

CUSTODY AND VISITATION RIGHTS AND OBLIGATIONS

This page discusses the rights and obligations of parents once custody, visitation and child support has been ordered by a court in the state. Once a court orders something such as custody, visitation and child support each party are bound to obey that order. Often times one party or both fail to comply with the orders of the court.

WHAT HAPPENS WHEN ONE PARTY TO AN ORDER FAILS TO OBEY THAT ORDER

If a party to an order fails to obey an order of the court that party can be found in contempt of court and sanctioned including jail. South Dakota and Tribal laws allow custody and visitation rights and child support obligations to be enforced by contempt proceedings. Property division and debt allocation can also be enforced by contempt proceedings if one of the parties fail to comply the court order dealing with those issues.

CAN YOU WITHHOLD CHILD SUPPORT IF THE OTHER PARTY DENIES YOU VISITATION AND CAN YOU WITHHOLD VISITATION IF THE OTHER PARTY FAILS TO PAY CHILD SUPPORT

No! Your sole remedy in such cases is a contempt proceeding through an order to show cause hearing. If you withhold child support because the other party is denying you visitation you are also violating the court order and could be found in contempt of court. Likewise, if you do not allow visitation to the other party because they are not paying child support you are also violating the court order and you could be found in contempt of court. If the other party is violating the court order you must file an order to show cause and you cannot violate the court order to make the other party comply with the order.

HOW DOES A CONTEMPT PROCEEDING WORK.

A contempt proceeding is started by requesting in writing for an order to show cause normally in the form of a motion. If one party to the order is denied visitation, custody, or child support they can file an order to show cause for failure to obey the order of the court. The court will read the motion and if the court decides there is enough information the court will issue a show cause order. The show cause or contempt hearing then will be scheduled.

At the show cause hearing the party who is ordered to show cause why they should not be held in contempt has the burden of showing that he or she is not in contempt or has a good reason for not obeying the order.

If the court finds that the person is in contempt of court for failure to obey the custody, visitation, or child support order, the court can levy sanctions against that party including a fine or jail. The court may suspend any jail time or fine on the condition that the party start complying with the order. If the party continues to fail to comply the jail time and fine can be reimposed.

WHAT ARE YOUR CUSTODY, VISITATION AND CHILD SUPPORT RIGHTS AND OBLIGATIONS

Once a custody, visitation and child support order is issued read it carefully. It will explain to you what your rights and obligations are. Typically one party will be awarded the primary

custody of the parties children with either a visitation schedule or a visitation plan set out in the order. The Supreme Court of South Dakota has implemented a set of standard child visitation guidelines. These visitation guidelines can be found at www.sdjudicial.com then click on to Procedures at the top right

Typically, a divorce decree will order the non-custodial parent to pay monthly child support due on a particular day. If you fail to pay the monthly child support when due you could be found in contempt of court.

CAN THE CHILD CUSTODY, VISITATION OR CHILD SUPPORT ORDER BE CHANGED OR MODIFIED AT A LATER TIME

Yes. South Dakota and Tribal laws allow for modification of custody, visitation or child support after the final decree is entered. This is done with a Motion to Modify. See the **Motion to Modify** page.