

13.0 FAMILY LAW ISSUES

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 and it is not in the police database?
- 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. Domestic Violence

One common way to combat domestic violence is by obtaining a protective order from a court. A protective order is a civil court order to prevent continued acts of family violence. Protective orders for family violence are issued under Title 4 of the Texas Family Code. 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. [Tex. Fam. Code § 82.002](#). The application must be filed in the county where either the applicant resides, the respondent resides, or the family violence allegedly occurred. [Tex. Fam. Code § 82.003](#). A violation of a Title 4 protective order is a criminal offense under [Tex. Pen. Code § 25.07\(g\)](#). Further, a violator can be punished for contempt of court and fined or jailed.

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. [Tex. Fam. Code § 85.025\(a-1\)\(1\)-\(3\)](#).

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. These orders last for no longer than twenty days, but can be extended in twenty-day-periods 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. And protective orders can do more than prevent violence. Protective orders may also establish possession of a child, prohibit the transfer of property, 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. 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 six months before the proceeding and 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) any other state having jurisdiction has 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](#).

When a Texas court is asked to issue an order affecting child custody, visitation, or support, the original petition filed is called as a suit affecting the parent-child relationship (SAPCR). [Tex. Fam. Code § 153](#) explains the two types of conservatorship in Texas: sole managing conservatorship and joint managing conservatorship. The presumption is that parents should be "joint managing conservators" which means that each parent has the right to make decisions for the child. If a court determines that joint managing conservatorship is not in the best interest of the child (for example, one parent has been violent towards the other parent or child), the court can appoint one parent as "sole managing conservator." 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 a 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*

<https://texasattorneygeneral.gov/cs/welcome-to-the-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, immediately call the police. If the assaulter is arrested, you may be entitled to a magistrate's order for emergency protection (MOEP). Under [Tex. Code Crim. Proc. art. 17.292](#), at the time the defendant appears before the judge following his or her arrest, the judge can order a MOEP on the judge's own motion or the request of the victim, the victim's guardian, a peace officer, or the state attorney. A judge must grant a MOEP if the offense involved serious bodily injury or the display or use of a deadly weapon. The victim does not have to be present for the order to be issued. The duration of these orders may be anywhere in the range of thirty-one to ninety-one days, depending on the circumstances. If the assaulter 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 and a fine.

Even if you have not called the police, you can file for a sexual assault protective order (SAPO). For help with applying for a SAPO, contact the County Attorney or the legal aid program covering your area. Under [Tex. Code Crim. Proc. art. 7A.01\(a\) et seq.](#), if you are the victim of sexual assault or stalking, you are eligible for a SAPO regardless of your relationship with the offender. A SAPO application can be filed in the county where the applicant lives, where the alleged offender lives, or where an element of the alleged offense occurred. After a hearing, if there are reasonable grounds to believe you are a victim of sexual assault, a judge must grant you a SAPO.

Also, at the time you file your application for a SAPO, the judge can enter a temporary ex parte order for the protection of you or any other member of your family or household on a finding that there "is a clear and present danger of sexual assault or abuse." No notice needs to be provided to the alleged offender and no hearing needs to take place. For a pro se SAPO packet, visit 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; <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 www.dfps.state.tx.us/site_map/Forms.

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 thirty 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.

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 maintain 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 twenty-four-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 postdisaster, please see the education chapter.