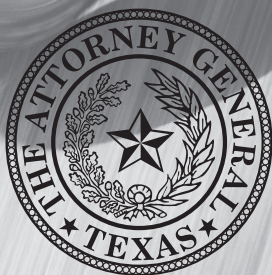




HANDBOOK FOR  
NONCUSTODIAL PARENTS



# INTRODUCTION

The purpose of this handbook is to inform noncustodial parents about paternity establishment and child support services. The Office of the Attorney General (OAG) believes that children do better when they have the love and support of both parents. This guide is designed with that in mind.

The OAG does not represent the parents or the child in court – the OAG represents the State of Texas. This handbook provides basic information on paternity establishment, child support, custody and visitation. It is not meant to take the place of legal advice.

## WHAT IS A noncustodial parent?

**Simply put, you are the parent who does not have primary custody of the child. But this does not mean you don't have rights as a parent. Remember, you are a very important part of your child's life.**

A managing conservator, or **custodial parent**, has the legal right to decide where the child will live. This right is commonly called custody. A possessory conservator, or **noncustodial parent**, has the legal right to spend time with the child and know the whereabouts of the child. These rights are commonly called “**access and visitation**” or “**possession.**”

Many people think only fathers can be noncustodial parents, but that is not the case. In Texas, about 10 percent of noncustodial parents are mothers. Some of the information in this guide is directed toward fathers, but most of the information can apply to either a mom or dad who is the noncustodial parent.


TEN THINGS  
ten things

NONCUSTODIAL PARENTS  
noncustodial parents

SHOULD KNOW  
should know

ABOUT PATERNITY  
about paternity

AND CHILD SUPPORT  
and child support

- 
1. If you receive a court summons, go to court. If you don't go, the court can make decisions about your case without you. This means a man can be named legal father and ordered to pay child support even if he didn't go to court.
  2. Unmarried couples can establish paternity by signing a legal document called an Acknowledgment of Paternity (AOP) or by petitioning the court. A father's name on the child's birth certificate *does not* establish a legal relationship.
  3. **Understand the consequences of signing a legal document before you sign.** Once a legal document is signed and filed, it can be hard to change (sometimes impossible), and it is almost always expensive.

4. Opening a child support case with the OAG can protect your rights. A court order will be established that addresses custody and visitation, as well as how much child support and medical support you owe each month.
5. If a parent opens a child support case with the Office of the Attorney General (OAG) and the OAG determines that a DNA test is necessary, generally one will be provided at no cost.
6. To make sure your child support is set at a realistic amount, provide as much information as you can to the OAG or the court about your financial situation.
7. If you cannot pay the full amount one month, you should still pay something. A partial payment shows that you are making an effort. You should also call the child support office handling your case to explain your situation.
8. Ask for a review of your case if your income changes substantially or if you lose your job.
9. If you fail to pay child support, it will only make things worse. Past-due child support doesn't go away. The OAG can collect past-due support even after the child becomes an adult. Interest is charged on unpaid child support. That means the amount you owe only gets bigger with each month child support goes unpaid.
10. If your child comes to live with you, notify your local child support office to request a change of status. Keep paying child support until the court orders that you are no longer required to do so.

## BASICS of child support services

### How do I open a case?

Many people don't realize that noncustodial parents can open a child support case, but they can. Apply for child support services online from the child support section of the OAG's website at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call (800) 252-8014 to request an application.

Your case will be scheduled for a negotiation conference with the other parent in the child support office. If you and the other parent can't agree on issues like child support or visitation, the case will be set for court.

### What determines the amount of child support ordered?

Child support is based on your net income (pay after taxes) and state child support guidelines.

In Texas, the guidelines are:

- One child - 20% of the noncustodial parent's net income
- Two children - 25% of net income
- Three children - 30% of net income
- Four children - 35% of net income
- Five or more children- 40% of net income

It doesn't matter if you are not working, the court will still order you to pay child support. It is best to provide the court with as much information as possible on your income so you can receive a realistic order.

### What if I have other children who live with me?

When you are supporting multiple children who live in different households, the guidelines are adjusted based on

the number of children you are supporting. It is important that you let the judge or OAG staff know that you support other children.

### **How do I make support payments?**

If you are employed, your employer will take child support directly out of your paycheck and send it to the State Disbursement Unit. This is the simplest and fastest way to pay child support. To pay by check or money order, send support payments to the State Disbursement Unit (along with your case number).

#### **State Disbursement Unit (SDU)**

**PO Box 659791**

**San Antonio, TX 78265-9761**

For online payment options, visit the child support section of [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) and click [Make a child support payment]. The OAG keeps track of the support you've paid. View your payment history on the OAG website [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call (800) 252-8014 to request a copy.

### **Neither of us applied for child support services. Why is a case being opened?**

In Texas, the OAG automatically opens a child support case when the custodial parent applies for some public benefits, like Temporary Assistance for Needy Families (TANF) or Medicaid. The custodial parent must cooperate with the OAG to establish paternity and set child support.

### **The other parent won't let me see my child. Can the OAG help?**

Federal law does not allow the OAG to enforce a parent's

visitation rights. However, there are resources that the OAG provides to help parents who have trouble seeing their children. For help with custody or visitation issues, call the Access and Visitation Hotline at (866)292-4636. The Hotline is answered in English and Spanish, Monday -

### **Child Support and Family Violence**

If you have safety concerns, ask the OAG to send you an Affidavit of Nondisclosure and put a **Family Violence Indicator** on your case. A Family Violence Indicator will provide some protections within the child support system. A case marked with a **Family Violence Indicator** will not be scheduled for a negotiation conference with the other parent in the child support office, and your contact information will not appear on public documents.

Friday, 1–7 p.m.

## HOW TO establish paternity

### **What does paternity mean?**

**Paternity** means legal fatherhood. It creates ties between the child and the father, both emotionally and legally. In Texas, an unmarried father is not automatically recognized as the legal father. Parents who are not married when a baby is born must establish paternity for their child to have a legal father.

There are two ways for unmarried parents to establish paternity: 1) sign a legal document called an Acknowledgment of Paternity, or 2) get a court order.

When a baby is born to married parents, legal fatherhood



is automatic. The husband of the woman giving birth is called the **presumed father**. The presumed father automatically has the same legal rights as the mother.

### Why does paternity matter?

Paternity creates a legal connection between the child and the father. Dad, Mom and their child benefit when paternity is established.

#### Benefits for Dad

- Your name can appear on your child's birth certificate.
- It's the first step toward protecting your legal connection to your child.
- It gives you the legal right to care for your child.

#### Benefits for Mom

- It establishes your child's legal relationship with his or her father.
- It makes your child's father legally responsible for his child.
- It is required before a court can be asked to order child support, custody or visitation.
- It helps your child become eligible for the father's inheritance, medical benefits, Social Security, and possibly veteran dependent benefits.

#### Benefits for Child

- A child knows the identity of his or her father and the father's side of the family.
- The legal bond of paternity establishment supports the emotional bond between a father and his child.
- It gives a child a sense of identity.
- It gives both parents access to a child's school and

medical records.

- It gives either parent the right to ask the court for custody, visitation or child support.

### How is paternity established?

When parents are not married to each other, there are two ways to establish paternity.

#### 1. Sign the Acknowledgment of Paternity (AOP) form.

This is the simplest and fastest way for biological parents to establish paternity.

- Both parents must voluntarily sign the form.
- If more than one man could be the father, each man should get a genetic (DNA) test before signing an AOP.
- Most couples sign the AOP at the hospital when the child is born, but they can sign the AOP before or after the child is born.
- Parents can sign the AOP at the hospital, local child support office, a county clerk's office or the Vital Statistics Unit at the Department of State Health Services.
- Parents who sign an AOP still need a court order to establish custody, child support, medical support and visitation.

#### 2. Get a court order. This can be done by opening a case with the OAG, hiring a private attorney, or filing a petition with the court.

- The process usually includes genetic (DNA) testing.
- The OAG helps parents establish paternity when a child support case is opened. The OAG also provides free genetic testing when paternity needs to be established.
- Ordinarily parents who agree on paternity and

other terms of the order can establish child support in a meeting at a local child support office. This is called the Child Support Review Process (CSRP).

- If parents cannot agree on paternity or the terms of their child support order, a court will resolve the disagreement. A judge will review the evidence and make a ruling regarding paternity and child support.

**REMEMBER:** If you receive a court summons, you must appear in court or paternity may be established without you. The court can also set child support, medical support, custody and visitation whether or not you are actually present. If you cannot appear in court, contact the court or child support office handling your case and ask how to file a response with the court.

Some people think if they don't show up and don't get a genetic (DNA) test, nothing will happen. That is not true. The court can make a paternity decision without a genetic (DNA) test.

### **What if I'm a minor? Can we still establish paternity using an Acknowledgment of Paternity form?**

Yes. Minors can complete an AOP, and it is legally binding.

### **What if I sign the AOP, then find out later that someone else might be the child's biological father?**

For information about how to rescind or challenge paternity, visit the child support section of the Attorney General's website [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov) or call the Paternity Opportunity Program (POP) toll-free at **(866) 255-2006**.

### **I am not married to the woman who is pregnant with my child. Could someone else adopt the baby without my permission?**

Yes. Texas law requires unmarried fathers to act very quickly to avoid losing their parental rights. If a man thinks his child is going to be placed for adoption, he can register with the State's Registry of Paternity through the Department of State Health Services. A father can register before the baby is born but no later than 31 days after the birth of the child. There is no charge for registering with the Paternity Registry. For more information, call Paternity Registry at (888) 963-7111 extension 7782.

## GOING TO court

### **I received court papers, but I have to work the day I'm scheduled for court. What should I do?**

In Texas, if you don't go to court after being served for a hearing, the court can make decisions about paternity and child support without you. If you cannot appear in court at the designated time, contact the court or child support office handling your case and ask how to file a response with the court.

### **What if I pay for things that my child needs, such as diapers, instead of paying the money through the child support agency?**

You are helping to support your child, but the court may see things differently. It is unlikely that a court will consider these direct payments as payment of child support. If you give the child or the child's other parent something directly, you will still owe the full amount of court-ordered

child support. The court will likely consider what you give to the other parent to be a gift to the child.

### What do I need to know about going to court?

- You will be in front of a judge or an associate judge and sometimes court can take all day.
- You have the right to hire and be represented by a private attorney at any stage of the trial. The other parent has that same right.
- The court is required to take your wishes into account when determining the issues, so it is important that you tell the court what you want.
- Fathers can request genetic (DNA) testing. Testing will be done by a laboratory identified by the court or the OAG.
- Once paternity is determined, the court order will set child support and medical support and address custody and visitation.
- The child support attorney from the OAG represents the interests of the State.
- If you need an interpreter, contact the OAG to ask how to request one.

### What about custody and visitation?

In legal terms, custody is called **conservatorship** and visitation is referred to as **periods of possession**. In Texas, the law presumes that parents will be “joint managing conservators,” meaning they will share parental rights and duties. In most cases, the court grants these rights and duties to both parents, as long as it is in the best interest of the child.

The presumption in Texas is the **Standard Possession Order**.

For parents who live within 100 miles of each other, the noncustodial parent has visitation:

- First, third and fifth weekends of every month.
- Thursday evenings of each week.
- Alternating holidays (such as Thanksgiving every other year).
- An extended period of time (30 days) during the summer vacation.

For parents who live more than 100 miles apart:

- The weekend schedule may be the same or reduced to one weekend per month.
- There is no mid-week visitation.
- The holiday schedule remains the same (alternating holidays).
- The noncustodial parent has the child(ren) every spring break and for a longer extended period in the summer (42 days).

The court may modify the Standard Possession Order based on the child's best interest. For example, if the child is very young (under 3 years old) or if the non-custodial parent has had very little or no previous contact with the child, the court may order a **Modified Possession Order**, which starts off with shorter visits that become progressively longer until the **Standard Possession Order** is reached. Once again, the court is making decisions based on what is best for the child.

### How does the court determine what is in the child's best interest?

Texas law contains guidelines that help judges make their decisions. Here are some things the court may

consider when deciding what is best for the child:

- The desires of the child.
- The child's emotional and physical needs, now and in the future.
- The emotional and physical danger to the child now and in the future.
- The parenting abilities of the individuals seeking custody.
- The programs available to assist parents in promoting the best interests of the child.
- The plans for the child.
- The stability of the home.
- The acts or omissions of the parent, which may indicate the suitability of the existing parent-child relationship.
- Any excuse for the acts or omissions of the parent.

### **How did the court determine the amount of child support I owe if I was not there and my income was not known?**

The court has legal authority to issue a child support order even if you are not actually present. If your current or past income is not known, the support order may be based on your working 40 hours per week at a job that pays minimum wage.

### **What if I was the noncustodial parent, but now my children live with me? Do I still have to pay child support?**

Yes – because you are still legally responsible for paying child support until the child support order has been modified. However, when circumstances change, you can modify your child support order. For more information contact your local child support office.

## MORE ABOUT child support orders

### **What if I want to pay more or less than the amount set by the child support guidelines?**

During a court hearing, you may ask the court to modify the child support order. To do this, you must present evidence showing that the new amount is in the best interest of the child. The court may or may not choose to order a new amount. The judge will look at the age and health of the child, child care, how much time a child spends with each parent and other factors that impact the child's well-being.

If both parents agree on a new amount, they may file a written agreement with the court. The court reviews the agreement to see if it serves the best interests of your child. If the court agrees with the new amount, it will be entered in the order.

### **When do I stop paying child support?**

Child support generally continues until the child's 18th birthday or until the child graduates from high school, whichever occurs later. If you and the other parent had private attorneys, your court order or divorce decree may require support to continue until the child graduates from college. Get a copy of your court order and check the details.

### **I'm paying child support. Why do I have to pay medical support, too?**

Medical support and child support are separate obligations the court may require of either or both parents.



The law assumes the person paying child support will also pay for the child's health insurance. If the custodial parent is required to provide health insurance coverage, the court will order the noncustodial to pay additional support in the form of cash medical support.

### **What if I lose my job or I am unable to pay child support?**

If your income changes and you are unable to pay your child support, notify the OAG and the court immediately. However, simply telling the court clerk or contacting your OAG child support office is not sufficient to reduce the amount of your child support payment. Your monthly child support obligation will only change if you obtain a new support order.

You may qualify for a modification of your child support order if there has been a substantial change in circumstances (major change in your life) that affects your ability to pay child support or:

- it has been three years since the child support order was created or modified; and
- the amount you currently pay differs by 20 percent or \$100 from the amount you would pay based on your current income and child support guidelines.

If you seek to modify your child support because of unemployment, the court may order you to show that you are looking for a job or participating in an employment training program such as those offered by the Texas Workforce Commission.

Many noncustodial parents believe that having a serious reason for falling behind on their child support payments will allow the court to dismiss their past-due support, once they explain what happened. This is not true. If a major life event affects your ability to pay child support, notify the court and the child support office immediately. **Do not wait to explain your changed circumstances, because the court will not reduce or reimburse past-due child support payments.**

### **Are there any services available to help me get a job so that I can pay my child support?**

Yes, the Texas Workforce Commission provides skills training and job placement services. At your request, the child support agency can also refer you to education and literacy classes as well as counseling services for substance abuse and parenting skills.

### **If the child's other parent interferes with visitation, may I refuse to pay court-ordered child support?**

No. You must pay your court-ordered child support regardless of whether you have access to your child for visitation.

If you need assistance seeing your child, contact the Texas Access and Visitation Hotline (866)-292-4636, Monday - Friday, 1–7 p.m.

### **How does not paying my child support affect my right to see my child?**

Legally, child support and visitation are separate issues. This means you have the right to see your child even if you are not paying child support. At the same time, if you are not seeing your child, you must continue to pay child

support. Both parents must obey the court order. The custodial parent must let you spend time with your child, just like you must pay child support every month in full. The Attorney General's Office only has legal authority to enforce the child support order.

### **Can I be put in jail for not paying child support?**

Yes. You may be placed in jail for up to six months for not paying child support. Under Texas law, the reason for placing a noncustodial parent in jail is **contempt of court**. Contempt of court means you are not following a court order. You may also be fined up to \$500 for each violation and have to pay attorney's fees and court costs.

You have the right to be represented by an attorney throughout a contempt proceeding. You have the right for the government to provide you with an attorney at no charge if the following conditions apply:

1. You can prove that your income is very low or you have no income; and
2. The hearing will likely result in jail time.

In some cases, noncustodial parents who do not pay child support can go to prison for a specific amount of time or until a fine is paid. This happens when someone is criminally prosecuted and convicted of a felony.

## CONTACT information

### **BY U.S. MAIL**

Office of the Attorney General  
Child Support Division  
P. O. Box 12017  
Austin, TX 78711-2017

### **ON THE INTERNET**

Website - [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)  
Email - [child.support@texasattorneygeneral.gov](mailto:child.support@texasattorneygeneral.gov)

### **24 HOUR PAYMENT AND CASE STATUS**

**INFORMATION:** (800) 252-8014 or  
visit the Attorney General's website and select  
"Child Support Interactive" from the drop-down  
menu.

### **FOR THE DEAF AND HARD OF HEARING**

Call Relay Texas toll free by dialing 711 or  
(800) RELAY TX (735-2989)

### **ACCESS AND VISITATION HOTLINE**

Call toll free Monday – Friday, 1 – 7 p.m.,  
to talk with an attorney familiar with family law.  
Call **(866) 292-4636** or visit [www.txaccess.org](http://www.txaccess.org).