BURDEN OF PROOF

A. Sufficient Evidence to Satisfy a Person of Ordinary Prudence and Caution

Ordinary Prudence and Caution requires a minimal showing, less than a preponderance but enough to persuade a reasonable person, similar to the "probable cause" required for a search warrant. The burden applies to:

- Ex Parte Removal Hearing. Tex. Fam. Code § 262.101;

- Taking Possession of a Child in Emergency Without a Court Order. Tex. Fam. Code § 262.104;

- Full Adversary Hearing (both emergency and non-emergency removal). Tex. Fam. Code § 262.201.

B. Preponderance of the Evidence

Preponderance is evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. Picture the scales of justice tipping slightly lower on one side and that is enough to meet the preponderance of the evidence. It is the standard of proof generally used in civil cases. The burden applies to:

- 60 Day Status Review. Tex. Fam. Code § 105.005;

- Permanency Hearing before Final Order. Tex. Fam. Code § 105.005;

- Final Order Awarding Permanent Managing Conservatorship (PMC) (without termination). Tex. Fam. Code § 105.005;

- Permanency Hearing after Final Order. Tex. Fam. Code § 105.005;

- Adoption Hearing. Tex. Fam. Code § 105.005.

C. Clear and Convincing

Clear and Convincing is the measure or degree of proof that will produce in the mind of the trier of fact (either a judge or a jury) a firm belief or conviction as to the truth of the allegations sought to be established. More than just a "Preponderance of the Evidence" but not as much as "Beyond a Reasonable Doubt." The burden applies to:

- Termination of Parental Rights. Tex. Fam. Code § 161.001;

- An Order placing a child in foster care under the Indian Child Welfare Act. 25 U.S.C. § 1912(e).

D. Beyond a Reasonable Doubt

Beyond a Reasonable Doubt is met when the trier of fact is fully satisfied, or entirely convinced that something occurred. The burden applies to:

- Termination cases subject to the Indian Child Welfare Act. 25 U.S.C. §1912(f).