

## **Question**

Does a district judge in Texas have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing?

## **Answer (Texas)**

### **Short response**

A district judge in Texas generally does not have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing, with limited exceptions for specific emergency situations involving child safety or family violence where statutory requirements are still met.

### **Summary**

Under Texas Family Code, judges are generally required to hold hearings and make specific findings before ordering a litigant out of their home or temporarily altering custody arrangements. The statutes establish procedural safeguards requiring notice and hearing in most cases affecting the parent-child relationship, particularly when making temporary orders that impact significant rights such as home possession and child custody.

However, Texas law does provide limited exceptions for emergency situations. In cases involving immediate danger to a child's physical health or safety, or when family violence is present, a judge may issue temporary ex parte orders without a prior adversary hearing. Even in these emergency circumstances, the judge must still make specific findings based on affidavits or testimony, and procedural requirements such as prompt subsequent hearings are typically mandated to protect due process rights.

### **Background and Relevant Law**

#### **Statutory Framework for Temporary Orders in Family Cases**

Texas Family Code establishes specific procedures for issuing temporary orders in family law matters, particularly those affecting the parent-child relationship. These provisions delineate when a judge may make orders affecting custody and possession of a residence, with a strong emphasis on the requirements for notice, hearings, and findings.

The general rule under [Tex. Fam. Code § 105.001](#) is that temporary orders in a suit affecting the parent-child relationship require notice and a hearing before issuance: "Except as provided by Subsection (h), an order may not be rendered under Subsection (a), or except after notice and a hearing." This establishes the baseline requirement that a judge must conduct a hearing before issuing temporary orders that could affect custody or possession of a home.

Similarly, [Tex. Fam. Code § 109.001](#) reinforces this procedural requirement regarding temporary orders during the pendency of an appeal: "In a suit affecting the parent-child relationship, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable." The explicit requirement of "notice and hearing" underscores the legislature's intent that such significant orders not be issued without procedural safeguards.

[Tex. Fam. Code § 156.006](#) addresses temporary orders in modification suits, specifically restricting a court's ability to change the designation of the person with the right to determine a child's primary residence without meeting certain conditions. The statute requires that such an order must be "in the best interest of the child" and meet additional criteria, such as showing that "the child's present circumstances would significantly impair the child's physical health or emotional development." This demonstrates the high threshold that must be met before a court may temporarily alter custody arrangements, even after a hearing.

#### **Procedural Requirements for Excluding a Party from Residence**

Specifically regarding the exclusion of a party from their residence, [Tex. Fam. Code § 83.006](#) establishes strict procedural requirements. Before a court may issue a temporary ex parte order excluding a person from their residence, the statute requires:

1. The applicant must file "a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence";
2. The applicant must appear "in person to testify at a temporary ex parte hearing to justify the issuance of the order without notice"; and
3. The court must find that:
  - a. The applicant either currently resides on the premises or has resided there within the past 30 days;
  - b. The person to be excluded has committed family violence against a household member within the past 30 days; and
  - c. "There is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household."

These requirements make clear that even when excluding someone from their residence on an emergency basis without advance notice to them, the court must still hold an ex parte hearing, take testimony, and make specific findings based on evidence.

In a protective order context, [Tex. Fam. Code § 85.021](#) authorizes a court to "grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence" under certain conditions. While this statute does not explicitly mention the hearing requirement, it must be read in conjunction with other provisions of the Family Code that establish procedural requirements for protective orders.

#### **Emergency Exceptions for Child Protection**

Texas Family Code does provide specific exceptions to the general requirement for notice and hearing in child protection cases, but even these exceptions include requirements for findings and subsequent procedural steps.

[Tex. Fam. Code § 262.102](#) permits a court to issue a temporary order authorizing a governmental entity to take possession of a child without prior notice and hearing, but only if the court finds:

1. "There is an immediate danger to the physical health or safety of the child" or the child has been a victim of neglect or sexual abuse;
2. "Continuation in the home would be contrary to the child's welfare";
3. "There is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing";
4. The child would not be adequately protected by less restrictive measures;
5. Placement with a relative or designated caregiver was either refused, not possible due to time constraints, or would pose an immediate danger; and
6. "Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child."

Similarly, [Tex. Fam. Code § 262.105](#) allows a court to issue a temporary restraining order for the removal of an alleged perpetrator from a child's home without an adversary hearing if certain conditions are met. The petition must state facts sufficient to satisfy the court that:

1. "There is an immediate danger to the physical health or safety of the child" or the child has been a victim of sexual abuse;
2. "There is no time, consistent with the physical health or safety of the child, for an adversary hearing";
3. "The child is not in danger of abuse from a parent or other adult with whom the child will continue to reside";
4. The parent or other adult with whom the child will continue to reside is likely to make reasonable efforts to monitor the residence and report any attempt by the alleged perpetrator to return; and
5. "The issuance of the order is in the best interest of the child."

[Tex. Fam. Code § 261.503](#) also provides for temporary ex parte orders in child protection cases: "If the court finds from the information contained in an application for a protective order that there is an immediate danger of abuse or neglect to the child, the court, without further notice to the respondent and without a hearing, may enter a temporary ex parte order for the protection of the child." However, this provision still requires the court to make a finding of "immediate danger" based on the application.

For these emergency orders, [Tex. Fam. Code § 262.201](#) mandates that "a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity," unless an extension is granted. This ensures that any emergency action taken without a full hearing is promptly reviewed through proper adversarial proceedings.

### **Requirements for Findings in Child Protection Cases**

Even when emergency actions are permissible, Texas law requires specific findings. [Tex. Fam. Code § 261.504](#) states that at the close of a hearing on an application for a protective order, "the court shall find whether there are reasonable grounds to believe that" the child is a victim of abuse or neglect or has a history of being abused or neglected, and whether there is a threat of immediate or continued abuse or neglect, among other potential threats.

Similarly, [Tex. Fam. Code § 263.202](#) requires the court to make specific findings at status hearings regarding whether the service plan adequately ensures reasonable efforts to enable the child's parents to provide a safe environment and whether the parents understand the potential consequences of failing to provide such an environment.

### **Procedural Safeguards Following Emergency Removal**

When a child is taken into possession without a court order in an emergency, [Tex. Fam. Code § 262.105](#) requires the person taking possession to:

1. "File a suit affecting the parent-child relationship";
2. "Request the court to appoint an attorney ad litem for the child"; and
3. "Request an initial hearing to be held by no later than the first business day after the date the child is taken into possession."

These requirements ensure that even emergency actions without prior judicial approval are quickly brought before a court for review.

### **Temporary Emergency Jurisdiction**

In interstate custody matters, [Tex. Fam. Code § 152.204](#) provides that "A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." This provision allows Texas courts to exercise emergency jurisdiction in certain situations, but does not specifically address whether a hearing or findings are required.

## **Analysis**

### **General Rule: Notice and Hearing Required**

The Texas Family Code establishes a clear general rule that temporary orders affecting significant rights like home possession and child custody require notice and a hearing. This is explicitly stated in multiple provisions, including [Tex. Fam. Code § 105.001](#) and [Tex. Fam. Code § 109.001](#). These provisions reflect the fundamental principle of due process—that individuals should have notice and an opportunity to be heard before being deprived of significant rights.

When considering whether a district judge has jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing, the answer is generally no. The statutory framework consistently requires both procedural elements (notice and hearing) and substantive elements (specific findings) before such significant actions can be taken.

## Limited Emergency Exceptions

However, Texas law does recognize certain emergency situations where the immediate protection of a child or family member may necessitate action before a full adversary hearing can be held. These exceptions are narrowly defined and still require judicial findings, even if made on an ex parte basis.

For example, [Tex. Fam. Code § 262.102](#) allows for emergency orders authorizing possession of a child without prior notice and hearing, but the court must still make specific findings regarding immediate danger, lack of time for a hearing, and the inadequacy of less restrictive measures. Similarly, [Tex. Fam. Code § 262.1015](#) permits temporary restraining orders removing an alleged perpetrator from a child's home without an adversary hearing, but again requires specific findings.

Importantly, these emergency provisions still require the court to make findings based on evidence—typically in the form of affidavits or testimony. [Tex. Fam. Code § 83.006](#) explicitly requires both a sworn affidavit and in-person testimony at an ex parte hearing before a judge can order someone excluded from their residence. Therefore, while the full adversary hearing may be postponed in emergency situations, some form of judicial finding based on evidence is still required.

## Procedural Safeguards in Emergency Situations

Even when emergency action is permitted, Texas law includes significant procedural safeguards to ensure that the affected parties receive due process. [Tex. Fam. Code § 262.201](#) mandates that a full adversary hearing be held within 14 days after a child is taken into possession by a governmental entity. [Tex. Fam. Code § 262.105](#) requires that when a child is taken into possession without a court order, an initial hearing must be requested by the next business day.

These provisions reflect a balance between the need for immediate action to protect vulnerable individuals and the importance of procedural due process. While emergency action may be taken without a prior adversary hearing, such action is temporary and must be promptly reviewed through proper judicial proceedings.

## Required Findings Even in Emergency Situations

It is crucial to note that even in emergency situations, Texas law does not permit a judge to act without making findings. The statutes consistently require specific findings, whether based on affidavits, applications, or ex parte testimony. [Tex. Fam. Code § 261.503](#), for example, permits temporary ex parte orders only if "the court finds from the information contained in an application for a protective order that there is an immediate danger of abuse or neglect to the child."

Similarly, [Tex. Fam. Code § 262.102](#) requires the court to find specific factors such as immediate danger, lack of time for a hearing, and the inadequacy of less restrictive measures before issuing an emergency order. These requirements ensure that even emergency action is based on specific factual findings rather than arbitrary decisions.

## Marriage Dissolution Context

In the context of marriage dissolution, procedural requirements are also emphasized. The document titled "Marriage Dissolution" dated May 5, 2022, indicates that a hearing is required to determine whether temporary orders, such as exclusive use of a residence, should be granted. The document lists among the purposes of the hearing: "Petitioner should be awarded the exclusive use and possession of the residence located at [street address, city, state]." This further supports the conclusion that a hearing is typically required before ordering a litigant out of their home.

## Exceptions and Caveats

### Child Protection Emergency Powers

The most significant exception to the general requirement for notice and hearing involves emergency situations where a child's safety is at immediate risk. As discussed above, [Tex. Fam. Code § 262.102](#), [Tex. Fam. Code § 262.1015](#), and [Tex. Fam. Code § 261.503](#) all provide for emergency action without a prior adversary hearing in certain child protection cases.

However, these exceptions are narrowly defined and still require judicial findings. Furthermore, they apply primarily to governmental entities seeking to protect children, rather than to private disputes between parents or other individuals.

### Temporary Emergency Jurisdiction

[Tex. Fam. Code § 152.204](#) provides for temporary emergency jurisdiction in certain interstate custody matters. This provision allows a Texas court to exercise jurisdiction when necessary to protect a child in an emergency, even if another state would normally have jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The secondary material "[Applying the UCCJEA in Family Law](#)" notes that "the court with emergency jurisdiction can only make a temporary order" and "that temporary order must specify a period reasonably calculated to allow a movant to then seek further orders from the court that has jurisdiction." This underscores the temporary nature of emergency jurisdiction and the expectation that proper proceedings will follow in the court with primary jurisdiction.

### Family Violence Protective Orders

In cases involving family violence, [Tex. Fam. Code § 83.006](#) provides a mechanism for excluding a person from their residence through a temporary ex parte order. However, this provision still requires both a sworn affidavit and in-person testimony at an ex parte hearing, as well as specific judicial findings regarding the applicant's residence, recent family violence, and the likelihood of future violence.

## Conclusion

Based on the provided statutory materials, a district judge in Texas generally does not have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing. The Texas Family Code establishes clear procedural requirements for such significant actions, typically including both notice and hearing requirements as well as the necessity for specific judicial findings.

Limited exceptions exist for emergency situations, particularly those involving immediate danger to a child's physical health or safety or situations of family violence. However, even in these emergency situations, the judge must still make specific findings based on evidence, typically in the form of affidavits or testimony. Furthermore, these emergency actions are temporary and must be promptly followed by proper adversarial proceedings.

The statutory framework reflects a balance between protecting vulnerable individuals in emergency situations and ensuring procedural due process for all parties involved. While immediate action may sometimes be necessary without a full adversary hearing, such action must be based on specific findings and subject to prompt judicial review.

In summary, while Texas law does provide for emergency action in certain limited circumstances, it does not authorize a district judge to order a litigant out of their home and temporarily divest them of custody without making any findings or holding any form of hearing. At minimum, specific findings based on evidence are required, and in most cases, some form of hearing—whether ex parte or with full notice to all parties—must be held before such significant rights are affected.

## Legal Authorities

### [Tex. Fam. Code § 152.204 Tex. Fam. Code § 152.204 Temporary Emergency Jurisdiction](#)

#### Extract

*A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.*

#### Summary

A Texas court can exercise temporary emergency jurisdiction in child custody matters if the child is present in Texas and there is an emergency situation, such as abandonment or a threat of mistreatment or abuse to the child or their family. This suggests that in such emergency situations, a court may have the authority to make immediate decisions regarding custody without a prior hearing or findings, to protect the child.

### [Tex. Fam. Code § 261.504 Tex. Fam. Code § 261.504 Required Findings; Issuance of Protective Order](#)

#### Extract

*At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that: the child: (A) is a victim of abuse or neglect; or (B) has a history of being abused or neglected; and there is a threat of: (A) immediate or continued abuse or neglect to the child; (B) someone illegally taking the child from the home in which the child is placed; (C) behavior that poses a threat to the caregiver with whom the child is placed; or (D) someone committing an act of violence against the child or the child's caregiver.*

#### Summary

A district judge in Texas must hold a hearing and make specific findings regarding the presence of abuse or neglect, or the threat thereof, before issuing a protective order. This implies that a judge cannot order a litigant out of their home or divest them of custody without making such findings or holding a hearing.

### [Tex. Fam. Code § 263.202 Tex. Fam. Code § 263.202 Status Hearing; Findings](#)

#### Extract

*Except as otherwise provided by this subchapter, a status hearing shall be limited to matters related to the contents and execution of the service plan filed with the court. The court shall review the service plan that the department filed under this chapter for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether: a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child; the child's parents have reviewed and understand the plan and have been advised that unless the parents are willing and able to provide the child with a safe environment, even with the assistance of a service plan, within the reasonable period of time specified in the plan, the parents' parental and custodial duties and rights may be subject to restriction or to termination under this code or the child may not be returned to the parents.*

#### Summary

A status hearing is required to review the service plan related to the child's placement and that the court must make findings regarding the plan's adequacy and the parents' understanding of it. This implies that the court must hold a hearing and make specific findings before making decisions that could affect parental rights or custody. Therefore, it suggests that a district judge would not have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing.

### [Tex. Fam. Code § 262.201 Tex. Fam. Code § 262.201 Full Adversary Hearing; Findings of the Court](#)

## **Extract**

*In a suit filed under Section FAMILY CODE 262.101 or FAMILY CODE 262.105, unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e) or (e-1).*

## **Summary**

In cases where a child is taken into possession by a governmental entity, a full adversary hearing must be held within 14 days unless an extension is granted. This suggests that a hearing is required before a court can make determinations regarding custody or possession of a child. The passage implies that findings must be made during this hearing process, which is necessary for the court to order a litigant out of their home or divest them of custody.

### [Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 Temporary Orders Before Final Order](#)

## **Extract**

*Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. Except as provided by Subsection (h), an order may not be rendered under Subsection (a), , or except after notice and a hearing. ... (h) An order under Subsection (a) may be rendered without notice and an adversary hearing if the order is an emergency order sought by a governmental entity under Chapter 262.*

## **Summary**

Generally, temporary orders, including those affecting custody, require notice and a hearing. However, there is an exception for emergency orders sought by a governmental entity under Chapter 262, which can be rendered without notice and an adversary hearing. This suggests that in non-emergency situations, a district judge would not have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing.

### [Tex. Fam. Code § 262.1015 Tex. Fam. Code § 262.1015 Removal of Alleged Perpetrator; Offense](#)

## **Extract**

*A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse; there is no time, consistent with the physical health or safety of the child, for an adversary hearing; the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child; the parent or other adult with whom the child will continue to reside in the child's home is likely to: (A) make a reasonable effort to monitor the residence; and (B) report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence; and the issuance of the order is in the best interest of the child.*

## **Summary**

A court in Texas can issue a temporary restraining order to remove an alleged perpetrator from a child's home without holding an adversary hearing if certain conditions are met. These conditions include immediate danger to the child's physical health or safety, lack of time for a hearing, and the best interest of the child. This suggests that a district judge does have jurisdiction to order a litigant out of their home under these specific circumstances.

### [Tex. Fam. Code § 109.001 Tex. Fam. Code § 109.001 Temporary Orders During Pendency of Appeal](#)

## **Extract**

*In a suit affecting the parent-child relationship, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable.*

## **Summary**

A court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal, but it specifies that this can only be done "after notice and hearing." This implies that a district judge does not have jurisdiction to order a litigant out of their home and temporarily divest them of custody without making findings or holding a hearing, as the requirement for notice and hearing is explicitly stated.

### [Tex. Fam. Code § 261.503 Tex. Fam. Code § 261.503 Temporary Ex Parte Order](#)

## **Extract**

If the court finds from the information contained in an application for a protective order that there is an immediate danger of abuse or neglect to the child, the court, without further notice to the respondent and without a hearing, may enter a temporary ex parte order for the protection of the child.

## Summary

A district judge in Texas does have the jurisdiction to issue a temporary ex parte order without a hearing if there is an immediate danger of abuse or neglect to a child. This order can be made without further notice to the respondent, which implies that the judge can take such actions as ordering a litigant out of their home and temporarily divesting them of custody if it is necessary for the protection of the child.

### [Tex. Fam. Code § 156.006 Tex. Fam. Code § 156.006 Temporary Orders](#)

#### Extract

*While a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of creating a geographic area, or changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child and: the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months; or the child is 12 years of age or older and has expressed to the court in chambers as provided by Section FAMILY CODE 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child.*

## Summary

A district judge in Texas does have jurisdiction to issue temporary orders in suits for modification. However, the judge cannot render a temporary order that changes the designation of the person with the exclusive right to designate the primary residence of the child unless specific conditions are met. These conditions include the necessity of the order for the child's best interest due to significant impairment of the child's physical health or emotional development, voluntary relinquishment of primary care by the designated person for more than six months, or the child's expressed preference if they are 12 years or older. Additionally, the person filing for such an order must provide an affidavit with facts supporting the allegation, and the court must determine the adequacy of these facts before scheduling a hearing.

### [Tex. Fam. Code § 262.102 Tex. Fam. Code § 262.102 Emergency Order Authorizing Possession of Child](#)

#### Extract

*Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section FAMILY CODE 105.001(a) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse; continuation in the home would be contrary to the child's welfare; there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section FAMILY CODE 262.1015 or FAMILY CODE 262.1016 or a protective order issued under Title 4; placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264: (A) was offered but refused; (B) was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or (C) would pose an immediate danger to the physical health or safety of the child; and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.*

## Summary

A district judge in Texas can issue a temporary order for the conservatorship of a child without prior notice and a hearing if certain conditions are met. These conditions include an immediate danger to the child's physical health or safety, the child's welfare being at risk if they remain in the home, and the lack of time for a full adversary hearing due to the emergency nature of the situation. The passage outlines specific criteria that must be satisfied for such an order to be issued, indicating that findings must be made even if a hearing is not held.

### [Tex. Fam. Code § 83.006 Tex. Fam. Code § 83.006 Exclusion of Party From Residence](#)

#### Extract

*Subject to the limitations of Section FAMILY CODE 85.021, a person may only be excluded from the occupancy of the person's residence by a temporary ex parte order under this chapter if the applicant: files a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence; and appears in person to testify at a temporary ex parte hearing to justify the issuance of the order without notice. Before the court may render a temporary ex parte order excluding a person from the person's residence, the court must find from the required affidavit and testimony that: the applicant requesting the excluding order either resides on the premises or has resided there within 30 days before the date the application was filed; the person to be excluded has within the 30 days before the date the application was filed committed family violence against a member of the household; and there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household.*

## Summary

Conditions under which a district judge in Texas can issue a temporary ex parte order to exclude a person from their residence. It specifies that a sworn affidavit and in-person testimony are required, and the court must make specific findings regarding the applicant's residence, recent family violence, and the likelihood of future violence. This indicates that a judge cannot order a litigant out of their home without making findings or holding a hearing, as these steps are necessary prerequisites.

#### [Tex. Fam. Code § 85.021 Tex. Fam. Code § 85.021 Requirements of Order Applying to Any Party](#)

##### **Extract**

*In a protective order, the court may: ... grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence: (A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession; (B) is owned or leased by the party retaining possession; or (C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence; provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;*

##### **Summary**

A district judge in Texas has the authority to issue protective orders that can include granting exclusive possession of a residence to one party and directing another party to vacate the residence. Additionally, the court can provide for the possession of and access to a child. This suggests that a judge can order a litigant out of their home and temporarily divest them of custody as part of a protective order. However, the passage does not specify whether findings or a hearing are required before such an order is made.

#### [Tex. Fam. Code § 262.101 Tex. Fam. Code § 262.101 Filing Petition Before Taking Possession of Child](#)

##### **Extract**

*An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse; continuation in the home would be contrary to the child's welfare; there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section FAMILY CODE 262.1015 or FAMILY CODE 262.1016 or a protective order issued under Title 4; placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264: (A) was offered but refused; (B) was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or (C) would pose an immediate danger to the physical health or safety of the child; and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.*

##### **Summary**

A district judge in Texas can order the removal of a child from their home without prior notice and a hearing if certain conditions are met. These conditions include an immediate danger to the child's physical health or safety, or if the child has been a victim of neglect or abuse. The affidavit must demonstrate that there is no time for a full adversary hearing and that reasonable efforts were made to prevent the removal. This indicates that under specific emergency circumstances, a judge can make such an order without a hearing.

#### [Tex. Fam. Code § 262.105 Tex. Fam. Code § 262.105 Filing Petition After Taking Possession of Child In Emergency](#)

##### **Extract**

*When a child is taken into possession without a court order, the person taking the child into possession, without unnecessary delay, shall: file a suit affecting the parent-child relationship; request the court to appoint an attorney ad litem for the child; and request an initial hearing to be held by no later than the first business day after the date the child is taken into possession.*

##### **Summary**

When a child is taken into possession without a court order, there are specific procedural requirements that must be followed, including filing a suit, appointing an attorney ad litem, and requesting an initial hearing by the next business day. This suggests that there are procedural safeguards in place to ensure that a hearing is held promptly, which implies that a district judge would not have jurisdiction to order a litigant out of their home and divest them of custody without making findings or holding a hearing, except in emergency situations where these procedures are followed.

#### [Applying the UCCJEA in Family Law](#)

## **Extract**

*The second instance is where there is another court that has seized jurisdiction under sections 201–203 and has issued an order. Then the court with emergency jurisdiction can only make a temporary order. That temporary order must specify a period reasonably calculated to allow a movant to then seek further orders from the court that has jurisdiction.*

## **Summary**

A court with emergency jurisdiction can issue a temporary order, but it must specify a period for seeking further orders from the court with proper jurisdiction. This suggests that while a temporary order can be made, it is not without conditions and must be followed by further proceedings in the appropriate jurisdiction. This implies that a district judge in Texas may have limited jurisdiction to issue temporary orders in emergency situations, but these orders are not final and require further judicial proceedings.

## [Marriage Dissolution](#)

**Texas Small-Firm Practice Tools. Volume 1-2 - James Publishing - Cindy Stormer - 2022-05-05**

## **Extract**

*The purpose of the hearing is to determine whether, while this case is pending: 1. The preceding temporary restraining order should be made a temporary injunction pending final hearing. 2. The additional temporary injunction prayed for should be granted. 3. Petitioner should be awarded the exclusive use and possession of the residence located at [street address, city, state]. [List any other property Petitioner should be exclusively awarded.]*

## **Summary**

A hearing is required to determine whether temporary orders, such as a temporary injunction or exclusive use of a residence, should be granted while a case is pending. This suggests that a district judge in Texas would need to hold a hearing to make such determinations, implying that findings and a hearing are necessary before ordering a litigant out of their home or temporarily divesting them of custody.

This memo was compiled by Vincent AI based on vLex materials available as of May 17, 2025. [View full answer on vLex](#)