

## Shared Custody

I am often asked about the definition of shared custody. The term “shared custody” appears in the child support section of the Code of Virginia, not the custody and visitation section. It refers to circumstances where one party has custody or visitation for more than 90 days of the year. If that party has custody or visitation for more than 90 days per year, then child support is calculated using the shared custody guidelines, taking into account the number of days each party has custody or visitation with the child. However, if the sole custody guideline amount (calculated when a party has less than 90 days per year) is less than the shared custody calculation, then the lesser amount of support shall be paid.

The next question I am asked is what is considered a “day” for purposes of calculating child support under the shared custody guidelines. Virginia Code Section 20-108.2 defines a day as “a period of 24 hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than 24 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.” The easy way to determine a day is that a full day is a 24 hour period and an overnight is a half day. So, if a party were to have a child from Friday after school until Monday morning, that party would have 2 ½ days for purposes of calculating child support. Under the statute, “the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court.” Most parties try to calculate the days using the calendar year.

While the purpose in the statute was one to compensate a party who had more than the minimum amount of time with his or her child, the unfortunate result has had some parents calculating days for the purpose of obtaining or blocking a shared custody child support calculation. The use of the shared custody calculation should not be applied in a way that is not in the best interest of the child.

**\*\*Legal notes are not legal advice. Because legal problems are factually intensive, the reader must always consult their counsel before acting on any legal matter.**