
BURDEN OF PROOF

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

The standard “ordinary prudence and caution” requires a minimal showing of evidence, less than a preponderance but enough to persuade a reasonable person, similar to the “probable cause” required for a search warrant. This burden of proof applies to:

- Hearing on a request for court ordered participation. [Tex. Fam. Code § 264.203](#).
- Ex Parte Removal Hearing. [Tex. Fam. Code § 262.101](#);
- Taking Possession of a Child in Emergency Without a Court Order. [Tex. Fam. Code § 262.104](#); and
- Full Adversary Hearing. [Tex. Fam. Code § 262.201](#).

B. Preponderance of the Evidence

To show a “preponderance of evidence” is to have evidence that is of greater weight or is more convincing than the evidence that is offered in opposition to it. A metaphor to illustrate the concept of preponderance is the scales of justice rising slightly higher on one side; that is enough to meet the standard of “preponderance of the evidence.” It is the standard of proof which is generally used in civil cases. This burden applies to:

- 60 Day Status Review. [Tex. Fam. Code § 105.005](#);
- Permanency Hearing before Final Order. [Tex. Fam. Code § 105.005](#);
- Final Order Awarding Permanent Managing Conservatorship (PMC) (without termination). [Tex. Fam. Code § 105.005](#);
- Permanency Hearing after Final Order. [Tex. Fam. Code § 105.005](#);
- Adoption Hearing. [Tex. Fam. Code § 105.005](#); and
- Hearing on reinstatement of parental rights. [Tex. Fam. Code § 161.303](#).

C. Clear and Convincing

To meet a “clear and convincing” burden of proof is to show the measure or degree of proof that will produce in the mind of the trier of fact (either a judge or a jury) a firm belief or conviction as to the truth of the allegations sought to be established. It is greater than a “Preponderance of the Evidence” but not as much as “Beyond a Reasonable Doubt.” The burden applies to:

- Termination of parental rights when the Indian Child Welfare Act (ICWA) does not apply. [Tex. Fam. Code § 161.001](#); and

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- An order placing a child in foster care under (ICWA). [25 U.S.C. § 1912\(e\)](#).

D. Beyond a Reasonable Doubt

The standard “beyond a reasonable doubt” is met when the trier of fact is fully satisfied, or entirely convinced that something occurred. The burden applies to:

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

The “beyond a reasonable doubt” standard which applies in ICWA cases is the highest standard of proof in a termination of parental rights case under Texas law, signaling the weight of this decision on the trier of fact.