





Noncustodial Fathers: Rights and Responsibilities

Activity 6-1	What's New?	 10-15 minutes
Activity 6-2	Paying Child Support	 25-35 minutes
Activity 6-3	Rights and Responsibilities	 45-55 minutes
Activity 6-4	Feedback/Wrap-up	 10-15 minutes

Key Concepts

- Noncustodial fathers should know their legal rights as parents, such as the right to see their children on a regular basis, the right to request review of a child support order if their financial situation changes, and the right to sue for custody if they can prove that it is in the child's best interest.
- *All* custodial parents, regardless of whether they receive Public Assistance, are entitled to receive child support from the noncustodial parent of their child.
- When a man declares paternity for his children, there are benefits for him and his children.
- It is the right of every child to be supported by *both* parents.
- Visitation rights are not connected to child support payments. A non-custodial parent who is not paying child support still has the right to visit his or her children. Likewise, even if the custodial parent refuses to let the noncustodial parent visit the children, the noncustodial parent still has an obligation to pay child support.

Materials Checklist

Activity 6-2 **Paying Child Support**

- Leader Resource, “Facts About Child Support and Paternity” (from Activity 6-3)
 - Handout, “Should I Pay Child Support?”
 - Pencils (for everyone)
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Activity 6-3 **Rights and Responsibilities**

- Leader Resource, “Facts About Child Support and Paternity”
- Handout, “Questions for the Experts”

What's New?

Begin the activity by asking the men what they thought about Session 5, “Fathers as Providers.” In your own words, ask the following questions.

▼ Discussion Questions

1. Would somebody like to summarize what was talked about last session?
2. What reactions have you had this week to our discussion about being a father? About being a provider?
3. Have you come up with any ideas about how to deal with things (or people) that get in the way of being a successful provider for your children? If so, what are your ideas?
4. What, if anything, did you discuss about our last session with your partner, friends, or family?
5. Did anyone have an opportunity to complete his “Personal Contract to My Children”? If so, what commitments did you list on the contract?

Remind the men that today’s session will continue their discussion about paying child support. Explain that in the first activity they will examine the different reasons that fathers give for not paying child support. Tell them that they then will have an opportunity to ask questions about their legal rights and responsibilities as noncustodial fathers. Finally, they will get a chance to think ahead to when their circumstances allow them to provide better care for their children.

Paying Child Support

Purpose: To help fathers explore what gets in the way of their ability to provide financially for their children. To help fathers understand how their children can benefit from regular, consistent child support.

Materials: Handout, “Should I Pay Child Support?”; pencils (for everyone).

Time: 20-30 minutes.

Planning Note: This activity helps the fathers deal directly with the various reasons given for not paying support, particularly through the legal Child Support Enforcement system. Before doing this activity, read the Leader Resource “Facts About Child Support and Paternity” (in Activity 6-3) to familiarize yourself with all the ways in which a child and a father can benefit from his paying child support. Use this information to help those “debate partners” who must defend paying support.

Procedure: Begin by saying something like, “In the last session, we talked about what it takes to be a good father, and what gets in the way of his efforts to provide for his children. One question we discussed was whether or not you think a father’s ability or decision to pay child support makes him a good candidate for the Father of the Year Award. In this activity, we will examine a father’s responsibilities as a provider for his children.”

Tell the men that the activity will explore their opinions about various reasons that fathers give for *not* paying child support. Ask whether anyone has ever been involved in a debate; if so, ask that member to describe how a debate works. (Be sure that the discussion includes that one person in a debate first states all the reasons he can think of to support his position, and then his debating partner presents all the reasons to argue against or oppose the first man’s position.) Tell the men that they will debate about issues related to child support. Then distribute the handout “Should I Pay Child Support?” and a pencil to each participant.

Say something like, “The handout lists a variety of reasons that people give for why they should not be legally responsible for paying child support (through the Child Support Enforcement agency). As I read each statement, put a check mark next to the ones that you would like to defend. You can pick statements that represent your personal opinion or statements that you have heard other noncustodial parents make and would like to defend. When we begin the debates, anyone who disagrees with the statements you’ve chosen can volunteer to be your debate partner.” Tell the men that the debates will reveal strong differences of opinion, but that this is OK.

After reading all the statements aloud (and reminding the men to put check marks on their handouts), tell the men that they will now have three or four debates, lasting five minutes each. Ask for a volunteer to defend one statement on the list; when he has read that statement aloud, ask for a volunteer to be his debate partner and argue against the statement. If more than one person wants to debate the same statement, suggest that the men form teams, but inform them that only one man can speak for each team. Tell them to pick a team member who has strong feelings about the issue to speak for them. Begin each debate with a one-minute defense of the statement, followed by a one-minute rebuttal; then alternate arguing the two positions until the time is up. Ask for a volunteer to be the timekeeper, to keep the debate moving.

After each debate, discuss question 1 below. When at least three statements have been debated, discuss the remaining questions.

▼ Discussion Questions

1. Now that you have heard the debate, what do you believe about the statement? Should the father in this situation have to pay child support? Why or why not?
2. Under what circumstances, if any, do you think a father should be excused from paying child support?
3. What does it mean to be a provider for your children?
4. Why do some men pay child support while others do not?
5. Does a father's relationship with his children change when he can't pay child support? If so, how? Does his relationship with the child's mother change as well? How?
6. In what ways is a child's life affected when the father does not pay child support? How do you think a child benefits when a father does support his child regularly?
7. When you were a child, were you supported financially by your father? What was that experience like?
8. What is it like for you when you can't support your children?
9. What plans do you have to support your children in the future?
10. What can fathers do if they believe that:
 - the amount of their child support is too high?
 - they are not able to see their children?
 - their children are in danger or are not being cared for adequately?

Should I Pay Child Support?



Please put a check mark next to the statements you are willing to defend.

1. Fathers who are not allowed to see their children should not have to pay child support.
2. Fathers should not have to pay child support if their payment goes to the welfare department and not to the child.
3. A man should not have to pay child support if he does not believe that he is the child's father.
4. A father should not be forced to pay child support if he knows that the mother is using the money for herself.
5. Fathers who do not have jobs should not be held responsible for child support payments.
6. A man has the right to decide how much he can afford to pay in child support. If he is not given this right, he should not have to pay.
7. A father's responsibility for child support should end when his child's mother remarries.
8. It is more important for a father to spend time with his child than to pay child support.
9. A father's responsibility for child support should end when he has a new family.
10. A father should not have to pay child support when his child's mother makes enough money to support the child herself.

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- 11. A father should not have to pay child support for a child who lives in another state.
- 12. A father should not have to pay child support for a child he did not want in the first place.
- 13. A father should not have to pay child support if the mother of his children is not also required to work to support her children.
- 14. A father who is a good provider should give money and things directly to the mother (or to his children), not to the child support system.
- 15. Being mandated to pay child support destroys a father's relationship with his children.
- 16. Fathers who don't have jobs should not have to go to jail if they cannot pay child support.
- 17. A father should not pay child support if he does *not* have a support order or a court order.

Rights and Responsibilities

Purpose: To increase participants' knowledge of child support policies and procedures. To help fathers understand their legal rights and responsibilities as noncustodial parents.

Materials: Leader Resource, "Facts About Child Support and Paternity"; Handout, "Questions for the Experts"; newsprint and markers.

Time: 35-45 minutes.

Planning Note: The goals of this activity are (1) to identify and explore participants' questions and concerns about paternity establishment and child support and (2) to inform them of their legal rights and responsibilities as noncustodial fathers. To answer specific questions about child support and paternity, it may be helpful to bring in a legal rights attorney with expertise in child support matters and/or a staff person from the Child Support Enforcement agency. Before inviting the guest speakers to the group, help the men list the questions or concerns they want to discuss. (See the handout "Questions for the Experts" for a variety of questions the group may want to ask.) Preparing a list will help the men clarify their questions and will let the presenters tailor their presentations to the needs of the group. Some fathers may have negative and hostile feelings about the Child Support Enforcement system, so you might remind the group to be courteous and discourage anyone from using this meeting to negotiate and resolve specific cases. (No one should see this as an opportunity to request an adjustment in his individual child support order; instead, the man can ask general questions about the procedures to request reductions.) You may want to prepare one or two volunteers to host the meeting, introducing the guests and facilitating the questions and answers.

If you choose *not* to use an outside presenter, be sure to review the Leader Resource "Facts About Child Support and Paternity" and the handout "Questions for the Experts" so that you can prepare to answer the men's questions. In addition, contact your local Child Support Enforcement agency to request any literature that

explains the child support procedures in your state or locality. The Leader Resource includes a list of resources to which noncustodial fathers can turn for free or low-cost legal advice and/or representation. It is important to identify local resources before conducting this activity and, if possible, to prepare a list of the addresses and phone numbers of these resources to distribute to the men.

Procedure: Begin by reminding the fathers that this activity will address their questions and concerns about child support and paternity. If you have invited outside presenters (either a legal rights attorney or a representative from the Child Support Enforcement agency), welcome your guests and introduce them to the group. Then ask each father to introduce himself and to state the names and ages of his children. In your own words, tell the men why you have invited the speakers. Say something like, “We’ve spent a lot of time talking about your roles as fathers and providers, and one big part of being a provider for your children is paying child support. Today we have an opportunity to ask questions about establishing paternity, paying child support, getting visitation or custody, changing child support orders, etc. Our guest speakers are knowledgeable about the Child Support Enforcement system and about your legal rights as noncustodial fathers, and they can address your questions and concerns about such issues. We will start by asking the list of questions we prepared on the handout ‘Questions for the Experts.’ Then each of you will have a chance to ask any other questions that you have.”

Concluding the Activity. Be sure to leave at least 10 minutes at the end of this activity to allow participants to ask any questions that are not included on the handout “Questions for the Experts.” When everyone has had an opportunity to ask questions, thank the presenters and ask them for suggestions about resources to contact if the men have questions in the future. Remind the men that the more consistent and regular they are about paying child support and visiting their children, the more credibility they will have with their children, their children’s mothers, the Child Support Enforcement agency, and each other.

Leader Resource

Facts About Child Support and Paternity

Establishing Paternity¹

“Establishing paternity” refers to the legal process that parents must go through to identify the father of a child who is born to an unmarried woman.

Benefits to the Father

- Providing emotional and financial stability for the child.
- A legal say in what happens to the child (for example, if the mother wants to move to another state, place the baby for adoption, or is not a fit caretaker).
- The legal right to seek joint or full custody of the child.
- Some legal rights (not tied to paying) to see the child according to a visitation plan worked out by the court or appropriate administrative agency.

Benefits to the Child

- A sense of security and identity that comes from having a relationship with one’s father.
- The emotional advantages of having an adult male role model.
- Being able to identify with other members of the father’s family.
- Access to the father’s medical history.
- Legal rights and privileges relating to the father’s medical and life insurance plans, Social Security and veteran’s benefits, and inheritance (property).
- The stability of financial support from both parents.

1. *Paternity* means fatherhood.

Procedures for Establishing Paternity

Under federal law, paternity can be established until a child is 18. Either the custodial parent can file a paternity complaint against the alleged father, or the Child Support Enforcement (CSE) or welfare agency can file the complaint on the noncustodial parent's behalf. The complaint is then adjudicated in one of several ways. Some states establish paternity through the courts, while others may use administrative hearing officers. States that do not use the courts to establish paternity generally have a system by which all agreements are legally binding. In most states, fathers cannot receive free legal advice or representation for paternity suits. In order to find out more about this process, contact your state's CSE agency.

Default Judgment. If a father has been notified about the paternity hearing and does not respond or show up, paternity can be established by default (called a *default judgment*). At this time, a support order can also be issued.

Consent Agreement. If the father wants to establish paternity, he can sign a consent agreement that, along with other procedures, makes him the legal father. At this time a support order is usually set.

Genetic Testing. Under federal law, if either party contests paternity (denies that the man is the father), the court must allow a genetic test in order to prove or disprove paternity. Two kinds of genetic tests may be used:

- A *blood test* using blood samples of the mother, child, and alleged father to compare similar parts of the red blood cells and serum protein to determine which genetic markers, if any, the alleged father has in common with the child. (Genetic markers are specific and do not change with time and, therefore, may be used objectively to rule out any man who is not the father.)
- A new type of *DNA test* to analyze the DNA of the mother, child, and alleged father. This test has an accuracy rate of 99 percent in determining whether the man is the biological father.

The cost of each test is between \$500 and \$600 (the newer test is slightly more expensive). In some states the father may be held responsible for the cost of the test if it proves his paternity. A father who is a noncustodial parent may also file for paternity. If a man questions that he is the father, he should request genetic testing *before* establishment of paternity.

Locating Absent Parents²

The Obligation of the Mother in the Location Effort

An unmarried mother who applies for Temporary Assistance for Needy Families (TANF; previously known as AFDC) is required by law to name the father of her children. She will also be asked to give his Social Security number, the names and addresses of his current or recent employers, and the names of his friends and relatives. Any information given to the CSE caseworker will be used to locate the father in an effort to establish paternity. If the custodial parent does not cooperate, her TANF benefits can be reduced or suspended.

State and Federal Parent Locator Services

If a father is employed, has credit in his name, has a driver's license or Social Security number, is in the armed forces, or receives any kind of government benefits, he can usually be located. The State Parent Locator Service (SPLS) can check records of state agencies, such as the Department of Motor Vehicles. The SPLS can also check Unemployment Insurance filings, state income tax refunds, and jails to find out where the father works and lives. If the absent parent cannot be found in the state, the Federal Parent Locator Service (FPLS) can search the records of the Internal Revenue Service, the Department of Defense, the Social Security Administration, and the Veterans Administration.

The CSE agency may try to locate absent parents for one of several reasons: to notify them if a paternity complaint has been filed and they need to come to court or an administrative hearing concerning the complaint; to either collect on an already established support order or begin withholding the order from parents' paychecks or tax refunds; and/or to review and modify the amount of the child support order.

2. *Absent parent* means the parent who does not live with or have custody of the child but does have responsibility for financial support.

Setting Child Support Orders

The Amount of Orders

Each state has guidelines tied to the resources and circumstances of parents to set child support orders. Judges or administrative hearings officers are obliged to use their state's guidelines in setting child support orders unless they feel that circumstances of a particular case make the guidelines unjust or inappropriate. These circumstances vary from state to state. To find out which guidelines your state uses in setting child support orders — and exceptions that judges can make to these guidelines — contact your local CSE agency.

Although the exact formulas used in child support guidelines vary, all take into account:

- The income of the noncustodial parent
- The employment status of the noncustodial parent
- The income of the custodial parent
- The number of children of the noncustodial parent
- The support needs of the children
- The past payment history of the noncustodial parent

Most states require that the noncustodial parent pay child support until the child is 18. Some states continue child support until the child is out of high school or college.³ In some states the noncustodial parent must petition the court to stop a child support order when a child reaches 18.

Modifications of the Order

If a noncustodial parent loses his job, or if his financial situation changes drastically, he can request a review of the order amount by filing a petition at the CSE office or court, which can lead to a hearing and possible adjustment of the order. In some states a filing fee may be required.

3. If the child has physical or mental disabilities, a father's obligation to pay child support may extend past the usual state requirements.

Paying Child Support

Child support payments will be withheld from the noncustodial parent's paycheck as a result of an income deduction order approved by the court or administrative agency for child support. Beginning in November 1990, this was required for all new or modified child support orders in cases where the noncustodial parent's children were receiving TANF. Wage withholding is also mandatory for those orders set before November 1, 1990, if an arrearage occurs equal to one month's support. Beginning January 1, 1994, support will be withheld from the noncustodial parent's paycheck regardless of whether he is on welfare.

The noncustodial parent should be encouraged to begin to make voluntary payments before the enforcement of the income deduction order. In this case, the noncustodial parent should be advised to keep all receipts of support payments made to the custodial parent. When making payments, the noncustodial parent should apply for an obligor or payee number to ensure that he receives proper credit for payments made.

\$50 Pass-Through in TANF Cases

When a custodial parent receives TANF, the first \$50 of child support paid by the noncustodial parent goes to the custodial parent without a decrease in her TANF payment, and the rest of the money is used to reimburse the state for TANF benefits that are paid out to the custodial parent.

States have different methods of enforcing payment of child support. A noncustodial parent's failure to comply with any child support order may result in the seizure of his:

- State and/or federal income tax refund
- Bank account funds
- Possessions (for example, motorcycles, etc.)
- Money from unemployment or disability income
- Driver's license

Also, noncustodial parents may have their names published in a local newspaper or other public record.

If noncustodial parents cannot pay because of unemployment, some states make them document their efforts to find work.⁴ Failure to pay can lead to incarceration.

Noncustodial parents who pay child support regularly do not have a right to specify how the custodial parent uses the child support money. However, if a father knows or suspects that the mother of his children is spending the money on drugs, and/or that she abuses or neglects the children, he can take the following steps:

- He can sue for custody if he has evidence that the mother is incapable of caring for the children and if he wants the children to live with him.
- If he is not prepared to take custody of his children but he feels that they are in a dangerous situation (e.g., the mother is using drugs), he can call the Child Welfare Office, which will investigate. If there is evidence that the children are being abused or neglected, they will be removed to be placed with relatives or in foster care. Sometimes the mother will be able to get the help she needs and the children will be allowed to live with her again when she is better able to care for them.

Visitation

When paternity is established, the noncustodial parent is usually granted the right to visit his children. Visitation rights are not connected to child support payments. If the noncustodial parent is not paying child support, he still has visitation rights. Likewise, if the custodial parent refuses to let the noncustodial parent visit the child, the noncustodial parent still has an obligation to pay child support.

Visitation orders can include specific instructions about the amount of time the noncustodial parent can spend with his children, or the instructions can be vague, granting the noncustodial parent “reasonable rights of visitation” or “visitation to be decided by both parties.” Nonspecific visitation orders leave it to the parents to agree on what constitutes “reasonable visitation.”

If the noncustodial parent is denied visitation rights by the custodial parent, he can file a complaint with the court or appropriate administrative agency. If the judge or hearing officer agrees that the noncustodial parent is being denied visitation, the custodial parent can be held in contempt of court or of the administrative agency.

4. Some states will suspend child support payments while the noncustodial parent is looking for work.

Noncustodial parents can also try to enter mediation with the custodial parents. This may be more effective and helpful than working through the courts.

Arrearages

Noncustodial parents are sometimes also obligated to make payments on child support debts known as *arrearages*. Typically, when a noncustodial parent pays regular child support through an income deduction order, a percentage of the custodial parent's wages will also be withheld to pay money toward arrearages. Each state has regulations about how arrearages are calculated. There are two general types of arrearages: money owed for child support and money owed for the TANF payments (previously AFDC) that the state is making to the custodial parent and her children.

Debts from Child Support

- **Uncollected child support before TANF application.** In some states, an arrearage can be from uncollected child support owed before TANF. When custodial parents apply for TANF, they assign to the state the right to collect child support. If they had a legal support order in place before applying for TANF and if the noncustodial parent owed money on this order, the right to collect the back support is assigned to the state at the time of TANF application.
- **Unpaid child support during TANF receipt.** If the custodial parent is receiving TANF and the noncustodial parent does not pay child support to the state (or does not pay the whole amount of the order), the unpaid balance becomes an arrearage debt.

Debts to the State for the TANF Payments Made to the Custodial Parent

- **TANF support debts.** In some states, noncustodial parents may be held responsible for any money that the state is paying to the custodial parent for TANF not covered by the custodial parent's child support order; this amount may become the noncustodial parent's debt as well.
- **Pre-support order costs.** Noncustodial parents can also accrue debt from before the child support order was set. In some states, the noncustodial parent may be held responsible for the costs of TANF and hospital "confinement" expenses due before the date of the child support order.

Legal Advice

It may be difficult for the men to get free legal advice about their cases. Facilitators should do some research in their communities about where the fathers can get legal advice. Some places to check are:

- **Legal Aid Societies/Legal Assistance Services.** In some jurisdictions, these organizations may represent the men or provide free legal advice.
- **The County Bar Association.** The County Bar Association is a professional organization made up of private attorneys. These groups sometimes offer free legal advice clinics or have attorneys who volunteer to take pro-bono cases.
- **Local family court.** The local family court may know what kinds of state committees and organizations in the area offer legal advice to noncustodial parents.
- **The American Civil Liberties Union (ACLU).** Although the ACLU does not specifically work with noncustodial parents, it often knows which groups are active in the area. The ACLU can be a good source of referrals.

Questions for the Experts



1. What does *paternity* mean, and how and when is it established?
2. What kinds of tests are used to prove paternity, and how accurate are they?
3. How much do these tests cost, and who pays for them?
4. How do fathers and children benefit when paternity is established?
5. What happens to fathers who refuse to establish paternity?
6. What happens if the mother refuses to acknowledge the father of her child?
7. What are the ways in which the court or child support agency goes about finding absent fathers?
8. Once paternity is established, how are orders for child support set?
9. What is the judge or hearing officer going to want to know about a noncustodial father when he appears in court for a child support order?
10. How is the amount of child support owed by the noncustodial father decided?
11. If a father's financial situation changes, how can he go about getting an adjustment in his child support order?
12. If a noncustodial father has never paid child support, how much previous support will he be responsible for?
13. If a noncustodial father has paid money to his children's mother directly, can he receive credit for the amount of support previously paid?
14. If his children's mother is on TANF, why should a noncustodial father have to pay child support?
15. If his children are on TANF, how much of his child support money will the children's mother actually receive (that is, what happens to the rest of his support money)?
16. If a noncustodial father lives in another town, city, or state, is he still expected to pay child support? If so, how is his support collected?

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17. Why does money for child support come out of a father's paycheck when he gets a job? What happens when he changes jobs?
18. If a noncustodial father cannot or will not pay child support, does he still have the right to visit his children?
19. What happens when a noncustodial father refuses to pay child support?
20. If a noncustodial father later marries and has other children, is he still responsible for supporting his first child?
21. If a noncustodial father's children go into foster care, will he still be expected to pay child support?
22. If a noncustodial father receives unemployment or disability benefits, is he still required to pay child support?
23. What happens to mothers on TANF who refuse to cooperate in establishing paternity or locating absent fathers?
24. If the children's mother marries someone with a good income, is the noncustodial father still responsible for child support?
25. Can a noncustodial father pay support directly to the mother of his children? If not, why not?
26. What happens when a father's children have different mothers? Is he responsible for paying support for all the children? How is the amount decided? If not all the children are on TANF, what happens?
27. When does a father's responsibility for supporting his children end?
28. How much say does a noncustodial father have about how the mother of his children spends the support money she receives?
29. What can a father do if he is concerned about the care and well-being of his children?
30. Where can a noncustodial father get free or low-cost legal advice and/or representation if he wants to sue for custody?
31. If a father has custody of his children, what financial responsibility will the mother have to her children?
32. If the mother of his children is not working (or doing anything constructive with her life), why should a noncustodial father be solely responsible for paying child support?

Feedback/Wrap-up

At the end of this session, the men may still have concerns about having to pay child support, in addition to anger and resentment toward the mothers of their children. Encourage them to express any negative feelings or opinions, but help them to make a distinction between how they feel about the child's mother or the "system" and what they say they want for their children. Be sure to emphasize how children benefit from regular child support and from strong relationships with their fathers. Remind them of what they have said they want for their children and of how they hope to improve their lives in the future. In your own words, use the following questions to discuss the men's reactions to this session about child support.

▼ Discussion Questions

1. Does anyone want to describe his reactions to today's session? What are your thoughts or feelings?
2. Did you learn anything new about your rights and responsibilities as a noncustodial parent? If so, what did you learn?
3. What suggestions do you have for fathers who resent having to pay child support or who are angry at their child's mother?
4. What, if anything, do you plan to do with today's information? (For example, will you attempt to establish paternity, or will you request visitation rights, etc.?)

Tell the men that the next few sessions (7, 8, and 9) will focus on the needs of their children. Say something like, "In the next session, you will examine what you value as parents and how you can help your children develop values to guide their lives. Then we will talk about the challenges you face when you are caring for your children, including how to deal with their troublesome behavior. Throughout these sessions, we will be looking for ways to build strong relationships between you and your children."