



# Visitation and Child Support

## *The Law*

Whether the parents are married or not, the court usually wants both parents to remain involved with their children. Even if one parent has custody of the children, the other parent usually is granted visitation and required to help pay for the child's expenses.

### **HOW IS VISITATION DECIDED?**

The court must grant visitation to a parent without custody (also called “noncustodial parent”) to allow the child and the noncustodial parent to keep up their relationship. The visitation must be in the child's best interest. To set visitation, the court looks at things like the child's age, the child's safety and the child's past relationship with the noncustodial parent.

Often the court gives the noncustodial parent “reasonable visitation”. The parents must then agree to the visitation times and arrangements. But, if either party asks, the court will set a schedule of specific dates and times for visitation. The court may grant more visitation to the noncustodial parent to provide care for the child while the custodial parent works. If this is asked for, the court will look at the ability of the parents to cooperate in such arrangements, the parents' methods for resolving disputes regarding childcare issues, and whether there has been domestic abuse.

### **WHAT ABOUT LIMITS ON VISITATION?**

The court can limit visitation if it is likely to harm the child's physical health, or emotional growth. The court can also limit visitation if the noncustodial parent has frequently violated the visitation plan without a good reason. There are many ways visitation may be limited. For example, the court can order that visitation be supervised by the other parent, or by a third party, such as a social worker, or that there be no overnight visitation, or that the noncustodial parent be sober for a certain period. If the person seeking visitation has been convicted of certain crimes (such as murder, incest, kidnapping, etc.), that person must prove that visitation is in the child's best interest.

### **WHAT IS A VISITATION EXPEDITER?**

A visitation expeditor is a neutral person who listens to both sides of any disagreement and makes a decision. Sometimes the court will order that the decision is “binding”(must be followed). Other times, the court will review the decision before making it binding.

### **HOW CAN VISITATION BE CHANGED?**

The court can change visitation if it is in the child's best interests, such as when there is danger to the parent or the child or if the other parent has constantly broken the visitation agreement. Also, parents can agree to change visitation. For example, either parent can ask the other parent to skip a visit and make it up at another time.



### **CAN THE PARENT WITH CUSTODY DENY VISITATION?**

In general, the custodial parent may not deny visitation unless the parent or the child is in immediate danger. The custodial parent must then go to court as soon as possible. If visitation is denied without a good reason, the court may allow the other parent to make up the missed visitation. The court may also find the denying parent in contempt of court and award a fine up to \$500.

### **CAN A CUSTODIAL PARENT MOVE OUT OF STATE?**

If the other parent has visitation rights, the custodial parent may not move out of state with the children – unless written consent of the other parent has been obtained. If the other parent does not agree, the custodial parent must ask the court for permission. A parent who leaves without permission could lose custody and be charged with a crime. The court will usually grant permission to move – unless the move is for the purpose of denying visitation. The court will order different visitation, such as longer summer visits, to make up for the inability to have the regular visitation.

### **CAN GRANDPARENTS SEEK VISITATION?**

Yes. A grandparent may ask the court for visitation

- if the child's biological parent is deceased, or
- if it is during or after proceedings in family court for divorce, custody, legal separation, annulment, paternity, or
- if the grandchild has resided with the grandparent for at least 12 months.

The court will consider the best interests of the child, the amount of contact between child and grandparent and whether the visits will interfere with the parent-child relationship.

### **HOW IS CHILD SUPPORT CALCULATED?**

This varies from state to state. Some states set up guidelines for the calculation of child support. These calculations are generally based on take home pay and the number of children. If a parent is voluntarily unemployed, the court can base its order on the parent's earning ability. Child support may be set above or below the guidelines based on the income, resources, expenses and needs of both parents and the needs and expenses of the children. If the parent has remarried, the court cannot consider the income of the new spouse. If the non-custodial parent buys gifts, clothes, or food for the children this does not count as child support.

### **CAN THE AMOUNT OF CHILD SUPPORT EVER CHANGE?**

Yes, child support can change if the financial situation of the parents or the children has changed so that the old order is unfair. You can also get a cost of living adjustment (COLA) every two years if you ask for it. You have to use the administrative process described below in order to get the COLA.

### **HOW DO I START AN ACTION TO BEGIN OR CHANGE CHILD SUPPORT?**



In order to establish, change or enforce a child support order you must fill out an application in the county child support office. The county reviews the application and will either accept or deny your request. If the office accepts your request, they will prepare a proposed order setting child support. They will give the proposed order to both parents. If both parents do not agree, the county will refer the case to a contested hearing and schedule a conference. If parents do not agree during the conference, a hearing by the administrative law judge or a district court judge will be held. The judge will then decide on the amount of child support to be paid. At any time during this proceeding you may have an attorney present.

## HOW IS CURRENT SUPPORT COLLECTED?

### **If you receive public assistance:**

You don't have to do anything to get help to collect support. The county will help free of charge. They will usually withhold it from the other parent's paycheck. The county will keep all the support received to reimburse the county for public assistance paid to you. If the amount collected is greater than the amount you received, you may get some of the past due support. You may not accept direct payment from the other parent.

### **If you are not on public assistance:**

The county may help you collect your support if you have a court order. You must fill out an application and pay a fee. The court can then order the parent paying the support to have support withheld from his or her paycheck and sent to you. The person owing the money may pay the custodial parent directly if:

- a. There is no back child support owing
- b. The court finds that direct payment is in the child's best interest
- c. The other parent agrees

The county can help you collect past due support by taking the person's federal and state income tax refunds, by reporting past-due support to credit agencies, by using income withholding, by placing a lien against property, or by suspending the driver's license.

## WHAT KIND OF HELP CAN I GET IN COLLECTING MY CHILD SUPPORT

The county is required to help you with the following regardless of whether or not you are on public assistance:

- a. Locate the absent parent
- b. Establish paternity
- c. Get a court order setting the amount of child support
- d. Collect current and past-due support
- e. Get an order for medical insurance coverage
- f. Collect current maintenance if ordered by the court
- g. Enforce your support order

Portions of this law sheet were taken from "Child Support" and "Understanding Visitation", published by Legal Aid Society of Minneapolis

# Visitation and Child Support *Questions*

1. What is visitation?
2. What does the court look at when deciding on visitation for the non-custodial parent?
3. Why might the court limit visitation?
4. Discuss several ways in which visitation may be limited.
5. Can the parent with custody deny visits?
6. Under what circumstances can visitation be changed and what is the process to change it?



# Visitation and Child Support

## *Activity: Creating a Poster*

You have been asked by Court Services to create a poster that explains the important points concerning visitation and child support to be hung on the wall in the waiting area at the courthouse. Select the five to ten most important points and create an eye catching and easy to understand poster.

# Visitation and Child Support

## *Activity: Mock Mediation*

Sam and Regina are the parents of six-year-old Erica. They are getting a divorce and need to work out a visitation plan. Regina has physical custody of Erica, and Sam and Regina share legal custody.

### **Sam**

Sam has recently changed jobs. He will be working very long hours during the spring, summer, and fall as a road construction supervisor. During the winter, he will be unemployed and home most of the time. To be closer to the company's office and immediately available for emergency calls, Sam moved to a town 30 miles away. Sam would like to have increased visitation during the time he is at home during the winter and less visitation when he is working long hours.

### **Regina**

Regina works as a nurse. She often has to work weekends. She relies on her sister-in-law to help provide childcare, especially during the summer months when Erica is not at school during the day. Erica likes her school very much and is doing very well in first grade. She has many friends in her neighborhood, including her two cousins. Sam has been taking care of Regina on the weekends and nights that Regina is required to work.