

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUN 26 2002

Shirley A. Johnson Long
Clerk

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IN THE MATTER OF THE ADOPTION)
OF STANDARD GUIDELINES TO BE)
USED STATEWIDE FOR CHILD)
VISITATION IN DIVORCE OR)
SEPARATE MAINTENANCE ACTIONS)
OR ANY OTHER CUSTODY ACTIONS)
OR PROCEEDINGS In Re:)
HOUSE BILL 1302)

RULE 02-07

A hearing was held on May 29, 2002, at Pierre, South Dakota,
relating to the adoption of South Dakota Visitation Guidelines,
and the Court having considered the guidelines, the
correspondence and oral presentations relating thereto and being
fully advised in the premises, now, therefore, it is

ORDERED that the attached South Dakota Visitation
Guidelines are hereby established by the Court;

IT IS FURTHER ORDERED that these guidelines shall become
effective July 1, 2002.

DATED at Pierre, South Dakota, this 26th day of June, 2002.

BY THE COURT:

David Gilbertson

David Gilbertson, Chief Justice

ATTEST

[Signature]
Clerk of the Supreme Court
(SEAL)

SOUTH DAKOTA VISITATION GUIDELINES

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply divorce itself, but continuing conflict between parents, before, during, and after divorce. Similar conflicts can occur between parents who were never married. To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to frequent and meaningful contact for the children with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent on reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will be used, unless a different schedule is court ordered. For most parents, these guidelines should be considered as only a minimum direction for interaction with the children.

1. GENERAL RULES

Parents should always avoid speaking negatively about one another and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed messages about appropriate behavior.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In South Dakota, grandparents have a legal right to reasonable visitation with their grandchildren, if it is in the best interests of the grandchildren. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother. It is recommended that the parents prepare an annual calendar of agreed dates so that both the parents and the children know where the children will be during the coming year.

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the visitation pattern, the court will consider apportioning between the parents the children's travel costs necessary to facilitate visitation with the noncustodial parent. In

apportioning these costs, the court will consider such factors as the economic circumstances of the parents and the reasons prompting the move.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone, at their residences, and not at their places of employment.

1.2 Grade Reports and Medical Information. The custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall authorize the noncustodial parent to communicate concerning the child directly with the daycare, the school, and the children's doctors and other professionals outside the presence of the custodial parent. Unless there are abuse, neglect, criminal, or protection orders to the contrary, the noncustodial parent shall also be listed as the children's parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall, as soon as reasonably possible, notify the noncustodial parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions to the noncustodial parent.

1.3 Visitation Clothing. The custodial parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the noncustodial parent. The noncustodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the children may be sent.

1.4 Withholding Support or Visitation. Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and to visitation, neither of which is dependent upon the other. In other words, no support does not mean no visitation, and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in this Visitation Schedule. This schedule is to be understood as imposing specific requirements and responsibilities; however, when family necessities, illnesses, or commitments reasonably so require, the parents are expected to modify visitation fairly. The parent requesting modification shall act in good faith and give as much notice as circumstances permit.

1.6 Custodial Parent's Vacation. Unless otherwise specified in a court order or agreed by the parents, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a vacation during the time when the noncustodial parent is not scheduled to spend time with the children.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist, or other provider not so approved or qualified should pay the additional cost thus incurred. When there is a contemplated change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or taking advantage of economic or medical benefits offered by the new carrier. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other parent. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was received.

1.8 Child Support Abatement. Unless a court order otherwise provides, support shall not abate during any period when the children are with the noncustodial parent. (South Dakota law allows for support abatement. See SDCL 25-7-6.14. However, no abatement may be taken unless there is a court order authorizing it.)

1.9 Missed Visitation. When events beyond either parent's control, such as illness, prevent a scheduled visitation, a mutually agreeable substituted visitation date shall be arranged, as quickly as feasible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.

1.10 Visitation - A Shared Experience. Except with infants and adolescents, it usually makes sense for all the children to share the same schedule. Having brothers and sisters along may provide an important support for children. Infants have special needs that may well prevent a parent from being with both infants and older children at the same time. Adolescents have special needs for peer involvement and for some control in their own lives that may place them on

different schedules from their younger brothers and sisters. Because it is intended that visitation be a shared experience between siblings and, unless these guidelines, a court order, or circumstances, such as age, illness, or a particular event suggest otherwise, all the children should spend time together with the noncustodial parent.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours when the children are with the noncustodial parent. The children may, of course, call either parent, though at reasonable hours and frequencies, and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation should make the child available for telephone calls every three days. At all other times, the parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available. A parent may wish to provide a child with a telephone calling card to facilitate communication with that parent.

1.12 Mail and E-mail Contact. Parents have an unrestricted right to send cards, letters, packages, and audio and video cassettes or CDs to their children. Children also have the same right to send items to their parents. Neither parent should interfere with this right. A parent may wish to provide a child with self-addressed, stamped envelopes for the child's use in corresponding with that parent. If the child and the parent have Internet capability, communication through e-mail should be fostered and encouraged.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other parent. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping off the children should not leave the premises until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is his or her own, and the children's time with that parent is equally private.

1.14 Special Considerations for Adolescents. Generally, these guidelines apply to adolescents as well as younger children. Nonetheless, within reason, the parents should honestly and fairly consider the wishes of their teenagers on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the

reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15 Day Care Providers. When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

1.16 Special circumstances.

A. Child Abuse. When child abuse has been established against the noncustodial parent and a continuing danger is shown to exist, all visitation should cease or be allowed only under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases, if either parent abuses a child.

B. Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse may be capable of doing so with children. Depending on the nature of the spouse abuse and the time and circumstances of its occurrence, the court may require that an abusive spouse successfully complete appropriate counseling before being permitted unsupervised time with the children.

C. Substance Abuse. The children should not be with a parent who is abusing substances.

D. Long Interruption of Contact. In those situations where the noncustodial parent has not had a continuing relationship with the child for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.

E. Kidnapping Threats. Noncustodial parents who have threatened to kidnap or hide the children should have no visitation or only supervised visits.

F. Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours with the father. A mother should not use breast feeding beyond the normal weaning age as a means to deprive the father of visitation.

G. A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and divorce.

H. Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and should cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.

I. Other. The court will consider limiting or denying visitation or changing custody of parents who show neglectful, impulsive, immoral, criminal, assaultive, or risk-taking behavior with or in the presence of the children.

2. NONCUSTODIAL PARENT VISITATION WHEN CHILDREN ARE UNDER AGE FIVE.

2.1 Children Under Age Five Generally. Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing, and predictability. Generally, overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is personally able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account children's developmental milestones as a basis for time with the noncustodial parent. Since children mature at different rates, these may need to be adjusted to fit the child's individual circumstances. These guidelines may not apply when the parents equally share caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations, those in which the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child, but has not shared equally in child caretaking, the following guidelines should generally apply.

2.2 Infants - Birth to Six Months. Alternate parenting plans: (1) Three, two-hour visits per week, with one weekend day for six hours; or (2) Three, two-hour visits per week, with one overnight on a weekend for no longer than a twelve-hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.

2.3 Infants - Six to Eighteen Months. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

2.4 Toddlers - Eighteen to Thirty-six Months. Alternate parenting plans: (1) The noncustodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one than

the other with two or three overnights spaced regularly throughout the week. This arrangement requires an adaptable child and cooperative parents.

2.5 Preschoolers - Three to Five-Years-Old. Alternate parenting plans: (1) One overnight visit (i.e., Saturday morning to Sunday evening) on alternate weekends and one midweek visit, at the conclusion of which the child is returned to the custodial parent's home at least one-half hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

2.6 Children in Day Care. In families where a child has been in day care before the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a baby-sitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

2.7 Holidays. For toddlers and preschool age children, when the parents live in the same or nearby communities, the parents should alternate each year Christmas Eve and Christmas Day, so that the children spend equal time with each parent during this holiday period. Other major holidays should also be divided between the parents.

3. NONCUSTODIAL PARENT VISITATION WHEN CHILDREN ARE OVER AGE FIVE AND THE PARENTS RESIDE NO MORE THAN 200 MILES APART

3.1 Weekends. Alternate weekends from Friday at 5:30 P.M. to Sunday at 7:00 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the noncustodial parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the noncustodial parent.

3.2 Mother's Day - Father's Day. The alternate weekends will be shifted, exchanged, or arranged, so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved under Paragraph 1.9.

3.3 Summer Visitation. One-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two

blocks of time. If a child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, the noncustodial parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.

3.4 Winter (Christmas) Vacation. One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-number years. Holidays, such as Christmas, are extremely important as times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities should plan for the children to spend part of each important holiday at both homes. If the parents are unable to work out a sharing arrangement for Christmas and they live in the same or nearby communities, in those years when Christmas does not fall in a parent's week, that parent shall have from 2:00 P.M. to 9:00 P.M. on Christmas Day.

3.5 Holidays. Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7:00 P.M. on the appropriate days.

3.6. Children's Birthdays. Like holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved under Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 2:00 P.M. to 8:00 P.M. (or so much of that period as the noncustodial parent elects to use).

3.7. Parents' Birthdays. The children should spend the day with the parent who is celebrating his or her birthday, unless it interferes with a noncustodial parent's scheduled time during a holiday or vacation.

3.8. Conflicts between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the noncustodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the noncustodial parent receives two

consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with the custodial parent. The parents are to make up missed weekends resulting from holiday conflicts.

3.9. Visitation Before and During Vacations. The custodial parent will have the weekend before the beginning of the noncustodial parent's summer extended visitation period(s) with the children, regardless of whose weekend it may be. Similarly, the noncustodial parent's alternating weekend schedule shall resume the second weekend after each extended summer visitation period. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the noncustodial parent's duty to accommodate, at a mutually convenient time, a 48-hour continuous period of visitation for the custodial parent, unless impractical because of distance.

3.10. Notice of Canceled Visitation. Whenever possible, the noncustodial parent shall give a minimum of three-days notice of intent not to exercise all or part of the scheduled visitation. When such notice is not feasible, the maximum notice permitted by the circumstances, and the reason therefor, shall be provided to the other parent. Custodial parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled visitation necessary. If the custodial parent cancels or modifies the noncustodial parent's time with a child because the child has a scheduling conflict, the noncustodial parent should be given the opportunity to take the child to the scheduled event or appointment.

3.11. Pick Up and Return of Children. When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the noncustodial parent will pick up and the custodial parent will return the children to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

3.12. Additional Visitation. The children's time with the noncustodial parent should be liberal and flexible. For most parents, these guidelines should be considered as only the minimum and are not meant to foreclose the parents from agreeing to such time-sharing with the children as the parents find reasonable and in the best interests of their children at any given time.

4. NONCUSTODIAL PARENT VISITATION WHEN CHILDREN ARE OVER AGE FIVE AND THE PARENTS RESIDE MORE THAN 200 MILES APART

4.1 Extended visitation. All but three weeks of the school summer vacation period and, on an alternating basis, the school winter (Christmas) vacation and spring break.

4.2 Priority of Summer Visitation. Summer visitation with the noncustodial parent takes precedence over summer activities (such as sports), when the visitation cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in the same or similar activity in the noncustodial parent's community.

4.3 Notice. At least 60 days advance written notice should be given by the noncustodial parent of the date for commencing extended summer visitation, so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to give the precise number of days notice does not give the custodial parent the right to deny visitation.

4.4 Additional Visitation. Where distance and finances permit, additional visitation, such as for holiday weekends or special events, is encouraged. When the noncustodial parent is in the area where the children reside, or the children are in the area where the noncustodial parent resides, liberal visitation shall be accommodated. Because the noncustodial parent does not get weekly time with the children, the children can miss some school to spend time with the noncustodial parent, so long as it does not substantially impair the children's scholastic progress.