



MILITARY PARENTS:

**PATERNITY,
CHILD SUPPORT,
CUSTODY &
PARENTING TIME**



This checklist is designed to help identify steps you can take to make sure that your child(ren)'s needs for financial, medical and emotional support are met before, during and after deployment. The Office of the Attorney General – Child Support Division (OAG-CSD) is the official child support enforcement agency for the state of Texas.

To locate a field office or for assistance with a child support issue, visit www.texasattorneygeneral.gov or call (800) 252-8014.

PRE-DEPLOYMENT

DOES MY CHILD HAVE A LEGALLY RECOGNIZED FATHER?

If a couple is married when their child is born, the husband is the legally recognized father.

— I was not married to the other parent when our child(ren) was born, but we completed a voluntary paternity establishment affidavit or acknowledgment, or we have a court order establishing paternity.

Make sure you have a certified copy of the voluntary paternity form or the court order.

— I was not married to the other parent when our child(ren) was born, and I'm not sure if paternity has been established.

See page 6 for information on paternity establishment.

DO I HAVE A COURT ORDER ADDRESSING CUSTODY & PARENTING TIME (VISITATION) RIGHTS?

*In Texas family law, **conservatorship orders** define each parent's rights and responsibilities. **Possession orders** define when the child(ren) will be with each parent or guardian.*

- In most cases, both parents share **parental rights and responsibilities** (called joint managing conservatorship).
- Usually, one parent has the right to determine **where the child(ren) lives**. (This parent is also called the custodial parent.)
- The time a child spends with the noncustodial parent (often called **visitation**) is defined in the possession order.

— **Who will have custody of my child(ren) while I am deployed?** If you are the custodial parent, as a military serviceperson you may ask the court to designate another person to determine where your child(ren) lives while you are deployed.

See page 7 for more detailed information.

— **Do I want to assign visitation?** If you are a noncustodial parent in the military, you can ask the court to designate another person to exercise

your visitation rights on your behalf while you are deployed.

See page 7 for more information.

— **Have I worked out a plan for parenting with my child(ren)’s other parent?** Most court orders do not include specific agreements about the detailed aspects of your child(ren)’s life. Many co-parenting couples find it helpful to develop a plan for handling the everyday issues that come up with their child(ren) (like bedtime, curfew, extracurricular activities and religious instruction) and the bigger decisions (like consent to marry while underage, medical treatments and tattoos or piercings). This written agreement does not take the place of the court order, but it can be helpful for day-to-day co-parenting.

See a sample on the OAG’s website in the For Our Children Co-Parenting Guide.

HOW WILL MY CHILD(REN) RECEIVE CHILD SUPPORT & MEDICAL SUPPORT WHILE I’M DEPLOYED?

A **child support order** includes requirements for both **financial** support and **medical** support of children and is based on the noncustodial parent’s monthly net income and the number of children for which he or she has responsibility. Parents being mobilized for service may experience a change in income. Either an increase or a decrease in pay may warrant a modification to the order.

A modification can be expedited for military parents. For more information, visit www.texasattorneygeneral.gov, call (800) 252-8014, or email HEROES@texasattorneygeneral.gov.

— **I’m the custodial parent and a person other than the noncustodial parent will care for my child(ren) while I’m deployed.** I want to make sure the child support is received by the person caring for my child(ren) while I’m deployed.

Make private arrangements – e.g., access to bank account and/or signing documents allowing a limited power of attorney or, in some cases, you may want to seek legal action to redirect/assign payments to a person with temporary custody.

— **I’m the custodial parent and the child(ren)’s other parent (noncustodial parent) will care for our child(ren) while I’m deployed.** I want to modify child support payments while I am deployed.

Contact the OAG-CSD and/or a private attorney.

— **I’m the noncustodial parent,** and my earnings are going either up or down during deployment. I can **ask for a review of my child support order** with the OAG-CSD or seek to modify my order so that the amount I pay is based on my new earnings.

Keep in mind that some states, including Texas, can include a military noncustodial parent's Base Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS) as part of the parent's financial resource, even though it is not taxable and cannot be garnished. Also, if you are moving from civilian employment to active duty or vice versa, immediately contact the OAG to correct your wage garnishments. The OAG will send a termination of garnishment to your former employer and a new garnishment to your current employer.

Contact the OAG-CSD and/or a private attorney.

— **I don't have an established child support and/or medical support order for my child(ren). Should I have one? How do I establish an order?**

One of the most common reasons separated or unmarried parents establish a formal child support order is that they cannot agree on how much financial support the parent without custody will pay or they want formal documentation of child support paid so that it is not questioned at a later time. Another reason parents may establish a child support case is to receive a formal custody/visitation order.

Either parent can open a child support case with the OAG-CSD, or they can contact a private attorney.

— **I have an established child support and/or medical support order, but it is from another state. Can it be modified in Texas?**

It may be possible to transfer the case to Texas, but in most instances you will have to modify the case in the state where the order was established.

Contact the OAG-CSD and/or a private attorney.

CAN SOMEONE ELSE RECEIVE INFORMATION ABOUT MY CHILD SUPPORT AND/OR MEDICAL SUPPORT CASE WHILE I'M DEPLOYED?

- **Yes.** You can designate another person to receive information about your case by completing an Authorization for Release of Information or Payments form (Form 1A004), and sending it to your local child support office. To locate Form 1A004, visit the child support section of www.texasattorneygeneral.gov and select "Forms". If it is more convenient, the form can be mailed to you or picked up at the local office. Child support office locations may be found on the child support section of the OAG website or by calling (800) 252-8014. When you return from deployment, you can revoke the authorization by completing Form 1A005 that also is available on the website, by mail or at a local child support office.

DURING DEPLOYMENT

- ✓ **Establish paternity:** If a child is born during deployment and the parents are not married, the mother and father can still establish paternity by separately signing the Acknowledgment of Paternity (AOP) form wherever they are. If you have doubts about a child's paternity, do not sign an AOP without confirming the child's parentage with a DNA test. The OAG offers free DNA testing as part of establishing an order for paternity and child support.
- ✓ **Stay in touch with your child(ren):** Communicate in as many ways as you can during deployment by sending letters, making phone calls, exchanging emails and using social media and other technology (Skype, FaceTime).
- ✓ **Continue to Co-Parent:** Stay in contact with those who are caring for your children while you are deployed. Encourage them to include you in family decisions and keep you well informed about your child's school, activities and health. Visit www.militarychild.org, www.militaryhomefront.dod.mil and www.zerotothree.org/military for helpful information for military parents and their children.
- ✓ **Keep an electronic or paper copy of your child support and parenting time (possession) order.**

POST-DEPLOYMENT

- ✓ **Update your information:** Make sure to contact the OAG's child support office or seek legal counsel upon your return to change any arrangements you made for redirecting child support payments or releasing information during deployment.
- ✓ **Request a review of your case:** If you are a noncustodial parent and your earnings are going either up or down after deployment, contact the OAG or seek legal counsel to ask for a review and/or modification of your order so that the amount you pay is based on your new earnings.
- ✓ **Help your child(ren) adjust:** Even the happy occasion of a parent's return from deployment can require adjustments for a child. Allow time for your child(ren) to warm up to you as needed—getting used to your physical presence and experiencing your everyday decisions about their lives. Spend time learning about their new interests and friends.
- ✓ **Makeup visitation time:** Many noncustodial parents want to make up for lost visitation time after returning from deployment. It's important for parents to work together to come up with a schedule supporting the child(ren)'s reconnection with the noncustodial parent, while also

allowing time for the child(ren) to adjust to visitation. In some cases it may be appropriate to ask the court to consider ordering additional periods of visitation. See page 8, Visitation, for more detailed information.

PATERNITY ESTABLISHMENT

When a child is born to unmarried parents, the law does not automatically recognize the biological father as the legal father. Children with legal fathers are entitled to benefits through their fathers that may include social security benefits, military family benefits, veteran benefits and inheritance rights.

Unmarried parents have two options to establish paternity:

1) Acknowledgment of Paternity (AOP):

✓ **What is it?** Administrative process used when both parents agree and are certain of biological father's parentage.

When can it be done? Before a child is born, at the time of a child's birth or any time after a child's birth (when there has been no other court order of paternity).

Where can it be done? In Texas, parents must be assisted by someone who has been certified by the Office of the Attorney General – birthing hospitals, Texas child support offices, local county clerks and vital statistics offices have certified staff. In addition, the Texas Office of the Attorney General assists parents who are unable to go in person to one of the above locations (e.g., one parent is in another state or country).

What about DNA testing? DNA testing is not required to establish paternity with an AOP. If parents want the added certainty of DNA testing, they should not complete the AOP until after they have had testing performed by a private lab. Another option parents may consider is establishing paternity through a court order that includes DNA testing. (See below – “Court order establishing paternity.”)

Whom do I contact for assistance with an AOP? Military members and dependents needing assistance with a Texas AOP should contact (866) 255-2006.

2) Court order establishing paternity:

✓ **What is it?** An order signed by a judge determining legal fatherhood. Generally, the order will include determinations of child support, medical support, custody and visitation rights.

When can it be done? After a child is born and both parents have received notice of the lawsuit to determine paternity.

Where can it be done? In Texas, if both parents agree, they can negotiate and sign the order in a local OAG child support office. The order is then submitted to the court for the judge's signature. If parents cannot reach an agreement, they will be scheduled for a court hearing. If one of the parents does not attend the court hearing, paternity may still be determined by default.

What about DNA testing? Genetic testing may be requested by either parent – it does not happen automatically. Parents establishing paternity by opening a child support case with the Texas OAG-CSD may request DNA testing at no cost to either parent.

Whom do I contact for assistance with a court order establishing paternity? Either parent (father or mother) can apply for free paternity establishment and child support services provided by the Texas OAG-CSD online at: www.texasattorneygeneral.gov or by calling (800) 252-8014. Parents may also contact a private attorney for assistance.

TEMPORARY CUSTODY & VISITATION DURING DEPLOYMENT

Who will have custody of my child(ren) while I'm away?

TEMPORARY CUSTODY

When a custodial parent is deployed, a court may grant a temporary order designating another person to have custody of the child(ren). The temporary order can only be made in a court with jurisdiction over civil family matters, not through the Military Family Care Plan. If there is no court order for a temporary change in custody and the noncustodial parent is the joint managing conservator, then the noncustodial parent has the right to primary custody.

Who can this person be? Texas family law has an order of preference for designating a person to have temporary custody of a child, always considering what is in the child's best interest:

1. Noncustodial parent

2. A person chosen by the custodial parent (if the court finds that it is not in the child's best interest for the noncustodial parent to have primary custody)

3. A person designated by the court (if the court finds that it is not in the child's best interest for either the noncustodial parent or the person chosen by the custodial parent to have custody)

If the court appoints the noncustodial parent to have primary custody, the deploying custodial parent may designate a person to exercise visitation

during his/her absence (e.g., a spouse, grandparent or other relative).

When can it be done? This may be done when the order addressing conservatorship and visitation is a Texas order and either conservator petitions the court for temporary orders as a result of military deployment, military mobilization or temporary military duty that involves moving a substantial distance from the conservator's residence.

What happens when the deployment or temporary military duty ends? After the deployment or temporary duty concludes and the custodial parent returns to his/her usual residence, temporary orders terminate, and the rights of all affected parties are governed by the terms of the original orders that were in place prior to the temporary orders.

VISITATION

When a noncustodial parent is deployed, Texas family law allows for the parent to designate a person who will temporarily exercise the parent's visitation. The visitation must be in the best interest of the child. These terms may already be included in the portion of the order addressing possession or access, or a petition may be filed with the court to designate this person.

Who can this person be? A designated person determined by the noncustodial parent and approved by the court.

When can it be done? A noncustodial parent may petition for temporary orders when he or she is ordered to military deployment or temporary military duty that involves moving a substantial distance from his or her residence.

A noncustodial parent may also ask the court to order makeup visitation after he or she returns from military deployment or temporary military duty. If a noncustodial parent has a court order for visitation from a Texas court, he or she can ask the court for additional visitation to make up for time missed during deployment. The court will consider what is in the best interest of the child – taking into account if the noncustodial parent designated someone to exercise visitation rights during deployment – and may order a reasonable amount of makeup visitation time. The request must be made within 90 days after deployment ends by petitioning the court.

For more detailed information regarding custody and visitation, visit www.txaccess.org or contact the Texas Access and Visitation Hotline at (866) 292-4636. The Hotline is open Monday through Friday from 1 p.m. to 7 p.m.

Visit TexasLawHelp.org to obtain information on a broad range of family law issues.