

# INCARCERATED PARENTS *and* CHILD SUPPORT

THE HANDBOOK FOR INCARCERATED PARENTS

CHILD SUPPORT

ESTABLISHING PATERNITY

VISITATION

DNA TESTING

RESOURCES



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

THE ATTORNEY  
GENERAL OF  
TEXAS  
administers the  
child support  
program in the  
State of Texas.

Federal law requires that the Attorney General's Child Support Division services include establishing paternity (legal fatherhood), establishing court orders for financial and medical support, enforcing child support orders and distributing support payments.

Our agency believes that children deserve the love and support of both of their parents. Even while you are incarcerated, you can let your children know that you care about them, want the best for them and are doing everything you can to support them.

The purpose of the **Incarcerated Parents and Child Support** brochure is to inform incarcerated parents about what they need to do when they are sent to prison, how to handle their child support case when they are incarcerated and what to do when they are released from prison. The brochure will also answer frequently asked questions and provide definitions of commonly used terms regarding child support issues, such as establishment of paternity and DNA testing.

If you plan on writing to the Attorney General's Office, you need to know what information or services we can provide while you are incarcerated and what we cannot provide. Check the following list carefully before writing to us.

#### THE OAG CAN PROVIDE:

1. Basic information about your child support case status
2. A review of your case and the terms of the order (such as monthly child support payments, monthly arrears payments and total arrears owed)
3. A review of your case to see if you are eligible for a child support modification (upon your request)
4. The address and phone number of the child support office handling your case or the county of your divorce order
5. Information on how to establish paternity for your child if you weren't married to the other parent when the child was born
6. The State of Texas Child Support Guidelines (how the child support due is calculated by state law).
7. In some cases, we may be able to forward a letter for your child or children to the custodial parent if you do not know the custodial parent's address and you have an open child support case. The custodial parent will be given your contact information. Additional letters may not be forwarded.

## THE OAG WILL NOT:

1. Change custody or enforce the visitation provisions of your child support order
2. File a Termination of Parental Rights petition
3. Provide you with the address(s) of your children or the other parent
4. Perform DNA testing if you have signed an Acknowledgement of Paternity (AOP) or if there is an existing child support order
5. Answer questions other than child support inquiries
6. Obtain information from the court if you do not have a case with Attorney General's Office
7. Transport you to court for a hearing or request a bench warrant on your behalf
8. Lift a bench warrant
9. Stop the interest on your arrears
10. Provide legal advice or an attorney

## FREQUENTLY ASKED QUESTIONS ABOUT CHILD SUPPORT

### **I'm in prison and can't work. Why doesn't my child support order change?**

Your child's needs don't change just because you are incarcerated. In fact, they are probably greater. Even if the Attorney General's Office knows you are in prison, your obligation to pay child support doesn't go away. The amount you owe will continue to add up, and you will be charged interest on any unpaid financial support. If you have any ability to pay child support while incarcerated, it is in your best interest – and your child's interest – to do so. You can request a modification of your child support due to your incarceration, but unless the order is modified, your obligation is unchanged.

### **How can my child support order be modified or changed?**

Only the court can modify or change your child support order. Grounds for a modification include a material and substantial change in the circumstances that impact your ability to pay child support, or the passage of three years since the last child support order and a difference in monthly payment by either 20 percent or \$100 from the child support guidelines. An incarcerated non-custo-

dial parent subject to a child support order may request a review and adjustment of his or her ordered child support. There is no guarantee that your child support order will be lowered. The forms you complete serve only as a request to review your child support for a modification.

### **What should I do when I enter prison?**

If you are reading this brochure, you are on the right track. Do everything you can to let your children know you care for and are committed to them. If you have a child support case, provide the office that is handling your case with your updated address. By doing this, you will receive a monthly statement that shows how much you are supposed to pay, how much you have paid, and how much you owe in past-due support. You may want to consider asking the child support office for a review and adjustment packet if you want to see if your child support can be lowered.

### **I was receiving child support payments before I came to prison. What happens to my child support payments while I'm in prison?**

The Attorney General's Office will continue to send child support payments to the custodial parent (CP) through the option he or she selected for receiving child support. If the CP doesn't request any changes, the payments will continue to be sent through direct deposit to his or her checking account or debit card, or a check will be mailed to the address previously requested. Child support payments will not stop unless a court order redirects payments to another person. Prior to being sent to prison, a CP may redirect child support payments to the person who is designated to care for the child(ren) through a court order.

### **While I'm in prison, can the child support I'm supposed to receive go to the person who is taking care of my child(ren)?**

#### **And if so, what do I need to do?**

Yes, your child support can go to the person caring for your child(ren). You (the CP) should direct the person who is taking care of the child(ren) to the Attorney General's Office, where they can seek a child support order that will redirect the child support payments to them. The person caring for the child(ren) will need to bring with them proof of possession and control of the child(ren).

Examples include child(ren)'s school or daycare records, an affidavit from the person in possession, or appropriate documentation of possession. The Attorney General's Office may then file a Motion to Redirect Child Support.

**I don't have a child support case, so I don't have anything to worry about, right?**

You may not have a child support case when you go to prison, but that doesn't mean a new case can't be established while you are incarcerated. If you are served with legal papers from the Attorney General's Office, it is important that you respond promptly in writing to the court that issued the papers and the local child support office that is named in the papers. If you do not respond, the court may make a decision on your child support case without your involvement, which is called a default judgment, and includes setting the amount of child support you must pay regardless of your situation.

In your response, include all information that you want the court to consider when deciding your case. If you have been identified as the father of a child and are being sued for paternity, you may request DNA testing, and the Attorney General's Office can send a lab technician to the Texas Department of Criminal Justice (TDCJ) facility where you are to collect a sample. The State Counsel for Offenders at the TDJC may be able to assist you in preparing your response. You also have the right to get your own attorney. The Attorney General's Office cannot advise you on any legal matter, and we **cannot** help you prepare a response to a legal document.

**Can I have a court-appointed attorney represent me in court at a child support hearing?**

A judge will appoint an attorney to represent you only if you are found to be indigent, you appear in person at the hearing, and you face incarceration as a result of the hearing. This is not a function of the OAG; you must make this request to the court.

## FREQUENTLY ASKED QUESTIONS ABOUT PATERNITY

**What does "paternity" mean?**

Both legally and biologically, the word paternity means the identity of the father of a child. Every child has a biological father. But if you were never married to the mother of your child, Texas law does not give you any rights or responsibilities as the child's father unless legal paternity is established. Unless paternity is established, a child born to an unmarried mother has no legal father.

A man is presumed to be the legal father of a child if he was married to the mother at the time of the birth of the child or if the child is born before the 301st day after the date the marriage is terminated.

**How can the paternity of a child be established?**

In Texas there are two primary ways to establish paternity for a child. Both parents can sign a legal document to establish the paternity of the child. This document is called an Acknowledgment of Paternity (AOP). The second way to establish paternity is through a court proceeding.

**What does it mean to "acknowledge paternity"?**

Paternity means fatherhood. When both parties sign an AOP and it is filed with the Texas Vital Statistics Unit (VSU), the biological father becomes the legal father. Once paternity has been established, the father's name is placed on the birth certificate. A court can order him to pay child support and may grant him the rights for visitation or possession of his child.

**What if the incarcerated parent wants to sign the Acknowledgment of Paternity (AOP)? Where can I get assistance signing the AOP form?**

An AOP can be obtained from a certified entity such as a local registrar or child support office or your Access to Court Supervisor. The Access to Court Supervisor can assist you with an AOP in the law library at your facility.

**What are the legal benefits for an incarcerated father when paternity is established?**

Establishing paternity has many benefits for both children and parents. The most important benefit for children is knowing that they have a father who wants to be in their life. Once paternity has been established, you become the legal father of that child, with all the rights and responsibilities of a father who was married to the mother. The Texas Attorney General's Office cannot help you obtain visitation with or custody of your child. There is no guarantee of the right to custody or visitation, but you have a right to raise the issue of custody and visitation in court or during the child support review process.

**What if, after signing the Acknowledgment of Paternity, I have reasons to believe I am not the father?**

If you sign the Acknowledgment of Paternity (AOP) and you later decide you may not be the father, you have to file legal papers to either rescind (if done within 60 days of filing an AOP) or challenge (must be done within four years of filing an AOP) the AOP. Either of these legal actions is likely to require assistance from an attorney. The Attorney General's Office cannot provide assistance to rescind or challenge an AOP. Legal action to challenge an AOP is barred if more than four years have passed since the AOP was filed.

**What if the mother says I am the father but I don't think I am and we were never married?**

If you do not think that you are the biological father and you have not signed an Acknowledgment of Paternity (AOP), a suit may be brought against you to establish paternity. The mother or the Attorney General's Office can open a case to establish whether you are the biological father. When paternity is being established, you can request a DNA test or the court can order a DNA test. If you have been identified as the father of a child and are being sued for paternity, you may request DNA testing and the Attorney General's Office can send a lab technician to the TDCJ facility where you are incarcerated to collect a sample. The request should be in writing and sent to the Attorney General's Office and the court listed in the documents naming you as the father. This request should be sent before the date of the hearing listed in the court papers. The DNA testing generally costs less than \$200 and will not be charged

if the man who has been named the father is found to **not be the biological father**.

**Are fathers treated differently from mothers in child support matters?**

No. In terms of support, custody, or visitation, the law does not discriminate based upon the gender of a person. The law focuses on what is the best interest of the child.

**We're together, so why do I have a child support case?**

In the eyes of the law, you are incarcerated and the other parent and your children are living separately from you. If the custodial parent (CP) needs assistance from the State and applies for Temporary Assistance for Needy Families (TANF), the State may proceed with a child support case whether the CP requests it or not.

FREQUENTLY ASKED QUESTIONS  
ABOUT VISITATION

**Does the Attorney General's Office handle custody and visitation disputes?**

Federal regulations do not allow the Office of the Attorney General to provide services for custody or visitation disputes. During your incarceration, you do not have the ability to enforce visitation rights provided in a court order and contact with your children is generally dependent upon on the custodial parent's willingness to work with you. Upon your release from TDCJ you may contact the Access & Visitation Hotline for information about resources available to help you see your children. The hotline number is 1-866-292-4636 and is answered in English and Spanish, Monday–Friday, 1–7 p.m.

FREQUENTLY ASKED QUESTIONS  
UPON RELEASE FROM INCARCERATION

We recognize that most people need a little time to get on their feet after being released from prison. The Attorney General's Office may be able to temporarily hold off on certain enforcement actions if you provide our office with evidence that you are looking for a job and providing some support to your child. You may also request a Child Support Review when you return to work or if you are reuniting with the mother of your child. This can be done by contacting the local child support office handling your case.

**What do I do about my child support case once I am released from prison?**

- Contact the child support office handling your case and give them an update on your status.
- Pay child support regularly while you are looking for work
- Request time to find employment before an enforcement action is taken; you will need to provide your address and report on your job search efforts
- Notify the child support office as soon as you are employed so that an order or writ for withholding can be sent to your employer.
- Request referrals to parenting programs, job help resources or other community assistance.

**My child support order was modified during my incarceration. When I get released from prison, what might happen to the amount of money that I will owe in child support?**

If your child support order was modified while you were in prison, your release is considered a material and substantial change in circumstances. When there is a material and substantial change in circumstance, the court can change your child support order. The amount you pay in child support will likely increase to reflect your earning capacity after your release from prison.

**How does the court decide how much child support I will pay?**

Texas law sets the following general guidelines for child support payments.

- 20% for one child
- 25% for two children
- 30% for three children
- 35% for four children
- 40% for five children
- Not less than 40% for six or more children

Special rules apply if you have children in more than one household. If the court believes you are not making as much money as you should, the child support amount may be based on your potential earnings.

**I have remarried, and my spouse makes a very good living. Will the child support office take my child support out of my spouse's earnings? Will my spouse's income be counted when my child support amount is calculated?**

No. Your new spouse does not have to pay your child support. A new spouse's income may not be used when determining the amount of child support to be paid.

**I have children who have different mothers. How will the court determine the amount of child support that I owe?**

When you have children in different households, the court uses a multiple household formula to determine the amount of support you must pay. It is important that you let the judge or child support review officer know that you support other children who have a different mother.

**What happens to my Social Security Disability Benefits or Veterans Benefits when I am incarcerated?**

Much like informing the Attorney General's Office of your incarceration, you must inform the Social Security Administration or the Department of Veterans Affairs when you have been convicted of a felony and are sent to prison for any length of time. You cannot receive disability benefits for any of the months during which you are incarcerated. However, family members who are eligible for benefits based on your work history may continue to receive benefits.

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

The Attorney General's Child Support Division can direct you to skills training and job placement services through the Texas Workforce Commission. The Child Support Division can also help you with referrals to educational or literacy classes and counseling services for substance abuse or for parenting skills. In many cases, the court will order a non-custodial parent who is behind on child support payments to take part in one or more of these services.

## CHILD SUPPORT DEFINITIONS:

**Accrual** – Sum of child support payments that are due or overdue

**Arrearage** – Past-due, unpaid child support owed by the non-custodial parent

**Acknowledgement of Paternity (AOP)** – A document that both unmarried parents can voluntarily sign to establish legal paternity for their child without going to court

**Case** – A collection of people associated with a particular child support order, court hearing, and/or request for IV-D services. This typically includes a custodial party (CP), a dependent(s), and a non-custodial parent (NCP) and/or putative father (PF). Every child support case has a unique Case ID number and, in addition to names and identifying information about its members, includes information such as CP and NCP wage data, court order details, and NCP payment history.

**Case ID** – Unique identification number assigned to a child support case

**Child support modification** – A court-ordered change to a child support order, which can include your child support payment amount being lowered or raised

**Child support** – Financial support paid by a parent to help support a child or children of whom they do not have custody

**Court order** – A legally binding edict issued by a court of law. It is issued by a judge or properly empowered administrative officer. A court order related to child support can dictate how often, how much, and/or what kind of support a non-custodial parent must pay and how long he or she must pay.

**Custodial parent (CP)** – The person who has primary care, custody, and control of the child, also referred to as the obligee

**Dependent** – A child who is under the care of someone else. Most children are dependents. The child ceases to be a dependent when he or she reaches the age of 18 as determined by state law, but depending on the State's provisions, may remain eligible for child support for a period after he or she turns 18 years of age.

**Default judgment** – A judgment entered when a person fails to respond to a legal action or fails to appear in court

**Genetic testing** – (DNA testing) Analysis of inherited factors to determine legal fatherhood or paternity

**Guidelines** – A standard method for setting child support amounts based on the income of the parent(s) and other factors determined by state law

**Income** – Any periodic form of payment to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, pension, or retirement program payments and interest

**Legal father** – A man who is recognized by law as the male parent of a child

**Monthly support obligation** – The amount of money a non-custodial parent is required to pay per month

**Non-custodial parent (NCP)** – The parent who does not have primary care, custody and control of the child, also referred to as the obligor

**OAG** – Office of the Attorney General

**Obligated** – A term meaning that a non-custodial parent (NCP) is required to meet the financial terms of a court or administrative order

**Obligation** – Amount of money to be paid as support by a non-custodial parent (NCP). It can take the form of financial support for the child, medical support, or spousal support. An obligation is recurring and ongoing. It is not a one-time debt.

**Order** – Direction of a magistrate, judge, or properly empowered administrative officer

**Paternity** – Legal determination of fatherhood

**Rescind** – Change of mind after signing an Acknowledgment of Paternity (AOP), must be filed as a petition with the court within 60 days of filing AOP documents with the Vital Statistics Unit

**Where can I get help with my child support or information about my child support case?**

The Access to Courts Supervisor at TDCJ is the place to start while you are incarcerated. They have the **Child Support Inquiry Form for Incarcerated Parents** that you must use to submit information requests to the Office of the Attorney General. All requests for information about child support or your child support case **must be made on this form**. Please allow about 60-90 days for a response.

**What do I do if I believe my child is being abused?**

Call the Department of Family and Protective Services at 1-800-252-5400. If you do not have access to a phone, ask a third party to make the call for you.

**CONTACT INFORMATION  
FOR USE AFTER RELEASE FROM TDJC**

**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)  
E-mail: [child.support@oag.state.tx.us](mailto:child.support@oag.state.tx.us)

**BY TELEPHONE**

Regional Customer Service Centers and Area Offices (all voice)  
Houston/Harris County . . . . . (713) 243-7100  
Dallas/Tarrant County . . . . . (972) 339-3100  
San Antonio/Bexar County . . . . . (210) 841-8450  
Austin/Travis County . . . . . (512) 514-7000  
Lubbock . . . . . (806) 765-0094  
McAllen . . . . . (956) 682-5581  
Tyler . . . . . (903) 595-6900  
El Paso . . . . . (915) 779-2388

**24-HOUR PAYMENT AND CASE STATUS INFORMATION**

(800) 252-8014

**FOR THE DEAF AND HARD OF HEARING**

(800) 572-2686 (TTY)  
(512) 460-6417 (TTY)



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**