

## Children in Distress: What to Do When You Need Emergency Relief

The right to obtain physical possession of a child, the right to obtain temporary relief without prior notice to the other party, and the right to exclude a party from a residence are all special circumstances in which emergency relief may be requested.

A writ of attachment is a court order requiring a child be produced at a particular location at a particular time. It is used in situations where a party is entitled to possession of a child under a court order. It may also be used when an emergency exists and a child is in imminent danger to his or her physical or emotional welfare.

The remedy is extraordinary. As such, specific facts must be alleged to command the court to issue the writ. The writ should be requested only when necessary to protect the welfare of the child.

Section 105.001 of the Texas Family Code provides the court may not render an order, except on a verified pleading or an affidavit which (1) attached the body of a child; (2) takes the child into the possession of the court or into the possession of a person designated by the court or (3) excludes a parent from possession of or access to a child.

Requests for writs of attachment are contained in petitions, motions and applications in suits affecting the parent child relationship and are filed ancillary to other requests. The court must then make a determination as to whether the necessity exists for the writ and the applications are in proper order.

The court issues a writ commanding any sheriff or constable to attach the body of a child and deliver the child to a designated place. That designated place is a location specified by the court who may command that the child be brought to the court or the court may provide a location where the child may be delivered by law enforcement.

Habeas corpus actions are brought when a party claiming a right to possession of a child is seeking the court's help in getting the child physically turned over to that party. The court shall compel return of the child to the person filing the habeas corpus only if the court finds that the filer is entitled to possession under the order.

If the court fails to compel return of the child, the court may issue temporary orders if a suit affecting the parent child relationship is pending. The court may issue such temporary orders only if the suit affecting parent child relationship is pending and the temporary hearing is set at the same time as the habeas corpus hearing. The court may then enter an order if a serious immediate question concerning the welfare of the child is shown at the temporary hearing.

The court has defined "serious and immediate question" to mean imminent danger of physical or emotional harm that requires immediate action to protect the child. If a right to possession is established, the exception to granting the writ occurs when a serious and immediate question concerning the welfare of the child exists. If the writ is denied after the right to possession under a prior court order is established, the Texas Supreme Court requires the trial court issue a written temporary order containing a finding that there is a serious and immediate question concerning the child.

A serious and immediate question, although often alleged, is rarely found in habeas corpus actions.

A temporary order, when entered, should not be a final adjudication of custody. At a minimum, the temporary order should contain the filer's temporary rights to possession and should set a further hearing.