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# REMOVAL

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## 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](#).

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### **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\(a\)](#).

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## 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\(b\)](#). However, [Tex. Fam. Code § 262.116](#) prohibits DFPS from taking possession of a child based on evidence that the parent homeschooled, is economically disadvantaged, has been charged with a nonviolent misdemeanor (other than one listed in [Tex. Penal Code Title 5 or 6](#), or involves family violence as defined by [Tex. Fam. Code § 71.004](#), the parent provided or administered low-THC cannabis if the low-THC cannabis was prescribed for the child, or if a parent declined immunization for a child for reasons of conscience, including religious belief. [Tex. Fam. Code § 262.116](#) does not prohibit DFPS from gathering or offering evidence of these actions as part of an effort to take possession of a child.

## 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](#).

New [Tex. Fam. Code § 262.013](#) establishes a new filing requirement for petitions relating to more than one child. DFPS must now file suit in the same court a petition based on allegations arising from the same incident or occurrence and involving children living in the same home.

If a 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

[Tex. Fam. Code § 155.201](#) requires that upon receiving notice that a court exercising emergency jurisdiction under Chapter 262 has ordered the transfer of a suit affecting the parent-child relationship under [Tex. Fam. Code § 262.203\(a\)\(2\)](#), a CCEJ must transfer the proceedings to the court exercising jurisdiction under Chapter 262. The court exercising emergency jurisdiction under Chapter 262 may also transfer the suit affecting the parent-child relationship to the CCEJ for the convenience of the parties and if transfer is in the child's best interest. However, a court hearing the case under [Tex. Fam. Code Chapter 262](#) must transfer any suit affecting the parent child relationship to the court in which the suit for dissolution of marriage is pending once the Chapter

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262 court has rendered a final order. [Tex. Fam. Code Chapter 263, Subchapter E](#). [Tex. Fam. Code § 262.203\(a\)\(3\)](#); [Tex. Fam. Code Chapter 6, Subchapter E](#). [Tex. Fam. Code § 6.407\(a\), \(b\) and \(c\)](#); [Tex. Fam. Code Chapter 103](#), [Tex. Fam. Code § 103.002](#); [Tex. Fam. Code Chapter 155, Subchapter C](#). [Tex. Fam. Code § 155.201\(a\)](#).

DFPS is required to file a transfer order issued under [Tex. Fam. Code § 262.203\(a\)\(2\)](#) with the clerk of the CCEJ so that the clerk of the CCEJ can, within the time required by [Tex. Fam. Code § 155.207\(a\)](#), transfer the case to the court exercising jurisdiction under Chapter 262. [Tex. Fam. Code § 155.204](#). Pursuant to [Tex. Fam. Code § 262.203](#), 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 (AAL) or guardian ad litem (GAL) appointed in the suit. [Tex. Fam. Code § 262.203\(d\)](#).

The court to which a suit affecting the parent-child relationship 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 \(c\)](#) 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

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## 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:

- 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\(c\)](#).

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### 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\(a-5\)](#), (e), or (e-1). [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:

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- 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;
- 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

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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 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\(a\)](#); or
- On personal knowledge or information 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\(b\)](#).

A petition filed after taking possession of a child in an emergency must be supported by an affidavit that comports with the grounds stated above. The affidavit must also state that based on the affiant's personal knowledge, there was no time, consistent with the child's health and safety, for a full adversary hearing under Subchapter C, that continuation in the home would be contrary to the child's welfare, and reasonable efforts were made to prevent or eliminate the need for removal of the child. [Tex. Fam. Code § 262.105](#).

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

For the purpose of determining the first business 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\(c\)](#).

## **3. Standard for Decision at Initial Hearing After Taking Possession**

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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

- The evidence shows that one of the following circumstances exists:
  - 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;
  - 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;
  - 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; or
  - the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine;
- 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\(b\)](#).

#### **4. 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\(b\)](#).

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## 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\(a-5\)](#), (e), or (e-1). [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\(b\)](#).

A voluntary agreement to temporary managing conservatorship cannot be used as an admission by the parent that the parent engaged in conduct that endangered the child. [Tex. Fam. Code § 262.013](#).

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

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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, unless the court grants an extension under [Tex. Fam. Code § 262.201 \(e\) or \(e-1\)](#). [Tex. Fam. Code § 262.201\(a\)](#).

### **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\(b\)](#).

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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;

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- The number and style of each case in which 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](#).

#### **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 § 107.251](#); [Tex. Fam. Code § 107.252](#); [Tex. Fam. Code § 107.253](#); [Tex. Fam. Code § 107.256](#); [Tex. Fam. Code § 107.258](#); [Tex. Fam. Code § 107.259](#); [Tex. Fam. Code § 107.260](#); [Tex. Fam. Code § 107.261](#); and [Tex. Fam. Code § 107.262](#).

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 § 107.254](#).

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

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in which the appointment is mandatory for a parent under [Tex. Fam. Code § 107.013](#). [Tex. Fam. Code § 107.255](#).

**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](#). A few specific duties of the attorney ad litem include the following:

[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:** The meeting between the AAL and child client 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\(d-2\)](#).

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[Tex. Fam. Code § 107.004\(d-3\)](#) requires that an attorney ad litem review the child's safety and well-being, including any effects of trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern.

#### **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 as long as the child is in the Department's managing conservatorship; 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 \(d\)](#), 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

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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 \(c\)](#). [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 \(e\)](#), 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\(b\)](#).

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If the court makes a finding described by [Tex. Fam. Code § 107.014\(b\)\(1\)\(A\) or \(B\)](#), 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 per [Tex. Fam. Code § 107.004\(b\)](#). 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](#) 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\(c\)](#).

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## 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 business 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\(d\)](#).

## 6. Information Provided to Relatives and Certain Individuals; 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

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- 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; and
    - 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 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

### 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:

- There is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person entitled to possession of the child and that allowing the child to remain 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, have been made to prevent or eliminate the need to remove the child from the child’s home. [Tex. Fam. Code § 262.113](#).

[Tex. Fam. Code § 262.1131](#) authorizes the court to render a Temporary Restraining Order as provided by [Tex. Fam. Code § 105.001](#), when DFPS files suit under [Tex. Fam. Code § 262.113](#).

A full adversary hearing on a non-emergency petition filed pursuant to [Tex. Fam. Code § 262.113](#) must be held not later than the 30th day after the date the suit is filed. [Tex. Fam. Code § 262.201\(b\)](#).

## H. Service of Citation

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

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- 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\(b\)\(2\), \(b\)\(3\), or \(b\)\(4\)](#);
  - 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\(a\)\(8\)](#).

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

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**

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[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 a 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 Children<sup>5</sup> and [The Interstate Compact on the Placement of Children \(ICPC\)](#) chapter of this Bench Book.

### **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\(b\)](#).

If a child is not placed with a relative, the court shall at *each hearing* under Chapter 262, include in its findings a statement on whether DFPS has elicited information regarding potential caregivers from the child. [Tex. Fam. Code § 262.0022\(1\)](#).

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\(c\)](#).

**Special Issue:** 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\(b\)](#).

### 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

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- 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:
    - 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**

DFPS must develop a temporary visitation schedule for children in in the temporary managing conservatorship of DFPS when the goal is reunification 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\(d\)](#).

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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 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](#).

