



Texas Advocacy Project’s Family Law Guide

FOR PRO BONO ATTORNEYS

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Introduction

Texas family law encompasses a comprehensive set of rules and regulations that address various aspects of family life, including marriage, divorce, paternity, child custody, child support, adoption and domestic violence. Family law matters often involve emotionally charged situations, especially when there is domestic violence involved, making it essential to approach the issues with sensitivity and knowledge.

This guide aims to provide an overview of family law in Texas in an effort to equip pro bono attorneys with the knowledge they need to navigate the legal process with our clients. It is important to remember that this guide is only a starting point. We have tried to provide links to the Texas Family Code as well as helpful websites within our FAQs in order to give you quick access to sources that may help you during your client consultations. It is our hope that this guide can make the journey through family law less daunting and help you advise and empower clients to make decisions that lead to positive outcomes for their families.

The Players

Courts

In most counties, family disputes are heard in the District Courts. They handle divorce cases, child custody disputes, child support alimony, property division and other family-related issues. In some counties, there are County Courts at Law that also have jurisdiction over family law cases, although these cases are typically less complex than those heard in the District Courts. Some larger counties, such as Harris, Dallas, Tarrant, Travis, and Bexar, have specialized Family Courts that handle exclusively family law cases. These courts have judges who have expertise in family law matters.

Office of the Attorney General

The Social Security Act of 1975 contains Title IV-D—a federal law that, in part, requires every state to manage a child support enforcement program. In Texas, the Office of the Attorney General (OAG) is the Title IV Agency for purposes of collecting child support. The idea behind these Title IV Agencies is that each state has an interest in protecting its children and so the OAG can manage the child support collection process when a child is not receiving the support they need.

The OAG can assist custodial parents in obtaining child support orders as well as modifying and enforcing orders made by the court. They have various tools they use to enforce payments such as wage garnishment and interception of tax refunds. They can also suspend the obligor's driver's license and seize their passport. For more information on the OAG's role in child support, please visit their [Website](#).

Some of the larger counties have established a Domestic Relations Office (DRO), which does the same thing as the OAG's office but for the county rather than the state.

The OAG can also assist with establishing paternity because parentage is crucial for determining rights and responsibilities toward the child, including support obligations.

Finally, the OAG administers the Crime Victims' Compensation (CVC) fund. The purpose of the CVC Fund is to provide financial compensation to victims of violent crime and their families who have incurred expenses as a result of the crime. See the Attorney General's [CVC Website](#) for more information.

County and District Attorneys

The Texas Legislature has attempted to create a uniform process for obtaining protective orders by authorizing the County Attorney or District Attorney's offices in each county to file protective order applications on behalf of victims. The Texas Family Code states that the county attorney or criminal district attorney is responsible for filing protective order applications. [Tex. Fam. Code §81.007\(a\)](#). Likewise, the Texas Code of Criminal Procedure authorizes prosecuting attorneys to file protective order applications. [Tex. Code of Crim. P. art. 7B.001\(a\)\(3\)](#). As a result, all prosecutors' offices should have staff assigned to help victims of domestic violence, sexual assault, and stalking obtain protective orders.

The hope was that since every county is served by either a district or county attorney, the practice of filing an application for a protective order would be uniform and easily accessible. The reality, however, is that a person's access to protective order assistance varies by county. While some counties have prosecutors who are assigned specifically to assist victims seeking protective orders, other counties do not offer any help. Moreover, every county has different procedural requirements, making protective order cases difficult to navigate *pro se*.

Government Agencies

In addition to the Office of the Attorney General, several other governmental agencies engage with families in Texas. The Texas Department of Family and Protective Services (DFPS) is responsible for protecting children (CPS) and vulnerable adults (APS) from abuse, neglect and exploitation. The Department of State Health Services (DSHS) maintains vital statistical records relating to birth, death, marriage, divorce and paternity. Texas Health and Human Services Commission (HHSC) provides public benefits such as SNAP and TANF and oversees domestic violence shelters and intervention programs.

The Texas Department of Public Safety (DPS) engages with families experiencing violence in several different ways beyond answering emergency calls. Local law enforcement (usually county constable or sheriff's office) also enforces protective orders, and custody orders and serves divorce, custody and protective order petitions. They often provide testimony in family law cases and will participate in custody exchanges in their parking lots.

Unfamiliar Family Law Terms

Conservatorship: The legal term for custody in Texas.

Guideline Child Support: The percentage-based formula Texas uses to calculate child support.

Possessory Conservator: The parent who is given visitation rights and possession of the child but does not have primary custody. This term is used instead of “non-custodial parent.”

Managing Conservator: The parent who has been granted primary custody of the child and has the right to make significant decisions regarding the child’s welfare, education and health. Other states call this the parent with “primary custody.” A Sole Managing Conservator is the parent who is given the exclusive right to make decisions on behalf of a child.

Joint Managing Conservatorship: A custody arrangement where both parents share significant decision-making responsibilities for the child’s well-being. Other states call this “joint custody.”

Standard Possession Order (SPO): A predefined visitation schedule outlined in the Texas Family Code that provides a default arrangement for noncustodial parent’s visitation with their children.

Possession and Access: This is what the courts use to refer to the time each parent spends with the child in cases involving custody and visitation. In Texas, visitation orders are commonly referred to as “possession orders” and refer to the time the non-custodial parent has physical possession of the child.

Temporary Orders: Court orders issued during the pendency of a family law case providing temporary solutions for custody, visitation, and support.

Suit Affecting the Parent-Child Relationship (SAPCR): A legal proceeding that deals with issues related to child custody, visitation and child support. It is known as a “child custody case” in other states.

Spousal Maintenance: Financial support ordered by a court that will allow them to provide for their minimum reasonable needs. Other states refer to this as spousal support or alimony.

Texas Family Code

The Statutes:

Almost all of the law that governs the issues you will encounter while advising clients appears in the [Texas Family Code](#). The statutes most relevant to the work TAP does are in the following Titles of the Family Code.

Title 1: The Marriage Relationship (§§1.001-9.302)

The Texas Family Code begins with marriage laws. This includes the requirements for a valid marriage, whether ceremonial or common law, as well as the conditions that can void a marriage. It also includes the legal procedures and grounds for divorce as well as the division of property and liabilities. It provides guidance on support, custody and visitation during divorce proceedings.

Title 4: Protective Orders and Family Violence (§§71.001-93.004)

This chapter contains mechanisms aimed at protecting individuals from family violence, which goes beyond merely household violence to include dating violence and stalking. Title 4 sets out the procedure for obtaining emergency and two-year protective orders as well as enforcement mechanisms and penalties for violation. A victim can also obtain a protective order for certain criminal offenses, such as sexual assault, trafficking, stalking, and bias-motivated violence. These provisions are in Article 7B of the Texas Code of Criminal Procedure and can be requested even if there is no family relationship between the victim and offender.

Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (§§101.001-266.013)

This title focuses on lawsuits that affect the parent-child relationship, such as paternity, child support, custody arrangements, conservatorship rights and responsibilities, adoption, child welfare services, termination of parental rights, and abuse and neglect investigations.

Chapter 157 of this Title contains the procedures for enforcing family court orders such as child support, custody, and visitation orders. Judges can enforce orders by holding the noncomplying party in contempt, which may result in fines or even jail time, garnishing wages, and suspending licenses.

Frequently Asked Questions in Family Law Consults

MARRIAGE

Q. We live together and have kids together. Are we married?

A. A common assumption is that co-habitation for a length of time or having children together creates a common-law marriage or informal marriage. However, in order to have a common-law marriage in Texas, a couple must satisfy three requirements:

1. They have to live together as husband and wife in the state of Texas;
2. They have to agree to be married to one another; AND
3. They had to hold themselves out to others as husband and wife [Tex. Fam. Code §2.402](#); OR
4. They filed a [Declaration of Informal Marriage](#).

In addition, at the time the common-law marriage was created, the parties must have been over the age of 18 and must not have been married, either formally or informally to anyone else. [Tex. Fam. Code §2.401\(c\)](#). For more information, see [Texas Law Help: Common Law Marriage](#).

Q. If we were only common-law married, do we have to get divorced?

A. If, for any reason, you want to establish that a common-law marriage existed (for example, to create a presumption of paternity or a presumption of community property or debt), and you want to terminate that marriage, you must file for divorce. If you filed a Declaration of Informal Marriage, you must get a formal divorce.

However, if the parties live apart for more than two years and do not take any steps to end the marriage, the law creates a presumption that a common law marriage never existed. [Tex. Fam. Code §2.401\(b\)](#).

If a marriage exists, it is advisable to file for divorce, even if you have lived apart for two years, so that there is no chance that the common-law partner can invalidate a future marriage to another partner. See [Texas Law Help: Common Law Marriage](#).

Q. I just found out that my spouse never divorced his first wife. Am I married?

A. In Texas, a person can only be married to one person at a time. If a person gets married without divorcing his or her previous spouse, Texas law presumes that the most recent marriage is valid until one proves the validity of the prior marriage. [Tex. Fam. Code §1.102](#).

If you did not know your spouse was married at the time you got married, the law considers you a “putative spouse.” You will be entitled to some protection under the law if you can show that: (1) you believed in good faith that the marriage was valid; and (2) you did not know about the facts that make your marriage void.

Any party can rebut the presumption that the most recent marriage is valid by bringing an action to assert the validity of a prior marriage (e.g., through a divorce action). If this happens, the most recent marriage becomes void. Once the prior marriage is dissolved, the most recent marriage becomes valid again if the parties satisfy the requirements of a legal marriage. For more information, see [Texas Law Help: Void Marriages in Texas](#).

Q. Are marriages in Mexico legal in Texas?

A. Yes. If your marriage meets all the requirements for a valid marriage in another state or country, you have a valid marriage in Texas. [Tex. Fam. Code §1.103](#).

SEPARATION

Q. My spouse and I are living apart. Can I file for legal separation?

A. Texas does not recognize legal separation, but there are ways to protect your rights and put guidelines in place for support and custody. Texas allows for temporary orders and protective orders if there has been family violence. These orders can dictate who has custody of the children as well as visitation rights. You can also file a [Suit Affecting the Parent-Child Relationship](#) (SAPCR), which is a custody case that is not part of a divorce. Another option is a separation agreement that spells out the rights and responsibilities of each spouse during the time before you get a divorce. In order to be valid, the separation agreement must be in writing and signed by both parties. For more information, see [Texas Law Help: Alternatives to Legal Separation](#).

Q. I'm not ready to file for divorce yet, but I'm having trouble making ends meet. How can I make my spouse pay child support while we are separated?

A. Prior to filing for divorce, you can file a [Suit Affecting the Parent-Child Relationship](#) (SAPCR), which allows a judge to make certain orders around child custody and support. The Office of the Attorney General of Texas (OAG) will bring an SAPCR on your behalf and will help enforce the orders if your spouse does not comply.

Q. I'm thinking of leaving my spouse. What are my rights to property?

A. When you leave, you may take your separate property, personal possessions, personal documents (medical and financial information), and your children's property, if the children are going to reside with you. Separate property consisting of gifts, inheritance, or personal injury settlements are not considered community property, even though they were acquired during the marriage. [Tex. Fam. Code §3.001, Separate Property](#).

Once you leave, you may use community property only to pay for “necessities,” *including legal fees*. Generally, you should avoid making large purchases that do not benefit the community or lessens the community’s valuable assets, as these actions could be seen as fraud or waste against which your spouse can later make a claim to be reimbursed.

Q. What do I do if my partner won’t let me get my property from our shared home?

- A.** If you are being denied entry into your former residence, you can apply for a [Writ of Retrieval](#) that lets you enter with a peace officer to get your or your child’s personal belongings. [Tex. Prop. Code §24A.002\(a\)](#). If there is a pending divorce case, you must file your writ in the court where the suit is pending. You must give the other party notice that you filed the writ unless the occupant poses a “clear and present danger of family violence” to you or your children. [Tex. Prop. Code §24A.002\(e\)](#). For more information on writs of retrieval, see [Texas Law Help: Getting your Belongings](#).

If there is a divorce decree that entitles you to the property, and your partner is preventing you from getting it, you can file a motion for enforcement of the decree. [Tex. Fam. Code §9.006](#). You must bring a motion to enforce within two years from when the judge signed the decree. [Tex. Fam. Code §9.003](#).

Q. How can I force my partner to leave the home?

- A.** If your partner is abusive, you can force him to leave the home by filing a [Protective Order Application](#) that specifically asks for a “kick-out” order. [Tex. Fam. Code §83.006](#). However, if the home is owned or leased by the abuser (and not jointly with you), then the court will only kick out the abuser if they have a legal obligation to support you or your child. [Tex. Fam. Code §85.021\(2\)](#).

You can apply for a temporary ex parte protective order, which will last for 20 days, but can be extended beyond 20 days under certain circumstances. You will also have to submit a written affidavit describing the facts and circumstances that require the exclusion of your partner from the home, and you will have to appear in person and testify at a hearing. [Tex. Fam. Code §83.006\(a\)](#). After you receive a temporary order, you can ask the judge for a final protective order that lasts for two years.

For more information, see [Texas Law Help: Kick-Out Orders](#).

Q. My spouse and I are separating. Who gets the kids while we’re separated?

- A.** In short, whoever takes them. Until there are court orders, the parties have equal rights to physical possession of the children. Without court orders, neither party has a legal duty to provide visitation or information regarding the children to the other parent.

In order to protect your rights to the children, you should file a [Suit Affecting the Parent-Child Relationship](#), which is a custody case that is not part of a divorce. In this suit, the judge can order custody, visitation and child support. If you and your spouse agree on all of the issues, you can file an uncontested SAPCR.

For more information on filing a SAPCR, see [Texas Law Help: SAPCR](#).

Q. My partner is threatening to bring kidnapping charges against me if I leave the city with the kids. Is it legal for me to travel with the kids without my partner's consent?

- A.** If no divorce or custody proceeding is pending, and there is no order in place prohibiting a parent from taking the children out of state, you cannot be liable for kidnapping. Parental kidnapping, under Texas law, happens when a parent takes their children out of state while in the midst of a divorce or custody proceeding (with the intent of depriving the court of jurisdiction over the child) or in violation of a court order. [Tex. Pen. Code §25.03\(a\)](#).

While taking your children out of the city should not cause any problems, taking the children out of the state without consent is generally not advisable prior to custody orders being in place.

DIVORCE

Q. Can I get an annulment?

- A.** In most cases, no. Annulment is used to end a marriage that was not legally valid in the first place. Texas law only allows annulments in the following situations:

1. If a party aged 16 or 17 years old wed without parental consent;
2. If a party was unable to consent to the marriage because they were under the influence of alcohol/narcotics;
3. If either party was impotent (unable to have intercourse) at the time of the marriage and the petitioner did not know about the impotency;
4. If the respondent used fraud, duress, or force to make the petitioner marry them;
5. If a party did not have the mental capacity to consent to marriage;
6. If the respondent concealed a divorce from the petitioner that occurred 30 days or less before the marriage; or
7. The couple wed within 72 hours of receiving a marriage license.

See [Tex. Fam. Code §6.102-110](#). In most cases, a petitioner must have stopped cohabitating with their spouse immediately and file the annulment petition within 30 days of discovering the qualifying condition. Further, the marriage must have taken place in Texas, or your permanent home must be Texas.

For more information, see [Texas Law Help: Annulment Guide](#).

Q. What are the residency requirements for filing for divorce?

A. At the time the divorce is filed, either spouse must have been living in Texas for six months AND living in the county in which they are filing for at least 90 days. [Tex. Fam. Code §6.301](#).

Q. Will I have to prove grounds for divorce?

A. Texas allows for “no-fault” divorces. A petitioner need only testify that the marriage is “insupportable” and there is no hope of reconciliation. [Texas Family Code §6.001](#).

However, Texas also has “fault” grounds for divorce such as cruelty and adultery, which may be helpful in custody suits or being awarded a larger share of the community property. [Tex. Fam. Code §6.001-8](#).

Q. Does my spouse have to agree to the divorce?

A. No. Generally, in Texas, if one party no longer wants to be married, a divorce will be granted whether the other party agrees or not. [Tex. Fam. Code §6.001](#).

Q. Can I get a divorce while I’m pregnant?

A. While there is nothing in the law that specifically forbids a divorce while pregnant, courts will not typically finalize a divorce until the baby is born. You can start the divorce while pregnant, though. If the husband (in a heterosexual marriage) is the biological father, the court must include the order for custody and support in the Final Decree of Divorce. If the husband is NOT the biological father, the court must establish paternity before the divorce can be finalized, and paternity cannot be established until the child is born.

For more information, see [Texas Law Help: Divorce When a Spouse is Pregnant](#).

Q. How much will my divorce cost?

A. Generally, filing a divorce on your own (*pro se*) should cost between \$250 and \$400. The filing fee amount differs by county (each county has its own fee schedule, which is usually available online). If your spouse does not waive service, it can cost an additional \$60-\$80 to have the County Constable serve them. See the [Texas Comptroller’s Website](#) for more information.

Q. What do I do if I can't afford to pay the court costs?

A. A party who cannot afford court costs may file a [Statement of Inability to Pay Costs](#), also called an *in forma pauperis* (IFP), which waives court fees and costs for service of citation. Your fees should be waived if you can produce evidence that:

- You receive government benefits (e.g., food stamps, TANF, Medicaid, SSI, or public housing);
- You are represented by a lawyer through a legal aid provider; or
- You applied for a lawyer through a legal aid provider and were financially eligible for legal aid services, but the legal aid provider could not take your case.

See [Tex. R. Civ. P. 145](#). See [Texas Law Help: Court Fees and Fee Waivers](#).

Q. How long will my divorce take?

A. There is a mandatory waiting period of 60 days after filing a Petition for Divorce before a divorce can be finalized, but most divorces take much longer. If there is an active protective order or if there has been a conviction of family violence, the court may waive the waiting period. [Tex. Fam. Code §6.702](#).

Q. Do I need an attorney?

A. You have a constitutional right to represent yourself in court, though *pro se* representation is not easy. If you and your spouse agree on the divorce, custody issues and division of property, it will not be that difficult. However, if you and your spouse do not agree, it is in your best interest to hire an attorney.

Texas Law Help has a [Pro Se Divorce Handbook](#) that is very helpful if you are planning to represent yourself in a divorce.

Q. What issues must I settle with my spouse before we can have an agreed divorce?

A. If there are children from the marriage, all issues regarding custody, visitation, and support must be disposed of in the final divorce decree. [Tex. Fam. Code §6.406](#). Additionally, all community property AND debt issues must be settled. [Tex. Fam. Code §7.001 et seq.](#)

Q. Am I entitled to alimony?

A. In Texas, courts decide whether a party is entitled to spousal maintenance (called “alimony” in other states) on a case-by-case basis. The court may grant temporary spousal maintenance at the beginning of a divorce hearing, which lasts only while the suit is pending. [Tex. Fam. Code §6.502\(a\)\(2\)](#).

There are several other grounds for the court awarding spousal maintenance in the divorce decree, including:

1. There was a conviction or deferred adjudication for family violence against the other spouse within 2 years before filing for divorce or while the divorce is pending;
2. The marriage lasted over 10 years and the spouse seeking maintenance:
 - a. Lacks sufficient income to provide for their needs; or
 - b. Is either disabled or the primary caretaker of a disabled child;
3. The parties agree upon a certain time period for spousal maintenance.

[Tex. Fam. Code §8.051](#). Maintenance can be no more than the lesser of \$5,000 per month or 20% of the spouse's monthly gross income. [Tex. Fam. Code §8.055](#). For more information about spousal maintenance, see [Texas Law Help: Spousal Maintenance](#).

Q. My spouse has filed for divorce. What do I do?

- A.** It is in your best interest to file an [Answer](#). If you do not respond, then you default and all final decisions about the division of property and debt can be made without you.

If you do not want to be formally served with divorce papers, you can sign a waiver of service. A waiver of service does not impact your ability to participate in the proceedings. Before you sign a waiver of service, you must receive a copy of the petition. Which waiver of service you sign depends on whether or not you have minor children. If you DO have minor children, use [this form](#); if you have no minor children, use [this form](#).

For more information, see [Texas Law Help: Responding to a Divorce](#).

Q. I want a divorce, but I don't know where my spouse is. What do I do?

- A.** You must have the court issue a "citation" and attempt to serve it (as well as the petition and any other documents you filed in the suit) on your spouse at their last known address. Once service fails, you can file a [Motion for Substitute Service](#), where the constable or private process server describes the attempts made to serve your spouse and includes any information leading the process server to believe they have the correct address. [Tex. R. Civ. P. 106, Method of Service](#). For more information, see [Texas Law Help: How to Serve Initial Court Papers](#).

If there are no children involved and there is no community property, you file a [Motion to Serve by Posting](#). If there are children involved, and you cannot find your spouse after a diligent search, you can serve your spouse by having a notice published in the newspaper and the [Public Information Website](#). See [Tex. Gov't Code §72.034](#).

For more information about serving a missing spouse, see [Texas Law Help: Service when you Can't Find the Other Spouse](#).

Q. I want a divorce, but my spouse is a foreign national and is no longer in the country. How can I serve him?

A. The easiest way to “serve” your spouse is to ask him or her to sign a waiver. Which waiver of service you sign depends on whether or not you have minor children. If you DO have minor children, use [this form](#); if you have no minor children, use [this form](#).

If your spouse refuses to sign a waiver and is not planning to come back to the country soon, there are several options. You can serve your spouse:

- In the manner prescribed by the laws of the country where they reside;
- As the foreign authority directs in response to a letter rogatory;
- As in the manner provided by Rule 106(a); or
- Pursuant to the international agreement called the Hague Service Convention, but only if your spouse lives in one of the countries that signed the agreement. A list of all member countries can be found [here](#).

See [Tex. R. Civ. P. 108\(a\)](#). For more information on how to serve someone who is out of the country, see [Texas Law Help: Serving a Respondent who is Outside the U.S.](#)

PATERNITY

Q. I’m not sure who the father of my child is, and the possible fathers refuse to take a DNA test. How can I make them do so?

A. If you were married when your child was born, your spouse is presumed to be the father of the child. [Tex. Fam. Code §160.204](#).

If you are not married, and the potential father of your child will not acknowledge paternity, you must file a [Petition to Adjudicate Parentage](#). Although paternity cases can be difficult to do, it is possible to fill out the forms on your own. If any of the potential fathers live out of state, you will have to attach an [Out-of-State Party Declaration](#). In this suit, you can ask that the court order DNA testing; you will also need to file a [Motion for Genetic Testing](#).

There is a good step-by-step guide on Texas Law Help’s website, see [Texas Law Help: Paternity Orders](#).

You can also open a case with the [Office of the Attorney General](#) (OAG) and they will help you with the paternity suit as well as child support orders. See [Tex. Fam. Code §160.601, et seq.](#)

Q. I received a notice that I am being sued for paternity and child support, but the child isn't mine. What do I do?

A. If any of the following conditions exist, then you are presumed to be the father of the child under the law:

- You were married to the child's mother when the child was born;
- You were married to the child's mother any time during the 300 days before the child was born;
- During the first two years of the child's life, you lived with the child and represented to others that the child was your own. [Tex. Fam. Code §160.204](#).

If one of the above conditions is met and you are presumed to be the father of the child, you need to complete a Denial of Paternity (DOP) form. [Tex. Fam. Code §160.303](#). You can complete the DOP form at a certified entity. To find a certified AOP entity near you, you can call (866) 255-2006 or search [online](#). The court will most likely order you to get a paternity test, and you must comply.

For a Denial of Paternity to be valid:

- It must be signed under a penalty of perjury;
- The man signing must not have previously signed an Acknowledgement of Paternity (unless it was challenged or rescinded);
- The man signing must not have been named as the child's father in a court order; and
- An Acknowledgment of Paternity (AOP) has been signed by another man and filed with the Vital Statistics Unit. [Tex. Fam. Code §160.303](#).

If you are not the presumed father and the biological father will not acknowledge paternity, you should file an [Answer](#) in the suit and then file a [Motion for Genetic Testing](#). [Tex. Fam. Code §160.502](#). Be sure to file your answer within the deadline, which is the Monday following 20 days from when you were served.

For more information on paternity, see [Texas Law Help: Acknowledgement or Denial of Paternity](#).

Q. I ignored an OAG suit for paternity and child support because the child isn't mine and now my wages are being garnished. What can I do?

A. You are what Texas law considers an "adjudicated father." Adjudicated father means that a court legally considers you the father of a child. Ignoring the OAG suit will not relinquish your paternity or your responsibility to pay child support.

You should file a [Petition to Terminate the Parent-Child Relationship Based on a Mistaken Paternity](#) along with an [Affidavit](#) explaining why you believe you are not the child's father. The Affidavit must be signed in front of a notary.

After you file the Petition and Affidavit, the court will have a hearing to determine whether you have stated enough evidence to order genetic testing. If the genetic testing shows you are not the biological father, the court may terminate the support obligation. However, you are still responsible for any unpaid child support. See [OAG Mistaken Paternity](#).

There is a good step-by-step guide on Texas Law Help's website: [Mistaken Paternity Guide](#)

Q. My husband and I are separated and I'm pregnant with my boyfriend's child. What do I do?

- A.** If you are still legally married, your husband is legally presumed to be the father of the child. To defeat this presumption, the biological father must sign an Acknowledgment of Paternity, AND your husband must sign a Denial of Paternity. Neither document is valid without the other. [Tex. Fam. Code §160.304](#). The Acknowledgment of Paternity and the Denial of Paternity can be signed at the hospital when the child is born or before or after the child is born at a "certified entity." To find a certified entity near you, you can call **(866) 255-2006** or search [online](#).

If your spouse refuses to sign the Denial of Paternity, you may file a [Petition to Adjudicate Parentage](#). You must file this case within four years of the child's birth unless you can show that you and your spouse did not live together or engage in sexual intercourse with each other during the probable time of conception. [Tex. Fam. Code §160.607\(a-b\)](#).

In a Suit to Adjudicate Parentage, you can ask the court to declare that your boyfriend is the father of your child and that your husband is not the father of the child. The court will probably order genetic testing.

Q. My ex-girlfriend had my child but refuses to sign the Acknowledgment of Paternity and won't give me visitation. What do I do?

- A.** You must file a [Petition to Adjudicate Parentage](#). In this petition, you can ask the court to order genetic testing and declare you the father of the child. You can also ask the court for custody (called conservatorship in Texas) and visitation orders in this petition.

For more information on paternity, see [Texas Law Help: Acknowledgement or Denial of Paternity](#).

Q. I named my ex-boyfriend as the father of the child when the baby was born, but he wasn't present at the birth. Does he have legal rights to the child?

A. Under Texas law, a father does not have legal rights to his child until paternity is established. There are several ways to establish paternity, but if you were not married at the time your child was born, you must both sign an Acknowledgment of Paternity (AOP). This form is typically presented at the time of the child's birth but can be signed at an AOP Certified Entity either before or after the birth. To find a certified AOP entity near you, you can call **(866) 255-2006** or search [online](#).

For more information on paternity, see [Texas Law Help: Acknowledgement or Denial of Paternity](#).

Q. I applied for public benefits for my child and named my ex-boyfriend as the father on the application, though my ex isn't on the birth certificate. Now the OAG is telling me they're going to sue my ex for paternity and child support. What's going on?

A. Applications for many types of public benefits, such as Temporary Aid for Needy Families (TANF) and Medicaid, WILL trigger an OAG suit for child support for repayment of the benefits from the assumed father to the state of Texas. This is true even if you are not currently receiving child support. Federal law requires parents who receive these benefits to cooperate with the OAG in establishing paternity and enforcing child support.

If the child has no adjudicated or presumed father, the OAG will first seek to establish parentage by bringing a paternity suit against the father named in the application for public benefits. You *may* be able to get the OAG to desist by withdrawing your application for public benefits, but this is unlikely if the suit has already been filed.

If you are a survivor of family violence and you feel that filing a child support suit will put your family in danger, you can request a good cause waiver. This waiver releases you from your responsibility to cooperate with the OAG in a child support case. You need to work with a family violence caseworker who can sign the good cause waiver for you. See the [HHS Information on Good Cause Waivers](#).

CUSTODY AND VISITATION

Q. How can I get custody and visitation orders?

A. In Texas, "custody and visitation" is referred to as conservatorship, possession and access, and they are governed by [Chapter 153](#) of the Texas Family Code. The public policy of Texas is to ensure children will have frequent and continuing contact with parents who provide a safe, stable and nonviolent environment. [Tex. Fam. Code §153.001\(a\)](#). Therefore, these orders are heavily influenced by allegations of family violence.

There are three types of conservatorship in Texas: Joint Managing Conservator (presumed best interest of the child), Sole Managing Conservator, and Possessory Conservator. [Tex. Fam. Code §§153.005-006 & §153.071, et seq.](#) The court shall consider evidence of physical or sexual abuse of a spouse, parent, or any person under the age of 18 if the abuse occurred within a 2-year period preceding the filing of the suit. [Tex. Fam. Code §153.004\(a\).](#)

The courts use a “best interest of the child” analysis when determining conservatorship and possession. Some of the factors the court uses to evaluate what is in the best interest of the child include: the desires of the child, emotional and physical needs of the child, parental abilities, stability of the proposed home, and the emotional and physical danger to the child now and in the future.

If you are married and are in the process of getting a divorce, you can get custody and visitation orders as part of your divorce suit.

If you are not married and the other parent has been determined to be the legal father of your child (either through a signed Acknowledgment of Paternity (AOP) or court order), then you should bring a [Suit Affecting the Parent-Child Relationship \(SAPCR\)](#). You can file the petition yourself, or if you are also asking for child support, the Office of the Attorney General (OAG) will file it on your behalf. See below. In this suit, you can ask for conservatorship, possession and access.

If paternity has not been legally established, you can bring a [Petition to Adjudicate Parentage](#), where you can ask the judge to determine paternity as well as order custody and visitation.

For more information on custody and visitation, see:

- [Texas Law Help: Visitation and Possession Orders](#)
- [Texas Law Help: Child Custody and Conservatorship](#)

Q. What is the OAG’s role in custody and visitation?

A. When you apply for child support through the OAG’s office, the OAG must address custody and visitation. The OAG will help set up and enforce child support and medical support. Parenting and visitation orders are established as a part of the child support establishment process.

The OAG will draw up custody and visitation orders according to the statutory presumptions that Joint Managing Conservatorship (JMC) and a Standard Possession Order (SPO) are in the best interests of the children. A Joint Managing Conservatorship is when parents share decision-making duties, including decisions dealing with the child’s education, healthcare, moral training, etc. [Tex. Fam. Code §153.074.](#)

A Standard Possession Order says that the parents may have possession of the child on whatever terms are agreed by the parents. If the parents do not agree on the terms, then the default schedule is ordered. [Tex. Fam. Code §153.3101, et seq.](#) This default schedule differs case-to-case, depending on how far away the parents live from one another and generally applies to children between the ages of 3-12. See [OAG Parenting Time Schedule](#).

If the child is under the age of 3, there are factors set out in the Family Code for determining the best interest of the child. [Tex. Fam. Code §153.254](#). Judges typically favor frequency of visits over a length of visits for young children.

Remember that the OAG does not represent you or your child but represents the State of Texas as a third party to your suit. The OAG's primary concern is child support and cannot help you enforce a visitation order. Further, the federal regulations do not allow the OAG to use child support funding to modify or enforce custody or visitation orders.

Q. Can I terminate the other parent's rights?

A. To terminate parental rights without an agreement, you must generally show by "clear and convincing evidence" that the parent in question:

- (1) Voluntarily left the child alone or in the possession of another that was not the parent and expressed an intent not to return;
- (2) Knowingly placed or knowingly allowed the child to remain in conditions or surroundings that endangered the child; or
- (3) Engaged in conduct or knowingly placed the child with persons who engaged in conduct that endangers the child.

There are additional grounds upon which you can terminate parental rights, but the above are those that the court considers most often. See [Tex. Fam. Code § 161.001\(b\)](#) for additional grounds. Still, the court will only terminate parental rights only if it determines that termination is in the best interest of the child. [Tex. Fam. Code § 161.001\(b\)\(2\)](#).

For more information, see [Texas Law Help: Terminating Parental Rights](#).

Q. How can I enforce my visitation rights?

A. If you have a court order regarding visitation that you believe was violated, you can bring a Motion to Enforce, which asks the court to order the other parent to comply with a visitation order, and/or a Motion for Contempt, which is a request to punish the other parent for not complying with the order. [Tex. Fam. Code §157.001](#). However, in order to show the court that you were denied visitation, you must appear in person at the exchange location listed in the court order, even if the other parent said they would not be there.

A Motion to Enforce can be filed *pro se*. You need to attach the visitation provision and incorporate it into your motion. You must also show “the manner of noncompliance,” which means you should state the date, place, and each time they failed to comply with the order. [Tex. Fam. Code §157.002](#).

It is important to collect detailed information regarding the other party’s failure to comply with a visitation order. You should keep notes regarding each incident where your visitation rights were violated, including witnesses to the exchange, what happened, the location where you tried to pick up your children, when and why the other parent did not let you see your child. Additionally, for your visitation attempts to count in an enforcement case, you must physically go to the place you are supposed to meet and pick up your child at the exact time ordered by the court. A phone call saying you can’t have the children before the scheduled date and time does not count for an enforcement case. Having a record of at least three denials within a brief time span is helpful for an enforcement case.

When you ask the court to enforce a visitation order, you can also ask the court to find the noncomplying parent in contempt of the order. Penalties for a finding of contempt include probation, a fine of up to \$500, and confinement in the county jail for not more than six months. In some areas of the State, the Domestic Relations Office will assist in enforcement actions. [Tex. Gov’t Code §21.002\(b\)](#).

Texas Law Help has a great summary of what to do when a party is not complying with a visitation order: [Texas Law Help: Visitation Order Enforcement](#).

Q. A friend left her child with me a few weeks ago and never came back. My neighborhood school won’t let me enroll him because I don’t have custody. What do I do?

A. If you can find the parent and he or she will authorize you to make decisions for the child, you can seek an [Authorization for Nonparent Care of a Child](#). This document gives an adult caregiver the authorization to make decisions for a child. It also allows a nonparent to consent to medical treatment, enroll the child in school or daycare, apply for and receive public benefits on behalf of the child. [Tex. Fam. Code §34.002](#).

At least one parent needs to sign the Authorization Agreement, while the other parent needs to receive a copy within 10 days of signing the form. [Tex. Fam. Code §34.005](#). However, if there is a pending SAPCR or any pending litigation relating to custody of the child, a parent cannot sign an Authorization without the court’s permission. [Tex. Fam. Code §34.004](#).

If you cannot get in touch with the child’s parent, you can file a Temporary Authorization to Care for a Child if the child has been living with you for at least 30 days and if there is no existing written authorization agreement that enables someone else to provide necessary care for the child. [Tex. Fam. Code §35.002](#). You will need to show that the parents or guardian will not object to you obtaining a temporary order or that the child does not have a parent or guardian that can authorize care that is necessary for the child’s welfare. [Tex. Fam. Code §35.003](#). This temporary authorization expires on the first anniversary of the

date the court signed it, unless an earlier date is ordered. If you need to renew the authorization, you must show that it is still needed. [Tex. Fam. Code §35.006](#).

If you have had actual possession of the child for at least 6 months, you can file a [Suit Affecting the Parent-Child Relationship \(SAPCR\)](#). For more information, see below.

For more information and instructions for completing the forms: [Texas Law Help: Temporary Authorization](#).

Q. A friend’s child has been living with me for 6 months. How can I get custody?

A. Any adult who has had a child residing with them for 6 months or longer in the past 90 days may bring a [Suit Affecting the Parent-Child Relationship \(SAPCR\)](#) or a [Petition to Modify SAPCR](#) to ask the court for custody of the child. [Tex. Fam Code §102.003\(a\)\(9\)](#). You must serve both biological parents and the OAG (if there is a previous SAPCR with OAG child support) with the petition. [Tex. Fam. Code §102.009](#).

If you can find the parent and he or she will authorize you to make decisions for the child, you can seek an [Authorization for Nonparent Care of a Child](#) ([Tex. Fam. Code §34.002](#)). See above for more information.

Q. I would like my current spouse to adopt my children from a previous relationship, but we can’t afford an attorney. I’m worried about what will happen to my kids if something happens to me. What can we do?

A. There are two ways to start an adoption case, depending on the parent-child relationship between the child and the other legal parent:

(1) If the child’s other legal parent is alive, and there is no court order of termination, you can file an Original Petition to Terminate Parent-Child Relationship, per [Tex. Fam. Code §161.002](#), and an Adoption Petition; or

(2) If the child’s parent is deceased, or there is a court order of termination, then you can file just an Adoption Petition.

The other legal parent can voluntarily relinquish their parental rights, but the court will still have to determine whether relinquishment is in the best interest of the child. [Tex. Fam. Code §161.103](#). For more information on who is eligible to adopt a child in Texas, see [Tex. Fam. Code §162.001](#).

Unfortunately, there are no standard forms for a stepparent adoption because each adoption is unique and often involves the termination of another parent’s rights. If you want to pursue an adoption without an attorney’s help, you can find some guidance [here](#).

If adoption is not a possibility, you can still ensure that your current spouse has the ability to make decisions for your children by signing an [Authorization for Nonparent Care of a Child](#). This document allows the parent to give a relative or close nonparent the authority to make medical decisions for the children, get insurance, enroll the children in school, and receive public benefits on behalf of the child. [Tex. Fam. Code §34.002](#).

At least one parent needs to sign the Authorization Agreement, while the other parent needs to receive a copy within 10 days of signing the form. [Tex. Fam. Code §34.005](#). However, if there is a pending SAPCR or any pending litigation relating to custody of the child, a parent cannot sign an Authorization without the court's permission. [Tex. Fam. Code §34.004](#).

If you are worried about who will take care of your child if something should happen to you and the other parent is dead or incapacitated, you can sign a [Declaration of Guardian of Minor Form](#). Through this declaration, you can appoint anyone to be the guardian. [Tex. Est. Code §1104.053](#).

For more information, see [Texas Law Help: Stepparent Adoption](#).

Q. Can my child decide where they want to live?

A. Where the child will live is a decision that is made by the court. If the child is 12 or older and wishes to express a preference, a party may motion for the judge to confer with the child in chambers. [Tex. Fam. Code §153.009](#). The child's preference will be considered, but the decision is ultimately up to the court.

Q. Can I get supervised visitation against another parent?

A. While it is possible to get an order for supervised visitation, it is difficult to get. The party requesting supervised visitation will have to prove to a Judge that supervised visitation is in the best interest of the child. [Tex. Fam. Code §153.002, Best Interest of the Child](#). It is a very fact-specific determination. The judge will consider whether there is a history of domestic violence, sexual abuse, substance abuse, or other activities that may endanger the child or otherwise make unsupervised visitation not in the child's best interest. [Tex. Fam. Code §153.004](#).

If a visitation order is not already in place, a party can include a request for one in the [Original Petition in a Suit Affecting the Parent-Child Relationship](#). If supervised visitation was not a component of a previous order, a party may seek to include it by pursuing a [Petition to Modify the Parent-Child Relationship](#).

Q. Do grandparents have rights to grandchildren in Texas?

A. Under certain circumstances, grandparents may file for custody (called conservatorship in Texas) and/or visitation. For conservatorship, there are two ways for grandparents to apply:

(1) they may file a [SAPCR petition](#) if the child has been living with them for a period of 6 months in the preceding 90 days prior to the suit, or if the child's parents are deceased [Texas Family Code §102.003](#); or

(2) they may file an original suit if the present environment poses a danger to the child's welfare or the parents/managing conservator files the petition or consents to the suit. [Tex. Fam. Code §102.004, Filing Suit.](#)

For visitation, grandparents may file a [SAPCR petition](#) or a [motion to modify](#) the SAPCR already in effect [Tex. Fam. Code §153.432, Access by Grandparent](#). To be eligible to file a SAPCR or to seek a modification to an existing SAPCR, a grandparent will need to meet the same qualifications of section 102 of the Texas Family Code provided above. A party can seek these remedies *pro se*. Typically, a court will only intervene if it determines that access to the child or conservatorship of the child is in that child's best interest. [Tex. Fam. Code §153.433, Possession of or Access to Grandchild.](#)

Q. What happens if I do not let the kids go during visitation because I'm afraid for their safety?

A. Anyone who does not follow a court order, such as refusing to allow visitation, may be charged with contempt. [Tex. Fam. Code §157.004, Enforcement of Possession](#). A finding of contempt can come with a fine of up to \$500 for each violation or even a sentence of up to six months in jail [Tex. Fam. Code §105.006\(d\)](#). There may be some circumstances where refusing to allow visitation is appropriate for the safety of the children, but the party who withholds should be prepared to justify the decision and explain why they should not be held in contempt.

If a parent suspects abuse or neglect when the children go on court-ordered visitation, they should call (800) 252-5400 to report it. [Tex. Fam. Code §261.101\(a\), Persons Required to Report](#). If the other parent picks up the child and appears to be intoxicated, under the influence of drugs, or otherwise dangerous to the child, a parent should contact the police immediately. A parent might also seek a modification to the current visitation orders. This can be done by filing a [Petition to Modify the Parent-Child Relationship](#), which can be used to seek things such as supervised visitation if you feel the child might be subject to future danger.

If a child has been the victim of family violence, sexual abuse, or physical abuse, they may qualify for a protective order. A helpful toolkit can be found [here](#).

Additionally, if the parent (1) believes the child is in immediate and irreparable danger, (2) has filed or is planning to file an SAPCR or modification to a previous SAPCR, and (3) a protective order would not be more appropriate, they may also pursue a Temporary Restraining Order (TRO). [Tex. Fam. Code §105.001, Temporary Orders](#). These can be granted very quickly, sometimes even on the same day they are requested, and are only for emergency situations in which a child has been harmed or faces a risk of harm. A TRO typically will only last 14 days.

Q. What if my child refuses to go for visitation?

- A.** Until the child reaches the age of 18, a parent may still face contempt charges if a child does not go for visitation. The parent may be able to build a defense by having third-party witnesses to the fact that the parent is encouraging visitation and that the child is refusing to go. A parent should consult with their child the reasons for their refusal and contact CPS if they suspect abuse or neglect when the child attends future court-ordered visitations.

If there are credible claims of abuse or neglect, a parent might pursue protective orders for their child. A helpful toolkit for obtaining a protective order can be found [here](#). A parent can also try to modify existing visitation orders by filing a [Petition to Modify the Parent-Child Relationship](#). A modification can change the frequency of the visits as well as provide for supervised visitation.

CHILD SUPPORT

Q. How can I file for child support?

- A.** There are several ways you can get an order for child support in Texas: through a divorce proceeding, a protective order case, a paternity case, or by filing a [Suit Affecting the Parent-Child Relationship \(SAPCR\)](#).

Child support is governed by [Chapter 154](#) of the Texas Family Code. The purpose of child support is to help a custodial parent maintain an adequate standard of living for a child. Only parents may be ordered to pay child support. Grandparents, stepparents, and non-parents do not have child support obligations.

If you and the other parent agree, you can seek a child support order by yourself. There are toolkits on texaslawhelp.org found [here](#).

If you and the other parent do not agree, you should contact the Child Support Division of the Office of the Attorney General to help you get an order. You can contact them at (800) 255-8014 or through their website found [here](#).

If you are representing yourself, the first stage of this process is filing an [SAPCR Petition](#). If parentage of the child is contested, a parent might need to file a [Petition to Adjudicate Parentage](#). In this petition, you can also ask the court to order child support.

For more information, see [Texas Law Help: Child Support](#).

Q. Can I terminate my rights to the child to end my support obligation?

- A.** Relinquishment of parental rights can only occur by court order after hearing a termination case. There is a process for voluntary termination of parental rights, but it is rarely granted. [Tex. Fam. Code §161.103](#).

A party can bring an affidavit for voluntary relinquishment of parental rights, but this generally requires a showing that at least two parents or parties are still financially responsible for the child at all times. Typically, to succeed in relinquishing your parental rights, you must designate another party to be financially responsible for the child. This can be: (1) prospective adoptive parents, (2) the Department of Family and Protective Services if they have consented to take responsibility for the children, or (3) a licensed child-placing agency that has agreed to care for the child financially. [Tex. Fam. Code §161.103\(b\)\(12\)](#). A court will ultimately determine what is in the best interest of the child. [Tex. Fam. Code §161.103\(a\)\(5\)](#).

Additionally, termination brought by the state (e.g., due to CPS involvement) does not necessarily end the child support obligation. [Tex. Fam. Code §154.001\(a-1\)](#).

Q. How is child support calculated?

- A.** The formula for calculating child support depends on the income of the noncustodial parent. Generally, the amount of child support is calculated as a percent of the noncustodial parent's net monthly income after standard deductions. See the [OAG Tax Chart](#) for more information. Income includes everything from your net wages (including self-employment income), rental income, severance, trust income, pensions, and other benefits like unemployment, disability, spousal maintenance, and alimony. This is offset by certain deductions such as taxes, union dues, and expenses for the cost of insurance and other medical support for the child ordered by the court. [Tex. Fam. Code §154.062, Net Resources](#).

Statutory guidelines direct courts to generally grant 20% of this income for one child plus 5% for each additional child, up to 40% with 5 children. For children beyond 5, courts are directed to not grant less than 40% but are not given an upper cap. [Tex. Fam. Code §154.125\(b\), Child Support Guidelines](#). For noncustodial parents who make less than \$1,000 in net monthly income, the percentages above instead range only from 15% to 35%.

following the same scheme of increasing by 5% per child. [Tex. Fam. Code §154.125, Low-Income Child Support Guidelines](#).

For individuals who have a net monthly income *above* \$9,200, a court has discretion to grant additional amounts if appropriate for the needs of the child. [Tex. Fam. Code §154.126](#). If the obligor has a court-ordered duty to support children in other families, the percentages will be reduced. [Tex. Fam. Code §154.128](#). The non-custodial parent will also likely be ordered to pay medical support or provide health care coverage for the child. [Tex. Fam. Code §154.181](#).

For more information, see [Texas Law Help: Child Support](#).

Q. What if the obligor is unemployed?

- A.** In the absence of evidence of the resources of the other party, the court will presume income equal to the federal minimum wage rate for an individual working 40 hours a week and calculate appropriately. [Tex. Fam. Code §154.068, wage and salary presumption](#). With good evidence, intentional unemployment or underemployment can be alleged, and the party can ask for a calculation based on the other party's earning potential rather than actual income. [Tex. Fam. Code §154.066, intentional unemployment/underemployment](#). The presumption of income equivalent to a 40-hour minimum wage position does not apply to incarcerated parties.

Q. What if the obligor won't pay?

- A.** The best way to enforce a child support order is to contact the [Office of the Attorney General](#), which can help enforce the court order for you. The OAG's office has additional enforcement tools, such as intercepting tax refunds or suspending the non-paying parent's passport. However, sometimes the wait can be long, and they cannot enforce other orders (such as visitation). Remember, the OAG does not represent you – they represent the best interests of the state, which includes securing child support for children in Texas.

You can also bring a motion to enforce a child support order *pro se* by a [Motion to Enforce and for Contempt. Tex. Fam. Code §157.001](#). Penalties for a finding of contempt based on failure to pay one's child support obligations can include a fine of up to \$500 and up to six months in jail. [Tex. Fam. Code §105.006](#). (Note: Because the penalty may come with jail time, the respondent is entitled to appointment of counsel. It might be safest not to ask for prison time.) If the court finds a failure to pay, the court shall award attorney's fees. [Tex. Fam. Code §157.167\(a\)](#)

A party can also petition a court for a Qualified Domestic Relations Order, which allows for the payment of pension, retirement plan contributions, or other employee benefits to be directed towards satisfying child support obligations. [Tex. Fam. Code §157.501, Jurisdiction for Qualified Domestic Relations Order](#). The court can also award attorney's fees in connection with these orders [Tex. Fam. Code §157.507, Attorney's Fees](#).

For more information, see [Texas Law Help: Enforcing Child Support](#).

Q. Is there a statute of limitations for child support enforcement?

- A.** Courts only have jurisdiction to confirm the total amount of missed child support and other forms of medical support and render judgments for past-due payments if sought no later than 10 years after the child becomes an adult or the support obligation otherwise terminates. [Tex. Fam. Code §157.005, Enforcement of Child Support](#). This means that if you haven't approached a court for an order regarding the other party's missed child support obligations until 10 years after the date the child turned 18 or the obligation ended, they will not have the jurisdiction to hear your case. However, if efforts for enforcement are made, an individual cannot simply ignore their obligations and have them excused based on a statute of limitations requirement.

To hold the non-paying parent in contempt for failure to pay child support, the suit must be brought within two years past the end of the obligation or the child's 18th birthday. [Tex. Fam. Code §157.005, Enforcement of Child Support](#).

Q. What happens if I don't pay my child support? Can I simply refuse to pay until the child turns 18?

- A.** No. There are serious consequences for failure to pay child support including:
1. Arrearages will continue to accrue interest at the rate of 6% a year on the portion of delinquent child support that is greater than your monthly payment. [Tex. Fam. Code §157.265, Accrual of Interest on Child Support](#).
 2. The court or the Office of the Attorney General can forcefully collect child support as well as overdue amounts by garnishing your wages or income tax refunds. [Tex. Fam. Code §§158.001 & 158.003](#);
 3. You may be found in contempt, which carries penalties of up to a \$500 fine or 6 months in jail for each violation. [Tex. Fam. Code §105.006](#). If the nonsupport is intentional, you can be prosecuted for criminal nonsupport, which constitutes a state jail felony. [Tex. Penal Code §25.05, Criminal Nonsupport](#).

Q. Can I discharge my child support obligation by filing for bankruptcy?

- A. Bankruptcy will not discharge current or past child support obligations. [11 U.S.C. §1328\(a\)\(2\)](#). A party may use financial hardship as an opportunity to modify a support order. A modification can be sought by filing a [Petition to Modify the Parent-Child Relationship](#).

Q. How far can retroactive child support reach?

- A. A court can award retroactive child support, which is the amount of money owed by one parent to the other for the period of time before there is a support order in place. [Tex. Fam. Code §154.009](#). It is a mechanism to hold the non-supporting parent accountable for expenses during a time when they should have been financially supporting the child.

There are no statutory limitations on how far back the court can award retroactive child support, but courts generally presume that limiting the amount to the prior 4 years is reasonable. [Tex. Fam. Code §154.131](#). In determining whether to award retroactive child support, the court considers certain factors, such as whether the father had knowledge of his paternity and whether the retroactive child support will impose an “undue financial hardship.” [Tex. Fam. Code §154.131\(b\)](#). You must plead retroactive child support in order to get it.

In determining the amount of retroactive child support to award, the court shall apply the statutory support guidelines found in [Tex. Fam. Code §154.121 et seq.](#) It is in addition to the child support ordered and is typically included as a small monthly payment until completely satisfied.

Court-ordered child support that has not been paid is called “back child support,” or arrears. [Tex. Fam. Code §157.263](#). You can file a [Motion to Enforce and for Contempt](#) to collect child support in arrears. [Tex. Fam. Code §157.001](#) You can file this as long as the payment is at least 30 days past due. Penalties for a finding of contempt based on failure to pay one’s child support obligations can include a fine of up to \$500, up to six months in jail, and usually an award of attorney’s fees and court costs. [Tex. Fam. Code §157.167](#).

The best way to enforce a child support order is to contact the [Office of the Attorney General](#) who can help enforce the court order for you. (See answer above.)

Q. I want to pay my child support directly to the other parent. Is there a way to avoid wage garnishment?

- A. Wage garnishment is an order for an employer to withhold money from an employee’s paycheck to pay court-ordered child support. Garnishment is mandatory under Texas law if there is a court order in place. [Tex. Fam. Code §158.001](#). You will have to show good cause or an agreement with the other party to avoid garnishment. [Tex. Fam. Code §158.002](#).

However, once you are in arrears for more than 30 days, the garnishment order will be reinstated. [Tex. Fam. Code §158.002](#).

To find more information on income withholding, see [Texas Law Help: Income Withholding](#).

Q. My ex has a new job and is making substantially more money than she was making when child support was ordered. What can I do to increase the child support amount?

A. You can ask the court to modify a child support order if: (1) the order is over 3 years old and, based on child support guidelines, would change by 20% or \$100; or (2) a material and substantial change in circumstances has occurred. [Tex. Fam. Code §156.401\(a\)](#). The procedure for the modification is different depending on whether you have an open case with the OAG or an order by the court.

If you have an open case with the OAG, you can submit a [Request for Review](#). You can print the form and mail it in or complete it online. Someone from the OAG's office will get back to you within 30 days and may ask for more information. After that, a Child Support Review Specialist will review your case and decide whether a hearing for modification is warranted. You can find more about the process [here](#).

If the other party does not agree to modify the child support order, you can file a [Petition to Modify the Parent-Child Relationship](#). See [Tex. Fam. Code §156.401\(a\)](#).

DIVISION OF THE ESTATE

Q. What is community property?

A. In general, all property and earnings acquired during the marriage, regardless of who paid for it or whose name is on the title, is considered community property. This includes income, real estate, vehicles, balances of checking and savings accounts, retirement benefits, and life insurance policies. There is a presumption that any property possessed by either spouse in community property unless it is shown by "clear and convincing evidence" that it is separate property. [Tex. Fam. Code §3.003](#).

Gifts, inheritance, or personal injury settlements are not considered community property even though they were acquired during the marriage. [Tex. Fam. Code §3.001](#).

For more information, see [Texas Law Help: Community Property](#).

Q. What is community debt?

- A.** Generally, any debt acquired during the marriage is considered “marital debt.” This includes car loans, mortgages, student loans and credit cards. Both spouses are responsible for the debt created during the marriage regardless of whose name is on the debt. Even if the court requires your spouse to pay a certain debt, it does not have the power to remove your name from the account. Therefore, creditors can still look to an ex-spouse for payment of a debt even if it is no longer their legal responsibility.

For more information, see [Texas Law Help: Dividing Property and Debt in Divorce](#).

Q. How is community distributed?

- A.** Texas law does not require courts to divide property equally but rather divide it in a way that is “just and right.” [Tex. Fam. Code §7.001](#) They use various factors in making this determination, including a history of domestic violence and fault in the divorce.

For more information, see [Texas Law Help: Community Property](#).

PROTECTIVE ORDERS

Q. What is the difference between a Protective Order and a Restraining Order?

- A.** A Protective Order is used to prevent acts of family violence (including dating violence), human trafficking, stalking and sexual assault. [Tex. Fam. Code §85.001](#). A Restraining Order is used in a civil case to maintain the status quo to avoid immediate injury, loss or damage. [Tex. Fam. Code §6.501](#). In Texas, a Protective Order is the best way to keep a person safe.

Types of protective orders include:

1. Emergency Protective Order (EPO): This is the most common type in Texas and is issued after an arrest for a family violence offense, trafficking, sexual assault, indecent assault, or stalking. The EPO can only be issued after an arrest. See [Code of Crim. P. art. 17.292](#).
2. Temporary Ex Parte Protective Order (TXPO): This type of protective order is granted to protect a family where there is “clear and present danger of family violence.” [Tex. Fam. Code §83.001](#). The TXPO can last up to 20 days and can be extended for an additional 20 days. The court can also issue a TXPO if there is immediate danger of abuse or neglect to a child. [Tex. Fam. Code §261.503](#). A TXPO is enforceable to the same extent and manner as the final protective order. [Tex. Fam. Code §83.0025](#).

3. Final Protective Order (PO): This protective order usually lasts two years. [Tex. Fam. Code §85.001, et seq.](#) See below for more specific information about protective orders.

For more information, see [Texas Law Help: Protective Orders](#).

Q. Can I get a 2-year Protective Order?

- A.** To get a 2-year Protective Order, you must show that “family violence has occurred.” [Tex. Fam. Code §85.001\(a\)](#). The former statute required a finding that family law would occur again in the future, but that provision was removed in 2023. Family violence includes any intimate partner violence like dating and same-sex partner violence. In most counties, the County or District Attorney’s Office will help you get a Protective Order. Each county has its own internal policies, so check with your [local office](#) for more information.

If the county or district attorney will not assist you in getting a protective order, you can file for a protective order on your own. There is a [Protective Order Kit](#) that you can complete and file in any court in Texas.

A Protective Order lasts for up to two years, but a court may issue it for a longer period of time if it finds the person: (1) committed a felony offense involving family violence, (2) causes serious bodily injury to the applicant or their family; or (3) has been the subject of two or more protective orders. [Tex. Fam. Code §85.025](#).

Q. What if there has been no physical violence, but my partner has been threatening me?

- A.** It is a crime in Texas to “intentionally or knowingly” threaten someone with “imminent bodily injury.” [Tex. Penal Code §22.01\(a\)\(2\)](#). Imminent means “ready to take place, near at hand, impending [or] hanging threateningly over one’s head.” [Tex. Admin. Code R. §9.102](#).

If you have been threatened, you can file a Peace Bond Complaint along with a Statement of Offense, which causes a warrant for arrest or summons to be issued for the accused. Texas [Code of Crim. P. art. 7.01, et seq.](#) A Peace Bond is a court order designed to protect someone who has been threatened. You will have to appear at a hearing before the justice of the peace, who will determine whether the threat was seriously made, and the offense was intended. If so, the bond will require the accused to refrain from committing the threatened offense and to put up a bond. If the accused violates the conditions of the bond, he will forfeit the amount he paid and potentially go to jail. [Tex. Code of Crim. P. art. 7.01, et seq.](#)

For more information, see [Texas Law Help: Peace Bonds](#).

Q. Why should I get a Protective Order if the abuser is likely to be incarcerated for longer than two years?

- A.** If the abuser was sentenced to more than 5 years and the protective order expires while the abuser is incarcerated, it automatically extends for one year after the abuser is released. [Tex. Fam. Code §85.025\(c\)](#). As the release date nears, you should check with the issuing court to ensure the protective order has been extended.

Q. How will a Protective Order affect my divorce or custody case?

- A.** Once a protective order is granted, it becomes a judicial finding of domestic violence, which is important evidence in divorce proceedings as well as custody proceedings. In divorce proceedings, a finding of domestic violence may increase the amount of spousal maintenance. In custody proceedings, a finding of domestic violence could decrease the custody and visitation granted to the abuser. It may also create a supervised visitation requirement.

A Protective Order Statement disclosing whether there is an active protective order or an application for a protective order pending must be included in every petition for divorce. [Tex. Fam. Code §85.004](#).

Q. How will family violence affect my divorce or custody case?

- A.** In a divorce, a finding of family violence may:
- Qualify the abused spouse for spousal maintenance, which money is separate from the division of property and child support that is paid to support the former spouse following a divorce. [Tex. Fam. Code §8.051](#).
 - Be used to claim an unequal division of the community property as the judge considers what is “just and right” in dividing the community property. [Tex. Fam. Code §7.002](#).
 - Allows you to shorten the 60-day waiting period for a divorce. [Tex. Fam. Code §6.702](#).

In a custody case, judges are required to consider evidence of family violence. [Tex. Fam. Code §153.004](#). A finding of family violence means the court cannot order Joint Managing Conservatorship (joint custody) and it defeats the presumption that a Standard Possession Order (visitation) is in the best interest of the child. It is also more likely that the judge will order supervised visitation.

For more information, see [Texas Law Help: Divorce and Family Violence](#).