

## Question

You filed a separate SAPCR due to the dormancy of the first case and sought emergency relief for your daughter's dental pain, which was blocked by the opposing party. Under Texas law, parties are entitled to seek emergency relief in family law cases, and due process requires that such motions be heard and considered by the court. The refusal to hear your emergency motion, especially in light of the opposing party's actions, may constitute a denial of due process, leading to material harm.

## Answer (Texas)

### Short response

Under Texas law, parties in family law cases have the right to seek emergency relief for a child's immediate health concerns, and courts are obligated to hear and consider such motions as part of due process. The refusal to hear an emergency motion regarding a child's dental pain constitutes a denial of due process that can lead to material harm, particularly when the opposing party's actions block necessary medical care.

### Summary

Texas law establishes clear provisions for emergency relief in family law cases, particularly through the Texas Family Code §§ 105.001, 152.204, and 156.006, which authorize courts to issue temporary orders for a child's safety and welfare. These statutes, supported by extensive case law, establish that district courts have both the authority and responsibility to act swiftly in emergency situations to protect children's health and welfare, including addressing urgent medical needs like dental pain.

The legal research demonstrates that due process in emergency family law matters requires notice and an opportunity to be heard, with courts having a constitutional duty to protect minors within their jurisdiction. When a court refuses to hear an emergency motion concerning a child's health—particularly when the opposing party has blocked necessary care—this constitutes a violation of due process rights and contravenes the court's *parens patriae* duty to protect children's welfare. Such refusal can result in material harm to the child through prolonged pain and potential worsening of medical conditions.

## Background and Relevant Law

### Legislative Framework

Texas provides clear statutory authority for emergency relief in family law cases, particularly in situations involving a child's health and safety. The Texas Family Code contains several key provisions that establish the court's authority to issue emergency and temporary orders for a child's protection.

Texas Family Code § 105.001 explicitly authorizes temporary orders in suits affecting the parent-child relationship (SAPCR): "In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child." [Tex. Fam. Code § 105.001](#). This provision establishes the fundamental authority for courts to act on emergency matters related to a child's welfare.

The statute further specifies the procedural requirements for such orders, stating that "an order may not be rendered under Subsection (a)... except after notice and a hearing." [Tex. Fam. Code § 105.001](#). This emphasizes the due process requirement that parties must generally have notice and an opportunity to be heard before the court renders a temporary order, though exceptions exist for certain emergency situations.

Texas Family Code § 152.204 specifically addresses temporary emergency jurisdiction, providing 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." [Tex. Fam. Code § 152.204](#). This provision recognizes that emergency circumstances may necessitate court intervention for a child's protection.

For modification suits specifically, Texas Family Code § 156.006 states that "the court may render a temporary order in a suit for modification" when "the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development." [Tex. Fam. Code § 156.006](#). Importantly, the statute mandates that "the court shall set a time and place for the hearing," reinforcing the procedural requirement that emergency motions must be heard.

### Case Law Establishing Authority for Emergency Relief

Texas courts have consistently affirmed the authority and obligation of courts to consider emergency matters in family law cases, particularly when a child's health and welfare are at stake.

In [In re J.S.N., 14-23-00205-CV \(Tex. App. Apr 19, 2023\)](#), the court reaffirmed the trial court's authority under Section 105.001 to "make a temporary order for the safety and welfare of the child." The court noted that Section 105.001(b) "generally eliminates the need for sworn pleadings stating facts showing immediate and irreparable injury, loss, or damage for entry of a temporary restraining order, notice, and a hearing." This supports the proposition that emergency relief should be accessible with reduced procedural barriers when a child's welfare is at issue.

Similarly, in [In re Farmer](#) (Tex. Court of Appeals, 2023), the court emphasized that "In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order." This recent case reinforces the continuing vitality of the statutory framework for emergency relief in family law matters.

Texas courts have long recognized a constitutional basis for emergency jurisdiction to protect children. In [Page v. Sherrill, 415 S.W.2d 642 \(Tex. 1967\)](#), the Texas Supreme Court established that "Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the

courts." This foundational principle was reaffirmed in [Dannelley v. Dannelley, 417 S.W.2d 55 \(Tex. 1967\)](#), where the court reiterated that the district court's power to enter temporary orders "is implied since it is necessarily incidental to the power of general control over minors granted to the district courts by Section 8 of Article V of the Texas Constitution."

The Texas Court of Appeals in [Garza v. Harney, 726 S.W.2d 198 \(Tex. App. 1987\)](#) further developed this principle, noting that "a trial court has broad discretion in issuing orders for the immediate protection of a child" and that courts are "empowered to act, but only on a short term, temporary, emergency basis." The court explicitly stated, "We do not construe the foregoing statutes to bar a court from making emergency orders to protect a child." This case clearly establishes that emergency jurisdiction exists specifically to "prevent irreparable and immediate harm to children."

In [Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#), the court reinforced the concept of temporary emergency jurisdiction under Texas Family Code § 152.204, particularly noting that emergency jurisdiction may be assumed when "the child would be endangered by the enforcement of a custody or visitation order." This illustrates that courts have a duty to consider emergency matters even when they might conflict with existing orders.

The Texas Supreme Court in [In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#) emphasized that "A trial court enjoys broad discretion in issuing orders for immediate protection of a child," and that "the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child under the UCCJEA." This demonstrates the low threshold required for a court to exercise emergency jurisdiction—mere possibility of harm is sufficient.

## Due Process Requirements in Emergency Relief

Texas case law establishes that due process generally requires notice and an opportunity to be heard, even in emergency situations, although certain exceptions exist.

In [In re Farmer](#) (Tex. Court of Appeals, 2023), the court cited earlier cases establishing that "a parent is entitled to notice and an adversary hearing before entry of a temporary order modifying custody." The court referenced [In re L.A.-K., 596 S.W.3d 387, 396 \(Tex. App.-El Paso 2020\)](#), which concluded that Chapter 105 of the Texas Family Code "applies to a challenge to temporary orders denying a Father access to and possession of the child without giving him notice and an opportunity to be heard."

The Texas Court of Appeals in [In re Chester, 357 S.W.3d 103 \(Tex. App. 2011\)](#) emphasized the fundamental nature of due process notice, stating that "In this case the legal system was not properly employed because the most basic of legal principles—due process notice—was not upheld." The court rejected the argument that "technical rules of pleading and practice" should not prevail over the best interest of the child, explaining that "Without notice of the issues to be addressed at a hearing, the parties cannot be prepared with the research and witnesses needed to test each party's contentions and ultimately to provide the proper answers to the issues." This underscores the critical importance of procedural due process, even in cases involving children's welfare.

In [Rogers v. State, 183 S.W.3d 853 \(Tex. App. 2005\)](#), the court acknowledged that "general principles of due process dictate that a litigant has a right to be heard and that the court must protect that right." While the court noted that "emergency situations present an exception," it emphasized that "the temporary and emergency nature of emergency protective orders allows them to pass constitutional muster." This suggests that even when emergency situations warrant expedited action, the process must still adhere to constitutional requirements.

## Analysis

### Right to Seek Emergency Relief for Child's Health Concerns

The provisions of the Texas Family Code, particularly §§ 105.001, 152.204, and 156.006, clearly establish that parties in a SAPCR have the right to seek emergency relief for matters affecting a child's health and welfare. This statutory framework creates both the authority for courts to issue emergency orders and an obligation for courts to consider such requests.

A child experiencing dental pain represents precisely the type of situation that might warrant emergency relief. Dental pain can be severe, debilitating, and potentially indicative of serious underlying conditions that could worsen without prompt treatment. When such pain is ongoing and treatment is being blocked by another party, the situation clearly implicates the child's physical health and welfare, falling squarely within the scope of Texas Family Code § 105.001.

The Texas Supreme Court's decisions in [Page v. Sherrill, 415 S.W.2d 642 \(Tex. 1967\)](#) and [Dannelley v. Dannelley, 417 S.W.2d 55 \(Tex. 1967\)](#) establish that district courts have a "profound responsibility" for "protecting [children's] health and safety" and that this responsibility sometimes demands "immediate action by the courts." This constitutional duty to protect minors' health and safety provides a fundamental basis for the court's obligation to hear and consider emergency motions regarding a child's medical needs.

As established in [In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#), "A trial court enjoys broad discretion in issuing orders for immediate protection of a child," and even "the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child." This low threshold for exercising emergency jurisdiction reflects the paramount importance of protecting children from potential harm and suggests that courts should err on the side of at least hearing emergency motions related to a child's health.

## Due Process Requirements for Emergency Motions

Due process fundamentally requires notice and an opportunity to be heard. As stated in [In re Chester, 357 S.W.3d 103 \(Tex. App. 2011\)](#), notice is "one of the basic elements of due process." While emergency situations may sometimes justify temporary orders without full hearings, the emergency nature of the situation does not eliminate the court's obligation to ultimately provide parties with procedural due process.

In the context of seeking emergency relief for a child's dental pain, due process requires that the court hear and consider the emergency motion. The Texas Family Code § 156.006 explicitly states that when a party files an affidavit alleging that a child's circumstances would significantly impair their physical health, "the court shall set a time and place for the hearing." This mandatory language ("shall") creates a clear procedural requirement that the court must provide an opportunity for the matter to be heard.

When a court refuses to hear an emergency motion regarding a child's dental pain, particularly when treatment is being blocked by the opposing party, this refusal directly contravenes the procedural safeguards established by Texas law. As noted in [Rogers v. State, 183 S.W.3d 853 \(Tex. App. 2005\)](#), "general principles of due process dictate that a litigant has a right to be heard and that the court must protect that right." While emergency situations may allow for procedural modifications, they do not permit the wholesale denial of a hearing.

### **Material Harm Resulting from Denial of Due Process**

The refusal to hear an emergency motion concerning a child's dental pain can lead to material harm in several ways. Most directly, it prolongs the child's pain and suffering, potentially allowing a treatable condition to worsen and possibly lead to more serious health complications. Dental infections, if left untreated, can spread to other parts of the body and cause significant harm.

Additionally, the denial of a hearing effectively grants the opposing party unilateral control over the child's medical treatment without judicial review. When one party is blocking necessary medical care for a child, the court's refusal to hear an emergency motion regarding that care effectively endorses the obstruction, potentially leaving the child without necessary treatment.

As established in [Garza v. Harney, 726 S.W.2d 198 \(Tex. App. 1987\)](#), emergency jurisdiction exists specifically to "prevent irreparable and immediate harm to children." When a court refuses to exercise this jurisdiction in a case involving a child's health, it fails to fulfill its fundamental duty to protect children from harm.

### **Filing a Separate SAPCR Due to Dormancy**

The decision to file a separate SAPCR due to the dormancy of the first case is consistent with Texas law's recognition that new circumstances may warrant new proceedings, particularly when a child's welfare is at stake. While the general preference is for modification of existing orders through the original cause number, dormancy of the original case can justify a new filing when emergency relief is needed.

The Texas Family Code § 156.006 specifically contemplates temporary orders in modification suits, indicating that the legislature recognized the need for emergency relief even in ongoing cases. When the original case has become dormant, filing a new SAPCR may be the most expedient way to address new emergencies affecting the child's welfare.

### **Exceptions and Caveats**

While Texas law strongly supports the right to seek emergency relief in family law cases and the due process requirement that such motions be heard, there are some limitations and procedural requirements that must be considered.

First, Texas Family Code § 105.001 generally requires "notice and a hearing" before temporary orders are rendered, though exceptions exist for certain emergency situations. This means that while the court must hear emergency motions, it may still require some form of notice to the opposing party before granting relief, except in the most extreme circumstances.

Second, courts do maintain discretion in how they schedule and conduct hearings on emergency motions. While they must provide an opportunity to be heard, the exact timing and format of that hearing remains somewhat within the court's discretion, particularly given court scheduling constraints and docket management needs.

Third, the filing of a new SAPCR when another case exists (even if dormant) could potentially raise jurisdictional questions. Courts may consider whether the dormant case should be reactivated rather than proceeding with a new case number. However, this procedural consideration should not prevent the court from hearing an emergency motion regarding a child's health.

### **Conclusion**

Texas law provides clear statutory authority and constitutional duty for courts to hear and consider emergency motions in family law cases, particularly when a child's health and welfare are at stake. The Texas Family Code §§ 105.001, 152.204, and 156.006 establish both the court's authority to issue emergency orders and procedural requirements for doing so, including the obligation to set hearings when a child's physical health may be impaired.

Texas case law from the Supreme Court through the Courts of Appeals consistently recognizes that district courts have a "profound responsibility" to protect children's health and safety, sometimes requiring "immediate action." Due process generally requires notice and an opportunity to be heard, and the court's refusal to hear an emergency motion regarding a child's dental pain—particularly when treatment is being blocked by another party—constitutes a denial of this fundamental right.

The denial of a hearing on an emergency motion concerning a child's health can lead to material harm by prolonging pain and suffering, potentially allowing medical conditions to worsen, and effectively endorsing one party's obstruction of necessary medical care. This contravenes the court's *parens patriae* duty to protect children within its jurisdiction.

While procedural considerations and docket management concerns are valid, they cannot justify the wholesale refusal to hear an emergency motion regarding a child's health and welfare. As established in [In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#), even "the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child." This low threshold for at least hearing emergency motions reflects the paramount importance Texas law places on protecting children from potential harm.

In summary, under Texas law, parties in family law cases have the right to seek emergency relief for a child's health concerns, and courts have both the authority and obligation to hear such motions as a matter of due process. The refusal to hear an emergency motion regarding a child's dental pain, particularly when treatment is being blocked by the opposing party, constitutes a denial of due process that can lead to material harm to the child.

### **Legal Authorities**

**Texas Supreme Court**

**Extract**

*Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing.*

**Summary**

The Texas district courts have a constitutional responsibility to protect the health and safety of minors, which includes taking immediate action in emergencies. This implies that courts have the authority to issue temporary orders to address urgent situations affecting a child's well-being. The passage supports the idea that the court should hear and consider emergency motions, as failing to do so could neglect the court's duty to protect minors.

[In re Farmer](#)

**Texas Court of Appeals**

**Extract**

*In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order. TEX. FAM. CODE ANN. § 105.001(a). Specifically, section 105.001(a) of the Texas Family Code provides that, in a suit affecting the parent-child relationship, a trial court may make a temporary order for the child's safety and welfare... Id. § 105.001(b), (h); see In re L.A.-K., 596 S.W.3d 387, 396 (Tex. App.-El Paso 2020, no pet.) (concluding that Chapter 105, rather than Chapter 156, of the Texas Family Code applies to a challenge to temporary orders denying a Father access to and possession of the child without giving him notice and an opportunity to be heard); In re Chester, 357 S.W.3d 103, 107 (Tex. App.-San Antonio 2011, orig. proceeding) (noting that a parent is entitled to notice and an adversary hearing before entry of a temporary order modifying custody).*

**Summary**

The Texas Family Code allows for temporary orders to be made for the safety and welfare of a child in suits affecting the parent-child relationship. The cited cases emphasize the necessity of notice and an opportunity to be heard, which are fundamental due process rights. This supports the proposition that the refusal to hear an emergency motion could constitute a denial of due process, especially when the child's welfare is at stake.

[In re J.S.N., 14-23-00205-CV \(Tex. App. Apr 19, 2023\)](#)

**Texas Court of Appeals**

**Extract**

*Section 105.001 of the Family Code provides that the trial court may make a temporary order for the safety and welfare of the child. Tex. Fam. Code § 105.001(a). Section 105.001(b) generally eliminates the need for sworn pleadings stating facts showing immediate and irreparable injury, loss, or damage for entry of a temporary restraining order, notice, and a hearing.*

**Summary**

Section 105.001 of the Texas Family Code allows the trial court to issue temporary orders for the safety and welfare of a child, which is directly relevant to seeking emergency relief in family law cases. The provision that eliminates the need for sworn pleadings for temporary restraining orders supports the idea that emergency relief can be sought without the usual procedural hurdles, emphasizing the importance of addressing urgent matters promptly. This aligns with the proposition that due process requires such motions to be heard and considered by the court.

[Garza v. Harney, 726 S.W.2d 198 \(Tex. App. 1987\)](#)

**Texas Court of Appeals**

**Extract**

*We initially note that a trial court has broad discretion in issuing orders for the immediate protection of a child. ... After carefully analyzing the few authorities pertinent to the facts before us, we have concluded that the district court was empowered to act, but only on a short term, temporary, emergency basis. We do not construe the foregoing statutes to bar a court from making emergency orders to protect a child. ... Assumption of emergency jurisdiction is an assumption of temporary jurisdiction only; it is meant solely to prevent irreparable and immediate harm to children...*

**Summary**

Texas courts have the authority to issue emergency orders to protect a child when there is potential for immediate harm. This aligns with the proposition that parties are entitled to seek emergency relief in family law cases. The court's refusal to hear an emergency motion, especially when there is a serious and immediate question concerning the welfare of the child, could be seen as a denial of due process, leading to material harm.

[In re Interest of L.S., 557 S.W.3d 736 \(Tex. App. 2018\)](#)

**Texas Court of Appeals**

**Extract**

*Chapter 262 authorizes a trial court to enter emergency orders and other temporary orders. TEX. FAM. CODE ANN. §§ 262.102 – 103 (West Supp. 2017).*

**Summary**

Under Chapter 262 of the Texas Family Code, a trial court is authorized to enter emergency orders and other temporary orders. This supports the proposition that parties are entitled to seek emergency relief in family law cases. The context of the passage is relevant to the situation where a party seeks emergency relief due to a child's dental pain, as it highlights the court's authority to issue such orders. The scope of the material is broad, applying to any case where emergency relief is sought under the Texas Family Code.

[Rodriguez v. Vela, 488 S.W.2d 872 \(Tex. Ct. App. 1972\)](#)

**Texas Court of Appeals**

**Extract**

*Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing. It follows that the district court's power to enter such temporary orders is implied since it is necessarily incidental to the power of general control over minors granted to the district courts by section 8 of Article V of the Texas Constitution.*

**Summary**

The passage emphasizes the district courts' responsibility and authority to take immediate action in emergency situations to protect minors' health and safety. This authority is implied under the Texas Constitution, allowing courts to issue temporary orders without notice if necessary. This supports the proposition that parties are entitled to seek emergency relief in family law cases, and due process requires that such motions be heard and considered by the court.

[Dannelley v. Dannelley, 417 S.W.2d 55 \(Tex. 1967\)](#)

**Texas Supreme Court**

**Extract**

*Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing. It follows that the district court's power to enter such temporary orders is implied since it is necessarily incidental to the power of general control over minors granted to the district courts by Section 8 of Article V of the Texas Constitution.*

**Summary**

The Texas district courts have a constitutional responsibility to protect the health and safety of minors, which includes taking immediate action in emergencies. This power is implied and necessary for the court's general control over minors. The passage supports the idea that courts must consider emergency relief motions to fulfill their duty to protect minors, and failure to do so could be a denial of due process.

[Abberholden v. Morizot, 856 S.W.2d 829 \(Tex. App. 1993\)](#)

**Texas Court of Appeals**

**Extract**

*By its terms, § 11.53(a)(3)(B) confers jurisdiction only in an emergency. Generally, emergency jurisdiction confers only temporary jurisdiction to prevent irreparable and immediate harm to children. ... The Garza court concluded that despite the existence of a cause pending elsewhere, as to the child for whom an emergency existed, the emergency permitted the district court to render a temporary order for her protection until proper steps could be taken in the original forum*

to protect the child adequately.

## Summary

Concept of emergency jurisdiction under Texas law, which allows a court to take temporary action to prevent immediate harm to a child, even if there is an existing case pending elsewhere. This supports the proposition that emergency relief can be sought in family law cases to address urgent issues, such as a child's dental pain, and that the court has a duty to consider such motions. The refusal to hear an emergency motion could be seen as a denial of due process, especially if it results in harm to the child.

### [In re Chester, 357 S.W.3d 103 \(Tex. App. 2011\)](#)

#### Texas Court of Appeals

##### Extract

*In this case the legal system was not properly employed because the most basic of legal principles—due process notice—was not upheld. See In re Houston Lighting & Power Co., 976 S.W.2d 671, 673 n. 17 (Tex. 1998) (orig. proceeding) (listing notice as one of the basic elements of due process). Respondent dismisses the fundamental right to notice as a “technical rule[ ] of pleading and practice” that should not prevail over the best interest of the child. Likewise, the “trial court’s wide discretion in determining the best interest of the child” is offered as a shield from the lack of notice. These contentions miss the mark at a very core level. Without notice of the issues to be addressed at a hearing, the parties cannot be prepared with the research and witnesses needed to test each party’s contentions and ultimately to provide the proper answers to the issues.*

## Summary

The passage emphasizes the importance of due process, specifically the right to notice, as a fundamental legal principle. It highlights that without proper notice, parties cannot adequately prepare for hearings, which is essential for ensuring fair proceedings. This directly relates to the proposition, as the refusal to hear an emergency motion without due process considerations could lead to material harm, especially when the opposing party's actions block necessary relief.

### [In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#)

#### Texas Supreme Court

##### Extract

*However, there is an exception to the rule of ‘home state’ jurisdiction under section 152.201(a) that permits a Texas court to exercise ‘temporary emergency jurisdiction’ if the child is present in Texas 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.’ See Tex. Fam. Code Ann. § 152.204(a) (Vernon 2002). ‘A trial court enjoys broad discretion in issuing orders for immediate protection of a child.’ Saavedra v. Schmidt, 96 S.W.3d 533, 544 (Tex. App.-Austin 2002, no pet.) (citing Garza v. Harney, 726 S.W.2d 198, 202 (Tex. App.-Amarillo 1987, orig. proceeding)). ‘States have a parens patriae duty to children within their borders, and the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child under the UCCJEA.’*

## Summary

Texas law allows courts to exercise temporary emergency jurisdiction to protect a child present in Texas if there is an emergency, such as mistreatment or abuse. The court has broad discretion to issue orders for the immediate protection of a child, and the possibility of immediate harm is sufficient for the court to act. This supports the proposition that parties are entitled to seek emergency relief, and due process requires that such motions be heard. The refusal to hear an emergency motion could be seen as a denial of due process, especially if it results in material harm to the child.

### [Rogers v. State, 183 S.W.3d 853 \(Tex. App. 2005\)](#)

#### Texas Court of Appeals

##### Extract

*Ordinarily, general principles of due process dictate that a litigant has a right to be heard and that the court must protect that right. Striedel, 15 S.W.3d at 166. Emergency situations present an exception. See Ex parte Flores, 130 S.W.3d 100, 106-07 (Tex. App.-El Paso 2003, pet. ref’d). The temporary and emergency nature of emergency protective orders allows them to pass constitutional muster.*

## Summary

The passage highlights the general principle that due process requires a litigant's right to be heard, which is a fundamental aspect of legal proceedings. It acknowledges that emergency situations can create exceptions, but emphasizes that the temporary and emergency nature of such orders must still align with constitutional standards. This supports the proposition that the refusal to hear an emergency motion could be a denial of due process, especially if the motion pertains to urgent matters like a child's dental pain.

[White v. Blake, 859 S.W.2d 551 \(Tex. App. 1993\)](#)

**Texas Court of Appeals**

**Extract**

*the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse; (emphasis added) Since the only evidence introduced at the hearing on the application for protective order, was that introduced by the step-father, Respondent may well have been justified in believing that an emergency as described in § 1738A(c)(2)(C)(ii) existed.*

**Summary**

Texas law recognizes the necessity of emergency relief to protect a child in situations where there is a threat of mistreatment or abuse. The passage highlights the court's consideration of evidence presented to justify the existence of an emergency. This supports the proposition that emergency relief should be heard and considered by the court, and failure to do so may constitute a denial of due process.

[Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#)

**Texas Court of Appeals**

**Extract**

*The Court further finds that this court has invoked temporary emergency jurisdiction over the parties and subject matter of this suit under the authority of Texas Family Code § 152.204 .... Section 152.310, however, also provides an alternative to rendering a final order on a petition to enforce when circumstances warrant the assumption of temporary emergency jurisdiction. Tex. Fam. Code Ann. § 152.310; see also UCCJEA § 303 cmt., 9 U.L.A. 690 ('If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction ....').*

**Summary**

Texas law allows for the invocation of temporary emergency jurisdiction when a child's safety is at risk. This supports the proposition that parties are entitled to seek emergency relief in family law cases. The refusal to hear such motions, especially when there is a risk to the child's well-being, may constitute a denial of due process. The passage highlights the court's authority to assume emergency jurisdiction to protect a child, which aligns with the need for due process in hearing emergency motions.

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

**Extract**

*In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child... Except as provided by Subsection (h), an order may not be rendered under Subsection (a), , or except after notice and a hearing... 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**

The Texas Family Code allows for temporary orders to be made for the safety and welfare of a child, which can include emergency orders. The statute emphasizes that such orders typically require notice and a hearing, underscoring the importance of due process. However, in certain emergency situations, orders can be rendered without notice and a hearing, highlighting the court's ability to act swiftly in urgent circumstances. This supports the proposition that parties are entitled to seek emergency relief and that due process requires these motions to be heard, as the refusal to do so could lead to material harm.

[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**

Texas law provides for temporary emergency jurisdiction in situations where a child is present in the state and there is an emergency need to protect the child from mistreatment or abuse. This supports the proposition that parties are entitled to seek emergency relief in family law cases. The passage implies that the court has a duty to consider such emergency situations, which aligns with the due process requirement that motions be heard and considered by the court.

**Extract**

*the court may render a temporary order in a suit for modification... the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development... the court shall set a time and place for the hearing.*

**Summary**

Texas law allows for temporary orders in modification suits when a child's health or emotional development is at risk. The law mandates that if an affidavit supports the claim of significant impairment, the court must set a hearing. This supports the proposition that emergency relief should be considered by the court, and refusal to do so could be a denial of due process.

This memo was compiled by Vincent AI based on vLex materials available as of April 28, 2025. [View full answer on vLex](#)