

THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * *

IN THE MATTER OF THE PROPOSED AMENDMENT TO SDCL 15-15-4)	NOTICE OF RULES HEARING
)	NO. 158
IN THE MATTER OF THE PROPOSED AMENDMENT TO SDCL 15-39-55)	
)	
IN THE MATTER OF THE PROPOSED AMENDMENTS TO SDCL 15-15A-8)	
and SDCL 15-15A-9)	
)	
IN THE MATTER OF THE PROPOSED AMENDMENT TO SDCL 16-18-20.2)	
)	
IN THE MATTER OF THE PROPOSED AMENDMENT TO SDCL 19-19-702)	
)	
PROPOSED ADOPTION OF A NEW RULE TO PROVIDE FOR THE DISCHARGE OF FINANCIAL OBLIGATIONS THREE YEARS FOLLOWING NOTICE OF DEATH OF A DEFENDANT)	
)	
PROPOSED ADOPTION OF NEW RULE TO PROVIDE REMOTE ACCESS TO TRUST DOCUMENTS FOR ATTORNEYS OF RECORD)	
)	
PROPOSED ADOPTION OF A NEW RULE ESTABLISHING MINIMUM QUALIFICATIONS OF CHILD CUSTODY EVALUATORS AND MINIMUM REQUIREMENTS OF REPORTS SETTING FORTH EVALUATOR'S FINDINGS AND RECOMMENDATIONS TO COURTS TO BE ADDED TO SDCL CHAPTER 25-4A CUSTODY AND VISITATION RIGHTS)	
)	
IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE APPENDIX TO SDCL 25-4A)	
)	

Petitions for the amendment of existing sections of the
South Dakota Codified Laws and proposals for the adoption of new

rules having been filed with the Court, and the Court having determined that the proposed amendments should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON February 11, 2026, at 11:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Amendment to SDCL 15-15-4. Sale or destruction of exhibits if not collected when judgment final--Retention of necessary copies--Fee.

Whenever the decision or judgment of the court has become final, the clerk of courts shall give notice to the attorneys or parties of record by electronic or first-class mail that the non-scannable exhibits in the possession of the clerk, if not collected within thirty days, shall must upon order of the court be destroyed or sold at sale under chapter 15-19. If the exhibit has been scanned into the electronic record the original will be destroyed without notice unless the party or parties request the clerk to return the original exhibit. The request must be received within thirty days of the date the decision or judgment has become final. However, upon proper application to the court, the exhibit may be preserved as a part of the permanent record in the files. If an exhibit is a necessary part of the judgment or consists of a written instrument establishing the liability of a party against whom judgment has been rendered, a copy of it shall be made and retained by the clerk and the original canceled by endorsement across its face before being returned to the person entitled thereto as determined by the court. Unless the person entitled thereto as determined by the court shall furnish a true copy of such exhibit, he shall pay the fee of the clerk for making such copy.

Explanation for Proposal 1.

This proposed amendment is being submitted on behalf of the State Court Administrator.

Because the electronic record is the official court record, and the electronic version of court records is considered the "original" document there is no reason to retain scannable exhibits. This proposal allows the clerk to destroy the paper copies of exhibits without giving notice to the parties. The proposal puts the burden on

the parties to notify the clerk if they want the paper exhibits returned.

This proposal is being offered pursuant to SDCL 16-3-5.2. The rule is not based on any other state or federal rule or statute and it is not expected to affect other existing rules or statutes.

2. Proposed Amendment to SDCL 15-39-55. ~~Notice valid though refused by defendant--Further notice on failure of delivery.~~

~~Notice shall be valid although refused by the defendant and, therefore, not delivered. If the notice by certified or registered mail is returned undelivered, without refusal by the defendant, or if in any other way it appears that notice has not reached the defendant, the clerk shall issue, at the request of the plaintiff and at the expense of the plaintiff, such other or further notice as the court may order. If plaintiff elects not to pursue further notification of the defendant or if the further notification is unsuccessful after ninety days, the clerk may dismiss the action without prejudice.~~

Explanation for Proposal 2.

This proposal is being submitted on behalf of the State Court Administrator.

Currently if a defendant in a small claims action refuses to accept service by certified or registered mail the action can proceed to default judgment without actual proof of notification to the defendant. This change will require proof that the defendant received sufficient notice of the small claims action.

This proposal is being offered pursuant to SDCL 16-3-5.2. The amendment is not based on any other state or federal rule or statute and is not expected to affect other existing rules or statutes.

3. Proposed Amendments to SDCL sections 15-15A-8 and 15-15A-9.

SDCL 15-15A-8. Confidential numbers, financial documents, and name of child victim excluded from public access.

The following information in a court record is not accessible to the public:

- (1) Social security numbers, employer or taxpayer identification numbers, and financial or medical account numbers of an individual-;
- (2) Financial documents such as income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information-; and
- (3) The name of any minor child, that is not a defendant, alleged to be a victim of a crime in any adult criminal proceeding.

SDCL 15-15A-9. Filing confidential numbers, financial documents, and name of child victim in court record.

The following procedures apply to the filing of confidential information in court records:

- (1) Social security numbers, employer or taxpayer identification numbers, and financial or medical account numbers of an individual where required to be filed with the court shall must be submitted on a separate Confidential Information Form, appended to these rules, and filed with the pleading or other document required to be filed. The Confidential Information Form is not accessible to the public-;
- (2) Financial documents named in subdivision 15-15A-8(2) that are required to be filed with the court shall must be submitted as a confidential document and designated as such to the clerk upon filing. The Confidential Financial Documents Information Form appended to these rules shall must be attached to financial documents being filed with the court. The Confidential Financial Documents Information Form is not accessible to the public. The confidential financial documents will not be publicly accessible, even if admitted as a trial or hearing exhibit, unless the court permits access pursuant to § 15-15A-10. The court may, on its own motion, protect financial documents that have been submitted without the Confidential Financial Documents Information Form-;
- (3) Names of any child under eighteen years of age, that is not a defendant, alleged to be the victim of a crime in any

adult criminal proceeding ~~shall must~~ appear as initials only "minor" followed by a numerical identifier. The names ~~shall must~~ be provided on a separate Confidential Information Form; (4) Court records in which a child under eighteen years of age is identified as the petitioner or respondent in a protection order proceeding ~~shall must~~ be treated as confidential and excluded from public access; and (5) Parties with cases filed prior to the effective date of this rule, or the court on its own, may, by motion, protect the privacy of confidential information as defined in § 15-15A-8. Parties filing this motion will submit a completed Confidential Information Form or Confidential Financial Documents Information Form as appropriate.

Explanation for Proposal 3.

This proposed rule is being submitted on behalf of the State Court Administrator.

The reason for the proposal is to protect the identity of minors under the age of eighteen in criminal proceedings unless the child is the defendant. Currently only the identity of minors who are victims of crimes. This will protect the identify of all minors. Also, currently minor victims of crimes are identified by their initials. If the minor's parent is the defendant in the criminal actions using initials does not adequately protect the identity of the minor.

The proposed amendment is being offered pursuant to SDCL 16-3-5.2. The rule is not based on any other state or federal rule or statute and it is not expected to affect other rules or statutes.

4. Proposed Amendment to SDCL 16-18-20.2. Attorney licensing--Trust accounting records and procedures.

The provisions of this rule apply to all members of the State Bar of South Dakota concerning trust funds received or disbursed by them in the course of their professional practice of law within the State of South Dakota. However, these provisions shall not apply to (1) full-time members of the Judiciary, i.e., Supreme Court Justices, Circuit Court Judges and Magistrate Judges, (2) nonresident attorneys

licensed to practice in South Dakota who comply with comparable trust accounting requirements in the state wherein they maintain their office, and (3) non-profit legal services organizations that file a copy of their annual independent audit with the State Bar, (4) non-resident attorneys licensed to practice in South Dakota who have not represented a South Dakota client during the reporting period, or (5) members who have been in an inactive status for the full reporting period. In addition, all lawyers required to disclose the absence of professional liability insurance as required pursuant to Rule 1.4(c) must sign the additional verification and certification of disclosure as reflected at the end of the Certificate of Compliance and Insurance Disclosure form.

MINIMUM TRUST ACCOUNTING RECORDS

The minimum trust accounting records which shall be maintained are:

(1) A separate bank account(s) ~~or accounts and, if utilized, a separate savings and loan association accounts or accounts.~~ Such account(s) must be at an institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund and which has a physical location shall be located in South Dakota unless the client otherwise directs in writing. All trust ~~The account~~ ~~or~~ accounts shall be in the name of the lawyer or law firm and clearly labeled and designated as a "trust account."

(2) Original or duplicate deposit slips, credit card receipts, and, in the case of currency or coin, an additional cash receipts book, clearly identifying:

- (a) The date and source of all trust funds received; and
- (b) The client or matter for which the funds were received.

(3) Original cancelled checks, or copies of both sides of the original checks produced through truncation or check imaging, or the equivalent, all of which must be numbered consecutively. If electronic disbursements or transfers are made, a record of all electronic disbursements or transfers, including for each disbursement or transfer, the date of the transaction, the amount of each transaction, the name of the client to whom the transaction pertains, the recipient of the funds involved in the transaction, the purpose of the transaction, and the signature of the attorney authorizing the transaction. A separate transaction must be completed for each electronic disbursement or transfer from a trust account.

(4) Other documentary support for all disbursements and transfers from the trust account.

(5) A separate trust accounts receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance, and containing at least:

- (a) The identification of the client or matter for which the funds were received, disbursed, or transferred;
- (b) The date on which all trust funds were received, disbursed, or transferred;
- (c) The check number, electronic confirmation number, or other documentation for all transfers or disbursements; and
- (d) The reason, such as "settlement," "closing" or "retainer," for which all trust funds were received, disbursed, or transferred.

(6) A separate individual client or matter file, ledger or computer file ~~with an individual card, page or computer document~~ for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance for the client or matter, and containing:

- (a) The identification of the client or matter for which trust funds were received, disbursed, or transferred;
- (b) The date on which all trust funds were received, disbursed, or transferred;
- (c) The check number, electronic confirmation number or other documentation for ~~of~~ all disbursements or transfers; and
- (d) The reason, such as "settlement," "closing" or "retainer," for which all trust funds were received, disbursed, or transferred. The billing or invoice number for each disbursement or transfer paying attorney's fees earned or costs advanced from funds held in trust for the client.

(7) All bank or ~~credit union savings and loan association~~ statements for all trust accounts.

MINIMUM TRUST ACCOUNTING PROCEDURES

The minimum trust accounting procedures which shall be followed by all attorneys practicing in South Dakota who receive or disburse trust money or property are:

- (1) The lawyer shall cause to be made monthly:
 - (a) Reconciliations of all trust bank or ~~credit union savings and loan association~~ accounts, disclosing the balance per bank or credit union, deposits in transit, outstanding checks or electronic disbursements or transfers identified by date and check number or electronic confirmation number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and

(b) A comparison between the total of the reconciled balances of all trust accounts and the total of the individual client trust ledger cards, pages, or computer documents, together with specific descriptions of any difference between the two totals and reasons therefore.

(2) At least annually, a detailed listing identifying the balance of the unexpended trust money held for each client or matter.

(3) The above reconciliations, comparisons, and listing shall be retained for at least six years.

(4) The lawyer shall file with the State Bar of South Dakota a trust accounting certificate showing compliance with these rules annually, which certificate shall be filed annually between December 1 and January 31 on a form approved by the Disciplinary Board

AUDITS

The following shall be cause for the Disciplinary Board to order an audit of a lawyer's or law firm's trust accounts:

(1) Failure to file the trust account certificate required by this rule;

(2) A trust account check is returned for insufficient funds or for uncollected funds, absent bank error;

(3) A petition for creditor relief is filed on behalf of an attorney;

(4) Felony charges are filed against an attorney;

(5) An attorney is adjudged insane or mentally incompetent;

(6) A claim against the attorney is filed with the Clients' Security Fund;

(7) When authorized by statute or court rule;

(8) Pursuant to an investigation by the Disciplinary Board; or

(9) Upon court order.

COST OF AUDIT

Audits conducted in any of the circumstances enumerated above shall be at the cost of the attorney audited only when the audit reveals that the attorney was not in substantial compliance with the trust accounting requirements or when the audit was precipitated by the failure to file the trust account compliance report. It shall be the obligation of any attorney who is being audited to produce all records and papers concerning property and funds held in trust and to provide such explanations as may be required for the audit. Records of general accounts are not required to be produced except to verify that trust money has not been deposited thereto. If it has been determined that trust money has been deposited into a general

account, all of the transactions pertaining to any firm account will be subject to audit.

CERTIFICATE OF COMPLIANCE

INSURANCE DISCLOSURE

TO: The Secretary-Treasurer The State Bar of South Dakota 111 W. Capitol Ave. #1 Pierre, South Dakota 57501

Dear Sir:

I (We), _____, a member(s) of the State Bar of South Dakota certify that during the twelve-month period preceding the date of this report: (check the following items where applicable and/or fill in the blanks)

1. I have engaged in the private practice of law in South Dakota as:

- (a) a sole practitioner;
- (b) a partner or shareholder of a firm practicing under the name of _____;
- (c) an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____ and I maintain separate books, records and accounts showing all legal business performed by me.

2. I have not engaged in the practice of law in South Dakota, and I have neither handled nor been responsible for either clients' trust funds or clients' trust property in South Dakota.

3. I have practiced law in South Dakota exclusively as an employee of (designate name of government agency, corporation, or other nonmember of the Bar) _____, and I do not handle or become responsible for money or property in a lawyer-client relationship, other than money or property received in the course of official duties and disposed of in accordance with regulations and practices of (designate name of government agency) _____.

(a) I (we) have served as a trustee in one or more cases under Title 11 of the United States Code, and I am accountable for all funds I handled in connection therewith to the Office of the United States Trustee, which office is statutorily charged with the responsibility for reviewing and supervising my trust operations; therefore, my handling of such funds is not separately accounted for herein in connection with my private practice of law, and I further certify that I am in compliance with all such accounting requirements of said Office.

4. I have engaged in the practice of law in South Dakota as an employee or as an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____, to the best of my knowledge all legal business performed by me is shown in the books, records and accounts of such sole practitioner or firm.

(Signature)

(Print or type the following information)

Full Name _____

Business Address _____

Date _____

5. My trust account(s) or the trust account(s) of the firm or association of which I am a partner or shareholder is at the _____ (name and address of banking institution) and bears the following name(s) and number(s) _____.

6. During the fiscal period ended _____ to the best of my knowledge I, or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained:

Yes or No

(a) A separate bank account or accounts located in *South Dakota (_____), in the name of the lawyer or law firm and clearly labeled and designated a "trust account."

*An out of state member may strike "South Dakota" and insert the state where his/her trust account is located.

(b) Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received, and specific identification of the client or matter for whom the funds were received. _____

(c) Original cancelled checks or copies of both sides of the original checks produced through truncation or check imaging, or the equivalent, for all trust disbursements.

(d) Other documentary support for all disbursements and transfers from the trust account.

(e) A separate trust account receipts and disbursements journal, including columns for receipts, disbursements, and the account balance, disclosing the client, check number, and reason for which the funds were received, disbursed or transferred.

(f) A separate file or ledger, with an individual card or page for each client and matter, showing all individual receipts, disbursements and any unexpended balance.

(g) All bank statements for trust accounts.

(h) Complete records of all funds, securities and other properties of a client coming into my/our possession, and rendered appropriate accounts to my/our clients regarding them.

7. During the same fiscal period identified in section 6 above, I, or the firm of which I am a member, complied with the required trust accounting procedures, and as a minimum I/we prepared monthly trust comparisons, including bank reconciliations and an annual detailed listing identifying the balance of the unexpended trust money held for each client or matter.

8. In connection with section 7 above, I or the firm of which I am a member, have completed the following procedures during the fiscal period herein: compared each month the total of trust liabilities and the total of each trust bank reconciliation, and there were (check one of the following):

no differences between the totals, excepting those determined to be the result of bank error;

differences. (Give full particulars below, identifying the months in which there were differences, the amounts involved, and the reason for each item contributing to a difference. Attach additional pages if necessary.)

9. (A) G *The undersigned lawyer(s) do not have professional liability insurance; or

(B) G The undersigned lawyer(s) have professional liability insurance, the name of the insurance carrier, policy number and limits are as follows:

I am a member of the State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and I certify that I have at all material times been in compliance with Rule 1.15 of the Rules of Professional Conduct entitled Safekeeping Property and SDCL 16-18-20.1 and 16-18-20.2.

All Responding Lawyers Signatures:

Date: _____

*Additional signature and attachment is needed if responding lawyer checked box 9(A): The undersigned lawyer(s) not having insurance, do hereby certify that pursuant to Rule 1.4(c), I have advised my clients of the lack of professional liability insurance during the reporting period and I have attached hereto a copy of my law office letterhead disclosing the lack of insurance, in the required format, pursuant to Rule 7.5 of the Rules of Professional Responsibility.

All Responding Lawyers Signatures:

Date: _____

*If you checked box 9(A), you must attach a representative copy of the letterhead you used to disclose the lack of insurance to your clients.

Explanation for Proposal 4.

The State Bar of South Dakota Disciplinary board ("Board") hereby submits the following proposal to amend certain provisions of SDCL 16-18-20.2 related to client trusts accounts maintained by attorneys in South Dakota.

Over the last several years, during investigations into allegations of attorney misconduct, the Board has observed that compliance with the trust accounting rules in SDCL 16-18-20.2 is lacking in many instances. While non-compliance has generally not involved theft from clients, the Board has concerns that the current rules do not contemplate the practice of many attorneys when it come to the increasing use of credit and debit card receipts, on-line banking and other forms of electronic financials transactions.

The proposed changes to SDCL 16-18-20.2 attempt to modernize the trust accounting rules to establish minimum record keeping requirements when electronic transactions such on-line banking are utilized. The proposed changes are intended to preserve the strict record keeping protections in the current rule and to ensure that the same standards are applicable to electronic transactions in trust accounts. The proposed changes also eliminated savings and loans from the rule and incorporate the ability to utilize and insured credit union.

The Board did not rely upon a state or federal rule or statute in suggesting the proposed changes. The trust accounting requirements of SDCL 16-18-20.2 are not addressed in the federal rule of the local federal rules. The standards and record keeping requirements in SDCL 16-18-20.2 are intended to ensure that

attorneys are complying with Rule 1.15 or the South Dakota Professional Conduct found in the Appendix of SDCL Chapter 16-18 and to ensure that clients funds are properly secured and accounted for by attorneys.

5. Proposed Amendment to SDCL 19-19-702. Testimony by expert.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not:

- (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;
- (c) The testimony is the product of reliable principles and methods; and
- (d) The expert has reliably applied expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Explanation for Proposal 5.

Information regarding each of the requirements of SDCL 16-3-5.3 is provided, below.

(1) The identity of the proponent or proponents of the change:

The proponent of the proposed amendment is the Evidence Committee of the State Bar of South Dakota. On June 20, 2025, State Bar members voted during the State Bar Business Meeting to submit the proposed rule change to the South Dakota Supreme Court for consideration.

(2) A detailed explanation of the change and the reasons for the change:

A detailed explanation of the change and the reasons for the change are as follows. The proposed amendment would bring SDCL 19-19-702 into line with the change to FRE 702 made in 2023. Generally, the proposed amendment to SDCL 19-19-702 would not alter the substance of the rule. The amendment simply clarifies the rule and reminds judges and litigants that SDCL 19-19-104(a) needs to be part of SDCL 19-19-702's analysis at each step. The amendment helps to clarify the language of the rule and to remove reliance on previous case law interpreting past versions of SDCL 19-19-702 or case law that is not consistent with SDCL 19-19-702.

(3) An analysis of the state or federal rule or statute that the change is based upon, if any;

(4) A comparison of the change with federal rules or local federal rules on the same subject, if any, and an explanation of any differences, if any; and

(5) An analysis of how the change affects existing rules or statutes:

FRE 702 was amended in 2023. The amendment to FRE 702 clarifies that the proponent of the expert witness must show the court by a preponderance of the evidence that the proposed expert's testimony satisfies the admissibility requirements set forth in the rule. This change comes after repeated decisions in which courts held the question of the sufficiency of the basis of the expert's opinion and the question of the application of an expert's methodology were questions of weight not admissibility. As described in the Advisory Committee Notes to FRE 702, these decisions were an incorrect application of both FRE 702 and FRE 104(a).

Under FRE 104(a), preliminary questions of admissibility are subjected to the judge being satisfied to a "preponderance-of-the-evidence standard." *Huddleston v. United States*, 485 U.S. 681, 687 n.5 (1988). This standard helps to ensure that, prior to admitting evidence to a fact finder, "the court will have found it more likely than not that the technical issues and policy concerns addressed by the Federal Rules of Evidence have been afforded due consideration." *Bourjaily v. United States*, 483 U.S. 171, 175 (1987). Rule 104(a) holds across all of the rules of evidence, but, as the Advisory Committee Notes to FRE 702 detail, the emphasis of the preponderance standard under FRE 702 is needed due to repeated misapplications of the reliability requirements in relation to expert testimony. Now, each of the three reliability tests clearly fall under the FRE 104(a) standard test, rather than the more permissive standards under FRE 104(b), conditional relevancy.

This will provide clarity when attacks on any of the three reliability standards are made. Now, rather than any attack automatically being relegated to an issue of weight and not admissibility, courts have guidance. Now, the court is explicitly reminded that the proponent of the testimony must establish the reliability requirements by that preponderance of the evidence standard before an attack can be deemed to go to merely weight rather than admissibility.

When a case contains competing experts who come to different

conclusions based upon contested facts, the 104(a) standard does not require the exclusion of one's side experts. Rather, the Advisory Committee Notes state that when the jury determines which of the contested facts are accurate, they can decide which expert's testimony to credit. The reliability requirement is not intended to be a "correctness" requirement.

Finally, FRE 702(d) has also been amended to clarify the fact that expert opinions must stay within what can be concluded from reliable application of the basis of said opinion and the methodology used to reach it. The Advisory Committee Notes point out that judges' gatekeeping role here is essential, as they are better equipped to determine if an opinion is within permissible bounds than members of the jury. This is particularly of note to testimony of forensic experts. The Advisory Committee Notes to Rule FRE 702 state:

"In deciding whether to admit forensic expert testimony, the judge should (where possible) receive an estimate of the known or potential rate of error of the methodology employed, based (where appropriate) on studies that reflect how often the method produces accurate results. Expert opinion testimony regarding the weight of feature comparison evidence (i.e., evidence that a set of features corresponds between two examined items) must be limited to those inferences that can reasonably be drawn from a reliable application of the principles and methods. This amendment does not, however, bar testimony that comports with substantive law requiring opinions to a particular degree of certainty."

The amended FRE 702 rule does not bring about new procedures or impose any new requirements. Rather, it is a clarification of previously existing law that was designed to emphasize that the expert's basis and methods must be reliable AND that they are then reliably applied to the facts of the case. It is different from SDCL 19-19-702 in that it highlights the 104(a) standard's applicability to these factors. Under current South Dakota law, the 19-19-104(a) standards should already be applied to these issues, but the text of the rule is less than clear.

BRIEF ANALYSIS OF SOUTH DAKOTA CASE LAW

This analysis is provided as a discussion of the proposed rule change pursuant to SDCL 16-3-5.3. Like most jurisdictions, South Dakota's case law appears to contain a history of liberally

permitting expert testimony at trial, with admission being the norm or expectation. Old case law, pre-dating SDCL 19-19-702, is still often cited today, however, that law does not necessarily track with the language of the current version SDCL 19-19-702. For example, in its most recent discussion of SDCL 19-19-702 in 2024, the South Dakota Supreme Court cited the current version of SDCL 19-19-702 and then referred to old case law that generally discussed the preponderance of evidence burden that had developed through the case law itself, not with reference to the rules of evidence. *Acuity v. A Mason Company, LLC*, 2024 SD 52, 11 N.W.3d 891 (citing *Tosh v. Schwab*, 2007 S.D. 132, ¶18, 743 N.W.2d 422, 428 (referencing older case law for the preponderance standard)).

This use of outdated case law, blended with SDCL 19-19-702 analysis, showed up recently in *Powers v. Turner County Board of Adjustment*, 2022 SD 77, 983 N.W.2d 594. There, the South Dakota Supreme Court analyzed a 702 issue and started by citing a long line of cases predating the adoption of SDCL 19-19-702, or anything like it. Included in this was the basis for much of the current problems identified by the committees who proposed the FRE 702 change at the Federal level. Specifically, in *Powers*, the S.D. Supreme Court cited to a 1996 case noting: “[t]he basis of an expert’s opinion is generally a matter going to the weight of the testimony rather than its admissibility.” *Id.* (citations omitted). This type of statement is not consistent with the old FRE 702 (or the current SDCL 19-19-702). However, it is even less consistent with the updated FRE 702. Ultimately, although the updated FRE 702 did not alter FRE 702’s substance, it is an express reminder of the court’s obligation to apply the preponderance standard at every stage of the expert process, instead of simply letting all experts through and leaving it to the jury to “weigh” the testimony. In short, it reminds the court to fill its role as a gatekeeper, not as a speed bump.

Optimistically, trial courts would use this change to become emboldened to fulfill the gatekeeping role the rule places upon them. Pessimistically, since the change would not make a substantive alteration and expert admission seems ingrained in the current practice, it may not have much of an impact. Realistically, the change would at least provide practitioners with a basis to argue that the trial court should fulfill its gatekeeping role and ignore any outdated case law authority indicating otherwise, which includes the consistent trial court fallback position of leaving it all for the jury to “weigh.”

6. Proposed Adoption of a new rule to provide for the discharge of financial obligations three-years following notice of death of a defendant.

Section 1. That a new rule be adopted as follows:

Any court-ordered financial obligation due and owing in a criminal proceeding, habeas corpus or abuse and neglect case, must be terminated three years following notice of death of the party owing the court-ordered financial obligation unless the court orders otherwise upon motion of the parties or victim. The Unified Judicial System shall provide the state's attorney, county auditor and victim, if applicable, notice of the date of death when that information is received.

Section 2. Effective date.

This rule is effective July 1, 2026.

Explanation for Proposal 6.

The proposed rule submitted by the State Court Administrator's Office is intended to provide a uniform response when an individual passes away owing court-ordered financial obligations in a criminal, habeas corpus or abuse and neglect case. Currently, that process is handled differently across the state. As of August 2025, and dating back to the inception of electronic court records, the UJS records indicate there is over 6 million dollars due and owing by an individual that has a date of death entered in the court record. The Supreme Court has been explicitly granted authority to promulgate rules in this area by the Legislature:

23A-47-5. Termination of financial obligation.

Pursuant to rules established by the Supreme Court, any financial obligation from an order more than twenty-five years old, deemed uncollectible, or following the death of an offender may be terminated.

The proposal's notice process is intended to ensure a victim owed restitution and the prosecutor for all court-ordered financial obligations would be apprised of the death and an opportunity to pursue other collection methods if applicable. This proposed change is not based on any other state or federal rule.

The proposed implementation of this rule would be July 1, 2026, to provide adequate time for implementation and training statewide for the UJS personnel.

7. Proposed Adoption of a new rule to provide remote access to trust documents for attorneys of record.

Section 1. That a new rule to be placed in ch. 21-22 be adopted as follows:

The Unified Judicial System shall provide remote online access to the court file to the attorney of record for a court trust or other trust, as indicated in the court record, through a secured online portal.

Section 2. Effective date.

This rule is effective July 1, 2026.

Explanation for Proposal 7.

This proposal is being submitted by the State Court Administrator's Office. Because trust cases are sealed, they are not available through the UJS eCourts attorney platform. This proposed change would allow the attorney of record, as indicated in the court record maintained by the Clerk of Courts, to access trust documents via that eCourts portal for attorneys. Without such access attorneys are required to contact the Clerk of Court to have a copy mailed or emailed to them. This change is not based on any other federal or state law.

Relevant Statutory Background:

21-22-28. Protection of privacy-Sealing and availability of documents

The privacy of those who have established a court trust or other trust shall be protected in any court proceeding concerning the trust. Upon the filing of any petition, the instrument on which the trust is based, briefs, and the entire court file including a trust's inventory, statement filed by any fiduciary, annual verified report of a fiduciary, final report of a fiduciary, and all petitions relevant to trust administration and all court orders thereon shall be sealed upon filing and may not be made a part of the public record of the proceeding, but are available to the court, to the trustor, to any fiduciary, to any enforcer, to any

beneficiary or the beneficiary's representative as provided in chapter 55-18, to their attorneys, and to such other interested persons as the court may order upon a showing of the need.

8. Proposed Adoption of a new rule establishing minimum qualifications of child custody evaluators and minimum requirements of reports setting forth evaluator's findings and recommendations to courts to be added to SDCL chapter 25-4A Custody and Visitation Rights.

Section 1. Custody and Parenting Time Disputes - Appointment of Custody Evaluator.

In any custody or visitation dispute between parents, the court may appoint a custody evaluator to assist the court in determining the best interests of the child. The Supreme Court may promulgate rules pursuant to §§ 16-3-1 and 16-3-2 to prescribe the authority, duties, appointment, and compensation of custody evaluators.

Section 2. Custody Evaluator Appointment at Party Request or on Court's Own Motion.

At the request of either party, or on the court's own motion, a custody evaluator may be appointed in any custody or parenting time proceeding. The parties may agree to use a custody evaluator, subject to approval by the court, or the court may designate a custody evaluator for the parties to use.

Section 3. Definitions.

The terms used in Sections 1 through 5 mean:

- (1) Custody evaluation: An evaluation based on personal interviews, interactions and observations of the parties and minor children that makes a recommendation to the court as to custody and parenting time for minors.
- (2) Custody evaluator: A person who meets the minimum qualifications set forth in Section 3 to perform custody evaluations.

Section 4. Qualifications of Custody Evaluator.

A custody evaluator must satisfy the following minimum qualifications:

- (1) File an approved application on the prescribed form with the presiding judge for the circuit in which the evaluator will provide custody and parenting time evaluation services;
- (2) Have a general knowledge of the South Dakota court system and its procedures in family matters;
- (3) Have a general knowledge of South Dakota family law, especially as applied to custody and parenting time issues;
- (4) Have a minimum of four hours of domestic violence training focusing upon the impact it has on parents and children exposed to violence;
- (5) Have a minimum of forty hours custody evaluation training with competence in the following areas:
 - (a) Definition of the purpose and roles of the child custody evaluator;
 - (b) Child development, including physical, cognitive, emotional, language, and social development, gender identity, sexual orientation, and the impact of parenting practices and other influences on children's development;
 - (c) The impact of parental separation, divorce, family restructuring, and interparent conflict on children, adults, and families;
 - (d) Family violence patterns and coercive controlling behaviors, the connection between intimate partner violence and child maltreatment, and the effects of exposure to family violence and coercively controlling behaviors on children;
 - (e) Parent-child contact problems and resist-refuse dynamics, including parental alienating behaviors, compromised parenting and child maltreatment;

- (f) Child and adult psycho-pathology, including mental health disorders, learning disorders, and developmental disorders;
- (g) Child maltreatment, including child neglect and physical, psychological, and sexual child abuse, the connection between child maltreatment and other adverse childhood experiences, and factors associated with resiliency from trauma and adversity;
- (h) Impact of relocation on children, adults, and families;
- (i) Resources available in the state to which the parties and the children can be referred for assistance;
- (j) Review of cultural considerations, bias, and ethical issues;
- (k) Utilization of psychological testing;
- (l) Updates on the current research;
- (m) Developmentally appropriate and empirically informed parenting plans, long distance parenting plans, methods of facilitating transitions between homes, and communication and information exchange;
- (n) Interviewing, record keeping, use of technology and problem-solving techniques applicable to the family setting;
- (o) Evidence-informed methods for interviewing adults and children, observing parent-child interactions, applying balanced procedures, maintaining objectivity, and interpreting data;
- (p) Recognizing the limits of reliability and validity of various sources of information; and
- (q) Best practices for report writing and testifying.

- (6) Committed to, and participate in, at least forty hours of continuing education courses focused on the areas outlined in subdivision 5 of this section every two years;
- (7) Be an attorney who is licensed to practice law in South Dakota; a psychologist who is licensed to practice in South Dakota; a psychiatrist who is licensed to practice in South Dakota; or any other South Dakota-licensed or certified professional with a master's degree or higher in social work, psychology, child development, counseling or behavioral sciences or a closely related field relevant to the duties of a custody evaluator; and
- (8) Have at least twenty-four months of professional experience working with families as outlined in subsection 7.

Section 5. Appointment Upon Consent of Parties.

Any person not meeting the educational requirements of subdivision 4(5) may be appointed as a custody evaluator by the court upon consent of the parties. The person is still required to comply with the training requirements of subdivision 4(2), (3) and (4).

Section 6. Form for Custody Evaluations.

The purpose of a custody evaluation is to provide the court with information it may consider in making decisions regarding custody and parenting time arrangements that are in the child's best interest. A custody evaluator shall consider and respond to the factors as set forth by the court in §§ 25-4A-23, 25-4-45 and sections set forth above.

A custody evaluator shall:

- (1) Use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards;
- (2) Complete a fact-finding investigation;

- (3) Interview service providers and other collateral sources (teachers, psychologists, psychiatrists, doctors, nurses, neighbors, and others) who are knowledgeable about the child and family; and
- (4) Administer or obtain psychological evaluations only upon receiving a court order or an agreement between the parties. Psychological evaluations must only be administered and interpreted by a licensed expert.

Every custody evaluation report must contain the following:

- (1) The procedures employed during the evaluation;
- (2) The data collected as permitted by professional standards;
- (3) Testing results;
- (4) An explanation of any limitations in the evaluation or any reservations of the professional regarding the resulting recommendations;
- (5) Verification of each statement of material fact upon which the evaluator relied and the sources of verification, or alternatively, the inability to verify material facts and reasons therefore;
- (6) The amount of time spent with each party and child; and
- (7) Application and discussion of each of the factors set forth in § 25-4A-24.

Upon receiving notice of an appointment by the Court, the evaluator shall provide their anticipated timeline for commencement to the parties and to the Court. Following receipt of the anticipated commencement date, either party may request the assignment of a different evaluator. After commencement of the evaluation, a report must be completed within 120 days after appointment by a Court Order. If the evaluation will not be completed within 120 days, the evaluator must obtain written consent of both parties and a court order expanding the timeline. The evaluator shall send a status update to the parties at least once every 30 days outlining what needs to be completed or provided by each party.

Upon completion of the report, the evaluator shall provide the written report to the parties and file a copy of the report with the court.

Evaluators shall retain all documents and notes used during their custody evaluation process for at least three years after completion of the report.

Explanation for Proposal 8.

Information regarding each of the requirements of SDCL 16-3-5.3 is provided below:

(1) The identity of the proponent or proponents of the new Supreme Court Rule:

The proponent of the new rule is the Family Law Committee of the State Bar of South Dakota.

(2) A detailed explanation of the change and the reasons for the change:

Currently, there are no regulations regarding child custody evaluations despite them being relied upon by many circuit court judges and parties in custody cases. There are no required qualifications concerning the person conducting these evaluations, no criteria setting forth what the evaluator should consider when conducting an evaluation, and no procedure or requirements regarding the reports produced from these custody evaluations. However, we do have such requirements concerning family law mediators and parenting coordinators.

There is significant disparity as to the procedure and methodology utilized by those conducting evaluations throughout the state. Furthermore, some persons appointed to conduct evaluations administer instruments the evaluator is not qualified to conduct or interpret. Reports from the evaluators also greatly vary. Some provide an analysis of factors set forth by the Supreme Court of South Dakota and/or the South Dakota Legislature, while others do not.

The adoption of the proposed rule would provide uniformity within our courts concerning the custody evaluation process and clarify who may conduct evaluations when considering child custody matters.

(3) An analysis of the state or federal rule or statute that the change is based upon, if any; N/A

(4) A comparison of the change federal rules or local federal rules on the same subject, if any; and N/A

(5) An explanation of any differences, if any; an analysis of how the change affects existing rules or statutes:

SDCL 25-4-45 empowers our circuit court judges to make determinations concerning the custody of a minor child based upon the best interest of the child in respect to the child's temporal and mental and moral welfare. SDCL 25-4-45.1 through 25-4-45.8 provide further guidance as to matters that may or may not be considered when a court considers an award of custody. Statutory guidance as to what factors the court may consider when addressing a request for shared parenting is also set forth via SDCL 25-4A-23. While SDCL 25-4-45.3 acknowledges the utilization of a child custody evaluation when making custody determinations, there is no statutory guidance concerning the appointment of an evaluator, nor a directive as to what an evaluator should consider or report process utilized. This proposed rule would fill those gaps.

Intentionally Left Blank

SUPREME COURT COMMISSION ON PARENTING TIME GUIDELINES FINAL REPORT

SUPREME COURT COMMISSION ON PARENTING TIME GUIDELINES

FINAL REPORT



INTRODUCTION

On August 26, 2020, the South Dakota Supreme Court entered an Order creating the Commission on Parenting Time Guidelines. Commencing in 2021, the Commission shall review the standard parenting guidelines outlined in SDCL 25-4A-10 every four years and report its findings and recommendations to the Supreme Court, Governor, and the Legislature. In addition to the Commission's 2021 submitted recommendations to the Guidelines, it was also recommended a training be offered to circuit court judges regarding family law and the effect these situations have on the parties and their children, as well as the implementation and enforcement of parenting time guidelines. That training has been held at judicial conferences.

This year, 2025, the Commission reconvened to review the Guidelines and compiled a list of findings and recommendations.

The Commission is to be composed of seven members:

1. A member of the South Dakota Judiciary;
2. A member in good standing of the South Dakota State Bar;
3. A professional in the field of childhood development;
4. Non-custodial parent;
5. Custodial parent;
6. State Representative; and
7. State Senator.

MEMBERSHIP

The 2025 Commission on Parenting Time Guidelines consists of the following members:

Honorable Christina Klinger, Presiding Circuit Court Judge, Pierre (Chair)
Senator Tom Pischke, State Senator, Dell Rapids
Representative Brandei Schaefbauer, State Representative, Aberdeen
Shanna Moke, Childhood Development Professional, Sioux Falls
Kylie Riggins, Family Law Attorney, Rapid City
Kacy Kienholz, Custodial Parent, Pierre
Ryon Rypkema, Non-Custodial Parent, Caputa

MEETINGS/PUBLIC HEARINGS

Formal meetings for the Commission took place on the following dates:

July 28, 2025, via Zoom – Kick off Meeting;
September 19, 2025, Room 4112 – Capitol Building, Pierre, SD.

Additionally, as required, three separate public hearings were also held from 6:00 p.m. – 8:00 p.m. on the following dates:

Aberdeen – August 18, 2025, at Ramkota Hotel
Sioux Falls – August 25, 2025, at Holiday Inn City Centre
Rapid City – September 15, 2025, at Ramkota Hotel

Concerns and suggestions were presented by the public at the public hearings and in written correspondence to the Commission. The following is a sample of some of the concerns but is not intended to be an exhaustive list.

- The Guidelines are too narrowly tailored and are interpreted as ceilings rather than starting points, often being used to limit a parent's involvement.
- The Guidelines do not provide sufficient definitions, practical tools, or structured guidance to help parents and courts create arrangements that preserve and strengthen child's relationship with both parents.
- The Guidelines should not apply in situations involving domestic violence and that age categories should reflect developmental stages rather than safety concerns.
- Parenting Guidelines should allow for increased parenting time beyond the ages of three to five.
- The Guidelines should include a provision for vacation for children under age three.
- The Guidelines needs stronger language against parental alienation, clarifying sibling references to include half-siblings, and revising language around the concept of maintaining the status quo.
- There needs to be a stronger emphasis on shared parenting and joint physical custody.
- The Guidelines should be updated to encourage maximizing meaningful time with each parent, while accommodating the unique circumstances of each family that would provide the courts and families with a framework that promotes consistency, fairness, and the child's best interests.
- The Guidelines should provide standardized parenting plan templates online to help parents and courts create clear, detailed and enforceable plans.
- Provide a definition of "Shared Parenting."
- The Guidelines should recommend co-parenting platforms such as OurFamilyWizard or CustodyXChange for scheduling, communications, and documentation to help reduce misunderstandings and conflict.
- The Guidelines should include a definition for joint physical custody.
- Consider adding culturally or religiously significant holidays.
- Concerns were raised regarding communications between parents through social media. A suggestion was to clarify the definition of "social media" in the Guidelines to ensure privacy and to broaden its scope. Provide guidance on how access to social media should evolve as children age.
- Clarify that children shall have only one primary cell phone which both parents can access for communication purposes.
- There should be additional time granted for parenting time when a child is in the 0-5 age range.
- The minimum should be equal joint physical custody and custody evaluations need to be more financially accessible including state-funded evaluations with repayment plans.
- South Dakota lags behind in shared parenting rights leaving the father with extreme legal fees an unaffordable childcare support.
- 180 days is arbitrary and outdated.

- 6 day abatement is not enough and does not allow adequate credit for overnights with children.
- Concerns of mandatory mediation order and it is an onerous burden to require a custody evaluation.
- Different shared parenting schedules should be included to give parents an idea of how time can be split.
- Holiday time for parents residing over 200 miles apart needs to be more feasible with travel time.
- Juneteeth will eventually fall on the same day as Father's Day and clarify which holiday takes precedence.
- Halloween should be removed because it's such a short time frame and custody should go to whichever parent is exercising time that day.
- Christmas break should be split in two equal halves to allow parents to travel for the holidays and remove the two 48 hour holiday periods entirely.
- The Guidelines contain an error in the rotation – the parent with July 4 also gets Labor Day weekend.
- The Guidelines has Parent 1 for Mother's Day. Clarify who is Parent 1 and who is Parent 2. This can potentially be problematic for same-sex parents.
- Parenting time should be uniform regardless of differences in age.
- Require both parents to use the same daycare provider.
- The vacation with 3-5 year olds provision conflicts with holiday language and needs clarification.
- Remove language "whichever is applicable" in the Guidelines.
- Remove Juneteenth, as it is rarely celebrated.
- Add a provision that if kids have 5 or more days off of school, that time goes to the non-custodial parent.
- Right of first refusal should be added to the Guidelines.
- Shared parenting needs to be set forth more general guidelines such as expectations of sharing of expenses, typical plans, etc.
- Remove the provision that permits children to miss school to spend time with noncustodial parent who lives more than 200 miles apart, because it may unintentionally conflict with truancy laws and doesn't account for absences due to medical appointments. The Guidelines should align with SD's compulsory attendance laws.
- Children should return home the night before holiday break concludes, because it can be difficult to return child the morning before school resumes.
- Summer parenting time needs to be more balanced. Consider splitting summer parenting time more evenly, such as a 60/40 or 70/30 split to allow for meaningful time without interfering with school or violating attendance policies.
- Clarify and strengthen advance notice requirements for additional parenting time. The term "preferably 30 days" is vague and unenforceable. Change to a minimum of 30 days advance written notice.

- Require enforceable notice for extended summer parenting time. Require that 60 days notice is mandatory and not just recommended with clear consequences if not followed. Written notice should be required to prevent disputes.
- Include a section encouraging parents to communicate and collaborate on driver's education, learner's permits, or teen driving responsibilities.
- Revise extended summer parenting time for children ages 16 and older to allow for teen's preferences and participate in athletic commitments or academic programs.
- Clarify the Guidelines must be followed unless otherwise ordered by the Court, and there needs to be clear consequences.
- Include more educational information regarding the importance of civility and co-parenting between parents, positive communication, and involvement of both parents.
- Teens and mature children should be allowed to state their parenting time preferences.

COMMISSION FINDINGS

The Commission conducted public hearings. Members discussed current research and materials on the subject matter in addition to parenting guidelines from other jurisdictions. In working through this process, the Commission believes there are revisions needed to provide more clarity to the parents of minor children who are navigating separation or divorce. The more clarity that is granted, the potential for conflict is reduced.

- The Guidelines are not intended to serve as a substitute for the advice of competent licensed professionals.
- The Guidelines are designed to assist parents in the development of their own parenting plans. In the event the parties cannot create their own parenting time agreement, these guidelines represent the minimum time a parent should have to maintain meaningful and continuing contact with a child, ensuring the best interests of the child.
- Having consistent schedules regarding parenting time is generally in the best interests of children.
- It is impossible to address every individual situation and resolve the same in the Guidelines. They are designed to address the most common circumstances.

RECOMMENDATIONS

The Commission recommends that the South Dakota Supreme Court adopt the attached South Dakota Parenting Guidelines. The proposed revisions to the Guidelines are attached to this report. Revisions to the Guidelines are reflected herein: additions denoted by underlining in red and deletions indicated by strikethrough in red. A summary of the changes are as follows:

- There is a need to better emphasize that the Guidelines represent the minimum standards rather than defaults, as some circuits have historically applied the Guidelines as maximums.
- Amend the Guidelines to use more clear and concise language laying out enforcement of the guidelines, and instructions how to object. A direct link to the objection form is provided.
- The Guidelines should support overnights with very young children when both parents can provide nurturing and routine within a stable environment and should be adjusted as needed to support the child's comfort and development.
- Increase custodial overnights on a weekend from eighteen hours to twenty-four hours.

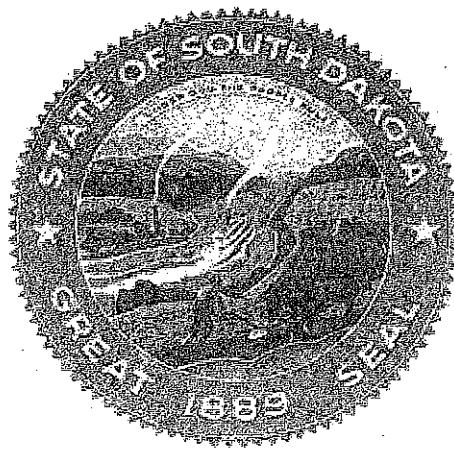
- Add a provision that should Juneteenth and Father's Day land on the same day, Father's Day prevails (will not occur until 2033).
- Revise time on Mother's Day and Father's Day to reflect "Mother" and "Father" instead of "Parent 1" and "Parent 2."
- Clarify that holidays take precedence over both birthdays and weekends.
- Include a provision that parents are encouraged to coordinate vacation plans and include a solution in the event there is a dispute.
- Provide clear language regarding the opportunity for mediation and provide a link to court appointed mediators.
- Update all links to the UJS website to reflect UJS's updated website.

CONCLUSION

Based on public feedback, the Commission found that the prior changes to the Guidelines have been well received, particularly the inclusion of charts for holiday scheduling and sections addressing infants at various developmental stages. There has been positive feedback regarding shared parenting options. The Commission believes that the Guidelines represent a strong step forward in creating consistent standards across the circuits and are significantly more inclusive and uniform than prior guidelines.

**9. Proposed Amendment to the Appendix of SDCL Chapter 25-4
Custody and Visitation Rights.**

SOUTH DAKOTA PARENTING GUIDELINES



Effective July 1, 2026

The South Dakota Parenting Guidelines are located
on the South Dakota Legal Self-Help Center found at
<https://uis.sd.gov/self-help/>

For more information, contact:
South Dakota Unified Judicial System
State Court Administrator's Office
500 E. Capitol Avenue
Pierre, SD 57501
605-773-3474

The Parenting Guidelines are not copyrighted and may be reproduced without prior permission of the South Dakota Unified Judicial System, State Court Administrator's Office.
Established by the 2025 Commission on Parenting Time Guidelines,

SOUTH DAKOTA PARENTING GUIDELINES

Enforcement.

These guidelines are required to be served with the Summons and Complaint in a divorce, paternity action, or any other custody action or proceeding.

See <https://ujslawhelp.sd.gov/onlineforms.aspx> <https://ujs.sd.gov/self-help/family-law-help/> under divorce or paternity actions for instructions on how to initiate an action (service of summons).

~~If the parents are able to agree to a schedule other than the guidelines, these Guidelines should be used as a minimum direction in creating the parenting time plan. Parents should agree to parenting times that they find reasonable and in the best interest of their children and the Parenting Guidelines are not intended to prevent such agreements.~~

Parental Agreements Encouraged:

Parents are both allowed and encouraged to work together and create a parenting plan for their child(ren) after giving meaningful consideration of the needs and abilities of the child(ren) and parents involved in their specific situation. These guidelines are intended to provide guidance regarding the minimum parenting time children should have with parents in order to ensure meaningful contact and allow for the parent/child relationship. Parents should agree to parenting time they find reasonable and in the best interests of their children. These Parenting Guidelines are intended to provide guidance and fill in the gaps when parents are unable to reach an agreement and are not intended to prevent agreements.

If the parents are unable to agree on a parenting plan, these Guidelines become a mandatory initial parenting plan and are enforceable as a court order upon commencement of a divorce or court action involving custody. SDCL 25-4A-11. ~~If you disagree with the use of these Guidelines as your parenting time plan, either parent has the right to object. Your written objection shall be filed with the Clerk. After it is filed, a hearing will be held and the Judge will determine your parenting time schedule. Instructions and this objection form can be found at <https://ujslawhelp.sd.gov/defendants.aspx>. This is a court order that will remain in place until further order of the court or until the parents agree otherwise.~~

Objection:

If either parent disagrees with the use of these guidelines as the initial parenting time plan, that parent has a right to object. A written objection shall be filed with the clerk. A form for the objection (form 372) can be found here: <https://ujs.sd.gov/media/od3jgnnd/ujs-372-objection-to-order-implementing-guidelines-9-2022.pdf>. Upon filing of the objection, a hearing will be scheduled within 30 days. Following the hearing, the court will issue an order for temporary custody. To assist the Court in formulating an interim order, parents should be prepared to concisely convey the degree of each parent's participation in the child's life and provide information regarding the provisions set forth in SDCL 25-4-45.

When constructing an interim parenting time schedule the Court will work to maximize the time each parent has with the child consistent with each parent's demonstrated participation in the child's life and ensuring the child's welfare. When constructing a parenting plan, the Court may consider these guidelines, as guidance regarding the minimum exposure recommended for children with parents in order to ensure meaningful contact and allow for the maintenance of the parent/child relationship. SDCL 25-4A-13.

SOUTH DAKOTA PARENTING GUIDELINES

Instructions and forms regarding enforcement can be found at:

<https://ujslawhelp.sd.gov/enforcement.aspx> <https://ujs.sd.gov/self-help/family-law-help/under Shared Parenting Guidelines & Plans>.

Guideline 1. For Parents Who Have Children Under Age 5.

1.1. Children Under Age 5 Generally.

- O Newborns (birth to 3 months) and infants (3 – 6 months) have a great need for continuous contact with their primary caregiver, but also frequent contact with both parents who provide a sense of security, nurturing, and predictability.
- O ~~Generally, overnights for very young children is not recommended unless the parents are both very closely attached to the children, are able to personally provide primary care, the children are adaptable, and the parents are cooperative.~~
- O ~~Overnights with very young children can establish and maintain meaningful bonds between the child and both parents and should occur when both parents can provide nurturing and routine within a stable environment. The schedule should be adjusted as needed to support the child's comfort and development.~~
- O Older children are able to tolerate more and longer separations from one parent or the other.

The following Guidelines for children under age 5 are designed to take into account childhood developmental milestones. Since children mature at different rates, these may need to be adjusted to fit the children's individual circumstances.

1.2. Birth until 3 Months. ~~Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting plans are recommended:~~

- ~~(1) Three, 2-hour parenting time periods per week and one weekend parenting time period for 6 hours; or~~
- ~~(2) In situations where both parents have been engaged in an ongoing caregiving routine with a ~~nursing~~ child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the child and maintain stability for the child. If applicable, breastfeeding shall be accommodated, but the parents must cooperate in working out alternatives. See 1.8 below.~~

1.3. 3 – 6 Months. Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting plans are recommended:

SOUTH DAKOTA PARENTING GUIDELINES

- (1) Three, 3-hour custodial periods per week and one weekend day for 6 hours. If applicable, breast feeding shall be accommodated but the parents must cooperate in working out alternatives; or
- (2) Three, 3-hour custodial periods per week and one overnight on a weekend not to exceed ~~18 24~~ hours, if the parent is capable of personally providing primary care. *See* exceptions in Section 1.8 below; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

1.4. 6 – 12 Months. Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 4-hour parenting time periods per week and one weekend day for 6 hours; or
- (2) Three, 4-hour parenting time periods per week and one overnight on a weekend not to exceed ~~18 24~~ hours, ~~if the child is not breastfeeding and the parent is capable of personally providing primary care~~; or
- (3) Children spend time in alternate homes, but spend significantly more time in one parent's home and no more than 1-2 overnights spaced regularly throughout the week at the other parent's home; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

1.5. 12 – 36 Months. Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) Three, 8-hour parenting time periods per week on a predictable schedule; or
- (2) Three, 8-hour parenting time periods per week on a predictable schedule and one overnight per week not to exceed ~~18 24~~ hours; or
- (3) Children spend time in alternate homes, but with significantly more time in one parent's home with 1-2 overnights spaced regularly throughout the week. This arrangement requires adaptable children; or
- (4) In situations where both parents have been engaged in an ongoing caregiving routine with the children (~~nursing or otherwise~~), overnights are allowed to continue as much as possible to

SOUTH DAKOTA PARENTING GUIDELINES

provide the same caregiving arrangement to the children and maintain stability for the children.

1.6. 3 Years – 5 Years. Recognizing the amount of time each parent spent with the children prior to the parents' separation and/or since that time, alternative parenting times are recommended:

- (1) One overnight parenting time period not to exceed 24 hours and two additional 8-hour parenting time periods each week, separate from the overnight, with the children returning to the other parent's home at least 1 hour before bedtime; or
- (2) Two to three overnights at one home, spaced throughout the week, the remaining time at the other parent's home. This arrangement requires adaptable children; or
- (3) In situations where both parents have been engaged in an ongoing caregiving routine with the children, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

If the parents cannot agree on which provision applies in sections 1.2 through 1.6, the parties shall use option 1 until further order of the court. Absent special circumstances as determined by the court, parenting time shall not decrease from one age category to the next.

1.7. Children in Day Care. In families where children are in day care before and/or after parental separation, the children may be able to tolerate more time with each parent earlier than their specific age group indicates above because the children are accustomed to separations from both parents.

1.8. Breastfeeding Children. – Parents must be sensitive to the special needs of breastfeeding children. Children's basic sleeping, feeding, and waking cycles should be maintained to limit disruption in the children's routine. Forcibly changing these routines due to the upheaval of parental disagreement is detrimental to the physical health and emotional well-being of the children. On the other hand, it is important that the children be able to bond with both parents.

- a. For children being exclusively breastfed, the nursing child can still have frequent parenting time with the other parent. The amount of time will be guided by/subject to infant's feeding schedule, progressing to more time as the child grows older. Both parents should be mindful that a feeding may occur, and the child may return to time with the other parent after the feeding.
- b. Where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain stability for the children.
- c. If the other parent has been caring for the children overnight or for twenty-four 24- hour periods while the nursing mother sleeps or works, that arrangement should/shall continue.

SOUTH DAKOTA PARENTING GUIDELINES

d. A mother may not use breastfeeding to deprive the other parent of time with the children. If, for example, a nursing mother uses day care or a babysitter for the children, the same accommodations (i.e., bottle feeding with breast milk or formula, or increased time between breast feeding sessions) used with the day care provider or babysitter will be used with the other parent, if the other parent is capable of personally providing the same caregiving.

1.9. Holidays. For children aged 0-5 years, when the parents live and/or celebrate the holiday in the same or a nearby community, the parents shall alternate the following holidays in the chart below. Prior to a child's 5th birthday, holiday parenting time shall not exceed the longest period of parenting time currently being exercised and shall be scheduled by the parent exercising holiday time. If the parents cannot otherwise agree, the holiday time shall be exercised within the time frames provided in the chart below not to exceed the longest period of parenting time currently being exercised. It is recommended that the parents communicate two weeks in advance about who is exercising what time period for the holidays set forth below. Parenting time, however, shall not be withheld solely for failure to abide by this two-week recommendation.

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Martin Luther King, Jr. Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
President's Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Easter weekend	8:00 a.m. Friday – 8:00 a.m. Monday	Parent 2	Parent 1
Mother's Day	8:00 a.m. – 8:00 a.m. the following day	<u>Parent 1</u> <u>Mother</u>	<u>Parent 1</u> <u>Mother</u>
Memorial Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Juneteenth (6/19)	<u>Starts at</u> 8:00 a.m. <u>on 6/19 and ends</u> 8:00 a.m. <u>the following day on 6/20. (In the event that Juneteenth and Father's Day lands on the same day, Father's Day prevails).</u>	Parent 1	Parent 2
Father's Day	8:00 a.m. – 8:00 a.m. the following day	<u>Parent 2</u> <u>Father</u>	<u>Parent 2</u> <u>Father</u>
4th of July	5:00 p.m. July 3rd – 5:00 p.m. July 5th	Parent 1	Parent 2
Labor Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Native American Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Halloween	3:00 p.m. – 8:00 p.m.	Parent 1	Parent 2
Thanksgiving	8:00 a.m. Thursday – 5:00 p.m. Sunday	Parent 2	Parent 1
Christmas Eve	8:00 a.m. Christmas Eve – 8:00 a.m. Christmas Day	Parent 2	Parent 1
Christmas Day	8:00 a.m. Christmas Day – 8:00 a.m. December 26th	Parent 1	Parent 2

SOUTH DAKOTA PARENTING GUIDELINES

Child's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, <u>the holiday takes precedence and</u> the parenting time for the birthday shall take place the day before)	Parent 2	Parent 1
Parent 2's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, <u>the holiday takes precedence and</u> the parenting time for the birthday shall take place the day before)	Parent 2	Parent 2
Parent 1's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, <u>the holiday takes precedence and</u> the parenting time for the birthday shall take place the day before)	Parent 1	Parent 1

1.10 Vacation With Children 3 – 5 Years Old. Upon 30 days advance written notice (by mail, email or text message), each parent is entitled to two separate periods of uninterrupted time for up to 5 days each with their children each year, not to conflict with the other parent's holiday parenting time. Parents are encouraged to coordinate vacation plans. The parents shall consider extending the 5-day time periods to 7 days if the children are adaptable and accustomed to spending time with both parents. In the event there is a dispute, the mother gets priority in choosing her vacation periods first in even-numbered years and the father gets priority in choosing his vacation periods first in odd-numbered years.

1.11 Long-Distance Parenting. When substantial distance between the parents exists, the ability to exercise these Guidelines is compromised. The parents will need to create a developmentally appropriate parenting plan for their unique situation. When parenting time is unable to be frequent, parents are encouraged to use video/audio contact to build and/or maintain the bond between the children and parent who lives afar.

Guideline 2. For Parents Who Have Children Age 5 and Older And Reside No More Less Than 200 Miles Apart.

2.1. Weekends. In most cases, it is a positive experience for the children to have both parents involved in taking the children to and from school. Parenting time shall consist of alternate weekends starting Friday upon the release of school or 3:15 p.m., whichever is applicable, for the week, and continuing until the return to school Monday or 8:00 a.m., whichever is applicable the following week. Parenting

SOUTH DAKOTA PARENTING GUIDELINES

time shall be an equivalent period of time if a parent is unavailable on weekends and the children do not miss school. Holiday time takes precedence over weekends.

2.2. Mid-Week. If time and distance allow, parenting time shall include one mid-week overnight every week, in addition to the weekends in 2.1 above, with the children. If the parents cannot otherwise agree, this mid-week time shall be on Wednesdays and shall start when the children are released from school or at 3:15 p.m. ~~whichever is applicable if no school is in session~~, and concludes when the children are returned to school the next day or at 8:00 a.m., ~~whichever is applicable~~. All transportation for the midweek parenting time is the responsibility of the parent exercising the parenting time.

2.3. Summer Break. The children shall be with each parent for one-half of the school summer break. Summer break begins the day after school is released and ends the day before school commences. The parent with whom the children reside the majority of the time during the school year has priority to have the children the week before school resumes, which counts as part of that parent's summer break. At the option of the other parent, his/her parenting time during summer break may be consecutive or it may be split into 2 or more blocks of time. This parent shall provide a minimum of 30 days advance notice of the dates selected.

If the children go to summer school and it is impossible for a parent to schedule time other than during summer school, the parent may elect to take the time when the children are in summer school and transport the children to the summer school sessions at the children's school or an equivalent summer school session in that parent's community.

The parent with whom the children reside for the majority of the school year shall have the weekend before the beginning and the weekend after the end of the other parent's summer period, regardless of whose weekend it may be. This weekend time will not be made up.

During any summer vacation parenting times of three or more consecutive weeks, the parent exercising parenting time shall arrange for a mutually convenient 48-hour continuous period of time for the other parent to spend with the children.

2.4. Holidays. The following chart shows the allocation of the holidays between parents. School breaks and release times may be different from school to school and district to district. The school calendar is published on your children's school's website before each school year starts. It is important to know these dates / times as they pertain to your children.

SOUTH DAKOTA PARENTING GUIDELINES

Holiday / Special Event	Details /Times	Even-Numbered Years	Odd-Numbered Years
Martin Luther King Jr. Day weekend	Starts when school is released <u>on Friday or 3:15 p.m., whichever is applicable for the week</u> and ends when the children are <u>returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week.</u>	Parent 2	Parent 1
President's Day weekend	Starts when school is released <u>on Friday or 3:15 p.m., whichever is applicable for the week</u> and ends when the children are <u>returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week.</u>	Parent 1	Parent 2
Easter weekend	Starts when school is released <u>on Friday or 3:15 p.m., whichever is applicable for the week</u> and ends when the children are <u>returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week.</u>	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	<u>Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. Starts when school is released for the week and ends when the children are returned to school the following week.</u> If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Mother's Day	Starts at 8:00 a.m. on Mother's Day and ends at 8:00 a.m. on Monday; one overnight.	<u>Parent 1</u> <u>Mother</u>	<u>Parent 1</u> <u>Mother</u>
Memorial Day weekend	Starts when school is released <u>on Friday or 3:15 p.m., whichever is applicable for the week</u> and ends when the children are <u>returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week.</u>	Parent 2	Parent 1
Juneteenth	Starts at 8:00 a.m. on 6/19 and ends at 8:00 a.m. on 6/20. (In the event that Juneteenth and Father's Day lands on the same day, Father's Day prevails)	Parent 1	Parent 2
Father's Day	Starts at 8:00 a.m. on Father's Day and ends at 8:00 a.m. on Monday; one overnight.	<u>Parent 2</u> <u>Father</u>	<u>Parent 2</u> <u>Father</u>
4th of July	Begins July 3 at 5:00 p.m. and ends July 5 at 5:00 p.m.	Parent 1	Parent 2

SOUTH DAKOTA PARENTING GUIDELINES

Labor Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable for the week and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week .	Parent 1	Parent 2
Native American Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable for the week and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable returned to school the following week .	Parent 2	Parent 1
Halloween	Starts on 10/31 when school releases for the day or 3:00 p.m. if no school or 3:15 p.m., whichever is applicable , and concludes on 11/01 when school resumes or at 8:00 a.m. whichever is applicable the children are returned to school or 8:00 a.m. if there is no school .	Parent 1	Parent 2
Thanksgiving weekend	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m. is released for the week and ends when the children are returned to school the following week .	Parent 2	Parent 1
Christmas Eve	Starts on 12/23 at 8:00 a.m. and concludes on 12/25 at 8:00 a.m.	Parent 2	Parent 1
Christmas Day	Starts on 12/25 at 8:00 a.m. and concludes on 12/27 at 8:00 a.m.	Parent 1	Parent 2
1st half of winter break	The winter break starts the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break	Parent 1	Parent 2
2nd half of winter break, including New Year's holiday	The winter break starts the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 2	Parent 1

SOUTH DAKOTA PARENTING GUIDELINES

Children's Birthdays	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before); parenting time shall be with all of the children not just the one who has the birthday.	Parent 2	Parent 1
Parent 2's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, <u>the holiday takes precedence and</u> the parenting time for the birthday shall take place the day before).	Parent 2	Parent 2
Parent 1's Birthday	Starts 8:00 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, <u>the holiday takes precedence and</u> the parenting time for the birthday shall take place the day before).	Parent 1	Parent 1

2.5. Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regularly scheduled weekend time, the holiday takes precedence. Unless mutually agreed in writing, there will be no makeup parenting time in conflicts between holiday weekend and the regularly scheduled weekend time. This may result in one parent having the children for three weekends in a row; however, neither parent shall have the children for more than 3 weekends in a row.

2.6. Parent's Vacation with Children Age 5 and Older. Each parent is entitled to a vacation with the children totaling up to 14 days, with 7 days being the most that may be exercised at one time. When possible, each parent shall provide the other with 30 days advance notice of their intent to utilize their vacation time. Parents are encouraged to coordinate vacation plans. In the event there is a dispute, the mother gets priority in choosing her vacation periods first in even-numbered years and the father gets priority in choosing his vacation periods first in odd-numbered years.

2.8. Precedence. The allocation of holidays listed in the above chart shall take precedence over vacations. In other words, a parent cannot exercise their vacation with the children when it is the other parent's holiday. But vacations shall take precedence over the regular parenting time schedule.

2.9. Notice of Canceled Time With the Children. Whenever possible, each parent shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled time with the children. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the explanation, shall be provided to the other parent.

2.10. Pick Up and Return of Children. When the parents live in the same area/community, the responsibility for picking up and returning the children shall be shared. The parent who receives the children for his/her parenting time will pick the children up from the other parent. Both parents have an obligation to be punctual and to arrive at the agreed upon time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

SOUTH DAKOTA PARENTING GUIDELINES

Guideline 3. For Parents Who Have Children Age 5 and Older and Reside More Than 200 Miles Apart.

3.1. Holidays. Parents who reside more than 200 miles apart shall exercise the following holidays as follows:

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Easter weekend	<u>Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.</u> <u>Starts when school is released for the week and ends when the children are returned to school the following week.</u>	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	<u>Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break.</u> <u>Starts when school is released for the week and ends when the children are returned to school the following week.</u> If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Thanksgiving	<u>Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.</u> <u>Starts when school is released for the week and ends when the children are returned to school the following week.</u>	Parent 2	Parent 1
Winter Break	The winter break starts <u>when</u> the day the children are released from school for the break and continues to the morning of the day the children return to school.	Parent 1	Parent 2

3.2. Summer Break. The parent with whom the children do not reside during the school year shall have the children for the children's summer break as follows: summer break begins 3 days after school is released and ends 7 days before school recommences. This allows 10 days of parenting time during the summer with the parent with whom the children reside during the school year. Additionally, the parent with whom the children reside during the school year shall be entitled to exercise a 48-hour period of parenting time with the children every three weeks during the summer break to be exercised at the sole expense of the parent with whom the children reside during the school year.

SOUTH DAKOTA PARENTING GUIDELINES

3.3. Priority of Summer Time With Parent. Parenting time in the summer with the parent who lives more than 200 miles away takes precedence over summer activities (such as sports) when the parent's time cannot be reasonably scheduled around such events. Even so, the conscientious parent will often be able to enroll the children in a similar activity in the parent's community. When each child reaches an age and maturity where activities are very important to them, the parents should reach an agreement that works best for the child.

3.4. Notice. At least ~~sixty (60)~~ 60 days' notice (recommended to be by mail, email, or text message) shall be given by the parent who lives more than 200 miles away from the children of the date for commencing extended summer parenting time with the children 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 entitle the parent with primary residence of the children the right to deny the other parent parenting time with the children.

3.5. Additional Time With the Parent Who Lives More Than 200 Miles Away. The parent who resides more than 200 miles away from the children shall have the following parenting time:

- o If the parent who lives more than 200 miles away wants to travel, at his/her sole expense, to visit with his/her children, this parenting time shall be accommodated for a reasonable time period of no less than 48 hours. However, this is not intended to be exercised more than every other weekend;
- o Where distance and finances permit, additional parenting time for the parent residing more than 200 miles away from the children, such as holiday weekends or special events, is encouraged. Parents are encouraged to reference the holiday schedules set forth in Section 2.4 when determining the allocation and duration of other holidays; and
- o When the parent who lives 200 miles away is in the area where the children reside, or the children are in the area where this parent resides, liberal time with the children based on the circumstances must be allowed. Circumstances will vary and may only allow for a quick visit or may allow for overnight parenting time.

The children may miss some school to spend time with the parent who lives 200 miles away, so long as it does not substantially impair the children's academic progress. However, additional time with the parent who lives more than 200 miles away from the child shall not interfere with the alternating holiday schedule set forth in Section 3.1 herein.

Parents are encouraged to communicate with each other and cooperate in creating additional parenting times for the children. If the additional parenting time exceeds 4 hours, the parent who lives more than 200 miles away shall provide as much advance notice as possible, preferably 30 days. Failure to provide notice shall not be the sole reason for denial of additional parenting time.

SOUTH DAKOTA PARENTING GUIDELINES

Guideline 4. General Rules Applicable to All Parents

4.1. Rules of Conduct. A parent shall always avoid speaking negatively about the other parent and must firmly discourage such conduct by relatives or friends. Each parent should speak in positive terms about the other parent in the presence of the children. Each parent shall encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent.

4.2. Relatives. Children will usually benefit from continued contact with all relatives on both sides of the family. 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. Usually the children will visit the paternal relatives during times when the children are with their father and the maternal relatives during times when they are with their mother. This may include allowing the children to spend time with these relatives even when the parent is not present.

4.3. Relocation. Relocation is governed by South Dakota state law and permission from the court may be required. See SDCL 25-4A-17. Instructions and forms on how to comply with the requirements surrounding relocation, ~~as well as how to object to a parent's notice of relocation~~, can be found at www.ujslawhelp.sd.gov <https://ujs.sd.gov/self-help/family-law-help/> under Relocate with Minor Child.

4.4. Communication between Parents. Parents must always keep each other advised of their home and work addresses and telephone numbers. Whenever possible and unless otherwise stated herein, all communication concerning the children must be conducted directly between the parents (i.e., in person, by telephone, email, text message, communication notebook, a designated third party or co-parenting tool). Absent an emergency, communication should not occur at a parent's place of employment.

4.5. School and Medical Information. Both parents shall keep the other parent informed with the name, address and telephone number of the school where each of their children attends and each parent is authorized to communicate concerning the children directly with the school and with the children's doctors and other professionals, outside the presence of the other parent. Each parent has an obligation to contact the school to ensure receipt of class schedules, school report cards, notices, etc. so that they can remain involved with their children's education. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Attendance at academic or disciplinary meetings pertaining to the minor children shall be limited to the parents and the respective school professional(s). Others may not attend such meetings without advance mutual parental agreement or court order.

Each parent shall immediately notify the other parent of any medical emergencies or serious illnesses of the children. Access to records and information pertaining to minor children, including, but not limited to, medical, dental, therapy, counseling, orthodontia and similar health care and school records must be made equally available to both parents. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If children are taking

SOUTH DAKOTA PARENTING GUIDELINES

medications, both parents shall have access to a sufficient amount for their parenting time as well as the instructions.

The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card or copy thereof 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. Except in emergencies, the parent taking the children to a doctor, dentist, or other provider not so approved or qualified may be required to pay the additional cost for that provider. However, when there is a change in insurance, which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration shall be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or the economic consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible for paying shall be promptly furnished with the bill, and where applicable, the explanation of benefits, 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 unless previously paid by the other parent. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

4.6. Extracurricular Activities. Both parents shall consult the other parent prior to enrolling the children in any event that may affect the other parent's parenting time. Both parents shall be listed as a parent and emergency contact on all of the children's records, forms, registrations, etc. Both parents shall be provided access to the name of the coach, director, and organization providing the activity for each child along with their contact information. Both parents shall have the obligation to contact the activity director to ensure receipt of information such as practice schedules, games, parental participation, etc.

4.7. Clothing. In situations where the children reside primarily with one parent, that parent shall send an appropriate supply of children's clothing with the children for the other parent's parenting time. At the conclusion of his/her parenting time, this clothing shall be returned clean (when reasonably possible). Parents must advise, as far in advance as possible, of any special activities so that appropriate clothing for the children may be sent. It is recommended that both parents have some basic clothing available in their home to ensure that all of the children's basic needs are met.

4.8. Withholding Support or Time with the Children. Neither time with the children 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 generally have a right both to support and, time with both parents, neither of which is dependent upon the other. In other words, if the parent ordered to pay child support fails to do so, he/she is still entitled to their parenting time. Likewise, if one parent denies the other parent parenting time, child support payments must still be made.

SOUTH DAKOTA PARENTING GUIDELINES

Forms and instructions on how to enforce your parenting time can be found on the South Dakota Legal Self-Help Center at <https://ujslawhelp.sd.gov/onlineforms.aspx>
<https://ujs.sd.gov/self-help/family-law-help/under Shared Parenting Guidelines & Plans>.

4.9 Adjustments in Parenting Plan. Parents are expected to fairly modify the parenting plan as family necessities, illnesses, weather, or commitments reasonably so require. The parents must work together in good faith to get any missed parenting time rescheduled to occur within a reasonable period of time, usually within 30 days. When possible, each parent must timely advise the other when scheduled parenting time with the children cannot be exercised.

4.10 Children of Different Ages. It usually makes sense for all the children to share the same schedule of parenting time. Having brothers or sisters along can be an important support for children. Because it is intended that parenting time with the children be a shared experience between siblings and, unless these Guidelines or a court order provides otherwise, all the children shall enjoy parenting time together. Parents shall consider the children's best interests when scheduling parenting time especially for newborns and infants who may have developmental needs that may prevent them from immediately experiencing the same schedule as their older siblings. Additionally, older teenagers' special needs for peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters.

4.11 Communication with Children. Unless prohibited by a court order, either parent may mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with the children at reasonable times and with reasonable frequency during those periods the children are with the other parent. The children may, of course, mail, call, text, email, FaceTime or skype (or use similar technology) to communicate with either parent, at reasonable hours or with reasonable frequency.

- Parents are cautioned that communication between the parent and the children should not be so excessive as to interfere with the other parent's time, nor used to undermine the other parent's authority.
- During long vacations, the parent with whom the children are on vacation is required to make the children available for telephone calls with the other parent at least every three days.
- At all other times, the parent the children are with must not refuse to answer the other parents telephone calls or turn off their telephone in order to deny the other parent telephone contact.
- If a parent uses an answering machine or cell phone voicemail, messages left should be returned to that person as soon as possible.
- Parents should agree on a specified time for calls to the children so that the children will be made available no less than three days a week.
- Either parent may provide the children with a cell phone subject to each parent's ability to set restrictions in their home. A parent shall not prohibit contact between the children and the other parent; nor shall they impede the children's ability to contact the other parent during reasonable times and at a reasonable frequency.
- Communication between a parent and the children must not be censored, recorded, or

SOUTH DAKOTA PARENTING GUIDELINES

- monitored, absent a court order.
- Each parent shall have an unrestricted right to send cards, letters and/or packages to their children. The children shall also have the same right to receive and send items to their parents.

4.12 Social Media. Each parent shall have full access to monitor the social media accounts of the children, but neither shall open or read communications between the children and the otherparent.

4.13 Privacy of Residence. A parent shall not enter the residence of the other parent except by express invitation, regardless of whether a parent retains a property interest in the residence. Unless otherwise indicated herein, the children shall be picked up and returned to the front entrance of the other parent's residence. The parent dropping off the children shall not leave until the children are safely inside the other parent's residence. Parents must refrain from surprise visits to the other parent's home.

4.14 Refusal / Hesitation by Children. Parents should always encourage the children to attend parenting time with the other parent absent circumstances outlined in the "Scope of Application" provision on page 3. Parents shall not deny parenting time with the other parent solely based on the refusal of the children.

4.15 Special Considerations for Adolescents. While children never get to choose where they live, the parents should honestly and fairly consider their teenager's wishes regarding time with a parent. Neither parent shall attempt to influence their teenager's wishes on parenting time. Teenagers should explain the reason for their wishes directly to the affected parent, without intervention by the other parent.

4.16 Daycare 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.

4.17 Parents in the Armed Services. When one or both parents are serving in the military, it is important to create a parenting time schedule that focuses on sharing the children when the parents live close to each other and allowing for temporary duty assignment (TDY) possibilities. Military families should also consider what parenting time would look like if TDY's or overseas commitments were engaged requiring one parent to live more than 200 miles from the children. The residential parent shall support the children's relationship with the other parent by having a consistent plan of communication with the military parent.

Legal Notice.

These Guidelines do not provide legal opinions or legal advice and are not intended to serve as a substitute for the advice of licensed, legal professionals.

Laws and interpretations of laws change frequently, and the material contained in these Guidelines have important legal consequences. In using these Guidelines, parents are responsible for determining the applicability of any information contained in this document to their situation and are strongly

SOUTH DAKOTA PARENTING GUIDELINES

encouraged to seek professional legal and other expert assistance in resolving their parenting time issues. Parents will often benefit from getting advice from mediators, counselors, therapists, parenting coordinators and lawyers to help them make a parenting time schedule.

Definitions.

Any custody proceeding involving children is going to involve a determination of both legal and physical custody.

“Legal Custody” refers to the legal authority to make major decisions for your children. There are 2 options when it comes to legal custody:

Joint Legal Custody – “[B]oth parents retain full parental rights and responsibilities with respect to their child[ren] and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child[ren].” See SDCL 25-5-7.1.

Sole Legal Custody – one parent shall have the right and responsibility to make the decisions related to health, education and welfare of the children.

“Physical Custody” refers to how parenting time is divided between 2 parties. Parents may agree on the amount of time the children spend with each parent. If parents do not agree, the parenting time schedule set forth herein shall remain in place until a court orders otherwise.

Shared Parenting.

These Guidelines do not address shared parenting, which is defined as “a detailed shared parenting plan which provides that the children will reside no less than 180 nights per calendar year in each parent’s home and that the parents will share the duties and responsibilities of parenting the children and the expenses of the children in proportion to their incomes[.]” SDCL 25-7-6.27. If you are interested in this arrangement, you are strongly encouraged to consult with an attorney of your choosing. More information and sample schedules can be found at <https://ujslawhelp.sd.gov/> <https://ujs.sd.gov/self-help/family-law-help/shared-parenting-guidelines-plans/> under Shared Parenting Plans.

SOUTH DAKOTA PARENTING GUIDELINES

Scope of Application.

General. These Guidelines are applicable to all custody situations, including divorces with minor children, paternity actions and cases involving joint legal custody where one parent has primary physical custody. These Guidelines are not applicable to situations where the court reasonably believes the children's physical health or safety is in danger or the children's emotional development could be significantly impaired. These situations may include, but are not limited to, the following:

- Family Violence (physical, verbal or otherwise);
- Substance Abuse;
- Mental Illness of Parent or Child;
- Risk of Flight with Children;
- Long Interruption of Contact Between Parent and Children;
- A Parent's New Relationship;
- Religious & Cultural Holidays; or
- An Incarcerated Parent.

In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be addressed before these Guidelines can be used. The type of help that is needed in such cases is beyond the scope of these Guidelines.

A parent who believes one or more of the above situations exists should file an Objection to the Implementation of the South Dakota Parenting Guidelines (UJS Form 372). This form can be found at <https://ujslawhelp.sd.gov/defendants.aspx> <https://ujs.sd.gov/media/od3jgnnd/ujs-372-objection-to-order-implementing-guidelines-9-2022.pdf>. The opposing parent should also file a response to this Objection and should appear at the hearing.

Existing Parenting Time Orders. Existing parenting time orders on the date of adoption of these revised Guidelines shall be enforced according to the parenting time guidelines that were in effect on the date the parenting time order was issued. Changes to the South Dakota Parenting Time Guidelines do not alone constitute good cause for modifying an existing parenting time order; however, a court or parties to a proceeding may refer to these Guidelines in requesting changes to their parenting time order after the effective date of the Guidelines.

Protection Orders. If a protection order has been established regarding the minor children, that order would prevail over these Guidelines, until a court specifically orders otherwise. If an active protection order prohibits contact between the parents or between one parent and the children, parents are cautioned that the parent who is the subject of the protection order will violate the order if he/she has contact with the other parent and makes agreements as suggested in these Guidelines without permission for contact from the court that issued the protection order.

Additional Resources

There are several resources available to parents who need help in creating, enforcing or improving their parenting plan. Visit <https://ujslawhelp.sd.gov/> (under the "Parenting" tab) <https://ujs.sd.gov/programs-services/> for additional information on mediators, parenting coordinators, co-parenting tools and counseling options.

Mediation is another opportunity for parents to meet and confer regarding parenting plans with the assistance with a professional. Mediation can be voluntary or court ordered. Approved court appointed mediators can be found at <https://ujs.sd.gov/programs-services/> under Mediators.

Additional tips that parents should consider in order to keep the children the focus of the parenting time arrangements can be found in **Appendix A**.

Tips to Stay Focused on the Children

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather continuing conflict between their parents before, during and after the divorce and/or separation. To minimize harm to the children, parents must agree on some basic rules to keep the children the focus of their parenting time arrangement.

Parents need to keep in mind that it is generally accepted that in most cases of divorce or separation:

1. Children of separated parents do best in both the short-term and the long-run when they feel loved and cared for by both parents;
2. Children generally do better when both parents have stable and meaningful involvement in their children's lives;
3. The strength of a parent's relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by time spent with the child (i.e. quality vs. quantity);
4. Each parent has different and valuable contributions to make to their children's development;
5. Children should have structured routine time (such as bedtime and doing homework}) with each parent, as well as unstructured time (such as playing in the park});
6. Parents should help their children maintain positive existing relationships, routines and activities;
7. Children may find security in personal possessions, like a favorite stuffed animal or blanket. Children should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them; and
8. Parenting plans may need to be adjusted over time as the needs and circumstances of parents and children change.

Children are harmed by exposure to conflict between their parents. High conflict between parents increases children's anxiety and negatively impacts healthy child development. The following are guidelines to help you navigate your role in co-parenting your children:

1. Children shall not be put in a position to "choose" between the parents. Children must not be made to feel guilty about having a good time with the other parent;
2. Each parent should strive to show respect for the other parent;
3. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent;

4. Children shall not be expected to communicate messages between parents, regarding parenting time, financial matters or issues about which parents disagree;
5. Parents should exchange the children in a respectful manner;
6. A parent should consider allowing their children to attend important family celebrations and events with both sides of their family, even when the events occur on the other parent's parenting time;
7. Differences between the parent's homes may occur (i.e. daily routines, activities, and diet). Parents should remember these are merely "differences" and are not necessarily a "better" or "worse" practice;
8. Children need consistency in both homes (i.e. bed times, meal times, medications etc.);
9. If one parent has been significantly more involved with the care of the child before separation, that parent may *need* to help the other parent gain the skills and knowledge to care appropriately for the child and support the development of a positive relationship between the child and the other parent, unless there are legitimate concerns about the other parent's capacity to care for their child. Both parents will need to approach this transition in a cooperative manner.

Parenting plans made for infants and young children may need to change as children get older and start to attend school. Parenting plans designed to accommodate a parent's employment may need to be modified if parents change their employment or work schedule. It is important for parents to communicate effectively, discuss changes that they observe in their children with one another and be prepared to modify the plans consistent with the best interests of the children.

Each family needs to consider the age, temperament, previous caretaking arrangements and the child's relationship with each parent, as well as whether the child has special needs. It is important that parents are able to communicate about their children on a regular basis, whether that communication is written or verbal. Parents shall share information so that a child's experience, as he/she transitions between parents, is as smooth as possible.

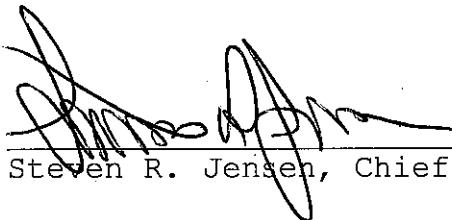
Notice of Rules Hearing No. 158 - February 11, 2026

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and filed with the Clerk of the Supreme Court no later than February 2, 2026. Subsequent to the hearing, the Court may reject or adopt the proposed amendments of any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://ujs.sd.gov/Supreme%20Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

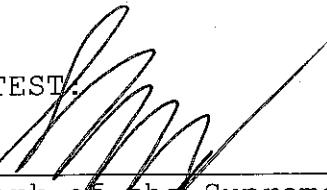
DATED at Pierre, South Dakota this 7th day of January, 2026.

BY THE COURT:



Steven R. Jensen, Chief Justice

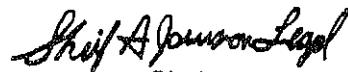
ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN 07 2026



Clerk