

What is “parenting time” and how is it decided?

Parenting time used to be called “visitation.” It is the time a parent spends with a child. It does not matter who is named as the custodial parent, but most people use the term parenting time to talk about the time the noncustodial parent spends with the child. The court decides parenting time according to the best interests of the child. The court cannot take away parenting time or stop you from having parenting time because you cannot pay child support.

Generally the court wants the noncustodial parent to have parenting time with the child, unless there are reasons it is a bad idea, like abuse or harm. In setting up parenting time, the court will look at things like:

- The age of the child and,
- What kind of relationship the child has had with the noncustodial parent. For example, how often has the noncustodial parent seen the child? Has the noncustodial parent’s time with the child usually included overnights?

Because the court wants to know about your past relationship with the child, it is a good idea to write things down, like the time you spend with your child. You can write it on a monthly calendar. Keep track of the dates and time that you spend with your child. Give this information to the court when you make your request for parenting time. This information can help the court when it is deciding how much parenting time to give you.

What else will the court look at when deciding parenting time?



On **January 1, 2007**, a new law started that says “in the absence of other evidence, there is a rebuttable presumption that a parent is entitled to receive **at least 25 percent** of the parenting time for the child.”

This means that the court will try to make sure that the child spends at least 25 percent of the time with each parent. The court figures out how much 25 percent is by counting the number of overnights. For example, 25 percent of the overnights in one month (4 weeks) would be 7 overnights. The court can use a different method for determining 25 percent if the parent spends a lot of time on separate days with the child but no overnights. So the 25 percent parenting time might be 7 full weekend days but no overnights. The court may also consider the age of the child. For very young children, it may not be a good idea for the noncustodial parent to have overnights right away. So the court can consider the age of the child and order some other way to get the 25 percent parenting time.

Also **new** is a **6-month review hearing option** after the court first decides custody or parenting time. See page 29 for more information.

The court will also look at:

- **Order for Protection.** If there is an Order for Protection because of domestic abuse between the mother and father or an Order preventing the father's contact with the child, the court has to take this into account when making a decision about parenting time.
- **Serious criminal convictions.** If you have been convicted of a serious crime, you may have to prove that you should have time with your child. The serious crimes that count in this category are:
 - murder or manslaughter
 - assault in the first, second or third degree
 - kidnapping
 - deprivation of custodial or parental rights
 - prostitution charges involving a minor
 - criminal sexual conduct in the first, second or third degree
 - incest or solicitation of a child to engage in sexual conduct
 - malicious punishment or neglect of child
 - terroristic threats or felony harassment or stalking.

When both boys and girls are reared with engaged fathers they demonstrate a greater ability to take initiative and evidence self-control.



Kyle Pruett

You will have to prove that you should get time with your child if the conviction was in the last 5 years, or if you are still incarcerated, on probation, or under supervised release for the offense. You will also have to prove that you should get time with your child if the victim of your crime was a household or family member. You have to convince the court that you should have parenting time or custody rights by showing that it is in the child's best interest to spend time with you.

If you think this section may apply to you, you may want to seek advice from a lawyer before taking any court action.

- **Guidelines on Ordering Parenting Time.** The court has “**A Parental Guide to Making Child-Focused Parenting Time Decisions.**” This is a document that helps judges make parenting time decisions. It takes into account the child's age and development. For example, the Guidelines suggest shorter but more visits between a noncustodial parent and an infant. But longer visits and maybe overnights for a teenager. You can get a copy of the guide by calling the Court Services Division of the Minnesota State Court Administration at (651) 297-7587.

It is also available online at:

www.mncourts.gov/documents/0/Public/Court_Information_Office/PARENTING_TIME_PAMPHLET.pdf

- **Other issues that affect the child's best interests.** A child who has severe medical problems or other special needs, like autism, may need a different schedule of parenting time. A parent's parenting time may be figured out differently to fit with that child's physical or emotional development.

How to Get Court-Ordered Parenting Time

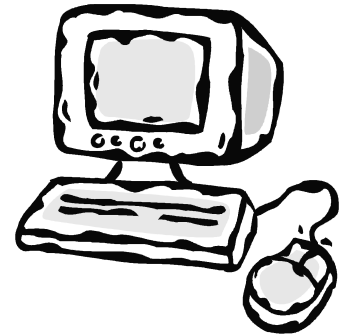
If you are pro se (without an attorney) the exact type of paperwork you need to file with the court to set parenting time depends on whether you signed a Recognition of Parentage or have a Paternity Order from court. Please note that some courts have their own forms or procedures that may be different from what is stated here or on the state court website. Check with the court where you are filing the form.

If you signed a Recognition of Parentage (ROP), and you do not have an attorney, you can ask the court for parenting time by filing a **Motion to Establish Custody and Parenting Time.** This form is available online or from any district court administrator. See the **resource** section at the end of this guide. You may need the original copy of your ROP (a yellow or green copy) or a certified copy of your ROP before you can file this court action.

How do I get a copy of my ROP?

To get a certified copy of your ROP, you must fill out a form asking for it with \$9 in a check or money order to the Minnesota Department of Health. You can find the form to ask for an ROP at the end of this guide (page 44), or online at: www.health.state.mn.us/divs/chs/osr/ropform.pdf

The Minnesota Department of Health address is on the form. It may take several weeks to get the certified copy of your ROP in the mail.



If you have a Paternity Order, the Order should tell you what your parenting time rights are. Sometimes a Paternity Order says “reasonable parenting time.” This means that the times you get to see your child are not set. You and the mother are supposed to make your own plans for your parenting time. If you disagree, the parent who has physical custody of the child makes the final decision. The only way to change this is to go to court.

To change your order from “reasonable” to a set schedule of time, you can ask the court to change your parenting time rights by filing a **Motion for Parenting Time Assistance.** You can also use this form if you were not given any rights in the Paternity Order. You can get the form online or from any district court administrator. See the **resource** section at the end of this guide. You may need a certified copy of your paternity order before you can file paperwork in court.

How do I get a copy of my paternity order?

To get a certified copy of your paternity order, you need to go to the Family Court Division at District Court. Ask for Family Court Records for the county where the Paternity Order was done. If you live outside the metro area in a smaller county, there might not be a family court division within District Court. If this is the case, ask at District Court for a copy of your order. Because paternity cases are private files and not open to the public, you need to have a photo I.D. to see the file. Most counties charge around \$10 for a certified copy of the order.

What will the court decide if I bring an action for parenting time?

Even if you ask the court to just give you parenting time and are not asking the court to decide legal or physical custody, the court will usually decide those things anyway. This is because once the court gets involved, it must decide the other parental rights of custody along with parenting time.

What if I want to change my parenting time?



IMPORTANT: If there is not already a child support order, the court may set a child support order when you go to court and ask for parenting time. If you are filing a court action without an attorney, it is important that you file with the court and serve on the other party all of the required forms for your court action, including the Financial Affidavit and supporting documentation described on page 28.

Parenting time is easier to change than custody. With parenting time, the court looks at the best interests of the child. A court will look to see if the situation of the child has changed since the most recent court order and if a new court order is needed for the child's best interest. You will have to state good reasons based on changes in the life of the child and parents since the last court order in order to get the court to change your parenting time. Or, parents can agree to change parenting time.

What if I am not getting my parenting time?

If you have a court order giving you a parenting time schedule that the custodial parent is not following, you can ask the court to help you fix your parenting time problem. If you do this without an attorney, you need to file a **Motion for Parenting Time Assistance**. You need to be able to tell the court the dates, times, and ways that the custodial parent has denied or caused you a problem with your parenting time.

You can ask the court for extra time with your child to make up for the time that you did not get. This is called "compensatory parenting time." You can ask the court to fine the other party. The money from a fine goes to the county, not you. The court has other ways to help you. They are listed in the **Motion for Parenting Time Assistance**.

If the problems you have with your parenting rights are serious, the court can hold the custodial parent in contempt of court. In some cases, the problems may be bad enough that a court gives physical custody to the non-custodial parent.

Can the court restrict my parenting time?

If the court finds that parenting time is likely to harm the child physically or emotionally, then the court can restrict parenting time or not give any time to you at all. The court is not supposed to restrict parenting time rights until there is a hearing on whether the restrictions are necessary. If there is an emergency or an Order for Protection, then there does not have to be a hearing before the restrictions are put in place. But there should be a hearing later, if you ask for it.

Restrictions on parenting time can be things like ordering that another adult be present during the visit, ordering that the supervised parenting time is at an agency, or ordering that the parent remain sober during the visits. It is important to follow these rules, even if you do not agree with them or like them. Often when the court orders things like this, it is doing it only until it has more information about what is needed long-term for the best interests of the child. Sometimes the rules remain in place until a new court order is made. Other times the rules might end when the temporary order containing the restrictions ends. It is the responsibility of the parent with the restrictions to follow the order and/or get a new order without restrictions if the situation changes.

For more information about supervised parenting time at a parenting time facility, refer to the Written Resources section at the end of this booklet.

Do I have to go to court?

No. Parents can always agree on how the child should spend time with the parents. If you make an agreement with the other parent, make sure that you do these things:

- **Write it down!** Make sure you put down the details of the agreement. Things like the dates and times of parenting time. For example, the noncustodial parent will have time with the child every other Friday

The court is the only place that can establish and enforce your rights as a father.



from 6 pm to Sunday at 5 pm. Decide who is responsible for transportation and where the exchanges will take place. Both parents may want to sign and notarize this agreement. **This agreement is not binding by the court or law enforcement, but is evidence that you did have an agreement if you need to go to court later. This agreement will not protect you the same way that a court-ordered parenting time order will protect you.**

- **Keep written records** of the time you spend with your child. A good way to do this is to write down on a calendar all the days and nights you spend with your child.
- **Keep a written list of phone calls** made to the other parent about your agreements.
- **Remember**, even if you and the mother agree now, you may not agree in the future. If you do not have court-ordered rights in place, no one HAS to give you notice of certain decisions involving your child. Even if you get notice, you might not have a say in those decisions.



There are certain things you do NOT want to do:

- **Do not make an agreement** if there is an order from court telling you to stay away from the other parent and/or child. This order may be called an Order for Protection, Harassment Restraining Order, or may be an order from Criminal Court or an order from Juvenile Court.
- **Do not stop paying child support** because you cannot see your child. You are still legally responsible for financially supporting your child even if you are prevented from spending time with your child.
- **Do not threaten** the other parent into letting you see your child.

I've heard about mediation. How does this work?

Mediation is a way to make an agreement with outside help. Mediators do not take sides. They are trained in working with parents on disputes, and they can help you and the other parent reach an agreement, which you may want to take to court. To find a list of mediators, contact your local court, legal aid or legal services agency, or a social service agency. Remember, mediators can help you come to an agreement, but that agreement is not legal until it is made into a court order.

What are "Parenting Plans"?

Minnesota has something called a "Parenting Plan" for parents who are divorced or never married. At the very least, parenting plans must have:

- a schedule of the time that each parent spends with the child
- rules about who will make what decisions about the child and
- a way to solve disputes.



Parents can use terms other than physical and legal custody in setting out their roles and responsibilities in a parenting plan. The terms used must be defined in the parenting plan. It is important to remember that even though you may use other terms, the plan has to set legal and physical custody so that the plan can be enforced.

Parents who agree to make a parenting plan of their own free will can put other things besides custody and parenting time in the plan. Like how to decide when and if the child can be in extra-curricular activities and who would pay for those activities. Parenting plans often have more details than a typical court order about how parents are going to care for their children together. For more information, see Minnesota Statutes section

518.1705 and the Written Resources Section at the end of this booklet.

What if these options don't work?

If you are having problems with being able to see your child, you could write letters to the child's mother about your efforts and your wishes to see the child. **Do not do this if there is an Order for Protection or No Contact Order in place telling you not to contact the mother.** If you send letters, keep copies. Sometimes people send letters like this by certified mail with return receipt to prove they were sent. Parents who are not getting along sometimes find it easier to use letters or third parties to set up parenting time for the child and other parent.

If you do not have any luck with the above options, you probably need to go to court so that you can see your child. **The court is the only place that can establish and enforce your rights as a father.**