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CHILD CUSTODY PROCEEDINGS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul A. Cutler

Senate Sponsor: Michael K. McKell

2

3 **LONG TITLE**

4 **General Description:**

5 This bill concerns the protection of children in certain judicial proceedings.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ defines terms;

9 ▶ in certain proceedings involving child custody and parent-time:

10 • specifies requirements for the admission of expert evidence; and

11 • requires a court to consider specific evidence when determining custody and

12 parent-time;

13 ▶ amends provisions regarding the supervision of supervised parent-time;

14 ▶ imposes certain requirements and limitations regarding orders to improve the

15 relationship between a parent and a child;

16 ▶ requires the state court administrator to make recommendations regarding the education

17 and training of court personnel involving child custody and related proceedings;

18 ▶ requires that certain protective order proceedings comply with specific standards; and

19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a coordination clause.

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **30-3-10**, as last amended by Laws of Utah 2023, Chapters 44, 327

27 **30-3-10.1**, as last amended by Laws of Utah 2023, Chapter 44

28 **30-3-10.10**, as enacted by Laws of Utah 2006, Chapter 287
 29 **30-3-34**, as last amended by Laws of Utah 2021, Chapter 399
 30 **30-3-34.5**, as last amended by Laws of Utah 2022, Chapter 430

31 ENACTS:

32 **30-3-41**, Utah Code Annotated 1953
 33 **78A-2-232**, Utah Code Annotated 1953
 34 **78B-7-121**, Utah Code Annotated 1953

35 **Utah Code Sections affected by Coordination Clause:**

36 **30-3-10**, as last amended by Laws of Utah 2023, Chapters 44, 327
 37 **30-3-10.1**, as last amended by Laws of Utah 2023, Chapter 44
 38 **30-3-10.2**, as last amended by Laws of Utah 2019, Chapter 188
 39 **30-3-34**, as last amended by Laws of Utah 2021, Chapter 399
 40 **30-3-34.5**, as last amended by Laws of Utah 2022, Chapter 430
 41 **30-3-41**, Utah Code Annotated 1953
 42 **78B-7-121**, Utah Code Annotated 1953

43

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

45 *The following section is affected by a coordination clause at the end of this bill.*

46 Section 1. Section **30-3-10** is amended to read:

47 **30-3-10 . Custody of a child -- Custody factors.**

48 (1) If a married couple having one or more minor children are separated, or the married
 49 couple's marriage is declared void or dissolved, the court shall enter, and has continuing
 50 jurisdiction to modify, an order of custody and parent-time.

51 (2) In determining any form of custody and parent-time under Subsection (1), the court
 52 shall consider the best interest of the child[~~and may consider among other factors the~~
 53 ~~court finds relevant, the following for each parent:] .~~

54 (3) In determining any form of custody and parent-time under Subsection (1), the court
 55 shall consider:

56 (a) for each parent, and in accordance with Section 30-3-41, evidence of domestic
 57 violence, physical abuse, or sexual abuse involving the child, the parent, or a
 58 household member of the parent;

59 (b) whether the parent has intentionally exposed the child to pornography or material
 60 harmful to minors, as "material" and "harmful to minors" are defined in Section
 61 76-10-1201; and

- 62 (c) whether custody and parent-time would endanger the child's health or physical or
63 psychological safety.
- 64 (4) In determining any form of custody and parent-time under Subsection (1), the court may
65 consider, among other factors the court finds relevant, the following for each parent:
- 66 (a) evidence of [~~domestic violence, neglect, physical abuse, sexual abuse, or emotional~~
67 ~~abuse, involving the child, the parent, or a household member of the parent~~]
68 psychological maltreatment;
- 69 (b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the
70 developmental needs of the child, including the child's:
- 71 (i) physical needs;
- 72 (ii) emotional needs;
- 73 (iii) educational needs;
- 74 (iv) medical needs; and
- 75 (v) any special needs;
- 76 (c) the parent's capacity and willingness to function as a parent, including:
- 77 (i) parenting skills;
- 78 (ii) co-parenting skills, including:
- 79 (A) ability to appropriately communicate with the other parent;
- 80 (B) ability to encourage the sharing of love and affection; and
- 81 (C) willingness to allow frequent and continuous contact between the child and
82 the other parent, except that, if the court determines that the parent is acting to
83 protect the child from domestic violence, neglect, or abuse, the parent's
84 protective actions may be taken into consideration; and
- 85 (iii) ability to provide personal care rather than surrogate care;
- 86 (d) in accordance with Subsection [~~(10)~~] (12), the past conduct and demonstrated moral
87 character of the parent;
- 88 (e) the emotional stability of the parent;
- 89 (f) the parent's inability to function as a parent because of drug abuse, excessive
90 drinking, or other causes;
- 91 [~~(g) whether the parent has intentionally exposed the child to pornography or material~~
92 ~~harmful to minors, as "material" and "harmful to minors" are defined in Section~~
93 ~~76-10-1201;~~]
- 94 [~~(h)~~] (g) the parent's reasons for having relinquished custody or parent-time in the past;
- 95 [~~(i)~~] (h) duration and depth of desire for custody or parent-time;

- 96 ~~[(f)]~~ (i) the parent's religious compatibility with the child;
- 97 ~~[(k)]~~ (j) the parent's financial responsibility;
- 98 ~~[(h)]~~ (k) the child's interaction and relationship with step-parents, extended family
- 99 members of other individuals who may significantly affect the child's best interests;
- 100 ~~[(m)]~~ (l) who has been the primary caretaker of the child;
- 101 ~~[(n)]~~ (m) previous parenting arrangements in which the child has been happy and
- 102 well-adjusted in the home, school, and community;
- 103 ~~[(o)]~~ (n) the relative benefit of keeping siblings together;
- 104 ~~[(p)]~~ (o) the stated wishes and concerns of the child, taking into consideration the child's
- 105 cognitive ability and emotional maturity;
- 106 ~~[(q)]~~ (p) the relative strength of the child's bond with the parent, meaning the depth,
- 107 quality, and nature of the relationship between the parent and the child; and
- 108 ~~[(r)]~~ (q) any other factor the court finds relevant.
- 109 ~~[(3)]~~ (5) There is a rebuttable presumption that joint legal custody, as defined in Section
- 110 30-3-10.1, is in the best interest of the child, except in cases when there is:
- 111 (a) in accordance with Section 30-3-41, evidence of domestic violence, neglect, physical
- 112 abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household
- 113 member of the parent;
- 114 (b) special physical or mental needs of a parent or child, making joint legal custody
- 115 unreasonable;
- 116 (c) physical distance between the residences of the parents, making joint decision
- 117 making impractical in certain circumstances; or
- 118 (d) any other factor the court considers relevant including those listed in this section and
- 119 Section 30-3-10.2.
- 120 ~~[(4)]~~ (6) (a) The person who desires joint legal custody shall file a proposed parenting
- 121 plan in accordance with Sections 30-3-10.8 and 30-3-10.9.
- 122 (b) A presumption for joint legal custody may be rebutted by a showing by a
- 123 preponderance of the evidence that it is not in the best interest of the child.
- 124 ~~[(5)]~~ (7) (a) A child may not be required by either party to testify unless the trier of fact
- 125 determines that extenuating circumstances exist that would necessitate the testimony
- 126 of the child be heard and there is no other reasonable method to present the child's
- 127 testimony.
- 128 (b) (i) The court may inquire of the child's and take into consideration the child's
- 129 desires regarding future custody or parent-time schedules, but the expressed

- 130 desires are not controlling and the court may determine the child's custody or
131 parent-time otherwise.
- 132 (ii) The desires of a child 14 years old or older shall be given added weight, but is not
133 the single controlling factor.
- 134 (c) (i) If an interview with a child is conducted by the court pursuant to Subsection [
135 ~~(5)(b)~~] (7)(b), the interview shall be conducted by the judge in camera.
- 136 (ii) The prior consent of the parties may be obtained but is not necessary if the court
137 finds that an interview with a child is the only method to ascertain the child's
138 desires regarding custody.
- 139 [~~(6)~~] (8) (a) Except as provided in Subsection [~~(6)(b)~~] (8)(b), a court may not discriminate
140 against a parent due to a disability, as defined in Section 57-21-2, in awarding
141 custody or determining whether a substantial change has occurred for the purpose of
142 modifying an award of custody.
- 143 (b) The court may not consider the disability of a parent as a factor in awarding custody
144 or modifying an award of custody based on a determination of a substantial change in
145 circumstances, unless the court makes specific findings that:
- 146 (i) the disability significantly or substantially inhibits the parent's ability to provide
147 for the physical and emotional needs of the child at issue; and
- 148 (ii) the parent with a disability lacks sufficient human, monetary, or other resources
149 available to supplement the parent's ability to provide for the physical and
150 emotional needs of the child at issue.
- 151 (c) Nothing in this section may be construed to apply to adoption proceedings under
152 Title 78B, Chapter 6, Part 1, Utah Adoption Act.
- 153 [~~(7)~~] (9) This section does not establish a preference for either parent solely because of the
154 gender of the parent.
- 155 [~~(8)~~] (10) This section establishes neither a preference nor a presumption for or against joint
156 physical custody or sole physical custody, but allows the court and the family the widest
157 discretion to choose a parenting plan that is in the best interest of the child.
- 158 [~~(9)~~] (11) When an issue before the court involves custodial responsibility in the event of a
159 deployment of one or both parents who are service members and the service member has
160 not yet been notified of deployment, the court shall resolve the issue based on the
161 standards in Sections 78B-20-306 through 78B-20-309.
- 162 [~~(10)~~] (12) In considering the past conduct and demonstrated moral standards of each party
163 under Subsection [~~(2)(d)~~] (4)(c) or any other factor a court finds relevant, the court may

164 not:

- 165 (a) consider or treat a parent's lawful possession or use of cannabis in a medicinal
 166 dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis
 167 device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments
 168 and Pharmacies, Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical
 169 Cannabis, or Subsection 58-37-3.7(2) or (3) any differently than the court would
 170 consider or treat the lawful possession or use of any prescribed controlled substance;
 171 or
- 172 (b) discriminate against a parent because of the parent's status as a:
- 173 (i) cannabis production establishment agent, as that term is defined in Section
 174 4-41a-102;
- 175 (ii) medical cannabis pharmacy agent, as that term is defined in Section 26B-4-201;
- 176 (iii) medical cannabis courier agent, as that term is defined in Section 26B-4-201; or
- 177 (iv) medical cannabis cardholder in accordance with Title 26B, Chapter 4, Part 2,
 178 Cannabinoid Research and Medical Cannabis.

179 *The following section is affected by a coordination clause at the end of this bill.*

180 Section 2. Section **30-3-10.1** is amended to read:

181 **30-3-10.1 . Definitions -- Joint legal custody -- Joint physical custody.**

182 As used in this chapter:

- 183 (1) "Abuse" means the same as that term is defined in Section 80-1-102.
- 184 (2) (a) "Custodial responsibility" includes all powers and duties relating to caretaking
 185 authority and decision-making authority for a child.
- 186 (b) "Custodial responsibility" includes physical custody, legal custody, parenting time,
 187 right to access, [~~visitation~~] parent-time, and authority to grant limited contact with a
 188 child.
- 189 [~~(2)~~] (3) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 190 (4) "Joint legal custody":
- 191 (a) means the sharing of the rights, privileges, duties, and powers of a parent by both
 192 parents, where specified;
- 193 (b) may include an award of exclusive authority by the court to one parent to make
 194 specific decisions;
- 195 (c) does not affect the physical custody of the child except as specified in the order of
 196 joint legal custody;
- 197 (d) is not based on awarding equal or nearly equal periods of physical custody of and

198 access to the child to each of the parents, as the best interest of the child often
 199 requires that a primary physical residence for the child be designated; and
 200 (e) does not prohibit the court from specifying one parent as the primary caretaker and
 201 one home as the primary residence of the child.

202 [~~(3)~~] (5) "Joint physical custody":

203 (a) means the child stays with each parent overnight for more than 30% of the year, and
 204 both parents contribute to the expenses of the child in addition to paying child
 205 support;

206 (b) can mean equal or nearly equal periods of physical custody of and access to the child
 207 by each of the parents, as required to meet the best interest of the child;

208 (c) may require that a primary physical residence for the child be designated; and

209 (d) does not prohibit the court from specifying one parent as the primary caretaker and
 210 one home as the primary residence of the child.

211 (6) "Protective order" means:

212 (a) a civil protective order, as that term is defined in Section 78B-7-102;

213 (b) an ex parte civil protective order, as that term is defined in Section 78B-7-102; or

214 (c) a foreign protection order, as that term is defined in Section 78B-7-302.

215 (7) "Psychological maltreatment" means a repeated pattern or extreme incident of caretaker
 216 behavior that:

217 (a) intentionally thwarts a child's basic psychological needs, including physical and
 218 psychological safety, cognitive stimulation, and respect;

219 (b) conveys that a child is worthless, defective, or expendable; and

220 (c) may terrorize a child.

221 [~~(4)~~] (8) "Service member" means a member of a uniformed service.

222 (9) "Sexual abuse" means the same as that term is defined in Section 80-1-102.

223 [~~(5)~~] (10) "Uniformed service" means:

224 (a) active and reserve components of the United States Armed Forces;

225 (b) the United States Merchant Marine;

226 (c) the commissioned corps of the United States Public Health Service;

227 (d) the commissioned corps of the National Oceanic and Atmospheric Administration of
 228 the United States; or

229 (e) the National Guard of a state.

230 Section 3. Section **30-3-10.10** is amended to read:

231 **30-3-10.10 . Parenting plan -- Domestic violence.**

- 232 (1) In any proceeding regarding a parenting plan, the court shall consider evidence of
 233 domestic violence in accordance with Section 30-3-41, if presented.
- 234 (2) If there is a protective order, civil stalking injunction, or the court finds that a parent has
 235 committed domestic violence, the court shall consider the impact of domestic violence
 236 in awarding parent-time, and make specific findings regarding the award of parent-time.
- 237 (3) If the court orders parent-time and a protective order or civil stalking injunction is still
 238 in place, it shall consider whether to order the parents to conduct parent-time pick-up
 239 and transfer through a third party. The parent who is the stated victim in the order or
 240 injunction may submit to the court, and the court shall consider, the name of a person
 241 considered suitable to act as the third party.
- 242 (4) If the court orders the parents to conduct parent-time through a third party, the parenting
 243 plan shall specify the time, day, place, manner, and the third party to be used to
 244 implement the exchange.

245 *The following section is affected by a coordination clause at the end of this bill.*

246 Section 4. Section **30-3-34** is amended to read:

247 **30-3-34 . Parent-time -- Best interests -- Rebuttable presumption.**

- 248 (1) If the parties are unable to agree on a parent-time schedule, the court may:
 249 (a) establish a parent-time schedule; or
 250 (b) order a parent-time schedule described in Section 30-3-35, 30-3-35.1, 30-3-35.2, or
 251 30-3-35.5.
- 252 (2) The advisory guidelines as provided in Section 30-3-33 and the parent-time schedule as
 253 provided in Sections 30-3-35 and 30-3-35.5 shall be considered the minimum
 254 parent-time to which the noncustodial parent and the child shall be entitled.
- 255 (3) In accordance with Section 30-3-41, when ordering a parent-time schedule a court shall
 256 consider:
 257 (a) evidence of domestic violence, physical abuse, or sexual abuse involving the child, a
 258 parent, or a household member of the parent; and
 259 (b) whether parent-time would endanger the child's health or physical or psychological
 260 safety.
- 261 (4) A court may consider the following when ordering a parent-time schedule:
 262 [~~(a) whether parent-time would endanger the child's physical health or mental health, or~~
 263 ~~significantly impair the child's emotional development;]~~
 264 [~~(b) (a) evidence of [domestic violence, neglect, physical abuse, sexual abuse, or~~
 265 ~~emotional abuse, involving the child, a parent, or a household member of the parent]~~]

266 psychological maltreatment;

267 [(e)] (b) the distance between the residency of the child and the noncustodial parent;

268 [~~(d)~~ a credible allegation of child abuse has been made;]

269 [(e)] (c) the lack of demonstrated parenting skills without safeguards to ensure the child's

270 well-being during parent-time;

271 [(f)] (d) the financial inability of the noncustodial parent to provide adequate food and

272 shelter for the child during periods of parent-time;

273 [(g)] (e) the preference of the child if the court determines the child is of sufficient

274 maturity;

275 [(h)] (f) the incarceration of the noncustodial parent in a county jail, secure youth

276 corrections facility, or an adult corrections facility;

277 [(i)] (g) shared interests between the child and the noncustodial parent;

278 [(j)] (h) the involvement or lack of involvement of the noncustodial parent in the school,

279 community, religious, or other related activities of the child;

280 [(k)] (i) the availability of the noncustodial parent to care for the child when the custodial

281 parent is unavailable to do so because of work or other circumstances;

282 [(l)] (j) a substantial and chronic pattern of missing, canceling, or denying regularly

283 scheduled parent-time;

284 [(m)] (k) the minimal duration of and lack of significant bonding in the parents'

285 relationship before the conception of the child;

286 [(n)] (l) the parent-time schedule of siblings;

287 [(o)] (m) the lack of reasonable alternatives to the needs of a nursing child; and

288 [(p)] (n) any other criteria the court determines relevant to the best interests of the child.

289 [(4)] (5) The court shall enter the reasons underlying the court's order for parent-time that:

290 (a) incorporates a parent-time schedule provided in Section 30-3-35 or 30-3-35.5; or

291 (b) provides more or less parent-time than a parent-time schedule provided in Section

292 30-3-35 or 30-3-35.5.

293 [(5)] (6) A court may not order a parent-time schedule unless the court determines by a

294 preponderance of the evidence that the parent-time schedule is in the best interest of the

295 child.

296 [(6)] (7) Once the parent-time schedule has been established, the parties may not alter the

297 schedule except by mutual consent of the parties or a court order.

298 *The following section is affected by a coordination clause at the end of this bill.*

299 Section 5. Section **30-3-34.5** is amended to read:

300 **30-3-34.5 . Supervised parent-time.**

301 (1) Considering the fundamental liberty interests of parents and children, it is the policy of
 302 this state that divorcing parents have unrestricted and unsupervised access to their
 303 children. When necessary to protect a child and no less restrictive means is reasonably
 304 available however, and in accordance with Section 30-3-41, a court may order
 305 supervised parent-time if the court finds evidence that the child would be subject to
 306 physical or emotional harm or child abuse, as described in Sections 76-5-109, 76-5-109.2,
 307 76-5-109.3, ~~[and] 76-5-114, and 80-1-102~~, from the noncustodial parent if left
 308 unsupervised with the noncustodial parent.

309 (2) ~~[A court that]~~ If the court finds evidence of domestic violence, child abuse, or an
 310 ongoing risk to a child, and orders supervised parent-time, the court shall give
 311 preference to [persons suggested by the parties to supervise, including relatives]
 312 supervision by a professional individual or private agency trained in child abuse
 313 reporting laws, the developmental needs of a child, and the dynamics of domestic
 314 violence, child abuse, sexual abuse, and substance abuse.

315 (3) If a professional individual or private agency described in Subsection (2) is not
 316 available, affordable, or practicable under the circumstances, a court shall give
 317 preference to supervision by an individual who is:

318 (a) capable and willing to provide physical and psychological safety and security to the
 319 child, and to assist in the avoidance and prevention of domestic and family violence;
 320 and

321 (b) is trained in child abuse reporting laws, the developmental needs of a child, and the
 322 dynamics of domestic violence, child abuse, sexual abuse, and substance abuse.

323 (4) ~~[If the court finds that the persons suggested by the parties are]~~ If an individual described
 324 in Subsection (2) or (3) is not available, affordable, or practicable under the
 325 circumstances, or if the court does not find evidence of domestic violence, child abuse,
 326 or an ongoing risk to a child, a court may order supervised parent-time that is supervised
 327 by an individual who is willing to supervise, and [are] is capable of protecting the [
 328 ~~children]~~ child from physical or emotional harm, or child abuse, [the court shall authorize
 329 ~~the persons to supervise parent-time]~~ and the court shall give preference to individuals
 330 suggested by the parties, including relatives.

331 ~~[(3) If the court is unable to authorize any persons to supervise parent-time pursuant to~~
 332 ~~Subsection (2), the court may require that the noncustodial parent seek the services of a~~
 333 ~~professional individual or agency to exercise their supervised parent-time.]~~

- 334 ~~[(4)]~~ (5) At the time supervised parent-time is imposed, the court shall consider:
- 335 (a) whether the cost of professional or agency services is likely to prevent the
- 336 noncustodial parent from exercising parent-time; and
- 337 (b) whether the requirement for supervised parent-time should expire after a set period
- 338 of time.

339 ~~[(5) The]~~

340 (6) Except when the court makes a finding that, due to abuse by or the incapacity of the

341 noncustodial parent, supervised parent-time will be necessary indefinitely to ensure the

342 physical or psychological safety and protection of the child, the court shall, in its order

343 for supervised parent-time, provide specific goals and expectations for the noncustodial

344 parent to accomplish before unsupervised parent-time may be granted. The court shall

345 schedule one or more follow-up hearings to revisit the issue of supervised parent-time.

346 ~~[(6)]~~ (7) A noncustodial parent may, at any time, petition the court to modify the order for

347 supervised parent-time if the noncustodial parent can demonstrate that the specific goals

348 and expectations set by the court in Subsection ~~[(5)]~~ (6) have been accomplished.

349 *The following section is affected by a coordination clause at the end of this bill.*

350 Section 6. Section **30-3-41** is enacted to read:

351 **30-3-41 . Definitions -- Expert evidence -- Violence or abuse findings -- Child**

352 **relationship and reunification.**

353 (1) As used in this section:

354 (a) (i) "Child custody proceeding" means a civil proceeding between the parents of a

355 child that involves the care or custody of the child, including proceedings

356 involving:

357 (A) divorce;

358 (B) separation;

359 (C) parent-time;

360 (D) paternity;

361 (E) child support; or

362 (F) legal or physical custody of the child.

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

364 (A) a child protective, abuse, or neglect proceeding;

365 (B) a juvenile justice proceeding; or

366 (C) a child placement proceeding in which a state, local, or tribal government, a

367 designee of such a government, or any contracted child welfare agency or child

368 protective services agency of such a government is a party to the proceeding.

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

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

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

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

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

384 (i) any past or current protective order against the accused parent; or

385 (ii) any charge, arrest, or conviction of the accused parent for domestic violence,
386 sexual violence, or abuse.

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

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

390 or

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

394 (4) As part of a child custody proceeding, a court may not, solely in order to improve a
395 deficient relationship between a parent and a child, including in the context of
396 reunification treatment:

397 (a) remove the child from a parent or litigating party:

398 (i) who is competent and not physically or sexually abusive; and

399 (ii) with whom the child is bonded; or

400 (b) restrict reasonable contact between the child and a parent or litigating party:

401 (i) who is competent and not physically or sexually abusive; and

- 402 (ii) with whom the child is bonded.
- 403 (5) As part of a child custody proceeding where the court has reasonable cause to believe
404 that there is domestic violence, child abuse, or an ongoing risk to the child:
- 405 (a) a court may not order a reunification treatment or program unless there is generally
406 accepted proof:
- 407 (i) of the physical and psychological safety, effectiveness, and therapeutic value of
408 the reunification treatment; and
- 409 (ii) that the reunification treatment is not associated with causing harm to a child;
- 410 (b) a court may not order a reunification treatment that is predicated on cutting off a
411 child from a parent:
- 412 (i) who is competent and not physically or sexually abusive; and
- 413 (ii) with whom the child is bonded;
- 414 (c) any order to remediate the resistance of a child to have contact with a violent or
415 abusive parent shall primarily address the behavior of that parent or the contributions
416 of that parent to the resistance of the child; and
- 417 (d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and that
418 requires the parent to take steps to potentially improve the child's relationship with a
419 violent or abusive parent, shall:
- 420 (i) prioritize the child's physical and psychological safety and needs; and
- 421 (ii) be narrowly tailored to address specific behavior.
- 422 (6) Subject to Subsection (4), Subsection (5) does not preclude the court from ordering
423 mental health treatment by a licensed mental health professional that is generally
424 accepted by and meets the standards of practice for mental health professions if:
- 425 (a) the court does not have reasonable cause to believe that there is domestic violence,
426 child abuse, or an ongoing risk to the child; and
- 427 (b) the treatment does not pose a risk to the child or parent.
- 428 Section 7. Section **78A-2-232** is enacted to read:
- 429 **78A-2-232 . Child abuse and domestic abuse education and training for judges,**
430 **court commissioners, and court personnel.**
- 431 (1) As used in this section:
- 432 (a) "Advocacy services provider" means the same as that term is defined in Section
433 77-38-403.
- 434 (b) "Child custody proceeding" means a civil proceeding between the parents of a child
435 that involves the care or custody of the child including proceedings involving:

- 436 (i) divorce;
437 (ii) separation;
438 (iii) parent-time;
439 (iv) paternity;
440 (v) child support;
441 (vi) legal or physical custody of a child; or
442 (vii) a civil protective order as that term is defined in Section 78B-7-102.
443 (2) The state court administrator described in Section 78A-2-105 shall develop or
444 recommend a proposed training and education program that:
445 (a) shall be designed to improve the ability of the courts to:
446 (i) recognize domestic violence and child abuse in child custody proceedings; and
447 (ii) make appropriate custody decisions that prioritize a child's physical and
448 psychological safety and well-being;
449 (b) shall focus solely on domestic and sexual violence and child abuse, including:
450 (i) child sexual abuse;
451 (ii) physical abuse;
452 (iii) emotional abuse;
453 (iv) coercive control;
454 (v) implicit and explicit bias, including biases relating to parents with disabilities;
455 (vi) trauma;
456 (vii) long-term and short-term impacts of domestic violence and child abuse on
457 children; and
458 (viii) victim and perpetrator behavior patterns and relationship dynamics within the
459 cycle of violence;
460 (c) shall be based on evidence-based and peer-reviewed research by recognized experts
461 in the types of abuse described in Subsection (2)(b);
462 (d) shall require training to be provided by a professional with substantial experience in
463 assisting survivors of domestic violence or child abuse, including an advocacy
464 services provider;
465 (e) may include input from a survivor of domestic violence or child physical or sexual
466 abuse; and
467 (f) may incorporate curriculum, best practices, or other materials developed for or used
468 in similar training and education programs.
469 (3) (a) The state court administrator shall present the proposed or recommended training

470 and education program to the Judiciary Interim Committee on or before the
471 committee's September 2024 interim meeting.

472 (b) The presentation described in Subsection (3)(a) shall include:

473 (i) recommendations for the specific personnel positions that will be required to
474 participate in the program;

475 (ii) recommended performance metrics for the program and how those metrics may
476 be tracked;

477 (iii) an estimate of the costs to implement the program; and

478 (iv) an identification of potential grant sources, if any, that may be available to fund
479 the program in whole or in part.

480 *The following section is affected by a coordination clause at the end of this bill.*

481 Section 8. Section **78B-7-121** is enacted to read:

482 **78B-7-121 . Requirements for proceedings between the parents of a child.**

483 (1) (a) As used in this section, "relevant proceeding" means a civil proceeding under this
484 chapter:

485 (i) between the parents of a child;

486 (ii) that involves the care or custody of the child; and

487 (iii) that concerns a protective order under this chapter.

488 (b) "Relevant proceeding" does not include:

489 (i) any child protective, abuse, or neglect proceeding;

490 (ii) a juvenile justice proceeding; or

491 (iii) any child placement proceeding in which a state, local, or tribal government, a
492 designee of such a government, or any contracted child welfare agency or child
493 protective services agency of such a government is a party to the proceeding.

494 (2) In a relevant proceeding, the court shall comply with the standards described in Section
495 30-3-41.

496 Section 9. **Effective date.**

497 This bill takes effect on May 1, 2024.

498 Section 10. **Coordinating H.B. 272 with S.B. 95.**

499 If H.B. 272, Child Custody Proceedings Amendments, and S.B. 95, Domestic
500 Relations Recodification, both pass and become law, the Legislature intends that, on
501 September 1, 2024:

502 (1) Subsections 30-3-10(1) through (4) in H.B. 272 be amended to read:

503 "[(1) If a married couple having one or more minor children are separated, or the

504 ~~married couple's marriage is declared void or dissolved, the court shall enter, and has~~
505 ~~continuing jurisdiction to modify, an order of custody and parent-time.~~

506 ~~(2) In determining any form of custody and parent-time under Subsection (1), the~~
507 ~~court shall consider the best interest of the child and may consider among other factors~~
508 ~~the court finds relevant, the following for each parent:]~~

509 (1) In a proceeding between parents in which the custody and parent-time of a minor
510 child is at issue, the court shall consider the best interests of the minor child in
511 determining any form of custody and parent-time.

512 (2) The court shall determine whether an order for custody or parent-time is in the
513 best interests of the minor child by a preponderance of the evidence.

514 (3) In determining any form of custody and parent-time under Subsection (1), the
515 court shall consider:

516 (a) for each parent, and in accordance with Section 81-9-103, evidence of domestic
517 violence, physical abuse, or sexual abuse involving the minor child, the parent, or a
518 household member of the parent;

519 (b) whether the parent has intentionally exposed the minor child to pornography or
520 material harmful to minors, as "material" and "harmful to minors" are defined in Section
521 76-10-1201; and

522 (c) whether custody and parent-time would endanger the minor child's health or
523 physical or psychological safety.

524 (4) In determining the form of custody and parent-time that is in the best interests of
525 the minor child, the court may consider, among other factors the court finds relevant, the
526 following for each parent:

527 (a) [-]evidence of[-] domestic violence, neglect, physical abuse, sexual abuse, or
528 emotional abuse, involving the child, the parent, or a household member of the parent;]
529 psychological maltreatment;

530 (b) [-]the parent's demonstrated understanding of, responsiveness to, and ability to
531 meet the developmental needs of the minor child, including the minor child's:

532 (i) [-]physical needs;

533 (ii) [-]emotional needs;

534 (iii) [-]educational needs;

535 (iv) [-]medical needs; and

536 (v) [-]any special needs;

537 (c) [-]the parent's capacity and willingness to function as a parent, including:

- 538 (i) [-]parenting skills;
- 539 (ii) [-]co-parenting skills, including:
- 540 (A) [-]ability to appropriately communicate with the other parent;
- 541 (B) [-]ability to encourage the sharing of love and affection; and
- 542 (C) [-]willingness to allow frequent and continuous contact between the minor child
- 543 and the other parent, except that, if the court determines that the parent is acting to
- 544 protect the minor child from domestic violence, neglect, or abuse, the parent's protective
- 545 actions may be taken into consideration; and
- 546 (iii) [-]ability to provide personal care rather than surrogate care;
- 547 (d) [~~in accordance with Subsection (10),~~]the past conduct and demonstrated moral
- 548 character of the parent as described in Subsection (9);
- 549 (e) [-]the emotional stability of the parent;
- 550 (f) [-]the parent's inability to function as a parent because of drug abuse, excessive
- 551 drinking, or other causes;
- 552 [~~(g) whether the parent has intentionally exposed the child to pornography or material~~
- 553 ~~harmful to minors, as "material" and "harmful to minors" are defined in Section~~
- 554 ~~76-10-1201;~~
- 555 (~~h~~) (g) the parent's reasons for having relinquished custody or parent-time in the
- 556 past;
- 557 [~~(+)~~] (~~h~~) duration and depth of desire for custody or parent-time;
- 558 [~~(+)~~] (~~i~~) the parent's religious compatibility with the minor child;
- 559 [~~(k)~~] (~~j~~) the parent's financial responsibility;
- 560 [~~(+)~~] (~~k~~) the child's interaction and relationship with step-parents, extended family
- 561 members of other individuals who may significantly affect the minor child's best
- 562 interests;
- 563 [~~(m)~~] (~~l~~) who has been the primary caretaker of the minor child;
- 564 [~~(+)~~] (~~m~~) previous parenting arrangements in which the minor child has been happy
- 565 and well-adjusted in the home, school, and community;
- 566 [~~(+)~~] (~~n~~) the relative benefit of keeping siblings together;
- 567 [~~(+)~~] (~~o~~) the stated wishes and concerns of the minor child, taking into consideration
- 568 the minor child's cognitive ability and emotional maturity;
- 569 [~~(+)~~] (~~p~~) the relative strength of the minor child's bond with the parent, meaning the
- 570 depth, quality, and nature of the relationship between the parent and the minor child; and
- 571 [~~(+)~~] (~~q~~) any other factor the court finds relevant.";

572 (2) all references to "child" in Subsections 30-3-10.1(7) and 30-3-34(3) in H.B. 272
573 be changed to "minor child";

574 (3) the changes to Subsection 30-3-34(4)(a) in H.B. 272 supersede the changes to
575 Subsection 81-9-206(3)(b) in S.B. 95;

576 (4) all references to "child" in Subsection 30-3-34.5(3)(a) in H.B. 272 be changed to
577 "minor child";

578 (5) Subsection 30-3-34.5(4) in H.B. 272 be amended to read:

579 "(4) [If the court finds that the persons suggested by the parties are-] If an individual
580 described in Subsection (2) or (3) is not available, affordable, or practicable under the
581 circumstances, or if the court does not find evidence of domestic violence, child abuse,
582 or an ongoing risk to a minor child, a court may order supervised parent-time that is
583 supervised by an individual who is willing to supervise, and[-are] is capable of
584 protecting the[-children] minor child from physical or emotional harm, or child abuse,[
585 the court shall authorize the persons to supervise parent-time] and the court shall give
586 preference to individuals suggested by the parties, including relatives.";

587 (6) all references to "child" in Subsection 30-3-34.5(6) in H.B. 272 be changed to
588 "minor child";

589 (7) Section 30-3-41 enacted in H.B. 272 be renumbered to 81-9-103 and be amended
590 to read:

591 "[30-3-41.] 81-9-103. Expert evidence -- Violence or abuse findings -- Child
592 relationship and reunification.

593 (1) As used in this section:

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

597 (A) divorce;

598 (B) separation;

599 (C) parent-time;

600 (D) paternity;

601 (E) child support; or

602 (F) legal or physical custody of the minor child.

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

604 (A) a child protective, abuse, or neglect proceeding;

605 (B) a juvenile justice proceeding; or

606 (C) a child placement proceeding in which a state, local, or tribal government, a
607 designee of such a government, or any contracted child welfare agency or child
608 protective services agency of such a government is a party to the proceeding.

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

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

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

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

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

625 (i) any past or current protective order against the accused parent; or

626 (ii) any charge, arrest, or conviction of the accused parent for domestic violence,
627 sexual violence, or abuse.

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

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

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

634 (4) As part of a child custody proceeding, a court may not, solely in order to improve
635 a deficient relationship between a parent and a minor child, including in the context of
636 reunification treatment:

637 (a) remove the minor child from a parent or litigating party:

638 (i) who is competent and not physically or sexually abusive; and

639 (ii) with whom the minor child is bonded; or

640 (b) restrict reasonable contact between the minor child and a parent or litigating party:
641 (i) who is competent and not physically or sexually abusive; and
642 (ii) with whom the minor child is bonded.
643 (5) As part of a child custody proceeding where the court has reasonable cause to
644 believe that there is domestic violence, child abuse, or an ongoing risk to the child:
645 (a) a court may not order a reunification treatment or program unless there is
646 generally accepted proof:
647 (i) of the physical and psychological safety, effectiveness, and therapeutic value of
648 the reunification treatment; and
649 (ii) that the reunification treatment is not associated with causing harm to a child;
650 (b) a court may not order a reunification treatment that is predicated on cutting off a
651 minor child from a parent:
652 (i) who is competent and not physically or sexually abusive; and
653 (ii) with whom the minor child is bonded;
654 (c) any order to remediate the resistance of a minor child to have contact with a
655 violent or abusive parent shall primarily address the behavior of that parent or the
656 contributions of that parent to the resistance of the minor child; and
657 (d) any order to a parent who meets the criteria in Subsections (5)(b)(i) and (ii), and
658 that requires the parent to take steps to potentially improve the minor child's relationship
659 with a violent or abusive parent, shall:
660 (i) prioritize the minor child's physical and psychological safety and needs; and
661 (ii) be narrowly tailored to address specific behavior.
662 (6) Subject to Subsection (4), Subsection (5) does not preclude the court from
663 ordering mental health treatment by a licensed mental health professional that is
664 generally accepted by and meets the standards of practice for mental health professions
665 if:
666 (a) the court does not have reasonable cause to believe that there is domestic
667 violence, child abuse, or an ongoing risk to the child; and
668 (b) the treatment does not pose a risk to the child or parent.";
669 (8) the reference in Subsection 78B-7-121(2) in H.B. 272 be changed from "Section
670 30-3-41" to "Section 81-9-103.";
671 (9) Subsection 81-9-205(2)(a)(i) in S.B. 95 be amended to read:
672 "(i) evidence of domestic violence, neglect, physical abuse, sexual abuse, or
673 emotional abuse involving the minor child, a parent, or a household member of the

674 parent in accordance with Section 81-9-103;" and
675 (10) Subsection 81-9-207(1) in S.B. 95 be amended to read:
676 "(1) If it is necessary to protect a minor child and there is no less restrictive means
677 reasonably available, and in accordance with Section 81-9-103, a court may order
678 supervised parent-time if the court finds evidence that the minor child would be subject
679 to physical or emotional harm or child abuse, as described in Sections 76-5-109,
680 76-5-109.2, 76-5-109.3, 76-5-114, and 80-1-102, from the noncustodial parent if left
681 unsupervised with the noncustodial parent."