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9 questions about your child custody terms under COVID: answered

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Whether you have your parenting time and custody agreement all worked out with your former spouse or have the essentials down but “play it by ear” on occasion, COVID-19 has parents asking questions about which parent their child or children should be with and when. Spring break has gone on for weeks, summer vacation is coming and going back and forth from one home to another during a shelter-in-place order is problematic to say the least.

Below are answers to some of your questions from Jason Wright, a central Texas family law attorney, about how COVID-19 and the various shelter-in-place orders may be affecting the terms of your child custody order.

1. What's the current position from the courts regarding child custody and COVID-19?

Parents are rightly concerned about moving children from house to house during the current pandemic. In some cases, travel is prohibited unless for an allowed purpose, so the question we've been getting a lot lately has been, "Is travel between parents essential?" Well, it appears that the courts are saying, it is. Right now, the shelter-in-place order does not override a current court-ordered child custody schedule.

On March 24, the Supreme Court of Texas issued its seventh emergency order related to COVID-19, and stated that "possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from an epidemic or pandemic including what is commonly referred to as the COVID-19 pandemic."

Basically, the court is saying that even though schools are shut down, parents are required to act as if school was still in session and follow the terms of your custody schedule when it comes to the possession and access of children. The question we keep getting over and over from parents is, "Do I have to send my child to their other parent for their Thursday night or Weekend?" and the answer from the courts appears to be a resounding – yes.

That order is currently in effect through May 8. In Travis County, the court further clarified rules regarding travel, stating that "travel required by law enforcement or court order" is considered essential.

It's important to note, the Supreme Court's order also specifically states, 'Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.'

Essentially, this reminds parents that if their order allows, they can make arrangements with each other by agreement. The courts always prefer for parents to find ways to work together.

2. Spring break was extended, or school is now closed. How does this affect my custody order?

By using phrases like “extending spring break” school districts set off a wave of questions and issues for family law attorneys. Luckily, the Supreme Court stepped in early and provided everyone with guidance. The court’s second emergency order dealt with the issue of spring break. The precedent established by the court was that parents should be following, the original published school schedule. This means that although your child’s spring break might have been extended or it feels like summer break because they’re not in school, in the simplest terms, parents need to follow the schedule printed before all the shelter-in-place orders. When it comes to exercising possession of a child, parents should carry on as if their children are going to school each day.

3. Easter holiday is coming up, how will that affect my custody?

Not to sound too much like a broken record, but your current court order along with the published calendar of your child’s school district will be the guides for what to do. There are provisions in some orders that extend weekend possessions for school holidays, teacher in-services, etc. If your order has a provision like that, you should look to see if your child’s school district would normally have a school holiday or teach in-service around Easter. Because if so, one parent’s weekend possession might be extended.

If you don’t know if your order has this provision, or you don’t understand how this might work, you should consult with a family law attorney before the Easter holiday in order to avoid any problems.



4. What if I think my child won't be safe from Coronavirus if moved?

These types of questions and calls have been common. It's true that parents may be concerned that moving their child to the other parent's home is unsafe because someone in that home is at risk of carrying or contracting the Coronavirus or not practicing social distancing. Parents may also feel that travel in and of itself will put your child at risk of exposure. Unfortunately, if you unilaterally decide to withhold your child from their other parent, you are at risk of being in contempt of your court order and the other parent can file a motion to enforce that order.

As I mentioned before, the courts would prefer for the parents to find common ground, and if your orders allow, work out an arrangement together that accommodates this new and highly unusual situation. Sometimes parents need the help of a professional to facilitate an agreement. Before escalating the situation, I would recommend consulting with a family law attorney. My office can help communicate with the other side and possibly work out a new, even temporary arrangements for possession and access.

5. What happens if my child's other parent refuses to honor the court order?

If you have the court-ordered right to possession of your child and the other parent is withholding your possession or access due to fears or anxiety over Coronavirus, this is a problem. If this happens you need to consult a lawyer immediately. More often than not, law enforcement agencies won't get involved in disputes over child custody, but more especially now given the strain the law enforcement and other agencies are under. The best thing for you to do in this instance is contact a family law attorney so they can bring that issue before a court.

6. I see my child one night during the week. Can I still do so?

Yes. While there is a shelter-in-place order prohibiting some non-essential movement outside the home, that does not apply to your parenting plan which is still under a court order. It's very unlikely that you're going to be stopped and asked, but you can always keep your paperwork with you while transporting your child.



7. What if we live in different states?

Although your court order still applies, even if you and your child's other parent live in different states, traveling far distances could be problematic given the current state of things. There may be issues with quarantine if driving or flying from or to states other than Texas.

Do keep all of your documents with you if you decide to travel. It's important to talk to your child's other parent about how to arrange your parenting time if you live in other states and work out an agreement. If you're unsure or need help understanding how various state orders conflict with your order, you should consult an attorney just in case.

8. Can I modify my court order?

It's important that you understand the difference between parents making an "agreement" and actually "modifying" a court order. An agreement is something that parents can do informally, through text or e-mail. It requires the parties to work together and communicate. Modifying a court order is legal procedure that requires a "material and substantial change" as well as court intervention. Even if the parties agree to the modification, the court's authority is needed to modify an order.

The problem becomes when one parent no longer agrees to the terms of a new agreement, this is how conflict often starts. It's unlikely that the courts will simply allow the unprecedented COVID-19 situation to give rise to a material and substantial change. Doing so would open the door for countless court filings. There might be legitimate reasons why modifying your order is needed. However, the problem right now is that many courts aren't setting non-emergency hearings.

9. What should I do now?

The State of Texas, including Travis and Williamson Counties, is encouraging parents to work out an agreement above and beyond their current court-ordered parenting time and possession arrangement. While your court-ordered possession and access schedule is still in place, you may have concerns about moving your child during this time.

You can turn to the [Law Office of Jason Wright](#) for guidance and legal help with child custody, child support and family law issues during the Coronavirus crisis. The firm is ready to help with phone or video consultations or meetings to help keep you and your family safe and to help you with any situations that come up, including working out a temporary access schedule. Call [\(512\) 884-1221](#) or [email to schedule a consultation today.](#)

Serving Travis County, Williamson County and surrounding areas, the [Law Office of Jason Wright](#) focuses on divorce, as well as complex child custody and property matters. While the vast majority of family law cases are resolved through mediation or informal settlement agreements, Jason is not afraid to fight for his client's position in the courtroom. Jason's ability to personally empathize with his clients as they experience the various emotional ups and downs of a family law case is what separates him from many of his peers — and what his clients find invaluable. [Visit his website for more information.](#)



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