SUPREME COURT COMMISSION ON PARENTING TIME GUIDELINES

FINAL REPORT

INTRODUCTION

On August 26, 2020, the South Dakota Supreme Court entered an order creating the Commission on Parenting Time Guidelines. Commencing in 2021, the commission shall review the standard parenting guidelines outlined in SDCL 25-4A-10 every four years and shall report its findings and recommendations to the Supreme Court, Governor and the Legislature. The Commission is to be composed of seven members:

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

MEMBERSHIP

The 2021 Commission on Parenting Time Guidelines consisted of the following members:

Honorable Christina Klinger, Circuit Court Judge, Pierre (Chair)
Senator Timothy Johns, State Senator, Lead
Representative Tom Pischke, State Representative, Dell Rapids
Shanna Moke, Childhood Development Professional, Sioux Falls
Kylie Riggins, Family Law Attorney, Rapid City
Billi Derudder, Custodial Parent, Rapid City
Michael Roselles, Non-Custodial Parent, Rapid City

MEETINGS / PUBLIC HEARINGS

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

March 18, 2021, via Zoom – Kickoff Meeting;
May 10, 2021, UJS Conference Room – Capitol Building, Pierre, SD; and
September 9, 2021, Room 412 – Capitol Building, Pierre, SD.

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

Sioux Falls – June 14, 2021 at Ramkota Hotel
Rapid City – July 1, 2021 at Hotel Alex Johnson
Aberdeen – August 23, 2021 at Ramkota Hotel

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

1. Elimination of the labels of "non-custodial" and "custodial" parents. Many find this offensive and feel there is a negative connotation associated with "non-custodial." They would like to simply be referred to as parents.
2. The language within the Guidelines needs to be more assertive to provide adequate direction to parents – replace "should" with "shall" or "must."
3. Enforcement of the Guidelines is difficult. Would like to see enforcement statutes similar to those regarding child support.
4. Clarify that the Guidelines must be followed unless otherwise ordered by a Court.
5. Include the process for objecting to the Guidelines.
6. These Guidelines are not viewed as a "minimum" by Judges – they are generally followed by the Courts when the parties cannot agree otherwise. Once implemented, it is difficult to increase parenting time beyond these Guidelines.
7. The minimum should be joint physical custody or shared parenting. The alternating weekend schedule was first established in the 1960's and continues 60 years later. Regardless of what kind of parent you were / are, you got alternating weekends with your children.
8. Different shared parenting schedules should be included to give parents an idea of how time can be split.
9. The process for relocation and objection to relocation should be included in the Guidelines.
10. The parenting time granted to a parent is also time for his/her family to visit with the children.
11. Requests for holiday chart that is clear and easy to follow.
12. Include all holidays in a holiday chart.
13. Every other weekend is not adequate parenting time. Would like to extend the weekends to include pick up on Fridays at school and drop off at school on Mondays.
14. Minimize interactions / communications between the parents.
15. The section regarding "Special Circumstances" should be more concise, better defined and applicable to both parents not just the non-custodial parent. Include language that if a "special circumstance" exists, an individual parenting plan needs to be established. Also include information regarding this process.
16. Parents should not be allowed to monitor communications between the other parent and children.
17. One parent should not be allowed to unilaterally reduce future parenting time if the other parent is late in dropping the child off.
18. Include a provision setting forth that military deployments shall not be used against the parent being deployed.
19. A reference to mediation should be included so parents understand this is an option.
20. Mediation should be required before a parent can file a motion to modify parenting time. The process regarding mediation should be clearly stated.

21. Midweek visit on Wednesdays should be an overnight. With activities after school, travel time, homework and supper, there's not enough time to visit with the child.
22. Parents need to be on the same page when it comes to placing the children in activities.
23. If one parent puts a child in an activity during the other parent's parenting time, that time should be required to be made up.
24. It is not clear how time should be made up when parenting time cannot be exercised due to an illness or weather.
25. There should be additional time granted for parenting time when a child is in the 0-5 age range. Data does not support that children from birth to 3 years will be harmed by having the same number of overnights with each parent.
26. Include more educational information regarding the importance of civility and co-parenting between parents, positive communication and involvement of both parents in the lives of their children.
27. Teens and mature children should be allowed to state their preferences of which parent they want to be with before age 18.
28. Request to include electronic communication with their children when they are with the other parent; i.e. FaceTime, Zoom. Concerns expressed regarding alienation of affection and the request to implement statutes prohibiting this from occurring.

COMMISSION FINDINGS

The Commission conducted the public hearings, consulted with experts, reviewed current research and materials presented on the subject matter and reviewed parenting guidelines from other jurisdictions. In working through this process, it became evident that the parenting time guidelines should be revised to provide more clarity to the parents of minor children who are navigating separation or divorce. The more clarity that is granted, the potential for conflict is reduced.

* The Guidelines are not intended to serve as a substitute for the advice of competent licensed professionals.

* Previously, a formal process by which the Parenting Time Guidelines would be modified did not exist.

* The Guidelines are designed to assist parents in the development of their own parenting plans. In the event the parties cannot create their own parenting time agreement, these guidelines represent the minimum time a parent should have to maintain meaningful and continuing contact with a child.

* Having consistent schedules regarding parenting time is generally in the best interests of children.

* It is impossible to address every individual situation and resolve the same in the Guidelines. They are designed to address the most common circumstances.

RECOMMENDATIONS

The Commission recommends that the South Dakota Supreme Court adopt the attached South Dakota Parenting Guidelines. The proposed changes to the Guidelines are substantial and can be characterized as a rewrite. The use of track changes made the entire document difficult to read. Therefore, a summary of the changes follows:

- Reorganization of the document with the distribution of parenting time appearing first;
- Removing the terms “noncustodial,” “custodial” and “visitation”;
- Using more clear and concise language to ideally minimize the opportunities to “interpret” the intention;
- Increasing alternating weekends to begin at the time school is recessed for the day and concluding when the child is delivered to school;
- Increasing the mid-week parenting time for kids over the age of 5 to start after school and conclude the next morning when returned to school;
- Including holiday calendars with specific times identified;
- Clarifying that the Guidelines are not intended to address shared parenting or other specific circumstances; and
- Identifying process and forms associated with enforcement of the Guidelines.

Based on public feedback, the Commission recommends that a training be offered to circuit court judges regarding family law and the effect these situations can have on the parties and their children as well as the implementation and enforcement of parenting time guidelines.

SOUTH DAKOTA PARENTING GUIDELINES

Prepared by the 2021 South Dakota
Commission on Parenting Guidelines

The South Dakota Parenting Guidelines are located on the South Dakota Legal Self-Help Center found at www.ujslawhelp.sd.gov

For more information, contact:

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

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Enforcement.

These Guidelines are required to be served with the Summons and Complaint in a divorce, paternity action or any other custody action or proceeding. *See* https://ujslawhelp.sd.gov/onlineforms.aspx under divorce or paternity actions for instructions on how to initiate an action (service of summons).

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

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

Instructions and forms regarding enforcement can be found at https://ujslawhelp.sd.gov/enforcement.aspx.

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

1.1. Children Under Age 5 Generally.

- Newborns (birth to 3 months) and infants (3 – 6 months) have a great need for continuous contact with their primary caregiver, but also frequent contact with both parents who provide a sense of security, nurturing and predictability.

- Generally, overnights for very young children is not recommended unless the parents are both very closely attached to the children, are able to personally provide primary care, the children are adaptable, and the parents are cooperative.

- Older children are able to tolerate more and longer separations from one parent or the other.

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

1.2. Birth until 3 Months. Three, 2-hour parenting time periods per week and one weekend parenting time period for 6 hours. In situations where both parents have been engaged in an ongoing caregiving

routine with a nursing child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the child and maintain stability for the child. If applicable, breastfeeding shall be accommodated, but the parents must cooperate in working out alternatives. *See* 1.8 below.

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

(1) Three, 3-hour custodial periods per week and one weekend day for 6 hours. If applicable, breast feeding shall be accommodated but the parents must cooperate in working out alternatives; or

(2) Three, 3-hour custodial periods per week and one overnight on a weekend not to exceed 18 hours, if the parent is capable of personally providing primary care. See exceptions in Section 1.8 below; or

(3) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

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

(1) Three, 4-hour parenting time periods per week and one weekend day for 6 hours; or

(2) Three, 4-hour parenting time periods per week and one overnight on a weekend not to exceed 18 hours, if the child is not breastfeeding and the parent is capable of personally providing primary care; or

(3) Children spend time in alternate homes, but spends significantly more time in one parent's home and no more than 1-2 overnights spaced regularly throughout the week at the other parent's home; or

(4) In situations where both parents have been engaged in an ongoing caregiving routine with a child, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

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

(1) Three, 8-hour parenting time periods per week on a predictable schedule; or

(2) Three, 8-hour parenting time periods per week on a predictable schedule and one overnight per week not to exceed 18 hours; or

(3) Children spends time in alternate homes, but with significantly more time in one parent's home with 1-2 overnights spaced regularly throughout the week. This arrangement requires adaptable children; or

(4) In situations where both parents have been engaged in an ongoing caregiving routine with the children (nursing or otherwise), overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

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

(1) One overnight parenting time period not to exceed 24 hours and two additional 8-hour parenting time periods each week, separate from the overnight, with the children returning to the other parent's home at least 1 hour before bedtime; or

(2) Two to three overnights at one home, spaced throughout the week, the remaining time at the other parent's home. This arrangement requires adaptable children; or

(3) In situations where both parents have been engaged in an ongoing caregiving routine with the children, overnights are allowed to continue as much as possible to provide the same caregiving arrangement to the children and maintain stability for the children.

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

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

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

a. For children being exclusively breastfed, the nursing child can still have frequent parenting time with the other parent. The amount of time will be guided by/subject to the infant's feeding schedule, progressing to more time as the child grows older. Both parents should be mindful that a feeding may occur, and the child may return to time with the other parent after the feeding.

b. Where both parents have been engaged in an ongoing caregiving routine with a nursing child, the same caregiving arrangement should be continued as much as possible to maintain stability for the children.

c. If the other parent has been caring for the children overnight or for twenty-four hour periods while the nursing mother sleeps or works, that arrangement should/shall continue.

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

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

Holiday	Details	Even-Numbered Years	Odd-Numbered Years
Martin Luther King, Jr. Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
President's Day weekend	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Easter weekend	8:00 a.m. Friday – 8:00 a.m. Monday	Parent 2	Parent 1
Mother's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 1
Memorial Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Juneteenth (6/19)	8:00 a.m. – 8:00 a.m. the following day	Parent 1	Parent 2
Father's Day	8:00 a.m. – 8:00 a.m. the following day	Parent 2	Parent 2
4th of July	5:00 p.m. July 3rd – 5:00 p.m. July 5th	Parent 1	Parent 2
Labor Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 1	Parent 2
Native American Day	5:00 p.m. Friday – 8:00 a.m. Tuesday	Parent 2	Parent 1
Halloween	3:00 p.m. – 8:00 p.m.	Parent 1	Parent 2
Thanksgiving	8:00 a.m. Thursday – 5:00 p.m. Sunday	Parent 2	Parent 1

Christmas Eve	8:00 a.m. Christmas Eve – 8:00 a.m. Christmas Day	Parent 2	Parent 1
Christmas Day	8:00 a.m. Christmas Day – 8:00 a.m. December 26th	Parent 1	Parent 2
Child's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 1
Parent 2's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 2	Parent 2
Parent 1's Birthday	Ages 0-3 = 4 hours Ages 3-5 = 8 a.m. on date of birthday – 8:00 a.m. the next day (If the birthday falls on a holiday, the parenting time for the birthday shall take place the day before)	Parent 1	Parent 1

1.10. Vacation With Children 3 – 5 Years Old. Upon 30 days advance written notice (by mail, email or text message), each parent is entitled to two separate periods of uninterrupted time for up to 5 days each with their children each year, not to conflict with the other parent's holiday parenting time. Parents are encouraged to coordinate vacation plans. The parents shall consider extending the 5 day time periods to 7 days if the children are adaptable and accustomed to spending time with both parents.

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

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

2.1. Weekends. In most cases, it is a positive experience for the children to have both parents involved in taking the children to and from school. Parenting time shall consist of alternate weekends starting Friday upon the release of school or 3:15 p.m., whichever is applicable, and continuing until the return to school Monday or 8:00 a.m., whichever is applicable. Parenting time shall be an equivalent period of time if a parent is unavailable on weekends and the children do not miss school.

2.2. Mid-Week. If time and distance allow, parenting time shall include one mid-week overnight every week, in addition to the weekends in 2.1 above, with the children. If the parents cannot otherwise agree, this mid-week time shall be on Wednesdays and shall start when the children are released from school or at 3:15 p.m., whichever is applicable, and concludes when the children are returned to school the next day or at 8:00 a.m., whichever is applicable. All transportation for the midweek parenting time is the responsibility of the parent exercising the parenting time.

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

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

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

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

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

Holiday / Special Event	Details / Times	Even-Numbered Years	Odd-Numbered Years
Martin Luther King Jr. Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
President's Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2

Easter weekend	Starts when school is released for the holiday weekend and ends at 8:00 a.m. on the day school recommences after the holiday weekend.	Parent 2	Parent 1
Spring Break, if one is designated separately from Easter	Starts when school is released for Spring Break and ends at 8:00 a.m. on the day school begins after the break. If a spring break is not granted by the school, this provision would not apply. Also, if the spring break is combined with Easter, this provision would not apply.	Parent 1	Parent 2
Mother's Day	Starts at 8:00 a.m. on Mother's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 1	Parent 1
Memorial Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Juneteenth	Starts at 8:00 a.m. on 6/19 and ends at 8:00 a.m. on 6/20	Parent 1	Parent 2
Father's Day	Starts at 8:00 a.m. on Father's Day and ends at 8:00 a.m. on Monday; one overnight.	Parent 2	Parent 2
4th of July	Begins July 3 at 5:00 p.m. and ends July 5 at 5:00 p.m.	Parent 1	Parent 2
Labor Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Native American Day weekend	Starts when school is released on Friday or 3:15 p.m., whichever is applicable, and ends when the children are returned to school on Tuesday or at 8:00 a.m., whichever is applicable.	Parent 2	Parent 1
Halloween	Starts on 10/31 when school releases for the day or 3:15 p.m., whichever is applicable, and concludes on 11/01 when school resumes or at 8:00 a.m., whichever is applicable.	Parent 1	Parent 2
Thanksgiving weekend	Starts when school releases on Wednesday or 3:15 p.m., whichever is applicable, and ends Monday at 8:00 a.m.	Parent 2	Parent 1
Christmas Eve	Starts on 12/23 at 8:00 a.m. and concludes on 12/25 at 8:00 a.m.	Parent 2	Parent 1
Christmas Day	Starts on 12/25 at 8:00 a.m. and concludes on 12/27 at 8:00 a.m.	Parent 1	Parent 2
1st half of winter break	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 1	Parent 2
2nd half of winter break, including New Year's holiday	The winter break starts when the day the children are released from school for the break and continues to the morning of the day the children return to school. The 48-hour parenting times for each Christmas Eve and Christmas Day are not included in the division of the winter break.	Parent 2	Parent 1

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

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

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

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

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

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

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

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

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

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

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

3.4. Notice. At least sixty (60) days' notice (recommended to be by mail, email, or text message) shall be given by the parent who lives more than 200 miles away from the children of the date for commencing extended summer parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to

give the precise number of days' notice does not entitle the parent with primary residence of the children the right to deny the other parent parenting time with the children.

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

- If the parent who lives more than 200 miles away wants to travel, at his/her sole expense, to visit with his/her children, this parenting time shall be accommodated for a reasonable time period of no less than 48 hours. However, this is not intended to be exercised more than every other weekend;

- Where distance and finances permit, additional parenting time for the parent residing more than 200 miles away from the children, such as holiday weekends or special events, is encouraged. Parents are encouraged to reference the holiday schedules set forth in Section 2.4 when determining the allocation and duration of other holidays; and

- When the parent who lives 200 miles away is in the area where the children reside, or the children are in the area where this parent resides, liberal time with the children based on the circumstances must be allowed. Circumstances will vary and may only allow for a quick visit or may allow for overnight parenting time.

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

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

Guideline 4. General Rules Applicable to All Parents

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

4.2. Relatives. Children will usually benefit from continued contact with all relatives on both sides of the family. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit the paternal relatives

during times when the children are with their father and the maternal relatives during times when they are with their mother. This may include allowing the children to spend time with these relatives even when the parent is not present.

4.3. Relocation. Relocation is governed by South Dakota state law. *See* SDCL 25-4A-17. Instructions and forms on how to comply with the requirements surrounding relocation, as well as how to object to a parent's notice of relocation, can be found at www.ujslawhelp.sd.gov.

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

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

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

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

cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements unless previously paid by the other parent. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

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

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

4.8. Withholding Support or Time with the Children. Neither time with the children nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children generally have a right both to support and, time with both parents, neither of which is dependent upon the other. In other words, if the parent ordered to pay child support fails to do so, he/she is still entitled to their parenting time. Likewise, if one parent denies the other parent parenting time, child support payments must still be made.

Forms and instructions on how to enforce your parenting time can be found on the South Dakota Legal Self-Help Center at https://ujslawhelp.sd.gov/onlineforms.aspx.

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

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

peer involvement and for some control of their own lives may place them on different schedules from their younger brothers and sisters.

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

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

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

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

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

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

4.16. Daycare Providers. When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

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

Legal Notice.

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

Laws and interpretations of laws change frequently, and the material contained in these Guidelines have important legal consequences. In using these Guidelines, parents are responsible for determining the applicability of any information contained in this document to their situation and are strongly encouraged to seek professional legal and other expert assistance in resolving their parenting time issues. Parents will often benefit from getting advice from mediators, counselors, therapists, parenting coordinators and lawyers to help them make a parenting time schedule.

Definitions.

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

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

> Joint Legal Custody – "[B]oth parents retain full parental rights and responsibilities with respect to their child[ren] and so that both parents must confer on, and participate in, major decisions affecting the welfare of the child[ren]." *See* SDCL 25-5-7.1.
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> Sole Legal Custody – one parent shall have the right and responsibility to make the decisions related to health, education and welfare of the children.

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

Shared Parenting.

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

Scope of Application.

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

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

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

A parent who believes one or more of the above situations exists should file an Objection to the Implementation of the South Dakota Parenting Guidelines (UJS Form 372). This form can be found at https://ujslawhelp.sd.gov/defendants.aspx. The opposing parent should also file a response to this Objection and should appear at the hearing.

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

to a proceeding may refer to these Guidelines in requesting changes to their parenting time order after the effective date of the Guidelines.

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

Additional Resources

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

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

Tips to Stay Focused on the Children

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

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

1. Children of separated parents do best in both the short-term and the long-run when they feel loved and cared for by both parents;

2. Children generally do better when both parents have stable and meaningful involvement in their children's lives;

3. The strength of a parent's relationship to a child is affected more by parental commitment, warmth and the ability to meet the child's needs than it is by time spent with the child (i.e. quality vs. quantity);

4. Each parent has different and valuable contributions to make to their children's development;

5. Children should have structured routine time (such as bedtime and doing homework) with each parent, as well as unstructured time (such as playing in the park);

6. Parents should help their children maintain positive existing relationships, routines and activities;

7. Children may find security in personal possessions, like a favorite stuffed animal or blanket. Children should be permitted to bring personal possessions back and forth between homes, regardless of which parent purchased them; and

8. Parenting plans may need to be adjusted over time as the needs and circumstances of parents and children change.

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

1. Children shall not be put in a position to "choose" between the parents. Children must not be made to feel guilty about having a good time with the other parent;

2. Each parent should strive to show respect for the other parent;

3. Each parent must support the child's relationship with the other parent and encourage them to enjoy themselves with the other parent;

4. Children shall not be expected to communicate messages between parents, regarding parenting time, financial matters or issues about which parents disagree;

5. Parents should exchange the children in a respectful manner;

6. A parent should consider allowing their children to attend important family celebrations and events with both sides of their family, even when the events occur on the other parent's parenting time;

7. Differences between the parent's homes may occur (i.e. daily routines, activities, and diet). Parents should remember these are merely "differences" and are not necessarily a "better" or "worse" practice;

8. Children need consistency in both homes (i.e. bed times, meal times, medications etc.);

9. If one parent has been significantly more involved with the care of the child before separation, that parent may need to help the other parent gain the skills and knowledge to care appropriately for the child and support the development of a positive relationship between the child and the other parent, unless there are legitimate concerns about the other parent's capacity to care for their child. Both parents will need to approach this transition in a cooperative manner.

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

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