

Coronavirus and Child Visitation

TexasLawHelp (<https://texaslawhelp.org/directory/legal-resource/texaslawhelp>) [1]

This material was written by TexasLawHelp (<http://www.texaslawhelp.org/>) [2] and is current as of July 3, 2020.



My child is somewhere with a shelter-in-place order. Can they travel?

The Texas Supreme Court has issued several **emergency orders** (<https://www.txcourts.gov/court-coronavirus-information/emergency-orders/>) [3] saying that for determining a person's right to possession of and access to a child under a court-ordered possession schedule, the existing trial court order controls in all instances.

Possession of and access to a child (often called visitation) is NOT affected by any shelter-in-place order or other order restricting movement that your city or county issued because of an epidemic or pandemic like COVID-19.

Many Texas county and city shelter-in-place orders specifically state that traveling to exchange the children is not a violation of the orders.

Example: Dallas County issued a **shelter-in-place order** (<https://www.dallascounty.org/Assets/uploads/docs/judge-jenkins/covid-19/03232020-AmendedOrder.pdf>) [4] effective March 23, 2020. Dallas family courts have provided this **joint statement** (<https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf>) (<https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf>) [5] about the issue. Exchanging your children is an essential activity, as the Dallas shelter-in-place orders, among others, make clear. That means you would **not** be violating a shelter-in-place order if you can show that you are exchanging a child.

The coronavirus situation is unprecedented. Your best option is to work out an agreement with the other parent. Look at **TxAccess.org** (<http://www.txaccess.org/>) [6] for cooperative **co-parenting** (<http://www.txaccess.org/co-parenting>) [7] ideas and tips. The State Supreme Court encourages working with the other parent. This **video from Legal Aid of Northwest Texas** (<https://texaslawhelp.org/article/co-parenting-during->

covid-19-lanwt-video [8] gives an overview of co-parenting during the coronavirus pandemic.

If the other parent files a motion to enforce against you, there are several **affirmative defenses** (<https://texaslawhelp.org/faq/what-affirmative-defense>) [9]. They are listed in **Texas Family Code 157.006(b)** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm#157.006>) [10].



One defense is that the other parent voluntarily relinquished actual control and possession of the child. Texas courts have also held that an **involuntary inability to follow the court orders** can be a defense to a motion to enforce. If you are saying you could not comply with the visitation orders, you have to show that you were legitimately unable to comply. Get legal advice about your circumstances. Communicate with the other parent. Keep proof about why you could not send your child for visitation—if it is really not possible.

Can I keep my child from the other parent if I think someone in the family is at risk of getting coronavirus?

If you do not let the kids go during their court-ordered visitation period, know that anyone who does not follow a court order takes a risk. The risk is that the other conservator might file a motion to enforce, and you could be held in contempt of court. If this happens, talk to a lawyer. Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [11] tool. Under very limited circumstances you might have the **right to a lawyer in a family law case** (<https://texaslawhelp.org/article/right-lawyer-family-law-cases>) [12].

Whatever you decide, you need to have documentation about why you did it and what you did. It might be possible to build a defense, but you should talk to a lawyer. Take a look at the **Visitation Journal Template** (<https://texaslawhelp.org/form/visitation-journal-template>) [13] for help documenting incidents.

Remember, you MUST be able to prove your concerns to the judge, and this might help you do it.

Things you will want to document include: the date of the scheduled visit; the time of the visitation attempt; the time police were called (if applicable); and police report number (if applicable). Write down the details about any specific

things that made you worry about the person's health or ability to care for the child. Law enforcement might not send an officer for a custody dispute during this emergency; they may prefer that you make a report online or by telephone.

Write down the names of third-party witnesses, and how to contact them. Document what happened. Save all the child's medical records. Take screen shots of communications. Take notes during conversations and consultations.



Remember that the **best interest of the child** (<https://texaslawhelp.org/faq/what-does-court-think-about-when-deciding-what-best-interest-child>) [14] is the standard the court must follow when it makes court orders about custody and visitation. Also, you have a duty to protect your child. If you have concerns about your child's health or safety, call the Child Abuse Hotline, 800-252-5400. For the latest information and resources for CPS cases, see the **Texas Children's Commission's COVID-19 web site** (<http://texaschildrenscommission.gov/reports-and-resources/covid-19-resources-related-to-cps-cases/>) [15].

Study your court orders to make sure you understand your rights and duties as to your children's health, safety, and welfare. TexasLawHelp's **final decree of divorce form** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [11] and **orders in suit affecting the parent child relationship** (<https://texaslawhelp.org/form/order-suit-affecting-parent-child-relationship-parent-custody-order-sapcr>) [16] include the typical rights and duties of a parent under the Texas Family Code.

I am afraid to send my child for visitation because of COVID-19. The **Texas Supreme Court's Seventh Emergency Order Regarding the COVID-19 State of Disaster** (https://texaslawhelp.org/sites/default/files/7th_emergency_order_regarding_covid-19_state_of_disaster.pdf)

[17] clarifies what to do about possession and access of children when shelter-in-place orders are in effect. Possession of and access to a child are not affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from a pandemic.

As long as your court orders say it's OK, you and the other parent or conservator

are free to agree to whatever possession and access and exchange methods works for your family.

There could be many reasons you do not want your child to go with the other parent during the coronavirus crisis.

Some examples:

- Someone in the household has been diagnosed with COVID-19;
- Someone in the household is not wearing a face covering or mask in public;
- Someone in the household might have been exposed to COVID-19;
- Social distancing is recommended but you think the other parent's social distancing practice is not good enough;
- There is someone especially vulnerable in the home, such as an elderly person or someone with a compromised immune system; or
- The child has been exposed to COVID-19 and might expose someone else in the other parent's household.



However, the court orders are still in effect unless you go back to court to modify them and the judge does modify them.

Look at your court orders to see what rights and duties you, as a parent, have.

These duties are usually the ones listed in **Texas Family Code 151.001**

(<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.151.htm>) [18] and

153.073 ([https://statutes.capitol.texas.gov/Docs/FA](https://statutes.capitol.texas.gov/Docs/FA/htm/FA.153.htm#153.073)

/htm/FA.153.htm#153.073) [19]and **153.074**

(<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.153.htm#153.074>) [20].

There are rights and duties you have at all times, and other rights and duties that you have when the child is with you.

Depending on the level of threat to the child, refusing to return the child might be a valid option if you think the child is in imminent danger. If possible, talk to a lawyer (<http://www.txaccess.org/hiring-an-attorney/>) [21] about your situation before taking any action. For general legal information, call the Access and Visitation hotline at 866-292-4636 (tel:18662924636) [22] between 1 p.m. and 5 p.m., Monday – Friday.

Talk with the other parent about your concerns, and try to work out a solution that allows the child to stay safe and healthy. If talking to the parent doesn't work and the danger to the child is immediate, call 9-1-1 (for an emergency) or CPS

at [\(800\) 252-5400 \(tel:18002525400\)](tel:18002525400) [23] (if you suspect the child is being abused or neglected). See [**Co-Parenting During COVID-19 - LANWT video \(https://texaslawhelp.org/article/co-parenting-during-covid-19-lanwt-video\)**](https://texaslawhelp.org/article/co-parenting-during-covid-19-lanwt-video) [8].

Dallas County family courts issued an [**order \(https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf\)**](https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf) [24] on March 23, 2020, explaining what to do under these circumstances (if you are in Dallas County). It may help you figure out how to move forward. Basically, if a parent, conservator, or child has been diagnosed with, or has reason to believe they or have been exposed to the COVID-19 virus, **you must tell the other parent about the diagnosis or exposure. Then, you must discuss the actions necessary to protect the child's safety and welfare.**

The other parent has the child but I think it is my turn for visitation. What can I do?

If you think the other parent is not going to let you see the child for visitation because of coronavirus concerns, you may want to read the following articles, bearing in mind that the coronavirus outbreak is a situation that has never occurred before and these options might not be appropriate.

- [**How to Enforce a Visitation Order \(https://texaslawhelp.org/article/how-enforce-visitation-order\)**](https://texaslawhelp.org/article/how-enforce-visitation-order) [25]
- [**What to Do When a Parent Refuses to Follow a Court Order and Return a Child \(https://texaslawhelp.org/article/what-do-when-parent-refuses-follow-court-order-and-return-child\)**](https://texaslawhelp.org/article/what-do-when-parent-refuses-follow-court-order-and-return-child) [26].

Call the [**Texas Access and Visitation Hotline \(https://texaslawhelp.org/directory/legal-resource/texas-access-and-visitation-hotline\)**](https://texaslawhelp.org/directory/legal-resource/texas-access-and-visitation-hotline) [27] for more information.

See also [**What to Do When a Parent Refuses to Follow a Court Order and Return a Child \(https://texaslawhelp.org/article/what-do-when-parent-refuses-follow-court-order-and-return-child\)**](https://texaslawhelp.org/article/what-do-when-parent-refuses-follow-court-order-and-return-child) [26].

My child's school extended its spring break or closed for the rest of the year because of coronavirus prevention measures. What does this mean?

Many Texas school districts have extended their spring breaks and changed their schedules in 2020 to try to keep coronavirus disease from spreading.

The Texas Supreme Court has issued an **order** (<https://www.txcourts.gov/media/1448109/209080.pdf>) [28], effective through September 30, 2020, clarifying that the standard possession order and originally published school schedule still apply.

So, for purposes of determining when a person's right to child visitation under a court-ordered possession schedule occurs, the original published school schedule shall control in all instances. Possession and access shall not be affected by the school's closure that arises from an epidemic or pandemic, including what is commonly referred to as the COVID-19 pandemic. The original school schedule as published should still be followed. The standard possession order, if that is what you have, is still in effect. See TexasLawHelp's **Coronavirus** (<https://texaslawhelp.org/article/coronavirus-covid-19>) [29] page. Note that the Texas Family Code is unclear about this particular situation.

Keep yourself up-to-date on what's going on in your county and in the school district where your child goes to school. You may need to check with the family courts in the county that issued your custody and visitation orders. You are best served by talking to a lawyer who practices in the county that issued your court orders.

Most standard possession orders let parents arrange for visitation schedules that work for their families if they mutually agree. But as the Texas Supreme Court has said, you may want to consider modifying your court orders to address situations like this. See **Changing a Custody, Visitation or Child Support Order** (<https://texaslawhelp.org/article/changing-custody-visitation-or-child-support-order>) [30]. TexasLawHelp does not yet have forms that contain language that applies to visitation during a pandemic. You may need to hire a lawyer to help you create appropriate orders. Consider **limited scope legal representation** (<https://texaslawhelp.org/article/limited-scope-representation>) [31].



What might happen if the other parent files a motion to enforce visitation?

If the other parent files a motion to enforce visitation, you should still file an answer. See **[How to File an Answer in a Family Law Case](https://texaslawhelp.org/article/how-file-answer-family-law-case)** (<https://texaslawhelp.org/article/how-file-answer-family-law-case>) [32]. To file online, go to **[E-File Texas](https://efile.txcourts.gov/ofswb)** (<https://efile.txcourts.gov/ofswb>) [33] and follow the instructions.



The other parent may ask the judge:

- for contempt (like fines, probation—even jail time);
- to be reimbursed for expenses incurred in attempting visitation that was ultimately denied;
- for additional parenting time/make-up parenting time to spend with the children.

If you are the parent filing the motion to enforce visitation, talk to a lawyer in your jurisdiction about whether or not the court is hearing enforcements during the coronavirus crisis.

I'm supposed to see my child Thursday nights. Do shelter-in-place orders prevent that?

The 6 p.m. – 8 p.m. Thursday evening visits that many parenting plans include is still legally binding. Show your orders to a lawyer to help you understand what applies in your situation. Read the Texas Supreme Court's order. You will not get in trouble for seeing your child even if there is a shelter-in-place order in effect.

The Texas Supreme Court has issued several orders making it clear that **shelter-in-place orders don't override your custody and visitation orders**. The most recent emergency order (**[the 18th](https://www.txcourts.gov/media/1448109/209080.pdf)** (<https://www.txcourts.gov/media/1448109/209080.pdf>) [28]) came out on June 29, 2020.

The other parent lives in a state that quarantines travelers from Texas (or vice versa).

When the conservators of a child live in different states and you have questions, it's best to talk to a lawyer who can look at your custody orders to help you figure

out what, specifically, is the best approach.

However, the Texas Supreme Court ordered that the terms of your suit affecting the parent-child relationship are unaffected by shelter-in-place orders **or other order restricting movement issued by a governmental entity that arises from an epidemic or pandemic (https://www.txcourts.gov/media/1448109/209080.pdf) [28]**. That means that your court-ordered visitation terms still apply.



Try to work out an agreement with the other parent. Look at **TxAccess.org (http://www.txaccess.org/) [6]** for cooperative **co-parenting (http://www.txaccess.org/co-parenting) [7]** ideas and tips. The State Supreme Court encourages working with the other parent. If you cannot come to an agreement with the other parent or conservator, talk to a lawyer.

Keep a copy of your court orders with you, along with a **copy of the Supreme Court's emergency orders (https://www.txcourts.gov/court-coronavirus-information/emergency-orders/) [3]** (or at least this link to it). Keep proof about why you could not send your child for visitation—if it is really not possible.

Whatever you decide, you need to have documentation about why you did it and what you did. It might be possible to build a defense, but you should talk to a lawyer. Take a look at the **Visitation Journal Template (https://texaslawhelp.org/form/visitation-journal-template) [13]** for help documenting incidents.

Things you will want to document include:

- the date of the scheduled visit;
- the time of the incident;
- the name of law enforcement officers involved (if applicable);
- law enforcement report number (if applicable); and
- the names of third-party witnesses and how to contact them.

Remember that the **best interest of the child (https://texaslawhelp.org/faq/what-does-court-think-about-when-deciding-what-best-interest-child) [14]** is the standard to follow.

Summer is here. What does this mean for visitation during a pandemic?

Unless your orders say something different or have been changed by a court since the coronavirus situation came up, you still need to do what your visitation orders say. Coronavirus and shelter-in-place orders are unlikely to affect summer visitation.

The Texas Supreme Court says that the standard possession order and originally published school schedule still apply. Show your particular orders to a lawyer to make sure you understand how to follow it. TexasLawHelp has general information about how visitation is supposed to work here: **[Child Visitation & Possession Orders \(https://texaslawhelp.org/article/child-visitation-possession-orders\)](https://texaslawhelp.org/article/child-visitation-possession-orders)** [34].

Keep yourself up-to-date on what's going on in your county and in the school district where your child goes to school. You may need to check with the family courts in the county that issued your custody and visitation orders. **You are best served by talking to a lawyer who practices in the county that issued your court orders.**

Most standard possession orders let parents arrange for visitation schedules that work for their families if they mutually agree. If you are having a hard time agreeing, you may find help through TxAcess.org. Legal Aid of Northwest Texas also put together a video question-and-answer session that talks about **[co-parenting during the coronavirus crisis \(https://texaslawhelp.org/article/co-parenting-during-covid-19-lanwt-video\)](https://texaslawhelp.org/article/co-parenting-during-covid-19-lanwt-video)** [8].

But as the Texas Supreme Court has said, you may want to consider modifying your court orders to address situations like this. See **[Changing a Custody, Visitation or Child Support Order \(https://texaslawhelp.org/article/changing-custody-visitation-or-child-support-order\)](https://texaslawhelp.org/article/changing-custody-visitation-or-child-support-order)** [30]. TexasLawHelp does not yet have forms that contain language that applies to visitation during a pandemic. You may need to hire a lawyer to help you create appropriate, custom orders. Consider **[limited scope legal representation \(https://texaslawhelp.org/article/limited-scope-representation\)](https://texaslawhelp.org/article/limited-scope-representation)** [31].



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Links

- [1] <https://texaslawhelp.org/directory/legal-resource/texaslawhelp>
- [2] <http://www.texaslawhelp.org/>
- [3] <https://www.txcourts.gov/court-coronavirus-information/emergency-orders/>
- [4] <https://www.dallascounty.org/Assets/uploads/docs/judge-jenkins/covid-19/03232020-AmendedOrder.pdf>
- [5] <https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf><https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf>
- [6] <http://www.txaccess.org/>
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- [11] <https://texaslawhelp.org/legal-help/legal-help-finder>
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- [13] <https://texaslawhelp.org/form/visitation-journal-template>
- [14] <https://texaslawhelp.org/faq/what-does-court-think-about-when-deciding-what-best-interest-child>
- [15] <http://texaschildrenscommission.gov/reports-and-resources/covid-19-resources-related-to-cps-cases/>
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- [17] https://texaslawhelp.org/sites/default/files/7th_emergency_order_regarding_covid-19_state_of_disaster.pdf
- [18] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.151.htm>
- [19] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.153.htm#153.073>
- [20] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.153.htm#153.074>
- [21] <http://www.txaccess.org/hiring-an-attorney/>
- [22] tel:18662924636
- [23] tel:18002525400
- [24] <https://www.dallascounty.org/Assets/uploads/docs/district-clerk/covid-19/Joint-statement-03.23.20.pdf>
- [25] <https://texaslawhelp.org/article/how-enforce-visitation-order>
- [26] <https://texaslawhelp.org/article/what-do-when-parent-refuses-follow-court-order->



and-return-child

[27] <https://texaslawhelp.org/directory/legal-resource/texas-access-and-visitation-hotline>

[28] <https://www.txcourts.gov/media/1448109/209080.pdf>

[29] <https://texaslawhelp.org/article/coronavirus-covid-19>

[30] <https://texaslawhelp.org/article/changing-custody-visitation-or-child-support-order>

[31] <https://texaslawhelp.org/article/limited-scope-representation>

[32] <https://texaslawhelp.org/article/how-file-answer-family-law-case>

[33] <https://efile.txcourts.gov/ofsweb>

[34] <https://texaslawhelp.org/article/child-visitation-possession-orders>

