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# PERMANENCY HEARING BEFORE FINAL ORDER

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## 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**
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### **A. Permanency Hearing Before Final Order**

#### **1. Initial Permanency Hearing**

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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 2<sup>nd</sup> 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\(a\)](#). Notice of a hearing under Chapter 263 must now state that the individual receiving notice pursuant to Section 263.0021(b) may, but is not required to, attend the hearing and may request to be heard at the hearing. [Tex. Fam. Code § 263.0021\(e\)](#). Courts must now determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. [Tex. Fam. Code § 263.0021\(f\)](#).

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;

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- 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):

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- 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 10<sup>th</sup> 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

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- 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

The court must make a finding as to whether DFPS is able to place the child with a relative or other designated caregiver and state the evidence that supports its finding either way. [Tex. Fam. Code § 263.002\(b\)](#).

Also, the court must make a finding as to whether returning the child to the child's home is safe and appropriate, in the best interest of the child, and whether return home is contrary to the welfare of the child. [Tex. Fam. Code § 263.002\(c\)](#).

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The court must also 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\(a-1\)\(6\)](#).

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\(a-1\)\(7\)](#).

## **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\(a-1\)\(4\)](#).

## **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;

**Special Issue:** Effective September 1, 2017, courts are required at each permanency review hearing held under Chapter 263 to review the placement of each child who is not placed with a relative caregiver or designated caregiver as defined by [Tex. Fam. Code § 264.751](#), and make a finding as to whether DFPS is able to place the child with a relative or designated caregiver and to state the evidence that supports its finding either way. [Tex. Fam. Code § 263.002\(b\)](#).

- 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:

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- has been provided appropriate non-pharmacological interventions, psychosocial therapies, or behavior 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.
    - whether DFPS has:
      - conducted an independent living skills assessment under [Tex. Fam. Code §264.121\(a-3\)](#);
      - addressed the goals identified in the child’s permanency plan, including the child’s housing plan, and the results of the ILS assessment;
      - provided a youth 16 years and older with the documents and information listed in [Tex. Fam. Code §264.121\(e\)](#); and
      - provided a youth who is 18 years or has had the disabilities of minority removed, the documents and information listed in Section 264.121(e-1). [Tex. Fam. Code § 263.306\(a-1\)\(5\)](#).

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

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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\(a-1\)\(3\)](#). 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\(a-1\)\(8\)](#).

### **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.

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**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 before a final order is rendered, 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;
- The best interest of the child based on the caregiver’s knowledge of the child;

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- 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\(e\)](#). The guardian ad litem is entitled to be consulted and provide comments regarding the child's placement, and must be granted access to a child in the child's placement. [Tex. Fam. Code § 107.002\(b\)](#).

**Special Issue:** Effective September 1, 2017, courts are required at each permanency hearing held under Chapter 263 to review the placement of each child who is not placed with a relative caregiver or designated caregiver as defined by [Tex. Fam. Code § 264.751](#), and make a finding as to whether DFPS is able to place the child with a relative or designated caregiver and to state the evidence that supports its finding either way. [Tex. Fam. Code § 263.002\(b\)](#).

### 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](#).

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## 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;
- 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 non-pharmacological 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\(a\)](#).

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## 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;
- 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

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- 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:

- 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\(h-1\)](#);

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- 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\(h-2\)](#).

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\(a\)](#).

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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\(f\)](#).

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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\(e\)](#).

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As soon as possible but not later than the 10<sup>th</sup> 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\(j\)](#).