

Children's
Commission®

SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

TEXAS CHILD PROTECTION LAW
BENCH BOOK

November 2016

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This revised edition of the Texas Child Protection Law Bench Book includes additions of and revisions to important topics such as human trafficking, trauma-informed care, the Indian Child Welfare Act, and educational outcomes of children in the child welfare system.

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ALTERNATIVES TO REMOVAL

Legal Overview of Alternatives to Removal

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 261. Investigation of Report of Child Abuse or Neglect

The primary purpose of a Child Protective Services (CPS) investigation is to protect the child. CPS investigations are civil in nature and include an evaluation of the child's immediate safety and an assessment of future risk of abuse or neglect.

- A. Initiation of Investigations**
- B. Making a Report**
- C. Fourth Amendment Requirements in an Investigation**
- D. Orders in Aid of Investigation**
- E. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse**
- F. Order for Required Participation**
- G. Protective Orders**
- H. Relinquishing Custody of Child to Obtain Certain Services**
- I. Child Safety Check Alert List**

A. Initiation of Investigations

Initiation of an investigation requires:

1. Abuse or Neglect or the Risk of Abuse or Neglect

"Abuse" includes the following acts or omissions by a person:

- Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

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- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
 - Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 - Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under [Tex. Penal Code § 21.02](#), indecency with a child under [Tex. Penal Code § 21.11](#), sexual assault under [Tex. Penal Code § 22.011](#), or aggravated sexual assault under [Tex. Penal Code § 22.021](#);
 - Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 - Compelling or encouraging the child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#), including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [Tex. Penal Code § 20A.02\(a\)\(8\)](#), prostitution under [Tex. Penal Code § 43.02\(b\)](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#);
 - Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by [Tex. Penal Code § 43.21](#) or pornographic;
 - The current use by a person of a controlled substance as defined by [Tex. Health and Safety Code Chapter 481](#), in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
 - Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by [Tex. Health and Safety Code Chapter 481](#);
 - Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by [Tex. Penal Code § 43.25](#); or
 - Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\)](#), (6), (7) or (8), or the failure to make a reasonable effort to prevent a

child from being trafficked in a manner punishable as an offense under any of those sections. [Tex. Fam. Code § 261.001\(1\)](#).

"Neglect" includes:

- The leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- The following acts or omissions by a person:
 - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services have been offered and refused;
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under [Tex. Fam. Code § 261.001 \(1\)\(E\), \(F\), \(G\), \(H\), or \(K\)](#) committed against another child; or
- The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away. [Tex. Fam. Code § 261.001\(4\)](#).

Neglect does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of DFPS if:

- The child has a severe emotional disturbance;
- The person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

-
- The person has exhausted all reasonable means available to the person to obtain the mental health services described by [Tex. Fam. Code § 261.001\(4\)\(B\)\(ii\)](#). [Tex. Fam. Code § 261.001\(4\)](#).

The DFPS Commissioner shall adopt rules to prohibit DFPS from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)\(1\)](#).

The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

- Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
- Has resulted in an observable and material impairment to the growth, development, or functioning of the child. [Tex. Fam. Code § 261.111\(b\)](#).

2. By a Person Responsible for a Child's Care, Custody, or Welfare

- A parent, guardian, managing or possessory conservator, or foster parent of the child;
- A member of the child's family or household as defined by [Tex. Fam. Code Chapter 71](#);
- A person with whom the child's parent cohabits;
- School personnel or a volunteer at the child's school; or
- Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential facility where the child resides. [Tex. Fam. Code § 261.001\(5\)](#).

B. Making a Report

DFPS sets out the mandatory requirements for an investigation in [CPS Handbook § 2200](#).¹

1. Call to the Hotline

An investigation of child abuse or neglect usually starts with a call to the hotline. The reporter may identify himself or remain anonymous, but the identity of the reporter is confidential. [Tex. Fam. Code § 261.201\(a\)\(1\)](#). However, a court may order disclosure of the identity of the reporter or the information obtained through the investigation. [Tex. Fam. Code § 261.201\(b\)](#).

2. Lay Person's Duty to Report

Any person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report. [Tex. Fam. Code § 261.101\(a\)](#).

In addition to the duty to report pursuant to [Tex. Fam. Code § 261.101\(a\)](#), a person must also report if the person has cause to believe that an adult was a victim of abuse or neglect as a child and the person determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

3. Professional's Duty to Report

If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, the professional shall make a report no later than the 48th hour after the professional first suspects that the child has been abused or neglected. [Tex. Fam. Code § 261.101\(b\)](#).

A professional may not delegate to or rely on another person to make the report. [Tex. Fam. Code § 261.101\(b\)](#).

A professional who has the duty to report under [Tex. Fam. Code § 261.101\(b\)](#) must also report if the professional has cause to believe that an adult was a victim of abuse or neglect as a child and the professional determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

The requirement to report under [Tex. Fam. Code § 261.101](#) applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services. [Tex. Fam. Code § 261.101\(c\)](#).

4. Failure to Report

A person commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(a\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a\)](#).

Failure to report when required is punishable as a Class A misdemeanor, except that the offense is a state jail felony if the child was a person with an intellectual disability who resided in a state supported living center or a facility licensed under [Tex. Health and Safety Code Chapter 252](#) and the actor knew the child suffered serious bodily injury. [Tex. Fam. Code § 261.109\(b\)](#).

A professional as defined by [Tex. Fam. Code § 261.101\(b\)](#) commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(b\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a-1\)](#).

An offense under [Tex. Fam. Code § 261.109\(a-1\)](#) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to conceal the abuse or neglect. [Tex. Fam. Code § 261.109\(c\)](#).

5. Immunities

A person acting in good faith who reports or assists in an investigation is immune from civil or criminal liability that might otherwise be imposed. [Tex. Fam. Code § 261.106\(a\)](#).

6. False Reports

Knowingly making a false report is punishable as a state jail felony, unless it is shown that the person has previously been convicted under this section, in which case the offense is a third-degree felony and carries a civil penalty of \$1,000. [Tex. Fam. Code § 261.107\(a\)](#) and [Tex. Fam. Code § 261.107\(e\)](#).

C. Fourth Amendment Requirements in an Investigation

For any investigative action that involves entering or remaining in a home, transporting a child for an interview, or removing a child from a parent's custody, DFPS must have consent, a court order, or exigent circumstances per *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, [537 F.3d 404](#) (5th Cir. 2008).

1. Consent

An evaluation of consent is based on the totality of the circumstances and under a standard of objective reasonableness. Silence or passivity cannot form the basis of consent to enter. Also, mere acquiescence to a show of lawful authority is insufficient to establish voluntary consent. Once consent is given, the consent may be limited, qualified, or withdrawn. *Gates*, [537 F.3d at 420](#).

2. Court Order

If a caseworker cannot gain consent, they may seek a court order to allow entrance for an interview, examination, or investigation. [Tex. Fam. Code § 261.303\(b\)](#).

3. Exigent Circumstances

If there is not time to obtain a court order, however, DFPS can still enter or remain in a home, even absent consent, if there are exigent circumstances. Under this standard, there must be a reasonable cause to believe that the child is in immediate danger. Entering or remaining in the home for the sole purpose of interviewing the child does not suffice. *Gates*, [537 F.3d at 421-23](#).

4. Anonymous Tip

An anonymous tip, absent some showing that it is reliable, is not enough to justify removal for an interview. Instead, the tip must be corroborated through a preliminary investigation that can include an interview of the child's teachers or peers, an interview of the child at the school, or by looking for injuries on the child without removing any of the child's clothing. In determining whether to take the child to another location for the interview, the caseworker should take into account the child's wishes. *Gates*, 537 F.3d at 424. A person who is notified of and attempts to interfere with the transportation can be charged with a Class B misdemeanor. [Tex. Fam. Code § 261.302\(f\)](#).

5. Taking Child Into Separate Room for an Interview

Like a *Terry* stop [*Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)], all that is required [to take a child into a separate room for an interview] is a reasonable suspicion of abuse or neglect so long as the interview is no more intrusive than necessary. *Gates*, 537 F.3d at 434.

6. Transporting a Child from School to Another Location for an Interview

Before transporting a child for an interview, DFPS must first attempt to notify the parent or other person having custody of the child. *Gates*, 537 F.3d at 429. Absent consent to transport, DFPS may obtain a court order. Although there is currently no express statutory provision authorizing such an order, [Tex. Fam. Code § 261.303](#) may be applicable. According to the holding in *Gates*, in order to transport a child from a public school for an interview absent a court order or consent, a caseworker must have a reasonable belief that the child has been abused and probably will be abused again upon his return home at the end of the school day. *Gates*, 537 F.3d at 439.

D. Orders in Aid of Investigation

1. Interference

A person may not interfere with a DFPS investigation of a report of child abuse or neglect. [Tex. Fam. Code § 261.303\(a\)](#).

The court may also prohibit the removal of the child from the state during an investigation if the court:

- Finds that DFPS has probable cause to conduct the investigation; and
- Has reason to believe that the person may remove the child from the state. [Tex. Fam. Code § 261.306\(b\)](#).

Contumacious refusal to submit to orders in aid of investigation may be grounds for termination of parental rights in a subsequently filed suit affecting the parent-child relationship. [Tex. Fam. Code § 161.001\(b\)\(1\)\(I\)](#).

2. Court Orders

If DFPS requests the information below, but is not allowed access, then the court having family law jurisdiction and for good cause shall order:

- Admission to the home, school, or place where a child may be for the interview, examination, and investigation, [Tex. Fam. Code § 261.303\(b\)](#);
- A child's physical, psychological, or psychiatric examination or the release of related medical records, [Tex. Fam. Code § 261.303\(c\)](#); or
- A parent or caregiver's medical or mental examination and/or access to related records. [Tex. Fam. Code § 261.305\(b\)](#).

If the court determines that the parent or person is indigent, then the court shall appoint an attorney at the hearing relating to the examination or release of medical records under this section. [Tex. Fam. Code § 261.305\(c\)](#).

Special Issue: Although not required by statute, some courts require an affidavit to support a motion for an order in aid of investigation. Courts might also consider requiring the making of a record, if DFPS requests an order in aid of investigation without an affidavit or a motion for the order.

Courts might consider the following when requested to issue an order in aid of investigation:

- Jurisdiction is proper in the court because the child is located in the jurisdiction of the court or the court has continuing jurisdiction.
- DFPS has filed an application seeking an order in aid of investigation and has shown good cause for a court order because:
 - DFPS cannot access the child;
 - DFPS cannot obtain medical, psychiatric, or psychological records of the child;
 - DFPS cannot obtain consent by the parent or caregiver of the child for a medical, psychological, or psychiatric examination; or
 - the parent or caregiver refuses to cooperate with the investigation and refusal poses a risk to the child's safety.

E. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse

Without asking for removal of the child, DFPS may file a petition for removal of the alleged perpetrator of child abuse from the household. [Tex. Fam. Code § 262.1015\(a\)](#).

DFPS can also:

-
- File for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order; or
 - Assist a parent or other adult with whom a child resides in obtaining a protective order. [Tex. Fam. Code § 262.1015\(a-1\)](#).

1. Court Orders

The court may order:

- Removal of the alleged perpetrator; and
- The remaining parent to make a reasonable effort to monitor the residence and report any attempt of the alleged perpetrator to return to the residence. [Tex. Fam. Code § 262.1015\(e\)](#).

2. Expiration of the Temporary Restraining Order

The order remains in effect for up to 14 days, unless the court grants an extension under [Tex. Fam. Code § 262.201\(a-3\)](#). [Tex. Fam. Code § 262.1015\(d\)](#).

3. Violation of Temporary Restraining Order

It is a Class A misdemeanor if either parent violates the order; if a parent has been previously convicted of the same offense, it is a third degree felony. [Tex. Fam. Code § 262.1015\(h\)](#).

4. Child With Sexually Transmitted Disease

DFPS must take additional steps if the investigation reveals that a child younger than 11 has a sexually transmitted disease. DFPS must appoint a special investigator to assist in the investigation of the case and that investigator must follow [Tex. Fam. Code § 262.010](#), including coordinating with law enforcement. [Tex. Fam. Code § 262.010](#).

F. Order for Required Participation

On request of DFPS, the court may require participation in services provided by DFPS.

1. Who May Be Ordered to Participate

- Parent;
- Guardian;
- Managing conservator; or
- Other member of child's household. [Tex. Fam. Code § 263.203](#).

2. Court May Order

Participation in the services DFPS provides or purchases to:

- Alleviate the effects of the abuse or neglect that has occurred;
- Reduce the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; and
- Permit the child and any siblings of the child to receive the services. [Tex. Fam. Code § 264.203\(a\)](#).

Such participation may be ordered whether the child resides in the home or has been removed from the home. [Tex. Fam. Code § 264.203\(b\)](#).

3. Failure to Comply

If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions in order to protect the health and safety of the child, including removal of the child. [Tex. Fam. Code § 264.203\(c\)](#).

4. If NOT Ordering Participation, Court Shall Specify Reasons in Writing

If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation. [Tex. Fam. Code § 264.203\(d\)](#).

G. Protective Orders

DFPS is specifically authorized to file an application for a protective order. [Tex. Fam. Code § 82.002\(d\)\(2\)](#).

1. Temporary Ex Parte Protective Order

A temporary ex parte protective order can be used to:

- Direct a respondent to do or refrain from doing certain acts. [Tex. Fam. Code § 83.001\(b\)](#).
- Exclude a perpetrator from a residence under certain situations. [Tex. Fam. Code § 83.006](#).

The order is effective for up to 20 days. [Tex. Fam. Code § 83.002\(a\)](#). On an applicant's request or on the court's own order, the 20-day period may be extended for additional 20-day periods. [Tex. Fam. Code § 83.002\(b\)](#).

A temporary ex parte protective order may be issued without notice or hearing, but the court has the option to recess the hearing to contact the respondent by phone and provide the respondent with an opportunity to be present for the hearing. If the court chooses to recess to allow the respondent an opportunity to be present, the hearing must resume that same day without regard to the respondent's availability. [Tex. Fam. Code § 83.006\(c\)](#).

A temporary ex parte protective order can be enforced through a civil contempt proceeding, and certain provisions can be criminally enforced. [Tex. Fam. Code § 85.021](#); [Tex. Fam. Code § 85.022](#); and [Tex. Penal Code § 25.07\(a\)](#).

During the time a temporary ex parte protective order is in existence, it supersedes any other order under [Tex. Fam. Code Title 5](#) to the extent there is a conflict. [Tex. Fam. Code § 83.005](#).

2. Protective Order

Protective orders may be issued by a court if the court finds that family violence has occurred and is likely to occur in the future. [Tex. Fam. Code § 85.001](#).

A prosecuting attorney may not be precluded from representing a party in a proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) and DFPS in another action involving the party, regardless of whether the proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) occurs before, concurrently with, or after the other action involving the party. [Tex. Fam. Code § 81.0075](#).

An application for a protective order may be filed in:

- The county in which the applicant resides;
- The county in which the respondent resides; or
- Any county in which the family violence is alleged to have occurred. [Tex. Fam. Code § 82.003](#).

In a protective order, the court may, among other things:

- Prohibit a party from removing a child who is a member of the family or household from the possession of a person named in the order, or the jurisdiction of the court, [Tex. Fam. Code § 85.021\(1\)\(A\)\(i\)-\(ii\)](#);
- Order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence, including completion of a battering intervention and prevention program, [Tex. Fam. Code § 85.022\(a\)](#);
- Prohibit the person found to have committed family violence from:
 - committing family violence;
 - communicating:
 - directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;

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- a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and
 - if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;
 - going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;
 - going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;
 - engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
 - possessing a firearm, unless the person is a peace officer, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. [Tex. Fam. Code § 85.022\(b\)](#).

There is a presumption that family violence has occurred and is likely to occur in the future if:

- The respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:
 - an offense under [Tex. Penal Code Title 5](#), for which the court has made an affirmative finding that the offense involved family violence under [Tex. Crim. Proc. Code Art. 42.013](#); or
 - an offense under [Tex. Penal Code Title 6](#).
- The respondent's parental rights with respect to the child have been terminated; and
- The respondent is seeking or attempting to seek contact with the child. [Tex. Fam. Code § 81.0015](#).

A protective order issued pursuant [Tex. Fam. Code, Title 4, Subtitle B](#) is effective for a period stated in the order, not to exceed two years; or if a period is not stated in the order, until the second anniversary of the date the order was issued. [Tex. Fam. Code § 85.025\(a\)](#). A court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court makes specific findings pursuant to [Tex. Fam. Code § 85.025\(a-1\)](#).

If a person who is subject of a protective order is confined or imprisoned on the date the protective order would expire under [Tex. Fam. Code § 85.025\(a\)](#) or [Tex. Fam. Code § 85.025\(a-1\)](#), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

- The first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or
- The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less. [Tex. Fam. Code § 85.025\(c\)](#).

Each protective order issued under [Tex. Fam. Code § 85.026\(a\)](#), including a temporary ex parte order, must contain the following:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY [TEX. PENAL CODE § 1.07](#), ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER, TO POSSESS A FIREARM OR AMMUNITION."

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

Each protective order issued under [Tex. Fam. Code § 85.026\(c\)](#), including a temporary ex parte order must contain the following:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS

ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Each protective order must be:

- Served on the respondent, [Tex. Fam. Code § 85.041](#); and
- Delivered to law enforcement and the child's child care or school, as applicable, [Tex. Fam. Code § 85.042](#).

If a final protective order is rendered by a court other than the court in which a suit affecting the parent-child relationship is pending, the clerk of the court that rendered the final protective order shall:

- Inform the clerk of the court that a final order has been rendered; and
- Forward a copy of the final protective order to the court in which the suit is pending. [Tex. Fam. Code § 85.062\(c\)](#).

A protective order rendered by a court may be transferred to the court having jurisdiction over the suit affecting the parent-child relationship or of continuing, exclusive jurisdiction. [Tex. Fam. Code § 85.064](#).

If a suit affecting the parent-child relationship is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application in the court within which the suit is pending, or in the court within the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending. [Tex. Fam. Code § 85.062\(a\)](#).

An applicant for a protective order or an attorney representing an applicant may not be assessed any type of fee by a district or county clerk of the court or a sheriff, constable, or other public official or employee for the filing, serving, or entering of a protective order or for any other service. [Tex. Fam. Code § 81.002](#).

3. Temporary Restraining Order

A temporary restraining order is not criminally enforceable like temporary ex parte protective orders and protective orders, both of which are designed to protect people and provide a greater level of protection than temporary restraining orders.

4. Texas Family Violence Bench Book

The Texas Office of Court Administration produced a reference manual in 2011, [the Texas Family Violence Bench Book](#), devoted entirely to the law on family violence in Texas² and updated [Texas Family Violence Bench Book chapters](#) in 2013.³

H. Relinquishing Custody of Child to Obtain Certain Services

The Texas Family Code requires DFPS to make rules that prohibit the agency from making a finding of abuse or neglect against a parent in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)](#).

1. Severe Emotional Disturbance Defined

[Tex. Fam. Code § 261.001](#) defines "severe emotional disturbance" as a "mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities." [Tex. Fam. Code § 261.001\(9\)](#).

2. Option of Joint Managing Conservatorship Between Parent and DFPS

Before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance to obtain mental health services for the child, DFPS must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS. [Tex. Fam. Code § 262.352](#).

I. Child Safety Check Alert List

If at any time during an investigation of a report of child abuse or neglect to which DFPS has assigned the highest priority DFPS is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, DFPS shall notify the Department of Public Safety (DPS) that the location of the child and the child's family is unknown. If DPS locates the child and the child's family, DPS shall notify DFPS of the location of the child and the child's family. [Tex. Fam. Code § 261.301\(i\)](#).

DPS shall maintain a child safety check alert list as part of the Texas Crime Information Center (TCIC) to help locate a child or the child's family for purposes of:

- Investigating a report of child abuse or neglect;
- Providing protective services to a family receiving family-based support services; or
- Providing protective services to the family of a child in the managing conservatorship of DFPS. [Tex. Fam. Code § 261.3022\(a\)](#).

If DFPS is unable to locate a child or the child's family for a purpose described in [Tex. Fam. Code § 261.3022\(a\)](#) after DFPS has attempted to locate the child for not more than 20 days, DFPS shall notify DPS that DFPS is unable to locate the child or the child's family. The notice must include the information required by [Tex. Fam. Code § 261.3022\(c\)\(1\)-\(10\)](#). [Tex. Fam. Code § 261.3022\(b\)](#).

On receipt of notice from DFPS, DPS shall notify TCIC to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:

- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report DFPS is attempting to investigate;
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by [Tex. Fam. Code § 261.3022\(a\)](#);
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by [Tex. Fam. Code § 261.3022\(a\)\(2\)](#) or [Tex. Fam. Code § 261.3022\(a\)\(3\)](#);
- If applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;
- The family's last known address;
- Any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;
- The case number assigned by DFPS;
- The DFPS dedicated law-enforcement telephone number for statewide intake;
- The date and time when and the location where the child was last seen; and
- Any other information required for entry as established by TCIC. [Tex. Fam. Code § 261.3022\(c\)](#).

On receipt of notice that a child has been located, TCIC shall remove the child and the child's family from the child safety check alert list. [Tex. Fam. Code § 261.3024\(c\)](#).

If law enforcement encounters a child or other person listed on the TCIC child safety check alert list, the law enforcement officer shall follow the procedures described by the [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3023](#).

If a peace officer locates a child or other person listed on the TCIC child safety alert list established under [Tex. Fam. Code § 261.3022](#), the officer shall:

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- Immediately contact DFPS on the dedicated law enforcement telephone number for statewide intake;
 - Request information from DFPS regarding the circumstances of the case involving the child or other person; and
 - Request information from the child and the other person regarding the child's safety, well-being, and current residence. [Tex. Crim. Proc. Code Art. 2.272\(a\)](#).

The peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child. [Tex. Crim. Proc. Code Art. 2.272\(b\)](#).

If the peace officer determines that the circumstances described by [Tex. Fam. Code § 261.204](#) exist, the officer may take temporary possession of the child without a court order as provided by [Tex. Fam. Code § 261.204](#). If the peace officer does not take possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to DFPS. [Tex. Crim. Proc. Code Art. 2.272\(c\)](#).

A peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS shall report to TCIC that the child or other person has been located and to whom the child was released, as applicable. [Tex. Crim. Proc. Code Art. 2.272\(d\)](#).

If law enforcement encounters a person, including a child, listed on the TCIC child safety check alert list, the officer shall request information from the person or the child regarding the child's well-being and current residence. [Tex. Fam. Code § 261.3023\(a\)](#).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list shall report that the child has been located in the manner prescribed by [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3024\(a\)](#).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list and who reports the child's current address and other relevant information to DFPS under [Tex. Fam. Code § 261.3023](#) shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(a\)](#).

If DPS locates a child who has been placed on the child safety check alert list established under [Tex. Fam. Code § 261.3022](#) through a means other than information reported to DPS by a law enforcement officer under [Tex. Crim. Proc. Code Art. 2.272](#), DPS shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(b\)](#).

REMOVAL

Legal Overview of Removal of Children

Texas Family Code

Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 262. Procedures in Suit by Governmental Entity to Protect Health & Safety of Child

[Tex. Fam. Code Chapter 262](#) governs the circumstances in which DFPS may seek managing conservatorship of a child if there is an immediate need for the child's removal from the home due to child abuse or neglect. [Tex. Fam. Code Chapter 262, Subchapter B](#). However, in some cases, if in the opinion of DFPS, a real and unacceptable risk of harm to the child exists, even in the absence of an actual emergency, DFPS may proceed under [Tex. Fam. Code § 262.113](#).

- A. Removal or Conservatorship of a Child**
- B. Jurisdiction, Venue, and Transfer**
- C. Emergency Removal With a Court Order**
- D. Emergency Removal Without a Court Order**
- E. Expedited Hearing and Appeal**
- F. After Ex Parte Order Authorizing Removal**
- G. Filing Suit Prior to Taking Possession of Child**
- H. Service of Citation**
- I. Evaluation of Identified Relatives and Other Designated Individuals**
- J. Placement**
- K. Visitation Schedule**
- L. Placement When Child Victim of Human Trafficking**

A. Removal or Conservatorship of a Child

- 1. Authorized Actions by Governmental Entity**

A governmental entity with an interest in the child may file a suit affecting the parent-child relationship requesting an order or take possession of a child without a court order. [Tex. Fam. Code § 262.001\(a\)](#).

2. Child’s Health and Safety is Paramount Concern

When determining if reasonable efforts have been made with respect to preventing or eliminating the need to remove a child from the child’s home or to make it possible to return a child to the child’s home, the child’s health and safety is the paramount concern. [Tex. Fam. Code § 262.001\(b\)](#).

B. Jurisdiction, Venue, and Transfer

1. Jurisdiction

A suit brought by DFPS requesting an order under [Tex. Fam. Code Chapter 262](#) may be filed in a court with jurisdiction to hear the suit in the county in which the child is found. [Tex. Fam. Code § 262.002](#).

If the court of this state has acquired continuing, exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child except as provided by [Tex. Fam. Code Chapter 155](#) or [Tex. Fam. Code Chapter 262](#). [Tex. Fam. Code § 155.001\(c\)](#).

2. Venue

Venue lies in the county where the child resides, and generally speaking that county is where the child’s parent lives, unless:

- Another court has continuing exclusive jurisdiction under [Tex. Fam. Code Chapter 155](#); or
- Venue is fixed in a suit for dissolution of marriage under [Tex. Fam. Code Subchapter D, Chapter 6](#). [Tex. Fam. Code § 103.001\(a\)](#).

3. Transfer

The court hearing the case under [Tex. Fam. Code Chapter 262](#) is not required to transfer the suit to a court in which a parent has filed suit for divorce before a final order for the protection of the child has been rendered under [Tex. Fam. Code Chapter 263, Subchapter E](#). [Tex. Fam. Code § 262.203\(c\)](#). The court hearing the CPS case may, however, as a matter of discretion, transfer the suit to the court hearing a divorce suit or to another court in which a suit affecting the parent child relationship is pending, even if there is not yet a final order in either court. [Tex. Fam. Code § 262.203\(a\)](#).

Pursuant to [Tex. Fam. Code § 262.203](#), an order of transfer must include:

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- The date of any future hearings in the case that have been scheduled by the transferring court;
 - Any date scheduled by the transferring court for the dismissal of the suit under [Tex. Fam. Code § 263.401](#); and
 - The name and contact information of each attorney ad litem or guardian ad litem appointed in the suit. [Tex. Fam. Code § 262.203\(d\)](#).

The court to which a suit is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

- The 10th day after the date of receiving the order of transfer; or
- The date of the first scheduled hearing after the transfer. [Tex. Fam. Code § 262.203\(e\)](#).

[Tex. Fam. Code § 155.207\(a\)](#) and [Tex. Fam. Code § 155.207\(c\)](#) address the transfer of court files from one jurisdiction to another. Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send to the proper court in the county to which transfer is being made:

- The pleadings in the pending proceeding and any other document specifically requested by a party;
- Certified copies of all entries in the minutes;
- A certified copy of each final order; and
- A certified copy of the order of transfer signed by the transferring court. [Tex. Fam. Code § 155.207\(a\)](#).

On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. [Tex. Fam. Code § 155.207\(c\)](#).

C. Emergency Removal With a Court Order

1. Filing a Petition Before Taking Possession of a Child

An original suit filed by a governmental entity requesting permission to take possession of a child without prior notice and a hearing must be supported by a sworn affidavit of a person with personal knowledge stating facts sufficient to satisfy a person with ordinary prudence and caution that:

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- There is an immediate danger to the child’s physical health or safety or the child has been the victim of neglect or sexual abuse and that 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; 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. [Tex. Fam. Code § 262.101.](#)

2. Emergency Order Authorizing Possession of a Child Prior to Removal

Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under [Tex. Fam. Code § 105.001\(a\)\(1\)](#) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child, the court must find that:

- There is an immediate danger to the physical health or safety of the child or the child has been the victim of neglect or sexual abuse and that 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; 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. [Tex. Fam. Code § 262.102\(a\).](#)

In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child’s household includes a person who has:

- Abused or neglected another child in a manner that causes serious injury to or the death of the other child; or
- Sexually abused another child. [Tex. Fam. Code § 262.102\(b\).](#)

The court shall render a temporary order under [Tex. Fam. Code Title 4](#) for the protection of the child if the court finds that, based on the recommendation of or request by DFPS:

- Child abuse or neglect has occurred; and
- The child requires protection from family violence by a member of the child’s family or household. [Tex. Fam. Code § 262.102\(c\).](#)

3. Removal of Alleged Perpetrator of Physical/Sexual Abuse

If DFPS determines after an investigation that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, DFPS shall file a petition for the removal of the alleged perpetrator from the residence rather than attempt to remove the child from the residence. [Tex. Fam. Code § 262.1015\(a\)](#).

Notwithstanding [Tex. Fam. Code § 262.1015\(a\)](#), if DFPS determines that a protective order under [Tex. Fam. Code Title 4](#) provides a reasonable alternative to obtaining an order under [Tex. Fam. Code § 262.1015\(a\)](#), DFPS may file an application for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order or can assist the parent or other adult with whom the child resides in obtaining a protective order. [Tex. Fam. Code § 262.1015\(a-1\)](#).

A court has the authority to issue a temporary restraining order for the removal of an alleged perpetrator if the DFPS petition states facts sufficient to satisfy the court that:

- There is immediate danger to the physical health or safety of the child or the child has been the 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 make reasonable efforts to monitor the residence and report to DFPS and appropriate law enforcement 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. [Tex. Fam. Code § 262.1015\(b\)](#).

The temporary restraining order:

- Is to be served on the alleged perpetrator as well as the adult with whom the child will continue to reside. [Tex. Fam. Code § 262.1015\(c\)](#).
- Expires not later than the 14th day after the order was rendered, unless the court grants an extension under [Tex. Fam. Code § 262.201\(a-3\)](#). [Tex. Fam. Code § 262.1015\(d\)](#).
- Requires that the other adult with whom the child will continue to reside make a reasonable effort to monitor the residence and report to DFPS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence. [Tex. Fam. Code § 262.1015\(e\)](#).

The court shall order the removal of an alleged perpetrator if the court finds that the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the child’s residence and that:

- The presence of the alleged perpetrator in the child’s residence constitutes a continuing danger to the physical health or safety of the child; or
- The child has been the victim of sexual abuse and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the residence. [Tex. Fam. Code § 262.1015\(f\)](#).

Removal of an alleged perpetrator from the child’s home was cited by the Supreme Court of Texas as a means of protecting a child short of separating the child from the parents and placing the child in foster care. See *In re Tex. Dep’t of Family and Protective Servs.*, [255 S.W.3d 613, 615](#) (Tex. 2008, orig. proceeding).

4. Failure to Report Perpetrator's Return

A person commits an offense if the person is a parent or other person with whom a child resides, the person is served with an order, and the person fails to make a reasonable effort to monitor the residence of the child or to report to DFPS and the appropriate law enforcement agency an attempt by the alleged perpetrator to return to the residence. An offense under this section is a Class A misdemeanor. [Tex. Fam. Code § 262.1015\(g\)](#).

5. Criminal Offense for Returning to Child's Residence

A person commits an offense if, in violation of a court order under this section, the person returns to the residence of the child the person is alleged to have abused. An offense under this subsection is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this subsection. [Tex. Fam. Code § 262.1015\(h\)](#).

D. Emergency Removal Without a Court Order

1. Taking Possession Without a Court Order

If there is no time to obtain a temporary order, temporary restraining order or attachment under [Tex. Fam. Code § 262.102\(a\)](#) before taking possession of the child consistent with the health and safety of that child, an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions only:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

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- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe there is an immediate danger to the physical health or safety of a child;
 - On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#);
 - On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#); or
 - On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by [Tex. Health & Safety Code Chapter 481](#) and the use constitutes an immediate danger to the physical health or safety of the child. [Tex. Fam. Code § 262.104\(a\)](#).

Special Issue: The statute appears to discourage emergency removal if prior notice and hearing is feasible without endangering the child. The exact nature of the emergency is determined by the DFPS caseworker or officer at the scene. According to the CPS Handbook, a caseworker should consider emergency removal only if other options for protecting the child are ruled out. Please see the [CPS Handbook § 5412](#) located at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_5400.asp.

2. Special Case for Methamphetamine

An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession of a child under [Tex. Fam. Code § 262.104\(a\)](#) on personal knowledge, or information that has been furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine. [Tex. Fam. Code § 262.104\(b\)](#).

3. Initial Hearing Requirement After Removal

If a child has been taken into possession without a court order by a governmental entity, the court in which a suit has been filed shall hold an initial hearing on or before the first working day after the date the child is taken into possession. [Tex. Fam. Code § 262.106](#).

The court shall render orders that are necessary to protect the physical health and safety of the child. [Tex. Fam. Code § 262.106\(a\)](#).

If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. [Tex. Fam. Code § 262.106\(a\)](#).

For the purpose of determining the first working day after the date the child is taken into possession, the child is considered to have been taken into possession by DFPS on the expiration of the five-day period permitted pursuant to [Tex. Fam. Code § 262.007\(c\)](#) or [Tex. Fam. Code § 262.110\(b\)](#). [Tex. Fam. Code § 262.106\(d\)](#).

The initial hearing may be ex parte (without notice to the parents) and proof may be by sworn petition or affidavit if a full Adversary Hearing is not practicable. [Tex. Fam. Code § 262.106\(b\)](#).

If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child. [Tex. Fam. Code § 262.106\(c\)](#).

4. Standard for Decision at Initial Hearing After Taking Possession

The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity, unless the court is satisfied that:

- There is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child, or the evidence shows that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#) on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
- Continuation of the child in the home would be contrary to the child's welfare; 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. [Tex. Fam. Code § 262.107\(a\)](#).

In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

-
- Sexually abused another child. [Tex. Fam. Code § 262.107\(b\)](#).

5. Taking Possession of Child in Emergency With Intent to Return Home

An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take temporary possession of a child without a court order on discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child. [Tex. Fam. Code § 262.110\(a\)](#).

Until a parent or other person entitled to possession of the child takes possession of the child, DFPS may retain possession of the child without a court order for not more than five days. On the expiration of the fifth day, if a parent or other person entitled to possession does not take possession of the child, DFPS shall take action under [Tex. Fam. Code Chapter 262](#) as if DFPS took possession under [Tex. Fam. Code § 262.104](#). [Tex. Fam. Code § 262.110\(b\)](#).

E. Expedited Hearing and Appeal

1. Expedited Hearing

DFPS is entitled to an expedited hearing under [Tex. Fam. Code Chapter 262](#) in any proceeding in which a hearing is required if DFPS determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child. [Tex. Fam. Code § 262.112\(a\)](#).

2. Expedited Appeal

In any proceeding in which an expedited hearing is held under [Tex. Fam. Code § 262.112\(a\)](#), DFPS, a parent, guardian, or other party to the proceeding is entitled to an expedited appeal on a ruling by the court that the child may not be removed from the child's home. [Tex. Fam. Code § 262.112\(b\)](#).

3. Subsequent Allegation

If a child is returned to the child's home after a removal in which DFPS was entitled to an expedited hearing under [Tex. Fam. Code § 262.112](#) and the child is subject of a subsequent allegation of abuse or neglect, DFPS or any other interested party is entitled to an expedited hearing on the removal of the child from the child's home in the manner provided by [Tex. Fam. Code § 262.112\(a\)](#) and to an expedited appeal in the manner provided by [Tex. Fam. Code § 262.112\(b\)](#). [Tex. Fam. Code § 262.112\(c\)](#).

F. After Ex Parte Order Authorizing Removal

1. Duration of Temporary Order, Temporary Restraining Order, and Attachment

A temporary order, temporary restraining order, or attachment of the child issued under [Tex. Fam. Code § 262.102\(a\)](#) expires not later than 14 days after the date it is issued unless it is extended as provided by [Tex. R. Civ. P. 680](#) or [Tex. Fam. Code § 262.201\(a-3\)](#). [Tex. Fam. Code § 262.103](#).

2. Temporary Managing Conservatorship

The court has the authority to issue a temporary order as described in [Tex. Fam. Code § 105.001](#), including an order for temporary conservatorship of a child, which may be rendered without notice and an Adversary Hearing if the order is an emergency order sought by a governmental entity. [Tex. Fam. Code § 105.001\(h\)](#).

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child. [Tex. Fam. Code § 153.002](#).

The managing conservator must be a parent, a competent adult, DFPS, or a licensed child-placing agency. [Tex. Fam. Code § 153.005\(b\)](#).

The rights and duties of a non-parent appointed as managing conservator are listed in [Tex. Fam. Code § 153.371](#).

A temporary order in a suit affecting a parent-child relationship rendered in accordance with [Tex. Fam. Code § 105.001](#) is not required to include a temporary parenting plan. The court may not require the submission of a temporary parenting plan in any case by local rule or practice. [Tex. Fam. Code § 153.602](#).

3. Setting Date for Full Adversary Hearing

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 of the child was taken into possession by the governmental entity. [Tex. Fam. Code § 262.201\(a\)](#).

Special Issue: Because the full Adversary Hearing must be scheduled no later than the 14th day from the date the child is taken into custody, many judges schedule the full Adversary Hearing at the time the ex parte order is signed. Scheduling the full Adversary Hearing at the time the ex parte order is signed not only provides notice to the parent of the Adversary Hearing, but pursuant to Section 262.102 [Emergency Order Authorizing Possession of a Child] the temporary order, temporary restraining order, or attachment of a child must contain the following statement prominently displayed in boldface type, capital letters, or underlined: "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

4. Attorney ad Litem and Guardian Ad Litem Appointments

4.1 Mandatory Appointment of Attorney ad Litem and Guardian ad Litem

In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full Adversary Hearing, to ensure adequate representation of the child. [Tex. Fam. Code § 107.012](#). For more information regarding the role and responsibilities of an attorney ad litem, please see [Tex. Fam. Code § 107.003](#) and [Tex. Fam. Code § 107.004](#).

In a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full Adversary Hearing. [Tex. Fam. Code § 107.011\(a\)](#). For more information regarding the role and responsibilities of a guardian ad litem, please see [Tex. Fam. Code § 107.002](#).

4.2 Discretionary Appointment of Parent Attorney

[Tex. Fam. Code § 107.0141](#) states that the court may appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under [Tex. Fam. Code Chapter 262](#) and ending on the court's determination of whether the parent is indigent before commencement of the full Adversary Hearing. [Tex. Fam. Code § 107.0141\(a\)](#).

An attorney ad litem appointed for a parent under this section:

- Has the powers and duties of an attorney ad litem appointed under [Tex. Fam. Code § 107.0131](#); and
- If applicable, shall:
 - conduct an investigation regarding the petitioner’s due diligence in locating and serving citation on the parent; and
 - interview any parent or other person who may have information relating to the identity or location of the parent. [Tex. Fam. Code § 107.0141\(b\)](#).

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Inform the parent of the parent’s right to be represented by an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;
- If the parent claims indigence and requests an attorney ad litem beyond the period of time the temporary appointment under [Tex. Fam. Code § 107.0141](#), assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and
- Assist the parent in preparing for the full Adversary Hearing under [Tex. Fam. Code Chapter 262, Subchapter C. Tex. Fam. Code § 107.0141\(c\)](#).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under [Tex. Fam. Code § 107.013\(a\)\(1\)](#). [Tex. Fam. Code § 107.0141\(d\)](#).

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem’s efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by [Tex. Fam. Code § 107.0141\(e\)](#), the court shall discharge the attorney ad litem from the appointment. [Tex. Fam. Code § 107.0141\(e\)](#).

If the attorney ad litem identifies or locates the parent, and the court determines that the parent is not indigent, the court shall discharge the attorney ad litem from the appointment. [Tex. Fam. Code § 107.0141\(f\)](#).

4.3 Court-Maintained Appointment Lists

Each court in this state shall establish and maintain a list of all attorneys who are qualified to serve as an attorney or guardian ad litem or mediator and are registered with the court. [Tex. Gov’t Code § 37.003\(a\)](#). Guardians ad litem or other persons

appointed under a program authorized by [Tex. Fam. Code § 107.031](#) are exempt from this list. [Tex. Gov't Code § 37.002](#). A court annually shall post each list at the courthouse of the county in which the court is located and on any Internet website of the court. [Tex. Gov't Code § 37.005](#). Courts will also be required to use a rotation system to appoint attorneys unless certain exceptions apply. [Tex. Gov't Code § 37.004](#).

Additionally, the clerk of each court shall prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, or mediator for a case before the court in the preceding month or note that no appointments were made for the preceding month. [Tex. Gov't Code § 36.004\(a\)](#). The report on court appointments must include:

- The name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The number and style of each case in which an a person was appointed as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian or mediator appointed by the court in that month and the source of the compensation; and
- If the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian or mediator for one appointed case in that month exceeds \$1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses. [Tex. Gov't Code § 36.004\(a\)\(1\)-\(6\)](#).

Not later than the 15th day of each month, the clerk of the court shall:

- Submit a copy of the report to the Office of Court Administration; and
- Post the report at the courthouse of the county in which the court is located and on any Internet website of the court. [Tex. Gov't Code § 36.004\(b\)](#).

If a court fails to provide to the clerk of the court information required for the report submitted under [Tex. Gov't Code § 36.004](#), the court is ineligible for any grant money

awarded by this state or a state agency for the next state fiscal biennium. [Tex. Gov't Code § 36.005](#).

Special Issue: A recent Attorney General Opinion stated that a court is unlikely to conclude that Senate Bill 1876, passed in 2015 and which mandated court-maintained appointment lists, is unconstitutional under [Tex. Const. art. II, § 1](#) or is unconstitutionally vague. [Att'y Gen. Op. No. KP-0071 \(2016\)](#).

4.4 Office of Child Representation and Office of Parent Representation and Managed Assigned Counsel Program

a. Office of Child Representation and Office of Parent Representation

The Texas Family Code authorizes governmental entities, including a county or group of counties, to create offices of child representation or parent representation. [Tex. Fam. Code Chapter 107, Subchapter E](#); [Tex. Fam. Code § 107.061](#); [Tex. Fam. Code § 107.062](#); [Tex. Fam. Code § 107.063](#); [Tex. Fam. Code § 107.066](#); [Tex. Fam. Code § 107.068](#); [Tex. Fam. Code § 107.069](#); [Tex. Fam. Code § 107.070](#); [Tex. Fam. Code § 107.071](#); and [Tex. Fam. Code § 107.072](#).

An office of child representation is an entity that used public money to provide legal representation and services for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a child under [Tex. Fam. Code § 107.012](#). [Tex. Fam. Code § 107.064](#).

An office of parent representation is an entity that uses public money to provide legal representation and services for a parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a parent under [Tex. Fam. Code § 107.013](#). [Tex. Fam. Code § 107.065](#).

b. Managed Assigned Counsel Program for the Representation of Certain Children and Parents

The Texas Family Code also includes provisions authorizing the creation of managed assigned counsel programs. [Tex. Fam. Code Chapter 107, Subchapter F](#); [Tex. Fam. Code § 107.101](#); [Tex. Fam. Code § 107.102](#); [Tex. Fam. Code § 107.103](#); [Tex. Fam. Code § 107.104](#); [Tex. Fam. Code § 107.105](#); [Tex. Fam. Code § 107.106](#); [Tex. Fam. Code § 107.107](#); and [Tex. Fam. Code § 107.108](#).

A managed assigned counsel program may be operated with public money for the purpose of appointing counsel to provide legal representation and services for a child or parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which

appointment is mandatory for a child under [Tex. Fam. Code § 107.012](#) and for a parent under [Tex. Fam. Code § 107.013](#). [Tex. Fam. Code § 107.102\(a\)](#).

4.5 Duties and Required Training of Child’s Attorney Ad Litem

The duties and responsibilities of attorneys ad litem are found in [Tex. Fam. Code § 107.003](#) and [Tex. Fam. Code § 107.004](#).

[Tex. Fam. Code § 107.004](#) requires that the attorney for the child file a written statement with the court indicating that the attorney ad litem complied with [Tex. Fam. Code § 107.004\(d\)\(1\)](#), if the child or individual is not present at the court hearing. This requirement is not intended to require that the attorney state what the child said in the meeting. It only requires that the attorney file with the court a written statement of compliance with the meeting provision in [Tex. Fam. Code § 107.004](#).

[Tex. Fam. Code § 107.004](#) states that the required meeting under [Tex. Fam. Code § 107.004\(d\)](#) must take place:

- A sufficient time before the hearing to allow the attorney ad litem to prepare for the hearing in accordance with the child's expressed objectives of representation; and
- In a private setting that allows for confidential communications between the attorney ad litem and the child or individual with whom the child ordinarily resides, as applicable. [Tex. Fam. Code § 107.004\(d-1\)](#).

Special Issue: This implies that a brief meeting in the hallway before a hearing is not sufficient to comply with an attorney’s obligation to meet with his or her client (or other individual). The meeting should occur sufficiently in advance of the hearing date to allow time to prepare for the hearing in light of the information obtained at the meeting. This might be a subject of judicial inquiry during the hearing.

[Tex. Fam. Code § 107.004\(d-2\)](#) also requires that an attorney ad litem appointed to represent a child in the managing conservatorship of DFPS shall, before each scheduled hearing under [Tex. Fam. Code Chapter 263](#), determine whether the child’s educational needs and goals have been identified and addressed. [Tex. Fam. Code § 107.004\(d-2\)](#).

4.6 Duties of Parent Attorney

[Tex. Fam. Code § 107.0131](#) requires an attorney appointed to represent a parent to abide by the parent’s objectives for representation. [Tex. Fam. Code § 107.0131\(a\)\(1\)\(H\)](#).

a. Duration of Appointment of Parent Attorney

[Tex. Fam. Code § 107.016](#) provides for continuity of representation for parents who appeal a termination or managing conservatorship order, stating:

- An order appointing DFPS as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court; and
- An attorney appointed under [Tex. Fam. Code Chapter 107, Subchapter B](#) to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:
 - the date the suit affecting the parent-child relationship is dismissed;
 - the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
 - the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record. [Tex. Fam. Code § 107.016](#).

4.7 Duties of Parent Appointed to Represent Alleged Father

Except as otherwise provided by [Tex. Fam. Code § 107.0132\(b\)](#) and [Tex. Fam. Code § 107.0132\(d\)](#), an attorney ad litem appointed under [Tex. Fam. Code § 107.013](#) to represent the interests of an alleged father is required to:

- Conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under [Tex. Fam. Code Chapter 160](#);
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and
- Conduct an independent investigation to identify or locate the alleged father, if applicable. [Tex. Fam. Code § 107.0132\(a\)](#).

[Tex. Fam. Code § 107.0132](#) provides duties for an attorney appointed to represent an alleged father who cannot be located. Specifically, those duties are limited to conducting an investigation regarding the petitioner's due diligence in locating the alleged father, and conducting an independent investigation to locate the father, including interviewing parties or persons with knowledge of the identity or location of the alleged father. If located, the attorney ad litem shall provide to each party and the court with the alleged father's name and locating information. If appropriate, the court may allow the attorney to assist the alleged father in establishing paternity. If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may

appoint the attorney ad litem to continue to represent the father's interests as a parent under [Tex. Fam. Code § 107.013\(a\)\(1\)](#) or [Tex. Fam. Code § 107.013\(c\)](#). [Tex. Fam. Code § 107.0132](#).

If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father. [Tex. Fam. Code § 107.0132](#). On receipt of the summary required by [Tex. Fam. Code § 107.0132\(d\)](#), the court shall discharge the attorney from the appointment. [Tex. Fam. Code § 107.0132\(d\)](#).

4.8 Duties of Attorneys Appointed to Represent Parents Whose Identity or Location is Unknown or Who Has Been Cited by Publication

[Tex. Fam. Code § 107.014](#) addresses situations when an attorney is appointed to represent a parent whose identity or location is unknown or who has been cited by publication.

a. Duties

Except as provided by [Tex. Fam. Code § 107.014\(b\)](#) and [Tex. Fam. Code § 107.014\(e\)](#), an attorney ad litem appointed under [Tex. Fam. Code § 107.013](#) to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

- Conduct an investigation regarding the petitioner's due diligence in locating the parent;
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and
- Conduct an independent investigation to identify or locate the parent, as applicable. [Tex. Fam. Code § 107.014\(a\)](#).

b. If Parent Identified and Located

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:
 - disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or
 - the parent has been a victim of family violence; and
- If appropriate, assist the parent in making a claim of indigence for the appointment of an attorney. [Tex. Fam. Code § 107.014\(b\)](#).

If the court makes a finding described by [Tex. Fam. Code § 107.014\(b\)\(1\)\(A\)](#) or [Tex. Fam. Code § 107.014\(b\)\(1\)\(B\)](#), the court may:

- Order that the information not be disclosed; or
- Render any other order the court considers necessary. [Tex. Fam. Code § 107.014\(c\)](#).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under [Tex. Fam. Code § 107.013\(a\)\(1\)](#). [Tex. Fam. Code § 107.014\(d\)](#).

c. If Parent Not Located or Identified

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by [Tex. Fam. Code § 107.014\(e\)](#), the court shall discharge the attorney from the appointment. [Tex. Fam. Code § 107.014\(e\)](#).

4.9 Required Attorney Training

[Tex. Fam. Code § 107.004](#) requires continuing legal education for attorneys appointed to represent children. An attorney ad litem appointed for a child in a proceeding under [Tex. Fam. Code Subtitle E](#) shall complete at least three hours of continuing legal education relating to representing children in child protection cases as described in [Tex. Fam. Code § 107.004\(c\)](#) as soon as practicable after the attorney ad litem is appointed. An attorney ad litem is not required to comply with [Tex. Fam. Code § 107.004\(d\)](#) if the court finds that the attorney ad litem has experience equivalent to the required education. [Tex. Fam. Code § 107.004\(b\)](#).

An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child protection case must complete at least three hours of continuing legal education relating to the representation of a child in a proceeding under [Tex. Fam. Code Subtitle E](#) each year before the anniversary date of the attorney's listing. [Tex. Fam. Code § 107.004\(b-1\)](#). The continuing legal education must focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a child in a proceeding under [Tex. Fam. Code Subtitle E](#). [Tex. Fam. Code § 107.004\(c\)\(2\)](#).

[Tex. Fam. Code § 107.0131](#) provides enumerated duties for parents' attorneys, including three hours of CLE training and meeting with the client before each hearing. [Tex. Fam. Code § 107.0131](#). [Tex. Fam. Code § 107.0131](#) also requires that the continuing legal education relate to representing parents in child protection cases and focus on the duties of an attorney ad litem in, and the procedures of and best practices

for, representing a parent in a proceeding under [Tex. Fam. Code Subtitle E](#). [Tex. Fam. Code § 107.0131\(b\)\(2\)](#). An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case must complete at least three hours of continuing legal education relating to the representation of a parent in a proceeding under [Tex. Fam. Code Subtitle E](#) each year before the anniversary date of the attorney's listing. [Tex. Fam. Code § 107.0131\(c\)](#).

The State Bar of Texas currently offers a number of online Continuing Legal Education (CLE) courses in the CPS Library of TexasBar CLE related to representation of all parties on the CPS docket, including the following webinars:

- Child Abuse & Neglect Workshop from 2015 Advanced Family Law Conference
- Representing Texas Parents in Abuse and Neglect Cases (2013)
- Special Education Advocacy for Kids in the Foster Care System (2013)
- Trial Skills in the CPS Case (2013)
- Moving from Ordinary to Extraordinary Representation in CPS Cases (2015)
- Child Protection Legislative Update - 84th Legislative Session (2015)
- Thinking Ahead: Dealing with Appeals Issues in CPS Cases (2015)
- Effective Representation of Children and Aged Out Foster Youth: Beyond the Basics (2016)
- Tips and Traps from Appointment Through Trial; Effective Representation of a Parent in a CPS Case (2016)
- Special Issues in CPS Parent Representation: teen parent; non-offending parent, undocumented/ ESL, deportation, ICE, DAPA, incarcerated parent (2016)

Additional webinars are added to the CPS online library periodically. Please select the CPS practice area when using the following link in order to access the current offerings: <http://www.texasbarcle.com/CLE/OCSearch2.asp>.

These webinars are free to judges. Attorneys who currently take appointments to represent children and parents can on a CPS docket, as well as attorneys who pledge to take appointments, can qualify for a discount when registering for any of these webinars.

Several of these webinars have qualified to meet the statutory three hour education requirements for attorneys to qualify for court appointments on child protection dockets.

5. Notice Requirement to Parent Regarding Legal Representation

The temporary order, temporary restraining order, or attachment of a child rendered by the court must contain the following statement prominently displayed in boldface type, capital letters, or underlined:

“YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU.”
[Tex. Fam. Code § 262.102\(d\)](#).

DFPS or other agency must give written notice to each parent of the child or to the child’s conservator or legal guardian when a representative of DFPS or other agency takes possession of a child. [Tex. Fam. Code § 262.109\(a\)](#).

The written notice must be given as soon as practicable, but in any event not later than the first working day after the date the child is taken into possession. [Tex. Fam. Code § 262.109\(b\)](#).

The written notice requirements must include, among other things:

- The reasons why the child was removed;
- Contact information for the caseworker;
- A summary of legal rights; and
- A statement that the parent has the right to hire an attorney. [Tex. Fam. Code § 262.109\(c\)](#).

The court may, but is not required to, waive the required notice under special circumstances, such as:

- The inability to locate the parent or caretaker;
- The child is an abandoned infant delivered to an emergency care provider; or
- For other good cause. [Tex. Fam. Code § 262.109\(d\)](#).

Special Issue: DFPS is responsible for providing service of citation and notice of several matters relating to agency activities relating to a lawsuit (investigations, removals, review hearings, etc.). While the same word “notice” is often used for both, it is important to distinguish between service and notice. The Texas Family Code requires that DFPS provide notice to parents of the investigation and removal of a child, as well as notice to relatives of the removal, and notice to parties, relatives, caregivers, and child if age 10 or older, of all review hearings. These notice obligations, however, do not need to be executed in accordance with the rules governing service under the Texas Rules of Civil Procedure. [Tex. Fam. Code § 263.0021](#) provides several methods of notice available to DFPS.

In lawsuits filed by DFPS, the agency is responsible for obtaining service of citation containing the original petition and providing notice of trial settings and other events during the pendency of the legal case. With respect to service of citation, [Tex. Fam. Code § 102.009\(c\)](#) directs that service be made “as in other civil cases.” Accordingly, DFPS is responsible for obtaining service of citation to all parties listed in [Tex. Fam. Code § 102.009\(a\)](#). Service must be accomplished via the method prescribed in [Tex. R. Civ. P. 106](#) and by a person authorized pursuant to [Tex. R. Civ. P. 103](#).

6. Information Provided to Relatives and Certain Individual; Investigation

When DFPS takes possession of a child under [Tex. Fam. Code Chapter 262](#), DFPS shall provide information to each adult who DFPS is able to identify and locate and who is:

- Related to the child within the third degree of consanguinity;
- An adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child’s biological father; or
- Identified as a potential relative or designated caregiver as defined by [Tex. Fam. Code § 264.751](#) on the proposed Child Placement Resources Form provided under [Tex. Fam. Code § 261.307](#), and may provide information regarding an adult who DFPS determines has a long-standing and significant relationship with the child. [Tex. Fam. Code § 262.1095\(a\)](#).
- The written notice must include, among other things:
 - notice that the child is in the state’s custody;
 - options available for participation in the care and placement and support of the family;
 - options that may be lost if the individual fails to timely respond;
 - include the date, time and location of the Status Hearing, if known. [Tex. Fam. Code § 262.1095\(b\)](#).

DFPS is not required to provide information to a person who has criminal or family violence history. [Tex. Fam. Code § 262.1095\(c\)](#).

DFPS must use due diligence to identify and locate all individuals described by [Tex. Fam. Code § 262.1095\(a\)](#) within 30 days of the date DFPS files the Suit Affecting the Parent-Child Relationship (SAPCR). [Tex. Fam. Code § 262.1095\(d\)](#). The failure of a parent or alleged father to complete the Child Placement Resources Form does not relieve DFPS of its duty to seek information about persons under [Tex. Fam. Code § 262.1095\(d\)](#). [Tex. Fam. Code § 262.1095\(e\)](#).

G. Filing Suit Prior to Taking Possession of Child

1. When it is Not Necessary to Remove a Child Prior to Notice and Hearing

An original suit filed by a governmental entity that requests to take possession of a child after 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:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the child to remain in the home would be contrary to the child's welfare. [Tex. Fam. Code § 262.113](#).

H. Service of Citation

The following are entitled to service of citation on the filing of a petition in an original suit:

- A managing conservator;
- A possessory conservator;
- A person having possession of or access to the child under an order;
- A person required by law or by order to provide for the support of the child;
- A guardian of the person of the child;
- A guardian of the estate of the child;
- Each parent as to whom the parent-child relationship has not been terminated or process has not been waived under [Tex. Fam. Code Chapter 161](#);
- An alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by [Tex. Fam. Code Chapter 161](#)

or unless the petitioner has complied with the provisions of [Tex. Fam. Code § 161.002\(b\)\(2\), \(3\), or \(4\)](#);

- A man who has filed a notice of intent to claim paternity as provided by [Tex. Fam. Code Chapter 160](#);
- DFPS, if the petition requests that DFPS be appointed as managing conservator of the child;
- The Title IV-D agency, if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency under [Tex. Fam. Code Chapter 231](#);
- A prospective adoptive parent to whom standing has been conferred under [Tex. Fam. Code § 102.0035](#); and
- A person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under [Tex. Fam. Code Chapter 161](#) or to whom consent to adoption has been given in writing under [Tex. Fam. Code Chapter 162](#). [Tex. Fam. Code § 102.009\(a\)](#).

Alleged fathers are not parents as defined in [Tex. Fam. Code § 101.024](#) and do not have the right to a court appointed attorney other than one appointed pursuant to [Tex. Fam. Code § 107.013\(a\)\(3\)](#) to monitor the due diligence of DFPS in checking the paternity registry under [Tex. Fam. Code Chapter 160](#). However, alleged fathers have the right to service of citation unless that right is waived in an affidavit of waiver of interest in the child, or forfeited by failing to register with the paternity registry. [Tex. Fam. Code § 102.009\(a\)\(8\)](#).

AND

Citation may be served on any other person who has or who may assert an interest in the child. [Tex. Fam. Code § 102.009\(b\)](#).

AND

Citation on the filing of an original petition in a suit shall be issued and served as in other civil cases. [Tex. Fam. Code § 102.009\(c\)](#).

Waiver of Citation

[Tex. Fam. Code § 102.0091](#) allows for waiver of citation. A party to a suit under [Tex. Fam. Code Title 5](#) may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition. [Tex. Fam. Code § 102.0091\(a\)](#).

The party executing the waiver may not sign the waiver using a digitalized signature. [Tex. Fam. Code § 102.0091\(b\)](#). The waiver must contain the mailing address of the party executing the waiver. [Tex. Fam. Code § 102.0091\(c\)](#).

Notwithstanding [Tex. Civ. Prac. & Rem. Code § 132.001](#), the waiver must be sworn before a notary public who is not an attorney in the suit, unless the party executing the waiver is incarcerated. [Tex. Fam. Code § 102.0091\(d\)](#). The Texas Rules of Civil Procedure do not apply to a waiver executed under [Tex. Fam. Code § 102.0091](#). [Tex. Fam. Code § 102.0091\(e\)](#).

I. Evaluation of Identified Relatives and Other Designated Individuals

1. Background/Criminal History Checks

Before a full Adversary Hearing, DFPS must perform a background and criminal history check on the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by [Tex. Fam. Code § 264.751](#), on the proposed Child Placement Resources Form provided under [Tex. Fam. Code § 261.307](#).

DFPS shall determine which relative or other designated individual would be the most appropriate substitute caregiver, if any, before the full Adversary Hearing. Until DFPS identifies such caregiver, DFPS must continue to explore substitute caregiver options. The time frames do not apply to a relative or other designated individual located in another state. [Tex. Fam. Code § 262.114\(a\)](#).

For more on out of state placements, see generally the Interstate Compact on Placement of Children⁴ and [the Bench Book chapter on *The Interstate Compact on the Placement of Children \(ICPC\)*](#).

2. Home Study Filed With Court

At the full Adversary Hearing, DFPS shall, after redacting any social security numbers, file with the court:

- A copy of each proposed Child Placement Resources Form completed by the parent or other person having legal custody of the child;
- A copy of any completed home study performed; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed. [Tex. Fam. Code § 262.114\(a-1\)](#).

If the child has not been placed with a relative or other designated caregiver by the time of the full Adversary Hearing, DFPS shall file with the court a statement that explains:

- The reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and

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- The actions DFPS is taking, if any, to place the child with a relative or other designated caregiver. [Tex. Fam. Code § 262.114\(a-2\)](#).

J. Placement

1. Child Placement Resources Form

DFPS may place a child with a relative or other designated caregiver identified on the proposed Child Placement Resources Form.

DFPS:

- Must determine that the placement is in the best interest of the child;
- Must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver;
- May place the child before conducting the background and criminal history check or home study required by [Tex. Fam. Code § 262.114\(a\)](#). Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, DFPS shall begin the home study of the relative or other designated caregiver. DFPS shall complete the home study as soon as possible unless otherwise ordered by a court; and
- Shall provide a copy of an informational manual required under [Tex. Fam. Code § 261.3071](#) to the relative or other designated caregiver at the time of the child's placement. [Tex. Fam. Code § 262.114\(b\)](#).

A foster parent with whom the child previously resided shall be considered for placement if:

- DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest; and
- The placement is available and in the child's best interest. [Tex. Fam. Code § 262.114\(c\)](#).

2. Caregiver Visit With Child; Information

Before placing a child with a proposed relative or other designated caregiver, DFPS must:

- Arrange a visit between the child and the proposed caregiver; and
- Provide the proposed caregiver with a form, which may be the same form DFPS provides to nonrelative caregivers, containing information, to the extent it is available, about the child that would enhance continuity of care for the child, including:

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- the child’s school information and educational needs;
 - the child’s medical, dental, and mental health care information;
 - the child’s social and family information; and
 - any other information about the child DFPS determines will assist the proposed caregiver in meeting the child’s needs. [Tex. Fam. Code § 264.7541\(a\)](#).

DFPS may waive the requirements if the proposed relative or other designated caregiver has a long-standing or significant relationship with the child and has provided care for the child at any time during the 12 months preceding the date of the proposed placement. [Tex. Fam. Code § 264.7541\(b\)](#).

3. Unacceptable Facilities for Housing Child

When a child is taken into possession and no allegations of delinquent conduct, conduct in need of supervision, or criminal conduct have been made, that child may not be held in isolation or in a jail, juvenile detention facility, or other secure detention facility. [Tex. Fam. Code § 262.108](#).

K. Visitation Schedule

1. Visitation With Certain Children

Applicable only to a child:

- Who is in the temporary managing conservatorship of DFPS; and
- For whom the goal of DFPS is reunification of the child with the child’s parent. [Tex. Fam. Code § 262.115\(b\)](#).

DFPS shall ensure that a parent who is otherwise entitled to possession of the child has an opportunity to visit the child not later than the fifth day after the date DFPS is named temporary managing conservator of the child unless:

- DFPS determines that visitation is not in the child’s best interest; or
- Visitation with the parent would conflict with a court order relating to possession of or access to the child. [Tex. Fam. Code § 262.115\(c\)](#).

2. Temporary Visitation Schedule

Before a hearing conducted under [Tex. Fam. Code Chapter 262, Subchapter C](#), DFPS in collaboration with each parent of the child must develop a temporary visitation schedule for the child’s visits with each parent. The visitation schedule may conform to the minimum visitation policies of DFPS. DFPS shall consider the factors listed in [Tex. Fam. Code § 263.107\(c\)](#) in developing the temporary visitation schedule. Unless modified by court order,

the schedule remains in effect until a visitation plan is developed under [Tex. Fam. Code § 263.107](#). [Tex. Fam. Code § 262.115\(d\)](#).

DFPS may include the temporary visitation schedule in any report DFPS submits to the court before or during a hearing under [Tex. Fam. Code Chapter 262, Subchapter C](#). The court may render any necessary order regarding the temporary visitation schedule. [Tex. Fam. Code § 262.115\(e\)](#).

L. Placement When Child Victim of Human Trafficking

A court in an emergency, initial, or full Adversary Hearing conducted under [Tex. Fam. Code Chapter 262](#) may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with [Tex. Hum. Res. Code § 42.0531](#), if the court finds that:

- The placement is in the best interest of the child; and
- The child’s physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.011](#).

ADVERSARY HEARING

Legal Overview of Adversary Hearing

Texas Family Code

Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 262. Procedures in Suit by Governmental Entity to Protect Health & Safety of Child
Subchapter C. Adversary Hearing

Please see the At a Glance and Adversary Hearing Checklists in the Checklist Section of the Bench Book.

There are two types of hearings considered to be adversary under [Tex. Fam. Code Chapter 262, Subchapter C](#). The first and most well-known occurs after a court grants an ex parte order approving the removal of a child from a parent or caretaker; this hearing is to be held within 14 days of the date the child was taken into the possession of DFPS. [Tex. Fam. Code § 262.201](#). The second type of Adversary Hearing occurs when the child is not in the possession of DFPS and DFPS is requesting to take possession of the child after notice and hearing. [Tex. Fam. Code § 262.205](#). Although there is no time limit as to when this hearing is to occur, it should occur promptly. Courts across Texas differ in the way full Adversary Hearings are held, but in all cases DFPS has the burden to show why its recommendations, including why a child should be in substitute care, should be approved by the court.

- A. Service of Citation**
- B. Notice**
- C. Hearing After Emergency Removal With or Without a Court Order**
- D. Hearing When Child Not in Possession of DFPS**
- E. If Court Does Not Remove or Continue DFPS Conservatorship**
- F. Mandatory Appointment of Attorney for Parent**
- G. Transfer**
- H. Placement With Relatives or Designated Caregiver**
- I. Placement When Child Victim of Human Trafficking**
- J. Aggravated Circumstances**
- K. Decisions Regarding Education Required at Adversary Hearing**

A. Service of Citation

Service is required in a suit filed by DFPS as in other original suits per [Tex. Fam. Code § 102.009](#), but most courts do not require service on all those entitled to service before proceeding with the Adversary Hearing. The court may proceed with temporary orders prior to any required service by publication. [Tex. Fam. Code § 262.201\(f\)](#).

1. DFPS Must Make a Diligent Effort to Locate Parent and Relatives

If a parent, as defined by [Tex. Fam. Code § 160.102\(11\)](#), of the child has not been personally served in a suit in which DFPS seeks termination, DFPS must make a diligent effort to locate that parent. [Tex. Fam. Code § 161.107\(b\)](#).

If a parent has not been personally served and cannot be located, DFPS shall make a diligent effort to locate a relative of the missing parent to give the relative an opportunity to request appointment as the child's managing conservator. [Tex. Fam. Code § 161.107\(c\)](#).

2. Relative Defined for Diligent Search Purposes

A relative means a parent, grandparent, adult sibling, or child. [Tex. Fam. Code § 161.107\(a\)\(2\)](#). If DFPS is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, DFPS shall request the Office of the Attorney General to use the parental locator service to determine the location of the missing parent or relative. [Tex. Fam. Code § 161.107\(d\)](#).

DFPS shall be required to provide evidence to the court to show what actions were taken by DFPS in making a diligent effort to locate the missing parent and relative of the missing parent. [Tex. Fam. Code § 161.107\(e\)](#).

3. Citation by Publication and Diligent Search

Once DFPS has made the effort and has been unsuccessful, DFPS can file a Motion to Cite by Publication under [Tex. R. Civ. P. 109](#).

[Tex. R. Civ. P. 109](#) requires that before citation by publication can be issued by the clerk, the petitioner must file an affidavit of "due diligence". That rule also requires the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the known parent who cannot be located, before granting any judgment on such service.

B. Notice

1. The Right to Notice

The Petitioner, which is usually DFPS, must ensure that notice of the lawsuit is provided to those who are sued.

2. Methods of Providing Notice of Hearing

The requirements for citation are different from requirements for notice of motions or of particular hearings. Citation generally must be by personal service on the Respondent unless citation is waived by the Respondent, forfeited under the “paternity registry” process, or given by some form of substituted service, including citation by publication, as authorized by the Texas Rules of Civil Procedure.

Once citation is complete and a return of service is on file, notice may be served by delivering a copy to the party to be served, or the party’s duly authorized agent or attorney of record, as the case may be, **electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager or in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.**

Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Notice may also be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. [Tex. R. Civ. P. 21a](#).

3. Information Provided to Relatives and Certain Individual; Investigation

When DFPS takes possession of a child under [Tex. Fam. Code Chapter 262](#), DFPS **shall** provide information to each adult DFPS is able to identify and locate who:

- Is related to the child within the third degree of consanguinity, as defined by [Tex. Gov’t Code § 573.023\(c\)](#);
- Is an adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child’s biological father; and
- Anyone who is identified as a potential relative or designated caregiver on the proposed Child Placement Resources Form. [Tex. Fam. Code § 262.1095\(a\)\(1\)](#).

DFPS **may** provide information to adults DFPS determines have a long-standing and significant relationship with the child. [Tex. Fam. Code § 262.1095\(a\)\(2\)](#).

The written notice must include, among other things:

- A statement that the child is in the state’s custody;
- Options available for participation in the care and placement and support of the family;
- Options that may be lost if the individual fails to timely respond; and

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- The date, time, and location of the Status Hearing, if known. [Tex. Fam. Code § 262.1095\(b\)](#).

DFPS is not required to provide information to a person who has criminal or family violence history. [Tex. Fam. Code § 262.1095\(c\)](#).

DFPS must use due diligence to identify and locate all individuals described by [Tex. Fam. Code § 262.1095\(a\)](#) within 30 days of the date DFPS files the SAPCR, and the failure of a parent or alleged father to complete the Child Placement Resources Form does not relieve DFPS of its duty to seek information about persons under [Tex. Fam. Code § 262.1095\(d\)](#). [Tex. Fam. Code § 262.1095\(d\)](#) and [Tex. Fam. Code § 262.1095\(e\)](#).

4. Report Regarding Notification of Relatives

[Tex. Fam. Code § 263.007](#) requires DFPS to provide the court with a report regarding their compliance with [Tex. Fam. Code § 262.1095](#). The court should review this report to assess DFPS' diligent efforts. [Tex. Fam. Code § 263.007](#).

5. Notice to Parents of Right to Counsel

Before commencement of the full Adversary Hearing, if an attorney has not already been appointed under [Tex. Fam. Code § 107.013](#), the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. [Tex. Fam. Code § 262.201\(a-1\)](#).

[Tex. Fam. Code § 107.0141](#) allows the court to appoint an attorney for a parent whenever the SAPCR is filed, but if a parent's first appearance is at the Adversary Hearing and the parent requests the appointment of an attorney, then the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the full Adversary Hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. [Tex. Fam. Code § 262.201\(a-2\)](#).

C. Hearing After Emergency Removal With or Without a Court Order

1. When Must Hearing Be Held

A hearing must be held not later than the 14th day after the date the child was taken into possession unless the court grants an extension pursuant to [Tex. Fam. Code § 262.201\(a-3\)](#). [Tex. Fam. Code § 262.201\(a\)](#).

2. Extension

Although [Tex. Fam. Code § 262.103](#) allows for the temporary order, temporary restraining order, and attachment of a child to be extended, there is no specific provision for the extension of the Adversary Hearing beyond the 14th day. If the hearing cannot be held within the 14 days, some courts convene and reset the hearing, while others rely on case law which indicates that the failure to conduct the Adversary Hearing does not deprive the court of its jurisdiction. *In re J.M.C.*, [109 S.W.3d 591, 595](#) (Tex. App. – Fort Worth 2003, no pet.).

The court may, for good cause shown, postpone the full Adversary Hearing for not more than seven days from the date of the attorney’s appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under [Tex. Fam. Code § 262.201\(a-3\)](#), if the parent and the appointed attorney agree in writing. If the court postpones the full Adversary Hearing, the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under [Tex. Fam. Code § 262.102\(a\)](#) for the protection of the child until the date of the rescheduled full Adversary Hearing. [Tex. Fam. Code § 262.201\(a-3\)](#).

3. Burden/Standard of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution. [Tex. Fam. Code § 262.201\(b\)](#).

Special Issue: Numerous studies indicate that African American children are disproportionately represented in the Texas child welfare system. According to data collected by DFPS, African American children are more likely to be removed, are less likely to be reunified, and spend longer waiting to be adopted. For more information regarding disproportionality, please see the [Disproportionality chapter](#) later in this Bench Book.

4. Required Findings if Child to Remain in Care

a. Danger to Physical Health and Safety

There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal](#)

[Code § 20A.03](#), which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child. [Tex. Fam. Code § 262.201\(b\)\(1\)](#).

b. Urgent Need to Protect

The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal. [Tex. Fam. Code § 262.201\(b\)\(2\)](#).

In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child. [Tex. Fam. Code § 262.201\(d\)](#).

c. Reasonable Efforts

Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. [Tex. Fam. Code § 262.201\(b\)\(3\)](#).

5. Court Actions/Orders if Child to Remain in Care

a. Issue an Appropriate Temporary Order

A temporary order rendered under [Tex. Fam. Code Chapter 262](#) is valid and enforceable until properly superseded by a court with jurisdiction to do so. A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under [Tex. Fam. Code Chapter 262](#). [Tex. Fam. Code § 262.204](#).

b. Admonish and Notify Parents

Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. [Tex. Fam. Code § 262.201\(c\)](#).

Before the commencement of the full Adversary Hearing, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. [Tex. Fam. Code § 262.201\(a-1\)](#).

c. Order Placement With Non-Custodial Parent or Relative

Unless it is not in the best interest of the child, place a child who has been removed from the child's custodial parent with the child's noncustodial parent or another relative of the child if placement with the noncustodial parent is not appropriate. [Tex. Fam. Code § 262.201\(e\)](#).

d. Render Protective Order, If Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under [Tex. Fam. Code Chapter 105](#). [Tex. Fam. Code § 262.205\(c\)\(1\)](#).

e. Inquire About Native American Heritage

The court shall ask all parties present at the full Adversary Hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated. [Tex. Fam. Code § 262.201\(a-4\)](#). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book Chapter on the [Indian Child Welfare Act](#).

f. Set Status Hearing

Although not statutorily required, the Status Hearing date is usually set at the Adversary Hearing and open-court notice to parties can be given.

Special Issue: Courts should consider setting the dates for Status, Initial Permanency, and Final Hearings at the start of the case as it helps provide all parties and interested persons with notice of future hearings.

D. Hearing When Child Not in Possession of DFPS (Show Cause Hearing)

1. Filed Under [Tex. Fam. Code § 262.113](#)

DFPS can file a suit requesting possession of a child after notice and a hearing. The suit must be supported by an affidavit sworn to by a person with personal knowledge and stating facts that satisfy the burden of proof. [Tex. Fam. Code § 262.113](#).

2. When Must Hearing Be Held

In a suit requesting possession of a child after notice and hearing, the suit shall be promptly set for hearing. [Tex. Fam. Code § 262.205\(a\)](#).

3. Conduct Hearing Under [Tex. Fam. Code § 262.205](#)

After the hearing, the court may grant the request to remove the child from the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession of the child if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the court to remain in the home would be contrary to the child's welfare. [Tex. Fam. Code § 262.205\(b\)](#).

If the court orders removal of the child from the child's home, the court shall:

- Issue an appropriate temporary order under [Tex. Fam. Code Chapter 105](#); and
- Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. [Tex. Fam. Code § 262.205\(c\)](#).

4. Burden/Standard of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution that:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the child to remain in the home would be contrary to the child's welfare. [Tex. Fam. Code § 262.205\(b\)](#).

5. Court Actions/Orders if Child is Placed in Care

a. Issue an Appropriate Temporary Order

A temporary order rendered under [Tex. Fam. Code Chapter 262](#) is valid and enforceable until properly superseded by a court with jurisdiction to do so. A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under [Tex. Fam. Code Chapter 262](#). [Tex. Fam. Code § 262.204](#).

b. Order Placement With Non-Custodial Parent or Relative

Unless it is not in the best interest of the child, the court shall place a child who has been removed under [Tex. Fam. Code § 262.205](#) with:

- The child's noncustodial parent; or
- Another relative of the child if placement with the noncustodial parent is inappropriate. [Tex. Fam. Code § 262.205\(e\)](#).

Special Issue: Although not required at a Show Cause Hearing, courts should consider whether to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child, as is required during an Adversary Hearing. [Tex. Fam. Code § 262.201\(c\)](#)

Additionally, although required before the commencement of the full Adversary Hearing, at a Show Cause Hearing, the court should consider whether to inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. [Tex. Fam. Code § 262.201\(a-1\)](#).

c. Render Protective Order, If Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under [Tex. Fam. Code Chapter 105](#). [Tex. Fam. Code § 262.205\(c\)\(1\)](#).

d. Set Status Hearing

Although not statutorily required, the Status Hearing date is usually set at the Adversary Hearing and open-court notice to parties can be given.

e. Ensure Child Placement Resources Form is Complete

The Child Placement Resources Form should:

- Instruct the parents, or other person having legal custody of the child, to identify three individuals who could be relative caregivers or designated caregivers; and
- Inform the parent or other person how to submit the form to DFPS or other agency either in person or by fax or email. [Tex. Fam. Code § 261.307\(a\)\(2\)](#).

E. If Court Does Not Remove the Child or Continue DFPS Conservatorship

Both statute and case law encourage the use of alternatives to removal as long as the child is protected. See the Bench Book Chapter entitled [Alternatives to Removal](#). If the court orders the return of the child to the parent or does not remove the child, the same alternatives are available to the court.

F. Mandatory Appointment of Attorney for Parent

When DFPS files a petition requesting termination or seeking conservatorship of a child, the court must appoint an attorney for the following persons:

- An indigent parent who responds in opposition to either termination of parental rights or to the appointment of DFPS as managing conservator, [Tex. Fam. Code § 107.013\(a\)\(1\)](#);
- A parent served by publication, [Tex. Fam. Code § 107.013\(a\)\(2\)](#);
- An alleged father who failed to register with paternity registry and whose identity or location is unknown, [Tex. Fam. Code § 107.013\(a\)\(3\)](#); and
- An alleged father who registered with the paternity registry but cannot be personally served. [Tex. Fam. Code § 107.013\(a\)\(4\)](#).

In a suit described by [Tex. Fam. Code § 107.013\(a\)](#), if a parent is not represented by an attorney at the parent's first appearance in court, the court shall inform the parent of:

- The right to be represented by an attorney; and
- If the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court. [Tex. Fam. Code § 107.013\(a-1\)](#).

The court may appoint one attorney for both parents if they are both entitled and their interests are not in conflict and there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties. [Tex. Fam. Code § 107.013\(b\)](#).

The court shall require a parent who claims indigence under [Tex. Fam. Code § 107.013\(a\)](#) to file an affidavit of indigence pursuant to [Tex. R. Civ. P. 145\(b\)](#) before the court may conduct a hearing to determine the parent's indigence under [Tex. Fam. Code § 107.013](#). [Tex. Fam. Code § 107.013\(d\)](#).

The court may consider additional evidence at that hearing, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the court determines the parent is indigent, the court shall appoint an attorney ad litem to represent the parent. [Tex. Fam. Code § 107.013\(d\)](#).

However, if DFPS has alleged grounds for termination of parental rights under [Tex. Fam. Code § 161.003\(b\)](#) based on inability to care for the child, the court must appoint an attorney when the petition is filed and without regard to opposition or indigence.

1. Temporary Appointment of Attorney ad Litem for Parents

[Tex. Fam. Code § 107.0141](#) authorizes the court to appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a

temporary restraining order or attachment of the parent's child under [Tex. Fam. Code Chapter 262](#) and ending on the court's determination of whether the parent is indigent before commencement of the full Adversary Hearing. [Tex. Fam. Code § 107.0141\(a\)](#).

An attorney ad litem appointed for a parent under this section:

- Has the powers and duties of an attorney ad litem appointed under [Tex. Fam. Code § 107.0131](#); and
- If applicable, shall:
 - conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and
 - interview any parent or other person who may have information relating to the identity or location of the parent. [Tex. Fam. Code § 107.0141\(b\)](#).

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Inform the parent of the parent's right to be represented by an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;
- If the parent claims indigence and requests an attorney ad litem beyond the period of time the temporary appointment under [Tex. Fam. Code § 107.0141](#), assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and
- Assist the parent in preparing for the full Adversary Hearing under [Tex. Fam. Code Chapter 262, Subchapter C. Tex. Fam. Code § 107.0141\(c\)](#).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under [Tex. Fam. Code § 107.013\(a\)\(1\)](#). [Tex. Fam. Code § 107.0141\(d\)](#).

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by [Tex. Fam. Code § 107.0141\(e\)](#), the court shall discharge the attorney ad litem from the appointment. [Tex. Fam. Code § 107.0141\(e\)](#).

If the attorney ad litem identifies or locates the parent, and the court determines that the parent is not indigent, the court shall discharge the attorney ad litem from the appointment. [Tex. Fam. Code § 107.0141\(f\)](#).

G. Transfer

On a motion of any party or the court's own motion, the court that rendered the temporary order shall:

- Transfer the suit to the court of continuing, exclusive jurisdiction, if any;
- Order transfer of the suit from the court of continuing, exclusive jurisdiction, if grounds exist for mandatory transfer; or
- Order transfer of the suit to the court having venue, if grounds exist for transfer based on improper venue. [Tex. Fam. Code § 262.203\(a\)](#).

A motion to transfer relating to a suit filed under [Tex. Fam. Code Chapter 262](#) may be filed separately from the petition and is timely filed while the case is pending. [Tex. Fam. Code § 262.203\(b\)](#).

1. When Transfer is Discretionary

A court exercising jurisdiction under [Tex. Fam. Code Chapter 262](#) is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for the protection of the child has been rendered under [Tex. Fam. Code Chapter 263](#). [Tex. Fam. Code § 262.203\(c\)](#).

2. Order of Transfer

An order of transfer must include:

- The date of any future hearings in the case that have been scheduled by the transferring court;
- Any date scheduled by the transferring court for the dismissal of the suit under [Tex. Fam. Code § 263.401](#); and
- The name and contact information of each attorney ad litem or guardian ad litem appointed in the suit. [Tex. Fam. Code § 263.203\(d\)](#).

The court to which a suit is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

- The 10th day after the date of receiving the order of transfer; or
- The date of the first scheduled hearing after the transfer. [Tex. Fam. Code § 262.203\(e\)](#).

3. Transfer of Court Files

[Tex. Fam. Code § 155.207\(a\)](#) and [Tex. Fam. Code § 155.207\(c\)](#) address the transfer of court files from one jurisdiction to another. Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send to the proper court in the county to which transfer is being made:

- The pleadings in the pending proceeding and any other document specifically requested by a party;
- Certified copies of all entries in the minutes;
- A certified copy of each final order; and
- A certified copy of the order of transfer signed by the transferring court. [Tex. Fam. Code § 155.207\(a\)](#).

On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. [Tex. Fam. Code § 155.207\(c\)](#).

H. Placement with Relatives or Designated Caregiver

1. Before the Adversary Hearing

DFPS must:

- Evaluate each person listed on the Child Placement Resources Form to determine who would be most the appropriate substitute caregiver;
- Complete a home study of the most appropriate caregiver, [Tex. Fam. Code § 262.114\(a\)](#); and
- Conduct background and criminal history checks of the relatives or other designated individuals identified as potential relatives or designated caregivers on the Child Placement Resources Form. Please see the [CPS Handbook § 4523](#).⁵

DFPS may place the child with the relative or designated caregiver identified on the proposed placement form if DFPS determines that the placement is in the best interest of the child. DFPS must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. [Tex. Fam. Code § 262.114\(b\)](#).

Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, DFPS shall begin the home study of the relative or other designated caregiver. [Tex. Fam. Code § 262.114\(b\)](#). DPS shall complete the home study as soon as possible unless otherwise ordered by a court. [Tex. Fam. Code § 262.114\(b\)](#).

DFPS must provide an informational manual required by [Tex. Fam. Code § 261.3071](#) to the relative or other designated caregiver at the time of the child’s placement. [Tex. Fam. Code § 262.114\(b\)](#).

2. At the Adversary Hearing

DFPS must, after redacting any social security numbers, file with the court:

- A copy of each proposed Child Placement Resources Form;
- A copy of any completed home study; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed. [Tex. Fam. Code § 262.114\(a-1\)](#).

If the child has NOT been placed by the time of the full Adversary Hearing, DFPS shall file with the court:

- A statement that explains the reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and
- The actions DFPS is taking, if any. [Tex. Fam. Code § 262.114\(a-2\)](#).

DFPS may file with the court the temporary visitation schedule developed pursuant to [Tex. Fam. Code § 262.115\(d\)](#). The court may render any necessary order regarding the temporary visitation schedule. [Tex. Fam. Code § 262.115\(e\)](#).

3. Further Consideration of Former Foster Parent

DFPS must consider placing a child who has previously been in the managing conservatorship of DFPS with a foster parent with whom the child previously resided if DFPS determines that placement of the child with a relative or designated caregiver is not in the child’s best interest and the placement is available and in the child’s best interest. [Tex. Fam. Code § 262.114\(c\)](#).

I. Placement When Child Victim of Human Trafficking

A court in an emergency, initial, or full Adversary Hearing conducted under [Tex. Fam. Code Chapter 262](#) may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with [Tex. Hum. Res. Code § 42.0531](#), if the court finds that:

- The placement is in the best interest of the child; and
- The child’s physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual

activity, including any child subjected to an act specified in [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.011](#).

Special Issue: During the 84th Legislative Session in 2015, [Tex. Gov't Code § 22.011](#) and [Tex. Gov't Code § 22.110](#) were amended to require judicial instruction related to trafficking of persons.

J. Aggravated Circumstances

If the court finds aggravated circumstances, it may:

- Waive the requirement:
 - of a service plan; and
 - to make reasonable efforts to return the child to a parent; and
- Accelerate the trial schedule. [Tex. Fam. Code § 262.2015\(a\)](#).

To view the list of aggravated circumstances, see [Tex. Fam. Code § 262.2015](#).

Special Issue: One of the offenses that constitutes aggravated circumstances is knowingly subjecting a child to sex trafficking, receiving a benefit from a venture that involves sex trafficking, or engaging in sexual conduct with a trafficked child.

The court must also:

- Find that reasonable efforts to make it possible for the child to safely return home are not required;
- Set and conduct the initial Permanency Hearing within 30 days of making this finding; and
- Set the final hearing. (No required time frame other than before dismissal date set pursuant to [Tex. Fam. Code § 263.401](#).) [Tex. Fam. Code § 262.2015\(c\)](#) and [Tex. Fam. Code § 262.2015\(d\)](#).

K. Decisions Regarding Education Required at Adversary Hearing

1. Designation of Education Decision-Maker

[Tex. Fam. Code § 263.004](#) requires DFPS to provide notice to the court and others of the entity or person holding education decision-making authority. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a

non-parent managing conservator pursuant to [Tex. Fam. Code § 153.371](#), which includes the right to make decisions regarding the child’s education. [Tex. Fam. Code § 153.371\(10\)](#).

Unless the court order limits the rights and duties of DFPS under [Tex. Fam. Code § 153.371\(10\)](#) to make decisions regarding the child’s education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child’s surrogate person in accordance with [20 U.S.C. 1415\(b\)](#) and [Tex. Educ. Code § 29.001\(10\)](#), for purposes of decision-making regarding special education services, if applicable. [Tex. Fam. Code § 263.004\(a\)](#).

Not later than the fifth day after the date of an Adversary Hearing held under [Tex. Fam. Code § 262.201](#) or [Tex. Fam. Code § 262.205](#) is concluded, DFPS must file the information required by [Tex. Fam. Code § 263.004\(a\)](#) with the court and provide a copy to the school the child attends. [Tex. Fam. Code § 263.004\(b\)](#).

Special Issue: The notice required by [Tex. Fam. Code § 263.004](#) will be provided by DFPS via Form 2085E, Designation of Education Decision-Maker. For more information regarding this form, please see the Bench Book Chapter entitled [Education](#).

If a person other than a person identified under [Tex. Fam. Code § 263.004\(a\)](#) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS shall file the updated information in a permanency progress report filed under [Tex. Fam. Code § 263.303](#) or [Tex. Fam. Code § 263.502](#). The updated information must be provided to the school the child attends not later than the 5th day after the date of the designation or assignment. [Tex. Fam. Code § 263.004\(c\)](#).

2. DFPS Must Ensure the Child Returns Child to School After Removal

If DFPS takes possession of a child during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child’s attendance infeasible. [Tex. Fam. Code § 264.115\(a\)](#).

If the child has a physical or mental condition of a temporary and remediable nature, that makes the child’s attendance infeasible, DFPS shall notify the school in writing that the child is unable to attend school. If the child’s physical or mental condition improves so that the child’s attendance is feasible, DFPS shall ensure that the child immediately returns to school. [Tex. Fam. Code § 264.115\(b\)](#).

STATUS HEARING

Legal Overview of Status Hearing

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services
Subchapter C. Status Hearing

The Status Hearing focuses on the child's status and service plan. The Status Hearing is an opportunity for the judge and other parties to review the service plan, but it is generally not considered an opportunity to re-litigate whether the child should have been placed in the legal custody of DFPS.

Please see the Checklist Section for Status Hearing Checklist.

- A. Status Hearing**
- B. Mandatory Findings**
- C. Court Shall Advise/Warn Parents**
- D. Court Shall Review Service Plan**
- E. Court Shall Review Visitation Plan**
- F. Child Placement Resources Form Required**
- G. Permanency Planning Meetings**
- H. Assessments**
- I. Inquiry About Child's Native American Heritage**

A. Status Hearing

1. Hearing is Mandatory

The Status Hearing is mandatory unless the court holds an initial Permanency Hearing under [Tex. Fam. Code § 262.2015](#) (aggravated circumstances) before the date a Status Hearing is required. [Tex. Fam. Code § 263.201\(b\)](#).

2. Must Be Held No Later Than 60th Day After Temporary Managing Conservatorship Order

Not later than the 60th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child, the court shall hold a Status Hearing to review the child's status and service plan. [Tex. Fam. Code § 263.201\(a\)](#).

3. Notice Must Be Given Pursuant to Tex. Fam. Code § 263.0021

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- DFPS;
- The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
- Each parent of the child;
- The managing conservator or guardian of the child;
- An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
- The child if:
 - the child is 10 years of age or older; or
 - the court determines it is appropriate for the child to receive notice; and
- Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;

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- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
 - In open court; or
 - In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

B. Mandatory Findings

During a Status Hearing, the court shall make findings as to whether:

- DFPS has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the paternity registry under [Tex. Fam. Code § 160.402](#). DFPS is required to file a report under [Tex. Fam. Code § 263.007](#) detailing its efforts to identify, locate, and provide information to each adult described by [Tex. Fam. Code § 262.1095\(a\)](#). [Tex. Fam. Code § 263.202\(f\)](#) requires that the court review the report and order DFPS to make further efforts, if warranted. [Tex. Fam. Code § 262.202\(a\)\(1\)](#); [Tex. Fam. Code § 263.202\(f\)](#); [Tex. Fam. Code § 262.1095\(a\)](#); and [Tex. Fam. Code § 263.007](#).
- The child and each parent, alleged father, or relative of the child before the court have furnished to DFPS all available information necessary to locate another absent parent, alleged father, or relative of the child through the exercise of due diligence. [Tex. Fam. Code § 263.202\(a\)\(2\)](#).
- A plan that has the goal of returning the child to the parent adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child. [Tex. Fam. Code § 263.202\(b\)\(1\)](#). The court shall give the child's parents the opportunity to comment on the service plan. [Tex. Fam. Code § 263.202\(g\)](#).
- The parents have reviewed and understand the plan, the plan is reasonably tailored to address any specific issues identified by DFPS, and the child's parents and the representative of DFPS has signed the plan. [Tex. Fam. Code § 263.202\(b\)\(2\)](#), (3) and (4).
- The court has identified the individual who has the right to consent to medical treatment for the child under [Tex. Fam. Code § 266.004](#). [Tex. Fam. Code § 263.202\(e\)](#).
- The court is directed to inquire at the Status Hearing whether parents or other parties have provided information necessary to locate an alleged father, an absent parent, or a relative of the child. It is left to the court to decide what action, if any, should be taken in response to a negative answer. [Tex. Fam. Code § 263.202\(a\)\(2\)](#).
- The court is required, after reviewing and making any necessary modifications, to incorporate the service plan into the orders of the court and may render additional

appropriate orders to implement or require compliance with the plan. [Tex. Fam. Code § 263.202\(b-1\)](#).

Special Issue: DFPS is required to involve the parents in developing the Service Plan. [Tex. Fam. Code § 263.102\(a\)\(3\)](#). Parent attorneys are entitled to attend any case staffing in which the parent is invited to participate, including to develop a family service plan. [Tex. Fam. Code §107.0131\(a\)\(2\)\(F\)](#). Courts might consider whether DFPS has involved counsel for the child and whether the parent has substantial input as to what services are appropriate to help the family reunify and ensure the child's well-being. Courts might also consider including language which takes into account the individualized needs and circumstances of the family and the reasons the child was removed rather than the use of boilerplate language.

C. Court Shall Advise/Warn Parents

1. Service Plan Progress Shall Be Reviewed at All Subsequent Hearings

The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the service plan. [Tex. Fam. Code § 263.203\(b\)](#).

2. Court Shall Warn Parents

The court is required to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents demonstrate a willingness and ability to provide the child with a safe environment. [Tex. Fam. Code § 263.006](#) and [Tex. Fam. Code § 263.202\(b\)\(2\)](#).

3. Advise Parent of Appointment of Attorney

[Tex. Fam. Code § 263.203\(a\)](#) requires that the court advise the parties of the provisions regarding the mandatory appointment of an attorney ad litem under [Tex. Fam. Code Chapter 107, Subchapter A](#) and appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by that subchapter. [Tex. Fam. Code § 263.203\(a\)](#).

[Tex. Fam. Code § 263.0061](#) requires notice to parents of right to counsel. At the Status Hearing required by [Tex. Fam. Code Chapter 263, Subchapter C](#) and at each Permanency Hearing required by [Tex. Fam. Code Chapter 263, Subchapter D](#), the court shall inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. [Tex. Fam. Code § 263.0061\(a\)](#).

If a parent claims indigence and requests the appointment of an attorney in a proceeding under [Tex. Fam. Code Chapter 263, Subchapter C](#) and [Tex. Fam. Code Chapter 263, Subchapter D](#), the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. [Tex. Fam. Code § 263.0061\(b\)](#).

4. Court Shall Review Visitation Plan

Court shall review the visitation plan, taking into consideration the factors specified in [Tex. Fam. Code § 263.107\(c\)](#). [Tex. Fam. Code § 263.108\(a\)](#). See Section E of this chapter.

The court may modify, or order DFPS to modify, an original or amended visitation plan at any time. [Tex. Fam. Code § 263.108\(b\)](#).

D. Court Shall Review Service Plan

1. Service Plan Shall Be Filed

Except as provided by [Tex. Fam. Code § 262.2015](#), DFPS must file a service plan not later than the 45th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child. [Tex. Fam. Code § 263.101](#).

[Tex. Fam. Code § 263.103](#) requires that the service plan shall be developed jointly with the parents. If the parents refuse to or are unable to participate, DFPS is required to file the service plan with the court and request that the court order that it is effective. The service plan remains in effect until amended by the court. [Tex. Fam. Code § 263.103](#).

[Tex. Fam. Code § 263.104](#) clarifies that any amendments to the service plan shall be developed jointly with the parents. If the parents refuse to or are unable to participate, DFPS is required to file the service plan with the court for it to become effective. The parent is allowed to file a motion with the court at any time to request review and modification of the amended service plan. [Tex. Fam. Code § 263.104](#). A court can modify a service plan at any time. [Tex. Fam. Code § 263.106](#).

2. Contents of the Service Plan

The service plan must:

- Be specific;
- Be in writing and in a language that the parents understand, or made otherwise available;
- Be prepared by DFPS in conference with the child's parents;
- State appropriate deadlines;

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- Specify the primary permanency goal and at least one alternative goal;
 - State the steps necessary to:
 - return the child to the child’s home if the placement is in foster care;
 - enable the child to remain in the child’s home with the assistance of a service plan if placement is in the home under DFPS’s supervision; or
 - otherwise provide a permanent safe placement for the child;
 - State the actions and responsibilities that are necessary for the child’s parents to take to achieve the plan goal during the period of the service plan and the assistance to be provided to the parents by DFPS or other agency toward meeting that goal;
 - State any specific skills or knowledge that the child’s parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;
 - State the actions and responsibilities that are necessary for the child’s parents to take to ensure that the child attends school and maintains or improves the child’s academic compliance;
 - State the name of the person with DFPS whom the child’s parents may contact for information relating to the child if other than the person preparing the plan; and
 - Prescribe any other term or condition that DFPS determines to be necessary to the service plan’s success. [Tex. Fam. Code § 263.102\(a\)](#).

The service plan shall include the following statement:

TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE TIME PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR PARENTAL AND CUSTODIAL RIGHTS MAY BE RESTRICTED OR TERMINATED OR YOUR CHILD MAY NOT BE RETURNED TO YOU. THERE WILL BE A COURT HEARING AT WHICH A JUDGE WILL REVIEW THIS SERVICE PLAN. [Tex. Fam. Code § 263.102\(b\)](#).

3. Service Plans for Children Under Two Years of Age

DFPS shall consult with relevant professionals to determine the skills or knowledge that the parents of a child under two years of age should learn or acquire to provide a safe placement for the child. DFPS shall incorporate those skills and abilities into service plans, as appropriate. [Tex. Fam. Code § 263.102\(f\)](#).

4. Effective Date

The service plan takes effect when:

-
- The child's parents and the appropriate representative of DFPS sign the plan; or
 - The court issues an order giving effect to the plan without the parents' signatures. [Tex. Fam. Code § 263.103\(d\)](#).

The plan is in effect until amended by the court or is superseded by a new plan negotiated between the parents and DFPS. [Tex. Fam. Code § 263.103\(e\)](#) and [Tex. Fam. Code § 263.104](#). A court can modify a service plan at any time. [Tex. Fam. Code § 263.106](#).

5. Court Implementation of Service Plan

After reviewing the original or any amended service plan, and making any changes or modifications deemed necessary, the court must incorporate the original or amended service plan into the orders of the court. The court may also render additional appropriate orders to implement or require compliance with an original or amended service plan. [Tex. Fam. Code § 263.106](#).

E. Court Shall Review Visitation Plan

For more information regarding visitation and relevant forms, please see the Bench Book Chapter entitled [Family Visitation](#).

1. Visitation Plan

Visitation plans apply only to a child in the temporary managing conservatorship of DFPS for whom the goal of DFPS is reunification of the child with the child's parent. [Tex. Fam. Code § 263.107\(a\)](#).

Not later than the 30th day after the date DFPS is named temporary managing conservator of a child, DFPS, in collaboration with each parent of the child, shall develop a visitation plan. [Tex. Fam. Code § 263.107\(b\)](#).

In determining the frequency and circumstances of visitation under [Tex. Fam. Code § 263.107](#), DFPS must consider:

- The safety and best interest of the child;
- The age of the child;
- The desires of each parent regarding visitation with the child;
- The location of each parent and the child; and
- The resources available to DFPS, including the resources to:
 - ensure that visitation is properly supervised by a DFPS employee or an available and willing volunteer DFPS determines suitable after conducting a background and criminal history check; and
 - provide transportation to and from visits. [Tex. Fam. Code § 263.107\(c\)](#).

Not later than the 10th day before the date of a Status Hearing under [Tex. Fam. Code § 263.201](#), DFPS shall file with the court a copy of the visitation plan developed under [Tex. Fam. Code § 263.107](#). [Tex. Fam. Code § 263.107\(d\)](#).

DFPS may amend the visitation plan on mutual agreement of the child’s parents and DFPS or as DFPS considers necessary to ensure the safety of the child. An amendment to the visitation plan must be in the child’s best interest. DFPS shall file a copy of any amended visitation plan with the court. [Tex. Fam. Code § 263.107\(e\)](#).

A visitation plan developed under [Tex. Fam. Code § 263.107](#) may not conflict with a court order relating to possession of and access to the child. [Tex. Fam. Code § 263.107\(f\)](#).

2. Review of Visitation Plan; Modification

At the first hearing held under [Tex. Fam. Code Chapter 263](#) after the date an original or amended visitation plan is filed with the court under [Tex. Fam. Code § 263.107](#), the court shall review the visitation plan, taking into consideration the factors listed under [Tex. Fam. Code § 263.107\(c\)](#). [Tex. Fam. Code § 263.108\(a\)](#).

The court may modify, or order DFPS to modify, an original or amended visitation plan at any time. [Tex. Fam. Code § 263.108\(b\)](#).

A parent who is entitled to visitation under a visitation plan may at any time file a motion with the court to request review and modification of an original or amended visitation plan. [Tex. Fam. Code § 263.108\(c\)](#).

3. Court Implementation of Visitation Plan

After reviewing an original or amended visitation plan, the court shall render an order regarding a parent’s visitation with a child that the court determines appropriate. [Tex. Fam. Code § 263.109\(a\)](#).

If the court finds that visitation between a child and a parent is not in the child’s best interest, the court shall render an order that:

- States the reasons for finding that visitation is not in the child’s best interest; and
- Outlines specific steps the parent must take to be allowed to have visitation with the child. [Tex. Fam. Code § 263.109\(b\)](#).

If the order regarding visitation between a child and a parent requires supervised visitation to protect the health and safety of the child, the order must outline specific steps the parent must take to have the level of supervision reduced. [Tex. Fam. Code § 263.109\(c\)](#).

F. Child Placement Resources Form

The court shall require all parties present at the Status Hearing to file a Child Placement Resources Form, if they have not already done so. [Tex. Fam. Code § 263.201\(c\)](#).

G. Permanency Planning Meetings

1. Timing of Permanency Planning Meetings

DFPS shall hold a permanency planning meeting for each child for whom DFPS is appointed temporary managing conservator in accordance with department rule that is designed to allow the child to exit the managing conservatorship of DFPS safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child. [Tex. Fam. Code § 263.009\(a\)](#).

2. Permanency Planning Meeting Requirements

At each permanency planning meeting, DFPS shall:

- Identify any barriers to achieving a timely permanent placement for the child;
- Develop strategies and determine actions that will increase the probability of achieving a timely permanent placement for the child; and
- Use the family group decision-making model whenever possible. [Tex. Fam. Code § 263.009\(b\)](#).

H. Assessments

Not later than the 45th day after the date a child enters the conservatorship of DFPS, the child shall receive a developmentally appropriate comprehensive assessment. [Tex. Fam. Code § 266.012\(a\)](#).

The assessment must include:

- A screening for trauma; and
- Interviews with individuals who have knowledge of the child's needs. [Tex. Fam. Code § 266.012\(a\)](#).

For more information, please see the Bench Book Chapter entitled [Trauma Informed Care](#).

I. Inquiry Regarding Child's Native American Heritage

The court shall ask all parties present at the Status Hearing whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated. [Tex. Fam. Code § 263.202\(f-1\)](#). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book Chapter entitled [Indian Child Welfare Act](#).

PERMANENCY HEARING BEFORE FINAL ORDER

Legal Overview of Permanency Hearing Before Final Order

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services
Subchapter D. Permanency Hearings

***Please see the Checklist Section for the Permanency Hearing
Before Final Order Checklist.***

Permanency Hearings examine progress made by the parties since the last hearing and provide an opportunity for correction and revision of the permanency or case plan.

- A. Permanency Hearing Before Final Order**
- B. Hearing Notice is Mandatory**
- C. Permanency Plan for Child is Required**
- D. Permanency Progress Report is Required; Contents**
- E. Procedural and Due Process Issues**
- F. Mandatory Actions, Findings, and Considerations**
- G. Mandatory Child-Specific Considerations**
- H. Best Interest**
- I. Medical Consent**
- J. Children Who are Missing or Victims of Sex Trafficking**
- K. Notice of Significant Events**

A. Permanency Hearing Before Final Order

1. Initial Permanency Hearing

The first Permanency Hearing must be held no later than the 180th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child and the court shall review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date of dismissal of the suit under [Tex. Fam. Code Chapter 263](#). [Tex. Fam. Code § 263.304\(a\)](#).

2. Subsequent Permanency Hearing

A subsequent Permanency Hearing before entry of a final order shall be held not later than the 120th day after the date of the last Permanency Hearing in the suit. For good cause shown or on the court's own motion, the court may order more frequent hearings. [Tex. Fam. Code § 263.305](#).

Special Issue: Some judges use the 2nd Permanency Hearing Before Final Order as a pretrial conference to discuss discovery, the pleadings upon which DFPS will be seeking relief, and other trial related issues.

B. Hearing Notice is Mandatory

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- DFPS;
- The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
- Each parent of the child;
- The managing conservator or guardian of the child;
- An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
- The child if:

-
- the child is 10 years of age or older; or
 - the court determines it is appropriate for the child to receive notice; and
 - Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;
- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
- In open court; or
- In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

Special Issue: Some courts reset Permanency Hearings Before and After Final Order if the necessary persons entitled to notice, such as the child, did not receive notice of the hearing and are not in attendance.

C. Permanency Plan for Child is Required

1. Permanency Plan

DFPS must prepare a permanency plan for each child. DFPS must give a copy of the plan to each person entitled to notice pursuant to [Tex. Fam. Code § 263.0021\(b\)](#) not later than 10 days before the date of the first Permanency Hearing. [Tex. Fam. Code § 263.3025\(a\)](#).

The permanency plan must contain information required by [Tex. Fam. Code § 263.303](#) and DFPS shall modify the permanency plan as required by the circumstances and the needs of the child. [Tex. Fam. Code § 263.3025\(b\)](#) and [Tex. Fam. Code § 263.3025\(c\)](#).

2. Permanency Goals

The permanency plan must include concurrent permanency goals consisting of a primary goal and at least one alternative permanency goal. [Tex. Fam. Code § 263.3025\(d\)](#). Appropriate and legally recognized permanency goals include (in order of preference):

- Reunification of the child with a parent or other individual from whom the child was removed;
- Termination of parental rights and adoption of the child by a relative or other suitable individual;

-
- Award of permanent managing conservatorship of the child to a relative or other suitable individual; or
 - Another planned, permanent living arrangement for the child (APPLA). [Tex. Fam. Code § 263.3026\(a\)](#).

With passage of the Preventing Sex Trafficking and Strengthening Families Act (“SFA”) into law in 2014, there are NO permissible uses of APPLA for any child under 16 years of age, and use of APPLA is limited for youth age 16 and older. Courts must ask each youth with a permanency plan of APPLA about their desired permanency outcome, and determine at each permanency review hearing that APPLA is the *best* permanency plan for the child. Texas law also requires courts to document the agency’s unsuccessful efforts to achieve a more preferred outcome. With passage of SFA, courts *must find* that APPLA is the best permanency plan. [Tex. Fam. Code § 263.3026\(b\)](#).

D. Permanency Progress Report is Required; Contents

1. Filing the Permanency Progress Report

Not later than the 10th day before the date set for each Permanency Hearing Before a Final Order is rendered, DFPS shall file with the court a permanency progress report and provide a copy at least 10 days prior to the hearing, unless the court orders a different period for providing the report, to:

- Each party;
- The child’s attorney ad litem;
- The child’s guardian ad litem; and
- The child’s volunteer advocate. [Tex. Fam. Code § 263.303\(a\)](#).

2. Contents of the Permanency Progress Report

The report must contain:

- Information necessary for the court to conduct the Permanency Hearing and make its findings and determinations under [Tex. Fam. Code § 263.306](#);
- Information on significant events, as defined by [Tex. Fam. Code § 264.018](#); and
- Any additional information DFPS determines is appropriate or that is requested by the court and relevant to the court’s findings and determinations under [Tex. Fam. Code § 263.306](#). [Tex. Fam. Code § 263.303\(b\)](#).

3. Filing a Response

A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the DFPS report filed under [Tex. Fam. Code § 263.303](#). A response to the report may be filed up to three days prior to hearing. [Tex. Fam. Code § 263.303\(c\)](#).

E. Procedural and Due Process Issues

At each Permanency Hearing Before Final Order, the court shall:

- Identify all persons or parties present at the hearing or those given notice but failing to appear. [Tex. Fam. Code § 263.306\(a-1\)\(1\)](#).
- Review the efforts of DFPS or other agency in:
 - locating and requesting service of citation on all persons entitled to service of citation under [Tex. Fam. Code § 102.009](#); and
 - obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, or relative of the child. [Tex. Fam. Code § 263.306\(a-1\)\(2\)](#).
- Inform each parent not represented by an attorney of:
 - the right to be represented by an attorney; and
 - if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. [Tex. Fam. Code § 263.0061](#).

F. Mandatory Actions, Findings, and Considerations

1. Place/Return Child

Determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest. [Tex. Fam. Code § 263.306\(a-1\)\(5\)](#).

OR

Estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship. [Tex. Fam. Code § 263.306\(a-1\)\(6\)](#).

2. Review Extent of Parent's Compliance With Temporary Orders and the Service Plan

Review the extent of the parent's compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care. [Tex. Fam. Code § 263.306\(a-1\)\(3\)](#).

3. Review Permanency Progress Report

Review the permanency progress report to determine:

- The safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
- The continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
- The appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;
- Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
- For a child receiving psychotropic medication, whether the child:
 - has been provided appropriate non-pharmacological interventions, therapies, or strategies to meet the child's needs; or
 - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
- Whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there have been major changes in the child's school performance or there have been serious disciplinary events;
- For a child 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community; and
- For a child whose permanency goal is APPLA:
 - the desired permanency outcome for the child, by asking the child; and
 - whether, as of the date of the hearing, another planning permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
 - return home;
 - be placed for adoption;

-
- be placed with a legal guardian; or
 - be placed with a fit and willing relative. [Tex. Fam. Code § 263.306\(a-1\)\(4\)](#).

4. Inquire About Child and Family’s Native American Heritage

The court shall ask all parties present whether the child or the child’s family has a Native American heritage and identify any Native American tribe with which the child may be associated. [Tex. Fam. Code § 263.306](#). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book Chapter entitled [Indian Child Welfare Act](#).

5. Determine Date of Dismissal

Announce in open court the dismissal date and the date of any upcoming hearings. [Tex. Fam. Code § 263.306\(a-1\)\(7\)](#).

6. Set Final Hearing

The court shall set a final hearing on a date that allows the court to render a final order before the date for dismissal of the suit. [Tex. Fam. Code § 263.304\(b\)](#).

A party to the suit or an attorney ad litem for the child may seek a writ of mandamus to compel the court to comply with the duties imposed by this subsection. [Tex. Fam. Code § 263.304\(b\)](#).

G. Mandatory Child-Specific Considerations

1. Child-Attendance is Mandatory

The child must attend each Permanency Hearing, unless specifically excused by the court. If the child is four years of age or older and if the court determines it is in the best interest of the child, the court shall consult with the child in a developmentally appropriate manner regarding the child’s permanency plan. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. [Tex. Fam. Code § 263.302](#).

Despite the many improvements Texas has made over the past several years, involving youth in the court process and ensuring their voice is heard and considered continues to be a challenge. The Texas Family Code has been amended many times to make it clear that children and youth must attend hearings, and to place additional duties on attorneys ad litem, judges, and the Department to meet with children in advance of court hearings. Yet, children and youth are routinely excluded from meaningful participation, resulting in the feeling that their voices are not heard and their opinions are not important. There have also been many studies by the American Bar Association (ABA) as well as Court Improvement Programs around the country on this singular issue, and there is simply no question that foster youth repeatedly express the desire to be involved in decisions about

their lives. Being involved gives the youth a sense of control, helps them understand the process, and direct contact with the court benefits the judge and the youth.

Special Issue: In 2008, the ABA National Child Welfare Resource Center on Legal and Judicial Issues produced five judicial bench cards to assist judges in preparing, accommodating, and interviewing children who attend court. The judicial bench cards are broken down by age: Ages 0-12 months, 3-5 years, 5-11 years, 12-15 years, and 16 years and over. These bench cards are included in the Checklist section of this Bench Book.

2. Age-Appropriate Normalcy Activity

[Tex. Fam. Code § 264.001](#) requires court consideration of age-appropriate normalcy activities, defined as an activity or experience:

- That is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and
- In which a child who is not in the conservatorship of DFPS is generally allowed to participate, including extracurricular activities, cultural and enrichment activities, and employment opportunities. [Tex. Fam. Code § 264.001\(1\)](#).

In addition to the requirements of [Tex. Fam. Code § 263.306\(a-1\)](#), at each Permanency Hearing the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child’s service plan. [Tex. Fam. Code § 263.306\(c\)](#).

DFPS shall use its best efforts to normalize the lives of children in the managing conservatorship of DFPS by allowing substitute caregivers, without the prior approval of DFPS, to make decisions similar to those a parent would be entitled to make regarding a child’s participation in age-appropriate normalcy activities. [Tex. Fam. Code § 264.125\(a\)](#).

In determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.125\(b\)](#).

The standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;
- The child’s age, maturity, and development level;

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- The best interest of the child based on the caregiver’s knowledge of the child;
 - The appropriateness of a proposed activity and any potential risk factors;
 - The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
 - The importance of encouraging the child’s social, emotional, and developmental growth; and
 - The importance of providing the child with the most family-like experience possible. [Tex. Fam. Code §264.001\(5\)](#).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.114\(c\)](#).

3. Placement Decisions

[Tex. Fam. Code § 264.107](#) requires DFPS, when making placement decisions, to consult with the child’s caseworker, attorney ad litem, and guardian ad litem and with any court-appointed volunteer advocate for the child, except when making an emergency placement that does not allow time for the required consultations. [Tex. Fam. Code § 264.107\(e\)](#).

4. Child Age 14 or Older

The court must ensure that if the child is 14 years or older, services are in place to assist the child in making the transition from substitute care to independent living if the services are available in the community. [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(G\)](#).

5. Texas Juvenile Justice Department (TJJD)

A child committed to the TJJD may attend a Permanency Hearing in person, by telephone, or by videoconference. [Tex. Fam. Code § 263.302](#).

6. Summary of Medical Care

At each hearing under [Tex. Fam. Code Chapter 263](#), the court shall review a summary of medical care provided to the foster child since the last hearing. [Tex. Fam. Code § 266.007\(a\) and \(b\)](#). The summary must include information regarding:

- The nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;

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- All medical and mental health treatment that the child is receiving and the child's progress with the treatment;
 - Any medication prescribed for the child, the condition, diagnosis, and symptoms for which the medication was prescribed, and the child's progress with the medication;
 - For a child receiving psychotropic medication:
 - any psychosocial therapies, behavior strategies, or other nonpharmacological interventions that have been provided to the child; and
 - the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by [Tex. Fam. Code § 266.011](#);
 - The degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;
 - Any adverse reaction to or side effects of any medical treatment provided to the child;
 - Any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis;
 - Any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet; and
 - Other information required by DFPS rule or by the court. [Tex. Fam. Code § 266.007\(a\)](#).

H. Best Interest

1. Presumption

The prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest. [Tex. Fam. Code § 263.307\(a\)](#).

2. Factors

The following factors should be considered by the court and DFPS in determining whether the child's parents are willing and able to provide the child with a safe environment:

- The child's age and physical and mental vulnerabilities;
- The frequency and nature of out-of-home placements;
- The magnitude, frequency, and circumstances of the harm to the child;

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- Whether the child has been the victim of repeated harm after the initial report and intervention by DFPS;
 - Whether the child is fearful of living in or returning to the child's home;
 - The results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;
 - Whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;
 - Whether there is a history of substance abuse by the child's family or others who have access to the child's home;
 - Whether the perpetrator of the harm to the child is identified;
 - The willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;
 - The willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
 - Whether the child's family demonstrates adequate parenting skills, including, providing the child and other children under the family's care with:
 - minimally adequate health and nutritional care;
 - care, nurturance, and appropriate discipline consistent with the child's physical and psychological development;
 - guidance and supervision consistent with the child's safety;
 - a safe physical home environment;
 - protection from repeated exposure to violence even though the violence may not be directed at the child; and
 - an understanding of the child's needs and capabilities; and
 - Whether an adequate social support system consisting of an extended family and friends is available to the child. [Tex. Fam. Code § 263.307\(b\)](#).

3. Child Age 16 or Older

The following guidelines should be considered by the court when determining whether to adopt the permanency plan submitted by DFPS for a child 16 and older:

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- The permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and
 - This transition is in the best interest of the child. [Tex. Fam. Code § 263.307\(c\)](#).

I. Medical Consent

1. Medical Care and Treatment

Except in an emergency, medical care may not be provided to a child in foster care, unless the person authorized by court order consents to the medical care. [Tex. Fam. Code § 266.004\(a\)](#).

2. Medical Consenter

The court may designate DFPS as the medical consenter, but DFPS must within 5 business days file with the court and each party the name of an individual who will exercise the duty and responsibility of providing informed consent on behalf of DFPS. [Tex. Fam. Code § 266.004\(b\)\(2\) and \(c\)](#).

A person may not be authorized to consent to medical care provided to a foster child unless the person has completed a DFPS-approved training program related to informed consent and the provision of all areas of medical care as defined by [Tex. Fam. Code § 266.001](#). [Tex. Fam. Code § 266.004\(h\)](#).

[Tex. Fam. Code § 266.004\(h\)](#) addresses required medical consenter training:

- The training required by [Tex. Fam. Code § 266.004\(h\)](#) must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications. [Tex. Fam. Code § 266.004\(h-1\)](#).
- Each person required to complete a training program under [Tex. Fam. Code § 266.004\(h\)](#) must acknowledge in writing that the person:
 - has received the training described by [Tex. Fam. Code § 266.004\(h-1\)](#);
 - understands the principles of informed consent for the administration of psychotropic medication; and
 - understands that nonpharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consent to the use of a psychotropic medication. [Tex. Fam. Code § 266.004\(h-2\)](#).

DFPS may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether services are provided under the medical assistance program under [Tex. Hum. Res. Code Chapter 32](#), if DFPS otherwise has the authority under [Tex. Fam. Code § 266.004](#) to consent to health care services. [Tex. Fam. Code § 266.004\(k\)](#).

3. Consent by Child 16 Years of Age

A child who is at least 16 years of age may consent to the provision of medical care if the court determines that the child has the capacity to consent to medical care. [Tex. Fam. Code § 266.010\(a\)](#).

An attorney ad litem appointed for a child in a proceeding under [Tex. Fam. Code Chapter 262](#) or [Tex. Fam. Code Chapter 263](#) shall, for a child at least 16 years of age, advise the child of the child's right to consent to the child's own medical care under [Tex. Fam. Code § 266.010](#). [Tex. Fam. Code § 107.003\(b\)\(3\)](#).

J. Children who are Missing or Victims of Sex Trafficking

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's parent unless the parent:
 - cannot be located or contacted;
 - has had the parent's parental rights terminated; or
 - has executed an affidavit of relinquishment of parental rights. [Tex. Fam. Code § 264.123\(a\)](#).

DFPS must provide the notice required by [Tex. Fam. Code § 264.123\(a\)](#) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under [Tex. Fam. Code § 264.123\(a\)](#) cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(b\)](#).

If a child has been reported as a missing child under [Tex. Fam. Code § 264.123\(a\)](#), DFPS must notify the persons described by [Tex. Fam. Code § 264.123\(a\)](#) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns

that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(c\)](#).

DFPS must make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

- Contacting the appropriate law enforcement agencies, the child's relatives, the child's former caregivers; and any state or local social service agency that may be providing services to the child on a monthly basis; and
- Conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed. [Tex. Fam. Code § 264.123\(d\)](#).

DFPS must document in the missing child's case record:

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under [Tex. Fam. Code § 264.123\(d\)\(2\)](#);
- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by [Tex. Fam. Code § 264.123\(f\)](#). [Tex. Fam. Code § 264.123\(e\)](#).

After a missing child returns to the child's substitute care provider, DFPS must interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under [Tex. Penal Code § 20A.02\(a\)\(7\)](#). DFPS must report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. DFPS shall make a report under this subsection not later than 24 hours after the time the disclosure is made. DFPS is not required to interview a missing child under this subsection if, at the time the child returns, DFPS knows that the child was abducted and another agency is investigating the abduction. [Tex. Fam. Code § 264.123\(f\)](#).

For more information, please see the Bench Book Chapter entitled [Human Trafficking](#).

Special Issue: Children in foster care and children who run away are at a higher risk of becoming victims of human trafficking. Traffickers manipulate youth with promises of food, clothing, and shelter. The first hours after a child or youth runs away can be critical to maintaining safety and preventing victimization. Consider holding hearings to determine what efforts have been made to locate missing children.

K. Notice of Significant Events

The notice sections of [Tex. Fam. Code § 264.018](#) are in addition to other notice requirements provided by law, including [Tex. Fam. Code § 264.107\(g\)](#), which deals with placement of children, and [Tex. Fam. Code § 264.123](#), governing the reporting duties of DFPS when a child in custody becomes missing. [Tex. Fam. Code § 264.018\(b\)](#).

DFPS must provide notice under [Tex. Fam. Code § 264.018](#) in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible. [Tex. Fam. Code § 264.018\(c\)](#).

Not later than 24 hours after an event described by [Tex. Fam. Code § 264.018\(d\)](#), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS of:

- A significant change in medical condition of the child [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)];
- The enrollment or participation of the child in a drug research program under [Tex. Fam. Code § 266.0041](#); and
- An initial prescription of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)]. [Tex. Fam. Code § 264.018\(d\)](#).

Not later than 48 hours before DFPS changes the residential child-care facility of a child in the managing conservatorship of DFPS, DFPS shall provide notice of the change to:

- The child's parent;
- An attorney ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A guardian ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#); and
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee. [Tex. Fam. Code § 264.018\(e\)](#).

As soon as possible but not later than the 10th day after the date DFPS becomes aware of a significant event [as defined by [Tex. Fam. Code § 264.018\(a\)\(5\)](#)] affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to:

- The child's parent;
- An attorney ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A guardian ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#);
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
- A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
- Any other person determined by the court to have an interest in the child's welfare. [Tex. Fam. Code § 264.018\(f\)](#).

A significant event means:

- A placement change, including failure by DFPS to locate an appropriate placement for at least one night;
- A significant change in medical condition [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)];
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)];
- A major change in school performance or a serious disciplinary event at school; or
- Any event determined to be significant under DFPS rule. [Tex. Fam. Code § 264.018\(a\)\(5\)](#).

For purposes of [Tex. Fam. Code § 264.018\(f\)](#), if a hearing for the child is conducted during the 10-day notice period described by [Tex. Fam. Code § 264.018\(f\)](#), DFPS shall provide notice of the significant event at the hearing. [Tex. Fam. Code § 264.018\(g\)](#).

DFPS is not required to provide notice under [Tex. Fam. Code § 264.018](#) to a parent of a child in the managing conservatorship of DFPS if:

- DFPS cannot locate the parent;
- A court has restricted the parent's access to the information;

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- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS efforts to involve the parent;
 - The parent's rights have been terminated; or
 - DFPS has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning. [Tex. Fam. Code § 264.018\(h\)](#).

A person entitled to notice from DFPS under [Tex. Fam. Code § 264.018](#) shall provide current contact information pursuant to [Tex. Fam. Code § 264.018\(j\)](#).

FINAL HEARING

Legal Overview of Final Hearing

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services
Subchapter E. Final Order for Child under Department Care

***Please see the Checklist Section for the
Final Order and Grounds for Termination Checklists.***

Because of the need for permanency, the Family Code requires resolution of a case within one year, with a possible six-month extension if the court finds there are extraordinary circumstances and the extension is in the best interest of the child. The goal of the final hearing is the entry of a final order that identifies a permanency option or goal for the child and resolves the rights of all involved parties.

- A. Case Must Be Dismissed Within One Year**
- B. Court May Extend Dismissal Date if Extraordinary Circumstances**
- C. Monitored Return**
- D. Final Hearing**

A. Case Must Be Dismissed Within One Year

Unlike a Family Based Safety Services (FBSS) or “court ordered services” case, once DFPS has temporary managing conservatorship of a child, the case must be resolved within one year. Unless the court has commenced the trial on the merits or granted an extension under [Tex. Fam. Code § 263.401\(b\)](#) or [Tex. Fam. Code § 263.401\(b-1\)](#), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing DFPS as temporary managing conservator, the court shall dismiss the suit affecting the parent-child relationship filed by DFPS. [Tex. Fam. Code § 263.401\(a\)](#).

B. Court May Extend Dismissal Date if Extraordinary Circumstances

Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the 12-month period unless the court finds that extraordinary circumstances necessitate the child remaining in temporary managing conservatorship of DFPS and that continuing the appointment of DFPS as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the one-year period. [Tex. Fam. Code § 263.401\(b\)](#).

If the court retains the suit on the court's docket, the court shall render an order in which the court:

- Schedules the new date on which the suit will be dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by [Tex. Fam. Code § 263.401\(a\)](#);
- Makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- Sets the trial on the merits on a date not later than the new dismissal period. [Tex. Fam. Code § 263.401\(b\)](#).

Special Issue: Judges might consider if extensions are being granted because of a lack of community or judicial resources or to allow DFPS more time to establish reasonable efforts and evaluate whether this presents extraordinary circumstances that justify keeping a child in care. The lack of resources or reasonable efforts may indicate a systemic problem that could be addressed by the child welfare and judicial communities so that children in foster care do not bear the burden of system inadequacies. Staying in care longer only to achieve the same result that would have been achieved at the original deadline may only serve to exacerbate problems that tend to develop with lengthy stays in foster care, all of which make achieving permanency more difficult.

If, after commencement of the initial trial on the merits within the time required by [Tex. Fam. Code § 263.401\(a\)](#) or [Tex. Fam. Code § 263.401\(b\)](#), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court schedules a new dismissal date, makes further temporary orders, and sets a new trial date pursuant to [Tex. Fam. Code § 263.401\(b-1\)](#).

If the court grants an extension under [Tex. Fam. Code § 263.401\(b\)](#) or [Tex. Fam. Code § 263.401\(b-1\)](#) but does not commence the trial on the merits before the dismissal date, the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under [Tex. Fam. Code § 263.401\(b\)](#) or [Tex. Fam. Code § 263.401\(b-1\)](#), as applicable. [Tex. Fam. Code § 263.401\(c\)](#).

1. Limits on the Extensions

The parties to a suit under this chapter may not extend the deadlines set by the court by agreement or otherwise. [Tex. Fam. Code § 263.402\(a\)](#). In addition to the limitation imposed by [Tex. Fam. Code § 263.401\(c\)](#), the following cases address limits on extension of time. *In re J.L.C.*, [194 S.W.3d 667](#) (Tex. App.—Fort Worth 2006) (mother's request for extension of one year deadline binds her to 18 months maximum for decision); *In re J.H.G.*, [302 S.W.3d 304](#) (Tex. 2010) (mother's failure to challenge the trial court's extension of the statutory deadline in her statement of points waived the issue on appeal).

2. Failure to Resolve Case Before Dismissal Date

If the court grants an extension but does not commence the trial on the merits before the required date for dismissal, the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal. [Tex. Fam. Code § 263.401\(c\)](#).

3. Failure to Make a Timely Motion to Dismiss

A party to a suit who fails to make a timely motion to dismiss the suit waives the right to object to the court's failure to dismiss the suit. A motion to dismiss is timely if the motion is made before the trial on the merits commences. [Tex. Fam. Code § 263.402\(b\)](#).

4. Effect of Dismissal

Typically, the dismissal of a suit affecting the parent-child relationship leaves the parties and the children in the status they had before the suit was filed. This is not always the case when DFPS files suit. For example, if a child is placed with a relative after DFPS files suit, the relative may gain standing to file an original suit seeking custody if the child remains with that relative for six months or more during the pendency of the DFPS lawsuit. The relative may not have had this standing at the time the DFPS lawsuit was filed, but now does with the passage of time. [Tex. Fam. Code § 102.003\(a\)\(9\)](#).

Dismissal of the suit filed by DFPS also does not bar another party with standing from proceeding to trial on the suit against the parents. An attorney ad litem appointed to represent the child is entitled to request a hearing or a trial on the merits. [Tex. Fam. Code § 107.003\(a\)\(3\)\(B\)](#). *In re Bishop*, [8 S.W.3d 412, 420](#) (Tex. App.—Waco 1999, orig. pet.) (dismissal is without prejudice and does not affect pleadings of intervenor relative and guardian ad litem); *In re J.C.*, [250 S.W.3d 486](#) (Tex. App.—Ft. Worth 2008, no pet. hist.) (foster parents sought and obtained termination of parent's rights after DFPS suit was dismissed).

DFPS may file a new petition after dismissal, but must look to the current situation in the home in order to find evidence sufficient to establish a continuing danger exists for the child if returned home. A parent must be appointed managing conservator of the child unless the appointment would significantly impair the child's physical health or emotional

development. [Tex. Fam. Code § 153.131\(a\)](#); see also *In re Cochran*, 151 S.W.3d 275 (Tex. App.—Texarkana 2004, orig. proceeding) (past terminations alone not sufficient to deny placement with parents absent evidence of current danger to the health or safety of the child).

C. Monitored Return

At any stage of the case, the court may order a monitored return of the child to a parent with DFPS remaining as temporary managing conservator. The monitored return cannot be for more than 180 days, but may be ordered without regard to the other deadlines.

1. Findings and Orders Required for a Monitored Return

The court may retain jurisdiction and not dismiss the suit if the court renders a temporary order that:

- Finds that retaining jurisdiction is in the best interest of the child;
- Orders DFPS to return the child to the child's parent;
- Orders DFPS to continue to serve as temporary managing conservator of the child; and
- Orders DFPS to monitor the child's placement to ensure that the child is in a safe environment. [Tex. Fam. Code § 263.403\(a\)](#).

If the court renders an order, the court shall:

- Include in the order specific findings regarding the grounds for the order; and
- Schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit unless a trial on the merits has commenced. [Tex. Fam. Code § 263.403\(b\)](#).

2. Failed Monitored Return

If a child placed with a parent under a monitored return must be moved from that home before dismissal of the suit or commencement of the trial on the merits, the court shall, at the time of the removal, schedule a new date for dismissal. The new dismissal date may not be later than the original dismissal date established under [Tex. Fam. Code § 263.401](#) or the 180th day after the date the child is removed under [Tex. Fam. Code § 263.403\(c\)](#), whichever date is later. [Tex. Fam. Code § 263.403\(c\)](#).

If the court renders an order, the court must include in the order specific findings regarding the grounds for the order. [Tex. Fam. Code § 263.403\(d\)](#); *In re J.W.M.*, 153 S.W.3d 541, 545 (Tex. App.—Amarillo 2004, pet. denied); *In re Neal*, 4 S.W.3d 443 (Tex. App.—Houston [1 Dist.] 1999, orig. proceeding).

D. Final Hearing

At the final hearing, the court may either:

- Enter a final decree of conservatorship that returns the child to the parent or caregiver and dismisses DFPS;
- Enter a final decree of conservatorship that gives a relative permanent managing conservatorship, with or without termination of parental rights, and dismisses DFPS; or
- Enter a final decree of conservatorship that names DFPS as the permanent managing conservator, with or without termination of parental rights.

1. Parties

Confirm that all parties have been served pursuant to [Tex. Fam. Code § 102.009](#).

Special Issue: Although the Family Code attempts to provide finality for children by limiting the time for appeals and restricting direct or collateral attacks on a judgment of termination of parental rights, the Texas Legislature has also recognized the countervailing interest of the child's family. For example, if an order terminating the parent-child relationship is entered without providing an opportunity for participation by an adult sibling of the child, a grandparent of the child, an aunt who is a sister of a parent of the child, or an uncle who is a brother of a parent of the child, that person may, within 90 days after termination of parental rights, file a motion to modify the order changing managing conservatorship from DFPS to the person. [Tex. Fam. Code § 102.006\(c\)](#). An adult sibling of a child who is separated from the child because of the action taken by DFPS may file a motion to modify or an original petition for access to the child without regard to whether the issue of managing conservatorship is an issue in the suit. [Tex. Fam. Code § 102.0045](#) and [Tex. Fam. Code § 153.551](#). The sibling of a child who is separated from the sibling as a result of an action by DFPS may file an original suit as provided by [Tex. Fam. Code § 153.551](#) requesting access to the child, regardless of the age of the sibling. [Tex. Fam. Code § 102.0045\(a-1\)](#). The court shall expedite a suit filed under [Tex. Fam. Code § 102.0045\(a-1\)](#).

2. Required Notice of Trial

The court may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than 45 days to the parties of the first setting for trial, or by agreement of the parties. [Tex. R. Civ. P. 245](#).

3. Burden of Proof at Final Hearing

DFPS has the burden to show that parental rights should be terminated or that DFPS or another non-parent should be appointed the permanent managing conservator of the child.

a. Termination

In a termination suit, DFPS has the burden to present clear and convincing evidence of at least one ground for termination and that termination is in the best interest of the child pursuant to [Tex. Fam. Code § 161.001](#). Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. [Tex. Fam. Code § 101.007](#).

The Due Process Clause of the 14th Amendment requires the State to support the parental unfitness finding in a termination case by clear and convincing evidence. *Santosky v. Kramer*, [455 U.S. 745, 760](#) (1982); *In re G.M.*, [596 S.W.2d 846](#) (Tex. 1980).

b. Conservatorship

When DFPS asks a court to grant conservatorship to DFPS or to an individual other than the parent, the burden of proof is a preponderance of the evidence, not clear and convincing. A parent may also seek to have conservatorship awarded to an individual of his or her choice, and the burden of proof for the parent would also be a preponderance of the evidence that conservatorship to that individual is in the best interest of the child. [Tex. Fam. Code § 105.005](#).

c. Indian Child Welfare Act (ICWA)

If ICWA applies, the burden of proof and standards for a final order seeking permanent managing conservatorship or termination of parental rights are different than under the Texas Family Code. In summary, if ICWA applies the evidence required to terminate parental rights is beyond a reasonable doubt, supported by qualified expert testimony that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made but proved unsuccessful. [25 U.S.C. § 1912\(d\)](#) and [25 U.S.C. § 1912\(f\)](#).

4. Grounds for Termination of Parental Rights

a. Personal Service Required unless Prongs Met Under [Tex. Fam. Code § 161.208](#)

If a parent of the child has not been personally served in a suit in which DFPS seeks termination, the court that terminates a parent-child relationship may not appoint DFPS as permanent managing conservator of the child unless the court determines that:

- DFPS has made a diligent effort to locate a missing person who has not been personally served and a relative of that parent; and
- A relative located by DFPS has had a reasonable opportunity to request appointment as a managing conservator of the child or DFPS has not been able

to locate the missing parent or a relative of the missing parent. [Tex. Fam. Code § 161.208](#).

b. Involuntary Termination of Parent-Child Relationship

Pursuant to [Tex. Fam. Code § 161.001\(a\)](#), “born addicted to alcohol or a controlled substance” means a child:

- Who is born to a mother who during the pregnancy used a controlled substance, as defined by [Tex. Health & Safety Code Chapter 481](#), other than a controlled substance legally obtained by prescription, or alcohol; and
- Who, after birth as a result of the mother’s use of the controlled substance or alcohol:
 - experiences observable withdrawal from the alcohol or controlled substance;
 - exhibits observable or harmful effects in the child’s physical appearance or functioning; or
 - exhibits the demonstrable presence of alcohol or a controlled substance in the child’s bodily fluids. [Tex. Fam. Code § 161.001\(a\)](#).

[Tex. Fam. Code § 161.001\(b\)](#) provides the list of grounds for involuntary termination of parental rights. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

- The parent has:
 - voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
 - voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
 - voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
 - knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
 - engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

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- failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
 - abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
 - voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
 - contumaciously refused to submit to a reasonable and lawful order of a court under [Tex. Fam. Code Chapter 261, Subchapter D](#);
 - been the major cause of:
 - the failure of the child to be enrolled in school as required by the Education Code; or
 - the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
 - executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by [Tex. Fam. Code § 161.103](#);
 - been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under [Tex. Fam. Code Title 3](#) for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
 - [Tex. Penal Code § 19.02](#) (murder);
 - [Tex. Penal Code § 19.03](#) (capital murder);
 - [Tex. Penal Code § 19.04](#) (manslaughter);
 - [Tex. Penal Code § 21.11](#) (indecentcy with a child);
 - [Tex. Penal Code § 22.01](#) (assault);

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- [Tex. Penal Code § 22.011](#) (sexual assault);
 - [Tex. Penal Code § 22.02](#) (aggravated assault);
 - [Tex. Penal Code § 22.021](#) (aggravated sexual assault);
 - [Tex. Penal Code § 22.04](#) (injury to a child, elderly individual, or disabled individual);
 - [Tex. Penal Code § 22.041](#) (abandoning or endangering child);
 - [Tex. Penal Code § 25.02](#) (prohibited sexual conduct);
 - [Tex. Penal Code § 43.25](#) (sexual performance by a child);
 - [Tex. Penal Code § 43.26](#) (possession or promotion of child pornography);
 - [Tex. Penal Code § 21.02](#) (continuous sexual abuse of young child or children);
 - [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [\(8\)](#) (trafficking of persons); and
 - [Tex. Penal Code § 43.05\(a\)\(2\)](#) (compelling prostitution);
 - had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of [Tex. Fam. Code § 161.001\(b\)\(1\)\(D\)](#) or [\(E\)](#) or substantially equivalent provisions of the law of another state;
 - constructively abandoned the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than six months, and:
 - DFPS has made reasonable efforts to return the child to the parent;
 - the parent has not regularly visited or maintained significant contact with the child; and
 - the parent has demonstrated an inability to provide the child with a safe environment;
 - failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than nine months as a result of the child's removal from the parent under [Tex. Fam. Code Chapter 262](#) for the abuse or neglect of the child;

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- used a controlled substance, as defined by [Tex. Health & Safety Code Chapter 481](#), in a manner that endangered the health or safety of the child, and:
 - failed to complete a court-ordered substance abuse treatment program; or
 - after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;
 - knowingly engaged in criminal conduct that has resulted in the parent's:
 - conviction of an offense; and
 - confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;
 - been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;
 - voluntarily delivered the child to a designated emergency infant care provider under [Tex. Fam. Code § 262.302](#) without expressing an intent to return for the child; or
 - been convicted of:
 - the murder of the other parent of the child under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#);
 - criminal attempt under [Tex. Penal Code § 15.01](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 15.01](#), to commit the offense described by [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(i\)](#); or
 - criminal solicitation under [Tex. Penal Code § 15.03](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 15.03](#), of the offense described by [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(i\)](#); and
- That termination is in the best interest of the child. [Tex. Fam. Code § 161.001\(b\)](#).

For more information regarding case law related to termination of parental rights, see the DPS Texas Practice Guide for Child Protective Services Attorneys, Section 8: Termination at: http://www.dfps.state.tx.us/Child_Protection/CPS_Attorneys/Section-8.asp

c. Involuntary Termination: Inability to Care for Child

The Texas Family Code authorizes the termination of the parental rights of a parent who is unable to meet the child's needs due to a mental disability. The court may order termination of the parent-child relationship in a suit filed by DFPS if the court finds that:

- The parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
- The illness or deficiency, in all reasonable probability, provided by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;
- DFPS has been the temporary or sole managing conservator of the child of the parent for at least 6 months preceding the date of the hearing on termination held in accordance with [Tex. Fam. Code § 161.003\(c\)](#);
- DFPS made reasonable efforts to return the child to the parent; and
- Termination is in the best interest of the child. [Tex. Fam. Code § 161.003\(a\)](#).

Immediately after filing a suit under [Tex. Fam. Code § 161.003](#), the court shall appoint an attorney ad litem to represent the interests of the parent against whom the suit is brought. [Tex. Fam. Code § 161.003\(b\)](#). An attorney appointed under [Tex. Fam. Code § 161.003\(b\)](#) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney. [Tex. Fam. Code § 161.003\(d\)](#).

A hearing on the termination may not be held earlier than 180 days after the date on which the suit is filed. [Tex. Fam. Code § 161.003\(c\)](#).

d. Termination of the Rights of an Alleged Biological Father

Except as otherwise provided by [Tex. Fam. Code § 161.002](#), the procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged father. [Tex. Fam. Code § 161.002\(a\)](#).

The rights of an alleged biological father may be terminated if:

- After being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under [Tex. Fam. Code Chapter 160](#);
- The child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), and after the exercise of due diligence by the petitioner:
 - his identity and location are unknown; or

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- his identity is known but he cannot be located;
 - The child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#); or
 - He has registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner. [Tex. Fam. Code § 161.002\(b\)](#).

The termination of the rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(2\)](#) or [Tex. Fam. Code § 161.002\(b\)\(3\)](#) does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#). [Tex. Fam. Code § 161.002\(c-1\)](#).

The termination of rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) does not require service of citation by publication on the alleged father. [Tex. Fam. Code § 161.002\(d\)](#).

The court shall not render an order terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(2\)](#) or [Tex. Fam. Code § 161.002\(b\)\(3\)](#) unless the court receives evidence of a certificate of the results of a search of the paternity registry under [Tex. Fam. Code Chapter 160](#) from the vital statistics unit indicating that no man has registered the intent to claim paternity. [Tex. Fam. Code § 161.002\(e\)](#).

The court shall not render an ordering terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner. [Tex. Fam. Code § 161.002\(f\)](#).

5. Best Interest

Holley v. Adams, [544 S.W.2d 367, 373](#) (Tex. 1976) factors used to evaluate the evidence relating to best interest include but are not limited to:

- The desires of the child;
- The emotional and physical needs of the child now and in the future;
- The emotional and physical danger to the child now and in the future;

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- The parenting abilities of the parties seeking custody;
 - The programs available to assist these persons;
 - The plans for the child by the parties seeking custody;
 - The acts or omissions of the parent and any excuse for the same; and
 - The stability of the home or proposed placement.

"The absence of evidence about some of these *Holley* considerations would not preclude a fact finder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child. Other cases, however, will present more complex facts in which paltry evidence relevant to each consideration mentioned in *Holley* would not suffice to uphold the jury's finding that termination is required." *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002).

"Evidence about placement plans and adoption are, of course, relevant to best interest. However, the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor; otherwise, determinations regarding best interest would regularly be subject to reversal on the sole ground that an adoptive family has yet to be located. Instead, the inquiry is whether, on the entire record, a fact finder could reasonably form a firm conviction or belief that termination of the parent's rights would be in the child's best interest—even if the agency is unable to identify with precision the child's future home environment." *In re C.H.*, 89 S.W.3d 17, 32 (Tex. 2002).

6. Presumptions Involved in Conservatorship

a. Parent Should Be Appointed as Managing Conservator

Unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child. It is a rebuttable presumption that the appointment of the parents as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption. [Tex. Fam. Code § 153.131\(b\)](#).

b. Parent With History of Domestic Violence or Sexual Abuse

In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year

period preceding the filing of the suit or during the pendency of the suit. [Tex. Fam. Code § 153.004\(a\)](#).

c. Parent Should Be Appointed as Possessory Conservator

The court shall appoint as a possessory conservator a parent who is not appointed as a sole or joint managing conservator unless it finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the child. [Tex. Fam. Code § 153.191](#).

The court shall consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator. [Tex. Fam. Code § 153.004\(c\)](#).

The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that:

- There is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; or
- The parent engaged in conduct that constitutes an offense under [Tex. Penal Code § 21.02](#), [Tex. Penal Code § 22.011](#), [Tex. Penal Code § 22.021](#), or [Tex. Penal Code § 25.02](#), and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child. [Tex. Fam. Code § 153.004\(d\)\(2\)](#).

Notwithstanding [Tex. Fam. Code § 153.004\(d\)](#), a court may allow a parent to have access to a child if the court makes one of several findings pursuant to [Tex. Fam. Code § 153.004\(d-1\)](#).

If the court enters an order appointing DFPS as the permanent managing conservator of the child without terminating the rights of the parent of the child, the court must find that:

- Appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and
- It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator. [Tex. Fam. Code § 263.404\(a\)](#).

Special Issue: Although not law, some judges do not simply dismiss or nonsuit the DFPS legal case outright, but rather enter final orders regarding conservatorship of the child, child support, and access to the child. If DFPS requests dismissal of its lawsuit after reunification with a parent, the court may want to consider whether:

- The dismissal or nonsuit is in the best interest of each child affected by the suit; and
- Any orders for the conservatorship, possession of or access to, or support of each child affected by the suit continue in effect after the dismissal or nonsuit.

7. Considerations in Naming DFPS as Permanent Managing Conservator

If the court determines that DFPS should be named as permanent managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

- The child will reach 18 years of age in not less than three years;
- The child is 12 years or older and has expressed a strong desire against termination or has continuously expressed a strong desire against being adopted; and
- The needs and desires of the child. [Tex. Fam. Code § 263.404\(b\)](#).

Special Issue: As a best practice, a court may consider continuing the appointment of the child's attorney ad litem (AAL) and guardian ad litem (GAL) until the child reaches permanency, meaning the child is adopted or leaves care permanently by transfer of conservatorship to a suitable adult prior to the age of 18.

8. Final Order Appointing DFPS as Managing Conservator of Certain Abandoned Children (Baby Moses Law)

There is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with [Tex. Fam. Code Subchapter D, Chapter 262](#):

- Is the child's biological parent;
- Intends to relinquish parental rights and consents to the termination of parental rights with regard to the child; and
- Intends to waive the right to notice of the suit terminating the parent-child relationship. [Tex. Fam. Code § 263.407\(a\)](#).

A party that seeks to rebut a presumption in [Tex. Fam. Code § 263.407\(a\)](#) may do so at any time before the parent-child relationship is terminated with regard to the child. [Tex. Fam. Code § 263.407\(a-1\)](#).

If a person claims to be the parent of a child taken into possession under [Tex. Fam. Code Chapter 262, Subchapter D](#) [Emergency Possession of Certain Abandoned Children], before the court renders a final order terminating the parental rights of the child's parents, the court shall order genetic testing for parentage determination unless parentage has previously been established. The court shall hold the petition for termination of the parent-child relationship in abeyance for a period not to exceed 60 days pending the results of the genetic testing. [Tex. Fam. Code § 263.407\(b\)](#).

Before the court may render an order terminating parental rights with regard to a child taken into DFPS custody under [Tex. Fam. Code § 262.303](#), DFPS must:

- Verify with the National Crime Information Center and state and local law enforcement agencies that the child is not a missing child; and
- Obtain a certificate of the search of the paternity registry under [Tex. Fam. Code Chapter 160, Subchapter E](#) not earlier than the date DFPS estimates to be the 30th day after the child's date of birth. [Tex. Fam. Code § 263.407\(c\)](#).

9. Requirements for Appointment of Nonparent as Managing Conservator

[Tex. Fam. Code § 263.408](#) imposes additional duties on DFPS when a nonparent is appointed as managing conservator of a child in the legal custody of DFPS.

In a suit in which the court appoints a nonparent as managing conservator of a child, DFPS must provide the nonparent with an explanation of the difference between appointment as a managing conservator of a child and adoption of a child, including specific statements informing the nonparent that:

- The nonparent's appointment conveys only the rights specified by the court order or applicable laws instead of the complete rights of a parent conveyed by adoption;
- A parent may be entitled to request visitation with the child or petition the court to appoint the parent as the child's managing conservator, notwithstanding the nonparent's appointment as managing conservator; and
- The nonparent's appointment as the child's managing conservator will not result in the eligibility of the nonparent and child for post-adoption benefits. [Tex. Fam. Code § 263.408\(a\)\(1\)](#).

In addition to the rights and duties provided under [Tex. Fam. Code § 153.371](#), the court order appointing the nonparent as managing conservator must include provisions that address the authority of the nonparent to:

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- Authorize immunization of the child or any other medical treatment that requires parental consent;
 - Obtain and maintain health insurance coverage for the child and automobile insurance for the child, if appropriate;
 - Enroll the child in a day-care program or school, including kindergarten;
 - Authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;
 - Authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
 - Authorize employment of the child;
 - Apply for and receive public benefits for or on behalf of the child; and
 - Obtain legal services for the child and execute contracts or other legal documents for the child. [Tex. Fam. Code § 263.408\(a\)\(2\)](#).

The court must require evidence that the nonparent was informed of the rights and duties of a nonparent appointed as managing conservator of a child before the court renders an order appointing the nonparent as managing conservator of a child. [Tex. Fam. Code § 263.408\(b\)](#).

PERMANENCY HEARING AFTER FINAL ORDER (FORMERLY PLACEMENT REVIEW HEARING)

Legal Overview of Permanency Hearing After Final Order

Texas Family Code

Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services

Subchapter F. Permanency Hearings After Final Order

***Please see the Checklist Section for the
Permanency Hearing After Final Order Checklist.***

When a child is in the permanent managing conservatorship of DFPS, the court must periodically review the case to ensure that the child's needs are being met and that efforts have not ceased to find the child a permanent placement. As long as the child remains in the permanent managing conservatorship of DFPS, whether parental rights have been terminated, the court must continue to review the status of the child until the child permanently leaves the managing conservatorship of DFPS through adoption, appointment of a person as managing conservator, or transitioning out of care upon the child's 18th birthday or graduation from high school, whichever occurs later.

Historically, once a child entered the long-term care of DFPS through the appointment of that agency as permanent managing conservator, if adoption was not the long-term goal of the child, few efforts were made to continue working with the parents or to locate a suitable relative or another individual in order to place the child outside of foster care. Recent changes to the Family Code envision continued efforts to achieve permanency for a child, even after the appointment of DFPS as permanent managing conservator. This includes changing the terminology regarding this hearing to emphasize the need to seek permanency for a youth until the youth leaves care, even if DFPS has permanent managing conservatorship.

- A. When Permanency Hearing After Final Order is Conducted**
- B. Notice of the Permanency Hearing After Final Order**
- C. The Child Shall Attend the Permanency Hearing After Final Order**
- D. Permanency Progress Report After Final Order**
- E. Conducting a Permanency Hearing After Final Order**

F. Court Orders Related to Permanent Managing Conservatorship

G. Foster Youth Bill of Rights and Ombudsman's Office

H. Transitional Services

I. Extended Jurisdiction for Youth Aging Out of Foster Care

A. When Permanency Hearing After Final Order is Conducted

After the entry of an order that appoints DFPS as permanent managing conservator of a child, if the parental rights are not terminated, a Permanency Hearing After Final Order must be held within six months. If the parental rights are terminated, the first Permanency Hearing After Final Order must be held within 90 days after the court renders the final order. [Tex. Fam. Code § 263.501\(a\) and \(b\)](#). Thereafter, a Permanency Hearing After Final Order must be held every six months until the date the child leaves the permanent managing conservatorship of DFPS. [Tex. Fam. Code § 263.501\(a\)](#).

B. Notice of the Permanency Hearing After Final Order

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- DFPS;
- The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
- Each parent of the child;
- The managing conservator or guardian of the child;
- An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
- The child if:

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- the child is 10 years of age or older; or
 - the court determines it is appropriate for the child to receive notice; and
 - Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;
- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
- In open court; or
- In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee is entitled to at least 10 days' notice of a Permanency Hearing After Final Order. [Tex. Fam. Code § 263.0021\(d\)](#).

C. The Child Shall Attend the Permanency Hearing After Final Order

The child shall attend each Permanency Hearing After Final Order in accordance with [Tex. Fam. Code § 263.302](#). [Tex. Fam. Code § 263.501\(f\)](#).

D. Permanency Progress Report After Final Order

1. Filing the Permanency Progress Report After Final Order

Not later than the 10th day before the date set for a Permanency Hearing After Final Order, DFPS shall file a permanency progress report with the court. [Tex. Fam. Code § 263.502\(a\)](#). For good cause shown, the court may order a different time for filing the report or that a report is not required for a specific hearing. [Tex. Fam. Code § 263.502\(a-2\)](#).

2. Copies of Report Provided

DFPS shall provide a copy to each person entitled to notice of the hearing under [Tex. Fam. Code § 263.0021](#). [Tex. Fam. Code § 263.502\(a\)](#).

Special Issue: If all necessary persons entitled to notice were properly notified and are before the court but did not receive the Permanency Progress Report, a court might consider allowing the persons the opportunity to review the report during a recess.

3. Permanency Progress Report Contents

The permanency progress report must contain:

- Information necessary for the court to conduct the Permanency Hearing and make its findings and determinations under [Tex. Fam. Code § 263.5031](#);
- Information on significant events, as defined by [Tex. Fam. Code § 264.018](#); and
- Any additional information DFPS determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under [Tex. Fam. Code § 263.5031](#). [Tex. Fam. Code § 263.502\(a-1\)](#).

E. Conducting a Permanency Hearing After Final Order

At each Permanency Hearing After Final Order, the court shall:

- Identify all persons and parties present at the hearing;
- Review the efforts of DFPS or other agency in notifying persons entitled to notice under [Tex. Fam. Code § 263.0021](#); and
- Review the permanency progress report to determine:
 - the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
 - the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
 - if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs;
 - the appropriateness of the primary and alternative permanency goals for the child, whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:
 - DFPS has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or
 - another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;

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- for a child whose permanency goal is another planned permanent living arrangement:
 - the desired permanency outcome for the child, by asking the child; and
 - whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child, and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
 - return home;
 - be placed for adoption;
 - be placed with a legal guardian; or
 - be placed with a fit and willing relative;
 - if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;
 - whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
 - for a child receiving psychotropic medication, whether the child:
 - has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child's needs; or
 - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
 - whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;
 - for a child for whom DFPS has been named managing conservator in a final order that does not include termination of parental rights, whether to order DFPS to provide services to a parent for not more than six months after the date of the Permanency Hearing if:
 - the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
 - the court determines that further efforts at reunification with a parent are:
 - in the best interest of the child; and

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- likely to result in the child's safe return to the child's parent; and
 - o whether DFPS has identified a family or other caring adult who made a permanent commitment to the child. [Tex. Fam. Code § 263.5031](#).

Additionally, [Tex. Fam. Code § 263.503\(c\)](#) requires that, in addition to the requirements of [Tex. Fam. Code § 263.5031](#), at each Permanency Hearing After a Final Order the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by [Tex. Fam. Code § 264.001](#); this may include activities not listed in the child's service plan. [Tex. Fam. Code § 263.503](#).

F. Court Orders Related to Permanent Managing Conservatorship

1. Court Ordered Services for Parents

When a parent is still involved or over time becomes re-involved in the case, a court may order DFPS to provide services to a parent for not more than six months after the date of the Permanency Hearing if:

- The child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
- The court determines that further efforts at reunification with a parent are:
 - o in the best interest of the child; and
 - o likely to result in the child's safe return to the child's parent. [Tex. Fam. Code § 263.5031\(3\)\(J\)](#).

2. Termination of Parental Rights After Denial of Prior Petition to Terminate

The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:

- The petition under [Tex. Fam. Code § 161.004](#) is filed after the date the order denying termination was rendered;
- The circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;
- The parent committed an act listed under [Tex. Fam. Code § 161.001](#) before the date the order denying termination was rendered; and
- Termination is in the best interest of the child. [Tex. Fam. Code § 161.004\(a\)](#).

At a hearing under [Tex. Fam. Code § 161.004](#), the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child. [Tex. Fam. Code § 161.004\(b\)](#).

3. Child Committed to Texas Juvenile Justice Department (TJJD)

A court is required to conduct a Permanency Hearing After Final Order for a child while the child is committed to or released under the supervision of TJJD, unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than DFPS. [Tex. Fam. Code § 263.501\(g\)](#).

G. Foster Youth Bill of Rights and Ombudsman’s Office

Each child in foster care shall be informed of the child’s rights provided by state or federal law or policy that relate to:

- Abuse, neglect, exploitation, discrimination, and harassment;
- Food, clothing, shelter, and education;
- Medical, dental, vision, and mental health services, including the right of the child to consent to treatment;
- Emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;
- Placement with the child’s siblings and contact with members of the child’s family;
- Privacy and searches, including the use of storage space, mail, and the telephone;
- Participation in school-related extracurricular or community activities;
- Interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;
- Contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;
- Religious services and activities;
- Confidentiality of the child’s records;
- Job skills, personal finances, and preparation for adulthood;
- Participation in a court hearing that involves the child;
- Participation in the development of service and treatment plans;

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- If the child has a disability, the advocacy and protection of the rights of a person with that disability; and
 - Any other matter affecting the child’s ability to receive care and treatment in the least restrictive environment that is most like a family setting. [Tex. Fam. Code § 263.008\(b\)](#).

DFPS shall provide a written copy of the foster children’s bill of rights to each child placed in foster care in the child’s primary language, if possible, and shall inform the child of the rights described by the foster children’s bill of rights:

- Orally in the child’s primary language, if possible, and in simple, non-technical terms; or
- For a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child. [Tex. Fam. Code § 263.008\(c\)](#).

The HHSC Commissioner must appoint an ombudsman for children and youth in foster care. [Tex. Gov’t Code § 531.992\(a\)](#). The ombudsman serves as a neutral party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues with the authority of DFPS or another health and human services agency. [Tex. Gov’t Code § 531.993](#).

Starting in May 2016, youth may contact FCO through the following methods:

- Toll-free phone: 1-844-286-0769 (8am to 5pm, Monday through Friday)
- Toll-free fax: 1-888-780-8099
- Mail: Texas Health and Human Services Commission
Foster Care Ombudsman, MC H-700
P O Box 13247
Austin, Texas 78711-3247
- Online: <http://www.hhsc.state.tx.us/ombudsman>

Special Issue: Judges, Parents, Attorneys, CASA and other individuals with inquiries and complaints about a youth's case may continue to contact the DFPS [Office of Consumer Affairs](#) at 1-800-720-7777 or oca@dfps.state.tx.us.

H. Transitional Services

DFPS shall address unique challenges facing youth in conservatorship transitioning to independence pursuant to [Tex. Fam. Code § 264.121](#), including efforts to improving transition planning and providing experiential life skills-training. [Tex. Fam. Code § 264.121\(a\)\(1\)](#) and [Tex. Fam. Code § 264.121\(a-2\)](#).

[Tex. Fam. Code § 264.121\(i\)](#) relates to transition planning. DFPS shall ensure that the transition plan for each youth 16 years of age or older includes provisions to assist the youth

in managing the youth's housing needs after the youth leaves foster care, including provisions that:

- Identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;
- If the youth's housing goals include residing with family or friends, state that DFPS has addressed the following with the youth:
 - the length of time the youth expects to stay in the housing arrangement;
 - expectations for the youth regarding paying rent and meeting other household obligations;
 - the youth's psychological and emotional needs, as applicable; and
 - any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;
- Inform the youth about emergency shelters and housing resources, including supervised independent living and housing at colleges and universities, such as dormitories;
- Require DFPS to review a common rental application with the youth and ensure that the youth possesses all of the documentation required to obtain rental housing; and
- Identify any individuals who are able to serve as cosigners or references on the youth's application for housing. [Tex. Fam. Code § 264.121\(i\)](#).

Provision of Copies of Certain Records

DFPS shall ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under [Tex. Transp. Code Chapter 521](#), on or before the date the on which the youth turns 16. [Tex. Fam. Code § 264.121\(e\)](#).

When providing a youth with a document required by [Tex. Fam. Code § 264.121\(e-1\)](#), DFPS shall provide the youth with a copy and a certified copy of the document or with the original document, as applicable. [Tex. Fam. Code § 264.121\(e-2\)](#).

If, at the time a youth is discharged from foster care, the youth is at least 18 years of age or has had the disabilities of a minor removed, DFPS shall provide to the youth, not later than the 30th day before the date the child is discharged from foster care, of the following information and documents unless the youth already has the information or document:

- The youth's birth certificate;

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- The youth’s immunization records;
 - The information contained in the youth’s health passport;
 - A personal identification certificate under [Tex. Transp. Code § 521.032](#);
 - A social security card or a replacement social security card, if appropriate; and
 - Proof of enrollment in Medicaid, if appropriate. [Tex. Fam. Code § 264.121\(e-1\)](#).

For more information about how to support youth who are transitioning from foster care, please see: [A Guide for Those "Aging Out" of Foster Care in Texas](#).⁶

I. Extended Jurisdiction for Youth Aging Out of Foster Care

1. Young Adult

“Young adult” is a person who was in the conservatorship of DFPS on the day before the person’s 18th birthday. [Tex. Fam. Code § 263.601\(4\)](#).

2. Extended Foster Care

“Extended foster care” is foster care that extends beyond the young adult’s 18th birthday. It requires the young adult to reside in a residential facility that is licensed or approved and paid for by DFPS, including a foster home, foster group home, Residential Treatment Center (RTC), and Supervised Independent Living facility through a provider who has a contract with DFPS for extended foster care services. [Tex. Fam. Code § 263.601\(1\)](#).

3. Trial Independence

“Trial independence” means the status assigned to a young adult under [Tex. Fam. Code § 263.6015](#), which is automatic and mandatory for a minimum of 6 months beginning on:

- The date of the young adult’s 18th birthday; or
- The date the young adult exits extended foster care. [Tex. Fam. Code § 263.6015\(b\)](#).

A court may order trial independence status extended for a period that exceeds the mandatory period under [Tex. Fam. Code § 263.6015\(b\)](#) but cannot exceed one year from the date the period under [Tex. Fam. Code § 263.6015\(b\)](#) commences. [Tex. Fam. Code § 263.6015\(c\)](#).

Each time a young adult exits foster care (originally at 18 or extended foster care), the youth adult will complete a new six-month period of trial independence. [Tex. Fam. Code § 263.6015\(d\)](#).

4. Extended Jurisdiction After Child’s 18th Birthday

Any court with jurisdiction over a youth on the day before they turn 18 will automatically continue to have jurisdiction of the youth beyond their 18th birthday for at least six months. Youth age 18 or older are allowed to temporarily leave foster care, and as long as the court has jurisdiction, the state is eligible for federal funding to provide services for the young adult, including independent living supports such as housing. [Tex. Fam. Code § 263.602](#).

While a youth is in extended foster care, the Family Code requires the court to conduct review hearings every six months, and make specific findings regarding the young adult's living arrangement, the permanency plan, whether the young adult participated in developing the plan, and whether it reflects independent living skills and appropriate services in order for the young adult to achieve independence, and whether additional services are needed to meet the young adult's needs. [Tex. Fam. Code § 263.602\(b\)](#).

The extended jurisdiction statute states that, unless a court extends its jurisdiction over a young adult beyond the end of trial independence as provided by [Tex. Fam. Code § 263.6021\(a\)](#) or [Tex. Fam. Code § 263.603\(a\)](#), the court's extended jurisdiction over a young adult terminates on the earlier of:

- The last day of the month in which trial independence ends; or
- The young adult's 21st birthday. [Tex. Fam. Code § 263.602\(f\)](#).

A court with extended jurisdiction is not required to conduct periodic hearings as described in [Tex. Fam. Code § 263.602](#) for a young adult who is not in extended foster care and who is only on trial independence and may not compel a young adult who has elected to not enter or has exited extended foster care to attend a court hearing. However, a court may, at the request of the young adult who is on trial independence, conduct a hearing described by [Tex. Fam. Code § 263.602\(b\)](#) or [Tex. Fam. Code § 263.6021](#) to review any transitional living services the young adult is receiving during trial independence. [Tex. Fam. Code § 263.602\(g\)](#).

For more information, see an Extended Court Jurisdiction Flowchart developed by DFPS.⁷

Unless a young adult receiving voluntary transitional living services while on trial independence reenters extended foster care before the end of the court's extended jurisdiction, the extended jurisdiction of the court ends on the earlier of:

- The young adult's 21st birthday; or
- The date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court. [Tex. Fam. Code § 263.6021\(b\)](#).

For more information, see a Brief Overview of Transitional Living Services developed by DFPS.⁸

5. Extended Jurisdiction in Guardianship Situation

If a court believes that a young adult may be incapacitated as defined by [Tex. Prob. Code § 601\(14\)\(B\)](#), the court may extend its jurisdiction on its own motion without the young adult's consent to allow DFPS to refer the young adult to the Department of Aging and Disability Services (DADS) for guardianship services, as required by [Tex. Hum. Res. Code § 48.209](#). [Tex. Fam. Code § 263.603\(a\)](#).

The extended jurisdiction to determine guardianship under [Tex. Fam. Code § 263.603](#) terminates on the earliest of the date:

- DADS determines a guardianship is not appropriate under [Tex. Hum. Res. Code Chapter 161](#);
- A court with probate jurisdiction denies the application to appoint a guardian; or
- A guardian is appointed and qualifies under the Texas Probate Code. [Tex. Fam. Code § 263.603\(b\)](#).

If DFPS or DADS determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court, under [Tex. Fam. Code § 263.603\(a\)](#), may continue to extend its jurisdiction over the young adult only as provided by [Tex. Fam. Code § 263.602](#) or [Tex. Fam. Code § 263.6021](#). [Tex. Fam. Code § 263.603\(c\)](#).

A young adult for whom a guardian is appointed and qualifies is not considered to be in extended foster care or trial independence and the court's jurisdiction ends on the date the guardian for the young adult is appointed and qualifies, unless the guardian requests the extended jurisdiction of the court under [Tex. Fam. Code § 263.604](#). [Tex. Fam. Code § 263.603\(d\)](#).

By Guardian Request

A guardian appointed for a young adult may request that the court extend the court's jurisdiction over the young adult. A court that extends its jurisdiction over a young adult for whom a guardian is appointed may not issue an order that conflicts with an order entered by the probate court that has jurisdiction over the guardianship proceeding. [Tex. Fam. Code § 263.604](#).

6. Role of Attorney ad Litem, Guardian ad Litem, or Volunteer Advocate

A court with extended jurisdiction may continue or renew the appointment of an attorney ad litem, guardian ad litem, or volunteer advocate for the young adult to assist in accessing services the young adult is entitled to receive. [Tex. Fam. Code § 263.605](#).

An attorney ad litem or guardian ad litem appointed for a young adult who receives services in the young adult's own home from a service provider or resides in an institution [as defined by [Tex. Fam. Code § 263.601\(3\)](#)] that is licensed, certified, or verified by a state agency

other than DFPS shall assist the young adult as necessary to ensure that the young adult receives appropriate services. [Tex. Fam. Code § 263.606](#).

7. Prohibited Appointments and Orders

The court may not appoint DFPS or DADS as the managing conservator or guardian of the young adult. [Tex. Fam. Code § 263.607\(a\)](#). A court may not order DFPS to provide a service to a young adult unless DFPS:

- Is authorized to provide the services under state law; and
- Is appropriated money to provide the services in an amount sufficient to comply with the court order and DFPS obligations to other young adults for whom DFPS is required to provide similar services. [Tex. Fam. Code § 263.607\(b\)](#).

8. Rights of Young Adults

A young adult who consents to the continued jurisdiction of the court has the same rights as any other adult of the same age. [Tex. Fam. Code § 263.608](#).

For more information, see the [Extended Jurisdiction Matrix](#) created by DFPS.⁹

APPEALS

Legal Overview of Appeals

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services
Subchapter E. Final Order for Child under DFPS Care

An appeal of a final order rendered under [Tex. Fam. Code Chapter 263, Subchapter E](#) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and the appellate court must render its final order or judgment with the least possible delay. [Tex. Fam. Code § 263.405\(a\)](#). Also, the final order must contain the following prominently displayed statement in boldfaced type, in capital letters, or underline:

“A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.” [Tex. Fam. Code § 263.405\(b\)](#).

- A. Specific Grounds Must Be Stated in Trial Court Judgment**
- B. Parent Deemed Indigent on Appeal**
- C. Attorney Ad Litem Required to Remain on Case**
- D. Trial Court Clerk Has Specific Time-Sensitive Duties**
- E. Application of Tex. Civ. Prac. & Rem. Code § 13.003 Prohibited**
- F. Effective Assistance of Counsel**
- G. Order or Judgment Termination Parent-Child Relationship May Not Be Suspended During Pendency of Appeal**
- H. Notice of Appeal / Appellant Duties**

A. Specific Grounds Must Be Stated In Trial Court Judgment

The Texas Rules of Civil Procedure require the judge to state the specific grounds in the judgment supporting the termination or the appointment of the managing conservator. [Tex. R. Civ. P. 306](#).

B. Parent Deemed Indigent on Appeal

Pursuant to [Tex. Fam. Code § 107.013\(e\)](#), parents deemed indigent in the trial court are presumed indigent on appeal, subject to challenges laid out in [Tex. R. App. P. 20.1](#).

C. Attorney Ad Litem Required to Remain on Case

Pursuant to [Tex. Fam. Code § 107.016\(2\)](#), the attorney ad litem appointed to represent the parent at trial is required to remain on the case until the case is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the duty or replaced by another attorney after a finding of good cause is rendered by the court on the record. [Tex. Fam. Code § 107.016\(2\)](#).

D. Trial Court Clerk Has Specific, Time-sensitive Duties

The Texas Rules of Appellate Procedure require the trial court clerk to immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter(s) responsible for preparing the record. [Tex. R. App. P. 25.1\(f\)](#).

The Texas Rules of Appellate Procedure require the trial court to direct the official or deputy reporter to commence the preparation of the reporter's record and arrange for a substitute reporter, if necessary. There are extensions of time available under certain circumstances. [Tex. R. App. P. 28.4\(b\)\(1\)](#).

E. Application of Tex. Civ. Prac. & Rem. Code § 13.003 Prohibited

The Texas Rules of Appellate Procedure prohibit the application of [Tex. Civ. Prac. & Rem. Code § 13.003](#) (Free Transcript of Statement of Facts on Appeal) to an appeal from a parental termination or child protection case. [Tex. R. App. P. 28.4\(b\)\(3\)](#).

F. Effective Assistance of Counsel

Case law has established that if a parent is entitled to court-appointed counsel, the parent is entitled to effective assistance of counsel. *In re J.O.A., et. al.*, [283 S.W. 3d 336, 347](#) (Tex. 2009).

G. Order or Judgment Termination Parent-Child Relationship May Not Be Suspended During Pendency of Appeal

Although a court may suspend other orders under the Family Code, the court may not suspend the operation of an order or judgment terminating the parent child relationship in a suit brought by the state or a political subdivision of the during the pendency of the appeal. [Tex. Fam. Code § 109.001\(d\)](#).

H. Notice of Appeal and Appellant Duties

The Texas Rules of Appellate Procedure require the notice of appeal to state whether it is a parental termination or child protection case subject to rules of acceleration under [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 25.1\(d\)\(6\)](#).

The Texas Rules of Appellate Procedure also require the appellant to file in the appellate court a docketing statement upon filing the notice of appeal and it must state whether the appeal is an appeal of a parental termination or child protection case as defined in [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 32.1\(g\)](#).

I. Case Law Update

Each year, DFPS produces a case law update of select child protection cases. The 2016 update includes the following cases:

JURISDICTION

In re J.P. and J.E.B., [No. 04-15-00145-CV](#) (Tex. App.—San Antonio July 29, 2015, no pet.) (mem. op.)

PRE-TRIAL MATTERS

Due Process: Attendance at Trial In re D.W., [No. 01-15-01045-CV](#) (Tex. App.—Houston [1st Dist.] May 17, 2016, no pet.)

Right to Counsel—No Opportunity for Trial Court to Admonish Parents E.T. and T.T. v. Tex. Dep't of Family and Protective Servs., [No. 03-15-00274-CV](#) (Tex. App.—Austin Sept. 29, 2015, no pet.) (mem. op.)

Denial of Bench Warrant In re K.D., [No. 11-14-00326-CV](#) (Tex. App.—Eastland May 15, 2015, no pet.) (mem. op.)

Monitored Return: Oral Rendition Sufficient In re A.H.J., A.H., and A.H., [No. 05-15-00501-CV](#) (Tex. App.—Dallas Oct. 8, 2015, pet. denied) (mem. p.)

TRIAL PRACTICE

Parents Entitled to Present Rebuttal Evidence In re S.F., [No. 11-15-00055-CV](#) (Tex. App.—Eastland Sept. 10, 2015, no pet.) (mem. op.)

Non-Parent Does not Have Burden of Proof In re R.A., [No. 10-14-00352-CV](#) (Tex. App.—Waco June 11, 2015, no pet.) (mem. op.)

EVIDENCE

Admissibility of Child Hearsay Statements In re E.M. and J.M., [No. 10-14-00313-CV](#) (Tex. App.—Waco May 28, 2015, pet. denied)

Res Judicata Inapplicable Where Suits Severed In re D.L.W., [No. 07-15-00243-CV](#) (Tex. App.—Amarillo Dec. 4, 2015, no pet.) (mem. op.)

Rule of Optional Completeness — Error in the Admission of the Entire Report In re C.C., M.C., L.O., and H.P., [476 S.W.3d 632](#) (Tex. App.—Amarillo 2015, no pet.)

No Spousal Privilege Regarding Child Abuse or Neglect In re L.E.S., [471 S.W.3d 915](#) (Tex. App.—Texarkana 2015, no pet.)

TERMINATION GROUNDS

[TFC §§ 161.001\(b\)\(1\)\(D\) and \(E\)](#) In re R.S. and A.S., [No. 02-15-00137-CV](#) (Tex. App.—Fort Worth Oct. 1, 2015, no pet.) (mem. op.)

[TFC §§ 161.001\(b\)\(1\)\(E\) i.](#) Failure to Protect Non-Biological Child Before Birth of Subject Child Supports, In re J.S., [No. 12-15-00053-CV](#) (Tex. App.—Tyler Aug. 12, 2015, no pet.) (mem. op.)

Leaving Children with Caretaker Known to be Unsafe In re L.D.F., [No. 04-15-00399-CV](#) (Tex. App.—San Antonio Dec. 9, 2015, no pet.) (mem. op.)

Scienter not Required In re J.N.G., [No. 14-15-00389-CV](#) (Tex. App.—Houston [14th Dist.] Sept. 24, 2015, no pet.) (mem. op.)

Drugs in Child’s Body Demonstrates Actual Injury In re S.H., [No. 07-15-00177-CV](#) (Tex. App.—Amarillo Sept. 16, 2015, no pet.) (mem. op.)

Medical Neglect of Autistic Child In re K.S., [No. 05-15-01294-CV](#) (Tex. App.—Dallas Apr. 21, 2016, pet. denied) (mem. op.)

Frequent Incarcerations and Knowledge of Drug Use In re J.B., [No. 06-15-00040-CV](#) (Tex. App.—Texarkana Jan. 22, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(F\)](#) In re Z.W.M., [No. 07-15-00316-CV](#) (Tex. App.—Amarillo Feb. 9, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(L\)](#) In re W.J.B. and In re A.L.F., D.P.F.-A., E.E.F., B.E.H., Jr., and R.F.B., [Nos. 01-15-00802-CV, 01-15-00803-CV](#) (Tex. App.—Houston [1st Dist.] Mar. 31, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(O\) i.](#) Excuses Insufficient In re A.M.M., [No. 04-15-00638-CV](#) (Tex. App.—San Antonio Apr. 6, 2016, no pet.) (mem. op.)

Date for Compliance In re B.S., [No. 13-15-00281-CV](#) (Tex. App.—Corpus Christi Nov. 12, 2015, no pet.) (mem. op.)

Prior Removal for Abuse In re J.H., [No. 09-15-00171-CV](#) (Tex. App.—Beaumont Aug. 31, 2015, no pet.) (mem. op.)

Removal of the Children from Non-Parent In re A.L.W. and A.N.W., [No. 01-14-00805-CV](#) (Tex. App.—Houston [1st Dist.] July 14, 2015, no pet.) (mem. op.)

[TFC §§ 161.001\(b\)\(1\)\(Q\) i.](#) Mere Conviction of Strict-Liability Offense Does Not Prove Scienter Element In re A.R., [No. 06-15-00056-CV](#) (Tex. App.—Texarkana Nov. 9, 2015, no pet.)

Scienter Established In re A.R., L.R. and R.Q. Jr., [No. 09-15-00473-CV](#) (Tex. App.—Beaumont April 14, 2016, no pet.) (mem. op.)

Inability to Provide Safe Environment In re S.R., [No. 13-15-00114-CV](#) (Tex. App.—Corpus Christi June 11, 2015, no pet.) (mem. op.)

Ability to Care During Imprisonment In re A.G. and A.G., [No. 05-15-01298-CV](#) (Tex. App.—Dallas Mar. 1, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(R\)](#) In re L.G.R., [No. 14-16-00047-CV](#) (Tex. App.—Houston [14th] June 7, 2016, no pet. h)

BEST INTEREST AND RELINQUISHMENT OF PARENTAL RIGHTS

[TFC §161.211\(c\)](#) Bars Appellate Review of Best Interest Finding In re J.H. and J.H., [486 S.W. 3d 190](#) (Tex. App.—Dallas 2016, no pet.)

Affidavit of Relinquishment Is Sufficient Evidence of Best Interest In re A.L.H., [468 S.W.3d 738](#) (Tex. App.—Houston [14th Dist.] 2015, no pet.)

Affidavit of Relinquishment Alone is Insufficient to Support Best Interest Finding In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

MSA Supports the Best Interest Finding In re J.R.W. and J.L.W, [No. 05-15-00493-CV](#) (Tex. App.—Dallas Aug. 27, 2015, pet. denied) (mem. op.)

MSA Insufficient Evidence of Best Interest In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

BEST INTEREST – HOLLEY FACTORS

Children’s Desires to Stay with Mother Did Not Outweigh Other Evidence Supporting Determination In re A.R.M., [No. 04-15-00314-CV](#) (Tex. App.—San Antonio Nov. 4, 2015, no pet.) (mem.op.)

Child’s Fear of Father Relevant in Determining Her Desires In re A.K, [487 S.W. 3d 679](#) (Tex. App.—San Antonio 2016, no pet.)

Emotional and Physical Needs and Danger—Failure to Complete Services In re K.N.M.M., [No. 07-15-00080-CV](#) (Tex. App.—Amarillo July 13, 2015, no pet.) (mem. op.)

Programs Available—Completion of a Service Plan Does Not Guarantee Reunification J.R. v. Tex. Dep’t of Family and Protective Servs., [No. 03-15-00108-CV](#) (Tex. App.—Austin July 30, 2015, pet. denied) (mem. op.)

The Stability of the Home or Proposed Placement—The Same Home Does Not Equal A Stable Home In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

ICWA

What Constitutes an “Indian Child” for Purposes of ICWA? In re T.R., [No. 04-15-00639-CV](#) (Tex. App.—San Antonio Apr. 4, 2016, no pet.)

ICWA Notice Requirement Triggered In re D.D., [No. 12-15-00192-CV](#) (Tex. App.—Tyler Feb. 29, 2016, no pet.) (mem. op.)

[25 U.S.C.A. § 1912\(f\)](#) Requires Testimony of a Qualified Expert Witness In re V.L.R., [No. 08-15-00250-CV](#) (Tex. App.—El Paso Nov. 18, 2015, no pet.)

Beyond a Reasonable Doubt Standard in an ICWA Case Limited to [25 U.S.C.A. § 1912\(f\)](#) In re G.C., M.C., and H.C., [No. 10-15-00128-CV](#) (Tex. App.—Waco Aug. 13, 2015, no pet.) (mem. op.)

JURY CHARGE

Broad Form Submission of Termination Question In re E.G., [No. 14-14-00967-CV](#) (Tex. App.—Houston [14th Dist.] Mar. 22, 2016, no pet.) (mem. op.)

POST-TRIAL MATTERS

Oral Rendition is Sufficient to Start TFC §102.006(c) Timeline In re M.P., [No. 02-14-00032-CV](#) (Tex. App.—Fort Worth Aug. 7, 2014, no pet.) (mem. op.)

Associate Judge’s Report and Order is a Final, Appealable Order In re E.K.C., [486 S.W. 3d 614](#) (Tex. App.—San Antonio 2016, no pet.)

APPEALS

Appointment of Counsel Through Final Appeal In re P.M., [59 Tex. Sup. J. 582](#) (Tex. Apr. 1, 2016) (per curiam) (not yet released for publication)

You can link to the 2016 case law update here:

<http://texaschildrenscommission.gov/media/71845/Case-Law-Update-2016-Final.pdf>

ADOPTION

Legal Overview of Adoption

Texas Family Code

Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 162. Adoption

The purpose of the adoption is to create the parent-child relationship between the adopted child and adoptive parents. [Tex. Fam. Code § 162.017\(a\)](#). The adoptive parents are assuming the permanent roles of parental care, custody, and control of the child. Through the adoption, the new parents are making a commitment to the court and the child that they will provide for all aspects of the child's well-being, so the adoption hearing concludes the decision-making and monitoring roles of the court.

A. Petition for Adoption

B. Documentation Required

C. Hearing

Special Issue: Judges interested in additional resources regarding adoption, please see the Texas Bench Book, Chapter 4: Family Proceedings, XVII. Parent & Child Adoption, A. Adoption on the Texas Center for the Judiciary website at:

http://www.yourhonor.com/web/Online/Resources/Bench_Books/Online/Resources/Bench_Books.aspx?hkey=933e2911-0259-4dda-962e-430801af23f2.

A. Petition for Adoption

1. Where Petition Must Be Filed

The Texas Family Code authorizes a suit in which adoption is requested may be filed in the county in which the child resides or in the county where the petitioners reside, regardless of whether another court has continuing exclusive jurisdiction under [Tex. Fam. Code Chapter 155](#). A court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit is filed. [Tex. Fam. Code § 155.001\(c\)](#) allows an exception to continuing, exclusive jurisdiction for suits for adoption. [Tex. Fam. Code § 103.001\(b\)](#).

2. Spouses Must Join in Petition

If a petitioner is married, both spouses must join in the petition for adoption. [Tex. Fam. Code § 162.002\(a\)](#). If after filing a joint petition for adoption, a married couple divorces, the court shall abate the adoption and dismiss the action unless one party thereafter amends the petition and seeks to adopt individually. [Tex. Fam. Code § 162.013\(c\)](#).

3. When to Proceed

The court has authority to proceed with adoption when all parental rights have been terminated in conjunction with the adoption. [Tex. Fam. Code § 162.001\(b\)\(1\)](#).

Unless waived by the court, the petition for adoption may be heard and the adoption ordered after the child has lived in the adoptive home for six months. [Tex. Fam. Code § 162.009](#).

B. Documentation Required

The following is a list of documents required by the court before an adoption can be granted:

- Criminal History Reports: The court shall order each person seeking to adopt the child to obtain his or her own criminal history reports. The court shall accept a criminal history record for each person seeking to adopt the child provided by DFPS or by a licensed child-placing agency that received the information from DFPS, if the information was obtained not more than one year before the court ordered the record obtained. [Tex. Fam. Code § 162.0085\(a\)](#).
- Pre-Adoptive Social Study and Post-Placement Social Study: In a suit for adoption, pre-adoptive and post-placement social studies must be conducted as provided in [Tex. Fam. Code Chapter 107](#). [Tex. Fam. Code § 162.003](#).
- Health, Social, Educational, and Genetic History (HSEGH) Report: Unless the adoptive parent is a grandparent, aunt or uncle, or stepparent, a HSEGH Report is required. [Tex. Fam. Code § 162.005\(a\)](#). If the child's biological parents cannot be located and there is insufficient information to complete the HSEGH report, the court may waive the HSEGH report. [Tex. Fam. Code § 162.008\(c\)](#).
- Interstate Compact Compliance Statement: per [Tex. Fam. Code § 162.002\(b\)\(2\)](#).
- Written consent forms: signed by the managing conservator, in most cases DFPS, and the child, if age 12 or over. [Tex. Fam. Code § 162.010](#).
- A report or response from the child's Indian tribe: if applicable.
- Order terminating parental rights: if rights have previously been terminated.

Adoption Order from a Foreign Country

- An adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of Texas and enforced as if the order were rendered by a court of Texas, unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state. [Tex. Fam. Code § 162.023\(a\)](#).
- A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order does not violate the principles of human rights or the laws or public policy of this state, the court shall order the state registrar to register the order and file a certificate of birth for the child under [Tex. Health & Safety Code § 192.006](#). [Tex. Fam. Code § 162.023\(b\)](#).

C. Hearing

1. Persons Who Should Always Be Present at the Uncontested Adoption Hearing

- Adoptive parents;
- Assigned caseworker; and
- Legal advocate for the child and/or guardian ad litem/CASA.

2. Persons Who Should Be Present at the Contested Adoption Hearing

- Prospective adoptive parents;
- Assigned caseworker;
- Agency attorney;
- Legal advocate for the child and/or guardian ad litem/CASA;
- Parties contesting the adoption; and
- Attorneys for all parties.

Special Issue: In a contested adoption, enough time must be set aside for the completion of a careful and complete hearing. Each court must determine the typical range in length of contested hearings and establish a calendar to accommodate such hearings without the need for postponements and delays.

3. Adoption Hearing Takes Precedent Over Other Settings

If the social studies and criminal history records are filed, the adoption hearing is to be set and heard preferentially to any other civil case not given preference by other law. [Tex. Fam. Code § 162.0045](#).

Special Issue: A number of judges have developed a special ceremony for consummating an adoption, including letting the child bang the gavel, the judge descending from the bench to join family in pronouncement, and including all extended family members and guests in the proceedings. Most families will want to take photos with the judge when the hearing is concluded.

4. Additional Information

The court may not delay or deny an adoption because a petitioner is a member of military or on the basis of race or ethnicity. [Tex. Fam. Code § 162.0025](#) and [Tex. Fam. Code § 162.015](#).

Upon granting the adoption, the court may order the sealing of the court's file. [Tex. Fam. Code § 162.021\(a\)](#).

Special Issue: Some jurisdictions prefer utilizing the same court which handled the termination of parental rights case for the adoption proceedings involving the same child. If the proceeding is a combined termination and adoption, courts may want to set forth explicitly and thoroughly the conditions and circumstances under which parental termination and consent to adoption is obtained, including determining whether the consent was voluntary and informed and that all alternatives to adoption were explained. A thorough record protects the court and adoptive parents if there is a later attempt to set aside the termination and/or adoption.

DISPROPORTIONALITY

Introduction

Disproportionality is the over representation of a race or cultural group in a particular program or system. By most measures of child well-being, African American, American Indian, Hawaiian and Alaska-Native children who are involved in the nation's child welfare system have worse experiences and outcomes than do white children.

This phenomenon has most significantly affected African American children, with national data indicating that African American children represent 33% of children in foster care, although they represent only 15% of children in the general population.¹⁰ This overrepresentation of African American children has been observed in the child welfare system for more than thirty years,¹¹ yet persists as a national concern.¹²

A. In Texas

In Texas, as compared to children of other races:

- African American children are more likely to be removed;
- African American children are least likely to return home;
- African American children are less likely to exit to reunification and more likely to exit to emancipation;
- African American child have the longest wait to exiting foster care; and
- For Native American children in the care of CPS, the trends and patterns are unstable due to the low numbers. CPS and the Children's Commission continue to work with the tribal communities to address how to best meet the needs of the community.¹³

DFPS data from FY2015 shows African American children were much more likely than Anglo or Hispanic children to be reported as victims of child abuse or neglect and are removed from their families at almost twice the rate of the general population. African American children comprised 11.4% of the general child population of Texas but accounted for almost 20.7% of all children awaiting adoption. Even when other factors are taken into account, African American children spend more time in foster care, or other substitute care, are less likely to go home to their parents, and wait longer for adoption.

While African American and American Indian children are overrepresented in foster care, White children are proportionately represented and Hispanic children are

underrepresented. However, most Hispanic children wait longer than White children to be adopted.¹⁴

B. The Elimination of Disproportionality and Disparities

Texas Health and Human Services Commission (HHSC) and DFPS have been addressing disproportionality at the statewide level since 2005. In 2010, HHSC created the Center for Elimination of Disproportionality and Disparities (CEDD) to partner with health and human services agencies, external stakeholders, other systems, and communities to identify and eliminate disproportionality and disparities affecting children, families, and disparately impacted individuals. The CEDD works to identify the systemic factors and practice improvements that address the disproportionate representation and disparate outcomes for children, families, and disparately impacted individuals in the state's health and human services programs.¹⁵

The CEDD partners with CPS to continue promoting equity within the child welfare system. Specific CPS practices include:

- Developing and delivering cultural competency training to service delivery staff;
- Increasing targeted recruitment efforts of foster and adoptive families who can meet the needs of children who are waiting for permanent homes;
- Targeting recruitment efforts to ensure diversity among CPS staff; and
- Developing collaborative partnerships with community groups, agencies, faith-based organizations and other community organizations to provide culturally competent services to children and families of every race and ethnicity.

C. What You Can Do About Disproportionality?

Many Texas judges want to know what they can do to combat disproportionality from the bench. In 2010, the Supreme Court Children's Commission formed the Judicial Workgroup Addressing Disproportionality (JWD).

- The JWD mission is to educate the judiciary & legal stakeholders on how to address cultural & institutional racism that contributes to the over-representation of African American, Native American and Hispanic youth and families in the child protection system.
- Since 2011, there have been 15 different judicial trainings where judges learned how unconscious bias could be affecting their decision-making.
- In 2016, the JWD hosted 70 participants in a Poverty Simulation Seminar. Six judges brought court teams to participate in a simulation where they assumed the roles of families facing poverty and experienced and how difficult it is to survive day-to-day,

and navigate the court system in a child welfare case, when you have limited means. **Contact the Children’s Commission if you are interested in hosting a Poverty Simulation in your region.**

There are also many opportunities to partner with your community to contribute to this effort. Leaders in the African American community who speak out in support of these efforts are making powerful statements to children and families in the child welfare system and to their communities. Partnerships with the Alabama-Coushatta, Ysleta del Sur Pueblo, and Kickapoo Traditional Tribe of Texas are ongoing.

The National Council of Juvenile and Family Court Judges (NCJFCJ) developed the [Courts Catalyzing Change Preliminary Protective Hearing Benchcard](#), a practical and concrete judicial tool for use at the first hearing. This Benchcard reflects best practices for one of the most critical stages in a child abuse and neglect case.¹⁶

Health and human services agencies, the justice system, and other systems must partner with each other to make a difference in past patterns. The child welfare system plays a pivotal role in the solution, because it addresses the family as a whole and has the potential to decrease future disparate outcomes for African Americans. By working with local, regional, state, and national agencies in education, juvenile justice, health, and other stakeholders, the child welfare community seeks to identify common issues and barriers to equal access to community services for all Texans. While this is not an isolated issue in child welfare, child welfare leaders in Texas are committed to ongoing conversations and solutions that will contribute to the reduction of disproportionality and disparities and improve outcomes. Texas CPS has state and regional disproportionality representatives who are working in partnership with communities and stakeholders to ensure our children, youth and families remain at the heart of our work.

COURTS CATALYZING CHANGE

PRELIMINARY PROTECTIVE HEARING BENCHCARD©

[Courts Catalyzing Change Preliminary Protective Hearing Benchcard](#)¹⁷

(Courtesy of the NCJFCJ; adapted with permission of NCJFCJ)

Reflections on the Decision-Making Process to Protect Against Institutional Bias

Ask yourself, as a judge:

- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?

KEY INQUIRIES, ANALYSES AND DECISIONS THE COURT SHOULD MAKE AT THE PRELIMINARY PROTECTIVE HEARING

Persons who should be Present:

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
- Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Parent partners
- Relatives – relatives with legal standing or other custodial adults, including adult half-siblings
- Paternal and maternal relatives

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- Non-related extended family, fictive kin (someone who is known and trusted by the families; godparents)
 - Assigned caseworker
 - Agency attorney
 - Attorney for each parent (if conflict exists)
 - Legal advocate for the child
 - Guardian ad Litem (GAL)
 - Court Appointed Special Advocate (CASA)
 - ICWA expert (if ICWA applies)
 - Tribal representative/tribal liaison
 - Treatment and/or service providers, parent mentors if assigned/available, substance abuse coach, DV advocate
 - All age-appropriate children
 - Foster parents
 - Cultural leaders, cultural liaisons, religious leaders
 - Court-certified interpreters or court-certified language services
 - Education liaison/school representative
 - Court reporter
 - Court security

COURTS CAN MAKE SURE THAT PARTIES AND KEY WITNESSES ARE PRESENT BY:

- Ensuring that the judge, not the bailiff or court staff, makes the determination about who is allowed to be in the courtroom.
- Asking the youth/family if there is someone else who should be present.
- Requiring quick and diligent notification efforts by the agency.
- Requiring both oral and written notification in a language understandable to each party and witness.
- Requiring service/tribal notice to include the reason for removal, purpose of the hearing, and availability of legal assistance in a language and form that is understandable to each party and witness.

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- Requiring caseworkers and/or protective service investigators to facilitate attendance of children, parents, relatives (paternal and maternal), fictive kin, and other parties.
 - Facilitating telephonic or video conferencing appearance at hearings.

REVIEWING THE PETITION

- A sworn petition or complaint should be filed prior to the preliminary protective hearing and served/provided to the parents.
- The petition should be specific about the facts that bring the child before the court.
- The petition should not be conclusory without relevant facts to explain and support the conclusions.
- Petitions need to include allegations specific to each legal parent or legal guardian if appropriate.
- If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.
- Petitions/removal affidavits need to include specific language clearly articulating the current threat to the child's safety.

ENGAGE PARENTS

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about?
- What family members and/or other important people should be involved in this process with us?
- Do you understand the petition? (review petition with parties)

DUE PROCESS

- Who are the child's parents and/or guardians?
- How was paternity determined?
- What were the diligent search efforts for all parents?
- Have efforts to identify and locate fathers been sufficient? What has been done?
- How were the parents notified for this hearing?

-
- was the notice in a language and form understandable to parents and/or guardians?
 - Do the parents understand the allegations?
 - Are the parents entitled to representation? Are there language issues to consider when appointing attorneys?
 - Are there issues in the case that are covered by the Americans with Disabilities Act?

LEGAL THRESHOLD FOR REMOVAL

- Has the agency made a prima facie case or probable cause showing that supports the removal of the child?
- Have the family's cultural background, customs and traditions been taken into account in evaluating the event and circumstances that led to the removal? Have the parent(s) cultural or tribal liaison/relevant other(s) been asked if there is a culturally-based explanation for the allegations in the petition?

REASONABLE EFFORTS (TO PREVENT REMOVAL)

- Were there any pre-hearing conferences or meetings that included the family?
 - who was present?
 - what was the outcome?
- What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services rationally related to the safety threat?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?
 - have non-custodial parents, paternal and maternal relatives been identified and explored? What is the plan to do so?
- How has the agency intervened with this family in the past? Has the agency's previous contact with the family influenced its response to this family now?

WHAT IS PREVENTING THE CHILD FROM RETURNING HOME TODAY?

- What is the current and immediate safety threat? Has the threat diminished? How do you know that? Specifically, how can the risk be ameliorated or removed?

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- What is preventing the child from returning home today? What type of safety plan could be developed and implemented in order for the child to return home today?
 - what specifically prevents the parents from being able to provide the minimally adequate standard of care to protect the child?
 - will the removal or addition of any person from or in the home allow the child to be safe and be placed back in the home?
 - If the safety threat is too high to return the child home, how have the conditions for return been conveyed to the parents, family and child, and are you satisfied that they understand these conditions?

APPROPRIATENESS OF PLACEMENT

- If child is placed in foster care/shelter, have kinship care options been fully explored? If not, what is being done to explore relatives? If so, why were the relatives deemed inappropriate?
- If child is placed in kinship care, what steps have been taken to ensure the relative is linked with all available training, services, and financial support?
- How is the placement culturally and linguistically appropriate?
 - from the family and child's perspective, is the current placement culturally and linguistically appropriate?
- How does the placement support the child's cultural identity? In what way does the placement support the child's connection to the family and community?
- How does the placement support the family/child's involvement in the initial plan?
- What are the terms of meaningful family time with parents, siblings and extended family members?
 - do the terms of family time match the safety concerns? Is it supervised? Specifically, why must it be supervised?
 - is the time and location of family time logistically possible for the family, and supportive of the child's needs?

REASONABLE EFFORTS TO ALLOW THE CHILD TO SAFELY RETURN HOME

- What services can be arranged to allow the child to safely return home today?
- How are these services rationally related to the specific safety threat?

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- How are the parents, extended family, and children being engaged in the development and implementation of a plan for services, interventions, and supports?
 - How will the agency assist the family to access the services?
 - does the family believe that these services, interventions, and supports will meet their current needs and build upon strengths?
 - has the family been given the opportunity to ask for additional or alternate services?
 - How are the services, interventions and supports specifically tailored to the culture and needs of this child and family?
 - how do they build on family strengths?
 - how is the agency determining that the services, interventions, and supports are culturally appropriate?
 - What evidence has been provided by the agency to demonstrate that the services/interventions for this family have effectively met the needs and produced positive outcomes for families with similar presenting issues and demographic characteristics?

CLOSING QUESTIONS TO ASK PARENTS, CHILDREN, AND FAMILY MEMBERS

- Do you understand what happened here today?
- Do you understand what the next steps are?
- Do you have any questions for the court?

EDUCATION

Please see the Checklist Section for the Education checklist.

A. Education Data

National studies show that youth in foster care have poor educational outcomes when compared to their peers in the general population. Youth in foster care are more likely to be suspended or expelled, score lower on statewide standardized tests, repeat a grade, and to drop out, and are less likely to graduate. For more information on these studies, please see: [National Working Group on Foster Care and Education \(2014, January\), “Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care”](#).¹⁸

According to data collected by the Texas Education Agency (TEA) Public Education Information Management System (PEIMS) during the 2012-2013 school year, which captured the “leaver” status, the reason why a student left school, only 38.8 percent of Texas youth in foster care left because they graduated, compared to 72.4 percent of the general student population. During the same school year, the leaver status of students in foster care who left school because they dropped out was 28.6 percent, compared to 8.3 percent of the general student population. Youth in foster care in Texas also had lower high school achievement, were more likely to be served in special education programs, and were less likely to be in gifted and talented programs. For further detail, please see [Data on Foster Children Attending Texas Public Schools](#).¹⁹

Although many children experience educational challenges, students in foster care face additional hurdles, including multiple residential and school changes, missed school days for visits with parents and siblings, court appearances, or therapeutic or other case-related appointments that are only available during school hours, as well as an often chaotic educational, social, emotional, and family history prior to entering foster care.

Children and youth who are of school-age and in foster care may also find themselves lost in-between child welfare and education – two systems with overlap, but often inadequate ongoing and effective communication. If Texas judicial, child welfare, and education stakeholders coordinate efforts, especially during school transitions, students in foster care are less likely to experience a damaging loss of records, credits, services, and support systems, which can hinder academic success.

B. School Stability

Special Issue: School is often a source of stability as well as a place for academic and social development of children and youth in foster care. If a child must be removed from his or her home or change placements, consider the potential impact on the child’s education and what efforts were made to keep the child in the same school, if possible.

1. Fostering Connections

Congress passed the most sweeping child welfare law in a decade with the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act).²⁰ 42 U.S.C. § 675.²¹ The Fostering Connections Act includes important provisions regarding the educational stability of youth in foster care, calling on child welfare agencies to keep the child in the same school any time the child’s placement changes, unless it is not in the child’s best interest. If the child cannot remain in the same school, the child must be promptly enrolled in a new school. The legislation also increases the amount of federal funding that may be used to cover education-related transportation costs and requires child welfare agencies to work with local education agencies (LEAs)²² to ensure educational stability. Provisions in the Fostering Connections Act highlight the importance of improving educational outcomes of children and youth in foster care across the nation.

a. Education Stability Provisions of the Fostering Connections Act

- *Proximity to school* – Each placement decision for a child in foster care must take into account the appropriateness of the child’s current educational setting and the proximity to the school in which the child is enrolled. 42 U.S.C. § 675(1)(G)(i).
- *Coordinate with local education agencies* – The child welfare agency must coordinate with LEAs to ensure that the child can remain in the school where the child is enrolled at the time of each placement. 42 U.S.C. § 675(1)(G)(ii)(I). For further detail, please see U.S. Departments of Education and Health & Human Serv., Admin. for Children & Families (2014) joint letter.²³
- *Immediate enrollment and timely transfer of records* – Alternatively, if remaining in that school is not in the child’s best interests, the agencies must ensure that the child is immediately enrolled and that all educational records are provided to the new school. 42 U.S.C. § 675(1)(G)(ii)(II).
- *Transportation* – Transportation costs, including expenses related to transport to extracurricular activities, may fall under foster care maintenance payments. For further detail, please see U.S. Dep’t Health & Human Serv., Admin. for Children & Families, CWPM § 8.1B Q27 (2007).²⁴

2. Educational Stability Plan

To meet the requirements of the Fostering Connections Act regarding education stability, DFPS must develop, in accordance with [42 U.S.C. § 675](#), a plan to ensure the educational stability for children in foster care. [Tex. Fam. Code § 264.1072](#).

In recognition of the need for agency coordination, DFPS and the Health and Human Services Commission (HHSC) must collaborate with the Texas Education Agency (TEA) to develop policies and procedures to ensure that the needs of foster children are met in every school district. [Tex. Fam. Code § 266.008\(d\)](#).

3. Every Student Succeeds Act

In December 2015, the most recent reauthorization of the Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA), became law.²⁵ [20 U.S.C. § 6301 et seq.](#) ESSA makes substantial changes to the education system, including giving more flexibility to states to determine student performance measures. ESSA also mirrors in the education law many of the provisions affecting students in foster care from the Fostering Connections Act.

a. Education Stability Provisions of the Every Student Succeeds Act

- *Best interest determination* – A student in foster care is entitled to enroll or remain in the school of origin unless a determination is made that it is not in such child’s best interest to attend the school of origin, which decision shall be based on all factors relating to the child’s best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(i\)](#).
- *Streamlined transitions* – When a determination is made that it is not in such child’s best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(ii\)](#). The enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(iii\)](#).
- *Liaisons at the state and local education agencies* – ESSA requires designation of a state point of contact to coordinate with child welfare agencies. [20 U.S.C. § 6311\(g\)\(1\)\(E\)\(iv\)](#). LEAs must also designate a point of contact upon written request. [20 U.S.C. § 6312\(c\)\(5\)\(A\)](#).
- *Transportation* – LEAs must ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with [42 U.S.C. 675\(4\)\(A\)](#) and ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency

will provide transportation to the school of origin if:

- the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
- the LEA agrees to pay for the cost of such transportation; or
- the LEA and the local child welfare agency agree to share the cost of such transportation. [20 U.S.C. § 6312\(c\)\(5\)\(B\)](#).

Special Issue: According to the U.S. Department of Education, school districts should plan for an orderly transition from NCLB to ESSA during the 2016-2017 school year. Many of the above provisions will not go into effect until the 2017-2018 school year. More information about Transitioning to ESSA and Frequently Asked Questions is available online at:

<http://www2.ed.gov/policy/elsec/leg/essa/fag/essatransitionfags050316.pdf>.

4. School Choice

A student who was enrolled in a primary or secondary public school before the student entered the conservatorship of DFPS and who is placed at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school in which the student was enrolled immediately before entering conservatorship until the student successfully completes the highest grade level offered by the school at the time of placement without payment of tuition. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of DFPS for the duration of the student's enrollment in the school. [Tex. Educ. Code § 25.001\(g\)](#).

If a student who is in the conservatorship of DFPS is enrolled in a primary or secondary public school, other than the school in which the student was enrolled at the time the student was placed in the conservatorship of DFPS, the student is entitled to continue to attend that school without payment of tuition until the student successfully completes the highest grade level offered by the school at the time of enrollment in the school, even if the child's placement is changed to a residence outside of the attendance area for that school or outside the school district. The student is entitled to continue to attend the school regardless of whether the student remains in the conservatorship of DFPS for the duration of the student's enrollment in the school. [Tex. Educ. Code § 25.001\(g-1\)](#).

Special Issue: Although [Tex. Educ. Code § 25.001\(g\)](#) and [Tex. Educ. Code § 25.001\(g-1\)](#) allow a child to remain in his or her school at the time of placement into foster care, it does not address related transportation issues, including costs of transportation and the person responsible for providing it. The presumption is that the child’s caregiver will be responsible for any costs related to the transportation, although transportation plans required under ESSA may create more opportunities for some school districts in the 2017-2018 school year to work with the caregiver to find a solution to the transportation challenge.

5. McKinney-Vento Homeless Assistance Act

Previously, a child who is “awaiting foster care placement” met the federal McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) definition of homeless and the child was entitled to attend the school that the child attended when permanently housed or the school in which the child was last enrolled, with transportation and other services provided by the district. [42 U.S.C. § 11431 et seq.](#)²⁶ ESSA amends the McKinney-Vento Act and effective December 10, 2016, the “awaiting foster care placement” will be removed from the definition of homelessness. [Pub. L. No. 114–95](#). Note, guidance from the Department of Education on ESSA is still under development and this date is subject to change.

C. Roles and Responsibilities Related to Education

1. Designation of Education Decision-Maker

[Tex. Fam. Code § 263.004](#) requires DFPS to provide notice to the court and others of the entity or person holding education decision-making authority for a child or youth in foster care. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a non-parent managing conservator pursuant to [Tex. Fam. Code § 153.371](#), which includes the right to make decisions regarding the child’s education. [Tex. Fam. Code § 153.371\(10\)](#).

Unless the court order limits the rights and duties of DFPS under [Tex. Fam. Code § 153.371\(10\)](#) to make decisions regarding the child’s education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child’s surrogate person in accordance with [20 U.S.C. § 1415\(b\)](#) and [Tex. Educ. Code § 29.001\(10\)](#), for purposes of decision-making regarding special education services, if applicable. [Tex. Fam. Code § 263.004\(a\)](#).

Not later than the fifth day after the date of an Adversary Hearing held under [Tex. Fam. Code § 262.201](#) or [Tex. Fam. Code § 262.205](#) is concluded, DFPS must file the

information required by [Tex. Fam. Code § 263.004\(a\)](#) with the court and provide a copy to the school the child attends. [Tex. Fam. Code § 263.004\(b\)](#).

If a person other than a person identified under [Tex. Fam. Code § 263.004\(a\)](#) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS shall file the updated information in a permanency progress report filed under [Tex. Fam. Code § 263.303](#) or [Tex. Fam. Code § 263.502](#). The updated information must be provided to the school the child attends not later than the fifth day after the date of the designation or assignment. [Tex. Fam. Code § 263.004\(c\)](#).

In order to comply with this mandate, DFPS created [Form 2085-E Designation of Education Decision-Maker](#),²⁷ to be filled out by the caseworker and provided to the school by the child's caregiver.

Special Issue: Every student in foster care will have an Education Decision-Maker. Only certain students in foster care who are eligible to receive special education services will have a surrogate parent appointed, as outlined below.

2. Court Hearings

During the Permanency Hearing Before Final Order, the Court must review the permanency progress report determine whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there have been major changes in the child's school performance or there have been serious disciplinary issues. [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(F\)](#).

At the Permanency Hearing After Final Order, the court must determine whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events. [Tex. Fam. Code § 263.5031\(3\)\(I\)](#).

Special Issue: In light of the DFPS duty to notify the court of the name and contact information of the education decision-maker within five days of the designation, if DFPS does not provide Form 2085-E in the permanency progress report, the court might inquire on the record during the Permanency Hearings Before or After Final Order about the identity of the education decision-maker for the child.

Upon request of a person providing substitute care for a child who is in the managing conservatorship of DFPS, DFPS shall allow the person to provide the child with an education in the home setting unless:

- The right of DFPS to allow the education of the child in a home setting has been specifically limited by court order;

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- A court at a hearing conducted under [Tex. Fam. Code Chapter 263](#) finds, on good cause shown through evidence presented by DFPS in accordance with the applicable provisions in the DFPS CPS Handbook, that education in the home setting is not in the best interest of the child; or
 - DFPS determines that federal law requires another school setting. [Tex. Fam. Code § 263.0045](#).

3. Notice of Significant Events

School districts, campuses, and open-enrollment charter schools must provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

- Requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973, [29 U.S.C. § 794](#), or special education under [Tex. Educ. Code § 29.003](#);
- Admission, review, and dismissal (ARD) committee meetings;
- Manifestation determination reviews required by [Tex. Educ. Code § 37.004\(b\)](#);
- Any disciplinary actions under [Tex. Educ. Code Chapter 37](#) for which parental notice is required;
- Citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;
- Reports of restraint and seclusion required by [Tex. Educ. Code § 37.0021](#); and
- Use of corporal punishment as provided by [Tex. Educ. Code § 37.0011](#). [Tex. Educ. Code § 25.007\(b\)\(9\)\(A\)-\(G\)](#).

Special Issue: State law requires schools to notify caseworkers of the enumerated major events, including the issuance of a Class C misdemeanor citation at school. Please note, however, that since 2013, ticketing is no longer permitted for school-related misbehavior constituting a Class C misdemeanor.

DFPS must provide notice of significant events, including a major change in school performance or a serious disciplinary event at school not later than the 10th day after the date DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS to:

- The child's parent;
- An attorney ad litem appointed under [Tex. Fam. Code Chapter 107](#);

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- A guardian ad litem appointed under [Tex. Fam. Code Chapter 107](#);
 - A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#);
 - The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
 - A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
 - Any other person determined by the court to have an interest in the child's welfare. [Tex. Fam. Code § 264.018\(a\)\(5\)\(D\)](#) and [Tex. Fam. Code § 264.018\(f\)](#).

4. Education-Related Requirements for AALs and GALs

An attorney ad litem appointed to represent a child in the managing conservatorship of DFPS must, before each scheduled hearing under [Tex. Fam. Code Chapter 263](#), determine whether the child's educational needs and goals have been identified and addressed. [Tex. Fam. Code § 107.004\(d-2\)](#).

A guardian ad litem appointed to represent a child in the managing conservatorship of the DFPS shall, before each scheduled hearing under [Tex. Fam. Code Chapter 263](#), determine whether the child's educational needs and goals have been identified and addressed. [Tex. Fam. Code § 107.002\(i\)](#).

Special Issue: Consider whether to continue the appointment of the attorney and guardian ad litem, especially CASA, on the case to address education issues until the youth permanently leaves care. If the attorney ad litem is dismissed before the youth leaves care, consider whether to identify an education advocate by court order.

5. Surrogate Parent for Children With Disabilities

The school district must assign an individual to act as a surrogate for the parents for a child with a disability in foster care who is eligible to receive special education services. [20 U.S.C. § 1415\(b\)\(2\)\(A\)](#). The school district has 30 days to appoint a surrogate parent upon realizing the need. [20 U.S.C. § 1415\(b\)\(2\)\(B\)](#).

If a child in the temporary or permanent conservatorship of DFPS is eligible under [Tex. Educ. Code § 29.003](#) to participate in a school district's special education program, the court may, when necessary to ensure that the educational rights of the child are protected, appoint a surrogate parent who:

- Is willing to serve in that capacity; and
- Meets the requirements of [20 U.S.C. § 1415\(b\)](#) and [Tex. Educ. Code § 29.001\(10\)](#).

[Tex. Fam. Code § 263.0025\(a\)](#).

Under the statewide plan, a surrogate parent is required to:

- Complete a training program that complies with minimum standards established by agency rule;
- Visit the child and the child's school;
- Consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
- Review the child's educational records;
- Attend meetings of the child's ARD committee;
- Exercise independent judgment in pursuing the child's interests; and
- Exercise the child's due process rights under applicable state and federal law. [Tex. Educ. Code § 29.001\(10\)](#).

In appointing a surrogate parent for a child, the court shall give preferential consideration to a foster parent of the child as required under [Tex. Educ. Code § 29.015](#). [Tex. Fam. Code § 263.0025\(b\)](#).

If the court does not appoint a child's foster parent to serve as the child's surrogate parent, the court must give consideration to a:

- Relative or other designated caregiver as defined by [Tex. Fam. Code § 264.751](#);
or
- Court-appointed volunteer advocate who has been appointed to serve as the child's guardian ad litem, as provided by [Tex. Fam. Code § 107.031\(c\)](#). [Tex. Fam. Code § 263.0025\(c\)](#).

An employee of any agency that is involved in the education or care of the child may not be appointed as a surrogate parent for the child including, but not limited to, employees of DFPS, TEA, a residential facility, and a school or school district. [20 U.S.C. § 1415\(b\)\(2\)\(A\)](#) and [Tex. Fam. Code § 263.0025\(d\)](#).

Special Issue: Consider appointment of a surrogate parent for youth in Residential Treatment Centers who are receiving special education services.

Pursuant to [Tex. Educ. Code § 29.001\(10\)\(A\)](#), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an

explanation of the provisions of federal and state laws, rules, and regulations relating to:

- The identification of a student with a disability;
- The collection of evaluation and re-evaluation data relating to a student with a disability;
- The ARD committee process;
- The development of an individualized education program (IEP), including the consideration of transition services for a student who is at least 16 years of age;
- The determination of least restrictive environment;
- The implementation of an IEP;
- The procedural rights and safeguards available under [34 C.F.R. § 300.148](#), [34 C.F.R. § 300.151-300.153](#), [34 C.F.R. § 300.229](#), [34 C.F.R. § 300.300](#), [34 C.F.R. § 300.500-300.520](#), [34 C.F.R. § 300.530-300.537](#), and [34 C.F.R. § 300.610-300.627](#), relating to the issues described in [34 C.F.R. § 300.504\(c\)](#); and
- The sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities. [19 Tex. Admin. Code § 89.1047\(a\)\(1\)](#).

The individual assigned to act as a surrogate parent must complete the training program described in [19 Tex. Admin. Code § 89.1047\(a\)\(1\)](#) within 90 calendar days after the date of initial assignment as a surrogate parent. [19 Tex. Admin. Code § 89.1047\(a\)\(3\)](#).

For more information on special education, see *Section F of this chapter, Special Education and Section 504*.

D. School Transitions

1. Foster Care Liaison in Each Texas School District and at the Texas Education Agency

Each school district and open enrollment charter school must appoint at least one employee to facilitate the enrollment in and transfer to a public school of a child in the district who is in the conservatorship of the state. [Tex. Educ. Code § 33.904\(a\)\(1\)](#). Each school district and open-enrollment charter school must also report the liaison's name and contact information to TEA. [Tex. Educ. Code § 33.904\(a\)\(2\)](#).

In recognition of the challenges faced by students in substitute care, TEA shall assist the transition of substitute care students from one school to another by designating at least one agency employee to act as a liaison officer regarding educational issues related to

students in the conservatorship of DFPS. [Tex. Educ. Code § 25.007\(b\)\(13\)](#).

Special Issue: TEA developed several resources regarding foster care liaisons:

- Updated contact information for the district and open enrollment charter school foster care liaisons is now located in the Ask Texas Education Directory (AskTED), available online at:

http://mansfield.tea.state.tx.us/TEA_AskTED_Web/Forms/Home.aspx.

- If the court cannot locate the school district liaison on the AskTED system, please reference TEA AskTED guidance, located online at:

<http://tea.texas.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769817937&libID=25769818040>.

- Other resources for liaisons, including contact information for Education Service Center Foster Care Champions, can be found at :

<http://tea.texas.gov/FosterCareStudentSuccess/liaisons/>

2. Enrollment

If DFPS takes possession of a child under [Tex. Fam. Code Chapter 262](#) during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible. [Tex. Fam. Code § 264.115\(a\)](#).

Special Issue: CPS has revised the policy handbook to require enrollment within two days of the initial removal or placement change. More information is available at:

https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15300.

A child may be enrolled by any person showing evidence of legal responsibility of the child. [Tex. Educ. Code § 25.001\(j\)](#). A child in foster care may attend a school free of charge in the district where the foster parent resides. [Tex. Educ. Code § 25.001\(f\)](#). A school district shall accept a child for enrollment in a public school without the documentation required by [Tex. Educ. Code § 25.002\(a\)](#) if DFPS has taken possession of the child under [Tex. Fam. Code Chapter 262](#). DFPS must furnish that documentation to the school district not later than the 30th day after the date the child is enrolled in the school. [Tex. Educ. Code § 25.002\(g\)](#).

A child may be provisionally admitted to an elementary or secondary school if the child has begun the required immunizations and if the child continues to receive the necessary

immunizations as rapidly as is medically feasible. [Tex. Educ. Code § 38.001\(e\)](#).

Special Issue: In general, DFPS delegates day to day decision-making to the child's caregiver, including responsibility for school enrollment. Upon enrollment in school, a caregiver should present DFPS Forms 2085 and 2085E to ensure the school recognizes the caregiver's legal authority to enroll the child. These documents also serve to notify the school that the child is in foster care and provide the name of the Education Decision Maker and the Surrogate Parent, if applicable. For more information on acceptable forms for school enrollment, please see TEA PEIMS supplemental guidance at: <http://tea.texas.gov/FosterCareGuidance.pdf>

3. Records Transfer

TEA shall assist the transition of students in substitute care from one school to another by ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school. [Tex. Educ. Code § 25.007\(b\)\(1\)](#).

Special Issue: Districts failing to provide the required information within 10 calendar days of a written request by the receiving school district may be reported to the Texas Records Exchange Help Desk: (512) 463-7246 or TREx@tea.texas.gov.

4. Education Passport

Each child in DFPS conservatorship must have an education passport. The education passport contains educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other important educational information. [Tex. Fam. Code § 266.008\(a\)](#). DFPS shall maintain the passport as part of DFPS records for the child as long as the child remains in foster care. [Tex. Fam. Code § 266.008\(b\)](#). DFPS has a duty to make the education passport available to any person authorized by law to make educational decisions for the child in foster care. [Tex. Fam. Code § 266.008\(c\)\(1\)](#).

Special Issue: For more information about the education passport, referred to as the Education Portfolio or "green binder," please see:

- CPS Policy Handbook Section 15400, located online at:

https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_x15000.asp#CPS_15410

- Education for Children Resource Guide, available at:

http://www.dfps.state.tx.us/handbooks/CPS/Resource_Guides/Education_Resource_Guide.pdf.

5. Confidentiality of Education Records

The federal Family Educational Rights and Privacy Act of 1974 (FERPA) allows for release of student records between school districts without parental consent in compliance with a court order upon enrollment in the receiving school. [20 U.S.C. § 1232g](#).²⁸

The Uninterrupted Scholars Act of 2013 amended FERPA to permit caseworkers and other child welfare or tribal organization representatives to access personally identifiable student information without parental consent and allows for disclosure of student records pursuant to a judicial order related to a child welfare proceeding without further notice to the parent. [20 U.S.C. § 1232g \(b\)\(2\)\(B\)](#).²⁹

The Uninterrupted Scholars Act provisions also apply to special education-related records for children ages birth to 21 with disabilities under the Individuals with Disabilities Education Act (IDEA) Parts B and C, [20 U.S.C. §§ 1400 et seq.](#)³⁰

6. Collection of State-Level Education Data

TEA collects data through PEIMS regarding the foster care status of students. [Tex. Educ. Code § 7.029\(b-1\)](#). In addition, DFPS provides child-level data on a yearly basis to TEA and TEA performs a data match to ascertain, on an aggregate level, how students in foster care are faring educationally. [Tex. Educ. Code § 7.029\(a\)](#).

7. Credit Transfer and Recovery

In recognition of the challenges facing students in foster care, TEA is now required to develop policies and procedures to address:

- Awarding credit, including partial credit if appropriate, for course work, including electives, completed by a student in substitute care while enrolled at another school, [Tex. Educ. Code § 25.007\(b\)\(3\)](#);
- Allowing a student in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course, at no cost to the student, before the beginning of the next school year, [Tex. Educ. Code § 25.007\(b\)\(10\)](#); and
- Ensuring that a student in substitute care who is not likely to receive a high school diploma before the 5th school year following the student's enrollment in grade 9, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed. [Tex. Educ. Code § 25.007\(b\)\(11\)](#).

School districts must make credit by examination available, at any point during the school year, to students in foster care. [19 Tex. Admin. Code § 74.24\(a\)\(2\)](#). Credits earned towards state graduation requirements in an accredited school district are transferable

and must be accepted by another school district in the state. [19 Tex. Admin. Code § 74.26\(a\)\(1\)](#). A school district shall award credit proportionately to a student in substitute care who successfully completes only one semester of a two-semester course. [19 Tex. Admin. Code § 74.26\(e\)](#).

E. Attendance and School Experience

1. School Year

A child who is required to attend school under [Tex. Educ. Code § 25.085](#) shall attend school each school day for the entire period the program of instruction is provided. [Tex. Educ. Code § 25.085\(a\)](#). Unless specifically exempted by [Tex. Educ. Code § 25.086](#), a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 19th birthday shall attend school. [Tex. Educ. Code § 25.085\(b\)](#). On enrollment in prekindergarten or kindergarten, attendance is also compulsory. [Tex. Educ. Code § 25.085\(c\)](#).

[Tex. Educ. Code § 25.0811](#) provides for the first day of instruction and [Tex. Educ. Code § 25.081](#) requires at least 75,600 minutes of instruction, including intermissions and recesses, per school year; other decisions about the calendar and school year are left to the school districts. [Tex. Educ. Code § 25.0811](#) and [Tex. Educ. Code § 25.081](#).

Special Issue: When considering the timing of a school move, courts, DFPS, and school staff should be aware of both the sending and receiving local school district calendars, including the administration schedule for the State of Texas Assessment of Academic Readiness (STAAR), which can be found on the TEA Website and on local school district websites.

2. Minimum Attendance for a Class Credit or a Final Grade

A student in any grade level from kindergarten through grade 12 may not be given credit or a final grade for a class unless the student is in attendance for at least 90 percent of the days the class is offered. [Tex. Educ. Code § 25.092\(a\)](#). A student who is in attendance for at least 75 percent but less than 90 percent of the days a class is offered may be given credit or a final grade for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. [Tex. Educ. Code § 25.092\(a-1\)](#). [Tex. Educ. Code § 25.092\(a\)](#) does not apply to a student who receives credit by examination for a class as provided by [Tex. Educ. Code § 28.023](#). [Tex. Educ. Code § 25.092\(a-2\)](#).

Special Issue: When considering the timing of a school move, courts, DFPS, and school staff should be aware of both the sending and receiving local school district calendars.

3. Excused Absences for Court-Ordered Activities

A school district shall excuse a student from attending school, including travel, if the student is in the conservatorship of DFPS, participating, as determined and documented by DFPS, in an activity:

- Ordered by a court under [Tex. Fam. Code Chapter 262](#) or [Tex. Fam. Code Chapter 263](#), provided that it is not practicable to schedule the participation outside of school hours; or
- Required under a service plan under [Tex. Fam. Code Chapter 263, Subchapter B. Tex. Educ. Code § 25.087\(b\)\(1\)\(F\)](#).

A student whose absence is excused under [Tex. Educ. Code § 25.087\(b\)](#) may not be penalized for that absence, shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district, and must be allowed a reasonable time to make up school work missed on those days. [Tex. Educ. Code § 25.087\(d\)](#).

Special Issue: If feasible, judges may consider scheduling court hearings for school-aged children outside of school hours. Additionally, to ensure a child does not incur unnecessary unexcused absences, it is helpful to clarify in the court order which appointments and activities require the child's presence or involvement.

4. Truancy

With certain exceptions, if a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, a school district shall within 10 school days of the student's 10th absence refer the student to a truancy court for truant conduct under [Tex. Fam. Code § 65.003\(a\)](#). [Tex. Educ. Code § 25.0951\(a\)](#). Truant conduct may be prosecuted only as a civil case in a truancy court. [Tex. Fam. Code § 65.003 \(b\)](#). However, if a student fails to attend school without excuse as specified by [Tex. Educ. Code § 25.0951\(a\)](#), a school district may file a complaint against the student's parent in a county, justice, or municipal court for an offense under [Tex. Educ. Code § 25.093](#), if the school district provides evidence of the parent's criminal negligence. [Tex. Educ. Code § 25.0951\(b\)](#).

A school district shall adopt truancy prevention measures designed to address student conduct related to truancy in the school setting before the student engages in conduct described by [Tex. Fam. Code § 65.003\(a\)](#) and minimize the need for referrals to truancy court for conduct described by [Tex. Fam. Code § 65.003\(a\)](#). [Tex. Educ. Code § 25.0915\(a\)](#). A school district shall offer additional counseling to a student and may not refer the student to truancy court if the school determines that the student's truancy is the result of being in the state foster program. [Tex. Educ. Code § 25.0915 \(a-3\)](#).

For more information, please see the [Texas Judicial Branch website truancy resources](#).³¹

5. Extracurricular Activities

A child in foster care may attend a school in the district where the foster parent resides free of charge and a durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district. [Tex. Educ. Code § 25.001\(f\)](#). The Office of the Attorney General of Texas interpreted this language to mean that the University Interscholastic League cannot apply any durational residency requirement to children placed in foster care, regardless of whether the placement is the child's first placement or a move from one placement to another.³²

6. Discipline

If a school district permits the use of corporal punishment as a method of student discipline, the person having lawful control of a student must provide a signed, written statement each school year to prohibit corporal punishment for that student. [Tex. Educ. Code § 37.0011\(c\)](#). It is CPS policy to prohibit the use of corporal punishment for all children in foster care and caregivers are directed to “opt out” of school policy on corporal punishment in writing on an annual basis.³³

In 2015, the [Tex. Educ. Code Chapter 37](#) was amended to require the designation of a person to serve as the campus behavior coordinator. [Tex. Educ. Code § 37.0012](#). In addition to other duties, the campus behavior coordinator shall promptly notify the student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. [Tex. Educ. Code § 37.0012\(d\)](#). A campus behavior coordinator must:

- Promptly contact the parent or guardian by telephone or in person; and
- Make a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian. [Tex. Educ. Code § 37.0012\(d\)](#).

[Tex. Educ. Code § 37.0012](#) also allows for written notice to be mailed or given by the principal or other designee if the parent or guardian is not reached on the first business day. [Tex. Educ. Code § 37.0012\(e\)](#) and [Tex. Educ. Code § 37.0012\(f\)](#).

7. High School Graduation

Beginning with the 2014-2015 school year, the minimum, recommended, and advanced high school programs were replaced with the foundation program. [Tex. Educ. Code § 28.025\(h\)](#). Graduation requirements now include review of a personal graduation plan (PGP) for some junior high or middle school students and all high school students. [Tex.](#)

[Educ. Code § 28.0212](#) and [Tex. Educ. Code § 28.02121](#). For further information on the graduation programs, please see the [TEA Graduation Toolkit](#).³⁴

Special Issue: A PGP provides each student with a roadmap for academic progress, graduation, and college and career readiness. A PGP is a helpful tool to keep students in foster care on track for graduation, especially when their progress is disrupted by school changes.

If a student in the 11th or 12th grade has failed to comply with the end-of-course assessment instrument performance requirements under [Tex. Educ. Code § 39.025](#) for not more than two courses, the school district that the student attends shall establish an individual graduation committee at the end of or after the student’s 11th grade year to determine whether the student may qualify to graduate. [Tex. Educ. Code § 28.0258](#).³⁵

If an 11th or 12th grade student in the conservatorship of DFPS transfers to a different school district and is ineligible to graduate from the district to which the student transfers, the district from which the student transferred shall award a diploma at the student’s request, if the student meets the graduation requirements of the district from which the student transferred. [Tex. Educ. Code § 28.025\(i\)](#).

F. Special Education and Section 504

1. The Individuals With Disabilities Education Act (IDEA)

Under IDEA, all children with disabilities between the ages of 3 and 21 are entitled to a free, appropriate public education (FAPE). [20 U.S.C. § 1412\(a\)\(1\)\(A\)](#). A child qualifies for special education if he or she has an identified disability and that disability adversely affects the child’s performance in school. [20 U.S.C. § 1400 et seq.](#) and [Tex. Educ. Code § 29.003](#).

2. Section 504

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal law aimed at protecting individuals from discrimination on the basis of a physical or mental disability that substantially impairs a major life activity.³⁶ [29 U.S.C. § 794](#).

Special Issue: Some children may qualify for Section 504 accommodations to “level the playing field” without changing what the child is expected to master. For example, a child with dyslexia may not be eligible for special education services, but might qualify for Section 504 accommodations, such as additional time to complete an exam or preferred seating in the classroom.

3. Referral and Consent

School districts have a "Child Find" duty to identify, locate, and evaluate children with disabilities to determine which children are currently receiving needed special education and related services. [20 U.S.C. § 1412\(a\)\(3\)\(A\)](#).

If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

- Provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
- Refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under [20 U.S.C. § 1415\(b\)](#). [Tex. Educ. Code § 29.004\(c\)](#).

If the rights of a parent have been terminated or subrogated by court order or the school has made reasonable efforts and cannot locate the parent, an initial evaluation may be initiated without parental consent. [20 U.S.C. § 1414\(a\)\(1\)\(D\)\(iii\)](#).

The school has 45 days to complete a full individual and initial evaluation of the student for special education services. [Tex. Educ. Code § 29.004\(a\)\(1\)](#).

4. Individualized Education Program (IEP)

Children who receive special education services will have an IEP. [20 U.S.C. § 1414\(d\)](#). Members of the child's IEP team, known in Texas as the ARD committee, participate in the formulation and approval of the IEP.³⁷ [Tex. Educ. Code § 29.005](#).

It is the responsibility of the school district to ensure the ARD Committee includes:

- The parents of a child with a disability;
- Not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher, or where appropriate, not less than one special education provider of such child;
- A representative of the local educational agency who:
 - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - is knowledgeable about the general education curriculum; and

-
- is knowledgeable about the availability of resources of the local educational agency;
 - An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in [20 U.S.C. § 1414\(d\)\(1\)\(B\)\(ii\) – \(vi\)](#);
 - At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
 - Whenever appropriate, the child with a disability. [20 U.S.C. § 1414\(d\)\(1\)\(B\)](#).

5. Special Education Transitions

A receiving school must accept a referral for special education services made for a student in substitute care by a school previously attended by the student. [Tex. Educ. Code § 25.007\(b\)\(8\)](#). If there is an existing IEP for the child, the receiving school must provide services comparable to those described in the previous IEP, until it either adopts the previous IEP or develops a new IEP. [20 U.S.C. § 1414\(d\)\(2\)\(C\)\(i\)\(I\)](#).

6. Manifestation Determination Review

The right to FAPE includes students who have been suspended or expelled from school. [20 U.S.C. § 1412\(a\)\(1\)\(A\)](#). If a student with a disability is removed for more than 10 days, members of the ARD committee must conduct a manifestation determination review to determine if:

- The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- The conduct in question was the direct result of the local educational agency's failure to implement the IEP. [20 U.S.C. § 1415\(k\)\(1\)\(E\)](#).

7. Graduation

A child who successfully completes their IEP under [Tex. Educ. Code § 29.005](#) is eligible for a high school diploma. [Tex. Educ. Code § 28.025\(c\)](#).

G. Eligibility for Special Programs

1. Prekindergarten

A school district must offer free prekindergarten if it identifies at least 15 eligible children who are at least four years old. [Tex. Educ. Code § 29.153\(a-1\)](#). A child is eligible for prekindergarten, without paying tuition, if the child is or ever has been in the

conservatorship of DFPS following an Adversary Hearing held as provided by [Tex. Fam. Code § 262.201](#). [Tex. Educ. Code § 29.153\(b\)\(6\)](#).

Special Issue: The school district will require a prekindergarten verification letter from DFPS to verify eligibility for children currently or formerly in DFPS conservatorship.

2. Compensatory, Intensive, or Accelerated Instruction

Students in foster care are considered to be at risk of dropping out of school and are eligible for supplemental education services. [Tex. Educ. Code § 29.081\(d\)\(11\)](#). A school district shall offer an intensive program of instruction to any student who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in the 9th grade, as determined by the district. [Tex. Educ. Code § 28.0213\(a\)\(2\)](#).

3. Nutrition

Students in foster care are categorically eligible for all U.S. Department of Agriculture child nutrition programs including: the National School Lunch Program /School Breakfast Program, Special Milk Program, Fresh Fruit and Vegetable Program, Summer Food Service Program, and the Child and Adult Care Food Program. [42 U.S.C. § 1758](#).

Special Issue: Schools use DFPS Form 2085 to verify that a child is in foster care and thus eligible for free school meals. If it is not otherwise addressed in the court reports, a court might ask the caseworker about whether the child's nutritional needs are being met in both the school and home settings.

4. Texas Virtual School Network (TxVSN)

Each school district must have a written policy about opportunities to enroll in electronic courses provided by TxVSN. [Tex. Educ. Code § 30A.007](#). Children in foster care are eligible for part or full time enrollment in the TxVSN, regardless of whether the student was enrolled in a public school in this state in the preceding school year. [Tex. Educ. Code § 30A.002](#).

Special Issue: The TxVSN is an online resource offered by state certified teachers that can assist student in foster care with obtaining course credit. On a case by case basis, DFPS will determine whether enrollment in virtual instruction is appropriate for a child in foster care. If the child receives special education services, that determination will be made in consultation with the child's ARD committee.

5. Early College

An at risk student, as defined by [Tex. Educ. Code § 29.081](#), can participate in an early college education program that:

- Enables a participating student to combine high school courses and college-level courses during grade levels 9 through 12;
- Allows a participating student to complete high school and, on or before the fifth anniversary of the date of the student's first day of high school, receive a high school diploma and either an associate degree; or at least 60 semester credit hours toward a baccalaureate degree;
- Includes articulation agreements with colleges, universities, and technical schools in this state to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and
- Provides a participating student flexibility in class scheduling and academic mentoring. [Tex. Educ. Code § 29.908](#).

6. Dual Credit

Each school district shall implement a program under which students may earn the equivalent of at least 12 semester credit hours of college credit in high school. [Tex. Educ. Code § 28.009\(a\)](#).

A program implemented under [Tex. Educ. Code § 28.009](#) must provide a student the opportunity to earn credit for a course or activity, including an apprenticeship or training hours:

- That satisfies a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree and is approved by the Texas Higher Education Coordinating Board (THECB); and
- For which a student may earn credit concurrently toward both the student's high school diploma and postsecondary academic requirements. [Tex. Educ. Code § 28.009\(a-1\)](#).

A school district is not required to pay a student's tuition or other associated costs for taking a course under this section. [Tex. Educ. Code § 28.009\(a-2\)](#).

H. Post-Secondary Opportunities

Special Issue: During hearings involving middle and high school students in foster care, courts may inquire about the youth's post-secondary education goals. If the youth or caregiver is present at the hearing, a court may encourage options, including vocational and technical training, certificate programs, and two and four-year higher education opportunities.

1. Tuition and Fee Waiver

A student is exempt from the payment of tuition and fees, including tuition and fees charged by an institution of higher education for a dual credit course or other course for which a high school student may earn joint high school and college credit, if the student:

- Was in the conservatorship of DFPS:
 - on the day preceding the student's on his or her 18th birthday; or
 - on or after the student's 14th birthday, if the student was also eligible for adoption on or after that day; or
 - on the day the student graduated from high school or received the equivalent of a high school diploma; or
 - on the day preceding the date the student is adopted or PMC is awarded to a person other than a parent, if that date is on or after September 1, 2009; or
 - during an academic term in which the student was enrolled in a dual credit course or other course for which a high school student may earn joint high school and college credit; and
- Enrolls in an institution of higher education as an undergraduate student or in a dual credit course or other course for which a high school student may earn joint high school and college credit not later than the student's 25th birthday. [Tex. Educ. Code § 54.366\(a\)](#).

Notwithstanding [Tex. Educ. Code Ann § 54.366\(a\)\(1\)](#), a child who exits the conservatorship of DFPS and is returned to the child's parent, including a parent whose parental rights were previously terminated, may be exempt from the payment of tuition and fees if DFPS determines that the child is eligible under department rule. [Tex. Educ. Code § 54.366\(c\)](#). Youth age 14 or older in PMC or youth age 16 or older in TMC who subsequently exit conservatorship to the legal responsibility of a parent are eligible for the tuition and fee waiver. [40 Tex. Admin. Code § 700.1630\(a\)](#). If after exiting the foster care system the youth returns to DFPS conservatorship, the youth's eligibility will be based on their current foster care circumstances. [40 Tex. Admin. Code § 700.1630\(b\)](#). [Tex. Fam. Code § 54.366\(c\)](#).

TEA and the THECB shall develop outreach programs to ensure that students in the conservatorship of DFPS and in grades 9-12 are aware of the availability of the exemption from the payment of tuition and fees provided by [Tex. Educ. Code § 54.366](#). [Tex. Educ. Code § 54.366\(b\)](#).

TEA must also develop procedures to ensure that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under [Tex.](#)

[Educ. Code § 54.366](#) for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit. [Tex. Educ. Code § 25.007\(b\)\(12\)](#).

Note, [Tex. Educ. Code § 54.2001\(g\)](#) specifically states the conditional receipt of the exemptions and waivers does not apply to students who receive the exemption in accordance with [Tex. Educ. Code § 54.366](#). [Tex. Educ. Code § 54.2001\(g\)\(3\)](#).

Special Issue: To encourage postsecondary success, it is important for the court, attorneys ad litem, schools, caseworkers, and others to explain the tuition and fee waiver and other benefits to assist youth with the transition out of foster care. A great resource for youth in care is the DFPS Texas Youth Connection, available online at:

<https://www.dfps.state.tx.us/txyouth/>.

2. Education Training Voucher (ETV) and Other Programs

Under the *John H. Chaffee Foster Care Independence Program*, eligible youth are entitled to up to \$5,000 a year to cover education-related expenses from the federal ETV program.³⁸ [42 U.S.C. § 677](#). For more details about the DFPS Preparation for Adult Living services and other higher education resources, please see [DFPS Overview of Higher Education Information/Resources for Current and Former Foster Youth](#)³⁹ and [Transitional Living Services Overview](#).⁴⁰

3. Liaisons at the THECB and Institutions of Higher Education

Each institution of higher education, [as defined by [Tex. Educ. Code § 61.003](#)] shall designate at least one employee of the institution to act as a liaison officer for current and incoming students at the institution who were formerly in the conservatorship of DFPS. The liaison officer shall provide to those students information regarding support services and other resources available to the students at the institution and any other relevant information to assist the students. [Tex. Educ. Code § 51.9356\(b\)](#).

The THECB shall designate at least one employee of the board to act as a liaison officer for current and incoming students at institutions of higher education who were formerly in the conservatorship of DFPS. The liaison officer shall assist in coordinating college readiness and student success efforts relating to those students. [Tex. Educ. Code § 61.0908](#).

Special Issue: Contact information for designated liaisons at Texas institutions of higher education is available online at:

http://www.collegeforalltexas.com/apps/financialaid/tola2_cfm?ID=429.

I. Resources

The Texas Blueprint: Transforming Education Outcomes for Children and Youth in Foster Care

In 2010, the Supreme Court of Texas issued an Order Establishing the Education Committee (Education Committee) of the Permanent Judicial Commission for Children, Youth and Families (Children's Commission). The Order was the result of a Texas Action Plan drafted by a team of child welfare experts and designed to study the educational outcomes of Texas children and youth in foster care. The Education Committee, a high-level group of court, education, and child welfare decision-makers, created a collaborative initiative designed to improve educational outcomes of children and youth in the Texas foster care system. The order resulted in over 100 court, education, and child welfare stakeholders coming together over an 18-month period to listen and learn from each other, discuss and debate the issues, and ultimately develop recommendations to improve educational outcomes of children and youth in foster care. Recommendations included changes in legislation, policy, and practice related to:

- Judicial practices;
- Data and information sharing;
- Multi-disciplinary training;
- School readiness;
- School stability and transitions;
- School experience, supports, and advocacy;
- Post-secondary education; and
- Future collaboration.

The recommendations and commentary may be found in the Education Committee's final report, [*The Texas Blueprint: Transforming Education Outcomes for Children and Youth in Foster Care*](#), found at:

<http://texaschildrenscommission.gov/media/23044/TheTexasBlueprint.pdf>.

Texas Foster Care and Education Summit, February 2013

In February 2013, over 200 court, child welfare, and education leaders met in Austin at Texas' first Foster Care and Education Summit and Texas took another step in its long-term initiative to improve how children and youth in its foster care system fare in schools. This step represented a new chapter in the initiative to improve education outcomes of students in foster care by bringing together a large group of multi-disciplinary stakeholders to raise

awareness of the need to improve these outcomes and to begin establishing connections among the courts, DFPS, and local school districts. The summit was initially conceived as a recommendation in the *Texas Blueprint*.

- [Education Issues for Students in Foster Care](#).⁴¹
- [Education Unplugged](#)⁴²
- [Connecting Child Welfare and Education Law](#)⁴³

The *Texas Blueprint* Implementation Task Force

As envisioned by the Supreme Court of Texas, the Education Committee was to be a short-term effort of less than two years. But, as part of its charge, the Court directed the Education Committee to develop a collaborative model to continue systemic improvement of educational outcomes after the submission of the *Texas Blueprint*. That collaborative model, the *Texas Blueprint* Implementation Task Force (Task Force), was created by order of the Supreme Court of Texas in December 2012 to ensure implementation of the *Texas Blueprint's* recommendations and suggested strategies. In prioritizing the recommendations, three primary issue areas emerged: Data, Training and Resources, and School Stability. The Task Force formed three workgroups based on these issues, identified chairs, and met from July 2013 through December 2014. Many of the workgroup members participated in the Education Committee, attended the summit and, hailing from diverse and multi-disciplinary backgrounds, brought a wealth of professional expertise to their respective workgroup's efforts at reform and collaboration.

In February 2015, the Task Force assessed progress and presented recommendations for future collaboration in the [Texas Blueprint Implementation Task Force Final Report](#).⁴⁴ Going forward, the Children's Commission approved the Task Force recommendation to create a standing Foster Care and Education Committee to systematically address the intermediate and long term goals of the *Texas Blueprint*.

Resource Guide for Foster Care Liaisons in School Districts

TEA, DFPS, and the Children's Commission collaborated on a resource guide for education professionals that has information of use to courts and others involved with CPS cases entitled [Foster Care & Student Success: Texas Systems Working Together to Transform Education Outcomes of Students in Foster Care](#),⁴⁵ In addition, TEA has additional resources that may be found on the Foster Care and Student Success webpage, listed below.

Texas Court Appointed Special Advocates (CASA) Educational Advocacy Toolkit

In 2015, Texas CASA released the first resource in its Fierce Advocate Series, the [Educational Advocacy Toolkit](#).⁴⁶ The toolkit was a deliverable of the Task Force Training and Resources Workgroup and resulted from several months of collaboration across education,

child welfare, court, and advocate stakeholder groups. The toolkit addresses a variety of education-related issues and includes tips and resources for CASA volunteers.

Foster Care and Education Data Workgroup Infographic

In November 2015, the Data Workgroup released an infographic prepared by the University of Texas at Austin entitled, [*Texas Commits to Transform Education Outcomes of Students in Foster Care: Findings from the Texas Blueprint Implementation Data Workgroup*](#).⁴⁷ The infographic highlights the education outcomes of students in foster care in Texas and emphasizes the importance of collaboration and using data to drive decision-making.

Judicial Checklists

Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care. Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges (2008), found at:

<http://www.ncjfcj.org/sites/default/files/education%20checklist%202009.pdf>.

Foster Youth Education Judicial Checklist. Texas specific one-page checklist on education, found at:

http://benchbook.texaschildrenscommission.gov/library_item/gov.texaschildrenscommission.benchbook/205.

Websites

American Bar Association Legal Center on Foster Care and Education website:
<http://www.fostercareandeducation.org/Home.aspx>.

Child Protective Services Policy Handbook on Education:
<https://www.dfps.state.tx.us/handbooks/CPS/Menu/MenuCPSa15000.asp>.

Texas Education Agency (TEA) Foster Care and Student Success website:
<http://tea.texas.gov/FosterCareStudentSuccess/>

Children's Commission Foster Care and Education website:
<http://texaschildrenscommission.gov/foster-care-education/>

EVIDENCE IN CPS CASES

CPS cases present evidentiary situations and procedures unique to this area of the law. This chapter will provide an overview of statutory provisions related to CPS cases.

A. Applicability of Rules of Evidence

Unless otherwise provided, the Texas Rules of Evidence apply as in other civil cases. [Tex. Fam. Code § 104.001](#).

B. Facilitating Child Testimony at Trial

1. Prerecorded Statement of Child

If a child 12 years of age or younger is alleged in a suit under [Tex. Fam. Code Title 5](#) to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

- No attorney for a party was present when the statement was made;
- The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;
- The statement was not made in response to questioning calculated to lead the child to make a particular statement;

Each voice on the recording is identified;

- The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and
- Each party is afforded the opportunity to view the recording before it is offered into evidence. [Tex. Fam. Code § 104.002](#).

2. Prerecorded Videotaped Testimony of the Child

The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding. [Tex. Fam. Code § 104.003\(a\)](#).

Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the child's testimony. [Tex. Fam. Code § 104.003\(b\)](#).

Only the attorneys for the parties may question the child. [Tex. Fam. Code § 104.003\(c\)](#).

The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them. [Tex. Fam. Code § 104.003\(d\)](#).

The court shall ensure that:

- The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and not altered;
- Each voice on the recording is identified; and
- Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom. [Tex. Fam. Code § 104.003\(e\)](#).

3. Remote Televised Broadcast of Testimony of Child

If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties. [Tex. Fam. Code § 104.004\(a\)](#).

The procedures that apply to prerecorded videotaped testimony of a child [see [Tex. Fam. Code § 104.003](#)] apply to the remote broadcast testimony of a child. [Tex. Fam. Code § 104.004\(b\)](#).

4. Substitution for In-Court Testimony of Child

If the testimony of a child is taken as provided by Tex. Fam. Code Chapter 104, the child may not be compelled to testify in court during the proceeding. [Tex. Fam. Code § 104.005\(a\)](#).

The court may allow the testimony of a child of any age to be taken in any manner provided by Tex. Fam. Code Chapter 104 if the child, because of a medical condition, is incapable of testifying in open court. [Tex. Fam. Code § 104.005\(b\)](#).

5. Hearsay Statement of Child Abuse Victim

In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and:

- The child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or
- The court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child. [Tex. Fam. Code § 104.006](#).

C. Video Testimony of Certain Professionals

In a proceeding brought forth by DFPS concerning a child who is alleged in a suit to have been abused or neglected, the court may order that the testimony of a professional be taken outside the courtroom by videoconference:

- On the agreement of the department's counsel and the respondent's counsel; or
- If good cause exists, on the court's own motion. [Tex. Fam. Code § 104.007\(b\)](#).

In ordering testimony to be taken as provided by [Tex. Fam. Code § 104.007\(b\)](#), the court shall ensure that the videoconference testimony allows:

- The parties and attorneys involved in the proceeding to be able to see and hear the professional as the professional testifies; and
- The professional is able to see and hear the parties and attorneys examining the professional while the professional is testifying. [Tex. Fam. Code § 104.007\(c\)](#).

Professional means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers. [Tex. Fam. Code § 104.007\(a\)](#); [Tex. Fam. Code § 261.101\(b\)](#).

If the court permits the testimony of a professional by videoconference as provided by [Tex. Fam. Code § 104.007](#) to be admitted during the proceeding, the professional may not be compelled to be physically present in the court during the same proceeding to provide the same testimony unless ordered by the court. [Tex. Fam. Code § 104.007\(d\)](#).

D. Allegations of Abuse and Neglect and Attorney-Client Privilege

1. Requirement to Report

The requirement to report child abuse and neglect under [Tex. Fam. Code § 261.101](#) applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services. [Tex. Fam. Code § 261.101\(c\)](#).

2. Privileged Communication

In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of a privileged communication except in the case of communications between an attorney and client. [Tex. Fam. Code § 261.202](#).

E. Testimony of Children’s Ad Litem

1. Attorney ad Litem

An attorney ad litem or an attorney serving in the dual role may not:

- Be compelled to produce attorney work product developed during the appointment as an attorney;
- Be required to disclose the source of any information;
- Submit a report into evidence; or
- Testify in court except as authorized by Tex. Disciplinary Rules Prof’l Conduct R. 3.08. [Tex. Fam. Code § 107.007\(a\)](#).

[Tex. Fam. Code § 107.007\(a\)](#) does not apply to the duty of an attorney to report child abuse or neglect under [Tex. Fam. Code § 261.101](#). [Tex. Fam. Code § 107.007\(b\)](#).

2. Guardian ad Litem

Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem’s recommendations relating to:

- The best interests of the child; and

-
- The bases for the guardian ad litem’s recommendations. [Tex. Fam. Code § 107.002\(e\)](#).

In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian’s report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative. [Tex. Fam. Code § 107.002\(f\)](#).

In a contested case, the guardian ad litem shall provide copies of the guardian ad litem’s report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:

- The date required by the scheduling order; or
- The 10th day before the date of the commencement of the trial. [Tex. Fam. Code § 107.002\(g\)](#).

Disclosure to the jury of the contents of a guardian ad litem’s report to the court is subject to the Texas Rules of Evidence. [Tex. Fam. Code § 107.002\(h\)](#).

F. Prohibition of Certain Testimony Not Applicable in DFPS Cases

[Tex. Fam. Code § 104.008](#) requiring an expert to conduct a child custody evaluation prior to testifying about conservatorship or possession of or access to a child does not apply to a suit in which DFPS is a party. [Tex. Fam. Code § 104.008\(c\)](#).

G. Resources

Evidence – Update and Current Issues, Heather L. King and Jessica Hall Janicek, State Bar of Texas 40th Annual Advanced Family Law Course, August 4-7, 2014.

Evidence Jeopardy – It’s All about the Hearsay, Heather L. King and Jessica Hall Janicek, State Bar of Texas Judges and Associate Judges Program, August 5, 2015.

EXTENDING FOSTER CARE FOR TRANSITIONING YOUTH

A. Extended Jurisdiction

Federal law (Fostering Connections Act) allows a youth to voluntarily remain in foster care after their 18th birthday – referred to as "Extended Foster Care", if they meet certain requirements such as staying in school, working, or participating in a job training program. Extended Foster Care is eligible for Title IV-E funding from the federal government until the youth's 21st birthday. Any court with jurisdiction over a youth on the day before they turn 18 will automatically continue to have jurisdiction of the youth beyond the 18th birthday for at least six months. Per [Tex. Fam. Code § 263.601 et seq.](#), the court must conduct periodic hearings every six months, and must make specific findings. The court must also maintain jurisdiction over the youth age 18 or older who temporarily leaves foster care for a "trial independence" period so that if/when the youth returns to foster care, the youth (and the State) will not lose eligibility for federal funding. This statutory structure assists the child welfare agency in ensuring federal funding to assist with extended foster care services. Without it, DFPS would not be able to serve many of the youth who leave foster care after turning 18 and later find they need to return to care for additional supports and services while they transition to independence.

B. Trial Independence

Trial Independence, found in [Texas Family Code § 263.6015](#), allows youth to voluntarily exit foster care after their 18th birthday, and then decide to voluntarily return to foster care within six months (or within a 12 month period if authorized by a court order) for additional support. The court retaining jurisdiction allows DFPS to draw down federal dollars to help provide services to youth who exit and later return to care. If a Trial Independence period is ending, and the youth does not wish to return to Extended Foster Care, the Court can still keep the case open, and the Court can maintain jurisdiction up to age 21, upon request by the youth. [Tex. Fam. Code § 263.6015](#).

C. Supervised Independent Living

Supervised independent living allows a youth to live in residential foster care in a more independent setting, but these placements are not required to be regulated/licensed child-care facilities (e.g., possibly a college dorm). Children who live in an "approved" supervised independent living setting will be eligible for Title IV-E funding.

CPS does not supervise the youth's living situation or maintain contact unless the youth is receiving transitional living services such as the Transitional Living Allowance and Aftercare Room and Board, Education and Training Voucher, and Aftercare Case management.

For more information, please see the [Extended Court Jurisdiction Flowchart](#), [Extended Jurisdiction Matrix](#), and the [Transitional Living Services Handout](#) developed by DFPS.⁴⁸

FAMILY VISITATION

A. Court Duties

Per [Tex. Fam. Code § 263.107](#), not later than the 30th day after the date DFPS is named TMC of a child for whom the goal of DFPS is reunification with the parent, it must develop a visitation plan in collaboration with each parent. In determining the frequency and circumstances of visitation, DFPS is to consider the safety and best interest of the child, the child's age, the desires of each parent regarding visitation with the child, the location of each parent and the child, and the resources available to DFPS, including resources to ensure visitation is properly supervised and provide transportation to the visit. Please see the [DFPS Visitation Plan template](#) for more information.⁴⁹

DFPS must file the visitation plan with the court 10 days before the Status Hearing, and the court must review the plan, taking into consideration those factors specified in [Tex. Fam. Code § 263.107](#).

Per [Tex. Fam. Code § 263.108](#), after reviewing an original or amended visitation plan, the court must render an order regarding the parent's visitation with a child that the court determines is appropriate. Parents may petition the court to request review and modification of an original or amended plan. [Tex. Fam. Code § 263.108\(c\)](#).

[Tex. Fam. Code § 263.109](#) states that if the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that states the reasons that visitation is not in the best interest of the child, and that outlines specific steps the parent must take to have visitation. DFPS has developed a "No Contact Visitation Plan" that requires documentation of why visitation is not in the child's best interest and what needs to occur in order for contact or visitation to begin. [Tex. Fam. Code § 263.109\(b\)](#). Please see the [DFPS No Contact Visitation Plan template](#) for more information.⁵⁰

Also, if the order requires supervised visitation, it must outline specific steps the parent must take to have the level of supervision reduced. [Tex. Fam. Code § 263.109\(c\)](#).

B. DFPS Best Practice Guide

DFPS issued a [Visitation Best Practice Guide](#) for the field in October 2014.⁵¹ This guide provides Department employees with policy, guidance, and tools to assess the appropriateness of visitation, how to develop the visitation plan, how to engage fathers and other family members in the visitation process, the role of the foster parents, and how to move from one level or supervision to another.

1. Basic Principles Promoted by the Best Practice Guide

a. Visitation is essential for a child's well-being

The primary purpose of visitation is to maintain the parent-child attachment, reduce a child's sense of abandonment, and preserve their sense of belonging as part of a family and community. A child needs to see and have regular contact with their parent(s) and siblings, as these relationships are the foundation of child development.

b. Visitation is fundamental to permanency

Visitation facilitates permanency planning, promotes timely reunification, and helps in the decision-making process to establish alternative permanency plans. Visitation maintains and supports the parent-child relationship necessary for successful reunification.

c. Visitation is vital to a child maintaining family relationships and cultural connections

Maintaining family connections has life-long significance for a child. Regular visitation maintains their relationships with siblings and others who have a significant role in a child's life. When a child loses family connections, they also lose family history, medical history and cultural information. Visitation is considered the heart of reunification, but even when reunification is not likely, parents, siblings and extended family continue to be important in a child's life.

d. Visitation and family contact should never be used as a reward or punishment but should always be considered a right of families and children

The absence of regular and frequent parent-child visitation or contact may have serious consequences for both a child and parent(s). Without visitation, the relationship can deteriorate and both can become emotionally detached. When parent-child attachment suffers, reunification becomes more difficult.

2. Benefits of Parent-Child Visitation

- Supports parent-child attachment
- Eases the pain of separation for all
- Maintains and strengthens family relationships
- Reassures a child that their parents/primary caregiver are alright and helps the child to not blame themselves for placement
- Supports the family in dealing with changing relationships
- Motivates parent to make positive changes in their life by providing reassurance that the parent-child relationship is important for a child's well-being

- Provides opportunities for parent(s) to learn and try new skills
- Supports a child’s adjustment to the foster home
- Enables the parent(s) to be active and stay current with their child’s development, educational and medical needs, church and community activities
- Provides opportunities for parent(s) to assess how their child is doing, and share information about how to meet their child’s needs
- Assists in the assessment and decision-making process regarding parenting capacities and permanency goals
- Reduces the time in out-of-home care
- Increases the likelihood of reunification

3. Supervision

If DFPS recommends to the court that visits be supervised, the visitation plan should include a summary statement of the assessed safety reasons supervision is necessary. In addition, parent(s) should clearly understand the specific safety factors preventing less restrictive contact with their child and what demonstrated changes will assist the caseworker in being able to make recommendations lifting supervision requirements.

C. Stages of Supervision

	Unsupervised	Low	Medium	High
	Parent(s) can be alone with child. No monitor is present during the visit.	Visitation where the monitor may be present for a portion of the visit. Parent(s) would have some time alone with their child.	Visitation where the monitor is close enough to observe the visit but is not required to hear everything that is said in the visit between the parent(s) and child. Parent(s) may have some time alone with their child if the monitor ensures certain conditions are satisfied.	Child may not be removed from the presence of the monitor. Parent(s) cannot be alone with their child.

	Unsupervised	Low	Medium	High
Stage of Supervision	<i>Example: Day and Overnight visits; visits at the kinship placement.</i>	<i>Example: Visits at the park or the parents' home where the caseworker or monitor may supervise the visit for 15 minutes then leave the child with the parent(s) for 30 minutes and then return to observe the last 15 minutes.</i>	<i>Example: Parent(s) can take the child to the bathroom alone. Parent(s) can play with the child at the playground while the monitor observes from a distance.</i>	<i>Example: Parent(s) must be within hearing distance and intervention distance of the monitor and cannot be alone with the child under any circumstance.</i>
Safety Assessment	Unsupervised visitation would be used when the caseworker determines no safety concerns exist that prohibit the parent(s) and child from being alone during the visit. This stage may be used while the child is in care and immediately prior to reunification.	Low supervision would primarily be used when the caseworker determines that there is a low level of concern for the child's safety but still a need for parental education, coaching, and skill-building.	Medium supervision would be used when the caseworker determines there is a moderate level of concern for the child's safety and coaching, education, and skill-building are necessary. Visitation assessment determines safety factors that must be addressed in visitation plan.	Highly structured visitation would most likely be used if there is a high level of concern assessed for a child's physical or emotional safety during a visit.

	Unsupervised	Low	Medium	High
Visitation Location	Parent(s) and Caseworker determine visitation location.	Visitation location is a community based or "home-like" setting and offers parent(s) the opportunity to develop parenting skills or improve parent-child interactions. Visits may occur in more than one place, including appointments with therapists or other professionals, and continue at the parents' home, relative's home, or other community setting.	Visitation location is a home-like setting to offer parent(s) the opportunity to develop parenting skills and improve parent-child interactions, as well as manage safety concerns. Locations may include parents' home, relative's home, professional's office, park or other community setting.	Visitation location would ensure a highly structured visit. Locations may include the CPS visiting room, professional's office or other secure location.

	Unsupervised	Low	Medium	High
Monitor's Role	No monitor. Parent(s) provides feedback about the visit.	Monitor's role is primarily to aid the parent(s) in problem solving if issues arise. The monitor may also offer the parent(s) education, coaching, skills building and support to achieve permanency goals. Monitor may drop in the visit to ensure that the visit is going well and that the parent(s) or child does not have any concerns.	Monitor's role is to observe interactions between the parent(s) and child; ensure that the child is safe; and offer the parent(s) education, coaching, and skill-building. Monitor and parent(s) would know the conditions required to maintain safe visits and under what conditions the monitor may intervene.	Monitor's role is to listen to and closely observe all interactions between the parent(s) and child and intervene if needed. Parental coaching could be offered, but the primary concern would be child's safety. Monitor and parent(s) would know the conditions required to maintain safe visits.

D. Parent Information and Observation Form⁵²

This information is provided to parents to assist with pleasant and meaningful visits with their child. It was developed in partnership with parents and parent advocates

- **It is very important for you to attend every visit on time.** If you do not do this, your child will be disappointed when they are at the visit and you are not. If you have a problem getting to the visit or know that you are likely to be late, contact your caseworker as soon as you can to inform the caseworker you will be late or are having a problem getting to the visit.
- It is best not to make promises to your child during visitation, but if you do make a promise, such as “next time I see you I will bring your favorite book from home,” make sure you fulfill that promise.
- You can bring toys, clothes and pictures from home to the visit. If you have questions about the appropriateness of an item, contact your caseworker prior to the visit.

-
- Show your child affection (i.e. hugs and handholding) during the visit unless you have specifically been ordered not to by the court or your caseworker.
 - The visit will be observed and there are two reasons for this: to ensure the safety and well-being of your child, and to gather information that will help improve future visits.
 - Your child may ask difficult questions such as “when can I come home?” You should not respond with a specific date because that can change along the way and you don’t want to disappoint your child. A good response could be “I hope it is soon, but I’m so glad I get to see you now.” Your child will probably ask this several times and possibly every time they talk to you.
 - Your child may also not behave in a way you expect. If your child is fussy or upset, it may be because so much change is happening in your child's life or your child is tired or had a bad day. Take this opportunity to positively comfort, support and talk to your child about what is going on in their life.
 - If your child talks to you about their foster parent or family, you should listen and respond in a positive way. Although it may be difficult that your child cannot be with you right now, you should be as supportive as possible of the foster parent or family because they are taking care of your child and it is important that your child not feel bad about that. If you do have a concern about the foster parent or family, do not discuss it with your child or in front of your child. Inform the caseworker of your concerns after the visit, and if you have a lawyer, you may want to discuss with him/her as well.
 - If you have questions about the visit or what was observed during the visit, you should feel free to ask the person observing you. If the person observing your visit uses a visitation observation form to document what happens at the visit, you should be given a copy of that form.
 - If you have questions about your case or future visits, ask your caseworker after the visit.
 - Don’t talk to your child about your CPS case or caseworker during the visit. Use this opportunity to spend time with your child and enjoy your child's company. If your child asks questions about your case, suggest that the child ask the caseworker. If your child has an attorney ad litem or a CASA volunteer, you might also suggest that your child ask them any case related questions.
 - You may have a difficult time after and between visits. Talk to people in your life about how you are feeling. It might even be a good idea to tell them about the visit ahead of time so you can have support ready for you. At the end of your visit, goodbyes can be difficult for you and your child. During the last 5 minutes, plan what you will do on your next visit together. Try putting it on paper and letting the child take it home with

them. During the visit you can give your child something from home or draw a picture with them so they have something to hold onto in between visits. Do not prolong the goodbye as it will make it harder for you and your child.

- If the visit didn't go as you had hoped or planned, don't be hard on yourself! Learn about what you need to improve and remember that there are no perfect parents. You just need to keep trying to be the best parent you can be for your child!

1. Observation

DFPS has also implemented a visitation observation form that is intended to document what occurs at supervised visits. The observer is asked to fill out responses to the following questions in the battle below.

After the visitation session, the observer is required to provide the parent or adult with the form, and the parent / adult is asked to sign it. Parents are allowed to make notes on the observation form regarding how the visit went, whether the parent has any questions or concerns about the recorded information, and if the parent has anything he/she would like to add about the visit. Please see the [DFPS Parent/Supportive Adult Visitation and Observation Form](#) for more information.⁵³

2. DFPS Review and Revision of Visitation Plan

Per DFPS, the visitation plan should be reviewed by DFPS monthly to determine progress, update goals, and determine if it appropriate to consider changes in supervision, location, and setting. If there has been little or no progress towards developing protective actions and meeting case goals found during two consecutive monthly reviews, the caseworker is directed to initiate a formal or informal family meeting to determine how to modify the visitation plan to include a more intensive level of parent coaching/guidance around visitation.

HEALTH CARE FOR TEXAS CHILDREN IN FOSTER CARE: STAR HEALTH

Please see Checklist Section for Medical and Mental Health Care Checklist.

STAR Health is a comprehensive, managed care program designed to better coordinate and improve access to health care for:

- Children in DFPS conservatorship (under age 18)
- Youth in CPS extended foster care (ages 18 to 22)
- Youth who were previously under DFPS conservatorship and have returned to foster care (ages 18 to 22) through voluntary foster care agreements
- Youth ages 18-21 who aged out of foster care at age 18 and are eligible for Medicaid services
- Former foster care youth (ages 21 to 23) enrolled in an institution of higher education located in Texas enrolled in the Former Foster Care in Higher Education (FFCHE) program.

There are a few populations of children who are not eligible for the STAR Health program. Unless otherwise indicated, these children receive Medicaid through the Traditional Fee-for-Service program. STAR Health does not cover children who are:

- Placed outside of Texas;
- From other states but placed in Texas;
- Residents in nursing homes, state schools, state supported living centers, and ICF-IID facilities;
- Dually eligible for Medicaid and Medicare;
- Adopted and the adoption is finalized;
- In hospice; or
- In DFPS conservatorship, but adjudicated in a Texas Juvenile Justice Department (TJJD) facility and do not receive Medicaid but receive health care services through TJJD.

A. Unique Features of STAR Health

STAR Health provides a full-range of Medicaid covered medical, dental, vision, prescription and behavioral health services, including:

- A Medical Home for each child, meaning a doctor, or other Primary Care Provider (PCP), or PCP Team to oversee care
- Immediate enrollment for immediate health care benefits
- Licensed and degreed MCO staff who coordinate physical and behavioral healthcare and access to other non-Medicaid benefits and resources
- Access to healthcare through a network of providers (doctors, nurses, hospitals, clinics, psychiatrists, therapists, etc.) specifically recruited for their history and expertise in treating children who have been abused or neglected and who are offered ongoing trainings on such issues
- The Health Passport electronic health record, which makes available a history of healthcare visits, immunizations, lab results, prescriptions, and service plans to medical consenters, caseworkers, and healthcare providers
- Psychotropic Medication Utilization Reviews to determine if the prescribed medication regimen meets the required guidelines and is within the standard of care
- Service management and service coordination teams led by licensed and degreed managed care organization (MCO) staff who coordinate physical and behavioral health care and access to other non-Medicaid benefits and resources for complex cases
- Nursing and Behavioral Health 24/7 help-lines for caregivers and caseworkers
- Medical advisory committees to monitor healthcare provider performance

B. Physical Healthcare Benefits Provided by STAR Health

The following is not an exhaustive list of Medicaid-covered physical health care benefits:

- Ambulance services
- Birthing services provided by a physician and certified nurse midwife (CNM) in a licensed birthing center
- Cancer screening, diagnostic, and treatment services
- Chiropractic services

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- Community First Choice services, including personal assistance services, habilitation, emergency response services, and support consultation
 - Dental services
 - Durable Medical Equipment and medical supplies
 - Early Childhood Intervention (ECI) services
 - Family planning
 - Hearing Exams/Hearing Aids
 - Home health care services, such as private duty nursing, skilled nursing, and personal care services
 - Hospital care, including emergency and inpatient services
 - Lab Tests/X-Rays
 - Physical, occupational, and speech therapies
 - Podiatry
 - Prenatal care
 - Prescription drugs and biological
 - Preventive care through Texas Health Steps
 - Specialty physician services
 - Transplantation of organs and tissues
 - Vision services

C. Behavioral Health Benefits Provided by STAR Health

The following is not an exhaustive list of Medicaid-covered behavioral health benefits:

- Substance abuse services
- Inpatient and outpatient mental health services
- Partial hospitalization
- Intensive outpatient
- Day treatment

- Observation
- Rehabilitative Services
- Outpatient therapy
- Telemedicine
- Disease Management (Intellectual Developmental Disabilities)
- Complex case management

STAR HEALTH ENHANCEMENTS		
	CARE GRANTS	\$100 per member, per year for non-Medicaid covered items that benefit the child's well-being (school supplies, art therapy kit)
	EXPANDED VISION	\$100 above the existing Medicaid benefit for features or frames not covered by Medicaid
	OTC MEDICATIONS	\$30 per member, per quarter toward over the counter medication delivery through a mail order program
	CENTACCOUNT	Walmart gift card account for young adults age 18-21 who complete wellness visits, dental checkups, flu shots, & other health screenings
	BOYS & GIRLS CLUB	Annual membership fee for members ages 6-18
	SPORTS / CAMP PHYSICALS	Pays for physicals for members ages 4-18
	7-DAY FOLLOW UP INCENTIVES	Gift card or teddy bear incentive (as age appropriate) once per year for attending the recommended 7-day follow up visit after an inpatient stay
	ONLINE MENTAL HEALTH RESOURCES	Access to mystrength.com, an interactive web and mobile application platform that helps improve mental health and overall wellbeing

D. Transitioning Youth

The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), requires states to provide Medicaid coverage to youth and young adults under age 26 who were in foster care and were receiving Medicaid when they aged out of foster care.

The **Former Foster Care Children (FFCC) program** provides healthcare coverage to youth who age out of foster care at age 18, were receiving Medicaid coverage at the time they aged out, are a U.S. citizen or have qualified alien status such as a green card. This coverage is available through age 25 under two separate programs, based on age:

- Young adults aged 18 through 20 are automatically enrolled in the STAR Health program, but can switch to the STAR program, if they prefer; and
- Young adults aged 21 through 25 must choose a STAR program health plan.

For foster youth who are under the age of 21, but who are not eligible for the FFCC program because the youth did not receive Medicaid at the time he/she aged out of care, coverage is provided by STAR Health for youth who:

- Were in Texas foster care on his/her 18th birthday or older;
- Do not have other health coverage;
- Meet program rules for income; and
- Are a US citizen or have a qualified alien status, such as a green card.

It is not necessary for a court to extend jurisdiction beyond age 18 for this coverage to apply. See the Bench Book Chapter entitled [Extending Foster Care for Transitioning Youth](#) for more information.

E. Medical Consent

Before a child may receive medical treatment, consent is required. In 2005, Texas passed a law that requires each child in DFPS conservatorship to have a medical consenter. The responsibility of this medical consenter is to provide medical consent. Medical consent means making a decision on whether to agree or not agree to a medical test, treatment, procedure, or a prescription medication.

1. Informed Consent

Informed consent means the medical consenter gets complete information about the proposed medical care before making a decision. The goal is to make sure that the medical consenter makes an informed decision about the child's health care.

When permission is given for health-care, the Medical Consenter must make sure he or she understands:

- The child's symptoms and medical diagnosis.
- How the treatment will help the condition.

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- What happens without the treatment?
 - The side effects and risks associated with the treatment.

2. Choosing a Medical Consenter

The court will name (authorize) either an individual or DFPS as the medical consenter.

The individual may be a relative or someone involved in the child's life. When the court names an individual as medical consenter, that person is ultimately responsible for the medical decisions for that child and reports directly to the court. When a judge gives DFPS the power to consent to medical care for a child, the agency chooses up to four primary and backup medical consenters. The two primary medical consenters are usually the child's caregivers or a caseworker and another CPS staff.

DFPS may choose medical consenters and backup medical consenters who are:

- Professional employees of emergency shelters
- Foster parents
- Relatives
- CPS caseworkers, supervisors or other CPS staff
- Parent whose rights have not been terminated, if in child's best interest

DFPS may not choose medical consenters and backup medical consenters who are employees of staffed facilities such as residential treatment centers or intermediate care facilities for individuals with developmental disabilities. CPS caseworkers are usually designated in these cases.

In some cases, the court allows a youth 16 or 17 years old to be his or her own medical consenter, if other requirements are met. [Tex. Fam. Code § 266.010](#).

Attorneys ad litem and DFPS staff are required to inform 16 and 17 year olds in foster care of their right to ask the court whether they can consent to their own medical care. [Tex. Fam. Code § 107.003\(b\)\(3\)](#).

There are two types of medical consent training for youth:

- DFPS Medical Consent Training for Caregiver - All youth must complete this training before they become 18 years old.
- DFPS Psychotropic Medication Training – Youth who are taking psychotropic medications must complete this training before they are 18 years old.

Documentation that a youth has completed the required training should be filed in the youth's file by the caseworker.

3. Informed Consent for Psychotropic Medications

The medical consenter must always have a complete discussion with the child's health-care provider. According to Texas law, consent to giving a psychotropic medication is valid only if:

- It is given voluntarily and without undue influence, and
- The consenter receives information (given verbally or in writing) describing:
 - the specific condition to be treated;
 - the beneficial effects on that condition expected from the medication;
 - the probable health and mental health consequences of not consenting to the medication;
 - the probable clinically significant side effects and risks associated with the medication;
 - the generally accepted alternative medications and non-pharmacological interventions to the medication, if any; and
 - the reasons for the proposed course of treatment. [Tex. Fam. Code § 266.0042.](#)

4. Guidance for Youth Who are Their Own Medical Consenter

[Tex. Fam. Code § 264.121](#) requires, for a youth taking prescription medication, DFPS to ensure that the youth's transition plan includes provisions to assist the youth in managing the use of the medication and in managing the child's long-term physical and mental health needs after leaving foster care, including provisions that inform the youth about:

- The use of the medication;
- The resources that are available to assist the youth in managing the use of the medication; and
- Informed consent and the provision of medical care in accordance with [Tex. Fam. Code § 266.010\(1\)](#). [Tex. Fam. Code § 264.121\(g\)](#).

The youth's caseworker and caregivers should help the youth get information about any medical condition(s), tests, treatment, and medications, and to support them in making informed decisions.

If a youth's healthcare decision puts the youth at risk for harm, the court can overrule a youth's decision to refuse medical care even after authorizing the youth to make medical decisions. To do that the court must find by clear and convincing evidence that the medical care is in the best interest of the youth and one of the following:

- The youth lacks the capacity to make the decision.
- Not getting the care will result in observable and material impairment of growth, development, or functioning of the youth.
- The youth is at risk of causing substantial bodily harm to self or others. [Tex. Fam. Code § 266.010\(g\)\(1\)-\(3\)](#).

In these situations, DFPS may file a motion asking the court to order a specific medical treatment or allow DFPS to consent to medical care for the youth. The motion must include the youth's reasons for refusing medical care and a statement signed by the physician explaining why medical care is necessary. [Tex. Fam. Code § 266.010\(d\)-\(e\)](#).

F. Monitoring Psychotropic Medications

In February 2005, DFPS, the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC) released a "best practices" guide to ensure the proper use of psychotropic medications for the children in foster care.

The March 2016 Psychotropic Medication Utilization Parameters for Children and Youth in Foster care⁵⁴ is the most recent version of these guidelines. It serves as a resource for physicians and clinicians who care for children diagnosed with mental health disorders. The guide provides recommendations for the appropriate use of psychotropic medications for children in foster care and includes nine criteria indicating the need for review of the child's clinical status.

Since April 2008, STAR Health has conducted Psychotropic Medication Utilization Reviews (PMURs) on the children whose medication regimens fall outside of the expectations of the Parameters.

[The STAR Health PMUR Process for STAR Health Members FAQ and Stakeholder Manual](#) explains this process and how to request a review.⁵⁵

G. Health Passport

The Health Passport is a web-based system that contains a record of healthcare history for every child, youth, or young adult enrolled in the STAR Health program. The Health Passport is not a full medical record. It contains the following information:

- A complete record of healthcare visits and services with any network provider

- Immunizations, lab results, and prescriptions received
- Healthcare forms such as psychotropic reviews, service plans, Texas Health Steps forms, and [COMING March 1 2016, CANS assessment results]
- Allergies, vital signs, height, weight, and record of future scheduled appointments if entered by network providers
- A two year history from prior to entering foster care, if the child received Medicaid or CHIP coverage in the past

Medical consenters, caseworkers, network providers, some CASA staff, and some residential provider staff are able to view Health Passport records. Network providers are able to enter data into Health Passport.

Only a DFPS staff member may give a printed copy of the Health Passport or sections of the Health Passport to other persons or entities, including judges.

H. Court Orders for Medical Services

Special Issue: If the child needs a service not covered by Medicaid, the judge may order that a physician assess the need for the service, if that has not already been done. Also, the judge may order the service and DFPS will seek that service through a private pay contract. When entering orders for services that are not covered by Medicaid, a judge might consider drafting an order that provides DFPS the maximum flexibility in contracting because a particular provider may not be in the position to fulfill the contract as dictated by the court order. Also, a copy of the signed order should be sent via fax to Superior at 1-866-702-4837.

I. References

Key STAR Health phone numbers

<u>Organization</u>	<u>Phone Number</u>
Superior HealthPlan Network Member Services Hotline	1-866-912-6283
Cenpatico (Behavioral Health)	1-866-218-8263
DentaQuest (Dental Services)	1-888-308-4766
Total Vision Health Plan (Vision Services)	1-866-642-8959
NurseWise	1-866-912-6283

HHSC Medical Transportation Program

If you live in the counties of Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, and Tarrant:

- **Call LogistiCare:**
 - Phone Reservations: 1-855-687-3255
 - Where's My Ride: 1-877-564-9834

If you live in the counties of Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, San Jacinto, Tyler, Walker, Waller and Wharton:

- **Call MTM:**
 - Phone Reservations: 1-855-687-4786
 - Where's My Ride: 1-888-513-0706

If you live in any other county:

- **Call MTP:**
 - Phone Reservations: 1-877-633-8742 and press Option 1 to schedule a ride or Option 2 to file a complaint.

J. Who to Contact with Health Care Questions

DFPS developed a STAR Health mailbox which is staffed by the DFPS medical services team and checked on each business day: dfpsstarhealth@dfps.state.tx.us

K. Additional Links / Resources

Texas DFPS website at

http://www.dfps.state.tx.us/Child_Protection/Medical_Services/guide-star.asp

See the STAR Health website at www.fostercaretx.com

[Center for Public Policy Priorities Policy Paper on STAR Health](#), November 2008

HUMAN TRAFFICKING

Please see the Checklist Section for the Human Trafficking checklist.

A. Definition of Human Trafficking

Human trafficking is a term that refers to labor and sex trafficking of minors and adults. While all forms of trafficking are dangerous and exploitative, children and youth in foster care are especially vulnerable to child sex trafficking.

1. Federal Law

Under the federal Trafficking Victims Protection Act,⁵⁶ severe forms of trafficking in persons is defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. [22 U.S.C. § 7102\(9\)](#).

The term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. [22 U.S.C. § 7102\(10\)](#). A “commercial sex act” is defined as any sex act on account of which anything of value is given to or received by any person. [22 U.S.C. § 7102\(4\)](#).

Special Issue: Force, fraud, or coercion are not required elements of sex trafficking when the victim is a child. In addition, movement of the child is not required and money need not be exchanged to prove a child was trafficked. Traffickers often manipulate children with promises of food, clothing, shelter, and love.

2. Trafficking of Children Defined

In Texas, “trafficking” is defined as transporting, enticing, recruiting, harboring, providing, or otherwise obtaining a person by any means. [Tex. Penal Code § 20A.01\(4\)](#).

For sex and labor trafficking offenses, a “child” is defined as a person younger than 18 years of age. [Tex. Penal Code § 20A.01\(1\)](#). Both child sex and labor trafficking are offenses in Texas regardless of whether the actor knew the age of the child at the time of the offense. [Tex. Penal Code § 20A.02\(b\)\(1\)](#).

3. Child Sex Trafficking

Texas law defines child sex trafficking as knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of, conduct prohibited by:

- Continuous Sexual Abuse of Young Child or Children, [Tex. Penal Code § 21.02](#);
- Indecency with a Child, [Tex. Penal Code § 21.11](#);
- Sexual Assault, [Tex. Penal Code § 22.011](#);
- Aggravated Sexual Assault, [Tex. Penal Code § 22.021](#);
- Prostitution, [Tex. Penal Code § 43.02](#);
- Promotion of Prostitution, [Tex. Penal Code § 43.03](#);
- Aggravated Promotion of Prostitution, [Tex. Penal Code § 43.04](#);
- Compelling Prostitution, [Tex. Penal Code § 43.05](#);
- Sexual Performance by a Child, [Tex. Penal Code § 43.25](#);
- Employment Harmful to Children, [Tex. Penal Code § 43.251](#); or
- Possession or Promotion of Child Pornography, [Tex. Penal Code § 43.26](#). [Tex. Penal Code § 20A.02\(a\)\(7\)](#).

Alternatively, a person commits the crime of child sex trafficking if that person knowingly receives a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or engages in sexual conduct with a child trafficked in the manner described in [Tex. Penal Code § 20A.02\(a\)\(7\)](#). [Tex. Penal Code § 20A.02\(a\)\(8\)](#).

The landmark case of *In re B.W.* addressed the issue of whether a thirteen year old child can be adjudicated a juvenile delinquent for committing the offense of prostitution. The Supreme Court of Texas held that a child under the age of 14 lacks capacity to consent to sex and thus cannot be charged with the offense of prostitution. The court found that, “[c]hildren are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution, and experts have described in detail the extent to which they are manipulated and controlled by their exploiters.” *In re B.W.*, [313 S.W.3d 818, 826](#) (Tex. 2010).

Special Issue: Other terms referring to child sex trafficking include Commercial Sexual Exploitation of Children and Domestic Minor Sex Trafficking.

4. Child Labor Trafficking

In Texas, a person commits child labor trafficking by knowingly trafficking a child with the intent that the trafficked child engage in forced labor or services. [Tex. Penal Code § 20A.02\(a\)\(5\)](#). In addition, knowingly receiving a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(5\)](#), including by receiving labor or services the person knows are forced labor or services, constitutes labor trafficking. [Tex. Penal Code § 20A.02\(a\)\(6\)](#).

“Forced labor or services” is defined as labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion. [Tex. Penal Code § 20A.01\(2\)](#).

Special Issue: Force, fraud, or coercion are required elements of child labor trafficking or adult labor or sex trafficking. Under Texas law, child sex trafficking can be accomplished by any means. Force, fraud, or coercion are not required.

5. Continuous Trafficking of Persons

A person commits the offense of continuous trafficking of persons if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under [Tex. Penal Code § 20A.02](#) against one or more victims. [Tex. Penal Code § 20A.03\(a\)](#).

B. Trafficking and Child Welfare

1. CPS Investigations Involving Trafficking

The definition of child abuse includes compelling or encouraging a child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#) including compelling or encouraging a child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\) or \(8\)](#), prostitution under [Tex. Penal Code § 43.02\(b\)](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#). [Tex. Fam. Code § 261.001\(1\)\(G\)](#).

Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\), \(6\), \(7\), or \(8\)](#), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections also constitutes child abuse. [Tex. Fam. Code § 261.001\(1\)\(L\)](#).

Special Issue: CPS Policy outlines the circumstances when a person traditionally responsible for a child's care, custody, or welfare can be investigated by CPS as an alleged perpetrator of sex or labor trafficking. For more information, see Section 2380 Child Trafficking (Sex and Labor Trafficking) available online at:

https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2380.

2. Trafficking May be Considered as Basis for Removal of Child

If there is no time to obtain a temporary order, temporary restraining order, or attachment under [Tex. Fam. Code § 262.102\(a\)](#) before taking possession of a child consistent with the health and safety of that child, an authorized DFPS representative, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions related to trafficking:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#); or
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.104\(a\)\(3\)-\(4\)](#).

3. Standard for Decision at Initial Hearing After Taking Possession Includes Consideration of Trafficking

At the initial hearing regarding a child taken in possession without a court order by a governmental entity, the court must return the child unless the court is satisfied that:

- There is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child or the evidence shows that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
- Continuation of the child in the home would be contrary to the child's welfare; 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. [Tex. Fam. Code § 262.107\(a\)](#).

4. Required Findings at Adversary Hearing if Child Victim of Trafficking to Remain in Care

At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;
- The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. [Tex. Fam. Code § 262.201\(b\)](#).

5. Aggravated Circumstances

The court may find under [Tex. Fam. Code § 262.2015\(a\)](#) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [\(8\)](#). [Tex. Fam. Code § 262.2015\(b\)\(3\)\(O\)](#).

C. Risk Factors and Indicators

Children and youth who run away or experience foster care are at a higher risk of commercial sexual exploitation.⁵⁷ According to the Office of the Texas Attorney General, potential indicators, or red flags, that a child may be a trafficking victim include:

- Changes in school attendance habits, appearance, socio-economics, friend groups, interests, school activities, vocabulary, demeanor, attitude, and sexual behavior;
- Luxury items (e.g. manicures, designer clothing, purses, etc.) without an explainable source of income;
- Truancy;
- Getting into trouble in the company of older teens or adults;
- Sexually provocative clothing;

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- Tattoos, especially of another person's name;
 - Hotel key cards;
 - Refillable gift cards;
 - Multiple phone or social media accounts;
 - Lying about the existence of social media accounts or refusing caregiver access to those accounts;
 - Sexually provocative pictures on the phone or online accounts;
 - Unexplained injuries: bruising, swelling, redness, cigarette burns;
 - Claim of an older boyfriend/girlfriend;
 - Lack of identification; and
 - Multiple runaways from home in a short period of time.⁵⁸

Special Issue: The availability of the internet means trafficking can happen anywhere. Traffickers often use the web to recruit and exploit child victims. Teaching youth in foster care about internet safety is a critical part of any effort to prevent and address human trafficking.

D. CPS Reporting Requirements Regarding Child Sex Trafficking

1. Preventing Sex Trafficking and Strengthening Families Act

Under the Preventing Sex Trafficking and Strengthening Families Act (SFA), by September 29, 2016, DFPS must report immediately, and in no case later than 24 hours after receiving information on children or youth who have been identified as being a sex trafficking victim, to the law enforcement authorities.⁵⁹ [42 U.S.C. § 671\(a\)\(34\)\(A\)](#).

Under SFA, DFPS is also required to develop and implement specific protocols for:

- Expeditiously locating any child missing from foster care;
- Determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements;
- Determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim (as defined in [42 U.S.C. § 675\(9\)\(A\)](#)); and

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- Reporting such related information as required by the Secretary of the Department of Health and Human Services; and

DFPS must report immediately, and in no case later than 24 hours after receiving, information on missing or abducted children or youth to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children. [42 U.S.C. § 671\(a\)\(35\)](#).

Special Issue: The National Human Trafficking Resource Center (NHTRC) has a hotline to report tips about human trafficking. The NHTRC also makes referrals for services. For more information, please visit <http://traffickingresourcecenter.org/> or call 1-888-373-7888.

E. Children Who are Missing or Victims of Sex Trafficking

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's parent unless the parent:
 - cannot be located or contacted;
 - has had the parent's parental rights terminated; or
 - has executed an affidavit of relinquishment of parental rights. [Tex. Fam. Code § 264.123\(a\)](#).

DFPS must provide the notice required by [Tex. Fam. Code § 264.123\(a\)](#) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under [Tex. Fam. Code § 264.123\(a\)](#) cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(b\)](#).

If a child has been reported as a missing child under [Tex. Fam. Code § 264.123\(a\)](#), DFPS must notify the persons described by [Tex. Fam. Code § 264.123\(a\)](#) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns

that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(c\)](#).

DFPS must make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

- Contacting the appropriate law enforcement agencies, the child's relatives, the child's former caregivers; and any state or local social service agency that may be providing services to the child on a monthly basis; and
- Conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed. [Tex. Fam. Code § 264.123\(d\)](#).

DFPS must document in the missing child's case record:

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under [Tex. Fam. Code § 264.123\(d\)\(2\)](#);
- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by [Tex. Fam. Code § 264.123\(f\)](#). [Tex. Fam. Code § 264.123\(e\)](#).

After a missing child returns to the child's substitute care provider, DFPS must interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under [Tex. Penal Code § 20A.02\(a\)\(7\)](#). DFPS must report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. DFPS shall make a report under this subsection not later than 24 hours after the time the disclosure is made. DFPS is not required to interview a missing child under this subsection if, at the time the child returns, DFPS knows that the child was abducted and another agency is investigating the abduction. [Tex. Fam. Code § 264.123\(f\)](#).

F. Secure Foster Group Home

A court in an emergency, initial, or full adversary hearing conducted under [Tex. Fam. Code Chapter 262](#) may order that the child who is the subject of the hearing be placed in a secure agency foster home or secure agency foster group home verified in accordance with [Tex. Hum. Res. Code § 42.0531](#), if the court finds that:

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- The placement is in the best interest of the child; and
 - The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.011](#).

A secure agency foster home or secure agency foster group home verified under [Tex. Hum. Res. Code § 42.0531](#) must provide:

- Mental health and other services specifically designed to assist children who are victims of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), including:
 - victim and family counseling;
 - behavioral health care;
 - treatment and intervention for sexual assault;
 - education tailored to the child's needs;
 - life skills training;
 - mentoring; and
 - substance abuse screening and treatment as needed;
- Individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;
- 24-hour services; and
- Appropriate security through facility design, hardware, technology, and staffing. [Tex. Hum. Res. Code § 42.0531\(c\)](#).

Special Issue: Very few placements exist to address the physical, mental, and emotional needs of child sex trafficking victims. Judges can play a critical role in working with community stakeholders to develop local strategies to prevent trafficking and support survivors.

G. Resources

Children's Commission Jurist in Residence letter on human trafficking (Jan 2016):

<http://texaschildrenscommission.gov/media/53980/Foster-Care-and-Human-Trafficking.pdf>

Department of Family and Protective Services

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- Texas Youth Connection information by region:
<https://www.dfps.state.tx.us/tyouth/safety/human-trafficking.asp>
 - Understanding Human Trafficking:
https://www.dfps.state.tx.us/Child_Protection/Investigations/Human_Trafficking/

National Center for Missing and Exploited Children child sexual exploitation resources:
<http://www.missingkids.org/Exploitation>

National Human Trafficking Resource Center (888)373-7888 or
<http://www.traffickingresourcecenter.org/>

National Judicial Institute on Domestic Child Sex Trafficking - Online Resources:
<http://www.ncjfcj.org/DCST-Materials>

Office of the Texas Attorney General information on human trafficking:
<https://www.texasattorneygeneral.gov/cj/human-trafficking>

Polaris Project human trafficking resources: <https://polarisproject.org/human-trafficking>

INDIAN CHILD WELFARE ACT (ICWA)

Please see Checklist Section for ICWA Checklist.

This chapter is excerpted from the DFPS Attorney Manual with permission of DFPS.

The Indian Child Welfare Act of 1978 (ICWA), [25 U.S.C. §§ 1901 – 63 25 C.F.R. Part 23](#), is a federal law that imposes special standards and requirements when a child welfare agency seeks to intervene to protect an “Indian child,” as defined by statute [25 U.S.C. § 1903\(4\)](#). The law was enacted to protect not only Indian children, but their families and tribes. [25 U.S.C. § 1902](#). To this end, ICWA affords important rights to both families and tribes, including the right to petition a court with competent jurisdiction to invalidate any action for foster care placement or termination of parental rights if key provisions of the Act are violated. [25 U.S.C. § 1914](#).

In February 2015, the Bureau of Indian Affairs (BIA) released the updated Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (Guidelines).⁶⁰ The Guidelines are not legislative and are thus not binding, but Texas courts have relied on the Guidelines in interpreting ICWA. *In re V.L.R.*, [No. 08-15-00250-CV](#) (Tex. App. — El Paso, Nov. 18, 2015). The new Guidelines state “these guidelines should be applied in all proceedings and stages of a proceeding in which the Act is or becomes applicable.” Also, the BIA has proposed “Regulations for State Courts and Agencies in Indian Child Custody Proceedings.”⁶¹ The Proposed Rules include most of the Guidelines, and if passed, would be binding.

The U.S. Supreme Court has only issued two opinions addressing ICWA, the first in 1989, *Mississippi Band of Choctaw Indians v. Holyfield*, [490 U.S. 30 \(1989\)](#), and the second, in June, 2013. In *Adoptive Couple v. Baby Girl*, [133 S.Ct. 2552 \(2013\)](#) the Court interpreted ICWA narrowly, restricting the rights of a parent who has never had custody of an Indian child and limiting the circumstances when the placement preferences apply. A summary of the case is provided in the Case Notes below and practice implications are noted in appropriate sections below.

A. When Does ICWA Apply?

ICWA applies to any “child custody proceeding” involving an “Indian child,” if the court “knows or has reason to know that an Indian child is involved.” [25 U.S.C. § 1912\(a\)](#).

1. Child Custody Proceedings

A suit seeking foster care placement, termination of parental rights, pre-adoptive or an adoptive placement is subject to ICWA. ICWA does not apply to most juvenile

delinquency actions; nor does it apply to custody actions in divorce or separation proceedings (unless custody may be awarded to a non-parent).⁶²

2. Indian Child

An Indian child is an unmarried person under age 18 who is either a member of an Indian tribe or eligible for membership and the biological child of a member. [25 U.S.C. § 1903\(4\)](#). There are more than 500 federally recognized tribes, but tribes from Mexico and Canada, as well as some U.S. tribes, are excluded.⁶³

3. How Are Possible Indian Children Identified?

The new Guidelines clarify that agencies and state courts must ask, in every child custody proceeding, whether ICWA applies.⁶⁴ The new Guidelines state:

Agencies and State courts, *in every child custody proceeding*, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines.⁶⁵

The Guidelines also provide that state courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.⁶⁶ Amendments to the Texas Family Code in the 84th Legislative session also mandate that the court ask all parties whether the child or the family has Native American heritage and to identify any tribe at the Adversary Hearing, Status Hearing, and Permanency Hearing Before Final Order. [Tex. Fam. Code § 262.201\(a-4\)](#), [Tex. Fam. Code § 263.202\(f-1\)](#), and [Tex. Fam. Code § 263.306](#).

Special Issue: When ICWA notice is sent, DFPS could also send a letter asking the tribe to confirm or deny the child's membership or eligibility for membership status. In every case, DFPS or courts should confirm that all appropriate persons have been asked about possible tribal family history. If all family members deny any tribal family history, this should be documented. If there is any information to suggest a tribal association, by giving the tribe notice and following up as necessary to verify a child's status you can eliminate a potentially devastating delay that can undermine permanency.

B. Jurisdiction

Whether the family court or tribal court has jurisdiction over a case involving an Indian child depends on where the child resides, whether transfer to the tribal court is requested, and whether an exception to the mandatory transfer provision applies. If a case involves an Indian child, however, the state court proceedings must comply with ICWA, whether or not the tribe intervenes or the case is transferred to a tribal court.

1. Exclusive Jurisdiction on the Reservation

If the child's residence or domicile is on the reservation, or if the child has been made a ward of the tribal court, the tribal court has exclusive jurisdiction, except when jurisdiction is otherwise vested in the state. [25 U.S.C. § 1911\(a\)](#).

2. Emergency Exception

When an Indian child who resides on a reservation is temporarily off the reservation and emergency removal or placement is necessary "to prevent imminent physical damage or harm to the child," the state child welfare agency may act despite the fact that the tribal court otherwise has exclusive jurisdiction. [25 U.S.C. § 1922](#). In such circumstances, the state child welfare agency must act promptly to: (1) end the removal or placement as soon as it is no longer necessary to prevent imminent physical damage or harm to the child; and (2) move to transfer the case to the jurisdiction of the tribe or return the child to the parents, as appropriate.

The updated Guidelines clarify that the Guidelines should be followed for emergency removal or placement regardless of whether the Indian child is a resident of or domiciled on a reservation. The new section B of the Guidelines also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate and provides examples.⁶⁷

3. Concurrent Jurisdiction Off the Reservation

If the child's residence or domicile is not on the reservation, the tribal and state court have concurrent jurisdiction. [25 U.S.C. § 1911\(b\)](#). Even in this circumstance, however, there is a presumption of tribal jurisdiction in cases involving an Indian child. *Mississippi*, [490 U.S. 30 \(1989\)](#).

4. Mandatory Transfer to Tribal Court

On motion by a child's parent, Indian custodian⁶⁸ or tribe, transfer of a state court child custody case involving an Indian child to the jurisdiction of the child's tribe is mandatory, unless either parent objects, good cause is shown or the tribe declines to accept the case. [25 U.S.C. § 1911\(b\)](#).

5. Parental Veto of Transfer

A parent's objection (including a non-Indian parent's veto) is an absolute bar to transfer. [25 U.S.C. § 1911\(b\)](#).

6. Good Cause

Under the new Guidelines, if any party asserts, that good cause not to transfer exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer. Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists. In determining whether good cause exists, the court may not consider:

- Whether the case is at an advanced stage;
- Whether transfer would result in a change in the placement of the child;
- The Indian child's contacts with the tribe or reservation;
- Socio-economic conditions or any perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems; or
- The tribal court's prospective placement for the Indian child.⁶⁹

Whenever a parent or tribe seeks to transfer the case it is presumptively in the best interest of the Indian child, consistent with the Act, to transfer the case to the jurisdiction of the Indian tribe. The burden of proving good cause is on the party opposing transfer.⁷⁰ The case law is not consistent in construing how "good cause" should be analyzed. The only Texas case addressing what constitutes "good cause" rejects the use of a "best interest" analysis for this purpose because doing so defeats the purpose of ICWA by allowing Anglo cultural bias into the analysis and because best interest is relevant to placement, not to jurisdiction, per *Yavapai-Apache Tribe v. Mejia*, [906 S.W.2d at 169](#). If transfer is granted, the Guidelines require that the state court provide all records of the proceedings to the tribal court expeditiously.⁷¹

C. Required Notice

Giving notice under ICWA requires close attention to specific requirements governing the type of notice, the proper persons and entities who must be served, the type of service required and how compliance is demonstrated by filing proof of service with the court. *In re R.R.*, [294 S.W. 3d 213](#) (Tex. App. — Fort Worth, March 19, 2009, no pet.).

The Notice of Pending Custody Proceeding Involving Indian Child must be sent to:

- Every known parent(s);

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- Indian custodian;
 - Any identified tribe;
 - The Secretary of the Interior; and
 - BIA, Area Director. [25 U.S.C. § 1912\(a\)](#) and [25 C.F.R. § 23.11\(a\)](#).

In addition, if the identity or location of a parent or Indian custodian is not known or the identity of the tribe cannot be determined, the Notice to Bureau of Indian Affairs: Parent, Custodian or Tribe of Child Cannot be Located or Determined must be sent to:

- The Secretary of Interior; and
- BIA, Area Director. [25 U.S.C. § 1912\(a\)](#) and [25 C.F.R. § 23.11\(b\)](#).

The new Guidelines provide that to contact a tribe to provide notice or obtain information or verification under these Guidelines, you should direct the notice or inquiry as follows:

- Many tribes designate an agent for receipt of ICWA notices. The BIA publishes a list of tribes' designated tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its website at www.bia.gov.
- For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.
- If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the BIA's Regional Office and/or Central Office in Washington D.C.⁷²

1. Parent

A parent includes the biological or adoptive parent of an Indian child and a non-Indian parent. [25 U.S.C. § 1903\(9\)](#). An alleged father, however, must acknowledge paternity or be legally determined to be the father before being recognized as a parent for purposes of ICWA.⁷³

2. Indian Custodian

"Indian custodian" is broadly defined as "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child." [25 U.S.C. § 1903\(6\)](#).

3. More Than One Tribe

If the child has ties to more than one tribe, notice should be given to each tribe identified.

4. Provide Family Information

A child's family history is often key to a tribe's ability to confirm or deny a child's status as an Indian child. The new Guidelines provide that a court may require the agency to provide genograms or ancestry charts for a child's parents, including specific family history information as part of the certification process, as well as the addresses for the child and parents.⁷⁴

5. Mailing

Notice must be sent by registered mail and must include a request for a return receipt.⁷⁵

6. Timing (10 + 20 days)

No "foster care placement or termination of parental rights" hearing can be held until at least ten (10) days after notice is received (subject to an additional 20 days if the parent/custodian/tribe requests additional time for preparation). [25 U.S.C. § 1912\(a\)](#). Pursuant to the Guidelines, notice of each subsequent hearing must be given, at least as to those proceedings involving removal or foster care placement, termination of parental rights or adoption.⁷⁶ The updated Guidelines recommend that temporary emergency custody be 30 days or less.⁷⁷

D. Response of Tribe

1. Tribe Confirms Membership

Tribes have differing methods of establishing membership, and enrollment is not required.⁷⁸ A tribe's determination regarding the child's membership status is conclusive.⁷⁹

2. Existing Indian Family Doctrine

This is a judicially created exception to ICWA based on the premise that if a child's parent does not have a social, cultural or political connection with an Indian tribe or the child has never lived in an Indian environment, ICWA should not apply. Many state courts have rejected this approach, citing the lack of statutory authority for this interpretation. Texas courts have not addressed the issue.

The new Guidelines state that there is no exception to ICWA based on the existing Indian family doctrine and provide a non-exhaustive list of factors that should not be considered in determining whether ICWA is applicable.⁸⁰

E. Removal and Hearing

1. Special Removal Affidavit

If the child's Indian status is discovered at the time of removal, an ICWA compliant affidavit should be filed at the earliest possible time (either at the emergency removal or at the 14 day Adversary Hearing).

2. Special Setting Following Emergency Hearing

A significant change made by the new Guidelines is only allowing temporary emergency orders for up to 30 days (unless there are extraordinary circumstances).⁸¹ “Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if: (1) A hearing, noticed in accordance with these guidelines, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or (2) Extraordinary circumstances exist.” At that hearing, the court must make the necessary findings to warrant a “foster care placement.” See Conservatorship or Termination of Parental Rights of an Indian Child, below.

F. Rights of the Parents, Indian Custodian and Tribe

The parents or an Indian custodian of an Indian child and the child’s tribe have specific rights under ICWA.

1. Appointment of Counsel

Appointment of counsel for indigent parents or Indian custodians is mandatory under ICWA, whether the action is for removal and placement in foster care or for termination of parental rights. [25 U.S.C. § 1912\(b\)](#). Appointment of counsel for a child is discretionary, but state law requires appointment of an attorney *ad litem* for a child if DFPS seeks conservatorship or termination. [Tex. Fam. Code § 107.012](#).

2. Right to Review Records

In a proceeding for foster care or termination of parental rights, each party (including the child’s tribe and custodian) has the right to review all reports and records filed with the court. [25 U.S.C. § 1912\(c\)](#).

3. Right to Intervene

The tribe and the Indian custodian have an absolute right to intervene in the state court action *at any time* in the proceedings. [25 U.S.C. § 1911\(c\)](#). Either may intervene without the other. Intervention may be accomplished informally, by oral statement or formally.

4. Full Faith and Credit

ICWA requires that all courts give full faith and credit to the “public acts, records, and judicial proceedings” of any federally recognized Indian tribe regarding Indian child custody proceedings. [25 U.S.C. § 1911\(d\)](#).

G. Statutory Placement Preferences for Indian Child

ICWA mandates that placements for foster care and adoption be made according to statutory preferences in most circumstances. The updated Guidelines also specify that it is inappropriate to conduct an independent analysis, inconsistent with ICWA’s placement preferences, of the “best interest” of an Indian child.⁸²

The statutory preferences are as follows:

- **Foster care or pre-adoptive placement**
 - a member of the child’s extended family;
 - a foster home licensed, approved, or specified by child’s tribe;
 - an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
 - an institution for children approved by the tribe or operated by an Indian organization which has a program suitable to meet the child’s needs.⁸³ [25 U.S.C. § 1915\(b\)](#).
- **For an adoptive placement**
 - a member of the child’s extended family;
 - other members of the child’s tribe; or
 - other Indian families. [25 U.S.C. § 1915\(a\)](#).

1. Tribe Can Modify

The tribe can by resolution alter the order of preferences for foster care, pre-adoptive, and adoptive placements.⁸⁴ The tribe’s preference should then be followed as long as it is still the least restrictive setting appropriate to the needs of the child. [25 U.S.C. § 1915\(c\)](#).

2. Good Cause Exception

According to the updated Guidelines, the reasons for a good cause exception must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child’s tribe. The party seeking departure from the preferences bears the

burden of proving by clear and convincing evidence the existence of “good cause” to deviate from the placement preferences.

A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

- The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.
- The request of the child, if the child is able to understand and comprehend the decision that is being made.
- The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. The good cause determination does not include an independent consideration of the best interest of the Indian child because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.
- The unavailability of a placement after a showing by the applicable agency in accordance with section F.1. of the BIA Guidelines,⁸⁵ and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child’s parent or extended family resides or with which the Indian child’s parent or extended family members maintain social and cultural ties.

The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.⁸⁶

3. Failure of Eligible Placement to Seek Placement

In the *Baby Girl* case, the U.S. Supreme Court held that the placement preferences do not apply if no party eligible for preference formally seeks placement. *Baby Girl*, [133 S.Ct. 2552](#). Under the current BIA Guidelines, the lack of a suitable family meeting the preference criteria can be considered good cause for an exception, but only if the court has found that active efforts were made to locate a conforming placement. The Guidelines further provide that a placement cannot be considered “unavailable” if it conforms to the

prevailing social and cultural standards of the Indian community of the child’s parents or extended family.⁸⁷

H. Conservatorship or Termination of Parental Rights of Indian Child

If ICWA applies, the burden of proof and standards for an order placing a child in foster care (in effect a removal) or a final order seeking permanent managing conservatorship or termination of parental rights are different than under the Texas Family Code. In summary, if ICWA applies the requirements are:

- Foster Care Placement – Clear and Convincing Evidence

Including qualified expert testimony that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made by proved unsuccessful.

- Termination of Parental Rights – Evidence Beyond a Reasonable Doubt

Including qualified expert testimony that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made but proved unsuccessful. [25 U.S.C. § 1912\(d\)](#) and [25 U.S.C. § 1912\(f\)](#).

1. Serious Emotional or Physical Damage

Evidence of poverty, crowded or inadequate housing, alcohol abuse, or nonconforming social behavior alone is not sufficient to show serious emotional or physical damage. There must be evidence of particular conditions in the home that are likely to result in serious emotional or physical damage to a specific child. The Guidelines add: “Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding.”⁸⁸

2. Active Efforts

There must be evidence of “active efforts” to alleviate the cause for removal, taking into account the prevailing social and cultural conditions and way of life of the Indian child’s tribe. [25 U.S.C. § 1912\(d\)](#). Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts. “Active efforts” is not defined by ICWA, but the new Guidelines offer a non-exhaustive list of examples:

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- Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);
 - Taking steps necessary to keep siblings together;
 - Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
 - Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;
 - Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;
 - Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;
 - Offering and employing all available and culturally appropriate family preservation strategies;
 - Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
 - Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;
 - Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;
 - Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;
 - Monitoring progress and participation in services;
 - Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;
 - Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and
 - Providing post-reunification services and monitoring.⁸⁹

The Guidelines further state that active efforts begin from the moment the possibility arises that the Indian child may be removed, and during the time Indian status is being verified.⁹⁰

3. Parent Without Prior Custody

If a parent in a case subject to ICWA has never had custody of a child, an action for foster care or termination of parental rights could proceed without meeting the higher burden of proof or standards in [25 U.S.C. § 1912\(d\)](#) and (f). *Baby Girl*, 133 S.Ct. 2552. However, the *Baby Girl* decision does not impact other substantive rights under ICWA, including the right to notice and appointment of counsel for indigent parents.

I. Who is a Qualified Expert Witness?

The new Guidelines suggest that a qualified expert will most likely be persons with the following characteristics, in descending order:

- A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.
- A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe.
- A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.
- A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's tribe.⁹¹

J. Voluntary Relinquishment of Parental Rights

ICWA imposes significantly different requirements for a valid voluntary relinquishment of parental rights, or "consent to termination of parental rights," as ICWA denotes the process, when an Indian child is involved than the Texas Family Code does. [25 U.S.C. § 1913\(a\)](#). The most significant difference is that a valid relinquishment to terminate parental rights must be in writing and be taken on the record before a judge. The new BIA Guidelines⁹² also state that notice of voluntary proceedings should be provided to the Indian tribe, while the statutory notice provision is limited to involuntary proceedings. [25 U.S.C. § 1912\(a\)](#).

In addition, ICWA requires the judge to attach a certificate that indicates that the terms and consequences of the consent were fully explained and that the parent or Indian custodian fully understood the explanation whether provided in English or by an interpreter. [25 U.S.C. § 1913\(a\)](#). Consent to voluntary relinquishment of parental rights cannot be given until the eleventh day after birth of the child and must contain the child's name, birth date, the name of the child's tribe, any tribal affiliation and membership, name and address of the consenting parent or Indian custodian, and the name and address of the person or entity that arranged any adoptive or pre-adoptive placement. Unlike a relinquishment made to CPS under the Texas Family Code, a parent of an Indian child may withdraw consent for any reason at any time prior to entry of a final decree of termination or adoption. If consent is obtained by fraud or duress, a parent may withdraw consent and the court shall invalidate a decree of adoption up to two years after entry of the decree (or beyond the two years if otherwise permitted under state law).

K. Case Notes

1. U.S. Supreme Court

Adoptive Couple v. Baby Girl, [133 S. Ct. 2552](#) (2013) (Court held: (1) the higher burden of proof and standard for termination of parental rights under ICWA do not apply to Indian parent who never had custody and cannot resume or continue to have custody of an Indian child; (2) requirement that "active efforts" be made to prevent the breakup of an Indian family does not apply to a parent who abandons a child before birth and never had custody; and (3) placement preferences do not bar a non-Indian family from adopting when no other eligible candidate (relative, tribal member, or other Indian person) seeks to adopt an Indian child)

Mississippi Band of Choctaw Indians v. Holyfield, [490 U.S. 30](#) (1989) (denial of tribe's motion to vacate adoption decree reversed on appeal, where both parents were members of the tribe and resided on the reservation, left the reservation prior to twins' birth and signed consent to adoption. Where children neither reside nor are domiciled on reservation, [25 U.S.C. § 1911\(b\)](#) creates concurrent but presumptive tribal jurisdiction that requires the state court to transfer jurisdiction unless good cause is shown or tribe declines)

2. Texas Courts

INDIAN CHILD STATUS

In re D.D., [No.12-15-00192-CV](#) (Tex. App. — Tyler 2016, no pet. h.) (mem.op.) (in separate opinions involving two parents, appeal of termination case abated and remanded, for failure to address issue of child's tribal heritage and give proper notice despite references in the record to family tribal history)

In re N.A., [No. 02-13-00345-CV](#), [2014 LEXIS 2377](#) (Tex. App. — Fort Worth, February 28, 2014, no pet.) (information in progress reports that mother reported her great-great-grandfather was a registered Cherokee sufficient to trigger notice to tribe requirement)

In re C.T., [No. 13-12-00006-CV](#), [2012 LEXIS 10746](#) (Tex. App. — Corpus Christi-Edinburg, Dec. 27, 2013, no pet.) (where child's grandmother testified child was half-Indian because she is half Black Foot and the mother is half Cheyenne, but failed to indicate whether parents or children were members or children were eligible for membership, failure to apply ICWA not error)

In re J.J.C., [302 S.W. 3d 896](#) (Tex. App. — Waco 2009, no pet.) (allegation that maternal grandmother is member of Chippewa Indian Nation sufficient to give court "reason to believe" Indian child involved)

In re R.R., [294 S.W. 3d 213](#) (Tex. App. — Fort Worth, March 19, 2009, no pet.) (where grandmother is enrolled tribal member and tribe requested more information, notice to tribes and Bureau of Indian Affairs required before trial court can determine child's status as Indian child)

In re R.M.W., [188 S.W. 3d 831](#) (Tex. App. — Texarkana 2006, no pet.) (assertion of Indian heritage or blood without evidence of membership or eligibility for membership in an Indian tribe insufficient to put court on notice of Indian child; court distinguishes *Doty-Jabbaar*, noting DFPS did not admit child was Indian, and court made no finding that any children were tribal members)

Doty-Jabbaar v. Dallas County Child Protective Services, [19 S.W. 3d 870](#) (Tex. App. — Dallas, 2000, pet. denied) (termination reversed for failure to adhere to ICWA requirements where caseworker notified the tribe in a prior proceeding for termination of parental rights and again in this case, court concluded "it is apparent [the agency] acknowledged the child's status as an Indian child")

NOTICE

In re K.S., [448 S.W. 3d 521](#) (Tex. App. -- Tyler 2014, pet. denied) (failure to strictly comply with formal notice not basis for invalidation where tribe had actual notice, intervened, and participated in case)

In re R.R., [294 S.W. 3d 213](#) (Tex. App. — Fort Worth, March 19, 2009, no pet.) (strict compliance with specific ICWA notice requirements necessary to avoid exposing a termination decree to a petition to invalidate at some future date)

ICWA APPLICATION

In re B.O., [No. 03-12-00676-CV](#), [2013 LEXIS 4712](#) (Tex. App.—Austin, April 12, 2013, no pet.) (mem.op.) (argument that ICWA should apply because father is a tribal member even though children are not members or eligible for membership in a tribe rejected).

Comanche Nation v. Fox, [128 S.W.3d 745](#) (Tex. App. —Austin 2004, no pet.) (ICWA does not apply to proceeding to modify child conservatorship where no public or private agency is attempting to remove a child from an Indian family)

Doty-Jabbaar v. Dallas County Child Protective Services, [19 S.W.3d 870](#) (Tex. App. —Dallas 2000, pet. denied) (even if tribe does not intervene, court must apply ICWA if Indian child involved and "[w]hen, as here, an ICWA proceeding takes place in state court, rather than a tribal forum, the trial court should take great precaution to ensure the prerequisites of ICWA have been satisfied.")

BURDEN OF PROOF

In re G.C., [2015 Tex. App. LEXIS 8527](#) (Tex. App.—Waco, August 13, 2015, no pet.) (mem. op) (section 1912(f)'s requirement of a finding beyond a reasonable doubt is limited to the finding expressly stated in section 1912(f) and does not apply to the termination findings under the Texas Family Code)

In re K.S., [448 S.W.3d 521](#) (Tex. App.— Tyler 2014, pet. denied) (there must be proof beyond a reasonable doubt that active efforts to prevent the breakup of the Indian family were made and proved unsuccessful)

PLEADINGS AND JURY CHARGE

In re G.C., [2015 Tex. App. LEXIS 8527](#) (Tex. App.—Waco, August 13, 2015, no pet) (mem.op.) (concurrent application of the ICWA and the Texas Family Code to proceedings involving Indian children provides additional protection to parents of Indian children because it requires the party seeking termination to prove state and federal grounds before the parent-child relationship may be terminated.)

In re K.S., [448 S.W. 3d 521](#) (Tex. App. —Tyler 2014, pet. denied) (when ICWA applies, both ICWA and the Texas Family Code must be satisfied; not error to submit broad form jury charge where charge included instruction on statutory language and burden of proof under both ICWA and the Family Code; and, there must be proof beyond a reasonable doubt that "active efforts" were made and were unsuccessful to prevent the breakup of the Indian family under [25 U.S.C. §1912\(d\)](#))

In re W.D.H., [43 S.W.3d 30](#) (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (termination order reversed, citing failure to make requisite ICWA findings and error in making findings on best interests ("an Anglo standard") and on statutory grounds for termination under the Texas Family Code. Father's whereabouts and status as a member of the Cheyenne-Arapaho tribe of Oklahoma were unknown when child was removed at birth and only after reunification was in progress and father was convicted of burglary did he advise the agency he was one-fourth Indian)

ACTIVE EFFORTS

In re K.S., [448 S.W.3d 521](#) (Tex. App. — Tyler 2014, pet. denied) (in dicta the court observes, "[b]ut when aggravated circumstances exist and reasonable efforts for reunification are not required by the family code, the ICWA requirements must still be satisfied because they provide a higher degree of protection than state law," an approach consistent with the generally strict interpretation of ICWA by Texas courts.)

EXPERT WITNESS

In re V.L.R., [No. 08-15-00250-CV](#), 2015 Tex. App. LEXIS 11848 (Tex. App. — El Paso, Nov. 18, 2015, no pet. h.) (caseworker without tribal membership, recognition by tribe of her substantial experience in the delivery of child and family services to Indians, or knowledge of the prevailing social and cultural standards and childrearing practices within the tribe, not a qualified expert).

Doty-Jabbaar v. Dallas County Child Protective Services, [19 S.W. 3d 870](#) (Tex. App. — Dallas, 2000, pet. denied) (without reference to the particular grounds for removal (cocaine exposed infant), court found social worker's nine and a half years of experience insufficient qualification as ICWA expert, citing the lack of evidence of social worker's education and familiarity with Indian culture and childrearing practices)

JURISDICTION/TRANSFER

Yavapai-Apache v. Mejia, [906 S.W.2d 152](#) (Tex. App. Tex. App.— Houston [14th Dist.] 1995, no writ) (error to use "best interests of the child" and the children's lack of contact with the tribe to determine good cause to deny transfer to tribal court; court approves use of a modified forum non conveniens doctrine, citing location of evidence and witnesses, to assess good cause and affirm denial of transfer, observing that "when a state court keeps a case in a concurrent setting, it is still required to apply the relevant sections of ICWA. In other words, avoiding tribal court jurisdiction does not render ICWA inapplicable.")

REMEDY FOR ICWA VIOLATION

In re V.L.R., [No. 08-15-00250-CV](#), 2015 Tex. App. LEXIS 11848 (Tex. App. — El Paso, Nov. 18, 2015, no pet. h.) (violation of ICWA requires reversal of termination judgment)

In re G.D.P., [2014 Tex. App. LEXIS 7477](#) (Tex. App. — Beaumont, 2014, no pet.) (parties agreed to reverse termination judgment based on violation of ICWA)

In re P.J.B., [No. 10-12-00286-CV](#), [2013 LEXIS 4076](#) (Tex. App. — Waco, March 28, 2013, no pet.) (no violation where appeal abated and trial court found ICWA did not apply)

In re J.J.C., [302 S.W. 3d 896](#) (Tex. App. — Waco 2009, no pet.) (trial court's failure to follow ICWA can be raised for the first time on appeal; appeal abated pending trial court determination of Indian child status; *disp. on merits*, 2010 Tex. App. LEXIS 2513 (Tex.

App.--Waco, April 7, 2010, no pet.) (mem. op.) (termination reversed and remanded based on determination that children were Indian children)

Doty-Jabbaar v. Dallas County Child Protective Services, [19 S.W. 3d 870](#) (Tex. App. — Dallas, 2000, pet. denied) (termination judgment reversed for failure to adhere to ICWA requirements)

STANDARD OF REVIEW

In re V.L.R., [No. 08-15-00250-CV](#), 2015 Tex. App. LEXIS 11848 (Tex. App. — El Paso, Nov. 18, 2015, no pet.h.) (where burden of proof is beyond a reasonable doubt in ICWA termination case, the Jackson v. Virginia standard requires review of evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found [25 U.S.C. § 1912\(d\)](#) and [25 U.S.C. § 1912\(f\)](#) were satisfied beyond a reasonable doubt)

3. Other State Courts

INDIAN CHILD STATUS

In re N.S., [837 N.W. 2d 680](#), 2013 LEXIS 723 (Iowa Ct. App. 2013) (where all three Ute tribes notified, two confirmed child was not a member and the third provided sufficient evidence for the court to conclude child was not a member, trial court properly concluded that ICWA did not apply)

In re Jack, [122 Cal. Rptr.3d 6](#) (Cal. Ct. App. 2011) (father and children's lack of tribal enrollment does not determine Indian child status; differences in tribal membership criteria and enrollment procedures mean that whether a child is an Indian child depends on "the singular facts of each case")

In re B.R., [97 Cal. Rptr. 890](#) (Ca. Ct. App. 2009) (where children's biological father had been adopted by Apache parent, error to allow tribe to determine Indian child status)

In re E.H., [46 Cal. Rptr.3d 787](#) (Cal. Ct. App. 2006) (mother's failure to repond to trial court's repeated exhortations that she disclose Indian heritage or to challenge social worker's report stating ICWA did not apply prompts court to observe "this is the most cynical and specious ICWA claim we have encountered." It is also worth noting that even on appeal, the mother did not assert that the children were subject to ICWA, but merely that the case should be reversed because the state agency and the court had made insufficient inquiries about whether ICWA applied to these children)

In re Gerardo A., [14 Cal. Rptr. 3d 798](#) (Cal. Ct. App. 2004) (error to find ICWA did not apply where child welfare department failed to share additional Indian heritage information with all proper tribes. Without available Indian family history information, neither the tribe nor the Bureau of Indian Affairs can investigate and determine if child is an "Indian child")

In re O.K., [130 Cal. Rptr. 2d 276](#) (Cal. Ct. App. 2003) (no reason to believe child is an Indian child where the only evidence is paternal grandmother's vague and speculative statement that child's father "may have Indian in him.")

EXPERT WITNESS QUALIFICATIONS

In re Diana P., [355 P.3d 541](#) (Alaska, Sept. 1, 2015) (where the basis for termination of parental rights is "culturally neutral," expert testimony combined with lay testimony can be sufficient to establish "serious emotional or physical damage.")

In re Shane, [842 N.W.2d 140](#) (Neb. Ct. App. 2013) (licensed mental health practitioner and certified professional counselor whose practice serving abused or neglected children and those with behavioral problems, includes Indian children, who has experience working with Indian youth at a youth shelter and at a high school program, qualifies as expert witness)

Brenda O. v. Arizona Dep't of Economic Security, [244 P.3d 574](#) (Ariz. Ct. App. 2010) (mental health professional qualified as expert witness, without extensive knowledge of prevailing social and cultural standards and childrearing practices of the Navajo where "there was no evidence at trial that Navajo culture or mores are relevant to the effect Brenda's demonstrated alcohol problem has on her children.")

Marcia V. v. Alaska, Office of Children's Services, [201 P.3d 496](#) (Alaska 2009) (legislative history suggests "expertise beyond the normal social worker qualifications" or "substantial education in the area of his or her specialty" are necessary but "[w]hen the basis for termination is unrelated to Native culture and society and when any lack of familiarity with cultural mores will not influence the termination decision or implicate cultural bias in the termination proceeding, the qualifications of an expert testifying under [25 U.S.C. § 1912\(f\)](#) need not include familiarity with Native culture.")

JURISDICTION/TRANSFER

In re Jayden D., [842 N.W. 2d 199](#) (Neb. Ct. App. 2014) (no good cause to deny transfer to tribal court where no evidence introduced regarding the current location of parent and children, the identity and location of witnesses, location of the tribal court, or the ease with which evidence might be presented in the tribal court)

In re C.L.J., [946 So.2d 880](#) (Ala. Civ. App. 2006) (order transferring case to tribal court reversed and remanded with directions to trial court to take evidence and to balance interests of witnesses, parent, child and the Chickasaw Nation before deciding whether to retain or transfer jurisdiction)

Navajo Nation v. Norris, [331 F.3d 1041](#) (9th Cir. 2003) (denial of tribe's challenge to adoption of Indian child based on state court's lack of jurisdiction affirmed, because Indian parents were not domiciliaries of the reservation at the time of the child's birth and as such, state court had concurrent jurisdiction)

PLACEMENT PREFERENCES

In re D.L., [298 P.3d 1203](#) (Ok. Civ. App. 2013) (tribal family failed to show good cause to deviate from the mandatory placement preferences, which give first preference to extended family, whether or not family is associated with a tribe)

In re Enrique P., [709 N.W.2d 676](#) (Neb. Ct. App. 2012) (in the absence of evidence showing good cause to deviate from placement preferences, court order to cease search for relative placements reversed)

Navajo Nation v. Arizona Dep't of Economic Security, Z., [284 P.3d 29](#) (Ariz. Ct. App. 2012) (good cause to deviate from placement preferences where infant placed in foster home at one month of age, removal would create severe distress, and family agreed to expose child to tribal culture; original placement was with extended family of alleged father later excluded as father)

ACTIVE EFFORTS TO REUNIFY

In re Tyrell B., [367 P.3d 881](#) (N.M. Ct. App., December 21, 2015) (no active efforts found where the Department created a service plan and referred the father to a parenting class but otherwise took a passive role and shouldered father with burden of locating and obtaining services and ensuring providers communicated with Department)

In re D.A., [305 P.3d 824](#) (Mont. 2013) (attempting to work around parent's incarceration, supervision, and chemical dependency problems, "[t]he Department's active efforts matched the Department's words in its desire to facilitate reunification.")

In re D.S., [806 N.W.2d 458](#) (Iowa Ct. App. 2011) (responding to tribe's statement that parents should be allowed up to five years additional time to reunify, court found active efforts to reunify were made, explaining "[w]hile ICWA focuses on preserving Indian culture, it does not do so at the expense of a child's right to security and stability.")

In re J.S.B., [691 N.W.2d 611](#) (S.D. 2005) ("we do not think Congress intended that ASFA's "aggravated circumstances" should undo the State's burden of providing 'active efforts' under ICWA.")

N.A. v. Alaska, [19 P.3d 597](#) (Alaska 2001) (citing long list of efforts by child welfare agency as well as Dept. of Corrections to address parent's substance abuse and reunify family, court concludes state's effort were not only active, but exemplary)

In re Leticia V., [97 Cal. Rptr.2d 303](#) (Cal. Ct. App. 2000) (active efforts does not require duplicative reunification services or the performance of idle acts; where parent failed to respond to substantial but unsuccessful efforts to address drug problem in one child's case, repeating those efforts for the same parent in another child's case is not required)

REMEDY FOR ICWA VIOLATION

In re S.E., 158 Cal. Rptr. 497 (Cal. Ct. App. 2013) (failure to investigate child's Indian heritage and provide information to the tribe requires reversal of guardianship order and remand)

In the Matter of Erin G., 140 P.3d 886 (Alaska 2006), 127 S.Ct. 591 (2006, cert. denied) (although ICWA contains no statute of limitations for a petition to invalidate , state law limiting challenge of adoption decree not based on fraud or duress to one year applied in the absence of explicit congressional intent to impose no time limit on such actions)

L. RESOURCES

Indian Child Welfare Act Checklists, National Council of Juvenile and Family Court Judges, <http://www.ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf>

THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

This chapter is an overview of the Interstate Compact on the Placement of Children (ICPC).

The ICPC is a model contract that was drafted in 1960, and is legally binding on all states that adopt it. Texas adopted the ICPC in 1995 and it is codified at [Tex. Fam. Code § 162.102](#). The purpose of the ICPC is to ensure that children placed out of their home state receive the same protections and services that would be provided, if they remained in their home state.

To see any specific ICPC regulations mentioned throughout this chapter, please link to the ICPC regulations here:

<http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html>

CPS ICPC policy can be found here:

<https://www.dfps.state.tx.us/handbooks/CPS/Menu/MenuCPS9000.asp>

Some recent efforts to improve the Texas ICPC process include:

- The overall processing of expedited home study requests
- Regional ICPC coordinators have been tasked to assist Texas caseworkers with the ICPC process
- Texas ICPC/State office and Regional ICPC coordinators are promoting on-line easily accessible ICPC training
- Texas ICPC/State Office created a spreadsheet to use jointly with the ICPC regional coordinators to routinely track and check for the status of outgoing home study requests

DFPS is tracking the timeliness of outgoing requests

A. Purpose of the ICPC

The purpose of the ICPC is to protect the child and the party states in the interstate placement of children so that:

- The child is placed in a suitable environment;
- The receiving state has the opportunity to assess that the proposed placement is not contrary to the interests of the child and that its applicable laws and policies have been followed before it approves the placement;

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- The sending state obtains enough information to evaluate the proposed placement;
 - The care of the child is promoted through appropriate jurisdictional arrangements; and
 - The sending agency or individual guarantees the child legal and financial protection.

B. ICPC Applicability

Generally, it applies to any interstate placement of a child over whom the court has jurisdiction. ICPC applies to the following:

- Placements that are preliminary to an adoption whether public or private adoption
- Placements in a licensed or approved foster home, including related and unrelated caregivers
- Placements with parents and relatives when a parent or relative is not making the placement (i.e., the parent does not have legal custody / right to make the placement)
- Placements in group homes or residential placement, including accused or adjudicated delinquents placed in institutions in other states

1. The ICPC does not apply to the following:

- Birth parents placing with a non-custodial birth parent, or a relative as long as no court has assumed jurisdiction of the child to be placed
- Relatives placing with birth parents or another relative as long as no court has assumed jurisdiction of the child to be placed
- A Court with jurisdiction that transfers the child to a non-custodial parent, AND:
 - does not have evidence before it that such parent is unfit;
 - does not seek such evidence; and
 - does not retain jurisdiction over the child after the court places the child
 - note that the receiving state has no responsibility for supervision or monitoring a placement made under these circumstances
- Placements into schools where the primary purpose for the placement is educational
- Placements into medical and mental facilities
- Tribal Placements (See the Indian Child Welfare Act section below)
- Visits, as long as the visit meets the definition under the ICPC Section I.D.3 (See also Visit vs. Placement section below).

In March 2016, DFPS updated its policy related to placing children with an out-of-state parent. DFPS will not initiate an ICPC home study request on a non-offending, non-custodial parent residing in another state, unless it is ordered to do so by the court with jurisdiction over the SAPCR. The new policy related to out of state placements with non-offending parents is found at Section 9300.⁹³

C. Jurisdiction vs. Process

When a case comes before a juvenile or family court, the issue of jurisdiction will always precede the question of whether the ICPC applies. Thus, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), and the Parental Kidnapping Prevention Act (PKPA) must be considered to determine whether the court and child welfare agency have continuing jurisdiction over child custody, which is precedent to the question of authority to place a child out-of-state. Case law in *J.D.S. v. Franks* differentiates between the jurisdictional components of the UCCJA and the purview of the ICPC. *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995). In *Franks*, the Supreme Court of Arizona explained that the compliance with the ICPC is not a prerequisite for exercising jurisdiction because the ICPC merely establishes a procedure to follow when a placement is made. Thus, the validity of a court's exercise of jurisdiction depends on the UCCJA (or UCCJEA) and PKPA. *Franks* spells out that the ICPC governs procedure, whereas the UCCJA (or UCCJEA) and PKPA govern jurisdiction. Likewise, in *White v. Adoption of Baby Boy D.*, the Supreme Court of Oklahoma held that the ICPC does not negate subject matter jurisdiction. *White v. Adoption of Baby Boy D.*, 2000 OK 44, 10 P.3d 212 (Okla. 2000).

D. Court Leadership

The National Council of Juvenile and Family Court Judges recommends close judicial monitoring to ensure the case is moving according to the ICPC timeframes. Special hearings may be required to ensure that certain activities are completed in a timely manner. Lack of understanding of the ICPC and its requirements is often cited as a problem that causes delays in an ICPC placement. Other delays are built into the ICPC process itself.

Special Issue: Many receiving states routinely deny home studies, especially on non-custodial parents, and there is no appeal process – a highly criticized flaw in the ICPC. Judges should consider directly contacting the judge in the receiving jurisdiction to ask for assistance in completing the ICPC process in the receiving state and with home studies that are stalled or denied without sufficient explanation and no recourse for reconsideration.

E. Expedited Placement Request

Under certain conditions, a court may request an expedited placement review. Cases involving a child who is under the jurisdiction of a court are eligible, if at least one of the following criteria is met:

- There is unexpected dependency due to a sudden or recent incarceration, incapacitation or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental or physical condition of a parent or guardian;
- The child sought to be placed is four years of age or younger, and can include older siblings sought to be placed with the same proposed placement resource;
- The court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or
- The child is currently in an emergency placement.

Expedited placement option is not available where:

- The child has already been placed in the receiving state in violation of the ICPC, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with Reg. No. 9; or
- The intention of the sending state is to place the child for licensed or approved foster care or adoption.

Expedited placement, like the ICPC, does not apply at all when:

- The court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.

It is not within a judge's discretion to make all orders expedited. The situation must fit those criteria outlined in ICPC Regulation 7 for priority placement to be available; it is not a matter of discretion for judges. See [explanation of Regulation VII, updated in October 2011](#) and a [suggested court order to be used when seeking expedited placement](#) for more information.⁹⁴

F. Visits vs. Placement

Although some judges feel that it is within their discretion to grant “extended visits,” these may actually be deemed an illegal placement with significant consequences. ICPC Regulation 9 defines a “visit,” which is distinguished from a placement on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child’s place of abode. For example, if the purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a camp stay or visit with a friend or relative, and is less than 30 days, it will be presumed to be a visit. A stay of more than 30 days, but not longer than the duration of a school vacation period, can also be considered a visit. A stay that does not have a terminal date will be considered a proposed placement. Once a home study or supervision request has been made by the sending agency, there is a rebuttable presumption that the intent of any stay in the receiving state that exceeds 30 days is for placement and not simply a visit.

G. ICPC and Victims of Domestic Sex Trafficking

According to a Juvenile Law Advisory Committee Brief on the ICPC and Domestic Child Sex Trafficking issued by the National Council of Juvenile and Family Court Judges in 2014, and in the context of child sex trafficking victims, the ICPC is often implicated in trying to place victims in the few facilities that can provide the extensive services needed for trafficking survivors. As the needs of this population are complex and expensive, only a limited number of residential institutions can provide this high level of care. Services for victims often require multi-systemic and long-term care, and the cost of housing a child in a residential facility can be expensive. Additionally, the operation of residential facilities is legally and practically complicated, and unfeasible for many poor, small or rural counties. Thus child sex trafficking victims may not have a variety of placements which fit their needs, forcing placing agencies to look outside the home state. There are various organizations that also recommend victims be removed from the original geographic area of exploitation during restorative services. There are only a handful of facilities throughout the country that specifically provide placement and services for trafficking victims.

H. The Indian Child Welfare Act and the ICPC

Because the ICPC is a compact adopted by states as state law, the federal Indian Child Welfare Act (ICWA) preempts conflicting state law. Thus, the ICPC does not apply to interstate placements of an Indian child if the placement is being made within an Indian reservation unless:

- The tribal government requests ICPC services;
- The tribe has adopted the ICPC; or
- The tribe has an existing Title IV-E agreement with the state requiring ICPC compliance.

If an Indian child is being placed interstate but not within a reservation, the ICPC applies to that placement. However, the placement requirements of ICWA preempt any ICPC requirements that interfere with or impede the implementation of the placement required by ICWA. See [Bench Book chapter on the Indian Child Welfare Act](#) for information about placement preferences and requirements when ICWA is involved.

I. Additional Resources

[ICPC: A Manual and Instructional Guide for Juvenile and Family Court Judges, NCJFCJ](#) located at http://www.ncjfcj.org/sites/default/files/ICPCManualandGuideFullDoc_0.pdf.

Vivek Sankaran, [Foster Kids in Limbo: The Effects of the Interstate Compact on the Placement of Children on the Permanency of Children in Foster Care](#) (2014) located at <http://www.law.umich.edu/centersandprograms/pcl/Documents/Final%20Summary%20to%20Casey.pdf>

Child Welfare Information Gateway, Legal and Court Issues Regarding Inter-jurisdictional Placements located at <https://www.childwelfare.gov/topics/permanency/interjurisdictional/legal/>

Leading Cases:

Rejecting the argument of prospective adoptive parents, residents of Colorado, with whom a child had been placed by the child's Texas managing conservator, that the Colorado court where the petition for adoption was pending had jurisdiction over the child, a Texas Court of Appeals in *Unger v. Baker*, [01-89-00803-CV](#) (Tex. App. Houston 1st Dist. Aug. 18, 1989)(unpublished), held that under Article V(a) of the ICPC, the managing conservator, as the sending agency, retained jurisdiction over the child because the child had not yet been adopted. Therefore, the child was subject to the jurisdiction of the Texas trial court in which the managing conservator had filed a motion to remove the child from the temporary placement with the prospective adoptive parents and overruled the prospective adoptive parents' motion for leave to file mandamus seeking rescission of the Texas trial court's order overruling their special appearance to contest the Texas court's jurisdiction.

[Washington State ICPC case](#), *In the Matter of the Dependency of D.F.M.*, [157 WA. App. 179](#) (Wash. Ct. App. 2010). Located at <http://www.washapp.org/Opinion.aspx?id=148>.

ICPC Regulations:

<http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html>

INTERVENTIONS IN CPS CASES

In CPS cases, legal interventions raise a number of issues. This chapter addresses:

- Standing requirements for non-parties to intervene in CPS legal cases and in cases with other stages of CPS involvement
- Considerations in responding to interventions filed
- Special issues when addressing an intervention in a CPS case

A. Standing

There are two avenues for a non-parent party to establish standing in a SAPCR:

- Standing to file an original suit
- Standing to intervene in a pending suit

1. Standing to File Original Suit

[Tex. Fam. Code Section 102.003](#) provides that an original suit may be filed at any time by:

- A parent of the child;
- The child through a representative authorized by the court;
- A custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- A guardian of the person or of the estate of the child;
- The Department of Family and Protective Services;
- A licensed child placing agency;
- A man alleging himself to be the father of a child filing in accordance with [Tex. Fam. Code Chapter 160](#), subject to the limitations of that chapter, but not otherwise;
- A person other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;
- A person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under [Tex. Fam. Code Chapter 161](#) or to whom consent to adoption has been given in writing under [Tex. Fam. Code Chapter 162](#);

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- A person with whom the child and the child’s guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child’s guardian, managing conservator, or parent is deceased at the time of the filing of the petition;
 - A person who is the foster parent of a child placed by the Department of Family and Protective Services in the person’s home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition;
 - A person who is a relative of the child within the 3rd degree of consanguinity, as determined by [Tex. Gov’t Code Chapter 573](#), if the child’s parents are deceased at the time of the filing of the petition; or
 - A person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under [Tex. Fam. Code § 102.0035](#), regardless of whether the child has been born. [Tex. Fam. Code § 102.003\(a\)](#).

In computing the time necessary for standing under [Tex. Fam. Code § 102.003\(a\)\(9\)](#), [Tex. Fam. Code § 102.003\(a\)\(11\)](#), and [Tex. Fam. Code § 102.003\(a\)\(12\)](#), the court may not require that the time be continuous and uninterrupted but shall consider the child’s principal residence during the relevant time preceding the date of commencement of the suit. [Tex. Fam. Code § 102.003\(b\)](#).

Notwithstanding the time requirements of [Tex. Fam. Code § 102.003\(a\)\(12\)](#), a person who is the foster parent of a child may file a suit to adopt a child for whom the person is providing foster care at any time after the person has been approved to adopt the child. The standing to file suit under [Tex. Fam. Code § 102.003\(a\)\(12\)](#) applies only to the adoption of a child who is eligible to be adopted. [Tex. Fam. Code § 102.003\(c\)](#).

Common Avenues for Original Standing in CPS Cases

2. Actual Care, Control and Possession

[Tex. Fam. Code § 102.003\(a\)\(9\)](#) provides standing to a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.

a. Time-Specific in Applicability

- No standing when child in home for only five and a half months at time of filing (*In the Interest of E.C.*, [No. 02-13-00413-CV](#) (Tex. App. – Fort Worth [2nd District] August 7, 2014)).
- No standing when child in home for only three months at time of filing (*In re C.M.J.*, [No. 02-12-0036-CV](#) (Tex. App. – Fort Worth, December 2012, no pet.)).

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- b. Elements of “Actual Care, Control, and Possession.” Under *Jasek v. Texas Department of Family and Protective Services*, the court looked to the composite elements of the care, control, and possession in reaching its decision, considering:
- The individual asserting standing under [Tex. Fam. Code § 102.003\(a\)\(9\)](#) will have:
 1. Lived in a home where the child consistently and frequently stayed overnight;
 2. Financially supported the child;
 3. Participated in the child’s education; and
 4. Fed, clothed, and provided health care to the child.
 - “Actual control” does not require the authority to make legal decisions for the child (*Jasek v. Texas Department of Family and Protective Services*, [348 S.W.3d 523](#) (Tex. App. – Austin 2011, no pet.)).

3. Standing to Request Termination and Adoption

An original suit requesting only an adoption or for termination of the parent-child relationship joined with a petition for adoption may be filed by:

- A stepparent of the child;
- An adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period preceding the filing of the petition;
- An adult who has had actual possession and control of the child for not less than two months during the three-month period preceding the filing of the petition;
- An adult who has adopted, or is the foster parent of and has petitioned to adopt, a sibling of the child; or
- Another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so. [Tex. Fam. Code § 102.005](#).

4. Standing for a Grandparent or Other Person

In addition to the general standing to file suit provided by [Tex. Fam. Code § 102.003](#), a grandparent, or other relative of the child related within the third degree of consanguinity, may file an original suit requesting managing conservatorship if there is satisfactory proof that:

- The order requested is necessary because the child’s present circumstances would significantly impair the child’s physical health or emotional development; or

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- Both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit. [Tex. Fam. Code § 102.004\(a\)](#).
 - a. Relatives and degrees of consanguinity:
 - A parent or child (relatives of the first degree)
 - A brother, sister, grandparent, or grandchild (relatives of the second degree)
 - A great-grandparent, great-grandchild, aunt who is a sister of a parent of the child, an uncle who is the brother of a parent of the child, a nephew who is the child of a brother or sister of the child, or a niece who is a child of a brother or sister of the child (relatives of the third degree). [Tex. Gov't Code § 573.023\(c\)](#).
 - b. Limits on [Tex. Fam. Code § 102.004\(a\)](#) Standing
 - Step-grandfather excluded (*In the Interest of E.C.*, [No. 02-13-00413-CV](#) (Tex. App. – Ft. Worth [2nd District] August 7, 2014))
 - Step-uncle excluded (*In re A.M.S.*, [277 S.W.3d 92](#) (Tex. App. – Texarkana 2009, no pet.))
 - Great-aunt or great-uncle excluded (*In re N.L.D.*, [412 S.W.3d 810](#) (Tex. App. – Texarkana 2013, no pet.))
 - c. Proving Significant Impairment pursuant to [Tex. Fam. Code § 102.004\(a\)](#)
 - Significant impairment of child's physical health and emotional development found with evidence of parental drug use and criminal convictions and incarceration. (*In re K.D.H.*, [426 S.W.3d 829](#) (Tex. App. – Houston [14th Dist.] April 3, 2014, no pet.))
 - Significant impairment of child's physical health and emotional well-being found with evidence of physical and emotional abuse of the child even if the last alleged incident occurred months before the filing of the petition when the parent's ideas regarding discipline had not changed during the period and the parent had not received any counseling or other services during that time to mitigate the risk of continued abuse. *In re McDaniel*, [408 S.W.3d 389](#) (Tex. App. – Houston [1st Dist.] 2011)
 - Significant impairment of emotional development found where a parent fails to send their child to school on a regular basis and fails to provide necessary therapeutic interventions for a child with poor school performance and behavioral issues. *Maudlin v. Clements*, [428 S.W.3d 247](#) (Tex. App. – Houston 2014)
 - d. Applicability and Implications of [Tex. Fam. Code § 102.004\(a\)](#) in CPS Cases

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- Avenue for grandparents and other relatives within the requisite degree of consanguinity to file for custody of a child in an investigation or Family Based Safety Services stage of a CPS case
 - An original action for conservatorship under [Tex. Fam. Code § 102.004\(a\)](#) does not have the rehabilitative and service requirements of a CPS case or the same strict timelines

B. Standing to Intervene in a Pending Suit

An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person deemed to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if there is satisfactory proof to the court that the appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child’s physical health or emotional development. [Tex. Fam. Code § 102.004\(b\)](#).

1. [Tex. Fam. Code § 102.004\(b\)](#) Applies Only to Pending SACPRs

- A grandparent or other person can only utilize [Tex. Fam. Code § 102.004\(b\)](#) in SACPRs that have not yet resulted in a final order.
- In the context of CPS cases, the SACPR is no longer pending once DFPS is appointed PMC of the child.

2. Requirements of [Tex. Fam. Code § 102.004\(b\)](#)

- The grandparent or other person must establish that they have had substantial past contact with the child; and
- The grandparent or other person must present satisfactory proof to the court that the appointment of the parent or parents as sole or joint managing conservators would significantly impair the child’s physical health and emotional development.

3. Case Law related to Substantial Past Contact

Special Issue: The determination of whether substantial past contact exists is a fact-intensive inquiry. The determination is not statutorily defined and case law does not establish a clear factual framework for judges to make the determination. Deference is usually given to the trial court’s assessment.

Courts have applied the standard definition of “substantial” from the Random House Dictionary as “of ample or considerable amount, quantity, size, etc.” and have evaluated

the amount of actual contact and not the difficulties of the intervening party maintaining contact. (*In re C.M.C.*, [192 S.W.3d 866](#) (Tex. App. – Texarkana 2006, no pet.))

“Substantial past contact” has been found to involve more than seeing a child regularly during his or her life. Substantial past contact has been shown by parties who have “frequently cared for the children, lived nearby, and spent a great deal of time with the family. (*Blackwell v. Humble*, [241 S.W.3d 707](#) (Tex. App. – Austin 2007, no pet.))

Relatives who have cared for a child for as few as 7 weeks have been found to have substantial past contact. The Court’s analysis focused on the caretaker’s daily supervision of the child during that time and found the intervening party to have established substantial past contact in undertaking the daily functions of legal custody during that time. (*In re A.L.W.*, [No. 02-11-00480-CV](#) (Tex. App. – Fort Worth Nov. 8, 2012, pet. denied)(mem. op.))

4. Evidence that Appointment of Parent(s) as Managing Conservator would Significantly Impair the Child’s Physical Health and Emotional Development

A person with substantial past contact with a child will be unable to show evidence that the appointment of a parent as the managing conservator when facts show only speculation of potential harm if the parent is appointed conservator. (*In re S.M.D.*, [329 S.W.3d 8](#) (Tex. App. – San Antonio, 2010, pet. dismissed))

5. “Significant Impairment” during Reunification Phase of a CPS Case

Alleged father who had independently raised the child for 2 and a half years submitted to paternity testing and was dismissed as a party to the case after genetic testing ruled him out as the father. He intervened alleging substantial past contact. He was denied leave to intervene because he failed to show that the appointment of the mother as sole managing conservator would significantly impair the child’s physical health and emotional development. Testimony offered by the Department at multiple hearings had shown that she had complied with all court orders and service plan requirements, that the child had already been placed with her and that the Department was recommending dismissal of the case. The Court of Appeals found no abuse of discretion in the trial court’s refusal to grant leave to intervene. (*L.J. v. Texas Department of Family & Protective Services*, [No. 03-11-00435-CV](#) (Tex. App. – Austin, August 1, 2012, pet. denied) (mem. op.))

C. Foster Parent Interventions

1. Generally, Two Avenues to Seek to Intervene in CPS Proceedings

- General standing provision, [Tex. Fam. Code § 102.003 \(a\)\(12\)](#)

an original suit may be filed at any time by a person who is a foster parent of a child placed by the Department of Family and Protective Services in the persons home

for at least 12 months ending not more than 90 days preceding the date of the filing of the petition

OR

- Established through:
 - [Tex. Fam. Code § 102.004\(b\)](#),
 - showing of Substantial Past Contact, and
 - satisfactory proof to the court that the appointment of a parent as Sole Managing Conservator or both parents as Joint Managing Conservators would significantly impair the child’s physical health or emotional development

2. Foster Parents Showing of Substantial Past Contact

Foster parents who had the children for 4 months had established substantial past contact under [Tex. Fam. Code § 102.004\(b\)](#). They did not have to show standing under [Tex. Fam. Code § 102.003\(12\)](#). (*In re Salverson*, No. 01-12-00343-CV (Tex. App. – Houston, April 23, 2012, no pet.) (mem. op.))

Foster parents who had the children placed in their care for almost 22 months at the time the intervention was filed had substantial past contact under [Tex. Fam. Code § 102.004\(b\)](#). (*In re A.B.*, 412 S.W.3d 588 (Tex. App. – Fort Worth 2013), aff’d No. 13-0749 (Tex. May 16, 2014))

Foster parents had standing under [Tex. Fam. Code § 102.004\(b\)](#) because the child had been in their care for all but the first 7 days of the child’s life, for a total of 15 months, at the time their intervention was filed. (*In re N.L.G.*, 238 S.W.3d 828 (Tex. App. – Fort Worth 2007, no pet.))

D. Limitations on Standing

1. [Tex. Fam. Code § 102.006](#) and Limitations on Standing

Except as provided by [Tex. Fam. Code § 102.006\(b\)](#) and [Tex. Fam. Code § 102.006\(c\)](#), if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:

- A former parent whose parent-child relationship has been terminated by court order;
- The father of the child; or

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- A Family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or the father of the child. [Tex. Fam. Code § 102.006\(a\)](#).

The limitations on filing suit imposed by [Tex. Fam. Code § 102.006](#) do not apply to a person who:

- Has a continuing right to possession of or access to the child under an existing court order; or
- Has the consent of the child’s managing conservator, guardian, or legal custodian to bring the suit. [Tex. Fam. Code § 102.006\(b\)](#).

The limitations on filing suit imposed by [Tex. Fam. Code § 102.006](#) do not apply to an adult sibling of the child, a grandparent of the child, an aunt who is the sister of a parent of the child, or an uncle who is the brother of a parent of the child if the adult sibling, grandparent, aunt, or uncle files an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated. [Tex. Fam. Code § 102.006\(c\)](#).

Courts have affirmed that [Tex. Fam. Code § 102.006\(c\)](#) serves to limit the standing of particular individuals when the parent-child relationship has been terminated; it does not confer standing. (*In re N.A.D.*, [397 S.W.3d 747](#) (Tex. App. – San Antonio 2013, no pet.)) and (*L.H. v. Texas Dep’t of Family and Protective Services*, [No. 03-13-00348-CV](#) (Tex. App. – Austin Mar. 6, 2014, no pet.)).

Special Issue: [Tex. Fam. Code § 102.006\(c\)](#) may have practical effects for judges:

- Narrows the class of individuals who would otherwise have standing to file an original proceeding for modification or adoption.
- Restricts time period for filing.
- Note that the legal avenues for adoption and modification may impose obstacles even to those who have standing and who file within 90 days.

2. Consequences of Missing 90-Deadline

Even parties who would otherwise have standing will lose that standing if they fail to file their petition for custody or adoption within 90 days.

Petition to adopt children by aunt with substantial past contact filed 7 months after parental rights were terminated was barred by Section 102.006(c) because it had not been filed within 90 days of the termination order. (*In re A.M.*, [312 S.W.3d 76](#) (Tex. App. – San Antonio 2010, pet. denied)).

E. Petitions to Modify the Parent-Child Relationship

1. Procedural Requirements of [Tex. Fam. Code § 156.102](#) Applicable

If a suit seeking to modify the designation of the person having the exclusive right to designate the primary residence of a child is filed not later than one year after the earlier of the date of the rendition of the order or the date of the signing of a mediated or collaborative law settlement agreement on which the order is based, the person filing the suit shall execute and attach an affidavit as provided by [Tex. Fam. Code § 156.102\(b\)](#). [Tex. Fam. Code § 156.102\(a\)](#).

The affidavit must contain, along with supporting facts, at least one of the following allegations that:

- The child's present environment may endanger the child's physical health or significantly impair the child's emotional development;
- The person who has the exclusive right to designate the primary residence of the child is the person seeking or consenting to the modification and the modification is in the best interest of the child; or
- The person who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for at least six months and the modification is in the best interest of the child. [Tex. Fam. Code § 156.102\(b\)](#).

The court shall deny the relief sought and refuse to schedule a hearing for modification under this section unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation listed in [Tex. Fam. Code § 156.102\(b\)](#) are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, the court shall set a time and place for the hearing. [Tex. Fam. Code § 156.102\(c\)](#).

2. Modifications of Termination Orders in CPS Proceedings

Modifications must include a sworn affidavit that shows that the child's present environment may endanger the child's physical health or emotional development.

Grandparents filed Petition to Modify the Parent-Child Relationship immediately following the termination of parent-child relationship proceeding to which they were not parties and cited [Tex. Fam. Code § 102.006\(c\)](#) as basis for standing. No affidavit was attached. DFPS filed a Motion to Dismiss based on failure to attach the required affidavit under [Tex. Fam. Code § 156.102](#). Trial court dismissed suit and 4th Court of Appeals upheld dismissal finding [Tex. Fam. Code § 102.006](#) did not confer standing and the procedural requirements of [Tex. Fam. Code § 156.102](#) applied in cases where a modification of the Department's conservatorship of a child is sought. (*In re N.A.D.*, [397 S.W.3d 747](#) (Tex. App. – San Antonio 2013, no pet.)).

Special Issue: *In re N.A.D.* may present practical implications for the court:

- Modification of an order entered only 90 days earlier may require facts that establish that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development.
- Modification facts may be difficult to establish if, as part of Trial Court findings at termination of parent rights proceedings, that the child's current placement is meeting the child's needs and continuation is in the best interest of the child.

F. Practical Considerations

1. Timing

a. Some courts have successfully struck interventions as untimely if filed too close to the dismissal deadline.

Grandmother filed petition in intervention 2 months before dismissal date when permanency plan changed from reunification to termination although she had been aware of the case for over a year. Motion to Strike granted and affirmed by Appellate Court as within the discretion of the Court. (*In re C.A.L.*, [No. 02-05-308-CV](#), 2007, orig. proceeding) (mem. op.)).

Grandfather who lived in Kentucky filed an intervention 2 months before trial. (Waiting to file an intervention when out of state and ICPC study required problematic). (*Anderson v. Texas Dep't of Family and Protective Services*, [No. 03-06-00327-CV](#) (Tex. App. – Austin May 9, 2007, pet. denied (mem. op))).

b. Court should balance the complication of the issues in the case and the rights of the intervening party.

A trial court abuses its discretion if it strikes a petition in which (1) the intervener could bring the same action, or any part thereof, in their own names, (2) the intervention will not complicate the case by an excessive multiplication of the issues, and (3) the intervention is almost essential to effectively protect the interveners' interest. In applying that analysis, the court found that even though the intervention was filed only 2 weeks before trial that the intervening party had standing and should have been allowed to participate in the trial. (*Seale v. Texas Dept. of Family & Protective Services*, [No. 01-10-00440-CV](#) (Tex. App. – Houston [1st Dist.] Mar. 3 2011, no pet.) (mem. op.)).

2. Procedural Issues

a. Effect of Intervention

Rule 60 of the Texas Rules of Civil Procedure provides that “any party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party.” Thus, intervening parties, absent a Motion to Strike, are immediately granted the status of a party and can participate in discovery, participate in hearings and mediations, and receive court reports, and other filings with the court. [Tex. Rule Civ. P. 60.](#)

b. Leave of Court

The court may grant a grandparent or another person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under [Tex. Fam. Code Chapter 102](#) if there is satisfactory proof to the court that appointment of a parent would significantly impair the child’s physical health or emotional development. [Tex. Fam. Code § 102.004\(b\).](#)

Following the plain language of the statute, the court finds a request for leave to intervene is necessary under [Tex. Fam. Code § 102.004\(b\)](#) and that the Intervener’s Amended Petition for Intervention which requested that the court “grant the relief requested in this intervention” be read as a request for leave to intervene. (*In the Interest of A.T.*, [No 14-14-00071-CV](#), (Tex. App. – Houston, July 15, 2014, (no pet.) (mem. op.))

Court found that [Tex. Rule Civ. P. 60](#) does not apply to interventions filed under [Tex. Fam. Code § 102.004\(b\)](#). Court noted that the legislature developed a separate provision governing interventions in family law cases and gave the trial court discretion to determine whether to allow an intervention even when the statutory requirements are met. Court then found that no written motion to strike was required. (*L.J. v. Texas Department of Family & Protective Services*, [No. 03-11-00435-CV](#) (Tex. App. – Austin Aug. 1, 2012, pet. denied) (mem.op.)).

c. Imperfect Pleadings Can Establish Standing

Appellate courts review standing issues by construing the pleadings in favor of the petitioner and by looking to the pleader’s intent

Question is whether a party provides other parties and the Court fair notice of his or her claim. (*Jasek v. TDFPS*, [348 S.W.3d 523](#) (Tex App. – Austin 2011, no pet.)); *In the Interest of D.A.*, [No. 02-14-00265-CV](#) (Tex. App. – Fort Worth, February 5, 2015) (mem. op.); *In the Interest of N.I.V.S.*, [No. 04-14-00108-CV](#) (Tex. App. – San Antonio, March 11, 2015) (mem. op.)

G.Resources

[Interventions: Tips for Properly Filing and Responding to Interventions in CPS Cases, 2015 Child Welfare Judges Conference.](#)

Interventions in Suits Affecting the Parent-Child relationship – Mary Evelyn McNamara and Karen J. Langsley, State Bar of Texas 40th Annual Advanced Family Law Course, August 4-7, 2014.

PERMANENCY CARE ASSISTANCE (PCA)

A. What Is Permanency Care Assistance?

The Permanency Care Assistance (PCA) Program provides certain benefits and supports to qualifying kinship families who take permanent managing conservatorship (PMC) of a child. PCA families are eligible for:

- Monthly cash assistance similar to adoption assistance;
- Medicaid health coverage; and
- A one-time reimbursement of nonrecurring expenses, including legal fees, incurred in the process of obtaining custody of the child, up to a maximum of \$1,200.

The maximum monthly payments are the same as those for adoption assistance and depend upon the child's authorized service level at the time the PCA is negotiated. [Tex. Fam. Code § 264.852\(a\)](#). Caregivers who apply must be:

- Related to, or has a longstanding relationship with, the child / children before the child is placed; and
- Verified by a child placing agency, and provide verified foster care for the child for at least six months AFTER verification and BEFORE the court awards PMC and dismisses the case.

DFPS may enter into a PCA Agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets the eligibility criteria under federal and state law and DFPS rule. [Tex. Fam. Code § 264.852\(b\)](#). A court may not order DFPS to enter into a PCA agreement with a kinship provider unless the kinship provider meets the eligibility criteria under federal and state law and DFPS rule, including the requirements relating to criminal history background check of a kinship provider. [Tex. Fam. Code § 264.852\(c\)](#).

B. What Should Courts Do?

Before awarding permanent managing conservatorship to a kinship caregiver under this program and dismissing DFPS from a case, the court should ensure that:

- DFPS has determined that reunification and adoption are not appropriate permanency options for the child;
- The caregiver is verified (verified is not the same thing as licensed. DFPS licenses child placing agencies, and in turn, child placing agencies verify foster homes);

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- The child has been placed with the verified kin for at least six months following the date of the verification; and
 - DFPS and the kinship caregiver have signed a PCA Agreement and it is on file PRIOR to the award of PMC to the caregiver – the child must be in the temporary or permanent managing conservatorship of DFPS on the day before PMC is transferred to the relative.

The one-year deadline to dismiss a case still applies. For example, if the 12-month deadline is approaching, and a child has not lived with his or her verified caregiver for at least six months after the verification, the case must be extended under [Tex. Fam. Code § 263.401](#) or permanent managing conservatorship must be awarded to DFPS in order to allow sufficient time to satisfy the 6-month verified foster care requirement prior to the relative being awarded PMC.

If a sibling is placed by CPS in the home of a child who is already the subject of a PCA agreement, the sibling is automatically eligible for PCA benefits. If the caregiver and DFPS agree on the appropriateness of the arrangement; and if DFPS has temporary or permanent managing conservatorship of the joining sibling at the time the agreement is signed, the family must enter into a PCA agreement for the sibling BEFORE the court awards PMC of the sibling to the kin/caregiver and dismisses DFPS from the case.

A caregiver receiving PCA is not eligible for the Relative and Other Designated Caregiver Program. Relatives who do not meet the eligibility criteria under the PCA program can continue to take advantage of the Relative and Other Designated Caregiver Program.

The maximum monthly amount of assistance payments under a PCA agreement may not exceed the amount of the monthly foster care maintenance payment DFPS would pay to a foster care provider caring for the child for whom the kinship provider is caring. [Tex. Fam. Code § 264.854](#).

C. How Does PCA Affect Older Youth?

Extended PCA benefits are available to eligible youth to permit them to remain eligible for PCA through the month in which they turn 21. Youth in this category can also apply for educational training vouchers (ETVs) for vocational or college pursuits, by contacting regional PAL staff.

If DFPS first entered into a PCA agreement with a youth's kinship provider after the child's 16th birthday, DFPS may continue to provide PCA payments until the last day of the month of the youth's 21st birthday under [Tex. Fam. Code § 264.855](#), provided the youth or permanent managing conservator submits documentation sufficient to establish that the youth:

- Regularly attends high school (or a program leading toward a high school diploma or high school equivalency certificate);

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- Regularly attends an institution of higher education (or a postsecondary vocational or technical program);
 - Works at least 80 hours a month;
 - Participates in a program or activity that promotes employment or removes barriers to it; or
 - Is incapable of performing the activities described above because of a documented medical condition.

Currently, the PCA program will expire on August 31, 2017, unless the Texas Legislature extends the program. If the program is not extended, DFPS will not be able to enter into PCA Agreements after August 31, 2017, but shall continue to make payments after that date under a PCA agreement entered into on or before August 31, 2017, according to the terms of the agreement. [Tex. Fam. Code § 264.857](#).

The Preventing Sex Trafficking and Strengthening Families Act, federal legislation passed by U.S. Congress on September 29, 2014, allows for the preservation of a child's eligibility for PCA payments in the event the caregiver dies or becomes incapacitated if a PCA-Successor (a person appointed to permanently care for your child in the event that the caregiver is no longer able) replaces the caregiver as the child's legal guardian.

PCA payments may continue to a PCA-Successor if all of the following conditions are met:

- The kinship caregiver completes an amendment to the Permanency Care Assistance Agreement to name a potential PCA-Successor to receive PCA benefits on the child's behalf in the event of their death or incapacitation.
- The PCA-Successor submits to DFPS the required background check information and that information meets DFPS standards.
- The PCA-Successor signs a Permanency Care Assistance Agreement with DFPS.
- The PCA-Successor submits to DFPS proof demonstrating that he or she has been given legal custody of the child by the court.

The PCA-Successor cannot begin receiving PCA payments from DFPS until he or she has signed a Permanency Care Assistance Agreement and has assumed legal custody of the child. If the PCA-Successor signs the Permanency Care Assistance Agreement after being given legal custody of the child by the court, DFPS may grant retroactive benefits back to the date legal custody was granted, for a period not to exceed 12 months.

The terms and conditions of the PCA Agreement originally signed by the kinship caregiver will also apply to the PCA-Successor.

D. What About Social Security Administration Benefits and Child Support?

While kinship families serve as foster parents, they receive a monthly foster care payment from DFPS. If the child in the kinship family's care receives Social Security Administration (SSA) benefits also or if child support monies have been court ordered, DFPS receives and uses these funds to offset the cost of the child's foster care payments. The kinship family will receive the foster care payments in lieu of the child's SSA benefits or child support they may have previously received from DFPS. When the court gives legal custody (PMC) to the kinship family and PCA benefits begin, the kinship family must apply with the SSA to become the representative payee of the child's SSA benefits and arrangements must also be made for the kinship family to receive any child support payments that have been court ordered.

E. Resources

Jurist in Residence Letters regarding PCA:

<http://texaschildrenscommission.gov/media/1281/jirfirstpca.pdf>

<http://texaschildrenscommission.gov/media/1293/pcajir.pdf>

<http://texaschildrenscommission.gov/media/1023/18-Permanency-Care-Assistance-Program-follow-up-3rd-letter.pdf>

Fostering Connections to Success and Increasing Adoptions Act: What it Means for Texas, Center for Public Policy Priorities located at: <http://library.cppp.org/files/4/newfostercare.pdf>

See Also: Chart of financial, education, and medical benefits available to children who exit DFPS conservatorship. Link or what?

PSYCHOTROPIC MEDICATION

Psychotropic medications are substances that affect the mind and alter mental processes such as perception, mood and behavior. Psychotropic drugs include stimulants, antidepressants, antipsychotics and mood stabilizers. Some children need to use psychotropic medications long-term to treat mental health disorders that they inherited or developed, such as attention deficit hyperactivity disorder, severe depression or psychosis. Other children need to use psychotropic medications temporarily to help relieve severe emotional stress and help them function in school, at home and in the community.

The use of psychotropic medication in children in foster care has been the subject of a heated national debate. Psychiatric medication may be life-saving and relieve disabling and sometimes deadly symptoms of mental health disorders. Children and youth in foster care may benefit from medication to ameliorate the effects of trauma brought on from exposure to abuse or neglect. However, studies have shown that psychotropic medications can have serious side effects on adults using them, and little yet is known about the effects of long-term use in children.

In 2013, the Texas Legislature amended [Tex. Fam. Code § 266.001](#) to add a definition of a psychotropic medication. A “psychotropic medication” means a medication that is prescribed for the treatment of symptoms or psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence or modify behavior, cognition, or affective state. The term includes the following categories when used as described by [Tex. Fam. Code § 266.001\(7\)](#):

- Psychomotor stimulants;
- Antidepressants;
- Antipsychotics or neuroleptics;
- Agents for control of mania or depression;
- Anti-anxiety agents; and
- Sedatives, hypnotics, or other sleep-promoting medications. [Tex. Fam. Code § 266.001\(7\)](#).

Texas led the nation in creating oversight protocols in 2005 when the 79th Texas Legislature enacted Senate Bill 6. This sweeping legislation proposed reforms for DFPS, including a plan to place all foster children under a single comprehensive managed care system. Texas was the first state to develop a "best practices" guide for oversight of psychotropic medications for children in foster care. Released in 2005 and recently updated, DFPS, the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC) developed

[Psychotropic Medication Parameters for Foster Children](#) (Parameters), most recently updated in 2016.⁹⁵ The Parameters serve as a resource for physicians and clinicians who care for children diagnosed with mental health disorders.

The Texas Legislature also enacted [Tex. Fam. Code Chapter 266](#) which governs medical care and education services for children in foster care primarily through three processes:

- Medical Consenter;
- Agency Oversight; and
- Judicial Review.

A. Medical Consenter

[Tex. Fam. Code § 266.004\(h\)](#) requires medical consenter training, which must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications. [Tex. Fam. Code § 266.004\(h-1\)](#).

Each person required to complete a training program under [Tex. Fam. Code § 266.004\(h\)](#) must acknowledge in writing that the person:

- Has received the training described by [Tex. Fam. Code § 266.004\(h-1\)](#);
- Understands the principles of informed consent for the administration of psychotropic medication; and
- Understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consent to the use of a psychotropic medication. [Tex. Fam. Code § 266.004\(h-2\)](#).

The Medical Consent Training for Caregivers is about two and half hours long and can be found at: http://www.dfps.state.tx.us/child_protection/medical_services/medical-consent-training.asp. DFPS also has a two-hour online training on psychotropic medications for DFPS staff, foster parents and residential providers, relative caregivers, and youth medical consenters. Please see: https://www.dfps.state.tx.us/Training/Psychotropic_Medication/

1. Informed Consent

Although the term “informed consent” as it relates to medical care for a child in foster care is not defined in [Tex. Fam. Code Chapter 266](#), the Texas Legislature has defined consent for psychotropic medication. Consent to the administration of a psychotropic medication is valid only if:

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- The consent is given voluntarily and without undue influence;
 - The person authorized by law to consent for the foster child receives verbally or in writing information that provides:
 - the specific condition to be treated;
 - the beneficial effects on that condition expected from the medication;
 - the probable health and mental health consequences of not consenting to the medication;
 - the probable clinically significant side effects and risks associated with the medication; and
 - the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment. [Tex. Fam. Code § 266.0042](#).

The Parameters describe what is meant by informed consent by stating that consent to medical treatment in non-emergency situations must be informed consent, which includes discussing the following with the prescribing doctor/psychiatrist before consenting:

- A DSM-IV (or current edition) psychiatric diagnosis for which the medication is being prescribed;
- Target symptoms;
- Treatment goals (expected benefits);
- Risks of treatment, including common side effects, laboratory finding, and uncommon but potentially severe adverse events;
- Risks of no treatment;
- Overall potential benefit to risk of treatment;
- Alternative treatments available and/or tried;
- The date the child was first placed in current placement;
- Child's current weight in pounds; and
- Child's date of birth, necessary to classify child as a child (age 1-12 years) or as an adolescent (age 13-18 years), because some medications are approved for children but not adolescents and vice versa.

Included in the idea of informed consent is the consideration of alternative treatments and trauma-informed care. The concept of trauma-informed care is a huge paradigm shift for

the entire system that will take some time. The Introduction and General Principles Section of the Parameters promote a trauma-informed child and family-serving system where all parties involved recognize and respond to the varying impact of traumatic stress on those who have contact with the system, including youth, caregivers, and service providers. A robust trauma-informed system would not only screen for trauma exposure and related symptoms, but would also use culturally appropriate, evidence-based assessments and treatment. In 2015, the 84th Texas Legislature added [Tex. Fam. Code § 266.012](#) regarding comprehensive assessments. Not later than the 45th day after the date a child enters the conservatorship of DFPS, the child shall receive a developmentally appropriate comprehensive assessment. The assessment must include:

- A screening for trauma; and
- Interviews with individuals who have knowledge of the child's needs. [Tex. Fam. Code § 266.012\(a\)](#).

Beginning September 1, 2016, all youth placed in substitute care will have a Child Assessment of Needs and Strengths (CANS) completed as part of their assessment and service planning process within 30 days of removal. The CANS will be used to gather information about the strengths and needs of the child and family and used in Service Planning to assist the child and family in reaching their goals.⁹⁶DFPS may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether services are provided under the medical assistance program under [Tex. Hum. Res. Code Chapter 32](#), if DFPS otherwise has the authority under [Tex. Fam. Code § 266.004](#) to consent to health care services. [Tex. Fam. Code § 266.004\(k\)](#).

2. Texas Foster Children are More Likely to Have Been Traumatized

In the general Texas population, about 10% of children are on psychotropic medications compared to 20% of foster kids. The different rates of use could be due to the serious mental health issues that are common with abuse and neglect or the lack of alternative treatments and specialized, trauma-informed services, or a combination of both. Exposure to trauma, coupled with Texas' low removal rate, might indicate that children in Texas foster care have higher mental health needs than other states that have a lower threshold for removal. Texas serves over 75% of families in the home, which means that the children who come into care have typically experienced more severe abuse and neglect and likely require more intervention for mental health and behavioral issues.

3. Limited Mental Health / Substance Abuse Services

Texas ranks 50th in providing adults access to mental health services. Medicaid in Texas is only available to children, the elderly, and the disabled. An able-bodied adult with severe depression or bipolar disorder, who does not have private health insurance, is not likely to access Medicaid. Substance abuse treatment is also unavailable for the majority of the

uninsured population. When parents cannot access mental health and substance abuse services, their children often suffer.

Another concern is the lack of access to child psychiatrists by the children and youth in foster care. When child psychiatrists are not available, more primary care physicians are put in the position of prescribing psychotropic medications that may be outside their expertise. STAR Health has made significant strides in contracting with new psychiatrists and other mental health providers, but the large, diverse population and geographic regions in Texas make this challenging.

4. Monitoring Use of Psychotropic Drug

The Medical Consenter shall ensure that the child has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

- Appropriately monitor the side effects of the medication; and
- Determine whether:
 - the medication is helping the child achieve the treatment goals; and
 - continued use of the medication is appropriate. [Tex. Fam. Code § 266.011](#).

B. Agency Oversight

The Parameters provide recommendations for the appropriate use of psychotropic medications for foster children and include criteria indicating need for review of the child's clinical status. Medical Consenters, caregivers, judges, attorneys, and advocates also use the Parameters as they fulfill their duties of advocacy and oversight.

1. Medication Review

STAR Health oversees automated reviews of pharmacy claims data for all children in foster care receiving psychotropic medications to identify medication regimens which appear to be outside the Parameters. Additionally, STAR Health clinical staff routinely conducts telephonic health screenings when children newly enter DFPS conservatorship or change placements.

The telephonic health screening includes screening of the child's psychotropic medications regimen. The screening process includes criteria such as:

- Does the child have a documented mental health diagnosis?
- What is the child's age? (Prescriptions might need further review if the child is under age 3 or 4, depending on the class of medication.)

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- Is the child taking two or more medications from the same drug class? (Two mood stabilizers and long and short acting stimulants from the same family are allowed, but otherwise two or more medications from the same class call for further review.)
 - Is the child prescribed five or more psychotropic medications regardless of the class?

2. Psychotropic Medication Utilization Review

The Psychotropic Medication Utilization Review (PMUR) is designed to determine whether a child's psychotropic medication regimen is outside of the Parameters and, if so, whether a consultation call from a STAR Health child psychiatrist to the prescribing physician is indicated. A PMUR can be initiated by STAR Health if indicated by a health screening or pharmacy claim review. A PMUR may also be triggered by a request from any judge, attorney, caseworker, advocate, foster parent, Medical Consenter or other concerned person working with the child. The PMUR examines child-specific clinical information about a child's diagnoses, medication dosage, and whether the medication regimen is in compliance with the Parameters. STAR Health has committed to priority responses to inquiries from judges concerning children under their supervision. PMUR findings are usually sent to the child's caseworker or can be faxed or emailed directly to the court, if requested.

All PMUR requests are reviewed by one of two STAR Health Licensed Behavior Health Clinicians who gather medical records and screen children's psychotropic medication regimens for compliance with the Parameters. If the regimen is outside the Parameters, the clinician refers the case to a STAR Health child psychiatrist to conduct a PMUR. The child psychiatrist outreaches to the treating physician, works with the treating physician to reduce polypharmacy if indicated, and prepares a PMUR report. The PMUR report will contain a formal determination about the foster child's medication regimen. The possible determinations are as follows:

- Medication regimen within Parameters
- Medication regimen outside Parameters. Medication regimen reviewed and found to be within the standard of care
- Medication regimen outside Parameters, and there is opportunity to reduce polypharmacy
- Medication regimen is outside Parameters, and there is risk for or evidence of significant side effects.

STAR Health is in a good position to intervene and educate the prescribing physician because all providers are clinically privileged by STAR Health. Physicians who appear to consistently prescribe outside the Parameters despite risk for or evidence of significant side effects, or when there is an opportunity to reduce poly-pharmacy, are referred to the Quality of Care (QOC) review process. Additional records are examined for pervasive patterns of

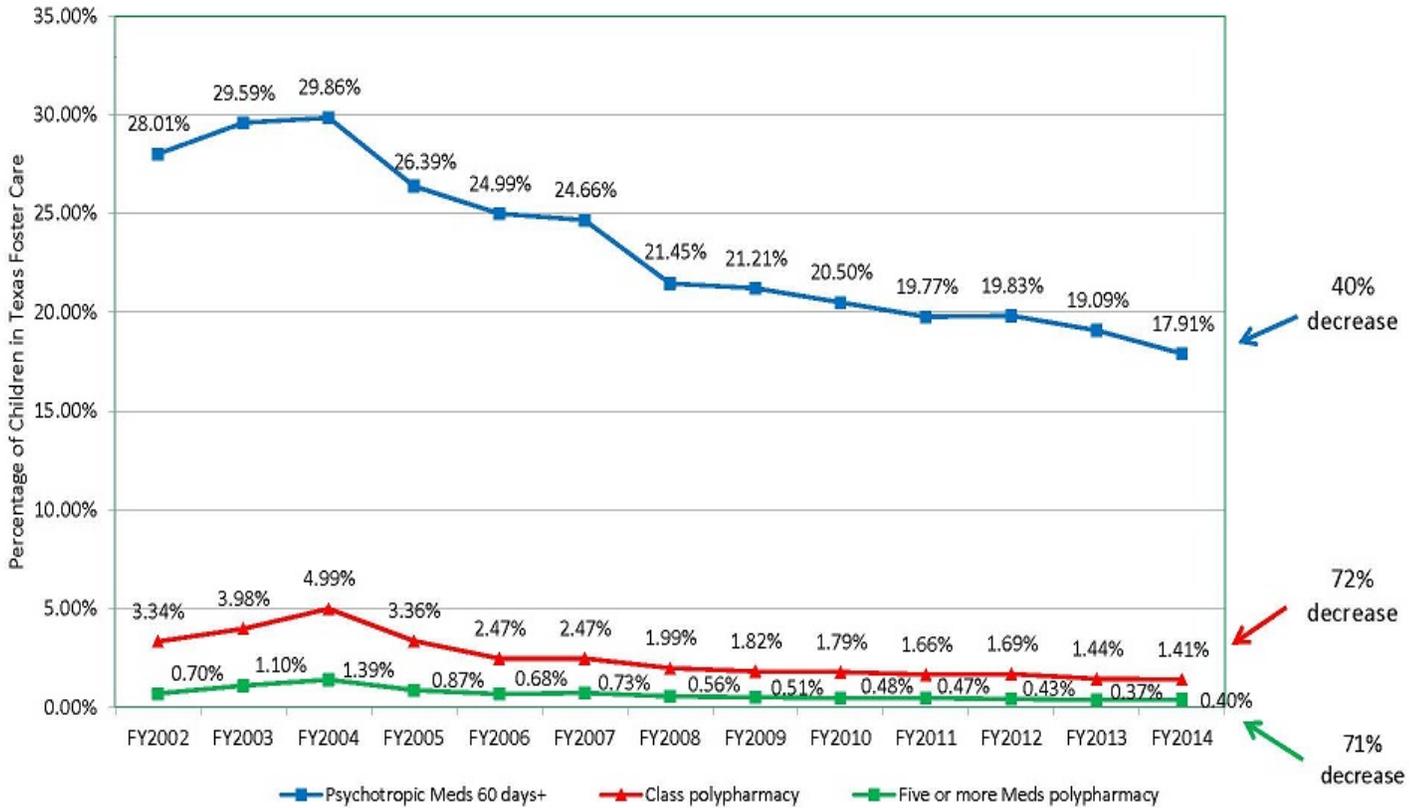
over or dangerous prescribing. Qualifying cases are referred to the Credentialing Committee for further investigation and action. The results of Quality Improvement and Credentialing Committee investigations and actions are confidential and may not be released to or discussed with the public. All QOC issues are tracked and trended. Any practitioner showing a pattern or trend may be placed on corrective action and/or face disciplinary action up to and including termination of contract, if warranted.

A PMUR cannot address whether other medications might be effective and this process is not the appropriate avenue to address immediate concerns about new medications or medication side effects; the informed consent process is considered the appropriate avenue to inquire about new medications and side effects. In these situations, STAR Health recommends that the Medical Consenter contact the prescribing physician directly. DFPS also employs CPS Nurse Consultants in each administrative region to assist CPS staff with children's health issues, including questions about psychotropic medications.

3. Effect of Texas' Oversight Process

As a result of the various improvements to Texas' oversight process, including hiring a Medical Director at DFPS, implementing the Parameters as a statewide monitoring system, and launching managed care and clinical consultation by STAR Health, the prescription patterns of psychotropic medications for Texas foster children have improved significantly. Every year, the use of psychotropic medications in Texas foster care continues to decrease and has decreased by 71% from 2002 to 2014 for children prescribed psychotropic medications for 60 days or more.

Percentage of Children in Texas Foster Care receiving psychotropic medications by category.



C. Parental Notification of Certain Medical Conditions

DFPS must provide notice of significant events regarding a child in foster care to the child's biological parents and others under [Tex. Fam. Code § 264.018](#) in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible. [Tex. Fam. Code § 264.018\(c\)](#).

Not later than 24 hours after an event described by [Tex. Fam. Code § 264.018\(d\)](#), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS of:

- A significant change in medical condition of the child [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)];
- The enrollment or participation of the child in a drug research program under [Tex. Fam. Code § 266.0041](#); and
- An initial prescription of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)]. [Tex. Fam. Code § 264.018\(d\)](#).

As soon as possible but not later than the 10th day after the date DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to the child's parent. [Tex. Fam. Code § 264.018\(f\)](#).

A significant event includes:

- A significant change in medical condition [as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#)]; and
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication [as defined by [Tex. Fam. Code § 266.001](#)].

For purposes of [Tex. Fam. Code § 264.018\(f\)](#), if a hearing for the child is conducted during the 10-day notice period described by [Tex. Fam. Code § 264.018\(f\)](#), DFPS shall provide notice of the significant event at the hearing. [Tex. Fam. Code § 264.018\(g\)](#).

DFPS is not required to provide notice under [Tex. Fam. Code § 264.018](#) to a parent of a child in the managing conservatorship of DFPS if:

- DFPS cannot locate the parent;
- A court has restricted the parent's access to the information;
- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS efforts to involve the parent;

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- The parent’s rights have been terminated; or
 - DFPS has documented in the child’s case file that it is not in the best interest of the child to involve the parent in case planning. [Tex. Fam. Code § 264.018\(h\)](#).

A person entitled to notice from DFPS under [Tex. Fam. Code § 264.018](#) shall provide current contact information pursuant to [Tex. Fam. Code § 264.018\(j\)](#).

D. Judicial Review

The judiciary is charged with oversight of the safety, permanency and well-being of the children in their courts. [Tex. Fam. Code § 266.007](#) requires that the judge overseeing the case review a summary of the medical care being provided to the child at each hearing held pursuant to [Tex. Fam. Code Chapter 263](#), specifically the Permanency Hearings Before and After Final Order.

1. Court Shall Review Medical Summary

[Tex. Fam. Code Chapter 266](#) requires the summary of medical care to include:

- The nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;
- All medical and mental health treatment that the child is receiving and the child’s progress with the treatments;
- Any medication prescribed for the child and the condition, diagnosis, and symptoms for which the medication was prescribed and the child’s progress with the medication;
- The degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;
- Any adverse reaction to or side effects of any medical treatment provided to the child;
- Any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis; and
- Any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet. [Tex. Fam. Code § 266.007](#).

Additional information may be required to effectively oversee that informed consent has been given. [Tex. Fam. Code Chapter 266](#) requires that judges review the medical care at each hearing conducted under [Tex. Fam. Code Chapter 263](#).

2. Foster Youth Must Be Heard at Each Hearing Held under Tex. Fam. Code Chapter 263

The Family Code provides that sixteen and seventeen-year-olds can serve as their own Medical Consenter with a judicial determination that the youth is capable of the role. [Tex. Fam. Code § 266.010](#). If the youth is not the Medical Consenter, [Tex. Fam. Code § 266.007\(c\)](#) requires that he or she be provided the opportunity to express to the court their views on the medical care being provided. Further, [Tex. Fam. Code § 263.302](#) requires that the youth attend Permanency Hearings before and after final order, although some stakeholders have shared concerns about their experiences in child welfare courts where children and youth do not routinely attend their hearings. This is especially concerning with older youth, who are more likely than younger foster youth to be prescribed psychotropic medications.

3. Judicial Psychotropic Medication Information Line

Another tool implemented in 2012 to improve information-sharing is the Judicial Medication Information Email Box (MedQuestions@Cenpatico.com) which allows judges to submit a request for general medication information. Emails are reviewed by a STAR Health Behavioral Health Service Manager, who has support from the STAR Health Behavioral Health Medical Director (child psychiatrist), the STAR Health Pharmacist and clinical managers. An example of an appropriate type of question for the email box is: What are the side effects of a particular medication or combination of medications on a 12-year-old girl who weighs 100 pounds? STAR Health also maintains a 24/7 Behavioral Health hotline with access to behavioral health professionals when urgent needs arise. The hotline can be reached at 1-866-218-8263.

4. Some Courts Use Standardized Court Report

In 2012, DFPS adopted a uniform court report which serves as a helpful tool for communication between CPS, the courts, and other parties. The standardized form provides a summary of medical information that directly follows [Tex. Fam. Code § 266.007](#). The standardized report also includes the child's age and weight as well as information about medication and dosage, condition and diagnosis, symptom(s) being treated, last medication review, and the prescribing physician. What is not included is the name of the authorized designated Medical Consenter or any psychotropic medication history, although this information may be provided verbally or located elsewhere in the court's file.

5. Some Courts Use Specific Informed Consent Forms and Practices

Some Texas child welfare judges have adopted a practice of ordering that in non-urgent situations, Medical Consenters must appear in court before giving consent to medication regimens that fall outside the Parameters. Also, to augment the information-sharing process, some judges are asking the Medical Consenters to complete a checklist of

questions before appearing in court to ensure that the Consenter considered the many steps to informed consent (as defined by the Parameters).

TRAUMA INFORMED CARE

A traumatic experience is an event that threatens someone's life, safety, or well-being and overwhelms one's capacity to cope. Some examples include:

- Child maltreatment
- Witnessing violence
- Natural disasters
- Loss of loved ones
- Serious accidents
- Medical trauma

A. Trauma Impacts a Child's Development and Health

1. Altered Biological Stress Systems and Neural Circuitry/Structure

- Difficulties with poor emotional regulation, focus and self-control (when in fight or flight mode, the brain loses executive functions that do not serve fight or flight, like higher learning and problem-solving which contribute substantially to school success)
- Anxious and avoidant behaviors
- Potential impacts to self-efficacy

2. Disruptions in Attachment Behavior

- Disruptions in relationships
- Distrust of people in authority, seen as threats

3. Changes in Social Development and Understanding of Social Stimuli

- Altered encoding and interpreting of social stimuli
- Hostile attribution bias (child perceivers negative motives, facial expressions, body language)
- Larger repertoire of aggressive responses
- Aggression as an acceptable response

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- Difficulties belonging and playing well with others

4. Behaviorally, Trauma Can Look Like Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), and/or Conduct Disorder and Can Lead to:

- Substance use/abuse
- Aggression
- Numbness
- Risk taking
- Delinquency and adult offending

B. Current Challenges

- Alarming high rates of childhood trauma exposure, Post Traumatic Stress Disorder (PTSD) and victimization among children in foster care.
- Trauma concerns are frequently overlooked. Consistent observations suggest that denial of PTSD and blaming of its victims are not isolated omissions or distortions, but a pattern that spans over time, crosses national and cultural boundaries, and defies accumulated knowledge.

C. Trauma-Informed Practices

- 1. Increase Accessible and Effective Trauma Services Through Education and Collaboration Among the Many Stakeholders** (mental health providers, caseworkers, foster parents, caregivers at kinship placements and residential treatment centers, judges, attorneys, CASAs, medical community, law enforcement)

Collaboration leads to:

- Better screening (brief, focused inquiry) at initial contact;
- More detailed assessments (a more in-depth exploration by a trained mental health professional of the nature and severity of the traumatic events, and current trauma-related symptoms);
- More specialized, evidenced-based treatments (with mental health professionals);
- Less misdiagnosis of schizophrenia, psychosis NOS, borderline personality disorder, and conduct or oppositional-defiant disorder;
- Fewer psychoactive medications, restraints and seclusions; and

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- More self-reporting of trauma by children and youth survivors.
 - children and youth become educated about effects of trauma, e.g. violent physical abuse in childhood may not be disclosed because it is thought of as “discipline” or “normal”
 - the fear, guilt or shame of perceived mental illness is lessened once child is able to connect the trauma and its effects
 - promote positive neurological effects on the foster youth’s immune function and overall physical health through disclosure of and confrontation of trauma

2. Create Environment of Safety, Respect, Honesty, and Humility to Nurture Healing, Rehabilitation, and Resiliency

- Communicate to the children in foster care that their caregivers believe abuse and violence are significant events. Survivors’ healing stories often begin with the experience of being believed, taken seriously and protected by an adult.
- Develop a shared understanding of the role that trauma has played in shaping the survivor’s life. Connect trauma concerns with the rest of the child’s problems and goals, and understand that experiences of physical, sexual, and emotional abuse can shape fundamental patterns of perceiving the world, other people, and oneself.
- Identify current circumstances that may trigger trauma responses, e.g., unexpected touching, threats, loud arguments, violations of privacy or confidentiality, being in confined spaces with strangers, or sexual situations.
- Determine potential contraindications to use of restraint (and other coercive measures).
- Be watchful for other less obvious triggers that become evident as you know the child better and as he or she recognizes and can express her or his individual stress responses more accurately.
- Enable children to understand their strengths (adaptive capacities) as well as weaknesses that have grown out of their responses to horrific events, rather than seeing their “symptoms” and “disorders” as evidence of fundamental defects. Identify with child the resources such as social support, self-esteem and resilience, self-comforting, sense of meaning and purpose – to help them to recognize and draw on underused strengths.
- Help children and youth identify strategies helpful in the past in dealing with overwhelming emotions. Place priority on child’s preferences regarding self-protection and self-soothing needs by using de-escalation preference surveys.

3. Increase Visitation

Minimize the trauma from removal and attachment disruption by increasing visitation with parents, siblings and other close family (especially in children ages zero to three) to provide meaningful and consistent connections with appropriate family members.

4. Promote Comforting and Calming Techniques

Encourage collaborative service plan. If crisis occurs again, caregivers in foster homes and residential can draw on the child’s own knowledge of what has previously helped and hurt. Prepare for de-escalation in foster homes and residential treatment centers.

5. Provide Ongoing Support for Caregivers

Responses of care giving adults to traumatic events are significant. Survivors often report the debilitating effects of being disbelieved, or having their accounts minimized or dismissed.

6. Encourage Foster Youth Connection with Healthy Adults

Facilitate connections with “persons of character”, e.g. CASAs.

7. Help Reduce Barriers to Youth Participating in Positive Activities of Interest

Problem-solve transportation issues preventing youth from engaging in positive afterschool activities, tutoring, etc.

D. Trauma-Informed Organizations⁹⁷

An organization, program, or system that is trauma-informed:

- **Realizes the impact of trauma**, including how it can emotionally, behaviorally, and physically affect children, families, staff, volunteers as well as the organizations that work with them.
 - understands a person’s behavior in the context of coping strategies that are designed to survive adversity, including responses to primary and secondary trauma. For instance what presents as anger may be fear, and what presents as disruptive behavior may be self-preservation.
 - understands that the need for a trauma-informed response is not limited to mental and behavioral health specialty services, but is integral to all organizations and systems involved in children’s lives. It may prevent healing and wellness if not addressed across the entire web of these systems.
 - understands that a pharmacological response and/or reducing the risk of repeat trauma alone cannot meet the needs of vulnerable children. Building relationships,

community, and the feeling of safety are necessary for neuro-development and healing from early trauma.

- **Recognizes the signs of trauma** and consistently incorporates trauma screening and assessment into all aspects of work, including interactions with children, families, staff, and volunteers.
- **Responds by applying the principles of a trauma-informed approach** to all areas of functioning. This includes:
 - staff and volunteer training on trauma and trauma-informed practices.
 - leadership that realizes the role of trauma in their staff and the children/families they serve.
 - policies and practices that ensure three core pillars of trauma-informed care are addressed:
 - **connection:** focusing on the relational needs of children, with special attention towards building and strengthening secure attachments between caregivers and children.
 - **safety:** creating an environment of physical, social, and psychological safety and meeting the child’s physiological needs; this includes good nutrition, adequate sleep, attention to sensory needs, and regular physical activity.
 - **regulation:** providing structured experiences to enhance emotional and behavioral self-regulation in children; enhancing caregivers’ mindful awareness and their ability to use proactive strategies for behavioral change.
- **Avoids re-traumatizing** children, caregivers, and staff by recognizing how organizational and system practices such as placement disruptions, seclusion, restraints, and abrupt transitions can cause additional harm and interfere with healing. Relationships and nutrition are not used as part of a system of awards/consequences.

Examples of What Trauma-Informed Care Looks Like In Different Scenarios

Court Rooms	<ul style="list-style-type: none">• Judges and attorneys are informed of research-based, trauma-informed responses.• Where possible, court orders allow adequate time for children and families to prepare for a transition to a new placement.• Placement decisions are based on ensuring connection, safety, and regulation.
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Caseworker Environment	<ul style="list-style-type: none"> • Caseworkers are connected emotionally with the children they serve. • Caseworkers have sensory items available for children to use if desired. • Nutritious snacks and water are available. • Caseworkers have skill-sets that are informed by research-based trauma-informed response and practices.
Medical Provider Offices	<ul style="list-style-type: none"> • Medical providers are aware of how trauma can emotionally, behaviorally, and physically affect children. • Medical providers understand that a pharmacological response alone cannot meet the needs of vulnerable children.
Residential Treatment Centers	<ul style="list-style-type: none"> • Nutritious snacks are available on request, not locked or used as rewards for good behavior. • Sensory rooms are available for children to use when they request or choose to. • All staff and volunteers are trained on research-based, trauma-informed responses and practices. • Behavioral correction strategies are trauma-informed; caregivers and staff understand the role of fear in behavior. • Children may use sensory techniques/items during instructional time; they may move and use other strategies to help them feel in control physically.
Homes	<ul style="list-style-type: none"> • Caregivers focus on the relational needs of children, with special attention towards building and strengthening secure attachments. • Behavioral correction strategies are trauma-informed; caregivers understand the role of fear in behavior. • Caregivers create an environment of physical, psychological, and social safety. • Children have nutritious food and water available at regular intervals throughout the day to maintain stamina and focus. • Children are given the opportunity for a break and “re-do” after disruptive behavior. • Caregivers are self-aware and are able to use proactive strategies for behavioral change.
Houses of Worship	<ul style="list-style-type: none"> • Wrap around support is available for children and families who have experienced trauma. • Learning and worship settings are conducive to physical, psychological, and social safety.

Classrooms	<ul style="list-style-type: none"> • Students may use sensory techniques/items during instructional time; they may move and use other strategies to help them feel in control physically. • Students have nutritious food and water available at regular intervals throughout the day to maintain stamina and focus. • Students are given the opportunity for a break and “re-do” after disruptive behavior rather than having a mark moved or other penalty imposed.
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E. Restraint and Seclusion Guidelines

Many trauma-informed care trainings promote specific strategies including self-care approaches, peer-provided services, arts programs, and comfort rooms to enhance healing and as means to avoid the use of restraint and seclusion. In Texas, the Administrative Code offers the following guidelines on restraining and secluding children in General Residential Operations and Residential Treatment Centers.

1. Restraint/Seclusion May Only Be Used:

- As last resort

[40 Tex. Admin. Code § 748.2455\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 749.2055\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 748.2551\(a\)](#); and [40 Tex. Admin. Code § 749.2151](#)

- After less restrictive and more positive measures have been tried and failed

[40 Tex. Admin. Code § 748.2455\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 749.2055\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 748.2551\(a\)](#); and [40 Tex. Admin. Code § 749.2151\(a\)](#)

- Only in an emergency situation

[40 Tex. Admin. Code § 748.2455\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 749.2055\(a\)\(1\)\(2\)](#); [40 Tex. Admin. Code § 748.2401\(5\)](#); and [40 Tex. Admin. Code § 749.2001\(5\)](#)

(Definition of emergency situation)

- Where immediately necessary

[40 Tex. Admin. Code § 748.43\(17\)](#); [40 Tex. Admin. Code § 749.43\(18\)](#) (Definition of EBI) [40 Tex. Admin. Code § 748.2401\(5\)](#); and [40 Tex. Admin. Code § 749.2001\(5\)](#) (Definition of emergency situation)

- To prevent imminent probable death or substantial bodily harm

[40 Tex. Admin. Code § 748.43\(17\)](#); [40 Tex. Admin. Code § 749.43\(18\)](#) (Definition of Emergency Behavioral Intervention (EBI)); [40 Tex. Admin. Code § 748.2401\(5\)](#); [40 Tex. Admin. Code § 749.2001\(5\)](#) (Definition of emergency situation); [40 Tex. Admin.](#)

Code § 748.43(47); and 40 Tex. Admin. Code § 749.43(56) (Definition of substantial bodily harm)

- NEVER as punishment, retaliation, convenience, treatment, or means of compliance
40 Tex. Admin. Code § 748.2463 and 40 Tex. Admin. Code § 749.2063

2. Types of Restraints That May Be Administered with Restrictions:

- Physical restraint

40 Tex. Admin. Code § 748.2451(a)(2); 40 Tex. Admin. Code § 749.2051(a)(2); 40 Tex. Admin. Code § 748.2401(7); and 40 Tex. Admin. Code § 749.2001(7) (Definition)

- Emergency medication

40 Tex. Admin. Code § 748.2451(a)(3); 40 Tex. Admin. Code § 749.2051(a)(3); 40 Tex. Admin. Code § 748.2753 (simultaneous use with another EBI); 40 Tex. Admin. Code § 749.2233 (simultaneous use with personal restraint); 40 Tex. Admin. Code § 748.2401(4); and 40 Tex. Admin. Code § 749.2001(4) (Definition)

- Seclusion

40 Tex. Admin. Code § 748.2451(a)(4); 40 Tex. Admin. Code § 748.2651; 40 Tex. Admin. Code § 748.2401(10); 40 Tex. Admin. Code § 749.2001(10) (Definition); and 40 Tex. Admin. Code § 749.2051(b)

- Mechanical restraint

40 Tex. Admin. Code § 748.2451(a)(5); 40 Tex. Admin. Code § 748.2701; 40 Tex. Admin. Code § 748.2703; 40 Tex. Admin. Code § 748.2755 (simultaneous use with emergency medication); 40 Tex. Admin. Code § 748.2401(6); 40 Tex. Admin. Code § 749.2001(6) (Definition); and 40 Tex. Admin. Code § 749.2051(b)

3. Restraint/Seclusion May Only Be Administered by:

- Qualified caregiver

40 Tex. Admin. Code § 748.2453 and 40 Tex. Admin. Code § 749.2053

- Trained in emergency behavior interventions

40 Tex. Admin. Code § 748.947; 40 Tex. Admin. Code § 749.947; 40 Tex. Admin. Code § 748.903; 40 Tex. Admin. Code § 749.903; 40 Tex. Admin. Code § 748.863(a); 40 Tex. Admin. Code § 749.863(a); 40 Tex. Admin. Code § 748.901; and 40 Tex. Admin. Code § 749.901

- Whose duties include the direct care, supervision, guidance, and protection of child

40 Tex. Admin. Code § 748.43(5) and 40 Tex. Admin. Code § 749.43(7)

4. A Child Must Be Released from a Restraint:

- IMMEDIATELY if an emergency health situation arises

40 Tex. Admin. Code § 748.2553(4)(A); 40 Tex. Admin. Code § 748.2553(5)(A); 40 Tex. Admin. Code § 748.2603; and 40 Tex. Admin. Code § 749.2203

- IMMEDIATELY once the danger is over

40 Tex. Admin. Code § 748.2553(2)(C) and 40 Tex. Admin. Code § 749.2153(2)(C)

- Once maximum time allowed is reached

40 Tex. Admin. Code § 748.2553(2)(E); 40 Tex. Admin. Code § 749.2153(2)(E); and 40 Tex. Admin. Code § 748.2553(4)(D)

Type of Emergency Behavior Intervention	The caregiver must release the child:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the disruptive behavior is de-escalated.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately; (B) Within one minute of the implementation of a prone or supine hold; (C) As soon as the child's behavior is no longer a danger to himself or others; (D) As soon as the medication is administered; or (E) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) Immediately when an emergency health situation occurs during the seclusion. The caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the required behaviors; (D) When the maximum time allowed for seclusion is reached; (E) If the child falls asleep in seclusion. In this situation, the caregiver must: (i) Unlock the door; (ii) Continuously observe the child until he awakens; and (iii) Evaluate his overall well-being; or (F) If the child is receiving emergency care services:

Type of Emergency Behavior Intervention	The caregiver must release the child:
(5) Mechanical restraint	<p>(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment immediately;</p> <p>(B) As soon as the child's behavior is no longer a danger to himself or others;</p> <p>(C) No later than five minutes after the child begins exhibiting the required behaviors;</p> <p>(D) When the maximum time allowed for mechanical restraint is reached; or</p> <p>(E) If the child falls asleep in the mechanical restraint. In this situation, the caregiver must release the child from the restraint and continuously observe the child until he awakens and evaluate him.</p>

The maximum amount of time for a restraint/seclusion:

- Physical Restraint – under the age of 9, 30 minutes; 9 or over, 1 hour
- Seclusion – <9, 1 hour; ≥9, 2 hours; < cumulative total of 2 hrs./12 hr. period
- Mechanical Restraint – <9, 30 minutes; ≥9, 1 hour; <cumulative total of 1 hr./12 hr. period

Figure: 40 Tex. Admin. Code § 748.2801

Types of Emergency Behavior Intervention	The maximum length of time is:
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child under nine years old, 30 minutes; (B) For a child nine years old or older, one hour; or (C) A prone or supine personal restraint hold may not exceed one minute.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.
(5) Mechanical restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.

When restraining/secluding, a written order is required:

- By a licensed physician when administering emergency medications
[40 Tex. Admin. Code § 748.2501\(3\)](#) and [40 Tex. Admin. Code § 749.2101\(3\)\(A\)](#)
- By a licensed psychiatrist when administering mechanical restraints
[40 Tex. Admin. Code § 748.2501\(5\)](#)
- By a licensed psychiatrist, physician, or psychologist when administering seclusion when using successive restraints
[40 Tex. Admin. Code § 748.2501\(2\)](#); [40 Tex. Admin. Code § 749.2102\(2\)\(A\)](#); [40 Tex. Admin. Code § 748.2751\(3\)](#); and [40 Tex. Admin. Code § 749.2231\(a\)](#)

- When using restraints simultaneously

40 Tex. Admin. Code § 748.2501(2); 40 Tex. Admin. Code § 749.2101(2)(A); 40 Tex. Admin. Code § 748.2753(a)(3) and (b); 40 Tex. Admin. Code § 749.2233(a) (Emergency medications with personal restraint); and 40 Tex. Admin. Code § 748.2755(a)(3) and (b) (Mechanical restraints with emergency medications)

- When maximum length of time allowed is exceeded

40 Tex. Admin. Code § 748.2805; 40 Tex. Admin. Code § 749.2283(2)

- Also see: 40 Tex. Admin. Code § 748.2505; 40 Tex. Admin. Code § 749.2105 (content of written orders); 40 Tex. Admin. Code § 748.2507; 40 Tex. Admin. Code § 749.2107 (PRN orders); and 40 Tex. Admin. Code § 748.2807 (verbal orders to exceed maximum time allowed)

Type of Emergency Behavior Intervention	Are written orders required to administer the intervention for a	Who can write orders for the use of the intervention for a specific child?
(1) Short personal restraint (2) Personal restraint	NO. NO. However, successive restraints, a restraint simultaneous with emergency medication, and/or a restraint that exceeds the maximum time limit all require orders as specified in this subchapter. PRN orders are also permitted under §748.2507 of this title (relating to Under what conditions are PRN orders permitted	Not applicable. Not Applicable.
(3) Emergency medication	YES.	A licensed physician.
(4) Seclusion	YES, except written orders are not required when you provide emergency care services to the child placed in seclusion.	A licensed psychiatrist, psychologist, or physician.

(5) Mechanical restraint	YES.	A licensed psychiatrist.
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A review is triggered when:

- Restrained four times in a seven day period
40 Tex. Admin. Code § 748.2901(2)(A) and 40 Tex. Admin. Code § 749.2331(2)(A)
- Emergency medications used three times in a thirty day period
40 Tex. Admin. Code § 748.2901(3) and 40 Tex. Admin. Code § 749.2331(3)
- Secluded >twelve hours or three times in a seven day period
40 Tex. Admin. Code § 748.2901(4) **NOTE: Not applicable to foster care placements.
- Mechanically restrained > three hours or three times in a seven day period
40 Tex. Admin. Code § 748.2901(5) **NOTE: Not applicable to foster care placements.

Restraint/Seclusion that is NOT allowed:

*Foster care placements may never administer chemical restraints, mechanical restraints, or seclusion.

- Mechanical restraint may not be simultaneously used with seclusion or pursuant to PRN order
40 Tex. Admin. Code § 748.2757 and 40 Tex. Admin. Code § 748.2507(5)
- No chemical restraints
40 Tex. Admin. Code § 748.1119(1); 40 Tex. Admin. Code § 749.1021(1); 40 Tex. Admin. Code § 748.2451(b); 40 Tex. Admin. Code § 749.2051(b); 40 Tex. Admin. Code § 748.2401(1); and 40 Tex. Admin. Code § 749.2001(1) (Definition)
- Prone or supine restraints except for a personal restraint for 1 minute or less
40 Tex. Admin. Code § 748.2605(b); 40 Tex. Admin. Code § 749.2205(b) & (c); 40 Tex. Admin. Code § 748.2461(b)(1); 40 Tex. Admin. Code § 749.2061(b)(1); 40 Tex. Admin. Code § 748.2553(2)(B); 40 Tex. Admin. Code § 749.2153(2)(B); 40 Tex. Admin. Code § 748.2801(2)(C); and 40 Tex. Admin. Code § 749.2281(2)(C)

Also see other relevant provisions:

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- [40 Tex. Admin. Code § 748.1119](#) and [40 Tex. Admin. Code § 749.2021](#) (techniques prohibited)
 - [Tex. Admin. Code § 748.2303](#) and [40 Tex. Admin. Code § 749.1953](#) (may not use or threaten corporal punishment)
 - [40 Tex. Admin. Code § 748.2307](#) and [40 Tex. Admin. Code § 749.1957](#) (methods of punishment prohibited)
 - [40 Tex. Admin. Code § 748.2605](#) and [40 Tex. Admin. Code § 749.2205](#) (prohibited physical restraint techniques)
 - [40 Tex. Admin. Code § 748.2705](#) (types of mechanical & other restraint devices prohibited)

F. Trauma Work in Texas

1. Reports

[Meeting the Needs of High Needs Children in the Texas Child Welfare System, November 2015](#)⁹⁸

[Understanding Trauma-Informed Care in the Texas Child Welfare System, Data and Recommendations from the Field, October 2015](#)⁹⁹

[Respecting the Needs of Children and Youth in Texas Foster Care: Acknowledging Trauma and Promoting Positive Mental Health throughout the System, December 2014](#)¹⁰⁰

2. Legislation

In 2011, the Texas Family Code was amended to require DFPS to include training in trauma-informed programs and services in any training the department provides to foster parents, adoptive parents, kinship caregivers, department caseworkers and department supervisors. [Tex. Fam. Code § 264.015](#).

DFPS Trauma-Informed Practice Workgroup was formed to look at:

- Training;
- Assessment and screening;
- Kinship caregiver support; and
- Secondary traumatic stress for direct care staff.

DFPS caseworkers are now required to complete:

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- An initial, in-person training on trauma-informed care during their basic skills development training; and
 - An annual refresher course online.

Residential Child Care Contract (RCCC) Requirements

- As of September 1, 2015, DFPS required all caregivers and employees who are subject to RCCC for direct care to complete:
- At least eight hours of trauma-informed care training prior to being the only caregiver responsible for children.
- At least two hours of trauma-informed care annually, and contractors may select their own curriculum/model for the annual refresher training

Changes to the Family Code in 2013 required trauma-informed care training for certain staff of county and state juvenile facilities, including probation officers, supervision officers, correctional officers, parole officers and court-supervised community-based program personnel. [Tex. Hum. Res. Code § 221.002\(c-1\)](#).

Since 2015, DFPS is required to institute a comprehensive psychosocial assessment tool to assess all children who enter the foster care system within 45 days. The tool must include a trauma assessment and an interview with at least one individual who knows the child. [Tex. Fam. Code § 266.012](#).

3. Community-Level Initiatives

The Travis County Collaborative for Children (TCCC)

Led by Texas Christian University's (TCU) Institute of Child Development (ICD), the TCCC intended to bring system-wide changes to the way foster children in Travis County are cared for during and after their time in state custody. TCCC's ultimate goal is to accelerate healing and speed to permanency for children in foster care utilizing ICD's evidence-based Trust-Based Relational Intervention (TBRI®) principles and practices.

Mental Health Connection Trauma Implementation Team

In Tarrant County, originally formed in 2011 to bring Trauma-Focused Cognitive Behavioral Therapy to the community. The Mental Health Connection launched a public awareness campaign in May 2013 called "Recognize Trauma." The campaign included movie ads, bus ads and billboards, in addition to brochures, posters and wallet cards.

The Trauma-Informed Care Consortium of Central Texas (TICC)

Established in 2013 by St. David's Foundation and Austin Child Guidance Center, the TICC brings together professional organizations quarterly to network, share information, and

coordinate trainings for mental health clinicians, school personnel, medical /nursing professionals, law enforcement and juvenile justice professionals.

4. Statewide Initiatives

DePelchin led an effort in 2011 to create the Texas Child Trauma Network (TCTN) for the coordination, organization, implementation and expansion of trauma-informed and trauma-focused practices within the Texas state child welfare system. Texas was not awarded the Substance Abuse and Mental Health Services Administration (SAMSHA) grant, so the TCTN did not come to fruition, but we can refer to the application for guidance.

Children’s Advocacy Centers’ (CACs) Practice Model

In 2013, the Texas Legislature raised the standard for mental health services in CACs, requiring that all mental health services be trauma-focused and evidence-based. Additionally, mental health services must be provided by professionals who have a master’s degree and are licensed, or who are students in an accredited graduate program and supervised by a licensed mental health professional.

Texas Children Recovering from Trauma (TCRFT)

In 2012, the Department of State Health Services (DSHS) was awarded a 4-year cooperative grant from the National Child Traumatic Stress Initiative of SAMHSA. This initiative focuses on transforming the existing children's mental health services in Texas into trauma-informed care services. The target population of this grant is children and youth ages 3 to 17 that have been exposed to or witnessed trauma or are children of military families.

Trauma-Informed Care Specialty Network

Created by STAR Health, it allows its providers to list the training on trauma that they have pursued and helps identify providers who have been trained in trauma-informed care in the STAR Health network for caseworkers, caregivers and others in the child welfare community. STAR Health also offers TIC trainings to CPA, kinship families, RTC staff and Emergency Shelter staff.

The National Quality Improvement Center’s Adoption and Guardianship Support and Preservation (QIC-AG) awarded grant funds to Texas to study TIC practice. Pathways to Permanence, training for active caregivers, was selected and will be randomly given to groups of caregivers for children whose parents’ had their parental rights terminated; or children who have been in care for at least two years with no or partial rights terminated.

G. National Resources

Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency at: http://www.ncjfcj.org/sites/default/files/trauma%20bulletin_0.pdf

[Roadmap to Seclusion and Restraint Free Mental Health Services](https://store.samhsa.gov/shin/content/SMA06-4055/SMA06-4055-A.pdf) at:
<https://store.samhsa.gov/shin/content/SMA06-4055/SMA06-4055-A.pdf>

[Position Statement on Seclusion and Restraint](http://www.mentalhealthamerica.net/go/position-statements/24), National Association of State Mental Health Program Directors (NASMHPD), at: <http://www.mentalhealthamerica.net/go/position-statements/24>

[The National Child Traumatic Stress Network \(NCTSN\) Bench Card for the Trauma Informed Judge](http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf), at: http://www.nctsn.org/sites/default/files/assets/pdfs/judge_bench_cards_final.pdf

The National Child Traumatic Stress Network, LGBTQ Issues and Child Trauma, at: http://www.nctsn.org/sites/default/files/assets/pdfs/safe_spaces_safe_places_flyer_2015.pdf

JURIST IN RESIDENCE LETTERS

The Commission has two Jurists in Residence:

District Judge Dean Rucker (ret): Appointed in 1998, Judge Rucker serves as the Presiding Judge for the Seventh Administrative Judicial Region of Texas. In 2014, Judge Rucker retired as judge of the 318th Judicial District in Midland County, a bench he held since 1988. Judge Rucker was a longtime member of the Supreme Court Task Force on Foster Care, created in 1994 and was a founding member of the Children’s Commission before becoming a Jurist in Residence. He is a member of the Texas Academy of Family Law Specialists and the National Council of Juvenile and Family Court Judges. He has served in numerous leadership capacities and also chairs the Children's Commission's Legislative Committee.

District Judge Robin Sage (ret): Judge Sage retired in 2011 from the 307th Family District Court in Longview. After serving as the assigned judge for the Child Protection Court of Northeast Texas, she currently is a judicial consultant with the National Center for State Courts and Casey Family Programs. Judge Sage has been active in Court Improvement Program activities since the mid-1990s serving on the Supreme Court Task Force on Foster Care, and was a founding member of the Children’s Commission prior to serving as Jurist in Residence.

Each judge is instrumental in advancing judicial education and community collaboration across the state through training events and written communications, particularly topical Jurist in Residence letters.

Jurist in Residence Letters

(Listed alphabetically and available at <http://texaschildrenscommission.gov/jir.aspx>)

- [84th Session Legislative Update](#)
- [Back to School - New Legislation and Resources to Help Improve Education Outcomes of Students in Foster Care](#)
- [Bench Book for CPS Judges](#)
- [Changes at Department of Family and Protective Services; Increase in Removals](#)
- [Child and Adolescent Needs and Strengths \(CANS\) Assessment for Foster Children](#)
- [Child and Adolescent Needs and Strengths \(CANS\) Assessment for Foster Children Meetings](#)
- [Children's Commission Offers Registration Scholarships for Child Abuse & Neglect Workshop](#)
- [Court Hearing Practices and Court Costs](#)

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- [CPS Realigns Staff in Response to State Budget Cuts](#)
 - [DFPS Foster Care Redesign](#)
 - [DFPS Publishes Guide for Fathers in CPS Cases](#)
 - [DFPS Transformation Report and Suggested Statutory Changes](#)
 - [Education Decision-Making in CPS Cases and the New Form 2085-E](#)
 - [Engagement Efforts to Achieve Permanency](#)
 - [Every Student Succeeds Act \(ESSA\)](#)
 - [Extended Health Care Benefits for Former Foster Youth](#)
 - [Extending Foster Care Beyond 18](#)
 - [Family Visitation in CPS Cases](#)
 - [Federal Requirements Regarding Specificity in Court Orders](#)
 - [Foster Care and Human Trafficking](#)
 - [Impact of Budget Deficits on CPS](#)
 - [Implicit Bias in Judicial Decision-Making](#)
 - [Information about Youth Sex Offenders](#)
 - [Judicial Guide to Advocate for and Ensure Adequate Funding for Legal Representation in Child Protective Services Cases](#)
 - [Legislative Changes Regarding Medical Care for Foster Youth](#)
 - [Legislative Proposal on Appointment and Compensation of Counsel in Child Protective Services \(CPS\) Cases](#)
 - [New Appellate Rules Applicable to Termination of Parental Rights or State as Managing Conservator](#)
 - [New DFPS Subpoena Policy](#)
 - [New Medical Consenter Training](#)
 - [New Texas Case Law on Indian Child Welfare Act](#)
 - [Ombudsman for Children and Youth in Foster Care](#)
 - [Opiate and Opioid Dependency of Pregnant and Nursing Women](#)

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- [Parental Child Safety Placements, or PCSPs](#)
 - [Permanency Care Assistance Program Basics](#)
 - [Permanency Care Assistance Program Follow-Up](#)
 - [Permanency Care Assistance Program - 3rd JIR](#)
 - [Permanency Summit Follow-up](#)
 - [Psychoactive Medications](#)
 - [Star Health Enhancements](#)
 - [Star Health & Psychotropic Medications](#)
 - [Texas Child Protection Specialty Courts](#)
 - [Texas Mounts Effort to Improve Educational Outcomes of Children and Youth in Foster Care](#)
 - [Unaccompanied Alien Children](#)
 - [Why It's Important to Consider the Indian Child Welfare Act](#)

CHARTS

[Post Foster Care Benefits](#)

[Uniform Child Custody Jurisdiction and Enforcement Act \(UCCJEA\)](#)

[Continuing Court of Jurisdiction \(CCJ\) and Venue](#)

[Extended Court Jurisdiction](#)

[Extended Jurisdiction Matrix](#)

COMMON ACRONYMS AND ABBREVIATIONS

Acronym	Explanation	Comments
AAL	Attorney ad litem	An attorney who provides services for the purposes of the legal action only, including representation of a child, and who owes to the person the duties of undivided loyalty, confidentiality, and competent
ADR	Alternative Dispute Resolution	Settling conflict outside of litigation, (e.g., mediation)
AFCARS	Adoption and Foster Care Analysis and Reporting System	An application that collects case level information on all children in foster care for whom State child welfare agencies have responsibility for placement, care or supervision, and on children who are adopted under the auspices of the State's public child welfare agency.
AJR	Administrative Judicial Region	The state of Texas is divided into nine administrative judicial regions. Each region has a presiding judge that is appointed by the Governor to serve a four-year term.
APPLA	Another Planned Permanent Living Arrangement	A permanent legal arrangement for a child designed to promote stability and permanency in a child's life; refers to permanent placements other than a reunification with a parent, adoption or permanent managing conservatorship to a relative.
ASFA	Adoption and Safe Families Act	The Adoption and Safe Families Act of 1997 (Public Law 105-89) was enacted by the United States Congress in an attempt to correct problems that were inherent in the foster care system that deterred the adoption of children with special needs. Many of these problems had stemmed from an earlier bill, the Adoption Assistance and Child Welfare Act of 1980, although they had not been anticipated when the law was passed. The biggest change to the law was how ASFA Amended Title IV-E of the Social Security Act regarding funding.
ARD	Admission, Review, and Dismissal	Process by which a student's parents and school staff meet at least annually to: 1) decide whether a student has an eligible disability; 2) determine what special education and related services will be provided; and 3) develop an individual education program.
BIA	Bureau of Indian Affairs	Bureau of the U.S. Department of the Interior, which currently provides services (directly or through contracts, grants or compacts) to approximately 1.9 million Native Americans and Alaska Natives.
CANS	Child and Adolescent Needs and Strengths	A tool developed for children's services to support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes.
CAPTA	Child Abuse Prevention and Treatment Act	Federal legislation addressing child abuse and neglect.

CASA	Court Appointed Special Advocate	A specially screened and trained volunteer, appointed by the court, which conducts an independent investigation of child abuse, neglect, or other dependency matters, and submits a formal report proffering advisory recommendations as to the best interests of a child. In some jurisdictions, volunteers without formal legal training, such as CASAs, are appointed to represent abused and neglected children, serving in the capacity of a Guardian ad litem. http://www.casaforchildren.org
CCEJ	Court of Exclusive, Continuing Jurisdiction	Upon rendition of a final order in a SAPCR, a court acquires continuing, exclusive jurisdiction over all subsequent matters regarding the child, unless otherwise provided by Tex. Fam. Code Chapter 155 .
CEDD	Center for the Elimination of Disproportionality and Disparities	In 2010, the Texas Health and Human Services created the Center for Elimination of Disproportionality and Disparities (CEDD) to partner with health and human services agencies, external stakeholders, other systems, and communities to identify and eliminate disproportionality and disparities affecting children, families, and disparately impacted individuals. The CEDD works to identify the systemic factors and practice improvements that address the disproportionate representation and disparate outcomes for children, families, and disparately impacted individuals in the state's health and human services programs.
CFRT	Texas Child Fatality Review Team	A multidisciplinary, multi-agency group, mandated by state law that oversees and assists the work of local review teams in Texas, and works to develop a statewide understanding of the scope and magnitude of childhood mortality. http://www.dshs.state.tx.us/mch/Child_Fatality_Review.shtm
CFSR	Child and Family Services Review	A Federal-State collaborative effort designed to help ensure that quality services are provided to children and families through State child welfare systems.
CIP	Court Improvement Program	Strengthening Texas courts to achieve safety, permanency, and well-being for abused and neglected children is the work of the Court Improvement Program. http://www.texaschildrenscommission.gov
COS	Circle of Support	Held soon after a youth who has been removed from the home reaches age 16. Primary purpose is to develop a transition plan for the youth and to connect youth to supportive and caring adults who can help the youth when the youth leaves foster care.
COS	Court Ordered Services	Type of CPS case during which services are ordered by the court for the family, but DFPS does not have temporary managing conservatorship of the child.
CPA	Child Placing Agency	Licensed by DFPS and required to conform to minimum standards, verify and oversee non-agency foster placements.
CPC	Child Protection Court	Courts that specialize in child protection cases.

CPS	Child Protective Services	A division of Texas DFPS that investigates reports of abuse and neglect of children. It also: provides services to children and families in their own homes; places children in foster care; provides services to help youth in foster care make the transition to adulthood; and places children in adoptive homes. http://www.dfps.state.tx.us/child_protection/about_child_protective_services
CPU	Centralized Placement Unit	Reviews child's information, tracks placement vacancies, and determines least restrictive placement option that best meets needs of child.
CRCG	Community Resource Coordination Group	Collaboration of local public and private agencies, organizations, and families to work together to meet the needs of individuals which no one agency can meet.
CSCAL	Child Safety Check Alert List	Automated program operated by the Texas Department of Public Safety as part of the Texas Crime Information Center to assist DFPS in locating families that move before CPS begins or finishes an investigation or that move during the provision of services by CPS.
CVS	Conservatorship	Legal care, custody and control of a child given by court order.
CWB	Child Welfare Board	Board developed and funded in some Texas counties to help meet needs of children and youth in foster care.
DFPS/ TDFPS	Texas Department of Family and Protective Services	A state agency that is charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes. http://www.dfps.state.tx.us
DPS	Texas Department of Public Safety	An agency of this state created to provide public safety services to those people in the state of Texas by enforcing laws, administering regulatory programs, managing records, educating the public and managing emergencies, both directly and through interaction with other agencies. http://www.txdps.state.tx.us
DSHS	Texas Department of State Health Services	The Texas Department of State Health Services promotes optimal health for individuals and communities while providing effective health, mental health and substance abuse services to Texans. http://www.dshs.state.tx.us

ESSA	Every Child Succeeds Act	Federal education law passed in December 2015 replacing No Child Left Behind. ESSA contains several educational stability provisions related to the education of children and youth in foster care that mirror the Fostering Connections to Success and Increasing Adoptions Act of 2008. ESSA also requires designated points of contact in education and child welfare systems, assurances that schools will coordinate with child welfare to develop transportation plans, and in the 2017-2018 school year, disaggregated data on children and youth in foster care will be included in the reporting requirements.
FBSS	Family Based Safety Services	A type of service provided to some families who were the subject of an investigation of child abuse and neglect allegations. Also known as Family Preservation. Includes services to families to prevent removal of the child from the home.
FCRB	Foster Care Review Board	A panel of screened and trained volunteers preferably appointed by juvenile or family courts to: regularly review cases of children in substitute placement such as foster care; examine efforts to identify a permanent placement for each child; and proffer advisory recommendations to the court.
FGC	Family Group Conference	A type of Family Group Decision Making. During a family group conference, the child's family joins with relatives, friends, and community members to develop a plan for the child and family. Generally held after a child is removed, but may also be used before removal when the family receives FBSS.
FGDM	Family Group Decision Making	A collaborative approach to service planning and decision making, which involves the child or youth and his or her family to join CPS staff in developing a service plan.
FTM	Family Team Meeting	A type of Family Group Decision Making that is generally held before a child is removed from the home, but also may be held during other states of services, such as when a family receives FBSS or when a child is in DFPS conservatorship.
GAL	Guardian ad litem	A person appointed by a judge to represent the best interests of an allegedly abused or neglected child; in many counties the GAL is the CASA
GRO	General Residential Operation	A residential child-care operation that provides child care for 13 or more children or young adults.
HHSC	Health and Human Services Commission	State agency which oversees operations of the health and human services system, including DFPS.
HSEGH	Health, Social, Educational and Genetic History	Child's information provided in report to prospective adoptive families.

ICPC	Interstate Compact on the Placement of Children	Provides a solid legal framework for ensuring the timely placement of children across state lines, the suitability of prospective families, and the provision of needed support services. The proposed compact: (1) narrows the applicability of the compact to the interstate placement of children in the foster care system and children placed across state lines for adoption; (2) requires the development of time frames for completion of the approval process; (3) establishes clear rulemaking authority, (4) provides enforcement mechanisms; (5) clarifies state responsibility; and (6) ensures states' ability to purchase home studies from licensed agencies to expedite the process.
ICWA	Indian Child Welfare Act	The Indian Child Welfare Act (ICWA), which was adopted by Congress in 1978, applies to child custody proceedings in state courts involving "Indian" children--children of Native American ancestry. The provisions of ICWA represent a dramatic departure from the procedural and substantive laws that most states have enacted to govern child custody proceedings.
IEP	Individualized Education Program	A plan for each child with a disability that is developed, reviewed and revised by a committee, of which parents are active members. Includes the student's present levels of academic achievement and functional performance, participation in State and district-wide assessments, transition services, annual goals, special factors, special education, related services, supplementary aids and services, extended school year services, and least restrictive environment.
IMPACT	Information Management Protecting Adults & Children in Texas	A statewide automated child welfare information system (SACWIS) system used by the Texas DFPS to aid in the investigation and assessment of alleged child and adult abuse or neglect cases.
IV-E	Title IV-E	Title IV-E of the Social Security Act which provides federal funding stream to states for costs related to the provision of foster care.
JMC	Joint Managing Conservatorship	The sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party. Tex. Fam. Code § 101.016.
LGBTQ	Lesbian, Gay, Bisexual, Transgender, and Questioning Youth	The American Bar Association Opening Doors Project started 6 years ago to provide the legal and child welfare community tools, resources and support for improving outcomes for LGBTQ young people in foster care. http://www.americanbar.org/groups/child_law/what_we_do/projects/openingdoors.html

MOU	Memo of Understanding	An agreement between two parties in the form of a legal document. It is not fully binding in the way that a contract is, but it is stronger and more formal than a traditional gentleman's agreement. Sometimes, a memorandum of understanding is used as a synonym for a letter of intent, particularly in private law. A letter of intent expresses an interest in performing a service or taking part in an activity, but does not legally obligate either party.
NCJFCJ	National Council of Juvenile and Family Court Judges	The mission of the National Council of Juvenile and Family Court Judges is to provide all judges, courts, and related agencies involved with juvenile, family, and domestic violence cases with the knowledge and skills to improve the lives of the families and children who seek justice.
NCSC	National Center for State Courts	The mission of NCSC is to improve the administration of justice through leadership and service to state courts, and courts around the world. http://www.ncsc.org/
OAG	Office of the Attorney General	A Texas state agency that serves as legal counsel to all boards and agencies of state government, issues legal opinions when requested by the Texas Governor, heads of state agencies and other officials and agencies as provided by Texas statutes, sits as an ex-officio member of state committees and commissions, and defends challenges to state laws and suits against both state agencies and individual employees of the State. http://www.oag.state.tx.us
OCA	Office of Court Administration	The mission of OCA is to provide Resources and Information for the Efficient Administration of the Judicial Branch of Texas. http://www.txcourts.gov/oaca.aspx
PAL	Preparation for Adult Living	A program within CPS to provide support and services to help youth prepare for independent adult living upon departure from DFPS care and support.
PC	Permanency Conference	Held when it is not possible or appropriate to hold a Family Group Conference. Used to develop a youth's permanency plan and the family's service plan.
PJMC	Permanent Joint Managing Conservatorship	The long-term sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party; granted by final decree. Tex. Fam. Code § 101.016.
PMC	Permanent Managing Conservatorship	Placement of a child in the permanent conservatorship of an entity or person, by court order, (e.g. Texas DFPS, relative) with no intention of returning the child to the parent's custody.
RO	Ruled Out	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. The information gathered during the investigation supports a reasonable conclusion that: 1) the alleged abuse did not occur; 2) the alleged perpetrator is 9 years old or younger; 3) the alleged abuse or neglect did occur but there is sufficient evidence to reasonably conclude that the named alleged perpetrator is not responsible.

RTB	Reason to Believe	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. Based on the preponderance of information gathered during the investigation, the caseworker concludes that the alleged abuse or neglect did occur and the alleged perpetrator is responsible for it.
RTC	Residential Treatment Center	Placement of a child in treatment where the child lives at the facility providing the treatment services.
SACWIS	Statewide Automated Child Welfare Information System (SACWIS)	A comprehensive automated case management tool that meets the needs of all staff (including social workers and their supervisors, whether employed by the State, county, or contracted private providers) involved in foster care and adoptions assistance case management.
SAPCR	Suit Affecting Parent-Child Relationship	A law suit, filed in child protective courts, that affects the parent-child relationship, such as conservatorship of a child that has allegedly been abused or neglected by a parent or guardian.
SIJS	Special Immigrant Juvenile Status	SIJS is an immigration classification that may allow for a child who is present in the U.S. without legal immigration status and who has been abused, abandoned, or neglected by a parent.
SPA	Regional Support Program Administrator	Persons assigned to a region for the support of Texas DFPS programs.
TBRI®	Trust-Based Relational Intervention	Developed by Texas Christian University's Institute of Child Development, evidence-based principles and practices to accelerate healing and speed to permanency for children in foster care.
TCIC	Texas Crime Identification Center	TCIC provides immediate access 24/7 to law enforcement agencies throughout Texas to data regarding the stolen status of property and the wanted, missing, sex offender, or protective order status of persons.
TFC	Texas Family Code	The laws and statutes that govern Texas family law including child protection
THECB	Texas Higher Education Coordinating Board	The Texas Higher Education Coordinating Board's mission is to promote access, affordability, quality, success, and cost efficiency in the state's institutions of higher education, through Closing the Gaps and its successor plan, resulting in a globally competent workforce that positions Texas as an international leader in an increasingly complex world economy.
TJMC	Temporary Joint Managing Conservatorship	When temporary managing conservatorship is granted to DFPS and the parent(s) or other person.

TMC	Temporary Managing Conservatorship	The awarding of conservatorship of a child to Texas DFPS. This may include children remaining in their home with orders from the court for particular requirements to ensure the safety of the child or the removal of a child from the family for safety and well-being purposes.
TPM	Transition Plan Meeting	Held soon after a youth who has been removed from the home reaches age 16.
TRCP	Texas Rules of Civil Procedure	Rules to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law. http://www.txcourts.gov/media/1055394/trcp-all-updated-with-amendments-effective-912015-.pdf
UTC	Unable to Complete	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. The caseworker could not gather enough information because the caseworker could not locate a principal or a principal was uncooperative.
UTD	Unable to Determine	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. The allegation does not meet the criteria for unable to complete, but: 1) the information gathered is not enough to determine whether the abuse or neglect occurred; or 2) there is enough information to determine that abuse or neglect occurred, but there is not enough information to determine if the alleged perpetrator is responsible.

Abbreviation	Definitions
MDNG	A case reason for Medical Neglect
NSUP	A case reason for Non-Support
PHAB	A case reason for Physical Abuse
PHNG	A case reason for Physical Neglect
RAPR	A case reason for Refusal to Accept Parental Responsibility
SXAB	A case reason for Sexual Abuse
EMAB	A case reason for Mental or Emotional Injury
ABAN	A case reason for Abandonment
NSUP	A case reason for Neglectful Supervision

¹ CPS Handbook § 2200, located at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp. Last visited August 16, 2016.

² The Texas Family Violence Bench Book, located at <http://www.txcourts.gov/media/478288/domesticviolencebenchbook.pdf>.<http://www.txcourts.gov/media/478288/domesticviolencebenchbook.pdf>. Last visited August 16, 2016.

³ Updates to chapters of the Texas Family Violence Bench Book, located at: <http://www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-bench-books.aspx> Last visited August 16, 2016.

⁴ Interstate Compact on Placement of Children, located at: <http://www.aphsa.org/content/AAICPC/en/ICPCRegulations.html>. Last visited August 16, 2016.

⁵ CPS Handbook § 4523, located at: https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4523.
https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4523. Last visited August 16, 2016.

⁶ A Guide for Those “Aging Out” of Foster Care in Texas, located at: <http://texaschildrenscommission.gov/media/71987/5th-Edition-Foster-Youth-Guide-Web-Final.pdf> Last visited August 19, 2016.

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⁸ DFPS Transitional Living Services Handout, located at: https://www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Transitional_Living/documents/Transitional_Living_Services_Handout.pdf Last visited August 23, 2016.

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¹⁰ National Conference of State Legislatures, <http://www.ncsl.org/research/human-services/disproportionality-and-disparity-in-child-welfare.aspx>. Last visited May 30, 2016.

U.S. Department of Health and Human Services (2010). Administration for Children and Families, Administration on Children, Youth, and Families. The AFCARS report: Preliminary FY 2009 estimates as of July 2010. Washington, DC: U.S. Government Printing Office.

¹¹ Billingsley, A., & Giovannoni, J. M. (1972). Children of the storm. New York: Harcourt Brace Jovanovich.

¹² Hill, R. B. (2008). An analysis of racial/ethnic disproportionality and disparity at the national, state, and county levels. Seattle, WA: Casey Family Programs.

¹³ Texas Department of Family and Protective Services. (2014). Disproportionality in Child Protective Services Trend Analysis: 2006-2012, located at <http://texascasaconference.org/wp-content/uploads/sites/4/2013/08/Disproportionality-Trend-Analysis-2014-Report-Special-01-05-15.pdf>. Last visited August 24, 2016.

¹⁴ Texas Department of Family and Protective Services, https://www.dfps.state.tx.us/Child_Protection/Initiatives/Disproportionality Last visited August 26, 2016.

¹⁵ The Center for the Elimination of Disproportionality and Disparities, located at http://www.hhsc.state.tx.us/hhsc_projects/cedd/ Last visited August 24, 2016.

¹⁶ [Courts Catalyzing Change Preliminary Protective Hearing Benchcard](http://www.ncifci.org/sites/default/files/CCC%20Bench%20Card%20Insertsfinal.pdf), located at <http://www.ncifci.org/sites/default/files/CCC%20Bench%20Card%20Insertsfinal.pdf>. Last visited August 24, 2016.

¹⁷ Located at <http://www.ncjfcj.org/sites/default/files/CCC%20Bench%20Card%20Insertsfinal.pdf>. Last visited August 24, 2016.

¹⁸ Available online at http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1937&Command=Core_Download&method=inline&PortalId=0&TabId=124. Last visited August 16, 2016.

¹⁹ Available online at [at http://texaschildrenscommission.gov/media/2511/2012-13-Updated-Foster-Care-Data-Handout_v2.pptx](http://texaschildrenscommission.gov/media/2511/2012-13-Updated-Foster-Care-Data-Handout_v2.pptx). Last visited August 16, 2016.

²⁰ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351. Available online at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ351/pdf/PLAW-110publ351.pdf>. Last visited August 16, 2016.

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²² Federal law references the local education agency. This term is synonymous with the school district. In Texas, the state education agency (SEA) is the Texas Education Agency.

²³ U.S. Departments of Education and Health & Human Serv., Admin. for Children & Families (2014) joint letter regarding coordination between local education and child welfare agencies. Available online at: <http://www2.ed.gov/about/inits/ed/foster-care/fostering-connections-letter.doc>. Last visited August 16, 2016.

²⁴ U.S. Dep't Health & Human Serv., Admin. on Children for Children & Families, CWPM § 8.1B Q27 (2007) . A, available online at: www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=36#1803. Last visited August 16, 2016.

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²⁶ McKinney-Vento Homeless Assistance Act of 1987, Pub. L. No. 100-77. Available online at <http://www.gpo.gov/fdsys/pkg/STATUTE-101/pdf/STATUTE-101-Pg482.pdf>. Last visited August 16, 2016.

²⁷ Available online at <http://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2085-E.docx>. Last visited August 16, 2016.

²⁸ Family Educational Rights and Privacy Act of 1974, Pub. L. No. 93-380. Available at <http://www.gpo.gov/fdsys/pkg/STATUTE-88/pdf/STATUTE-88-Pg484.pdf>. Last visited August 16, 2016.

²⁹ Uninterrupted Scholars Act of 2013, Pub. L. No.112-278. Available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s3472enr/pdf/BILLS-112s3472enr.pdf>. Last visited August 16, 2016.

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³¹ Available at <http://www.txcourts.gov/publications-training/training-materials/truancy-reform.aspx>. Last visited August 16, 2016.

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³⁶ Rehabilitation Act of 1973, Pub. L. No. 93-112. Available online at <http://www.gpo.gov/fdsys/pkg/STATUTE-87/pdf/STATUTE-87-Pg355.pdf>. Last visited August 16, 2016.

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- ⁶² 25 U.S.C. §1903(1); BIA Guidelines, *supra* note 1 at Rule A.3.
- ⁶³ 25 U.S.C. §1903(8) [“Indian tribe” defined]; *In re A.J.*, 733 A.2d 36 (Vt. 1999).
- ⁶⁴ BIA Guidelines, *supra* note 1 at Rule A.3., *When does ICWA apply?*
- ⁶⁵ BIA Guidelines, *supra* note 1 at Rule A.3(c), *When does ICWA apply?*
- ⁶⁶ BIA Guidelines, *supra* note 1 at Rule B.2. (b), *What actions must an agency and State court undertake in order to determine whether a child is an Indian child?*
- ⁶⁷ BIA Guidelines, *supra* note 1 at Rule B, *Pretrial Requirements*.

⁶⁸ “Indian custodian” is defined in ICWA as “any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.” 25 U.S.C. §1903(6).

⁶⁹ BIA Guidelines, *supra* note 1 at Rule C.3, *How is a determination of “good cause” made?*

⁷⁰ BIA Guidelines, *supra* note 1 at Rule C.3(e), *Yavapai-Apache Tribe v. Mejia*, 906 S.W.2d at 163.

⁷¹ BIA Guidelines, *supra* note 1 at Rule C.2(b).

⁷² BIA Guidelines, *supra* note 1 at Rule A. 4, *How do I contact a tribe under these guidelines?*

⁷³ 25 C.F.R. §23.2, “Parent means the biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.”

⁷⁴ BIA Guidelines, *supra* note 1 at Rule B.2(b)(1).

⁷⁵ BIA Guidelines, *supra* note 1 at Rule B.6(a).

⁷⁶ BIA Guidelines, *supra* note 1 at Rule B.6(a).

⁷⁷ BIA Guidelines, *supra* note 1 at Rule B.8.(f).

⁷⁸ “Under ICWA, enrollment is not a necessary condition of tribal membership. *Nelson v. Hunter*, 132 Or. App. 361, 364, 888 P.2d 124, 125-26 (Ct. App. 1995). “[M]embership may be established through proof of enrollment[;] enrollment is not the exclusive test of membership.” *Id.* “Enrollment is not always required in order to be a member of a tribe. Some tribes do not have written rolls. Others have rolls that list only persons that were members as of a certain date.” *Id.*, 888 P.2d at 125; accord *In re Junious M.*, 144 Cal. App. 3d 786, 791, 193 Cal. Rptr. 40, 42-43 (Dist. Ct. App. 1983). Likewise, ICWA contains no blood quantum requirement; rather, each tribe has its own criteria. See Thomas R. Myers & Jonathan J. Siebers, *ICWA: Myths and Mistaken Application*, 83 Mich. Bar. J. 12, 21 (2004).” *In re R.R.*, 294 S.W.3d 213 (Tex. App. 2009).

⁷⁹ BIA Guidelines, *supra* note 1 at Rule B.1. *Determination That Child Is an Indian.*

⁸⁰ BIA Guidelines, *supra* note 1 at Rule A.3 (b), *When does ICWA apply?*

⁸¹ BIA Guidelines, *supra* note 1 at Rule B.8(f) *What is the process for the emergency removal of an Indian child?*

⁸² BIA Guidelines, *supra* note 1 at Rule D, *Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights.*

⁸³ BIA Guidelines, *supra* note 1 at Rule F.2, *What placement preferences apply in adoptive placements?*

⁸⁴ 25 U.S.C. §1915(c) (tribe can alter placement preferences by resolution).

⁸⁵ BIA Guidelines, *supra* note 1, at Rule F.1, *When do the placement preferences apply?*

⁸⁶ BIA Guidelines, *supra* note 1 at Rule F.4. *How is a determination for “good cause” to depart from the placement preferences made?*

⁸⁷ BIA Guidelines, Rule F.4(b)(4).

⁸⁸ BIA Guidelines, *supra* note 1 at Rule D.3.(c). *What are the applicable standards of evidence?*

⁸⁹ BIA Guidelines, *supra* note 1 at Rule A. 2. *What terms do I need to know?*

⁹⁰ *Id.* at B.1, *When does the requirement for active efforts begin?*

⁹¹ BIA Guidelines, *supra* note 1 at Rule D.4. *Who may serve as a qualified expert witness?*

⁹² BIA Guidelines, *supra* note 1 at Rule E.1(b).

⁹³ DFPS Child Protective Services Handbook, Section 9300, Placing Children Outside of Texas, located at: https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_9300.asp#CPS_9300. Last visited August 16, 2016.

⁹⁴ Explanation of ICPC Regulation VII (October 2011), located at:

<http://icpc.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/ICPC-Regulation7-Sept2011.pdf>, and suggested court order, located at:

<http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/FormOrderforExpeditedPlacementDecision2011.pdf> Last visited August 16, 2016.

⁹⁵ The Psychotropic Medication Parameters for Foster Children can be found online at:

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⁹⁶ Department of Family and Protective Services, *Child and Adolescent Needs and Strengths Assessment (CANS)*, located at <http://texaschildrenscommission.gov/media/70771/CPS-CANS-Presentation.pdf> Last visited August 16, 2016.

⁹⁷ Travis County Travis County Collaborative for Children, *Defining a Trauma-Informed Organization, Program, or System*, located at http://media.wix.com/ugd/34f85b_500749dbe84e433abc819e626bb22791.pdf. Last visited August 16, 2016.

⁹⁸ Meeting the Needs of High Needs Children in the Texas Child Welfare System (November 2015), located at:

https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2015/2015-12-03_Stephen_Group_High_Needs_Assessment.pdf. Last visited August 16, 2016.

⁹⁹ Understanding Trauma-Informed Care in the Texas Child Welfare System: Data and Recommendations from the Field (October 2015), located at: <http://texascasa.org/wp-content/uploads/2015/10/FINAL-Trauma-Survey-Report-10.5.15.pdf>. Last visited August 16, 2016.

¹⁰⁰ Respecting the Needs of Children and Youth in Texas Foster Care: Acknowledging Trauma and Promoting Positive Mental Health throughout the System (December 2014), located at: <http://texascasa.org/wp-content/uploads/2015/01/Texas-CASA-Mental-Health-Task-Force-Report-final-webversion.pdf>. Last visited August 16, 2016.