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# ALTERNATIVES TO REMOVAL

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## Texas Family Code

### Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship Chapter 261. Alternative Response

In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child, DFPS may use an alternative response system to make the most effective use of resources to investigate and respond to cases. [Tex. Fam. Code § 261.3015](#). In addition, CPS may seek the following remedies and interventions as an alternative to removing a child.

- A. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse**
- B. Order for Required Participation**
- C. Protective Orders**
- D. Relinquishing Custody of Child to Obtain Certain Services**
- E. Child Safety Check Alert List**

## **A. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse**

Without asking for removal of the child, DFPS may file a petition for removal of the alleged perpetrator of child abuse from the household. [Tex. Fam. Code § 262.1015\(a\)](#).

DFPS can also:

- File for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order; or
- Assist a parent or other adult with whom a child resides in obtaining a protective order. [Tex. Fam. Code § 262.1015\(a-1\)](#).
- DFPS can also file for a protective order in certain cases under new Section 261.501, which provides for a protective order on its own or jointly with a parent or relative caregiver when DFPS is not otherwise authorized to seek a protective order under [Tex. Fam. Code § 82.002](#). [Tex. Fam. Code § 261.501](#).
- DFPS is also required to include in its petition for removal a statement as to whether there is a protective order in effect or an application pending under Title 4, Family Code,

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Chapter 7A, Code of Criminal Procedure, or an order for emergency protection under Article 17.292, Code of Criminal Procedure. The Department must also attach a copy of each order in effect, if a party to the suit or a child of a party was the applicant or victim and the other party was the respondent. If a copy of an order in effect is not available at the time of filing of the petition, the petition must state that a copy of the order will be filed with the court before any hearing. [Tex. Fam. Code § 102.008](#).

### **1. Court Orders**

The court may order:

- Removal of the alleged perpetrator; and
- The remaining parent to make a reasonable effort to monitor the residence and report any attempt of the alleged perpetrator to return to the residence. [Tex. Fam. Code § 262.1015\(e\)](#).

### **2. Expiration of the Temporary Restraining Order**

The order remains in effect for up to 14 days, unless the court grants an extension under [Tex. Fam. Code § 262.201\(a-5\)](#), [\(e\)](#), or [\(e-1\)](#). [Tex. Fam. Code § 262.1015\(d\)](#).

### **3. Violation of Temporary Restraining Order**

It is a Class A misdemeanor if either parent violates the order; if a parent has been previously convicted of the same offense, it is a third degree felony. [Tex. Fam. Code § 262.1015\(h\)](#).

### **4. Child With Sexually Transmitted Disease**

DFPS must take additional steps if the investigation reveals that a child younger than 11 has a sexually transmitted disease. DFPS must appoint a special investigator to assist in the investigation of the case and that investigator must follow [Tex. Fam. Code § 262.010](#), including coordinating with law enforcement. [Tex. Fam. Code § 262.010](#).

## **B. Order for Required Participation**

On request of DFPS, the court may require participation in services provided by DFPS.

### **1. Who May Be Ordered to Participate**

- Parent;
- Guardian;
- Managing conservator; or
- Other member of child's household. [Tex. Fam. Code § 263.203](#).

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## 2. Court May Order

Participation in the services DFPS provides or purchases to:

- Alleviate the effects of the abuse or neglect that has occurred;
- Reduce the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; and
- Permit the child and any siblings of the child to receive the services. [Tex. Fam. Code § 264.203\(a\)](#).

Such participation may be ordered whether the child resides in the home or has been removed from the home. [Tex. Fam. Code § 264.203\(b\)](#).

## 3. Failure to Comply

If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions in order to protect the health and safety of the child, including removal of the child. [Tex. Fam. Code § 264.203\(c\)](#).

## 4. If NOT Ordering Participation, Court Shall Specify Reasons in Writing

If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation. [Tex. Fam. Code § 264.203\(d\)](#).

# C. Protective Orders

DFPS is specifically authorized to file an application for a protective order. [Tex. Fam. Code § 82.002\(d\)\(2\)](#).

## 1. Temporary Ex Parte Protective Order

A temporary ex parte protective order can be used to:

- Direct a respondent to do or refrain from doing certain acts. [Tex. Fam. Code § 83.001\(b\)](#).
- Exclude a perpetrator from a residence under certain situations. [Tex. Fam. Code § 83.006](#).

The order is effective for up to 20 days. [Tex. Fam. Code § 83.002\(a\)](#). On an applicant's request or on the court's own order, the 20-day period may be extended for additional 20-day periods. [Tex. Fam. Code § 83.002\(b\)](#).

A temporary ex parte protective order may be issued without notice or hearing, but the court has the option to recess the hearing to contact the respondent by phone and provide the respondent with an opportunity to be present for the hearing. If the court chooses to recess

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to allow the respondent an opportunity to be present, the hearing must resume that same day without regard to the respondent's availability. [Tex. Fam. Code § 83.006\(c\)](#).

A temporary ex parte protective order can be enforced through a civil contempt proceeding, and certain provisions can be criminally enforced. [Tex. Fam. Code § 85.021](#); [Tex. Fam. Code § 85.022](#); and [Tex. Penal Code § 25.07\(a\)](#).

During the time a temporary ex parte protective order is in existence, it supersedes any other order under [Tex. Fam. Code Title 5](#) to the extent there is a conflict. [Tex. Fam. Code § 83.005](#).

## 2. Protective Order

Protective orders may be issued by a court if the court finds that family violence has occurred and is likely to occur in the future. [Tex. Fam. Code § 85.001](#).

A prosecuting attorney may not be precluded from representing a party in a proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) and DFPS in another action involving the party, regardless of whether the proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) occurs before, concurrently with, or after the other action involving the party. [Tex. Fam. Code § 81.0075](#).

An application for a protective order may be filed in:

- The county in which the applicant resides;
- The county in which the respondent resides; or
- Any county in which the family violence is alleged to have occurred. [Tex. Fam. Code § 82.003](#).

In a protective order, the court may, among other things:

- Prohibit a party from removing a child who is a member of the family or household from the possession of a person named in the order, or the jurisdiction of the court, [Tex. Fam. Code § 85.021\(1\)\(A\)\(i\)-\(ii\)](#);
- Order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence, including completion of a battering intervention and prevention program, [Tex. Fam. Code § 85.022\(a\)](#);
- Prohibit the person found to have committed family violence from:
  - committing family violence;
  - communicating:

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- directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
  - a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and
  - if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;
  - going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;
  - going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;
  - engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
  - possessing a firearm, unless the person is a peace officer, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. [Tex. Fam. Code § 85.022\(b\)](#).

There is a presumption that family violence has occurred and is likely to occur in the future if:

- The respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:
  - an offense under [Tex. Penal Code Title 5](#), for which the court has made an affirmative finding that the offense involved family violence under [Tex. Crim. Proc. Code Art. 42.013](#); or
  - an offense under [Tex. Penal Code Title 6](#).
- The respondent's parental rights with respect to the child have been terminated; and
- The respondent is seeking or attempting to seek contact with the child. [Tex. Fam. Code § 81.0015](#).

A protective order issued pursuant [Tex. Fam. Code, Title 4, Subtitle B](#) is effective for a period stated in the order, not to exceed two years; or if a period is not stated in the order,

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until the second anniversary of the date the order was issued. [Tex. Fam. Code § 85.025\(a\)](#). A court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court makes specific findings pursuant to [Tex. Fam. Code § 85.025\(a-1\)](#).

If a person who is subject of a protective order is confined or imprisoned on the date the protective order would expire under [Tex. Fam. Code § 85.025\(a\)](#) or [Tex. Fam. Code § 85.025\(a-1\)](#), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

- The first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or
- The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less. [Tex. Fam. Code § 85.025\(c\)](#).

Each protective order issued under [Tex. Fam. Code § 85.026\(a\)](#), including a temporary ex parte order, must contain the following:

**"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."**

**"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."**

**"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY [TEX. PENAL CODE § 1.07](#), ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER, TO POSSESS A FIREARM OR AMMUNITION."**

**"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."**

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Each protective order issued under [Tex. Fam. Code § 85.026\(c\)](#), including a temporary ex parte order must contain the following:

**"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."**

Each protective order must be:

- Served on the respondent, [Tex. Fam. Code § 85.041](#); and
- Delivered to law enforcement and the child's child care or school, as applicable, [Tex. Fam. Code § 85.042](#).

If a final protective order is rendered by a court other than the court in which a suit affecting the parent-child relationship is pending, the clerk of the court that rendered the final protective order shall:

- Inform the clerk of the court that a final order has been rendered; and
- Forward a copy of the final protective order to the court in which the suit is pending. [Tex. Fam. Code § 85.062\(c\)](#).

A protective order rendered by a court may be transferred to the court having jurisdiction over the suit affecting the parent-child relationship or of continuing, exclusive jurisdiction. [Tex. Fam. Code § 85.064](#).

If a suit affecting the parent-child relationship is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application in the court within which the suit is pending, or in the court within the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending. [Tex. Fam. Code § 85.062\(a\)](#).

An applicant for a protective order or an attorney representing an applicant may not be assessed any type of fee by a district or county clerk of the court or a sheriff, constable, or other public official or employee for the filing, serving, or entering of a protective order or for any other service. [Tex. Fam. Code § 81.002](#).

DFPS is also required to include in its petition for removal a statement as to whether there is a protective order in effect or an application pending under Title 4, Family Code, Chapter 7A, Code of Criminal Procedure, or an order for emergency protection under Article 17.292, Code of Criminal Procedure. The Department must also attach a copy of each order in effect, if a party to the suit or a child of a party was the applicant or victim and the other party was the respondent. If a copy of an order in effect is not available at the time of filing

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of the petition, the petition must state that a copy of the order will be filed with the court before any hearing. [Tex. Fam. Code § 102.008](#).

*Link here to Texas Center for the Judiciary Bench Book chapter on Contempt Proceedings:* <http://texaschildrenscommission.gov/media/83643/chapter-8-contempt-chapter-tcj-bench-book-2016.pdf>

### **3. Temporary Restraining Order**

A temporary restraining order is not criminally enforceable like temporary ex parte protective orders and protective orders, both of which are designed to protect people and provide a greater level of protection than temporary restraining orders.

### **4. Texas Family Violence Bench Book**

The Texas Office of Court Administration produced a reference manual in 2011, [the Texas Family Violence Bench Book](#), devoted entirely to the law on family violence in Texas<sup>2</sup> and updated [Texas Family Violence Bench Book chapters](#) in 2013.<sup>3</sup>

## **D. Relinquishing Custody of Child to Obtain Certain Services**

The Texas Family Code requires DFPS to make rules that prohibit the agency from making a finding of abuse or neglect against a parent in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child’s family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)](#).

### **1. Severe Emotional Disturbance Defined**

[Tex. Fam. Code § 261.001](#) defines “severe emotional disturbance” as a “mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person’s role or ability to function in family, school, or community activities.” [Tex. Fam. Code § 261.001\(9\)](#).

### **2. Option of Joint Managing Conservatorship Between Parent and DFPS**

Before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance to obtain mental health services for the child, DFPS must, unless it is not in the best interest of the child, discuss with the child’s parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS. [Tex. Fam. Code § 262.352](#).

## **E. Child Safety Check Alert List**

If at any time during an investigation of a report of child abuse or neglect to which DFPS has assigned the highest priority DFPS is unable to locate the child who is the subject of the report of abuse or neglect or the child’s family, DFPS shall notify the Department of Public Safety (DPS) that the location of the child and the child’s family is unknown. If DPS locates the child



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and the child's family, DPS shall notify DFPS of the location of the child and the child's family. [Tex. Fam. Code § 261.301\(i\)](#).

DPS shall maintain a child safety check alert list as part of the Texas Crime Information Center (TCIC) to help locate a child or the child's family for purposes of:

- Investigating a report of child abuse or neglect;
- Providing protective services to a family receiving family-based support services; or
- Providing protective services to the family of a child in the managing conservatorship of DFPS. [Tex. Fam. Code § 261.3022\(a\)](#).

If DFPS is unable to locate a child or the child's family for a purpose described in [Tex. Fam. Code § 261.3022\(a\)](#) after DFPS has attempted to locate the child for not more than 20 days, DFPS shall notify DPS that DFPS is unable to locate the child or the child's family. The notice must include the information required by [Tex. Fam. Code § 261.3022\(c\)\(1\)-\(10\)](#). [Tex. Fam. Code § 261.3022\(b\)](#).

On receipt of notice from DFPS, DPS shall notify TCIC to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:

- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report DFPS is attempting to investigate;
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by [Tex. Fam. Code § 261.3022\(a\)](#);
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by [Tex. Fam. Code § 261.3022\(a\)\(2\)](#) or [Tex. Fam. Code § 261.3022\(a\)\(3\)](#);
- If applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;
- The family's last known address;
- Any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;

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- The case number assigned by DFPS;
  - The DFPS dedicated law-enforcement telephone number for statewide intake;
  - The date and time when and the location where the child was last seen; and
  - Any other information required for entry as established by TCIC. [Tex. Fam. Code § 261.3022\(c\)](#).

On receipt of notice that a child has been located, TCIC shall remove the child and the child's family from the child safety check alert list. [Tex. Fam. Code § 261.3024\(c\)](#).

If law enforcement encounters a child or other person listed on the TCIC child safety check alert list, the law enforcement officer shall follow the procedures described by the [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3023](#).

If a peace officer locates a child or other person listed on the TCIC child safety alert list established under [Tex. Fam. Code § 261.3022](#), the officer shall:

- Immediately contact DFPS on the dedicated law enforcement telephone number for statewide intake;
- Request information from DFPS regarding the circumstances of the case involving the child or other person; and
- Request information from the child and the other person regarding the child's safety, well-being, and current residence. [Tex. Crim. Proc. Code Art. 2.272\(a\)](#).

The peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child. [Tex. Crim. Proc. Code Art. 2.272\(b\)](#).

If the peace officer determines that the circumstances described by [Tex. Fam. Code § 261.204](#) exist, the officer may take temporary possession of the child without a court order as provided by [Tex. Fam. Code § 261.204](#). If the peace officer does not take possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to DFPS. [Tex. Crim. Proc. Code Art. 2.272\(c\)](#).

A peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS shall report to TCIC that the child or other person has been located and to whom the child was released, as applicable. [Tex. Crim. Proc. Code Art. 2.272\(d\)](#).

If law enforcement encounters a person, including a child, listed on the TCIC child safety check alert list, the officer shall request information from the person or the child regarding the child's well-being and current residence. [Tex. Fam. Code § 261.3023\(a\)](#).

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A law enforcement officer who locates a child listed on the TCIC child safety check alert list shall report that the child has been located in the manner prescribed by [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3024\(a\)](#).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list and who reports the child's current address and other relevant information to DFPS under [Tex. Fam. Code § 261.3023](#) shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(a\)](#).

If DPS locates a child who has been placed on the child safety check alert list established under [Tex. Fam. Code § 261.3022](#) through a means other than information reported to DPS by a law enforcement officer under [Tex. Crim. Proc. Code Art. 2.272](#), DPS shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(b\)](#).