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# STATUTORY CHAPTERS

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# INVESTIGATIONS

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The primary purpose of a Department of Family and Protective Services (DFPS) investigation into allegations of child abuse or neglect is to protect the child. DFPS investigations are civil in nature and include an evaluation of the child's immediate safety and an assessment of future risk of abuse or neglect.

## A. Initiation of an Investigation

Initiation of an investigation requires:

### 1. Abuse, Neglect, Exploitation or the Risk of Abuse or Neglect

"Abuse" includes the following acts or omissions by a person:

- Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under [Tex. Penal Code § 21.02](#), indecency with a child under [Tex. Penal Code § 21.11](#), sexual assault under [Tex. Penal Code § 22.011](#), or aggravated sexual assault under [Tex. Penal Code § 22.021](#);
- Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- Compelling or encouraging the child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#), including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\) or \(a\)\(8\)](#), solicitation of prostitution under [Tex. Penal Code § 43.021](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#);
- Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph,

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film, or depiction of the child is obscene as defined by [Tex. Penal Code § 43.21](#) or pornographic;

- The current use by a person of a controlled substance as defined by [Tex. Health & Safety Code Chapter 481](#), in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by [Tex. Health & Safety Code Chapter 481](#);
- Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by [Tex. Penal Code § 43.25](#);
- Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\), \(a\)\(6\), \(a\)\(7\) or \(a\)\(8\)](#), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or
- Forcing or coercing a child to enter into a marriage. [Tex. Fam. Code § 261.001\(1\)](#).

"Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety.

"Neglect" includes:

- The leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- The following acts or omissions by a person:
  - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of immediate harm to the child;
  - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
  - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services have been offered and refused;
  - placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or

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- placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under [Tex. Fam. Code § 261.001\(1\)\(E\), \(1\)\(F\), \(1\)\(G\), \(1\)\(H\), or \(1\)\(K\)](#) committed against another child;
  - The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or
  - A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy. [Tex. Fam. Code § 261.001\(4\)](#).

Neglect does not include:

- The refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of DFPS if:
  - the child has a severe emotional disturbance;
  - the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
  - the person has exhausted all reasonable means available to the person to obtain the mental health services described by [Tex. Fam. Code § 261.001\(4\)\(B\)\(i\)\(b\)](#). [Tex. Fam. Code § 261.001\(4\)\(B\)\(i\)](#);
- Allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture. [Tex. Fam. Code § 261.001\(4\)\(B\)\(ii\)](#).
- Seeking a second opinion for a child's medical care or transferring a child's medical care to a new provider or facility. [Tex. Fam. Code § 261.001\(4\)\(B\)\(ii\)](#).

The DFPS Commissioner shall adopt rules to prohibit DFPS from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)\(1\)](#).

The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

- Presents a substantial risk of death, disfigurement, or bodily injury to the child; or

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- Has resulted in an observable and material impairment to the growth, development, or functioning of the child. [Tex. Fam. Code § 261.111\(b\)](#).

“Exploitation” includes:

- The illegal or improper use of a child or the child’s resources for monetary or personal benefit or profit by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy. [Tex. Fam. Code § 261.001\(3\)](#).

## **2. By a Person Responsible for a Child’s Care, Custody, or Welfare**

- A parent, guardian, managing or possessory conservator, or foster parent of the child;
- A member of the child’s family or household as defined by [Tex. Fam. Code Chapter 71](#);
- A person with whom the child’s parent cohabits;
- School personnel or a volunteer at the child’s school; or
- Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential facility where the child resides; or
- An employee, volunteer, or other person working under the supervision of a licensed or unlicensed child-care facility, including a family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in [Tex. Hum. Res. Code Chapter 42](#). [Tex. Fam. Code § 261.001\(5\)](#).

## **B. Making a Report**

DFPS sets out the mandatory requirements for an investigation in [CPS Policy Handbook § 2200](#).<sup>1</sup>

### **1. Call to the Hotline**

An investigation of child abuse or neglect usually starts with a call to the hotline. Reports can also be submitted online on the [Texas Abuse Hotline Website](#).<sup>2</sup> The reporter may self-identify or remain anonymous, but the identity of the reporter is confidential. [Tex. Fam. Code § 261.201\(a\)\(1\)](#). However, a court may order disclosure of the identity of the reporter or the information obtained through the investigation. [Tex. Fam. Code § 261.201\(b\)](#).

### **2. Lay Person's Duty to Report**

Any person having reasonable cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person must immediately make a report. [Tex. Fam. Code § 261.101\(a\)](#).

In addition to the duty to report pursuant to [Tex. Fam. Code § 261.101\(a\)](#), a person must also report if the person has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the person determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

### **3. Professional's Duty to Report**

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If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, the professional shall make a report no later than the 48th hour after the professional first suspects that the child has been abused or neglected. [Tex. Fam. Code § 261.101\(b\)](#).

A professional may not delegate to or rely on another person to make the report. [Tex. Fam. Code § 261.101\(b\)](#).

A professional who has the duty to report under [Tex. Fam. Code § 261.101\(b\)](#) must also report if the professional has reasonable cause to believe that an adult was a victim of abuse or neglect as a child and the professional determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

The requirement to report under [Tex. Fam. Code § 261.101](#) applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services. [Tex. Fam. Code § 261.101\(c\)](#).

#### **4. Failure to Report**

A person commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(a\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a\)](#).

Failure to report when required is punishable as a Class A misdemeanor, except that the offense is a state jail felony if the child was a person with an intellectual disability who resided in a state supported living center or a facility licensed under [Tex. Health & Safety Code Chapter 252](#) and the actor knew the child suffered serious bodily injury. [Tex. Fam. Code § 261.109\(b\)](#).

A professional as defined by [Tex. Fam. Code § 261.101\(b\)](#) commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(b\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a-1\)](#).

An offense under [Tex. Fam. Code § 261.109\(a-1\)](#) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to conceal the abuse or neglect. [Tex. Fam. Code § 261.109\(c\)](#).

#### **5. Immunities**

A person acting in good faith who reports or assists in an investigation is immune from civil or criminal liability that might otherwise be imposed. [Tex. Fam. Code § 261.106\(a\)](#).

#### **6. False Reports**

Knowingly making a false report is punishable as a state jail felony, unless it is shown that the person has previously been convicted under this section, in which case the offense is a third-degree felony and carries a civil penalty of \$1,000. [Tex. Fam. Code § 261.107\(a\) and \(e\)](#).

### **C. Fourth Amendment Requirements in an Investigation**

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For any investigative action that involves entering or remaining in a home, transporting a child for an interview, or removing a child from a parent's custody, DFPS must have consent, a court order, or exigent circumstances per *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, 537 F.3d 404 (5th Cir. 2008).

### **1. Consent**

An evaluation of consent is based on the totality of the circumstances and under a standard of objective reasonableness. Silence or passivity cannot form the basis of consent to enter. Also, mere acquiescence to a show of lawful authority is insufficient to establish voluntary consent. Once consent is given, the consent may be limited, qualified, or withdrawn. *Gates*, 537 F.3d at 420.

### **2. Court Order**

If a caseworker cannot gain consent, they may seek a court order to allow entrance for an interview, examination, or investigation. *Tex. Fam. Code § 261.303(b)*.

### **3. Exigent Circumstances**

If there is not time to obtain a court order, however, DFPS can still enter or remain in a home, even absent consent, if there are exigent circumstances. Under this standard, there must be a reasonable cause to believe that the child is in immediate danger. Entering or remaining in the home for the sole purpose of interviewing the child does not suffice. *Gates*, 537 F.3d at 421-23.

### **4. Anonymous Tip**

If the Department receives an anonymous report of child abuse or neglect, the Department shall conduct an investigation to determine whether there is any evidence to corroborate the report. *Tex. Fam. Code § 261.304*. The tip must be corroborated through a preliminary investigation that can include an interview of the child's teachers or peers, an interview of the child at the school, or by looking for injuries on the child without removing any of the child's clothing. An investigation can include a visit to the child's home unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit, an interview with and examination of the child, and an interview with the child's parents. *Tex. Fam. Code § 261.304(b)*.

In determining whether to transport the child to another location for the interview, the caseworker should take into account the child's wishes. *Gates*, 537 F.3d at 424. A person who is notified of and attempts to interfere with the transportation can be charged with a Class B misdemeanor. *Tex. Fam. Code § 261.302(f)*.

### **5. Taking Child into Separate Room for an Interview**

Like a *Terry* stop [*Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)], all that is required [to take a child into a separate room for an interview] is a reasonable suspicion of abuse or neglect so long as the interview is no more intrusive than necessary. *Gates*, 537 F.3d at 434.

### **6. Transporting a Child from School to Another Location for an Interview**

Before transporting a child for an interview, DFPS must first attempt to notify the parent or other person having custody of the child. *Gates*, 537 F.3d at 429. Absent consent to transport, DFPS may obtain a court order. Although there is currently no express statutory provision authorizing such an order, *Tex.*



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[Fam. Code § 261.303](#) may be applicable. According to the holding in *Gates*, in order to transport a child from a public school for an interview absent a court order or consent, a caseworker must have a reasonable belief that the child has been abused and probably will be abused again upon his return home at the end of the school day. *Gates*, [537 F.3d at 439](#).

## 7. Immediate Removal

If, before an investigation is completed, the investigating agency believes that the immediate removal of a child from their home is necessary to protect the child from further abuse, or neglect, the investigating agency must file a petition or take other action under [Tex. Fam. Code Chapter 262](#) to provide for the temporary care and protection of the child. [Tex. Fam. Code § 261.302\(d\)](#).

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**Special Issue:** A DFPS investigator must notify of the parent of the right to make an audio recording of the interview, that the recording is subject to subpoena, and that the parent may request a copy of DFPS recording policy. [Tex. Fam. Code § 261.3027](#). The investigator must also inform the parent in writing before conducting the interview that the parent may request an administrative review of DFPS findings, and the parent shall sign an acknowledgement of receipt. [Tex. Fam. Code § 261.3091](#).

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## D. Orders in Aid of Investigation

### 1. Interference

A person may not interfere with a DFPS investigation of a report of child abuse or neglect. [Tex. Fam. Code § 261.303\(a\)](#).

The court may also prohibit the removal of the child from the state during an investigation if the court:

- Finds that DFPS has probable cause to conduct the investigation; and
- Has reason to believe that the person may remove the child from the state. [Tex. Fam. Code § 261.306\(b\)](#).

Contumacious refusal to submit to orders in aid of investigation may be grounds for termination of parental rights in a subsequently filed Suit Affecting the Parent-Child Relationship (SAPCR). [Tex. Fam. Code § 161.001\(b\)\(1\)\(I\)](#).

### 2. Court Orders

If DFPS requests the information below, but is not allowed access, then the court having family law jurisdiction and for good cause shall order:

- Admission to the home, school, or place where a child may be for the interview, examination, and investigation. [Tex. Fam. Code § 261.303\(b\)](#);
- A child's physical, psychological, or psychiatric examination or the release of related medical records. [Tex. Fam. Code § 261.303\(c\)](#); or
- A parent or caregiver's medical or mental examination and/or access to related records. [Tex. Fam. Code § 261.305\(b\)](#).

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If the court determines that the parent or person is indigent, then the court shall appoint an attorney at the hearing relating to the examination or release of their medical records. [Tex. Fam. Code § 261.305\(c\)](#).

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**Special Issue:** *Although not required by statute, some courts require an affidavit to support a motion for an order in aid of investigation. Courts might also consider requiring the making of a record, if DFPS requests an order in aid of investigation without an affidavit or a motion for the order.*

*Courts might consider the following when requested to issue an order in aid of investigation:*

- *Jurisdiction is proper in the court because the child is located in the jurisdiction of the court or the court has continuing jurisdiction.*
- *DFPS has filed an application seeking an order in aid of investigation and has shown good cause for a court order because:*
  - *DFPS cannot access the child;*
  - *DFPS cannot obtain medical, psychiatric, or psychological records of the child;*
  - *DFPS cannot obtain consent by the parent or caregiver of the child for a medical, psychological, or psychiatric examination; or*
  - *the parent or caregiver refuses to cooperate with the investigation and refusal poses a risk to the child's safety.*

*Unlike emergency orders for TMC under [Tex. Fam. Code Chapter 262](#), [Tex. Fam. Code §§ 261.303-261.306](#) do not contain language authorizing orders to be made without notice and hearing. [Tex. Fam. Code § 105.001\(h\)](#) also specifically exempts emergency orders for TMC under [Tex. Fam. Code Chapter 262](#) from notice and hearing requirements but contains no exemptions for orders under [Tex. Fam. Code Chapter 261](#).*

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# ALTERNATIVES TO REMOVAL

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In assigning priorities and prescribing investigative procedures based on the severity and immediacy of the alleged harm to a child, DFPS may use an alternative response system to make the most effective use of resources to investigate and respond to cases. [Tex. Fam. Code § 261.3015](#). In addition, DFPS may seek the following remedies and interventions as an alternative to removing a child.

## A. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse

Without asking for removal of the child, DFPS may file a petition for removal of the alleged perpetrator of child abuse from the household. [Tex. Fam. Code § 262.1015\(a\)](#).

DFPS can also:

- File for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order; or
- Assist a parent or other adult with whom a child resides in obtaining a protective order. [Tex. Fam. Code § 262.1015\(a-1\)](#).

DFPS can file for a protective order in certain cases under [Tex. Fam. Code § 261.501](#), which provides for a protective order on its own or jointly with a parent or relative caregiver when DFPS is not otherwise authorized to seek a protective order under [Tex. Fam. Code § 82.002](#). [Tex. Fam. Code § 261.501](#).

DFPS is also required to include in its petition for removal a statement as to whether there is a protective order in effect or an application pending under [Tex. Fam. Code Title 4](#), [Tex. Crim. Proc. Code Chapter 7B](#), or an order for emergency protection under [Tex. Crim. Proc. Code Art. 17.292](#). The Department must also attach a copy of each order in effect if a party to the suit or a child of a party was the applicant or victim and the other party was the respondent. If a copy of an order in effect is not available at the time of filing of the petition, the petition must state that a copy of the order will be filed with the court before any hearing. [Tex. Fam. Code § 102.008](#).

### 1. Court Orders

The court may order:

- Removal of the alleged perpetrator; and
- The remaining parent to make a reasonable effort to monitor the residence and report any attempt of the alleged perpetrator to return to the residence. [Tex. Fam. Code § 262.1015\(e\)](#).

### 2. Expiration of the Temporary Restraining Order

The order remains in effect for up to 14 days, unless the court grants an extension under [Tex. Fam. Code § 262.201\(a-5\)](#), (e), or (e-1). [Tex. Fam. Code § 262.1015\(d\)](#).

### 3. Violation of Temporary Restraining Order

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It is a Class A misdemeanor if either parent violates the order; if a parent has been previously convicted of the same offense, it is a third degree felony. [Tex. Fam. Code § 262.1015\(h\)](#).

#### **4. Child with Sexually Transmitted Disease**

DFPS must take additional steps if the investigation reveals that a child younger than 11 has a sexually transmitted disease. DFPS must appoint a special investigator to assist in the investigation of the case and that investigator must follow the requirements in [Tex. Fam. Code § 262.010](#), including coordinating with law enforcement. [Tex. Fam. Code § 262.010](#).

## **B. Protective Orders**

DFPS is specifically authorized to file an application for a protective order of any person alleged to be the victim of family violence. [Tex. Fam. Code § 82.002\(d\)\(2\)](#).

Additionally, if not otherwise authorized to apply for a protective order under [Tex. Fam. Code Chapter 82](#), DFPS may file an application for a protective order for the protection of a child in their temporary managing conservatorship in certain cases of abuse or neglect. [Tex. Fam. Code § 261.501](#).

### **1. Temporary Ex Parte Protective Order**

A temporary ex parte protective order may be granted for any member of the family or household if the court finds there is a clear and present danger of family violence. [Tex. Fam. Code § 83.001\(a\)](#).

A temporary ex parte protective order may also be granted if the court finds there is an immediate danger of abuse or neglect to the child. [Tex. Fam. Code § 261.503](#).

A temporary ex parte protective order can be used to:

- Direct a respondent to do or refrain from doing certain acts. [Tex. Fam. Code § 83.001\(b\)](#).
- Exclude a perpetrator from a residence under certain situations. [Tex. Fam. Code § 83.006](#).

The order is effective for up to 20 days. [Tex. Fam. Code § 83.002\(a\)](#). On an applicant's request or on the court's own order, the 20-day period may be extended for additional 20-day periods. [Tex. Fam. Code § 83.002\(b\)](#).

A temporary ex parte protective order may be issued without notice or hearing, but the court has the option to recess the hearing to contact the respondent by phone and provide the respondent with an opportunity to be present for the hearing. If the court chooses to recess to allow the respondent an opportunity to be present, the hearing must resume that same day without regard to the respondent's availability. [Tex. Fam. Code § 83.006\(c\)](#).

A temporary ex parte protective order can be enforced through a civil contempt proceeding, and certain provisions can be criminally enforced. [Tex. Fam. Code § 85.021](#); [Tex. Fam. Code § 85.022](#); and [Tex. Penal Code § 25.07\(a\)](#).

During the time a temporary ex parte protective order is in existence, it supersedes any other order under [Tex. Fam. Code Title 5](#) to the extent there is a conflict. [Tex. Fam. Code § 83.005](#).

### **2. Protective Order**

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A protective order may be issued by a court upon a finding that family violence has occurred and is likely to occur in the future. [Tex. Fam. Code § 85.001](#). An agreed protective order can be civilly and criminally enforceable regardless of whether the court makes the required findings. [Tex. Fam. Code § 85.001\(a\)-\(b\)](#).

Upon a finding that there are reasonable grounds to believe that an applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking, a court may issue a Protective Order that includes a statement of these findings. [Tex. Crim. Pro. Art. 7B.003](#). A protective order issued under [Tex. Crim. Pro. Art. 7B.003](#) may be effective for the duration of the lives of the offender and victim or for any shorter period stated in the order. If no period is stated in the order, the order is effective until the second anniversary of the date the order was issued. [Tex. Crim. Pro. Art. 7B.007](#).

Protective orders for the protection of a child for certain abuse and neglect may be issued by a court if the court finds that there are reasonable grounds to believe that the child is a victim of abuse or neglect or has a history of being abused or neglected and there is a threat of:

- Immediate or continued abuse or neglect to the child;
- Someone illegally taking the child from the home in which the child is placed;
- Behavior that poses a threat to the caregiver with whom the child is placed; or
- Someone committing an act of violence against the child or the child's caregiver. [Tex. Fam. Code § 261.504](#).

Except as otherwise provided, [Tex. Fam. Code Title 4](#) applies to a protective order issued under [Tex. Fam. Code Chapter 261, Subchapter F](#). [Tex. Fam. Code § 261.505](#).

A prosecuting attorney may not be precluded from representing a party in a proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) and DFPS in another action involving the party, regardless of whether the proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) occurs before, concurrently with, or after the other action involving the party. [Tex. Fam. Code § 81.0075](#).

An application for a protective order may be filed in:

- The county in which the applicant resides;
- The county in which the respondent resides; or
- Any county in which the family violence is alleged to have occurred. [Tex. Fam. Code § 82.003](#).

Among other considerations, the court may include the following in a protective order:

- Prohibit a party from removing a child who is a member of the family or household from the possession of a person named in the order, or the jurisdiction of the court, [Tex. Fam. Code § 85.021\(1\)\(A\)\(i\)-\(ii\)](#);
- Order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the

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likelihood of family violence, including completion of a Battering Intervention and Prevention Program (BIPP), [Tex. Fam. Code § 85.022\(a\)](#);

- Prohibit the person found to have committed family violence from:
  - committing family violence;
  - communicating:
    - directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
    - a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and
    - if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;
  - going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;
  - going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;
  - engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
  - possessing a firearm, unless the person is a peace officer, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. [Tex. Fam. Code § 85.022\(b\)](#).

There is a presumption that family violence has occurred and is likely to occur in the future if:

- The respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:
  - an offense under [Tex. Penal Code Title 5](#), for which the court has made an affirmative finding that the offense involved family violence under [Tex. Crim. Proc. Code Art. 42.013](#);  
or
  - an offense under [Tex. Penal Code Title 6](#);
- The respondent's parental rights with respect to the child have been terminated; and
- The respondent is seeking or attempting to seek contact with the child. [Tex. Fam. Code § 81.0015](#).

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A protective order issued pursuant [Tex. Fam. Code, Title 4, Subtitle B](#) is effective for a period stated in the order, not to exceed two years; or if a period is not stated in the order, until the second anniversary of the date the order was issued. [Tex. Fam. Code § 85.025\(a\)](#). A court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court makes specific findings pursuant to [Tex. Fam. Code § 85.025\(a-1\)](#).

If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under [Tex. Fam. Code § 85.025\(a\) or \(a-1\)](#), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

- The first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or
- The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less. [Tex. Fam. Code § 85.025\(c\)](#).

Each protective order issued under [Tex. Fam. Code § 85.026\(a\)](#), including a temporary ex parte order, must contain the following in boldfaced type, capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY [TEX. PENAL CODE § 1.07](#), ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER, TO POSSESS A FIREARM OR AMMUNITION."

"IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER WOULD HAVE EXPIRED NOT LATER THAN THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED FROM CONFINEMENT OR IMPRISONMENT, THE ORDER IS AUTOMATICALLY EXTENDED TO EXPIRE ON:

"(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR

"(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."



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"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

Each protective order issued under [Tex. Fam. Code § 85.026\(c\)](#), including a temporary ex parte order must contain the following:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Each protective order must be:

- Served on the respondent. [Tex. Fam. Code § 85.041](#); and
- Delivered to law enforcement and the child's child-care facility or school, as applicable. [Tex. Fam. Code § 85.042](#).

If a final protective order is rendered by a court other than the court in which a SAPCR is pending, the clerk of the court that rendered the final protective order shall:

- Inform the clerk of the court that a final order has been rendered; and
- Forward a copy of the final protective order to the court in which the suit is pending. [Tex. Fam. Code § 85.062\(c\)](#).

A protective order rendered by a court may be transferred to the court having jurisdiction over the suit affecting the parent-child relationship or of continuing, exclusive jurisdiction. [Tex. Fam. Code § 85.064](#).

If a SAPCR is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application in the court within which the suit is pending, or in the court within the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending. [Tex. Fam. Code § 85.062\(a\)](#).

An applicant for a protective order or an attorney representing an applicant may not be assessed any type of fee by a district or county clerk of the court or a sheriff, constable, or other public official or employee for the filing, serving, or entering of a protective order or for any other service. [Tex. Fam. Code § 81.002](#).

DFPS is also required to include in its petition for removal a statement as to whether there is a protective order in effect or an application pending under [Tex. Fam. Code Title 4](#), [Tex. Crim. Proc. Code Chapter 7B](#), or an order for emergency protection under [Tex. Crim. Proc. Code Art.17.292](#). The Department must also attach a copy of each order in effect, if a party to the suit or a child of a party was the applicant or victim and the other party was the respondent. If a copy of an order in effect is not available at the



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time of filing of the petition, the petition must state that a copy of the order will be filed with the court before any hearing. [Tex. Fam. Code § 102.008](#).

### **3. Temporary Restraining Order**

A temporary restraining order is not criminally enforceable like temporary ex parte protective orders and protective orders, both of which are designed to protect people and provide a greater level of protection than temporary restraining orders.

For more information on the impacts of domestic violence in child welfare cases, please see the Bench Book Chapter entitled [Domestic Violence](#).

## **C. Relinquishing Custody of Child to Obtain Certain Services**

The Texas Family Code requires DFPS to make rules that prohibit the agency from making a finding of abuse or neglect against a parent in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)](#).

### **1. Severe Emotional Disturbance Defined**

[Tex. Fam. Code § 261.001](#) defines "severe emotional disturbance" as a "mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities." [Tex. Fam. Code § 261.001\(9\)](#).

### **2. Option of Joint Managing Conservatorship Between Parent and DFPS**

Before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance to obtain mental health services for the child, DFPS must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS. [Tex. Fam. Code § 262.352](#).

## **D. Child Safety Check Alert List**

If at any time during an investigation of a report of child abuse or neglect to which DFPS has assigned the highest priority DFPS is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, DFPS shall notify the Department of Public Safety (DPS) that the location of the child and the child's family is unknown. If DPS locates the child and the child's family, DPS shall notify DFPS of the location of the child and the child's family. [Tex. Fam. Code § 261.301\(i\)](#).

DPS shall maintain a child safety check alert list as part of the Texas Crime Information Center (TCIC) to help locate a child or the child's family for purposes of:

- Investigating a report of child abuse or neglect;
- Providing protective services to a family receiving family-based support services; or

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- Providing protective services to the family of a child in the managing conservatorship of DFPS. [Tex. Fam. Code § 261.3022\(a\)](#).

If DFPS is unable to locate a child or the child's family for a purpose described in [Tex. Fam. Code § 261.3022\(a\)](#) after DFPS has attempted to locate the child for not more than 20 days, DFPS shall notify DPS that DFPS is unable to locate the child or the child's family. The notice must include the information required by [Tex. Fam. Code § 261.3022\(c\)\(1\)-\(10\)](#). [Tex. Fam. Code § 261.3022\(b\)](#).

On receipt of notice from DFPS, DPS shall notify TCIC to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:

- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report DFPS is attempting to investigate;
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by [Tex. Fam. Code § 261.3022\(a\)](#);
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by [Tex. Fam. Code § 261.3022\(a\)\(2\)](#) or [\(a\)\(3\)](#);
- If applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;
- The family's last known address;
- Any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;
- The case number assigned by DFPS;
- The DFPS dedicated law-enforcement telephone number for statewide intake;
- The date and time when and the location where the child was last seen; and
- Any other information required for entry as established by TCIC. [Tex. Fam. Code § 261.3022\(c\)](#).

On receipt of notice that a child has been located, TCIC shall remove the child and the child's family from the child safety check alert list. [Tex. Fam. Code § 261.3024\(c\)](#).

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If law enforcement encounters a child or other person listed on the TCIC child safety check alert list, the law enforcement officer shall follow the procedures described by the [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3023](#).

If a peace officer locates a child or other person listed on the TCIC child safety alert list established under [Tex. Fam. Code § 261.3022](#), the officer shall:

- Immediately contact DFPS on the dedicated law enforcement telephone number for statewide intake;
- Request information from DFPS regarding the circumstances of the case involving the child or other person; and
- Request information from the child and the other person regarding the child's safety, well-being, and current residence. [Tex. Crim. Proc. Code Art. 2.272\(a\)](#).

The peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child. [Tex. Crim. Proc. Code Art. 2.272\(b\)](#).

If the peace officer determines that the circumstances described by [Tex. Fam. Code § 262.104](#) exist, the officer may take temporary possession of the child without a court order as provided by [Tex. Fam. Code § 262.104](#). If the peace officer does not take possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to DFPS. [Tex. Crim. Proc. Code Art. 2.272\(c\)](#).

A peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS shall report to TCIC that the child or other person has been located and to whom the child was released, as applicable. [Tex. Crim. Proc. Code Art. 2.272\(d\)](#).

If law enforcement encounters a person, including a child, listed on the TCIC child safety check alert list, the officer shall request information from the person or the child regarding the child's well-being and current residence. [Tex. Fam. Code § 261.3023\(a\)](#).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list shall report that the child has been located in the manner prescribed by [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3024\(a\)](#).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list and who reports the child's current address and other relevant information to DFPS under [Tex. Fam. Code § 261.3023](#) shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(a\)](#).

If DPS locates a child who has been placed on the child safety check alert list established under [Tex. Fam. Code § 261.3022](#) through a means other than information reported to DPS by a law enforcement officer under [Tex. Crim. Proc. Code Art. 2.272](#), DPS shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(b\)](#).



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# REQUIRED PARTICIPATION

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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\(h\)](#).

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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\(i\)\(2\)](#).

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**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.*

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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\(n\)](#).

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**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.*

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[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 \(n\)](#).*

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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\(p\)](#).

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**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.*

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## 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\(t\)](#).



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# REMOVAL

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[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](#).

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

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

### 3. Restriction on Removal

[Tex. Fam. Code § 262.116](#) prohibits DFPS from taking possession of a child based on evidence that:

- The parent homeschooled the child;
- The parent is economically disadvantaged;
- The parent 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;
- The parent declined immunization for a child for reasons of conscience, including religious belief;
- The parent allowed a child to engage in independent activities;
- The parent tested positive for marijuana unless the parent's marijuana use caused significant impairment to the child's physical or mental health or emotional development; or
- The parent sought a second opinion for a child's medical care or transferred a child's medical care to a new provider or facility.

[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, Transfer, and Venue

### 1. Jurisdiction

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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](#).

DFPS must file each suit in the same court a petition based on allegations of abuse or neglect arising from the same incident or occurrence and involving children living in the same home. [Tex. Fam. Code § 262.015](#).

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](#), [Tex. Fam. Code §103.001\(b\)](#), or [Tex. Fam. Code Chapter 262](#). [Tex. Fam. Code § 155.001\(c\)](#).

## 2. 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 court of continuing, exclusive jurisdiction (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 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 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\(e\)](#).

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[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\(c\)](#).

### **3. Venue**

Venue lies in the county where the child resides; 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\(a\)](#).

## **C. Emergency Removal With a Court Order**

### **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**

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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 may not order and emergency removal to be based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child. [Tex. Fam. Code § 262.102\(b-1\)](#).

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\(c\)](#).

### **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:

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- 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:

- 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

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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 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](#); or
- 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\(a\)](#).

An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession 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\(b\)](#).



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An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may not take possession of a child based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child. [Tex. Fam. Code § 262.104\(c\)](#).

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 [Tex. Fam. Code 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**

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;

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- 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\(b\)](#).

## **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**

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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\(c\)](#).



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# AFTER REMOVAL

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After a court has authorized emergency removal of a child, there are statutorily required actions the both the court and DFPS must take prior to the Adversary Hearing.

## A. Procedures after 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](#).

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\(a\)](#).

## B. Attorney ad Litem and Guardian ad Litem Appointments

### 1. Mandatory Appointment of Attorney ad Litem and Guardian ad Litem

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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](#).

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

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\(d\)](#).

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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\(f\)](#).

### **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, mediator, or competency evaluator 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, mediator, or competency evaluator 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, mediator, or competency evaluator for a case in that month;
- The number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator 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, mediator, or competency evaluator 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, mediator, or competency evaluator 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, mediator, or competency evaluator 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\(a\)\(1\)-\(6\)](#).

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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. 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 uses 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 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\(a\)](#).

#### **5. Duties, Required Training, and Duration of Appointment of Child's Attorney Ad Litem**



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The duties and responsibilities of an attorney ad litem are found in [Tex. Fam. Code § 107.003](#) and [Tex. Fam. Code § 107.004](#). The duties of an attorney ad litem apply to suites filed under [Tex. Fam. Code Chapters 262, 263, and 264](#). A few specific duties of the attorney ad litem include the following:

[Tex. Fam. Code § 107.004](#) requires that the attorney for the child report to the court at each hearing whether they met with the child or their caregiver prior to the hearing as required by [Tex. Fam. Code § 107.004\(d\)\(1\)](#), or whether they are requesting a finding of cause that meeting with the child was not feasible or in the best interest of the child.

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\(d-1\)](#).

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**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 as judges may want to hear from the AAL whether the AAL met with their child client. If the AAL was non-compliant with the statutory requirement, judges may inquire as whether there was good cause for the non-compliance, and what the AAL plans to do in order to ensure that they can arrange a prompt initial meeting with their child client.*

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[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 and 264](#), determine whether the child's educational needs and goals have been identified and addressed. [Tex. Fam. Code § 107.004\(d-2\)](#).

[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. Attorneys ad litem must also provide proof that the attorney completed a training program on trauma-informed care and the effect of trauma on children in DFPS conservatorship. [Tex. Fam. Code § 107.004\(b-1\)\(2\)](#).

[Tex. Fam. Code § 107.016](#) requires an order appointing DFPS managing conservatorship to continue the appointment of the AAL or the GAL, or the attorney serving in the dual role for the child, as long as the child is in DFPS Conservatorship. The court may continue the appointment of both the AAL and the GAL.

## **6. Duties and Duration of Appointment 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\(a\)\(1\)\(H\)](#).

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[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](#).

## **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 knowledge of the identity or location of the alleged father. If located, the attorney ad litem shall provide to each party and the court 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.](#)

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[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\(d\)](#).

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

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

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by [Tex. Fam. Code § 107.014\(e\)](#), the court shall discharge the attorney from the appointment. [Tex. Fam. Code § 107.014\(e\)](#).

## 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\(c\)\(2\)](#). Additionally, attorneys must complete a training program regarding trauma-informed care and the effect of trauma on children in the conservatorship of DFPS. [Tex. Fam. Code § 107.004\(b-1\)\(2\)](#). Completing the trauma training may satisfy the training requirement of [Tex. Fam. Code § 107.004\(b-1\)](#).

[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\(c\)](#).

## 10. 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\(d\)](#).

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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\(d\)](#).

## **C. Information Provided to Relatives and Certain Individuals**

When DFPS takes possession of a child under [Tex. Fam. Code Chapter 262](#), DFPS shall provide information in writing to each adult who DFPS is able to identify and locate and who is:

- Related to the child within the fourth 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
- 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, the methods by which the individual may exercise those options, and any requirements the individual must satisfy to exercise those options, including the requirement that the individual be evaluated by the DFPS under [Tex. Fam. Code § 262.114](#) before the individual may serve as a substitute caregiver; and the deadlines before which the individual must respond to exercise those options;

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- options that may be lost if the individual fails to timely respond;
  - the date, time, and location of the Status Hearing, if applicable; and
  - information regarding the procedures and timeline for a suit affecting the parent-child relationship. [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 provide the information immediately after the person has been identified and located. [Tex. Fam. Code § 262.1095\(d-1\)](#).

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\(e\)](#).

## D. Service of Citation

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

- 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](#);

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- 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\(c\)](#).

### **1. Waiver of Citation**

[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\(e\)](#).

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



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For more on out of state placements, see generally the Interstate Compact on Placement of Children<sup>3</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
- The actions DFPS is taking, if any, to place the child with a relative or other designated caregiver. [Tex. Fam. Code § 262.114\(a-2\)](#).

## F. 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\(b\)](#).



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- Must give preference in hierarchical order, from relatives, fictive kin, foster homes, and GROs. [Tex. Fam. Code § 262.114\(d\)](#).

If a child is not placed with a relative, the court shall at each hearing under [Tex. Fam. Code 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 is in the child's best interest. [Tex. Fam. Code § 262.114\(c\)](#).

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**Special Issue:** Courts are also 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\(b\)](#). Doing so promotes positive permanency for children and youth. Positive permanency means that the child exits DFPS care into a permanent setting that includes a legal relationship to a family. Keeping positive permanency in mind throughout the entire CPS case can facilitate identifying best outcomes for the child at every stage of the case.

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## 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
- 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

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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](#).

## G. 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\(d\)](#).

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\(e\)](#).

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**Special Issue:** *In approving a temporary visitation schedule or a visitation plan, judges should consider ways to minimize trauma to the child and ensure that all safety issues have been taken into account. Please see the [Domestic Violence](#) chapter in this Bench Book for additional information regarding safety issues and visitation.*

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## H. Placement of 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

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- 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](#).



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# ADVERSARY HEARING

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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

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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\(m\)](#).

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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.

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***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.*

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

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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



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[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

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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

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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](#).<sup>4</sup>

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

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

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**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.*

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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](#).*

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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](#).

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**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.*

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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\(10\)](#).

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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\(b\)](#).

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**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.*

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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\(b\)](#).

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# DE NOVO HEARING

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The presiding judge of each administrative judicial region can appoint a full-time or part-time associate judge to handle cases filed under [Texas Family Code Subtitle E, Tex. Fam. Code § 201.201](#). Except as otherwise provided by [Tex. Fam. Code Chapter 201, Subchapter C, Subchapter A](#) applies to any associate judge appointed by a presiding judge to handle child protection cases filed under [Texas Family Code Subtitle E](#), including all powers and duties. The Texas Family Code authorizes judges in civil proceedings to refer cases to associate judges appointed both under [Texas Family Code Subchapters A and C](#) to handle the disposition of a variety of case-related matters, including trials on the merits in termination of parental rights. [Tex. Fam. Code § 201.005\(a\)](#).

Referral to an associate judge is not binding on the parties, so if any party timely objects, the referring court must hear the trial on the merits or preside at a jury trial. [Tex. Fam. Code § 201.005\(b\)-\(c\)](#). Barring an objection, however, a [Texas Family Code Chapter 201, Subchapters A or C](#) associate judge may determine the merits in either a bench or a jury trial, subject to the parties' post-trial right to request a "de novo hearing" before the referring court, which must be heard within thirty days of a timely de novo request. [Tex. Fam. Code § 201.015](#). A de novo hearing occurs when a party in a case heard before an associate judge requests that the referring court rehear specific issues ruled on by the associate judge.

## A. Objection to Associate Judge

A party desiring a trial before the referring court rather than the associate judge need only to object to the associate-judge referral. The objection must be filed not later than the 10th day after the date the party receives notice that the associate will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial, if a jury demand has been timely made. [Tex. Fam. Code § 201.005\(c\)](#).

## B. De Novo Hearings

[Tex. Fam. Code § 201.015](#) applies to a request for a de novo hearing before the referring court for matters adjudicated by an associate judge appointed under [Tex. Fam. Code Chapter 201, Subchapter A and C](#). When a case is referred to an associate judge for any authorized purpose, a party may request a de novo hearing before the referring court by filing a written request with the clerk of the referring court not later than the third working day after the date the party receives notice of the substance of the associate judge's ruling or order. [Tex. Fam. Code § 201.015\(a\)](#). In child welfare cases, the requesting party must also file the request with the referring court. [Tex. Fam. Code § 201.2042\(b\)](#). For de novo hearings requested in matters handled by associate judges appointed under [Tex. Fam. Code Chapter 201, Subchapter C](#), the party requesting the de novo hearing must file notice with the clerk of the referring court as well as the court to ensure that the referring court judge is timely notified along with the clerk of the court. The referring court must conduct the de novo hearing within thirty days of the request. [Tex. Fam. Code § 201.015\(f\)](#). De novo hearings are limited to the specific issues stated in the de novo hearing request. [Tex. Fam. Code § 201.015\(b\)](#). See *In re L.R.*, 324 S.W.3d 885, 890 n.5 (Tex. App.—Austin 2010, no pet.) (“[T]he de novo hearing before the referring court is limited to those issues raised in the hearing request.”).



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Parties may present witnesses at the de novo hearing, and the referring court may consider the record from the hearing before the associate judge, including any charge to the jury and any verdict returned, if the matter was tried before a jury. [Tex. Fam. Code § 201.015\(c\)](#).

Although a party may request a de novo hearing before the referring court, a party is not entitled to demand a second jury if the order or proposed judgment reviewed by the referring court was the result of a jury trial presided over by the associate judge in the first instance. [Tex. Fam. Code § 201.015\(i\)](#).

### **C. De Novo Hearing vs. Trial De Novo**

The Supreme Court of Texas held in the *In the Interest of A.L.M.-F.* case that neither [Tex. Fam. Code § 201.015](#) nor any other provision of the Texas Family Code expressly confers a right to a jury trial in a de novo hearing.<sup>5</sup> The A.L.M.-F case distinguishes a De Novo Hearing and a Trial De Novo. A “trial de novo” is a new and independent action in the reviewing court with “all the attributes of an original action” as if no trial of any kind has occurred in the court below.<sup>6</sup> But a de novo hearing under [Tex. Fam. Code Chapter 201](#) is not equivalent to a new trial as review by the referring court under [Tex. Fam. Code § 201.015](#) is not entirely independent of the proceedings before the associate judge. Accordingly, the term “de novo hearing,” as used in [Tex. Fam. Code Chapter 201](#), does not equate to a “trial de novo.” Rather, the term “de novo hearing” has meaning that is unique to the associate judge referral statutes and governed by the procedures specified in the authorizing statutes.<sup>7</sup> As stated above, de novo hearings are limited to the specific issues stated in the de novo hearing request. [Tex. Fam. Code § 201.015\(b\)](#).

### **D. Judicial Action on Associate Judge’s Proposed Order or Judgment**

Parties can forego their right to have their case decided by the referring court in two ways: a party can waive the right to a de novo hearing by executing a waiver prior to the hearing or trial before the associate judge, or post-hearing, the party can fail to or forego filing a request for a de novo hearing within the time required by statute. Thus, if a request for a de novo hearing before the referring court is not timely filed or the right to de novo hearing before the referring court is waived. For an associate judge hired by a district court, the referring court may adopt, modify, or reject the proposed order, hear further evidence, or recommit the matter. [Tex. Fam. Code § 201.014\(a\)](#). For Child Protection Court associate judges, the proposed order or judgment of the associate judge becomes the order of the referring court by operation of law without ratification by the referring court. [Tex. Fam. Code § 201.2041\(a\)](#). Regardless of whether a de novo hearing is requested before the referring court, a proposed order or judgment rendered by an associate judge that meets the requirements of [Tex. Fam. Code § 263.401\(d\)](#) is considered a final order for purposes of [Tex. Fam. Code § 263.401](#). [Tex. Fam. Code § 201.014\(b\)](#) and [Tex. Fam. Code § 201.2041\(b\)](#).



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# INTERVENTIONS

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In CPS cases, legal interventions raise a number of issues. This chapter addresses:

- Standing requirements for non-parties to intervene in CPS legal cases and in cases with other stages of CPS involvement;
- Considerations in responding to interventions filed; and
- Special issues when addressing an intervention in a CPS case.

## A. Standing

There are two avenues for a non-parent party to establish standing in a SAPCR:

- Standing to file an original suit; and
- Standing to intervene in a pending suit.

### 1. Standing to File Original Suit

[Tex. Fam. Code § 102.003](#) provides that an original suit may be filed at any time by:

- A parent of the child;
- The child through a representative authorized by the court;
- A custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- A guardian of the person or of the estate of the child;
- The Department of Family and Protective Services;
- A licensed child placing agency;
- A man alleging himself to be the father of a child filing in accordance with [Tex. Fam. Code Chapter 160](#), subject to the limitations of that chapter, but not otherwise;
- A person other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;
- 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](#);
- A person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the

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filing of the petition if the child’s guardian, managing conservator, or parent is deceased at the time of the filing of the petition;

- A person who is the foster parent of a child placed by the Department of Family and Protective Services in the person’s home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition;
- A person who is a relative of the child within the 3rd degree of consanguinity, as determined by [Tex. Gov’t Code Chapter 573](#), if the child’s parents are deceased at the time of the filing of the petition; or
- A person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under [Tex. Fam. Code § 102.0035](#), regardless of whether the child has been born. [Tex. Fam. Code § 102.003\(a\)](#).

In computing the time necessary for standing under [Tex. Fam. Code § 102.003\(a\)\(9\)](#), [\(a\)\(11\)](#) and [\(a\)\(12\)](#), the court may not require that the time be continuous and uninterrupted but shall consider the child’s principal residence during the relevant time preceding the date of commencement of the suit. [Tex. Fam. Code § 102.003\(b\)](#).

Notwithstanding the time requirements of [Tex. Fam. Code § 102.003\(a\)\(12\)](#), a person who is the foster parent of a child may file a suit to adopt a child for whom the person is providing foster care at any time after the person has been approved to adopt the child. The standing to file suit under [Tex. Fam. Code § 102.003\(a\)\(12\)](#) applies only to the adoption of a child who is eligible to be adopted. [Tex. Fam. Code § 102.003\(c\)](#).

## 2. Actual Care, Control, and Possession

[Tex. Fam. Code § 102.003\(a\)\(9\)](#) provides standing to a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.

### a. Time-Specific in Applicability

- No standing when child in home for only five and a half months at time of filing (*In the Interest of E.C.*, [No. 02-13-00413-CV](#) Tex. App. LEXIS 10199 (Tex. App. – Fort Worth [2nd District] September 11, 2014)).
- No standing when child in home for only three months at time of filing (*In the Interest of C.M.J.*, [No. 02-12-00036-CV](#) (Tex. App. – Fort Worth, December 2012, no pet.)).

**b. Elements of “Actual Care, Control, and Possession”** Under *Jasek v. Texas Department of Family and Protective Services*, the court looked to the composite elements of the care, control, and possession in reaching its decision, considering:

- The individual asserting standing under [Tex. Fam. Code § 102.003\(a\)\(9\)](#) will have:
  - lived in a home where the child consistently and frequently stayed overnight;

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- financially supported the child;
  - participated in the child's education; and
  - fed, clothed, and provided health care to the child.
  - "Actual control" does not require the authority to make legal decisions for the child (*Jasek v. Texas Department of Family and Protective Services*, 348 S.W.3d 523 (Tex. App. – Austin 2011, no pet.) See also *In the Interest of H.S.*, 550 S.W.3d 151, 157 (Tex. 2018).).
  - A non-parent's "actual care, control, and possession" of a child does not need to be exclusive to have standing under [Tex. Fam. Code § 102.003\(a\)\(9\)](#). *In the Interest of H.S.*, 550 S.W.3d 151 (Tex. 2018).

### 3. Standing to Request Termination and Adoption

An original suit requesting only an adoption or for termination of the parent-child relationship joined with a petition for adoption may be filed by:

- A stepparent of the child;
- An adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period preceding the filing of the petition;
- An adult who has had actual possession and control of the child for not less than two months during the three-month period preceding the filing of the petition;
- An adult who has adopted, or is the foster parent of and has petitioned to adopt, a sibling of the child; or
- Another adult whom the court determines to have had substantial past contact with the child sufficient to warrant standing to do so. [Tex. Fam. Code § 102.005](#).

### 4. Standing for a Grandparent or Other Person

In addition to the general standing to file suit provided by [Tex. Fam. Code § 102.003](#), a grandparent, or other relative of the child related within the third degree of consanguinity, may file an original suit requesting managing conservatorship if there is satisfactory proof that:

- The order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; or
- Both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit. [Tex. Fam. Code § 102.004\(a\)](#).

#### a. Relatives and degrees of consanguinity:

- A parent or child (relatives of the first degree)
- A brother, sister, grandparent, or grandchild (relatives of the second degree)

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- A great-grandparent, great-grandchild, aunt who is a sister of a parent of the child, an uncle who is the brother of a parent of the child, a nephew who is the child of a brother or sister of the child, or a niece who is a child of a brother or sister of the child (relatives of the third degree). [Tex. Gov't Code § 573.023\(c\)](#).

**b. Limits on Tex. Fam. Code § 102.004(a) Standing**

- Step-grandfather excluded (*In the Interest of E.C.*, No. 02-13-00413-CV Tex. App. LEXIS 10199 (Tex. App. – Fort Worth [2nd District] September 11, 2014))
- Step-uncle excluded (*In re A.M.S.*, [277 S.W.3d 92](#) (Tex. App. – Texarkana 2009, no pet.))
- Great-aunt or great-uncle excluded (*In re N.L.D.* 344 S.W.3d 33 (Tex. App.- Texarkana 2011, no pet.))

**c. Proving Significant Impairment pursuant to [Tex. Fam. Code § 102.004\(a\)](#)**

- Significant impairment of child's physical health and emotional development found with evidence of parental drug use and criminal convictions and incarceration. (*In re K.D.H.*, [426 S.W.3d 879](#) (Tex. App. – Houston [14th Dist.] April 3, 2014, no pet.))
- Significant impairment of child's physical health and emotional well-being found with evidence of physical and emotional abuse of the child even if the last alleged incident occurred months before the filing of the petition when the parent's ideas regarding discipline had not changed during the period and the parent had not received any counseling or other services during that time to mitigate the risk of continued abuse. *In re McDaniel*, [408 S.W.3d 389](#) (Tex. App. – Houston [1st Dist.] 2011)
- Significant impairment of emotional development found where a parent fails to send their child to school on a regular basis and fails to provide necessary therapeutic interventions for a child with poor school performance and behavioral issues. *Maudlin v. Clements*, [428 S.W.3d 247](#) (Tex. App. – Houston 2014)
- Acts or omissions that constitute significant impairment include, but are not limited to, physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior by a parent. (*In the Interest of M.P.*, No. 13-21-00013-CV (Tex. App.- Corpus Christi-Edinburg May 19, 2022, no pet. h.). See also *In re B.B.M.*, 291 S.W.3d 463, 469 (Tex. App.- Dallas 2009, pet. denied)).

**d. Applicability and Implications of [Tex. Fam. Code § 102.004\(a\)](#) in CPS Cases**

- Avenue for grandparents and other relatives within the requisite degree of consanguinity to file for custody of a child in an investigation or Family Based Safety Services stage of a CPS case.
- An original action for conservatorship under [Tex. Fam. Code § 102.004\(a\)](#) does not have the rehabilitative and service requirements of a CPS case or the same strict timelines.

## **B. Standing to Intervene in a Pending Suit**

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An original suit requesting possessory conservatorship may not be filed by a grandparent or other person. However, the court may grant a grandparent or other person deemed to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if there is satisfactory proof to the court that the appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development. [Tex. Fam. Code § 102.004\(b\)](#).

### 1. Applicable to Pending SAPCRs

- A grandparent or other person can only utilize [Tex. Fam. Code § 102.004\(b\)](#) in SAPCRs that have not yet resulted in a final order.
- In the context of CPS cases, the SAPCR is no longer pending once DFPS is appointed PMC of the child.

### 2. Pleading Requirements

- The grandparent or other person must establish that they have had substantial past contact with the child; and
- The grandparent or other person must present satisfactory proof to the court that the appointment of the parent or parents as sole or joint managing conservators would significantly impair the child's physical health and emotional development. [Tex. Fam. Code § 102.004\(b\)](#).

### 3. Case Law related to Substantial Past Contact

Courts have applied the standard definition of "substantial" from the Random House Dictionary as "of ample or considerable amount, quantity, size, etc." and have evaluated the amount of actual contact and not the difficulties of the intervening party maintaining contact. (*In re C.M.C.*, [192 S.W.3d 866](#) (Tex. App. – Texarkana 2006, no pet.))

"Substantial past contact" has been found to involve more than seeing a child regularly during his or her life. Substantial past contact has been shown by parties who have "frequently cared for the children, lived nearby, and spent a great deal of time with the family." (*Blackwell v. Humble*, [241 S.W.3d 707](#) (Tex. App. – Austin 2007, no pet.))

Relatives who have cared for a child for as few as 7 weeks have been found to have substantial past contact. The Court's analysis focused on the caretaker's daily supervision of the child during that time and found the intervening party to have established substantial past contact in undertaking the daily functions of legal custody during that time. (*In re A.L.W.*, [No. 02-11-00480-CV](#) (Tex. App. – Fort Worth Nov. 8, 2012, pet. denied)(mem. op.). See also *In the Interest of R.I.*, [610 S.W.3d 581, 590](#) (Tex. App.-Tyler 2020, no pet.)).

In a case of first impression, the Dallas Court of Appeals has held that grandparents, as opposed "other persons," are not required to establish substantial past contact under [Tex. Fam. Code § 102.004\(b\)](#). See *In re Nelke*, [537 S.W. 3d 917, 922-23](#) (Tex. App – Dallas 2019, no pet h.).

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**Special Issue:** *The determination of whether substantial past contact exists is a fact-intensive inquiry. The determination is not statutorily defined and case law does not establish a clear factual framework for judges to make the determination. Deference is usually given to the trial court’s assessment.*

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#### **4. Evidence that Appointment of Parent(s) as Managing Conservator Would Significantly Impair the Child’s Physical Health and Emotional Development**

A person with substantial past contact with a child will be unable to show evidence that the appointment of a parent as the managing conservator would cause significant impairment when facts show only speculation of potential harm if the parent is appointed conservator. (*In re S.M.D.*, 329 S.W.3d 8 (Tex. App. – San Antonio, 2010, pet. dismissed)).

Frequent moves “are acts that may constitute significant impairment of a child’s physical health or emotional development.” *In the Interest of A.D.T.*, 588 S.W.3d 312, 318 (Tex. App.- Amarillo 2019, no pet.).

#### **5. “Significant Impairment” During Reunification Phase of a CPS Case**

Alleged father who had independently raised the child for two and a half years submitted to paternity testing and was dismissed as a party to the case after genetic testing ruled him out as the father. He intervened alleging substantial past contact. He was denied leave to intervene because he failed to show that the appointment of the mother as sole managing conservator would significantly impair the child’s physical health and emotional development. Testimony offered by the Department at multiple hearings had shown that she had complied with all court orders and service plan requirements, that the child had already been placed with her and that the Department was recommending dismissal of the case. The Court of Appeals found no abuse of discretion in the trial court’s refusal to grant leave to intervene. (*L.J. v. Texas Department of Family & Protective Services*, No. 03-11-00435-CV (Tex. App. – Austin, August 1, 2012, pet. denied) (mem. op.))

### **C. Foster Parent Interventions**

#### **1. General Standing Provision: [Tex. Fam. Code § 102.003 \(a\)\(12\)](#)**

An original suit may be filed at any time by a person who is the foster parent of a child placed by the Department of Family and Protective Services in the person’s home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition. [Tex. Fam. Code § 102.003\(A\)\(12\)](#).

#### **2. Foster Parent Intervention Limited**

[Tex. Fam. Code § 102.004\(b\)](#) allows persons with substantial past contact with a child leave to intervene in a pending suit if they can provide satisfactory proof to the court that the appointment of a parent as Sole Managing Conservator or both parents as Joint Managing Conservators would significantly impair the child’s physical health or emotional development. However, a foster parent may only be granted leave to intervene under [Tex. Fam. Code § 102.004\(b\)](#) if the foster parent would have standing to file an original suit as provided by [Tex. Fam. Code § 102.003\(a\)\(12\)](#). [Tex. Fam. Code § 102.004\(b-1\)](#).

### **D. Limitations on Standing**

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## 1. Limitations on Standing

Except as provided by [Tex. Fam. Code § 102.006\(b\) and \(c\)](#), if the parent-child relationship between the child and every living parent of the child has been terminated, an original suit may not be filed by:

- A former parent whose parent-child relationship has been terminated by court order;
- The father of the child; or
- A family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or the father of the child. [Tex. Fam. Code § 102.006\(a\)](#).

The limitations on filing suit imposed by [Tex. Fam. Code § 102.006](#) do not apply to a person who:

- Has a continuing right to possession of or access to the child under an existing court order; or
- Has the consent of the child's managing conservator, guardian, or legal custodian to bring the suit. [Tex. Fam. Code § 102.006\(b\)](#).

The limitations on filing suit imposed by [Tex. Fam. Code § 102.006](#) do not apply to an adult sibling of the child, a grandparent of the child, an aunt who is the sister of a parent of the child, or an uncle who is the brother of a parent of the child if the adult sibling, grandparent, aunt, or uncle files an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated. [Tex. Fam. Code § 102.006\(c\)](#).

Immediately after a court renders an order terminating the parent-child relationship in a suit filed by DFPS, DFPS must notify relatives who have been identified under [Tex. Fam. Code § 262.1095](#) that the parent-child relationship has been terminated and they have 90 days after the date the order is rendered to file an original suit or a suit for modification requesting managing conservatorship of the child in accordance with [Tex. Fam. Code § 102.006\(c\)](#). [Tex. Fam. Code § 161.2081](#).

Courts have affirmed that [Tex. Fam. Code § 102.006\(c\)](#) serves to limit the standing of particular individuals when the parent-child relationship has been terminated; it does not confer standing. (*In re N.A.D.*, [397 S.W.3d 747](#) (Tex. App. – San Antonio 2013, no pet.)) and (*L.H. v. Texas Dep't of Family and Protective Services*, [No. 03-13-00348-CV](#) (Tex. App. – Austin Mar. 6, 2014, no pet.)).

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**Special Issue:** [Tex. Fam. Code § 102.006\(c\)](#) may have the following practical effects for judges:

- *Narrows the class of individuals who would otherwise have standing to file an original proceeding for modification or adoption.*
- *Restricts time period for filing.*

*Note that the legal avenues for adoption and modification may impose obstacles even to those who have standing and who file within 90 days.*

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**Special Issue:** As of July 2022, caselaw related to reinstatement of parental rights has not yet been developed. However, please note the following:

- Reinstatement is only available to parents whose rights were terminated involuntarily, so parents who relinquish their rights will not be able to file.
- Former and current foster parents wishing to intervene in reinstatement of parental rights cases may have difficulty doing so. Foster parents only have two ways to intervene currently: by filing an original suit under [Tex. Fam. Code 102.003\(a\)\(12\)](#), which doesn't seem to apply in cases of reinstatement, or under [Tex. Fam. Code 102.004\(b\)](#). Under [Tex. Fam. Code 102.004\(b\)](#) a foster parent needs to show substantial past contact. In complex cases it may be difficult to establish substantial past contact in the two years between termination and petition for reinstatement.

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## 2. Consequences of Missing 90-Day Deadline

Even parties who would otherwise have standing will lose that standing if they fail to file their petition for custody or adoption within 90 days.

Petition to adopt children by aunt with substantial past contact filed 7 months after parental rights were terminated was barred by [Tex. Fam. Code § 102.006\(c\)](#) because it had not been filed within 90 days of the termination order. (*In re A.M.*, 312 S.W.3d 76 (Tex. App. – San Antonio 2010, pet. denied)).

## E. Petitions to Modify the Parent-Child Relationship

### 1. Procedural Requirements

If a suit seeking to modify the designation of the person having the exclusive right to designate the primary residence of a child is filed not later than one year after the earlier of the date of the rendition of the order or the date of the signing of a mediated or collaborative law settlement agreement on which the order is based, the person filing the suit shall execute and attach an affidavit as provided by [Tex. Fam. Code § 156.102\(b\)](#). [Tex. Fam. Code § 156.102\(a\)](#).

The affidavit must contain, along with supporting facts, at least one of the following allegations that:

- The child's present environment may endanger the child's physical health or significantly impair the child's emotional development;
- The person who has the exclusive right to designate the primary residence of the child is the person seeking or consenting to the modification and the modification is in the best interest of the child; or
- The person who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for at least six months and the modification is in the best interest of the child. [Tex. Fam. Code § 156.102\(b\)](#).

The court shall deny the relief sought and refuse to schedule a hearing for modification under this section unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation listed in [Tex. Fam. Code § 156.102\(b\)](#) are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, the court shall set a time and place for the



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hearing. [Tex. Fam. Code § 156.102\(c\)](#). In a jury trial, a jury verdict regarding the right to determine the child's primary residence for a joint or sole managing conservator may be authorized by the court. [Tex. Fam. Code § 105.002\(c\)](#).

## 2. Modifications of Termination Orders in CPS Proceedings

Modifications must include a sworn affidavit that shows that the child's present environment may endanger the child's physical health or emotional development.

Grandparents filed Petition to Modify the Parent-Child Relationship immediately following the termination of parent-child relationship proceeding to which they were not parties and cited [Tex. Fam. Code § 102.006\(c\)](#) as basis for standing. No affidavit was attached. DFPS filed a Motion to Dismiss based on failure to attach the required affidavit under [Tex. Fam. Code § 156.102](#). Trial court dismissed suit and 4th Court of Appeals upheld dismissal, finding that [Tex. Fam. Code § 102.006](#) did not confer standing and the procedural requirements of [Tex. Fam. Code § 156.102](#) applied in cases where a modification of the Department's conservatorship of a child is sought. (*In re N.A.D.*, [397 S.W.3d 747](#) (Tex. App. – San Antonio 2013, no pet.)).

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**Special Issue:** *In re N.A.D.* may present practical implications for the court:

- *Modification of an order entered only 90 days earlier may require facts that establish that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development.*
- *Modification facts may be difficult to establish if, as part of trial court findings at termination of parent rights proceedings, that the child's current placement is meeting the child's needs and continuation is in the best interest of the child.*

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## F. Practical Considerations

### 1. Timing

- a. Some courts have successfully struck interventions as untimely if filed too close to the dismissal deadline.**

Grandmother filed petition in intervention two months before dismissal date when permanency plan changed from reunification to termination although she had been aware of the case for over a year. Motion to Strike granted and affirmed by appellate court as within the discretion of the Court. (*In the Interest of C.A.L.*, [No. 2-05-308-CV](#), 2007, Tex. App LEXIS 1196 (App.—Fort Worth Feb. 15, 2007 orig. proceeding) (mem. op.)).

Grandfather who lived in Kentucky filed an intervention two months before trial. (Waiting to file an intervention when out of state and ICPC study required problematic). (*Anderson v. Texas Dep't of Family and Protective Services*, [No. 03-06-00327-CV](#) (Tex. App. – Austin May 9, 2007, pet. denied (mem. op.)).

- b. Court should balance the complication of the issues in the case and the rights of the intervening party.**

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A trial court abuses its discretion if it strikes a petition in which (1) the intervener could bring the same action, or any part thereof, in their own names, (2) the intervention will not complicate the case by an excessive multiplication of the issues, and (3) the intervention is almost essential to effectively protect the interveners' interest. In applying that analysis, the court found that even though the intervention was filed only two weeks before trial that the intervening party had standing and should have been allowed to participate in the trial. (*Seale v. Texas Dept. of Family & Protective Services*, No. 01-10-00440-CV (Tex. App. – Houston [1st Dist.] Mar. 3, 2011, no pet.) (mem. op.)).

## **2. Procedural Issues**

### **a. Effect of Intervention**

Rule 60 of the Texas Rules of Civil Procedure provides that “any party may intervene by filing a pleading, subject to being stricken by the court for sufficient cause on the motion of any party.” Thus, intervening parties, absent a Motion to Strike, are immediately granted the status of a party and can participate in discovery, participate in hearings and mediations, and receive court reports, and other filings with the court. [Tex. R. Civ. P. 60](#).

### **b. Leave of Court**

The court may grant a grandparent or another person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under [Tex. Fam. Code Chapter 102](#) if there is satisfactory proof to the court that appointment of a parent would significantly impair the child's physical health or emotional development. [Tex. Fam. Code § 102.004\(b\)](#).

Following the plain language of the statute, the court finds a request for leave to intervene is necessary under [Tex. Fam. Code § 102.004\(b\)](#) and that the Intervener's Amended Petition for Intervention which requested that the court “grant the relief requested in this intervention” be read as a request for leave to intervene. (*In the Interest of A.T.*, No 14-14-00071-CV, (Tex. App. – Houston, July 15, 2014, (no pet.) (mem. op.)).

A court found that [Tex. R. Civ. P. 60](#) does not apply to interventions filed under [Tex. Fam. Code § 102.004\(b\)](#). The court noted that the legislature developed a separate provision governing intervention in family law cases and gave the trial court discretion to determine whether to allow an intervention even when the statutory requirements are met. Court then found that no written motion to strike was required. (*L.J. v. Texas Department of Family & Protective Services*, No. 03-11-00435-CV (Tex. App. – Austin Aug. 1, 2012, pet. denied) (mem. op.)).

### **c. Imperfect Pleadings Can Establish Standing**

Appellate courts review standing issues by construing the pleadings in favor of the petitioner and by looking to the pleader's intent.

The question is whether a party provides other parties and the court fair notice of his or her claim. (*Jasek v. TDFPS*, 348 S.W.3d 523 (Tex. App. – Austin 2011, no pet.); *In the Interest of D.A.*, No. 02-14-00265-CV (Tex. App. – Fort Worth, February 5, 2015) (mem. op.); *In the Interest of N.I.V.S.*, No. 04-14-00108-CV (Tex. App. – San Antonio, March 11, 2015) (mem. op.)).

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## G. Resources

[GRANDPARENTS OR OTHER PERSON, 2020 TXCLE-AFL 18-VI, 2020 WL 5608033](#)

[STANDING, 2018 TXCLE-AFL 36-III, 2018 WL 6366549](#)

Hon. Melissa DeGerolami, Interventions: [Tips for Properly Addressing Interventions in CPS Cases](#), Child Welfare Judges Conference, 2015.

Mary Evelyn McNamara and Karen J. Langsley, Interventions in Suits Affecting the Parent-Child Relationship, State Bar of Texas 40th Annual Advanced Family Law Course, August 4-7, 2014.



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# STATUS HEARING

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The Status Hearing focuses on the child's status and service plan. The Status Hearing is an opportunity for the judge and other parties to review the service plan, but it is generally not viewed as an opportunity to relitigate whether the child should have been placed in the legal custody of DFPS.

**Please see the Checklist Section for Status Hearing Checklist.**

## A. Timing and Notice

### 1. Hearing is Mandatory

The Status Hearing is mandatory unless the court holds an initial Permanency Hearing under [Tex. Fam. Code § 262.2015](#) (aggravated circumstances) before the date when a Status Hearing is required. [Tex. Fam. Code § 263.201\(b\)](#).

### 2. Timing of Status Hearing

Not later than the 60th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child, the court shall hold a Status Hearing to review the child's status and service plan. [Tex. Fam. Code § 263.201\(a\)](#).

### 3. Notice Must Be Given Pursuant to [Tex. Fam. Code § 263.0021](#)

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#). Notice of a hearing under Chapter 263 must state that the individual receiving notice pursuant to [Tex. Fam. Code § 263.0021\(b\)](#) may, but is not required to, attend the hearing and may request to be heard at the hearing. [Tex. Fam. Code § 263.0021\(e\)](#). Courts must determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. [Tex. Fam. Code § 263.0021\(f\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- DFPS;
- The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
- Each parent of the child;
- The managing conservator or guardian of the child;
- An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
- A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;

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- A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
  - The child if:
    - the child is 10 years of age or older; or
    - the court determines it is appropriate for the child to receive notice; and
  - Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;
- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
- In open court; or
- In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

## B. Mandatory Findings

During a Status Hearing, the court shall make findings as to whether:

- DFPS has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the paternity registry under [Tex. Fam. Code § 160.402](#). DFPS is required to file a report under [Tex. Fam. Code § 263.007](#) detailing its efforts to identify, locate, and provide information to each adult described by [Tex. Fam. Code § 262.1095\(a\)](#). [Tex. Fam. Code § 263.202\(f\)](#) requires that the court review the report and order DFPS to make further efforts, if warranted. [Tex. Fam. Code § 262.202\(a\)\(1\)](#); [Tex. Fam. Code § 263.202\(f\)](#); [Tex. Fam. Code § 262.1095\(a\)](#); and [Tex. Fam. Code § 263.007](#).
- The child and each parent, alleged father, or relative of the child before the court have furnished to DFPS all available information necessary to locate another absent parent, alleged father, or relative of the child through the exercise of due diligence. [Tex. Fam. Code § 263.202\(a\)\(2\)](#).
- A plan that has the goal of returning the child to the parent adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child. [Tex. Fam. Code § 263.202\(b\)\(1\)](#). The court shall give the child's parents the opportunity to comment on the service plan. [Tex. Fam. Code § 263.202\(g\)](#).

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- The parents have reviewed and understand the plan, the plan is narrowly tailored to address any specific issues identified by DFPS, and the child's parents and the representative of DFPS have signed the plan. [Tex. Fam. Code § 263.202\(b\)\(2\), \(b\)\(3\) and \(b\)\(4\)](#).
  - The court has identified the individual who has the right to consent to medical treatment for the child under [Tex. Fam. Code § 266.004](#). [Tex. Fam. Code § 263.202\(e\)](#).
  - The court is directed to inquire at the Status Hearing whether parents or other parties have provided information necessary to locate an alleged father, an absent parent, or a relative of the child. It is left to the court to decide what action, if any, should be taken in response to a negative answer. [Tex. Fam. Code § 263.202\(a\)\(2\)](#).
  - The court is required, after reviewing and making any necessary modifications, to incorporate the service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with the plan. [Tex. Fam. Code § 263.202\(b-1\)](#).

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**Special Issue:** *DFPS is required to involve the parents in developing the service plan. [Tex. Fam. Code § 263.102\(a\)\(3\)](#). Parent attorneys are entitled to attend any case staffing in which the parent is invited to participate, including to develop a family service plan. [Tex. Fam. Code §107.0131\(a\)\(2\)\(F\)](#). Courts might consider whether DFPS has involved counsel for the child and whether the parent has substantial input as to what services are appropriate to help the family reunify and ensure the child's well-being.*

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## C. Court Shall Advise/Warn Parents

### 1. Service Plan Progress Shall Be Reviewed at All Subsequent Hearings

The court shall advise the parties that progress under the service plan will be reviewed at all subsequent hearings, including a review of whether the parties have acquired or learned any specific skills or knowledge stated in the service plan. [Tex. Fam. Code § 263.203\(b\)](#).

### 2. Court Shall Warn Parents

The court is required to inform each parent in open court that parental and custodial rights and duties may be subject to restriction or to termination unless the parent or parents demonstrate a willingness and ability to provide the child with a safe environment. [Tex. Fam. Code § 263.006](#) and [Tex. Fam. Code § 263.202\(b\)\(2\)](#).

### 3. Court Shall Advise Parent of Appointment of Attorney

[Tex. Fam. Code § 263.203\(a\)](#) requires that the court advise the parties of the provisions regarding the mandatory appointment of an attorney ad litem under [Tex. Fam. Code Chapter 107, Subchapter A](#) and appoint an attorney ad litem to represent the interests of any person eligible if the appointment is required by that subchapter. [Tex. Fam. Code § 263.203\(a\)](#).

[Tex. Fam. Code § 263.0061](#) requires notice to parents of right to counsel. At the Status Hearing required by [Tex. Fam. Code Chapter 263, Subchapter C](#) and at each Permanency Hearing required by [Tex.](#)

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Fam. Code Chapter 263, Subchapter D, the court shall 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 § 263.0061\(a\)](#).

If a parent claims indigence and requests the appointment of an attorney in a proceeding under [Tex. Fam. Code Chapter 263, Subchapter C and Subchapter D](#), the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. [Tex. Fam. Code § 263.0061\(b\)](#).

#### **4. Court Shall Review Visitation Plan**

Court shall review the visitation plan, taking into consideration the factors specified in [Tex. Fam. Code § 263.107\(c\)](#). [Tex. Fam. Code § 263.108\(a\)](#). See Section E of this chapter.

The court may modify, or order DFPS to modify, an original or amended visitation plan at any time. [Tex. Fam. Code § 263.108\(b\)](#).

## **D. Court Review of the Service Plan**

### **1. Service Plan Shall Be Filed**

Except as provided by [Tex. Fam. Code § 262.2015](#), DFPS must file a service plan not later than the 45th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child. [Tex. Fam. Code § 263.101](#).

[Tex. Fam. Code § 263.103](#) requires that the service plan shall be developed jointly with the parents. If the parents refuse to or are unable to participate, DFPS is required to file the service plan with the court and request that the court order that it is effective. The service plan remains in effect until amended by the court. [Tex. Fam. Code § 263.103](#).

[Tex. Fam. Code § 263.104](#) clarifies that any amendments to the service plan shall be developed jointly with the parents. If the parents refuse to or are unable to participate, DFPS is required to file the service plan with the court for it to become effective. The parent is allowed to file a motion with the court at any time to request review and modification of the amended service plan. [Tex. Fam. Code § 263.104](#). A court can modify a service plan at any time. [Tex. Fam. Code § 263.106](#).

### **2. Contents of the Service Plan**

The service plan must:

- Be specific;
- Be in writing and in a language that the parents understand, or made otherwise available;
- Be prepared by DFPS in conference with the child's parents;



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- State appropriate deadlines;
  - Specify the primary permanency goal and at least one alternative goal;
  - State the steps necessary to:
    - return the child to the child’s home if the placement is in foster care;
    - enable the child to remain in the child’s home with the assistance of a service plan if placement is in the home under DFPS’ supervision; or
    - otherwise provide a permanent safe placement for the child;
  - State the actions and responsibilities that are necessary for the child’s parents to take to achieve the plan goal during the period of the service plan and the assistance to be provided to the parents by DFPS or other agency toward meeting that goal;
  - State any specific skills or knowledge that the child’s parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;
  - State the actions and responsibilities that are necessary for the child’s parents to take to ensure that the child attends school and maintains or improves the child’s academic compliance;
  - State the name of the person with DFPS whom the child’s parents may contact for information relating to the child if other than the person preparing the plan; and
  - Prescribe any other term or condition that DFPS determines to be necessary to the service plan’s success. [Tex. Fam. Code § 263.102\(a\)](#).

The service plan shall include the following statement:

TO THE PARENT: THIS IS A VERY IMPORTANT DOCUMENT. ITS PURPOSE IS TO HELP YOU PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT WITHIN THE REASONABLE TIME PERIOD SPECIFIED IN THE PLAN. IF YOU ARE UNWILLING OR UNABLE TO PROVIDE YOUR CHILD WITH A SAFE ENVIRONMENT, YOUR PARENTAL AND CUSTODIAL RIGHTS MAY BE RESTRICTED OR TERMINATED OR YOUR CHILD MAY NOT BE RETURNED TO YOU. THERE WILL BE A COURT HEARING AT WHICH A JUDGE WILL REVIEW THIS SERVICE PLAN. [Tex. Fam. Code § 263.102\(b\)](#).

### **3. Service Plans for Children Under Two Years of Age**

DFPS shall consult with relevant professionals to determine the skills or knowledge that the parents of a child under two years of age should learn or acquire to provide a safe placement for the child. DFPS shall incorporate those skills and abilities into service plans, as appropriate. [Tex. Fam. Code § 263.102\(f\)](#).

### **4. Effective Date**

The service plan takes effect when:

- The child’s parents and the appropriate representative of DFPS sign the plan; or

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- The court issues an order giving effect to the plan without the parents' signatures. [Tex. Fam. Code § 263.103\(d\)](#).

The plan is in effect until and unless it is amended by the court or superseded by a new plan negotiated between the parents and DFPS. [Tex. Fam. Code § 263.103\(e\)](#) and [Tex. Fam. Code § 263.104](#). A court can modify a service plan at any time. [Tex. Fam. Code § 263.106](#).

## 5. Court Implementation of Service Plan

After reviewing the original or any amended service plan, and making any changes or modifications deemed necessary, the court must incorporate the original or amended service plan into the orders of the court. The court may also render additional appropriate orders to implement or require compliance with an original or amended service plan. [Tex. Fam. Code § 263.106](#).

## E. Court Review of Visitation Plan

For more information regarding visitation and relevant forms, please see the Bench Book chapter entitled [Family Visitation](#).

### 1. Visitation Plan

Visitation plans apply only to a child in the temporary managing conservatorship of DFPS when the goal is reunification of the child with the child's parent. [Tex. Fam. Code § 263.107\(a\)](#).

Not later than the 30th day after the date DFPS is named temporary managing conservator of a child, DFPS, in collaboration with each parent of the child, shall develop a visitation plan. [Tex. Fam. Code § 263.107\(b\)](#).

In determining the frequency and circumstances of visitation under [Tex. Fam. Code § 263.107](#), DFPS must consider:

- The safety and best interest of the child;
- The age of the child;
- The desires of each parent regarding visitation with the child;
- The location of each parent and the child; and
- The resources available to DFPS, including the resources to:
  - ensure that visitation is properly supervised by a DFPS employee or an available and willing volunteer DFPS determines suitable after conducting a background and criminal history check; and
  - provide transportation to and from visits. [Tex. Fam. Code § 263.107\(c\)](#).

Not later than the 10th day before the date of a Status Hearing under [Tex. Fam. Code § 263.201](#), DFPS shall file with the court a copy of the visitation plan developed under [Tex. Fam. Code § 263.107](#). [Tex. Fam. Code § 263.107\(d\)](#).

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DFPS may amend the visitation plan on mutual agreement of the child's parents and DFPS or as DFPS considers necessary to ensure the safety of the child. An amendment to the visitation plan must be in the child's best interest. DFPS shall file a copy of any amended visitation plan with the court. [Tex. Fam. Code § 263.107\(e\)](#).

A visitation plan developed under [Tex. Fam. Code § 263.107](#) may not conflict with a court order relating to possession of and access to the child. [Tex. Fam. Code § 263.107\(f\)](#).

## **2. Review of Visitation Plan; Modification**

At the first hearing held under [Tex. Fam. Code Chapter 263](#) after the date an original or amended visitation plan is filed with the court under [Tex. Fam. Code § 263.107](#), the court shall review the visitation plan, taking into consideration the factors listed under [Tex. Fam. Code § 263.107\(c\)](#). [Tex. Fam. Code § 263.108\(a\)](#).

The court may modify, or order DFPS to modify, an original or amended visitation plan at any time. [Tex. Fam. Code § 263.108\(b\)](#).

A parent who is entitled to visitation under a visitation plan may at any time file a motion with the court to request review and modification of an original or amended visitation plan. [Tex. Fam. Code § 263.108\(c\)](#).

## **3. Court Implementation of Visitation Plan**

After reviewing an original or amended visitation plan, the court shall render an order regarding a parent's visitation with a child that the court determines appropriate. [Tex. Fam. Code § 263.109\(a\)](#).

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\(b\)](#).

If the order regarding visitation between a child and a parent requires supervised visitation to protect the health and safety of the child, the order must outline specific steps the parent must take to have the level of supervision reduced. [Tex. Fam. Code § 263.109\(c\)](#).

## **F. Child Placement Resources Form**

The court shall require all parties present at the Status Hearing to file a Child Placement Resources Form, if they have not already done so. [Tex. Fam. Code § 263.201\(c\)](#).

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 § 263.202\(h\)](#).

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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. [Tex. Fam. Code § 263.202\(i\)](#).

## **G. Permanency Planning Meetings**

### **1. Timing of Permanency Planning Meetings**

DFPS shall hold a permanency planning meeting for each child for whom DFPS is appointed temporary managing conservator in accordance with a schedule adopted by department rule that is designed to allow the child to exit the managing conservatorship of DFPS safely and as soon as possible and be placed with an appropriate adult caregiver who will permanently assume legal responsibility for the child. [Tex. Fam. Code § 263.009\(a\)](#).

The initial permanency planning meeting is to occur within 45 days after DFPS removes a child to develop an initial Family Plan of Service (FPOS) and visitation plan. Permanency planning meetings should also occur before scheduled permanency hearings, after a significant update to the child's permanency goal, and as soon as possible after a final court order naming DFPS as permanent managing conservator of a youth age 16 or older with a permanency goal of Another Planned Permanency Living Arrangement (APPLA) and any time after that, if there is no progress toward achieving positive permanency for the youth. [CPS Policy Handbook § 6251](#).<sup>8</sup>

### **2. Permanency Planning Meeting Requirements**

At each permanency planning meeting, DFPS shall:

- Identify any barriers to achieving a timely permanent placement for the child;
- Develop strategies and determine actions that will increase the probability of achieving a timely permanent placement for the child; and
- Use the family group decision-making model whenever possible. [Tex. Fam. Code § 263.009\(b\)](#).

## **H. Review of Placement of a Child in Qualified Residential Treatment Program**

As long as a child remains in a Qualified Residential Treatment Program (QRTP), DFPS must provide the court with information at the Status Review Hearing and at each Permanency Hearing demonstrating that:

- The ongoing assessment of the child's strengths and needs shows the needs of the child cannot be met through placement in a foster home;
- Placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment, and;
- The placement is consistent with the short-term and long-term goals for the child specified in the permanency plan.

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DFPS must provide information documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, and the efforts made by DFPS to prepare the child to be placed in a home, with a foster home, relative, legal guardian, or adoptive parent. [Tex. Fam. Code § 263.00201\(d\)](#).

The review of a child's placement in a QRTP may be conducted through a remote proceeding. [Tex. Fam. Code § 263.00201\(f\)](#).

## **I. Assessments**

All children must receive a developmentally appropriate comprehensive assessment not later than the 45th day after the date a child enters the conservatorship of DFPS. [Tex. Fam. Code § 266.012\(a\)](#).

The assessment must include:

- A screening for trauma; and
- Interviews with individuals who have knowledge of the child's needs. [Tex. Fam. Code § 266.012\(a\)](#).

For more information, including other assessments such as Texas Health Steps and Required Medical Exams, please see the Bench Book chapter entitled [Health Care for Texas Children in Foster Care: STAR Health](#).

## **J. Inquiry Regarding Child's Native American Heritage**

The court shall ask all parties present at the Status 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 § 263.202\(f-1\)](#). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book Chapter entitled [Indian Child Welfare Act](#).



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# PERMANENCY HEARING BEFORE FINAL ORDER

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Permanency Hearings examine progress made by the parties since the last hearing and provide an opportunity to adjust the permanency or case plan.

**Please see the Checklist Section for the Permanency Hearing Before Final Order Checklist.**

## A. Permanency Hearing Before Final Order

### 1. Initial Permanency Hearing

The first Permanency Hearing must be held no later than the 180th day after the date the court renders a temporary order appointing DFPS as temporary managing conservator of a child and the court shall review the status of, and permanency plan for, the child to ensure that a final order consistent with that permanency plan is rendered before the date of dismissal of the suit under [Tex. Fam. Code Chapter 263](#). [Tex. Fam. Code § 263.304\(a\)](#).

### 2. Subsequent Permanency Hearing

A subsequent Permanency Hearing before entry of a final order shall be held not later than the 120th day after the date of the last Permanency Hearing in the suit. For good cause shown or on the court's own motion, the court may order more frequent hearings. [Tex. Fam. Code § 263.305](#).

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**Special Issue:** *In addition to the required findings, some judges and attorneys use the second Permanency Hearing Before Final Order as a pretrial conference to discuss discovery, the pleadings upon which DFPS will be seeking relief, and other trial-related issues. Both permanency hearings can also be used as opportunities to discuss mediation and/or settlement.*

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## B. Hearing Notice is Mandatory

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#). Notice of a hearing under Chapter 263 must state that the individual receiving notice pursuant to [Tex. Fam. Code § 263.0021\(b\)](#) may, but is not required to, attend the hearing and may request to be heard at the hearing. [Tex. Fam. Code § 263.0021\(e\)](#). Courts must determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. [Tex. Fam. Code § 263.0021\(f\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- DFPS;
- The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
- Each parent of the child;

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- The managing conservator or guardian of the child;
  - An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
  - A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;
  - A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
  - The child if:
    - the child is 10 years of age or older; or
    - the court determines it is appropriate for the child to receive notice; and
  - Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;
- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
- In open court; or
- In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

## C. Permanency Plan for Child is Required

### 1. Permanency Plan

DFPS must prepare a permanency plan for each child in its care. DFPS must give a copy of the plan to each person entitled to notice pursuant to [Tex. Fam. Code § 263.0021\(b\)](#) not later than 10 days before the date of the first Permanency Hearing. [Tex. Fam. Code § 263.3025\(a\)](#).

The permanency plan must contain information required by [Tex. Fam. Code § 263.303](#) and DFPS shall modify the permanency plan as required by the circumstances and the needs of the child. [Tex. Fam. Code § 263.3025\(b\) and \(c\)](#).

### 2. Permanency Goals

The permanency plan must include concurrent permanency goals consisting of a primary goal and at least one alternative permanency goal. [Tex. Fam. Code § 263.3025\(d\)](#). Appropriate and legally recognized permanency goals include (in order of preference):

- Reunification of the child with a parent or other individual from whom the child was removed;



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- Termination of parental rights and adoption of the child by a relative or other suitable individual;
  - Award of permanent managing conservatorship of the child to a relative or other suitable individual; or
  - Another planned, permanent living arrangement for the child (APPLA). [Tex. Fam. Code § 263.3026\(a\)](#).
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**Special Issue:** *With passage of the Preventing Sex Trafficking and Strengthening Families Act (SFA) into law in 2014, there are NO permissible uses of APPLA for any child under 16 years of age and use of APPLA is limited for youth ages 16 and older. Courts must ask each youth with a permanency plan of APPLA about their desired permanency outcome and determine at each permanency review hearing that APPLA is the best permanency plan for the child. Texas law also requires courts to document the agency’s unsuccessful efforts to achieve a more preferred outcome. With passage of SFA, courts must find that APPLA is the best permanency plan. [Tex. Fam. Code § 263.306 \(a-1\)\(5\)\(I\)\(ii\)](#).*

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## **D. Permanency Progress Report is Required; Contents**

### **1. Filing the Permanency Progress Report**

Not later than the 10th day before the date set for each Permanency Hearing Before a Final Order is rendered, DFPS shall file with the court a permanency progress report and provide a copy at least 10 days prior to the hearing, unless the court orders a different period for providing the report, to:

- Each party;
- The child’s attorney ad litem;
- The child’s guardian ad litem; and
- The child’s volunteer advocate. [Tex. Fam. Code § 263.303\(a\)](#).

### **2. Contents of the Permanency Progress Report**

The report must contain:

- Information necessary for the court to conduct the Permanency Hearing and make its findings and determinations under [Tex. Fam. Code § 263.306](#);
- Information on significant events, as defined by [Tex. Fam. Code § 264.018](#); and
- Any additional information DFPS determines is appropriate or that is requested by the court and relevant to the court’s findings and determinations under [Tex. Fam. Code § 263.306](#). [Tex. Fam. Code § 263.303\(b\)](#).

### **3. Filing a Response**

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A parent whose parental rights are the subject of a suit affecting the parent-child relationship, the attorney for that parent, or the child's attorney ad litem or guardian ad litem may file a response to the DFPS report filed under [Tex. Fam. Code § 263.303](#). A response to the report may be filed up to three days prior to hearing. [Tex. Fam. Code § 263.303\(c\)](#).

## E. Procedural and Due Process Issues

At each Permanency Hearing Before Final Order, the court shall:

- Identify all persons or parties present at the hearing or those given notice but failing to appear. [Tex. Fam. Code § 263.306\(a-1\)\(1\)](#).
- Review the efforts of DFPS or other agency in:
  - locating and requesting service of citation on all persons entitled to service of citation under [Tex. Fam. Code § 102.009](#); and
  - obtaining the assistance of a parent in providing information necessary to locate an absent parent, alleged father, or relative of the child. [Tex. Fam. Code § 263.306\(a-1\)\(2\)](#).
- 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 § 263.0061](#).

## F. Mandatory Actions, Findings, and Considerations

### 1. Place/Return Child

The court must make a finding 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 § 263.002\(b\)](#).

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 § 263.306\(a-1\)](#).

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. [Tex. Fam. Code § 263.306\(c\)](#).

The court must return the child to the parent or parents unless the court finds with respect to each parent that there is a continuing danger to the health and safety of the child and returning home is contrary to the welfare of the child. [Tex. Fam. Code § 263.002\(c\)](#). The court may order the child returned to the parent pursuant to a monitored return under [Tex. Fam. Code § 263.403](#). [Tex. Fam. Code § 263.002\(d\)](#).

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The court must also determine whether to return the child to the child's parents if the child's parents are willing and able to provide the child with a safe environment and the return of the child is in the child's best interest. [Tex. Fam. Code § 263.306\(a-1\)\(6\)](#).

Additionally, the court must estimate a likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in permanent managing conservatorship. [Tex. Fam. Code § 263.306\(a-1\)\(7\)](#).

## **2. Review Extent of Parent's Compliance with Temporary Orders and the Service Plan**

The court must review the extent of the parent's compliance with temporary orders and the service plan and the extent to which progress has been made toward alleviating or mitigating the causes necessitating the placement of the child in foster care. [Tex. Fam. Code § 263.306\(a-1\)\(4\)](#).

## **3. Review Permanency Progress Report**

Under [Tex. Fam. Code § 263.306](#), the court must also review the permanency progress report to determine:

- The safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
- The continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
- The appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;
- Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
- For a child receiving psychotropic medication, whether the child:
  - has been provided appropriate non-pharmacological interventions, psychosocial therapies, or behavior strategies to meet the child's needs; or
  - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
- Whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and whether there have been major changes in the child's school performance or there have been serious disciplinary events;
- For a child 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community; and

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- For a child whose permanency goal is APPLA:
    - the desired permanency outcome for the child, by asking the child; and
    - whether, as of the date of the hearing, another planning permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
      - return home;
      - be placed for adoption;
      - be placed with a legal guardian; or
      - be placed with a fit and willing relative.
    - whether DFPS has:
      - conducted an independent living skills (ILS) assessment under [Tex. Fam. Code §264.121\(a-3\)](#);
      - addressed the goals identified in the child’s permanency plan, including the child’s housing plan, and the results of the ILS assessment;
      - provided a youth 16 years and older with the documents and information listed in [Tex. Fam. Code §264.121\(e\)](#); and
      - provided a youth who is 18 years or has had the disabilities of minority removed, the documents and information listed in [Tex. Fam. Code § 264.121\(e-1\)](#). [Tex. Fam. Code § 263.306\(a-1\)\(5\)](#).

#### **4. Inquire About Child and Family’s Native American Heritage**

The court shall ask all parties present 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 § 263.306\(a-1\)\(3\)](#). For more information regarding requirements when a child has a Native American heritage, please see the Bench Book chapter entitled [Indian Child Welfare Act](#).

#### **5. Determine Date of Dismissal**

Courts must announce in open court the dismissal date and the date of any upcoming hearings. [Tex. Fam. Code § 263.306\(a-1\)\(8\)](#).

#### **6. Set Final Hearing**

The court shall set a final hearing on a date that allows the court to render a final order before the date for dismissal of the suit. [Tex. Fam. Code § 263.304\(b\)](#).

A party to the suit or an attorney ad litem for the child may seek a writ of mandamus to compel the court to comply with the duties imposed by this subsection. [Tex. Fam. Code § 263.304\(b\)](#).

### **G. Mandatory Child-Specific Considerations**

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## 1. Child's Attendance is Mandatory

The child must attend each permanency hearing, unless specifically excused by the court. If the child is four years of age or older and if the court determines it is in the best interest of the child, the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. [Tex. Fam. Code § 263.302](#).

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**Special Issue:** *In 2008, the ABA National Child Welfare Resource Center on Legal and Judicial Issues produced five judicial bench cards to assist judges in preparing, accommodating, and interviewing children who attend court. The judicial bench cards are broken down by age: Ages 0-12 months, 3-5 years, 5-11 years, 12-15 years, and 16 years and over. These bench cards are included in the Checklist section of this Bench Book.*

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## 2. Age-Appropriate Normalcy Activity

[Tex. Fam. Code § 264.001](#) requires court consideration of age-appropriate normalcy activities, defined as an activity or experience:

- That is generally accepted as suitable for a child's age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and
- In which a child who is not in the conservatorship of DFPS is generally allowed to participate, including extracurricular activities, cultural and enrichment activities, and employment opportunities. [Tex. Fam. Code § 264.001\(1\)](#).

In addition to the requirements of [Tex. Fam. Code § 263.306\(a-1\)](#), at each permanency hearing before a final order is rendered, the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. [Tex. Fam. Code § 263.306\(c\)](#).

DFPS shall use its best efforts to normalize the lives of children in the managing conservatorship of DFPS by allowing substitute caregivers, without the prior approval of DFPS, to make decisions similar to those a parent would be entitled to make regarding a child's participation in age-appropriate normalcy activities. [Tex. Fam. Code § 264.125\(a\)](#).

In determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.125\(b\)](#).

The standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;

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- The child’s age, maturity, and development level;
  - The best interest of the child based on the caregiver’s knowledge of the child;
  - The appropriateness of a proposed activity and any potential risk factors;
  - The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
  - The importance of encouraging the child’s social, emotional, and developmental growth; and
  - The importance of providing the child with the most family-like experience possible. [Tex. Fam. Code §264.001\(5\)](#).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency (CPA) caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.114\(c\)](#).

### **3. Placement Decisions**

[Tex. Fam. Code § 264.107](#) requires DFPS, when making placement decisions, to consult with the child’s caseworker, attorney ad litem, and guardian ad litem and with any court-appointed volunteer advocate for the child, except when making an emergency placement that does not allow time for the required consultations. [Tex. Fam. Code § 264.107\(e\)](#). The guardian ad litem is entitled to be consulted and provide comments regarding the child’s placement and must be granted access to a child in the child’s placement. [Tex. Fam. Code § 107.002\(b\)](#).

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**Special Issue:** Courts are required at each permanency hearing held under [Tex. Fam. Code 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](#), to 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\(b\)](#).

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### **4. Child Age 14 or Older**

The court must ensure that if the child is 14 years or older, services are in place to assist the child in making the transition from substitute care to independent living if the services are available in the community. [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(G\)](#).

### **5. Texas Juvenile Justice Department (TJJD)**

A child committed to the TJJD may attend a permanency hearing in person, by telephone, or by videoconference. [Tex. Fam. Code § 263.302](#).

### **6. Summary of Medical Care**

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At each hearing under [Tex. Fam. Code Chapter 263](#), or more frequently if ordered by the court, the court shall review a summary of medical care provided to the foster child since the last hearing. The summary must include information regarding:

- The nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;
- All medical and mental health treatment that the child is receiving and the child's progress with the treatment;
- Any medication prescribed for the child, the condition, diagnosis, and symptoms for which the medication was prescribed, and the child's progress with the medication;
- For a child receiving psychotropic medication:
  - any psychosocial therapies, behavior strategies, or other non-pharmacological interventions that have been provided to the child; and
  - the dates since the previous hearing of any office visits the child had with the prescribing physician, physician assistant, or advanced practice nurse as required by [Tex. Fam. Code § 266.011](#);
- The degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;
- Any adverse reaction to or side effects of any medical treatment provided to the child;
- Any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis;
- Any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet; and
- Other information required by DFPS rule or by the court. [Tex. Fam. Code § 266.007\(a\)](#).

## **7. Permanency Plan for a Child Age 16 or Older**

The following guidelines should be considered by the court when determining whether to adopt the permanency plan submitted by DFPS for a child who is 16 and older:

- The permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and
- This transition is in the best interest of the child. [Tex. Fam. Code § 263.307\(c\)](#).

For more information, please see the Bench Book chapter entitled [Best Interest](#).

## **H. Review of Placement of a Child in Qualified Residential Treatment Program**



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As long as a child remains in a Qualified Residential Treatment Program (QRTP), DFPS must provide the court with information at the Status Review Hearing and at each Permanency Hearing demonstrating that:

- The ongoing assessment of the child's strengths and needs shows the needs of the child cannot be met through placement in a foster home;
- Placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment, and;
- The placement is consistent with the short-term and long-term goals for the child specified in the permanency plan.

DFPS must provide information documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, and the efforts made by DFPS to prepare the child to be placed in a home, with a foster home, relative, legal guardian, or adoptive parent. [Tex. Fam. Code § 263.00201\(d\)](#).

The review of a child's placement in a QRTP may be conducted through a remote proceeding. [Tex. Fam. Code § 263.00201\(f\)](#).

## **I. Medical Consent**

### **1. Medical Care and Treatment**

Except in an emergency, medical care may not be provided to a child in foster care, unless the person authorized by court order consents to the medical care. [Tex. Fam. Code § 266.004\(a\)](#).

### **2. Medical Consenter**

The court may designate DFPS as the medical consenter, but DFPS must within 5 business days file with the court and each party the name of an individual who will exercise the duty and responsibility of providing informed consent on behalf of DFPS. [Tex. Fam. Code § 266.004\(b\)\(2\) and \(c\)](#).

A person may not be authorized to consent to medical care provided to a foster child unless the person has completed a DFPS-approved training program related to informed consent and the provision of all areas of medical care as defined by [Tex. Fam. Code § 266.001](#). [Tex. Fam. Code § 266.004\(h\)](#).

[Tex. Fam. Code § 266.004\(h\)](#) addresses required medical consenter training as follows:

- The training required by [Tex. Fam. Code § 266.004\(h\)](#) must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications. [Tex. Fam. Code § 266.004\(h-1\)](#).
- Each person required to complete a training program under [Tex. Fam. Code § 266.004\(h\)](#) must acknowledge in writing that the person:
  - has received the training described by [Tex. Fam. Code § 266.004\(h-1\)](#);



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- understands the principles of informed consent for the administration of psychotropic medication; and
  - understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consent to the use of a psychotropic medication. [Tex. Fam. Code § 266.004\(h-2\)](#).

DFPS may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether services are provided under the medical assistance program under [Tex. Hum. Res. Code Chapter 32](#), if DFPS otherwise has the authority under [Tex. Fam. Code § 266.004](#) to consent to health care services. [Tex. Fam. Code § 266.004\(k\)](#).

### **3. Consent by Child 16 Years of Age**

A child who is at least 16 years of age may consent to the provision of medical care if the court determines that the child has the capacity to consent to medical care. [Tex. Fam. Code § 266.010\(a\)](#).

An attorney ad litem appointed for a child in a proceeding under [Tex. Fam. Code Chapter 262](#) or [Chapter 263](#) shall, for a child at least 16 years of age, advise the child of the child's right to consent to the child's own medical care under [Tex. Fam. Code § 266.010](#). [Tex. Fam. Code § 107.003\(b\)\(3\)](#).

## **J. Children Who are Missing or Victims of Sex Trafficking**

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's parent unless the parent:
  - cannot be located or contacted;
  - has had the parent's parental rights terminated; or
  - has executed an affidavit of relinquishment of parental rights. [Tex. Fam. Code § 264.123\(a\)](#).

DFPS must provide the notice required by [Tex. Fam. Code § 264.123\(a\)](#) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under [Tex. Fam. Code § 264.123\(a\)](#) cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(b\)](#).

If a child has been reported as a missing child under [Tex. Fam. Code § 264.123\(a\)](#), DFPS must notify the persons described by [Tex. Fam. Code § 264.123\(a\)](#) when the child returns to the child's substitute

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care provider not later than 24 hours after the time the department learns that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(c\)](#).

DFPS must make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

- Contacting the appropriate law enforcement agencies, the child's relatives, the child's former caregivers; and any state or local social service agency that may be providing services to the child on a monthly basis; and
- Conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed. [Tex. Fam. Code § 264.123\(d\)](#).

DFPS must document in the missing child's case record:

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under [Tex. Fam. Code § 264.123\(d\)\(2\)](#);
- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by [Tex. Fam. Code § 264.123\(f\)](#). [Tex. Fam. Code § 264.123\(e\)](#).

After a missing child returns to the child's substitute care provider, DFPS must interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense under [Tex. Penal Code § 20A.02\(a\)\(7\)](#). DFPS must report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. DFPS shall make a report not later than 24 hours after the time the disclosure is made. DFPS is not required to interview a missing child if, at the time the child returns, DFPS knows that the child was abducted and another agency is investigating the abduction. [Tex. Fam. Code § 264.123\(f\)](#).

For more information, please see the Bench Book chapter entitled [Commercial Sexual Exploitation of Children](#).

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**Special Issue:** *Children in foster care and children who run away are at a higher risk of becoming victims of human trafficking. The first hours after a child or youth runs away can be critical to maintaining safety and preventing victimization. Consider holding hearings to determine what efforts have been made to locate missing children.*

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## K. Notice of Significant Events

The notice sections of [Tex. Fam. Code § 264.018](#) are in addition to other notice requirements provided by law, including [Tex. Fam. Code § 264.107\(g\)](#), which deals with placement of children, and [Tex. Fam. Code § 264.123](#), governing the reporting duties of DFPS when a child in custody becomes missing. [Tex. Fam. Code § 264.018\(b\)](#).

DFPS must provide notice under [Tex. Fam. Code § 264.018](#) in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible. [Tex. Fam. Code § 264.018\(c\)](#).

Not later than 24 hours after an event described by [Tex. Fam. Code § 264.018\(d\)](#), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS of:

- A significant change in medical condition of the child, as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#);
- The enrollment or participation of the child in a drug research program under [Tex. Fam. Code § 266.0041](#); and
- An initial prescription of a psychotropic medication, as defined by [Tex. Fam. Code § 266.001](#). [Tex. Fam. Code § 264.018\(d\)](#).

Not later than 48 hours before DFPS changes the residential child-care facility of a child in the managing conservatorship of DFPS, DFPS shall provide notice of the change to:

- The child's parent;
- An attorney ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A guardian ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#); and
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee. [Tex. Fam. Code § 264.018\(e\)](#).

As soon as possible but not later than the 10th day after the date DFPS becomes aware of a significant event, as defined by [Tex. Fam. Code § 264.018\(a\)\(5\)](#), affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to:

- The child's parent;
- An attorney ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A guardian ad litem appointed for the child under [Tex. Fam. Code Chapter 107](#);
- A volunteer advocate appointed for the child under [Tex. Fam. Code Chapter 107](#);
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;

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- A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
  - Any other person determined by the court to have an interest in the child's welfare. [Tex. Fam. Code § 264.018\(f\)](#).

A significant event means:

- A placement change, including failure by DFPS to locate an appropriate placement for at least one night;
- A significant change in medical condition, as defined by [Tex. Fam. Code § 264.018\(a\)\(4\)](#);
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication, as defined by [Tex. Fam. Code § 266.001](#);
- A major change in school performance or a serious disciplinary event at school;
- A placement in a qualified residential treatment program as that term is defined by [42 U.S.C. Section 672\(k\)\(4\)](#); or
- Any event determined to be significant under DFPS rule. [Tex. Fam. Code § 264.018\(a\)\(5\)](#).

For purposes of [Tex. Fam. Code § 264.018\(f\)](#), if a hearing for the child is conducted during the 10-day notice period described by [Tex. Fam. Code § 264.018\(f\)](#), DFPS shall provide notice of the significant event at the hearing. [Tex. Fam. Code § 264.018\(g\)](#).

DFPS is not required to provide notice under [Tex. Fam. Code § 264.018](#) to a parent of a child in the managing conservatorship of DFPS if:

- DFPS cannot locate the parent;
- A court has restricted the parent's access to the information;
- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS efforts to involve the parent;
- The parent's rights have been terminated; or
- DFPS has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning. [Tex. Fam. Code § 264.018\(h\)](#).

A person entitled to notice from DFPS under [Tex. Fam. Code § 264.018](#) shall provide current contact information. [Tex. Fam. Code § 264.018\(j\)](#).

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# FINAL HEARING

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Because of the need for permanency, the Texas Family Code requires resolution of a case within one year, with a possible six-month extension if the court finds there are extraordinary circumstances and finds that the extension is in the best interest of the child. The goal of the final hearing is the entry of a final order that identifies a permanency option or goal for the child and resolves the rights of all involved parties.

**Please see the Checklist Section for the  
Final Order and Grounds for Termination Checklists.**

## A. Case Must Be Dismissed Within One Year

If DFPS has temporary managing conservatorship of a child, the case must be resolved within one year. Unless the court has commenced the trial on the merits or has granted an extension under [Tex. Fam. Code § 263.401\(b\) or \(b-1\)](#), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing DFPS as temporary managing conservator, the case will be automatically dismissed without a court order. [Tex. Fam. Code § 263.401\(a\)](#).

## B. Court May Extend Dismissal Date if Extraordinary Circumstances

Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after the 12-month period unless the court finds that extraordinary circumstances necessitate the child remaining in temporary managing conservatorship of DFPS and that continuing the appointment of DFPS as temporary managing conservator is in the best interest of the child. If the court makes those findings, the court may retain the suit on the court's docket for a period not to exceed 180 days after the one-year period. [Tex. Fam. Code § 263.401\(b\)](#). The court shall consider a parent's good faith effort to successfully complete a substance abuse treatment program when granting an extension of the deadline. [Tex. Fam. Code § 263.401\(b-2\)](#). The court must make a finding of extraordinary circumstances to extend the dismissal date of a suit if a parent has made a good faith effort to complete a service plan but needs more time and the court intends to return the child once the plan is completed. [Tex. Fam. Code § 263.401\(b-3\)](#).

If the court retains the suit on the court's docket, the court shall render an order in which the court:

- Schedules the new date on which the suit will be automatically dismissed if the trial on the merits has not commenced, which date must be not later than the 180th day after the time described by [Tex. Fam. Code § 263.401\(a\)](#);
- Makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and
- Sets the trial on the merits on a date not later than the new dismissal period. [Tex. Fam. Code § 263.401\(b\)](#).

If, after commencement of the initial trial on the merits within the time required by [Tex. Fam. Code § 263.401\(a\) or \(b\)](#), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit

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on the court's docket and render an order in which the court schedules a new date on which the suit will be automatically dismissed, makes further temporary orders, and sets a new trial date pursuant to [Tex. Fam. Code § 263.401\(b-1\)](#).

If the court grants an extension under [Tex. Fam. Code § 263.401\(b\) or \(b-1\)](#) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under [Tex. Fam. Code § 263.401\(b\) or \(b-1\)](#), as applicable. [Tex. Fam. Code § 263.401\(c\)](#).

### **1. Limits on the Extensions**

The parties to a suit under this chapter may not extend the deadlines set by the court by agreement or otherwise. [Tex. Fam. Code § 263.402\(a\)](#). In addition to the limitation imposed by [Tex. Fam. Code § 263.401\(c\)](#), the following cases address limits on extension of time:

*In re J.L.C.*, [194 S.W.3d 667](#) (Tex. App.—Fort Worth 2006) (mother's request for extension of one year deadline binds her to 18 months maximum for decision);

*In re J.H.G.*, [302 S.W.3d 304](#) (Tex. 2010) (mother's failure to challenge the trial court's extension of the statutory deadline in her statement of points waived the issue on appeal);

*In re J.E.P., No. 04-18-00241-CV* (Tex. App.—San Antonio 2018) (By rejecting the trial court's proposed trial date, which was the only date left available within the one-year deadline, father effectively agreed to the extension).

*In re J.-R.A.M., No. 10-20-00221-CV* (Tex. App.—Waco 2020, pet. denied) (mem. op.) (Failure to enter a written order or to specifically set a dismissal date does not affect the validity of an order granting an extension pursuant to emergency orders issued by the Texas Supreme Court regarding the COVID-19 State of Disaster. The emergency orders do not expressly require compliance with an extension granted after the initial extension).

*In re A.R.*, [No 11-20-00152-CV](#) (Tex. App.—Eastland 2020) (mem. op.) (It is well within the trial court's discretion to deny a request for a continuance despite any assertion that a party needs more time to complete services due to the COVID-19 pandemic disrupting services).

*In re A.W. a/k/a A.R.W.*, [623 S.W.3d 519](#) (Tex. App.—Waco 2021, no pet.) (The Twenty-Ninth Emergency Order requires that an extension order entered under COVID-19 provisions where a case has not yet entered an extension order pursuant to [Tex. Fam. Code § 263.401\(b\)](#) must still adhere to its requirements).

### **2. Failure to Resolve Case Before Dismissal Date**

If the court does not commence the trial on the merits before the required date for dismissal, the court's jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order, unless the court has granted an extension. [Tex. Fam. Code § 263.401\(c\)](#).

### **3. Failure to Make a Timely Motion to Dismiss**

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There is no duty to file a motion to dismiss. The court automatically loses jurisdiction of the case without a court order unless the trial court has commenced the trial on the merits or granted an extension under [Tex. Fam. Code § 263.401\(b\) or \(b-1\)](#).

#### 4. Effect of Dismissal

Typically, the dismissal of a SAPCR leaves the parties and the children in the status they had before the suit was filed. This is not always the case when DFPS files suit. For example, if a child is placed with a relative after DFPS files suit, the relative may gain standing to file an original suit seeking custody if the child remains with that relative for six months or more during the pendency of the DFPS lawsuit. The relative may not have had this standing at the time the DFPS lawsuit was filed, but now does with the passage of time. [Tex. Fam. Code § 102.003\(a\)\(9\)](#).

Dismissal of the suit filed by DFPS also does not bar another party with standing from proceeding to trial on the suit against the parents. An attorney ad litem appointed to represent the child is entitled to request a hearing or a trial on the merits. [Tex. Fam. Code § 107.003\(a\)\(3\)\(B\)](#). See also *In re Bishop*, [8 S.W.3d 412, 420](#) (Tex. App.—Waco 1999, orig. pet.) (dismissal is without prejudice and does not affect pleadings of intervenor relative and guardian ad litem); *In re J.C.*, [250 S.W.3d 486](#) (Tex. App.—Ft. Worth 2008, no pet. hist.) (foster parents sought and obtained termination of parent’s rights after DFPS suit was dismissed).

DFPS may file a new petition after dismissal, but must look to the current situation in the home in order to find evidence sufficient to establish a continuing danger exists for the child if returned home. A parent must be appointed managing conservator of the child unless the appointment would significantly impair the child’s physical health or emotional development. [Tex. Fam. Code § 153.131\(a\)](#). See also *In re Cochran*, [151 S.W.3d 275](#) (Tex. App.—Texarkana 2004, orig. proceeding) (past terminations alone not sufficient to deny placement with parents absent evidence of current danger to the health or safety of the child).

## C. Monitored Return

At any stage of the case, the court may order a monitored return of the child to a parent with DFPS remaining as temporary managing conservator. The monitored return cannot be for more than 180 days unless court grants a request for an additional six months under [Tex. Fam. Code § 263.403\(a-1\)](#). However, the monitored return may be ordered without regard to the other deadlines.

### 1. Findings and Orders Required for a Monitored Return

The court may retain jurisdiction and not dismiss the suit if the court renders a temporary order that:

- Finds that retaining jurisdiction is in the best interest of the child;
- Orders DFPS to:
  - return the child to the child’s parent; or
  - transition the child, according to a schedule determined by DFPS or the court from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child’s return;



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- Orders DFPS to continue to serve as temporary managing conservator of the child; and
  - Orders DFPS to monitor the child's placement to ensure that the child is in a safe environment. [Tex. Fam. Code § 263.403\(a\)](#).

Unless the court has already granted an extension under [Tex. Fam. Code § 263.401\(b\)](#), DFPS or the parent may request an additional six months to complete the remaining requirements in a service plan and specified in the temporary order that are mandatory for the child's return. [Tex. Fam. Code § 263.403\(a-1\)](#). If the court has already granted a six-month extension based on extraordinary circumstances under [Tex. Fam. Code § 263.403\(b\)](#), the extension offered under [Tex. Fam. Code § 263.403\(a-1\)](#) is not available.

If the court renders an order under [Tex. Fam. Code § 263.403](#), the court shall:

- Include in the order specific findings regarding the grounds for the order; and
- Schedule a new date, not later than the 180th day after the date the temporary order is rendered, for dismissal of the suit unless a trial on the merits has commenced. [Tex. Fam. Code § 263.403\(b\)](#).

## 2. Failed Monitored Return

If before the dismissal of the suit or the commencement of the trial on the merits a child placed with a parent under [Tex. Fam. Code § 263.403](#) must be moved from that home or the court renders a temporary order terminating the transition order issued under [Tex. Fam. Code §263.403\(a\)\(2\)\(B\)](#), the court shall, at the time of the move or order, schedule a new date for dismissal of the suit. The new dismissal date may not be later than the original dismissal date established under [Tex. Fam. Code § 263.401](#) or the 180th day after the date the child is moved or the order is rendered under [Tex. Fam. Code § 263.403\(c\)](#), whichever date is later. [Tex. Fam. Code § 263.403\(c\)](#).

An order terminating a parent's rights after a failed monitored return was upheld as the clear and unambiguous language of [Tex. Fam. Code § 263.403\(c\)](#) allowed for the order to be entered after the 18 months authorized by [Tex. Fam. Code § 263.401](#). *In re J.W.M.*, 153 S.W.3d 541, 545 (Tex. App.—Amarillo 2004, pet. denied). See also *In re Neal*, 4 S.W.3d 443 (Tex. App.—Houston [1 Dist.] 1999, orig. proceeding). If the court renders an order, the court must include in the order specific findings regarding the grounds for the order. [Tex. Fam. Code § 263.403\(d\)](#).

## D. Final Hearing

At the final hearing, the court may either:

- Enter a final decree of conservatorship that returns the child to the parent or caregiver and dismisses DFPS;
- Enter a final decree of conservatorship that gives a relative permanent managing conservatorship, with or without termination of parental rights, and dismisses DFPS; or
- Enter a final decree of conservatorship that names DFPS as the permanent managing conservator, with or without termination of parental rights.



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## 1. Parties

At the final hearing, the court must confirm that all parties entitled to service under [Tex. Fam. Code § 102.009](#) have been served.

## 2. Required Notice of Trial

The court may set contested cases on written request of any party, or on the court's own motion, with reasonable notice of not less than 45 days to the parties of the first setting for trial, or by agreement of the parties. [Tex. R. Civ. P. 245](#).

## 3. Burden of Proof at Final Hearing

DFPS has the burden to show that parental rights should be terminated or that DFPS or another non-parent should be appointed the permanent managing conservator of the child.

### a. Termination

In a termination suit, DFPS has the burden to present clear and convincing evidence of at least one ground for termination and that termination is in the best interest of the child pursuant to [Tex. Fam. Code § 161.001](#). Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. [Tex. Fam. Code § 101.007](#).

The Due Process Clause of the 14th Amendment requires the State to support the parental unfitness finding in a termination case by clear and convincing evidence. *Santosky v. Kramer*, [455 U.S. 745, 760](#) (1982); *In re G.M.*, [596 S.W.2d 846](#) (Tex. 1980).

Evidence that the parent did one or more of the following does not constitute clear and convincing evidence sufficient to make a finding under [Tex. Fam. Code § 161.001\(b\)](#):

- The parent homeschooled the child;
- The parent is economically disadvantaged;
- The parent has been charged with a nonviolent misdemeanor (other than one listed in [Tex. Penal Code Title 5 or 6](#), or one that involves family violence as defined by [Tex. Fam. Code § 71.004](#));
- The parent administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed;
- The parent declined immunization for a child for reasons of conscience, including religious belief;
- The parent allowed a child to engage in age-appropriate independent activities; or
- The parent sought a second opinion for a child's medical care or transferred a child's medical care to a new provider. [Tex. Fam. Code § 161.001\(c\)](#).

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However, the Department may offer evidence of the actions described in [Tex. Fam. Code § 161.001\(c\)](#) as part of an action to terminate the parent-child relationship. [Tex. Fam. Code § 161.001\(e\)](#).

Also, [Tex. Fam. Code § 161.206\(a-1\)](#) restricts courts from terminating the parental rights of a parent unless the court finds by clear and convincing evidence grounds for termination for that parent.

#### **b. Conservatorship**

When DFPS asks a court to grant conservatorship to DFPS or to an individual other than the parent, the burden of proof is a preponderance of the evidence, not clear and convincing. A parent may also seek to have conservatorship awarded to an individual of his or her choice, and the burden of proof for the parent would also be a preponderance of the evidence that conservatorship to that individual is in the best interest of the child. [Tex. Fam. Code § 105.005](#).

#### **c. Indian Child Welfare Act (ICWA)**

If ICWA applies, the burden of proof and standards for a final order seeking permanent managing conservatorship or termination of parental rights are different than under the Texas Family Code. Under ICWA, the evidence required to terminate parental rights is beyond a reasonable doubt, supported by qualified expert testimony that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made but proved unsuccessful. [25 U.S.C. § 1912\(d\) and \(f\)](#).

### **4. Grounds for Termination of Parental Rights**

#### **a. Personal Service Required Unless Prongs Met Under [Tex. Fam. Code § 161.208](#)**

If a parent of the child has not been personally served in a suit in which DFPS seeks termination, the court that terminates a parent-child relationship may not appoint DFPS as permanent managing conservator of the child unless the court determines that:

- DFPS has made a diligent effort to locate a missing person who has not been personally served and a relative of that parent; and
- A relative located by DFPS has had a reasonable opportunity to request appointment as a managing conservator of the child or DFPS has not been able to locate the missing parent or a relative of the missing parent. [Tex. Fam. Code § 161.208](#).

#### **b. Involuntary Termination of Parent-Child Relationship**

Pursuant to [Tex. Fam. Code § 161.001\(a\)](#), “born addicted to alcohol or a controlled substance” means a child:

- Who is born to a mother who during the pregnancy used a controlled substance, as defined by [Tex. Health & Safety Code Chapter 481](#), other than a controlled substance legally obtained by prescription, or alcohol; and
- Who, after birth as a result of the mother’s use of the controlled substance or alcohol:

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- experiences observable withdrawal from the alcohol or controlled substance;
  - exhibits observable or harmful effects in the child's physical appearance or functioning;  
or
  - exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids. [Tex. Fam. Code § 161.001\(a\)](#).

[Tex. Fam. Code § 161.001\(b\)](#) provides the list of grounds for involuntary termination of parental rights. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that:

- The parent has:
  - voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return. [Tex. Fam. Code § 161.001\(b\)\(1\)\(A\)](#);
  - voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months. [Tex. Fam. Code § 161.001\(b\)\(1\)\(B\)](#);
  - voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months. [Tex. Fam. Code § 161.001\(b\)\(1\)\(C\)](#);
  - knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child. [Tex. Fam. Code § 161.001\(b\)\(1\)\(D\)](#);
  - engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. [Tex. Fam. Code § 161.001\(b\)\(1\)\(E\)](#);
  - failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition. [Tex. Fam. Code § 161.001\(b\)\(1\)\(F\)](#);
  - abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence. [Tex. Fam. Code § 161.001\(b\)\(1\)\(G\)](#);
  - voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth. [Tex. Fam. Code § 161.001\(b\)\(1\)\(H\)](#);
  - contumaciously refused to submit to a reasonable and lawful order of a court under [Tex. Fam. Code Chapter 261, Subchapter D](#). [Tex. Fam. Code § 161.001\(b\)\(1\)\(I\)](#);

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- been the major cause of:
    - the failure of the child to be enrolled in school as required by the [Tex. Educ. Code](#); or
    - the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return; [Tex. Fam. Code § 161.001\(b\)\(1\)\(J\)](#);
  - executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by [Tex. Fam. Code Chapter 161](#). [Tex. Fam. Code § 161.001\(b\)\(1\)\(K\)](#);
  - been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under [Tex. Fam. Code Title 3](#) for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
    - [Tex. Penal Code § 19.02](#) (murder);
    - [Tex. Penal Code § 19.03](#) (capital murder);
    - [Tex. Penal Code § 19.04](#) (manslaughter);
    - [Tex. Penal Code § 21.11](#) (indecent with a child);
    - [Tex. Penal Code § 22.01](#) (assault);
    - [Tex. Penal Code § 22.011](#) (sexual assault);
    - [Tex. Penal Code § 22.02](#) (aggravated assault);
    - [Tex. Penal Code § 22.021](#) (aggravated sexual assault);
    - [Tex. Penal Code § 22.04](#) (injury to a child, elderly individual, or disabled individual);
    - [Tex. Penal Code § 22.041](#) (abandoning or endangering child);
    - [Tex. Penal Code § 25.02](#) (prohibited sexual conduct);
    - [Tex. Penal Code § 43.25](#) (sexual performance by a child);
    - [Tex. Penal Code § 43.26](#) (possession or promotion of child pornography);
    - [Tex. Penal Code § 21.02](#) (continuous sexual abuse of young child or disabled person);
    - [Tex. Penal Code § 20A.02\(a\)\(7\) or \(8\)](#) (trafficking of persons); and

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- [Tex. Penal Code § 43.05\(a\)\(2\)](#) (compelling prostitution). [Tex. Fam. Code § 161.001\(b\)\(1\)\(L\)](#);
  - had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of [Tex. Fam. Code § 161.001\(b\)\(1\)\(D\)](#) or [\(E\)](#) or substantially equivalent provisions of the law of another state; [Tex. Fam. Code § 161.001\(b\)\(1\)\(M\)](#). The petition for termination must be filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parent's rights were terminated based on a (D) or (E) finding. [Tex. Fam. Code § 161.001\(d-1\)](#);
  - constructively abandoned the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than six months, and:
    - DFPS has made reasonable efforts to return the child to the parent;
    - the parent has not regularly visited or maintained significant contact with the child; and
    - the parent has demonstrated an inability to provide the child with a safe environment. [Tex. Fam. Code § 161.001\(b\)\(1\)\(N\)](#);
  - failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than nine months as a result of the child's removal from the parent under [Tex. Fam. Code Chapter 262](#) for the abuse or neglect of the child. [Tex. Fam. Code § 161.001\(b\)\(1\)\(O\)](#);

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**Special Issue:** *Courts are prohibited from ordering termination on “O” grounds if a parent proves by a preponderance of the evidence that the parent was unable to comply with specific provisions of the court order, that the parent made a good faith effort to comply with the order, and that failure to comply is not attributable to any fault of the parent.*

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- used a controlled substance, as defined by [Tex. Health & Safety Code Chapter 481](#), in a manner that endangered the health or safety of the child, and:
  - failed to complete a court-ordered substance abuse treatment program; or
  - after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance. [Tex. Fam. Code § 161.001\(b\)\(1\)\(P\)](#);
- knowingly engaged in criminal conduct that has resulted in the parent's:
  - conviction of an offense; and
  - confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition. [Tex. Fam. Code § 161.001\(b\)\(1\)\(Q\)](#);

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- been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription. [Tex. Fam. Code § 161.001\(b\)\(1\)\(R\)](#);
  - voluntarily delivered the child to a designated emergency infant care provider under [Tex. Fam. Code § 262.302](#) without expressing an intent to return for the child. [Tex. Fam. Code § 161.001\(b\)\(1\)\(S\)](#);
  - been convicted of:
    - the murder of the other parent of the child under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#);
    - criminal attempt under [Tex. Penal Code § 15.01](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 15.01](#), to commit the offense described by [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(i\)](#);
    - criminal solicitation under [Tex. Penal Code § 15.03](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 15.03](#), of the offense described by [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(i\)](#); or
    - the sexual assault of the other parent of the children under [Tex. Penal Code § 22.011](#) or [Tex. Penal Code § 22.021](#) or other under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 22.011](#) or [Tex. Penal Code § 22.021](#). [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)](#); or
  - been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under [Tex. Penal Code § 22.011](#) or [Tex. Penal Code § 22.021](#), or other under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense [Tex. Penal Code § 22.011](#) or [Tex. Penal Code § 22.021](#). [Tex. Fam. Code § 161.001\(b\)\(1\)\(U\)](#); and
  - That termination is in the best interest of the child. [Tex. Fam. Code § 161.001\(b\)\(2\)](#).

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**Special Issue:** For termination of parental rights to be granted, a court must find by clear and convincing evidence that at least one of the grounds for involuntary termination listed above exists AND that it is in the best interest of a child for parental rights to be terminated. Considerations for best interest include, but are not limited to, those listed in [Tex. Fam. Code § 263.307](#) and *Holley v. Adams*, 544 S.W.2d 367

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*(Tex. 1976). While at least one of the grounds for involuntary termination of parental rights may exist, it may not always be in the best interest of a child for parental rights to be terminated. If it is also not in the best interest of a child to name a parent as the managing conservator of the child, alternatives such as naming DFPS or a non-parent as the managing conservator of the child while awarding possessory conservatorship to a parent should be considered.*

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Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under [Tex. Fam. Code § 161.001\(b\)](#) and order termination of the parent-child relationship. Evidence that the parent:

- Homeschooled the child;
- Is economically disadvantaged;
- Has been charged with a nonviolent misdemeanor offense other than:
  - an offense under [Tex. Penal Code Title 5](#);
  - an offense under [Tex. Penal Code Title 6](#); or
  - an offense that involves family violence, as defined by [Tex. Fam. Code § 71.004](#);
- Provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under [Tex. Occ. Code Chapter 169](#); or
- Declined immunization for the child for reasons of conscience, including a religious belief.
- Allowed a child to engage in independent activities.
- Sought a second opinion for a child's medical care or transferred a child's medical care to a new provider or facility [Tex. Fam. Code § 161.001\(c\)](#).

**c. Involuntary Termination: Inability to Care for Child**

The Texas Family Code authorizes the termination of the parental rights of a parent who is unable to meet the child's needs due to the parent's mental disability. The court may order termination of the parent-child relationship in a suit filed by DFPS if the court finds that:

- The parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
- The illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;
- DFPS has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on termination held in accordance with [Tex. Fam. Code § 161.003\(c\)](#);
- DFPS made reasonable efforts to return the child to the parent; and



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- Termination is in the best interest of the child. [Tex. Fam. Code § 161.003\(a\)](#).

Immediately after filing a suit under [Tex. Fam. Code § 161.003](#), the court shall appoint an attorney ad litem to represent the interests of the parent against whom the suit is brought. [Tex. Fam. Code § 161.003\(b\)](#). An attorney appointed under [Tex. Fam. Code § 161.003\(b\)](#) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney. [Tex. Fam. Code § 161.003\(d\)](#).

A hearing on the termination may not be held earlier than 180 days after the date on which the suit is filed. [Tex. Fam. Code § 161.003\(c\)](#).

#### **d. Termination of the Rights of an Alleged Biological Father**

Except as otherwise provided by [Tex. Fam. Code § 161.002](#), the procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged father. [Tex. Fam. Code § 161.002\(a\)](#).

The rights of an alleged biological father may be terminated if:

- After being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under [Tex. Fam. Code Chapter 160](#);
- The child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), and after the exercise of due diligence by the petitioner:
  - his identity and location are unknown; or
  - his identity is known but he cannot be located;
- The child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#); or
- He has registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner. [Tex. Fam. Code § 161.002\(b\)](#).

The termination of the rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(2\) or \(b\)\(3\)](#) does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#). [Tex. Fam. Code § 161.002\(c-1\)](#).

The termination of rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) does not require service of citation by publication on the alleged father. [Tex. Fam. Code § 161.002\(d\)](#).

The court shall not render an order terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(2\) or \(b\)\(3\)](#) unless the court receives evidence of a certificate of the results of a search of the paternity



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registry under [Tex. Fam. Code Chapter 160](#) from the vital statistics unit indicating that no man has registered the intent to claim paternity. [Tex. Fam. Code § 161.002\(e\)](#).

The court shall not render an ordering terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner. [Tex. Fam. Code § 161.002\(f\)](#).

## 5. Best Interest *Holley* Factors

The case *Holley v. Adams*, [544 S.W.2d 367, 373](#) (Tex. 1976) sets forth factors used to evaluate the evidence relating to best interest, which include but are not limited to:

- The desires of the child;
- The emotional and physical needs of the child now and in the future;
- The emotional and physical danger to the child now and in the future;
- The parenting abilities of the parties seeking custody;
- The programs available to assist these persons;
- The plans for the child by the parties seeking custody;
- The acts or omissions of the parent and any excuse for the same; and
- The stability of the home or proposed placement.

The *Holley* factors appear frequently in case law. Here are some examples that might be informative:

"The absence of evidence about some of these *Holley* considerations would not preclude a fact finder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child. Other cases, however, will present more complex facts in which paltry evidence relevant to each consideration mentioned in *Holley* would not suffice to uphold the jury's finding that termination is required." *In re C.H.*, [89 S.W.3d 17, 28](#) (Tex. 2002).

"Evidence about placement plans and adoption are, of course, relevant to best interest. However, the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor; otherwise, determinations regarding best interest would regularly be subject to reversal on the sole ground that an adoptive family has yet to be located. Instead, the inquiry is whether, on the entire record, a fact finder could reasonably form a firm conviction or belief that termination of the parent's rights would be in the child's best interest—even if the agency is unable to identify with precision the child's future home environment." *In re C.H.*, [89 S.W.3d 17, 32](#) (Tex. 2002).

"The Department is required to prove by clear and convincing evidence that termination of a parent's right to his children is in the children's best interest [...] In determining whether the evidence is legally

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sufficient to support a best-interest finding, we ‘consider the evidence that supports a deemed finding regarding best interest and the undisputed evidence,’ and ignore evidence a fact-finder could reasonably disbelieve. *In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (citing *In re J.F.C.* 96 S.W. 3d 256 at 268 (Tex. 2002).

“A trial court’s best-interest finding must be supported by clear and convincing evidence in the record [...] [It is error to rely] on a lack of evidence to contradict a finding as if it were evidence supporting the finding [...] A lack of evidence does not constitute clear and convincing evidence.” *In re E.N.C.*, 384 S.W.3d 796, 808 (Tex. 2012).

## **6. Presumptions Involved in Conservatorship**

### **a. Parent Should Be Appointed as Managing Conservator**

Unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child’s physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child. It is a rebuttable presumption that the appointment of the parents as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption. [Tex. Fam. Code § 153.131\(b\)](#).

### **b. Parent with History of Domestic Violence or Sexual Abuse**

In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party’s spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit. [Tex. Fam. Code § 153.004\(a\)](#).

Under [Tex. Fam. Code § 153.004\(e\)](#), it is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present neglect, abuse or family violence by that parent, or any person who resides in that parent’s household or who is permitted by that parent to have unsupervised access to the child during that parent’s periods of possession of or access to the child. [Tex. Fam. Code § 153.004\(e\)](#). The statute further provides that courts may consider evidence of a history or pattern of past or present child neglect, abuse or family violence by a parent or other person, as applicable. [Tex. Fam. Code § 153.004\(f\)](#). For more information about dynamics of family violence in a child welfare case, please see the [Domestic Violence](#) chapter in this Bench Book.

### **c. Parent Should Be Appointed as Possessory Conservator**

The court shall appoint as a possessory conservator a parent who is not appointed as a sole or joint managing conservator unless it finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the child. [Tex. Fam. Code § 153.191](#).

The court shall consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator. [Tex. Fam. Code § 153.004\(c\)](#).

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The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that:

- There is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; or
- The parent engaged in conduct that constitutes an offense under [Tex. Penal Code § 21.02](#), [Tex. Penal Code § 22.011](#), [Tex. Penal Code § 22.021](#), or [Tex. Penal Code § 25.02](#), and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child. [Tex. Fam. Code § 153.004\(d\)\(2\)](#).

Notwithstanding [Tex. Fam. Code § 153.004\(d\)](#), a court may allow a parent to have access to a child if the court makes one of several findings pursuant to [Tex. Fam. Code § 153.004\(d-1\)](#), but see [Tex. Fam. Code § 153.004\(e\) and \(f\)](#) regarding visitation and access to a child by any person who will have unsupervised access to a child who also has a history or pattern of past or present child neglect, abuse or family violence.

If the court enters an order appointing DFPS as the permanent managing conservator of the child without terminating the rights of the parent of the child, the court must find that:

- Appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and
- It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator. [Tex. Fam. Code § 263.404\(a\)](#).

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**Special Issue:** *Although not required by law, judges should enter final orders regarding conservatorship of the child, child support, and access to the child. If DFPS requests dismissal of its lawsuit after reunification with a parent, the court may want to consider whether:*

- *The dismissal or nonsuit is in the best interest of each child affected by the suit; and*
- *Any orders for the conservatorship, possession of or access to, or support of each child affected by the suit should continue in effect after the dismissal or nonsuit.*

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## 7. Considerations in Naming DFPS as Permanent Managing Conservator

If the court determines that DFPS should be named as permanent managing conservator of the child without terminating the rights of a parent of the child, the court shall take the following factors into consideration:

- The child will reach 18 years of age in not less than three years;
- The child is 12 years or older and has expressed a strong desire against termination or has continuously expressed a strong desire against being adopted; and
- The needs and desires of the child. [Tex. Fam. Code § 263.404\(b\)](#).

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**Special Issue:** *The court is required to continue the appointment of the AAL, or the GAL, or an attorney serving in the dual role as long as child is in DFPS conservatorship but as a best practice, courts should continue the appointment of both the child’s AAL and GAL as long as the child is in the managing conservatorship of DFPS.*

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## **8. Final Order Appointing DFPS as Managing Conservator of Certain Abandoned Children (“Baby Moses” Law)**

There is a rebuttable presumption that a parent who delivers a child to a designated emergency infant care provider in accordance with [Tex. Fam. Code Subchapter D, Chapter 262](#):

- Is the child’s biological parent;
- Intends to relinquish parental rights and consents to the termination of parental rights with regard to the child; and
- Intends to waive the right to notice of the suit terminating the parent-child relationship. [Tex. Fam. Code § 263.407\(a\)](#).

A party that seeks to rebut a presumption in [Tex. Fam. Code § 263.407\(a\)](#) may do so at any time before the parent-child relationship is terminated with regard to the child. [Tex. Fam. Code § 263.407\(a-1\)](#).

If a person claims to be the parent of a child taken into possession under [Tex. Fam. Code Chapter 262, Subchapter D](#) [Emergency Possession of Certain Abandoned Children], before the court renders a final order terminating the parental rights of the child’s parents, the court shall order genetic testing for parentage determination unless parentage has previously been established. The court shall hold the petition for termination of the parent-child relationship in abeyance for a period not to exceed 60 days pending the results of the genetic testing. [Tex. Fam. Code § 263.407\(b\)](#).

Before the court may render an order terminating parental rights with regard to a child taken into DFPS custody under [Tex. Fam. Code § 262.303](#), DFPS must:

- Verify with the National Crime Information Center and state and local law enforcement agencies that the child is not a missing child; and
- Obtain a certificate of the search of the paternity registry under [Tex. Fam. Code Chapter 160, Subchapter E](#) not earlier than the date DFPS estimates to be the 30th day after the child’s date of birth. [Tex. Fam. Code § 263.407\(c\)](#).

## **9. Requirements for Appointment of Nonparent as Managing Conservator**

[Tex. Fam. Code § 263.408](#) imposes additional duties on DFPS when a nonparent is appointed as managing conservator of a child in the legal custody of DFPS.

In a suit in which the court appoints a nonparent as managing conservator of a child, DFPS must provide the nonparent with an explanation of the difference between appointment as a managing conservator of a child and adoption of a child, including specific statements informing the nonparent that:

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- The nonparent's appointment conveys only the rights specified by the court order or applicable laws instead of the complete rights of a parent conveyed by adoption;
  - A parent may be entitled to request visitation with the child or petition the court to appoint the parent as the child's managing conservator, notwithstanding the nonparent's appointment as managing conservator; and
  - The nonparent's appointment as the child's managing conservator will not result in the eligibility of the nonparent and child for post-adoption benefits. [Tex. Fam. Code § 263.408\(a\)\(1\)](#).

In addition to the rights and duties provided under [Tex. Fam. Code § 153.371](#), the court order appointing the nonparent as managing conservator must include provisions that address the authority of the nonparent to:

- Authorize immunization of the child or any other medical treatment that requires parental consent;
- Obtain and maintain health insurance coverage for the child and automobile insurance for the child, if appropriate;
- Enroll the child in a day-care program or school, including kindergarten;
- Authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;
- Authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
- Authorize employment of the child;
- Apply for and receive public benefits for or on behalf of the child; and
- Obtain legal services for the child and execute contracts or other legal documents for the child. [Tex. Fam. Code § 263.408\(a\)\(2\)](#).

The court must require evidence that the nonparent was informed of the rights and duties of a nonparent appointed as managing conservator of a child before the court renders an order appointing the nonparent as managing conservator of a child. [Tex. Fam. Code § 263.408\(b\)](#). Before entering a final order that awards permanent custody of a child in DFPS conservatorship to a nonparent relative the court must verify that the relative was offered the opportunity to become a licensed foster placement to qualify for a Permanency Care Assistance program and that the relative declined and the Child Placing Agency has been notified of the declination. [Tex. Fam. Code § 263.409](#).

#### **10. Rendering a Final Order after Commencing a Trial on the Merits**

The court must render a final order after commencement of trial on the merits in a case brought by DFPS within 90 days, with no tolling for recesses. A party may file a mandamus proceeding to compel compliance. The court may grant a good cause extension that specifies the good cause and the length of the extension. [Tex. Fam. Code § 263.4011](#).



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# PERMANENCY HEARING AFTER FINAL ORDER

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When a child is in the permanent managing conservatorship of DFPS, the court must periodically review the case to ensure that the child's needs are being met and that efforts to obtain permanency for the child are ongoing. As long as the child remains in the permanent managing conservatorship of DFPS, whether or not parental rights have been terminated, the court must continue to review the status of the child until the child permanently leaves the managing conservatorship of DFPS through adoption, appointment of a person as managing conservator, or transitioning out of care upon the child's 18th birthday or graduation from high school, whichever occurs later. In some instances, young adults will voluntarily remain in extended foster care until their 21<sup>st</sup> birthday.

The Texas Family Code envisions continued efforts to achieve permanency for a child, even after the appointment of DFPS as permanent managing conservator. This includes changing the terminology regarding this hearing to emphasize the need to seek permanency for a youth until the youth leaves care, even if DFPS has permanent managing conservatorship.

**Please see the Checklist Section for the  
Permanency Hearing After Final Order Checklist.**

## A. When Permanency Hearing After Final Order is Conducted

After the entry of an order that appoints DFPS as permanent managing conservator of a child, if the parental rights are not terminated, a Permanency Hearing After Final Order must be held within six months. If the parental rights are terminated, the first Permanency Hearing After Final Order must be held within 90 days after the court renders the final order. [Tex. Fam. Code § 263.501\(a\) and \(b\)](#). Thereafter, a Permanency Hearing After Final Order must be held every six months until the date the child leaves the permanent managing conservatorship of DFPS. [Tex. Fam. Code § 263.501\(a\)](#).

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**Special Issue:** *Positive permanency for children and youth can still be achieved at any stage of a case. Placement options can become available until the child turns 18, so judges can continue to set judicial expectations that positive permanency is the goal and that urgency to identify placement before the youth ages out is critical. Continuing to engage family and youth in their case, setting frequent hearings, and employing techniques to locate and engage relatives and kin also facilitate positive permanency after final orders are entered.*

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## B. Notice of the Permanency Hearing After Final Order

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) shall be given to all persons entitled to notice of the hearing. [Tex. Fam. Code § 263.0021\(a\)](#). Notice of a hearing under Chapter 263 must state that the individual receiving notice pursuant to [Tex. Fam. Code § 263.0021\(b\)](#) may, but is not required to, attend the hearing and may request to be heard at the hearing. [Tex. Fam. Code § 263.0021\(e\)](#). Courts must determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. [Tex. Fam. Code § 263.0021\(f\)](#).

The following persons are entitled to at least 10 days' notice and are entitled to present evidence and be heard at a hearing under [Tex. Fam. Code Chapter 263](#):

- 
- DFPS;
  - The foster parent, pre-adoptive parent, relative providing care, or the director or director's designee of the group home or general residential operation where the child resides;
  - Each parent of the child;
  - The managing conservator or guardian of the child;
  - An attorney ad litem appointed for the child, if the appointment was not dismissed in the final order;
  - A guardian ad litem appointed for the child, if the appointment was not dismissed in the final order;
  - A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
  - The child if:
    - the child is 10 years of age or older; or
    - the court determines it is appropriate for the child to receive notice; and
  - Any other person or agency named by the court to have an interest. [Tex. Fam. Code § 263.0021\(b\)](#).

Notice of a hearing under [Tex. Fam. Code Chapter 263](#) may be given:

- As provided by [Tex. R. Civ. P. 21a](#);
- In a temporary order following a full Adversary Hearing;
- In an order following a hearing under [Tex. Fam. Code Chapter 263](#);
- In open court; or
- In any manner that would provide actual notice to a person entitled to notice. [Tex. Fam. Code § 263.0021\(c\)](#).

The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee is entitled to at least 10 days' notice of a Permanency Hearing After Final Order. [Tex. Fam. Code § 263.0021\(d\)](#).

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**Special Issue:** [Tex. Fam. Code 263.501\(c\)](#) requires notice of a Permanency Hearing After Final Order be given as provided by [Tex. Fam. Code § 263.0021](#) which includes notice to each parent. If a parent's rights have been terminated, the legal status of that parent no longer exists and notice is not required. If DFPS has been named permanent managing conservator without termination of a parent's rights, that parent is entitled to notice, even if they are not represented by counsel.

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## C. The Child Shall Attend the Permanency Hearing After Final Order

The child shall attend each Permanency Hearing After Final Order in accordance with [Tex. Fam. Code § 263.302](#). [Tex. Fam. Code § 263.501\(f\)](#).

## D. Permanency Progress Report After Final Order

### 1. Filing the Permanency Progress Report After Final Order

Not later than the 10th day before the date set for a Permanency Hearing After Final Order, DFPS shall file a permanency progress report with the court. [Tex. Fam. Code § 263.502\(a\)](#). For good cause shown, the court may order a different time for filing the report or that a report is not required for a specific hearing. [Tex. Fam. Code § 263.502\(a-2\)](#).

### 2. Copies of Report Provided

DFPS shall provide a copy to each person entitled to notice of the hearing under [Tex. Fam. Code § 263.0021](#). [Tex. Fam. Code § 263.502\(a\)](#).

### 3. Permanency Progress Report Contents

The permanency progress report must contain:

- Information necessary for the court to conduct the Permanency Hearing and make its findings and determinations under [Tex. Fam. Code § 263.5031](#);
- Information on significant events, as defined by [Tex. Fam. Code § 264.018](#); and
- Any additional information DFPS determines is appropriate or that is requested by the court and relevant to the court's findings and determinations under [Tex. Fam. Code § 263.5031](#). [Tex. Fam. Code § 263.502\(a-1\)](#).

## E. Conducting a Permanency Hearing After Final Order

At each Permanency Hearing After Final Order, the court shall:

- Identify all persons and parties present at the hearing;
- Review the efforts of DFPS or other agency in notifying persons entitled to notice under [Tex. Fam. Code § 263.0021](#);
- Make a finding 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](#), [Tex. Fam. Code § 263.002](#), and [Tex. Fam. Code § 263.5031\(3\)\(B\)](#); and
- Review the permanency progress report to determine:
  - the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;

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- whether DFPS placed the child with a relative or other designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
  - if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive setting consistent with the child's best interest and special needs;

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**Special Issue:** Under *Tex. Fam. Code § 263.001(3-a)*, “least restrictive setting” means a placement that, in comparison to all other available placements, is the most family-like setting. For children older than six, placing the child in a cottage home, even though part of a general residential operation and considered congregate care under federal law, is permissible and considered under *Tex. Fam. Code § 263.001(c)* to be a “least restrictive setting” if a suitable relative or other designated caregiver is not available as a placement for the child. Under *Tex. Fam. Code § 263.001(d)*, for children younger than six, the only acceptable “least restrictive setting” is a foster home. A cottage home may be considered the least restrictive setting for a child younger than six only if DFPS determines it is in the best interest of the child to be placed in the cottage home.

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- the appropriateness of the primary and alternative permanency goals for the child, whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:
  - DFPS has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or
  - another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;
- for a child whose permanency goal is another planned permanent living arrangement:
  - the desired permanency outcome for the child, by asking the child;
  - whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child, and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
    - return home;
    - be placed for adoption;
    - be placed with a legal guardian; or
    - be placed with a fit and willing relative;
  - whether DFPS has:

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- conducted an independent living skills (ILS) assessment under [Tex. Fam. Code § 264.121\(a-3\)](#);
  - addressed the goals identified in the child’s permanency plan, including the child’s housing plan, and the results of the ILS assessment;
  - provided a youth 16 years and older with the documents and information listed in [Tex. Fam. Code § 264.121\(e\)](#); and
  - provided a youth who is 18 years or has had the disabilities of minority removed, the documents and information listed in [Tex. Fam. Code § 264.121\(e-1\)](#). [Tex. Fam. Code § 263.306\(a-1\)\(5\)](#);
  - if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child’s community;
  - whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child’s opinion on any medical care provided;
  - for a child receiving psychotropic medication, whether the child:
    - has been provided appropriate non-pharmacological interventions, therapies, or strategies to meet the child’s needs; or
    - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
  - whether an education decision-maker for the child has been identified, the child’s education needs and goals have been identified and addressed, and there are major changes in the child’s school performance or there have been serious disciplinary events;
  - for a child for whom DFPS has been named managing conservator in a final order that does not include termination of parental rights, whether to order DFPS to provide services to a parent for not more than six months after the date of the Permanency Hearing if:
    - the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
    - the court determines that further efforts at reunification with a parent are:
      - in the best interest of the child; and
      - likely to result in the child’s safe return to the child’s parent; and
  - whether DFPS has identified a family or other caring adult who made a permanent commitment to the child. [Tex. Fam. Code § 263.5031](#).

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- review DFPS efforts to ensure the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. [Tex. Fam. Code § 263.5031\(b\)](#).
  - 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 § 263.5031\(4\)\(B\)](#).
  - 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 agreement. [Tex. Fam. Code § 263.5031\(3\)](#).

Additionally, [Tex. Fam. Code § 263.503\(c\)](#) requires that, in addition to the requirements of [Tex. Fam. Code § 263.5031](#), at each Permanency Hearing After a Final Order the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by [Tex. Fam. Code § 264.001](#); this may include activities not listed in the child's service plan. [Tex. Fam. Code § 263.503](#).

## **F. Review of Placement of a Child in Qualified Residential Treatment Program**

As long as a child remains in a Qualified Residential Treatment Program (QRTP), DFPS must provide the court with information at the Status Review Hearing and at each Permanency Hearing demonstrating that:

- The ongoing assessment of the child's strengths and needs shows the needs of the child cannot be met through placement in a foster home;
- Placement in a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment, and;
- The placement is consistent with the short-term and long-term goals for the child specified in the permanency plan.

DFPS must provide information documenting the specific treatment or service needs that will be met for the child in the placement, the length of time the child is expected to need the treatment or services, and the efforts made by DFPS to prepare the child to be placed in a home, with a foster home, relative, legal guardian, or adoptive parent. [Tex. Fam. Code § 263.00201\(d\)](#).

The review of a child's placement in a QRTP may be conducted through a remote proceeding. [Tex. Fam. Code § 263.00201\(f\)](#).

## **G. Court Orders Related to Permanent Managing Conservatorship**

### **1. Court Ordered Services for Parents**

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When a parent is still involved or over time becomes re-involved in the case, a court may order DFPS to provide services to a parent for not more than six months after the date of the Permanency Hearing if:

- The child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
- The court determines that further efforts at reunification with a parent are:
  - in the best interest of the child; and
  - likely to result in the child's safe return to the child's parent. [Tex. Fam. Code § 263.5031\(3\)\(J\)](#).

## **2. Termination of Parental Rights After Denial of Prior Petition to Terminate**

The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:

- The petition under [Tex. Fam. Code § 161.004](#) is filed after the date the order denying termination was rendered;
- The circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;
- The parent committed an act listed under [Tex. Fam. Code § 161.001](#) before the date the order denying termination was rendered; and
- Termination is in the best interest of the child. [Tex. Fam. Code § 161.004\(a\)](#).

At a hearing under [Tex. Fam. Code § 161.004](#), the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child. [Tex. Fam. Code § 161.004\(b\)](#).

## **3. Child Committed to Texas Juvenile Justice Department**

A court is required to conduct a Permanency Hearing After Final Order for a child while the child is committed to or released under the supervision of TJJD, unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than DFPS. [Tex. Fam. Code § 263.501\(g\)](#).

## **H. Foster Youth Bill of Rights and Ombudsman's Office**

Each child in foster care shall be informed of the child's rights provided by state or federal law or policy that relate to:

- Abuse, neglect, exploitation, discrimination, and harassment;
- Food, clothing, shelter, and education;

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- Medical, dental, vision, and mental health services, including the right of the child to consent to treatment;
  - Emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;
  - Placement with the child's siblings and contact with members of the child's family;
  - Privacy and searches, including the use of storage space, mail, and the telephone;
  - Participation in school-related extracurricular or community activities;
  - Interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;
  - Contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;
  - Religious services and activities;
  - Confidentiality of the child's records;
  - Job skills, personal finances, and preparation for adulthood;
  - Participation in a court hearing that involves the child;
  - Participation in the development of service and treatment plans;
  - If the child has a disability, the advocacy and protection of the rights of a person with that disability; and
  - Any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting. [Tex. Fam. Code § 263.008\(b\)](#).

DFPS shall provide a written copy of the foster children's bill of rights to each child placed in foster care in the child's primary language, if possible, and shall inform the child of the rights described by the foster children's bill of rights:

- Orally in the child's primary language, if possible, and in simple, non-technical terms; or
- For a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child. [Tex. Fam. Code § 263.008\(c\)](#).

The Health and Human Services Commission must appoint an ombudsman for children and youth in foster care. [Tex. Gov't Code § 531.992\(a\)](#). The ombudsman serves as a neutral party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues with the authority of DFPS or another health and human services agency. [Tex. Gov't Code § 531.993](#).

Youth may contact the Foster Care Ombudsman through the following methods:

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- Toll-free phone: 1-844-286-0769 (8am to 5pm, Monday through Friday)
  - Toll-free fax: 1-888-780-8099
  - Mail: Texas Health and Human Services Commission  
Foster Care Ombudsman, MC H-700  
P O Box 13247  
Austin, Texas 78711-3247
  - Online: [HHS Ombudsman Foster Care Help](#)<sup>9</sup>
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**Special Issue:** Judges, Parents, Attorneys, CASA and other individuals with inquiries and complaints about a child or youth's case may continue to contact the DFPS [Office of Consumer Relations](#) by phone at 1-800-720-7777 or by email at [OCR@dfps.texas.gov](mailto:OCR@dfps.texas.gov).

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## I. Transitional Services

### 1. Transition to Independence

DFPS has a duty to address unique challenges facing youth in conservatorship transitioning to independence, including efforts to improve transition planning and providing experiential life skills-training. [Tex. Fam. Code § 264.121](#). The life skills-training must include instruction on financial literacy including, but not limited to, understanding the timeline to file taxes, protecting against identity theft, and preparing a budget. For youth 17 or older, the training must also include lessons related to insurance, civic engagement, and identification documents. [Tex. Fam. Code § 264.121\(a-2\)](#). For youth 14 or older, DFPS must ensure the youth has an email address through which they can receive documents before they leave foster care. [Tex. Fam. Code § 264.121\(a-7\)](#).

DFPS must conduct an independent living skills (ILS) assessment for all youth 16 and older in DFPS Temporary or Permanent Managing Conservatorship and must conduct an ILS assessment for all youth 14 and older in DFPS Permanent Managing Conservatorship. [Tex. Fam. Code § 264.121\(a-3\) and \(a-4\)](#). DFPS must annually update the youth's ILS assessment to determine the skills acquired by the youth during the preceding year. [Tex. Fam. Code § 264.121\(a-5\)](#).

DFPS also must coordinate with the Texas Higher Education Board to establish a workgroup to develop a plan to ensure that youth in foster care who complete a standardized the Preparation for Adult Living (PAL) curriculum are eligible to receive college credit for completing the PAL program. used around the state by providers. DFPS will report this plan to the legislature not later than November 1, 2022. [Tex. Fam. Code § 264.121\(a-6\)](#).

DFPS must also ensure that before a youth leaves foster care, each youth who is 14 years of age or older has an email address where they can receive encrypted copies of personal documents and records. [Tex. Fam. Code § 264.121\(a-7\)](#).

DFPS must ensure that the transition plan for each youth 16 years of age or older includes provisions to assist the youth in managing the youth's housing needs after the youth leaves foster care, including provisions that:

- Identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;

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- If the youth's housing goals include residing with family or friends, state that DFPS has addressed the following with the youth:
    - the length of time the youth expects to stay in the housing arrangement;
    - expectations for the youth regarding paying rent and meeting other household obligations;
    - the youth's psychological and emotional needs, as applicable; and
    - any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;
  - Inform the youth about emergency shelters and housing resources, including supervised independent living (SIL) and housing at colleges and universities, such as dormitories;
  - Require DFPS to review a common rental application with the youth and ensure that the youth possess all of the documentation required to obtain rental housing; and
  - Identify any individuals who are able to serve as cosigners or references on the youth's application for housing. [Tex. Fam. Code § 264.121\(i\)](#).

## 2. Housing for Homeless Youth Aging out of Care

For youth who will voluntarily enter extended foster care, DFPS shall do the following:

- Complete any necessary transitional housing paperwork for youth entering extended foster care, six months before the youth turns 18 and to review the qualifications for housing 90 days before the youth turns 18.
- Waive background checks if a youth in extended foster care continues to live with the same substitute caregivers.
- Notify the youth and document the communication if their placement will not allow them to live there after the youth's 18th birthday. A foster home that prohibits a youth from living there after they turn 18 shall notify the caseworker 90 days before the youth's 18th birthday and congregate care facilities must notify the caseworker six months before the youth's 18th birthday or as soon as possible if the youth is placed there within six months of their 18th birthday.
- Assist the youth in Supervised Independent Living (SIL) programs to develop a rental history by allowing them to co-sign for the lease on their housing.
- Develop a protocol to prevent a youth from aging out of residential treatment center and implement the protocol when the youth turns 17 years old. [Tex. Fam. Code § 264.1214](#).

## 3. Provision of Copies of Certain Records

DFPS must ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification



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certificate under [Tex. Transp. Code Chapter 521](#), on or before the date the on which the youth turns 16 years old. [Tex. Fam. Code § 264.121\(e\)](#).

If, at the time a youth is discharged from foster care, the youth is at least 18 years of age or has had the disabilities of a minor removed, DFPS shall provide to the youth, not later than the 30th day before the date the child is discharged from foster care, the following information and documents unless the youth already has the information or document:

- The youth's birth certificate;
- The youth's immunization records;
- The information contained in the youth's health passport;
- A personal identification certificate under [Tex. Transp. Code Chapter 521](#);
- A social security card or a replacement social security card, if appropriate; and
- A Medicaid card or other proof of the youth's enrollment in Medicaid or an insurance card from a health plan that provides health coverage to foster youth. [Tex. Fam. Code § 264.121\(e-1\)](#).

When providing a youth with a document required by [Tex. Fam. Code § 264.121\(e-1\)](#), DFPS shall provide the youth with a copy and a certified copy of the document or with the original document, as applicable. [Tex. Fam. Code § 264.121\(e-2\)](#).

Prior to the youth leaving care, the youth's DFPS caseworker shall:

- Assist the youth with developing a plan for keeping the document described in [Tex. Fam. Code § 264.121\(e\)](#) in a safe place; and
- Inform the youth about the documents the youth is required to receive before the date the youth is discharged from foster care. [Tex. Fam. Code § 264.121\(e-4\)](#).

When obtaining a copy of a birth certificate to provide to a foster youth or assisting a foster youth in obtaining a copy of a birth certificate, the department shall obtain the birth certificate from the state registrar. If the department is unable to obtain the birth certificate from the state registrar, the department may obtain the birth certificate from a local registrar or county clerk. [Tex. Fam. Code § 264.121\(e-3\)](#).

Attorneys and guardians ad litem, along with other advocates, are responsible for ascertaining whether youth in care have received a copy of the documents referenced in [Tex. Fam. Code § 264.121\(e\)](#) and [\(e-1\)](#). [Tex. Fam. Code § 107.003\(b\)](#). Courts are also required to determine whether the department has provided the youth with documents required by [Tex. Fam. Code § 264.121\(e\)](#), and for youth 18 years or older, or who has had the disabilities of minority removed, whether the department has provided the youth with the documents and information listed in [Tex. Fam. Code § 264.121\(e-1\)](#). [Tex. Fam. Code § 263.306\(a-1\)](#) and [Tex. Fam. Code § 263.5031\(3\)](#).

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For more information about how to support youth who are transitioning from foster care, please visit the Texas RioGrande Legal Aid [Texas Foster Youth Justice Project website](#), including [A Guide for Those "Aging Out" of Foster Care in Texas](#).<sup>10</sup>

## J. Extended Jurisdiction for Youth Aging Out of Foster Care

### 1. Young Adult

“Young adult” is a person who was in the conservatorship of DFPS on the day before the person’s 18th birthday. [Tex. Fam. Code § 263.601\(4\)](#).

### 2. Extended Foster Care

“Extended foster care” is foster care that extends beyond the young adult’s 18th birthday. It requires the young adult to voluntarily reside in a residential setting that is licensed or approved and paid for by DFPS, including a foster home, foster group home, Residential Treatment Center (RTC), and Supervised Independent Living (SIL) facility through a provider who has a contract with DFPS for extended foster care services. [Tex. Fam. Code § 263.601\(1\)](#).

### 3. Trial Independence

“Trial independence” means the status assigned to a young adult under [Tex. Fam. Code § 263.6015](#), which is automatic and mandatory for a minimum of 6 months beginning on:

- The date of the young adult’s 18th birthday; or
- The date the young adult exits extended foster care. [Tex. Fam. Code § 263.6015\(b\)](#).

A court may order trial independence status extended for a period that exceeds the mandatory period under [Tex. Fam. Code § 263.6015\(b\)](#) but cannot exceed one year from the date the period under [Tex. Fam. Code § 263.6015\(b\)](#) commences. [Tex. Fam. Code § 263.6015\(c\)](#).

Each time a young adult exits foster care (originally at 18 or extended foster care), the youth adult will complete a new six-month period of trial independence. [Tex. Fam. Code § 263.6015\(d\)](#).

A young adult’s trial independence status ends on the young adult’s 21<sup>st</sup> birthday. [Tex. Fam. Code § 263.6015\(e\)](#).

### 4. Extended Jurisdiction After Child’s 18th Birthday

Any court with jurisdiction over a youth on the day before they turn 18 will automatically continue to have jurisdiction of the youth beyond their 18th birthday for at least six months. [Tex. Fam. Code § 263.602\(a\)](#).

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**Special issue:** *A young adult age 18 or older is allowed to temporarily leave foster care, and as long as the court has jurisdiction, the state is eligible for federal funding to provide services for the young adult, including independent living supports such as housing.*

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While a youth is in extended foster care, the Texas Family Code requires the court to conduct review hearings every six months and make specific findings regarding the young adult’s living arrangement,

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the permanency plan, whether the young adult participated in developing the plan, and whether it reflects independent living skills and appropriate services in order for the young adult to achieve independence, and whether additional services are needed to meet the young adult's needs. [Tex. Fam. Code § 263.602\(b\)](#).

The extended jurisdiction statute states that, unless a court extends its jurisdiction over a young adult beyond the end of trial independence as provided by [Tex. Fam. Code § 263.6021\(a\)](#) or [Tex. Fam. Code § 263.603\(a\)](#), the court's extended jurisdiction over a young adult terminates on the earlier of:

- The last day of the month in which trial independence ends; or
- The young adult's 21st birthday. [Tex. Fam. Code § 263.602\(f\)](#).

A court with extended jurisdiction is not required to conduct periodic hearings as described in [Tex. Fam. Code § 263.602](#) for a young adult who is only on trial independence and may not compel a young adult who has elected to not enter or has exited extended foster care to attend a court hearing. However, a court may, at the request of the young adult who is on trial independence, conduct a hearing described by [Tex. Fam. Code § 263.602\(b\)](#) or [Tex. Fam. Code § 263.6021](#) to review any transitional living services the young adult is receiving during trial independence. [Tex. Fam. Code § 263.602\(g\)](#).

For more information, see an [Extended Court Jurisdiction Flowchart](#) developed by DFPS.<sup>11</sup>

Unless a young adult receiving voluntary transitional living services while on trial independence reenters extended foster care before the end of the court's extended jurisdiction, the extended jurisdiction of the court ends on the earlier of:

- The young adult's 21st birthday; or
- The date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court. [Tex. Fam. Code § 263.6021\(b\)](#).

For more information, see a [Brief Overview of Transitional Living Services](#) developed by DFPS.<sup>12</sup>

## **5. Extended Jurisdiction in Guardianship Situation**

If a court believes that a young adult may be incapacitated as defined by [Tex. Est. Code § 1002.017\(2\)](#), the court may extend its jurisdiction on its own motion without the young adult's consent to allow DFPS to refer the young adult to the Health and Human Services (HHS) Guardianship Services Program (formerly known as the Department of Aging and Disability Services or DADS) for guardianship services, as required by [Tex. Hum. Res. Code § 48.209](#). [Tex. Fam. Code § 263.603\(a\)](#).

The extended jurisdiction to determine guardianship under [Tex. Fam. Code § 263.603](#) terminates on the earliest of the date when:

- Guardianship Services Program determines a guardianship is not appropriate under [Tex. Hum. Res. Code Chapter 161](#);
- A court with probate jurisdiction denies the application to appoint a guardian; or

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- A guardian is appointed and qualifies under the Texas Estates Code. [Tex. Fam. Code § 263.603\(b\)](#).

If DFPS or HHS Guardianship Services Program determines a guardianship is not appropriate, or the court with probate jurisdiction denies the application to appoint a guardian, the court, under [Tex. Fam. Code § 263.603\(a\)](#), may continue to extend its jurisdiction over the young adult only as provided by [Tex. Fam. Code § 263.602](#) or [Tex. Fam. Code § 263.6021](#). [Tex. Fam. Code § 263.603\(c\)](#).

A young adult for whom a guardian is appointed and qualifies is not considered to be in extended foster care or trial independence and the court's jurisdiction ends on the date the guardian for the young adult is appointed and qualifies, unless the guardian requests the extended jurisdiction of the court under [Tex. Fam. Code § 263.604](#). [Tex. Fam. Code § 263.603\(d\)](#).

## **6. By Guardian Request**

A guardian appointed for a young adult may request that the court extend the court's jurisdiction over the young adult. A court that extends its jurisdiction over a young adult for whom a guardian is appointed may not issue an order that conflicts with an order entered by the probate court that has jurisdiction over the guardianship proceeding. [Tex. Fam. Code § 263.604](#).

## **7. Role of Attorney ad Litem, Guardian ad Litem, or Volunteer Advocate**

A court with extended jurisdiction may continue or renew the appointment of an attorney ad litem, guardian ad litem, or volunteer advocate for the young adult to assist in accessing services the young adult is entitled to receive from DFPS or any other service provider. [Tex. Fam. Code § 263.605](#).

An attorney ad litem or guardian ad litem appointed for a young adult who receives services in the young adult's own home from a service provider or resides in an institution that is licensed, certified, or verified by a state agency other than DFPS shall assist the young adult as necessary to ensure that the young adult receives appropriate services. [Tex. Fam. Code § 263.606](#).

## **8. Prohibited Appointments and Orders**

The court may not appoint DFPS or HHS Guardianship Services Program as the managing conservator or guardian of the young adult. [Tex. Fam. Code § 263.607\(a\)](#). A court may not order DFPS to provide a service to a young adult unless DFPS:

- Is authorized to provide the services under state law; and
- Is appropriated money to provide the services in an amount sufficient to comply with the court order and DFPS obligations to other young adults for whom DFPS is required to provide similar services. [Tex. Fam. Code § 263.607\(b\)](#).

## **9. Rights of Young Adults**

A young adult who consents to the continued jurisdiction of the court has the same rights as any other adult of the same age. [Tex. Fam. Code § 263.608](#).

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# APPEALS

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An appeal of a final order rendered under [Tex. Fam. Code Chapter 263, Subchapter E](#) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and the appellate court must render its final order or judgment with the least possible delay. [Tex. Fam. Code § 263.405\(a\)](#). Also, the final order must contain the following prominently displayed statement in boldfaced type, in capital letters, or underline:

“A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.”  
[Tex. Fam. Code § 263.405\(b\)](#).

## A. Specific Grounds Must Be Stated In Trial Court Judgment

The Texas Rules of Civil Procedure require the judge to state the specific grounds in the judgment supporting the termination or the appointment of the managing conservator. [Tex. R. Civ. P. 306](#).

## B. Parent Deemed Indigent on Appeal

Parents deemed indigent in the trial court are presumed indigent on appeal, subject to challenges laid out in [Tex. R. App. P. 20.1](#). [Tex. Fam. Code § 107.013\(e\)](#).

## C. Attorney Ad Litem Required to Remain on Case

The attorney ad litem appointed to represent the parent at trial is required to remain on the case until the case is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the duty or replaced by another attorney after a finding of good cause is rendered by the court on the record. [Tex. Fam. Code § 107.016\(3\)](#).

## D. Trial Court Clerk Has Specific, Time-sensitive Duties

The Texas Rules of Appellate Procedure require the trial court clerk to immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter(s) responsible for preparing the record. [Tex. R. App. P. 25.1\(f\)](#).

The Texas Rules of Appellate Procedure require the trial court to direct the official or deputy reporter to commence the preparation of the reporter's record and arrange for a substitute reporter, if necessary. There are extensions of time available under certain circumstances. [Tex. R. App. P. 28.4\(b\)\(1\)](#).

## E. Application of [Tex. Civ. Prac. & Rem. Code § 13.003](#) Prohibited

The Texas Rules of Appellate Procedure prohibit the application of [Tex. Civ. Prac. & Rem. Code § 13.003](#) (Free Transcript of Statement of Facts on Appeal) to an appeal from a parental termination or child protection case. [Tex. R. App. P. 28.4\(b\)\(3\)](#).

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## F. Effective Assistance of Counsel

Case law has established that if a parent is entitled to court-appointed counsel, the parent is entitled to effective assistance of counsel. *In re J.O.A., et. al.*, 283 S.W. 3d 336, 347 (Tex. 2009). The Supreme Court of Texas has held that the right to appointed counsel extends to proceedings in the Supreme Court of Texas including a Petition for Review as well as an *Anders* brief and motion to withdraw. *In re P.M.*, 520 S.W.3d 24 (Tex. 2016).

## G. Order or Judgment Cannot Be Suspended During Pendency of Appeal

Although a court may suspend other orders under the Texas Family Code, the court may not suspend the operation of an order or judgment terminating the parent child relationship in a suit brought by the state or a political subdivision of the state during the pendency of the appeal. [Tex. Fam. Code § 109.001\(d\)](#).

## H. Notice of Appeal and Appellant Duties

The Texas Rules of Appellate Procedure require the notice of appeal to state whether it is a parental termination or child protection case subject to rules of acceleration under [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 25.1\(d\)\(6\)](#).

The Texas Rules of Appellate Procedure also require the appellant to file in the appellate court a docketing statement upon filing the notice of appeal and it must state whether the appeal is an appeal of a parental termination or child protection case as defined in [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 32.1\(g\)](#).

## I. Case Law Update

Each year, DFPS produces a case law update of select child welfare cases at the Advanced Family Law Child Abuse and Neglect Workshop. The [2022 DFPS Termination Case Law Update](#) was prepared by the DFPS Appellate Unit staff.<sup>13</sup>

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# ADOPTION

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Adoption creates the legal parent-child relationship between the adopted child and adoptive parents for all purposes. [Tex. Fam. Code § 162.017\(a\)](#). The adoptive parents assume the permanent roles of parental care, custody, and control of the child as though the child were the biological child of the parents. [Tex. Fam. Code § 162.017\(b\)](#). Through adoption, the new parents make a commitment to the court and to the child that they will provide for all aspects of the child's well-being, thereby concluding the decision-making and monitoring roles of the court.

## A. Petition for Adoption

### 1. Where Petition Must Be Filed

The Texas Family Code gives authority for a suit in which adoption is requested to be filed in the county in which the child resides or in the county where the petitioners reside, regardless of whether another court has continuing exclusive jurisdiction under [Tex. Fam. Code Chapter 155](#). A court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit is filed. [Tex. Fam. Code § 155.001\(c\)](#) allows an exception to continuing, exclusive jurisdiction for suits for adoption under [Tex. Fam. Code § 103.001\(b\)](#). The petition must include a statement that the court in which the petition for adoption is filed either has continuing jurisdiction or has jurisdiction in the county where the child or petitioner resides under [Tex. Fam. Code § 103.001\(b\)](#). [Tex. Fam. Code § 102.008\(b\)](#). The court of continuing jurisdiction must transfer the proceedings to the court with jurisdiction under [Tex. Fam. Code § 103.001](#) upon a motion showing that the petition for adoption has been filed under [Tex. Fam. Code § 103.001\(b\)](#) and requesting a transfer to that court. [Tex. Fam. Code § 155.201\(a-1\)](#).

### 2. Spouses Must Join in Petition

If a petitioner is married, both spouses must join in the petition for adoption. [Tex. Fam. Code § 162.002\(a\)](#). If after filing a joint petition for adoption, a married couple divorces, the court shall abate the adoption and dismiss the action unless one party thereafter amends the petition and seeks to adopt individually. [Tex. Fam. Code § 162.013\(c\)](#).

### 3. When to Proceed

The court has authority to proceed with adoption when all parental rights have been terminated or when a suit for termination is joined with a suit for adoption. [Tex. Fam. Code § 162.001\(b\)\(1\)](#).

Unless waived by the court, the petition for adoption may be heard and the adoption ordered after the child has lived in the adoptive home for six months. [Tex. Fam. Code § 162.009](#).

## B. Documentation Required

The following is a list of documents required by the court before an adoption can be granted:

- **Criminal History Reports:** The court shall order each person seeking to adopt the child to obtain their own criminal history reports. The court shall accept a criminal history record for each person seeking to adopt the child provided by DFPS or by a licensed child-placing



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agency that received the information from DFPS, if the information was obtained not more than one year before the court ordered the record obtained. [Tex. Fam. Code § 162.0085\(a\)](#).

- Pre-Adoptive Social Study and Post-Placement Social Study: In a suit for adoption, pre-adoptive and post-placement social studies must be conducted as provided in [Tex. Fam. Code Chapter 107](#). [Tex. Fam. Code § 162.003](#).
- Health, Social, Educational, and Genetic History (HSEGH) Report: Unless the adoptive parent is a grandparent, aunt or uncle, or stepparent, a HSEGH Report is required. [Tex. Fam. Code § 162.005\(a\)](#). If the child's biological parents cannot be located, and there is insufficient information to complete the HSEGH report, the court may waive the HSEGH report. [Tex. Fam. Code § 162.008\(c\)](#). [Tex. Fam. Code § 162.005\(c\)](#) requires any Child Placing Agency, Single Source Continuum Contractor (SSCC), or other person placing a child for adoption to receive a copy of the HSEGH in preparation for the adoption. Also, [Tex. Fam. Code § 162.007\(a\)](#) requires that the child's health history include information, to the extent known by DFPS, whether the child's birth mother consumed alcohol during pregnancy and whether the child has been diagnosed with Fetal Alcohol Spectrum Disorder (FASD).
- Interstate Compact Compliance Statement. [Tex. Fam. Code § 162.002\(b\)\(2\)](#).
- Written consent forms signed by the managing conservator, in most cases DFPS, and the child, if age 12 or over. [Tex. Fam. Code § 162.010](#).
- A report or response from the child's Indian tribe, if applicable.
- Order terminating parental rights if rights have previously been terminated.

### **1. Adoption Order from a Foreign Country**

- An adoption order rendered to a resident of this state that is made by a foreign country shall be accorded full faith and credit by the courts of Texas and enforced as if the order were rendered by a court of Texas, unless the adoption law or process of the foreign country violates the fundamental principles of human rights or the laws or public policy of this state. [Tex. Fam. Code § 162.023\(a\)](#).
- A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order does not violate the principles of human rights or the laws or public policy of this state, the court shall order the state registrar to register the order and file a certificate of birth for the child under [Tex. Health & Safety Code § 192.006](#). [Tex. Fam. Code § 162.023\(b\)](#).

### **2. Outgoing Convention Adoption Cases**

- An outgoing Convention adoption involves the adoption of a child resident in the United States by an individual or individuals residing in a Convention country when, in connection



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with the adoption, the child has moved or will move between the United States and the Convention country.

- An outgoing Convention adoption must comply with processes established by the Intercountry Adoption Act of 2000 (IAA) and its implementing regulations that afford adoptees the recognition of their adoption in another Convention country. Such compliance is also key to the adoptee's ability to enter and permanently reside in another Convention country.
- An outgoing Convention adoption will involve a State court's issuance of either a final adoption decree or an order granting custody for the purpose of adoption in another Convention country.
- For more information, please see the U.S. Department of State Office of Children's Issues [Guide for State Authorities on Outgoing Adoption Cases from the United States to another Convention Country](#).

## C. Hearing

### 1. Persons Who Should Always Be Present at an Adoption Hearing

- Adoptive parents;
- Assigned caseworker; and
- Legal advocate for the child and/or guardian ad litem/Court Appointed Special Advocate (CASA).

Attendance at the Adoption Hearing by the petitioner is required. If joint petitioners are spouses, and it would be unduly difficult for one of the petitioners to appear at the hearing, the court may waive the attendance of that petitioner if the other spouse is present. [Tex. Fam. Code § 162.014\(a\)](#).

A child to be adopted who is 12 years old or older shall attend the hearing. The court may waive this requirement in the best interest of the child. [Tex. Fam. Code § 162.014\(b\)](#).

### 2. Additional Persons Who May Be Present at a Contested Adoption Hearing

- Agency attorney;
- Parties contesting the adoption; and
- Attorneys for all parties.

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**Special Issue:** *In a contested adoption, enough time must be set aside for the careful completion of the hearing. Each court must determine the time required for contested hearings and establish a docket to accommodate such hearings without the need for postponements and delays.*

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### 3. Adoption Hearing Takes Precedent Over Other Settings

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If the social studies and criminal history records are filed, the adoption hearing is to be set and heard preferentially to any other civil case not given preference by other law. [Tex. Fam. Code § 162.0045](#).

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**Special Issue:** *A number of judges have developed a special ceremony for consummating an adoption, including letting the child bang the gavel, the judge descending from the bench to join the family in pronouncement, and including all extended family members and guests in the proceedings. Most families will want to take photos with the judge when the hearing is concluded.*

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#### 4. Additional Information

The court may not delay or deny an adoption because a petitioner is a member of military or on the basis of race or ethnicity. [Tex. Fam. Code § 162.0025](#) and [Tex. Fam. Code § 162.015](#).

If a petition requesting termination has been joined by a petition requesting adoption, the court shall also terminate the parent-child relationship at the same time the adoption order is rendered. The court must make separate findings that the termination is in the best interest of the child and that the adoption is in the best interest of the child. [Tex. Fam. Code § 162.016 \(a\)](#).

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**Special Issue:** *Some jurisdictions prefer to utilize the same court which handled the termination of parental rights case for the adoption proceedings involving the same child. If the proceeding is a combined termination and adoption, courts may want to explicitly and thoroughly set forth the conditions and circumstances under which parental termination and consent to adoption is obtained, including determining whether the consent was voluntary and informed and that all alternatives to adoption were explained. A thorough record protects the court and adoptive parents if there is a later attempt to set aside the termination and/or adoption.*

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DFPS is required to provide information to each person seeking to adopt a child placed for adoption by DFPS regarding the right of a child's sibling to file a suit for access to the child. [Tex. Fam. Code § 162.0086 \(a\)](#).

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**Special Issue:** *Although the Texas Family Code attempts to provide finality for children by limiting the time for appeals and restricting direct or collateral attacks on a judgment of termination of parental rights, the Texas Legislature has also recognized the countervailing interest of the child's family. [Tex. Fam. Code § 162.0086](#) (Information Regarding Sibling Access) requires DFPS to provide to each person seeking to adopt a child information regarding the right of a child's sibling to file suit for access to that child under [Tex. Fam. Code § 102.0045](#) and [Tex. Fam. Code § 153.551](#).*

*The sibling of a child who is separated from the child because of an action taken by DFPS may request access to the child by filing an original suit or a suit in modification as provided by [Tex. Fam. Code Chapter 156](#), and the court shall order reasonable access to the child by the child's sibling if the court finds that access is in the best interest of the child. [Tex. Fam. Code § 153.551](#).*

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Upon granting the adoption, the court may order the sealing of the court's file. [Tex. Fam. Code § 162.021\(a\)](#).

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## 5. Rehoming

The Regulated Custody Transfer of Adopted Child under the Texas Family Code prohibits and criminalizes the practice of “rehoming” a child. A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child unless: (1) the parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting a transfer of custody; and (2) the court approves the petition. [Tex. Fam. Code § 162.026](#). Transfer to the department for a short term is allowed.

## D. Final Order

A court of continuing jurisdiction loses continuing jurisdiction when an order of adoption is rendered by a court where the adoption suit was filed under [Tex. Fam. Code § 103.001\(b\)](#). An order for adoption rendered under [Tex. Fam. Code § 103.001\(b\)](#) on or after September 1, 2015 but before September 1, 2019 is a final order and is not subject appeal on the basis the court rendering the order did not have continuing exclusive jurisdiction. [Tex. Fam. Code § 155.004\(a\)](#).

Notwithstanding [Tex. R. Civ. P. 329](#), the validity of an adoption order is not subject to attack after six months after the date the order was signed. [Tex. Fam. Code § 162.012\(a\)](#).



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# REINSTATEMENT OF PARENTAL RIGHTS

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## A. Petition for Reinstatement

A petition to reinstate parental rights may be filed by DFPS, a Single Source Continuum Contractor (SSCC), the attorney ad litem for a child, and the parent whose rights were terminated. [Tex. Fam. Code § 161.302\(a\)](#).

A petition for reinstatement may be filed if:

- The termination of parental rights resulted from a suit filed by DFPS;
- At least two years have passed since the issuance of the order terminating the former parent's parental rights and an appeal of the order is not pending;
- The child has not been adopted;
- The child is not the subject of an adoption placement agreement; and
- If the petitioner is the former parent whose parental rights are sought to be reinstated, proper notice is provided. [Tex. Fam. Code § 161.302\(b\)](#).

The petition must include the name of the petitioner, the name and address of the former parent seeking reinstatement, the name, date and place of birth, and residence of the child (if known), and the name, address, and contact information for any party that participated in the termination hearing that has information relevant to the petition. The petition must also include a summary of the termination grounds, a summary of the facts and evidence that demonstrate the former parent's current fitness, a statement by the former parent seeking reinstatement, a statement of the child's consent if the child is 12 years or older, and a summary of the prior requests or motions for reinstatement by the former parent and the petitioner (if the petitioner is not the former parent). [Tex. Fam. Code § 161.302\(c\)](#).

If the petitioner is the former parent, they must provide DFPS with 45 days' notice of their intent to file. [Tex. Fam. Code § 161.302\(d\)](#). Notice of the petition must be served on the child or the child's representative, the county attorney, the child's attorney, DFPS or the SSCC, the former parent whose parental rights are sought to be reinstated (if they are not the petitioner), and the Tribe if the child is subject to the Indian Child Welfare Act (ICWA). [Tex. Fam. Code § 161.302\(e\)](#).

## B. Hearing

A hearing must be held within 60 days of filing and the petitioner has the burden of proof. The court must find by preponderance of the evidence that reinstatement of parental rights is in the child's best interest, the former parent has remedied the conditions that were the grounds for termination, the former parent is willing and capable of performing parental duties as provided in Tex. Fam. Code § 151.001, at least two years have passed since the order terminating parental rights was issued and no appeal of that order is pending, the child has not been adopted and is not the subject of an adoption placement agreement, and the child consents to the reinstatement and desires to reside with the parent (if older than 12). If the child is younger than 12 years old, the court shall consider the child's

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age, maturity, and ability to express a preference and may consider the child's preference regarding the reinstatement as one factor in making the determination. [Tex. Fam. Code § 161.303](#).

## C. Orders

The court may grant, deny, or defer the petition for six months and render a temporary order awarding the parent possessory conservatorship with DFPS remaining the managing conservator. If the court defers granting the petition, DFPS must monitor the parent and the court must hold another hearing to revisit the reinstatement when the temporary order expires. If the court grants or denies the petition, the court must articulate the court's findings in its order. If the petition is denied, a new petition may not be filed for one year after the date of the order. [Tex. Fam. Code § 161.304](#).

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*Special Issue: Youth in DFPS conservatorship are eligible for certain benefits, such as a tuition and fee waiver for attending state higher education institutions, an Education and Training Voucher (ETV) to provide financial assistance while attending school, Medicaid eligibility, and waiver of fees for state government identification. Eligibility for the youth depends on a variety of factors including the youth's age, legal conservatorship, and how the youth exits DFPS conservatorship. If the parent's rights are reinstated, it may affect the availability of certain benefits for the youth and the child may still be eligible for the tuition and fee waiver under certain circumstances.*

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