

INTRODUCTION

This handbook is based on Minnesota law. It was written on June 18, 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 for non-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 in Minnesota. In fact, CFFPP does not have any lawyers who practice in Minnesota.

The 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 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 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 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 non-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. Know that your paternity or child support case will be decided without your input if you do not respond or do not appear at hearings. You may not be allowed to come in later to have your side heard or to undo what happened at the hearing.**
2. 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 judge address the issue.
3. Know as much as you can about the child support worker or assistant county attorney you meet with, his or her title, power to make a decision, and power to change a decision.

4. Understand that if you sign a Recognition of Parentage form (explained later in handbook what this form is), 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.
- 5. Know that just because you are the father of a child does not guarantee parenting time with or custody of that child unless you get a court order giving you these rights.**
6. Understand that the child support enforcement agency does not represent you or the mother, but represents the interest of the State of Minnesota.
7. Pay child support consistently if you can, even if the amount you pay is below the order amount. Know that the child support agency can cause you problems, such as suspending your driver's license; if you don't pay the full amount of child support each month.
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 and your child support caseworker whenever you lose your job or your income is reduced. Try to get a change in your child support and follow up on the progress of your request every two weeks until you get a final answer or change. It is important to be persistent in trying to change your child support order.
- 10. Know that avoiding child support enforcement is likely to cause problems.**

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 father who was not married to the mother it is different. Minnesota does not give you any rights or duties to the child until you are legally recognized as the father of the child. For you to have these rights and duties someone must establish your paternity of that child.

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 the 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 previously 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 mother, there are two primary ways to establish paternity.

1. Both parents can sign a legal form called a Recognition of Parentage form or
2. Another way to establish paternity is by going to court

If you are **absolutely 100% sure** that you are the father of the child, and the mother agrees, you can both sign the Recognition of Parentage form. The child support agency, the court system, and other government agencies will then consider you the legal father of the child. If the mother obtains a court order you will owe child support.

While the baby is still in the hospital, the mother and the father, if he is present, are given a chance to do this. **In addition, you may do this at a later date.** This may be done at the local child support enforcement agency or at the Bureau of Vital Statistics. **You will still need to go to court if you want to have court-ordered parenting time with your child. You will not have the opportunity to have a genetic test to be sure you are the biological father. Until you obtain a court order, the mother legally will have the right to custody of the child. If you have any doubt as to whether you are the father, you should consider not signing the Recognition of Parentage form. Wait until you have had genetic testing (DNA testing) that proves you are the father.**

If a mother or the state claims in a legal proceeding that you are the father of a child, you may want to ask for a genetic test. **A genetic test is the best way to be absolutely sure that you are the biological father. If you are not sure that you are the father, and want to be sure, you should insist on a genetic test. After getting a genetic test, it may still be possible to sign a Recognition of Parentage form. What if, after signing the Recognition of Parentage form, I have reason to think I am not the father?**

There are limited ways for you to cancel your signing of the form. **However, this is most easily done within 60 days of either of you signing it. After 60 days pass, what you have to do is much more difficult. (See next question.)**

Within 60 days, there are specific things you need to do to cancel it. The first option is to go to your local child support enforcement agency and tell them that you may not be the father of the child. Tell them that you wish to “revoke” or take back your signing of the Recognition of Parentage form. They should provide you with another form. You need to follow the steps on this form so that you will not be considered the legal father of that child. You must do this within 60 days of your signing the Recognition of Parentage form.

There is also a second possibility. If there is a court hearing about the child that you are part of within 60 days from your signing of the Recognition of Parentage form, you may ask the court to cancel the Recognition of Parentage form. The court will then decide whether to do so. If there is a court proceeding about the child you lose the option of going to the child support enforcement agency and asking them to take back your signing of the Recognition of Parentage form.

Sixty days have passed since the mother and I signed the Recognition of Parentage form. What can I do now that I think I may not be the biological father?

After 60 days it is hard to make a court or the child support agency not treat you as the legal father of the child. To make it so you are not treated as the father you will have to go to court. You will have to file a lawsuit to “vacate” or make it so the Recognition of Parentage form no longer makes you the legal father. **To do this you must prove at least one of three things.** You must prove that you signed the form 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)

This will likely require the help of a lawyer.

It is important that if you signed the Recognition of Parentage form and you do not think you are the father that you act quickly to have a court declare that you are not the father. You only have one year after you signed the Recognition of Parentage form or six months after getting the results of the genetic test that show you are not the father to bring a court action to make sure you are no longer considered the father.

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

In some cases paternity establishment is not a choice made by either of the child’s parents. For example, a mother who gets welfare services must help the government to try to establish who is the father of a child. She generally must cooperate to help establish who is the father of the child or the government may not give her welfare benefits.

There are many benefits to both the parents and child in knowing who is the father of that child. For instance, it is the only way the child can receive court-ordered child support. In addition, this process is necessary to get court-ordered parenting time with your child.

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

If you never signed a Recognition of Parentage form and you were never married to the mother of the child, a suit can be brought against you to declare you the father. Among the people who can sue to establish that you are the father of a child are the mother, the child, or the local child support attorney.

You will get a legal document that will have a date and time for you to appear at a hearing. It is important that you go to the hearing and that you be on time. If you do not go you likely will be declared the father of the child and owe child support. If you do not show up, the court does not need to provide you with the chance to take a genetic test. The court can declare you the father based on what the mother tells the court.

I got a document that claims I may be the biological father of a child. This document tells me that there will be a hearing about this matter. Should I just skip the hearing because I know I am not the father?

No. If you do not respond to this document you will be declared the father of the child and you will owe child support. You should go to the hearing and say that you are not the father. Perhaps the best thing you can do is to request that the court order a genetic test (DNA test).

In Minnesota, if you do not appear at a paternity hearing the court will declare

you the father and order you to pay child support. This order is called a default order. The only way you will not be declared the father is if there is no proof that you had notification of the hearing.

I got a document that claims I may be the biological father of a child. This document tells me that there will be a hearing about this matter. Should I just skip the hearing because I know I am the father?

No. You should always go to any hearing. This will allow you to hear what your rights are. You will also have a chance to tell your financial situation so that if you are declared the father a realistic child support order may be set. Going to the hearing will provide you a chance to know the amount of your child support order.

In addition, if you want court-ordered parenting time with your child, going to the hearing will allow you to ask the court for this. If you do not go to the hearing and want court-ordered parenting time, you will have to initiate another court hearing.

What if I believe that I am a child's father, but the mother does not let me see the child?

For you to have court-ordered parenting time with your child, you must be declared the child's father. If you would like to be declared the father and you have never been married to the mother, there are two ways for this to happen. If both you and the mother sign a Recognition of Parentage form, you will become the legal father. To obtain court-ordered parenting time you will then need to go to court. If the mother will not sign a Recognition of Parentage form, you will need to file (give) legal documents with the court to start a paternity action.

You also may be able to apply with your local child support enforcement agency to help you establish paternity. It is important to understand that the local child support enforcement agency does not represent your interest but the interest of the State of Minnesota.

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

If the genetic test shows a 99 percent or higher chance that you are the father, you will most likely be declared to be the father. If the genetic test shows you are not the father, you 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 you are 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 you are found to be the father of the child, you may possibly 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 mother; he or she represents the interest of the State of Minnesota.

I am going to a hearing where I may be declared the father of a child. If I am declared the father of a child, can I owe child support for a period before the hearing?

Yes. You may be ordered to pay child support for some of the expenses the mother had before the hearing. The court may only order you to pay for the last two years since the mother or you first started the action for you to be declared the father. The order for back pay depends on the age of the child. (For example, if

the child is 6 months old the order for back pay will only go back 6 months.)

What are some of the legal benefits of my being declared the father of my child?

Once paternity has been established, a man is the legal father of that child. **He can then get all of the rights and duties of a man who had been married to the mother.** The child will be eligible for government dependent benefits, tribal rights benefits, and inheritance rights from you. Your name also can be listed on the birth certificate as the father. You will have the right to be notified of any adoption proceedings for your child.

You will not automatically have a right to custody of or parenting time with your child. What you will have is a right to ask a court for custody of or parenting time with the child.

If you sign a Recognition of Parentage form, you may ask a court for custody or parenting time with the child. To do this you will have to start a court action.

If you are involved in a court action where it is determined that you are the father, you may ask for parenting time with or custody of your child. It is important that if you want parenting time with the child that you request this at the hearing where the court declares you the father of the child. If you were involved in a court action where you were declared the father and parenting time was not addressed, you may want to start another court action to ask for parenting time. You may have the right to a public defender to represent you at an initial paternity hearing to establish parenting time and custody. If you can not afford a private attorney, the court will appoint a public defender if you ask and are indigent (very poor).

You should ask the court to make an order that includes a specific parenting plan with the exact days and hours you can be with the child.

What are some of the legal consequences of my establishing paternity?

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 will also owe all of the cost for the genetic test if it was ordered as part of the paternity action. You may also owe some of the cost for:

- the mother's pregnancy
- the premiums to obtain health insurance for the child
- medical expenses not covered by health insurance
- child care for when the mother works
- and other costs

CHILD SUPPORT

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

There are guidelines (a formula) to determine how much a non-custodial parent pays in child support. This support amount is generally determined based on a percentage of your income. What percentage of your income you pay is based on how many children you have and how much income you have.

Even if you have a very low income or no income at all, you probably still will owe child support. This will happen if a court believes you could make more money. The court will base your child support on an amount that it believes you could make. It is important to show the court that you are making as much money as you possibly could or that you have tried to get a job but have been unable to do so.

How do I make my child support payments?

The usual method is that your employer (by court order) takes money directly from your paycheck. The employer then gives the money to the child support enforcement agency. Minnesota employers can charge one dollar for each time that they have to withhold money from your paycheck for child support.

Is there another way to make child support payments?

You should pay your child support in the way specified by the court order. If you are unemployed, self-employed, or for some reason cannot pay by having money taken directly from a paycheck, you may pay in a different way.

You should send your payment to the child support payment center. Your court order will have the address on it.

Will my child support order include anything about health insurance?

Yes. A child support order must 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 towards the insurance or medical assistance/Minnesota Care costs for your child

The court may not address this issue at this hearing and instead consider this issue at a later hearing. 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.

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 can pay.

First, your current order may not have ever been realistic for you. If you did not appear in court when they set your current order, the amount of the order may be beyond your means to pay. The order may be based on a previous job where you made more money, or you may have been laid off your job at one time or another. If this is the case, you should consider going through the procedures to ask the court for a change in the amount of child support you pay in the future (ask for a child support modification).

Second, if you did not ask for a change in your child support order when things changed in your life, the amount you owe may not be realistic for you. You should consider going through the procedures to ask the court for a change in the amount of future child support you pay.

Third, if you do not pay your child support, you will have to pay your regular amount of support plus an additional amount (20% of your child support order) to begin to cover the past-due amount. You will also be charged interest on any past-due child support.

You may also be charged with the costs of a genetic test (DNA test) in a paternity action, the mother's pregnancy, postnatal care related to the pregnancy,

premiums to obtain health insurance for the child, medical expenses not covered by health insurance, day care costs if the mother is employed or in school, and other costs.

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?

Going to court is one way to get a change in the amount of future child support that you pay. You will need to file with (give) the court a legal document known as a “motion” that asks for a decrease in the amount of your child support.

At a hearing, one reason your child support order can be decreased is if there has been a “substantial change” (major change) in what you earn. A court generally will grant your request if changing the child support order will result in at least a 20% change and a \$50 change from the current ordered amount.

Generally, if this request is granted it will only lower the amount of support you owe in the future. It will not lower any amount of past-due support you may owe. It is best to get a lawyer, if you can afford one, to help you with this.

How can my child support order be increased?

In Minnesota, there are three ways to increase a child support order. The first is by a request for a hearing to increase child support. The court will grant this if the judge or child support magistrate believes that there has been a major (substantial) change in circumstances that calls for an increase in support and that this major change makes the current child support order unreasonable and unfair.

The second way is if the state or the mother asks the child support worker for a review of the child support order.

Your child support can be increased in another way. 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. (See next question for more information about a cost-of-living adjustment.)

Can my child support order amount increase without a hearing?

Yes. 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.

You are supposed to receive notification of this increase. The notification will be mailed to the last address that the child support enforcement agency has for you. The notification should include instructions for you to challenge the cost-of-living adjustment and what day the increase will start. In addition, you should be able to obtain forms at a courthouse that will enable you to ask a court to not increase your child support.

There are some additional things to understand about challenging the cost-of-living-adjustment. First, you must challenge the cost-of-living-adjustment before it starts. Second, you will need to show that you have not had an increase in your income that would allow you to pay the increased cost of living.

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 enforcement 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.

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:

- **denying or revoking your driver's license**
- taking your tax refunds (federal and state)
- denying or suspending occupational licenses (for example, your welder's license)
- denying or revoking recreational licenses
- denying or revoking a passport
- referring you to private collection agencies
- telling a consumer reporting agency that you did not pay child support
- placing liens on your property
- putting a hold on your bank accounts
- charging interest on any past-due support
- 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. A court may put you in jail for not paying child support, or you may have to pay an additional fine.

What should I do about my child support order if I am in jail or prison?

If you are in jail or prison for any reason, you should ask a court for a change in your child support order. You will need to ask the court to make your child support amount less based on what you can earn while in prison. You may also ask for this change from the child support enforcement agency from which the order came. It is important that you make sure that follow-up occurs on your request to the child support enforcement agency. While this may be hard, it is extremely important that you try to do this. **If you are placed in prison or jail your child support order will continue while you are in prison or jail.**

If you are in jail or prison a court may change the amount of child support you owed in the past while you were in prison if three things are true. First, you ask the court to retroactively change your child support (back to the date you went to prison). Second, you are not in prison for not paying child support. Third, you did not have the financial ability to pay your child support while in prison. It is very important that you file with (give) the court a motion to decrease your child support and provide proof that you are in prison and cannot afford to pay your child support. If you do this, there is a chance that the court may reduce what you owe from the past as well as decrease your future payments. **The sooner you give the court this motion, the better.**

CHILD SUPPORT & PARENTING TIME

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

Child support and parenting time are two separate issues. **You must pay your child support whether or not you see your child.** However, you may go to court and ask for a specific parenting plan.

If there is a parenting time schedule and the child's mother does not follow it, you can ask the court to order her to follow the schedule. This may be a hard process, but it is possible that it can help you get parenting time 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 parenting time with your child. When a court determines parenting time it should only be concerned with the best interest of the child. Still, the reality is that if you have not paid your child support, it is not likely to help your chances to spend time with your child.

EMPLOYMENT

What if I do not have a job when the court or administrative agency sets the child support order?

If a court decides you are choosing to not work, support orders can be based on what the court thinks you could make if you were employed. This can happen even if you tell the court that you are unable to get a job.

I switched jobs. Should I notify child support?

Yes. If you have a child support order, you should tell the child support enforcement agency anytime that you change jobs. Generally the child support order requires you to do this within 10 days. Yet if you have changed jobs and not done this you should do it as soon as possible. In addition, if you are making less money in your new job, you should consider asking the court for a change in your child support order.

I just got a new job. What information is my employer going to need from me to give to the child support enforcement agency?

Some of the information an employer must obtain from you and give to the government includes your:

- name
- home address
- social security number
- date of birth, if available, and
- date you were hired

Your employer must generally give this information to the child support enforcement agency within 20 days of hiring you.

Money is taken from my paycheck to pay child support. Can my employer charge me for taking this money?

Yes. Your employer may charge one dollar for each payment it makes to the child support enforcement agency. This fee is for the employer following the court order and giving your money to the child support enforcement agency.

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

If you lose your job or make less money than you used to, you should notify the child support enforcement agency immediately. You should also file with (give) a legal document known as a "motion" that asks for a decrease in the amount of future support that you owe. Another option is to contact the child support enforcement agency and ask them to change your order. Generally the amount of past-due child support cannot be reduced.

At a hearing, the amount of child support you will owe in the future may be

changed. The court will do this if there has been a major (substantial) change in your financial circumstances. The court will not decrease your child support order if it believes that you voluntarily quit your job or that you were fired because you were not doing a good job.

I lost my driver's license because I did not pay child support. Is there anything I can do to get a driver's license for getting to work?

Yes. You may apply for a limited license. This license will expire 90 days after you get it and you will not be able to apply for another.

Another option is to enter into a payment plan with the child support enforcement agency and get them to provide proof that you are paying child support according to this new payment plan.

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. The Center on Fathers, Families, and Public Policy also believes that these services do not replace the assistance of an attorney to represent you in your particular case.**

All counties in Minnesota

Legal Services Program

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

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 local law library, and some law libraries have paid staff that 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.

Other resource 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

(612) 596-8519

- 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.

Self-Help Center
300 South Sixth Street
Minneapolis, MN

- Volunteer attorneys are available for brief legal advice from 9-11am Monday through Friday at this Self Help Center, located on the skyway level of the Hennepin County Government Center. Walk-in service only. No phone advice.

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

(651) 266-2847 to schedule an appointment; (651) 266-2832 to talk to an attorney

- 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).

Dakota County

Family Law Self-Help program staffed by volunteer attorneys.
(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,
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,
612-871-0118 for more information

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