

How to Enforce a Visitation Order

Texas Legal Services Center (<https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>) [1]

This article tells you about your options if you have a Texas court order that allows you to spend time with your children, and the other parent is not following the order. FORMS INCLUDED.

Background: In Texas, parental visitation time is often court-ordered.

Children do best when co-parents work together in a flexible and cooperative way to develop a parenting schedule that works best for the unique needs of the children and their co-parents. Research shows that a healthy relationship with you—as well as with the other parent—is vitally important to your child’s social skills, grades, and health.

Sometimes, co-parents cannot reach an agreement on what is best for their children. In those cases, the terms of the access and visitation court order (standard possession order, or “SPO”) become the schedule everyone must follow. If you have a Texas court order that clearly specifies your access and visitation rights, then a judge has already determined what he or she believes is in your child’s best interest.

If you have tried to resolve your co-parenting issues through other means, such as mediation, and the other parent continues to ignore the court’s instruction, then you can file a lawsuit and ask the court to penalize the other parent for their denial of your parental rights.

One of the most common problems noncustodial parents face is the denial of their parenting time by the custodial parent. If this is happening to you, there are certain things you must do first in order to file an enforcement lawsuit.

What laws control visitation enforcement?

Read the **law that governs enforcement actions**

(<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm>) [2]! If you are representing yourself, you—just like a lawyer—are expected to be familiar with the law.

Is your visitation order enforceable?

Before you can ask the court to enforce your visitation order, make sure the order is “clear, specific and unambiguous as to the duties and responsibilities of

the alleged violator.” **Ex Parte Slavin, 412 S.W. 2d 43 (Texas 1967)**
(http://www.leagle.com/decision/1967455412SW2d43_1449/EX%20PARTE%20SLAVIN) [3].

This means that your visitation order needs to clearly state a time, place, and date to exchange the children. Unfortunately, some orders contain language such as “by agreement of the parties” only, and do not contain precise, specific terms that are enforceable by the court. If your order is not enforceable, you may need to **modify** (**<https://texaslawhelp.org/family-divorce-children/toolkit/modification-i-need-change-custody-visitation-or-support-order>**) [4] or **clarify** (**<https://texaslawhelp.org/article/clarifying-visitation-orders-answers-common-questions>**) [5] your order to make it enforceable.



What are the main parts of a motion to enforce visitation?

When you file your enforcement lawsuit, **Texas Family Code chapter 157.002**
(<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm>) [2] requires the motion to include:

- The provisions of the order sought to be enforced (which part of the order they violated);
- The manner of the Respondent's alleged noncompliance (what the other parent did or did not do); and
- The request for relief by the movant (what you're asking the court to do for you).

Click here for the entire Visitation Enforcement Kit.

(<https://texaslawhelp.org/form/visitation-enforcement-kit>) [6]

How do you show the court which parts of the order you want enforced?

You may copy those provisions from the prior order, attach the prior order as an exhibit, and “incorporate by reference”—which means writing in the volume and page number of the prior order into your motion to enforce.

How do you show the court how and when the Respondent violated the orders?

Remember, you must show the “manner of the Respondent's alleged noncompliance for a denial of visitation.” You must attach evidence that

establishes a pattern of visitation denials to your Motion to Enforce. Be specific!

You need to show a **pattern** of denials by the co-parent. According to **Texas Family Code chapter 157.002** (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm#157.002>) [7], the motion must include the provision of the order sought to be enforced; the manner of the respondent's alleged noncompliance; and the request for relief by the movant.



The penalty for failing to follow a court order can include taking away a person's personal freedom. That means a judge can put someone in jail if there is a contempt finding. So, it is important to show that a person did violate the order by accident or mistake. For example, maybe there was mix-up about the right date for visitation. To establish a pattern you will need to have at least three properly documented violations of the order.

What evidence do I need?

In addition to your own testimony on what occurred, a judge will want to see something else that corroborates what you are saying. You can do this several ways:

1. the testimony of another witness;
2. through evidence such as a receipt from a nearby store that shows you were in the neighborhood on the right day at the right time, or
3. through a police report (with testimony from the officer, or a business records affidavit) that shows the same information.

What counts as a denial of visitation?

To enforce your visitation order and ask the court to hold the other parent in contempt, you must show that you were following the order *exactly* as it is written—and the other parent was not following it.

This means you must show up at the correct location on the correct date and time stated in your order. To be legally enforceable, it is not enough to show that the other parent sent you a text or left you a message telling you they would not be there for the exchange. You must go to the exchange location and make a record of your attempt to see your child.

If you followed the order and arrived at the exchange location on the right day and time and the other parent did not surrender the child to you, make sure to

write down exactly what happened in a **visitation journal** (<https://texaslawhelp.org/form/visitation-journal-template>) [8].

- For example: “I texted my ex to say I was coming to pick up my child at 6 p.m. There was no response. When I arrived at her house at 5:55 p.m., I knocked on the door and waited. No one came to the door. I waited 15 minutes and then went to the convenience store down the street and bought a soda.”)



Also write down the names of anyone who came along with you and saw the denial of visitation. You can attach these journal entries as exhibits to your motion to satisfy the “manner of alleged non-compliance.” If you bring someone with you, see if they'd be willing to testify in court about what happened when you tried to see your child.

How do I explain what I'm asking for in the petition to enforce?

In a court proceeding, what you are asking for is sometimes known as a **remedy** (<https://www.law.cornell.edu/wex/remedy>) [9] or **relief**. Only some types of relief are available when you are trying to enforce visitation. The types of relief available to a parent who has been denied visitation are listed in the **visitation enforcement kit forms** (https://texaslawhelp.org/sites/default/files/visitation_enforcement_kit_complete_october_2017_final.pdf) [10] (specifically the Motion to Enforce and Order) and in **Texas Family Code chapter 157** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm>) [11].

One of the types of relief is "contempt," which can mean:

- fines,
- community supervision (probation), or
- even jail time.

Other types of relief: You can be reimbursed for expenses that you incurred in attempting visitation that was ultimately denied, and the court can order additional parenting time/make-up time to spend with the children. If you do not ask for a specific type of relief in your motion, the judge cannot grant it to you. Be sure to look over the types of relief available to you for denial of visitation, and remember that the judge will be limited by what you ask for in your

pleadings (the documents you file with the court).

[Click here for the entire Visitation Enforcement Kit.](https://texaslawhelp.org/form/visitation-enforcement-kit)

<https://texaslawhelp.org/form/visitation-enforcement-kit> [6]



What is contempt?

When you file a Motion to Enforce for denial of visitation, you are asking the judge to punish the person who was ordered to perform some act that they have failed to do. This is called “constructive contempt.” Punishment for constructive contempt falls into two categories:

1. Criminal Contempt (or punitive contempt): This type of contempt punishes a person for disrespecting the dignity and the authority of the Court. Because of something they did, or failed to do, like deliberately ignoring the court's order, they are subject to criminal consequences like incarceration.
2. Civil Contempt (coercive contempt): The court uses this type of punishment to persuade the **contemnor** (<https://www.law.cornell.edu/wex/contemnor>) [12] to obey the previous order. This is often a money judgment or make-up visitation.

****Important note**** When you are requesting punishment for criminal contempt, make sure *not* to ask for punishment to exceed six months total for all violations. If you ask for more than six months, then the respondent is entitled to a jury trial. Jury trials are complicated, so in that case it would be better to be directly represented by an attorney.

Should I have the order to appear signed by a judge?

When contempt is sought or when a money judgment is sought, it is absolutely necessary that the Respondent is served with a Show Cause Notice and a Citation. The Citation is necessary to support a money judgment. These documents can be found **[here](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjqpO2E39XOAhVB22MKHQaBUcQFggcMAA&url=http%3A%2F%2Ftexaslawhelp.org%2Fresource%2Fvisitation-enforcement-)** (<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjqpO2E39XOAhVB22MKHQaBUcQFggcMAA&url=http%3A%2F%2Ftexaslawhelp.org%2Fresource%2Fvisitation-enforcement->

[kit%2Fdownload%2F6DA26B01-C8CE-4945-88DC-F5EC2EDE90D4.pdf&usg=AFQjCNHZ3tutj4dMmFiJDf-pJ2tL_nLZSg&sig2=hr8OzD2eAgW7GzShAy63LQ&bvm=bv.129759880,d.eWE\)](#) [13].

When you are at the courthouse to file your Motion to Enforce, **make sure** to follow the court coordinator's instructions and ask the judge to sign the Order to Appear. After the judge has signed this Order to Appear, make enough copies for yourself and all of the parties in your case.



Should I give the other side legal notice of the enforcement action?

If you are seeking to have someone held in contempt it is absolutely essential that the person has received actual notice of the contempt hearing. This means that the Respondent must be personally served with the Motion for Contempt containing the Show Cause Order.

Also, if you amend (update or change) the Motion to Enforce at any time after you have filed it but before the hearing, don't forget that the Respondent *must* be served with the amended pleading too.

Make sure to ask the clerk about how to properly serve the other party. The clerk will process the citation and may be able to give it to a constable. The constable will serve the Order to Appear and the Motion upon the person you are seeking to have found in contempt. If they can't do it themselves, the clerk should be able to tell you how to get the proper documents to the constable for service. After they have served the paperwork, the constable will file a return of citation with the clerk's office to show them that the person to be held in contempt was personally served.

****You cannot have a hearing on contempt until the Return of Citation has been on file with the court for at least 10 days.****

How should I prepare for the hearing?

To prepare yourself for the hearing:

- Talk to your witnesses.
 - Prepare questions for them, or have them prepare a statement to tell to the judge.
- Review the documentation that shows the judge your visitation has been denied.

- You will need the following items:
 - Order on Motion for Enforcement of Possession or Access
 - Capias

What if I don't include a "pattern" of enforceable denials in my Motion to Enforce?

In order to succeed when you file a Motion to Enforce Visitation Order, you will need to show a **pattern of denials** by the co-parent. According to **Texas Family Code chapter 157.002** (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm#157.002>) [7], the motion must include the provision of the order sought to be enforced, the manner of the respondent's alleged noncompliance, and the request for relief by the movant.

The penalty for failing to follow a court order can include taking away a person's personal freedom: a judge can put a person in jail if there is a contempt finding. So it is important to show that a person has not violated the order by accident or mistake. For example, maybe there was mix-up about the correct date for visitation. To establish a pattern you will need to have at least three properly documented violations of the order.

To avoid making this mistake, make sure to attach your documentation and include the denial information in the Motion to Enforce. The Texas Family Code requires the motion to include the portion of the order allegedly violated and each date of alleged contempt (**Texas Family Code chapter 157.002** (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm#157.002>) [7]). Providing the receipts or the police reports will clearly show the date of each alleged contempt.

What if I didn't get the judge to sign the Order to Appear?

When you are at the courthouse to file your Motion to Enforce, you must also schedule a date and time for the Enforcement hearing and have the judge sign an Order to Appear. If this is not signed by the judge, then the other parent cannot be found in contempt.

To avoid making this mistake: Before you go to the courthouse to file, it is wise to call the court's coordinator first to find out the procedure for your particular court.



- Explain that you're filing a Motion to Enforce, and you need to know :
 1. What the procedure is to get the judge to sign the Order to Appear, and
 2. What the procedure is to set the motion for a hearing.
- Follow the court coordinator's instructions to ask the judge sign the Order to Appear. Make sure and give the judge your Motion for Enforcement and Order to Appear
- After the judge signs the Order to Appear, make enough copies for yourself and all of the parties in your case. (The clerk will keep the original.)



The courthouse can be a confusing and intimidating place, especially if you are not familiar with the particular process and procedures you will be encountering. It can be very easy to forget a crucial step when you are under stress, so take your time and make sure to familiarize yourself with the building itself and the rules for your particular court. Calling the court's coordinator first will help you to know exactly which steps you need to take. Physically going to the courthouse beforehand and seeing what an enforcement hearing is like will help you to better prepare yourself and will answer some of the questions you may have about the process.

If you find that you did not have an Order to Appear signed by the judge, then the Respondent cannot be held in contempt. If you discover this mistake before the date of the hearing then you will need to have the Order to Appear signed by the judge and make sure the Respondent is personally served with the Order to Appear. Don't forget that you must still give the Respondent sufficient notice of the hearing.

Why is this important? The Texas Family Code says that you may be granted a default judgment (the court grants your requests made in the Motion to Enforce) and a capias can be issued for the arrest of a person who does not show up for court for a contempt hearing when they have been given proper notice to appear in court.

Texas Family Code chapter 157.066. Failure to Appear.

(<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm#157.066>) [14]

If a respondent who has been personally served with notice to appear at a hearing does not appear at the designated time, place, and date to respond to a

motion for enforcement of an existing court order, regardless of whether the motion is joined with other claims or remedies, the court may not hold the respondent in contempt but may, on proper proof, grant a default judgment for the relief sought and issue a *capias* for the arrest of the respondent.



Isn't it enough if I can prove the other parent said they wouldn't let me see the child?

Sometimes, custodial parents will say in advance that they won't be at the place of exchange or that they, or the children, have other plans.

But, attaching these texts or emails to the Motion to Enforce is not enough to show that the custodial parent actually violated the order! You must show that you (or your designated competent adult) were *there* at the time and place of exchange listed in the order. The custodial parent's defense to an enforcement action is that the other parent did not attempt visitation. So, if you lack proof that you made the attempt, the custodial parent could say that they were there (usually at the residence) and that you didn't show up for visitation.

If you have already filed your Motion to Enforce and you now feel like you may not have included sufficient evidence of legal denials, you must amend (make the changes to) your pleadings to include the needed documentation. This means you need to file another Motion to Enforce with a new title that says "Amended Motion to Enforce." You will also need to make sure that you serve the other parties to the suit with this amended pleading and make sure that you provided them enough time to prepare for the hearing. See more about giving sufficient notice [here \(https://texaslawhelp.org/article/how-enforce-visitation-order\)](https://texaslawhelp.org/article/how-enforce-visitation-order) [15].

If you do not have the required documentation, then you will need to wait until you have properly gathered it by documenting the denials at the time they occur *before* you can file the Motion to Enforce. This is what is required to get you into the courtroom. Once you are at the hearing and are giving testimony about denied visitation, you may tell the judge about other instances where the custodial parent has denied your parenting time. You can say whether or not, and why, you are concerned that they will continue to deny your visitation in the future.

VISITATION ENFORCEMENT KIT - Click below for free forms and

instructions.

[CLICK HERE \(HTTPS://TEXASLAWHELP.ORG/FORM/VISITATION-ENFORCEMENT-KIT\)](https://texaslawhelp.org/form/visitation-enforcement-kit)

[6]

Click the link below for a guided form for the Visitation Enforcement Kit.

[CLICK HERE \(HTTPS://TEXASLAWHELP.ORG/GUIDED-FORM/INTERACTIVE-GUIDED-FORM\)](https://texaslawhelp.org/guided-form/interactive-guided-form)

[16]

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Links

[1] <https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>

[2] <http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm>

[3] http://www.leagle.com/decision/1967455412SW2d43_1449/EX%20PARTE%20SLAVIN

[4] <https://texaslawhelp.org/family-divorce-children/toolkit/modification-i-need-change-custody-visitation-or-support-order>

[5] <https://texaslawhelp.org/article/clarifying-visitation-orders-answers-common-questions>

[6] <https://texaslawhelp.org/form/visitation-enforcement-kit>

[7] <http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.157.htm#157.002>

[8] <https://texaslawhelp.org/form/visitation-journal-template>

[9] <https://www.law.cornell.edu/wex/remedy>

[10] https://texaslawhelp.org/sites/default/files/visitation_enforcement_kit_complete_october_2017_final.pdf

[11] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm>

[12] <https://www.law.cornell.edu/wex/contemnor>

[13] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjqpO2E39XOAhVB22MKHQQaBUcQFggcMAA&url=http%3A%2F%2Ftexaslawhelp.org%2Fresource%2Fvisitation-enforcement-kit%2Fdownload%2F6DA26B01-C8CE-4945-88DC-F5EC2EDE90D4.pdf&usg=AFQjCNHZ3tutj4dMmFiJDf-pJ2tL_nLZSg&sig2=hr8OzD2eAgW7GzShAy63LQ&bvm=bv.129759880,d.eWE

[14] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.157.htm#157.066>

[15] <https://texaslawhelp.org/article/how-enforce-visitation-order>

[16] <https://texaslawhelp.org/guided-form/interactive-visitation-enforcement-kit>

