

THIS IS THE LAW

CHILD CUSTODY/ VISITATION AND CHILD SUPPORT

Generally, the care and support of his or her children are a parent's primary concern. 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 as well. Children detect conflict between parents. Children often imagine that they are the cause of the conflict. Children want to please both parents and feel caught in the middle.

The most important thing to remember in a separation is that children take their 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 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 ugly to each other in the presence of their children. Each parent needs to encourage his or her child's relationship with the other parent. Parents need to insulate children from the adult issues. Parents who are able to put the best interests of the children above their own are much 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.

NORTH CAROLINA
BAR ASSOCIATION
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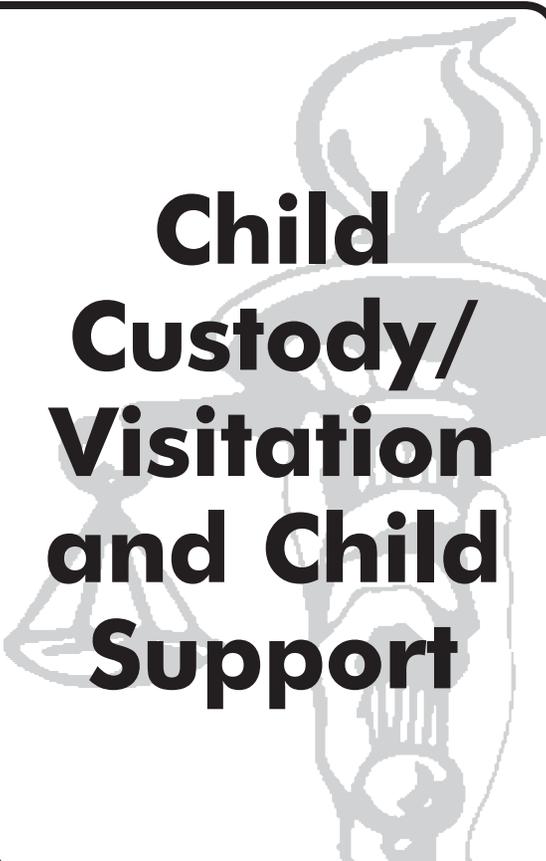
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Who is Entitled to Custody? • In order for a court to grant custody, the court must find that the custodian is a fit and proper person to have custody and that custody with that person is in the best interests of the children. There is not a presumption favoring mothers over fathers. All other things being equal, mothers and fathers have equal rights to the custody of their children. There is a presumption favoring natural parents over third parties, such as grandparents, aunts, and neighbors. Natural parents have protected rights to parent their own children. However, natural parents can lose those protected rights if they take action that is inconsistent with the best interests of the children.

What is Sole Custody? • Sole legal custody means that one person has sole decision-making power over a child and typically has primary physical custody of that child.

What is Joint Custody? • Joint legal custody means shared decision-making power over a child. It does not mean shared physical custody of the child. Joint custody means shared decision-making power over a child and shared physical custody of the child. It does not necessarily mean equally shared physical custody. When parents have joint custody, they share in major decisions about a child, and often each parent has the child more than every other weekend. For joint custody to be successful, the parents need to be able to communicate effectively and to cooperate in parenting their child together.

How is Custody Determined? • Custody may be agreed upon by the parties. If it is, the parties may set out the terms of their custody agreement in a Separation Agreement or Parenting Agreement that is not usually filed with the court or in a Consent Order that is filed with the court. If the parents are unable to agree on their own, they can try mediation or arbitration. If they do not want to try alternative dispute resolution, they can go to court to let a judge decide, but in most districts they will be required to attend mediation through the court system before they can be heard by a judge.

What are Visitation Rights? • If one parent has custody, the other has the right to have visitation with his or her child. There are no general rules about when and how much visitation the noncustodial parent should get. 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 noncustodial parent, the parties (or the court)

should consider weekdays, weekends, holidays, and summer. As with custody, the parties may agree on visitation in an agreement. If they cannot agree, they can try mediation or arbitration. If they do not wish to try mediation or arbitration, they can go to court and let a judge decide.

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 extreme cases, 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 decide what custody and visitation arrangement is in the best interests of the children.

What is Mediation? • Mediation is when a neutral third party helps facilitate an agreement between the parties. The mediator does not make decisions. The parties make the decisions with the mediator's help. You can hold a private mediation before or after a complaint has been filed. In addition to resolving custody issues, you can 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 can be settled in one day, and you can leave a private mediation with a binding settlement document. The process is very civil and dignified. It can set the tone for how the parties deal with each other from that point forward. If the parties are able to resolve the issues related to their separation at mediation, typically they work together and treat each other better in subsequent dealings with children or otherwise. You do not necessarily need a lawyer for mediation, but we recommend it. A non-lawyer mediator will not know the law. Without an attorney, you could lose or waive rights you did not know you had.

Is Custody Ever Permanent? • No. Custody and visitation arrangements are always subject to change when circumstances affecting the child's best interests change substantially.

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

How is Child Support Determined? • If the parties' combined income is less than \$300,000 per year, child support is determined based on the North Carolina Child Support Guidelines. There are generally four numbers that are needed to calculate child support: 1) Mother's gross monthly income; 2) Father's gross monthly income; 3) Children's portion of the monthly health insurance premium; and 4) Work-related childcare costs. If either parent has other children in the home or for which he or she pays child support, those numbers are included in the calculation as well. There are 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. If the child turns 18 before graduation, child support continues until graduation. 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 child support. You can be put in jail. Your driver's license and other licenses can be suspended. Your tax refunds can be intercepted. 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 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.

How Do I Find an Attorney? • You may contact the N.C. Lawyer Referral Service; contact information is provided on the back panel of this pamphlet and on the website of the North Carolina Bar Association (www.ncbar.org). If you cannot afford an attorney, you should contact the Legal Aid of North Carolina office serving your county. Each county also has a child support enforcement agency you may contact for help in obtaining child support.