

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

846Z0146

SENATE JUDICIARY ENGROSSED NO. **SB 165** 2/1/2018

Introduced by: Senators Nelson, Jensen (Phil), Russell, and Stalzer and Representatives Pischke, Dennert, DiSanto, Kaiser, Marty, and Wiese

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding child custody and
2 visitation and the enforcement of those provisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-4A be amended by adding a NEW SECTION to read:

5 Any order of the court for parenting time shall have attached a copy of § 25-4A-5.

6 Section 2. That chapter 25-4A be amended by adding a NEW SECTION to read:

7 If a noncustodial parent believes that the custodial parent has violated § 25-4A-5, the
8 noncustodial parent may file with the court clerk a motion for enforcement of visitation rights.
9 The motion shall be filed on a form provided by the court clerk. Upon filing of the motion, the
10 court shall immediately set a hearing on the motion, which may not be more than twenty-one
11 days after the filing of the motion.

12 Section 3. That § 25-4A-5 be amended to read:

13 25-4A-5. If the court finds that any party has willfully violated or willfully failed to comply
14 with any provisions of a custody or visitation decree, the court shall impose appropriate



1 sanctions to punish the offender or to compel the offender to comply with the terms of the
2 custody or visitation decree.

3 ~~Sanctions which the court may, in its discretion, order include~~ The court may enter an order
4 clarifying the rights and responsibilities of the parents and the court's order. The court may order
5 one or more of the following sanctions:

6 (1) To require the offender to provide the other party with make up time with the child
7 equal to the time missed with the child, due to the offender's noncompliance;

8 (2) To require the offender to pay, to the other party, court costs and reasonable
9 attorney's fees incurred as a result of the noncompliance;

10 (3) To require the offender to pay a civil penalty of not more than the sum of one
11 thousand dollars;

12 (4) To require the offender to participate satisfactorily in counseling or parent education
13 classes;

14 (5) To require the offender to post bond or other security with the court conditional upon
15 future compliance with the terms of the custody or visitation decree or any ancillary
16 court order;

17 (6) To impose a jail sentence on the offender of not more than three days; or

18 (7) In the event of an aggravated violation or multiple violations, the court may modify
19 the existing visitation or custody situation, or both of any minor child.

20 The provisions of this section do not prohibit the court from imposing any other sanction
21 appropriate to the facts and circumstances of the case.

22 Section 4. That chapter 25-4A be amended by adding a NEW SECTION to read:

23 The Unified Judicial System shall develop and maintain the form required by section 2 of
24 this Act. The form shall be used for a motion to enforce visitation rights. The form shall be as

1 follows:

2

3 STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

4

SS.

5 COUNTY OF _____

_____ JUDICIAL CIRCUIT

6 _____, Petitioner/Plaintiff,

7 v.

8 _____, Respondent/Defendant.

9 Case No. _____

10

11 MOTION FOR ENFORCEMENT OF NON-CUSTODIAL PARENT VISITATION RIGHTS

12 The undersigned Non-Custodial Parent in the above case moves the Court, pursuant to the
13 provisions of § 25-4A-5, to enforce visitation rights which have been unreasonably denied or
14 interfered with by the Custodial Parent.

15 The Name(s) and Age(s) of the Child(ren) to which my visitation rights have been unreasonably
16 denied are:

17 _____

18 Date of Birth: _____

19 _____

20 Date of Birth: _____

21 _____

22 Date of Birth: _____

23 The approximate date of my last visit with the Child(ren) was:

24 _____.

1 Within the past 12 months, I have visited with the Child(ren)

2 approximately _____ of times of visitation times.

3 Within the past 12 months, I have been denied requested visitation approximately _____

4 of times of ordered visitation times.

5 On the attached page, I have stated THE SPECIFIC DETAILS as to how and when my visitation

6 with the Child(ren) was denied.

7 Signed under penalties of perjury this ____ day of _____, 20__.

8 _____

9 Petitioner Signature

10 My Full Name:

11 _____

12 My Mailing Address:

13 _____

14 My Telephone Numbers:

15 _____

16 _____

17 _____

18 15 Subscribed and sworn to before me this ____ day of _____, 20__.

19

20 Notary Public (or Clerk or Judge)

21 My Commission Expires:

22 _____

23 Section 5. That chapter 25-4A be amended by adding a NEW SECTION to read:

24 The order referred to in sections one and three of this Act shall be substantially as follows:

1 ORDER

2 The people of the State of South Dakota, to the within-named defendant:

3 You are hereby directed to appear and answer the foregoing claim and to have with you all
4 books, papers, and witnesses needed by you to establish your defense to the claim.

5 This matter shall be heard at _____ (name or address of building), in
6 _____, County of _____, State of South Dakota, at the hour of _____
7 o'clock of the _____ day of _____, 20___. And you are further notified that in case you
8 do not so appear judgment will be given against you as follows:

9 For the enforcement or modification of custody as requested by the movant. And, in addition,
10 for costs of the action (including attorney fees where provided by law), including costs of
11 service of the order.

12 Dated this _____ day of _____, 20__.

13

14 Clerk of the Court (or Judge)

15 The court shall mail a copy of this order by certified mail, return receipt requested to the
16 non-moving party. The return of service shall be brought to the hearing.