

THIS IS THE LAW

CHILD CUSTODY/ VISITATION AND CHILD SUPPORT

Generally, a parent's primary concern is the care and support of his or her children. When disputes about custody, visitation, or child support arise in the context of a separation or divorce, they can be particularly difficult for parents. When parents cannot agree about custody, visitation or child support, the children suffer. Children detect conflict between parents. Children may imagine that they are the cause of the conflict. Children want to please both parents and may feel caught in the middle.

The most important thing to remember in a separation is that children take cues from their parents. If a child's parents are hostile and bitter, the child will be hostile and bitter. If a child's parents are civil and respectful to each other, the child will better adjust to the separation. Parents must make it clear to children that they are not the cause of the separation. Children need to know that they are loved by both of their parents and are free to love both of their parents. Parents should never fight, argue or speak rudely to each other in the presence of their children. Each parent should encourage his or her child's relationship with the other parent. Parents should try to insulate children from the adult issues. Parents who are able to put the best interests of the children above their own are more likely to raise happy, healthy, well-adjusted children.

This pamphlet seeks to explain North Carolina laws on child custody, child visitation rights and child support by answering frequently asked questions about these matters.

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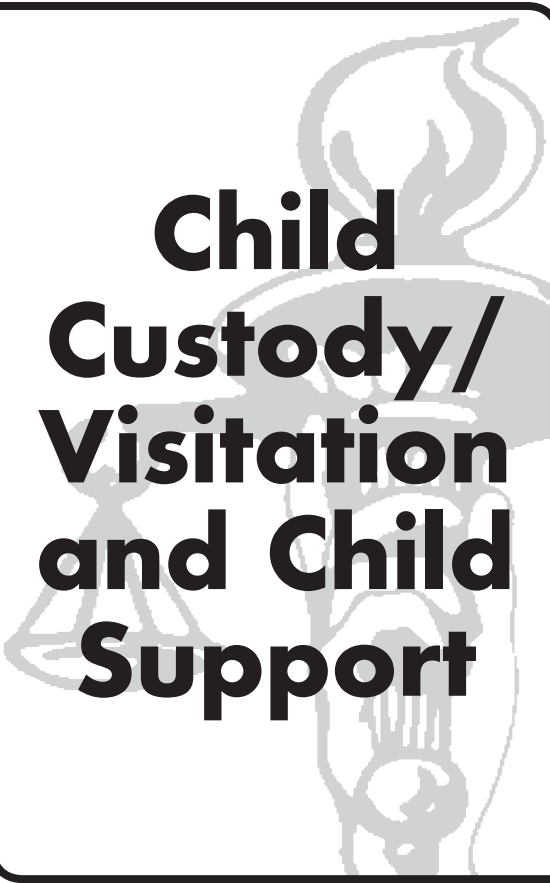
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Who is Entitled to Custody? • For a court to grant custody, the court must find that the custodian is a fit and proper person to have custody and that custody with that person is in the best interests of the children. There is no presumption favoring mothers over fathers. All factors being equal, mothers and fathers have equal rights to legal and physical custody of their children. There is a presumption favoring natural or adoptive parents over third parties, such as grandparents, aunts and neighbors. Natural or adoptive parents have protected rights to parent their own children. However, natural or adoptive parents may lose their protected rights if they take action or engage in behavior that is inconsistent with the best interests of the children.

What is Sole Legal Custody? • Sole legal custody means that one person has sole decision-making authority on issues such as education, religion, and medical decisions with regard to a child. The person who has sole legal custody frequently also has primary physical custody of that child.

What is Joint Legal Custody? • Joint legal custody means shared decision-making authority over a child. Both parties must discuss in advance and agree upon major issues for the child such as education, religion, and medical decisions. An award of “joint legal custody” does not necessarily mean equally shared physical custody; physical custody may be equally shared, or one person may have a greater amount of time with the child than the other. For joint legal custody to be successful, the parents should be able to communicate effectively and cooperate in parenting their child together.

How is Physical Custody different than Legal Custody? • Physical custody describes where the children reside on a day-to-day basis. Parties can share “joint” physical custody, which means that the children are spending substantially equal time with each party. Alternatively, one party could be the “primary” physical custodian and the other party would have “secondary” physical custody, or visitation with the children.

How is Custody Determined? • Custody may be agreed upon by the parties. If they are in agreement about legal custody and the custodial (“physical custody”) schedule, the parties may set out the terms of their custody agreement in a Separation Agreement or Parenting Agreement that is not required to be filed with the court, or in a Consent Order that is filed with the court and signed by a judge. If the parents are unable to agree on their own, they may try a mediation or arbitration process to resolve their dispute. If they do not wish to try alternative dispute resolution, they can go to court to let a judge decide, but mediation through the court system is mandatory before they can be heard by a judge.

What are “Visitation Rights”? • If one parent has primary custody, the other may be awarded “visitation”

(which is secondary physical custody) with his or her child. Under the law, the terms “custody” and “visitation” generally mean the same thing: a certain amount of time with the child. There are no general rules about when and how much visitation the parent without primary custody may have. That depends on various factors, including ages of the children, the children’s schedules, how far apart the parents live, and the work schedules of the parents. When determining a visitation schedule for the parent without primary custody, the parties (or the court) should consider weekdays, weekends, holidays, school breaks and “track-out” periods. If the parties cannot agree upon a reasonable visitation schedule, they may try mediation or arbitration to resolve their differences. If they do not wish to try mediation or arbitration, or if those tools are not successful, they can go to court and let a judge decide the visitation schedule.

What is the Court Procedure in Custody/Visitation Cases? • One of the parties begins the process by filing a complaint (lawsuit) for custody or visitation. The parties generally must attend mandatory mediation before a trial will be scheduled. In some jurisdictions, the parties must also attend parent-education classes. In some cases, where the physical and/or emotional well-being of a child is in question, the court may appoint a Guardian ad Litem to represent the children or a mental health professional to perform a psychological evaluation of the parties and/or the children. At a trial, the court will hear evidence and will determine a custody and visitation arrangement which is in the best interests of the children.

What is Mediation? • In mediation, a neutral third party helps facilitate an agreement between the parties. The mediator does not make decisions. The parties make decisions about custody and visitation with the mediator’s help. Parties may agree to mediate the Issue of custody before a lawsuit has been filed. However, if a lawsuit is filed, custody mediation is mandatory. In addition to resolving custody issues, parties may address all support and property issues in a private mediation. Mediation is generally less expensive and not as time-consuming as court. The parties control the outcome. The entire process may be settled in one day, and the parties can leave a private mediation with a binding settlement document. Parties do not necessarily need a lawyer for mediation and lawyers do not attend court mandated mediation, but parent are wise to consult an attorney prior to the mediation session. Without an attorney’s advice, a party could lose or waive rights the party did not know he or she had.

Is Custody Ever Permanent? • No. Custody and visitation arrangements are always subject to change when there is a substantial change of circumstances since the last order entered on custody, and those substantial changes affect the child’s welfare. Either party may file a motion for modification of a previous order citing these changed circumstances and how they affect the child, and

if the judge agrees there has been a substantial change that impacts the child, the judge will then decide if changing the custodial arrangement is in the child’s best interest.

Can the Child Decide? • No. The court may consider the wishes of children, but the court will not let the children decide custody or visitation issues.

How is Child Support Determined? • Currently, if the parties’ combined gross income is \$300,000 per year or less, child support is typically based upon the North Carolina Child Support Guidelines. To calculate child support, you will need: 1) Mother’s gross monthly income; 2) Father’s gross monthly income; 3) Children’s portion of the monthly health insurance premium; 4) Work-related childcare costs; and 5) any extraordinary expenses for the minor children (examples are items like medical treatments or therapies for special needs children). If either parent has other children in the home or for which he or she pays child support, adjustments for those amounts are included in the calculation as well. There are three different worksheets used in the calculation depending on the custodial arrangement. The guidelines and the worksheets are available at www.nccourts.org.

When Does Child Support Terminate? • Child support generally terminates when a child turns 18 or graduates from high school, whichever occurs later, but concludes at the outside age of 20. If the child turns 18 before graduation, child support continues until graduation (assuming the child graduates before they turn 20 years old). If the child graduates before turning 18, child support continues until the child turns 18. Child support may terminate earlier or extend later but only in certain rare circumstances.

What Happens if I Don’t Pay? • You can be held in contempt or prosecuted for failure to pay court ordered child support. You can be put in jail. Your driver’s license and other licenses can be suspended. Your tax refunds can be intercepted and passport applications denied. The courts have a host of options to enforce child support orders.

Can Child Support be Changed? • Yes. Either parent may seek a change (increase or decrease) in child support at any time if a substantial change in circumstances has occurred after the order was entered by the court. A substantial change in circumstances is presumed by the court if the request to change the support order is made three or more years after the entry of the original support order and there is a 15 percent difference between the amount of support being paid and the amount of support that would be required with new calculations under the Guidelines. The new calculation takes into account the parties’ updated incomes, childcare costs and health insurance expenses.