
BEST INTEREST

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 (emphasis added). [Tex. Fam. Code § 153.002](#).

A. Factors in Determining Best Interest of Children

The *Holley* factors below are a non-exclusive list of factors to consider:

- Desires of the child;
- Emotional and physical danger to child now and in future;
- Parental abilities;
- Programs available to assist parents;
- Plans for the child by individuals or agency seeking custody;
- Stability of home or proposed placement;
- Any acts or omissions of a parent indicating the relationship is not proper; and
- Any excuse for the acts or omissions of a parent. *Holley v. Adams*, 544 S. W. 2d 367 (Tex. 1976)

Factors in determining the best interest of the child include, but are not limited to:

- Child's age and physical and mental vulnerabilities;
- Frequency and nature of out-of-home placements;
- History of abusive or assaultive conduct by the child's family or others with access to home;
- History of substance abuse by child's family or others with access to home;
- Whether the perpetrator of the harm to child has been identified; and
- For children 16 years of age or older, whether the permanency plan includes services to help the child transition from foster care to independent living. See [Tex. Fam. Code § 263.307](#).

In considering the factors established by [Tex. Fam. Code § 263.307](#), the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest.

B. Hearings Requiring a Best Interest Determination

1. The Adversary Hearing

a. When considering placement with relative:

- The court shall place a child with a relative unless placement with a relative is not in the best interest of the child. [Tex. Fam. Code § 262.201\(n\)](#).

2. Permanency Hearing Before a Final Order

a. When determining whether to meet with a child:

- The court shall consult with the child if the child is four years of age or older and if the court determines it is in the child's best interest. [Tex. Fam. Code § 263.302](#).

b. When determining whether to send a child home:

- At each Permanency Hearing before a final order is rendered, the court shall make a finding on whether the child's parents are willing and able to provide the child with a safe environment and whether the return of the child is in the child's best interest. [Tex. Fam. Code § 263.306\(a-1\)\(6\)](#). See also [Tex. Fam. Code § 263.002\(c\)](#).

C. Court Decisions Requiring a Best Interest Determination

1. Transferring a case to the Court of Continuing Exclusive Jurisdiction (CCEJ):

- The court shall order transfer to the CCEJ if the court finds the transfer is necessary for the convenience of the parties and is the best interest of the child. [Tex. Fam. Code § 262.203](#).

2. Denying a parent visitation:

- If the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that:
 - states the reasons for finding that visitation is not in the child's best interest; and
 - outlines specific steps the parent must take to be allowed to have visitation with the child. [Tex. Fam. Code § 263.109\(b\)](#).

3. When considering unsupervised visitation in the context of family violence:

- It is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with a child if credible evidence is presented of a history or pattern of past or present child neglect or abuse or family violence by that parent or any person the parent permitted to have unsupervised access to the child. [Tex. Fam. Code § 153.004\(e\)](#).

4. Extending the dismissal date considerations:

- Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after one year unless the court finds that extraordinary circumstances necessitate the child remaining in the Temporary Managing Conservatorship (TMC) of the

department and that continuing TMC is in the best interest of the child. [Tex. Fam. Code § 263.401\(b\)](#).

5. Ordering a monitored return:

- The court may find that retaining jurisdiction under this section is in the best interest of the child. [Tex. Fam. Code § 263.403\(1\)](#).

D. DFPS Decisions That Must Consider Best Interest

1. When considering placement:

- In selecting a placement for a child, DFPS shall consider whether the placement is in the child's best interest. In determining whether a placement is in a child's best interest, DFPS shall consider whether the placement:
 - is the least restrictive setting for the child;
 - is the closest in geographic proximity to the child's home;
 - is the most able to meet the identified needs of the child; and
 - satisfies any expressed interests of the child relating to placement, when developmentally appropriate. [Tex. Fam. Code § 264.107\(c\)](#).

2. When assessing a relative or designated placement:

- Before placing a child with a proposed relative or other designated caregiver, DFPS must conduct an assessment to determine whether the proposed placement is in the child's best interest. [Tex. Fam. Code § 264.754\(b\)](#).

