

## 13.0 FAMILY LAW, CHILD WELFARE AND FOSTER CARE ISSUES

### GENERAL FAMILY LAW

#### 13.1 Overview

Displacement during and after a natural disaster can cause unique legal issues in the family law context. In addition to issues regarding custody, visitation, and child support, incidents of domestic and sexual violence increase after natural disasters according to a 2015 global study by the International Federation of Red Cross and Red Crescent Societies. Researchers attribute this increase to a combination of loss of family members and homes, scarcity of basic resources, displacement, increased stress, and marital conflict. In addition, the lack of security in temporary disaster-relief shelters increases sexual violence towards women and young girls.

This chapter is designed to provide some guidance for attorneys facing family law issues related to a natural disaster.

#### 13.2 Most Common Issues/Questions

- What do I do if I lost the physical copy of my protective order in the disaster?
- I had to relocate to a different state following a disaster. Is my protective order still enforceable?
- How can I make sure my abuser doesn't find me in a disaster-relief shelter?
- I have been sexually assaulted in a disaster-relief shelter. What can I do?
- I am the child's grandparent, but I do not have custody. Can I still enroll my grandchild in school and obtain medical care?
- I had to evacuate my home. Where do I go to modify my child's custody or support order?
- What if my child's other parent refuses to pay child support after the disaster?
- During the disaster my child's other parent evacuated with my child and will not give him or her back. What do I do?

#### 13.3 Summary of the Law

##### *a. Protective Orders*

One common way to combat domestic violence and other violence is by obtaining a protective order from a court. Texas law authorizes the courts to issue protective orders for domestic violence, sexual assault, stalking, or trafficking. A protective order is a civil court order to prevent continued acts of violence.

Protective orders for family violence are issued under Title 4 of the Texas Family Code and protective orders for sexual assault, stalking, or trafficking are issued under Chapter 7A of the Texas Code of Criminal Procedure. Protective orders for sexual assault are discussed further in the “FAQ” section.

Family violence includes any intimate partner violence and violence from members of the same household. For a family violence protective order, after notice and a hearing a court must issue a protective order if it finds family violence occurred and is likely to occur again in the future. [Tex. Fam. Code § 85.001](#). An adult member of the family may file an application for a protective order to protect not only the applicant, but also any member of the applicant’s family or household. [Tex. Fam. Code § 82.002](#). An application for a protective order may be filed in the county where either the applicant resides, the respondent resides, or where the violence allegedly occurred. [Tex. Fam. Code § 82.003](#). Certain violations of a protective order can be charged a criminal offense under [Tex. Pen. Code § 25.07\(g\)](#). Other violations can be punished by contempt of court and fined or jailed.

There are many similarities between protective orders issued under Title 4 and Chapter 7A, but the most important distinction is that unlike family violence protective orders, no specific relationship must exist between the victim and the abuser to request a sexual assault, stalking, or trafficking protective order. [Tex. Code. Crim. Proc. § 7A.01](#)

The duration of a protective order typically cannot exceed two years. However, in certain circumstances, the court can enter a protective order that lasts longer than two years and up to the duration of the lives of the offender and victim. [Tex. Fam. Code § 85.025\(a–1\)\(1\)–\(3\)](#) and [Tex. Code. Crim. Proc. § 7A.07](#).

If a court finds, through information provided in the protective order application, that there “is a clear and present danger of family violence,” the court may enter a temporary ex parte protective order, under [Tex. Fam. Code § 83.001](#) without any notice to the individual who allegedly committed the family violence. The same “clear and present danger” requirement is necessary for ex parte applications in protective orders filed under Art. 7A. These ex parte orders are temporary and last no longer than 20 days but can be extended in 20-day period increments on the request of the applicant or the court. [Tex. Fam. Code § 83.002](#).

An applicant can also file for a protective order during a suit for dissolution of marriage and during a suit affecting the parent-child relationship. Protective orders can do more than prevent violence. Protective orders may also establish possession of a child, prohibit the transfer of property, award property temporarily, require payment of child support, and require the abuser to vacate the residence. See [Tex. Fam. Code § 85.021–.022](#) for a full list of what a court may include in a protective order.

### ***b. Conservatorship and Possession***

In Texas, custody is referred to as “conservatorship” and “possession.” “Conservatorship” refers to the rights and duties regarding the child and “possession” refers to access to the child. When a Texas court is asked to issue an order affecting child custody, visitation, or support, the original petition filed is called a suit affecting the parent-child relationship (SAPCR). Determining whether Texas has jurisdiction over a custody case may be complicated if the child has lived in multiple states. Prior to filing suit, it is important to know which state is the child’s “home state.” “Home state” is defined as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than 6 months of

age, the term means the state in which the child lived from birth with a parent or a person acting as the parent. [Tex. Fam. Code § 152.102\(7\)](#).

A Texas court has jurisdiction to make an initial child custody determination if: (1) Texas is the home state of the child (or was the home state within the 6 months before the proceeding and the child is absent but the parent still lives in Texas); (2) the home state of the child has declined to exercise jurisdiction (and the child and the child's parent have a significant connection with the state of Texas and evidence is available in Texas); or (3) all other courts having jurisdiction have declined to exercise it because a Texas court would be the more appropriate forum. [Tex. Fam. Code § 152.201](#).

A Texas court can also have temporary emergency jurisdiction if the child is present in Texas and has been abandoned or it is necessary in an emergency to protect the child because the child, or a parent or sibling, is threatened with abuse. [Tex. Fam. Code § 152.204](#).

One of the main issues in a custody case is allocating rights and duties between the parties. There are two types of conservatorship in Texas: sole managing conservatorship (SMC) and joint managing conservatorship (JMC). [Tex. Fam. Code ch. 153](#). Most custody orders name the parents joint managing conservators. A court will order joint managing conservatorship unless there is a good reason not to, such as family violence. A JMC order normally requires that the parents share decision making about the child's education, medical treatment, and similar issues. A JMC order does not mean that the child's time is split equally between the parents.

In most custody orders, one parent will have the right to decide where the child lives. This person usually has the right to receive child support on behalf of the child. This parent may be referred to as the custodial parent.

When there is a good reason to do so, a court can name one parent as a sole managing conservator. An SMC order can limit or take away the noncustodial parent's access to the child and right to make decisions about the child. The parent who is the sole managing conservator has the exclusive right to make important decisions for the child. See [Tex. Fam. Code § 153.132](#) for a list of the rights and duties of a parent sole managing conservator.

Existing custody orders must be modified in the court which issued the original order (the "court of continuing jurisdiction") unless the case is transferred. See [Tex. Fam. Code §§ 155.201–.202](#) for when an SAPCR can be transferred from the court of continuing jurisdiction to another court in Texas. Under [Tex. Fam. Code § 156.101](#), the standard for modification is that modifying the order is in the best interest of the child and "the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed." Some common qualifying changes are relocation of the child or change of a parent's employment or income.

### **Useful Websites**

- For general information on many family law issues and sample forms, visit <https://texaslawhelp.org/>
- For general information on protective orders and a sample form, visit

<https://www.texasattorneygeneral.gov/cvs/protective-orders>

- For general information on modification of child support orders, visit <https://texasattorneygeneral.gov/faq/cs-frequently-asked-questions-about-child-support-modifications>
- To apply for legal aid, contact:
  - **Legal Aid for Survivors of Sexual Assault**  
1-844-303-7233 (SAFE)
  - **Legal Aid of Northwest Texas, Inc.**  
<https://internet.lanwt.org/>
  - **Lone Star Legal Aid, Inc.**  
<https://lonestarlegal.blog/>  
713-652-0077
  - **Texas Advocacy Project**  
<http://www.texasadvocacyproject.org/>
  - **Texas RioGrande Legal Aid, Inc.**  
<http://www.trla.org/>  
1-888-988-9996
  - **Texas Legal Services Center**  
<http://www.tlsc.org>  
1-800-622-2520
- Helpful websites and phone numbers:
  - **National Domestic Violence Hotline**  
<http://www.thehotline.org/>  
1-800-799-7233 (24/7/365 hotline)
  - **Texas Department of Family and Protective Services**  
<http://www.dfps.state.tx.us/>
  - **Office of the Attorney General Child Support Division**

#### 13.4 **FAQs—Domestic Violence/Sexual Assault**

***Q. 13-1 What do I do if I lost the physical copy of my protective order in a disaster and it is not in the police database?***

You can obtain free, certified copies of your protective order by contacting the court clerk for the court that issued your order. [Tex. Fam. Code § 81.002](#). Copies of the protective order should also have been sent to your local law enforcement by the court issuing your order. [Tex. Fam. Code § 85.042\(a\)](#). After receiving an order from the clerk of the issuing court, law enforcement must immediately enter the information into the Department of Public Safety statewide law enforcement information system. [Tex. Fam. Code § 86.0011](#) allows for only a three-business-day grace period from the time law enforcement receives the order to when they must enter the information into the system. If you find out that the court clerk did not forward the protective order to law enforcement, you should ask them to do so immediately.

Even if not filed in the law enforcement information system, your protective order is still enforceable. If you believe your protective order is being violated, you can immediately call 9-1-1. In Texas, a police officer must arrest the violator if the police officer witnesses a violation of your protective order; if the violation occurred outside the police officer's presence, the officer can still choose to arrest the violator. [Tex. Code Crim. Proc. art. 14.03\(a\)\(3\)](#), (b). Additionally, the police officer must remain at the scene if it is reasonably necessary to verify allegations of a violation of your protective order or family violence and prevent any further protective order violations or acts of family violence. [Tex. Code Crim. Proc. art. 14.03\(c\)](#).

Alternatively, a motion for enforcement of your protective order can be filed with the court with original jurisdiction over the protective order, or any county where either the parties reside or where an alleged violation occurred, and the court has the authority to hold the protective order violator in contempt. [Tex. Fam. Code § 81.002](#).

Further, if you relocated to Texas after a disaster and have a protective order that was issued by a court in a different state, it is still enforceable. According to [Tex. Fam. Code § 88.004\(a\)–\(c\)](#), Texas does not require you to have a certified copy of your protective order for it to be enforced. As long as the officer “determine[s] that there is probable cause to believe that a valid foreign protective order exists by relying on any relevant information,” the order will be enforced.

Although not required, it is good practice to keep multiple copies of the protective order, including an electronic version stored on your phone or email. And, if your protective order has been violated, regardless of where the violation occurred or what state you reside in, you can call the police immediately.

***Q. 13-2 I had to relocate to a different state following a disaster. Is my protective order still enforceable?***

Likely yes. The Violence Against Women Act (VAWA) states that a foreign protective order that meets federal requirements “shall be accorded full faith and credit by the court of another State . . . and

enforced . . . as if it were the order of the enforcing State . . . .” [18 U.S.C. § 2265\(a\)](#). A protective order meets federal requirements if (1) the issuing court had jurisdiction over the parties and matter and (2) reasonable notice and opportunity to be heard was given to the respondent. [18 U.S.C. § 2265\(b\)](#).

Further, you generally do not need to register or file the protective order in the new state for it to be enforceable. [18 U.S.C. § 2265\(d\)\(2\)](#). However, some states do have specific rules regarding registration and filing of protective orders, which may make enforcement easier. Consult an attorney or the laws of the state you relocate to in order to make sure you are in compliance.

If you have relocated to Texas, your foreign protective order will be judicially enforced if the order is valid on its face. [Tex. Fam. Code § 88.003](#). A valid order has the names of both the protected individual and respondent, is current, was rendered by a court with jurisdiction over both the parties and the subject matter, and was rendered after the respondent was given reasonable time for notice and an opportunity to be heard. And, under [Tex. Fam. Code § 88.004](#), a law enforcement officer will enforce a protective order when there is probable cause that a protective order exists and it has been violated. You do not need to register or file your protective order in Texas in order for it to be enforced.

**Q. 13-3     *How can I make sure my abuser doesn’t find me in a disaster-relief shelter?***

If you have a protective order, it may include a provision that your address remain confidential. [Tex. Fam. Code §§ 82.011, 85.007](#).

If you have a final order from a SAPCR, such as a child custody or child support order, it must contain the addresses of each party. [Tex. Fam. Code § 105.006](#). Further, each party is under an obligation to notify all other parties of any change of address. However, if a court finds that requiring this disclosure of information subjects the child or conservator to family violence, the court may order that the information not be disclosed to the other party. So, you should first find out if your order exempts you from disclosing your change of address. If it does not, you can file a motion for the court to waive this requirement, under [Tex. Fam. Code § 105.007](#), if providing your address would likely expose you or your child to harassment, abuse, or serious injury.

Texas also has a program called the Address Confidentiality Program (ACP). The ACP is administered by the Office of the Attorney General and designates a post office box address for participants as a way to increase the safety of family violence victims. Participants can use this address in place of an actual residential, business, or school address, and it can be used as the main address for driver’s licenses, school registration, and for most court and government documents. For more information on the program and how to apply, visit <https://www.texasattorneygeneral.gov/cvs/the-address-confidentiality-program-acp>.

**Q. 13-4     *I have been sexually assaulted in a disaster-relief shelter. What can I do?***

If you have been sexually assaulted, consider reporting this to the police. You can also contact your local rape crisis center. The National Sexual Assault Hotline at 1-800-656-HOPE (4673) can help you find support in your own community after a sexual assault. You can consider a sexual assault exam, which is available to you even if you do not want to involve the police.

If the offender is arrested, a magistrate’s order for emergency protection (MOEP) may be issued and provided to you. At the time of arrest, an MOEP may be requested on your behalf by the judge, a peace officer, the victim’s guardian, or the state’s attorney. [Tex. Code Crim. Proc. art. 17.292](#). An MOEP will be granted if the offense involved serious bodily injury or the display or use of a deadly weapon. The duration of these orders may be anywhere in the range of 31 to 91 days, depending on the circumstances. You do not have to be present for the order to be issued. If the defendant violates the MOEP by committing family violence, communicating with you or a member of your family, or going within a minimum distance of your residence or place of employment, he or she may be subject to jail time, a fine, and additional criminal charges.

Even if you have not called the police, you can file for a sexual assault protective order (SAPO). You do not have to pay court costs to request a protective order. For help with applying for an SAPO, contact the county attorney or the legal aid program covering your area. An SAPO can be filed in the county where you live, the county where the offender lives, or where an element of the offense occurred. [Tex. Code Crim. Proc. art. 7A.01\(a\) et seq.](#)

At the time you file your application for an SAPO, the judge can enter a temporary ex parte order to protect you and other members of your family or household on a finding that there “is a clear and present danger of sexual assault or abuse.” To grant this temporary order, the judge will review the affidavit that you submitted in your protective order application. The purpose of the temporary protective order is to protect you until the protective order hearing takes place. At the final hearing, the court will grant the SAPO if it finds there are reasonable grounds to believe the applicant is a victim of sexual assault. For a pro se SAPO packet, visit [https://texaslawhelp.org/sites/default/files/2016\\_sapo\\_-\\_fillable.pdf](https://texaslawhelp.org/sites/default/files/2016_sapo_-_fillable.pdf).

Lastly, sexual assault victims are guaranteed certain rights under Texas law, regardless of whether you have reported the assault. For an overview discussion of these rights, see generally [http://taasa.org/wp-content/uploads/2015/06/BR\\_KnowYourLegalRights\\_2014.pdf](http://taasa.org/wp-content/uploads/2015/06/BR_KnowYourLegalRights_2014.pdf); <https://texaslawhelp.org/article/sexual-assault-examinations-without-police-involvement>; and <https://www.texasattorneygeneral.gov/cvs/sexual-assault-information-for-adult-survivors>.

### **13.5 FAQs—Conservatorship**

**Q. 13-5** *I am the child’s grandparent, but I do not have a court order for custody. Can I still enroll my grandchild in school and obtain medical care?*

Yes. There are a couple of different routes a nonparent can take to gain the authority needed to make these types of decisions for the child.

If you have one parent’s cooperation, under [Tex. Fam. Code § 34.002](#) a parent can sign an “authorization agreement” to authorize an adult caregiver to provide temporary care for a child. If the agreement is signed and sworn to before a notary public, the adult caregiver can authorize medical treatment, obtain health insurance coverage for the child, enroll the child in school, authorize the child’s participation in recreational activities, authorize the child to obtain a driver’s license, authorize the child’s employment, receive public benefits on behalf of the child, and obtain personal identification documents for the child. For a full list of what the agreement must contain, see [Tex. Fam. Code § 34.003](#).

However, under [Tex. Fam. Code § 34.008](#), an authorization agreement will be terminated if the parent revokes consent, gives notice to all parties, and files the revocation with the appropriate clerk of county. Further, if a court enters an order regarding custody or placement of the child, access to or visitation with the child, appointment of guardianship, or anything affecting the parent-child relationship, the authorization agreement will be terminated. To view the form, along with instructions for completing it, visit [https://www.dfps.state.tx.us/site\\_map/forms.asp](https://www.dfps.state.tx.us/site_map/forms.asp).

If you do not have the parent's cooperation, another option is to request an order for temporary authority for care of a minor child. Under [Tex. Fam. Code § 35.002](#), if the child has lived with you for at least the last 30 days before the date the petition was filed, there is not already a written authorization agreement in place, and the parent or guardian of the child does not object to you having authority to care for the child, you can ask the court for temporary authority. After filing the petition, a hearing will be set. Under [Tex. Fam. Code § 35.005](#), if the child does not have a parent available to give consent, the court must award temporary authority if "it is necessary to the child's welfare and no objection is made by the child's parent, conservator, or guardian." This authority also allows you to consent to medical treatment and enroll the child in school. The order lasts for one year.

Helpful information for grandparents may be found in the "Texas Kinicare Primer" available online at: <https://texaslawhelp.org/article/texas-kinicare-primer#toc-3>.

**Q. 13-6     *I had to evacuate my home. Where do I go to modify my child's custody or support order?***

After a Texas state court has made a custody determination, that same court maintains exclusive continuing jurisdiction, under [Tex. Fam. Code § 152.202](#), for all future modifications and determinations surrounding a child, unless the child and both parents leave the state or neither the child nor one parent maintains a significant connection with the state. If the child still lives in Texas, but has moved to a different county for at least six months, the court of continuing jurisdiction must transfer the case to the new county if timely requested. [Tex. Fam. Code § 155.201](#).

**Q. 13-7     *What if my child's other parent refuses to pay child support after the disaster?***

When circumstances change, a parent paying child support can ask the court to modify the child support order. The standard for modification under [Tex. Fam. Code § 156.401](#) is a "material and substantial change in the circumstances of a child or a person affected by the order." Usually this is satisfied if the noncustodial parent's income has decreased or the child's living arrangements have changed. So, it could be possible that loss of a job because of a natural disaster would satisfy the material and substantial change needed to lessen a child support amount. But the parent must file for a modification with the court in order for it to be effective and must continue paying the support in the current order until the modification is granted.

If the parent does not take these steps, he or she is still under a legal duty to pay child support. The Office of the Attorney General is responsible for the enforcement of child support orders. If the parent is not paying child support, contact the Child Support Division for help filing an enforcement action. If the noncustodial parent has relocated to a different state because of the disaster, the Uniform Interstate



Family Support Act (UIFSA) allows for the enforcement of a child support order over an obligor living in another state.

Custodial parents can call the Child Support Division of the Attorney General's Office 24-hour hotline at (800) 252-8014 for more information and assistance.

**Q. 13-8** *During the disaster my child's other parent evacuated with my child and will not give him or her back. What do I do?*

Under [Tex. Fam. Code § 157.371](#), if a child has been taken in violation of a custody order, a parent may file a petition for writ of habeas corpus in the court of exclusive continuing jurisdiction or a family court located in the county where the child is found. If the court finds the petitioner is entitled to possession under a valid court order, it must compel the return of the child to the petitioner. The only instances in which the court may not grant the order is if it finds the previous court order governing possessory rights of the child did not give the contestants reasonable notice and an opportunity to be heard, if the person with custody voluntarily relinquished possession for more than six months, or if it finds that there is a serious immediate question concerning the welfare of the child.

[Tex. Fam. Code § 42.002](#) also provides for civil liability for any person who takes a child, retains possession of a child, or conceals the whereabouts of a child in violation of a court order specifying another person's possessory right to that child. Damages can include the costs, including attorney's fees, accumulated in locating and recovering possession of the child and enforcing the order in court. Further, the plaintiff can recover for his or her mental suffering and anguish that stems from a violation of the possessory order. If the parent who took the child acted with malice or intent to cause harm to the plaintiff, he or she may also be liable for exemplary damages. [Tex. Fam. Code § 42.006](#). You should consult an attorney to pursue any such action.

### **13.6** Education

For information regarding enrolling children in school, special education, or any other education issues post-disaster, please see the education chapter.

### **13.7** Powers of Attorney

A power of attorney (POA) may be a useful tool in the care of a child or an elder parent. A POA is a legal document that authorizes one person to take action on behalf of another person. The scope authorized in a POA can be very broad, or limited to a specific purpose or transaction.

*A power of attorney for a nonparent caregiver* gives an agent permission to make decisions for a child that a parent would usually make. An example of this is the "authorization agreement" discussed in detail in **Q. 13-5** above.

To assist in the caregiving of an elder parent, a person may wish to be able to have decision-making authority over the affairs of their elder parent. In this case, a person may wish to take control (1) immediately (*durable power of attorney*), (2) upon the incapacity or disability of an elder parent (*springing power of attorney*) or (3) when a medical treatment decision arises and the elder parent is mentally or physically unable to make a decision (*medical power of attorney*).

In order for a POA to be legally enforceable, an adult must acknowledge the authorization of power in writing in the witness of a notary public or other person authorized to “take acknowledgments to deeds of conveyance” or “administer oaths.” Texas Est. Code § 751.0021. In Texas, the easiest way to ensure a POA will be in compliance with the legal requirements is to utilize the form titled [Statutory Durable Power of Attorney](#) that the Texas legislature has provided at Texas Est. Code § 752.051. This form will allow an elder parent to give their child permission to access bank accounts, sell property and make other important decisions when such elder parent becomes incapacitated or unable to make decisions. By default, the durable POA will stay in effect until revoked by the elder parent or until such elder parent dies.

### **13.8 Family Law and COVID-19**

The COVID-19 pandemic presents unprecedented challenges in the area of family law. Below is a brief summary of how family law issues are being affected by COVID-19 and the resulting Texas courts orders, closures and updates.

In addition to the resources presented in the [Useful Websites](#) section above, TexasLawHelp provides general information related to family law and COVID-19 at <https://texaslawhelp.org/article/family-law-issues-during-covid-19>.

#### ***a. Possession Orders***

Possession of and access to a child is not affected by any shelter-in-place order or other order restricting movement issued by a government entity because of COVID-19. If a parent is already subject to a court-ordered possession schedule, the Texas Supreme Court has issued an order, in effect until July 15, 2020, clarifying that the existing trial court order controls for purposes of determining a parent’s right to possession of and access to their child. See the [Texas Supreme Court’s Seventh Emergency Order Regarding the COVID-19 State of Disaster](#). If a child’s possession schedule is tied to the school calendar, the original published school schedule will still control the schedule, and possession of and access to the child will not be affected by any school closure that arises due to COVID-19. See the [Texas Supreme Court’s Twelfth Emergency Order Regarding the COVID-19 State of Disaster](#).

If a parent is concerned about their child staying with the child’s other parent (e.g., someone in the household has been diagnosed with or exposed to COVID-19), the most expedient option is to discuss their concerns with the other parent to arrange a plan for possession and access that allows for the child to remain safe and healthy. If a discussion with the child’s other parent is unsuccessful and the parent believes that the child is in imminent danger, a person may call 9-1-1 (for an emergency) or CPS at (800) 252-5400 (if abuse or neglect is suspected).

The possession order remains in effect unless and until you go to court to modify it and the judge agrees that it is in the best interests of the child to modify the current schedule. In the event that a parent chooses to withhold their child from the child’s other parent because of concerns related to COVID-19, he or she will be violating a court order and subject to the associated risks. See **Conservatorship and Possession** above for more information regarding modifying a possession order and <https://texaslawhelp.org/article/coronavirus-and-child-visitation> for general information regarding the effect of COVID-19 on possession orders.

***b. Court Procedure Rules***

The Texas Supreme Court has issued a series of emergency orders to adjust court procedure rules in light of the COVID-19 pandemic. The Twelfth Emergency Order Regarding the COVID-19 State of Disaster prohibits courts from conducting any in-person proceedings contrary to guidance issued by the Office of Court Administration regarding social distancing, maximum group size, and other restrictions and precautions. It also requires courts to use all reasonable efforts to conduct proceedings remotely.

More specifically, in-person proceedings of any size should be delayed until at least June 1. Essential proceedings may occur in-person only if holding the proceeding remotely is not possible or feasible. The scope of “essential” proceedings has not been defined, but examples include CPS removal hearings, temporary restraining orders and temporary injunctions, and family violence protective orders.

Contact your local county or the applicable court in your jurisdiction to determine the latest information. See <https://texaslawhelp.org/article/court-closures-orders-postponements-and-updated-procedures-due-covid-19> for more information regarding Texas courts orders, postponements, closures and updates due to COVID-19.

***c. Job Loss and Child Support***

A parent is still responsible for child support payments despite job loss during the COVID-19 pandemic. A court ordered child support order may only be amended through a court order. There is no suspension of wage withholding from paychecks as a result of the COVID-19 pandemic.

If a parent has lost their job and begun receiving unemployment benefits, those benefits do count as income for the purposes of child support calculations. Child support will be taken from your unemployment benefits through wage withholding. In contrast, if a parent receives a stimulus check from the federal government pursuant to the CARES Act, child support obligations will likely remain unaffected, as these checks are not considered income for purposes of calculating child support. Note, however, that there is no exception for child support payments in arrears. Therefore, in some instances, a stimulus check may be intercepted up to the total amount of child support owed. See <https://www.texasattorneygeneral.gov/child-support/covid19/your-child-support-and-federal-stimulus-payment> for more information.

Although it will not affect a parent’s obligation to provide child support, job loss may provide a basis for asking the court to modify the amount of the child support payment. Modifying a child support order is discussed in detail in **Q. 13-7** above.

Currently, physical child support offices are closed to visitors due to the COVID-19 pandemic. However, the Office of the Attorney General Child Support Division services will continue to be provided over the telephone and internet. If a parent has specific questions about child support payments, the Office of the Attorney General Child Support Division is now offering the ability to chat with live child support customer service specialists through their website at <https://www.texasattorneygeneral.gov>.

## CHILD WELFARE AND FOSTER CARE

### 13.9.1 Overview

Disasters can uniquely impact families involved in the child welfare system and children and youth in foster care. This section provides a brief overview of how these systems function, resources to support clients involved in these systems, and answers to specific questions that may arise during disasters.

### 13.10 Common Issues/Questions

- Can reports of abuse or neglect be made during a disaster?
- I've been reported for abuse or neglect of a child – what do I do now?
- What do I do if I cannot comply with my CPS service plan?
- What is CPS supposed to do during a disaster?
- How will my CPS court hearings be impacted by a disaster?
- What do I do if I am displaced during a disaster and CPS is investigating me?
- How can I make sure my child, who is in foster care, is safe during a disaster?
- How am I supposed to have visits with my child who is in foster care during a disaster?
- How can I make a complaint against CPS?
- How can I help children and youth in foster care during a disaster?
- What resources are available for homeless youth during disasters?

### 13.11 Summary of the Law

#### *a. Parents and Caregivers*

**Investigation:** You might be under investigation by Child Protective Services (CPS) if someone has made a report saying they think your child may be abused or neglected. If you are under investigation, a CPS investigator will come to your home to ask you questions, speak to your children, and may speak to other people about your child's safety. Tex. Fam. Code § 261.302. CPS must decide if your child has been abused or neglected and if your child will be safe in your care. Tex. Fam. Code § 261.301(e). The investigation may be conducted jointly with law enforcement. Tex. Fam. Code § 261.301(f), (h). While the investigation is pending, you may be asked to comply with a temporary safety plan or risk your child being removed. 40

Tex. Admin. Code § 700.515. If CPS finds that abuse or neglect did not occur, they will close the case. But if there are concerns about abuse or neglect, CPS has these options:

*Safety Planning:* CPS may choose to work with you to create a safety plan that will allow your child to stay safely at home while the investigation is going on. 40 Tex. Admin. Code § 700.515. Both you and the CPS worker must agree on all of the terms, and you must be willing to follow the plan. If you don't follow the plan, there will be consequences, which may include CPS removing your child. If the other parent has been violent and abusive to you, you can request to have separate safety plans from that parent.

*Parental Child Safety Placement (PCSP):* If your child is not safe in your home, CPS may ask you to send your child to live temporarily with someone else you know and trust who is willing and able to provide a safe home. This is different from a removal. PCSPs are meant to provide temporary safety for your child while giving you a chance to deal with any safety threats in your home. Tex. Fam. Code § 264.901(2); 264.902. The person you pick should be someone who has a close relationship with you or your child.

*Family Based Safety Services (FBSS):* If a CPS investigation results in a finding that your child may not be safe in your home, you may be allowed to keep your child at home or with a relative while you receive services and work to make your home safer. 40 Tex. Admin. Code § 700.702. Services you may be required to complete include parenting classes, anger management, counseling, drug treatment, or daycare. If you refuse to complete services, CPS can ask a court to order you to participate.

**Removal:** If a CPS investigation resulted in a finding that your child's safety cannot be ensured by providing services to the family, your child will be removed from your home. A child can be removed by CPS immediately if the investigator and supervisor believe that your child is in immediate danger (Tex. Fam. Code § 262.104); otherwise, CPS needs a court order in order to remove your child without your permission. Tex. Fam. Code § 262.101; 102. If CPS removes your child without a court order, an emergency court hearing must be held with CPS on the first working day after the removal to make sure the judge agrees with the removal. Tex. Fam. Code § 262.106. Regardless of whether your child was removed with a court order or because of an emergency, an "adversary hearing" will be held within 14 days of the removal so you have a chance to tell the judge your side of the story. Tex. Fam. Code § 262.201. There will be additional court hearings throughout the CPS case.

\*\*\*Many times a parent or caregiver will say that the children were placed with them by CPS. This does not necessarily mean there was a removal or a court order and the attorney should ask more questions about whether there are court orders, were court hearings held and if CPS caseworkers are still visiting the children to assess the case status.

**Right to Counsel:** Texas law says that you have the right to hire an attorney at any point in the CPS case. If you cannot afford to pay an attorney, and CPS has brought a court case, the court must provide you with a free court-appointed attorney. Tex. Fam. Code § 107.013. You will have to prove that you cannot

afford to pay a private attorney by providing information to the court about your finances and public benefits (food stamps, Medicaid, TANF, etc.). Tex. Fam. Code § 107.013(d). If you have not been appointed an attorney, you need to ask the court to appoint you an attorney as soon as possible and ask that any court hearings be rescheduled until you have a chance to meet with your attorney.

**Placement:** If your child is removed from your care, CPS will place them in somewhere the caseworker thinks is appropriate where your child will be safe and whether space is available. Tex. Fam. Code § 264.107; 40 Tex. Admin. Code § 700.1309. Your child may initially go to a single foster home, a children’s shelter for temporary care, or a group foster home. 40 Tex. Admin. Code § 700.1307. If you have more than one child removed, CPS will try to keep them together, but it is not always possible. 40 Tex. Admin. Code §§ 700.1309, 700.1327. If you want your child to stay with a family member or someone you trust, you should help your caseworker contact the potential caregiver so that CPS can run background checks and complete an evaluation of their home. Tex. Fam. Code § 262.114. Even if CPS does not want to place your child with a family member or trusted friend, your attorney may be able to convince the judge that placing your child where you want is best for your child. While your child is in foster care during the CPS court case, they are in the “temporary conservatorship” of the state. Tex. Fam. Code § 262.201(h), (j). If your child stays in foster care after your CPS court case is over, they are in the “permanent conservatorship” of the state. Tex. Fam. Code § 263.404.

**Visitation:** During the CPS court case, you have a right to have visits with your child while your CPS case is pending, but this right can be limited if CPS or the judge thinks it may be harmful to your child to visit with you. Tex. Fam. Code §§ 262.115, 263.107. Your visits will probably be supervised by CPS, especially early in the case. If your visits go well, the court may allow a family member or friend to supervise or may allow you to have unsupervised visits. If your parental rights are terminated at the end of your CPS court case, you will no longer have the right to visit your child.

**Case Resolution:** CPS cases are supposed to be resolved in 12 months and no longer than 18 months. Tex. Fam. Code § 163.401. The judge can order one of three things at the end of the case: (1) your child can be returned home to you (Tex. Fam. Code § 163.403); or (2) CPS, a family member, or a friend can be appointed as your child’s “managing conservator” but not terminate your parental rights (Tex. Fam. Code § 163.404); or (3) your parental rights can be terminated (Tex. Fam. Code § 263.407). If your parental rights are not terminated, you may still have an opportunity to ask the court for visitation with your child or ask the court to return your child to you at a later time. Tex. Fam. Code § 163.263.408(a)(1)(B). If your parental rights are terminated, CPS will assume the parent role for your child and may allow your child to be adopted.

#### ***b. Children and Youth***

**Advocacy during TMC:** When a child is in the temporary managing conservatorship (TMC) stage of foster care, an attorney ad litem (AAL) must be appointed for the child. Tex. Fam. Code § 107.012. The attorney ad litem is required to represent the goals and interests of the child. Tex. Fam. Code § 107.004. A guardian ad litem (GAL) is also appointed while the child is in TMC—the guardian is required to report to the court

on what they believe is in the best interest of the child (which may not always be in agreement with what the child wants). Tex. Fam. Code § 107.011. Often the GAL is a Court Appointed Special Advocate (CASA), a community volunteer. All children are required to attend permanency hearings (following the initial adversary hearing) and the judge must, if the court determines it is in the best interest of the child, consult with children age 4 or older about their permanency plan. Tex. Fam. Code § 263.302.

**Advocacy during PMC:** When a child is in the permanent managing conservatorship (PMC) stage of foster care, the court can choose whether to extend the appointments of the AAL or GAL for as long as the child remains in the conservatorship of the state. Tex. Fam. Code § 107.016. If the AAL is dismissed, the child will no longer have an attorney to represent their interests. If the AAL appointment is extended, the AAL must continue to represent the goals and interests of the child. Tex. Fam. Code § 107.004(a). The child will continue to be required to attend all court hearings while in PMC. Tex. Fam. Code § 263.302.

**Rights in Foster Care:** All children and youth in foster care have specific rights that must be upheld and protected by CPS. These rights concern the child's safety and care, contact with family, normalcy, discipline, medical care, etc. The *Rights of Children and Youth in Foster Care* can be accessed [here](#). If a child or youth's rights are violated in any way while in foster care, they can contact the [Foster Care Ombudsman](#) to file a complaint (until they turn 18).

**Extended Foster Care:** Youth who are in foster care when they turn 18 may choose to remain in extended foster care until they turn 21 (or 22 if they are enrolled in high school or a program leading toward a high school diploma or high school equivalence certificate (GED). 40 Tex. Admin. Code § 700.346. If they choose to leave foster care at any time before they turn 21, they can also return to extended foster care. 40 Tex. Admin. Code § 700.346(e). In order to be eligible for extended foster care, youth must meet one of these criteria: (1) attend college or higher learning institution or post-secondary vocational program or technical program (6 credit hours minimum); (2) participate in an employment program or activity that promotes or removes barriers to employment; (3) work at a job at least 80 hours per month; OR (4) have a documented medical condition that limits other activities. 40 Tex. Admin. Code § 700.346(a). The availability of a placement may limit whether an aged-out foster youth can return to extended foster care. *Id.* Supervised independent living (SIL) placements are only available to youth in extended foster care. 40 Tex. Admin. Code § 700.347. The court can choose to extend the appointment of the AAL, GAL, or volunteer advocate. Tex. Fam. Code § 263.605.

**Extended Jurisdiction:** The CPS court will retain jurisdiction over a young adult for as long as they are in extended foster care or during trial independence (which lasts 6-12 months after exiting care). The young adult has the same rights as any other young adult. The CPS court's jurisdiction is only for the purpose of finding whether the young adult's placement is safe and appropriate and whether CPS is providing all services and supports to help the young adult become independent and meet their needs. Tex. Fam. Code § 263.602. The youth can also request that the court retain jurisdiction until they turn 21. Tex. Fam. Code § 263.6021(a). In any case, the court's jurisdiction will automatically end at age 21. Tex. Fam. Code § 263.6021(b). As long as the youth is in extended foster care, a placement review hearing must be held every six months. Tex. Fam. Code § 263.602(b). Youth who have left extended care but continue to be

under the jurisdiction of the court and are receiving transitional living services can request a hearing to review aftercare services. Tex. Fam. Code § 263.6021(c).

**Transition Issues:** Youth transitioning out of foster care into independent adulthood may face a number of challenges, not the least of which include obtaining gainful employment and safe and stable housing. Other challenges transitioning youth may encounter include obtaining their identification documents, accessing Medicaid benefits and the healthcare system, re-establishing and maintaining contact with siblings or other family members, juvenile and criminal issues, obtaining their CPS records, immigration and citizenship issues, accessing foster youth benefits and extended care, name change issues, and issues related to their education. Youth can learn about all these issues and more in [A Guide to “Aging Out” of Foster Care in Texas](#).

### 13.12 Useful Websites

#### *a. General Information*

[Children’s Commission](#)

[DFPS Policy Handbooks](#)

[DFPS Office of Consumer Relations](#)

#### *b. For Parents/Caregivers*

Parent Resource Guide ([English](#) | [Spanish](#))

[TLSC Family Helpline](#)

#### *c. For Current and Former Foster Youth (and those that help them)*

[Foster Care Ombudsman](#) (only for those under 18 and in foster care)

[Rights of Children and Youth in Foster Care](#)

[Texas Foster Youth Justice Project](#)

[Texas Youth Helpline](#) (call, text, or chat)

[Regional Preparation for Adult Living \(PAL\) Coordinators](#)

[Regional Transition Centers](#)

[Texas Homeless Youth Handbook](#)



### 13.13 FAQs

#### **Q. 13-9      *Can reports of abuse or neglect be made during a disaster?***

Yes, even in a disaster the State Wide Intake (SWI) department of the (Department of Family and Protective Services (DFPS) will remain open and will accept reports of abuse or neglect. Reports can be made to the Texas Abuse Hotline at **(800) 252-5400** or online via the [Texas Abuse Hotline Website](#) if the situation is not urgent. Reports will be investigated according to DFPS procedures. For additional information about how DFPS should operate during a disaster, you may view DFPS' Disaster Plan [here](#).

\*\*\*Attorneys should remember that they are considered “mandated reporters” under Tex. Fam. Code § 261.101 and have a duty to report suspected child abuse and neglect that supersedes all privacy, confidentiality, and privilege protections. Best practices for reporting include telling clients about your duty to report so they can choose what to tell you. If you must report, invite your client to make the report with you and, if the situation is not urgent, report using the website so you can control how much and what information is shared with DFPS.

#### **Q. 13-10      *I've been reported for abuse or neglect of a child – what do I do now?***

Make sure you have all the information about the investigation. Find out the contact information for the caseworker and the caseworker's supervisor. Make sure you have copies of any safety plan, service plan, or any other document related to the investigation. Communicate with the investigator often and update them whenever anything changes—your contact information, your availability, or any changes regarding your child. Check your voicemail, text messages, email, and regular mail often to make sure you do not miss a communication with the investigator or someone else related to the investigation. Keep all documents and contact information in a safe place. Call the [CPS Family Helpline](#) if you want to talk to someone about your questions and review the **Parent Resource Guide** ([English](#) | [Spanish](#)) so you know what to expect from the investigation and any future court case that may be filed.

If the investigation finds there is “reason to believe” you committed abuse or neglect, your name will be included in the DFPS central registry of abuse and neglect which, while not available to the public, can limit your opportunities to work with children or foster or adopt children. Tex. Fam. Code § 261.002; 40 Tex. Admin. Code § 702.251. You should know that even if they don't remove your children or take any other action, they may still make this finding and it will stay on your record unless you take required steps to challenge the finding by the applicable deadline.

You can request an Administrative Review of Investigation Findings (ARIF). An ARIF provides an informal review process for a person who has been designated as a perpetrator of abuse or neglect. 40 Tex. Admin. Code § 700.516(a). If you want to request an ARIF, you must submit a written request to DFPS within 45 days after receiving notice of the findings of the investigation. 40 Tex. Admin. Code § 700.516(b). You may hire an attorney to represent you at the ARIF, but you do not have to. 40 Tex. Admin. Code § 700.516(g). If the ARIF is not favorable, you can then request a due process hearing to be held before the State Office

of Administrative Hearings (SOAH) or you can waive the ARIF and proceed directly to the SOAH hearing. 40 Tex. Admin. Code § 700.516(k).

**Q. 13-11      *What do I do if I cannot comply with my CPS service plan?***

If you are not able to comply with your CPS services plan because of a disaster or another reason, you should contact your investigator or caseworker as soon as you find out that you will not be able to comply, but you should make every effort to comply. Try to find creative ways to access services (for example, find out if virtual counseling or parenting sessions are available). If the services you are required to complete are not being offered, you should not have to resume the services until they are offered again.

**Q. 13-12      *What is CPS supposed to do during a disaster?***

Foster and adoptive parents caring for children in foster care have to notify their caseworker if they are impacted by a disaster. If required by local city or county authorities, foster and adoptive parents will be required to evacuate their homes. They must take a two-week supply of medication in its bottle, other medical supplies and equipment, important paperwork, their personalized disaster plan, and contact information for the family's and child's caseworkers and supervisors. CPS Handbook Section 7642. Other functions of CPS, such as investigation and casework of active removal cases, will continue.

**Q. 13-13      *How will my CPS court hearings be impacted by a disaster?***

You should contact your attorney about any questions you have about your court hearings. If you are not represented by an attorney you should ask the caseworker, check the courthouse website, and call the court's office to ask about hearings. A disaster may impact whether the courthouse is open and how the hearings are handled. Your hearing may be rescheduled or may take place virtually. You should talk to your attorney about whether it is possible for you to appear at the hearing virtually (by telephone or video) if you are unable to attend.

**Q. 13-14      *What do I do if I am displaced during a disaster and CPS is investigating me?***

You need to make sure you communicate with your investigator or caseworker if there are any changes in your residence or contact information. There may be consequences in your case if you do not update your investigator or caseworker of your displacement and they cannot reach you. Lack of communication with your investigator or caseworker and absence from your home could be considered to be interference with an investigation (Tex. Fam. Code § 261.303) or failure to cooperate with investigation (Tex. Fam. Code § 261.3031). In fact, it is a criminal offense if you intend to interfere with the investigation and relocate your residence without notifying CPS of your new address or you conceal your child and your relocation or concealment interferes with the investigation. Tex. Fam. Code § 261.3032.

**Q. 13-15      *How can I make sure my child, who is in foster care, is safe during a disaster?***

You can contact your caseworker for updates on your child's safety. The caseworker is required to provide you with updates of "significant events", which include any changes in placement, as soon as possible.

Tex. Fam. Code § 264.018. Keep in mind that your caseworker will be extremely busy following up with all the children on their caseload and may not be able to contact you immediately.

**Q. 13-16      *How am I supposed to have visits with my child who is in foster care during a disaster?***

CPS should make every attempt to coordinate visits as long as the visit will not harm your child. If in-person visits are not possible, CPS should try to arrange a virtual visit. You should communicate with your caseworker about the best way to continue visits in a way that will continue to keep your child safe.

**Q. 13-17      *How can I make a complaint against CPS?***

Complaints about CPS can be made through the [Office of Consumer Relations](#) (OCR). You can contact the OCR in a number of ways:

- Phone: (800) 720-7777, Monday – Friday, 8:00AM – 4:30PM
- Complete an online complaint form
- Print a form and return by email, fax, or regular mail
- Email: [OCR@dfps.state.tx.us](mailto:OCR@dfps.state.tx.us)
- Fax: (512) 339-5892
- Regular mail: OCR/DFPS, PO Box 149030, Mail Code Y946, Austin, TX 78714-9030

Note that the OCR can only investigate and review decisions made by CPS—they cannot change a court order or review actions taken by law enforcement. If you want to challenge a court decision, you need to talk to your attorney.

**Q. 13-18      *How can I help children and youth in foster care during a disaster?***

Children and youth in the temporary managing conservatorship (TMC) stage of foster care are required to have an attorney ad litem (AAL) and a guardian ad litem (GAL). Tex. Fam. Code § 107.011, 107.012. While they are represented by both an AAL and GAL, the child’s objectives, as well as what is in the child’s best interest, should be presented to the court. If you find out that a child who is represented by an attorney is not being properly represented, the youth can contact the [Foster Care Ombudsman](#) to file a complaint. A supportive adult can also try to contact the child’s attorney to advocate on the child’s behalf to their attorney.

If a child or youth in foster care is no longer in TMC and is not represented by an attorney, there is no reason why a private attorney cannot represent the child or youth if the child or youth requests the representation. While a minor does not have the capacity to enter into a binding contract, an attorney may agree to represent the minor with all the ethical obligations and privileges associated with an attorney-client relationship. Attorneys and supportive adults wanting guidance about working with foster youth can contact the [Texas Foster Youth Justice Project](#).

Supportive adults are critical to the success of a youth's transition out of foster care. Since many youth are no longer in contact with their family, having a supportive adult to go to for advice and help navigating the adult world can make a positive impact. The needs of a child or youth in or transitioning out of foster care during a disaster are intensified. They are always at a great risk of exploitation and homelessness and can experience trauma and instability. Aged out foster youth can connect with supportive benefits and services through their [Regional PAL Coordinator](#) or [Regional Transition Center](#).

**Q. 13-19      *What resources are available for homeless youth during disasters?***

Various programs exist across Texas to address the needs of homeless youth. See the [Provider Directory](#) compiled by the Texas Network of Youth Services (TNOYS) to find emergency shelters, drop-in centers, housing providers, counseling providers, and transition centers. You can find more information for homeless youth in the [Texas Homeless Youth Handbook](#).