
REQUIRED PARTICIPATION

Under [Tex. Fam. Code § 264.203\(a\)](#), at a hearing on a petition requesting an order for the required participation of a parent or caregiver in services provided by DFPS, the court must determine whether the family is in need of services to address allegations of abuse and neglect and if those services aim to alleviate a continuing danger to the child. Required Participation cases are also referred to as Court Ordered Services (COS) cases or a Motion to Participate (MTP).

Please see the Checklist Section for Required Participation Checklist.

A. Filing the Petition

DFPS may file a suit in the county in which the child is located requesting the court to render a temporary order requiring the parent, managing conservator, guardian, or other member of the child's household to participate in services for:

- Alleviating the effects of the abuse or neglect that has occurred;
- Reducing a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; or
- Reducing a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; and
- Permitting the child and any siblings of the child to receive services. [Tex. Fam. Code § 264.203\(a\)-\(b\)](#).

The petition must be supported by a sworn affidavit by a person based on personal knowledge and stating facts sufficient to support a finding that:

- The child has been a victim of abuse or neglect or is at substantial risk of abuse or neglect; and
- There is a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household unless that person participates in services requested by DFPS. [Tex. Fam. Code § 264.203\(d\)](#).

B. Mandatory Appointment of Attorney

When DFPS files a petition requesting required participation in services, the court must appoint an attorney to represent the interests of the following persons:

- The child. [Tex. Fam. Code § 264.203\(g\)](#); and
- A parent for who participation in services is being requested. [Tex. Fam. Code § 264.203\(h\)](#).

Appointment must occur immediately after the filing of a petition for court-ordered services but before the 14-day hearing. [Tex. Fam. Code § 264.203\(g\) and \(h\)](#).

A parent who is indigent and appears in opposition to the motion has a right to a court-appointed attorney. [Tex. Fam. Code § 264.203\(i\)\(2\)](#).

Special Issue: *The court is not required to appoint an attorney for a parent who is not asked to participate in services or for any non-parent who is asked to participate in services.*

In court-ordered services cases, court-appointed attorneys for children have the powers and duties under [Tex. Fam. Code §§ 107.003](#) and [107.004](#) and court-appointed attorneys for parents have the powers and duties under [Tex. Fam. Code § 107.0131](#). [Tex. Fam. Code § 264.203\(g\) and \(h\)](#).

C. Hearing

1. Ex Parte Orders Prohibited

An order for required participation can be entered only after notice and a hearing. [Tex. Fam. Code § 264.203\(l\)](#).

2. When Must Hearing Be Held

A hearing on a motion for required participation must be held not later than the 14th day after the date to the petition is filed unless the court finds good cause for extending that date for not more than 14 days. [Tex. Fam. Code § 264.203\(f\)](#).

3. Burden of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution. [Tex. Fam. Code § 262.203\(m\)](#).

4. Court Actions Before the Hearing

Before the commencement of the hearing, the court must inform each parent for whom participation in services is being requested of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the motion, the right to a court-appointed attorney. [Tex. Fam. Code § 264.203\(i\)](#).

If a parent claims indigence, the court shall require the parent to complete and file an affidavit of indigence. The court may consider additional evidence to determine indigency including evidence relating to the parent's:

- Income;
- Source of income;
- Assets;

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- 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. [Tex. Fam. Code §264.203\(j\)](#).

If the court determines a parent is indigent, the court-appointed attorney may continue to represent the parent. If the court determines that a parent is not indigent, the court must discharge the attorney ad litem after the hearing and must order the parent to pay the cost of the attorney ad litem's representation. [Tex. Fam. Code § 264.203\(j\)](#). The court may, for good cause shown, postpone any subsequent proceeding for up to seven days after discharge to allow the parent time to hire an attorney or to provide the parent's attorney with time to prepare for the subsequent proceeding. [Tex. Fam. Code § 264.203\(k\)](#).

5. Required Findings for Court Ordered Services

The court must deny the petition unless the court makes the following findings:

- Abuse or neglect has occurred or there is a substantial risk of abuse or neglect or continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; and
- Services are necessary to ensure the physical health or safety of the child. [Tex. Fam. Code § 263.203\(m\)](#).

6. Court Actions if Required Participation Granted

If a court renders an order granting the Department's petition, the court must state its findings in the order, make appropriate temporary orders under [Tex. Fam. Code Chapter 105](#) necessary to ensure the safety of the child, and order participation in services specific services narrowly tailored to address the findings made by the court. [Tex. Fam. Code § 264.203\(n\)](#).

Special Issue: *The court is not authorized to incorporate compliance with a safety plan in its orders, but the court may make its own orders regarding the child's safety, which may include elements of any safety plan that may be in place.*

[Texas Family Code §105.001](#) provides that a court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order:

- For the temporary conservatorship of the child;
- For the temporary support of the child;
- Restraining a party from disturbing the peace of the child or another party;

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- Prohibiting a person from removing the child beyond a geographical area identified by the Court; or
 - For payment of reasonable attorney's fees and expenses.
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Special Issue: *With proper notice and pleadings, courts may temporarily place a child with another party and/or make other appropriate orders pursuant to [Tex. Fam. Code Chapter 105](#), provided the court's orders are necessary to ensure the safety of the child. [Tex. Fam. Code § 264.203\(e\) and \(n\)](#).*

A parent may obtain services from a qualified provider selected by the person, but the parent is responsible for the cost, the provider must certify the parent completed the services, and DFPS shall accept the provider's verification as proof of completion. [Tex. Fam. Code § 264.2031](#).

The court must review the status of each person required to participate in services within 90 days after the date the court renders the order. The court must set subsequent review hearings every 90 days to review the continued need for the order. [Tex. Fam. Code § 264.203\(p\)](#).

Special Issue: *Courts should consider setting subsequent review dates sooner than the 90-day requirement if the court hears evidence that participants are steadily progressing in their services at the current review hearing.*

D. Non-Perpetrators

The court may not require a person to participate in services who is not found to be the cause of the continuing danger to the physical health or safety of the child or the substantial risk of abuse or neglect or was not the perpetrator of the abuse or neglect alleged. [Tex. Fam. Code § 264.203\(o\)](#).

E. Dismissal Date

An order for required participation expires on the 180th day after the date the order is signed unless extended as provided by [Tex. Fam. Code § 264.203\(r\) or \(s\)](#). [Tex. Fam. Code § 264.203\(q\)](#).

A court-ordered services case may be extended up to an additional 180 days from the original expiration date upon a showing by DFPS of a continuing need for the order, after notice and hearing. [Tex. Fam. Code § 264.203\(r\)](#).

The Court may extend an order up to an additional 180 days only if the extension is requested by the person required to participate in services or that person's attorney and the court finds:

- The extension is necessary to allow the person time to complete ordered services;
- The department made a good faith effort to timely provide the services to the person;
- The person made a good faith effort to complete the services;
- The completion of the services is necessary to ensure the physical health and safety of the child; and

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- The extension is requested by the person or the person's attorney. [Tex. Fam. Code § 264.203\(s\)](#).

Any party can request termination of the order at any time. The court must terminate the order on a finding the order is no longer needed. [Tex. Fam. Code § 264.203\(t\)](#).

