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COLOMBIAN LEGISLATION ON PARENTAL AUTHORITY, CUSTODY RIGHTS AND ALIMONY¹

COLOMBIAN LEGISLATION ON PARENTAL AUTHORITY

- **Ley 57 de 1887 – Colombian Civil Code**

Article 288. <Definition of Parental Authority >. Parental authority is the set of rights that the law recognizes for parents regarding their non-emancipated children, to facilitate compliance with the duties that their role imposes on them.

Together, the parents are responsible for exercising parental authority over their children. In the absence of one of the parents, the other will exercise it.

Non-emancipated children are children of the family, and the father or mother in relation to them, father or mother.

Article 299. <Cease of administration and usufruct>. Both the administration and the usufruct cease when the parental authority is terminated and when the parents who exercise it are found liable for fraud or serious guilt in the performance of the former.

Guilt is presumed when the assets are considerably reduced or the liability is increased without a fair cause.

Article 305. < Litigation against whoever exercises parental authority>. Whenever the child has to litigate against the person exercising parental authority, a guardian will be given for the litigation, who will preferably be a family defense attorney when he or she exists in the respective municipality; and if he or she acts as a part, the authorization of the judge will be necessary.

Article 306. <Judicial representation of the child >. The legal representation of the child corresponds to either parent.

The child can only appear in court as a part, authorized or represented by one of his parents. If both deny their consent to the child or if they are unable to provide it or if they authorize without representing it, the rules of the General Code of Process for the appointment of a guardian ad litem will apply.²

¹ This text is a compilation of the relevant articles regarding parental authority, custody rights and alimony. For more information go directly to the cited legislation.

² See Art. 55, Código General del Proceso.

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In civil actions against the child, the part must contact any of his or her parents, to represent him or her in the litigation. If none could represent it, the rules of the Civil Procedure Code will be applied for the appointment of a guardian ad litem.

Article 307. <Exercise and delegation of representation and administration>.

The rights of administration of the assets, the legal usufruct and the extrajudicial representation of the family child will be jointly exercised by the father and the mother. The foregoing does not prevent one parent from delegating in writing, in whole or in part, to the other, such administration or representation.

If one of the parents is absent, the aforementioned rights will correspond to the other. In cases where there is no agreement of the holders of parental authority over the exercise of the rights referred to in the first subsection of this article or in the event that one of them does not agree in the way the other carries, the judge or another official designated by the law will settle the controversy, in accordance with the relevant procedural rules.

Article 310. <Suspension of parental authority>. Parental authority is suspended, with respect to any of the parents, for their insanity, for being in doubt of managing their own assets and for their long absence. Likewise, it ends on the grounds contemplated in article 315; but if these occur with respect to both parents, the provisions of said article shall apply.

When the parental authority is suspended with respect to both parents, while the suspension lasts, the underage child will be given a guardian.

The suspension or deprivation of parental authority does not exonerate parents from their duties to their children.

Article 311. <Decree of the suspension of parental authority> The suspension of parental authority must be decreed by the judge who knows the cause after having heard hearing about it from the relatives of the child and the ombudsman.

Article 250. <Obligations of children>. Children owe respect and obedience to their parents.

The children are legitimate, extramarital and adoptive and will have equal rights and obligations.

Article 260. <Duties of the grandparents> The obligation to feed and educate the child who lacks assets passes, through the lack or insufficiency of the parents, to the grandparents by both lines together.

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The judge will regulate the contribution, taking into account the powers of the taxpayers, and may from time to time modify it, depending on the circumstances that may arise.

Article 262. <Surveillance, correction and sanction>. The parents or the person in charge of the personal care of the children shall have the power to monitor their behavior, correct them and punish them moderately.

Article 263. <Extension of the power of correction>. The rights conferred on the parents in the preceding article will be extended in the absence, inability or death of one of them, to the other, and both to whom corresponds the personal care of the underage child.

Article 264. <Directorate of education>. The parents, in common agreement, will direct the education of their minor children and their moral and intellectual training, in the way that they think is most convenient for them; likewise, they will collaborate jointly in its upbringing, support and establishment.

Article 265. <Cessation of the right of direction>. The right that by the previous article is granted to the father or mother, will cease with respect to the children who, due to the bad conduct of the father or mother, have been removed from their power and entrusted to another person; which will exercise this right with the consent of the tutor or guardian, if he or she itself is not.

Article 267. <Cessation of rights due to parental misconduct>. The parents will incurred in the same deprivation of rights when, due to their misconduct, have given reason to the order to separate the children from their side, unless it has been later revoked.

- **Ley 1098 de 2006 – Childhood and Adolescence Code**

Article 14. <Parental responsibility>. Parental responsibility is a complement to parental authority established in civil law. It is also the obligation inherent to the guidance, care, accompaniment and upbringing of children and adolescents during their raising process. This includes the shared and joint responsibility of the father and mother to ensure that children and adolescents can achieve the highest level of satisfaction of their rights.

In no case may the exercise of parental responsibility entail physical or psychological violence or acts that impede the exercise of their rights.

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Article 110. <Permission to travel abroad>. When a child or adolescent who has residence in Colombia is going to leave the country with one of the parents or with a person other than the legal representatives, he / she must previously obtain the permission of the person with whom he / she will not travel or that of those, duly authenticated by a notary or consular authority. Said permit must contain the destination, the purpose of the trip and the date of departure and entry back into the country.

No authorization will be required from parents who have been suspended or deprived of parental authority.

Minors with habitual residence abroad, equal to or greater than one (1) year, and who are going to leave the country with only one of their parents, will not require authorization when they decide to return to that country. For the purpose of leaving the country, they must provide an abroad residence certificate, issued by the competent consulate or the consular registration and a copy of the document establishing custody for the parent with whom he/she is leaving.

The custody application may be submitted to the corresponding consular authority, who will forward it to the competent authority in Colombia.

In cases in which the child with habitual residence abroad, equal to or greater than one (1) year, is going to leave the country with a third party, they must have an exit permit issued by the parent holding custody.

For children who have a residence in another country of less than one (1) year, they must complete the procedure established in the first paragraph of this article.

When a child or adolescent with residence in Colombia, lacks a legal representative, their whereabouts are unknown or is not in a position to grant it, permission to leave the country will be granted by the Family Ombudsman subject to the following rules:

1. Legitimation. The request must be made by the person who exercise the personal care for the child or adolescent.

2. Application requirements. The request must indicate the facts on which it is based and the length of stay of the child or adolescent abroad. It must be accompanied by the birth certificate and proof of the alleged facts.

3. Procedure. Once the request is presented, the Family Ombudsman will order the parents or the legal representative who have not signed it to be summoned and will officiate at Migración Colombia if there is an impediment to leave the minor's country.

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If, within the five (5) business days following notification or summons, none of the aforementioned objects, the official will carry out the tests he deems necessary, if applicable, and will decide on the requested permission.

Once the resolution granting the permit has been signed, the Family Defender will send a copy of it to the Ministry of Foreign Affairs and to the Special Administrative Unit on Migration in Colombia. The permit will be valid for sixty (60) business days, counted from its execution.

In the event that opposition to the request for permission is filed, the Family Ombudsman will send the file to the Family Judge, and by telegram will notify the interested parties to appear before the corresponding court for distribution.

Paragraph 1. The Family Ombudsman will grant permission to leave the country: To the children or adolescents who enter the Victims and Witnesses Program of the Office of the Attorney General of the Nation.

To children or adolescents, detached or witnesses in criminal proceedings, when their life and personal integrity are in serious danger.

To children or adolescents, who go on a sporting, scientific or cultural mission.

To children or adolescents when they need to travel for reasons of emergency medical treatment abroad.

Article 132. <Continuity of maintenance obligation>. When the sanction of suspension or lost of parental authority is imposed on the parents, the maintenance obligation will not cease. This obligation ends when the child or adolescent is placed for adoption.

COLOMBIAN LEGISLATION ON CUSTODY

- **Ley 57 de 1887 – Colombian Civil Code**

Article 253. <Parenting and education of children>. The parents, or the surviving father or mother, share the personal care of the upbringing and education of their children.

Article 254. <Third-party childcare>. The judge, in the case of physical or moral disability of both parents, may entrust the personal care of the children to another competent person or persons.

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In the election of these people, the closest blood relatives will be preferred, and above all, legitimate ancestors.

Article 256. <Visitation>. The father or mother from whose personal care the children are removed, it is not for this reason that they will be prohibited from visiting them as often and freely as the judge deems appropriate.

Article 257. <Parenting, education and establishment>. The costs of raising, education and establishment of legitimate children belong to the conjugal society, according to the rules that, when dealing with it, will be said.

If the husband and wife live under a state of separation of property, they must contribute to said expenses in proportion to their powers.

But if a son has his own property, the expenses of his establishment, and, if necessary, those of his upbringing and education, may be taken out of them, the capital being conserved as far as possible.

Article 161. <Effects of divorce on children>. Notwithstanding the provisions of the judge in the judgment, regarding the custody and exercise of parental authority, the effects of divorce regarding the common children of the divorced shall be governed by the provisions contained in titles XII and XIV of the book. I of the Civil Code.

- **Ley 1098 de 2006 – Childhood and Adolescence Code**

Article 23. <Custody and personal care>. Children and adolescents have the right to have their parents permanently and in solidarity direct and timely perform the custody of them for their integral development. The obligation of personal care also extends to those who live with them in the family, social or institutional spheres, or to their legal representatives.

Article 52. <Verification of the guarantee of rights>. In all cases in which an alleged violation or threatening of the rights of a child or adolescent is known, the competent administrative authority shall issue a process ordering its interdisciplinary technical team to verify the guarantee of the rights enshrined in the Title I of Chapter II of this Code. It should be done:

1. Initial psychological and emotional assessment.
2. Nutrition assessment and review of the vaccination schedule.

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3. Initial assessment of the family environment, link networks and identification of protective and risk elements to guarantee rights.
4. Verification of the inscription in the civil registry of birth.
5. Verification of the link to the health and social security system.
6. Verification of the link to the educational system.

Paragraph 1. Of the previous actions, the professionals of the interdisciplinary technical team will issue the reports that will be incorporated as evidence to define the procedure to be followed.

Paragraph 2. The verification of rights must be carried out immediately, except when the child or adolescent is not before the competent administrative authority, in which event, the verification of rights will be carried out in the shortest possible time, which may not exceed ten (10) days following the knowledge of the alleged violation or threat by the Administrative Authority.

Paragraph 3. If within the verification of the guarantee of rights it is determined that it is a matter susceptible of conciliation, it will be processed in accordance with the current law on this matter; in the event that the conciliation attempt fails, the official by means of a reasoned resolution will establish the provisional obligations regarding custody, alimony and visits and in the event that any of the parties requests it within the following five (5) days, the official will file a lawsuit before the competent judge.

LEGISLATION REGARDING THE ALIMONY DUTY

- **Ley 57 de 1887 – Colombia Civil Code**

Artículo 411. Se deben alimentos:

1. The spouse
2. Legitimate descendants
3. Legitimate ascendants
4. In head of the guilty spouse, to the divorced spouse without his or her fault.
5. A los hijos naturales, su posteridad legítima y a los nietos naturales.

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7. Natural Ascendants
 6. Adoptive children
 7. Adoptive parents
 8. Legitimate siblings
- [...]

No maintenance is owed to the persons designated here in cases where a law denies them.

- **Ley 1098 de 2006 – Childhood and Adolescence Code**

Article 111. <Alimony>. For the establishment of the alimony, the following rules will be observed

1. The pregnant woman may claim alimony in favor of the child who is about to be born, regarding the legitimate father or the extramarital one who has recognized paternity.
2. Whenever the address where the person obliged to provide maintenance is known, the defender or family commissioner will summon him to a conciliation hearing. Otherwise, it will prepare a report that will supply the demand and will send it to the Family Judge so that he can initiate the respective process. When the obligated party has not been duly summoned to the hearing, or the conciliation has not been attended, he will set a provisional maintenance fee, but the report will only be sent to the judge if one of the parties requests it within five days. following business
3. When conciliation is achieved, a record will be drawn up indicating: the amount of the alimony and the formula for its periodic readjustment; the place and form of its fulfillment; the person to whom the payment must be made, the salary discounts, the guarantees offered by the obligor and other aspects deemed necessary to ensure full compliance with the maintenance obligation. If this is the case, the authority will promote the conciliation on custody, visitation regime and other related aspects.
4. The provisions of this article shall also apply to the voluntary provision of alimony to children or adolescents.

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Article 129. <Alimony>. In the brief that transfers the lawsuit or the report made by the Family Ombudsman, the judge will establish a provisional alimony fee, providing proof of the relationship that originates the maintenance obligation. If he does not have proof on the financial solvency of the obligor, the judge may establish it taking into account his or her patrimony, social position, customs and in general all the antecedents and circumstances that serve to evaluate his or her economic capacity. In any case, it will be presumed that at least the legal minimum wage accrues.

The sentence may provide that alimony is paid and insured through the constitution of a capital whose income satisfies them. In such case, if the obligated party does not comply with the order within the following ten business days, the judge will proceed in the manner indicated in the following paragraph.

The judge must adopt the necessary measures so that the obligor complies with the provisions of the order that establishes the provisional maintenance quota, in the conciliation or in the sentence that indicates them. To this end, it will order embargo, kidnapping, appraisal and auction of the assets or rights of the former, which will be practiced subject to the rules of the executive process.

The embargo will be lifted if the obligor pays the overdue fees and provides surety that guarantees the payment of the fees corresponding to the following two years.

In the case of private settlement or out-of-court conciliation, with the copy of it or of the record of the diligence the interested party may bring forward an executive proceeding before the family judge for the collection of the overdue fees and those that are henceforth caused.

When there is information that the person obliged to supply alimony has been in default of paying the fee for more than a month, the judge who knows or has known of the alimony process or the one that the executive will give notice to the Administrative Department of Security ordering to prevent him from leaving the country until he provides sufficient guarantee of compliance with the alimony obligation and will be reported to the credit bureaus.

The alimony quota set in a court order, in a conciliation hearing or in a private agreement shall be deemed readjusted as of January 1 following and annually on the same date, in a percentage equal to the consumer price index, without prejudice to the judge, or the parties by mutual agreement, establish another periodic adjustment formula.

However, when the financial capacity of the feeder or the needs of the child have changed, the parties may mutually agree to modify the fee, and any of them may ask the judge for its modification. In the latter case, the interested party must provide the

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application with at least an informal copy of the order, the conciliation act or the private agreement in which it has been indicated.

As long as the debtor does not comply or pays to fulfill the maintenance obligation that he has regarding the child or adolescent, he will not be heard in the claim of his custody and personal care or in exercise of other rights over him or her.

The provisions of this article will also apply to the provision of food to children or adolescents.

Failure to comply with the maintenance obligation generates criminal liability.

LEGISLATION REGARDING INTERNATIONAL RESTITUTION

- **Ley 1098 de 2006 – Childhood and Adolescence Code**

Article 112. <International return of children girl or adolescents.> Children or adolescents improperly detained by one of their parents, or by persons in charge of their care, or by any other organization abroad or in Colombia, will be protected by the Colombian State against any illegal transfer or undue obstacle to return to the country. For such purposes, Law 173 of 1994 approving the Convention on civil aspects of the international abduction of children, signed in The Hague on October 25, 1980, will be applied to Law 620 of 2000 approving the Inter-American Convention on international restitution of minors, signed in Montevideo on July 15, 1989, and the other rules that regulate the matter.

For the purposes of this article, the Colombian Institute of Family Welfare (ICBF) will act as the central authority. The Central Authority, through the Family Ombudsman, will carry out the actions aimed at the voluntary restitution of the boy, girl or adolescent and will decree the measures to reestablish rights.

Note: In Judgment T-202/2018, issued by the Constitutional Court, a description is made of the administrative and judicial procedure for international restitution of minors. The decision will have “inter-parties” effects only, which makes it important to read it as descriptive and not an unrestricted application to the decisions of subsequent procedures. For further reading, refer to the following link: <https://www.corteconstitucional.gov.co/relatoria/2018/T-202-18.htm>.

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