
ADVERSARY HEARING

A Full Adversary Hearing occurs after a court grants an ex parte order approving the removal of a child from a parent or caretaker; this hearing is to be held within 14 days of the date the child was taken into possession by DFPS. [Tex. Fam. Code § 262.201](#). Courts across Texas differ in the way Full Adversary Hearings are held, but in all cases DFPS has the burden to show why its recommendations should be approved by the court, including why a child should be in substitute care.

Please see the Checklist Section for the At a Glance and Adversary Hearing Checklists.

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

1. When Must Hearing Be Held

A hearing must be held not later than the 14th day after the date the child was taken into possession by DFPS unless the court grants an extension pursuant to [Tex. Fam. Code § 262.201\(a-5\)](#), (e) or (e-1). [Tex. Fam. Code § 262.201\(a\)](#).

2. Extension

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

For indigent parents, the court may, for good cause shown, postpone the full Adversary Hearing for up to seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. [Tex. Fam. Code § 262.201\(e\)](#). For parents who are not indigent but who appear in opposition, the court may, for good cause shown, postpone the full Adversary Hearing for up to seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. [Tex. Fam. Code § 262.201\(a-5\) or \(e-1\)](#). Under an extension granted pursuant to [Tex. Fam. Code § 262.201\(e\)](#), the court may shorten or lengthen the extension granted, if the parent and the appointed attorney agree in writing. If the court postpones the full Adversary Hearing, the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under [Tex. Fam. Code § 262.102\(a\)](#) for the protection of the child until the date of the rescheduled full Adversary Hearing. [Tex. Fam. Code § 262.201\(a-5\) or \(e\)](#).

3. Burden/Standard of Proof

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

4. Duties of DFPS Prior to Adversary Hearing

[Tex. Fam. Code § 262.014](#) requires DFPS, at the request of the attorney for a parent who is a party in the suit or the attorney ad litem for the parent's child, before the adversary hearing, to provide the name

of any person the Department intends to call as a witness to the allegations (except the name of a Department employee), a copy of any offense report relating to the allegations contained in the petition that will be used to refresh a witness's memory, and a copy of any photo, video, or recording that will be presented as evidence.

5. Required Findings if Child to Remain in Care

a. Danger to Physical Health and Safety Finding

There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), which was caused by an act or failure to act of the person entitled to possession from whom the child is removed and for the child to remain in the home is contrary to the welfare of the child. [Tex. Fam. Code § 262.201\(g\)\(1\)](#).

b. Urgent Need to Protect Finding

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

In determining whether there is a continuing danger to the physical health or safety of the child under [Tex. Fam. Code § 262.201\(g\)](#), the court may consider whether the household to which the child would be returned includes a person who has:

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

c. Reasonable Efforts Finding

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

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

a. Issue an Appropriate Temporary Order

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

b. Admonish and Notify Parents

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

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

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

c. Order Placement with Another Parent

The court must place the child with the parent who did not endanger the child or perpetrate abuse or neglect unless the parent cannot be located, or the court finds that possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts by DFPS to enable that person's possession. [Tex. Fam. Code § 262.201\(g-1\)](#). If such a person is located by DFPS after the Adversary Hearing and makes a written request for possession of the child, DFPS must notify the court and request a hearing. [Fam. Code § 262.201\(q\)](#).

d. Order Placement with a Relative

If it is not safe to return a child to either parent, the court must place a child with a relative unless it is not in the best interest of the child. [Tex. Fam. Code § 262.201\(n\)](#).

e. Render Protective Order, if Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under [Tex. Fam. Code Chapter 105](#). [Tex. Fam. Code § 262.201\(k\)](#).

f. Inquire About Native American Heritage

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

g. Set Status Hearing

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

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

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

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

C. Mandatory Appointment of Attorney for Parent

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

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

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

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

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

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

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

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

1. Temporary Appointment of Attorney ad Litem for Parents

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

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

- Has the powers and duties of an attorney ad litem appointed under [Tex. Fam. Code § 107.0131](#); and
- If applicable, shall:
 - conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and
 - interview any parent or other person who may have information relating to the identity or location of the parent. [Tex. Fam. Code § 107.0141\(b\)](#).
- If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:
 - inform the parent of the parent's right to be represented by an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;
 - if the parent claims indigence and requests an attorney ad litem beyond the period of time the temporary appointment under [Tex. Fam. Code § 107.0141](#), assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and
 - assist the parent in preparing for the full Adversary Hearing under [Tex. Fam. Code Chapter 262, Subchapter C](#). [Tex. Fam. Code § 107.0141\(c\)](#).

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

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

D. 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 SAPCR 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 SAPCR 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 SAPCR to the court in which the suit for dissolution of marriage is pending once the Chapter 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\(a\)](#).

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

1. Order of Transfer

An order of transfer must include:

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

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

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

2. Transfer of Court Files

[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\(c\)](#).

E. Placement with Relatives or Designated Caregiver

1. Before the Adversary Hearing

DFPS must:

- Evaluate each person listed on the Child Placement Resources Form to determine who would be most the appropriate substitute caregiver;
- Complete a home study of the most appropriate caregiver, [Tex. Fam. Code § 262.114\(a\)](#); and
- Conduct background and criminal history checks of the relatives or other designated individuals identified as potential relatives or designated caregivers on the Child Placement Resources Form. Please see the [CPS Policy Handbook § 6610](#).⁴

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

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

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

2. At the Adversary Hearing

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

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

The court shall inquire from all parties whether the child has had the opportunity to provide information regarding potential caregivers and whether individuals identified by the child are listed on the proposed Child Placement Resources Form. [Tex. Fam. Code § 262.201\(l-1\)](#).

If the child has been placed with a relative or designated caregiver, the court shall inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for a

Permanency Care Assistance program under [Tex. Fam. Code Chapter 264, Subchapter K. Tex. Fam. Code § 262.201\(n-1\)](#).

Special Issue: *The Permanency Care Assistance (PCA) program gives financial support to kinship caregivers who want to provide a permanent home to children in the temporary or permanent managing conservatorship of DFPS who cannot be reunited with their parents or adopted. Monthly payments are \$400 to \$545 per month, depending upon the needs of each child. To qualify for PCA, kinship caregivers must apply to become foster parents, care for the child as foster parents for at least six months, negotiate and sign a PCA Agreement before a court grants them managing conservatorship of the child, and obtain an order from a court naming them the managing conservator of the child after the PCA Agreement has been signed. Please see the Bench Book chapter on [Permanency Care Assistance](#) for more information.*

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

- A statement that explains the reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and
 - The actions DFPS is taking, if any. [Tex. Fam. Code § 262.114\(a-2\)](#).
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Special Issue: *Courts must make a finding at the Adversary Hearing 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 § 262.0022](#).*

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

3. Modifying Child Support

[Tex. Fam. Code § 154.001](#) requires the court to notify the Office of the Attorney General within 10 days if a court presiding over a SAPCR involving DFPS orders child support payments or modifies child support payments that requires the payments be made to DFPS.

[Tex. Fam. Code § 234.007\(a\)](#) requires all parties who pay child support under temporary or final orders to pay child support through the state disbursement unit, including child support employers who are court-ordered to withhold from the obligor's income.

4. Further Consideration of Former Foster Parent

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

F. Placement of Child Victim of Human Trafficking

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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](#).

G. Aggravated Circumstances

If the court finds aggravated circumstances, it may:

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

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

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

The court must also:

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

H. Decisions Regarding Education Required at Adversary Hearing

1. Designation of Education Decision-Maker

[Tex. Fam. Code § 263.004](#) requires DFPS to provide notice to the court and others of the entity or person holding education decision-making authority. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a non-parent managing conservator pursuant to [Tex. Fam. Code § 153.371](#), which includes the right to make decisions regarding the child’s education. [Tex. Fam. Code § 153.371\(10\)](#).

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

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

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

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

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

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

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

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