

# Colorado Question and Answer Handbook for Noncustodial Parents: A question and answer resource on paternity establishment and child support

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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.

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## Introduction

This Question and Answer handbook is based solely on Colorado law and is only accurate for the state of Colorado. It was produced on March 1, 2001, and does not reflect any changes in Colorado law since that date.

This handbook provides only general legal information surrounding the Colorado 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.

Every day in the United States, thousands of children are born to unmarried parents. In Colorado alone in 1995, 13,235 children were born out of wedlock. Most of these parents, like most married parents, lovingly welcome their children into their lives. However, the problems and concerns faced by unmarried parents who are poor are particularly complicated and sometimes can seem hopeless.

This handbook will highlight the legal processes involved in paternity establishment and child support enforcement. You should read this handbook with the understanding that any individual faced with the situations outlined here would benefit greatly from the assistance of a legal professional.

## Legal Services

Most people would, if they could afford it, hire a lawyer to handle matters as complicated and serious as establishing paternity and setting child support orders. 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 low-income fathers and for social service professionals who are trying to help explain the paternity establishment and child support enforcement systems. This handbook does not replace the services of an attorney to help you with your legal problems.

Some programs are available to low-income Colorado parents who need assistance with family law matters. This list does not provide every available legal resource for low-income parents in Colorado. The Center on Fathers, Families, and Public Policy is not responsible for the type of service you receive from this program. The Parent's Legal Clinic gives an informational clinic on the second Thursday of each month from 11:30 a.m. to 1:00 p.m. for parents who do not have attorneys. Each clinic is designed to provide information on the steps necessary to proceed with matters related to paternity, child support, visitation, and custody without the assistance of an attorney. The location of this free program is the Denver City & County Building, 1437 Bannock Street, Denver, CO 80202, and the program is held in the Grand Jury Room (Room 325).

Also in the Denver City & County Building, 1437 Bannock Street, Denver CO 80202 are a number of forms that an individual without an attorney can use to proceed in a court matter. Among these forms are the following:

- Petition to establish paternity

- Motion to terminate child support
- Motion to modify child support
- How to file a motion
- Motion to modify parenting time
- Motion for modification of custody or allocation of decision-making responsibility
- Motion to allocate parental responsibilities
- Motion to change a child's surname
- Instruction sheet for filing a motion to review child support arrears/support debt

## **The Top Ten Things You Should Understand About The Colorado Child Support System**

1. Know that your paternity or child support case will be decided without your input if you do not respond.
2. Understand that you can disagree with a decision made by a child support worker through the administrative process and if you disagree, you may have the right to have a judge address the issue.
3. Know as much as you can about the child support worker you meet with, his or her title, power to make a decision, and power to change a decision.
4. Understand what you are signing and the consequences of signing a document before you sign it.
5. Understand that the child support enforcement office does not represent you or the mother, but represents the interest of the state.
6. Know that just because you are the 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 these rights.
7. Pay consistently if you can, even if the amount you pay is below the order amount.
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. Notify the court or your child support caseworker whenever you lose your job or your income is reduced for whatever reason, try to get a modification of your child support, and make sure that follow-up occurs.
10. Know that avoiding child support enforcement is likely to make your situation worse.

## **Paternity Establishment**

### **What is meant by the word "paternity"?**

Both legally and biologically, the word paternity means the identity of the father of a child. Except in rare circumstances, when a mother 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 the child, Colorado will not treat you as the father of the child unless legal paternity is established.

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

In Colorado there are two primary ways to establish paternity for a child born to a mother who has never been married. Both parents can sign a legal document to establish the paternity of the child. This document is called an Acknowledgment of Paternity. Another way to establish paternity is through a court or administrative proceeding.

If you are absolutely sure that you are the father of the child, and the mother agrees, you can both voluntarily acknowledge that you are the father of the child. While the baby is still in the hospital, the mother and the father, if he is present, are offered the opportunity to do this. In addition to the opportunity to acknowledge paternity voluntarily at the hospital, Colorado provides opportunities for acknowledgment at a later date. You will still need to go to court if you wish to have court-ordered visitation with your child.

If a mother or the state claims that you are the father of a child in a legal proceeding, you may want to take a genetic test to make sure you are the biological father. Since the 1980s, very accurate genetic tests (DNA tests) have been developed. A genetic test is the best way to be absolutely sure that you are the biological father of the child. If you are not sure that you are the father, and want to be sure, you should insist on a genetic test.

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

Yes. The consequences and benefits of signing an Acknowledgment of Paternity are the same for a minor as for an adult.

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

Even if you sign an Acknowledgment of Paternity and you later decide you may not be the father, there are ways for you to cancel your signing of the form. However, this is most easily done within 60 days of signing. After 60 days pass, the requirements for canceling the Acknowledgment of Paternity are extremely difficult to meet.

If within 60 days of both of you signing the form you decide that you want to cancel this acknowledgment because you are not sure if you are the father, you have two options. The first option is to contact your local child support enforcement unit or a court and tell them that you may not be the father of the child. If you can afford it, you should get an attorney to help you cancel this form.

There is also a second possibility. If you are called to court for a court proceeding about that child within 60 days from the signing of the Acknowledgment of Paternity, you may ask the court to cancel the Acknowledgment of Paternity. The court will then decide whether to do so.

### **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, your only option is to go to court. You will have to file a lawsuit to contest the voluntary acknowledgment of paternity. To contest a voluntary acknowledgment you must prove at least one of three things. 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)

Successfully contesting an Acknowledgment of Paternity in court will likely require the assistance of an attorney.

### **What if a woman says I am the father of her child but I believe that I am not the father?**

If you have not signed an Acknowledgment of Paternity and you were never married to the mother of the child, a suit will have to be brought against you to establish that you are the father. The mother, the child, or the local child support unit can sue to establish whether you are the biological father.

You may be contacted in one of two ways. You will either receive a legal document called a "notice of financial responsibility" or you will receive a legal document called a summons to appear in court. It is very important that you read and try to understand everything in whichever document you receive.

Either of these legal documents will have on it a date and time for you to appear. It is important that you appear at this hearing. If you do not appear, you may be declared to be the father of the child, owe child support, or have a court place a bench warrant for your arrest. You will also owe child support. If you cannot attend the hearing, you should look to see if the legal document tells you what steps you should take.

### **I received a document that claims I may be the biological father of a child. Should I just disregard the hearing because I know I am not the father?**

No. You should go to the hearing and say (and if necessary prove) that you are not the father. Perhaps the best way to prove you are not the father is to get genetic test (DNA test).

In Colorado, if you do not appear this can result in an order declaring you the father of the child. This order is called a default order and it will likely include an order to pay child support.

### **I am going to court in the next couple of weeks for a paternity case and I know that I am the father of the three-year-old child for this court case. Could I owe child support for the child for the last three years?**

Yes. You may be ordered to pay child support for the time before the date you were declared the father and all the way back to the birth of the child.

### **How important are genetic tests (DNA tests) in paternity cases?**

If the genetic test (DNA test) does not exclude you as the father and indicates there is a 97 percent or higher chance that you are the father, a court will think you are the father. If the genetic test does not exclude you as the father and indicates that there is less than a 97 percent chance that you are the father, the court will decide whether you are the father based on other evidence. If the genetic test excludes you as the possible father, the court will rule that you are not the father and dismiss the paternity action. Thus, the results of the genetic test will most likely determine what the court rules as to whether or not you are the father of the child.

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

Having a legal determination of who is the father of a child offers many benefits to the parents and the child. For instance, legal paternity establishment is necessary to get court-ordered child support. In addition, you will only be able to ask a court for visitation with your child if paternity has been established.

In some cases the mother must establish that you are the father of the child because the government requires her to do so to receive assistance from the government. She must cooperate in helping Colorado to establish who is the father of the child, or the government will decrease the amount of support that it gives her, or may refuse to give her welfare benefits. In addition, any child support that you pay will go to the government instead of going to the mother.

### **What if I believe that I am a child's father, but the mother denies me access to the child?**

For you to have court-ordered visitation you must be declared the father of the child. If you have not been declared the father, you can file a request with the court or local child support unit to be declared the father. If you can afford one, you have the right to be represented by an attorney at any portion of a paternity proceeding. If the mother can afford one, she also has the right to be represented by an attorney at any portion of a paternity proceeding. You can also apply for services through the local child support enforcement unit. The child support enforcement attorney does not represent you or the mother; he or she represents the interest of the state of Colorado.

As part of the paternity action, you can request a genetic test (DNA test) of the mother, the child, and yourself. If you request these genetic tests, each of you will be ordered to have the genetic test taken. If you are ordered or the parties agree to genetic tests, the results of these tests will be a part of the paternity proceeding.

If it is determined that you are the father of the child and you are the non-custodial parent, you will owe child support. Once paternity has been established, the court may also consider the issues of visitation and custody. If you desire to have visitation or custody it is important that you ask the court to write a visitation order that clearly states where and when you can see your child.

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

Once paternity has been established, a man becomes the legal father of that child. He has all of the rights and responsibilities of a man who had been married to the mother. The child will be eligible for government dependent benefits and inheritance rights from you. In addition, your name can be listed on the birth certificate as the father of the child.

There is no guarantee of the right to custody or visitation, but a father has the right to ask for custody or 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, you may ask for visitation with or custody of your child. You should ask the court to make an order that specifically says which days and hours you can be with the child.

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

If you are declared the legal father of a child and the mother gets physical custody of the child, you will have to pay child support. You may also owe the reasonable costs of the mother's pregnancy and confinement, the child's medical expenses, child support back to the time of the baby's birth, and other costs.

## **Child Support**

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

The usual method for payment of child support is to have your employer directly take money from your paycheck and give it to the custodial parent or child support enforcement office. Colorado employers can charge up to five dollars for each month that they have to withhold money from your paycheck for child support. Your employer cannot discriminate against you or treat you unfairly just because they have to withhold child support from your paycheck.

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

Colorado has established guidelines to calculate what amount a non-custodial parent should pay for child support. Colorado determines the amount of support you owe based on what a court considers reasonable or necessary for a child. This support amount is partially based on the financial situation of each parent and the costs of raising a child.

A parent may ask the court to award an amount greater or less than the guideline amount. To do this you must convince a court that the guidelines are unfair, unjust, or inappropriate in your case. Only a court may award an amount greater or less than the guideline amount.

If a court believes you could make more money, you may get a child support order that is not based on your actual income. Instead the court will base your child support on a higher amount that it believes you could make. The court may also order you to seek employment if you are currently not employed.

Child support generally continues until the child's 19th birthday or until the child graduates from high school.

## **I pay my child support but the mother claims that she never gets any of the money that I send. What is happening?**

In some cases the mother does not receive the child support that you pay. If she receives certain forms of government assistance, the government will keep all child support that you pay. (The only way she will receive any child support is if the amount of child support is greater than the amount of government assistance that she receives). However, if you do not pay child support there are many penalties that the government can apply against you.

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

You may ask that the court give you a child support order that is lower than the guideline amount. (The mother can also ask that you be given an order that is higher.) To do this you must convince a court that the guidelines are unfair, unjust, or inappropriate in your case. The court may also order you to seek employment if you are currently not employed.

Child support generally continues until the child's 19th birthday or until the child graduates from high school.

## **Why do I owe so much money in child support?**

There are many reasons that the amount of money you owe can be larger than what you feel you have the ability to pay in child support.

First, if you have not asked for a modification of your child support order when things changed in your life, the amount of child support you are expected to pay may not reflect your ability to pay.

Second, if you have fallen behind in paying your child support you will have to pay your regular amount of support plus an additional amount to begin to cover what you were unable to pay in the past. The government may also charge you interest at the rate of 12% per year on any past due child support.

You may also be charged with the costs of the mother's pregnancy, the child's health care expenses, the costs of genetic tests (DNA tests), attorney's fees for the cost of enforcement actions, and other costs. In addition, your employer may charge up to five dollars every month that your employer gives money to the mother or the child support enforcement unit. 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?**

One way to get a change in the amount of support you pay is to request a change in the amount you pay through the child support enforcement unit or the court. 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 the future.

At a hearing, the judge may lower your child support in two situations:

if there has been a major change (substantial and continuing change) in circumstances that impacts your ability to pay child support, or if you now physically have the child living with you (and you and the mother voluntarily agreed to your having the child)

Except for this second situation, the judge cannot reduce the amounts in past due support you already owe for the time before you asked the court for a modification. All the judge can do is reduce the amount of support you will owe in the future.

Many non-custodial fathers believe that if they cannot make a payment, a court can later reduce what they owe when an explanation is given. However, if you wait to explain your changed circumstances, the court cannot reduce the amount owed. A court can only modify support from the time that you ask the court for this modification.

The court may also order you to seek employment if you are currently not employed.

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

It is unlikely that anything you pay outside of the child support order will count as payment of child support. If you give the child or the child's mother something directly you still probably owe the full amount of 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 or child support enforcement unit immediately.

At a hearing, the court may modify the amount of child support you pay. The court will do this if there has been a major change (substantial and continuing change) in your circumstances that impacts your ability to pay child support.

A court may also order you to seek employment if you are unemployed.

### **What are some possible penalties for me if I do not pay my child support?**

Many penalties may be applied to you for not paying child support. Some of these penalties include the following:

- denying or revoking your driver's license
- taking your tax refunds (federal and state)
- denying or suspending occupational licenses
- denying or revoking your recreational licenses
- referring you to private collection agencies
- reporting to a consumer reporting agency that you did not pay child support
- placing liens on your property
- placing you in jail, through a court action, for not paying child support.

### **Can they put me in jail for not paying child support?**

Yes. 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 have the right to be represented by an attorney at a hearing that decides whether you are purposefully refusing to obey a court order (a contempt proceeding).

### **How will my being placed in jail impact the amount of support I owe for the time while I am in prison?**

If you are placed in jail your child support order will continue while you are in jail. You will need to ask the court 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 important that you try to explain other reasons why the court should decrease the amount of support that you owe besides that you have been imprisoned.

A court may only reduce the amount of future child support that 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, there is a chance that the court may reduce the amount of future payments.

### **The custodial parent doesn't allow me to see the child. Why do I have to pay support?**

Child support and visitation are two separate issues. You must pay your child support according to the court order regardless of whether you see your child. However, you may go to court and ask for a specific visitation schedule, if you do not have one.

If there is a visitation schedule and the child's mother refuses to follow it, you can ask the court to order her to follow the schedule. This may be a very difficult and sometimes frustrating process, but it is possible that it can help you get consistent visitation with your child.

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

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 should only be concerned with the best interest of the child.

Of course, many penalties may be applied to you for not paying child support. Some of these penalties include the following:

- denying or revoking your driver's license
- taking your tax refunds
- denying or suspending occupational licenses
- denying or revoking your recreational licenses
- referring you to private collection agencies
- reporting to a consumer reporting agency that you did not pay child support
- charging 12% interest on any past due child support
- placing liens on your property or
- placing you in jail, through a court action, for not paying child support.