



# CHILD CUSTODY AND SUPPORT



## SOUTH CAROLINA CHILD CUSTODY

A court's decision to award custody of a child to a particular parent is based upon the court's determination of what is in “the best interest of the child.” “The court considers many factors in determining the best interests of a child including the physical, psychological, spiritual, educational, familial, emotional, and recreational aspects of the child’s life. The courts will also assess each parent’s character, fitness, and attitude as they impact the child; consider the child’s preference for custody and weigh any domestic violence.” (*S.C Code Ann. §63-15-512*)

If parents are unable to mutually agree on custody, the court will decide on the matter. In some cases, “the court may consider the child's reasonable preference for custody. The court shall place weight upon the preference based upon the child's age, experience, maturity, judgment, and ability to express a preference. Usually the child will need to be at least twelve years old before the court will consider the child's preference. However, this is only one factor in the decision and South Carolina does not allow a child to decide custody.” (*Code of Laws for South Carolina - Chapter 3; Sections 20-3-160, 20-7-100, 20-7-1520*)

In cases where custody is contested, the court will appoint an independent third party known as a guardian ad litem to represent the child's interests. The guardian ad litem “functions as a representative of the court, appointed to assist the court in making its determination of custody by advocating for the best interest of the children and providing the court with an objective view.” *Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997); Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996).*

## TYPES OF CUSTODY

Courts may order many different types of custody arrangements. The main two types of custody arrangements are: legal and physical custody.

Legal custody is described as the ability to make decisions regarding the minor child or children. Included in those decisions are: the choice of the parent to make decisions regarding educational instruction, religious instruction, health care, discipline, child care providers for the child, notice of illness and injury, access to school and medical records; and all other material decisions affecting the health, education, and welfare of the child or children. Legal custody can be granted to one or both parents. The overwhelming preference in South Carolina is for joint legal custody.

Physical custody simply means the actual physical possession of the child or children. The main terms that describe physical custody are: sole custody, shared custody, and primary physical custody.

- Sole custody- this is where only one parent is granted all of the physical parenting time with the other parent being excluded completely. Courts are reluctant to order this option unless it is shown to be in the “best interest of the child.” Each parent has a Constitutional right to have a relationship with his or her child and judges are very reluctant to totally terminate a parent’s rights.
- Shared custody- this is an arrangement where the child is “shared” between the two parents, meaning that the child resides with one parent for half of the time and the other parent for half of the time. This is not the preference in South Carolina since the courts feel that it is important for the child to have stability. Example of shared custody, the child lives with each parent on alternating weeks with the exchange of the child occurring at 6pm on Sundays.
- Primary physical custody- this is an arrangement where the child lives in one home, in the child’s school district, for the greater amount of time. This is the legal preference for child custody in South Carolina. One parent is awarded primary physical custody and the other parent will be awarded visitation rights.

After custody has been determined, the court may consider the visitation rights of the noncustodial parent. Visitation is determined by the “best interest of the child” standard.

## **SOUTH CAROLINA CHILD SUPPORT**

Child support is the payment made by the noncustodial parent for the support of the child or children. Following a custody determination, the court will calculate the amount of child support to be paid by the parents. South Carolina has established a formula for the computation of child support based upon predetermined tables. Child support, alimony, the number of children in the home, health insurance, child care costs and extraordinary medical expenses are also considered in determining the child support amount.

Typically, “the total child support obligation is divided between the parents in proportion to their income. Each parent’s proportional share of combined adjusted gross income must be calculated. Compute the obligation of each parent by multiplying each parent’s share of income by the total child support obligation, and give the necessary credit for adjustments to the basic combined child support obligation...The guidelines presume that the parent to whom support is owed will spend that parent’s share directly on the child in that parent’s custody.” *(South Carolina Child Support Guidelines § 14-A; 14-B)*

A court's determination of custody, visitation and support may be subject to revision upon showing a substantial change in circumstances since the issue was determined. Examples of a substantial change are: losing your job, making substantially less, a child now lives with you, a child is now emancipated, or you have a medical condition, injury or disability. One must remember that child support and visitation are not dependent upon each other. The withholding or denial of one does not justify withholding or denial of the other.

Support generally continues until the child is 18 and has finished high school or at the end of the school year that the child turns 19. Support can continue for exceptional situations such as college or if the child is disabled. Child support does not end automatically. You will need to file a motion or other court action to terminate the support obligation.

<https://www.sctbar.org/public/get-legal-help/common-legal-topics/child-support/> )

## **LAWYER REFERRAL SERVICES**

**DISCLAIMER: THIS HANDOUT PROVIDES A GENERAL EXPLANATION OF CHILD CUSTODY AND SUPPORT. DO NOT RELY EXCLUSIVELY ON THIS HANDOUT. IF YOU HAVE ADDITIONAL QUESTIONS OR SEEK ADVICE REGARDING THIS SUBJECT PLEASE:**

**CONTACT THE LAWYER REFERRAL SERVICE, OF THE SOUTH CAROLINA BAR, AT 1-800-868-2284 (IN SUMTER: 803-799-6653) FOR A REFERRAL TO A LAWYER WHO PRACTICES IN THIS AREA OF LAW. IF YOU ARE INDIGENT AND UNABLE TO PAY FOR A LAWYER’S SERVICE, YOU MAY WANT TO CONTACT THE LEGAL AID TELEPHONE INTAKE SERVICE AT 1-888-346-5592 TO SEE IF YOU QUALIFY FOR FREE OR REDUCED LEGAL SERVICES.**

SOURCE: <https://www.south-carolina-divorce.com/child-custody.html>; <https://www.sctbar.org/public/get-legal-help/common-legal-topics/child-support/> ); (South Carolina Child Support Guidelines § 14-A; 14-B); Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997); Townsend v. Townsend, 323 S.C. 309, 474 S.E.2d 424 (1996).