
Enforcement of Child Custody

417.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance and define the duties of Deputy Sheriffs as it relates to issues of child custody.

417.2 POLICY

The Montgomery County Sheriff's Office understands the issue of child custody is a serious and complex issue, which law enforcement is called upon to intervene and provide guidance and sometimes assistance with the enforcement of court orders regarding custody of minor children.

417.3 DEFINITIONS

1. "Uniform Child-Custody Jurisdiction and Enforcement Act and Uniform Deployed Parents Custody and Visitation Act." shall mean the guidance provided by N.C. General Statute 50A.
2. "Child" means an individual who has not attained 18 years of age or has been emancipated by a court of proper jurisdiction.
3. "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
4. "Issuing state" means the state in which a child-custody determination is made.
5. "Temporary Custodian" shall mean a place, institution or organization i.e. school, church, day care, civic or youth organization.
6. "Child Custody Warrant" shall mean a warrant issued by a Judge under the authority of N.C. General Statute 50A-311 requiring law enforcement to take physical custody of a minor child.

417.4 DUTIES

Deputy Sheriffs shall recognize the issue of child custody is a civil matter and normally law enforcement does not have jurisdiction in determining who is or should be the main caregiver or guardian of a minor child without the presence of a valid court order. Frequently, child custody orders will state which parent is entitled to custody of the child and might even order one parent to deliver the child or turn over custody to another parent. Deputies should not get involved in helping the parent get custody in those cases. The only involvement for the Deputy in those cases is to prevent a breach of the peace. The Deputy should only take action if a "Child Custody Warrant" has been issued and the warrant specifically directs law enforcement to take the child and deliver custody to a particular person.

Determination of custody is important, Deputies should determine who is in possession of the child (i.e. parent, step-parent, grandparent, guardian or temporary custodian) at the time they are called to the scene in an effort to best understand what actions may or may not be able to perform.

1. A parent being a mother or father has dual and equal custody of a child unless child-custody determination has been addressed by the courts.
2. A step-parent, grandparent or caregiver has no consideration of custody above a parent unless child-custody determination has been addressed by the courts granting custody to someone other than a parent.
3. If a child is with a temporary custodian, (i.e. school, church, day care, civic or youth organization) then it shall be the responsibility of said temporary custodian to seek legal advice of what they need to do to be in compliance with general statutes or child-custody determinations. Deputies shall understand the temporary custodian has control over this issue due to the placement and trust provided by the parent to the temporary custodian.

The Deputy shall:

1. Determine who is in possession of the child as outlined above.
2. Ask all parties involved if court orders exist concerning child-custody determination. If there are no court orders Deputies shall inform all parties they need to seek the assistance of an attorney and petition the courts to declare child custody determination and without a court order law enforcement has no jurisdiction. If law enforcement has probable cause that the child is a victim of abuse or neglect they shall contact the Department of Social Services, Child Protection Services and follow the policy concerning child welfare.
3. If the Deputy is provided a copy of a court order issued by a North Carolina court or a court from another state, which has been filed and accepted by a North Carolina Clerk of Superior Courts Office then they shall read the court order fully and carefully and shall not add to or discredit any weight of the written order.
4. If the Deputy determines a violation of the court order exists, they should inform the person who is complaining it is a civil matter and they should seek the assistance of an attorney and report their complaint to the courts. The Deputy should inform all parties they are willing to provide testimony if subpoenaed concerning their observations. Deputies shall not take any enforcement action or intervene in any manner to ensure compliance of the order unless there is an accompanying child custody warrant and the warrant specifically directs law enforcement to take the child and deliver custody to a particular person. Deputies shall read the child custody warrant fully and carefully and shall not add to or discredit any weight of the warrant. The efforts of Deputies shall be done in a professional manner with the upmost consideration not to traumatize the child.