

NORTH CAROLINA CHILD SUPPORT

As a general rule, all parents are responsible for supporting their children. In North Carolina, child support is financial support paid by a parent for the reasonable needs of the minor child or children.

There are several ways in which child support can be determined. First, parents can come to an agreement outside of court on the amount for child. Second, the parents can utilize the Child Support Enforcement Agency (CSE) in order to establish and enforce child support. Third, the parties can file a civil action with the court system and have a judge determine child support.

Custody Arrangement and Child Support

Child support can be determined with or without a custody or visitation scheduled. Although the number of overnights that a parent has with the child(ren) could affect the amount of child support to be paid, it is a misconception that if you do not get to see your child that you do not have to pay child support. Every parent is obligated to support their child(ren). If the other parent is withholding your child(ren), instead of not paying child support, the better approach is to address custody concerns separately, either through a settlement agreement outside of court or by filing a civil action.

Child Support Calculation

North Carolina's Child Support Guidelines are used to determine the amount of child support that should be paid depending on certain financial information of the parents. The most significant pieces of information used to determine child support according to the guidelines are income, daycare expenses, medical insurance, and the living arrangements of the children.

As a default rule, the courts use the amount of child support established by the Guidelines. One exception to the default rule occurs when use of the Guidelines would not meet or would exceed the reasonable needs of the child, or when the amount determined by the guidelines would be unjust or inappropriate. This is called a deviation. Either parent can request a deviation from the guidelines or the court can deviate from using the guidelines upon its own motion. The minimum amount of child support that can be ordered using the guidelines is \$50 per month. For helpful information, forms and child support calculators, go to <https://ncchildsupport.com/>.

In general, you can enforce your child support order through the contempt powers of the court by filing a motion for contempt against the other parent for failure to pay child support.

As a general rule, if you have a child support order, you can file a motion to modify after three years, or if there has been a "substantial change in circumstances."

In North Carolina, child support is to be paid until the minor child reaches age 18. However, Parents are required to support a child until the child turns 20 if the child has not yet graduated and remains in high school.

If arrears have accumulated and remain unpaid when the child turns 18, you are still obligated to pay the arrears until they are either forgiven or paid in full. You can find more helpful information by visiting this website: <https://www.nccourts.gov/locations/mecklenburg-county/selfserve-center>

Child Support Worksheets

Worksheet A: Use this worksheet when one parent has primary physical custody of all of the child(ren). Primary physical custody of a child occurs when the child lives with that parent for 243 nights or more during the year.

Worksheet B: Use this worksheet when the parents share custody of all of the child(ren) or when one parent has primary physical custody of one or more of the children and the parents share custody of another child. In general, shared custody occurs when the child lives with each parent for at least 123 overnights during the year. It is not shared custody when a parent has visitation rights that provide for a parent to have less than 123 overnights per year.

Worksheet C: Use this worksheet when primary physical custody of two or more children is split between the parents. Split custody occurs when one parent has primary custody of at least one of the children and the other parent has primary custody of the other child or children.

Retroactive Child Support

In cases involving a parent's obligation to support his or her child for a period before a child support action was filed (i.e., cases involving claims for "retroactive child support"), a court may determine the amount of parent's obligation (a) by determining the amount of support that would have been required had the guidelines been applied at the beginning of the time period for which support is being sought, or (b) based on the parent's fair share of actual expenditures for the child's care.

High Combined Income

In cases in which the parents have a high combined adjusted gross income, the supporting parent's basic child support obligation cannot be determined by using the child support schedule. In this case, the court should set the amount of child support that meets the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, and other factors. See N.C.G.S. 50-13.4(c).

Imputed Income

The court can impute income to a parent who is obligated to pay child support if the court finds that the parent is voluntarily unemployed or underemployed. The unemployment or underemployment must be in bad faith or a deliberate suppression of income to avoid that parent's support obligation.

Extraordinary Expenses

Extraordinary expenses incurred for a minor child may be considered in calculating child support. Typically, such expenses include special or private elementary or secondary school expenses or

expenses for transporting the child between the parents' homes for custody and visitation purposes. The court must find that the expenses are reasonable, necessary, and in the child's best interest.

What is child custody and visitation?

Child custody includes the right to make major life decisions about a child and the right to have the child in your care. Visitation is a secondary form of custody, which includes the right to visit with a child at times set forth in a court order, sometimes under specific conditions. "Visitation" is frequently used to refer to a person's parenting time when it is relatively limited.

What is the difference between legal and physical custody?

Legal custody is the right to make major decisions about the child. Physical custody means the right to have the child in your physical care, either all the time or part of the time. Both legal and physical custody can be either shared by the parents or held solely by one parent.

What do sole custody and joint custody mean?

A parent who has sole legal custody can make major decisions about the child's life without consulting the other parent. If parents have joint legal custody, then they must consult with one another and jointly make major decisions, such as where the child will attend school or whether the child will have a major medical procedure. If the parents cannot agree, a court may have to make the decision.

Sole physical custody means that the child lives with one parent only, though the child may visit with the other parent. Joint physical custody means that the child's time is split between the parents. There are many possibilities for joint physical custody. One parent may have primary physical custody, meaning the child lives with that parent most of the time, while the other parent has secondary physical custody, for example, every other weekend, or regularly scheduled dinner visits. Alternatively, there may be an equal split in which the child alternates between the parents on a regular basis.

Am I required to get a custody order?

Parents who are no longer together are not required to get a custody order, but may choose to do so in case they do not agree about the child's care. Non-parents do not need a custody order to provide temporary care for a child as long as the parents agree that the child will live with or be cared for by the non-parent. However, schools, medical providers or other third parties may require a custody order before allowing a non-parent to make decisions for a child.

What happens if there is no custody order?

Both legal parents have equal rights to the child if there is no custody order. "Legal parents" are people officially recognized as parents on the child's birth certificate, a court order such as a child support or adoption order, or an affidavit of parentage. Without a custody order, the rights of non-parents are much more limited, and the parents generally have the right to custody of the child.

Does failing to pay child support affect a parent's custody rights?

A parent's custody rights do not depend on payment of child support, but on the type of relationship with the parent that is in the child's best interests. A court may consider refusal to pay child support in its analysis of the parent's ability to act in the child's best interests.

What is an emergency custody order?

An emergency custody order, sometimes referred to as an "ex parte order," is an immediate, short-term custody order that a judge can grant under limited emergency circumstances, without hearing from the other party. The grounds for granting emergency custody include situations in which a child is at a substantial risk of bodily injury, sexual abuse, or removal from North Carolina for the purpose of avoiding the authority of the North Carolina courts. Law enforcement can assist in recovering a child with an emergency custody order. If an emergency custody order is granted, a hearing must be scheduled so that both parties have the opportunity to be heard. You should consider hiring an attorney if you need to file for emergency custody because the process is complex.

Filing for Custody

Who can file for child custody or visitation?

Any parent can file for custody, whether the parents are separated, divorced or never married. Third parties, such as grandparents, relatives, or others who have cared for the child, can file for custody or visitation under some circumstances.

Where should I file my custody case?

Custody cases must be filed in the child's "home state," which is the state where the child has lived for the six months before the case is filed. If you had a previous custody case about the same child in a different state, you generally must return to that state to change your custody order as long as one of the parties still lives there.

Within North Carolina, you may file a custody case in the county in which any of the parties lives.

Generally, before a judge can hear your case, it will be sent to the Custody Mediation Program. See the Custody Mediation Help Topic for more details about custody mediation. If you and the other party are unable to agree on a custody and visitation plan in mediation, a judge can hear your case to make a decision for you. In most cases, a hearing will be scheduled only if one of the parties requests it.

What is custody mediation?

Custody mediation is a conversation between the parents assisted by a professional mediator. The mediator works with the parents, without attorneys in the room, to come to an agreement about child custody, if possible.

What will the judge consider in deciding my case?

Judges decide child custody based on “the best interests of the child.” This decision can include many factors, such as the parents’ living arrangements, each parent’s ability to care for the child, the child’s relationship with each parent, and any other factors affecting the welfare of the child. While fairness to the parents is important, this is secondary to the child’s welfare. A party’s shortcomings as a spouse or relationship partner will generally only carry substantial weight if they also impact the party’s parenting abilities. An attorney can advise you on the most relevant factors in your specific case.

Can my child talk to the judge about what he or she wants?

There are two situations in which a parent may bring a child to testify in court, and the requirements are slightly different. There is no age limit preventing parents from bringing young children to testify, but this can affect the judge’s view of the parent’s judgment, depending on the age of the child and other circumstances.

Children can testify as witnesses to specific incidents. Before taking testimony from a child, the judge must determine that the child understands the importance of telling the truth.

Children can speak to the judge about their preferences. In this case, the judge must determine that the child understands the importance of telling the truth and that the child has reached the “age of discretion,” meaning that he or she has sufficient maturity and good judgment. Judges often consider teenagers’ preferences about where they want to live, but are not required to order what the teenager wants.

Many judges prefer to have children wait outside the courtroom rather than observing the trial. Many judges will speak to children “in chambers,” meaning in a separate room without the parents present, rather than having the child testify in the courtroom.

What is the difference between temporary and permanent custody orders?

Judges may enter either temporary or permanent custody orders. A temporary custody order will be in effect until the judge holds a new trial to make a decision about modifying the temporary order or entering a permanent order. Temporary custody orders are legally binding, but easier to change than permanent orders. If you are unhappy with a temporary custody order, you can schedule your case for a review of the temporary order or for a permanent custody trial.

Temporary custody orders can become permanent if neither party requests another hearing for a long period of time. To change a permanent custody order, you must show that there has been a substantial change in circumstances affecting the child since the permanent order was entered.

Enforcement and Modification

The other parent has violated our custody order. What can I do?

You can file a Motion for Order to Show Cause or Motion for Contempt to ask the judge to hold the other parent in contempt of court for violating the order. If the judge finds that the other parent violated the order, the judge will decide the appropriate penalty. Penalties for contempt of court can include a verbal reprimand, a fine, jail time, or requiring the party in contempt to pay the other party’s attorney’s fees.

I have a custody order and want to change it. What can I do?

If you have a temporary custody order, you can schedule another hearing in your case without the need to file additional motions, though filing a motion may be helpful in some cases. If you have a permanent custody order, you must file a Motion to Modify. When you file a Motion to Modify, you must allege in your motion and prove in court that there has been a substantial change in circumstances since the original order was entered, and that those changes are affecting the child in a way that requires the old order to be changed to serve the child's best interests.

I have a custody order from another state but now live in North Carolina. What do I need to do?

Custody orders from other states are valid in North Carolina. In general, even if you and/or the child has moved from another state to North Carolina, a judge in the original state will continue to make decisions in your case as long as one of the parties still lives there. If everyone has left the original state, you can ask the North Carolina courts to take over your case. If you want a North Carolina judge to enforce or change your out-of-state order, you must begin by registering the order in North Carolina. You can find the petition to register a custody order from another state or country here.

The Parties to all custody and visitation cases, including modification motions, shall complete Parent Education and participate in Custody Mediation prior to a trial on the issues, unless the Court waives either or both events.

Pleadings for Temporary Parenting Arrangement.

Pleadings for a Temporary Parenting

Arrangement hearing pending a trial or other resolution of a claim for custody or visitation should be made only in rare situations which do not rise to the level of an emergency but which significantly affect the well-being of the children. Circumstances which may warrant a Temporary Parenting Arrangement include, but are not limited to, relocation; repeated "snatching" of children between parents; one parent claiming the other parent is denying access to the child or is severely and unreasonably limiting access; substance abuse or mental health issues which pose some risk for the children. All Pleadings setting forth facts that form the basis of the request shall be verified and include a request for a hearing. They may be accompanied by supporting affidavits. A copy of all Pleadings and supporting affidavits shall be served on the opposing Party and delivered to the FCA's Office. However, if the Pleading for a Temporary Parenting Arrangement is part of a Complaint, it shall not be delivered to the FCA's office until the Complaint has been served. In all cases, proof of date served shall accompany the delivery to the FCA's Office. The opposing Party has seven (7) calendar days from the date of service to respond. Such response shall be verified and may be accompanied by supporting affidavits and shall be served on the requesting Party and delivered to the FCA's office. Upon the earlier of receipt of the response or seven (7) calendar days, the request and response shall be submitted to the Assigned Judge. The Assigned Judge may grant or deny the request for a Temporary Parenting Arrangement based upon the documents submitted and/or may set a hearing. If a ruling is based solely on the documents submitted, the Litigants shall be notified of the Court's decision. If a hearing is set, the Litigants shall be notified. If a hearing is set, upon a showing of extraordinary circumstances, the Assigned Judge may allow expedited Local Rules of Domestic

Court: Effective August 21, 2017 Page 12 depositions solely related to the Temporary Parenting Arrangement hearing. It is anticipated that the hearing will not exceed one (1) hour in length. Any order that makes Temporary Parenting Arrangements shall be without prejudice to either Party during Custody Mediation and at any later trial of the custody claim. The filing of Pleadings for Temporary Parenting Arrangements that are not well-grounded may result in sanctions against the offending Party, which may include attorney's fees, or, if the offending Party may otherwise be entitled to attorney's fees, the denial of a fee award. Such sanctions are within the Assigned Judge's discretion.

Rule 11: Emergency Matters 11.1 "Emergency matters" are matters that call for immediate action including but not limited to emergency custody orders (other than temporary parenting arrangements governed by Rule 7A.11), temporary restraining orders, domestic violence protective orders (50B) and civil no-contact orders (50C). An application for an emergency order shall be made in a written verified motion or pleading that sets forth the facts giving rise to the need for emergency relief. The verified motion or pleading may be accompanied by affidavits. The application for an emergency order should also be accompanied by a clear instruction for how the party requesting relief can be notified promptly regarding the action taken on the request (cell phone and/or email are recommended). (Hereinafter the application for emergency relief [pleading, motion, and affidavits] shall be referred to as the "Emergency Paperwork.") . 11.2 A party making an application for an emergency order may deliver the Emergency Paperwork in person to the judge assigned to the case or to the office of the Family Court Administrator. The Family Court Administrator's office shall maintain a receptacle for Emergency Paperwork in a prominent location in the office along with a place for said paperwork to be signed in. When the judge has signed an appropriate order granting or denying the relief requested, he or she will set a hearing date (if required) and have the party or parties notified of the decision and how said party or parties will be furnished or may obtain a copy or copies of the order filed in the case. Questions regarding the status of Emergency Paperwork shall be directed to the judge's Family Court case coordinator or courtroom clerk. 11.3 A party making an application for emergency relief must give actual or reasonable notice of the application and any scheduled hearing to the adverse party or that party's attorney except for those circumstances in which a party is permitted to proceed ex parte. A party attempting to proceed on an ex parte basis should be aware of the limitations and requirements set forth in G.S. 50-13.5(d), Rule 65 of the North Carolina Rules of Civil Procedure, and any other applicable rules or statutes. 11.4 The filing of pleadings or motions for emergency relief that are not well grounded may result in sanctions being imposed against the offending party. Such sanctions, in the discretion of the Court, may include an award of attorney's fees. 11.5 These Rule 11 procedures are in addition to remedies available through the Magistrate and the dedicated 50B and 50C courts.