PERMANENCY HEARING AFTER FINAL ORDER (FORMERLY PLACEMENT REVIEW HEARING)

Legal Overview of Permanency Hearing After Final Order

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and Protective Services
Subchapter F. Permanency Hearings After Final Order

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

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 have not ceased to find the child a permanent placement. As long as the child remains in the permanent managing conservatorship of DFPS, whether 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.

Historically, once a child entered the long-term care of DFPS through the appointment of that agency as permanent managing conservator, if adoption was not the long-term goal of the child, few efforts were made to continue working with the parents or to locate a suitable relative or another individual in order to place the child outside of foster care. Recent changes to the Family Code envision 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.

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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).

B. Notice of the Permanency Hearing After Final Order

In 2015, the 84th Texas Legislature amended the statute regarding notice of all Tex. Fam. Code Chapter 263 hearings. 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).

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).

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).

Special Issue: If all necessary persons entitled to notice were properly notified and are before the court but did not receive the Permanency Progress Report, a court should consider allowing the persons the opportunity to review the report during a recess.

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

In 2015, the 84th Texas Legislature significantly modified the Texas Family Code regarding the findings the court needs to make during a Permanency Hearing After Final Order (formerly Placement Review Hearing). This included repeal of Tex. Fam. Code § 263.503 and the addition of Tex. Fam. Code § 263.5031.

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; 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;
  - 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 environment consistent with the child's best interest and special needs;
- 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; and
  - 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;
- 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 nonpharmacological 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.

Additionally, Tex. Fam. Code § 263.503(c) was added in 2015 and now requires, 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. Court Orders Related to Permanent Managing Conservatorship

1. Court Ordered Services for Parents

When a parent is still involved or over time becomes reinvolved 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 (TJJD)

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).

G. 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;
- 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).

In 2015, the 84th Texas Legislature passed legislation requiring the HHSC Commissioner to 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.

H. Transitional Services

DFPS shall address unique challenges facing youth in conservatorship transitioning to independence pursuant to Tex. Fam. Code § 264.121, including efforts to improving

transition planning and providing experiential life skills-training. Tex. Fam. Code § 264.121(a)(1) and Tex. Fam. Code § 264.121(a-2).

In 2015, the 84th Texas Legislature added Tex. Fam. Code § 264.121(i) related to transition planning. DFPS shall 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;
- 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 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 possesses 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).

Provision of Copies of Certain Records

DFPS shall 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 certificate under Tex. Transp. Code Chapter 521, on or before the date the on which the youth turns 16. Tex. Fam. Code § 264.121(e).

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).

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, of 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 § 521.032;
- A social security card or a replacement social security card, if appropriate; and
- Proof of enrollment in Medicaid, if appropriate. Tex. Fam. Code § 264.121(e-1).

For more information about how to support youth who are transitioning from foster care, please see: A Guide for Those "Aging Out" of Foster Care in Texas located at

http://texaschildrenscommission.gov/media/32072/FosterYouthAgingOutGuideWeb%20(1).pdf.

I. 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 reside in a residential facility 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 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).

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. Youth age 18 or older are 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. Tex. Fam. Code § 263.602.

While a youth is in extended foster care, the Family Code requires the court to conduct review hearings every six months, and make specific findings regarding the young adult's living arrangement, 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 not in extended foster care and 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).

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).

5. Extended Jurisdiction in Guardianship Situation

If a court believes that a young adult may be incapacitated as defined by Tex. Prob. Code § 601(14)(B), 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 Department of Aging and Disability Services (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:

- DADS 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
- A guardian is appointed and qualifies under the Texas Probate Code. Tex. Fam. Code § 263.603(b).

If DFPS or DADS 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).

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.

6. 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. 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 [as defined by Tex. Fam. Code § 263.601(3)] 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.

7. Prohibited Appointments and Orders

The court may not appoint DFPS or DADS 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).

8. 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.

For more information, see the Extended Jurisdiction Matrix created by DFPS at:

http://texaschildrenscommission.gov/media/32069/ExtendedJurisdictionMatrixFinal%20_2_.pdf