

# *Family Matters e-Newsletter*



*Amy Edwards*

Family Law

313 West 2nd St. • Greenville NC

(252) 758-3430

[www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com)

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**Passports and Your Kids: Got a Ticket to Ride?**

By Amy A. Edwards

Every child is required to have a passport for overseas travel, regardless of age. At the time this article is written both parents or guardians must consent for the passport to be issued. Both parents are also required to be present with the child to authorize the issuance of a passport for a child under the age of 16. If one parent cannot be present to apply for the passport, he or she must sign and notarize a [Statement of Consent](#). This requirement for parental permission is in addition to all of the routinely required documents.

A parent who requests the passport on his or her own without the consent of the other parent must have a valid court order giving him or her permission to do so. Although the U.S. State Department is a federal agency, it gives a great deal of latitude to court orders from state courts because they issue child custody orders. A NC judge has the authority to issue an order that allows the passport to be issued over the objection of the other parent, or vice versa. Or, the U.S. State Department will recognize an order clearly granting sole custody to one parent. A child custody order can include specific restrictions on the child's travel or restrictions on the parent(s). One parent is also permitted to apply independently if the other parent is declared by court order to be legally incompetent. Judges may issue court orders requiring passports already issued to be surrendered by a parent and held by the court (or some other secured location) until some future date.

The [Children's Passport Issuance Alert Program](#) (CPIAP) is a U.S. State Department program that allows parents to enroll children under the age of 18 who are US citizens. Once a child is enrolled in CPIAP, the U.S. State Department will alert the parent in the event the other parent applies for a passport. Parents may also enroll children for whom a passport has been issued. In that event, the parent will be notified when there is a renewal requested.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of September 2015.

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## Child Custody Mediation in NC Courts

By Amy A. Edwards

### Where Do We Start?

The "magic words" in North Carolina child custody cases are best interest of the child. The Court hears evidence regarding the fitness of the parents, their desires, living accommodations, and the child or children's past, current and prospective situation. A judge must decide which parent will have the authority to make the major decisions affecting the child's life and which will provide the child's day-to-day residential supervision. Sometimes, both parents are awarded custody. This is known as legal custody. The judge will also create a schedule for each parents to spend time with the child or children. This is known as physical custody, which is literally "possession" of the child.

### How Do We Get There?

With rare exceptions, if you file a child custody case, you will be required to attend mandatory child custody mediation. A neutral mediator who is trained to help parents work towards reaching a visitation schedule will try to help you and the other parent find common ground. But the ultimate job of putting together a schedule that works for the family is that of the parties.

## How Does It Work?

Custody mediation is free, and no one but the mediator and the parents may attend the mediation. After attending an orientation program, the parents will attend the actual mediation. When parents live out of town, the program is facilitated by video. If they reach an agreement at the mediation, the attorneys will have the opportunity to review the proposed agreement before it is signed by a judge, becoming a custody order. If no agreement is reached, the case may proceed to trial, or the parents may decide to attend another mediation session if both agree.

## The Goal of the Mediation Process

Mediation is your opportunity to jointly make parenting decisions on your own because if you cannot resolve these issues, a judge will decide them for you. A judge usually creates a specific visitation schedule, which may or not reflect what you like or want, or even what the other parent likes or wants. Therefore, it is best to attempt in good faith to resolve custody cases at mediation. Courts warmly welcome custodial agreements made by the parents.

Except in extremely unusual (and rare) circumstances, the non-custodial parent will receive substantial visitation privileges with the child. A typical visitation schedule for a non-custodial parents when both live in the same geographical area might be one in which the non-custodial parent has the child on alternate weekends, one-half of the holidays, several weeks in the summer, and perhaps one night during the week. This is not a required schedule but when both parents work and the children are in school, it tends to become a typical schedule.

*Read more:*

## Things to Consider About Your Parenting Agreement

**Putting Children First: A Booklet for Families in Transition**, from the NC Administrative Office of the Courts.

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## The Basics of Child Support and Health Insurance

By Amy A. Edwards

### Is There Any Insurance?

While there are some exceptions, when a parent has insurance that is "currently available . . . at a reasonable cost" the court is required to "order either parent to obtain and maintain medical health insurance coverage." *Guidelines, page 4*. When is insurance available at a reasonable cost? For now, reasonable cost is defined as insurance that is available at a group rate, which is offered by some employers. This standard has existed for years but it will probably be changed as more parents buy individual policies through the [Health Insurance Marketplace](#).

If health insurance is not available, the court must require parents to provide it when and if it becomes available. Although there is no specific mention of vision insurance in the Guidelines, the court may require a parent to provide dental insurance.

### How Does Insurance Change Support?

In North Carolina, Child Support Guidelines start with the gross incomes of parents, before any taxes or other payroll deductions, to determine the child support obligation. Then, the support obligation is adjusted to account for payment of work-related child care and/or health insurance. When parents (or

their spouses) pay premiums for a child's coverage, that parent is credited and the amount of support is adjusted accordingly. It is not a dollar for dollar credit, which means it is essentially prorated between the parents so they are sharing the cost.

### **How Much is Credited to the Parent?**

A parent is entitled to a health insurance credit only for the cost to cover the child or children. When a parent has a family insurance policy, it is important to obtain an itemization of the premium cost. For example, if a family insurance plan is \$300 per month, and the cost to cover only the employee is \$100 per month, the amount credited for the children would be \$200 per month. If no itemization is available, the cost is divided by the number of people covered by the plan. The insurance premium is often paid by payroll deduction. Note that if a parent's employer pays the health insurance premium directly to the insurer on behalf of the parent, the parent receives no credit because he or she has not paid anything for it. But, it is not considered as income for child support purpose.

Read more:

[\*\*How Child Support is Calculated\*\*](#)  
[\*\*Child Support When Self-employed\*\*](#)

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## ***New NC Law:***

### **Permanent No-Contact Orders For Victims of Sexual Assault**

By Amy A. Edwards

Although there are civil domestic violence protective orders and no-contact orders, NC has only recently created the third type of civil order of this nature, a permanent no contact order for sexual assault victims (NCSAV). All portions of this law, Session Law 2015-91, will be effective by December 1, 2015. A permanent NCSAV may be obtained when there is a conviction of certain sexual offenses specified by the NC General Statutes against a victim that occurred in NC.

An adult may seek a NCSAV on behalf of a victim who has been declared incompetent, or a victim who is minor child (under age 18). A NCSAV is permanent, and it remains in effect until the death of the defendant. This civil remedy is available only if the victim did not seek a NCSAV in the criminal case. The new law allows the victim to seek the NCSAV when there are "reasonable grounds exist for the victim to fear future contact" with the defendant. The filing fees paid to the court are waived. The evidence rules generally prohibit the defendant from questioning the victim about her prior sexual activity or reputation of the victim, although there are some exceptions. The judge can order the defendant:

1. Not to contact the victim by phone, written communication, or electronic

means.

2. Not threaten, visit, assault, molest, harass, abuse, injure or otherwise interfere with the victim, including the victim's place of employment.
3. Not follow the victim, including at his or her workplace.
4. Not enter or remain at the victim's residence, school, place of employment, or other specified places at times when the victim is present.
5. The law specifically adds a "catch-all" remedy for a judge to deal with a case as he or she sees fit, giving the authority to "order other relief deemed necessary and appropriate by the court."

All state law enforcement agencies must enforce NCSAVs by arresting the defendant without a warrant where there is probable cause to believe the defendant knowingly violated the order. NCSAVs may be enforced by contempt powers of the court, which includes the possibility of incarceration, as well as through the criminal system as a Class A-1 misdemeanor.

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Amy A. Edwards

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