

## Pro Se Membership Program



# UNDERSTANDING ALL THINGS CHILD CUSTODY- SOUTH DAKOTA



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# A STEP- BY-STEP E-GUIDE

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## **TYPES OF CUSTODY ARRANGEMENTS IN SOUTH DAKOTA**

Parents can reach custody agreements on their own or with a mediator's help. In either case, a judge will review the agreement to ensure it meets the child's needs before entering it as an order of the court. When parents are unable to reach a compromise on custody, their case will have to go to trial and a judge will decide both legal and physical custody.

### **Legal Custody**

"Legal custody" is a parent's right to make medical, educational, and legal decisions on a child's behalf. A parent with legal custody can decide where a child attends school, what kinds of medical care the child receives, and whether the child should be raised in a particular religious faith.

Parents can share legal custody (called "joint legal custody") or one parent may have sole decision-making rights over a child. In most cases, it's appropriate for both parents to have an active role in a child's upbringing through shared legal custody.

### **Physical Custody**

"Physical custody" refers where the child lives. A parent with primary physical custody (also called the "custodial parent") will spend most of the time with the child.

The other parent (called the "noncustodial parent") is entitled to regular visits including weeknights, alternating weekends, and school and summer holidays. Like legal custody, parents may share physical custody or one parent may be awarded sole physical custody rights over the child.

## UNDERSTANDING A CHILD'S BEST INTERESTS

A child's needs are central to any custody decision. When parents can't agree, a judge will decide the arrangement best suited to the child's emotional, educational, and physical needs.

The court will consider your family's overall circumstances and each parent's ability to provide a stable environment for the child. Specifically, a judge may examine the following:

- the child's relationship with each parent
- the child's age and physical and emotional health
- the child's relationship with siblings and extended family members
- the child's ties to home, school, and the community
- each parent's physical and mental health
- each parent's willingness to foster a relationship between the child and the other parent
- either parent's history of domestic violence, if any
- either parent's history of neglect, if any
- the child's preference if of a sufficient age and maturity
- each parent's role in the child's caretaking, and
- each parent's work schedule.

Additional factors include each parent's fitness and stability, which parent has been the primary caretaker, the quality of communication between the parents, and which parent is more likely to encourage a relationship between the child and the other parent.

When deciding joint custody, a judge will also examine the parents' relationship, the parents' geographical proximity, and the child's emotional well-being. See S. D. Codified Laws § 25-4A-24 (2020).

## CUSTODY MODIFICATION

In South Dakota, the Circuit Court is the only entity with authority to modify a child support obligation. This is usually done in response to a petition filed by one of the parents. Either parent or a representative may file a petition to modify their child support order. A support order may be modified without showing any change in circumstances if the order was entered prior to July 1, 2022.

An order entered after July 1, 2022 may be modified only:

1. If it was entered three years or more from the date the petition is filed; or
2. Upon showing a substantial change in circumstances has occurred since the entry of the order.

### Petition for Modification Form

- Petition for Modification Form
- These forms are also available from local offices throughout the state or by calling the Division of Child Support at 605.773.3641.

A petitioner must provide the complete address of the other parent. Please note that your address may be released to the non-petitioning party during modification proceedings. This release may be necessary even if there is an existing protection order in place.

The completed, notarized petition, along with a financial statement, verification of income, Child Support Order Filing Data form UJS/DSS 089, copy of the most recent South Dakota court order or decree establishing child support and other necessary attachments must be filed

## **GUARDIAN AD LITEM ON**

Pursuant to § 15-6-17(c), the court may on its own motion or on the motion of a party appoint a guardian ad litem for a vulnerable adult if justice requires. The vulnerable adult's attorney may not also serve as the guardian ad litem.

South Dakota has statutory authority for appointment of a guardian ad litem or attorney specifically to represent the child in a custody case. This person advocates for the best interest of the child, and is tasked with investigating the family situation and advising the court what custody situation would be in the best interests of the child.

## **RECUSAL OF A JUDGE**

<https://casetext.com/statute/south-dakota-codified-laws/title-15-civil-procedure/chapter-12-change-of-circuit-judge-or-magistrate/section-15-12-211-informal-request-for-disqualification#:~:text=Codified%20Laws%20%C2%A7%2015%2D12%2D21.1,->

Download&text=Prior%20to%20filing%20an%20affidavit, but%20may%20if%20he%20desires.

[https://sdlegislature.gov/Statutes/Codified\\_Laws/2043852](https://sdlegislature.gov/Statutes/Codified_Laws/2043852)

## **RULES OF CONDUCT FOR JUDGES**

<https://ujs.sd.gov/uploads/je/Canons.pdf>

<https://casetext.com/statute/south-dakota-codified-laws/title-16-courts-and-judiciary/chapter-2-the-unified-judicial-system/appendix-a-to-chapter-16-2-south-dakota-code-of-judicial-conduct>

## **ATTORNEY ETHICS**

[https://sdlegislature.gov/Statutes/Codified\\_Laws/2044876](https://sdlegislature.gov/Statutes/Codified_Laws/2044876)

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