

## Adversary Hearing Checklist

15 minutes; up to 25 suggested best practice

### Prior to Hearing, review court file to determine:

- If child removed pursuant to 262.101 or 262.105, was hearing set within 14 days of removal? [Tex. Fam. Code § 262.201\(a\)](#) unless temporary order extended under [Tex. Fam. Code § 262.201\(a-5\)](#) or (e-1).
- Child's GAL/AAL has been appointed and notified of hearing. [Tex. Fam. Code § 107.011](#); [Tex. Fam. Code § 107.012](#)
- All necessary parties served. [Tex. Fam. Code § 102.009](#)
- Court of Continuing, Exclusive Jurisdiction identified. [Tex. Fam. Code § 155.101](#)
- If petition on non-emergency removal filed pursuant to 262.113, was hearing set within 30 days of filing? [Tex. Fam. Code § 262.201\(j\)](#) unless temporary order extended under [Tex. Fam. Code § 262.201\(a-5\)](#) or (e-1).

### At Hearing:

- Identify those present, note those not present, determine service on parties, and swear witnesses. [Tex. Fam. Code § 102.009](#)
- Parents not represented by attorney informed of right to be represented by an attorney, and if indigent and in opposition to suit, right to court-appointed attorney. [Tex. Fam. Code § 262.201\(c\)](#)
- Parents not represented by attorney informed of right to be represented by an attorney, and if not indigent, but in opposition to suit, right to hire an attorney. [Tex. Fam. Code § 262.201\(a-5\)](#) or (e-1)
- If a parent claims indigence, hear evidence and make determination. [Tex. Fam. Code § 262.201\(d\)](#)

- Confirm that DFPS generated notice to relatives. [Tex. Fam. Code § 262.1095\(a\)](#)
- Determine if language interpretation is needed. [Tex. Gov't Code § 57.002](#)
- Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. [Tex. Fam. Code § 261.307\(a\)\(2\)](#); [Tex. Fam. Code § 262.201\(l\)](#)
- Review placement and determine whether DFPS and criminal background checks conducted and whether home studies have been initiated. [Tex. Fam. Code § 262.114\(a-1\)\(2\)](#); [Tex. Fam. Code § 264.114\(b\)](#)
- Determine whether DFPS is able to place with relative and note evidence supporting decision. [Tex. Fam. Code § 262.0022](#)
- Inquire about Indian/Native American Heritage. [25 U.S.C. § 1912](#); [Tex. Fam. Code § 262.201\(f\)](#)
  - Inquire of all parties if there's Indian heritage in the family.
  - Determine which tribes may be involved.
  - Ensure proper notice to parent, tribe if known, and Secretary of the Interior and Bureau of Indian Affairs if tribe unknown. **(See Topical Checklist: ICWA)**
- Ask Child's Attorney Ad Litem if has seen client and when.
  - If AAL has not seen client, ensure form is provided. [Tex. Fam. Code § 107.004\(d\)\(2\)](#)
- Review and approve temporary Family Visitation Plan. [Tex. Fam. Code § 262.115](#)

### At the End of the Hearing:

- Determine if sufficient evidence to grant DFPS TMC of child; if not, return the child, if in possession of DFPS. Evidence is sufficient to satisfy a person of ordinary prudence and caution that:
  - There was / is a danger to physical health or safety of the child, which was / is caused

by the act or failure to act of the person entitled to possession. [Tex. Fam. Code § 262.201\(g\)\(1\); 262.201\(j\)\(1\)](#)

- The urgent need for protection required the immediate removal of the child / or requires the removal and reasonable efforts have been made to prevent or avoid removal. [Tex. Fam. Code § 262.201\(g\)\(2\); 262.201\(j\)\(2\)](#)
  - Reasonable efforts have been made to enable a child who has been removed to return to the home but there is a substantial risk of a continuing danger if the child is returned home. [Tex. Fam. Code § 262.201\(g\)\(3\)](#)
  - There is a continuing danger to the physical health or safety of the child and for the child to be in or remain in the home is contrary to the welfare of the child. [Tex. Fam. Code § 262.201\(h\); 262.201\(j\)\(1\)](#)
- If evidence is sufficient to appoint DFPS as TMC, inform parents that their rights may be terminated or limited. [Tex. Fam. Code § 262.201\(m\)](#)
- Determine if aggravated circumstances are alleged or exist. [Tex. Fam. Code § 262.2015](#)
- Determine whether family violence has occurred and Protective Order necessary or available. [Tex. Fam. Code § 262.201\(k\)](#)
- Determine whether child victim of human trafficking and needs placement in secure agency foster or group home. [Tex. Fam. Code § 262.011](#)
- Unless not in the child's best interest, place child with:
- Child's noncustodial parent; or
  - Another relative of the child if placement with the noncustodial parent is inappropriate. [Tex. Fam. Code § 262.201\(n\)](#)
- ISSUE COURT ORDER** and include or address:

- Service on all parties entitled to service. [Tex. Fam. Code § 102.009](#)
- Notice of removal to all parties entitled to notice. [Tex. Fam. Code § 262.1095](#)
- Parentage or DNA testing [Tex. Fam. Code § 160.502](#)
- Dismissal date. [Tex. Fam. Code § 263.401](#)
- Transfer to court of continuing, exclusive jurisdiction, if necessary for convenience of parties and in child's best interest or order transfer of the SAPCR from the CCJ if necessary for convenience of parties and in child's best interest. [Tex. Fam. Code § 262.203](#)

### Best Practices:

- Review diligent efforts to locate parties not present.
- Engage parties with direct questions:
  - *Do you speak English?*
  - *Do you understand the purpose of this hearing?*
  - *Do you understand what I've explained about your parental rights?*
- Ask DFPS direct and specific questions about Reasonable Efforts.
  - *Tell me what efforts you made to prevent or eliminate the need to remove Mary Jane Smith*
  - *Tell me what efforts you made to enable Mary Jane to return home*
  - *Tell me specifically the continuing danger to Mary Jane if she is returned home/remains in the home*
- Review services with parents, as applicable or appropriate. [Tex. Fam. Code § 263.105](#)
- Set status hearing date and announce in open court. [Tex. Fam. Code § 263.201\(a\)](#)
- Ask the following questions:
  - *What is preventing this child from returning home today?*

- *How is my decision specific to this child and this family?*
- *Are there cultural issues we need to understand?*

**Well-being issues that may be pertinent at Adversary Hearing:**

- Education Decision-maker, school stability, education goals, progress, school-related issues. [Tex. Fam. Code § 263.004](#); [Tex. Educ. Code § 25.001\(g\)](#); [Tex. Educ. Code § 25.001\(g-1\)](#) [BP at Adversary Hearing]
- Medical care and behavioral or psychiatric care. [Tex. Fam. Code § 266.007](#) [BP at Adversary Hearing]
- Young adult presence at hearing or opinion about education or medical care. [Tex. Fam. Code § 263.302](#); [Tex. Fam. Code § 266.007](#) [BP at Adversary Hearing]