

INTRODUCTION

This handbook is based on Minnesota law. It was written on June 1, 2003, and does not reflect any changes in the law since that date.

This handbook provides only general legal information about the Minnesota child support system. It is not advice about your particular legal situation. If you can afford it, you should talk with a lawyer for help with your legal problems.

This handbook is about paternity establishment and child support issues for custodial parents. You should understand that you would benefit from help from a lawyer with these issues. The Center on Fathers, Families, and Public Policy (CFFPP) does not represent fathers or mothers in Minnesota. CFFPP does not have any lawyers who practice in Minnesota.

This handbook can be read from cover to cover, or if you have a specific question, you can just jump to that section. CFFPP also produced a similar handbook for non-custodial parents in Minnesota. That handbook is about paternity establishment and child support in Minnesota but is meant for custodial parents. You may obtain a copy of the non-custodial handbook by going to www.cffpp.org or by calling CFFPP at 608-257-3148. In both handbooks, CFFPP refers to non-custodial parents as the fathers of children and custodial parents as the mothers of children. CFFPP understands that this is increasingly not always the case. But for simplicity's sake and because it still reflects the majority of separated families, we will refer to fathers as non-custodial parents and mothers as custodial parents.

Legal Services

Many people hire a lawyer to handle paternity establishment or child support matters. Yet many fathers and mothers cannot afford such help. This handbook gives information for custodial parents and the social service professionals who try to help them. **This handbook does not replace a lawyer to help you with your legal problems.**

There are a limited number of resources for free or low-fee legal assistance in family law matters in Minnesota. The list of these services is at the back of this handbook, just before the acknowledgment portion of the handbook. This list does not provide every available legal resource for low-income parents in Minnesota. **The Center on Fathers, Families, and Public Policy is not responsible for the type of service you receive from these programs.**

THE TOP TEN THINGS YOU SHOULD KNOW ABOUT THE MINNESOTA CHILD SUPPORT SYSTEM

1. Understand that the child support enforcement agency does not represent the father or you, but represents the interest of the state.
2. Be sure that all child support officials, child support magistrates, and judges involved in your case are aware if domestic violence is an issue in your relationship with your partner/former partner.
3. Understand that if you sign a Recognition of Parentage form (explained later in this handbook), you give up the right to genetic testing. It can be very difficult to go back later and change the paternity of the child, even with test results showing someone else is the biological father of the child.
4. Understand that you can disagree with a decision made by a child support worker and, if you disagree, you may have the right to have a child support magistrate or judge address the issue.
5. 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.
- 6. Understand what you are signing and the consequences of signing a document before you sign it.**
7. Know that just because a man is the father of the child does not mean that he is guaranteed parenting time with or custody of that child unless he gets a court order giving him these rights.
8. Understand that if you receive certain forms of government assistance, you will have to cooperate with the child support agency in establishing the paternity of your child and other child support matters. **There is one exception to this rule that is outlined later in this handbook.**
9. Understand that if you get certain forms of government assistance, the government must be a party to any lawsuit involving paternity establishment or child support.
- 10. Understand that if you receive certain forms of government assistance, you may not receive the entire amount of child support that the father pays.**

PATERNITY ESTABLISHMENT

What does the word "paternity" mean?

Paternity means fatherhood. Both legally and biologically, the word **paternity means who is the father of a child.**

When a mother gives birth to a child she is almost always the legal mother of that child. She has rights and duties to the child as the child's mother.

For a man who was not married to the mother when the child was born, it is different. Minnesota does not give this man any rights or duties to the child as the child's father. To have these rights and duties, he must be legally recognized as the father.

What is the difference between legal and physical custody?

Legal custody involves the right to make decisions for the child, such as medical, educational, and religious decisions. Physical custody is where the child lives.

Who has a legal right to custody of the child?

When a child is born to parents who are not married, the law gives sole legal and physical custody to the mother. If either parent wants a different custody arrangement, the parent will need to go to court. In addition, if the parents cannot agree about how much time each should spend with the child, they will need to go to court to ask for a parenting time order. Parenting time is the time that each parent spends with the child. (This used to be called "visitation" in Minnesota. It is the time the non-custodial parent gets to spend with the child.) A father whose paternity is established through court can ask for parenting time and legal or physical custody at that hearing. A father whose paternity is established by signing a Recognition of Parentage form must bring an action in court to ask for parenting time (or legal or physical custody), in order to have a legally enforceable right to parenting time (or custody) with the child.

How can I establish the paternity of my child?

If you were never married to the father, there are two primary ways to establish paternity. The two most common ways for unmarried parents to establish paternity are:

1. signing a legal form called a Recognition of Parentage form or
2. going to court

How can I establish the paternity of my child without a hearing?

If you are **absolutely sure** who the father is, and the father agrees, you can both sign, notarize, and file the Recognition of Parentage form. While the baby is in the hospital, you and the father, if he is present, may do this. **In addition, you may do this at a later date.**

After signing the Recognition of Parentage form, you will not be owed court-ordered child support. If you desire court-ordered support,

you will need to get a court order. If you are receiving certain forms of government assistance, the child support enforcement agency may initiate a court action for child support and other forms of assistance from the father.

Signing the Recognition of Parentage form also gives the father the right to go to court to ask for a court order for parenting time, legal custody, physical custody, or other matters related to the child.

I was married when the child was born. The father of my child is not my husband. How can I have the biological father declared the father of the child without a hearing?

If the man you were married to and the biological father of the child agree, all three of you can sign certain forms. After signing and filing these forms, the biological father will be the legal father.

The man you were married to will need to sign a form entitled "Minnesota Voluntary Recognition of Parentage Husband's Non-paternity Statement." He must sign this form in front of a notary public and mail it to the Office of State Registrar. This must be done within one year of the child being born.

You and the biological father will then need to complete and send in the Recognition of Parentage form. If you and the biological father do not do this, the man you were married to will still be the legal father of the child.

It is important that you follow all steps to complete both of these forms. If you can afford it, you probably should talk to a lawyer before doing this. If you follow this process, you will lose the opportunity to have a genetic test to resolve any question of who is the biological father.

If your child is more than a year old, you cannot use these forms to have the biological father declared the legal father of the child. Instead, you will need to go to court if you wish to have the biological father declared the legal father. (You can have the county child support agency do all of this for you for a one-time \$25 fee—establish paternity, establish child support order, etc. It is, however, important to remember that the child support agency does not represent the father or you, but represents the interest of the state.)

I applied for benefits through the Minnesota Family Investment Program, government child care assistance, or IV-E foster care. Will this impact whether I have to help the government to establish paternity?

Yes. If you apply for any of the above listed government programs, you must cooperate with the government in establishing the paternity of

your child.

Cooperating includes:

- providing all known information about the father, including his name, address, social security number, telephone number, place of employment or school, and the names and addresses of any of his relatives
- appearing at interviews, hearings, and legal proceedings
- taking a genetic test and
- providing additional information as required by the child support agency

There is only one set of circumstances where you will not be required to cooperate. (See the next question for these possible circumstances.)

I applied for or am receiving government assistance. Do I always have to cooperate in establishing the paternity of my child (see previous question)?

Generally, yes. However, you can get what is called a good cause exemption not to cooperate. You do not have to cooperate if you can document the facts that the establishment of paternity would result in:

1. physical or emotional harm to the child
2. physical or emotional harm to you that would reduce your ability to care for your child or
3. harm to the child and
 - a. the child was born as a result of incest or rape
 - b. a court is considering whether to place the child for adoption or
 - c. you are working with a social service agency to determine whether to place the child for adoption

You need to file a written claim with the public assistance agency on a form provided by the commissioner of human services.

After you file the written claim, you have 20 days to provide evidence of your claim. It is possible to get an extension of this 20-day limit if the public agency believes you are trying to provide the evidence. You may request that the child support or public assistance agency help you to get the evidence.

You will likely have to resubmit evidence every year in order to continue the good cause exemption.

I want to establish the paternity of my child but the father will not sign the Recognition of Parentage form. What services are available to establish paternity without using the form?

You may apply for child support services to establish the paternity of your child. The cost for this application is \$25. If you have received

certain forms of government assistance, you will not have to pay this cost and the child support agency will likely start the paternity action.

It is important to remember that the child support attorney does not represent your interest or the father's interest. Both you and the father are entitled to the services of a public defender for any custody or visitation issues in the initial paternity case if you are indigent (extremely poor).

How important is a genetic test (DNA test) in paternity cases?

If the genetic test shows a 99 percent or higher chance that the man is the father, he will most likely be declared the father. If the genetic test shows that he is not the father, he most likely will not be declared the father. **Thus, if a genetic test is taken, the genetic test will most likely determine the ruling as to whether he is the father.**

Who pays for the genetic test (DNA test) in a paternity case?

Initially, if a child support enforcement agency is involved in the case, the government pays for the genetic test. If the alleged father is found to be the father, he will occasionally be ordered to pay the government back for the cost of the test.

Does the child support attorney represent the mother?

No. The child support attorney does not represent you or the father; he or she represents the interest of the State of Minnesota. Both you and the father are entitled to the services of a public defender for any custody or visitation issues in the initial paternity case if you are indigent (extremely poor).

What are some of the legal benefits if he is declared the father of our child?

Once paternity has been established, the man becomes the legal father of the child. If he does not live with the child, a court can order that he has all the rights and duties with respect to the child as a non-custodial parent. He must get a court order giving him those rights. The child will be eligible for government dependent benefits, tribal rights benefits, and inheritance rights from him. His name also can be listed on the birth certificate as the father.

If the mother gets physical custody of the child, the father can be ordered to pay child support. He may also be ordered to pay the premiums for health insurance for the child. Further, he may be ordered to pay medical expenses of the child that are not covered by health insurance. In addition, he may be required to pay support toward child care in order that you may work or go to school.

What are some of the legal consequences if he is declared the father of our child?

Once paternity has been established for your child, the father can ask for parenting time, legal custody, or physical custody of the child. If paternity is established through a court action, the court will usually determine parenting time, legal custody, and physical custody for the child as part of that action. The first time a court determines custody of a child, it does so under a "best interests of the child" standard, which consists of 13 factors in the law that the court will look at the first time it decides physical and legal custody of a child.

If paternity is established by signing and filing a Recognition of Parentage form, the father does not have any parenting time, legal custody, or physical custody rights. For him to obtain these, he must bring a court action, or "motion," asking for these. In this case, the same "best interests of the child" standard applies because it is the first time a court will be determining custody. When a court determines parenting time rights, it is also under a "best interests of the child" standard. If you want more information about parenting time and custody rights for unmarried parents, you can contact the legal services provider in your county and ask for written information on this topic.

The father also has certain rights unless a court believes that granting these rights would endanger the welfare of you or the child. Some of these rights include:

- to have access to important records of the child, such as school or medical records
- to be kept informed of the school that the child attends
- to have school officials inform him about the child's progress in school
- to have reasonable access to the child through the phone
- to be informed if the child suffers an accident or injury

CHILD SUPPORT

How do I apply for child support enforcement services?

If you have never received any public assistance, you may apply for child support services at your county child support agency. Another option, if you can afford it, is to seek the assistance of a family law lawyer to represent your interest in any child support or family law matter.

If you are receiving public assistance, your case will automatically be referred to the child support agency. If you are able, it is advisable to seek the assistance of a family law lawyer to represent your interest in any child support or family law matter.

How much does it cost to apply for child support enforcement services?

The fee for applying for child support enforcement services is \$25. Some of the reasons you may not be charged this fee are that you:

1. are receiving public assistance
2. received public assistance and continue to need child support services
3. are a minor parent
4. are attending a public secondary school, area learning center, or other approved school

Does the child support attorney or agency represent me?

The child support enforcement lawyer does not represent you or the father; he or she represents the interest of the state of Minnesota.

How does the court decide how much child support the father owes?

There are guidelines (a formula) to determine how much a non-custodial parent pays in child support. This support amount is generally based on a percentage of his income. What percentage of his income he pays is based on his income and number of children.

Even if he has very low income or no income at all, he probably still will owe child support. This will happen if a court believes he could make more money. The court will base his child support on an amount that it believes he could make.

How much of the child support that the father pays will I receive?

If you have never received any government assistance, you should get all the child support that the non-custodial parent pays.

If you obtain a grant from the Minnesota Family Investment Program (MFIP), you should get the current child support paid by the non-custodial parent. Each month that the father pays child support, the government will decrease your MFIP grant two months later. The government will decrease your MFIP grant by the same amount the father paid in child support. For instance, if the father pays his child support in January, the government will decrease your March MFIP grant by the same amount he paid in child support in January.

Will the child support order impact my eligibility for the Minnesota Family Investment Program (MFIP)?

Yes. To get MFIP assistance you must satisfy certain income eligibility requirements. The child support order will be counted as income.

I applied for the Minnesota Family Investment Program, government child care assistance, or IV-E foster care. Will this impact whether I have to help the government in child support matters?

Yes. If you apply for any of the above listed government programs, you must cooperate to help the government in child support matters.

Cooperating includes:

- providing all known information about the father, including his name, address, social security number, telephone number, place of employment or school, and the names and addresses of any of his relatives
- appearing at interviews, hearings, and legal proceedings
- taking a genetic test and
- providing additional information as required by the child support agency

There is only one set of circumstances where you will not be required to cooperate. (See next question for these circumstances.)

I applied for or am receiving government assistance. Do I always have to cooperate with the child support agency about child support (see previous question)?

Generally, yes. However, you can get what is called a good cause exemption to not cooperate. The reasons you may not cooperate include that you document that the establishment of paternity would result in:

1. physical or emotional harm to the child
2. physical or emotional harm to you that would reduce your ability to care for the child or
3. harm to the child and
 - a. the child was born as a result of incest or rape
 - b. a court is deciding whether to place the child for adoption
 - c. you are working with a social service agency to determine whether to place the child for adoption

You need to file a written claim with the public assistance agency on a form provided by the commissioner of human services.

After you file the written claim you have 20 days to provide evidence of your claim. It is possible to get an extension of this 20-day limit if the public agency believes you are trying to provide the evidence. You may request that the child support or public assistance agency help you to get the evidence.

You will likely have to resubmit evidence every year in order to continue the good cause exemption.

How can I increase my child support order?

You can ask for an increase in your child support order in three

ways. The first way is to request a hearing to increase child support. You will need to give (file) a legal document known as a "motion" that asks for an increase. The court will grant this if the judge or child support magistrate believes there has been a major (substantial) change in circumstances. This major change must make the current order unreasonable and unfair. A court is likely to change the order if applying the child support guidelines to the current circumstances of the parties results in a calculated order that is at least 20 percent and at least \$50 per month higher or lower than the current order.

The second way is to ask your child support worker for a review of the child support order. If you ask for a review, you should make sure that follow-up happens on your request.

Another way your order is increased is called a COLA (Cost-of-Living Adjustment). Generally, Minnesota child support orders must have an automatic increase in child support every two years. This automatic increase is supposed to be based on an increase in the cost of living. To obtain this increase two things must happen:

- the child support order must provide for a cost of living adjustment and
- you or the child support agency must send notice to the father that you want the adjustment (this notice must be sent 20 days before the adjustment and to his last known address)

After receiving this notice, the father may contest the cost-of-living adjustment.

I am about to move or have moved. Should I tell the child support agency about this?

Yes. If you have a child support order, you should tell the child support agency whenever you move to a new address. Generally, the child support order requires you to do this within 10 days. Yet if you have moved and not done this you should do it as soon as possible. If you do not tell the child support enforcement agency of your new address, they may send important notices to your old address. In addition, it may make it more difficult for you to receive the child support when the non-custodial parent has paid it.

What are some possible penalties that the father faces for not paying child support?

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

- denying or revoking his driver's license
- taking his tax refunds (federal and state)

- denying or suspending occupational licenses (for example, his welder's license)
- denying or revoking recreational licenses
- denying or revoking his passport
- placing a lien on his car
- referring him to a private collection agency
- telling a consumer reporting agency that he did not pay child support
- placing liens on his property
- putting a hold on his bank accounts
- charging him interest on any past due support or
- placing him in prison, through a court action, for not paying child support

Can they put him in prison for not paying child support?

Yes. A court may put him in prison for not paying child support or have him pay an additional fine.

CHILD SUPPORT & PARENTING TIME

How does the father not paying his child support impact his right to see the child?

The court treats child support and parenting time as two separate issues. His not paying child support should not affect parenting time with your child. When a court determines parenting time, it should only be concerned with the best interests of the child. His not paying child support is not a legally valid reason to deny or restrict his parenting time.

Does he still have to pay child support if I do not allow him to see the child?

Child support and parenting time are two separate issues. He must pay court-ordered child support whether or not he sees the child. However, even if he is not currently paying his child support order he may go to court and ask for a specific parenting time schedule.

If there is a court-ordered parenting time schedule and you do not follow it, he can ask the court to order you to follow the schedule or seek make-up time with the child. In addition, he may ask a court for sanctions against you for not following the court order, including a change of physical custody.

HEALTH INSURANCE

Will the child support order include anything about health insurance?

Yes. A child support order should address health insurance for the child. The order will do one of two things. One option is for the order to require one of the parents to cover the child under their health insurance. The court is supposed to put the child under the insurance plan of the parent with the better insurance.

If neither parent has insurance, the court will go to the second option. The second option is to require one or both of the parents to do one of three things:

- a. buy insurance for the child
- b. cover the child's reasonable and necessary medical expenses or
- c. pay no less than \$50 per month toward the costs of the child's medical assistance or Minnesota Care costs

If the health insurance does not cover some health care expenses, the court may order that either parent pay some of these expenses. The court must believe that the health care expenses are reasonable and necessary.

CHILD CARE

Does he have to pay child care costs?

A court is supposed to provide that each parent pay some of the child care costs. Each parent is supposed to pay a part of these costs based on their respective income unless this division would be unfair to either party. These child care costs must be for when the custodial parent either works or goes to school.

I get child care assistance from the government. Is it still possible for him to owe child care assistance?

Yes. The father is supposed to be ordered to pay a portion of the child care costs. Since you receive government assistance for the child care, the government will keep the child care costs he pays.

LEGAL SERVICES

There are limited resources for free or low-fee legal assistance with family law matters such as custody and parenting time (visitation). **The Center on Fathers, Families, and Public Policy is not responsible for the type of service you receive from these programs.** Each county in Minnesota is served by a legal services program that provides limited

family law legal assistance to individuals who qualify. The contact information for each county's legal services or "legal aid" program is listed on the website: <http://www.lawhelpmn.org>

Other resources in the Twin Cities Metro Area include (all self-help centers are free and do not have income restrictions):

- **Hennepin County**

Family Law Self-Help Center
110 South Fourth Street – 1st Floor
Minneapolis, MN 55401

Provides forms and instructions for many family court actions and can provide assistance when parties have reached an agreement or in cases where no forms are available. Free and open to the public. Call 612-596-8519.

- **Ramsey County**

Legal Clinic for the Self-Represented in Family Court
Ramsey County Family Court
Room 760, Government Center West
50 W. Kellogg Blvd
St. Paul, MN 55102

Volunteer lawyers can offer advice and legal assistance, answer procedural questions, and help you fill out court-provided forms. Call to make an appointment and for hours (limited hours only). Call 651-266-2847 to schedule an appointment; 651-266-2832 to talk to an attorney.

- **Dakota County**

Family Law Self-Help program

Staffed by volunteer attorneys. Call 651-438-8102 to schedule an appointment.

Resource Center for Fathers and Families

Provides family law seminars at low cost or free at several locations in the Twin Cities; call 763-783-4938 for more information.

Chrysalis Legal Assistance for Women

Provides legal information sessions, law clinics, and lawyer referrals, serving women of all income levels; call 612-871-0118 for more information.

- **ALL COUNTIES IN MINNESOTA**

Local Law Library

Another place to turn for legal information or additional written resources with family law matters is the local county law library or court administrator's office. Each county has a law library, and some law libraries have paid staff who can assist you in finding the legal information you need. If you would like to speak to a law librarian, call 651-296-2775 during business hours to reach someone at the Minnesota State Law Library or email askmarvin@courts.state.mn.us

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