

Effective 3/25/2017

30-5a-103 Custody and visitation for persons other than a parent.

- (1) In accordance with Section 62A-4a-201, it is the public policy of this state that parents retain the fundamental right and duty to exercise primary control over the care, supervision, upbringing, and education of their children. There is a rebuttable presumption that a parent's decisions are in the child's best interests.
- (2) A court may find the presumption in Subsection (1) rebutted and grant custodial or visitation rights to a person other than a parent who, by clear and convincing evidence, has established all of the following:
 - (a) the person has intentionally assumed the role and obligations of a parent;
 - (b) the person and the child have formed an emotional bond and created a parent-child type relationship;
 - (c) the person contributed emotionally or financially to the child's well being;
 - (d) assumption of the parental role is not the result of a financially compensated surrogate care arrangement;
 - (e) continuation of the relationship between the person and the child would be in the child's best interests;
 - (f) loss or cessation of the relationship between the person and the child would be detrimental to the child; and
 - (g) the parent:
 - (i) is absent; or
 - (ii) is found by a court to have abused or neglected the child.
- (3) A proceeding under this chapter may be commenced by filing a verified petition, or petition supported by an affidavit, in the juvenile court if a matter is pending, or in the district court in the county in which the child:
 - (a) currently resides; or
 - (b) lived with a parent or a person other than a parent who acted as a parent within six months before the commencement of the action.
- (4) A proceeding under this chapter may be filed in a pending divorce, parentage action, or other proceeding, including a proceeding in the juvenile court, involving custody of or visitation with a 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 as set forth in Section 78B-13-209.
- (6) A proceeding under this chapter may not be filed 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 rules of civil procedure on all of the following:
 - (a) the child's biological, adopted, presumed, declarant, and adjudicated parents;
 - (b) any person who has court-ordered custody or visitation rights;
 - (c) the child's guardian;
 - (d) the guardian ad litem, if one has been appointed;
 - (e) a person or agency that has physical custody of the child or that claims to have custody or visitation rights; and
 - (f) any other person or agency that has previously appeared in any action regarding custody of or visitation with the child.
- (8) The court may order a custody evaluation to be conducted in any action brought under this chapter.

- (9) The court may enter temporary orders in an action brought under this chapter pending the entry of final orders.
- (10) Except as provided in Subsection (11), a court may not grant custody of a child under this section to an individual who is not the biological or adoptive parent of the child and 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:
- (a) child abuse, as described in Section 76-5-109;
 - (b) child abuse homicide, as described in Section 76-5-208;
 - (c) child kidnapping, as described in Section 76-5-301.1;
 - (d) human trafficking of a child, as described in Section 76-5-308.5;
 - (e) sexual abuse of a minor, as described in Section 76-5-401.1;
 - (f) rape of a child, as described in Section 76-5-402.1;
 - (g) object rape of a child, as described in Section 76-5-402.3;
 - (h) sodomy on a child, as described in Section 76-5-403.1;
 - (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;
 - (j) sexual exploitation of a minor, as described in Section 76-5b-201; or
 - (k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (10).
- (11)
- (a) For purpose of 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) A person described in Subsection (10) may only be considered for custody of a child if the following criteria are met by clear and convincing evidence:
 - (i) the person is a relative, as defined in Section 78A-6-307, of the child;
 - (ii) at least 10 years have elapsed from the day on which the person 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 person files a petition with the court seeking custody the person 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 child;
 - (iv) the person 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 78A-6-105, or potential harm to the child currently or at any time in the future when considering all of the following:
 - (A) the child's age;
 - (B) the child's gender;
 - (C) the child's development;
 - (D) the nature and seriousness of the disqualifying offense;
 - (E) the preferences of a child 12 years of age 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 person can provide evidence of the following:
 - (A) the relationship with the child is of long duration;
 - (B) that an emotional bond exists with the child; and

- (C) that custody by the person who has committed the disqualifying offense ensures the best interests of the 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 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 person with the disqualifying offense and the 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 person with the disqualifying offense bears the burden of proof regarding why placement with that person is in the best interest of the child over another responsible relative or equally situated person 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 person 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.

Amended by Chapter 400, 2017 General Session
Revisor instructions Chapter 400, 2017 General Session