

# Instructions for Implementing the South Dakota Parenting Time Guidelines

The Term "Visitation" was changed to "Parenting Time" by the South Dakota Legislature. "Parenting Time" means the time a parent spends with a child regardless of the custodial designation regarding the child.

READ THESE INSTRUCTIONS AND REVIEW THE FORMS BEFORE BEGINNING

## IMPORTANT NOTICES

- The Court expects every person who appears in court without an attorney to know and follow the law. The Judge will not be able to give you any help in court.
- Court employees **cannot** help you fill out forms or give you legal advice. If you have questions, please **consult an attorney**.
- You must follow the instructions included in this packet.
- Type your answers or print neatly using dark ink.

## PETITION Instructions for Implementing South Dakota Parenting Time Guidelines

**REQUIREMENTS OF THE LAW:** *SDCL 25-4A-16.1. Subject to the jurisdictional and procedural provisions of chapter 26-5B, any parent subject to a court order of this state or subject to the jurisdiction of a court of this state pursuant to chapter 26-5B relating to visitation, custody, or child support may request the court to enter an order implementing the standard visitation guidelines. If the request is made in a child support proceeding, compliance with chapter 26-5B, including appropriate notice and an opportunity to be heard, if not previously provided, is required. The request shall be in writing and shall include a copy of the existing order establishing custody or visitation and provide a current address of the responding party. Upon filing of the written request, the moving party shall serve a copy of the standard guidelines, together with a copy of the request and provide notice that absent an objection, the guideline visitation shall be imposed. The notice shall provide instructions as to the manner in which objections may be made. The service of such notice shall be deemed complete when an affidavit of the service of such notice and of the particular mode thereof, duly signed and verified by the person or officer making the service, shall have been filed with the court and such record or affidavit shall be presumptive evidence of the completed service of the notice herein required. If a party objects to the imposition of the standard guidelines within ten days of service, the court shall conduct an expedited hearing as soon as practical. Based upon the evidence presented at the hearing, the court may order the parties to abide by the standard visitation guidelines or may order any other relief as it deems appropriate.*

- If you have a visitation, support, or custody order from a court in South Dakota;

**AND**

- You would like the South Dakota Parenting Time Guidelines included into your court Order;

**THEN YOU MAY FOLLOW THESE INSTRUCTIONS TO FILE A PETITION AND ASK THE COURT TO INCLUDE THE GUIDELINES IN YOUR CURRENT COURT ORDER:**

1. Fill out the Petition for Order Implementing South Dakota Parenting Time Guidelines (Form UJS-366) and the Notice of Petition for Parenting Time Guidelines (Form UJS-367). The information to fill in the top part of the forms (called the Caption) can be found at the top of your current support or custody Order. Be sure to copy the information **exactly** as it appears on your current custody or visitation Order.

***Note:** This Petition cannot start a civil case. If you do not have an existing Order, you will need to start a new civil file in which you are the Plaintiff. You will also need to complete and file a Civil Case Filing Statement (Form UJS-232). If you need assistance beginning a new civil file, you may want to consider consulting a lawyer.*

2. Sign the Petition **in the presence** of a Notary Public. By signing your name, you are telling the court that you are telling the truth and have a good faith reason for your request. If you are not telling the truth, are misleading the court, or serving or filing this document for an improper purpose, the court can impose penalties.
3. File the Petition and the Notice of Petition with the Clerk of Court **in the county where your current child support, custody, visitation, or spousal support Order is filed**, making sure the case number of the record with the current Order is provided on both documents.

***Note:** There is **no filing fee** for this particular court action.*

4. For a small copy fee, the Clerk of Court can make copies of all paper work for your file and for you to serve on the other party.
5. You must serve the Petition and Notice of Petition on the other party, which means you must give all the documents to the other party and **must** provide proof to the Court that you gave all the documents to the other party.
6. The Petition and Notice of Petition can be served in two ways:
  - 1) Mail a file stamped copy of the Petition and Notice of Petition with attachments and the Admission of Service (Form UJS-368) to the other party. The other party is not required to sign the Admission of Service but may choose to sign the Admission and mail it back to you. If the other party signs and returns the Admission of Service, they are considered served;

**Or**

- 2) If you do not think the other party will sign the Admission of Service, or if the other party refuses to sign the Admission, take your paper work to the local sheriff's office and pay the sheriff's office to serve him/her. The sheriff's office will provide Proof of Service for the Court.
7. Once you have proof that the other party was served you **must** file the **original** Proof of Service (either the Admission of Service or the Sheriff's proof of his service) with the Clerk of Court.
8. **Failure to file** any of these documents with the Clerk of Court may result in the dismissal of your case.

9. If the other party does not object within the allowed time from the date of service, you must submit the Order Implementing South Dakota Parenting Time Guidelines (Form UJS-370) to the Clerk of Court. Based upon the information within the Petition and the prior support/custody Court Order, the Judge may order the standard guidelines to be implemented and will mail both parties a copy of the signed Order.
10. If, within 10 days of Service, the other party **does** object to the Court ordering the standard guidelines the Court will order a hearing and both parties will be sent a Notice of Hearing, which will include the hearing date set by the Court.
11. Once the Objection is filed with the Court, the Clerk of Court will schedule a hearing and send all parties a copy of the Notice of Hearing. You must go to court on the date set for the hearing. Be sure to be on time. Bring copies of your documents with you to the hearing. **Do not** bring child(ren) to the hearing. Take any proof you have or witnesses who can verify your claims and explain why the standard guidelines should be implemented in part or whole to the hearing with you. The hearing is very formal. You should be polite to everyone in the courtroom and address the Judge as “your honor.” Remember to talk to the Judge, not the opposing party. Do not argue with the other party. The Judge may issue the Order at the end of the hearing or may send a copy of the Order to you in the mail.