

THE LAW AND CHILDREN

Your rights and obligations as a parent



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YOUR RIGHTS AS A PARENT

Both parents have the same rights to the children. No parent has more or less right to the children than the other. No parent has custody of the children to the exclusion of the other. These rights can only be limited by a court order.

When parents decide to divorce, or one petitions for custody . . .

Until a court enters an order stating otherwise, both parents continue to have equal rights to the children. In the course of a divorce or custody action, certain provisions go into effect.

While the divorce or custody action is pending, the law provides that, unless it is shown to be detrimental to the child, the child shall have equal access to both parents until a custody order is entered.

In considering custody issues, the court considers what is in “the best interests of the child.” Neither parent is entitled to preference in making a custody decision. The court considers many factors in determining whether shared custody is appropriate or not. Shared custody means that the child is supposed to have “frequent and continuing contact” with each parent.

A parent who is not granted custody still has certain rights. That parent still has a right of access to medical, dental, school, and other records of the child, the same as the parent granted custody.

After the court enters a custody order . . .

Both parents are obligated to follow the terms and conditions of the court order. Failure to do so is contempt of court. If a custodial parent willfully prevents visitation of a child, when there is a court order providing for visitation, and there is no just excuse (such as severe illness), the custodial parent could be liable for monetary damages under the law. In addition, failure to comply with a visitation order may provide a basis for a change of custody.

After a custody order is entered . . .

Custody orders can only be changed when and if there is a “change of circumstance” which results in the change being in the child’s best interests. This is not always an easy standard to meet, as it requires proof that the situation has changed so much that the best interests of the child require changing the custody order. When deciding

whether modification of the custody order is appropriate, the court looks at many things, including the parents' history paying child support under the order.

When a child is taken into state custody . . .

When a child is taken into state custody, but the parent's rights have not been terminated, the parents still have certain rights, including :

- right to reasonable visitation
- right to consent (or not) to non-emergency major medical care
- right to consent (or not) to an adoption
- right to consent (or not) to marriage of the child
- right to consent (or not) to the child entering the armed service.



YOUR OBLIGATIONS AS A PARENT

Just as both parents have rights to their children, both parents have obligations to their children. These obligations exist even if the parents are not married, and even if the name of both parents is not on the birth certificate.

Duty to Support

Alaska law specifically imposes a duty of support on parents. A.S. 25.20.030 states:

Each parent is bound to maintain the parent's children when poor and unable to work to maintain themselves.

This duty to support your children arises upon their birth, and exists even if there is no court order setting a specific monthly child support amount. The duty to support is more than just paying a monthly amount. It includes the duty to care for and nurture your children.

This duty does not end when you divorce the other parent, the other parent re-marries, you have other children, or the children are taken into state custody.

Because this duty cannot be disclaimed or avoided, parents owe child support even when the child is being taken care of by someone other than a parent, such as a relative, foster parent, or the state.

Child support is owed to the child, and not to the other parent. The obligation can be set by court order, or by CSED upon application by the custodial parent. The amount of child support is set by Civil Rule 90.3.

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|------------|---|---------------------|
| 1 child | = | 20% adjusted income |
| 2 children | = | 27% adjusted income |
| 3 children | = | 33% adjusted income |
| 4 children | = | 36% adjusted income |

For parents who live in poverty, the child support obligation is set at \$50/month, regardless of the number of children.

Child Support Enforcement Division & The Duty to Support

CSED is the state agency responsible for child support enforcement. CSED enforces the support provisions of court orders. CSED also handles child support cases which do not arise from a court case. CSED has the power to set a child support obligation, even though it is not a court.

Whenever a parent asks for CSED assistance, CSED can open a child support case. CSED will notify the non-custodial parent that a case has been opened and will ask for certain income information. If the non-custodial parent provides that information, CSED will set a monthly child support obligation based upon that income information. If the non-custodial parent does not provide the information, CSED will set the child support based upon imputed income or the amount of state benefits received for the child.

Whenever a parent receives ATAP for a child, CSED will open a case and set a child support obligation. The obligation can be set as an amount equal to the monthly ATAP benefits received, or based on imputed income, if the non-custodial parent does not provide his or her income information.

Whenever a child is taken into state custody, whether placed in foster care or a state facility, CSED will open a case and set a child support obligation for both parents. The state is entitled to this child support, as the state has assumed the parents' duty to support and care for the child.

Dealing with CSED can often be confusing. It is not unusual for a parent to have five or more caseworkers while a case is open. However, there are ways to contest or modify a child support order.

An obligated parent can ask to have a child support order modified. If a court originally entered the order, the parent must go back to the same court and file a motion for modification. Child support orders cannot be modified retroactively.

If CSED set the order, and the order was not based on actual income information about the non-custodial parent, then the parent can file a Motion to Vacate Order with CSED. This requires CSED to go back and use real income information to set the support order.



TERMINATION OF PARENTAL RIGHTS

The only way a parent's rights can be terminated is by court order. This typically occurs in Child In Need of Aid cases, but can also be initiated by one parent against another or in the course of adoption proceedings. The process of terminating a parent's rights is governed by law.

Termination by the State

In order to have a parent's rights terminated, the state must file a petition for termination with the court. The court will then take evidence on factors such as:

- the best interests of the child
- whether the child has been neglected or abused and any harm caused to the child
- whether the parent has solved the problems which placed the child in danger
- the likelihood of returning the child to the parent in a reasonable time
- the effort made by the parent to solve the problems which placed the child in danger
- the likelihood that the harmful conduct will continue
- the history of conduct by or conditions created by the parent.

Termination in Other Cases

It is possible for one parent's rights to be terminated, while the other parent retains his or her rights.



ADOPTION

This information is about state court adoptions. Not all of this information applies to tribal adoption actions. For information about tribal adoptions, contact your IRA or ALSC.

Can my child be adopted without my consent?

In most cases, both parents must consent to the adoption by relinquishing their parental rights. This consent must be in writing, and signed. An adoption cannot usually proceed without written consent from the mother and father of the child, as well as from the child (if older than 10 years).

Sometimes, consent is not required for an adoption to occur. In the following situations, an adoption can proceed without parental consent:

- the parent's rights have been terminated
- the parent has abandoned a child for at least 6 months
- the parent has failed to significantly communicate with the child, without justifiable cause, for at least 1 year
- the parent has failed to provide for care and support of the child, without justifiable cause, for at least 1 year
- the parent withhold consent unreasonably (see A.S. 25.23.050(A)(8))

A father's consent is not required if he was neither married to the mother nor acted to legitimize the child in any way.

Once consent is given, it can usually only be withdrawn within 10 days. Once an adoption decree has been entered, consent cannot be withdrawn.



SOURCES OF INFORMATION

The Family Law Self-Help Center

1-800-494-0851

www.state.ak.us/courts/selfhelp.htm

access to forms and information about the legal process

Alaska Court System – forms

www.state.ak.us/courts/forms.htm

PDF versions of many civil case forms, including divorce, dissolution, and custody

Child Support Enforcement Division

www.csed.state.ak.us

information about CSED services, PDF versions of forms, and online payment information