

Sweden: Children and Parents Code, Chapter 6 and Chapter 21

Chapter 6. Custody and contact

Introductory provisions

Section 1. Children are entitled to care, security and a good upbringing. They shall be treated with respect for their person and their distinctive character and may not be subjected to corporal punishment or any other humiliating treatment.

Section 2. Both or one of the parents of a child shall have custody of that child, unless a court has entrusted custody to one or two specially appointed custodians. Custody of a child shall continue until he or she attains the age of eighteen years or enters into marriage before that age.

A person who has custody of a child is responsible for the child's personal affairs and shall ensure that the needs of the child referred to in Section 1 are met. The person with custody of the child is also responsible for ensuring that the child receives the necessary supervision, having regard to his or her age, development and other circumstances, and shall see to it that the child is satisfactorily maintained and educated. In order to prevent the child causing damage to the detriment of any other person, the person with custody shall, furthermore, ensure that the child is kept under supervision or that other appropriate steps are taken. Provisions concerning responsibility for the financial affairs of a child are set out in Chapters 9-15

Section 2a. The best interests of the child shall be the primary consideration in the determination under the provisions of this chapter of all questions concerning custody, residence and contact. In the assessment of what is in the best interests of the child, particular attention shall be paid to the child's need of close and good contact with both parents. The risk of the child being abused, being unlawfully removed or detained, or otherwise suffering harm shall be taken into account.

Persons with custody

Section 3. Both parents of a child shall have custody of that child from birth, if they are married to each other; otherwise the mother alone shall have custody. If the parents later enter into marriage with one another, both of them shall have custody of the child from that point in time, unless a court has previously entrusted custody to one or two specially appointed custodians.

If a decree of divorce is granted between the parents, both parents shall continue to have custody of the child, unless joint custody is dissolved as provided in Section 5, 7, or 8. If both parents are to continue to have custody of the child after the decree of divorce, the court shall remind them in the decree that joint custody still applies.

Section 4. If only one of the parents has custody of a child and the parents wish to have joint custody, the court shall, on their joint application, make an order in accordance with their request, unless joint custody is manifestly incompatible with the best interests of the child. If the child is registered in the Swedish population records, the parents may obtain joint custody by means of registration with the tax authority after they have jointly notified

- (1) the social welfare committee, in conjunction with acceptance by the committee of an acknowledgement of paternity, or
- (2) the tax authority, provided no custody order has previously been made and the parents and the child are Swedish citizens. (Act 2003:645)

Section 5. If both parents have custody of a child or one of them does and if either of them

wishes the custody position to be changed, the court shall, having regard to the best interests of the child, order that the parents are to have joint custody or entrust custody to one of the parents. The court may not order joint custody if both parents are opposed to it. Questions concerning a change in the custody position as provided in the first paragraph shall be considered on the application of one or both of the parents. In a divorce case the court may, of its own motion, entrust custody of the child to one of the parents, if joint custody is manifestly incompatible with the best interests of the child.

Section 6. If both parents have custody of a child or one of them does, they may enter into an agreement to the effect that they are to have joint custody or that one of them is to have custody of the child. This agreement shall be valid if it is in writing and it is approved by the social welfare committee as provided in the second paragraph.

If the parents have entered into an agreement on joint custody, the social welfare committee shall approve the agreement if it is not manifestly incompatible with the best interests of the child. If the agreement provides for one of the parents to have sole custody, the committee shall approve the agreement if what has been agreed is in the best interests of the child.

2 Please note: this translation is not an official, legally binding document. No assessment of quality or accuracy in legal or linguistic terms has been made.

Section 7. If, when exercising custody of a child, a parent is guilty of abuse or neglect or is otherwise wanting in his or her care of the child in a manner which entails an enduring risk to the child's health or development, the court shall make a decision changing the custody position.

If both parents have custody of the child and what is said in the first paragraph applies to one of them, the court shall entrust custody to the other parent alone. If that parent is also wanting in his or her care of the child in the manner referred to in the first paragraph, the court shall transfer custody to one or two specially appointed custodians.

If only one parent has custody of the child, the court shall, in cases referred to in the first paragraph, transfer custody to the other parent or, if it is more appropriate, to one or two specially appointed custodians.

Questions concerning a change in the custody position as provided in this section shall be considered on the application of the social welfare committee or, of the court's own motion, in a divorce case between the parents or in some other case provided for in Section 5.

Section 8. If a child has been regularly cared for and brought up in a private home other than his or her parental home and if it is manifestly in the best interests of the child for the existing arrangement to continue and for custody to be transferred to the person or persons who have received the child or to one of them, the court shall appoint the person or persons concerned to exercise custody of the child as specially appointed custodians.

Questions concerning a transfer of custody as provided in the first paragraph shall be considered on the application of the social welfare committee.

Section 9. If both parents have custody of a child and one of them dies, the other alone shall have custody. If both parents die, the court shall, upon notification by the social welfare committee or when the fact otherwise becomes known, entrust custody to one or two specially appointed custodians.

If only one of the parents has custody of the child and that parent dies, the court shall, on the application of the other parent or upon notification by the social welfare committee, entrust custody to the other parent or, if it is more appropriate, to one or two specially appointed custodians.

Section 10. If one or two specially appointed custodians have custody of a child and if one of the child's parents wishes custody to be transferred to him or her, or both so wish, the court shall decide in accordance with the best interests of the child. The court may not transfer custody to both parents if they are both opposed to it.

Questions concerning a transfer of custody as provided in the first paragraph shall be considered on the application of both parents or one of them or on the application of the social welfare committee.

Section 10 a. If a custodian is to be appointed specially, a person who is fit to provide the child with care, security and a good upbringing shall be chosen. A minor may not be appointed as a custodian.

Two persons may be appointed to exercise joint custody, if they are married to each other or are living together in circumstances resembling marriage.

In the case of siblings, the same person shall be appointed as custodian, unless there are special reasons to the contrary.

If a custodian is to be appointed after the death of the child's parents and the parents have or one of them has made known whom they wish to be appointed as custodian, that person shall be appointed, unless it is inappropriate to do so.

Section 10 b. A specially appointed custodian has the right to be relieved of the office at his or her request.

If the child has two specially appointed custodians and one of them wishes joint custody to be discontinued, the court shall, on the application of one or both of them, entrust custody to one of them, having regard to the best interests of the child. In a divorce case between the custodians, the court may also, of its own motion, make an order concerning custody as provided here, if joint custody is manifestly incompatible with the best interests of the child.

Section 10 c. A specially appointed custodian shall be discharged if, when exercising custody, he or she is guilty of abuse or neglect or is for some other reason no longer suitable as a custodian.

If the child has two specially appointed custodians and one of them is discharged or dies, the other alone shall have custody. If both custodians are discharged or die, the court shall appoint one or two other persons as specially appointed custodians.

Questions concerning a change in the custody position as provided in this section shall be considered on the application of the social welfare committee.

The exercise of custody

Section 11. A person with custody of a child has the right and the duty to make decisions concerning the child's personal affairs. In doing so, the person with custody shall, in keeping with the increasing age and maturity of the child, take the child's views and wishes increasingly into account.

Section 12. The child himself or herself may enter into a contract of employment or for other work, but only with the consent of the person with custody of the child. The child himself or herself may terminate the contract and, if he or she has attained the age of sixteen years, enter into a contract concerning other work of a similar nature without obtaining renewed consent.

The child or the person with custody may terminate the contract with immediate effect if this is necessary with regard to the health, development or education of the child. If the person with custody has terminated the contract for this reason, the child may not subsequently enter into a new contract without the consent of the person with custody.

Provisions concerning the effects of a child alone having entered into a contract for work without being entitled to do so are set out in Chapter 9, Sections 6 and 7.

Section 13. If two persons have custody of a child, the provisions of Sections 11 and 12 shall apply to them jointly. If, owing to absence, illness or some other reason, one of the persons with custody is prevented from sharing in decisions relating to the custody of the child which cannot be postponed without inconvenience, the other person alone may make

such decisions. However, that person alone may not make a decision of farreaching significance for the child's future unless it is manifestly required by the best interests of the child.

Section 14. Provisions concerning the entitlement of children and persons with custody to support and assistance from the social welfare committee are set out in the Social Services Act (2001:453). The social welfare committee may arrange contacts with other public advisory agencies. (Act 2001:456)

The residence of the child

Section 14 a. If both parents have custody of a child, the court may, on the application of one or both of them, decide with which of the parents (including both parents alternately) the child is to live. The best interests of the child shall be the decisive consideration. The parents may enter into an agreement concerning where the child is to live. This agreement shall be valid if it is in writing and it is approved by the social welfare committee. The agreement shall be approved if what has been agreed is in the best interests of the child.

Section 15. A child shall have the right to contact with a parent with whom he or she is not living.

The child's parents have a joint responsibility to ensure that, as far as possible, the child's need of contact with a parent with whom he or she is not living is met. Specially appointed custodians have a corresponding responsibility.

A person with custody of a child has a responsibility to ensure that, as far as possible, the child's need of contact with any other person particularly close to the child is met.

If both parents have custody of the child and the child is to have contact with a parent with whom he or she is not living, the other parent shall provide such information about the child as will promote contact, unless there are special reasons to the contrary. If the child is to have contact with a parent who does not have custody or with some other person who is particularly close to the child, the information referred to in the first sentence shall be provided by the person with custody.

Section 15 a. The court shall make decisions on contact in accordance with the best interests of the child. Proceedings concerning contact may be commenced by a parent who wishes to have contact with his or her child. If contact is requested by any other person, proceedings may be commenced by the social welfare committee.

If both parents have custody of the child or one of them does, they may enter into an agreement concerning the child's contact with a parent with whom the child is not living. This agreement shall be valid if it is in writing and it is approved by the social welfare committee. The agreement shall be approved if what has been agreed is in the best interests of the child.

Section 15 b. If the child lives with only one parent, that parent shall contribute to the cost of the travel occasioned by the child's need of contact with the other parent. He or she shall do so in accordance with what is reasonable, having regard to the financial capacity of the parents and the overall circumstances.

A judgment or agreement concerning the cost of travel may be adjusted by the court with respect to the period after the commencement of proceedings, if this is prompted by a change in the circumstances.

Procedure in cases and matters concerning custody etc.

Section 16. A notification under Section 4, second paragraph, concerning joint custody for parents who are not married to each other shall be examined by the tax authority. The notification shall be submitted in writing by both parents.

A notification under Section 4, second paragraph, subsection (2), may be submitted to the tax authority or the social insurance office.

An appeal against the decision of the tax authority may be made to the county administrative court in whose jurisdiction the child was registered at the time of the decision.

A review permit is required for appeal to the administrative court of appeal. (Act 2004:797)

Section 17. Questions concerning custody, residence or contact shall be considered by the court in the place in which the child habitually resides. Such questions may also be considered in conjunction with matrimonial cases. In the absence of any other court with jurisdiction, these questions shall be considered by the Stockholm District Court.

Questions concerning custody referred to in Sections 4, 5, 7, 8 and 10 and in Section 10 b, second paragraph, and questions concerning residence and contact shall be considered under the procedure laid down for civil cases. The question of the apportionment of the cost of travel as provided in Section 15 b shall be regarded as part of the question of contact. If both parents have custody of the child or one of them does and the parents are agreed on the matter, they may commence proceedings by making a joint application.

Other questions concerning custody shall be considered under the procedure laid down for miscellaneous court matters.

In custody and residence cases, payments of maintenance for the child may be applied for without a summons.

In a case concerning custody, residence or contact, judgment may be given without a main hearing if the parties are agreed on the matter.

Section 17 a: Under chapter 5, Section 3 of the Social Services Act (2001:453), parents can receive assistance in entering into agreements on custody, residence and contact. (Act 2001:456)

The social welfare committee in the municipality in which the child is registered shall consider whether an agreement between the parents under Section 6, Section 14 a, second paragraph, or Section 15 a, second paragraph, is to be approved.

When considering the parents' agreement, the social welfare committee shall ensure that questions concerning custody, residence and contact are properly investigated.

Notwithstanding the secrecy requirement laid down in Chapter 7, Section 4, first paragraph, of the Secrecy Act (1980:100), another social welfare committee which has access to information that could be of significance in the assessment of the question has a duty to supply such information at the request of the social welfare committee which is to consider the agreement.

No appeal may be made against a decision reached by the social welfare committee under the second paragraph.

Section 17 b. If a social welfare committee has approved an agreement on custody, notification of the terms of the agreement shall be sent on the same day to

- (1) the tax authority,
- (2) if the agreement relates to a child who has reached the age of 15 years: the National Board of Student Aid,
- (3) the social insurance office. (Act 2004: 797)

Section 18. Under Chapter 5, Section 3 of the Social Services Act (2001:453), parents can receive assistance, in the form of cooperation discussions, with the view to their reaching agreement on questions of custody, residence and contact.

In a case concerning custody, residence or contact, the court may instruct the social welfare committee or some other body, in the interests of the child, to arrange for cooperation discussions with a view to achieving agreement between the parents.

If the court gives instructions as provided in the second paragraph, it may adjourn the case for a certain period. The same shall apply if cooperation discussions have already begun and

further discussions may be assumed to be beneficial. If there are special reasons for doing so, the court may extend the adjournment.

Section 19. The court shall ensure that questions concerning custody, residence and contact are properly investigated.

Before the court determines a case or matter concerning custody, residence or contact, the social welfare committee shall be given the opportunity to submit information. If the committee has access to information that could be of significance in the assessment of the question, it has a duty to supply such information to the court.

If further inquiries beyond those referred to in the second paragraph are necessary, the court may instruct the social welfare committee or some other body to appoint someone to make such inquiries. The court may lay down guidelines for these inquiries and set a date by which they are to be completed. If necessary, the court may extend the period allowed. The court shall ensure that the inquiries are conducted without delay.

The person conducting the inquiries shall, if it is not inappropriate, seek to ascertain the views of the child and report them to the court.

The child may be heard by the court if there are special reasons for doing so and it is manifest that it will not harm the child to be heard.

Section 20. In a case or matter concerning custody, residence or contact, the court may decide on the question of custody, residence or contact until such time as the question has been determined by a judgment or decision that has become non-appealable or the parents have entered into an agreement on the question and the agreement has been approved by the social welfare committee. The court shall decide in accordance with the best interests of the child.

Before a decision *under* first paragraph may be made the court shall give the other party the opportunity to express his or her opinion on the question. The court may obtain information on the question from the social welfare committee. If the court has made a decision, it shall review it when the case or matter is determined. (Act 2000:174)

A decision under this section may be enforced in the same way as a judgment that has become non-appealable. The decision may, however, be varied by the court at any time.

Section 21. In a case or matter concerning custody, residence or contact, the court may, when announcing its judgment or decision on the issue and if there are special reasons for doing so, on the application of one party order the other party to surrender the child on penalty of a fine. If an injunction on penalty of a fine has been granted in connection with a decision under Section 20, first paragraph, the court may order that the injunction is to take immediate effect.

An appeal against an injunction under the first paragraph may only be made in conjunction with an appeal against the judgment or decision concerning custody, residence or contact. Questions concerning the imposition of a fine attached to an injunction shall be determined by the county administrative court on the application of the party who applied for the injunction.

Section 22. In a case or matter concerning custody, residence or contact, the question of legal costs shall be governed by the second and third paragraphs below, rather than by Chapter 18, Sections 1-7, of the Code of Judicial Procedure.

Each party shall bear his or her own legal costs. However, one party may be required to reimburse the other party fully or in part for that party's legal costs, if he or she has acted in such a manner as is referred to in Chapter 18, Section 3 or 6, of the Code of Judicial Procedure or if there are other special reasons why he or she should do so.

If, under the second paragraph, one party is to reimburse the other party fully or in part for his or her legal costs and if the first party's representative, attorney or adviser has acted in such a manner as is referred to in Chapter 18, Section 3 or 6, of the Code of Judicial Procedure and thereby caused some or all of those costs, he or she may be required to

reimburse the costs together with the party concerned. The court may make such a decision even in the absence of an application from either party.

This section shall also apply when the case or matter is considered by a higher court.

Chapter 21. Enforcement of judgments, decisions or agreements concerning custody, residence or contact, and related matters

Enforcement of judgments, decisions or agreements

Section 1. In enforcement proceedings, the best interests of the child shall be the primary consideration.

To enforce what a court of general jurisdiction has determined in a judgment or decision concerning custody, residence, contact or the surrender of a child, an application may be made to the county administrative court. If the judgment or decision has not become non-appealable and specific permission has not been given for it nevertheless to be enforced, the county administrative court may not take the steps provided for in Sections 2-4.

To enforce an agreement under Chapter 6, Section 6, Section 14 a, second paragraph, or Section 15 a, second paragraph, an application may be made to the county administrative court. The provisions of this chapter concerning the enforcement of a judgment or decision that has become non-appealable also apply to such an agreement.

Section 2. Before making an enforcement order, the county administrative court may instruct a member or alternate member of the social welfare committee or a social services officer to seek to ensure that the person with the child in his or her care voluntarily discharges his or her obligations. Such instructions may also be given to some other suitable person.

A person given instructions as provided for in the first paragraph shall report within the period set by the county administrative court on the steps that have been taken and on any other circumstances that have emerged. This period may not exceed two weeks. The county administrative court may extend the period, however, if there is some prospect of achieving voluntary compliance.

Section 3. If the county administrative court makes an enforcement order, it may attach to it the penalty of a fine for non-compliance or decide that the child is to be collected by the police authority. It may only decide that the child is to be collected, however, in the cases and on the conditions stated in the second and third paragraphs.

In the case of a judgment or decision concerning custody, residence or the surrender of a child, the county administrative court may decide that the child is to be collected if enforcement cannot be achieved in any other way or if collection is necessary to avoid the child suffering serious harm.

In the case of a judgment or decision concerning contact between the child and a parent with whom the child is not living, the county administrative court may decide that the child is to be collected if enforcement cannot be achieved in any other way and the child has a particularly great need of contact with the parent.

Questions concerning the imposition of a fine attached to an enforcement order shall be considered by the county administrative court on the application of the party who applied for enforcement.

Section 4. If the county administrative court makes an enforcement order, it may also give instructions as provided for in Section 2. If the court has decided that the child is to be collected by the police authority, such instructions shall be given, unless there are special reasons for not doing so.

If there are special reasons for doing so, the county administrative court may, in order to facilitate the transfer of the child, direct that the child is to be temporarily taken charge of in an appropriate manner.

If the county administrative court is ordering the enforcement of a judgment or decision concerning contact which has become non-appealable, the court may, if justified by circumstances that have arisen since the judgment or decision was announced, adjust the conditions or times of contact stipulated.

Section 5. If the child has attained the age of twelve years, enforcement may not be ordered contrary to his or her wishes, except where the county administrative court considers it necessary with regard to the best interests of the child. The same shall apply if the child has not yet reached the age of twelve years but has attained such a degree of maturity that his or her wishes should be taken into account in a corresponding manner.

Section 6. The county administrative court may refuse enforcement if the circumstances have manifestly changed since the judgment or decision of the court of general jurisdiction was announced or the parents' agreement was approved by the social welfare committee, and it is in the best interests of the child for the question of custody, residence or contact to be reviewed. Such a question shall be considered by a court of general jurisdiction on the application of a person who was a party to the case before the county administrative court or on the application of the social welfare committee.

The county administrative court may refuse enforcement in other cases too, if there is a not insignificant risk of harm to the physical or mental health of the child.

Transfer of children in other cases

Section 7. Even in the absence of a judgement or decision as referred to in Section 1, the person with custody of a child may, when the child is in the home of another person, apply to the county administrative court for a decision that steps should be taken to transfer the child to the person with custody.

The county administrative court may refuse to take the steps requested if it is in the best interests of the child for the question of custody to be considered by a court of general jurisdiction.

A decision to take the steps provided for in the first paragraph may not be made if a removal prohibition order under the Care of Young Persons (Special Provisions) Act (1990:52) has been made with respect to the child.

In other respects, Sections 2-6 shall apply.

Section 8. The provisions of Section 7 shall also apply when parents, adoptive parents or specially appointed custodians have joint custody and one of them, without sufficient cause, has removed or is detaining the child without consent and the other applies for the matter to be remedied.

Section 9. The collection of or any other measure affecting a child shall be carried out with the greatest possible consideration for the child.

When a child is collected, a person who can provide support for the child shall be present. If a contact person for a child, as referred to in the Social Services Act (2001:453), is available, that person should be asked to be present. If possible, a paediatrician, child psychiatrist or child psychologist should also assist. If it is inadvisable to move the child owing to illness or for any other special reason, collection of the child shall be postponed. (Act 2001:456)

Section 10. If in a case provided for in this chapter there is any danger of the child being taken out of the country or if the matter is urgent for some other reason, the county administrative court may immediately order that the child be taken charge of in the manner it considers appropriate.

If it is not possible to wait for a decision under the first paragraph, the police authority may, irrespective of whether any proceedings have been commenced, take such immediate

measures as can be taken without harming the child. When such measures are taken, a doctor and a representative of the social services or, where relevant, a contact person for the child referred to in the Social Services Act (2001:453) should be present if possible. The measures taken shall immediately be reported to the county administrative court, which shall consider without delay whether they should stand.

Section 11. In a case provided for in this chapter, the county administrative court may order that the child is to be examined by a doctor.

When giving notice of such a medical examination, the county administrative court may require attendance on penalty of a fine. Questions concerning the imposition of such a fine shall be considered by the county administrative court.

Section 12. In a case provided for in this chapter, the county administrative court shall hold an oral hearing unless it is manifestly unnecessary. Provisions concerning oral hearings in the administrative court of appeal and the Supreme Administrative Court are set out in Section 9 of the Administrative Court Procedure Act (1971:291).

In an oral hearing the child may be heard in court if there are special reasons for doing so and it is manifest that it will not harm the child to be heard.

If a party fails to attend a hearing at which he or she has been summoned on penalty of a fine to appear in person, the court may order that that party be brought to the court, either immediately or at a later date.

Section 13. The county administrative court may, having regard to what is reasonable, order one party to reimburse the other party for the costs he or she has incurred in a case provided for in this chapter.

The cost of carrying out instructions as provided for in Section 2, first paragraph, second sentence, bringing a party to a hearing, collecting or taking charge of a child, and arranging for a medical examination shall be met out of public funds. Having regard to what is reasonable, the court may decide that a party who has caused expenditure with respect to bringing a person to a hearing or collecting a child is to pay the whole or part of the cost to the state.

A person who has the child in his or her care may be awarded reimbursement and advance payment with respect to travel and accommodation expenses in connection with attendance at a medical examination as provided for in Section 11. In this respect, Section 15 of the Administrative Court Procedure Act (1971:291) shall apply.

Questions concerning reimbursement under the second and third paragraphs shall be considered by the county administrative court.

Section 14. The county administrative court may order that a decision made under this chapter which does not relate to the imposition of a fine, reimbursement of a party's costs or a party's costs or a party's liability to reimburse the state for costs incurred is to have immediate effect.

Section 15. A decision under this chapter concerning the transfer of a child does not prevent the question which has been determined from being reviewed when this is prompted by a change in the circumstances or some other special reason.

Section 16. When a case provided for in this chapter is considered by the administrative court of appeal, the court shall include lay assessors.