

## **Service and Issuance of Citation When the Other Side Is Incarcerated**

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

This article discusses serving incarcerated persons in Texas with citation and documents in a family law case.



### **How do you serve an incarcerated respondent?**

Each person named as a respondent in your family law petition (the form you file to start your case) **must** be served with the initial court papers. See **How to Serve the Initial Court Papers (Family Law)** (<https://texaslawhelp.org/article/how-serve-initial-court-papers-family-law>) [2].

In order to have an incarcerated respondent served with notice that you have filed suit, contact the sheriff or constable in the county where the respondent is incarcerated. You then can make arrangements to send the initial court papers to the sheriff or constable. In many Texas counties, the constable's office will be responsible for serving such papers, but in some counties, the sheriff will have this responsibility.

### **Is serving an incarcerated person difficult?**

Actually, the process does not differ much from when a respondent is *not* incarcerated. The important thing is knowing where they are and having an exact physical address.

### **What if the respondent has already filled out an answer or waiver of service?**

The incarcerated respondent does not have to be served with the initial court papers if he or she filled out and signed a Respondent's Original Answer form, or a Waiver of Service Only (Specific Waiver) form (the latter of which must be signed before a notary). Check with the facility to see if a notary is available. Incarcerated persons in Texas may be able to complete a waiver of service as an unsworn declaration. TexasLawHelp does not have a waiver of service

available that includes an inmate's unsworn declaration.

### **What if the incarcerated respondent will not sign an answer or waiver of service?**

If the incarcerated respondent will not sign an answer or waiver of service, then the initial court papers must be served on him or her where they are incarcerated.



### **What are the initial court papers?**

The initial court papers consist of a copy of the citation, a copy of the petition (the form you file to start your case), and copies of any other forms you filed with your petition.

### **How do you get the physical address of incarceration?**

If the respondent is in a county jail, then call the jail or sheriff's office in that county to get the physical address.

If the respondent is in prison, you may be able to use one of the following websites to get the address:

(1) If the respondent is in a Texas prison - **Texas Department of Criminal Justice Offender Search** (<https://offender.tdcj.texas.gov/OffenderSearch/>) [3]

(2) If the respondent is in a federal prison - **Federal Bureau of Prisons Inmate Locator** (<https://www.bop.gov/inmateloc/>) [4]

(3) If the respondent is being held by a U.S. Customs and Immigration Enforcement (ICE) - **ICE Detainee Locator** (<https://locator.ice.gov/odls/homePage.do>) [5]

### **What if you cannot find the respondent but know the institution where they are?**

You can call the warden of the prison or the administrator of the ICE detention center in order to make sure that the respondent is located at that institution. You will need to be certain of the physical address in order to serve the respondent.

### **How do you serve subsequent court papers?**

If the incarcerated respondent has a lawyer in the case in question, you should then serve any subsequent documents in the case to that lawyer. If the incarcerated respondent does not have a lawyer, you should contact the warden or top administrator of an ICE detention facility to find out the facility's procedure for getting documents to the incarcerated person.



### **Can an incarcerated person appear in court for hearings?**

Incarcerated people may get permission from the court and the institution in which they are incarcerated to appear in court for hearings. The court has a lot of discretion.

Of course, there should be adequate security for the protection of the petitioner. The court and the facility may determine that the respondent's testimony should be provided to the court by telephone, video, affidavit, deposition or some other means. If an incarcerated person has a lawyer, the lawyer may appear in court to speak on the inmate's behalf.

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### **Links**

- [1] <https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>
- [2] <https://texaslawhelp.org/article/how-serve-initial-court-papers-family-law>
- [3] <https://offender.tdcj.texas.gov/OffenderSearch/>
- [4] <https://www.bop.gov/inmateloc/>
- [5] <https://locator.ice.gov/odls/homePage.do>