



CHILD CUSTODY AND CHILD SUPPORT

Family crises often lead to questions about child custody and child support. We at Victim Services regularly speak with individuals who are concerned about how to proceed when they have concerns about their children's safety, but don't want to violate a court order - or need a court order in place to help safeguard their children. If you have concerns about your child custody or child support situation, the information on this page may be helpful to you.

PLEASE NOTE: This page is for informational purposes only. TCSO Victim Services does **NOT** provide *legal representation* or *legal services*, nor should any information in this section be considered *legal advice*. If you need further assistance with your legal situation, please refer to the legal resources at the bottom of the page.

About Child Support in Texas

Children have the right to be emotionally and financially supported by both of their parents.

The Office of the Attorney General (OAG) is the official child support enforcement agency for the State of Texas. It provides services for parents who wish to obtain or provide support for their children. The OAG provides parents with a full range of child support services at no cost. However, the OAG represents the State and Texas and cannot represent individuals involved in child support claims. If you need to file a child support case in Texas or have questions about an open case, contact the OAG Child Support Division at 1-800-252-8014.

The OAG Child Support Division determines, on a case-by-case basis, which of the child support services listed below are appropriate:

- Locating the absent parent
- Establishing paternity
- Establishing and enforcing child support orders
- Establishing and enforcing medical support orders
- Reviewing and adjusting child support payments
- Collecting and distributing child support payments

The Attorney General's office accepts applications from mothers, fathers, and other individuals who have possession of a child, such as grandparents. Applicants do not have the right to select what enforcement actions are taken in their cases. The Office of the Attorney General is required to provide all appropriate services for the benefit of the children.

Temporary Assistance to Needy Family (TANF) recipients automatically receive child support services, but persons who do not receive TANF must apply for Title IV-D child support services.

How can child support be changed?

Only the Court can modify the child support order. It cannot be done by agreement of the parties.

Can a parent take custody of the child instead of making child support payments?

Both parents must provide for the child, no matter which parent has primary custody. Child support is normally paid to the custodial parent for the benefit of the child. Legal custody can be changed, but only if the parents go to court to modify the previous child support order and establish a child support amount for the new noncustodial parent.

Keep in Mind:

There is no legal requirement to pay child support until there is a court order. However, unless you are voluntarily paying and keeping a written record of child support payments, you could be ordered to pay retroactive child support. Voluntary payments can demonstrate to the court and your child that you want to do what is in the best interest of your child. Should a case be initiated, the court will be reviewing each parent's expenditures between the date of separation and the first court hearing.

About Custody and Visitation

To establish a custody order, a Suit Affecting the Parent-Child Relationship (SAPCR) must be filed with the court. This can be filed alone, or in conjunction with a divorce or paternity case. In order to file a SAPCR you will likely need the assistance of an attorney. In some cases, such as an agreed divorce, you may be able to represent yourself. If you decide to represent yourself, it is advisable to access resources that will help you understand the required paperwork and the process.

If a parent has not paid their child support, are they still legally allowed to have visitation?

Yes. Generally, child support and visitation are considered separate parts of the court's orders. Unless otherwise directed by the court, it is a violation of the court order to deny visitation due to missed or late child support payments. Likewise, a non-custodial parent cannot stop paying child support due to denied visitation. Either violation can result in being held in contempt of court which can result in up to six months in jail and a \$500 fine for each violation. If both parents violate the court order, both could be held in contempt. It is best to always abide by the latest court order until it is modified in court.

Does the Office of the Attorney General handle custody and visitation disputes?

No. The OAG is not able to directly handle custody and visitation disputes, but they provide some assistance services:

- **Ask a Lawyer By phone:** Call the Texas OAG Access and Visitation Hotline toll-free at 1-866-292-4636 from 1-7 p.m., Monday – Friday. Calls are answered in English and Spanish.
- Search the hotline's companion Web site for sample materials and tools for assistance with child visitation issues: www.txaccess.org

- The OAG also maintains the Access and Visitation Directory, which is an online directory of programs and service providers across Texas designed to facilitate shared parenting after separation or divorce: www.oag.state.tx.us/cs/access/
- In the case where custody and/or visitation are contested, you may choose to hire a private attorney or represent yourself. If you cannot afford a lawyer, you may be eligible for Legal Aid. Sometimes the court will appoint a lawyer for the child, called a guardian ad litem.

There has been physical violence during our relationship. Can this be used against a parent even if the children were never abused or injured?

Yes. Acts of violence are taken very seriously by the courts. If one parent was physically violent with the other parent, even if the children were never hurt, this can be used as a basis to restrict custody or visitation with the children.

Protective Orders and Child Custody

Many people are concerned with how a Protective Order impacts custody and visitation. In most cases, the concern exists because the custodial parent obtains a protective order against the non-custodial parent, making it difficult to facilitate visits. Often, the custodial parent does not wish to deny the children access to the non-custodial parent, and therefore may decide not to obtain a much needed protective order.

There are ways to obtain an order of protection *and* maintain appropriate contact with an offending non-custodial parent. If the judge does not feel there is a substantial safety risk to the children, the protective order may not list the children as protected persons. This does not necessarily mean that the offender can come to where the children live with the custodial parent, but it does mean that they can maintain visitation. In such cases the order may list detailed contact and exchange rules for visitation days. This may involve determining a neutral public location to exchange the children, or having a third party provide a timed buffer between the parents' arrivals.

If the judge feels that there is a substantial risk to the children, visitation may be ordered to be supervised by a third party, or it may be lessened or denied pending compliance with other orders. For example, a judge may order visitation is suspended until the offending parent completes a batterer intervention program.

If you have questions about protective orders and custody issues, consult the agency assisting you with the protective order, your attorney, or you may call TCSO Victim Services at (512) 854-9709.

Available Resources

The Office of the Attorney General Child Support Division: 1 (800) 252-8014
www.oag.state.tx.us/cs/index.shtml and www.txaccess.org

Domestic Relations Office: (512) 854-9696

www.co.travis.tx.us/dro/default.asp

Child support and visitation enforcement, Visit exchange service information

Texas Rio Grande Legal Aid: 1 (888) 988-9996 or (512) 374-2700

www.trla.org

Free legal services for low-income individuals that qualify

Lawyer Referral Service of Central Texas (LRS): (512) 472-8303 or 1 (866) 303-8303

www.austinlrs.com

Low-cost lawyer referral match program and Free legal hotline once a month

References and citations: <https://www.oag.state.tx.us/cs/index.shtml> and www.txaccess.org

*Neither TCSO nor the information presented on this web site are endorsed by the State of Texas or any state agency.