

# Custody & Visitation

## Physical Custody

Physical custody is often given to the parent in which the child will live with most of the time. Physical custody is usually only awarded to one of the parents, not both.

being of the child. The court can give legal custody to either or both of the parents.

## Visitation Orders

The parent without physical custody of the child will get a visitation order that details when the child will be with them. This includes which

## How do I make my South Dakota custody and visitation schedule?

When creating a child visitation schedule in the State of South Dakota, it is important to be aware of the laws governing child custody and visitation in the State.

These laws are found in the South Dakota Codified Laws, Title 25, Domestic Relations.

South Dakota law allows parents who are willing to create a parenting plan (which includes a child visitation schedule) to send their plan to the courts instead of being assigned a custody arrangement and visitation schedule by the court.

The law also defines the terminology used by the courts and describes some of the procedures the court uses.

Understanding the law and applying it to your child visitation schedule is a good way to make sure the needs of your child are being met, and that your child visitation schedule will not be rejected due to a failure to follow the law.

## **How is the process different for unmarried parents?**

The mother of an unmarried minor born out of wedlock is entitled to its custody, services, and earnings provided to the court's right to award custody of the child to either parent, considering the best interests of the child as to its temporal, mental, and moral welfare. (SDCL § 25-5-10).

## **What does the court base custody decisions on?**

Determining custody can be a complex legal process. When making a custody determination, the court will consider some relevant factors in the child's life, including:

- Who is the more “fit” parent?
- Who is the more “stable” parent?
- Who is the “primary caretaker”?
- The preference of the child if the child is old enough and mature enough to voice an educated opinion as to custody (SDCL § 25-4-45)
- Is there “harmful parental misconduct” present?
- Are there half-siblings involved?
- Has there been a large change in circumstances?
- All relevant aspects in a child's life

## **What are the South Dakota Parenting (Visitation) guidelines?**

The South Dakota Parenting Guidelines can be found in the Appendix to Chapter 25-4A in the *South Dakota Codified Laws*. Also available on the Unified Judicial System of South Dakota website: <http://ujls.sd.gov>. There are several very detailed custody schedules that have been created for children of various ages and various circumstances.

Some examples of schedules from the Guidelines are provided below. *Please note: more information and exceptions may apply to the schedules for certain age groups; please review the guidelines in their entirety to decide if more information and/or exceptions apply to the schedule for each given age group.*

- **Newborns (birth to 3 months):** The non-residential parent can have three 2-hour custodial periods per week. One weekend custodial period for six hours at the custodial parent's house or another agreed location.
- **Infants (3 to 6 months):** Alternative Parenting Plans: (1) Three, 3 hour custodial periods per week, with one weekend day for six hours. Breast feeding must be accommodated. Or (2) Three, three-hour custodial periods per week. One overnight on a weekend for no longer than a twelve-hour period, if the child is not breastfeeding and the noncustodial parent can personally providing primary care.
- **Babies (6 to 12 months):** Alternative Parenting Plans: (1) Three custodial periods per week of up to four hours each with one weekend day for six hours; or (2) Three custodial periods per week of up to four hours each with one weekend day for six hours, but with one overnight not to exceed twelve hours, if the child is not breastfeeding, and the noncustodial parent is can provide personal primary care; or (3) Child spends time in alternate homes, but spends significantly more time in one parent's home and no more than one to two overnights spaced regularly throughout the week at the other parent's home, if the child is not breastfeeding.
- **Toddlers (12 to 36 months):** Alternative Parenting Plans: (1) Three custodial periods per week of up to eight hours each on a predictable schedule; or (2) Three custodial periods per week of up to eight hours each on a predictable schedule and also one overnight per week; or (3) Child spends time in alternate homes, but with significantly more time in one parent's home with one or two overnights spaced regularly throughout the week. Arrangement (3) requires an adaptable child and cooperative parents.

Of course, parents are free to set up their own parenting plan. However, as required by the South Dakota Parenting Guidelines: *If the parents are unable to agree on their own Parenting Plan, however, these Guidelines become mandatory and will be used as their Parenting Plan. SDCL 25-4A-10, 25-4A-11. In the event a parent's time with the children becomes an issue in court, the judge will set whatever Parenting Plan best meets the needs of the children.*

## **What should be included in a custody and visitation schedule?**

Any agreement by the parties for visitation other than the standard guidelines shall be in writing, signed by both parties and filed with the court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan already filed. (SDCL § 25-4A-12).

## **How do I move with the child when there is shared custody?**

*The guidelines also state: A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather the continuing conflict between their parents before, during, and after the divorce and/or separation. To decrease harm to their children, parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of their children. It is recommended that an annual calendar be prepared so that the parents and the children are aware of the parenting schedule.*

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