

CHAPTER FIFTEEN ACCESS AND PARENTING TIME

INTRODUCTION

When parents live apart, respectful relationships between parents and healthy relationships between parent and child are vitally important for both child well-being and stable child support payments. The child support program has played a critical role in supporting such relationships. This chapter discusses parenting time agreements and custody orders as they relate to the establishment of a child support obligation, and the role that child support agencies can play in helping to facilitate parenting time agreements. It explains the history of the State Access and Visitation Program, including allowable services and regulatory standards. The chapter also reviews domestic violence safeguards that are important for a child support attorney and a tribunal to follow when establishing parenting time in cases that involve a risk of harm.

Enacted by Part B of the Social Security Amendments of 1974, Title IV-D of the Social Security Act¹ created the Program for Child Support Enforcement and Establishment of Paternity, referred to as the IV-D program.² Basic core services in this unique federal-state partnership were locating absent parents, establishing paternity, and enforcing and modifying child support orders.³ The primary role in the early years was welfare reimbursement for Aid to Families with Dependent Children (AFDC).⁴

In the majority of states, child support and visitation and/or parenting time are legally separated. For parents, however, they are emotionally and financially connected. As early as 1979, research indicated that fathers with little or no contact with their children paid only 34% of their child support obligation, while fathers with regular contact paid 85% of their obligation.⁵ Subsequent studies revealed that two-thirds of parents with frequent contact with their children paid child support, while only one-third of those with no contact made payments.⁶

With the expectation that access to both parents was extremely beneficial to children and would foster regular payment of child support, the federal Office of Child Support Enforcement (OCSE) in 1990 launched Child Access Demonstration Projects in seven states to test the impact of mediation, parent education, and counseling relating to increased involvement of fathers in their

¹ Pub. L. No. 93-647, 88 Stat. 2337, 2351.

² 42 U.S.C. §§ 651 – 669 (2018).

³ See Chapter One: Child Support in the United States.

⁴ See Chapter Two: The Federal Role in the Child Support Program.

⁵ See Center for Policy Research, U.S. Dep't of Health and Human Services, [Report on Child Access and Visitation Programs: Participant Outcomes](#) 1 (May 24, 2007).

⁶ *Id.*

children's lives.⁷ A 1995 evaluation of these demonstration projects "confirmed that access and visitation⁸ was a complex problem for many separated and divorced parents,"⁹ and recommended that courts and agencies develop no- and low-cost dispute resolution interventions, such as mediation.¹⁰

PROGRAM LEGISLATION

Access and Visitation Grants to States

Subsequently, Congress enacted legislation authorizing grants for Access and Visitation Programs (AV Programs). The goal of the grants was to enable states to establish and administer programs to support and facilitate noncustodial parents' access to and visitation with their children.¹¹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)¹² authorized formula grants to the states and territories totaling \$10 million per year. Allowable services include mediation, development of parenting plans, counseling, parent education, visitation enforcement (supervised visitation and neutral drop-off), and development of guidelines for visitation and alternative custody arrangements. The legislation requires the Administration for Children and Families (ACF) to provide a state a minimum grant of \$100,000 and requires a state match minimum of 10% of the federal grant support; a state can fulfill the match by cash or in-kind contributions.¹³

Specific program services used to promote statutory purposes are left to the discretion of states. Examples of program services currently being implemented by states and territories include:

⁷ See Report on Child Access and Visitation Programs: Participant Outcomes, *supra* note 5, p. 1 of report.

⁸ "Access" and "visitation" are terms that refer to a parent's time with their children. Since the 1990s, terminology has evolved. Increasingly states are using terms such as "parenting time" or "residential time."

⁹ *Id.*

¹⁰ Jessica Pearson, Nancy Thoennes, David Price, & Robert. Williams, Evaluation of the Child Access Demonstration Projects: Report to Congress (Center for Policy Research and Policy Studies Inc. 1996).

¹¹ 42 U.S.C. § 669b (2018).

¹² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 391, 110 Stat. 2105, 2258, codified at 42 U.S.C. § 669b (2018).

¹³ See Office of Child Support Enforcement, [Child Access and Visitation Grants: State/Jurisdiction Profiles for FY 2008](#) at 6. Guam and the Virgin Islands are exempt.

- Legal services helplines and websites.
- Limited legal services for drafting parenting plans and settling parenting disputes.
- Dispute resolution/mediation.
- Parenting education (including legal education).
- Interactive, online parenting plan/order development platforms.
- Development of parenting plans.
- Visitation enforcement (including monitoring, supervision, and neutral drop-off and pickup).
- The development of guidelines for visitation and alternative custody arrangements.¹⁴

A state may directly provide services or contract with courts, local public agencies, or nonprofit private entities to provide the services. The state must monitor, ensure adequate family violence safeguards are in place, and report on its grant program.¹⁵ Program services do not have to be statewide or limited to parents participating in the child support program, but an increasing number of states are prioritizing services for families with child support cases and using remote service delivery to expand the reach of program services. The state IV-D agency administers the grant funds in a majority of states.

OCSE administers this program on behalf of ACF. Regulatory standards are set forth in 45 C.F.R. Part 303. Since 1997, the AV Programs have served more than 1.6 million parents, including custodial parents, noncustodial parents, and a small, yet growing, number of grandparents and legal guardians. The total number of families served each year from Federal Fiscal Year (FFY) 2000 to FFY2018 has dramatically increased – from less than 48,000 in FFY2000 to more than 80,000 in FFY2018.¹⁶ Each state has contact information for its Access and Visitation Program on the OCSE website.¹⁷

¹⁴ 42 U.S.C. § 669b(a) (2018).

¹⁵ 42 U.S.C. § 669b(c) (2018). Federal legislation establishing the Access and Visitation Program does not provide for funding to tribal child support programs. It only authorizes funding for programs in states and territories.

¹⁶ See Office of Child Support Enforcement, [FY 2018: Access and Visitation Grant Program Update](#) (Mar. 2020). For more information about the AV Program, see [Access and Visitation \(AV\)](#) (last visited Feb. 8, 2021).

¹⁷ For the contact person(s) in a particular state, see [Access and Visitation Program Contact List](#) (Jan. 31, 2017) (last visited Feb. 8, 2021).

Sense of Congress

In 2014, Congress enacted the following as part of the Preventing Sex Trafficking and Strengthening Families Act:

Sense of the Congress. – It is the sense of the Congress that – (1) establishing parenting time arrangements when obtaining child support orders is an important goal which should be accompanied by strong family violence safeguards; and (2) States should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Healthy Marriage Promotion and Responsible Fatherhood Grants.¹⁸

EARLY RESEARCH ON PARTICIPANT OUTCOMES

OCSE commissioned a study in 2001/2002 of participant outcomes of State AV Programs in nine states, involving 970 cases. The study made the following findings:

- State AV Programs serve a diverse group of parents, particularly those at lower socioeconomic levels.
- Supervised visitation programs serve the most disadvantaged parents and those at greatest risk.
- Two-thirds to almost three-quarters of parents reported reaching agreements in mediation on custody, visitation, and child support issues.
- Between 36% and 39% of noncustodial parents reported increases in child contact following service delivery.
- Participants in state AV programs increased their child support payments, with never-married parents showing the most dramatic increases in compliance.
- Ninety percent of parents who participated in supervised visitation characterized this service as a safe place to conduct visits.¹⁹

In 2006, OCSE commissioned a second study to examine the impact of the AV Programs on increasing noncustodial parents' access to and visitation

¹⁸ Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303, 128 Stat. 1919, 1946 (2014).

¹⁹ Jessica Pearson and David Price, Child Access and Visitation Programs: Promising Practices (Center for Policy Research and Policy Studies, Inc. 2002).

with their children. This study involved three major program types: mediation, parent education, and supervised visitation. It consisted of telephone interviews with program participants and a review of their child support records, both before and after program participation. The study found that among the noncustodial parents who were paying less than 100% of what was owed during the 12 months prior to project participation, 64% of participants in the mediation programs increased payments following program participation, 93% of participants in parent education programs increased payments, and 53% in supervised visitation programs increased payments.²⁰ The report noted that court mediation programs had done little to address the access and visitation problems of never-married parents. This is an important population to serve since the birth rate²¹ for unmarried women is high.²² The report concluded that AV Programs should focus on serving never-married parents for significant increases in child support payments. The report also concluded that AV Programs should be prepared to offer resources to parents with domestic violence histories.²³

²⁰ *Id.*

²¹ Births per 1,000 unmarried women aged 15–44.

²² In 2012 and 2013 the birth rate for unmarried women was approximately 45%, which is a drop from prior years. See Brady Hamilton, Ph.D., Joyce Martin, M.P.H., Michelle Osterman, M.P.H., & Sally Curtin, M.A., *Births: Preliminary Data for 2013*, National Vital Statistics Report, Vol. 63, No. 2 (May 29, 2014), p. 4. The percentage of nonmarital births was essentially the same between 2012 and 2013 for women in age groups under 20 and increased slightly for women in age groups 20 and higher. Women aged 20–24 had the largest number of births to unmarried women of all age groups, accounting for 37% of all nonmarital births. See p. 4 and Table 6, p. 14.

²³ Child Access and Visitation Programs: Participant Outcomes, *supra* note 5.

PROFILE OF CUSTODIAL MOTHERS AND FATHERS

According to Census Bureau data²⁴ about custodial parents in 2017:

- The majority of custodial parents were mothers.²⁵
- The distribution of custodial parents by marital status differed between mothers and fathers.

About 42% of custodial mothers were currently divorced or separated and 40.4% had never been married. The remaining mothers consisted of 16.3% who were currently married and 1.3% who were widowed. About 50.5% of custodial fathers were divorced or separated and 29.3% had never married.²⁶

- A majority (approximately 80.6%) of the 5.4 million custodial parents due child support payments in 2017 had arrangements for joint child custody or visitation privileges with the noncustodial parent.²⁷
- Custodial parents with shared parenting time arrangements who were due support received more child support than those due child support without such arrangements.

In situations where there was court ordered physical or legal joint custody of children, approximately 58% of custodial parents due support in 2017 received the full amount compared to only 31.7% of custodial parents with children who had no contact with their other parent.²⁸

It is important for law and policy makers to be aware of such Census Bureau data as they explore how to best address the relationship between child support and parenting time.

²⁴ See Timothy Grall, *Custodial Mothers and Fathers and Their Child Support: 2017*, Current Population Reports, P60-269, U.S. Census Bureau, Washington, DC, 2020.

²⁵ Current Population Reports, U.S. Census Bureau, *supra* note 24, p. 3. Approximately 80% of custodial parents were mothers, and about 20% were fathers, increasing from 16% in 1994.

²⁶ Current Population Reports, U.S. Census Bureau, *supra* note 24, p. 3.

²⁷ Current Population Reports, U.S. Census Bureau, *supra* note 24, p. 7, and Table 8.

²⁸ Current Population Reports, U.S. Census Bureau, *supra* note 24, Figure 5.

PARENTING TIME ORDERS

Laws governing custody and visitation and/or parenting time are state specific. Usually the “best interest of the child” is the paramount factor.²⁹

States tend to use three approaches to address parenting time.³⁰ One approach is a standard visitation schedule. Standard visitation plans are similar to child support guidelines – they presume that a standard parenting time schedule will work for the majority of families, with options to deviate based on specific family characteristics.³¹ Some standard plans include an umbrella statement that parents may follow their own schedule if both parties agree, and that it’s only when the parties don’t agree that they must follow the schedule in the standard plan.³² The schedule typically delineates what time will be spent with each parent, including weekends, holidays, and vacations. Although standard schedules are a low-cost way to address parenting time in many cases, courts and parties need to ensure they address domestic violence concerns.

Another approach is to use neutral or third-party assistance.³³ Mediators or facilitators can help parents create a customized parenting plan. Although potentially more expensive, mediated or facilitated agreements often result in higher parent satisfaction and a better understanding of the parenting plan terms.³⁴

A third approach is the self-help approach.³⁵ Parents access resources such as a parenting plan they download from the internet. They then can customize it based on their needs. Parents using publicly available forms must usually still file a petition with the court and pay a filing fee in order for it to be enforceable.

Divorcing parents in family court usually can establish custody, visitation, and parenting time orders during the divorce process. Unmarried parents do not have a similar forum. Child support and other family law systems are often distinct, requiring unmarried parents to participate in multiple, often overlapping, legal proceedings to resolve issues of child support and parenting time.³⁶

²⁹ See, e.g., John Lande, *The Revolution in Family Law Dispute Resolution*, 24 Fam. L. Dispute Resolution 411 (2012).

³⁰ See Jessica Pearson, Research Brief: Child Support, Parenting Time and Safety Concerns (2013, updated in August 2015).

³¹ See, e.g., Eric G. Mart, *Overnight Visitation for Infants and Toddlers: Implications for Parenting Plans*, 35 Vt. B.J. 40 (Summer 2009) (reviewing briefly the empirical literature about infant and toddler overnight visitation and parental attachment issues).

³² *Id.* at p. 3.

³³ See also Laurie S. Kohn, *Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 Cardozo L. Rev. 511 (Dec. 2013) for additional information on mediation and problem-solving courts in the context of family law.

³⁴ See Pearson, *supra* note 30, p. 6.

³⁵ See Pearson, *supra* note 30, p. 5.

³⁶ Office of Child Support Enforcement, Child Support Fact Series #13 – Child Support and Parenting Time: Improving Coordination to Benefit Children (Aug. 5, 2013).

Addressing both the calculation of child support and the amount of parenting time as part of the same process increases efficiency and reduces the burdens on parents of being involved in multiple administrative or judicial processes.³⁷ However, historically the child support agency in most states has provided no assistance in developing parenting time orders. In large part, this lack of assistance is because current law does not allow states to use Title IV-D funds to pay for parenting time services.

There are several states, however, with child support program initiatives that incorporate parenting time orders into initial child support orders. Such programs find support in research showing that noncustodial fathers who pay child support are more likely to stay involved in their children's lives, and programs designed to improve parental contact with noncustodial children are associated with improved child support outcomes.³⁸ Many of the initiatives focus on memorializing parenting arrangements where the parents have already agreed upon the division of time. Domestic violence safeguards are an important part of these programs.³⁹ Often, the child support agency is working in partnership with courts and other agencies.⁴⁰

Examples of these state programs include:

- *Florida*: Florida legislation authorizes the Florida Department of Revenue (the Title IV-D agency) to establish parenting time plans agreed to by both parents in Title IV-D child support actions.⁴¹ The legislation provides a standard IV-D parenting plan that the parents can adopt; the plan includes timetables that specify the time, including overnights and holidays, a child may spend with each parent.⁴² The parents can also agree to a different parenting plan, which can be incorporated into the support order.
- *Michigan*: The state assists in establishing parenting time orders concurrently with initial child support orders through its Friend of the Court (FOC) program and mediation services. With the help of the FOC, parents can also file motions and schedule hearings to address parenting time concerns.
- *Texas*: The state has established the most standardized, statewide program incorporating parenting time orders. Pursuant to state law, parenting time arrangements are established in the initial child support order so parents receiving a child support order also receive a

³⁷ *Id.*

³⁸ *Ibid.*

³⁹ Office of Child Support Enforcement, Child Support Fact Series #13, *supra* note 36.

⁴⁰ *Id.*

⁴¹ Fla. Stat. § 409.2563(2) (2018).

⁴² Fla. Stat. § 409.2554(16) (2018).

parenting time order known as a “possession order.”⁴³ Texas also provides parents assistance in shared parenting, including a nationally-recognized hotline in which attorneys provide free legal information regarding parenting time and child support.

- *California, Orange County*: The statewide Family Law Facilitator Program offers free legal assistance to self-represented litigants in family court; in Orange County, that office may assist parents with developing parenting time agreements. While the attorneys do not provide direct legal representation, information is provided on parenting time and child support with legal referrals as appropriate.
- *Minnesota, Hennepin County*: The county operates a “Co-Parent” court that establishes paternity, support, and parenting time. Parenting plans become part of the court order and parents are required to attend parenting education workshops.⁴⁴

Federal regulations also authorize funding for “educational and outreach activities intended to inform the public, parents and family members, and young people who are not yet parents about ... responsible parenting and co-parenting.”⁴⁵ Of the 106,473 services provided by AV grants in FY 2018, parent education was the most frequently provided service; it accounted for 38% of all AV services.⁴⁶

Voluntary mediation has also contributed to increased parenting time, assisting noncustodial parents in spending more time with their children while encouraging the payment of their child support obligation. Mediation was the second most frequently provided service in FY 2018 AV grants, accounting for 23% of all AV activities.⁴⁷

In addition to these programs, some state and local child support agencies informally assist with parenting time orders, often through programs with specific eligibility criteria.⁴⁸ Some state agencies, such as the North Dakota Department of Human Services, provide parents with online information regarding parenting

⁴³ Tex. Fam. Code Ann. §§ 153.601 – 153.611, 153.007, 153.133 – 153.134 (2017). See *specifically* Tex. Fam. Code Ann. § 153.603 (2017).

⁴⁴ Office of Child Support Enforcement, Child Support Fact Series #13, *supra* note 36.

⁴⁵ 45 C.F.R. § 304.20(b)(12) (2019).

⁴⁶ Office of Child Support Enforcement, [Access and Visitation Program Update FY 2018](#) 3 (Mar. 2020).

⁴⁷ *Id.*

⁴⁸ See Office of Child Support Enforcement, Child Support Fact Sheet Series #13, *supra* note 36. The Fact Sheet identifies several counties in South Carolina, Connecticut, Hawaii, Ohio, and certain judicial districts in Tennessee.

time.⁴⁹ Other states, such as Washington, provide referrals to legal service providers or provide information about legal assistance available.⁵⁰

In FFY2012, OCSE also exercised its grant-making authority to establish Parenting Time Opportunities for Children in the Child Support Program (PTOC).⁵¹ All of the PTOC grantees must have an OCSE-approved domestic violence protocol to prepare for and address family violence.

DOMESTIC VIOLENCE SAFEGUARDS

Domestic violence is a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial, and/or sexual – and that perpetrators use against their intimate partner.⁵² Child support attorneys need to be sensitive to domestic violence issues when interviewing parents because:

- Establishment or enforcement of a child support order may trigger a violent response even where the past abuse was not physical.
- Lack of economic stability is a primary reason victims remain or return to an abusive situation.
- In one study, 50% of battered women remained in an abusive relationship because they did not believe they could support themselves or their children.⁵³
- Ninety percent of women with a current/former abusive partner will pursue child support if they can do so safely.

⁴⁹ See North Dakota Department of Human Services, *Parents: Parenting Time*, <https://www.childsupport.dhs.nd.gov/services/resources/parenting-time> (last visited Feb. 9, 2021). See also Arizona Supreme Court, Court Services Division, Court Programs Unit, *Planning for Parenting Time, Arizona's Guide to Parents Living Apart*, <https://www.azcourts.gov/portals/31/parentingTime/PPWguidelines.pdf> (2009) (last visited Feb. 9, 2021).

⁵⁰ Washington State Court Rule GR 27. See Office of Child Support Enforcement, [PAID – Child Support Fact Sheet #3: Access to Justice Innovations](#) (June 20, 2012).

⁵¹ Office of Child Support Enforcement, [Child Support Fact Sheet Series #14: Discretionary Grants for Parenting Time Opportunities for Children in the Child Support Program](#) (Aug. 5, 2013).

⁵² See Office of Child Support Enforcement, [Bench Card – Child Support and the Judiciary: Domestic Violence and Child Support](#) (Mar. 1, 2012).

⁵³ *Id.*

Because child support attorneys may also play a role in developing or facilitating a parenting time agreement, they need to understand the spectrum of parenting plans with safety components. There is no consensus on the type of parenting plan that is appropriate for families with a history of domestic violence.

For some, a detailed plan may be safe; for other victims, it may be unsafe. Standard visitation plans may provide useful examples for families. Other families may benefit from the development of more individualized plans tailored to family needs or child development. In addition to supervised visitation, graduated approaches to visitation in cases of domestic violence may be appropriate for some families.⁵⁴

Sometimes, it may not be appropriate for the perpetrator of violence to spend any time with the child. Such a decision will be governed by state law and the case facts.

If the child support attorney is involved with parenting time issues, it is important for the attorney to receive training on domestic violence from subject matter experts. Collaboration with an existing court program, third party facilitator or mediator, or domestic violence program is also important. An excellent example of collaborations is the partnership of the Texas Child Support Division, within the Office of the Attorney General of Texas, with the Texas Council on Family Violence in developing “Get Smart, Get Safe, Get Support,” which is an online website to assist domestic violence victims in accessing child support services.⁵⁵ Other state child support agencies that have recently established collaborations with their state domestic violence coalition include Arizona and Vermont.

⁵⁴ See Jessica Pearson, [*Roundtable on Domestic Violence: Child Support Program and Parenting Time Orders: Research, Practice & Partnership Project – Meeting Synthesis*](#) (Sept. 30, 2013).

⁵⁵ See Texas Council on Family Violence, *Get Child Support Safely*, <https://getchildsupportsafely.org/> (last visited Feb. 9, 2021).

SUPERVISED VISITATION AND SAFE EXCHANGE SERVICES

In developing a parenting time plan involving children and adult victims of domestic violence, child support attorneys should consider supervised visitation and exchange services.⁵⁶ Domestic violence advocates have long called for the use of supervised visitation and exchange services to reduce the risks to children and adult victims while providing the opportunity to have parent-child contact monitored by an appropriate third party. Congress acknowledged this need for available and appropriate supervised visitation and exchange by establishing the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Supervised Visitation Program) as part of the Violence Against Women Act of 2000.⁵⁷ Designed to increase supervised visitation and exchange services for victims of domestic violence, this program places the highest priority on the safety of both children and adult victims.⁵⁸

Over a three-year period beginning in 2003, the Supervised Visitation Program National Steering Committee developed principles, standards, and practices to guide the development and administration of Supervised Visitation Program centers.⁵⁹ These guiding principles are:

- *Principle I: Equal Regard for the Safety of Children and Adult Victims:* Visitation centers play a critical role in the safety of children and adult victims; therefore, it is important that visitation centers understand that their safety needs are often linked.
- *Principle II: Valuing Multiculturalism and Diversity:* Visitation centers should be responsive to the background, circumstances, and cultures of their community; failure to understand the social and cultural context of parents using the centers can lead to decisions that increase the risk of harm to children and adult victims, reducing the usefulness of services.
- *Principle III: Incorporating an Understanding of Domestic Violence into Center Services:* Visitation centers should demonstrate a comprehensive understanding of domestic violence, and the center staff need to be aware of the ways batterers may attempt to use the services to threaten and control their victims.
- *Principle IV: Respectful and Fair Interaction:* Visitation centers should treat every individual with respect and fairness while recognizing the

⁵⁶ See Exhibit 15-2.

⁵⁷ 34 U.S.C. § 12464 (2018) (formerly cited as 42 U.S.C. § 10420) (creating safe havens for children).

⁵⁸ U.S. Dep't of Justice Office on Violence Against Women, *Guiding Principles Safe Havens: Supervised Visitation and Safe Exchange Grant Program* 5 (Dec. 2007), <https://www.justice.gov/sites/default/files/ovw/legacy/2008/08/06/guiding-principles032608.pdf>.

⁵⁹ *Id.* at pp. 13–37.

abuse that has occurred within the family. Recognizing each individual's right to personal dignity is a cornerstone to effective visitation and exchange services.

- *Principle V: Community Collaboration:* Visitation centers should seek a community collaborative that strives to ensure responses to each family member's needs, stop the abuse of children and adult victims, and eliminate the social conditions that cause intimate partner violence.
- *Principle VI: Advocacy for Children and Adult Victims:* Visitation centers should ensure that children and adult victims have meaningful access to services. Because visitation centers interact with each member of the family, these centers can serve as a gateway through which needed services can be more readily accessed by children and adult victims who may not know the range of supportive services available in the community.⁶⁰

Child support attorneys can help inform child support agencies about laws, research, and resources in the area of supervised visitation. They can also work jointly with domestic violence advocacy groups regarding training staff on domestic violence and “integrating domestic violence awareness in child support agency policy and procedures,”⁶¹ including the facilitation of parenting time plans. Past research has established that 90% of custodial parents elect to pursue child support if it can be done safely.⁶²

MILITARY SERVICES – PARENTING CHALLENGES

In 2019, the Pentagon reported that over one-third (36.5%) of active duty members have children. Of active duty members with children, the greatest proportion have at least one child age five years or younger. More than two-fifths (41%) Selected Reserve members have children. Of Selected Reserve members with children, the majority have at least one child age five years or younger,⁶³ While all parents that live apart from their children face parenting challenges, the challenges facing military parents are unique because of deployments and lengthy separations that complicate custody, access, and parenting plan

⁶⁰ For additional information on developing a parenting time plan where supervised visitation may be required to address the issues of domestic violence and allegations of parental misconduct, access these websites: (1) Promising Futures – Best Practices for Serving Children, Youth and Parents Experiencing Domestic Violence, <https://promising.futureswithoutviolence.org/> (last visited Feb. 8, 2021), and (2) Supervised Visitation Network, <https://www.svnworldwide.org/> (last visited Feb. 8, 2021).

⁶¹ *Id.*

⁶² See Pearson, *supra* note 30 at 7.

⁶³ Department of Defense, 2019 Demographics: Profile of the Military Community.

issues.⁶⁴ Assisting military parents in developing parenting plans that account for parenting time can increase the involvement of noncustodial fathers and mothers with their children, as well as increase the likelihood of financial support for their children.⁶⁵

Family Care Plans

Service members are familiar with the need for parenting plans because the military requires certain members to develop a Family Care Plan.⁶⁶ A Family Care Plan details care arrangements for a service member's family during the member's absence while on military duty. Service members, both active duty and reserve, who must have a Family Care Plan include single parents with custody of children under 19, and married service members who have custody or joint custody of children with a parent who is not their current spouse.⁶⁷ Each service branch has additional guidelines for developing a plan and resources to assist the member, such as family support centers and legal assistance offices.

Although the Family Care Plan is a useful tool for determining parenting decisions, it does not address all custody or parenting time issues. Nor does it take the place of a legal order for parenting time or custody.⁶⁸ Regardless of whether there is a Family Care Plan, either parent may seek a court order for custody or parenting time. The order will prevail if a conflict arises between the Family Care Plan and the order. Often it is necessary for the child support attorney to explain to a service member the difference between a Family Care Plan and a court order.

The Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act (SCRA),⁶⁹ provides for, among other protections, the temporary suspension of civil judicial and administrative proceedings so that members of the armed forces and specified other individuals can focus their full attention on their military responsibilities without adverse consequences for themselves or their families. There are no provisions in the SCRA that are specific to custody proceedings. However, if a member receives

⁶⁴ See Mark E. Sullivan, *Third Rail Custody: The Military Case*, 65 Juv. & Fam. Ct. J. 45 (Winter 2014).

⁶⁵ Office of Child Support Enforcement, [Child Support Fact Sheet Series #8: Military Services and Child Support Partnerships](#) (Nov. 1, 2011).

⁶⁶ Department of Defense Instruction 1342.19, "Family Care Plans," (July 13, 1992). For more information on Family Care Plans, see Chapter Fourteen: Military Parents. See also Military OneSource, *Preparing Your Family Care Plan* (Apr. 24, 2020), <https://www.militaryonesource.mil/family-relationships/relationships/parents-guardians/preparing-your-family-care-plan/> (last visited Feb. 8, 2021) and *How to Create a Family Care Plan for Caregivers* (Feb. 20, 2020), <https://www.militaryonesource.mil/military-life-cycle/deployment/preparing-for-deployment/how-to-create-a-family-care-plan-for-caregivers/> (last visited Feb. 8, 2021).

⁶⁷ DoD Instruction 1342.19.

⁶⁸ See Chapter Fourteen: Military Parents for more information.

⁶⁹ Pub. L. No. 108-189, 117 Stat. 2835 (2003), codified at 50 U.S.C. §§ 3901 – 4043 (2018).

notice that a proceeding related to custody or parenting time has been initiated against him or her during a period of military service or within 90 days thereafter, the member has the right under the SCRA to request that the action or proceeding be stayed for a period of at least 90 days.⁷⁰ The tribunal must grant the initial request for a stay upon the member's production of certain required statements.⁷¹ The member also has the right to request that the court extend such a stay if necessary. Granting an additional stay is within the discretion of the court.⁷² If the member's request for an extension of a stay is denied, then the court must appoint an attorney to represent the member in the action or proceeding.⁷³ If the member does request, and the court orders, a stay, be aware that there are no provisions within the SCRA regarding the establishment of a temporary custody order.

The SCRA protections against a default order also protect the service member involved in a child custody proceeding.⁷⁴

The Uniform Deployed Parents Custody and Visitation Act

In 2012, the Commissioners on Uniform State Laws approved a Uniform Deployed Parents Custody and Visitation Act to address the challenges unique to military families facing deployment and lengthy separations.⁷⁵ As of September 2019, 14 states have enacted it.⁷⁶ Other states also have statutory provisions that address custody and parenting time in relation to deployed service members.⁷⁷ Such statutes create expedited processes by which temporary custody and visitation orders can be created or modified in order to ensure the least disruption to the parent-child relationship when one parent is an active service member. Several states have also created an opportunity for deployed

⁷⁰ Section 202 of the SCRA, codified as amended at 50 U.S.C. § 3932 (2018).

⁷¹ Section 202(b)(1) of the SCRA, codified as amended at 50 U.S.C. § 3932(b)(1) (2018).

⁷² Section 202(d) of the SCRA, codified as amended at 50 U.S.C. § 3932(d) (2018).

⁷³ Section 202(d)(2) of the SCRA, codified as amended at 50 U.S.C. § 3932(d)(2) (2018).

⁷⁴ Section 201 of the SCRA, codified as amended at 50 U.S.C. § 3931 (2018) and Section 202, codified as amended at 50 U.S.C. § 3932 (2018). See generally Sara Estrin, *The Servicemembers Civil Relief Act: Why and How This Act Applies to Child Custody Proceedings*, 27 Law & Ineq. 211 (2009).

⁷⁵ Unif. Deployed Parents Custody and Visitation Act (2012), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b2b1ea28-bbdd-b8e3-5176-4983997b7038&forceDialog=0>. See also Mark E. Sullivan, *Military Custody and Visitation: Problems and Solutions in the Twenty-First Century*, 52 Fam. Ct. Rev. 355 (Jul. 2014).

⁷⁶ Ark. Code Ann. §§ 9-21-101 to -504 (2018); Colo. Rev. Stat. §§ 14-13.7-101 to -504 (2018); Fla. Stat. §§ 61.703 to 61.773 (2019); Iowa Code §§ 598C.101 to 503 (2018); Minn. Stat. Ann. §§ 518E.101 to .503 (2018); Neb. Rev. Stat. §§ 43-4601 to -4603 (2018); Nev. Rev. Stat. §§ 125C.0601 to 125C.0647 (2017); N.C. Gen. Stat. §§ 50A-350 to 50A-396 (2018); N.D. Cent. Code §§ 14-09.3-01. to 14-09.3-26. (2017); S.C. Code Ann. §§ 63-15-500 to -556 (2018); S.D. Codified Laws §§ 25-4B-101 to -503 (2017); Tenn. Code Ann. §§ 36-7-101 to -503 (2018); Utah Code Ann. §§ 78B-20-101 to -107 (2018); W. Va. Code §§ 48-31-101 to -503 (2018).

⁷⁷ See, e.g., Alaska Stat. § 25.20.095 (2018); Cal. Fam. Code § 3047 (2018); Iowa Code § 598.41D (2018); Kan. Stat. Ann. § 60-1630 (2011); Okla. Stat. Ann. § 43-112.7 (2018); Or. Rev. Stat. §§ 107.145 to .146 (2017); 51 Pa. Cons. Stat. Ann. § 4109 (2018).

parents to transfer their visitation rights to a third person for the duration of the deployment.⁷⁸

CHILD SUPPORT GUIDELINES AND PARENTING TIME ADJUSTMENTS

Many state guidelines permit or require a tribunal to consider the amount of time a child spends with each parent in calculating the child support award. Although states use different approaches to address the impact of parenting time on a child support award, most either include a formula within the guideline or authorize the tribunal to deviate from the guideline award.⁷⁹ As of 2016, approximately 36 states and the District of Columbia have an adjustment in the child support guidelines for parenting time.⁸⁰ Among those states, the adjustments vary significantly, both in when and how they are applied. Less than 15 states authorize a deviation from the guideline amount in cases with shared parenting; the deviation is within the discretion of the tribunal. A few guidelines provide neither a formula nor a deviation.⁸¹

Most states using a formulaic adjustment provide that the obligated parent's time with the child must meet a certain threshold for there to be an adjustment of the support award; about a third of those states set the threshold at 21% to 30%.⁸² In Arizona the percentage adjustment starts when the obligated parent has the child for four overnights per year.⁸³ The most typical application of the adjustment is through a cross-credit. That is, the support obligation for each parent is calculated, factoring in the amount of time the child spends with each parent. The obligations are then offset against each other, with the parent owing the higher amount becoming the obligated parent. Most state guidelines that use the cross-credit approach inflate the basic child support obligation by 50% to account for duplicated expenses that the parents have related to the child(ren).⁸⁴

The periodic review of support guidelines rarely results in revision of these parenting time adjustments.⁸⁵ However, states are invoking new terminology within their support guidelines, statutes, or court rules to address custody and visitation arrangements. For example, some have replaced the long-used term

⁷⁸ For additional information and federal and state legislation, see David F. Burelli & Michael A. Miller, Cong. Research Serv., R43091, *Military Parents and Child Custody: State and Federal Issues* (2013).

⁷⁹ For more information, see Chapter Nine: Establishment of Child Support and Medical Support Obligations.

⁸⁰ See National Conference of State Legislatures, *Child Support and Parenting Time Orders*, <https://www.ncsl.org/research/human-services/child-support-and-parenting-time-orders.aspx> (last visited Feb. 8, 2021).

⁸¹ See Jane C. Venohr, *Child Support Guidelines and Guideline Reviews: State Differences and Common Issues*, 47 Fam. L.Q. No. 3 (Fall 2013), at 341.

⁸² Jane C. Venohr and Carly Everett, Center for Policy Research, *2010 Review of New York Child Support Guidelines* at 141 (Nov. 9, 2010).

⁸³ Ariz. Admin. Order No. 2018-08(11)(C) (eff. Jan. 24, 2018).

⁸⁴ Venohr and Everett, *supra* note 82.

⁸⁵ Venohr, *supra* note 81.

“visitation” with “parenting time” (Arizona⁸⁶ and Indiana⁸⁷), “joint physical custody” (California),⁸⁸ or “shared responsibility” (New Mexico).⁸⁹ Others are employing different terms to define the parent with whom the child resides, such as “residential parent” (Ohio).⁹⁰ Florida decided that even the terms residential and non-residential parent have negative connotations.⁹¹ Regardless of whether the child support attorney is dealing with an arrangement termed “visitation,” “parenting time,” “joint physical custody,” or “shared responsibility,” it is critical that the attorney understand the impact such an arrangement has under the forum state’s child support guidelines.

Most states that use a formulaic adjustment in shared parenting cases, require that there be “a court order for shared residential custody/visitation, a parenting plan, or an agreement between the parties.”⁹² Usually the parenting plan or agreement must be filed with the court or introduced into evidence.⁹³ Because they have not been involved in a divorce proceeding, unmarried parents are less likely to have a custody or visitation order qualifying them for the shared-parenting time adjustment. They also may have less access to resources for development of a parenting plan or agreement. For example, these issues are usually not addressed in a Title IV-D child support proceeding. A few states, such as Arizona, only require proof that parenting time is or is expected to be exercised by the noncustodial parent.⁹⁴

DRAFTING AN APPROPRIATE PARENTING TIME PLAN

Increasingly, states are developing initiatives or enacting legislation that include the establishment of a parenting time plan when the initial child support order is established. It is therefore important for child support attorneys to be familiar with the issues that are typically addressed in a parenting time plan, including any minimum requirements. A child support attorney who is assisting parents with an agreement also needs to ensure that he or she is dealing with the legal parents, that the agreement does not conflict with any existing custody/visitation/parenting time orders, and that the agreement complies with requirements to make it legally binding.⁹⁵

⁸⁶ Ariz. Rev. Stat. Ann. § 25-401 (2018).

⁸⁷ Ind. Code §§ 31-17-4-1 to -11 (2018). See also Indiana Rules of Court, Indiana Parenting Time Guidelines, <https://www.in.gov/courts/rules/parenting/> (last visited Feb. 8, 2021).

⁸⁸ Cal. Fam. Code § 3080 (2018).

⁸⁹ N.M. Stat. Ann. § 40-4-11.1 (2017).

⁹⁰ Ohio Ref. Code Ann. § 3109.04 (2018).

⁹¹ Fla. Stat. § 61.13 (2018).

⁹² Venohr, *supra* note 81, at 341, 342.

⁹³ See, e.g., N.J. Ct. R. 5:6A; App. IX-A (14)(c) (eff. Sept. 1, 2019).

⁹⁴ See Ariz. Admin. Order No. 2018-08(11)(C) (eff. Jan. 24, 2018).

⁹⁵ See, e.g., Parenting Plans, <https://www.courts.ca.gov/15872.htm> (last visited Feb. 8, 2021). In California, a parenting time agreement becomes a court order after it is signed by both parents, signed by the judge, and filed with the court.

State Law Considerations

State law may dictate the key elements of a parenting plan. For example, some states may require that the parenting plan, at a minimum, describe in adequate detail the time that the minor child will spend with each parent. Some states may have additional requirements. For example, Florida law provides that in order for the parenting plan to be approved by the court, it must also, at a minimum, describe how the parents will share and be responsible for the daily tasks associated with the child's upbringing; designate who will be responsible for any and all forms of health care, school-related matters, and other activities; and specify the methods and technologies that the parents will use to communicate with the child.⁹⁶

Some states use a presumptive standard visitation/parenting plan that applies unless circumstances warrant deviation. The standard plan, which may be detailed in a statute or court rule, often spells out how the child's time will be divided with each parent during regular, vacation, and holiday periods.⁹⁷ Parents are asked to disclose any safety concerns which may trigger modification to the standard plan. For example, parents in Texas, absent family violence or child abuse, harm, or neglect, are entitled at a minimum to a possession schedule with their children called the Standard Possession Schedule. The Texas Standard Possession Schedule allows the non-primary parent to have possession of the child, at a minimum, on the first, third, and fifth weekends of the month beginning at 6 p.m. on Fridays and ending at 6 p.m. on Sundays. The non-primary parent also has possession of the child on Thursdays during the school year from 6 p.m. to 8 p.m., and for 30 days in the summer. Additionally, parents alternate having possession of the child during Spring Break, Thanksgiving, Christmas, and New Year holidays.⁹⁸ Even where there is a standard parenting plan, the state law or court rule usually provides that the parties may agree to deviate from the schedule.

Parenting Plan Forms

Some states provide online forms that parents can use. For example, Washington courts have created an online form that an acknowledged father or mother may use to bring an action to establish a residential schedule/parenting plan. The form can be completed four years or more after the Acknowledgment of Paternity they signed was filed with the Washington State Registrar of Vital Statistics.⁹⁹ There are also similar forms that separated or divorcing parents may

⁹⁶ See, e.g., Fla. Stat. § 61.13(2)(b) (2018).

⁹⁷ See Pearson, *supra* note 30.

⁹⁸ Tex. Fam. Code Ann. §§ 153.311 – 153.317 (2017).

⁹⁹ See *Court Forms: Parentage (Unmarried Parents) — Petition for a Parenting Plan / Residential Schedule and/or Child Support with Paternity Acknowledgment or Final Parentage Order*, <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=34> (last visited Feb. 8, 2021). Either parent may also bring this action more than 60 days but less than four years after the acknowledgment was filed if the petitioning party specifically states (alleges) certain facts.

use.¹⁰⁰ The website for Oregon courts includes an online parenting plan guide¹⁰¹ and sample forms that help parents complete parenting plans that comply with Oregon law.¹⁰² It was developed by the State Family Law Advisory Committee's Parenting Plan Outreach Workgroup. If a parent has safety concerns, there is a safety-focused parenting plan guide and three different sample parenting plans: one option that provides for supervised visitation, one that provides for unsupervised/no overnights, and one that provides for overnights.¹⁰³ See Exhibit 15-2 for a sample parenting plan that provides for supervised visitation.

It is important to note that while parenting plan forms may be helpful in finding ways to structure a parenting plan, there is no prescribed "right" way to design or use a sample plan. Attorneys should be attentive to the limitations of sample plans, literacy issues, and whether a particular plan is mandated by the court or state law.

Plain Language in Parenting Plans

Several states are looking at ways to make their family law forms more understandable by redrafting the forms in plain language and more accessible formats.¹⁰⁴ Less confusion, greater clarity, better understanding, and achievement of personal and legal goals are just some of the benefits plain language forms offer. The benefits of plain language forms extend to attorneys and the courts as well.¹⁰⁵

If the court does not require a particular parenting plan form, the child support attorney should ensure that the parenting plan is drafted in plain language. The attorney can use the following plain language techniques:¹⁰⁶

- Use smaller words and sentences; avoid foreign words, jargon, and specialized terms. Below are some examples of how to replace complex words with short, more familiar words:¹⁰⁷

¹⁰⁰ See *Court Forms*, <https://www.courts.wa.gov/forms/> (last visited Feb. 8, 2021).

¹⁰¹ *Basic Parenting Plan Guide*, <https://www.courts.oregon.gov/programs/family/children/Pages/parenting-plan-guide.aspx> (last visited Feb. 8, 2021).

¹⁰² Or. Rev. Stat. § 107.102 (2017).

¹⁰³ For safety-focused parenting plan guides, see <https://www.courts.oregon.gov/programs/family/children/Pages/parenting-plans.aspx> (last visited Feb. 8, 2021).

¹⁰⁴ See, e.g., Charles Dyer et al., *Improving Access to Justice: Plain Language Family Law Court Forms in Washington State*, 11 Seattle J. for Social Justice 1065 (Nov. 2013).

¹⁰⁵ State of Washington, ATJ/AOC/WSBA Plain Forms Project, Letter from the Supreme Court, (Jan. 5, 2012), https://www.courts.wa.gov/forms/forms_comment/plainLanguage/ATJ_PlainFormsSupport.pdf.

¹⁰⁶ Dyer, *Improving Access to Justice*, *supra* note 104.

¹⁰⁷ See Maryland Access to Justice Commission, *Writing for Self-Represented Litigants: A guide for Maryland's courts and civil legal services providers* (Nov. 2012).

<i>Replace ...</i>	<i>With ...</i>
Advocate / Attorney	Lawyer
Conform	Follow
Judgment	Decision
Party/Plaintiff/Defendant	You, the other person, the other side
Timely	On time
Whereas	But

- Convert levels of sentence hierarchy into bullet lists or check boxes. In Washington State, the new family law forms include new check box lists to replace blank lines. This technique helps to improve readability for the parents and for the judge.¹⁰⁸
- Eliminate extra words and unnecessary details.
- Use an active voice.
- Prefer verbs over nouns.¹⁰⁹

<i>Noun</i>	<i>Verb</i>
Usage	Use
Completion	Complete
Payment	Pay
Decision	Decide

Considerations When Developing a Parenting Plan

If allowed under state law, many courts recognize that, if at all possible, parents should create their own schedule for parenting their child(ren). If parents want to create a specific schedule, they should ensure that the parenting plan complies with any minimum statutory or court rule requirements. They also need to decide how detailed they want the plan to be. The following elements are typically addressed in a court-ordered parenting plan, and may guide parents in drafting plan provisions:¹¹⁰

¹⁰⁸ Dyer, *Improving Access to Justice*, *supra* note 104.

¹⁰⁹ Maryland Access to Justice Commission, *supra* note 107.

¹¹⁰ See Exhibit 15-1: Sample Parenting Time Plan - Agreement.

- Weekend placement of the child(ren), e.g., first, third, and fifth weekends of each month.
- Time with the child during the week, e.g., every Wednesday afternoon.
- Holidays, including July 4th, Thanksgiving, and religious holidays.
- Mother's Day and Father's Day.
- Birthdays, including each parent's and the child(ren)'s.
- A number of weeks during the summer.
- Spring and Fall Break from school.
- Notification of child(ren)'s illness or accident.
- Telephone access to the child(ren).
- Access to information regarding the child(ren)'s medical, dental, and hospital records.

If the parties do not wish to have specific placement times addressed in their parenting plan, an alternative is a parenting plan that simply provides for placement at "reasonable times and circumstances with reasonable notice." The parties need to ensure that such a plan meets any state requirements if they want a court to enforce it.

CONCLUSION

Research shows that parents who spend time with their children are more likely to pay support. Such research has resulted in Congressional funding of access and visitation programs, as well as OCSE grants to states that want to develop access and parenting time initiatives in conjunction with the delivery of child support services. Increasingly, states are also passing state legislation requiring the development of parenting time orders and recognizing the special issues related to custody and visitation orders when one parent is an active service member. In the future, child support attorneys may be involved in addressing such issues in court and presenting either an agreement between the parents or facts for the court to consider in entering an appropriate parenting time order.

[page left blank intentionally]

CHAPTER FIFTEEN

TABLE OF STATUTES AND AUTHORITIES

<u>Statutes and Regulations</u>	<u>Page</u>
34 U.S.C. §§ 12464 (2018)	12
42 U.S.C. §§ 651 – 669 (2018)	1
42 U.S.C. § 669b (2018)	2
42 U.S.C. § 669b(a) (2018)	3
42 U.S.C. § 669b(c) (2018)	3
42 U.S.C. § 10420	12
50 U.S.C. §§ 3901 – 4043 (2018)	14
50 U.S.C. § 3931 (2018)	15
50 U.S.C. § 3932 (2018)	15
50 U.S.C. § 3932(b)(1) (2018)	15
50 U.S.C. § 3932(d) (2018)	15
50 U.S.C. § 3932(d)(2) (2018)	15
Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105	2
Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919, 1946 (2014)	4
Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003)	14
Servicemembers Civil Relief Act, Section 201	15
Servicemembers Civil Relief Act, Section 202	15
Servicemembers Civil Relief Act, Section 202(b)(1)	15
Servicemembers Civil Relief Act, Section 202(d)	15
Servicemembers Civil Relief Act, Section 202(d)(2)	15

<u>Statutes, Regulations, and Court Rules</u>	<u>Page</u>
Social Security Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337, 2351	1
Violence Against Women Act of 2000, Title IV of the Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796	12
45 C.F.R. Part 303 (2019)	3
45 C.F.R. § 304.20(b)(12) (2019)	9
Alaska Stat. § 25.20.095 (2018)	15
Ariz. Admin. Order No. 2018-08(11) (eff. Jan. 24, 2018)	16,17
Ariz. Rev. Stat. Ann. § 25-401 (2018)	17
Ark. Code Ann. §§ 9-21-101 to -504 (2018)	15
Cal. Fam. Code § 3047 (2018)	15
Cal. Fam. Code § 3080 (2018)	17
Colo. Rev. Stat. §§ 14-13.7-101 to -504 (2018)	15
Fla. Stat. § 61.13 (2018)	17
Fla. Stat. § 61.13(2)(b) (2018)	18
Fla. Stat. §§ 61.703 to 61.773 (2019)	15
Fla. Stat. § 409.2554(16) (2018)	8
Fla. Stat. § 409.2563(2) (2018)	8
Ind. Code §§ 31-17-4-1 – 31-17-4-11 (2018)	17
Indiana Rules of Court, Indiana Parenting Time Guidelines	17
Iowa Code §§ 598C.101 to 503 (2018)	15
Iowa Code § 598.41D (2018)	15
Kan. Stat. Ann. § 60-1630 (2011)	15

<u>Statutes, Regulations, and Court Rules</u>	<u>Page</u>
Minn. Stat. Ann. §§ 518E.101 to .503 (2018)	15
N.C. Gen. Stat. §§ 50A-350 to 50A-396 (2018)	15
N.D. Cent. Code §§ 14-09.3-01. to 14-09.3-26. (2017)	15
N.J. Ct. R. 5:6A; Appendix IX-A (14)(c) (eff. Sept. 1, 2019)	17
N.M. Stat. Ann. § 40-4-11.1 (2017)	17
Neb. Rev. Stat. §§ 43-4601 to -4603 (2018)	15
Nev. Rev. Stat. §§ 125C.0601 to 125C.0647 (2017)	15
Ohio Ref. Code Ann. § 3109.04 (2018)	17
Okla. Stat. Ann. tit. 43, § 112.7 (2018)	15
Or. Rev. Stat. § 107.102 (2017)	19
Or. Rev. Stat. §§ 107.145 to 107.146 (2017)	15
51 Pa. Cons. Stat. Ann. § 4109 (2018)	15
S.C. Code Ann. §§ 63-15-500 to -556 (2018)	15
S.D. Codified Laws §§ 25-43-101 to -503 (2017)	15
Tenn. Code Ann. §§ 36-7-101 to -503 (2018)	15
Tex. Fam. Code Ann. §§ 153.311 – 153.317 (2017)	18
Tex. Fam. Code Ann. §§ 153.601 – 153.611, 153.007, 153.133 – 153.134 (West 2017)	9
Utah Code Ann. §§ 78B-20-101 to -107 (2018)	15
Wash. Gen. R. 27	10
W. Va. Code §§ 48-31-101 to -503 (2018)	15
 <u>Military Regulations and Directives</u>	 <u>Page</u>
Department of Defense Instruction 1342.19	14

Model Codes

Page

Unif. Deployed Parents Custody and Visitation Act (2012)

15

[page left blank intentionally]

¹¹¹ Chapter 17 of the Iowa Court Rules requires the use of forms approved by the Iowa Judicial Branch in cases where a party appears *pro se* in a divorce or family law case. Form 229 is a form available free of charge from the Iowa Judicial Branch, in a fillable and savable format, for use in a divorce where there are minor or dependent children and where the spouses are in agreement. The court strongly recommends that a party proceeding without an attorney first carefully review the *Guide to Representing Yourself in an Iowa Divorce Case with Children* before using the form. This form is available at <https://www.iowacourts.gov/for-the-public/court-forms/> (last visited Feb. 8, 2021) under “Divorce,” “With Children.” It appears here as a sample parenting plan, where parties are in agreement. Although it was developed for married parents, its terms are also applicable to unwed parents.

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

- (3) ☐ There are children of Petitioner or Respondent not listed in B. *Explain*
- *If there are children born before the marriage, who are not the children of Petitioner or of Respondent, check (3) and explain.*
 - *If there are children of Petitioner and Respondent, but the parental rights have been terminated, check (3) and explain.*

2. Plan

A. Read these definitions of legal custody and physical care:

- (1) **Legal custody** means a parent has legal rights and responsibilities for the child. These include making decisions about medical care, education, extracurricular activities, and religious instruction.
- (2) **Joint legal custody** means both parents have equal legal rights and responsibilities for the child. These include making decisions about medical care, education, extracurricular activities, and religious instruction.
- (3) **Physical care** means providing the main home for the child and taking care of the child.
- (4) **Joint physical care** means both parents have equal rights and responsibilities for providing the main home for the child and taking care of the child.

B. Legal custody should be

Check one

- (1) ☐ Joint legal custody to both parents
- (2) ☐ To Petitioner
- (3) ☐ To Respondent
- (4) ☐ To other person _____
Full name of other person: first, middle, last

C. Physical care should be

Check one

- (1) ☐ To Petitioner *If you check (1), use D for Respondent's visitation.*
- (2) ☐ To Respondent *If you check (2), use D for Petitioner's visitation.*
- (3) ☐ Joint physical care to both parents *If you check (3), use D(12) to explain the joint physical care schedule.*
- (4) ☐ To other person _____
Full name of other person: first, middle, last

D. Visitation

Use D only if one parent will have physical care. This is the schedule for the other parent to see the children.

(1) Visitation for

Check one

- a. ☐ Petitioner
- b. ☐ Respondent

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

(2) Visitation permission

Check a, b, or c.

- a. ☐ Visitation should not be allowed because:

- b. ☐ Visitation should be supervised because:

The supervisor for visitation should be _____
Supervisor's full name: first, middle, last

- c. ☐ Regular unsupervised visitation schedule as the parents agree:

Check all that apply

- i. ☐ Reasonable visitation as the parents agree.

- ii. ☐ Mid-week visitation on these days:

M Tu W Th F From _____ a.m. to _____ a.m.
☐ ☐ ☐ ☐ ☐ p.m. to _____ p.m.

- iii. ☐ Every weekend
 From _____ at _____ a.m. to _____ at _____ a.m.
Day of week Time Day of week Time
☐ p.m. to _____ p.m.

- iv. ☐ Every other weekend
 From _____ at _____ a.m. to _____ at _____ a.m.
Day of week Time Day of week Time
☐ p.m. to _____ p.m.

- v. ☐ Other Describe _____

- vi. Visitation will start on _____ 20_____
Month Day Year

(3) Detailed holiday schedule

This schedule tells on which holidays the children will be with either Petitioner or Respondent.

Note: You do not have to fill in everything. Any day that is left blank means the children will spend that day with the parent who already has the children on that day.

P = Petitioner R = Respondent

Holiday	Time	Every year		Even years		Odd years	
		P	R	P	R	P	R
New Year's Eve	: <input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
New Year's Day	: <input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Martin Luther King, Jr. Day	: <input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

President's Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Memorial Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Independence Day <i>July 4th</i>	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Labor Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Veterans' Day <i>November 11th</i>	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Thanksgiving Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Christmas Eve	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Christmas Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Mother's Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Father's Day	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Petitioner's Birthday	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Respondent's Birthday	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Halloween <i>October 31st</i>	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: <i>Describe</i>	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: <i>Describe</i>	:	<input type="radio"/> a.m. <input type="radio"/> p.m.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

(4) Special rules for holidays

Check one

- a. ☐ If a holiday falls on a Friday or a Monday, the parent with the holiday will have the whole weekend.
- b. ☐ If a holiday falls on a Monday or a Friday, the alternating weekend schedule in D(2)c.iv. will continue. *This means the parent who has the children on the holiday weekend may have the children two weekends in a row.*
- c. ☐ The parents will cooperate and rearrange the alternate weekend schedule so that neither parent will have the children more weekends in a row without contact with the other parent.
- d. ☐

Continued on next page

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

(5) Summer

Check one

- a. ☐ Summer school vacation will be divided as Petitioner and Respondent agree.
- b. ☐ Petitioner and Respondent will each have one-half of the summer school vacation with alternate weekends to the other parent. The children will be returned to the parent with physical care at least one week before school starts.
- c. ☐ The parent without physical care will have two weeks of uninterrupted summer visitation with the children and the parent with physical care will have two weeks of uninterrupted summer visitation with the children. During the rest of the summer the weekly visitation schedule should be followed.
- d. ☐ Other *Explain* _____

(6) Winter school holiday

Check one

- a. ☐ Winter school holidays will be divided as Petitioner and Respondent agree.
- b. ☐ Petitioner and Respondent will each have one-half of the winter school holiday and alternate the first and second half each year.
- c. ☐ Other *Explain* _____

(7) Spring school break

Check one

- a. ☐ Spring school break will be divided as Petitioner and Respondent agree.
- b. ☐ Spring school break will be alternated every other year between Petitioner and Respondent.
- c. ☐ Petitioner and Respondent will each have one-half of each spring school break.
- d. ☐ Other *Explain* _____

(8) The children's birthdays

Check one

- a. ☐ Petitioner and Respondent will have contact with the children on their birthdays as the parents may agree.
- b. ☐ A child's birthday will be spent with the parent who has the child on that day.
- c. ☐ Each child's birthday will be alternated from year to year between Petitioner and Respondent.
- d. ☐ Petitioner and Respondent will each have no less than two hours of personal contact with the child on the child's birthday.
- e. ☐ Other *Explain* _____

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

(9) Pick up and drop off

Check all that apply

- a. ☐ The parents will agree about pick up and drop off for each visit.
- b. ☐ The parent with visitation will pick up the children at the other parent's residence at the beginning of visitation and the parent with physical care will pick up the children at the end of visitation.
- c. ☐ Only certain people can help the parents with transportation. If persons other than Petitioner and Respondent will help them provide transportation of the children, only the following persons are permitted to help: _____
- d. ☐ Other arrangements for visitation. *For example, Petitioner and Respondent will meet at a location between their residences. Explain* _____

(10) The parent without the children may contact the children by

Check all that apply

- a. ☐ Calling the children

Check one

- i. ☐ At reasonable hours
- ii. ☐ Any day from _____ 8 a.m. to _____ 8 a.m.
p.m. to _____ 8 p.m.
Phone number (_____) _____
Phone number where children can be contacted

- b. ☐ Emailing the children at this address: _____
Email where children can be contacted
- c. ☐ Other *Explain* _____

(11) Changes to the schedule

Check all that apply

- a. ☐ The parties may agree to additional visitation or changes to the schedule.
- b. ☐ If one parent fails to arrive at the appointed time, then the other parent will wait for at least _____ minutes before cancelling the visit.
- c. ☐ No changes allowed except by a court order.
- d. ☐ Other *Explain* _____

Continued on next page

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

(12) Joint physical care plan

Use only if both Petitioner and Respondent are given joint physical care.

- a. How Petitioner and Respondent will make decisions about the children: *For example, decisions on school, medical care, religion, and other decisions parents make for their children.*

- b. How the children's time will be divided between Petitioner and Respondent: *You may use sections 3, 4, 5, 6, 7, and 8 for holidays, school breaks, and birthdays.*

- c. How the children's expenses will be paid: *For example, expenses such as clothes, activities, and school fees.* _____

- d. How Petitioner and Respondent will deal with major changes or disagreements about the children (including changes due to the children's age and development):

- e. Other issues:

(13) Resolving disagreements

Check one

Before going to court to resolve disagreements, Petitioner and Respondent will

- a. ☐ Ask the following person to help them resolve disagreements:

<i>Name</i>	<i>Relationship to parties</i>	() <i>Phone number</i>
<i>Present street address</i>	<i>City</i>	<i>State</i> <i>ZIP code</i>
- b. ☐ Go to mediation. *Do not check if mediation will not work because of domestic violence or an injunction.*

Continued on next page

Rule 17.200—Form 229: Agreed Parenting Plan, continued

3. Attorney Help

Check one

A. Petitioner

(1) ☐ An attorney did not help me prepare or fill in this paper.

(2) ☐ An attorney helped me prepare or fill in this paper.

If you check (2), you must fill in the following information:

Name of attorney or organization, if any Attorney's P.I.N. # — Ask the attorney

Business address of attorney or organization City State ZIP code

() _____
Attorney's phone number Attorney's fax number — optional Attorney's email address — optional

B. Respondent

(1) ☐ An attorney did not help me prepare or fill in this paper.

(2) ☐ An attorney helped me prepare or fill in this paper.

If you check (2), you must fill in the following information:

Name of attorney or organization, if any Attorney's P.I.N. # — Ask the attorney

Business address of attorney or organization City State ZIP code

() _____
Attorney's phone number Attorney's fax number — optional Attorney's email address — optional

4. Oaths and Signatures

This Agreed Parenting Plan addresses all custody and visitation issues in our divorce. We want the court to approve this Agreed Parenting Plan and make it a part of the final Decree.

A. Petitioner's Oath and Signature

I, _____, certify under penalty of perjury and pursuant to the
Print Petitioner's name

laws of the State of Iowa that I have read this Agreed Parenting Plan, and I agree with the Plan. I ask the court to adopt this Agreed Parenting Plan.

_____, 20_____
Month Day Year Petitioner's signature*

Mailing address City State ZIP code

() _____
Phone number Email address Additional email address — if available

* Whether filing electronically or in paper, you must *handwrite* your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.

Continued on next page

Rule 17.200—Form 229: *Agreed Parenting Plan*, continued

B. Respondent's Oath and Signature

I, _____, certify under penalty of perjury and pursuant to the
Print Respondent's name

laws of the State of Iowa that I have read this Agreed Parenting Plan, and I agree with the Plan. I ask the court to adopt this Agreed Parenting Plan.

_____, 20_____
*Month Day Year Respondent's signature**

Mailing address City State ZIP code

(_____) _____
Phone number Email address Additional email address—if available

* *Whether filing electronically or in paper, you must handwrite your signature on this form. If you are filing electronically, scan the form after signing it and then file electronically.*

[page left blank intentionally]

EXHIBIT 15-2: SAMPLE PARENTING PLAN – SAFETY CONCERNS

IN THE CIRCUIT COURT OF THE STATE OF OREGON*
FOR THE COUNTY OF _____

Petitioner _____

CASE NO:

and

PARENTING PLAN

Respondent _____

Exhibit 1

1. The Parties. Petitioner and Respondent are the parents of:

Full Name	Date of Birth

They shall be collectively referred to as “the children” throughout this parenting plan. The residential parent is the parent with whom the children live most of the time and who also has legal custody of them.

Petitioner shall hereafter be referred to as the (check one): ☐ Residential parent
☐ Non-residential parent

Respondent shall hereafter be referred to as the (check one): ☐ Residential parent
☐ Non-residential parent

* SAFETY FOCUSED PARENTING PLAN (Option A - Supervised) [Rev 6/03].

The Oregon Judicial Branch website has information about parenting plans at <https://www.courts.oregon.gov/programs/family/children/Pages/parenting-plans.aspx> (last visited Feb. 8, 2021). Included are hyperlinks to information and forms about safety focused parenting plans. The Option A safety-focused parenting plan requires supervised visitation.

2. Parenting Time. (choose only one):

- ☐ **No Parenting Time.** The non-residential parent shall have no contact with the children until further court order. All parenting decisions shall be made by the residential parent.
- ☐ **Supervised Parenting Time.** Whenever the children are with the non-residential parent, the supervisor shall be present. The non-residential parent has the right to spend time with the children even though the residential parent will be making most, if not all, of the parenting decisions which need to be made on the children's behalf. The children shall be with the non-residential parent on any schedule agreed to between the parents, but not less than is set forth in the following supervised schedule (choose only one):
- ☐ _____ hours per week. The place(s), day(s), and time(s) shall be set by the residential parent.
- ☐ From _____ m. to _____ m. on the following day(s): _____

3. **Supervisor.** The person supervising the parenting time shall (choose only one):

- ☐ Be selected by the residential parent.
- ☐ Be selected by the non-residential parent, subject to the residential parent's prior approval.

4. **Access to Activities and Events.** The non-residential parent (choose only one):

- ☐ Shall not attend the children's school activities and athletic events.
- ☐ May attend the children's school activities and athletic events.

5. **Child Safety.** The non-residential parent shall follow the safety rules checked below. If the non-residential parent violates any of the rules below, the residential parent may seek the court's help through a contempt action. In addition, if the violation poses an immediate threat to the child(ren), the specific parenting time may be stopped.

(Check all safety rules that apply):

- ☐ There shall be no firearms in the non-residential parent's home, car or in the children's presence during parenting time.

- ☐ The non-residential parent shall not consume alcoholic beverages beginning 12 hours before the children arrive up to the point they are returned to the residential parent.
- ☐ The children shall not be physically disciplined.
- ☐ The following person(s) present a danger to the children and shall not be present during parenting time
_____.
- ☐ The non-residential parent shall not be under the influence of intoxicating liquor or a controlled substance (e.g. drugs) as said terms are defined in ORS 813.010 during any period of time that he or she is to be with the children.
- ☐ Other:

6. Location. The nonresidential parent shall spend his/her parenting time with the child(ren) at the following location(s):

- ☐ Supervised visitation center.
- ☐ _____ (location) or any other location designated by the residential parent.
- ☐ Any location designated by the nonresidential parent with approval by the supervisor.

7. Exchange Point. The exchange of the child(ren) shall occur at (Choose all that apply):

- ☐ The site of the supervised visit.
- ☐ Other (describe)_____.
- ☐ The nonresidential parent may not come to the exchange point.

8. Transportation. The residential parent or other person chosen by the residential parent shall be responsible for transporting the child(ren) to the exchange point. The child(ren) shall be picked up and/or returned to the exchange point by (choose only one):

- ☐ The nonresidential parent with the supervisor present.
- ☐ The supervisor alone.

The child(ren) shall not be driven in a car unless the driver has a valid driver's license, auto insurance, seat belts, and child safety seats as required by Oregon law.

9. Communication with the Children. The non-residential parent (check all that apply):

- ☐ Shall not telephone, write, or email the children unless the contact is agreed to in advance by the residential parent.
- ☐ May write or e-mail the children at any time. Each parent shall provide a contact address (and e-mail address if appropriate) to the other parent.
- ☐ May call the children on the telephone ____ times per week. The call shall last no more than 15 minutes and shall take place between _____.m. and _____.m. Long distance telephone calls made by the children shall be paid for by the parent receiving the call. Each parent shall provide a telephone number to the other parent.

10. Changes to the Parenting Plan. A specific parenting time may be denied due to the safety concerns listed in Paragraph 5. Changes to the parenting plan are allowed whenever both parents agree to a change. Agreed upon changes will be temporary and will be enforced by the court only if the change is written down, is dated, signed by both parents before a notary public and submitted to the court leaving a space for the judge's signature. See ORS 107.174.

11. This is part of a Court Order when attached to a signed Judgment. Each party has been put on notice that an intentional failure to follow the rules of this parenting plan is punishable through the contempt powers of the court. One parent's failure to comply with the rules does not excuse the other party from following the rules.

12. Signature(s)

Your signature below indicates that you have read and agree with what has been decided and written in this document.

Petitioner:

☐ Respondent

☐ Co-Petitioner

Signature

Date

Signature

Date

