

# Resources for Custody

## Legal Services for Students

### HOW TO ESTABLISH PATERNITY

Paternity is the legal identification of child's biological father. In order to have rights to visitation or custody, and before you can be required to pay child support, paternity must be established as between you and the child. If you were married to the child's mother when he/she was born, paternity is presumed. If there is dispute as to the identity of the child's father, you should file a paternity case to ask for a court-ordered paternity test (Motion for Genetic Testing), as well as a child custody, visitation, child support and medical support order. Locate the form and instruction packet 'Establishing Paternity by Court Order' at [www.TexasLawHelp.org](http://www.TexasLawHelp.org). The filing fee for a paternity petition in Travis County is \$277.00.

If you need affordable legal assistance in obtaining a divorce, contact:  
**The Lawyer Referral Service of Central Texas, MATCH Program: 512-472-8303.**

### HOW TO SEEK CUSTODY AND VISITATION:

**A Suit Affecting the Parent-Child Relationship (SAPCR)** can be filed by a parent or authorized person to ask for a child custody, visitation, child support and medical support order.

### BASIC STEPS FOR A SAPCR:

#### 1. Fill out the Petition in Suit Affecting the Parent Child Relationship

You are the Petitioner and the other people involved are the Respondents. The following people must be listed as the Respondents in your Petition:

- The child's mother, and
- Anyone with a court-ordered relationship with the child, and
- Any man alleged to be the child's father, and
- Any man who signed an Acknowledgment of Paternity, and
- Any man presumed by law to be the child's father, including: any man married to the mother when the child was born or at any time during the 300 days before the child was born; any man who married the mother after the child was born and voluntarily claimed paternity of the child on the child's birth certificate or other record; any man who continuously lived with the child during the first 2 years of the child's life and represented to others that the child was his own.

#### 2. File Your Petition and Forms

File your Petition and forms at the district clerk's office in the county where the child or children live. Pay the Travis County filing fee of \$277.00, or file an Affidavit of Indigency.

**Note:** If the child gets TANF or Medicaid or got it in the past, you must send a file-stamped copy of your Petition to the Office of the Attorney General Child Support Division. Failure to submit a copy of your Petition could result in the Attorney General filing a lawsuit against you for the costs of healthcare provided to your child through those assistance programs.

#### 3. Give Each Respondent Legal Notice

When you file your Petition, inform the clerk that you want to use Official Service of Process. In Travis County, the fee for this service is \$75.00.

#### 4. Fill Out the Order Form (Order in Suit Affecting the Parent-Child Relationship)

You will eventually bring the Order to court, and the court signs this form to finish the case.

#### 5. Check With the Clerk's Office

Check with the clerk's office to learn if the Respondent filed an answer. If approximately 21 days have passed and the Respondent has not filed an answer, you will need to fill out 2 additional forms: **Certificate of Last Known Address**; **Military Status Affidavit**.

Call the clerk to learn when and where the court hears uncontested cases. At the time indicated by the clerk, bring the following papers with you to the courthouse to finish your case:

- A file-stamped copy of your Petition
- A completed Order signed by you
- A completed Income Withholding Order for Support (if child support will be ordered)
- A completed Certificate of Last Known Address (get file-stamped by the clerk before entering the courtroom)
- A completed Affidavit of Military Status (get file-stamped by the clerk before entering the courtroom)

## 6. Request Order Copy

After the judge signs your Order, turn it in to the clerk's office and request a certified copy of your order from the clerk. You are finished!

### MODIFICATION

If there is already a court order about the child, you should file a Modification case instead of a SAPCR. Get information about filing a Modification case by speaking with an attorney or visiting [www.TexasLawHelp.org](http://www.TexasLawHelp.org).

### WHO CAN FILE A SAPCR

If you are not the child's parent, you can still file a SAPCR if one of the following is true:

- You have had actual care, control and possession of the child for at least 6 months ending not more than 90 days before the date you file the SAPCR and you are not a foster parent; or
- You have lived with the child and the child's parent for at least 6 months ending not more than 90 days before the date you file the SAPCR and the child's parent has died;

### RESIDENCY

A Texas court can only make orders about a child who has lived in Texas for at least the past 6 months (or since birth for an infant). There are exceptions to this rule so talk to a lawyer if this is an issue.

### DISABLED CHILDREN

Do not use the online SAPCR forms if the child is disabled. Talk to a lawyer.

### STANDARD POSSESSION ORDER (SPO)

The SPO is a form within the Order. Texas law presumes that the SPO is best for a child age 3 or older. The SPO says that the parents may have possession of the child whenever they both agree. If the parents don't agree, the SPO says the non-custodial parent (the parent the children live with less than half of the time) has the right to possession of the child as set out below:

- When the parents live within 100 miles of each other: 1st, 3rd, and 5th weekends of every month; Thurs day evenings during the school year; alternating holidays; and an extended period of time (30 days) during summer vacation.
- When the parents live over 100 miles apart: the weekend schedule may be the same or reduced to 1 weekend per month; there is no Thursday evening visits; alternating holidays; and the non-custodial parent has the child for a longer period of time (42 days) during summer vacation and every spring break.

**Note on Changing The SPO:** if the SPO is not in the child's best interest or is unworkable, the judge can make a different possession order.

### CHILD SUPPORT

Child support is paid to the custodial parent (the parent the children live with more than half of the time). The non-custodial parent pays child support to the custodial parent.

Child support is calculated based on a percentage of the non-custodial parent's monthly net resources. Resources means all money from wages, overtime, tips, bonuses, etc., and net resources is resources after taxes. A court will not expect you to put your entire paycheck towards child support; the child support payments are set low enough to allow for your living expenses and bills. If the non-custodial parent is unemployed, the court will presume that the non-custodial parent is earning minimum wage for a 40-hour week and will still order him/her to pay child support.

Provide the court with as much information (pay stubs, income tax filings) as possible when your child support payments are calculated. Based on the number of children the non-custodial parent has, basic percentage rates for child support payments are listed at [https://www.texasattorneygeneral.gov/AG\\_Publications/pdfs/qa\\_ncp.pdf](https://www.texasattorneygeneral.gov/AG_Publications/pdfs/qa_ncp.pdf).

### HEALTH INSURANCE

The parent paying child support is generally the parent ordered to pay for health insurance by: providing health insurance through his/her employer or another source, or reimbursing the other parent for the cost of health insurance, or paying cash medical support if the child receives Medicaid or C.H.I.P.