

NON CUSTODIAL PARENTS

INTRODUCTION

This handbook addresses the legal challenges faced by poor, unemployed or low-income, unmarried Texas fathers. Many of these men are, or would be if they were in better economic or social circumstances, interested in establishing a legal and personal relationship with their child. Most unmarried fathers want to be good parents and, to the best of their ability, want to support their child financially, emotionally, and physically.

NON CUSTODIAL PARENTS

Every day in the United States, thousands of children are born to unmarried parents. Most of these parents, like most married parents, heartily and lovingly welcome their child into their lives and into their world. However, parents who are young, poor, unemployed, underemployed, or unable to work face particularly complicated problems and concerns.

The Center on Fathers, Families, and Public Policy, in conjunction with the Office of Attorney General of Texas, created this handbook to explain the Texas child support system and to highlight the legal processes involved in paternity establishment and child support enforcement. Individuals in the situations outlined here would benefit from the assistance of a lawyer.

EFFECT OF FEDERAL LAW

The federal welfare Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) of 1996 has greatly affected the way that Texas conducts paternity establishment and child support enforcement. Alleged fathers, particularly those who cannot afford legal advice, should be aware that the federal government has set a goal of establishing paternity for at least 90 percent of all children born out of wedlock. New federal and state laws were designed to ensure that this goal is reached, and the Texas child support enforcement system is committed to reach this goal. For example, Texas does not allow an unmarried man's name to be added to a birth certificate unless he has signed a Voluntary Acknowledgment of Paternity form or there has been a legal determination that he is the father. In addition, welfare benefits can be reduced if a child's mother does not cooperate in establishing paternity and obtaining support, unless the mother has good cause.

Establishment of paternity for all children is a worthy goal, and in the overwhelming majority of cases, a legal finding of paternity is in the best interests of all concerned: mother, father, and child. In situations where the alleged father is actually the biological father, these new laws will not have an unjust impact. However, if a man does not understand the meaning and possible consequences of documents he signs, or if he is unable to comprehend legal processes, child support laws and policies could have an unintended result.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

LEGAL SERVICES

If they could afford to, most people would hire a lawyer to handle matters as serious as establishing paternity and setting child support orders. Such legal assistance is advisable in paternity cases, even if the alleged father does not doubt that the child is his. However, the reality is that many low-income, unmarried fathers cannot afford such services. The Center on Fathers, Families, and Public Policy developed this handbook as a source of information for alleged fathers and for social service professionals who are helping those men with the paternity establishment and child support enforcement systems.

The Child Support agency for the State of Texas is the Office of the Attorney General. Attorneys from the Child Support Division of the Office of the Attorney General represent the interests of the State. However, child support services are available to both custodial and non-custodial parents, from the Attorney General's Child Support Division upon request.

TEN THINGS YOU SHOULD UNDERSTAND ABOUT THE TEXAS CHILD SUPPORT SYSTEM

1. Know that your paternity or child support case will be decided without your input if you fail to respond.
2. Understand that if you disagree with a decision made by an administrative child support officer, you may have the right to have a judge address the issue.
3. Know as much as you can about the child support officer you meet with: his or her name, title, power to make a decision, and power to change a decision.
4. Understand what you are signing.
5. Understand the consequences of signing a document before you sign it.
6. Know that just because you are the legal father of a child does not mean that you will have visitation with or custody of that child unless you get a court order granting you one of these.
7. Pay consistently if you can, even if the amount you pay is below the order amount. Always keep records of your payments.
8. Make sure that you explain and have some written proof of your financial situation so that your child support order can be set at a realistic amount.
9. Request a review and adjustment of your child support payment from your child support caseworker whenever you lose your job or your income is reduced for whatever reasons, and make sure that follow-up occurs.
10. Know that avoiding child support enforcement is likely to make your situation worse.

PATERNITY ESTABLISHMENT

How can I be listed as the father on my baby's birth certificate?

Under Texas law, if you were married to the mother of the child when the child was born, your name will automatically appear on the baby's birth certificate as the father of the child.

If you were not married to the mother of the child, there are two ways to have your name added to the birth certificate:

1. By voluntarily signing an Acknowledgment of Paternity form; or
2. By a court order.

What does "paternity" mean?

Both legally and biologically, the word paternity means the identity of the father of a child. Except in rare circumstances, when a woman gives birth to a child, she is considered to be the legal mother of that child. Every child also has a biological father. But if you were never married to the mother of your child, Texas does not give you any rights or responsibilities as the child's father unless legal paternity is established.

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.

Unless paternity is established, a child born to an unwed mother has no legal father.

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. The second way to establish paternity is through a court proceeding.

The decision to voluntarily acknowledge paternity should not be taken lightly because it is an important one for both you and your child. If you are absolutely sure that you are the father of the child, and the mother agrees, you should both voluntarily acknowledge paternity. If you and the mother are unable to reach an agreement about visitation with the child or other rights such as the right to see your child's school or medical records, you will have to go to court.

If a mother or the State claims that you are the father of a child, you may want to take a genetic test to make sure you are the biological father. A genetic test is the best way to be absolutely sure that you are the biological father of the child. Since the 1980s, very accurate genetic tests have been developed. If you are not sure that you are the father, you should insist on a genetic test to determine whether you are the father of the child. If the test shows you are the father, the court will likely order you to repay the cost of the test.

What if the mother and I want to establish paternity as soon as the baby is born?

In Texas, if the mother of the child is not married, paternity can be established in the hospital at the time the baby is born by both of you signing an Acknowledgment of Paternity (AOP) form. The AOP may also be signed before the child is born. If both parents have signed an AOP, no court proceeding on the issue of paternity is needed, and you can be held responsible for child support. You will also

have the right to seek a court order for visitation or custody.

The decision to voluntarily acknowledge paternity should not be taken lightly because it is an important one for both you and your child. If you are absolutely sure that you are the father of the child, and the mother agrees, you should both voluntarily acknowledge paternity.

If I do not establish paternity in the hospital, can the mother and I do it later without going to court?

Yes. You and your child's mother can sign an Acknowledgment of Paternity form at a later date. It must include the signatures of both you and the mother.

If you sign the form after the hospital has already mailed the birth certificate, you will be charged a fee for changing the birth certificate to include your name as the father of the child. A completed Acknowledgment of Paternity form should be sent to the Bureau of Vital Statistics, 1100 W. 49th Street, Austin, TX, 78756-3191. The Bureau of Vital Statistics will not charge a fee to file this form.

After both parents have signed an AOP, no court proceeding on the issue of paternity is needed, and you can be held responsible for child support. You will also have the right to seek a court order for visitation or custody.

The decision to voluntarily acknowledge paternity should not be taken lightly because it is an important one for both you and your child. If you are absolutely sure that you are the father of the child, and the mother agrees, you should both voluntarily acknowledge paternity.

I am under 18. If I sign an Acknowledgement of Paternity form, will that make me the legal father of the child?

Yes. Under the Texas voluntary acknowledgment laws, a minor may sign an Acknowledgement of Paternity.

I was never married to the mother of my child, and I am an undocumented immigrant. I want to be declared the legal father of my child. What should I do?

Your status as an undocumented immigrant does not mean that you cannot be declared the legal father of a child born in this country. To be declared the legal father of your child, you and the mother of the child can sign an AOP form.

If you sign the form after your child is born and the hospital has already mailed the birth certificate, you will be charged a fee to change the birth certificate to include your name as the father. A completed Acknowledgment of Paternity should be sent to the Bureau of Vital Statistics, 1100 W. 49th Street, Austin, TX, 78756-3191. The Bureau of Vital Statistics will not charge a fee to file this form.

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

If you sign an Acknowledgment of Paternity and you later decide you may not be the father, there are ways for you to withdraw your signing of the form. However, this is most easily done within 60 days of signing. After 60 days pass, the requirements for withdrawing your name are more difficult to meet. If, within 60 days after the form is filed with the Bureau of Vital Statistics, one of you decides that you want to withdraw this acknowledgment, you have two options. The first option is to file a legal document known as a Petition to Rescind. You may only file a Petition to Rescind if you have not been part of a court case concerning the child. If both you and the mother agree that you are not the father, after you file the Petition to Rescind, the court will declare that you are not the father. If the baby's mother receives welfare benefits, the State must also agree that you are not the father. If there is not agreement as to whether you are the father, the court will hold a hearing to determine whether you are the father.

There is also a second option. If you are summoned for a court proceeding about that child within 60 days of signing the Acknowledgment of Paternity, you may ask the court to cancel the AOP. The court will then decide whether to grant your request.

What if 60 days have passed since the mother and I signed the voluntary Acknowledgment of Paternity and I realize that I may not be the biological father of the child?

If after the 60-day period expires, you no longer believe that you are the child's father, you will have to go to court and file a lawsuit to contest the voluntary Acknowledgment of Paternity. To contest a voluntary acknowledgment, you must prove that the document was signed under conditions of fraud (someone lied in signing the document), duress (you were forced to sign), or mistake of fact (you thought one thing and another thing is true). Contesting an AOP will likely require the assistance of an attorney.

Additionally, you must file a lawsuit to contest the AOP within four years of the form's filing.

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, a suit will be brought against you to establish that you are the father. The mother, child, or government can sue to establish whether you are the biological father.

In Texas, if you refuse to go to court after being served for a paternity hearing, the court can declare you to be the father of the child. This order is called a default order and may include an order to pay child support.

Why would a mother force me to go through the legal process of establishing that I am the father?

In some cases the mother must establish that you are the legal father of her child because the State requires her to in order to receive financial assis-

tance. She must cooperate in helping the State establish who is the father of the child, or the State will decrease the amount of support that it gives her.

Having a legal determination of who is the father of a child offers many benefits to everyone involved. For instance, the child will only be entitled to child support if a legal father has been named. In addition, you will only have the right to ask a court for visitation if you are determined to be the legal father. And the mother, by establishing paternity, will be able to receive financial assistance to help care for your child.

What happens when I go to court for a paternity case?

You will first receive a document from the court. It is very important that you read and understand everything in this document.

When you appear in court, it will most likely be in front of a judge or a child support master. The court is supposed to provide an interpreter at no charge for any father who does not speak English, or for a father who is deaf.

In the court proceeding, you will be asked whether you admit to paternity or not. If you admit to paternity, a judgment will be entered and child support may be immediately ordered, or support may be ordered at a later hearing. If you deny paternity, a paternity test will likely be ordered.

If a paternity test is ordered, you, the mother, and your child must all appear for the test. If you fail to appear to take a court-ordered paternity test, the court may hold you in contempt. If there is sufficient proof, the court may also enter a default judgment declaring you to be the father.

Can this be handled without going to court?

Instead of going to court, paternity can be established and child support set administratively in a Child Support office through the Child Support Review Process (CSRP). If you have not acknowledged paternity, you have the right to ask for a

genetic test. Paternity tests can also be ordered if there is doubt about the biological father's identity. No one has to appear in court if there is an agreement concerning custody, visitation, and support, and everyone signs the agreed order.

What should I expect if a mother claims I am the father of a child, but I say I'm not and she takes me to court?

Every case is different and there is no magic list for what you can expect if parents disagree on paternity and a lawsuit is filed.

If you can afford one, you have the right to be represented by an attorney at any stage of a paternity trial. If the mother can afford one, she has the right to be represented by an attorney at any stage of a paternity trial. The child support attorney from the Office of the Attorney General represents the interest of the State.

A big part of any paternity suit is the genetic test. At this point, most likely you will have already had that test. You, the State, or any other party has the right to request a paternity test. The government may pay for the test. However, if it is determined that you are the father, the court may order that you repay the government for the cost of the test.

If the court determines that you are the father of the child, you will be ordered to pay child support. If you request custody or visitation, the court is required to consider your wishes. If you wish to spend time with your child, it is important that you request this from the court.

How important are genetic tests in paternity cases?

The results of the genetic test will determine what the court rules as to whether you are the father of the child. If the genetic test excludes you as the possible father, the court will rule that you are not the father. If the genetic test indicates that there is a 99 percent or better chance that you are the father, you will have the burden to prove that you are not the father.

She says it is not my baby and she won't let me have visitation. What should I do?

If you are not married to the mother of your child and paternity has not been established, you can file a petition with the court that you be declared the child's legal father. If you can afford one, you have the right to be represented by an attorney at any stage of a paternity trial. If the mother can afford one, the mother also has the right to be represented by an attorney at any stage of a paternity trial. The child support attorney from the Office of the Attorney General represents the interest of the State. You may ask the Child Support Division of the Office of the Attorney General to begin the court process of having you declared the legal father of the child.

You should begin by requesting a genetic test for the mother, the child, and yourself. If you request the tests, the court will order each of you to take one. If a court orders or the parties agree to genetic tests, the results of these tests will be a part of the paternity trial.

If the court determines you are the legal father of the child, you will be responsible for child support. You will also have the right to request custody or visitation orders from the court. If you wish to spend time with your child, it is important that you make this request.

I am not married to a 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 promptly to establish that they are a baby's father to avoid losing their rights if the child is put up for adoption. Unmarried fathers who have not legally established paternity should register with the state's registry of paternity located at the Bureau of Vital Statistics. To legally establish paternity means that you have filed an Acknowledgment of Paternity or had a court determine that you are the father of the child. You can register before the baby is born. But you must register no later than 31 days after the birth of the child. You will not be

charged any money for registering with the state's registry of paternity.

Not registering can have serious consequences. It may lead to your parental rights being terminated if you cannot be located.

If you do not register, you will be notified of a potential adoption only if you have filed a suit to establish paternity before your parental rights are terminated.

I was worried that the mother of my child would place our child up for adoption. I registered with the paternity registry within 31 days of the child's birth. Is there anything else that I need to do to make sure that my parental rights are not terminated so that she cannot place the child for adoption?

Yes. You should be sure to notify the paternity registry any time there is a change in any of the information you provided to the registry. In particular, you should inform the paternity registry anytime you change your address.

If you do not tell the paternity registry of your changed address, the mother of your child may be able to get a court order to terminate your parental rights without your knowing about it. The mother would be able to do this because she was not able to provide you with the required notification. Once your parental rights are terminated, your child may be adopted without your receiving notice or having the right to object to this adoption.

What are the legal benefits of establishing paternity for an unwed father?

If you have not been declared the legal father, you have no legal right to seek custody or visitation with your child.

Once paternity has been established, you become the legal father of that child, with all of the rights and responsibilities of a father who was married to the mother. The Texas child support agency 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 the right to raise the issue of custody and visitation in court.

If you sign an Acknowledgment of Paternity, you may go to court to ask for custody of or visitation with the child. If you establish paternity through the court system, the court is required to consider your wishes concerning visitation and custody. You should ask the court to order specific days and hours you can be with the child.

Establishing paternity also helps children. Your child might be entitled to Social Security, veteran's benefits or health insurance. Establishing paternity helps to ensure your child's eligibility for these benefits.

What are the legal consequences of establishing paternity for an unwed father?

If you are declared the legal father of a child, you will most likely be required to pay child support. If you do not get a child support order when you are made the legal father, there will likely be an order at another hearing or at some time in the future. Unless you have sole custody of the child, you will be responsible for child support. You may also be responsible for some of the costs of the mother's pregnancy, the child's health care expenses, retroactive child support, and other costs.

In Texas, many penalties can be assessed against a father who does not pay child support. Some of these penalties include: posting your picture in private and public locations and in the news, revoking your driver's license, taking your tax refunds, denying occupational licenses, denying you state loans or grants, referring you to private collection agencies, reporting you to a consumer reporting agency, or placing you in jail.

You will also be required to pay interest at the rate of 6 percent per year on any past due child support. Before January 1, 2002, any parent who was late in paying court-ordered child support was charged 12 percent per year.

CHILD SUPPORT

How do I make my child support payments?

The usual method for payment of child support is to have money taken directly from your paycheck and sent to the local child support registry or the state disbursement unit. If a court orders your employer to take money out of your paycheck for child support or medical support, your employer must, by law, do so. Texas employers can charge up to \$10 each month to withhold money from your paycheck for child support, but your employer cannot discriminate against you because of the child support withholding procedure.

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

Texas has established a formula to calculate what amount a non-custodial parent should pay for child support. If your net monthly income is less than \$6000, Texas law has established the following guidelines for child support payments. The amount withheld is based on your net income each month.

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

Special rules apply in cases of split or joint placement or multiple children in different households. If a court believes that you are not making as much money as you should, the child support amount may be based on your earning potential. This is income that you could potentially earn.

I have children who have different mothers. We are going before the court to determine the amount of support that I should pay to one of the mothers of my children. How will the court determine the amount of child support that I owe?

A different formula may apply to determine the amount of support when you have children in different households. It is important that you let the

judge, child support master, or child support review officer know that you support other children who have a different mother.

What if I cannot afford to pay the amount that is determined by the child support guidelines?

A parent may ask the court to award an amount greater or less than what would be determined by the child support guidelines. To do this, you must convince a court that the guidelines are unjust or inappropriate in your case. In determining whether the amount of child support determined by the guidelines is inappropriate or unjust, the court will look at many factors. Among the factors the court will consider are the age and needs of the child, child care expenses incurred by you or the child's mother in order to work, or any other factor consistent with the best interest of the child.

In Texas, the parties may sign a written agreement that differs from the child support guidelines. If the child's mother receives welfare benefits, the child support attorney will also have to agree to the amount that differs from the child support guidelines. It may be difficult to get a child support attorney to agree to this. If the court agrees with the parties' decision concerning the amount of child support, the court will enter the agreement as an enforceable order of the court. However, the court must find that the written agreement serves the best interest of the child.

Child support generally continues until the child's 18th birthday or until the child graduates from high school, whichever occurs later.

How did the court determine the amount of child support I owe if I was not there and they did not know my income?

If you do not show up, a child support order can still be entered. If your income is not known, the support order will be based on you having a job that pays the federal minimum wage and working 40 hours per week.

Why is the amount I owe greater than my weekly child support amount?

In Texas, there are many reasons that the amount of money you owe each week can be greater than your weekly child support amount.

First, the weekly amount you pay may be more than what is stated in your order because you have fallen behind in paying your child support. When you fall behind in your child support, you will not only have to pay your current amount of support but also an additional amount to begin to cover what you were unable to pay in the past. You will also be charged interest at the rate of 6 percent per year on any past due child support.

You may also be charged with the costs of the mother's medical bills during her pregnancy, the child's health care expenses, the costs of paternity tests, attorney's fees, and other costs. In addition, you may be charged up to \$10 every month that your employer takes money from your paycheck to provide support.

All of these costs may be added to the amount that you owe each month.

What if I want to decrease the amount of my child support payment because things have changed in my life, and I want to do this without relying on the Child Support Division of the Attorney General's office?

To get a change in the amount of support you pay, you must obtain an order from the judge or child support master. It is best to get a lawyer, if you can afford one, to handle your attempt to change the amount of child support you pay.

In Texas, the parties may agree to change the amount of child support that is being paid. If the child's mother receives welfare benefits, the child support attorney will also have to agree to any amount that differs from the child support guidelines. It may be difficult to get a child support attorney to agree to this. In addition, the court must agree to the change. If the court does not think the

change is in the best interest of the child, the court will not approve the agreement.

At a hearing, the child support master or judge may modify the amount of child support you pay in two situations:

- if there has been a substantial change in circumstances that affects your ability to pay child support, or
- if it has been three years since the child support order was created or modified and the amount you pay differs by 20 percent or \$100 from the amount you would pay based on your current income according to the child support guidelines.

The child support master or judge cannot reduce the amount you already owe. Many non-custodial fathers believe that if they get behind at a time when they are legitimately unable to make a payment, what they owe can later be reduced or discounted by the court when an explanation is given. However, if you wait to explain your changed circumstances, the court will be unable to reduce the back payments you owe. So it is very important that you notify the court immediately, provide proof of the reduction in income, and ask that your payments be reduced accordingly. If you do this, the court may temporarily or permanently reduce the amount of future payments.

What if I directly pay for things that my child needs, such as diapers, instead of paying the money through the child support agency as required by the court order?

It is unlikely that any payments other than those required by the court will count as payment of child support. If you give the child or the child's mother something directly, you will still owe the full amount of court-ordered child support. The court will likely consider what you give to the mother to be a gift to the child.

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

If you lose your job, make less money than you used to, or become physically disabled and unable to earn an income, you should notify the court immediately. However, simply telling the court clerk or the Child Support Division of the Office of the Attorney General is not enough to reduce the amount of child support you owe. You must obtain an order from the judge or child support master. It is best to get a lawyer, if you can afford one, to handle your attempt to change the amount of child support you owe.

Many noncustodial fathers believe that if they get behind at a time when they are legitimately unable to make a child support payment, what they owe can later be reduced or discounted by the court when an explanation is given. However, if you wait to explain your changed circumstances, the court will be unable to reduce the back payments you owe. It is very important that you notify the court immediately, provide proof of the reduction in income, and ask that your payments be reduced accordingly. If you do this, the court may temporarily or permanently reduce the amount of future payments.

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The court may also order you to seek employment or participate in an employment-training program, such as those offered by the Texas Workforce Commission.

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

The Attorney General's Child Support Division can direct you toward skills training and job placement services through the Texas Workforce Commission. The child support agency may also help you with referrals to education or literacy classes and counseling services for substance abuse or for parenting skills. In many cases, the court will order a father who is behind on his child support payments to take part in one or more of these services. Your child support case worker may ask or require you to attend the program, but you should find out whether you are being ordered to attend. If you have been ordered to attend any of these programs and you do not complete them, your driver's license may be suspended.

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. The legal basis for placing you in jail is "contempt of court." Contempt of court is a legal term that 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. If two conditions are satisfied, you also have the right for the government to provide you with that attorney free of charge:

- You must prove that your income is very low or you have no income; and
- The result of the hearing must be that you are likely to be placed in jail.

In some cases, the law allows you to be imprisoned for a specific amount of time and/or pay a fine. This happens when you are criminally prosecuted and imprisoned for nonpayment, which is a felony. As of September 1, 1999, a felony conviction is sufficient to deport someone who is not a citizen of the United States.

How will my being placed in jail affect the amount of support I owe for the time I am incarcerated?

Your child support order will continue while you are in jail. You will need to petition the court to ask for a reduction in your child support amount based on what you can earn while in jail or in prison. While this may be difficult, it is extremely important that you try to do this. It is up to the court to determine whether to decrease your child support because you have been imprisoned.

Many non-custodial fathers believe that if they get behind at a time when they are legitimately unable to make a payment, what they owe can later be reduced or discounted by the court when an explanation is given. However, if you wait to explain your changed circumstances, the court will be unable to reduce the back payments you owe. It is very important that you notify the court immediately, provide proof of the reduction in income, and ask that your payments be reduced accordingly. If you do this, the court may temporarily or permanently reduce the amount of future payments.

My child support order was reduced during my prison term. 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 has been reduced or suspended while you are 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 must change your child support order. As a result, the amount you pay in child support will likely increase to reflect your earning capacity after your release from prison.

Before there will be an increase in your child support amount, the court will have to be asked and agree to change the amount of child support you owe.

How can I have custody of or visitation with my child?

If you are separated from or have never lived with the mother of your child, you will need a court order to determine custody and visitation arrangements. The Child Support Division of the Attorney General's office cannot help you obtain an order for visitation or custody. It is best, if you can afford it, to get an attorney to handle these issues. If you cannot afford an attorney, you may do this without an attorney.

If you can make a custody and visitation arrangement with the mother of your child, it is best that you do this. If the two of you agree, the court will likely provide a legal order for that arrangement. If the court believes that the arrangement you have made is not in the best interest of the child, the court may ask you both to come up with another arrangement or may make an arrangement that the court believes is in the best interest of the child. If you cannot come to an agreement with the mother of your child, it will be up to a court to determine the custody and visitation arrangements for the child. In determining visitation and custody, the court will consider all facts relevant to the best interest of the child. Among the factors a court typically looks at are the wishes of the parents, the wishes of an older child, or any other matter that the court feels affects its decision as to what is in the best interest of the child.

Does domestic violence factor into a court's decision concerning custody of or visitation with a child?

The court will look at all factors relevant to the best interest of the child in determining custody or visitation.

One factor the court will look at is whether either parent engaged in or if there have been allegations of domestic abuse of the other parent of the child. Another factor the court will consider is any instance of child abuse.

If the child's mother 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 the child for visitation.

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

Child support and visitation are separate issues. Your not paying child support should not affect your ability to see your child. When faced with the question of whether or not to allow you to see your child, a court will only be concerned with the best interest of the child.

There are many penalties that the court will likely apply to you for not paying child support. Some of these penalties include: posting your picture in private and public locations and in the news, revoking your driver's license, taking your tax refunds, denying occupational licenses, denying you state loans or grants, referring you to private collection agencies, reporting you to a consumer reporting agency, or placing you in jail.

Another Texas penalty for not paying child support is that you will be required to pay interest at the rate of 6 percent per year on any past-due child support. Before January 1, 2002, any parent who was late in paying court-ordered child support was charged 12 percent per year.

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All of the ideas, opinions, and legal interpretations presented in this handbook are explicitly those of the Center on Fathers, Families, and Public Policy. It should not be assumed that the foundations providing support for this work share them.

This Question-and-Answer handbook is based solely on Texas law and is only accurate for the state of Texas. It was produced on April 5, 2002, and does not reflect any changes in Texas law since that date. This handbook provides only general legal information surrounding the Texas child support system. It is not advice about your particular legal situation. If you can afford it, you should consult an attorney for assistance with your particular legal problems.

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