

## PUBLICATION UPDATE

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# Texas Family Law Practice and Procedure

Publication 705

Release 88

October 2023

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## HIGHLIGHTS

### TEXAS FAMILY LAW RELEASE 88

- This release updates the set to incorporate recent case law developments and amendments to the Texas Family Code enacted during the Regular Session of the 88th Legislature.

**In camera interview of child.** A trial court commits reversible error when it fails to conduct a properly-requested in camera interview with a child 12 years of age or older if the requesting parent would have pursued a jury trial but for the interview request and there were material fact issues for the jury to resolve [In Interest of J.N., 2023 Tex. LEXIS 509, \*5-\*15 (June 9, 2023)]. See Task B2, Determining Custody of Children, § B2.04[2][d].

**Lump-sum disability payments.** When a child receives a lump-sum payment as a result of the obligor's disability, the credit for the payment may be applied only to a child support arrearage in existence at the time the payment is made. See Task B3, Calculating Child Support, § B3.02[5][c].

**Unemployed child support obligors.** A court may order an unemployed or underemployed child support obligor to work or participate in job-skills training or job placement services. See Task B3, Calculating Child Support, § B3.03B.

**Reimbursement.** The statutes governing reimbursement have been revised to enhance clarity and to incorporate established case law. See Task B7, Dividing Community Property, § B7.04.

**Child custody evaluations.** A re-

buttal expert may testify and challenge the qualifications, methodology, or relevance of the information obtained by a person who has conducted a child custody evaluation, without having conducted his or her own child custody evaluation. See Task C3, Drafting the Petition and SAPCR, § C3.10A[2].

A child custody evaluator is required to create an audiovisual recording of each interview with a child who is the subject of a suit seeking conservatorship, possession, or access. See Task C3, Drafting the Petition and SAPCR, § C3.10A[7].

**Temporary orders.** Temporary orders may prohibit a party from tracking or monitoring personal property or a motor vehicle in the other party's possession by (1) using a tracking application on a personal electronic device or using a tracking device, or (2) physically following the other party or causing another to physically follow the other party. See Task C3, Drafting the Petition and SAPCR, §§ C3.13[1][a], C3.20[2][a]; Task C6, Obtaining Temporary Orders, § C6.03[2][a].

**Hearing on temporary orders.** If the court on its own motion refers a dissolution suit or a SAPCR to mediation while a motion for a temporary order is pending, the court may not postpone the initial hearing on the pending motion to a date that is later than the 30th day after the date set for the hearing. See Task C6, Obtaining Temporary Orders, § C6.06[1].

**Discovery.** In family law cases filed on or after September 1, 2023,

new discovery rules apply to testifying expert witnesses and disclosures. The new rules are in lieu of Texas Rules of Civil Procedure 194 and 195 and are set out in Title 6 of the Family Code. See Task E1, Conducting Discovery, §§ E1.10, E1.11.

**Guardian and attorney ad litem.** New provisions require a guardian ad litem and an attorney ad litem to take additional steps when a child is or may be placed in a residential treatment center. See Task H3, Conducting SAPCR Modification Proceedings, § H3.03[2][a], [c].

**Make-up visitation.** If a denial of court-ordered possession has resulted from a DFPS investigation that did not result in a finding of abuse or neglect, a court must order additional periods of possession to compensate. See Task H4, Establishing Grounds for Modification of Conservatorship, § H4.02[6A].

**Modification of child support for incarcerated obligor.** When a child support obligor is incarcerated, the Title IV-D agency may administratively adjust the obligor's child support obligations. See Task H5, Establishing Grounds for Modification of Child Support, § H5.01[3][a].

**Protective orders.** A court must now grant a protective order against family violence if it finds that family violence has occurred. Until September 1, 2023, a family violence finding encompassed two separate elements: that family violence had occurred *and* that family violence was likely to occur in the future. See Task P1, Determining Whether to Seek Protec-

tive Order, § P1.02[1].

A protective order may enjoin a party from tracking or monitoring personal property or a motor vehicle in the other party's possession by (1) using a tracking application on a personal electronic device or using a tracking device, or (2) physically following the other party or causing another to physically follow the other party. See Task P2, Following Procedure to Obtain Protective Order, § P2.08[2].

**Protective order forms.** Effective September 1, 2024, a person filing an application for a protective order and courts issuing temporary ex parte protective orders and final protective orders must use the standardized forms created by the Office of Court Administration of the Texas Judicial System. The forms will be available on the office's website. See Task P2, Following Procedure to Obtain Protective Order, §§ P2.01, P2.03, P2.08.

**Parentage.** The court may not delay an adjudication of parentage with respect to an individual over whom the court does have personal jurisdiction solely due to the lack of jurisdiction over another individual. See Task R3, Initiating Parentage Suit, § R3.04[3][a].

**Termination of parental rights.** In a DFPS case, the trial court may extend the mandatory one-year dismissal deadline if it finds that extraordinary circumstances exist and the extension is in the child's best interest. The Texas Supreme Court has held that these findings are man-

datory, but not jurisdictional, and as a result, a parent cannot complain for the first time on appeal that the trial court failed to make both findings when it granted an extension [In Interest of J.S., 2023 Tex. LEXIS 527, \*1–\*2 (June 16, 2023)]. See Task S2, Conducting Termination Suit, § S2.09[8][b][ii].

New grounds for termination of parental rights have been added to Family Code Section 161.001(b)(1): criminal solicitation of a minor under Penal Code Section 15.031, and online solicitation of a minor under Penal Code Section 33.021. See Task S3, Establishing Grounds for Termination, § S3.02[24].

In DFPS cases, when a court terminates parental rights under Family Code Section 161.001(b)(1), the court must set out in a separate section of its order its findings regarding DFPS's efforts to return the child to the parent or the court's waiver of the reasonable efforts requirement. See Task S5, Obtaining Final Order in Termination Suit, § S5.100[1][b].

**Adoption.** When placing a child for adoption, DFPS or a licensed child-placing agency may not set a maximum age for any prospective adoptive parent, but may consider the person's health and expected life span. See Task T1, Understanding Child Adoption, § T1.06.

The court may waive the adoption evaluation requirement in uncontested stepparent adoptions. See Task T4, Conducting Child Adoption Proceedings, § T4.03[1].

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# Texas Family Law Practice and Procedure

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Publication 705    Release 88

October 2023

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<input type="checkbox"/>	Title page thru xix . . . . .	Title page thru xxi
<input type="checkbox"/>	B1-5 thru B1-17 . . . . .	B1-5 thru B1-18.1
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## VOLUME 2

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**VOLUME 3**

**Revision**

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**Revision**

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