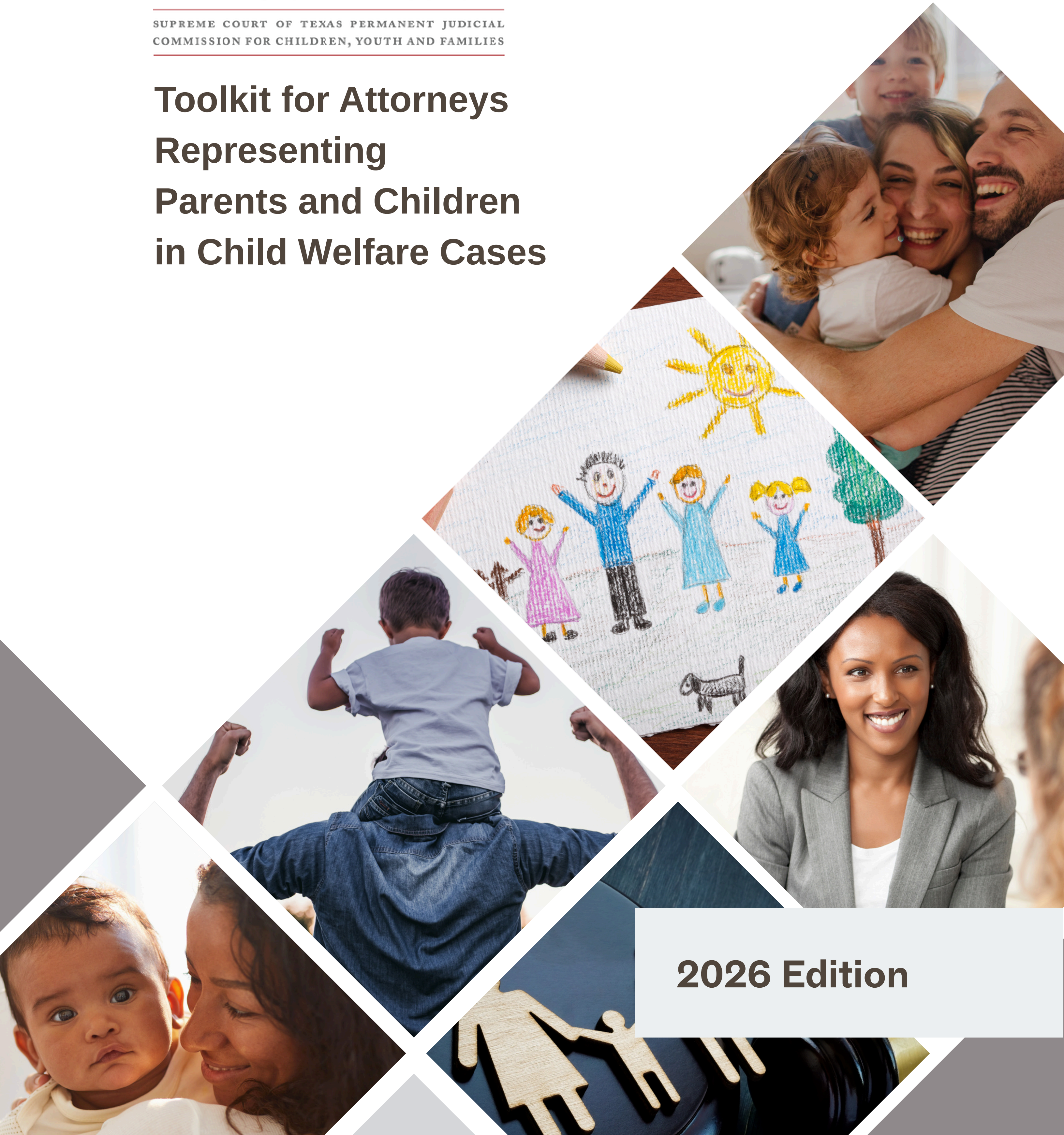
Children's Commission

SUPREME COURT OF TEXAS PERMANENT JUDICIAL COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Toolkit for Attorneys Representing Parents and Children in Child Welfare Cases



2026 Edition

Disclaimer:

The 2026 Toolkit for Attorneys Representing Parents and Children in Child Welfare Cases is funded by the Children's Commission through the federal Court Improvement Program. The materials in this toolkit should not be construed as an advisory or ruling by or from the Supreme Court of Texas or any other court on specific cases or legal issues. These materials are solely intended to address the improvement of the law, the legal system, and the administration of justice. The information included in this toolkit was originally released in August 2020 and last updated in April 2026.

Letter from the Executive Director

SUPREME COURT OF TEXAS PERMANENT JUDICIAL COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

June 1, 2026

Dear Practitioner,

The Supreme Court of Texas Permanent Judicial Commission on Children, Youth, and Families (Children's Commission) is charged with strengthening courts for children, youth, and families in the child welfare system and thereby improving the safety, permanency, and well-being outcomes for children. The Children's Commission provides training, tools, resources, and support to judges and attorneys who work on child welfare cases across the state. One of the goals of the Children's Commission is to promote high- quality court proceedings that safeguard due process, encourage meaningful child and family involvement, and include effective legal representation of all parties.

The Children's Commission spearheaded the development of this Toolkit for Attorneys Representing Parents and Children in Child Welfare Cases as part of the ongoing commitment to elevate the practice of law in child welfare cases. This toolkit is designed to benefit attorneys of all levels of experience by providing concise compilations of relevant legal subjects, applicable state and federal statutes, hearing checklists, and practice tips for representing parents and children in child welfare cases. The intent is for this toolkit to promote best practices for attorneys in their advocacy both inside and outside the courtroom.

Please note that while this toolkit is designed for attorneys representing parents and children, it is among the many resources which the Children's Commission has developed, supported, and provided to attorneys for parents, attorneys for children, attorneys representing the Department of Family and Protective Services, and judges. These resources include the Texas Child Welfare Law Bench Book and Bench Cards; Trial Skills Training; the Family Helpline; the Parent Resource Guide; and the Toolkit for Attorneys Representing the Texas Department of Family & Protective Services in Child Welfare Cases. Like all Children's Commission materials, this toolkit is available free of charge.

Thank you for your dedication and advocacy on behalf of the parents and children involved in Texas child welfare cases.

Sincerely,

Jamie Bernstein
Executive Director
Children's Commission

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Acknowledgments

The Toolkit for Attorneys Representing Parents and Children in Child Welfare Cases grew from a concept to an established resource which will serve to improve the quality of legal services to Texas' children and families. The Children's Commission would like to thank the individuals who contributed to both the original and updated versions of this toolkit:

Jessica Arguijo
Jamie Bernstein
Renée Castillo-De La Cruz
Aimee Corbin
Lori Duke
Judge Angela Ellis
Fedora Galasso
Michael Hull
Kim Isham
Shanti Khanna
Brenda Kinsler
Michael Ludvik
Dylan Moench
Kim Murphy
Anna Muñoz
Milbrey Raney
Stephanie Stevens
Diane Sumoski
Andrea Vicencio
Trevor Woodruff

Additionally, the Children's Commission would like to express its gratitude to the current members of the Commission's Legal Representation Committee:

Linda Aleckner
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* Indicates membership both on the workgroup which developed this toolkit and on the Legal Representation Committee of the Children's Commission.

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*Please note that throughout this document, there are references to the legal requirements and duties placed upon the Department of Family and Protective Services (DFPS). In areas with Community-Based Care, while the Petitioner remains DFPS, a Single Source Continuum Contractor (SSCC) assumes responsibility for DFPS' legal requirements and duties.

Overview: Child Welfare Case Flow

Removal/Start of Case Tex. Fam. Code Title 5, Chapter 161; 261-266

Emergency

Ex Parte Hearing

- Before Removal
- After Removal

Within 14 Days

Within 14 days of Ex Parte Hearing, court adjudicates DFPS petition for Temporary Managing Conservatorship (TMC) of the child.*

*Subject to extension for good cause.

Adversary Hearing

Status Hearing

No later than 60 days after DFPS granted TMC, court must review efforts to locate and serve parents, contents of child's service plan, and related issues.

1st Permanency Hearing Before Final Order Within 180 Days

No later than 180 days after DFPS granted TMC, court conducts comprehensive review of child's status and permanency plan.

Subsequent Permanency Hearing Before Final Order Within 120 Days

Monitored Return

The dismissal date can be extended as part of a monitored return. *See* the expanded chart in the *Dismissal Date* section (page 93).

Extension of Time

Dismissal date extended 180 days if court finds that extraordinary circumstances & best interest necessitate child remaining in TMC.

Automatic Dismissal

No later than first Monday following one year anniversary of DFPS appointment as TMC, a case is dismissed by operation of law, UNLESS the court commences trial, grants a single extension, OR orders monitored return. Court must give notice of dismissal 60 days before.

Final Hearing

Court adjudicates termination of parental rights and/or Appointment of Permanent Managing Conservatorship (PMC).

New Trial/Mistrial or Remand

Court must set dismissal date no later than 180 days after new trial/mistrial granted or remand ordered and set new trial date.

Permanency Hearing After Final Order

No later than 90 days after final order entered if DFPS named PMC & parental rights terminated; otherwise, 6 months after final order. Court must review every 6 months until child achieves permanency.

Appeals

Rules of Accelerated Appeals apply. Notice of appeal must be filed within 20 days after the order of judgment is signed.

Duties of Parents' and Children's Attorneys

In addition to the duties that every attorney owes their client under the Texas Disciplinary Rules of Professional Conduct, there are specific statutory duties for attorneys appointed to represent parents and children in child welfare cases.

Duties of parents' and children's attorneys apply equally to Required Participation/Court Ordered Services/Motion to Participate (COS/MTP) cases as they do to cases where the Department of Family and Protective Services (DFPS) has Temporary Managing Conservatorship (TMC). Tex. Fam. Code § 264.203(g)-(h).

Duties for Both Parents' and Children's Attorneys

Interview the client after initial appointment within a reasonable amount of time unless the client's location is unknown (for child client, applies to age four or older). Tex. Fam. Code §§ 107.0131(a)(1)(A)(i), 107.003(a)(1)(A)(i).

Interview each person who has significant knowledge of the case. Tex. Fam. Code §§ 107.0131(a)(1)(A)(ii), 107.003(a)(1)(A)(ii).

Interview the parties to the suit. Tex. Fam. Code §§ 107.0131(a)(1)(A)(iii), 107.003(a)(1)(A)(iii).

Conduct an independent investigation into the facts of the case. Tex. Fam. Code §§ 107.0131(a)(1)(B), 107.003(a)(1)(D).

Obtain and review copies of all court files in the suit during the attorney's course of representation. Tex. Fam. Code §§ 107.0131(a)(1)(C)(i), 107.003(a)(1)I.

Conduct formal discovery under the Texas Rules of Civil Procedure or a local discovery control plan. Tex. Fam. Code §§ 107.0131(a)(1)(C)(ii), 107.003(a)(1)(F).

Take any action consistent with the client's interests that the attorney considers necessary to expedite the proceedings. Tex. Fam. Code §§ 107.0131(a)(1)(D), 107.003(a)(1)(G).

Encourage settlement and the use of alternative forms of dispute resolution. Tex. Fam. Code §§ 107.0131(a) (1)(E), 107.003(a)(1)(H).

Review and sign, or decline to sign, a proposed or agreed order affecting the client. Tex. Fam. Code §§ 107.0131(a)(1)(F), 107.003(a)(1)(I).

Meet before each court hearing with the client (for child client, applies to age four or older).Tex. Fam. Code §§ 107.0131(a)(1)(G), 107.004(d)(1).

Abide by the client's objectives for representation (for child client, child must be competent to form an attorney-client relationship and form that relationship). Tex. Fam. Code §§ 107.0131(a)(1)(H), 107.004(a) (2).

Become familiar with the American Bar Association's standards of practice for attorneys in abuse and neglect cases. Tex. Fam. Code §§ 107.0131(a)(1)(I), 107.004(a)(3).

Complete at least three hours of continuing legal education relating to representing parents and/or at least three hours of continuing legal education relating to representing children in child protection cases as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education. Tex. Fam. Code §§ 107.0131(a)(1)(J), 107.004(b).

Annually complete at least three hours of continuing legal education relating to the representation of a parent and/or a child in a proceeding under Tex. Fam. Code Title 5, Subtitle E to be maintained by the court as being qualified for appointment. Tex. Fam. Code §§ 107.0131(c) and 107.004(b-1)(1).

Annually report to the Texas Indigent Defense Commission (TIDC) the percentage of practice time dedicated to court-appointed child welfare representation of parents and children in each county. Tex. Fam. Code § 107.0042.

Additional Duties for a Child's Attorney

Interview and interact with the child in a developmentally appropriate manner. Tex. Fam. Code §§ 107.003(a)(1)(A)(i), 107.004(a).

Elicit in a developmentally appropriate manner the name of any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver. Tex. Fam. Code § 107.003(b)(4).

Advise the child. Tex. Fam. Code § 107.004(a)(1).

Meet with the child or meet with the person whom the child ordinarily resides if the child is younger than four years of age, with sufficient time before the hearing to allow the attorney to prepare in accordance with the child's expressed objectives and meet in a private setting that allows for confidential communication. Tex. Fam. Code § 107.004(d)(1)(B), (d-1).

Exceptions – If the court:

- Finds at that hearing that the attorney has shown good cause why the attorney's compliance is not feasible or, in the case of a child, not in the best interest of the child.; or
- On a showing of good cause, authorizes the attorney to comply by conferring with the parent or child, as appropriate, by telephone or video conference.

Tex. Fam. Code § 107.004(e).

Report to the court whether the attorney met with the child prior to each hearing, and if not, request the court to find that compliance was not feasible or not in the best interest of the child. Tex. Fam. Code § 107.004(d)(2).

Consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court. Tex. Fam. Code § 107.003(a)(1)(C).

Determine whether the child's educational needs and goals have been identified and addressed. Tex. Fam. Code § 107.004(d-2).

Review periodically 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 issues of concern. Tex. Fam. Code § 107.004(d-3).

Provide proof to the court that the attorney has completed a training program regarding trauma-informed care and the effect of trauma on children in the conservatorship of DFPS as soon as practicable after the attorney is placed on the list of attorneys qualified for appointment as an attorney ad litem for children in a child protection case. Tex. Fam. Code § 107.004(b-2), (b-3).

Obtain and review copies of relevant records relating to the child, including school, law enforcement, social services, medical and mental health records. Tex. Fam. Code §§ 107.003(a)(1)(E), 107.006.

Review the medical care provided to the child. Tex. Fam. Code § 107.003(b)(1).

Elicit, in a developmentally appropriate manner, the child's opinion on the medical care provided. Tex. Fam. Code § 107.003(b)(2).

DUTIES IF A CHILD IS CONSIDERED FOR PLACEMENT IN AN RTC OR A QRTP*

If the child is considered for placement in a Residential Treatment Center (RTC), Qualified Residential Treatment Program (QRTP), or similar setting, a child's attorney must:

- Review any available information related to the child's needs including the Child and Adolescent Needs and Strengths (CANS) assessment, psychological evaluations, discharge notes, incident reports and counseling notes;
- Review information regarding whether the placement is appropriate to meet the child's specific needs;
- Meet with the child to elicit the child's opinion regarding the child's current or proposed placement and prepare for the hearing in accordance with the child's objectives;
- Advise the child regarding DFPS' request for placement and the likelihood of the request being granted; and
- Advocate to the court for the child's specific desires regarding the requested placement.

Tex. Fam. Code § 107.004(f)(1).

The child's attorney may request a placement conference and participate in any placement conferences conducted by DFPS regarding an RTC, QRTP, or similar placement. Tex. Fam. Code § 107.004(f)(2).

**See* the *Placement* section of this toolkit for more information on RTC and QRTP placements.

DUTIES FOR CHILDREN AT LEAST 16 YEARS OF AGE

- Advise the child of the child's right to request the court to authorize the child to consent to their own medical care. Tex. Fam. Code § 107.003(b)(3)(A).
- Ascertain whether the child has received a certified copy of their birth certificate, social security card or replacement card, driver's license (DL) or state identification card, or any other document DFPS determines appropriate. Tex. Fam. Code § 107.003(b)(3)(B).

SUBSTITUTED JUDGMENT

In limited circumstances, an attorney ad litem appointed to represent a child or appointed in the dual role may decline to follow their client's direction and instead present to the court a position the attorney determines will serve the best interest of the child. Tex. Fam. Code § 107.008(c)(2). If a guardian ad litem has been appointed, the attorney must consult with the guardian ad litem for the child but is not bound by the guardian ad litem's opinion or recommendation. However, the attorney for the child must ensure that the guardian's opinion and recommendation regarding the best interest of the child is presented to the court. Tex. Fam. Code § 107.008(c)(1).

The attorney may only substitute their judgment for their child client's direction if the attorney determines that the child cannot meaningfully formulate the child's objectives of representation because the child:

- Lacks sufficient maturity to understand and form the attorney-client relationship;
- Despite appropriate legal counseling continues to express objectives of representation that would be seriously injurious to the child; or
- For any other reason is incapable of making reasonable judgments and engaging in meaningful communication.

Tex. Fam. Code § 107.008(a).

Duties of a Child's Attorney Appointed in the Dual Role

Conduct an investigation to determine the best interests of the child. Tex. Fam. Code § 107.002(a)(1).

Consider the child's expressed objectives without being bound by those objectives. Tex. Fam. Code § 107.002(b)(3).

Interview each person who has significant knowledge of the case including educators and child welfare service providers. Tex. Fam. Code § 107.002(b)(1)(B).

If substituting judgment, the attorney may present to the court a position the attorney determines will serve the best interest of the child. Tex. Fam. Code § 107.008(b), (c)(2).

> **Child's Attorney Practice Tip**: In some Texas jurisdictions, long-standing practice has been to appoint an attorney serving in the dual role of attorney and guardian litem to every child in a child welfare case. However, an attorney who serves in the dual role may face an ethical dilemma when representing a child who is capable of forming an attorney-client relationship and directing representation, if the child's objectives are incompatible with the attorney's assessment of the child's best interest, but the child's objectives do not meet the standard required to substitute judgment. The dilemma can be resolved by requesting appointment of another person to serve in the role of guardian ad litem for the child. Tex. Fam. Code § 107.0125.

Duties for an Attorney Appointed to an Alleged Father

Conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry. Tex. Fam. Code § 107.0132(a)(1).

Interview any party or other person with significant knowledge of the case who may have information relating to the identity or location of the alleged father. Tex. Fam. Code § 107.0132(a)(2).

Conduct an independent investigation to identify or locate the alleged father, as applicable. Tex. Fam. Code § 107.0132(a)(3).

If the alleged father is identified and located, the attorney ad litem shall:

- Provide to each party and the court the alleged father's name and address and any other locating information; and
- If appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity. Tex. Fam. Code § 107.0132(b).

If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, and opposes the termination, the court may appoint the attorney ad litem to continue to represent the father's interests pursuant to Tex. Fam. Code § 107.013(a)(1) or (c). Tex. Fam. Code § 107.0132(c).

If unable to identify or locate the alleged father, the attorney ad litem must 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. Code § 107.0132(d).

Duties for an Attorney Appointed to Represent an Unknown Parent, Unlocated Parent, or Parent Who Has Been Served by Publication

Conduct an investigation regarding the petitioner's due diligence in locating the parent. Tex. Fam. Code § 107.014(a)(1).

Interview any party or other person with significant knowledge of the case who may have information relating to the identity or location of the parent. Tex. Fam. Code § 107.014(a)(2).

Conduct an independent investigation to identify or locate the parent, as applicable. Tex. Fam. Code § 107.014(a)(3).

If the attorney identifies and locates the parent, the attorney must:

- 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 unable to identify or locate the parent, the attorney ad litem must 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, the court must discharge the attorney from the appointment. Tex. Fam. Code § 107.014(e).

Burden of Proof

Good Cause

Good Cause generally means a legally sufficient ground or reason, depending upon the circumstances of each individual case. Applies to obtaining an:

- Order in aid of an investigation to enter the home, school, or any place where the child may be for an interview, examination, and investigation if the child is in imminent danger of aggravated circumstances. Tex. Fam. Code § 261.303(b)(1);
- Order for access to medical records of a caregiver with a history of medical or mental illness. Tex. Fam. Code § 261.305(b);
- Order for extension of the Adversary Hearing. Tex. Fam. Code § 262.201(e), (e-1);
- Order for extension of a Required Participation/Court Ordered Services (COS) Hearing. Tex. Fam. Code § 264.203(f), (k).

Probable Cause

Probable Cause generally means a reasonable basis or having more evidence for than against. Applies to obtaining an:

- Order in aid of investigation to enter the home, school, or any place where the child may be if it is necessary to protect the child from abuse or neglect. Tex. Fam. Code § 261.303(b)(2);
- Order in aid of an investigation for release of medical, psychological, or psychiatric records of the child or to order an examination of the child if it is necessary to protect the child from abuse or neglect. Tex. Fam. Code § 261.303(c);
- Ex Parte Hearing for an order in aid of an investigation if there is no time, consistent with the physical health or safety of the child, for a full hearing. Tex. Fam. Code § 261.303(f);
- Order prohibiting the removal of the child from the state pending completion of the investigation. Tex. Fam. Code § 261.306.

Sufficient to Satisfy a Person of Ordinary Prudence and Caution

Ordinary Prudence and Caution is similar to the Probable Cause standard. Ordinary Prudence and Caution generally requires a minimal showing of evidence, less than a preponderance, but enough to persuade a reasonable person. Applies to:

- Initial Hearing of a petition in a Required Participation/Court Ordered Services (COS)/ Motion to Participate (MTP). Tex. Fam. Code § 264.203(m);
- Ex Parte Removal Hearing. Tex. Fam. Code § 262.101;
- Taking Possession of a Child in Emergency Without a Court Order. Tex. Fam. Code § 262.104.
- Adversary Hearing. Tex. Fam. Code § 262.201(g).

Preponderance of the Evidence

Preponderance of the Evidence is evidence that is of greater weight or is more convincing than the evidence that is offered in opposition to it. A metaphor to illustrate the concept of preponderance is the scales of justice rising slightly higher on one side. It is the standard of proof generally used in civil cases. Applies to:

- Aggravated Circumstances Hearing. Tex. Fam. Code § 105.005;
- 60-Day Status Review Hearing. Tex. Fam. Code § 105.005;
- Permanency Hearing before Final Order. Tex. Fam. Code § 105.005;
- Final Order Awarding Permanent Managing Conservatorship (PMC) (without termination). Tex. Fam. Code § 105.005;
- Permanency Hearing after Final Order. Tex. Fam. Code § 105.005;
- Adoption Hearing. Tex. Fam. Code § 105.005;
- Reinstatement of Parental Rights Hearing. Tex. Fam. Code § 161.303.

Clear and Convincing

Clear and Convincing is 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. It is greater than a Preponderance of the Evidence but a lower burden than Beyond a Reasonable Doubt.

Applies to:

- Termination of Parental Rights when Indian Child Welfare Act (ICWA) does not apply. Tex. Fam. Code § 161.001;
- An order placing a child in foster care under ICWA; 25 U.S.C.§ 1912(e).

Beyond a Reasonable Doubt

The Beyond a Reasonable Doubt standard is met when the trier of fact is fully satisfied or entirely convinced that something occurred. Applies to:

- Termination cases subject to ICWA. 25 U.S.C. §1912(f).

Best Interest of the Child

Best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002(a).

In a suit between a parent and a nonparent, it is a rebuttable presumption that a parent acts in the best interest of the parent's child, and it is in the best interest of a child to be in the care, custody, and control of a parent. Tex. Fam. Code § 153.002(b).

A nonparent may overcome the best interest presumption by proving by clear and convincing evidence that denial of the relief requested by the nonparent would significantly impair the child's physical health or emotional development. If the court renders an order granting relief to the nonparent, the court must state in the order:

- The specific facts that supports the courts finding that denying the relief requested by the nonparent would significantly impair the child's physical health or emotional development; and
- The extent to which the nonparent has overcome the presumption under Tex. Fam. Code § 153.002(b).

Tex. Fam. Code § 153.002(c).

Factors Determining Best Interest

The "Holley factors" *Holley v. Adams*, 544 S. W. 2d 367 (Tex. 1976) below are a non-exhaustive list of factors to consider:

- Desires of the child;
- Emotional and physical danger to child now and in future;
- Parental abilities;
- Programs available to assist parents;
- Plans for the child by individuals or agency seeking custody;
- Stability of home or proposed placement;
- Any acts or omissions of a parent indicating the relationship is not proper; and
- Any excuse for the acts or omissions of a parent.

Additional factors to consider in determining a child's best interest include, but are not limited to:

- Child's age and physical and mental vulnerabilities;
- Frequency and nature of out-of-home placements;
- History of abusive or assaultive conduct by the child's family or others with access to home;
- History of substance abuse by child's family or others with access to home;
- Whether the perpetrator of the harm to child has been identified; and
- Special considerations for children 16 years of age or older.

See further Tex. Fam. Code § 263.307(b).

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

DFPS Decisions That Must Consider Best Interest

WHEN CONSIDERING PLACEMENT

DFPS shall consider whether the placement is in the child's best interest. In determining whether a placement is in a child's best interest, DFPS shall consider whether the placement:

- Is the least restrictive setting for the child;
- Is the closest in geographic proximity to the child's home;
- Is the most able to meet the identified needs of the child; and
- Satisfies any expressed interests of the child relating to placement, when developmentally appropriate.

Tex. Fam. Code § 264.107(c).

WHEN ASSESSING A RELATIVE OR DESIGNATED PLACEMENT

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

Best Interest Determinations at Court Hearings

THE ADVERSARY HEARING

When Considering Placement with a Relative

If the court does not order possession of the child by a parent, the court shall place a child with a relative unless placement is not in the best interest of the child. Tex. Fam. Code § 262.201(n).

PERMANENCY HEARINGS BEFORE A FINAL ORDER

When Determining Whether to Meet a Child

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

When Determining Whether to Send a Child Home

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

TRANSFERRING A CASE TO THE COURT OF CONTINUING EXCLUSIVE JURISDICTION (CCEJ)

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

DENYING A PARENT VISITATION

If the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that:

- States the reasons for finding that visitation is not in the child's best interest; and
- Outlines specific steps the parent must take to be allowed to have visitation with the child.

Tex. Fam. Code § 263.109(b).

WHEN CONSIDERING UNSUPERVISED VISITATION IN THE CONTEXT OF FAMILY VIOLENCE

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

EXTENDING THE DISMISSAL DATE

The court finds that extraordinary circumstances necessitate the child remaining in the TMC of DFPS and that continuing TMC is in the best interest of the child. Tex. Fam. Code § 263.401(b).

ORDERING A MONITORED RETURN

The court finds that retaining jurisdiction is in the best interest of the child. Tex. Fam. Code § 263.403(a)(1).

PLACING A CHILD IN A RESIDENTIAL TREATMENT CENTER (RTC)

If a child is placed or is referred to and awaiting placement in an RTC, the court shall determine whether the recommended or existing program is the least restrictive setting consistent with the child's best interest and individual needs. Tex. Fam. Code § 263.002(e)(3).

Best Interest Determinations in Final Orders

DFPS MANAGING CONSERVATORSHIP WITHOUT TERMINATION

The court may appoint DFPS as managing conservator without terminating the rights of the parent if the court finds 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 best interest of the child to appoint a relative of the child or another person as managing conservator.

Tex. Fam. Code § 263.404(a).

TERMINATION OF PARENTAL RIGHTS

A court may order termination of the parent-child relationship if, in addition to making the necessary findings of proof by clear and convincing evidence of the statutory requirements for the grounds for termination, the court finds by clear and convincing evidence that termination is in the best interest of the child. Tex. Fam. Code §§ 161.001(b)(2), 161.003(a)(5), and 161.004(a)(4).

Eliciting Evidence Regarding Best Interest

A parent or child's attorney should be comfortable eliciting information regarding a child's best interest regardless of the position being advocated. Below are some starting suggestions for topics which might solicit evidence regarding best interest at a trial or contested hearing.

PARENT/CONSERVATOR TESTIMONY

- Memories of the child's birth or the day the child came into their life;
- The child's unique role in the family;
- The bonds the child has with the parent and with family members;
- The bonds the child has with the family's community;
- Training/classes the parent has attended; and/or
- Knowledge the parent or caregiver has gained about the child's needs and how they plan to meet those needs in the child's home.

PSYCHOLOGIST/THERAPIST TESTIMONY

- The number of and type of placements the child has experienced in DFPS care;
- The progress or lack of progress the child has made in DFPS care;
- Clinical research regarding the effects of removal or separation;
- Clinical research regarding life outcomes of children who experience foster care or family separation;
- The child's desires to remain/return home;
- What permanency means for this child;
- Behaviors of the child now and in the future; and/or
- Psychological effect of "closure" on the healing process.

SUBSTITUTE CAREGIVER TESTIMONY

- Typical day with the child (meetings/appointments they attend with or for the child);
- Training/classes they have attended;
- Any special needs of the child and how those needs have been met;
- How the child was when they first entered substitute care and how they are now; and/or
- Future plans for child (e.g., Does the caregiver plan to stay involved with the child and if so, how?).

Reasonable Efforts

DFPS is required to make reasonable efforts throughout the life of a case, starting with reasonable efforts to prevent the need for removal of the child. Additionally, if removal is authorized, DFPS is required to make reasonable efforts to safely return the child home. 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 the child to the child's home, the child's health and safety is the paramount concern. Tex. Fam. Code § 262.001(b).

If DFPS seeks termination of parental rights, it is required to prove that it made reasonable efforts to return the child, and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent. Tex. Fam. Code § 161.001(f).

Statutorily Required Reasonable Efforts Findings

REASONABLE EFFORTS MUST BE DESCRIBED IN A SEPARATE SECTION

- In an emergency removal affidavit. Tex. Fam. Code §§ 262.101(b), 262.105(c);
- In an emergency removal order. Tex. Fam. Code §§ 262.102(e); 262.107(c);
- In an adversary hearing order granting the continued temporary managing conservatorship of the child by DFPS. Tex. Fam. Code § 262.201(g-2); and
- In an order for termination of parental rights. Tex. Fam. Code §161.001(f) and (g).

ADDITIONAL REASONABLE EFFORTS FINDINGS

- Whether a service plan 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).
- Whether DFPS made reasonable efforts to finalize the permanency plan, including concurrent permanency goals, in effect for the child. Tex. Fam. Code §§ 263.306(a-1)(5)(C), 263.5031(a)(4)(E).
- Whether the following grounds of involuntary termination were met:
    - constructive abandonment. Tex. Fam. Code § 161.001(b)(1)(N).
    - inability to care. Tex. Fam. Code § 161.003(a)(4).
- In an extended foster care review hearing:
    - whether DFPS has made reasonable efforts to place the young adult in the least restrictive environment necessary to meet the young adult's needs. Tex. Fam. Code § 263.602(b)(1); and
    - whether DFPS is making reasonable efforts to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living. Tex. Fam. Code § 263.602(b)(2).

AGGRAVATED CIRCUMSTANCES

If the court finds that aggravated circumstances exist, it may waive the requirement that DFPS make reasonable efforts to return a child to their parent under Tex. Fam. Code § 262.2015. An aggravated circumstances finding also waives the required finding for termination of parental rights under Tex. Fam. Code §161.001(f) that DFPS made reasonable efforts to return the child and the continuation in the home would present a continuing danger to the child. However, even if the court makes an aggravated circumstances finding, DFPS must make continued reasonable efforts to finalize permanency for the child throughout the life of the case.

Questions on Reasonable Efforts to Avoid Removal (non-exhaustive list)

Although there is no definitive list of what constitutes reasonable efforts, the questions below are modified from the National Council of Juvenile and Family Court Judges Enhanced Resource Guidelines and are designed to elicit suggested elements of what could be considered reasonable efforts throughout the case.

- What were the specific safety risks leading to removal?
- What services were considered and offered to allow the child to remain in the home? Were those services culturally appropriate? Were they rationally related to the safety risk? Did they take into account the family's strengths and needs?
- What was done to create a safety plan to allow the child to remain at home or with another designated caregiver without requiring court involvement?
- Would the removal of a person from the home have allowed the child to safely remain home?
- Would the addition of a person to the home have allowed the child to safely remain home?
- Was the family offered the opportunity to participate in the Alternative Response Program or Family Based Safety Services? If so, why was Alternative Response or Family Based Safety Services unsuccessful?
- Was the family ordered to participate in Court Ordered Services (COS)? If so, why was COS unsuccessful?
- Were non-custodial parents, paternal and maternal relatives identified and evaluated?
- Were there any pre-hearing conferences such as a Family Team Meeting or Family Group Conference? Who was there? What was the outcome?
- Does the family have a history with DFPS? Did the history influence DFPS' response to this situation?
- Are there orders that could be made under Tex. Fam. Code § 264.203 that would require the parents to participate in services but allow the child to remain safely in the home?

Questions on Reasonable Efforts to Return the Child Home (non-exhaustive list)

- What is preventing this child from safely going home today?
- What is the current immediate safety threat?
- What type of safety plan could be developed and implemented in order for the child to return home today?
- What specifically is preventing the parents from being able to provide the minimally adequate standard of protective care?

- Will the removal of a person from the home allow the child to safely return home?
- Will the addition of a person to the home allow the child to safely return home?
- Is a monitored return or a transition monitored return appropriate? If not, why not?
- If the safety threat is too high, do the parents understand what conditions are required for the child to safely return?
- What services can be arranged to allow the child to safely go home today?
- How are the services rationally related to the specific safety threat?
- How is the family, including children and extended family, engaged in the development and implementation of the services?
- What efforts has DFPS made to assist the family with services?
- Does the family believe the services take into account the family's strengths and needs?
- Has the family asked for additional or alternative services?
- What evidence has DFPS provided that the services meet the needs of the family and have produced positive outcomes for families with similar issues?
- How are the services specifically tailored to the culture and needs of this child and this family?

Questions for Reasonable Efforts to Achieve Permanency (non-exhaustive list)

Modified from the National Council of Juvenile and Family Court Judges Enhanced Resource Guidelines

- What efforts were made to reunify the family?
- Why is this plan preferable to reunification?
- Are there relatives who are willing to adopt the child if termination is granted? Is the child living with this relative? If not, why, and what can DFPS do to eliminate barriers to placement?
- If the child is not placed with relatives, what efforts have been made to identify a willing and able relative to adopt the child?
- If there are no relatives willing and able to adopt, has DFPS identified any fictive kin willing and able to adopt the child?
- If relative adoption is not the plan, is adoption by the foster parent(s) the plan? Why or why not?
- If an adoptive home must be recruited, what efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? Are there adults with whom the child has or has had a positive relationship with who may be potential adoptive families?
- Are there relatives interested in permanent managing conservatorship but who are not willing or able to adopt? If so, why is non-relative adoption preferable to PMC with a relative?
- Were the relatives fully informed about the benefits of adoption and/or permanent managing conservatorship?

- Have the relatives been offered assistance in answering questions they may have about adoption or PMC?
- If relatives have been ruled out as placement resources due to prior criminal records, have non-safety licensing waivers been pursued? If not, why?
- What is the child's desire regarding adoption or PMC?
- Is the prospective adoptive placement open to maintaining positive family contacts?
- If there is a sibling group, will the siblings be able to remain together? If not, what efforts have been made to keep the siblings together? Is sibling contact and visitation occurring, and are the placements committed to continuing contact and visitation after final orders are entered?
- If a change in school will occur, what will be done to prepare the child for the transition?
- Is the adult proposed to serve as permanent managing conservator or as the adoptive parent willing to fill the parental role for the child beyond the age of majority and through adulthood?
- Is the adult proposed to serve as the permanent managing conservator or adoptive parent financially able to care for the child through the age of majority? If not, has DFPS explored opportunities for relative caregiver payments, if a relative, and or entitlements?
- Has there been full disclosure to the family of the child's circumstances and any special needs?
- What are the plans to continue any necessary services for the child? How will these services be funded after the final order is signed?
- Does the proposed managing conservator or adoptive parent have the necessary skills and knowledge to apply a "reasonable and prudent parent standard" while at the same time allowing the child to participate in normal and beneficial activities?
- Is counseling needed and will it be provided to assist the child to understand and participate in reaching the new goal?
- If the goal is APPLA, what are the compelling reasons for determining that it is not in the child's best interest to return home, to pursue either termination or reinstatement of parental rights, or pursue placement with a guardian or fit and willing relative? What is the identified, specific, and long-term placement for the child? How will this plan provide stability and permanency for the child? What is the child position regarding this plan?

The Impact of Reasonable Efforts Findings on Federal Funding

If the court fails to make a reasonable efforts finding or finds that reasonable efforts were not made, it could impact the total amount of federal Title IV-E reimbursement received by DFPS; however, it does not affect funding for the individual child, the subject of the suit.

REASONABLE EFFORTS TO PREVENT REMOVAL

Timing

Finding must be made within 60 days of the child's removal. 45 C.F.R. § 1356.21(b)(1)(i).

Impact

If the court does not make the finding, the agency will not receive IV-E dollars for the duration of the child's stay in foster care. 45 C.F.R. § 1356.21(b)(1)(ii).

REASONABLE EFFORTS TO FINALIZE PERMANENCY

Timing

Finding must be made within 12 months of foster care entry and at least once every 12 months thereafter. 45 C.F.R. § 1356.21(b)(2)(i).

Impact

If the court does not make the finding, the agency will not receive IV-E funding until such a determination is made. 45 C.F.R. § 1356.21(b)(2)(ii).

Pleading Practice

While DFPS may plead multiple grounds for termination in the petition, a Suit Affecting the Parent-Child Relationship filed by a governmental entity is subject to Tex. R. Civ. P. 13, which prohibits groundless pleadings brought in bad faith or to harass, as well as Tex. Civ. Prac. & Rem. Code § 10, which requires that each allegation or other factual contention in the pleading has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Tex. Fam. Code § 161.101(b).

> **Parent's Attorney Practice Tip**: DFPS may plead in the alternative, but if DFPS pleads a "laundry list" of all termination grounds or includes termination grounds that are not supported by the affidavit, consider setting a meeting to discuss this further. Other options include serving discovery or a Request for Admissions to ascertain the evidence that DFPS has on each ground, and if no evidence is provided, consider filing a Motion for No Evidence Summary Judgment to eliminate the grounds for which there is no evidence.

Common Pleadings

Answer: Attorneys for parents and children should always file an Answer after their client has been served.

> **Parent's Attorney Practice Tip**: An Answer or participation in the suit generally waives any defects in the previously issued service or notice. If a parent client is not located, has not been served, and has not appeared before the court, do not file an Answer. Appear at the hearing and make clear to the court that your client has not been served, and you are strictly there to ascertain information as to how the client can be located.

Special Appearance: If your client has never submitted to the jurisdiction of the Court (i.e., your client has never been to Texas), then a special appearance may be necessary. *See* Tex. R. Civ. P. 120a.

Affirmative Defenses: These should be filed with the Answer if they are applicable to your case. All affirmative defenses listed in Tex. R. Civ. P. 94 may be pleaded in any civil case.

***Note**: While an affirmative defense for "a failure to comply with a specific provision of a court order," previously referred to as the "O" ground, is provided by Tex. Fam. Code § 161.001(d), the "O" ground to which this defense applied was repealed during the 89th Regular Legislative Session. All subsequent grounds listed thereafter under the Tex. Fam. Code § 161.001(b)(1) were re-alphabetized.*

Counter/Cross-Petition: If a client is seeking relief from the court, consider filing a counter/cross-petition. This can be combined with the Answer. If a client has a preferred relative placement, consider including a request for the relative to be named managing conservator of the child, whether or not that relative has intervened. The counter/cross-petition can also include a petition to adjudicate paternity if the client is an alleged father.

Petition for Writ of Mandamus: If a client requests to contest the outcome of the Adversary

Hearing order rendered by a district court or county court at law, or an associate judge of a district court, county court, or child protection court, an attorney may file a Petition for Writ of Mandamus to the appropriate appellate court. The standard of review for a Writ of Mandamus is abuse of discretion.

Request for De Novo Hearing: If a client requests a de novo review of a ruling made by an associate judge, a written request for a De Novo Hearing must be filed within three working days of receiving notice of the substance of the associate's report or the rendering of the temporary order, and the matter must be heard by the referring court within 30 days. Tex. Fam. Code § 201.015. Parties must specify the issues that will be presented to the referring court and may present witnesses on the specific issues raised on de novo. Tex. Fam. Code § 201.015(b), (c).

Pleading Considerations for a Child's Attorney

A child's attorney shall participate in the conduct of the litigation to the same extent as an attorney for a party. Tex. Fam. Code § 107.003(a)(1)(F). Accordingly, a child's attorney should file any necessary pleadings to further their representation of the child. Attorneys should only file pleadings that their clients have directed them to unless the attorney ad litem is using substituted judgment (*see* discussion above.)

CHILD CLIENT'S ANSWER

A child's attorney may file an Answer to the suit and should advocate for the State (or other parties who cross-claimed) to meet their burden of proof. A general denial is an appropriate pleading. Tex. R. Civ. P. 83 and 85.

> **Child's Attorney Practice Tip**: An Answer of the child's attorney who is serving in the dual role should also include an assertion that the court should consider the best interest factors specified in Holley v. Adams in rendering judgment. 544 S.W. 2d 367 (Tex. 1976). This response may be considered a "special plea" under Tex. R. Civ. P. 85. Including the specific factors in a pleading puts these factors at issue in the case, supports reasonably related discovery, and establishes relevance for purposes of determining admissibility of evidence.

RESPONDING TO NONSUIT

The State cannot nonsuit a suit to terminate parental rights without court approval. Tex. Fam. Code § 161.203. If the State seeks to nonsuit, the child's attorney should consider the child's position. If appointed in the dual role, the attorney should also consider whether the nonsuit is in the child's best interest and file a response contesting the nonsuit, if appropriate (*see* discussion on *Substituted Judgment* above). Given that the State may not be very enthusiastic about pursuing a Petition it has been prevented from nonsuiting, the child's attorney should also consider filing a Cross-Petition on behalf of the child client, if opposed to the nonsuit.

CHILD'S CROSS-PETITION

The child's attorney can file a Cross-Petition that can seek an outcome not pleaded by another party, but that meets the child's desires and/or best interest. Tex. R. Civ. P. 85 and 60.

- Even if the relief sought in the Cross-Petition seeks relief already sought by another party, the Cross-Petition preserves the client's right to pursue the claim if the other party abandons or does not vigorously pursue that claim.

- Cross-petition may allow the parties to pursue relief that the state is restricted from pursuing by DFPS policy or otherwise, e.g., if an out of state relative has surfaced too late in the proceeding to permit the state to seek an Interstate Compact on the Placement of Children (ICPC) placement. The child's attorney can use a cross-petition to continue to seek placement with that relative as being in the best interest of the child.

CROSS-PETITION FOR NAME CHANGE

A name change may be needed due to inconsistencies or issues with the child's legal name, such as a birth certificate listing the first name as "Infant," or a listing of a last name different than the surname used throughout child's life and in records.

> **Practice Tip**: Evaluate whether DFPS is excluding the proposed placement for reasons that might be unrelated to safety. Look at the length of time since last criminal history, changed circumstances of the proposed placement, relationship to child, and review any home study denial closely.

Name changes are somewhat less complex before the child reaches the age of majority. If the child is 10 years of age or older, the child's written consent to the name change must be attached to the Petition. Tex. Fam. Code § 45.002(b).

Motion Practice

A motion is a pleading seeking some specific relief. There are certain motions that are specifically defined in the Texas Family Code or Texas Rules of Procedure that have precise elements to be included and demonstrated, but an attorney for a parent or a child is not limited to pursuing only those motions delineated in the Codes and Rules. A motion can be filed to pursue the relief a party needs and can merely state the grounds for the relief and set forth the relief or order requested. *See* Tex. R. Civ. P. 21.

Potential Motions for Parents' and Children's Attorneys

Objection to Proposed Service Plan/Motion to Modify Service Plan: If the parent or child client needs additional services, or requests to eliminate services from the service plan, an attorney may file an Objection/Motion and seek relief from the court.

Motion to Increase/Modify Visitation: This motion can be filed by either parents' or children's attorneys when seeking to increase visitation or to obtain unsupervised visitation (also known as "family time").

Motion to Change Placement or to Conduct a Home Study: This motion can be filed by either a parent's attorney or child's attorney, but the child's attorney is specifically obligated to elicit "the name of any adult . . . who could be a relative or designated caregiver for the child." Tex. Fam. Code § 107.003(b)(4). If DFPS does not pursue the potential placement after the attorney provides the name of a proposed caregiver, the attorney can bring the issue to the attention of the court by filing a motion. Even if it is not a licensed or approved home, the judge may order a change of placement.

Motion for Expedited Home Study: DFPS needs an order to request an expedited home study. To resolve the issue of placement as quickly as possible, an attorney can file this motion as soon as the need for a home study is identified.

Motion for a Monitored Return: If a parent has completed most of their services, and the case appears to be moving toward reunification, but DFPS will not agree to return the child and dismiss the case, an attorney for a parent or a child may file a motion for the child to be returned home while the court retains jurisdiction, either through a standard monitored return or transition monitored return. Tex. Fam. Code § 263.403(a)(2)(A)-(B).

Motion for Travel Costs: Depending on the jurisdiction's policy toward travel reimbursement, this motion may be appropriate.

Motion for Paternity/DNA/Genetic Testing: May be necessary if the alleged father does not acknowledge paternity, or when there is more than one alleged father. Tex. Fam. Code § 160.502.

Motion for Continuance: An attorney may file a written and sworn Motion for Continuance if good cause exists to delay the trial and there is still time for the court to grant the motion and still commence trial on the merits before the statutory deadline. If denied, error is preserved for appeal. Tex. R. Civ. P. 251.

Motion for Extension: If applicable, an attorney for a parent or a child may file a motion asserting that there are extraordinary circumstances sufficient to extend the case 180 days beyond the original statutory deadline. Tex. Fam. Code § 263.401(b).

Potential Motions for a Parent's Attorney

Motion to Exclude Drug Test Results: DFPS may attempt to admit drug test results through a business records affidavit. Some courts have held that drug test results cannot be admitted through business records affidavits alone due to the more stringent clear and convincing standard for a parental termination case. *See In re K.C.P.*, 142 S.W.3d 574, 580 (Tex. App.—Texarkana 2004, no pet.). However, business records affidavits of drug test results that show sufficient indicia of trustworthiness because they contain information regarding chain of custody, testing procedures, qualifications of the analysts or other indicators of reliability may be admitted without expert testimony. *See In the Interest of S.W.W.*, No. 14-22-00503-CV, 2022 WL 17982904 at *8 (Tex. App.—Houston, 14th District, 2022, review denied).

Motion for Daubert Hearing: If a party attempts to elicit expert testimony from a witness who is not qualified to give an expert opinion, an attorney may move for a Daubert Hearing to challenge the witness's status as an expert. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995). It will be necessary to voir dire the proposed expert on their qualifications, data relied on, and scientific procedure as outlined in the *Evidentiary Issues* section of this toolkit. An attorney can consider following up with a motion to exclude expert witness if appropriate.

Motion for No Evidence Summary Judgment: After an adequate time for discovery, this dispositive motion can be filed to strike any termination ground alleged in the pleadings for which DFPS has provided no evidence.

Motion to Strike Intervention: If relatives or foster parents file an intervention over the objection of a client, review whether the intervenor meets the standing and affidavit requirements for nonparents. An intervention may be struck if the intervenor does not meet the standing requirements of Tex. Fam. Code §§ 102.003 or 102.004. Additionally, relief sought by an intervenor shall be denied, and their suit dismissed or their motion struck if they do not satisfy the affidavit requirements under Tex. Fam. Code § 102.0031. A motion to strike the intervention should be supported by specific reasoning for the requested relief.

Motion for Funds for an Expert Witness: This motion may be most relevant in medical abuse cases when there are differing opinions as to how certain injuries occurred, although it could be used for any expert, including those for drug testing and psychological/psychiatric issues.

Motion to Appoint Temporary Possessory Conservator: This can be filed when the order granting TMC to DFPS does not specify that the parents are temporary possessory conservators with specific rights and duties.

Motion to Compel Discovery Responses: Consider filing if DFPS has not complied timely with discovery requests and has not responded to additional requests to submit responses or responds with an objection that the discovery request is vague or not applicable. However, it is important to determine the desired outcome before filing a motion to compel, and attorneys should weigh the costs and benefits of such a motion depending on the evidence requested. Most evidence that is not produced in accordance with discovery will not be admissible at trial.

Motion to Remove Guardian/Attorney Ad Litem: This motion should only be considered if there is serious misconduct by the child's attorney that is prejudicial to a client. Talking to the child's ad litem first regarding concerns might alleviate the need to file the motion.

Motion for Participation by Other Means: Parents have a constitutional right to attend not only their trial, but any ancillary hearings in the case. If a parent client is in jail, or otherwise indisposed and cannot attend trial, the attorney may file a motion requesting the parent to attend by telephone, television, Skype, Zoom, or other video conferencing method available to the court and the client. If the motion is denied, then error is preserved for appeal.

Motion for the Record of Ex Parte Hearing: The court is required to keep a record of any ex parte hearing held under Tex. Fam. Code Chapter 262. Consider requesting this record before the Adversary Hearing, it may be relevant for impeachment purposes or to get more information about the investigation. Tex. Fam. Code § 262.206.

Motion to Exclude Evidence Obtained During the Investigation: This motion may be filed prior to the Adversary Hearing, in a case under Tex. Fam. Code Chapter 262 or prior to the initial hearing in a case under Tex. Fam. Code Chapter 264 but can be filed at any time. Tex. Fam. Code § 261.307. *See* the *Parents' Rights in an Investigation* section of this toolkit for more information.

Termination Grounds

Termination of parental rights in a suit filed by DFPS requires a finding by clear and convincing evidence that termination is in the child's best interest, that DFPS made reasonable efforts to return the child to the parent, and that the parent committed an act or omission listed in the enumerated grounds justifying termination (*See* the *Best Interests* and *Reasonable Efforts* sections of this toolkit for more information). For a full list of the statutory grounds for Involuntary Termination of Parent-Child Relationship, *see* Tex. Fam. Code § 161.001(b)(1). The non-exhaustive list below contains grounds often pleaded in DFPS cases.

Endangerment: Conditions or Surroundings

Tex. Fam. Code § 161.001(b)(1)(D)

Has the parent:

- Knowingly placed the child or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child.

> **Parent's Attorney Practice Tip**: Because this ground applies to the child's surroundings and environment, rather than parental conduct, it applies only to the child's pre-removal circumstances.

Endangerment: Course of Conduct

Tex. Fam. Code § 161.001(b)(1)(E)

Has the parent:

- 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.

> **Parent's Attorney Practice Tip**: This ground can apply to a parent's actions both before and after removal and before and after a child is born but requires a course of continuing conduct. One act or omission is insufficient to prove this ground. Acts done in the distant past are also insufficient without showing a present or future danger to the child.

Affidavit of Relinquishment of Parental Rights

Tex. Fam. Code § 161.001(b)(1)(K)

Has the parent:

- Executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights.

Note*: When a parent executes an affidavit of voluntary relinquishment, Tex. Fam. Code § 161.1031 also requires the parent to complete a medical history report. If an "Indian child" is involved, the standard relinquishment form is not valid. Please see additional information in the ICWA section in this toolkit.*

Criminal Conviction-Death or Serious Injury

Tex. Fam. Code § 161.001(b)(1)(L)

Has the parent been convicted or been placed on community supervision, including deferred adjudication community supervision:

- For being criminally responsible for the death or serious injury of a child... under any of the following crimes: murder; capital murder; manslaughter; indecency w/ child; assault; sexual assault; aggravated assault; aggravated sexual assault; injury to child, an elderly individual or disabled individual; abandoning or endangering child; prohibited sexual conduct; sexual performance by child; possession or promotion of child pornography; continuous sexual abuse of child or disabled individual; human trafficking; or compelling prostitution.

> **Parent's Attorney Practice Tip**: If DFPS only offers judgments of convictions without charging instruments or any other evidence of the underlying facts that support the conviction, a parent's attorney may want to challenge the sufficiency of the evidence.

Note*: this ground also applies to out-of-state convictions for crimes with elements similar to those listed above.*

Prior Termination on Endangerment Grounds

Tex. Fam. Code § 161.001(b)(1)(M)

Has the parent:

- Had their parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of grounds (D) or (E) or substantially equivalent provisions of the law of another state.

Note*: The court may not order termination under this ground unless the petition was filed within one year of DFPS or an equivalent agency in another state being named managing conservator of a child in the prior case that resulted in the termination based on a finding that the parent's conduct violated 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(d-1).*

Constructive Abandonment

Tex. Fam. Code § 161.001(b)(1)(N)

Has the parent:

- Constructively abandoned the child who has been in the PMC or TMC of DFPS for not less than six months; AND

- DFPS 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.

Parent's Attorney Practice Tip(s):

- It is important to determine whether DFPS arranged visits, canceled visits, and/or assisted with transportation to visits.
- A parent's incarceration alone is insufficient to prove this ground.
- Reasonable efforts by DFPS are outlined in the Family Service Plan (FSP), but the FSP must be specific and clearly written so that the parent understands what must be completed by the parent.
- Reasonable efforts can also be other efforts made in addition to what is contained in the FSP.

Drug Treatment or Relapse

Tex. Fam. Code § 161.001(b)(1)(O)

Has the parent:

- 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.

***Note**: During the 89th Regular Legislative Session, the "O" ground, commonly referenced to as "failure to complete the family plan of service" was repealed, and all subsequent grounds listed thereafter under Tex. Fam. Code § 161.001(b)(1) were re-alphabetized. This change applies to SAPCRs pending in a trial court or filed on or after the effective date of September 1, 2025.*

Incarceration and Inability to Care

Tex. Fam. Code § 161.001(b)(1)(P)

Has the parent:

- 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.

Parent's Attorney Practice Tip: Among other efforts, an incarcerated parent can demonstrate an ability to care for a child, even while incarcerated, by arranging care for the child with a safe relative or other caregiver during their incarceration.

***Note**: The confinement or imprisonment for not less than two years is prospective from the date of the filing of the petition rather than retrospective. In re A.V., 113 S.W.3d 355 (Tex. 2003).*

Child Born Addicted

Tex. Fam. Code § 161.001(b)(1)(Q)

Has the parent:

- Been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription.

See the definition of "born addicted," Tex. Fam. Code § 161.001(a).

Termination of Rights of Alleged Biological Father

Tex. Fam. Code § 161.002

If an alleged father has been served with citation, his rights can be terminated if he does not timely file an admission of paternity or a counterclaim for paternity under Tex. Fam. Code Chapter 160. Tex. Fam. Code § 161.002(b)(1).

An alleged father's rights can be terminated without personal service of citation or citation by publication if:

- The child is over one year of age at the time the petition was filed, and the alleged father has failed to register with the paternity registry, 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; Tex. Fam. Code § 161.002(b)(2).
- The child is under one year old at the time petition was filed, and the alleged father has not registered with the paternity registry. Tex. Fam. Code § 161.002(b)(3).

Petitioner's due diligence to locate and identify the alleged father is required for the above sections including obtaining a certificate of the results of the paternity registry search from the Texas Department of State Health Services Vital Statistics Section indicating that no man has registered intent to claim paternity. Tex. Fam. Code § 161.002(e).

Practice Tip: Some attorneys representing DFPS may offer "informal discovery" such as providing a redacted copy of the agency case file. However, without a formal discovery request, the receiving party lacks recourse if DFPS fails to provide items or information. Formal discovery requested of DFPS in accordance with the rules of civil procedure provides the requesting party with greatest access to the information.

If an alleged father has registered with the paternity registry, citation by publication is not required, but DFPS must still exercise due diligence to locate alleged father, including a sworn affidavit describing their efforts to obtain personal service of citation at the address provided to the registry and any other address known to DFPS. Tex. Fam. Code § 161.002(b)(4). The court must enter specific findings regarding the exercise of due diligence by DFPS when rendering an order terminating parental rights under this section. Tex. Fam. Code § 161.002(f).

Practice Tip: Before the court can render an order terminating parental rights of an alleged father who has failed to register with the paternity registry, the court must receive evidence of a certificate of the results from the Texas Department of State Health Services Vital Statistics Unit indicating that no man has registered intent to claim paternity. Tex. Fam. Code § 161.002(e).

Discovery

Overview

Most Discovery rules in DFPS cases are the same as in other civil cases and are governed by the Texas Rules of Civil Procedure. However, Tex. Fam. Code Chapter 301 controls requests for disclosure and discovery regarding testifying expert witnesses. A Suit Affecting the Parent-Child Relationship (SAPCR) is usually subject to Level 2 Discovery. Please note that many courts who hear child welfare cases have Level 3 Discovery Control Plans in place as part of their local rules and may modify the date by which responses are due and require court approval to go outside of the parameters of the Discovery Control Plan. For more information, *see* Texas Law Help Discovery in Texas: Investigate and Prepare for Trial.[1]

It is important to respond to all discovery requests within 30 days after the discovery is served or in accordance with deadlines set forth in a court ordered Discovery Control Plan.

> ***Note***: *Failure to answer discovery in a timely manner may limit the evidence and testimony which can be presented at trial. Tex. R. Civ. P. 193.6(a).*

Types of Discovery in Texas Rules of Civil Procedure

Pursuant to Tex. R. Civ. P. 190.3(b)(1)(B), for a case filed under the Texas Family Code, the discovery period begins when the suit is filed and continues until 30 days before the date set for trial. The Level 2 discovery plan is the default to be followed unless the court enters its own discovery control plan.

RESPONDING TO WRITTEN DISCOVERY

Tex. R. Civ. P. 193; Tex. Fam. Code § 301.051

- Not later than the 30th day before the last day of any applicable discovery period, a party may obtain disclosure from another party of the information or material described by Tex. Fam. Code § 301.052 by serving the other party with a request for disclosure. Tex. Fam. Code § 301.051.
- If an objection is not timely asserted, then the objection is waived unless the court excuses the waiver for good cause shown. Tex. R. Civ. P. 193.2(e).
- A party is required to amend or supplement their response reasonably promptly after the party discovers the necessity for the amended response. It is presumed that an amended or supplemental response made less than 30 days before trial was not made reasonably promptly. Tex. R. Civ. P. 193.5(b).
- A party who fails to make, amend, or supplement a discovery response, including a required disclosure, in a timely manner may not introduce in evidence the material or information or offer the testimony of a witness (other than a named party) unless the court finds that there was good cause for the failure or that the failure of the party to do so will not unfairly surprise or unfairly prejudice the other parties. Tex. R. Civ. P. 193.6(a).

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1 Texas Law Help website. Discovery in Texas. Available online at https://texaslawhelp.org/article/discovery-in-texas. Last visited on August 13, 2025.

REQUIRED DISCLOSURES

Tex. R. Civ. P. 194a

- No later than 30 days before the end of any applicable discovery period, a party may obtain disclosure from another party of the information or material described in Tex. R. Civ. P. 194a.2 by serving the other party a request. Tex. R. Civ. P. 194a.1. Child welfare actions are also subject to court orders for certain disclosures and disclosure timelines set by the court.
- Unless subject to an exception, the responding party must serve a written response on the requesting party within 30 days after service of the request. Tex. R. Civ. P. 194a.3.
- Unless otherwise ordered by the court, pretrial disclosures must be made at least 30 days before trial. Tex. R. Civ. P. 194.4(b).

DISCOVERY REGARDING TESTIFYING EXPERT WITNESSES

Tex. R. Civ. P. 195a

- A party may request another party to designate and disclose information concerning a testifying expert witness only through a disclosure request served under Tex. R. Civ. P. 194a.1 or a deposition or report permitted by Tex. R. Civ. P. 195a. Tex. R. Civ. P. 195a.1.
- Unless otherwise ordered by the court, a responding party seeking affirmative relief must provide the information requested under Tex. R. Civ. P. 194a.2(f) 90 days before the end of the discovery period. Tex. R. Civ. P. 195a.2.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Tex. R. Civ. P. 196

- The responding party must serve a written response on a requesting party at least 30 days after service of the request, except that a defendant in a suit governed by the Texas Family Code served with a request before their answer is due need not respond until 50 days after service of the request. Tex. R. Civ. P. 196.2.
- Can include a request for entry upon property. Tex. R. Civ. P. 196.7.

INTERROGATORIES

Tex. R. Civ. P. 197

- Must be served on another party no later than 30 days before the end of the discovery period. Tex. R. Civ. P. 197.1.
- Responding party must serve their written response on the requesting party within 30 days after service of the interrogatories except that a defendant in a suit governed by the Texas Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request. Tex. R. Civ. P. 197.2(a).

REQUESTS FOR ADMISSION

Tex. R. Civ. P.198

- Must be served on another party no later than 30 days before the end of the discovery period. Tex. R. Civ. P. 198.1.

- Responding party must serve their written response on the requesting party within 30 days after service of the request, except that a defendant in a suit governed by the Texas Family Code served with a request before the defendant's answer is due need not respond until 50 days after service of the request. Tex. R. Civ. P. 198.2(a).
- Failure to respond timely will result in admissions being deemed admitted. Tex. R. Civ. P. 198.2(c).

DEPOSITIONS

Tex. R. Civ. P. 199-200; Tex. Fam. Code § 301.101

- A party may request another party to designate and disclose information concerning testifying expert witnesses only through a disclosure request or a deposition or report permitted by Tex. Fam. Code Chapter 301, Subchapter C. Tex. Fam. Code § 301.101.
- Any objection to the time and place of the deposition must be made by filing a motion for a protective order or a motion to quash. Tex. R. Civ. P. 199.4.
- Notice of intent to take written deposition must be served on witnesses and all parties at least 20 days before the deposition is taken. A deposition on written questions may be taken outside of the discovery period only by agreement of the parties or with leave of the court. Tex. R. Civ. P. 200.1.
- Objections to the form of a question are waived unless asserted in accordance with Tex. R. Civ. P. 200.3(b). Tex. R. Civ. P. 200.3(c).

> **Practice Tip**: Some courts limit depositions or require that a motion be filed to request a court order for depositions to be taken. Parents' and children's attorneys should learn in advance the court's procedures for depositions and for the payment of court reporters taking depositions.

REQUESTS FOR PHYSICAL AND MENTAL EXAMINATIONS

Tex. R. Civ. P. 204

- In a DFPS suit, on motion by a party or the court's own initiative, the court may appoint:
  - one or more psychologists or psychiatrists to examine a child or another other party to the suit; and/or
  - a qualified expert to test and determine paternity. Tex. R. Civ. P.204.4.

COMMON OBJECTIONS TO DISCOVERY

The following is a non-exclusive list of objections that may be raised to requests for discovery.

- Discovery not timely requested.
- Vague, ambiguous, argumentative, overbroad, and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.
- Broad, uncertain, and unintelligible so that the responding party cannot determine the nature of the information sought.
- Repetitive (if the information requested or produced has already been requested in the discovery).

- Privileged (if the information calls for privileged information such as attorney-client communication or is otherwise privileged). Tex. Civ. P. 193.3.

If an asserted privilege or objection only pertains in part as to the request for production or response, a party is required to comply with any part of the request for production or response that is not objected to.

> **Practice Tip**: If an attorney for the party served with discovery responds with an objection that the request is vague or not applicable, the proponent of the discovery request can consider filing a Motion to Compel Discovery and request a hearing to address the validity of the objection. When there is a partial answer, if it is preceded by an objection, the objection should be addressed in this manner to ensure that a full answer is given.

Notable Discovery Issues in DFPS Cases

DISCOVERY PRIOR TO THE ADVERSARY HEARING

Prior to the Adversary Hearing, a party may send a written request to the attorney representing DFPS asking that DFPS turn over the names of non-DFPS employee witnesses who will testify to the allegations, copies of offense reports that will be used to refresh a witness' memory, and any photo, video, or recording that may be used at that Adversary Hearing. Tex. Fam. Code § 262.014. Items produced prior to an adversary hearing may need to be redacted by the attorney representing DFPS.

CONFIDENTIALITY WITH THE DFPS CASE FILE

DFPS files contain information that is confidential and may only be disclosed consistent with the Texas Family Code and applicable federal and state law. Tex. Fam. Code § 261.201; *See* also 40 Tex. Admin. Code §§ 745.8481 - 745.8493. For example, the identity of the reporter of abuse or neglect is confidential and is not subject to release. Tex. Fam. Code § 261.201.

> **Practice Tip**: Redaction of the record in accordance with DFPS rules and guidelines takes time. When production of the record is needed urgently, consider asking the court to order DFPS to produce the record with only the reporter's name and confidential information redacted.

DISCOVERY FOR THE CHILD'S ATTORNEY

Children's attorneys are entitled to seek discovery even though their client is not a party to the litigation because the child's attorney is directed to ". . . participate in the conduct of the litigation to the same extent as an attorney for a party." Tex. Fam. Code § 107.003(a)(1)(F). Another party may also request discovery from the child's attorney; however, like any attorney, the child's attorney can object to producing specific materials on the basis of attorney-client privilege, attorney work product, or general confidentiality.

Parent's Attorney Practice Tip: The "quasi-party" status of the child's attorney can cause some confusion regarding discovery; local practice may vary as to whether children's attorneys are served with discovery. If not served with discovery, the children's attorneys may submit evidence that another party bound by discovery would not be allowed to present. Parent's attorneys might consider filing a motion to ask the court to order the child's attorney to disclose all witnesses that they may seek to call to testify, and to produce all exhibits that they may seek to admit.

REQUEST FOR INSPECTION

Before agreeing to the return of a child to the parent, a child's attorney may want to see where the child will be living and ensure that the home is safe and suitable. If the child's attorney is unable to secure the agreement of the parent's attorney to allow inspection of the home, the child's attorney can serve a request for inspection under Tex. R. Civ. P. 196.7.

EXPERTS

Special rules govern the exchange of information about expert witnesses in the discovery process. Note that the scope of discovery is different when cases involve testifying experts or consulting experts (those experts whose work has been reviewed by a testifying expert). Tex. R. Civ. P. 195.

PRIVILEGES

Commonly invoked privileges in child abuse litigation include those related to:

- Mental health records;
- Drug and alcohol abuse records;
- Attorney-client communication; and
- Work product.

SUBPOENAS

A person served with a subpoena can request a protective order if the subpoena seeks information that is privileged or otherwise objectionable. Tex. R. Civ. P. 176.6(e). DFPS has adopted detailed policy governing procedures for handling subpoenas served on individual staff or the agency. The DFPS subpoena policy is available on the DFPS website.[2]

Practice Tip: In addition to serving a subpoena on individual staff or the agency in accordance with DFPS policy, parents' and children's attorneys might consider serving a copy on the attorney representing DFPS.

[2] DFPS Subpoena Policy. Available online at https://www.dfps.texas.gov/handbooks/Subpoena/. Last visited on August 14, 2025.

> **Practice Tip**: The subpoena range in a civil proceeding is limited: a witness who is represented to reside 150 miles or less from a county in which a suit is pending or who may be found within that distance at the time of trial on the suit may be subpoenaed in the suit. Tex. Civ. Prac. & Rem. Code § 22.002.

BUSINESS RECORDS

The Texas Rules of Evidence allow an exception to the hearsay rule for business records as long as they meet the requirements of Tex. R. Evid. 803(6) and they can be submitted without the testimony of the custodian of records or other qualified witness if accompanied by an affidavit that meets the requirements of Tex. R. Evid. 902(10).

> **Parent's Attorney Practice Tip**: When seeking documents by subpoena from a third party, such as a hospital or other medical provider, consider including a business records affidavit along with the subpoena so that the documents may be authenticated without live testimony. Be aware that the proponent of the documents must serve the documents and the accompanying affidavit pursuant to Tex. R. Civ. P. 21a on each party to the case at least 14 days before trial.

> **Parent's Attorney Practice Tip**: Some medical providers may file motions to quash subpoenas, so it may be necessary to have the court rule on the validity of the subpoena in order to obtain the records. If the requested records are those of a client or of the child of the client, consider having the client execute a release of information to obtain those records.

MOTION FOR ENFORCEMENT AND/OR TO COMPEL

Sanctions for abuse of the discovery process include orders denying discovery, imposing costs, finding facts established, limiting claims or defenses, striking pleadings, or dismissing an action and/or a contempt order for failure to comply with any order except orders to submit to a physical or mental examination.

> **Practice Tip**: A remedy to the Motion for Enforcement or Contempt is usually the production of the discovery. The movant can wait until trial and then ask the court to grant sanctions for failure to respond to discovery. If requested information is confidential, a hearing is necessary for such information to be released. Tex. Fam. Code § 261.201(b) sets out the procedural mechanism to request the disclosure of confidential material.

Caselaw on Admitting Discovery Even If It Was Not Properly Produced

- **Requests for Admissions were intended to "eliminat[e] matters about which there is no real controversy" and were "never intended to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense."** *Stelly v. Papania*, 927 S.W.2d 620, 622 (Tex. 1996) (per curiam).

Requests should be used as "a tool, not a trapdoor." *Marino v. King*, 355 S.W.3d 629, 632 (Tex. 2011). When a party uses deemed admissions to try to preclude presentation of the merits of a case, due process concerns arise. *See TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917-18 (Tex. 1991). "Constitutional imperatives favor the determination of cases on their merits rather than on harmless procedural defaults." *Marino*, 355 S.W.3d at 634. Absent flagrant bad faith or callous disregard for the rules, due process bars preclusive sanctions for discovery abuses. *Wheeler v. Green*, 157 S.W.3d 439, 443 (Tex. 2005).

- **Parties can testify even if the parties were not disclosed as witnesses in discovery.** *In re J.L.J.*, 352 S.W.3d 536 (Tex. App.—El Paso 2011, no pet.) (Mother who signed affidavit of relinquishment prior to final judgment was still a party to the suit and allowed to testify at trial against father). Tex. R. Civ. P. 193.6(a) expressly exempts parties from exclusion if not disclosed as a potential witness in discovery. *In re M.J.M.*, 406 S.W.3d 292, 299 (Tex. App.—San Antonio 2013, no pet.) (Holding the trial court erred in assessing death penalty sanctions, and noting, "Rule 193.6 expressly states that it does not apply to the testimony of named parties.").
- **The failure to timely make, amend, or supplement the discovery response did not unfairly surprise or unfairly prejudice the other parties.** Tex. R. Civ. P. 193.6(a)(2). *In re M.F.D.*, No. 01-16-00295-CV, 2016 WL 7164063, (Tex. App.—Houston [1st Dist.] Dec. 8, 2016, no pet.) (mem. op.) (The trial court did not abuse its discretion in finding that there was a lack of unfair surprise or unfair prejudice when DFPS' petition, a Status Hearing order, and service plan put the parent on notice that DFPS would seek termination if reunification could not be achieved.).
- **Because the best interest of a child is of primary importance, the Third Court of Appeals has held that witnesses in a termination should be allowed to testify even if they were not disclosed in discovery.** *Spurck v. Tex. Dep't of Family and Protective Servs.*, 396 S.W.3d 205, 215 (Tex. App.—Austin 2013, no pet.). But *see In Int. of D.W.G.K.*, 558 S.W.3d 671, 686–87 (Tex. App.—Texarkana 2018) where the court did not agree that the rule elevating the best interest issue over "technical rules of pleading and practice" governs parental rights termination cases.

Practice Tip: If a parent's or child's attorney did not timely make, amend, or supplement a discovery response, this may result in evidence being excluded. However, the following approaches are available under Tex. R. Civ. P. 193.6 to advocate for admitting the evidence:

- Move for continuance and ask the court to allow more time to respond;
- Try to prove good cause for a failure to respond (i.e., clerical accident, mistake);
- Try to prove lack of unfair surprise and prejudice (no actual delay caused); and/or
- Argue that sanctions are not to be used as a tool to preclude presentation of the merits.

Evidentiary Issues

Cases involving child abuse and neglect present unique evidentiary issues and procedures. This section provides an overview of statutory provisions related to child welfare cases.

Applicability of Rules of Evidence

Like procedural rules, evidentiary rules in child welfare cases are the same as in other civil cases. Unless otherwise provided, the Texas Rules of Evidence apply in child welfare cases. Tex. Fam. Code § 104.001.

Exclusionary Rule

If a person who is the subject of an investigation does not receive the verbal notification and written summary required by Tex. Fam. Code § 261.307, any information obtained from the person, and any other information that would not have been discovered without that information, is not admissible for use against the person in any civil proceeding. Tex. Fam. Code § 261.307(e). For more information related to Child Welfare Investigations, *see* the *Investigations of Child Abuse and Neglect* section of this toolkit.

Predicates

OVERVIEW

Tex. R. Evid. 901 provides, "to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what a proponent claims it is."

AUTHENTICATION QUESTIONS

Evidence Business/Medical Records

- Are you a custodian of the records or are you otherwise familiar with the manner in which the records contained in the Exhibit are maintained by virtue of your duties and responsibilities?
- Are the records originals or exact duplicates?
- Is it the regular practice of the business to make the records?
- Were the records made by persons with personal knowledge (or from information transmitted by them)?
- Were the records made at or near the time of the occurrence? *See* Tex. R. Evid. 902(10)(B).

Diagrams/Charts/Drawings/Timelines

- Did you participate in the preparation of the Exhibit? (if applicable)
- Are you familiar with the information as it is presented in the Exhibit? How?
- Does it contain information generally used and relied upon by persons in your profession or occupation? (if applicable)
- Is this a fair and accurate representation of the underlying information?
- Will the Exhibit assist the judge/jury to comprehend the evidence?

Photographs

- Are you familiar with the person/location/objects shown in the Exhibit? How?
- Is this a fair and accurate depiction?

Note*: The person admitting the photograph does not have to be the person who took it, as long as they can testify the photo was an accurate depiction at the time it was taken.*

Videotapes/Audiotapes/Voicemail

- Are you familiar with what is shown/heard in the Exhibit? How?
- Was the recording device capable of making an accurate recording?
- Was the operator of the device competent?
- Have there been any changes, additions, or deletions made?
- Who is shown and/or speaking in the Exhibit?
- Is it a fair and accurate recording?

Physical Evidence/Tangible Objects

- Are you familiar with the Exhibit? How?
- Are there any identifying or distinguishing marks on it?
- Is the Exhibit in the same condition as it was when you previously observed it?
- Describe where the Exhibit has been since last in your custody.
- Who has had access to the Exhibit?

Signatures/Writings/Drawings

- Are you familiar with Jane Doe's handwriting/signature? How?
- Do you recognize the handwriting/signature contained in the Exhibit?
- Were you present when the Exhibit was made?
- Whose handwriting/signature is it?

Rays

- Are you familiar with this Exhibit or what is shown in the Exhibit? How?
- Was the Exhibit made by a qualified technician or physician? Who? When? Where?
- What proof is there that this Exhibit is Jane Doe's x-ray?
- Does this Exhibit fairly and accurately show the condition of Jane Doe's (insert name of body part in x-ray) at the time the x-ray was made?

Email or Text Message

- Do you recognize the sender's e-mail address? How?
- Do you recognize the name at the end of this email?
- Do you recognize the sender of the text message? How?

- Do the contents refer to any previous communication you had with this person?
- Are the contents of this email/text known to the sender?

Social Media

- Do you use Facebook/Twitter/Instagram/Snapchat/etc.?
- Do you have an account on Facebook, etc.?
- Did you create your own page on Facebook, etc.?
- Are you familiar with (defendant/respondent/opposing party)?
- How do you know them?
- Are you friends with the sender on any social media networks/do you follow the sender?
- Is that how you can see their page?
- Are you familiar with their Facebook page? Is it currently active?
- Would you recognize it if it were presented to you today in court?
- (Hand copy of social media page to witness) Do you recognize what I just handed you?
- Is this a screen shot of the sender's page/post/picture?
- Is this a fair and accurate depiction of the sender's page?
- Does it appear to be altered in any manner?
- How did you access this page?
- Since you and sender were friends on Facebook, you could see their page?
- And you could post things on each other's walls/pages?
- What was their username?
- Has anyone else ever sent you a message/posted on your wall from Jane Doe's account?
- How did you know that it was sent from this sender and not someone pretending to be him/her?
- Do you have any reason to doubt that the person you were talking to on social media was this sender?

> **Practice Tip**: Remember that "likes," "loves," or "dislikes" responses to social media postings might fall into a hearsay exception, such as admission against interest.

Establishing a Child's Competence to Testify

PRESUMPTION OF COMPETENCE

The Texas Rules of Evidence provide that every person is competent to be a witness unless the rules provide otherwise. Generally, a child is presumed to be competent to testify. However, "persons lacking sufficient intellect" are incompetent to testify. A child may be one such witness, but a procedure must be followed to challenge the child's competence. Accordingly, the burden is on the party challenging the child's competence. Tex. R. Evid. 601(a).

The issue of the child's competence must be raised by a party opposing the child's testimony.

At that point, the court must examine the child to assess whether the child "does not possess sufficient intellect to relate transactions about which he will testify." In doing so, the court considers:

- The competence of the child to observe intelligently the events in question at the time of the occurrence;
- The child's capacity to recollect the events;
- The child's capacity to narrate the facts; and
- Whether the child lacks the capacity to understand the obligation of the oath. *Pipkin v. Kroger Tex., L.P.*, 383 S.W.3d 655, 668 (Tex. App.—Houston [14th Dist.] 2012, pet. denied). *See* also *In re R.M.T.*, 352 S.W.3d 12 (Tex. App.—Texarkana 2011, no pet.).

> **Practice Tip**: To establish that a child has the capacity to understand the oath, the attorney needs to show that the child knows the difference between the truth and a lie (not that the child understands perjury). Rather than asking the child to define "truth" and "lie," it is most developmentally effective to provide the child with simple examples of truth and lies. For example, "Sam, if someone told you that the judge's robe is pink, would that be the truth or a lie?"

Objections

Hearsay
Statement made outside of Court, offered to prove the truth of the matter asserted.

Not Hearsay	Code
Prior Inconsistent Statements	TRE 801(e)(1)
Admission by Party Opponent	TRE 801(e)(2)
Deposition	TRE 801(3)

Exceptions to Hearsay: Availability of Declarant Immaterial	Code
Present Sense Impression	TRE 803(1)
Then-Existing Mental/Emotional/Physical Condition	TRE 803(3)
Recoded Recollection	TRE 803(5)
Absence of Entry of Record	TRE 803(7)
Records of Vital Statistics	TRE 803(9)
Records of Religious Organizations	TRE 803(11)
Family Records	TRE 803(13)
Statements of Property Documents	TRE 803(15)
Market Reports, Commercial Pubs	TRE 803(17)
Reputation - Family/Personal History	TRE 803(19)
Reputation as to Character	TRE 803(21)
Judgment re: Pers/Fam/Hist/Boundaries	TRE 803(23)
Excited Utterance	TRE 803(2)
Medical Diagnosis/Treatment	TRE 803(4)
Business/Medical Records	TRE 803(6)
Public Records/Reports	TRE 803(8)
Absence of Public Record/Entry	TRE 803(10)
Marriages/Baptisms & Similar	TRE 803(12)
Property Records	TRE 803(14)
Statements in Ancient Docs	TRE 803(16)
Learned Treatises	TRE 803(18)
Reputation - Boundaries/History	TRE 803(20)
Previous Conviction	TRE 803(22)
Statement Against Interest	TRE 803(24)

Exceptions to Hearsay: Declarant Unavailable	Code
Former Testimony	TRE 804(b)(1)
Personal Testimony	TRE 804(b)(3)
Dying Declaration	TRE 804(b)(2)

Objections, continued

General Objections	Code
Authentication Insufficient	TRE 901
Best Evidence	TRE 1002, 1003
Bolstering	TRE 607-610
Cumulative	TRE 403
Confuses the Issue	TRE 403
Improper Predicate	TRE 602-3, 701, 701-2, 901-2
Inconsistent with Pleadings	TRE 66, 67
Irrelevant	TRE 401, 402
Misleading	TRE 403
Probative vs. Unfair Prejudice	TRE 403
Privileged	TRE 503

Objections to the Form of the Question	Code
Ambiguous/Vague	TRE 611(a)
Asked & Answered	TRE 403; 611
Argumentative	TRE 611(a)
Assumes Facts Not Evidence	TRE 403; 611
Calls for Narrative	TRE 403; 611(a)
Calls for Speculation	TRE 403; 611(a)
Compound	TRE 611(a)
Confusing	TRE 611(a)
Creates Undue Delay	TRE 403; 611(a)
Harassing Witness	TRE 403; 611(a)
Leading/Suggestive	TRE 403; 611(c)
Misleading	TRE 403; 611(a)
Misquoting Witness	TRE 403; 611(a)
Overbroad	TRE 403; 611(a)
Unfairly Prejudicial	TRE 403
Unintelligible	TRE 403; 611(a)

Objections to the Form of the Answer	Code
Narrative	TRE 611(a)
Nonresponsive	TRE 611
Lack of Personal Knowledge	TRE 602
Volunteered	TRE 403; 611(a)

Exceptions to Hearsay for Children's Statements

The exceptions to the hearsay rule for children's statements are found in the Rules of Evidence and the Texas Family Code.

RULES OF EVIDENCE

Exceptions to the Rule Against Hearsay Regardless of Whether the Declarant is Available as a Witness. Tex. R. Evid. 803.

Present Sense Impression Tex. R. Evid. 803(1)

- A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

Excited Utterance Tex. R. Evid. 803(2)

- A statement relating to a startling event or condition, made while or immediately after the declarant perceived it.

Then-Existing Mental, Emotional, or Physical Condition Tex. R. Evid. 803(3)

- A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed.

TEXAS FAMILY CODE

Pre-recorded Statement of a Child Tex. Fam. Code § 104.002

- No attorney for a party was present when the statement was made;
- The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;
- The statement was not made in response to questioning calculated to lead the child to make a particular statement;
- Each voice on the recording is identified;
- The person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party; and
- Each party is afforded an opportunity to view the recording before it is offered into evidence.

Pre-recorded Videotaped Testimony of Child Tex. Fam. Code § 104.003

- The court may, on the motion of a party to the proceeding, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding.
- Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons

necessary to operate the equipment may be present in the room with the child during the child's testimony.

- Only the attorneys for the parties may question the child.
- The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them.
- The court shall ensure that:
    - o the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
    - o the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
    - o each voice on the recording is identified; and
    - o each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

Remote Televised Broadcast of Testimony of Child Tex. Fam. Code § 104.004

- If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties.
- The procedures that apply to prerecorded videotaped testimony of a child apply to the remote broadcast of testimony of a child.

Substitution for In-Court Testimony of Child Tex. Fam. Code § 104.005

- If the testimony of a child is taken as provided by this chapter, the child may not be compelled to testify in court during the proceeding.
- The court may allow the testimony of a child of any age to be taken in any manner provided by this chapter if the child, because of a medical condition, is incapable of testifying in open court.

Hearsay Statement of Child Abuse Victim ("Outcry" statements) Tex. Fam. Code § 104.006

- In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability; and
- The child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or
- The court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.
- *See, e.g., In the Interest of E.M.*, 494 S.W.3d 209 (App. —Waco 2015, pet. denied) (focus is on the outcry statement itself, not the abuse; therapist testified outcry statements regarding domestic violence between the parents were credible because they were expressed in a manner consistent with what the therapist would expect, were made in age-appropriate language, were consistent through different placements, and were not

of the type this aged child would make up.)

> **Child's Attorney Practice Tip**: Note the age restrictions in some of the above rules and that some exceptions require a motion to be filed by the child's attorney.

Preservation of Error

AT TRIAL OR IN A HEARING

Timely Objections Tex. R. App. P. 33.1

To preserve error, the party objecting to the admission of evidence must make a timely objection, a motion to strike from the record, and obtain a ruling on the record. Similarly, the proponent of excluded evidence must make an offer of proof setting forth the substance of the evidence.

Objections must be timely:

- Improper question: must object before an answer is given.
- Improper answer: objection must be made as soon as that fact becomes apparent. Although it is proper to object to a completed answer (and necessary in order to protect the record), this is not the most desirable solution. If the objection is sustained, ask that the answer be struck and that the jury be instructed to disregard it.

> **Practice Tip**: Listen for possible leading questions on direct examination, questions that call for a narrative response, or that solicit irrelevant information. After objecting, clearly but respectfully request to get a ruling on the record, especially if the court does not respond directly to the request. Without a clear ruling on the objection, the error may not be preserved for appeal.

> **Practice Tip**: When arguing on the record, avoid using terms of art and acronyms (such as "FBSS," "RTB," etc.). Also, avoid terms like "ruled out" and "unable to determine" unless the meaning of the terms are articulated. The record will be clearer if the terms are spelled out and explained in sufficient detail.

Offer of Proof Tex. R. Evid. 103(a)(2)

An offer of proof preserves an argument regarding evidence by informing the appellate court what evidence was excluded by the trial court. Through an offer of proof, counsel can memorialize testimony excluded by the trial court. Exhibits not admitted into evidence should be marked and handed to the court's reporter for inclusion in the record.

> **Practice Tip**: Request to make an offer of proof outside the presence of the jury. On the record, state what the evidence is, and why it should be admitted; then ask the court to admit for the limited purpose of appeal. Evidence can be physical evidence or testimony that was objected to and excluded because the court sustained the objection.

Bill of Exception Tex. R. App. P. 33.2

Informs appellate court of evidence that was excluded at trial and therefore is not reflected in the record.

- Must obtain the trial court's signature and must be filed with the trial court no later than 30 days after notice of appeal is filed.
- The document must be specific enough to make the trial judge aware of the rulings or actions which are the subject of the complaint, and which will be asserted on appeal.
- Must be presented to trial judge and opposing counsel.

> **Practice Tip**: A Bill of Exception is less common than an Offer of Proof but remains a method for obtaining review of a matter which is not reflected in the record.

- Can be agreed to by all parties or a hearing held to determine issues.

Expert Witnesses

ADMISSIBILITY

For expert testimony to be admissible, the court must be satisfied that three conditions are met:

- The witness qualifies as an expert;
- The subject matter of the testimony is an appropriate one for the expert's testimony; and
- Admitting the expert testimony will assist the factfinder in deciding the case.

Even if the expert is qualified and the topic is a proper one for expert testimony, the proposed testimony must also be reliable and relevant. *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

EVIDENTIARY RULES ON EXPERT WITNESSES

- Must be relevant. Tex. R. Evid. 401.
- Relevant evidence is generally admissible; irrelevant evidence is not. Tex. R. Evid. 402.
- Testimony by experts is specialized knowledge that will assist the trier of fact to determine a fact at issue. Expert testimony can be based upon knowledge, skill, training, or education and expert can testify in the form of an opinion. Tex. R. Evid. 702.

- Basis of opinion by expert must be underlying data or facts that are basis of opinion given to other party at or before hearing. Data must be of a type reasonably relied upon by experts in that particular field. Tex. R. Evid. 703.
- Qualified experts can testify to their opinion as to the ultimate issue (i.e., should parental rights be terminated?). Tex. R. Evid. 704.
- The court acts as a gatekeeper to determine if underlying facts or data are sufficiently reliable as the basis for the opinion testimony (must request a hearing). Tex. R. Evid. 705(c).

"DAUBERT CHALLENGE"

Hearing to determine if expert's opinion is based upon reliable facts. Burden of proof is preponderance of the evidence. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993); *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

The court must determine that:

- The expert's field of expertise employs sound principles and methods;
- The expert's opinion is based on sufficient facts or data; and
- The expert has applied the principles and methods in a reliable manner.

ROBINSON RELIABILITY FACTORS

- The extent to which the theory has been or can be tested;
- The extent to which the technique relies upon the subjective interpretation of the expert;
- Whether the theory has been subjected to peer review and/or publication;
- The technique's potential rate of error;
- Whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and
- The non-judicial uses which have been made of the theory or technique.

These factors are not exclusive factors, and the trial courts may consider other factors which are helpful to determining the reliability of the scientific evidence. *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

SAMPLE QUESTIONS ON EXPERT QUALIFICATION

- What is your occupation/profession?
- What is your educational background?
- What degrees, certificates, or licenses do you have?
- Have you attended or conducted continuing education seminars, conferences and related training?
- Are you a member in any professional organizations/societies?
- Have you received any awards or other professional recognition?
- Have you published articles in your field?
- How many cases involving [subject matter] have you handled?

- How many years have you worked in this field?

SAMPLE QUESTIONS ON NEED FOR EXPERT OPINION

- What is it about a brain injury/a burn injury/bite marks that requires an expert to explain?
- What is it about this case that a lay person with no background in this field might not understand?
- What are the key principles that a person without education or experience in this field would need to grasp in order to understand this case?
- Can you explain the research/theoretical basis/scientific principles involved in this field of study to a non-expert?
- Do you believe your testimony will aid the judge or jury in understanding the facts in this case? How?

> **Practice Tip**: Review criminal court cases for new law and/or science, as they tend to be reviewed on appeal more often than family law cases – i.e., arson and bite mark science has changed significantly over time.

SAMPLE QUESTIONS ON BASIS FOR OPINION

- Have you examined or interviewed the child/parent/other person?
- Have you administered any medical or psychological tests to the child/parent/other person?
- Have you reviewed medical records/documents/police reports?
- Have you made a diagnosis/made a conclusion/formed an opinion?
- Did you rely on any other source of information in forming your opinion other than the medical records/documents/police reports that we have discussed?
- If so, what other sources did you rely on?
- If the facts were [supply hypothetical] could you render an opinion regarding cause of injury; whether the injury was intentional; whether the injury is consistent with the parent's report of the incident?

CROSS-EXAMINATION QUESTIONS OF THE OPPOSING EXPERT

- Has your theory been tested, or can it be tested?
- Does your technique rely on subjective interpretation?
- Has your theory been peer reviewed or publicized?
- What is the rate of error?
- Has your theory been generally accepted as valid by the relevant scientific community?
- Have there been any other non-judicial uses of your theory?

Drug Testing

Drug tests are commonly admitted into evidence through a parent (party) admission. Otherwise, for proper admission of drug test results, the source of the testing, the method used, and/or the circumstances or preparation of the test must indicate trustworthiness.

Business records affidavits alone may not be sufficient to admit drug test results under the clear and convincing standard of proof required for a parental termination case. *See In re K.C.P.*, 142 S.W.3d 574, 580 (Tex. App.—Texarkana 2004, no pet.).

Error can be committed unless:

- The qualifications of the person conducting the test are admitted;
- There is testimony as to the type of test; and
- The expert shows that the test is standard and accepted for the substance tested.

However, business records affidavits of drug test results that show sufficient indicia of trustworthiness because they contain information regarding chain of custody, testing procedures, qualifications of the analysts or other indicators of reliability may be admitted without expert testimony. *See Int. of S.W.W.*, No. 14-22-00503-CV, 2022 WL 17982904, at *8 (Tex. App.—Houston, 14th District, 2022, review denied (June 16, 2023).

> **Practice Tip**: Consider filing a Motion to Exclude drug test results if the proper evidentiary foundation is not laid.

> **Practice Tip**: Drug test results admitted without proper foundation are not reversible error if the drug test results come into evidence through other means (i.e., the parent testifies to the use/admits to the probable results). DFPS may confront a parent with a positive test result, and if the parent admits to the use of the drugs confirmed in the test then the fact of usage may not be contested, but the specific drug and/or the amount used may still be at issue. *See In re K.C.P.*, 142 S.W.3d 574, 581 (Tex. App.—Texarkana, 2004, no pet.).

> **Parent's Attorney Practice Tip**: In some circumstances, a client may fear being held criminally liable for admitting to drug use and may wish to assert their Fifth Amendment privilege against self-incrimination. However, there are important limitations on the privilege when it is asserted in a civil case, and it is prudent to counsel the client regarding the potential implications of asserting the privilege prior to testimony. *See* the *Parents with an Open Criminal Case* section of this toolkit for more information.

COMMON OBJECTIONS TO DRUG TESTING RESULTS

- Chain of custody;
- Hearsay; and
- Lack of proper foundation.

Investigations of Child Abuse and Neglect

Investigations of child abuse and neglect are conducted by DFPS Child Protective Investigations (CPI). At the conclusion of an investigation, the assigned CPI caseworker, with input from their supervisor, will enter a disposition as to each allegation of child abuse or neglect investigated based on the information gathered. The case may then be assigned for closure, referred for services, or further legal action may be taken.

Parents' Rights in an Investigation

When DFPS has initial contact with a parent or other person with legal custody of a child who is the subject of an investigation, DFPS must provide information to that person regarding the DFPS employee's identity and the DFPS investigation summary. DFPS must allow a reasonable amount of time for the parent or person to read or review the summary before taking any action in investigating the report.

During this first contact, the DFPS investigator must provide the parent or alleged perpetrator with a written summary that explains that any statement or admission made by the person to anyone may be used against the person in a criminal case, as a basis to remove the child, or as a basis to terminate the person's relationship with the child.

The DFPS investigator must also verbally notify the person of their right to:

- Not speak with any agent of DFPS without legal counsel present;
- Receive assistance from an attorney;
- Have a court-appointed attorney if the person is indigent, they are the parent of the child, and DFPS seeks a court order under Tex. Fam. Code Chapter 262 or 264;
- Record any interaction or interview with DFPS subject to the understanding that the recording may be disclosed to DFPS, law enforcement, or another party under a court order;
- Refuse to allow the investigator to enter the home or interview the children without a court order;
- Have legal counsel present before allowing the investigator to enter the home or interview the child;
- Withhold consent to the release of any medical or mental health records;
- Withhold consent to any medical or psychological examination of the child;
- Refuse to submit to a drug test; and
- Consult with legal counsel prior to agreeing to any proposed voluntary safety plan.

Pursuant to Tex. Fam. Code § 261.307, DFPS must document that verbal notice was provided to the person and document that the person received the written and oral summary and provide a signed copy to the person's attorney, if represented.

> **Parent Attorney Practice Tip**: DFPS uses Form 3010, Notification of Rights, to notify individuals subject to an investigation of their rights before being interviewed.[3] When preparing for the Adversary Hearing, determine whether this form was p rovided to your client.

[3] DFPS Form 3010 Notification of Rights. Available online at https://www.dfps.texas.gov/Application/Forms/showFile.aspx?Name=P-201-3010.docx. Last visited on August 18, 2025.

Alternatives to Removal of a Child

Federal law requires that DFPS make reasonable efforts consistent with child safety to prevent or eliminate the need for removing a child from a family's home. Not all investigations and interactions with families lead to removal of children. Below are examples of alternative interventions in lieu of removal.

The Investigation Cannot Be Completed

COURT ORDER REGARDING THE CHILD

If a person interferes with an investigation of a family, or DFPS cannot access the child or the child's records, DFPS may petition a court to order the following on a showing that there is good cause to believe the child is in imminent danger of aggravated circumstances, or there is probable cause to believe the order is necessary to protect the child from abuse or neglect:

- Access to a home, school, or any place where a child may be for an interview, examination, and investigation; and
- A medical, psychological, or psychiatric exam (or to obtain the records of such an exam). Tex. Fam. Code §§ 261.303, 261.3031.

A hearing for an order may not be ex parte unless the court has probable cause to believe there is no time consistent with the health and safety of the child for a full hearing. The order must include the court's findings regarding the sufficiency of the evidence, and the court must provide a copy of the order to a party upon request. Tex. Fam. Code § 261.303(f)-(h).

COURT ORDER REGARDING THE PARENT

An investigation may include an inquiry into the possibility that a parent or person responsible for the care of a child who is subject to the report has a history of medical or mental illness. If the person does not consent to an examination or allow DFPS to have access to medical or mental health records requested, a court having family law jurisdiction, for good cause shown, shall order the examination to be made or that DFPS be permitted to have access to the records under terms and conditions prescribed by the court.

A parent or person responsible for the child's care is entitled to notice and a hearing when DFPS seeks a court order to allow a medical, psychological, or psychiatric examination or access to medical or mental health records. If the court determines that the parent or person is indigent, the court shall appoint an attorney to represent them at the hearing. Tex. Fam. Code § 261.305.

There is a Safety Issue, but the Family is Willing to Engage in Services

ALTERNATIVE RESPONSE (AR)

The AR program was created to help families with low to moderate risk cases. In order to be considered for the program, all alleged child victims must be over the age of 6 and the intake must have received a designation of Priority 2 (P2). In an AR case, no final disposition, no alleged perpetrator, and no entry are made into the Central Registry. The goal is to provide a collaborative approach to address safety concerns, identify family strengths, and build a support network. For more information, *see* CPS Policy Handbook § 2600 and the DFPS Guide to Alternative Response.[4]

SAFETY PLANS

A Safety Plan is defined by DFPS as a written agreement used when an immediate danger to a child is identified and action is required to keep a child safe. The plan must be created with the family and be written in a practical, action-oriented manner and acknowledge a family's network of support. A safety plan must not exceed 30 calendar days without an approved extension. A petition for legal intervention is not filed with the court, and no court orders are entered in association with a Safety Plan; as a result the plan is not legally binding. Safety Plans are voluntary agreements, and a parent can revoke their agreement at any time. However, DFPS policy states if the family is unwilling to participate in a safety plan to address dangers to the child, the caseworker must determine if it is necessary to remove the child from the home. A Safety Plan is implemented when:

- The parent and child are residing together but away from the danger.
- The parent and child are residing together, but their contact is being supervised.
- The parent and child do not live together, and the contact is being supervised (family initiated PCSP).

CPS Policy Handbook § 3210.[5]

If the parent chooses to place the child outside their home as part of a Safety Plan, the plan must follow the requirements of a Parent Child Safety Placement (PCSP). *See* the *There is a Need for an Alternative Placement* section of this toolkit below for more information on PCSPs.

FAMILY-BASED SAFETY SERVICES (FBSS)

FBSS offers protective services to a family whose children are not in the managing conservatorship of DFPS in order to prevent the need to remove a child from the home. Participation in FBSS by a family is voluntary and is accompanied by a Safety Plan meant to sufficiently address the danger indicators or risk factors present that cause concern for child safety. Parents do not have to engage in or comply with the voluntary services. However, DFPS has the option of

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4 CPS Policy Handbook § 2600. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2600; DFPS Alternative Response Resource Guide. Available online at https://www.dfps.texas.gov/Investigations/guide_to_alternative_response.asp.. Last visited on August 12, 2025.

5 CPS Policy Handbook §3210. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_3000.asp#CPS_3210. Last visited on August 12, 2025.

initiating further legal intervention if it determines that the lack of compliance constitutes a danger to the child. For more information on case referrals from Investigations to Voluntary or Court Ordered FBSS, *see* CPS Policy Handbook § 2400.[6]

There is a Need for an Alternative Placement

PARENTAL CHILD SAFETY PLACEMENT (PCSP)

A Parental Child Safety Placement (PCSP) is an agreed, family-initiated, temporary out-of-home placement approved by DFPS made by a parent with a caregiver who is either related to the child or has a long-standing and significant relationship with the child or family that may occur when there is an immediate danger to the child and all options allowing the child and the parent or legal guardian to remain in the home together were exhausted. With a proper authorization agreement, a parent can give an adult caregiver of a child placed under a PCSP the authority to take action, including but not limited to medical consent, school enrollment, consent for participation in school and sport events, applying for public benefits, and related authority. Tex. Fam. Code §§ 34.002, 34.0021, 264.902. For a school-age child, a PCSP agreement must include a letter provided by DFPS that contains the address of the child's residence during the PCSP, which has the effect of establishing residency for purposes of admission into the local public school. Tex. Fam. Code § 264.902(a-1); Tex. Educ. Code § 25.001(c-3).

Before a parent may enter into a PCSP, DFPS must notify the parent of their right to counsel and give them a reasonable amount of time to consult an attorney. PCSPs automatically terminate after 30 days, and DFPS may enter into not more than two 30-day extensions. Upon entering a PCSP agreement, DFPS must inform the parent of their right to refuse to enter into the agreement and to be represented by an attorney or a court-appointed attorney, if indigent and if DFPS seeks a subsequent court order. DFPS may not place a child in a PCSP for longer than 90 days unless both the parent and their attorney sign the agreement, or a court renders an order under Tex. Fam. Code Chapter 262. Tex. Fam. Code § 264.902.

For more information on PCSPs, *see* CPS Policy Handbook §§ 3210-3215 and 6380.[7]

> **Practice Tip**: Attorneys representing parents and children in child welfare matters may consider subscribing to receive DFPS policy updates on PCSPs and all other CPS related policy updates.[8]

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6 CPS Policy Handbook §2400. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2400. Last visited on August 12, 2025.

7 CPS Policy Handbook §§ 3210-3215. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_3200.asp#CPS_3210; CPS Policy Handbook § 2400. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2400. Last visited on August 12, 2025.

8 DFPS Email & Text Updates. Available online at https://public.govdelivery.com/accounts/TXDFPS/subscriber/new. Last visited on January 12, 2026.

There is a Safety Issue, but the Family is Unwilling to Participate in Services

COURT ORDER FOR REQUIRED PARTICIPATION IN SERVICES/ MOTION TO PARTICIPATE (COS/MTP)

If a family has refused services or is not voluntarily cooperating with services provided or funded by DFPS, DFPS can seek a court order to require a parent to participate in services designed to alleviate the effects of abuse or neglect or to reduce the reasonable likelihood of abuse or neglect in the immediate or foreseeable future. The services ordered by the court are provided by FBSS. A parent's failure to comply with court ordered services may lead to DFPS filing a petition to remove a child and may be offered as evidence. *See* CPS Policy Handbook § 2414 for more information on referrals to Court Ordered FBSS. *See also*, the *Required Participation in Services* section of this toolkit.[9]

The Parent is a Victim of Family Violence

ORDER FOR REMOVAL OF AN ALLEGED PERPETRATOR ("KICK-OUT ORDER")

It is well established that separating a child from their home and caregiver can be traumatizing. If an alleged perpetrator will not voluntarily leave the home and if the remaining parent or caretaker of the child will make a reasonable effort to monitor and report any attempt by the alleged perpetrator to return to the home, a temporary restraining order could be used to remove the alleged perpetrator. It is a Class A Misdemeanor to violate this temporary restraining order. This order lasts for 14 days. Tex. Fam. Code § 262.1015. This timing allows a protective parent time to initiate a custody suit or seek a protective order.

An alleged perpetrator can also agree to a Kick-Out Order. The agreed order may not be used against an alleged perpetrator as an admission of child abuse or neglect, and it is only enforceable civilly or criminally, but it is not enforceable as a contract. The person affected by an agreed order may request that the court terminate the order. The court must terminate the agreed order upon a finding that the order is no longer needed and that terminating the order is in the best interest of the child. Tex. Fam. Code § 262.1016.

> **Practice Tip**: If the protection of the child requires an order lasting longer than 14 days, a protective order can be requested. (*See* section immediately below.) This requires a separate application to be filed instead of, or in addition to, the Kick-Out Order.

9 CPS Policy Handbook § 2414. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2414. Last visited on August 12, 2025.

Practice Tip: If a client is uncertain about whether to seek a protective order or a temporary restraining order, consider filing for both the temporary restraining order and the protective order at the same time in order to only have to complete service on the alleged perpetrator once. The protective order hearing can always be passed if it is not necessary, and the temporary restraining order expires in 14 days. Current law allows the temporary Ex Parte Protective Order to last up to 20 days with the ability to extend its duration for an additional 20 days at a time. Tex. Fam. Code § 83.002.

PROTECTIVE ORDERS

Domestic violence is often a presenting issue in child welfare cases. If a parent is a victim of domestic violence, parents' attorneys may want to consider filing for a protective order on behalf of their client to help demonstrate their protective capacity. Children's attorneys may also consider filing for a protective order if the child is a victim.

Filing

Any adult, including a parent or guardian, who is acting on behalf of a victim of an offense under Tex. Penal Code §§ 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.012, 42.072, or 43.05 may file an application for a protective order if the victim is younger than 18 years of age. Tex. Code Crim. Proc. art. 7B.001. A prosecuting attorney acting on behalf of the victim or adult who is acting on behalf of the victim may also file an application.

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).

Parent's Attorney Practice Tip: The county prosecutor (criminal district attorney or county attorney) will file the application for protective order at no cost on behalf of the applicant. If the county prosecutor also represents DFPS in a suit against the applicant, the prosecutor is not prohibited from filing the application, subject to the Texas Disciplinary Rules of Professional Conduct. However, the county prosecutor is not required to file the protective order if they find it to be a conflict or it does not meet their qualifications for filing. Advise a client to exercise caution in sharing information in applying for a protective order that might be used as evidence in the child welfare case.

Temporary Ex Parte Protective Orders

While awaiting a protective order hearing, temporary ex parte orders issued can prohibit an alleged perpetrator of domestic violence from doing certain acts (such as causing emotional and physical abuse of the child) or going near the child or residence. DFPS can file such orders alone or jointly with another protective person.

If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, it may, without further notice or hearing, enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household. Tex. Fam. Code § 83.001. 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. The temporary ex parte order is valid for no more than 20 days and may be extended by additional 20-day periods. Tex. Fam. Code § 83.002.

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 in which a protective order issued under Tex. Fam. Code Title 4, Subtitle B is valid and subject to transfer, including a temporary ex parte order, the order prevails over any other order rendered in a suit for dissolution of a marriage under Tex. Fam. Code Chapter 6 or a suit affecting the parent-child relationship under Tex. Fam. Code Title 5 to the extent of any conflict between the orders. Tex. Fam. Code § 81.012.

Required Findings for Issuance of Protective Order

A victim of family violence may be issued a protective order upon a finding that family violence has occurred. Tex. Fam. Code § 85.001. Except as otherwise provided by statute, a protective order is effective for the period stated in the order, not to exceed two years or, if not stated in the order, until the second anniversary of the date the order was issued. Tex. Fam. Code § 85.025.

Upon a finding that there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking, a court shall issue a protective order including a statement of the required findings. Tex. Code Crim. Proc. art. 7B.003. An offender's conviction of or placement on deferred adjudication community supervision for any of the above offenses constitutes reasonable grounds. Tex. Code Crim. Proc. art. 7B.003.

Obtaining a protective order does not require proof of any visible marks or bruises and, in a hearing for a protective order, a statement made by a child 12 years old or younger describing alleged family violence is admissible in the same manner as provided by Tex. Fam. Code § 104.006. Tex. Fam. Code § 84.006.

In a hearing on application for a protective order under Tex. Code Crim. Proc. Chapter 7B, a statement that is made by a child younger than 14 years of age who is the victim of an offense under Tex. Penal Code §§ 21.02, 21.11, 22.011, 22.012, or 22.021 that describes the offense committed against the child is admissible as evidence in the same manner that a child's statement regarding the abuse against the child is admissible under Tex. Fam. Code § 104.006. Tex. Code Crim. Proc. art. 7B.004.

A protective order for the protection of a child may be issued by a court if the court finds that there are reasonable grounds to believe that the child is the 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(a).

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.

Duration

The temporary ex parte protective order may be issued for up to 20 days and may be extended for additional 20-day periods. Tex. Fam. Code § 83.002. After notice and hearing, a court may issue a protective order. 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 more than two years if the court makes certain findings about the person who is the subject of the protective order. *See* Tex. Fam. Code § 85.025(a-1). Additionally, an application for protective order may be renewed. Tex. Fam. Code §§ 82.008, 82.0085.

A protective order issued under Tex. Code Crim. Proc. 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. A parent or guardian may not file an application to rescind the protective order if the parent or guardian is the alleged offender subject to the protective order. Tex. Code Crim. Proc. art. 7B.007.

The court shall issue a lifetime protective order if the offender is:

- Convicted of or placed on deferred adjudication community supervision for an offense listed in Tex. Code Crim. Proc. art. 7B.001(a)(1); and
- Required to register for life as a sex offender under Tex. Code Crim. Proc. art. 62. Tex. Code Crim. Proc. art. 7B.007(a-1).

Enforcement

A violation of a protective order is a criminal offense. Tex. Fam. Code § 85.026; Tex. Code Crim. Proc. art. 7B.006.

***Note**: Trial courts rendering a protective order exceeding two years against a parent must (1) make the requisite findings using a clear and convincing standard and (2) consider the child's best interest. Stary v. Ethridge, 712 S.W.3d 584, 595-596 (Tex. 2025).*

At a Glance

	Required Participation	Adversary Hearing	Status Hearing	Permanency Hearing Before Final Order	Permanency Hearing After Final Order
Hearing set timely	14 days	14 days	60 days	1st at 180 days, thereafter, 120 days	180 days, except 1st at 90 days if TPR
Court of Continuing, Exclusive Jurisdiction	No	Yes	No	Yes	No
Child AAL and GAL appointed	Required before Temporary Orders Hearing (AAL only)	No later than 14-day Hearing	Required before 14-day Hearing	Yes	Yes, AAL or GAL or attorney in dual role required as long as child remains in DFPS conservatorship
Parent Attorney appointed	Required before Temporary Orders Hearing	Yes	Yes	Yes	No
Notice of Hearing	Yes	Yes	Yes	Yes	Yes
Court Report filed and provided	Not Required	Yes	Yes	Yes	Yes
Identify all parties and swear witnesses	Yes	Not Required	Not Required	Yes	Yes
Inquire about absent parties	Yes	Yes	Yes	Yes	Yes
Inquire about diligent efforts	No	Yes	Yes	Yes	No
Address service on parties	Yes	Yes	Yes, if outstanding	Yes, if outstanding	No
Address parentage issues	No	Yes	Yes, if outstanding	Yes, if outstanding	No
Issue orders regarding service	Yes	Yes	Yes, if outstanding	Yes, if outstanding	No
Admonish parents of right to attorney	Yes	Yes	Yes	Yes	No
Confirm rights and information provided to AP	No	Yes	No	No	No
Admonish parents of TPR	No	Yes	Yes	Yes	No
Aggravated circumstances	No	Yes	No	No	No
Inquire about and document Indian heritage	No	Yes	Yes	Yes	No, unless new information
Indian Child Welfare Act, if applicable	No	Clear and convincing, expert testimony	Active efforts	Active efforts	No
Child Placement Resources Form	No	Yes	Yes, if outstanding	No	No
Child asked about potential placements	No	Yes	Yes	Yes	Yes
Initial Home Studies on file	No	Yes	Yes	No	No
Child present	No	No	No	Yes	Yes

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	Required Participation	Adversary Hearing	Status Hearing	Permanency Hearing Before Final Order	Permanency Hearing After Final Order
If AAL hasn't seen client, determine good cause	Yes	Yes	Yes	Yes	Yes
Review current and alternative placement	No	Yes	Yes	Yes	Yes
Determine if able to place with relative, cite evidence	No	Yes	Yes	Yes	No
If with relative, inform about PCA	No	Yes	Yes	Yes	Yes
Temporary Visitation Plan on file	No	Yes	No	No	No
Review Visitation Plan	No	No	Yes	Yes	Yes
Service Plan development	Yes	No	Yes	No	No
Review Service Plan	Yes	No	Yes	Review Compliance	Review Compliance
Review permanency goal	No	No	No	Yes	Yes
Review education goals, progress, and needs	No	No	If needed	Yes	Yes
Education Decision-Maker identified	No	No	Yes	Yes	Yes
Review medical care	No	No	Yes	Yes	Yes
Medical Consenter identified	No	Yes	Yes	Yes	Yes
Child's opinion on medical care known	No	No	No	Yes	Yes
Normalcy activities	No	No	No	Yes	Yes
Reasonable Efforts findings required	No	Yes (prevent removal, return the child home, or place with a non-custodial parent)	Yes (Service Plan requirements)	Yes (execution of Permanency Plan)	Yes (execution of Permanency Plan)
Determine dismissal date	Yes	Yes	Yes	Yes	No
Transitional Living Plan on file if child is 16 or older	N/A	No	No	No	Yes
Independent Living Skills Assessment conducted, if required	N/A	No	No	Yes	Yes
Review Extended Jurisdiction	N/A	No	No	No	Yes
Set next hearing	Yes	Yes	Yes	Yes	Yes
Issue order and provide to parties	Yes	Yes	Yes	Yes	Yes

Required Participation in Services

Required Participation in Services cases may also be referred to as a Court Ordered Services (COS), a Motion to Participate (MTP), or an Order to Participate (OTP) case, depending on local practice.

STATUTE

Tex. Fam. Code § 264.203

PURPOSE

To determine whether the family is in need of services to address allegations of abuse and neglect and if those services aim to alleviate the continuing danger to the child.

STANDARD OF PROOF

Evidence sufficient to satisfy a person of ordinary prudence and caution. Tex. Fam. Code § 264.203(m).

Requirements for Filing a 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 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).

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).

Appointment of Counsel

Immediately after the filing of a petition for court ordered services but before the 14-day hearing, the court must appoint counsel for the child(ren) and counsel for a parent for whom participation in services is requested. 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). The court is not required to appoint an attorney for a parent who is not asked to participate in services or any non-parent who is asked to participate in services. Tex. Fam. Code § 264.203(h).

> **Parent's Attorney Practice Tip**: Attorneys should review and complete the affidavit of indigency with their client prior to the initial hearing. A completed affidavit can help avoid continuances or other delays in the client's case.

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.

If a parent is found 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 postpone any subsequent proceeding for up to seven days after discharge to allow the parent time to hire counsel or to provide the parent's attorney time to prepare for the subsequent hearing. Tex. Fam. Code § 264.203(k).

> **Parent's Attorney Practice Tip**: Pursuant to Tex. R. Civ. P. 131, if the client prevails at the temporary orders hearing, court-appointed attorneys for parents who are determined not to be indigent might consider asking for a judgment against DFPS in the amount of the cost for their court-appointed representation.

Ex Parte Orders Prohibited

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

14 Day Hearing

The court must set a hearing no later than 14 days after the date the petition was filed unless the court finds good cause to extend that date for not more than 14 days. Tex. Fam. Code § 264.203(f).

REQUIRED SHOWING

At the conclusion of the hearing, the court must deny the petition unless the court finds:

- An act or failure to act of the parent, managing conservator, guardian, or other member of the child's household resulted in:
  - abuse or neglect of the child; or
  - a substantial risk of abuse or neglect to the child; or
  - continuing danger to the physical health or safety of the child; and
- Services are necessary to ensure the physical health or safety of the child.

Tex. Fam. Code § 264.203(m).

REQUIRED COURT ACTION

Before the hearing begins, the court must inform each parent of their right to an attorney and to a court- appointed attorney, if indigent. Tex. Fam. Code § 264.203(i).

If DFPS meets their required showing, 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 except that the court may not issue a temporary order that places the child outside of the home or in the conservatorship of DFPS; and
- Order the participation in specific services narrowly tailored to address the findings made by the court.

Tex. Fam. Code § 264.203(n).

The court may not require a parent to participate in services if that parent/party did not cause the alleged abuse or neglect, the substantial risk of abuse or neglect, or the continuing danger to the child.

A parent, managing conservator, guardian, or other member of a household ordered to participate in services may obtain those services from a qualified provider selected by the person. Tex. Fam. Code § 264.2031(a). A managing conservator, guardian, or other member of a household who is not a parent is responsible for the cost of those services. Tex. Fam. Code § 264.2031(b). An individual who successfully completes the services ordered under Tex. Fam. Code § 267.203(a) must obtain verification from the service provider of that completion, and DFPS must accept the provider's verification as proof of completion. Tex. Fam. Code § 264.2031(c).

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. Tex. Fam. Code § 264.203(p).

Safety Plans

A family in a court ordered services case may already have a Safety Plan with DFPS as part of the investigation or ongoing FBSS case and the status of the Safety Plan may become an issue in the court- ordered services case. (*See* the *Investigations & Alternatives to Removal* section of this toolkit for more information on DFPS Safety Plans.)

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. Tex. Fam. Code § 264.203(n) provides that if a court renders an order granting DFPS' petition the court shall "make appropriate temporary orders under Tex. Fam. Code Chapter 105 necessary to ensure the safety of the child…."

Tex. Fam. 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;
- 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.

> **Practice Tip**: 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. These orders would be limited to 180 days pursuant to Tex. Fam. Code § 264.203(q) unless extended pursuant to Tex. Fam. Code § 264.203(r) or (s).

Review Hearings

STANDARD OF PROOF

Preponderance of the evidence. Tex. Fam. Code § 105.005

REQUIRED COURT ACTION

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).

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

> **Parent's Attorney Practice Tip**: Once a client has completed services, a motion for dismissal can be filed immediately rather than waiting to address the issue at the next statutorily required review hearing.

Extension

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; and
- DFPS made a good faith effort to timely provide the services to the person; and
- The person made a good faith effort to complete the services; and
- The completion of the services is necessary to ensure the physical health and safety of the child; and
- The extension is requested by the person or the person's attorney.

Tex. Fam. Code § 264.203(s).

Ex Parte Hearings

Ex Parte Order Prior to Removal of Child

STATUTE

Tex. Fam. Code §§ 262.101, 262.102

PURPOSE

To determine whether a court will authorize the removal of a child from their home without prior notice and hearing, and grant DFPS TMC of the child to eliminate the threat of an immediate danger to the physical health or safety of the child until an adversary hearing can be held.

To obtain removal, DFPS must include in its removal affidavit a statement that the child would not be adequately protected by a kick-out order of the perpetrator, by a protective order, or by placement with a relative or designated caregiver under a PCSP because it was refused, not possible, or that placement would pose an immediate danger to the physical health or safety of the child.

Additionally, the removal affidavit must describe all reasonable efforts that were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.101(b).

STANDARD OF PROOF

Evidence sufficient to satisfy a person of ordinary prudence and caution. Tex. Fam. Code § 262.101.

BEST INTEREST

Best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002.

INDIAN CHILD WELFARE ACT (ICWA)

A court can order emergency removal of an "Indian child" only if necessary "to prevent imminent physical damage or harm to the child." 25 C.F.R. § 23.113(d). This must be followed by a noticed hearing where DFPS must prove by clear and convincing evidence, including testimony from a Qualified Expert Witness (QEW), that a "foster care placement" is warranted. This hearing cannot be held until 10 days after notice of ICWA has been provided and is subject to a 20-day extension on request of a parent or Tribe.

Continuing an Ex Parte Hearing to Comply with ICWA Notice Requirement

An ex parte proceeding should not be continued for more than 30 days unless the court finds:

- Returning the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
- The court has been unable to transfer the proceeding to the appropriate Tribe; and
- It has not been possible to initiate a "child-custody proceeding" as defined by 25 C.F.R. § 23.2.

2 C.F.R. § 23.113(e).

Termination of Ex Parte Removal Under ICWA

An ex parte removal can be terminated on the following actions:

- Filing of a child-custody proceeding subject to the provisions of ICWA;
- Transfer of the case to the Tribe's jurisdiction; or
- Return of the child to the parent or Indian custodian.

25 C.F.R. § 23.113(c).

If a party asserts or the court has reason to believe an "Indian child" may have been improperly removed or retained, the court must expeditiously determine whether there was improper removal or retention. If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to their parent or Indian custodian, unless returning the child would subject the child to "substantial and immediate danger or threat of such danger." 25 C.F.R. § 23.114.

If a Tribe confirms (or a court finds) that a child is an "Indian child," please *see* the *Indian Child Welfare Act* section of this toolkit for information on how ICWA requirements will affect the case going forward.

RECORD REQUIRED

Ex parte hearings under Tex. Fam. Code Chapter 262 must be recorded by either audio, video, or court reporter transcription. The court must provide a copy of the recording to a party upon request, and DFPS must provide notice of the hearing to the parent's attorney, if represented.

Tex. Fam. Code § 262.206.

REQUIRED SHOWING FOR EX PARTE ORDER BEFORE REMOVAL HEARING

DFPS must submit sufficient evidence to prove:

- Either an immediate danger to the physical health or safety of the child, or that the child has been a victim of neglect or sexual abuse*;
- The child would not be adequately protected in the home with an order for the removal of the alleged perpetrator or a protective order issued under Tex. Fam. Code §§ 262.1015 or 262.1016;
- Placing the child with a relative or designated caregiver or with a caregiver under a PCSP was refused, not possible, or would pose an immediate danger to the child;
- That continuation in the home would be contrary to the child's welfare; and
- That there is no time, consistent with the child's physical health or safety and the nature of the emergency, to hold an adversary hearing; and
- That reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal.

Tex. Fam. Code § 262.102.

* This determination may not be based solely on the opinion of a medical professional under contract with DFPS who did not conduct a physical examination of the child. Tex. Fam. Code § 262.102(b-1).

DEFINITION OF "HOME"

The federal Administration for Children and Families defines "home" as the adult from whom the child is legally removed. In other words, home means parental custody, not physical location. The definition of "home" does not change regardless of where the child is living.

REQUIRED COURT ACTION

If the court finds that DFPS made the required showing, the court must:

- Issue an ex parte order for protection of the child that includes a description of all reasonable efforts made to prevent or eliminate the removal and the substantial risk of a continuing danger if the child is returned home pursuant to Tex. Fam. Code § 262.102(e);
- Appoint an attorney ad litem and a guardian ad litem for the child. Tex. Fam. Code §§ 107.012, 107.011;
- Appoint an authorized medical consenter for the child. Tex. Fam. Code § 266.004(b); and
- Set the Adversary Hearing within 14 days, unless the court finds good cause to postpone the hearing pursuant to Tex. Fam. Code § 262.201(a).

Practice Tip: Attorneys for parents and children are not required to be appointed prior to the Ex Parte Hearing and their attendance is not required at the hearing. However, in some circumstances an attorney may already be appointed when an Ex Parte hearing takes place. This may occur if the attorney was appointed as part of a Court Ordered Services case under Tex. Fam. Code § 264.203 and a new referral alleging abuse or neglect is the reason DFPS is seeking removal, or if DFPS is seeking to remove a child born during the pendency of an existing case filed under Tex. Fam. Code Chapter 262. If a parent's or a child's attorney is appointed or retained prior to the Ex Parte Hearing, they may prepare and file a response with controverting affidavits and participate in the Ex Parte Hearing. The attorney should conduct an independent evaluation of the basis for the removal, rather than relying solely upon DFPS for information.

Ex Parte Order After Emergency Removal of Child Without a Court Order

STATUTES

Tex. Fam. Code §§ 262.104, 262.105, 262.106, 262.107

PURPOSE

There are limited circumstances when an authorized DFPS representative, law enforcement officer, or juvenile probation officer may take possession of a child without a court order. Tex. Fam. Code § 262.104.

DFPS must then file a petition and affidavit with the court no later than the next business day to make an ex parte request for TMC of the child until an adversary hearing can be held. Tex. Fam. Code § 262.105. DFPS must include in its removal affidavit a statement that the child would not be adequately protected by a kick-out order of the perpetrator, by a protective order, or by placement with a relative or designated caregiver under a PCSP because it was refused, not possible, or that placement would pose an immediate danger to the physical health or safety of the child. Additionally, the removal affidavit must describe all reasonable efforts that were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.105(c).

The court must hold an Ex Parte Hearing on or before the first business day after the child is removed. Tex. Fam. Code § 262.106.

DFPS must meet the required evidentiary showing for the court to grant emergency TMC. Tex. Fam. Code § 262.107.

STANDARD OF PROOF

Evidence sufficient to satisfy a person of ordinary prudence and caution.

BEST INTEREST

Best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002.

ICWA

A court can order emergency removal of an "Indian child" only if necessary "to prevent imminent physical damage or harm to the child." 25 C.F.R. § 23.113 (d). This must be followed by a noticed hearing where DFPS must prove by clear and convincing evidence, including QEW testimony, that a "foster care placement" is warranted. This hearing cannot be held until 10 days after notice of ICWA has been provided and is subject to a 20-day extension on request of a parent or Tribe.

Continuing an Ex Parte Hearing to Comply with ICWA Notice Requirement

An ex parte proceeding should not be continued for more than 30 days unless the court finds:

- Returning the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
- The court has been unable to transfer the proceeding to the appropriate Tribe; and
- It has not been possible to initiate a "child-custody proceeding."

25 C.F.R. § 23.113(e).

Termination of Ex Parte Removal Under ICWA

An ex parte removal will terminate on the following conditions:

- Filing of a child-custody proceeding,
- Transfer of the case to the Tribe's jurisdiction, or
- Return of the child to the parent or Indian custodian.

25 C.F.R. § 23.113(c).

If a party asserts or the court has reason to believe an "Indian child" may have been improperly removed or retained, the court must expeditiously determine whether there was improper removal or retention. If the court finds that the Indian child was improperly removed or retained, the court must terminate the proceeding and the child must be returned immediately to their parent or Indian custodian, unless returning the child would subject the child to "substantial and immediate danger or threat of such danger." 25 C.F.R. § 23.114.

If a Tribe confirms (or a court finds) that a child is an "Indian child," please *see* the *Indian Child Welfare Act* section of this toolkit for information on how ICWA requirements will affect the case going forward.

RETURN OF THE CHILD

The child must be returned to the parent or guardian if the initial hearing is not timely held. Tex. Fam. Code § 262.106(c). For the purposes of determining the first business day after 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 under Tex. Fam. Code §§ 262.007(c) or 262.110(b). Tex. Fam. Code § 262.106(d).

REQUIRED SHOWING

DFPS must submit sufficient evidence to prove:

- One of the following circumstances exist:
    - There is a continuing danger to the physical health or safety of the child; or
    - That the child has been a victim of neglect or sexual abuse and is a substantial risk of future sexual abuse or trafficking; or
    - The parent's use of a controlled substance constitutes an immediate danger to the physical health and safety of the child; or
    - The child has been permitted to remain on the premises used for the manufacture of methamphetamine; and
- The child would not be adequately protected in the home with an order for the removal of the alleged perpetrator or a protective order issued under Tex. Fam. Code §§ 262.1015 or 262.1016;
- Placing the child with a relative or designated caregiver or with a caregiver under a PCSP was refused, not possible, or would pose an immediate danger to the child.
- That continuation in the home would be contrary to the child's welfare; and
- That reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal.

Tex. Fam. Code § 262.107.

REQUIRED COURT ACTION

If the court finds that DFPS made the required showing the court must:

- Issue an ex parte order for protection of the child that includes a description of all reasonable efforts made to prevent or eliminate the removal and the substantial risk of a continuing danger if the child is returned home pursuant to Tex. Fam. Code § 262.107;
- Appoint an attorney ad litem and a guardian ad litem for the child. Tex. Fam. Code §§ 107.012, 107.011;

- Appoint an authorized medical consenter for the child. Tex. Fam. Code §266.004(b); and
- Set the Adversary Hearing within 14 days, unless the court finds good cause to postpone the hearing pursuant to Tex. Fam. Code § 262.201(a).

RECORD REQUIRED

Ex parte hearings under Tex. Fam. Code Chapter 262 must be recorded by either audio, video, or court reporter transcription. The court must provide a copy of the recording to a party upon request, and DFPS must provide notice of the hearing to the parent's attorney, if represented. Tex. Fam. Code § 262.206.

Obligations of DFPS Following the Removal of a Child

WRITTEN NOTICE

As soon as practicable, but no later than the first business day after a child is taken into possession by the department or other agency, DFPS must give written notice to each parent of the child or the child's conservator or legal guardian of a child stating:

- The reasons why the department or agency is taking possession of the child and the facts that led the department to believe that the child should be taken into custody;
- The name of the person that the person, conservator, or other custodian may contact for information relating to the child or a legal proceeding relating to the child;
- A summary of legal rights of a parent, conservator, guardian, or other custodian under Tex. Fam. Code Chapter 262 and an explanation of the probable legal procedures relating to the child; and
- A statement that the parent, conservator, or other custodians have a right to hire an attorney.

Tex. Fam. Code § 262.109(a)-(c).

The written notice may be waived by the court at the initial hearing, on a showing that the parents, conservators, or other custodians of the child could not be located, or that the department took possession of the child under Tex. Fam. Code Chapter 262, Subchapter D, or for other good cause. Tex. Fam. Code § 262.109(d).

EVALUATION OF IDENTIFIED RELATIVES AND OTHER DESIGNATED INDIVIDUALS

Before an adversary hearing, DFPS must perform a background and criminal history check of 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, including any adult identified by the child. The department shall evaluate each person listed on the form to determine the relative or other designated individual who would be most appropriate substitute caregiver for the child and must complete a home study of the most appropriate substitute caregiver, if any, before the Adversary Hearing. The department must continue to explore substitute caregiver options until the department identifies a relative or other designated individual who is qualified to be a substitute caregiver for the child. Tex. Fam. Code § 262.114(a).

SCHOOL ENROLLMENT

If DFPS takes possession of a child under Tex. Fam. Code Chapter 262 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).

***Note**: Under state and federal law, a child should remain in their school of origin unless it is not in their best interest. The school of origin is the school in which a child is enrolled at the time of placement in foster care. If a child's foster care placement changes, the school of origin is then considered the school in which the child is enrolled at the time of the placement change. See Tex. Educ. Code § 25.001(g) and (g-1). The decision on whether to enroll a child in their school of origin must be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. 20 U.S.C. § 6311(g)(1)(E)(i). For more information about the education of students in foster care, see the Texas Foster Care & Student Success Resource Guide.*[10]

TEMPORARY VISITATION SCHEDULE

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 TMC 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).

Before the Adversary Hearing, DFPS in collaboration with each parent of the child must develop a temporary visitation schedule for the child's visits with each parent and, unless modified by the court, the schedule remains in effect until a visitation plan is developed under Tex. Fam. Code § 263.107. Tex. Fam. Code § 262.115(d). The temporary visitation schedule may be included in any report DFPS submits to the court before or during the Adversary Hearing. Tex. Fam. Code § 262.115(e).

3-DAY MEDICAL EXAM

If the child is removed as a result of sexual abuse, physical abuse, or an obvious physical injury to the child or has a chronic medical condition, a medically complex condition, or a diagnosed mental illness, DFPS shall ensure that a child who has been taken into the conservatorship of DFPS and remains in the conservatorship of DFPS for more than three business days receives an initial medical examination from a physician or other health care provider not later than the third business day after the date the child is removed from the child's home. Tex. Fam. Code § 264.1076.

10 Texas Foster Care & Student Success Resource Guide. Available online at https://tea.texas.gov/special-populations-and-support/foster-care-and-student-success/2022-fcss-resource-guide.pdf. Last visited on July 2, 2026.

INITIAL TEXAS HEALTH STEPS CHECKUP

DFPS shall ensure that child receives an initial Texas Health Steps medical checkup within 30 days after the child enters DFPS conservatorship. 40 Tex. Admin. Code § 749.1151(a); CPS Policy Handbook § 11212.[11] The law requires that all children three or older, and CPS policy requires that all children six months of age or older, have an initial dental exam scheduled within 30 days after placement in DFPS conservatorship. 40 Tex. Admin. Code § 1153; CPS Policy Handbook § 11213.[12]

DESIGNATION OF MEDICAL CONSENTER

Not later than the fifth business day after the date the court provides authorization to DFPS or an agent of DFPS to consent to medical care, DFPS shall file with the court and each party the name of the individual who will exercise the duty and responsibility of providing consent on behalf of DFPS and must file notice of any subsequent change of the individual designated to consent to medical care not later than the fifth business day after the date of the change. Tex. Fam. Code § 266.004(c).

> **Practice Tip**: The fact that a child has been removed from their home does not necessarily preclude a parent from making sound medical decisions for their child. Under Tex. Fam. Code § 266.004, the court may authorize a parent to consent to medical care for a child in foster care, if the parent's rights have not been terminated and the court determines that it is in the best interest of the child to allow the parent to make medical decisions on behalf of the child. Additionally, if DFPS or an agent of DFPS is authorized by the court to consent to medical care of a child in foster care, DFPS may designate the child's parent, if the parent's rights have not been terminated, to exercise the duty and responsibility of providing consent on behalf of DFPS. Tex. Fam. Code § 266.004(c). Attorneys should inform parent clients of these options and advocate both with the court and DFPS according to their client's wishes.

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[11] CPS Policy Handbook § 11212. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x11200.asp#CPS_11212. Last visited on December 5, 2025.

[12] CPS Policy Handbook § 11213. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x11200.asp#CPS_11213. Last visited on December 5, 2025.

Adversary Hearings

STATUTE

Tex. Fam. Code § 262.201

PURPOSE

To determine whether a court will authorize continued TMC of a child to DFPS.

TIMING

The hearing must be held not later than the 14th day after the date the child was taken into possession unless the court grants an extension. Tex. Fam. Code § 262.201(a).

STANDARD OF PROOF

Evidence sufficient to satisfy a person of ordinary prudence and caution.

BEST INTEREST

The best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002. At the Adversary Hearing, courts must place a child who is removed with a relative unless placement is not in the best interest of the child. Tex. Fam. Code § 262.201(n).

ICWA

The court must ask whether the child or family has Native American heritage and identify any Tribe at the Adversary Hearing. Tex. Fam. Code § 262.201(f). DFPS must give notice to any identified Tribe and request that the Tribe confirm or deny the child's status as an Indian child.

If a Tribe confirms (or a court finds) that a child is an "Indian child," please *see* the *Indian Child Welfare Act* section of this toolkit for information on how ICWA requirements will affect the case going forward.

PARENT'S ATTORNEY PREPARATION

- Determine whether DFPS provided the required written and verbal notification of rights to the parents prior to interviewing them.
- File any pleadings necessary to enable the court to enter orders in accordance with the client's wishes, including placement with a relative.
- Determine whether a court of continuing jurisdiction exists and whether ICWA applies to the child, even if the client is not the Indian parent.
- Determine if additional time is necessary to adequately prepare for the hearing and file any necessary motions for continuance.
- Determine whether appropriate relatives or fictive kin are able to care for the child and request home assessments be completed before the hearing.
- Determine if there is a probable or pending criminal case as a result of the facts surrounding the DFPS case and advise the client of their Fifth Amendment right against self-incrimination in testifying at the hearing, discussing the case with other parties, and in participating in court- ordered or recommended services.
- Review and assess evidence.
- Meet with the parent in a confidential setting to review and assess the evidence together.

- Advise the parent of their right to a full contested adversary/evidentiary hearing on DFPS' request for TMC.
- Determine if the client has any disabilities or special needs that must be accommodated in order to actively participate in the hearing.
- Determine if a language barrier exists.
- Determine whether domestic violence is an issue in the family, and whether it is known to DFPS.
- Make a request of the prosecutor pursuant to Tex. Fam. Code § 262.014 to provide names of witnesses DFPS intends to call (other than DFPS employees), a copy of any offense report to be used to refresh a witness's testimony, and a copy of any photo, video or recording to be presented as evidence; and subpoena any necessary witnesses and documents for the adversary/evidentiary hearing.
- Determine what options may exist for services through non-DFPS providers – i.e., the client is participating in substance abuse treatment through probation, mental health services through county or private providers, domestic violence services through a non-profit agency, etc.
- Determine whether the parent has other children who are not subject of the suit, or who live with the parent.

Parent's Attorney Practice Tip: Your parent client may be focused exclusively on concerns for their children and the circumstances of removal and therefore may have difficulty understanding the long-term consequences of the decisions that they may be making at the outset of the case. The *Trauma-Informed Lens for Interacting with Clients* section of this toolkit may be of assistance in helping discuss long-term implications of the Adversary Hearing.

Practice Tip: Consider whether the following issues should be contested at the Adversary Hearing:

- There is not an immediate danger to the child – i.e., DFPS waited a substantial period of time between the incident that forms the basis of the referral and the removal and circumstances have changed in the meantime that reduce or eliminate the danger.
- DFPS did not make reasonable attempts to prevent or eliminate the need for removal – i.e., demand that the offending parent leave the home, place the child with a non-custodial parent, etc.
- The non-custodial parent is suitable and placement with that parent would not be against the best interest of the child.
- There is a suitable relative or fictive kin available to care for the child, but DFPS is opposed to the placement.
- Conservatorship or placement are not contested issues, but the parent is opposed to one or more of the recommended services or to the proposed visitation plan.

UNKNOWN OR ABSENT PARENT'S ATTORNEY PREPARATION

Determine whether the other parties know the identity and/or whereabouts of the parent. Note that when asked by DFPS for the address of the missing parent, the responding parent may say "I don't know." However, the responding parent may know where the family of the absent parent lives, or know how to get to their home, even if they do not know the exact address. Additionally, the responding parent may not want the other parent involved, but the parent's attorney should explore why that is so and explain that for purposes of temporary orders, it might be preferable for the child to be with the other parent or their family rather than in foster care.

- Use due diligence to locate the client and submit a report to the court, stating either that the client has been located and provide the location information or that after due diligence the client could not be found. Make sure to report what efforts were made to locate the client.
- If the parent is an alleged father, determine whether he is an acknowledged or adjudicated father and, if not, whether he wants to be adjudicated or is requesting paternity testing.

> **Practice Tip**: Attorneys representing a father whose location or identity are unknown should consider asking the child's mother whether she is receiving child support or benefits such as Medicaid or food stamps, as the receipt of benefits may trigger the filing of an Office of the Attorney General (OAG) paternity suit. The existence of a paternity suit may provide identity and contact information for a father whose location or identity are currently unknown.
>
> Also consider asking the child's mother if she has ever been married and, if so, whether she has obtained a divorce or when she last resided with her husband. Additional issues may arise, and genetic testing may be necessary if a presumed father exists, and the alleged father wishes to be adjudicated as the father.

CHILD'S ATTORNEY PREPARATION

- Visit the child in the child's placement. If there is no time to visit the child before the hearing, request a reset of the hearing in order to make the required visit;
- If possible, observe a parent-child visit;
- Interview the current caretakers, parents (if allowed by their attorneys), witnesses, and collaterals to be fully knowledgeable about the facts underlying the case;
- Review the rights and duties of a Guardian ad Litem and an Attorney ad Litem under the Texas Family Code;
- Consider all the recommendations that may apply to the parent's attorneys, if appropriate, especially regarding locating absent parents and their relatives. If a parent is not found until late in the case, it may be a lost opportunity to prevent the need for removal, identify family placement options, and can result in delays in permanency;
- Confer with the Court Appointed Special Advocate (CASA), if they are appointed to the case, as they often have valuable information that can assist in the Attorney ad Litem's knowledge of the larger case context.

PARENT'S AND CHILD'S ATTORNEY PREPARATION

Review the *Concurrent Issues*, *Child's Attorney Issues*, and *Parent's Attorney Issues* sections of this toolkit to be prepared to advocate a position on:

- Paternity
- Placement of the Child
- Child Support and Kinship Support
- Visitation
- Child Well-Being
- Reasonable Efforts to Prevent or Eliminate Removal

Child's Attorney Practice Tip: Upon meeting with and interviewing the child, the child may desire to attend court and meet with the judge at the Adversary Hearing. Because the child's attendance at this hearing is not required by statute, consider filing a Motion to Interview Child in Chambers and request that the court schedule a time for the child to be brought to the courthouse or appear remotely prior to the hearing to speak with the judge. This approach can permit the child to express their interests without having to testify in open court. Other parties might oppose this request so the attorney ad litem should be prepared to present an argument to support the request.

COURT MUST CONFIRM REQUIRED NOTICE TO ALLEGED PERPETRATOR WAS PROVIDED

Before commencement of the full adversary hearing, the court shall, in writing and in open court, confirm with an alleged perpetrator that:

- Before interviewing the alleged perpetrator, DFPS informed the person of the person's right to create an audio or video recording of the interview under Tex. Fam. Code § 261.3027 and request an administrative review of the DFPS findings under Tex. Fam. Code § 261.3091; and
- When DFPS first contacted the alleged perpetrator after initiating an investigation of a parent or other person having legal custody of a child, DFPS provided the person with the information required by Tex. Fam. Code § 261.307.

Tex. Fam. Code § 262.2011.

REQUIRED COURT FINDINGS

Findings Regarding the Parent from Whom the Child Was Removed

Tex. Fam. Code § 262.201(g).

The court must return the child to the parent/conservator/guardian/custodian from whom the child was removed unless the court finds:

- There was a continuing danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession (that danger could include that the child would be a victim of trafficking under Tex. Penal Code §§ 20A.02 or 20A.03);

- That continuation in the home would be contrary to the child's welfare;
- The urgent need for protection required immediate removal 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; and
- That reasonable efforts have been made to enable the child to return home, but there is a substantial risk of continuing danger to the child if the child is returned home.

Findings Regarding a Parent Not Involved in the Circumstances Leading to Removal
Tex. Fam. Code § 262.201(g-1).

If the court finds it is not safe to return the child to the parent from whom the child was removed, the court shall consider any other parent, managing conservator, possessory conservator, guardian, caretaker, or custodian as a possible placement.

If the court finds this person did not cause the immediate danger to the physical health or safety of the child or was not the perpetrator of the neglect or abuse alleged in the suit, the court shall order possession of the child by that person unless the court makes specific findings as to each person entitled to possession:

- The person cannot be located after exercise of due diligence by DFPS, or the person is unable or unwilling to take possession of the child; or
- Reasonable efforts have been made to enable the person's possession of the child, but possession by that person presents a continuing danger to the physical health or safety of the child caused by an act or failure to act of the person, including a danger that the child would be a victim of trafficking under Tex. Penal Code §§ 20A.02 or 20A.03.

ADDITIONAL REQUIRED COURT ACTION

Upon making the necessary findings above, the court must enter temporary orders for protection and:

- Include in that order a description of all reasonable efforts made to prevent or eliminate the removal and the substantial risk of a continuing danger if the child is returned home or the reasonable efforts that were made to enable a person's possession of the child; and the continuing danger to the physical health or safety of the child pursuant to Tex. Fam. Code § 262.201(g-2);
- Order placement of the child with a relative unless that is not in the child's best interest. Tex. Fam. Code § 262.201(n);
- Ask all parties about Native American heritage and the identity of any Tribe(s). Tex. Fam. Code § 262.201(f);
- Give parents warning about parental rights, require completion of the Child Placement Resources form, and require all relatives to provide information to locate any absent parent or relative. Tex. Fam. Code § 262.201(l), (m);
- Set a Status Hearing within 60 days of the date TMC is granted. Tex. Fam. Code § 263.201(a);
- 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); and

- Inform relatives serving as placement for a child of the ability to become a licensed foster parent and apply for Permanency Care Assistance (PCA). Tex. Fam. Code § 262.201(n-1).

RENEWING AND EXTENDING THE 14 DAY PERIOD

An adversary hearing must be held within 14 days because the temporary order authorizing emergency removal expires after 14 days in accordance with Tex. Fam. Code § 262.103. However, those orders can be extended before an adversary hearing is held. The temporary orders can be renewed and extended under the following circumstances:

- Upon a showing of good cause (defects in service, allowing time for the attorney for the child to visit with their client, court closure or docketing issues, etc.), an attorney can seek an order to extend the temporary order by up to 14 days and reschedule the hearing. Tex. R. Civ. P. 680;
- If an indigent parent appears in opposition to the suit and the court appoints an attorney, the temporary order can be extended by 7 days, and the court may shorten or lengthen the time of the extension if the parent and the appointed attorney agree in writing [emphasis added]. Tex. Fam. Code § 262.201(e);
- If a non-indigent parent requests time to hire an attorney or to provide a retained attorney time to respond, the temporary order can be extended by 7 days, and the court may shorten or lengthen the time of the extension if the parent and the attorney agree in writing [emphasis added]. Tex. Fam. Code § 262.201(e-1);
- No more than one extension of a temporary order may be granted unless subsequent extensions are unopposed. Tex. R. Civ. P. 680.

Practice Tip: Be mindful of the impact of separation on the child by delaying the Adversary Hearing. Request a reset only for the amount of time necessary to accomplish the required tasks instead defaulting to the maximum 14 days allowed under the Texas Family Code and consider requesting additional visitation time, if appropriate, in the interim.

Practice Tip: Though a court will not lose jurisdiction if the Adversary Hearing is delayed or reset, a parent may seek mandamus to compel the court to hold the hearing. *In re J.M.C.*, 109 S.W.3d 591, 595 (Tex. App.—Fort Worth 2003).

Practice Tip: Consider addressing the following additional issues at the Adversary Hearing:

- Before the service plan can be fully developed and signed by a parent, there may be an identified need for psychological testing, drug assessment or testing, or physical examinations. Determine what orders might be appropriate and proceed accordingly.
- Determine whether there is a discovery control plan in place and/or whether there is a need for formal discovery.
- Consider requesting a scheduling order that sets out every future hearing.

Parent's Attorney Practice Tip: Meet with the client after the hearing to discuss the Family Strengths and Needs Assessment (FSNA) and to explain what to expect between the Adversary Hearing and the Status Hearing.

Obligations of DFPS Following the Adversary Hearing

- File notice of the Education Decision Maker and/or Surrogate Parent for the child with the court and provide a copy to the school the child attends not later than the fifth day after the date of an adversary hearing. Tex. Fam. Code § 263.004(a) and (b).
- File a service plan, except as provided by Tex. Fam. Code § 262.2015, not later than the 45th day after the date the court renders a temporary order appointing DFPS TMC of a child. Tex. Fam. Code § 263.101.
- Develop a visitation plan, in collaboration with each parent of the child, for any child in TMC of DFPS for whom the goal is reunification, not later than the 30th day after the date DFPS is named TMC. Tex. Fam. Code § 263.107.
- Ensure that a child receives a developmentally appropriate comprehensive assessment not later than the 45th day after the date a child enters the conservatorship of DFPS. A single source continuum contractor (SSCC) providing therapeutic foster care services to a child shall ensure that the child receives a comprehensive assessment at least once every 90 days. Tex. Fam. Code § 266.012.
- Hold a permanency planning meeting for each child in the TMC of DFPS that is designed to allow the child to exit 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).
- Request identification of continuing, exclusive jurisdiction and request that their attorney file for a transfer, if necessary. Tex. Fam. Code §§ 155.201, 262.202.

***Note**: In addition to the statutorily required actions, caseworkers must also follow DFPS policy requirements, which include, but are not limited to, completing a Family Strengths and Needs Assessment (FSNA) to assist in the development of the initial Family Plan of Service (FPOS), making face-to-face contact with each child, and meeting with each parent on their caseload at least once a month. For more information about Substitute Care Services, please see the CPS Policy Handbook § 6000.*[13]

[13] CPS Policy Handbook § 6000. Available online at https://www.dfps.texas.gov/handbooks/CPS/Menu/MenuCPS6000.asp. Last visited on January 30, 2026.

Status Hearing

STATUTES

Tex. Fam. Code §§ 263.201, 263.202, 263.203

PURPOSE

To have a court review the contents of the service plan, rule on requested modifications to the service plan, and enter court orders necessary to implement the service plan. Additional goals are to review due diligence of efforts to serve parties; locate missing parents; notify relatives of a child's removal; identify potential family or fictive kin placements, if applicable; and review the child's medical care.

STANDARD OF PROOF

Preponderance of the evidence.

BEST INTEREST

Best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002(a).

ICWA

The court must ask whether the child or family has Native American heritage and identify any Tribe at the Status Hearing. Tex. Fam. Code § 263.202(f-1). DFPS must give notice to any identified Tribe and request that the Tribe confirm or deny the child's status as an "Indian child."

If a Tribe confirms (or a court finds) that a child is an "Indian child," please *see* the *Indian Child Welfare Act* section of this toolkit for information on how ICWA requirements will affect the case going forward.

PARENT'S ATTORNEY PREPARATION

- Review the service plan with the client in advance of the hearing.
- Prepare for any modifications that will be requested in court.

> **Parent's Attorney Practice Tip**: If the service plan drafted by DFPS does not reflect the services that were court-ordered, or do not address the client's individual needs or preferred service provider, consider filing a written objection to the plan. If the court adopts the service plan as an order of the court, the parent will have to complete these tasks as well as those that were initially court-ordered so the plan should be comprehensive and individually tailored.

CHILD'S ATTORNEY PREPARATION

- Review the child's plan of service and review with the client, if developmentally appropriate.
- Prepare any requested modifications to either the child's or parent's plan of service.

PARENT'S AND CHILD'S ATTORNEY PREPARATION

Review the *Concurrent Issues*, *Child's Attorney Issues*, and *Parent's Attorney Issues* sections of this toolkit to be prepared to advocate a position on:

- Placement of the Child
- Child Support and Kinship Support
- Visitation
- Child Well-Being
- Normalcy

> **Practice Tip:** If DFPS has failed to set up services, provide parent-child visits or initiate and/or complete home studies, consider filing a motion to enforce the court orders that were entered at the Adversary Hearing rather than waiting for the next statutorily required hearing. Filing a motion can create a sense of urgency to timely address issues that can delay reunification or permanency.

REQUIRED COURT ACTION

At the Status Hearing the court must:

- Advise unrepresented parents of their right to be represented by counsel and, if indigent, of their right to court-appointed counsel, and appoint counsel as required. Tex. Fam. Code §§ 263.0061, 263.203(a);
- Assess service and diligent search efforts to locate any missing parents (including alleged fathers) Tex. Fam. Code § 263.202(a);
- Review the service plan that DFPS filed for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether the service plan has a goal of returning the child to their parents 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);
- Make a finding as to whether the parents have had an opportunity to review and understand the service plan and advise the parents that their parental and custodial duties and rights may be subject to restriction or to termination. Tex. Fam. Code §§ 263.006, 263.202(b)(2);
- Determine whether the service plan is narrowly tailored to address specific issues identified by DFPS. Tex. Fam. Code § 263.202(b)(3);
- Determine whether the child's parents and the representative of DFPS have signed the plan. Tex. Fam. Code § 263.202(b)(4);
- Make specific findings and orders regarding visitation, service plan, medical consent (and psychotropic medications if prescribed), continued placement in a RTC or QRTP. Tex. Fam. Code §§ 263.109, 263.202(b), 262.202(b-1), 263.202(e), 263.202(b)(5)-(6);
- Review DFPS' filed report and inquire into the sufficiency of DFPS' efforts to identify, locate, and provide information described by Tex. Fam. Code § 262.1095(a), and order DFPS to make further efforts if the court determines that DFPS' efforts have not been sufficient. Tex. Fam. Code § 263.202(f);
- Ask all parties about Native American heritage and the identity of any Tribe(s).

Tex. Fam. Code § 263.202(f-1);

- Allow the parents the opportunity to comment on the service plan. Tex. Fam. Code § 263.202(g);
- If a child placement resources form has not been submitted, require each parent, alleged father, or other person to whom DFPS is required to provide a form to submit a completed form and 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);
- 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);
- Inform relatives serving as placement for a child of the ability to become a licensed foster parent and apply for PCA. Tex. Fam. Code § 263.202(i);
- Advise the parties that their 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); and
- Set a Permanency Hearing no later than 180 days after TMC is granted.

Practice Tip: If a client is seeking additional relief such as a contested placement change that will require a hearing separate from the Status Hearing, the most efficient way of obtaining a setting may be to file a motion for the requested relief and have it on file prior to the Status Hearing. Then request that a hearing be set on this motion at the same time as the Status Hearing while everyone is present in court.

***Note**: The court may waive the requirement of a service plan and the requirement to make reasonable efforts to return the child to a parent and may accelerate the trial schedule to result in a final order for a child under the care of DFPS at an earlier date than provided by Tex. Fam. Code Chapter 263, Subchapter D if the court finds that the parent has subjected the child to aggravated circumstances as defined by Tex. Fam. Code § 262.2015.*

Permanency Hearing Before Final Order

STATUTES

Tex. Fam. Code §§ 263.002, 263.302, 263.304, 263.305, 263.306

PURPOSE

Review status of the child and the permanency plan to ensure that the final hearing (trial on the merits) can be commenced before the dismissal date.

STANDARD OF PROOF

Preponderance of the evidence.

BEST INTEREST

Best interest of the child is always the primary consideration in determining conservatorship, possession, and access. Tex. Fam. Code § 153.002(a). Additionally, best interest arises at the Permanency Hearings before a final order as follows:

- The court shall consult with the child if the child is four years of age or older and if the court determines it is in the child's best interest. Tex. Fam. Code § 263.302.
- The court shall review the permanency progress report to determine the continuing necessity and appropriateness of the placement of the child and whether the placement continues to be in the best interest of the child. Tex. Fam. Code § 263.306(a-1)(5)(B).
- The court shall make a finding on whether the child's parents are willing and able to provide the child with a safe environment and whether the return of the child is in the child's best interest. Tex. Fam. Code § 263.306(a-1)(6). But *see* also Tex. Fam. Code § 263.002(c).
- If a child is placed or is referred to and awaiting placement in an RTC, the court shall determine whether the recommended or existing program is in the least restrictive setting consistent with the child's best interest and individual needs. Tex. Fam. Code § 263.002(e)(3).

ICWA

Unless the court has made a finding that a child is not an "Indian child," the court must continue to ask whether the child or family has Native American heritage and identify any Tribe, especially if new parties have appeared at this stage of the case. Tex. Fam. Code § 263.306(a-1)(3).

If a Tribe confirms (or a court finds) that a child is an "Indian child," please *see* the *Indian Child Welfare Act* section of this toolkit for information on how ICWA requirements will affect the case going forward.

PARENT'S ATTORNEY PREPARATION

- Assess parent's compliance and progress with temporary orders and the service plan.
- Assess whether there are services that need to be modified or eliminated.
- Assess whether the parent has addressed the circumstances that endangered the child such that returning the child to the parents does not constitute a continuing danger to the child and that returning the child to the parent is not contrary to the child's welfare.

Parent's Attorney Practice Tip: A client who has experienced trauma may be making progress but then revert into old patterns and behaviors. Changing these behaviors takes time and may not be a straightforward or linear process. Targeted trauma-informed therapies and services can assist a client in healing. It may be appropriate to ask the court to include trauma-informed therapies or services in the service plan to improve the likelihood for success.

PARENT'S AND CHILD'S ATTORNEY PREPARATION

Review the *Concurrent Issues*, *Child's Attorney Issues*, and *Parent's Attorney Issues* sections of this toolkit and be prepared to advocate a position on:

- Placement of the Child
- Visitation
- Child Well-Being
- Normalcy
- Reasonable Efforts to Return the Child Home

Additionally, Parents' and Children's attorneys should address:

- What are the diligent search efforts for any missing parties?
- What is the permanency plan for the child?
- What is the factual basis for the permanency plan?
- Is the client in agreement or opposition with the permanency plan?
- Is mediation appropriate at this stage of the case?

Practice Tip: A child's caregiver has a right to attend hearings held under Tex. Fam. Code Chapter 263 to provide information about the child. If a caregiver appears at the hearing, be prepared to address the caregiver's participation in the hearing before they provide this information to the court. This may include clarifying whether the caregiver will be sworn in, whether the parties may ask questions, the appropriate scope of the caregiver's testimony, and any applicable confidentiality protections. Meaningful participation is enhanced when caregivers understand the purpose of the hearing, their role in the court process, and how they may provide relevant information to the court.

CHILD'S ATTORNEY PREPARATION FOR CLIENT WHO MAY NOT ACHIEVE POSITIVE PERMANENCY

For a child whose permanency plan is Another Planned Permanent Living Arrangement (APPLA), consider:

- What is the child's desired permanency outcome?
- Have the goals identified in the child's permanency plan been addressed?
- Has the child had an Independent Living Skills (ILS) assessment done and what were the results? Are any further services needed as a result?

- If the child is 16 or older, determine whether the child has the original or certified copies of personal documents (not photocopies) which include Texas Identification card, birth certificate, Social Security card, and if child was not born in the United States, the child's immigration or citizenship documents which are required by law. Tex. Fam. Code §§ 264.121(e), 263.306(a-1)(5) (I)(v).
- If the child is 18 or older or has had the disabilities of minority removed, have original or certified copies (not photocopies) of personal documents been delivered to the client? Required documents include Texas Identification card, birth certificate, Social Security card. Tex. Fam. Code §§ 264.121(e-1)-(e-2), 263.306(a-1)(5)(I)(vi).
- If the child was not born in the United States, determine whether DFPS has possession of the child's immigration or citizenship documents and request they be turned over to the child.

Practice Tip: If mediation is appropriate and in the client's interest at this stage of the case consider a motion requesting mediation. If another party objects to mediation, request that the court order mediation.

REQUIRED COURT ACTION

The court must:

- Advise the parents that their parental and custodial duties and rights may be subject to restriction or to termination. Tex. Fam. Code § 263.006.
- Advise unrepresented parents of their right to be represented by counsel and, if indigent, of their right to court-appointed counsel and appoint counsel as required. Tex. Fam. Code § 263.0061.
- For a child not placed with a relative or designated caregiver, review the placement and include in its findings a statement whether the child is placed with a relative or designated caregiver. Tex. Fam. Code § 263.002(b);
- 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);
- Identify persons and parties present, review the status of service of process and search efforts, ask about Native American heritage and any Tribes the child is associated with, and review compliance with temporary orders and service plan, as well as progress toward mitigating the need for foster care placement. Tex. Fam. Code § 263.306(a-1)(1)-(4);
- Review the permanency progress report to assess each component (child safety and well-being, necessity for placement, appropriateness of permanency goals, whether the child has had opportunity to express opinion on any medical care, compliance with specific requirements if psychotropic medications are prescribed, education issues, and transitional care issues). Tex. Fam. Code § 263.306(a-1)(5);
- Review the permanency progress report to determine whether the child has had the opportunity to identify any adults, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child. Tex. Fam. Code § 263.306(a-1)(5)(E);
- For a child with an APPLA permanency goal, the court shall determine:

- the desired permanency outcome for the child, by asking the child;
- whether, as of the date of the hearing, APPLA is the best permanency plan for the child, and, if so, a compelling reason why another plan is not in child's best interest;
- whether DFPS has conducted an Independent Living Skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3);
- whether DFPS has addressed the goals of the permanency plan, including a housing plan and the results of the ILS assessment;
- for youth 16 or older, whether DFPS has provided required documents per Tex. Fam. Code § 264.121(e)(1); and
- for youth 18 or older, or youth with disabilities of minority removed, whether DFPS has provided required documents; Tex. Fam. Code §§ 264.121(e-1). Tex. Fam. Code § 263.306(a-1)(5)(I);

- If a child is placed in or referred to an RTC or QRTP, the court shall make specific findings about the child's needs and the suitability of that placement. Tex. Fam. Code §§ 263.002(e)-(f) and 263.306(a-1)(5)(J)-(K).
- Order the return of the child to a parent unless the court finds that returning the child to that parent presents a continuing danger to the child and the return would be contrary to the welfare of the child. Tex. Fam. Code § 263.002(c); The order returning the child may be a monitored return under Tex. Fam. Code § 263.403. But *see* also Tex. Fam. Code § 263.306(a-1)(6).
- Estimate a likely date for the child to be returned, adopted, or placed in PMC. Tex. Fam. Code § 263.306(a-1)(7);
- Announce in open court the automatic dismissal date and the date of any subsequent hearings. Tex. Fam. Code § 263.306(a-1)(8);
- Review DFPS efforts to provide the child with regular, ongoing opportunities to engage in normalcy activities. Tex. Fam. Code § 263.306(c)(1);
- Inform relatives serving as placement for a child of the ability to become a licensed foster parent and apply for PCA. Tex. Fam. Code § 263.306(c)(2);
- Retain jurisdiction and permit the child to transition home under a transition monitored return while the parents complete services or order a monitored return to parents if appropriate and in the child's best interest. Tex. Fam. Code § 263.403; and
- Set a subsequent Permanency Hearing date no more than 120 days later until a final order is rendered. Tex. Fam. Code § 263.305.

> **Practice Tip**: If discovery has not already been served on opposing parties, it may be appropriate to begin the process now to ensure it can be completed in advance of trial. *See* the *Discovery* section of this toolkit for more information.

SUBSEQUENT PERMANENCY HEARINGS

A subsequent Permanency Hearing before entry of a final order must be held within 120 days of the previous Permanency Hearing in the suit (although it can be held sooner than 120 days). Tex. Fam. Code § 263.305. At such a hearing, the court reviews the progress of the parents, the status of the child, and the permanency goal.

Practice Tip: If the case can benefit from mediation, consider requesting that mediation by the parties be ordered by the court prior to trial. In addition, if helpful in obtaining a final agreement, ask that any non-parties that may be subject to a final order be authorized to attend mediation. For example, if a grandmother may be granted PMC of the children, it is best to have her sign off on the Mediated Settlement Agreement (MSA) to indicate her willingness to do so.

Dismissal Date Issues

CALCULATING THE AUTOMATIC DISMISSAL DATE

The dismissal clock begins to run on the date when the court first grants TMC to DFPS. Unless the court has commenced the trial on the merits by that dismissal date, with few exceptions, a SAPCR filed by DFPS is automatically dismissed on the first Monday after the first anniversary of the date the court rendered an order appointing DFPS as TMC. Tex. Fam. Code § 263.401(a).

Practice Tip: Pursuant to Tex. Fam. Code. § 263.401, the dismissal deadline is automatic, and the court loses jurisdiction by operation of law if a trial is not commenced before the deadline date. A timely motion to dismiss the suit is not required.

From the date DFPS is awarded TMC, the viability of obtaining a final order in the allotted time should be assessed on an ongoing basis. Exceptions to the one-year dismissal date are extremely limited but are important to keep in mind as the lawsuit evolves, in case requesting an extension might be needed.

EXTRAORDINARY CIRCUMSTANCES

If the court finds that extraordinary circumstances necessitate the child remaining in the TMC of DFPS and that continuing the appointment of DFPS as the TMC is in the child's best interest, the court may grant an extension of no more than 180 days. Tex. Fam. Code § 263.401(b).

- The court must consider a parent's good faith attempt to complete a drug rehab program when granting an extension of the deadline.
- The court shall find that extraordinary circumstances exist if:
    - a parent has made a good faith effort to successfully complete the service plan but needs additional time, and
    - on completion of the service plan the court intends to order the child returned to the parent. Tex. Fam. Code § 263.401(b-3).

Practice Tip: An agreement by the parties to seek an extension does not constitute a finding of extraordinary circumstances. Attorneys might exercise caution about relying on such an agreement, as the judge may still deny the extension if the court determines that extraordinary circumstances are not present.

Practice Tip: Waiting until the last minute to request an extension can limit the court's discretion. If there is no active trial setting before the original deadline and no time to obtain a setting when the request for the extension is made, the court can only grant the extension or allow the case to be dismissed. The court may disagree that extraordinary circumstances are present but no longer has the flexibility to order the case proceed to trial under the original deadline.

Practice Tip: An extension of the deadline under Tex. Fam. Code § 263.401 requires the court to find that extraordinary circumstances necessitate the child remaining in conservatorship of DFPS. Technical issues that prevent a trial from commencing such as lack of notice, lack of service, or lack of a trial setting may or may not equate to extraordinary circumstances. If a client opposes the extension, consider challenging the sufficiency of the evidence for granting an extension based on extraordinary circumstances.

CHILD IS MISSING FROM SUBSTITUE CARE

Notwithstanding Tex. Fam. Code § 263.401, if the court finds the child is missing from the child's substitute care provider, the court shall retain jurisdiction and schedule a new dismissal date that is 180 days after the last dismissal date. The court may not dismiss the case until the earlier of:

- The date the child is found, or
- The date on which the child would no longer be eligible to receive department services or benefits.

Tex. Fam. Code § 263.4012(a).

If the court retains jurisdiction under Tex. Fam. Code § 263.4012(a) 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. Tex. Fam. Code § 263.4012(b).

MONITORED RETURN OR TRANSITION MONITORED RETURN

Alternatively, the court may also retain jurisdiction and continue the TMC of DFPS and enter an order to:

- Return the child to the parent (a "monitored return"); or
- Transition the child to the home while the parent completes necessary services specified in the temporary order and order DFPS to remain as TMC and to monitor the child's placement (a "transition monitored return").

In the case of a monitored return, the court shall schedule a new dismissal date 180 days after the monitored return is ordered, regardless of whether the deadline has been extended. Under the transition monitored return, the deadline is still extended by 180 days, and after the 180 days, the court may retain jurisdiction for an additional six months for the parent to complete services specified in the temporary order, unless the court has already granted an extension under Tex. Fam. Code § 263.401(b).

If a child must be removed from the parent's home or the court terminates a transition order during this period, the court must set a new dismissal date no later than the original dismissal date or 180 days after the child is moved, whichever is later. Tex. Fam. Code § 263.403.

Monitored Return or Transition Monitored Return

If the court has not granted an extension of the 12 month deadline under Tex. Fam. Code § 263.401(b):

The court can order a **Regular Monitored Return** under Tex. Fam. Code § 263.403(a)(2)(A).

The Family Code does not authorize any type of extension associated with a Monitored Return ordered pursuant to Tex. Fam. Code § 263.403(a)(2)(A).

Per Tex. Fam. Code § 263.403(b), the court must schedule a new dismissal date not later than the 180th day after the court enters the order unless the court commences a trial on the merits.

The court can order a **Transition Monitored Return** under Tex. Fam. Code § 263.403(a)(2)(B).

Extends 180 days per Tex. Fam. Code § 263.403(b).

Under Tex. Fam. Code § 263.403(a-1), the Court can order an additional six months for the parent to complete the service requirements specified in the temporary order during a Transition Monitored Return granted pursuant to Tex. Fam. Code § 263.403(a)(2)(B), but only if no extension under Tex. Fam. Code § 263.401 was already granted.

After an extension period has been granted pursuant to Tex. Fam. Code § 263.401(b):

The court can order a Regular Monitored Return under either Tex. Fam. Code § 263.403(a)(2)(A).

OR

The court can order a Transitioned Monitored Return under Tex. Fam. Code § 263.403(a)(2)(B).

But the additional six months of Tex. Fam. Code § 263.403(a-1) are not available.

A COURT ORDER IS REQUIRED TO EXTEND THE DISMISSAL DATE

Even if all the parties agree to extend the dismissal date, the deadlines cannot be extended except by court order. Tex. Fam. Code § 263.402(a). The Supreme Court has ruled that "Trial Courts should make the Tex. Fam. Code § 263.401(b) findings in a written order as a matter of course, but we hold that the failure to do so is not error, provided the findings are made orally on the record or in some other writing." *In re G.X.H.*, 627 S.W.3d 288 (Tex. 2021).

Final Hearing/Trial on the Merits

A Final Hearing (trial on the merits) must commence, or an extension must be granted, before the dismissal deadline or the court will lose jurisdiction over the case and the suit will be automatically dismissed without a court order. Tex. Fam. Code § 263.401.

STATUTES

Tex. Fam. Code §§161.001, 263.401, 263.404

PURPOSE

To obtain a final order prior to the dismissal date.

STANDARD OF PROOF

If termination of parental rights is requested, the standard of proof is clear and convincing evidence. If Permanent Managing Conservatorship (PMC) or any other type of conservatorship that does not result in termination is requested, the standard is preponderance of the evidence, unless ICWA applies, in which case the burden shifts to beyond a reasonable doubt and a Qualified Expert Witness (QEW) is required.

BEST INTEREST

The focus at a termination trial is on best interest factors (including, but not limited to: child's age and physical and mental vulnerabilities, frequency and nature of out-of-home placements, history of abusive or assaultive conduct by the child's family or other with access to home; history of substance abuse by child's family or others with access to home; whether the perpetrator of the harm to child has been identified; and special considerations for children 16 years of age or older), as well as on the Holley factors. Tex. Fam. Code § 263.307; *Holley v. Adams*, 544 S. W. 2d 367 (Tex. 1976). DFPS must prove at least one ground for termination plus that termination of parental rights is in the child's best interest. Please *see* the *Best Interest* section in this toolkit for more information.

ICWA

If ICWA applies, termination of parental rights requires proof beyond a reasonable doubt, including qualified testimony of a QEW, that the parent's continued custody "is likely to result in serious emotional or physical damage to the child." 25 U.S.C. § 1912(f). DFPS must demonstrate that "active efforts" were made to reunify, as well as other requirements. Please *see* the *Indian Child Welfare Act* section in this toolkit for more information.

HEARING BEFORE ASSOCIATE JUDGE

Judges in civil proceedings may refer cases to associate judges appointed both under Tex. Fam. Code Chapter 201, 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, and 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, an 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 party desiring a trial before the referring court rather than the associate judge must file an objection not later than the 10th day after the date the party receives notice that the associate judge 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).

PRESUMPTIONS INVOLVED IN CONSERVATORSHIP CASES

Parent Acts in the Best Interest of Their Child

It is a rebuttable presumption that a parent acts in the best interest of their child and that it is in the best interest of a child to be in the care, custody, and control of a parent. Tex. Fam. Code § 153.002(b).

In a suit between a parent and nonparent, the nonparent may overcome the presumption by proving by clear and convincing evidence that denial of the relief requested would significantly impair the child's physical health or emotional development. If the court renders an order in the suit granting relief to the nonparent, the court shall state in the order:

- The specific facts that support the court's finding that denying the relief requested by the nonparent would significantly impair the child's physical health or emotional development; and
- The extent to which the nonparent has overcome the presumption under Tex. Fam. Code § 153.002(b).

Tex. Fam. Code § 153.002(c).

Appointment of a Parent as Managing Conservator

Subject to the prohibition in Tex. Fam. Code § 153.004, 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 conservatorship or both parents shall be appointed joint managing conservatorship (JMC) of the child. It is a rebuttable presumption that the appointment of parents as JMC is in the best interest of the child. A finding of a history of family violence involving the parents of the child removes the presumption. Tex. Fam. Code § 153.131.

If a managing conservator is appointed, the court may appoint one or more individuals with possessory conservatorship (PC). If the court appoints PC, the court must specify the rights and duties of a person appointed PC and must specify and expressly state in the order the times and conditions for possession of or access to the child, unless there is a showing of good cause as to why specific orders would not be in the best interest of the child. Tex. Fam. Code § 153.006.

PREPARATION FOR A CONTESTED TRIAL

The preparation required for a contested trial varies greatly depending on the relief requested, the evidence, and whether a jury is requested. The practice tips below outline some general principles that attorneys for parents and children may consider when approaching a contested trial. Attorneys should seek additional materials, resources, and training to ensure adequate preparation.

Parent's Attorney Practice Tip: A parent's attorney should work with their client in the months leading up to trial to answer discovery so that all necessary witnesses may be called, and all necessary exhibits may be admitted. All service providers and any other witnesses the client wants to call to testify at trial should be interviewed. An attorney should discuss with their client the burden of proof required, the anticipated evidence from all parties, and any alternative relief requested. Attorneys should prepare their clients to testify on both direct and cross examination.

Child's Attorney Practice Tip: A child's attorney should not rely on the prosecutor and parents' attorneys to call witnesses and submit evidence relevant to their client's interests. A child's attorney should be prepared to call their own witnesses and introduce their own exhibits. If aligned with one party, the attorney should collaborate with that party on trial strategy and issue subpoenas for witnesses and exhibits that will advance the client's interests at trial. If the case is being tried to a jury, an attorney could request strikes separate from other parties but be aware the court may require aligned parties to share strikes. During voir dire, it is essential that the panel understands the independent role of the child's attorney and develops trust in the attorney so that they are prepared to act on the ad litem attorney's recommendations. A child's attorney should have pleadings on file to seek relief requested on behalf of the child that is not sought by another party.

Practice Tip: When making a record, it is helpful to avoid terms of art or acronyms and to remember the basics of examining a witness (e.g., identify all witnesses in the record and their relationship to the case). If examining the caseworker(s), it is important to establish their relationship to the case, and the basis of their knowledge about it (how long have they been working on the case, etc.).

PREPARATION FOR AN AGREED OR DEFAULT FINAL ORDER

Termination of Parental Rights

Termination of parental rights requires evidence of the following:

- At least one ground for termination of parental rights against a parent;
- Evidence that termination is in the best interest of the child; and that DFPS made reasonable efforts to return the child, and that despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or
- The court waived a service plan under Tex. Fam. Code § 262.2015 (aggravated circumstances).

The court must make findings related to reasonable efforts in writing with specificity in a separate section of the final order. Tex. Fam. Code § 161.001(b)(1), (b)(2), (f), (g).

REQUIRED COURT ACTION

Appointment of DFPS as PMC

The appointment of DFPS as a child's permanent managing conservator without termination of parental rights is only appropriate if a more permanent option for a child is not possible. This requires evidence that:

- Appointment of a parent as managing conservator would not be in the child's best interest because it 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 or another person as managing conservator.

Tex. Fam. Code § 263.404(a).

In making this determination, the court shall consider:

- That the child will be 18 years old in less than three years,
- The child is 12 or older and has expressed a strong desire against termination and continuously expressed a strong desire against being adopted, and
- The needs and desires of the child.

Tex. Fam. Code § 263.404(b).

Transition Plan Requirements for Certain Youth

As part of the Final Hearing, the court must verify the following for any child who goes into PMC of DFPS and who has an APPLA:

- If the child is 14 or older: that DFPS has conducted an independent living skills (ILS) assessment for the child as provided under Tex. Fam. Code § 264.121(a-3); that DFPS has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the ILS assessment;
- If the child is 16 or older: that there is evidence that DFPS has provided the youth with the documents and information listed in Tex. Fam. Code § 264.121(e); and
- If the child is 18 or older or has had the disabilities of minority removed: that there is evidence that DFPS has provided the youth with the documents and information listed in Tex. Fam. Code § 264.121(e-1). Tex. Fam. Code § 263.4041.

Entering a Default Judgment

A default judgment must conform to the pleadings served on the respondent. The record must show:

- Service of citation, no Answer, and the Citation Return on file at least 10 days before trial;
- An order appointing an attorney ad litem for the absent parent, if appointment of counsel is mandatory;
- Evidence to support at least one of the termination grounds plead, that termination is in the child's best interest and that DFPS made reasonable efforts to return the child, and despite those reasonable efforts, a continuing danger remains in the home

that prevents the return of the child to the parent, if the judgment seeks termination against one or both parents;

- A “statement of the evidence” approved and signed by the judge which should demonstrate the diligence used to locate the defendant if citation by publication was requested;
- Proof of compliance with the Servicemembers Civil Relief Act (SCRA) (please *see* the *Servicemembers Civil Relief Act* section in this toolkit for more information); and
- For an alleged father, evidence that the alleged father has not registered his paternity or filed a paternity action or an admission of paternity.

Entering Agreed Orders

Agreed Final Orders can be entered by a court when all parties have reached agreement, typically achieved during a settlement conference or in mediation. The order must provide for the permanency of the children, whether this be to return home, to be placed permanently with a relative as managing conservator, or voluntary relinquishment of parental rights and awarding PMC to DFPS.

> **Practice Tip**: Elicit testimony on best interest for both contested hearings and agreed orders. The testimony should be specific to the child and sufficient to meet the burden of proof, not merely a yes or no answer. Agreed orders should be dictated into the record and reflected in the final order. If there is a mediated settlement agreement, consider attaching a copy of it to the final order.

> **Practice Tip**: Attorneys for parents and children should consider the following issues before entering a final order dismissing DFPS as conservator:
>
> - Is there a court of continuing jurisdiction?
> - Is there a prior order establishing a parent-child relationship?
> - Are there multiple prior orders regarding different children that should be consolidated?
> - Has child support for each child from each party been addressed?
>
>   Has medical insurance and dental insurance been addressed for each child?
> - Has visitation between each child and each conservator been established and is the language specific enough to be enforceable later, if needed?

At the final hearing, the court may:

- 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 parent rights.

At the final hearing, the court must:

- Confirm that all parties entitled to service under Tex. Fam. Code § 102.009 have been served.
- Receive evidence of a certificate of the results of a search of the paternity registry under Tex. Fam. Code Chapter 160 from the Vital Statistics Unit indicating that no man has registered the intent to claim paternity before rendering an order terminating the parental rights of an alleged father under Tex. Fam. Code § 161.002(b)(2) or (3). Tex. Fam. Code § 161.002(e).
- Determine whether DFPS has exercised due diligence in attempting to obtain service on the alleged father and make specific findings regarding the exercise of due diligence of DFPS before rendering an order terminating the parental rights of an alleged father under Tex. Fam. Code § 161.002(b)(4). Tex. Fam. Code § 161.002(f).
- Make required findings necessary to render a final order.

Before a court enters a final order granting PMC to a nonparent, 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. Tex. Fam. Code § 263.408(b).
- Shall verify that the individual was offered the opportunity to become verified by a licensed child-placing agency to qualify for PCA benefits under Chapter 264, Subchapter K, and the individual declined the verification process and the permanency care assistance benefits. Tex. Fam. Code § 263.409(1).
- Shall verify that the child-placing agency conducting the verification for the individual's PCA benefits has been notified of the individual's decision to decline the PCA benefits. Tex. Fam. Code § 263.409(2).

If PMC is awarded to DFPS, the court must set a date for the next hearing as follows:

- If DFPS was granted PMC and parental rights were terminated, the court must conduct the initial Permanency Hearing After Final Order within 90 days of the Final Order and hold subsequent hearings at least once every six months until the child is adopted or DFPS is no longer the conservator.
- If DFPS was granted PMC and parental rights were not terminated, the court must conduct a Permanency Hearing After Final Order at least once every six months until DFPS is no longer the conservator.

> **Child's Attorney Practice Tip**: An attorney for a child in PMC may request Permanency Hearings more frequently than every six months. More frequent hearings may be especially important for children in PMC who do not yet have a finalized permanency plan or are not in permanent family placement.

TRANSITION PLAN REQUIREMENTS FOR CERTAIN YOUTH

As part of the Final Hearing, the court must verify the following for any child who goes into PMC and who has an APPLA permanency goal:

- If the child is 14 or older: that DFPS has conducted an Independent Living Skills Assessment (ILSA) for the child as provided under Tex. Fam. Code § 264.121(a-3); that DFPS has addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the ILSA;

- If the child is 16 or older: that there is evidence that DFPS has provided the youth with the documents and information listed in Tex. Fam. Code § 264.121(e); and
- If the child is 18 or older or has had the disabilities of minorities removed: that there is evidence that DFPS has provided the youth with the documents and information listed in Tex. Fam. Code § 264.121 (e-1). Tex. Fam. Code § 263.4041

90-DAY DEADLINE TO RENDER FINAL ORDER; EXTENSION

The court must render a final order not later than the 90th day after trial commences. Tex. Fam. Code § 263.4011(a). The remedy for failing to render a final order within the specified time period is to file a mandamus requesting that the court render a final order.

***Note**: The 90-day period IS NOT tolled for any recess during the trial. The court may extend the 90-day period for the period the court determines necessary if, after a hearing, the court finds good cause for the extension.*

***Note**: An extension of the 90-day period requires both a hearing and a written order specifying the grounds on which the extension is granted and the length of the extension.*

Appellate Transition

At the conclusion of a final hearing, a trial attorney has duties relating to a potential appeal. This is true even if the trial attorney is not competent or inclined to pursue the appeal. An attorney must notify the client of the right to appeal and provide the client with information regarding deadlines and the time- sensitive nature of the appeal. The attorney should also advise their client about the nature of the appeals process and how it is different from trial. The same considerations apply to an attorney ad litem for the child who desires to appeal the judgment as they do to an attorney for a parent. *See* Tex. Fam. Code § 107.003(a)(1)(F), (G).

> **Parent's Attorney Practice Tip**: If the client requests an appeal, consider requesting visitation pending the appeal. If the case is reversed and rendered, and no visits have been occurring, the transition may be very confusing or jarring to a child who may not have seen their parent in many months.

CRITICAL DEADLINES

20 Days After Judgment

- A request for findings must be filed. Tex. R. Civ. P. 296.
- Notice of appeal must be filed with the trial court. Tex. R. App. P. 26.1(b).

30 Days After Judgment

- Post-judgment motions must be filed. Tex. R. Civ. P. 329B(a) & (g).

35 Days After Judgment

- An extension to file a notice of appeal is due (15 days after the deadline for filing the original notice of appeal.) Tex. R. App. P. 26.3.

FINALITY/APPEALABILITY

Generally, a party may appeal only from a final judgment. Tex. Fam. Code § 109.002(b); but *see* Tex. Civ. Prac. & Rem. Code § 51.014 for exceptions. A judgment is final "if it disposes of all pending parties and claims in the record, except as necessary to carry out the decree." *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). An order following a trial on the merits is presumed final. *Id.* at 198-99.

> **Practice Tip**: Counsel should ensure that the judgment is final by verifying that all of the parties' claims and counterclaims are resolved by the final order rendered by the trial court. If not, the judgment is not final, appeal is premature, and counsel for the party considering appeal should act to resolve the remaining claims.

A party need not request a de novo hearing from a referring court before appealing, petitioning for review, or requesting relief from an appellate court. Tex. Fam. Code §§ 201.016(a); 201.318(a). When an order by an associate judge is (or is not) final, *see* Tex. Fam. Code §§ 201.007(c); 201.016(b) & (c); 201.306(b); 201.318(b)-(c).

> **Practice Tip**: If an associate judge presided over final trial, a request for a de novo hearing must be filed with the clerk of the referring court no later than the third working day after receiving notice of the associate judge's order.

CONTINUATION OF RIGHT TO COUNSEL

An appointed attorney ad litem for a parent "continues to serve in that capacity" until the date the suit is dismissed, the date all appeals are exhausted or waived, or until "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(2). The right to appointed counsel continues from the trial court to courts of appeal and to the Texas Supreme Court. *In re P.M.*, 520 S.W.3d 24, 27 (Tex. 2016).

TRIAL COUNSEL DUTIES: ACTION STEPS IF A CLIENT REQUESTS AN APPEAL

Appointed counsel may be unwilling or unable to prosecute an appeal or petition for review for a parent but they have a legal and ethical duty to continue the representation until relieved of duties or replaced by the trial court. "Trial counsel's failure to follow through with his representation until relieved of that duty was tantamount to abandoning his client at a critical stage of the proceeding." *In re J.O.A.*, 283 S.W.3d 336, 343 (Tex. 2009).

Appointed trial counsel must consider whether certain steps should be taken to ensure an appeal occurs and that it has the best chance of success. Counsel planning to withdraw or already having withdrawn may still owe ethical duties to the client or former client. Tex. Disciplinary Rules Prof'l Conduct R. 1.15(d). Satisfying the client's right may include the following:

- Notify the client of the right to appeal and provide the client with information regarding deadlines and the time-sensitive nature of the case;
- File a Motion for Discharge of Attorney and Appointment of Appellate Attorney immediately upon being notified that the client wishes to appeal if notified within the time allowed to appeal;
- Notify the court coordinator that the Motion for Discharge has been filed due to the time-sensitive nature of the appeal;
- File a Notice of Appeal with the District Clerk's Office to perfect the appeal;
- Obtain the order appointing appellate counsel from the court;
- Notify newly appointed appellate counsel of appointment by e-mail and telephone due to the time- sensitive nature of the appeal;
- Provide appellate counsel with the name and contact information for the client as well as suggested issues/points for appeal; and
- Provide the client with the name and contact information for appellate counsel.

SUBSTITUTION OF AN APPELLATE ATTORNEY

While some courts routinely replace trial counsel with appellate counsel following the rendition of a final judgment, the general rule permits appointed counsel to withdraw "only for good cause and on appropriate terms and conditions." *In re P.M.*, 520 S.W.3d at 27. Courts must ensure that withdrawal "will not result in foreseeable prejudice to the client." *Id.* at 27.

Communication between trial counsel and appellate counsel is imperative. *In re J.O.A.*, 283 S.W.3d at 343-44. The Supreme Court of Texas recognized that the shorter deadlines combined with a change in attorneys can lead to "misunderstandings as to which attorney is responsible for filing a motion for new trial … and a notice of appeal," among other things. *Id.* at 343. Given these issues, the Supreme Court suggested that "the burden should logically fall on trial counsel" to ensure appellate preparation is complete. *Id.* at 344.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In civil bench trials, the appealing party should comply with Tex. R. Civ. P. 296-299a, which is the process by which a party requests and a trial court supplies findings of fact and conclusions of law. Usually, it is improper to include findings of fact in a judgment. Tex. R. Civ. P. 299a.

However, in SAPCRs filed by a governmental entity, "the judgment must state the specific grounds for termination or for appointment of the managing conservator." Tex. R. Civ. P. 306. Since judgments drafted by DFPS are very detailed and include the grounds for termination among many other statutory requirements, the judgment as signed should satisfy an appellant's need for findings and conclusions. Consequently, requests for findings are typically not necessary in these appeals unless a party desires additional or amended findings.

The timeline for challenging the findings in the judgment is short. A request for findings must be filed within twenty days of the signing of the judgment. Tex. R. Civ. P. 296. If the court does not file the amended or additional findings within twenty days of the request, the appellant must file a "Notice of Past Due Findings …" within thirty days of the original request. Tex. R. Civ. P. 297. After the court files its original findings, the appellant may request additional or amended findings within ten days. Tex. R. Civ. P. 298. This process is difficult and may result in waiver or presumed findings without careful attention.

POST-JUDGMENT MOTIONS

After the judgment is rendered or signed, a party may file a post-judgment motion. These motions include a motion for new trial, a motion to modify, correct or reform a judgment, or the like. Tex. R. Civ. P. 329b. Post-judgment motions must be filed within thirty days of the date of the judgment. Tex. R. Civ. P. 329b(a) & (g).

Post-judgment motions are important for several reasons.

- They offer an opportunity to try to preserve error that may not have been preserved at trial (albeit a limited opportunity as many errors not properly challenged at trial are waived).
- They provide the trial court an opportunity and time to reconsider its judgment.
- A motion for new trial is required to preserve certain types of error in jury trials (jury misconduct, newly discovered evidence, factual insufficiency of the evidence, that a finding is against the overwhelming weight of the evidence, and incurable jury argument).
- A legal insufficiency or matter of law issue can be raised during a jury trial by a motion for directed verdict, an objection to the submission of a jury question, or a motion for a judgement notwithstanding the verdict (JNOV).

A trial court retains plenary power for thirty days after it signs the final judgment under Tex. R. Civ. P. 329b(d), but if a post-judgment motion is timely filed the trial court retains plenary jurisdiction for thirty days from the time the motion is overruled by written order or by operation of law. Tex. R. Civ. P. 329b(e). If the court modifies, corrects, or reforms the judgment, the time for appeal runs from the date of the amended judgment. Tex. R. Civ. P. 329b(h).

NOTICE OF APPEAL

Appeals of final orders terminating the parent-child relationship are given precedence and are accelerated under the Rules of Appellate Procedure. Tex. Fam. Code §§ 109.002(a-1); 263.405. Because the appeal is accelerated, the notice of appeal must be filed within twenty days after the judgment or order is signed, subject to a possible 15-day extension. Tex. R. App. P. 26.1(b) and Tex. R. App. P. 26.3.

A post-judgment motion or request for findings of fact does not extend the time for filing a notice of appeal in a SAPCR originally filed by the government. Tex. R. App. P. 26.1(b) & 28.1(b).

PERFECTING THE APPEAL

The appeal is perfected when a party files the notice of appeal with the trial court clerk. Tex. R. App. P. 25.1(a). If mistakenly (but timely) filed with the appellate court clerk, the appeal is still perfected. *Id.* The specific content required in a notice of appeal is delineated in Tex. R. App. P. 25.1(d). The filing of the notice of appeal is the only jurisdictional requisite to perfect appeal. Tex. R. App. P. 25.1(b).

> **Practice Tip**: If a party misses the deadline for filing a notice of appeal, the party can opt to proceed to file the notice of appeal in the trial court as soon as possible and move for an extension of time in the appellate court. Tex. R. App. P 26.3. The deadline for filing an extension is fifteen days after the deadline for filing the original notice of appeal. *Id.* If in doubt as to the finality of the judgment, file the notice of appeal. Premature notices of appeal are treated as effective after the event that begins the notice of appeal period. Tex. R. App. P. 27.1(a).

APPEALING WHEN ANOTHER PARTY FILES AN APPEAL

A party should consider a cross-appeal if the party wants to alter the trial court's judgment. "A party who seeks to alter the trial court's judgment or other appealable order must file a notice of appeal. The appellate court may not grant a party who does not file a notice of appeal more favorable relief than did the trial court except for just cause." Tex. R. App. P. 25.1(c); but *see* Tex. R. Civ. P. 324(c) (may bring error by cross-point rather than notice of appeal in limited circumstances). If a party files a notice of appeal and another party desires to appeal, the latter party "may file a notice of appeal within the applicable period stated above or 14 days after the first filed notice of appeal, whichever is later." Tex. R. App. P. 26.1(d).

Permanency Hearing After Final Order

STATUTES

Tex. Fam. Code §§ 263.002, 263.501, 263.5031, 264.121

PURPOSE

To review the status of every child in PMC at least once every six months until DFPS is no longer the child's permanent managing conservator (unless parental rights are terminated, when the first Permanency Hearing must be no later than 90 days after the date of the order terminating parental rights).

BURDEN OF PROOF

Preponderance of the evidence.

CHILD'S ATTORNEY PREPARATION

- If parental rights have been terminated, and the child is in their intended adoptive home, ensure that all steps are being taken to consummate the adoption.
- Determine whether the child is eligible for an adoption subsidy and ensure that the proper procedures are followed to obtain the subsidy; if this is not occurring, ask the court to direct DFPS to assist the family in obtaining a subsidy.
- If parental rights have been terminated, but the child is not in a prospective adoptive home, advocate for recruitment efforts to identify such a home and request the court order DFPS to prioritize finding an adoptive home for the child. If there is a DFPS unit in the same county in which the case is currently filed which specializes in adoption preparation and recruitment, request that the child's case be transferred to that unit.
- Revisit the client's family members to inquire about placement and/or adoption. It may be that a relative was unable or unwilling to take the child in during the TMC phase, but circumstances may have changed to such a degree that placement is now viable. Adoption subsidy eligibility or PCA may make placement with family possible. With teenage clients, be knowledgeable about assistance to the family that may extend beyond age 18.
- For children who are likely to age out of foster care, attend all meetings related to planning for adulthood and be prepared to update the court and/or ask for additional services.
- Monitor the progress of DFPS in getting the child's documents, scheduling preparation for adult living classes, and helping the child in accessing their benefits.
- Be familiar with the benefits available to youth aging out of foster care. There are numerous resources available online including on the DFPS and Children's Commission websites.
- If CASA is assigned to the case, maintain contact with the CASA and supervisor, as they may have more frequent contact with the child and are often willing to research benefits, education- related assistance, and potential relatives.
- Review the *Concurrent Issues* and *Child's Attorney Issues* section of this toolkit and be prepared to advocate a position on:
  - Placement of the Child
  - Child Well-Being
  - Normalcy

Child's Attorney Practice Tip: Children who are in long-term foster care may be more likely to experience the juvenile justice, adult criminal justice, and/or immigration system, as well as school discipline and mental health challenges. To represent a client effectively, a child's attorney must have a working knowledge of these systems. If necessary, an attorney may petition the court to appoint a co-attorney for the specific purpose of addressing some of these issues. The addition of an attorney with specialized knowledge can be very helpful to the youth.

REQUIRED COURT ACTION

The court must:

- Identify persons and parties present, review DFPS efforts in notifying persons entitled to notice, and review DFPS efforts to provide the child with regular, ongoing opportunities to engage in normalcy activities. Tex. Fam. Code §§ 263.5031(a)(1)-(a)(2), (b), and 263.0021(f);
- 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(a)(4)(B);
- Inform relative(s) serving as placement for a child of the ability to become a licensed foster parent and apply for PCA. Tex. Fam. Code § 263.5031(a)(3);
- Review the permanency progress report to assess:
    - child safety and well-being (including whether any medical or special needs are being met). Tex. Fam. Code § 263.5031(a)(4)(A);
    - whether the child is placed with a relative or designated caregiver, and the continuing necessity for and appropriateness of the placement (including whether an out-of-state placement is in the child's best interest). Tex. Fam. Code § 263.5031(a)(4)(C);
    - if a child is placed in or referred to an RTC or QRTP, the court shall make specific findings about the child's needs and the suitability of that placement. Tex. Fam. Code §§ 263.002(e)-(f), 263.5031(a)(4)(M)-(N);
    - the appropriateness of concurrent permanency goals, and whether DFPS made reasonable efforts to finalize the permanency plan and exercised due diligence. Tex. Fam. Code § 263.5031(a)(4)(E);
    - whether to place a child for adoption if parental rights are terminated. Tex. Fam. Code § 263.5031(a)(4)(E)(i) or
    - whether to find another permanency placement (including relative or return to parent) if appropriate. Tex. Fam. Code § 263.5031(a)(4)(E)(ii);
    - for a child with a goal of APPLA:
        - ask the child regarding their desired permanency outcome;
        - determine whether APPLA is the best plan and provide a compelling reason why another plan is not in the child's best interest;
        - determine whether DFPS has conducted an ILS assessment;

- determine whether DFPS has addressed the goals of the permanency plan, including a housing plan and the results of the ILS assessment;
- for youth age 16 or older, determine whether DFPS has provided the original or certified copies of personal documents (not photocopies) which include Texas Identification card, birth certificate, Social Security card, and if child was not born in the United States, their immigration or citizenship documents.
- for youth age 18 or older, or with disabilities of minority removed, determine whether DFPS has provided the original or certified copies of personal documents (not photocopies) which include Texas Identification card, birth certificate, Social Security card, and if child was not born in the United States, their immigration or citizenship documents. Tex. Fam. Code § 263.5031(a)(4)(F)

- determine whether transition services are needed for children age 14 or older. Tex. Fam. Code § 263.5031(a)(4)(G);
- review the appropriateness of medical care, whether the child has had an opportunity to express an opinion on any medical care, and compliance with specific requirements if psychotropic medications are prescribed. Tex. Fam. Code § 263.5031(a)(4)(H);
- determine whether an education decision-maker has been appointed and whether school issues have been addressed. Tex. Fam. Code § 263.5031(a)(4)(J);
- if the child is in PMC of DFPS and parental rights have not been terminated, determine whether to order up to six months of additional services for the parents if a relative or other person is not seeking PMC. Tex. Fam. Code § 263.5031(a)(4)(K);
- determine whether DFPS has identified a family or other caring adult who has made a permanent commitment to the child. Tex. Fam. Code § 263.5031(a)(4)(L); and
- set another hearing in six months or sooner. Tex. Fam. Code § 263.501.

Child's Attorney Practice Tip: At the first hearing after termination, be aware of whether a relative has filed an original suit or a motion to modify as allowed by the Tex. Fam. Code § 102.006(c). If so, explore whether the relative would be a suitable placement. If a client is opposed to the relative (or when serving as the child's attorney and guardian ad litem, the GAL determines that the suit would not be in the child's best interest), determine whether they qualify by degree of consanguinity. If not, consider filing a motion to dismiss the suit.

Child's Attorney Practice Tip: If DFPS does not seem to be making progress toward an adoption, request a review hearing sooner than the next statutory permanency hearing, and consider filing a motion to ask the court to order DFPS to complete tasks within specific deadlines.

De Novo Hearing

STATUTES

Tex. Fam. Code §§ 201.015, 201.2042(b)

PURPOSE

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). 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.").

Note*: 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. Notice of a request for a de novo hearing before the referring court must be given to opposing parties under Tex. R. Civ. P. 21(a). Tex. Fam. Code § 201.015(d).*

Practice Tip: If a request for de novo hearing is filed by a party, any other party may file a request for a de novo hearing before the referring court not later than the third working day after the date the initial request was filed. Tex. Fam. Code § 201.015(e).

BURDEN OF PROOF

De Novo of Temporary Orders

For a de novo review of a temporary orders hearing, other than the 14-day Adversary Hearing, the standard is preponderance of the evidence.

De Novo of Final Hearing

In non-ICWA cases, if termination of parental rights is requested, the burden of proof is clear and convincing evidence. If permanent managing conservatorship is requested, the standard is preponderance of the evidence.

If ICWA applies, the burden shifts to beyond a reasonable doubt in termination cases and clear and convincing evidence when permanent managing conservatorship without termination is requested. Testimony from a Qualified Expert Witness (QEW) in these hearings is also required.

ATTORNEY PREPARATION

The amount of preparation varies greatly depending on whether any new testimony and/or evidence will be presented on behalf of DFPS at the de novo hearing. A de novo hearing may be requested for any hearing in which the associate judge rendered orders.

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).

RELEVANT CASELAW

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. *In re A.L.M.-F.*, 593 S.W. 3d 271, 276-277, (Tex. 2019).

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. *In re A.L.M.-F.*, 593 S.W. 3d 271 at 277.

FORGOING RIGHT TO DE NOVO HEARING

Parties can forgo 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.

REQUIRED COURT ACTION

The referring court must conduct the de novo hearing within thirty days of the request. Tex. Fam. Code § 201.015(f).

The findings and orders that the referring court must render will vary based on the type of de novo hearing and will specifically address the issues presented for review.

The denial of relief to a party after a de novo hearing under Tex. Fam. Code § 201.015 or a party's waiver of the right to a de novo hearing before the referring court does not affect the right of the party to file a motion for new trial, motion for judgment notwithstanding the verdict, or other post-trial motion. Tex. Fam. Code § 201.015(h).

Appealing a Temporary Order

Generally, temporary orders are not subject to interlocutory appeal per Tex. Fam. Code § 105.001(e), but there are some exceptions:

- DFPS may appeal where a court refuses to permit removal of a child despite DFPS' determination that the child is in "immediate danger." Tex. Fam. Code § 262.112(b).
- Relatives or designated caregivers denied placement of a child due to a conviction of a low-risk offense may appeal the disqualification. Tex. Fam. Code § 264.754(c).
- Protective orders may be appealed in some circumstances. Tex. Fam. Code § 81.009.
- Interlocutory relief by petition for writ of mandamus may be available in some circumstances.

MANDAMUS

In some circumstances, a party may seek appellate relief through a petition for writ of mandamus. Relief by mandamus "is proper only to correct a clear abuse of discretion when there is no adequate remedy by appeal." *In re Tex. Dep't of Family & Protective Servs.*, 210 S.W.3d 609, 612 (Tex. 2006) (orig. proceeding).

Mandamus may be appropriate to challenge a trial court's legal errors, its factual findings, or its application of the law to the facts. "If the trial court fails to properly interpret the law or applies the law incorrectly, it abuses its discretion." *In re Dep't of Family & Protective Servs.*, 273 S.W.3d 637, 642-43 (Tex. 2009) (orig. proceeding).

ABUSE OF DISCRETION

"A trial court abuses its discretion when it makes a decision that is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law." *In re Berryman*, 629 S.W.3d 453, 458 (Tex. App.—Tyler 2020, orig. proceeding). The appellate court will not substitute its judgment for the trial court's judgment, but it must ensure that the trial court did not "act[] without reference to guiding rules and principles." *Id.* "[A]n appellate court should defer to the trial court's factual determinations supported by the record." *In re C.J.C.*, 603 S.W.3d 804, 811 (Tex. 2020) (orig. proceeding).

Mandamus Statutory Authorizations

The Texas Family Code sets forth three specific instances where mandamus is permitted in child welfare cases:

In a SAPCR, a "court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable." Tex. Fam. Code § 109.001(a). These orders may be challenged by mandamus or assignment as error in a party's brief, Tex. Fam. Code § 109.001(b-5), but not by interlocutory appeal. Tex. Fam. Code § 109.001(c).

If a court fails to set the final hearing for a date that permits the court to render a final order before the statutory dismissal date, any party or the child's attorney ad litem "may seek a writ of mandamus to compel the court" to do so. Tex. Fam. Code § 263.304(b).

Once a suit timely commences under Tex. Fam. Code § 263.401, a court shall render a final order within ninety days unless timely extended. Tex. Fam. Code § 263.4011(a) and (c). "A party may file a mandamus proceeding if the court fails to render a final order within the time required" by Tex. Fam. Code § 263.4011. Tex. Fam. Code § 263.4011(d).

Other Mandamus Circumstances

Texas case law includes numerous examples of appellate courts considering challenges to interlocutory orders through mandamus proceedings. Some examples include the following:

Challenge to emergency removal via mandamus proceeding. *In re E.R.W.*, 528 S.W.3d 251, 257 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

Challenge to award of temporary managing conservatorship following adversary hearing. *In re M.N.M.*, 524 S.W.3d 396, 398-406 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

Failure of trial court to timely hold adversary hearing subject to review by mandamus. *In re E.D.L.*, 105 S.W.3d 679, 688 (Tex. App.—Fort Worth 2003, pet. denied). Remedy for failing to hold timely status hearing, initial permanency hearing, or subsequent permanency hearing was mandamus rather than due process complaint on appeal. *In re T.T.F.*, 331 S.W.3d 461, 479-80 (Tex. App.—Fort Worth 2010, no pet.).

Mandamus is proper to compel trial court to dismiss suit for failing to comply with statutory dismissal deadline. *In re G.P.*, 665 S.W.3d 127, 134 (Tex. App.—Texarkana 2023, orig. proceeding).

Mandamus compelling trial court to not hold termination trial on holy days. *In re Blank*, No. 01-13-00792-CV, 2013 WL 5276108 at *1 (Tex. App.—Houston [1st Dist.] Sep. 18, 2013, orig. proceeding).

Mandamus proper to challenge order in aid of investigation. *In re Berryman*, 629 S.W.3d 453, 457 (Tex. App.—Tyler 2020, orig. proceeding).

The Right to Proceed by Mandamus is Not Absolute

An appellate court may deny relief "when a party inexplicably delays asserting its rights." *In re Roxsane R.*, 249 S.W.3d 764, 771 (Tex. App.—Fort Worth 2008, orig. proceeding). Furthermore, unchallenged temporary orders are mooted upon rendition of a final judgment. *In re E.R.W.*, 528 S.W.3d 251, 257 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Tex. R. App. P. 52 prescribes the procedural requirements for petitions for writs of mandamus and other original proceedings in the appellate courts.

Placement

Placement Types

There are multiple types of placements for children and youth in DFPS conservatorship. It is always preferred for the child to be placed in the least restrictive, most family-like setting appropriate under the circumstances of the case. *See* Tex. Fam. Code §263.001. The availability of placement types below depends on capacity in each DFPS region.

KINSHIP CARE

In child welfare cases, kin and fictive kin (kinship) mean a child's extended family, and other people who the child or family have a significant relationship. Kinship placement can provide many benefits to children in care including a familiar setting with people they know and trust, retention of a child's sense of cultural identity, sustained extended family connection and healthy relationships, continued family traditions and memories, and a sense of stability, safety, and well-being for the child. DFPS has a continued duty to explore possible kinship placements for a child.

There are many steps attorneys can take to ensure all possible kinship placements are explored for their clients.

- If the child is in a foster care placement, what efforts were/are being made to explore kinship placement options?
- Have the parents and the child been asked to identify kinship placement options?
- Were home studies started? If the home study will be outside of Texas, it will involve the Interstate Compact on the Placement of Children (ICPC) unless it involves a biological parent. Out-of-state home studies take significantly longer than in-state home studies and must be initiated as soon as possible in order not to delay permanency. Please *see* additional information in the *Interstate Compact on the Placement of Children* section of this toolkit.
- If a kinship placement was identified but deemed inappropriate by DFPS, what were the specific reasons? Was the placement assessed for "low-risk criminal offense" under Tex. Fam. Code § 264.754?
- Are there services or supports available to mitigate any safety risks identified in the home study?
- If the child is in a kinship placement, has the placement been provided with appropriate training, services, and support to care for the child?

> **Practice Tip**: If DFPS is opposed to placement with a non-custodial parent, relative, or fictive kin due to their previous DFPS or criminal history, attorneys might consider conducting an independent inquiry into that history. While DFPS may not agree to placement due to policy, a judge may find that certain criminal history from the distant past and/or unrelated to a safety issue may not be a current safety issue for purposes of placement. Similarly, it is important to evaluate whether DFPS history that is remote, a finding of "ruled out" or "unable to determine," or a situation where the party was not a perpetrator but rather the subject child or a collateral presents a current safety issue.

FOSTER HOME

The home must be the primary residence of the licensed foster parent(s) and provide care for six or fewer children or young adults, under the regulation of a child-placing agency.

PRIMARY MEDICAL NEEDS (PMN) FOSTER CARE

Children with PMN cannot live without mechanical supports or the services of others because of life- threatening conditions. Caregivers have special training to meet the daily needs of the children in their care.

TREATMENT FOSTER FAMILY CARE (TFFC):

TFFC is a program designed to provide multi-disciplinary treatment services to a child in a highly structured family home environment. The homes must have:

- Specialized evidence-based parenting training in mental health and behavioral health of high needs children;
- 24-hour on-call case management to ensure the child's safety and sense of security, which includes frequent one-to-one monitoring with the ability to provide immediate on-site response;
- Wraparound services with a highly trained treatment team; and
- Low child-to-caregiver ratio with professional foster parents.

TFFC is intended to be a short-term treatment option that leads to permanency and is limited to nine months, with an option of a onetime three-month extension.

GENERAL RESIDENTIAL OPERATION (GRO)

A GRO is a residential child-care operation that provides childcare for seven or more children or young adults. The care may include treatment services or programmatic services. These operations include formerly titled emergency shelters, operations providing basic childcare, residential treatment centers, and halfway houses.

RESIDENTIAL TREATMENT CENTERS (RTC)

RTCs provide intensive help for children or youth experiencing serious emotional and behavioral challenges. While receiving residential treatment services, children temporarily live outside of their homes and in a facility where they can be supervised and monitored by trained staff.

QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP)

QRTPs are accredited facilities. They provide twenty-four hour, seven days a week nursing and clinical staff, six months of aftercare support, family outreach, engagement and inclusion, and have a trauma- informed treatment model.

QRTP Placement Requirements

An assessment of the child must be completed within 30 days of initial placement (although note that if the child is under the care of an SSCC, the timeline is within 16 calendar days) and the assessment must recommend placement in the QRTP. Three steps are required:

- QRTP Permanency Team Meeting;
- Child and Adolescent Needs and Strengths (CANS) assessment; and

- Third Party Review – clinical assessment, review, and recommendations by a qualified individual for placement into a QRTP.

Other QRTP Requirements

- Discharge planning begins at the time of placement and the QRTP must provide six months of aftercare services that includes crisis intervention and monthly contact with the family or next caregiver and the child.

***Note**: QRTP placements may not be available throughout the State due to regulatory considerations.*

INTENSIVE PYSCHIATRIC STABLIZATION PROGRAM

The Intensive Psychiatric Stabilization Program is a time limited program that assists children in DFPS conservatorship who have a recent history of multiple psychiatric hospitalizations that have resulted in placement instability. The goal of this program is to stabilize and transition the child or youth to a less restrictive setting after a recent acute psychiatric hospital admission.

Placement Considerations

Attorneys for parents and children should be prepared to address the following issues regarding a child's placement.

PLACEMENT APPROPRIATENESS

- Is the current placement the least restrictive and most family-like setting for the child?
- Is the placement culturally and linguistically appropriate?
- Is the child or the parent requesting a placement change?

PLACEMENT PREFERENCES

DFPS is required to give preference to persons in the following order:

- A person related to the child by blood, marriage, or adoption;
- A person with whom the child has a long-standing and significant relationship;
- A foster home;
- A general residential operation. Tex. Fam. Code § 262.114(d).

If the child has previously been in a foster home under DFPS conservatorship, DFPS must consider placing a child in that home if the foster home is available, the placement would be in the child's best interest, and placement with a relative or fictive kin is not in the child's best interest. Tex. Fam. Code § 262.114(c).

If a child is not placed with a relative, the court must 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).

Please *see* the *Indian Child Welfare Act* section in this toolkit for a list of placement preferences for an "Indian child."

> **Practice Tip**: Prior to a hearing, determine if an agreement can be reached for a return to a parent, placement with a noncustodial parent, relative, or fictive kin. If the parties can agree on a placement for the child, draft an agreement pursuant to Tex. R. Civ. P. 11 to present to the other parties. If not, consider filing a motion for such relief.

PLACEMENT CONSIDERATIONS BASED ON CHILD'S NEEDS

- Are the siblings placed together? If not, what efforts were made to attempt to place them together? Is there a safety issue that prevents the siblings from being placed together? How frequently are sibling visits occurring? Are the siblings able to regularly communicate with each other?
- Can the child remain in the same school and can the placement meet the child's educational needs?
- Is the child's trauma being sufficiently considered in determining the child's placement?
- Is the placement knowledgeable about helping children with traumatic stress reactions and how to cope with those reactions? If not, what training or support is needed/available?
- Does the placement understand the reasonable and prudent parent standard and support normalcy for the child?
- Has the child's attorney regularly contacted the child to inform them of the next steps? Has the child's attorney checked on the child's thoughts and feelings about the current placement options?

CONSIDERATIONS FOR RTC OR QRTP PLACEMENT

A child's attorney has specific duties if their client is being considered for placement in an RTC or QRTP. Tex. Fam. Code § 107.004(f).

See the *Additional Duties for a Child's Attorney* section of this toolkit for more information.

> **Child's Attorney Practice Tip**: Keeping children informed about placement options helps give them a sense of transparency in decision-making about their life and gives them a voice in what decisions are made about them.

TEMPORARY EMERGENCY SUPERVISION

Temporary Emergency Supervision is defined as the supervision and care provided by DFPS or an SSCC for a child without placement for whom DFPS has been appointed as the temporary or permanent managing conservator. Tex. Fam. Code § 263.0022(a).

DFPS or an SSCC may not advocate for, and a court may not render an order, placing a child in temporary emergency supervision if an appropriate placement is available. DFPS or the SSCC and the court may not consider a child's refusal to stay in a placement when determining whether the placement is appropriate. Tex. Fam. Code § 263.0022(b).

Before a court may order temporary emergency supervision for a child, DFPS or the SSCC shall submit a report to the court that includes information regarding each attempted placement, including:

- Type of placement;
- Location of the placement;
- Date DFPS or the SSCC contacted the placement; and
- Reason DFPS or the SSCC determined the placement was not appropriate.

Tex. Fam. Code § 263.0022(c).

Visitation

Temporary Visitation Schedule

A temporary visitation schedule is required at an early stage in a case for each child whose goal is reunification: The caseworker develops the schedule with the child's parents to the extent possible.

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 TMC 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; or
- DFPS has determined the goal is not reunification.

The temporary schedule remains in effect until the visitation plan is developed under Tex. Fam. Code § 263.107 or modified by court order.

Court Implementation of Visitation Plan

Not later than the 30th day after the date DFPS is granted TMC of a child for whom the goal of DFPS is reunification with the parent, DFPS must develop a visitation plan in collaboration with each parent. Tex. Fam. Code § 263.107. DFPS must file the family's visitation plan no later than 10 days before the Status Hearing. Tex. Fam. Code § 263.107(d). 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.

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.

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.

Practice Tip: Attorneys for parents and children can use language to reorient how the court and parties perceive the contacts between parents and children. Using language such as "family time" rather than "visits" or 'visitation" can help bring focus to the parent-child bond. Advocates can also stress the importance of both the length and the quality of the contact in growing, maintaining, or repairing family bonds.

Visitation Advocacy

The primary purpose of visitation is to maintain the parent-child attachment, reduce a child's sense of abandonment, and preserve their sense of belonging as part of a family and community. A child needs to see and have regular contact with their parents and siblings, as these relationships are the foundation of child development.

Attorneys for parents and children can advocate that the court consider a number of options to increase the length and quality of time for visitation:

- Whether visitation can include normal parenting activities such as sharing meals, medical and therapeutic appointments, and school events;
- Whether visitation can occur at parks, restaurants, museums, zoos, or other natural family-oriented settings;
- Whether nursing during bonding time for infants can be supported;
- Whether visitation time can factor in the bonding time needed at different developmental stages (younger children may need more frequent visits, older children with established bonds may need less frequent visits which are longer in duration);
- Whether phone calls or virtual visits can be added to the visitation plan;
- Whether there is a safety issue that necessitates supervised visitation (if the children are older and/or if the reason for removal was neglect, then the visits may not need to be supervised);
- Whether there are, family, fictive kin, and/or community organizations that can supervise visits when supervision is necessary;
- Whether there is a way to support sibling visitation in addition to parent visitation;
- Whether the visitation schedule factors in the parent's resources for transportation and time away from work;
- Whether the child has an interest in expansive visitation that is independent from the parent's progress in services; and
- If a child is having a negative reaction at visitation, whether there is a way to provide trauma- informed support to the parent and child to assist them with safe, continued visits rather than reducing visitation.

Attorneys representing parents who are 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).

Medical Abuse and Neglect Allegations

Definitions

PHYSICAL ABUSE

A 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 [emphasis added] 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. Tex. Fam. Code § 261.001(1)(C).

MEDICAL NEGLECT

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. Tex. Fam. Code § 261.001(4)(A)(ii)(b).

The DFPS Process for Forensic Diagnosis of Medical Abuse and Neglect Allegations

Medical abuse and neglect cases are typically generated by an intake report received from hospital personnel or medical providers, such as a child's pediatrician.

FORENSIC ASSESSMENT CENTER NETWORK

DFPS utilizes the Forensic Assessment Center Network (FACN) in most medical cases. The FACN was established by DFPS in 2006 to make specialized pediatricians available for consultation to DFPS and Child Care Licensing in cases of suspected child abuse and neglect. The FACN is managed by the University of Texas Health Science Center (UTHealth)-Houston McGovern Medical School, in coordination with UT Health Science Center at San Antonio, UT Medical Branch at Galveston, UT Southwestern Medical Center at Dallas, Dell Children's Medical Center at Austin, and Texas Tech University Health Sciences Center at Lubbock.

The FACN allows for consultations with physicians who are board certified in relevant field or specialty, including radiologists, geneticists, orthopedists, and endocrinologists. Physicians must also have experience in certain specific conditions such as rickets, Ehlers-Danlos Syndrome, and other medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment. Tex. Fam. Code § 261.3017(b).

SPECIALTY CONSULTATION

DFPS must refer the case for specialty consultation if DFPS, the child's primary care physician, parent, or legal guardian (or the parent or legal guardian's attorney) requests a specialty consultation. The consultation must be with a board-certified physician who was not involved in the report of suspected abuse or neglect.

DFPS must provide to the child's parent or legal guardian written notice of the name, contact information, and credentials of the specialist before the specialty consultation and the parent, legal guardian, or attorney may object to the proposed referral and request referral to another specialist. DFPS and the parent, legal guardian, or attorney must collaborate in good faith to select an acceptable specialist from the proposed specialists, but DFPS can refer the child's case to a specialist over the objection of the parent, legal guardian, or attorney. Tex. Fam. Code § 261.3017(c), (c-1), and (c-2).

Before referring a child's case for a specialty consultation, DFPS must provide the child's parent, legal guardian, or their attorney with all medical records, including radiographs, images, and other documents used by DFPS and the FACN during the abuse and neglect investigation. Tex. Fam. Code § 261.3017(c-3).

The parent may still seek a second opinion and DFPS must consider the second opinion and document its analysis and determination regarding the opinion. Tex. Fam. Code § 261.3017(e). DFPS, a referring provider, including a hospital, and the FACN may not obstruct, prevent, or inhibit a parent, legal guardian, or their attorney from obtaining all medical records and documentation necessary to request a second opinion, including access to the child. Tex. Fam. Code § 261.3017(e-1).

> **Parent's Attorney Practice Tip**: In a hospital setting, parents may have talked to DFPS investigators, DFPS Special Investigators, and law enforcement without counsel and without understanding the implications. Additionally, parents may have signed written statements and the parents or the investigator or officer may have recorded the interview. When meeting with a parent client, it is critical to establish what information has been shared, what documentation may exist, and who possesses that documentation.

More information about referrals to the FACN is available in CPS Policy Handbook § 2233 and the DFPS Forensic Assessment Center Network (FACN) Resource Guide.[14]

Medical Records

Any case that involves medical information should start with a medical records request. Depending on the type of case and allegations, an attorney may need to include requests for a child's birth records and even a mother's pregnancy records.

Parents are entitled to request a copy of their child's medical records unless that right has been specifically restricted by a court. Tex. Fam. Code § 153.073(a)(3). A parent may then share such records with their attorney.

> **Parent's Attorney Practice Tip**: Initial records may be incomplete, so an attorney may need to make additional requests for specific information including, but not limited to, physician and nurses' notes, consults, radiology and imaging, medication administration, and lab work.

Hospitals may also have their own internal process of assessing whether the child's condition requires a referral to statewide intake. The records kept by these teams when they consult with each other and the FACN may contain several possible witnesses that may be relevant to

14 CPS Policy Handbook § 2233. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2233; DFPS Forensic Assessment Center Network (FACN) Resource Guide. Available online at https://www.dfps.texas.gov/handbooks/CPS/Resource_Guides/FACN_Resource_Guide.pdf. Last visited on November 21, 2025

the parent's case, but the witnesses may not be included in a standard medical records request and may also need to be identified specifically.

Most medical records are available in digital format, referred to as the Electronic Health Record (EHR). Records that look fuzzy, crooked, and scanned in may not be the EHR. Attorneys should request an electronic copy/EHR or if they are older records, records in an Optical Character Reader (OCR) format. This allows for quick scanning of the records for important information.

> **Parent's Attorney Practice Tip**: Obtaining all the necessary records may be challenging as different providers may have different policies when it comes to releasing records. If necessary, subpoenas can be used to ensure all relevant records are provided.

Medical Information and Decision Making When DFPS has TMC of the Child

MEDICAL CONSENTOR

When DFPS is appointed TMC, DFPS is granted the rights and duties in Tex. Fam. Code § 153.371. This includes "the right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment and to have access to the child's medical records."

Pursuant to Tex. Fam. Code § 266.004, the court may authorize the following persons to consent to medical care for a child in the conservatorship of DFPS:

- An individual named in a court order, including the child's parent,
- The child's foster parent; or
- DFPS or an agent of the DFPS.

This person is commonly referred to as the "medical consenter." If DFPS or its agent is the medical consenter, DFPS shall file with the court and each party the name of the individual who will exercise the duty and responsibility on behalf of DFPS, and DFPS has an obligation to keep this information updated throughout the case. Tex. Fam. Code § 266.004(c). 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).

DFPS has a Medical Consent Resource Guide available online that references its policies for consenting to medical care for children in its conservatorship.[15]

CONSENT BY YOUTH AT LEAST 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). *See* the *Older Youth in Foster Care* section of this toolkit for more information on youth becoming their own medical consenter.

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15 Texas Department of Family and Protective Services Medical Consent Resource Guide. Available online at https://www.dfps.texas.gov/handbooks/CPS/Resource_Guides/Medical_Consent_Resource_Guide.pdf. Last visited on January 28, 2026.

ASSUMPTION OF FINANCIAL RESPONSIBILITY BY MEDICAL CONSENTERS

A person, other than DFPS, who is authorized by a court to consent to medical care for a foster child, may assume financial responsibility for medical care, including behavioral health services, provided to a foster child by an out-of-network provider engaged by the medical consenter on behalf of the child. For that purpose, assuming financial responsibility may include the medical consenter enrolling the child in a health insurance plan. Tex. Fam. Code § 266.0043(b). DFPS is not liable for the cost of such care unless a court orders DFPS to cover the cost of the medical care. Tex. Fam. Code § 266.0043(c).

The assumption of financial responsibility authorized by Tex. Fam. Code § 266.0043 may not be construed to:

- Limit or restrict a foster child's access to Medicaid benefits, including in-network benefits provided under the Medicaid managed care program;
- Change or limit the rights of parents of children in the TMC of DFPS; or
- Limit a court's authority to order DFPS to assume financial responsibility for the cost of services provided to a foster child by an out-of-network provider.

Tex. Fam. Code § 266.0043(d).

A medical consenter is required, not later than the 10th business day after the date medical care for which the consenter assumes financial responsibility is provided, to notify the child's caseworker of the provision of that care in the form and manner prescribed by DFPS. DFPS must ensure the child's health passport includes records of the medical care provided. Tex. Fam. Code § 266.0043(e).

A Medicaid managed care organization (MCO) is prohibited from taking adverse action to prevent or discourage a recipient from accessing health care and related services and benefits in accordance with Tex. Fam. Code § 266.0043. Tex. Govt. Code § 540.0807.

PARENTS' MEDICAL RIGHTS WHILE DFPS HAS TMC

Unless the court specifically limits a parent's rights by court order, a parent has the right at all times to:

- Receive information from DFPS concerning and to confer regarding the health, education, and welfare of the child;
- Access medical, dental, psychological, and educational records of the child;
- Consult with a physician, dentist, or psychologist of the child;
- Be designated on the child's records as a person to be notified in case of an emergency; and consent to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and
- Consent to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child. Tex. Fam. Code § 153.073.

> **Parent's Attorney Practice Tip**: An attorney representing a parent should ask for the parent to be appointed as a temporary possessory conservator to make clear that the parent retains the standard rights a parent has when another party is the managing conservator.

> **Parent's Attorney Practice Tip**: Parents and their attorneys may still encounter barriers to exercising these rights with medical providers based on the nature of the case and DFPS involvement. Attorneys representing parents of children with medical needs should consider how to use subpoenas, motion practice, and collaborative efforts in their specific jurisdictions to get necessary medical documentation, seek second opinions, and to seek and obtain judicial rulings consistent with the children's best interest.

Vaccination

Tex. Fam. Code § 32.101 governs who may consent to immunization of a child. Subsections (a) and (b) indicate who may give consent, including DFPS, and the circumstances of that consent. However, Tex. Fam. Code § 32.101(c) provides that "a person otherwise authorized to consent under Subsection (a) may not consent for the child if the person has actual knowledge that a parent…has expressly refused to give consent to the immunization…" *See In re Womack*, 549 S.W.3d 760 (Tex. App.—Waco 2017) and *In re Zook*, No. 03-21-00180-CV, 2021 WL 2964264 (Tex. App.—Austin July 15, 2021).

> **Parent's Attorney Practice Tip**: An attorney representing a parent who objects to vaccinations should immediately document the parent's refusal to give consent for the child's vaccinations to DFPS and the court.

Expert Testimony

GETTING YOUR OWN EXPERT

Attorneys representing parents should consider getting their own expert witness in medical abuse and/ or neglect cases though attorneys may struggle to find a medical expert who is not contracted with DFPS who is willing to take on a medical abuse and/or neglect case.

> **Parent's Attorney Practice Tip**: Child welfare law practitioners in the area may have suggestions for expert witnesses used in previous cases. It might also be helpful to seek out medical expert suggestions from the criminal defense bar. It is also not uncommon for an attorney to seek a medical expert from another jurisdiction or state.

Funding for the expert may also be a challenge as it is likely an indigent parent cannot afford an expert witness fee. Consult with other child welfare law practitioners in your jurisdiction to determine the local practices for requesting funds for the expert.

Some experts may be willing to consult and produce a short-form report from the available records. Submitting such a report to DFPS may avoid the need for contested hearing and consultation by the expert may be less expensive than retaining the expert for testimony.

CROSS EXAMINATION

Regardless of whether a parent's attorney is able to get their own expert in a medical abuse and/or neglect case, the parent's attorney needs to engage in effective cross examination of the State's expert. It is important to demonstrate the limitations on the expert's knowledge and opinion and establish that the expert's role is to identify suspected abuse, not to identify the abusers. Areas of cross examination could include:

The Expert's Education and Experience

- Are they board certified by the American Board of Pediatrics in child abuse pediatrics?
- Do they meet the qualifications to become certified?
- Have they attempted to take the exam?
- Have they completed a fellowship in child abuse pediatrics?

Relationship with DFPS

- Are they contracted with DFPS?
- What is the amount of DFPS cases they handle per month/year?
- What paid work does the expert perform outside of work for DFPS, if any?

Training And Experience in the Relevant Underlying Area Of Medicine

- Do they have the training that is relevant to this child's specific medical condition or injury, i.e., neurology, radiology, ophthalmology, pathology, etc.?

Physical Examination and Diagnosis of the Child

- Has the expert personally examined the child?
- What is the amount of time the expert has spent with the child?
- Has the expert discussed the child's injuries with the child's parents?
- Was a filter or lens used to highlight the child's injuries in photos?
- Were medical conditions that mimic maltreatment or increase the risk of misdiagnosis of maltreatment examined? Were they ruled out? *See* Tex. Fam. Code § 261.3017.

Additional Information Now Available

- Has the expert been provided with new information by DFPS since the alleged abuse/ neglect occurred?
- Does the expert have knowledge of the parents' progress in services?

Practice Tip: It is not uncommon for parents to dispute the allegations of medical abuse or neglect but agree to DFPS being appointed TMC based on the lower standard of proof required at an Adversary Hearing. Effective advocacy when parents dispute the allegations can include any and all of the following:

Request a Family Group Conference
A Family Group Conference is a facilitated meeting that can be held to discuss the child's injuries, the parent's progress in services, the risks that remain, how the risks can be mitigated through agreed court orders and safety plans, and the safety concerns that remain and how to address them.

Seek a consultation with the DFPS medical expert
Consulting with the DFPS medical expert rather than getting the information second hand through the case worker or supervisor can create a better shared understanding of the child's condition and needs so that all parties have the same information.

Filing a motion and setting an evidentiary hearing
When the parent and child advocates are at an impasse about whether to or how to move forward with family reunification, it is appropriate to seek court intervention to resolve the impasse. In this hearing, a parent's attorney should seek specific orders on any remaining services needed to achieve reunification, expanding visitation to include unsupervised and overnight visitation, and/ or seeking a monitored return.

Medical & Mental Health Checklists

HEALTH CARE PROVIDER

Physical, dental, and eye care, along with immunization and behavioral health for children in foster care are covered by two managed care programs, STAR Health (a division of Superior HealthPlan) and Cenpatico Behavioral Health, a division of the Centene Corporation.

ELIGIBILITY

- All children in DFPS conservatorship and young adults in extended foster care or those young adults who have returned to foster care, up to age 22. Tex. Fam. Code § 264.101(a- 1)-(a-2).
- All youth who turned 18 in foster care and received healthcare through Medicaid (STAR Health or other) but who did not return to extended foster care are covered under STAR Health or STAR Medicaid under the Affordable Care Act up to age 26. Patient Protection and Affordable Care Act; Pub. L. No. 111-148, 124 Stat. 119 (2010).

***Note**: Former foster care children (FFCC) who are under the age of 21, but who are not eligible for the FFCC program because the youth did not receive Medicaid at the time they aged out of care, receive coverage through the Medicaid for Transitioning Foster Care Youth (MTFCY) program if they do not have other healthcare coverage and meet program rules for income.*

Child's Attorney Tip: All Medicaid recipients, including youth formerly in foster care, must renew their Medicaid eligibility once every 12 months. To ensure continuous coverage, youth must provide their current mailing address to HSSC. If a youth changes their address without notifying HHSC, and HHSC receives returned mail and cannot locate the youth, the youth's Medicaid benefits will be denied. A youth can report an address change online through the YourTexasBenefits website or mobile app, by calling 2-1-1 (Option 2 after selecting a language), in person at a local Medicaid eligibility office, or by reporting the change in writing by mail or fax.[16] Youth must also respond to requests for information from HSSC and may need to verify that they are a Texas resident or their immigration status. Youth formerly in foster care can attest to their Texas residency at application and redetermination rather than provide documentation (such as a driver's license or a utility bill).

MEDICAL CARE QUESTIONS FOR THE CHILD'S ATTORNEY

- Has the child received all health assessments, immunizations, hearing and vision screenings, dental checkups and services, prescriptions for medications, and medical equipment?

16 Your Texas Benefits website. Available online at https://www.yourtexasbenefits.com/Learn/Home. Last visited on January 29, 2026.

- Has there been any emergency medical care provided to the child and circumstances necessitating care, include injury, or acute illness of child?
- What medical and mental health treatment is the child receiving and what is child's progress with treatment (this includes any physical, dental, eye, immunization, and mental health issues)?
- Is there medication prescribed for the child, what is the condition, diagnosis, and symptoms for which medication was prescribed, and what is child's progress with medication?
- Has the child or foster care provider complied or failed to comply with any plan of medical treatment for child?
- Has the child suffered any adverse reaction to, or side effects of, any medical treatment provided to child?
- Is there a specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis?
- Is there any activity the child should avoid or engage in that might impact effectiveness of treatment, including physical activities, other medications, and diet?
- Is there any other information required by DFPS or rule of court?

Tex. Fam. Code § 266.007.

MENTAL HEALTH QUESTIONS FOR THE CHILD'S ATTORNEY

- Has there been a comprehensive psychological evaluation?
- Have the parents or other family caregivers given input for the evaluation?
- Who has given input for the evaluation? And would they have had sufficient experience with the child to give accurate information?
- What is the child's diagnosis? What are the treatment options for that diagnosis?
- What are the recommendations? Is DFPS implementing them?
- For a child receiving psychotropic medication:
  - What psychosocial therapies, behavior strategies, or other non-pharmacological interventions were provided to child?
  - Has the child seen or is the child seeing their prescribing physician, physician assistant or advanced practice nurse every 90 days?

TRAUMA-RELATED QUESTIONS FOR THE CHILD'S ATTORNEY

- Has trauma played a role in the child's behavior?
- Is a trauma assessment of the child by a trauma-informed professional needed?
- What monitoring, treatment, or other supports might be needed to help the child cope with traumatic stress reactions?
- What potential trauma-informed services have been considered or implemented? (occupational therapy/physical therapy, weighted blankets, soothing exercises, yoga/meditation, etc.).

Child's Attorney Practice Tip: A child's behavior may be related to their trauma history. Symptoms of mental health disorders can overlap with the symptoms of trauma. If a child client is exhibiting behavioral issues, consider advocating for trauma-informed services for the client. Please *see* the *Trauma-Informed Lens for Interacting with Clients* section of this toolkit for more information.

DFPS ACTIONS FOR CHILD'S ATTORNEY TO VERIFY

- Did the child receive the comprehensive, preventive Texas Health Steps medical checkup within 30 days of entering conservatorship?
- Did the child receive the 3-day medical examination by the end of the third business day after the child was removed from the child's home? Tex. Fam. Code § 264.1076(b).
- Did the child receive a Texas Child and Adolescent Needs and Strengths (CANS) 3.0 behavioral health assessment within 30 days of entering conservatorship if aged 3-17 years?[17]

ADDITIONAL REQUIREMENTS FOR CHILD'S ATTORNEY

- Has the child been provided the opportunity to comment on the medical care being provided? Tex. Fam. Code § 266.007(c).
- Have you, as the child's attorney, reviewed the child's medical care? Tex. Fam. Code § 107.003(b)(1).
- Have you, as the child's attorney, elicited from your client their view on the medical care being provided? Tex. Fam. Code § 107.003(b)(2).
- Have you, as the child's attorney, advised youth clients 16 and older of the right to request medical consenter designation from the court? Tex. Fam. Code § 107.003(b)(3).

Foster Care & Education Checklists

SCHOOL READINESS

- If the child is age 0-3, have they been assessed for Early Childhood Intervention (ECI) services? 34 C.F.R. Part 303.
- If the child is age 0-5, have they been enrolled in Early Head Start, Head Start, or Pre-Kindergarten? 45 C.F.R. § 1305.2, Tex. Educ. Code § 29.153(b).

SCHOOL STABILITY

- Is the child enrolled in and does the child have transportation to current school? Tex. Educ. Code § 25.001(a).
- Can the child remain in current school, regardless of additional placement changes? Tex. Educ. Code § 25.001(g)-(g-1).

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[17] DFPS Texas Child Centered Care CANS 3.0 Assessment website. Available online at https://www.dfps.texas.gov/Texas_Child_Centered_Care/CANS_3-0.asp. Last visited on January 29, 2026.

- If school changes do occur, can they be planned at the end of grading periods?
- If school changes do occur, can changes be planned to avoid conflict with standardized testing or final exams?

EDUCATION DECISION-MAKING

- Has DFPS designated an Education Decision-Maker (EDM) for the child? Tex. Fam. § Code 263.004.
- Should the parent retain, or should any other person be given, specific education-related rights? Tex. Fam. Code § 263.0025
- Has DFPS provided EDM Form 2085-E to the child's school and has information regarding the EDM been provided to the parties? Tex. Fam. Code § 263.004.
- Should a surrogate parent be appointed to make decisions regarding special education, if the foster parent is unwilling or unable to fulfill that role? Tex. Fam. Code § 263.0025(b).

SCHOOL ENROLLMENT

- Can the child be enrolled immediately in a new school if a change is required? Tex. Fam. Code § 264.115.
- Has the child's education record or credit transfer issues been addressed by court as necessary? Tex. Educ. Code § 25.007(b).
- If the child was receiving special education services at their previous school, is the child's Individual Education Plan (IEP) being followed at the new school and has an Admission Review and Dismissal (ARD) committee meeting been scheduled? 19 Tex. Admin. Code § 89.1050(j).

SCHOOL PLACEMENT AND SCHOOL SUCCESS

Tex. Fam. Code §§ 263.306, 263.5031

- What does the child say about school and which school the child wants to attend?
- Is the child in a school that can meet their needs?
- Is the child progressing academically and on grade level?
- Are there identifiable areas where the child is excelling?
- Are there any additional school supports needed?
- Is the child involved in extracurricular activities? If not, does the child want to be involved?
- Is the child experiencing any discipline issues (truancy, suspension, expulsion, restraints)?
- Was the child's status in DFPS conservatorship considered when disciplinary decisions were made? Tex. Educ. Code § 37.001.
- Has the caregiver signed the annual form to prohibit corporal punishment at school? Tex. Educ. Code § 37.0011.

POST-SECONDARY EDUCATION

Tex. Fam. Code §§ 263.306, 263.5031

- If the youth is at least grade 9, has a personal graduation plan been created and graduation endorsement been chosen (this is in addition to the Foundation High School Program in STEM, Business & Industry, Public Services, Arts & Humanities, or Multi-Disciplinary Studies)? Tex. Educ. Code § 28.025.
- Does the child have a college or career plan?
- Does the child and their caregivers know about high school graduation requirements and how to prepare and apply for post-secondary education and available funding? 42 U.S.C. § 677; Tex. Educ. Code §§ 54.366, 54.367.

SPECIAL EDUCATION

- If needed, has the child been evaluated for special education services?
- If eligible for special education, what is the date of child's last ARD committee meeting?
- Does the child have an IEP that is current, appropriate, and in effect?
- Has transition planning been coordinated, beginning no later than age 14?

Human Trafficking Checklists

WHAT IS CHILD SEX TRAFFICKING?

- A person knowingly transported, enticed, recruited, harbored, provided, or otherwise obtained the child by any means. Tex. Penal Code § 20A.01(4); and
- Caused the child to engage in, or become the victim of, an enumerated sex offense. Tex. Penal Code § 20A.02(a)(7); or
- Received a benefit from participating in a venture that involves an enumerated sex offense; or
- Engaged in sexual conduct with a trafficked child. Tex. Penal Code § 20A.02(a)(8).
- Child under 18 years of age, regardless of trafficker's knowledge. Tex. Penal Code §§ 20A.01(1), 20A.02(b)(1).

WHAT IS CHILD LABOR TRAFFICKING?

- A person knowingly trafficked child with intent that the child engage in forced labor or services. Tex. Penal Code § 20A.01(2), Tex. Penal Code § 20A.01(4), Tex. Penal Code § 20A.02(a)(5); or
- Received a benefit from participating in a venture that involves forced child labor or services including knowingly receiving forced child labor or services. Tex. Penal Code § 20A.02(a)(6).
- Child under 18 years of age, regardless of trafficker's knowledge. Tex. Penal Code §§ 20A.01(1), 20A.02(b)(1).

UNDER WHAT CIRCUMSTANCES WILL DFPS INVESTIGATE TRAFFICKING?

- A person traditionally responsible for child's care, custody, or welfare;
- Compelled or encouraged the child to engage in sexual conduct including child sex trafficking, prostitution, or compelling prostitution; Tex. Fam. Code § 261.001(1)(G);
- Knowingly caused, permitted, encouraged, engaged in, or allowed a child to be trafficked for sex or labor; or
- Failed to make a reasonable effort to prevent the child from being trafficked for sex or labor. Tex. Fam. Code § 261.001(1)(L).

IF CHILD HAS BEEN MISSING FROM FOSTER CARE, WERE THE FOLLOWING STEPS TAKEN?

Tex. Fam. Code § 264.123 (*Note*: These apply to any child missing from foster care, not exclusively victims of trafficking.)

- DFPS made report to law enforcement and the National Center for Missing and Exploited Children (NCMEC) no later than 24 hours after learning a child is missing or abducted. 42 U.S.C. § 671(a) (35).
- Within 24 hours of learning child missing or returned to care after missing, DFPS notified law enforcement, court, child's Attorney ad Litem (AAL) and Guardian ad Litem (GAL), and parents (unless no known location, Termination of Parent Rights [TPR], or relinquishment).
- While a child is missing, DFPS makes continuing efforts to locate the child including monthly contacts with law enforcement and former caregivers and conducts supervisory-level review.
- After a missing child returns to care, DFPS interviewed the child about why the child was missing, where the child stayed while missing, and whether the child was a victim of sex trafficking while missing.

WHAT ARE SOME RED FLAGS TO HELP IDENTIFY CHILD TRAFFICKING VICTIMS?

- Multiple runaway incidents from foster care placement in a short period of time.
- Changes in school attendance habits, appearance, socio-economic status and possessions, friend groups, interests, school activities, vocabulary, demeanor, attitude, and sexual behavior.
- Unexplained injuries such as bruising, swelling, redness, or cigarette burns.
- Tattoos or branding.
- Hotel key cards or refillable gift cards.

Interviewing the Child Client

When to Interview the Client

- Within a reasonable time after the appointment. Tex. Fam. Code § 107.003(a)(1)(A).
- Before each hearing, meet with the child if they are at least four years of age. Tex. Fam. Code § 107.004(d)(1).

Background Preparation

Before the first interview, become familiar as possible with the client and the client's background and history.

- Do not make assumptions about the child or the case.
- Read the pleadings, affidavits, and any other documents obtained.
- Talk with the DFPS caseworkers who have been involved with the case.
- Analyze the child's world from the child's perspective.
- Educate yourself about the trauma that the child has experienced, how the child's past trauma affects the client now, and how might it affect the child in the future.

Goals For First/Early Meeting(s) With a Child Client

- Build rapport and trust.
- Explain the attorney-client privilege and confidentiality in a developmentally appropriate way and the roles and responsibilities of the professionals involved in the case.
- Learn the basic facts of the case from the child's perspective.
- Assess the child's needs.
- Elicit the child's preferences related to the case, including placement, visitation, education, and normalcy.
- Inquire, in developmentally appropriate manner, about potential family or fictive kin placement options.
- Be patient and listen to your client.

Location and Timing of Interview

- The interview can take place where the child lives, at their school, their daycare, a park, or another location where the child feels safe and comfortable.
- The interview must take place in a private space to ensure confidentiality. Tex. Fam. Code § 107.004(d-1)(2).

> **Child's Attorney Practice Tip**: If you meet where the child is placed, it is not recommended to go into a bedroom or behind closed doors to meet with a child. Potential meeting locations include meeting outside or in a private location. If the child wants to show you their room or meet in their room, it is advisable to keep the door open.

- The interview must take place sufficiently in advance of the hearing to allow the attorney to prepare in accordance with the child's objectives. Tex. Fam. Code § 107.004 (d-1)(1).

Child-Centered Interviewing

PREPARE TO ADDRESS CHILDREN'S COMMON CONCERNS

- When will I go home?
- When will I see my mom/dad/siblings/friends?
- Where will I live?
- Where will I go to school?

CREATE A TRUSTING ENVIRONMENT

- Ask where they would like to talk (outside/inside) and what physical place they prefer.
- Consider bringing an age-appropriate game to play, such as Candy Land, Chutes and Ladders, or Connect Four.
- For younger children, consider printing and bringing Sam and the Search for Spots, the Children's Commission's coloring book designed to help them understand the role of their lawyer.[18]
- Go for a walk if the child would be comfortable doing so – being active helps promote conversation.
- Get on the child's level physically. Sit on the floor, or together at a table or bench.
- Ask for permission when taking notes. Explain that you are writing down what is important to them so you can tell the judge with their permission.

USE APPROPRIATE INTERVIEW TECHNIQUES

- Age-appropriate ice-breakers. Ask about the client's interests, likes, and dislikes in connection with "safe" topic areas. ("What do you like to do for fun?" "Who is your favorite superhero?")
- Simple, open-ended questions. ("Tell me how to play that game?" "Why is Batman your favorite?" "What do you like or dislike about ___?")
- Follow the child's lead on areas of discussion even though they may not be linear. Open-ended questions as you approach topic areas pertinent to the facts of the case are encouraged. Children are highly suggestible, so extra caution should be taken not to ask them any leading questions.
- "Funnel" approach when your client tells the story of the case. Start by letting the child narrate the entire story as they choose and then ask appropriate, more narrow questions to inquire about specific details that will assist your advocacy while not re-traumatizing your client.
- Check for understanding. Children often say that they understand something in order

[18] Texas Children's Commission Sam and the Search for Spots Coloring Book. Available online at https://texaschildrenscommission.gov/media/q3dlgqjh/coloring-book-online-print.pdf. Last visited on January 29, 2026.

to please adults, when they really may not fully understand the conversation. When explaining something to your child client, ask them to explain it back to you in order to check their level of understanding.

- Use their words. For example, if they call their grandmother GiGi, call her GiGi when talking to the child.
- Use demonstration: when appropriate, ask them to show how something happened, rather than requiring them to use words – or make demonstrations to help them ("You said you liked visiting with your mother. How much did you like it?" Show your hands close together ["this much?"] then spread them out ["this much?"]).
- Sibling groups: If interviewing a sibling group, talk with the group about an overview of the case, but then interview each child individually to obtain each client's direction and preserve confidentiality.
- Judge's role: Emphasize that the judge, rather than DFPS, the child's parent or substitute caregiver, gets to make decisions about what happens in their case.
- Body language: Observe the child's body language. Non-verbal communication in reaction to questions can help guide you about which topics the client is ready to talk about. Also, be aware that your body language can have an impact on your client.

EXPLAIN THE LEGAL SYSTEM TO A CHILD

- Avoid jargon: instead of using the words "Adversary Hearing" substitute "talking to the judge about what is going on with you and your family."
- Use simple language to explain the legal roles of other people in the child's case. for example:
  - a judge makes decisions;
  - a caseworker makes sure children are safe;
  - a CASA tells the judge what they think is best for the child;
  - a therapist helps people try to make better choices; and
  - a parent's attorney tells the judge what their mom/dad wants.

EXPLAIN THE ROLE OF THE CHILD'S ATTORNEY

- Differentiate the attorney role from that of DFPS or CASA: Explain to the child "you are my boss/ you get to tell me what you want to have happen and my job is to tell the judge what you want."
- Explain the counselor part of the attorney's role and prepare the child that some information and advice may be hard for them to hear at times but that you want them to know what to expect. When possible, and without breaking confidentiality, arrange for the child to have some support after such conversations.
- Explain attorney-client privilege but differentiate confidentiality from keeping secrets. Emphasize to the child that you will keep the conversations that you have with them private, except for what your client allows you to share, but that the child is free to share the conversations with anyone they choose.
- Explain the exceptions to confidentiality and your obligation to report abuse/neglect under Tex. Fam. Code § 261.101(c) if they disclose that:

  - they hurt someone;
  - someone hurts them; and/or
  - they are hurting themselves.

- Explain the procedural overview of the case in a way that is developmentally appropriate given the child's age and demonstrated understanding of legal concepts.
- Explain that if the child also has a juvenile case there may be another attorney assigned to represent them in that matter but that both attorneys have the same duty to maintain confidentiality. Please *see* the *Dual Status Youth* section of this toolkit for more information.

Information That Should Be Acquired During The Interview

- Where does the client want to live? Have them rank their choice of placement (1st, 2nd, 3rd), and document their choices.
- How does the child feel about their current placement?
- What are the child's educational needs?
- What are the child's health needs, including medical, mental, and therapeutic?
- What are the child's preferences for visitation with parents and siblings?
- Can the child identify possible relatives or fictive kin?
- What are your observations regarding the effects of trauma on the child?

Speaking to the Judge

- Explain that they might meet the judge in courtroom or in chambers.
- Ask both if the child would like to speak with the judge and where they would like to speak to the judge.

> **Child's Attorney Practice Tip**: If your jurisdiction permits virtual child conferences with the judge, allowing a child to visit with the judge virtually may be an appropriate option. Virtual meetings can allow the child to meet the judge from a setting they are comfortable in, reduce interference with the child's school schedule, and can allow the judge to see the child's environment. There may be reasons why the child might still wish to meet the judge in person so all options should be presented to the client.

Gaining and Keeping the Client's Trust

- Do not pretend to know them or their lives.
- Do not criticize their parents or other family members.
- Never make a promise that cannot be kept.
- Sustain a client's morale but be honest. Tex. R. Prof. Conduct 2.01.
- Inform the child about the case in a developmentally appropriate manner. If appropriate,

tell them about their parent's progress, that their parents love them, etc.

- Answer their questions in developmentally appropriate ways.
- Be respectful of their views, comments, concerns, and situation.
- Practice empathy.
- Pay attention to what matters to the client.

Discussion of Prior Abuse

- Avoid bringing up the topic of past abuse as repetition of traumatic events can retraumatize the child.
- If the child brings up the topic, remain calm, listen, and validate the child's feelings. Do not overreact. Ask a few open-ended questions that allow the child to tell their story in their own words.
- Know your limitations and keep the discussion brief. If a child will be a testifying witness regarding the abuse, consult with the child's therapist and a forensic interviewer when preparing the child for testimony.
- Do not criticize the child or the alleged abuser.

Dealing With a New Abuse Disclosure/Outcry

- Assume the child is telling the truth.
- Remain calm, do not overreact.
- Reassure the child that they did the right thing by telling you, and that what happened was not their fault.
- Do not criticize the child or the alleged abuser.
- Do not make promises.
- Let the child know this information cannot be kept a secret since you have an obligation to report it to keep them safe.
- Make the report to the DFPS Hotline: 1-800-252-5400 or online Texas Abuse Hotline Website.[19]

19 Texas Abuse Hotline Website. Available online at http://txabusehotline.org/Login/Default.aspx. Last visited on January 29, 2026.

Additional Resources

- ABA Section of Litigation Children's Rights Committee Video: Interviewing the Child Client: Approaches and Techniques for a Successful Interview.[20]
- ABA Center for Children and the Law Youth Engagement resource information and materials.[21]
- Texas Children's Commission Attorney-Client Materials:
    - Brochure: What Does an Attorney for a Child or Youth do in a CPS Case?[22]
    - Coloring Book: Sam and the Search for Spots- available in English and Spanish.[23]
    - Video Series: Your Lawyer Works for You[24]

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[20] ABA Section of Litigation Children's Rights Committee YouTube Webpage. Interviewing the Child Client: Approaches and Techniques for a Successful Interview. Available online at https://www.youtube.com/watch?v=OYLWkVHvgOM. Last visited on January 29, 2026.

[21] ABA Center on Children and the Law Resources for Youth Engagement in Court webpage. Available online at https://www.americanbar.org/groups/public_interest/child_law/project-areas/youth-engagement-project/resources/. Last visited on January 29, 2026.

[22] Texas Children's Commission Legal Representation Committee Webpage. What Does an Attorney for a Child or Youth do in a CPS Case brochure. Available online at https://www.texaschildrenscommission.gov/media/tghlulxj/childs-atty-tri-fold-325-print.pdf. Last visited on April 29, 2026.

[23] Texas Children's Commission Legal Representation Committee Webpage. Sam and the Search for Spots Coloring Book. Available online at https://www.texaschildrenscommission.gov/our-work/legal-practice-process/legal-representation-committee/. Last visited on April 29, 2026.

[24] Texas Children's Commission Legal Representation Committee Webpage. Your Lawyer Works for You Video Series. Available online at https://www.youtube.com/playlist?list=PLu95AlElAiCnP4qEu-cbkAKm5z6jwXOtI. Last visited on April 29, 2026.

Normalcy

Normalcy Defined

FEDERAL LAW

Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014)

- Required states to implement a "reasonable and prudent parenting standard" giving foster parents the authority to make day-to-day decisions affecting children in their care regarding extracurricular, enrichment, cultural, social, and/or sporting activities.

Texas adopted a definition of "age-appropriate normalcy activity" as well as a definition of a "reasonable and prudent parent." *See* below for more specifics.

AGE-APPROPRIATE NORMALCY ACTIVITY DEFINED

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 the state is generally allowed to participate, including extracurricular activities, in-school and out-of-school social activities, cultural and enrichment activities, and employment opportunities. Tex. Fam. Code § 264.001(1).

REASONABLE & PRUDENT PARENT STANDARD OF CARE DEFINED

What 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.

Factors to consider when deciding whether an activity is appropriate:

- Overall health and safety of the child;
- Child's age, maturity, and development level;
- Best interest of the child based on the caregiver's knowledge of the child;
- Appropriateness of a proposed activity and any potential risk factors;
- Behavioral history of the child and the child's ability to safely participate in a proposed activity;
- Importance of encouraging the child's social, emotional, and developmental growth; and
- Importance of providing the child with the most family-like living experience possible.

Tex. Fam. Code § 264.001(5).

DFPS Best Efforts

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

Normalcy in Practice

For youth in foster care, normalcy means being able to act like their friends act and feel like part of a family. This includes:

- Being part of a caring family that supports them.
- Doing the normal daily and extracurricular activities they choose.
- Being a person, not a label.
- Making decisions, trying new things, and sometimes making mistakes.

Child's Attorney Practice Tips:

- Ask early and often about a youth's interests and desired activities, including at school and in the community.
- Treat a young person as an individual. Take the time to get to know the client and what normalcy means to them.
- Rethink visitation. Allow relationship building time and activities, including with family, friends, and community members.
- Be creative in supporting youth's interests.
- Encourage the community to engage in the lives of the youth as skill trainers, transportation providers, or support families.
- Understand and respect normalcy decisions of the caregiver.
- If the parties cannot agree on normalcy activities, utilize motions for further orders so that the court can resolve disagreements and enforce compliance if the court has ordered access to the activity.

For more information on normalcy, *see* "NORMALCY MATTERS: A Guide to Supporting Children & Youth in Texas Foster Care."[25]

[25] Texas CASA Normalcy Matters: A Guide to Supporting Children & Youth in Texas Foster Care. Available online at https://texascasa.org/program-portal/resources/normalcy-matters-guide/. Last visited on January 29, 2026.

Children Without Placement (CWOP)

If DFPS or SSCC is unable to secure an appropriate, licensed placement, DFPS or the SSCC must provide temporary emergency supervision for a child. DFPS or the SSCC must provide notice to the court no later than the next business day after the date the child is placed in temporary emergency supervision. Tex. Fam. Code § 264.107(g).

Any overnight in a DFPS office is prohibited, so the child must stay in another location (i.e., hotel, apartment) while being supervised by DFPS or SSCC staff. Tex. Fam. Code § 264.1071. While this situation should be avoided whenever possible, the number of children without placement is very low compared to the overall population of children in care across Texas. CWOP is also called "Child Watch."

Supervision

- The children are supervised and provided for by caseworkers and other DFPS staff. These duties are in addition to existing work responsibilities.
- Caseworkers and staff must ensure that an adult is always present, but there may not be a consistent caregiver or supervisor.
- DFPS caseworkers and staff are not trained as childcare providers, foster parents, or residential treatment staff.

Causes and Risk Factors

There is no single reason why some children in the conservatorship of DFPS might experience a lapse in licensed placement. However, the combination of the effects of the COVID-19 pandemic, increased federal and state oversight, and placement capacity gaps are some factors that may have contributed to an increasing number of children in Texas entering CWOP.

Children who are at higher risk of experiencing CWOP include:

- Older children
- Children with complex behavioral issues
- Children released from psychiatric hospitals
- Children released from juvenile detention
- Children moving to or from a residential treatment center (RTC)
- Children with special needs (i.e., Autism)
- Children with problematic sexual behaviors

Impacts of CWOP on Children

INSTABILITY

- Overnight stays in DFPS offices are forbidden by statute, but children without placement may stay in hotels, apartments, or rental homes overnight and may stay in DFPS offices during daytime hours. Such unlicensed placements are intended as a short-term solution, but some children may experience it for longer periods of time.
- The child's formal education may be interrupted and there may be limited access to informal education resources such as tutors or study sessions.

- Therapy for the children can be inconsistent during temporary placements.
- Not having a stable, licensed placement can be a traumatic experience for children.

> **Child's Attorney Practice Tip**: Children without placement who are staying in hotels, rental homes, apartments, or dorms on a temporary basis meet the federal McKinney-Vento Homeless Assistance Act ("McKinney-Vento") definition of homeless and therefore are entitled to attend the school that the child attended when permanently housed or the school in which the child was last enrolled, with transportation and other services provided by the school district. *See* 42 U.S.C. § 11431 et seq.

SAFETY

- Children without placement are at increased risk of running away or becoming a victim of child sex trafficking.
- Unsupervised access to medication can lead to improper dosage or the proper medication regime not being followed.
- Children with serious mental health or behavioral needs may interact with other children without adequate supervision.
- Without training and options for discipline, conflicts between children or between children and
- Staff can escalate and increase the risk of injury or arrest.

BASIC NEEDS

- Older youth do not have the support or living space available to build healthy life skills such as hygiene, cleaning/chores, getting regular physical activity outdoors, cooking a healthy meal, etc.
- Making visitation arrangements with parents is more complicated when the child does not have a stable placement.

What Can Attorneys Do if a Client or a Client's Child is in CWOP?

BUILDING TRUST

Attorneys can work to reduce the possibility of CWOP by building strong attorney-client relationships that center on partnership.

- Children in care who feel supported by the adults in their lives may be less likely to run away, experience placement breakdowns, or experience one or more unlicensed placements. Parents who have a good relationship with their attorney are more likely to share information about possible placement options, including kinship.
- The most important aspect of building attorney-client partnerships is to take the time to listen to the client. Their insights and expertise can be very helpful in informing what actions need to be taken, including identifying and vetting possible placement options.
- Making an authentic connection with each client from the start of the attorney-client

relationship may help to prevent CWOP situations by identifying and solving problems before they reach a crisis point.

IDENTIFYING PLACEMENT OPTIONS

An attorney can assist in moving a child out of CWOP by thoroughly investigating alternative placements. For example, attorneys for children and parents might:

- Identify whether there are relatives or fictive kin who may not meet DFPS approval but could be a safe place for this child.
- Contact potential relatives or fictive kin placement and consider meeting with them in their homes, if appropriate.
- Request specific placement search information from DFPS. Which placements were considered, which were rejected, and why?
- Consider contacting treatment centers that do not contract with DFPS about availability
- Request the child's common app, review for accuracy, and request edits, if appropriate.

MOTION PRACTICE

When a child is without placement, attorneys can help maintain a sense of urgency by setting regular hearings until an appropriate placement is found. The following motions may be appropriate in unique circumstances and would not be appropriate for filing in every case.

Motion for Change of Placement: If asking for placement with a relative or fictive kin who DFPS has not or cannot approve, it is important to be aware if that person has any DFPS or criminal history. It may also be helpful to visit the proposed home prior to the hearing. Explore whether supportive services such as daycare or after-school care should be considered to stabilize the placement.

Motion for Court Approval of Out of State Placement: Consider requesting that the court require prior court approval for the child to be placed in any out of state facility.

Motion for Education Services: Explore what educational supports may be available through the school district where the child was last enrolled. Depending on the child's educational needs and goals, distance learning may be an option for the child until a stable placement can be found. Consider requesting that tutoring or other education support be ordered.

Motion for Normalcy Activities: Children without placement may be caught in a cycle where there are no authorized activities, but there may be inadequate supervision to prevent them from engaging in unauthorized activities. A motion to allow the child to engage in specific activities or for DFPS to provide opportunities for activities can encourage normalcy and stability.

Motion for Therapy or Other Services: If your client needs therapy or other services, request that such services be brought to the child's current location or that the child can access them remotely.

Motion for Child-Specific Contract: This motion requests the court to order DFPS to contract with a provider that does not have a standing contract with DFPS for placement. This motion may only be appropriate in very limited circumstances and a child specific contract is not a quick or easy solution. Drafting a child-specific contract will take time, the cost of the child specific contract is significant, and the enforceability of the court's order may end up in further litigation.

Children with Disabilities

Attorney-Client Relationship

A child's intellectual or developmental disability does not necessarily mean that the child is not competent to form an attorney-client relationship. Neither does a child's IQ alone demonstrate incapacity. It is imperative for a child's attorney to become familiar with child development stages, interview the child, make an independent determination if that child can form an attorney-client relationship, and determine whether the attorney can or must follow the client's directives. If the child cannot meaningfully direct representation, the child's attorney must follow the procedures outlined in Tex. Fam. Code § 107.008 for substituted judgment.

Supplemental Security Income (SSI)

DFPS is required to assess and determine long-term care plans for youth who have qualifying disabilities. DFPS is responsible for applying for SSI on the youth's behalf. Written confirmation of benefits from the Social Security Administration is necessary to understand exactly what benefits the youth is entitled to when they exit foster care. DFPS has Regional Specialists for SSI and they can be an effective resource for ensuring the client obtains appropriate resources.

EFFECTS OF SSI ON A CHILD'S PLACEMENT

- If a child receives SSI and they are in DFPS-contracted substitute care, the SSI payment goes to the state to defray the cost of the child's care.
- If a child receives SSI and is placed with a kinship caregiver, the kinship caregiver can receive the SSI payment either directly or once it has passed through DFPS.
- If the child is adopted, the SSI payment is taken into consideration when negotiating the adoption subsidy.

Child's Attorney Practice Tip: Make sure that the Disability Specialist at DFPS is notified when a youth who receives SSI is aging out of foster care so that DFPS can resign as the youth's designated payee. Once DFPS resigns as the payee, the youth can go to the Social Security Administration office to become their own payee or designate a new payee. If the youth cannot manage their own finances but does not need a guardian, local resources may help find a designated payee to help the youth manage their finances.

Medicaid Services and Denials

All children in foster care are automatically enrolled in the STAR Health Medicaid plan regardless of any prior Medicaid eligibility or enrollment in other Medicaid Plans. At this time, Superior HealthPlan is the insurance provider for STAR Health, so children in DFPS conservatorship can only go to providers who accept Superior HealthPlan. If a client is denied a service by Superior HealthPlan, the denial can be appealed. Typically, there is a lengthy process for administratively appealing Medicaid service denials. Rather than appealing the Superior decision, it may be more efficient to petition the court to order the service under Tex. Fam. Code § 266.004(e). Though Superior HealthPlan is not a party to the case and technically not subject to court orders, they are contractually obligated to pay for services ordered by the court. However, it is important to note that Superior HealthPlan can only be ordered to pay for services that are both "medically necessary" and part of the Texas Medicaid Plan. Any other healthcare service ordered by the court must be paid for by different means, typically by DFPS directly.

Intellectual Disabilities

Children with Intellectual and Developmental Disabilities (IDD) can be supported long-term after aging out of DFPS care through the Home and Community-Based Services (HCS) program that provides housing, therapeutic interventions, and other in-home supports for the lifetime of a person with IDD. Though the most common way to qualify for an HCS program slot is to be put on a waiting list, most individuals wait over 10 years for an HCS slot. There are special slots in the HCS program for children aging out of DFPS custody. To qualify for one of these special slots the child must have a Determination of Intellectual Disability (DID) from the Local IDD Authority (LIDDA). There are several agencies all over the state that license and supervise HCS host homes (similar to foster homes) and group homes (homes with shift staff and four or fewer individuals). Though DFPS should identify potential HCS agencies and placements for the child, the child and the attorney ad litem should be active participants in making the final placement selection since this will be where the child lives for a very long time as an adult. The child is also entitled to pre-placement visits in making the placement decision.

Child's Attorney Practice Tip: Make sure the DFPS Developmental Disability Specialist (DDS) has registered an eligible youth for an HCS slot, if needed.

Child's Attorney Practice Tip: The process to apply for and receive disability-related benefits can be a lengthy one. If the child has a disability and may be entitled to services, it is critical to have conversations with the caseworker and/or DFPS Regional Social Security Specialists as soon as practicable and on a regular basis.

Guardianship

Competency is generally determined based on whether the individual can continue to make decisions for themselves with supports in place rather than losing their rights through a guardianship proceeding where a guardian is appointed to make decisions on their behalf. However, a child with an intellectual disability or other disability does not automatically qualify for adult guardianship once they turn eighteen. A probate court still must appoint Texas Department of Aging and Disability Services (DADS) or another guardian through a probate proceeding, and a Certificate of Medical Exam (CME) must be completed by a physician and presented to the court documenting the person's incapacity. DADS, through the Texas Health and Human Services Commission (HHSC), is the state agency that is appointed as the guardian for a qualifying child if there is not another adult to take guardianship, and they can accept or reject a guardianship application.

Child's Attorney Practice Tip: If a child client will require a guardian once they become an adult, it is important to begin the application process well before the client turns 18 as qualification for guardianship is not automatic.

STEPS TO GUARDIANSHIP

By the time a youth with disabilities turns 16, the caseworker must consider whether the youth will have the ability to provide for their own food, clothing, shelter, oversee their own healthcare, and manage their own finances.

The DFPS caseworker should begin searching for an interested and appropriate potential guardian when a youth in care with disabilities turns 16 and should consult with the DFPS Developmental Disability Specialist (DDS) and DFPS supervisor regarding alternatives to guardianship or possible alternate guardians. If there is not a less restrictive alternative available, the DFPS caseworker should begin collecting information and necessary documentation for the referral to HHSC to request a guardian.

While DFPS may refer a youth to HHSC at age 16, it is preferable for DFPS to wait until the youth is at least 17 since a guardianship application cannot be filed more than six months prior to the youth's 18th birthday. Prior to making a referral to HHSC, the DFPS caseworker should contact the DFPS SSI coordinator to ensure the youth is receiving active SSI benefits, and if benefits are not active, the DFPS caseworker must work with the SSI coordinator to apply or have benefits reinstated.

Once the SSI benefits for the youth with disabilities have been established and confirmed and all supporting documentation required has been gathered, the DFPS supervisor launches the Aging Out of Care (AOC) stage in IMPACT, the DFPS case management system. The DFPS caseworker completes the referral form and submits it to the DDS. The DDS submits the guardianship referral via IMPACT and emails a copy of the referral form and all supporting documentation to the Guardianship Supervisor in the region where the youth is currently residing.

ALTERNATIVES TO GUARDIANSHIP

Guardianship restricts the legal rights of an individual with a disability and may not always be appropriate. Courts must ensure that the least restrictive arrangement is made for a youth with disabilities, so the youth has their needs met and their rights intact. Sometimes a youth may only need a limited guardianship that is tailored to the specific needs they have. For instance, the right to vote, the right to drive, and the right to marry might all remain intact. Restoring a right after it has been removed via guardianship can be challenging and it is preferable to leave as many rights as possible available for the individual.

Some youth do not need a guardianship at all and can be better served with a Supported Decision- Making Agreement (SDMA), which is a less-restrictive option that allows the youth to retain all decision-making rights while having a supporter who helps them to understand and process the decisions they make.

Planning for Transition to Independent Housing

The Section 811 Project Rental Assistance Program provides project-based rental assistance linked with long term services for extremely low-income persons with disabilities. The program allows persons with disabilities to live as independently as possible through the coordination of voluntary services and by providing a choice of subsidized, integrated rental housing options. Referrals to Section 811 must be made by the DFPS primary case worker in coordination with the DFPS Developmental Disability Specialist. There is also a waiting list for this program, though it is much shorter than the waitlist for HCS.

Dual Status Youth

Definitions

A dual system child is a child who, prior to the child's 18th birthday, was referred to the juvenile justice system and was involved in the child welfare system. Tex. Fam. Code § 51.11. A dual status child is a dual system child who has or had concurrent involvement in both the child welfare and juvenile justice systems. Tex. Fam. Code § 51.02. When representing dual status children there are important issues to consider.

Information Gathering

Questions to ask when a client has been detained (arrested) for an offense:

- Has the child been appointed a juvenile defense attorney on the delinquency case? If so, make contact with the attorney as soon as possible to introduce yourself, learn about the offense, and provide any information about the child that can assist the juvenile defense attorney in their representation.
- Has a petition been filed? Is the child eligible for a deferred prosecution?
- Is the juvenile case filed in the same county as the child welfare case?
- What are the pending charges? What range of dispositions might be involved?
- Is the child currently in detention? How long have they been there? When is the child's next detention hearing scheduled? Is juvenile probation recommending release?

It is important to research these questions with the child, the caseworker, the juvenile defense attorney, and the juvenile probation officer, depending on the timeline of the case.

GUARDIAN AD LITEMS AND COURT APPOINTED SPECIAL ADVOCATES

A guardian ad litem may serve as ad litem in both the juvenile case and the child welfare case. If the guardian ad litem is serving in both cases and is an attorney, the guardian ad litem will want to become much more familiar with the juvenile proceedings.

A non-attorney guardian ad litem must be very careful not to investigate any pending juvenile charges nor offer testimony concerning the guilt or innocence of a dual status child. Questions or investigations could lead the non-attorney guardian ad litem to become a witness against the child in violation of Tex. Fam. Code § 51.11. As such, questions from a GAL or CASA should be presented to the juvenile defense attorney, instead of the child or child's parents or guardians.

CONFIDENTIALITY

Because the objectives of the juvenile defense attorney (handling the delinquency case) and the attorney ad litem (as well as others working on behalf of the youth on the child welfare case) may not necessarily align, it is important for the two attorneys or legal teams to enter a Memorandum of Understanding (MOU) at the very outset of representation to identify what information, if any, may be shared between attorneys and legal teams.

It is critically important to advise a client not to discuss their delinquency case with anyone besides their juvenile defense attorney (unless MOUs have been signed allowing for information sharing). Information about the allegations is confidential and protected by the Fifth Amendment and the juvenile defense attorney should advise the clients of their Fifth

Amendment right to remain silent as to any details regarding a current criminal investigation or ongoing case. That may include information that the juvenile defense attorney will not want to disclose to the child's attorney, or have their client disclose to the child's attorney, without an MOU.

In the absence of an MOU governing information sharing, the Rules of Professional Conduct dictate that confidentiality is imperative. Under these rules, the juvenile defense attorney should advise the client not to speak or discuss the delinquency case or any of its details with anyone (other than their juvenile defense attorney).

In the absence of an MOU, an issue that may arise is that the DFPS caseworker or investigator may ask the client about their delinquency charges, and the client may respond without understanding the implications for their delinquency case.

COMMUNICATION WITH JUVENILE DEFENSE COUNSEL

Notwithstanding the existence of an MOU, it is crucial to establish open lines of communication with a client's juvenile defense attorney. A child's attorney in the child welfare case may know the client and their family history and circumstances better than the juvenile defense attorney. A child's attorney in the child welfare case can provide information that assists in a better and more expedient resolution on the delinquency case, including:

- Mitigating circumstances due to child's DFPS case and placement;
- Services the child needs;
- Services the child is already receiving;
- Best ways to communicate with the child;
- Possible resources of support known in child welfare case but not in juvenile case;
- Attendance at detention hearings (if child is in detention) to advise court of placements available to the child, in order to allow for expedited release from detention; or
- Attendance at disposition hearings (if the child is adjudicated delinquent) to advise of interventions being utilized with the child and family already or interventions that are available.

Court-appointed juvenile defense attorneys often have heavy caseloads, which can slow their response time when contacted, but it is important to initiate a conversation as soon as possible to discuss the mutual client's case.

Important things to discuss include:

- Upcoming court dates for both the child welfare and juvenile cases;
- Progress of the case;
- The general strategy of the juvenile defense attorney;
- The status of plea negotiations with prosecution (i.e., what is the current offer, what are the possibilities in the case for pre-petition diversion programs, deferred adjudication, or services as part of a plea negotiation); and
- Disposition options in the juvenile case, including placement options if the child is not going to be released on probation.

> **Child's Attorney Practice Tip**: Make it a priority to check in with the juvenile defense attorney for updates regularly, at least before each statutory child welfare hearing, and more often if child is in detention.

Understand How the Juvenile Case Affects the Child Welfare Case

SERVICES OVERLAP

It is important for the juvenile court to determine what services are being provided through the child welfare case. Must they be duplicated or substituted by juvenile probation services, or are the services being provided in the child welfare case sufficient? Ask the court to allow consolidation of services as much as possible. This is especially important if transportation and/or time management is necessary for a caregiver to provide so that the child is able to receive services.

CONSEQUENCES OF DISPOSITIONS – SEALING JUVENILE RECORDS

Once a juvenile case is concluded or nearing its end, whether it was disposed through a deferred prosecution or through formal adjudication and disposition, it is imperative to take steps to ensure that the child's juvenile records will be sealed. Even if the case was resolved through a deferred prosecution without a charge being filed, the child will still have a juvenile record that can have numerous negative collateral consequences, such as:

- Barriers to obtaining housing;
- Difficulty with successful applications to colleges or trade schools;
- Obstacles in obtaining employment;
- Problems applying for military service; and/or
- Interference with immigration cases.

Youth transitioning out of foster care are especially in need of having their records sealed once they become eligible to ensure a better transition into adulthood. There are both non-profit agencies and juvenile attorneys that will seal juvenile records via Application for Sealing of Files and Records. Please *see* the *Additional Resources* section of this toolkit for more information.

> **Child's Attorney Practice Tip**: Constructing a timeline with the delinquency case dates and the statutory deadlines for the child welfare case can increase understanding of how the two cases may overlap.

Psychotropic Medication Parameters for Children

Psychotropic medications are substances that affect the mind and alter mental processes such as perception, mood, and behavior. Psychotropic drugs include stimulants, antidepressants, antipsychotics, and mood stabilizers. Some children need to use psychotropic medications long-term to treat mental health disorders that they inherited or developed, such as attention deficit hyperactivity disorder, severe depression, or psychosis. Other children need to use psychotropic medications temporarily to help relieve severe emotional stress and help them function in school, at home, and in the community.

Child's Attorney Practice Tip: Symptoms of mental health disorders can overlap with the symptoms of trauma. A child's behavior may be related to their trauma history. If a child client is exhibiting behavioral issues, consider advocating for trauma-informed services for the client.

A "psychotropic medication" means a medication that is prescribed for the treatment of symptoms or psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence or modify behavior, cognition, or affective state. The term includes the following categories:

- Psychomotor stimulants;
- Antidepressants;
- Antipsychotics or neuroleptics;
- Agents for control of mania or depression;
- Anti-anxiety agents; and
- Sedatives, hypnotics, or other sleep-promoting medications.

Tex. Fam. Code § 266.001(7).

In February 2005, DFPS, the Department of State Health Services (DSHS), and HHSC released a "best practices" guide to ensure the proper use of psychotropic medications for the children in foster care.

The January 2026 Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (7th Version) is the most recent version of these guidelines.[26] It serves as a resource for physicians and clinicians who care for children diagnosed with mental health disorders. The guide provides recommendations for the appropriate use of psychotropic medications for children in foster care and includes nine criteria indicating the need for review of the child's clinical status.

Since April 2008, STAR Health has conducted Psychotropic Medication Utilization Reviews (PMURs) on the children whose medication treatment falls outside of the expectations of the Parameters. A PMUR can be initiated by STAR Health if indicated by a health screening or pharmacy claim review. A PMUR may also be triggered by a request from any judge, attorney, caseworker, advocate, foster parent, Medical Consenter, or other concerned person working with the child. The PMUR examines child-specific clinical information about a child's diagnoses, medication dosage, and whether the medication treatment is in compliance with the Parameters. The PMUR is not a second opinion on whether the medication is appropriate for

[26] Texas HHS Psychotropic Drug Formulary webpage. Available online at https://www.hhs.texas.gov/sites/default/files/documents/psychotropic-medication-utilization-parameters-medication-tables.pdf. Last visited on April 28, 2026.

that child or whether the child is on "too much" medication. It primarily reviews whether the prescribing physician violated the Parameters (for example, are two medications prescribed that are contraindicated). STAR Health has committed to prioritize responses to inquiries from judges concerning children under their supervision. PMUR findings are usually sent to the child's caseworker or can be faxed or emailed directly to the court, if requested.

All PMUR requests are reviewed by one of two STAR Health Licensed Behavior Health Clinicians who gather medical records and screen children's psychotropic medication treatment for compliance with the Parameters. If the treatment is outside the Parameters, the clinician refers the case to a STAR Health child psychiatrist to conduct a PMUR. The child psychiatrist outreaches to the treating physician, works with the treating physician to reduce polypharmacy if indicated, and prepares a PMUR report. The PMUR report will contain a formal determination about the foster child's medication treatment. The possible determinations are as follows:

- Medication treatment within Parameters;
- Medication treatment outside Parameters. Medication treatment reviewed and found to be within the standard of care;
- Medication treatment is outside Parameters and there is opportunity to reduce polypharmacy; or
- Medication treatment is outside Parameters and there is risk for or evidence of significant side effects.

Physicians who appear to consistently prescribe outside the Parameters despite risk for or evidence of significant side effects, or when there is an opportunity to reduce polypharmacy, are referred to the Quality of Care (QOC) review process. Additional records are examined for pervasive patterns of over or dangerous prescribing. Qualifying cases may be referred to the Peer Review Committee for further investigation and action. The Peer Review Committee is established by the Managed Care Organization, Superior HealthPlan, and consists of network providers who review PMUR concerns for STAR Health Members who exceed the Quality-of-Care thresholds. Superior HealthPlan also utilizes consultant physicians as needed to review specific specialist issues, if a need is identified. The results of Quality Improvement and Peer Review Committee investigations and actions are confidential and may not be released to or discussed with the public. All QOC issues are tracked and trended. Any practitioner showing a pattern or trend may be placed on corrective action and/or face disciplinary action up to and including termination of their contract, if warranted.

A PMUR cannot address whether other medications might be effective, and this process is not the appropriate avenue to address immediate concerns about new medications or medication side effects; the informed consent process is considered the appropriate avenue to inquire about new medications and side effects. In these situations, STAR Health recommends that the Medical Consenter contact the prescribing physician directly. DFPS also employs Nurse Consultants in each administrative region to assist DFPS staff with children's health issues, including questions about psychotropic medications.

The Parameters and PMUR can be accessed on DFPS' website.[27]

[27] DFPS Psychotropic Medications: A Guide to Medical Services at CPS. Available online at https://www.dfps.texas.gov/Child_Protection/Medical_Services/Psychotropic_Medications.asp. Last visited on January 29, 2026.

Permanency Goals and Permanency Planning

Regular review of the status and progress of a permanency plan is a vital responsibility of a child's attorney. Reviewing the permanency goal is particularly important following any significant incident or change in a child's circumstances or service plan. Some factors may include placement, mental health and therapeutic needs, access to services, and the available support of family and community resources.

Identifying both primary and concurrent permanency goals is critical for the child's attorney especially if a child client is in PMC. Common permanency goals for children include:

- Relative Conservatorship
- Relative Adoption
- Non-relative Adoption
- Another Planned Permanent Living Arrangement (APPLA)

An attorney for a child must review the DFPS permanency goals with their client regularly and at a minimum, prior to every hearing. Inattention to or delay in reviewing the permanency plan increases the risk that the progress of a permanency plan will stall. In some cases, a child might not agree with the permanency goals DFPS has identified and at times the permanency goals might change.

> **Child's Attorney Practice Tip**: To minimize the possibility of unnecessary delays in permanency, take an active role in assessing what is required to achieve permanency for the child and identify and monitor the progress of the steps necessary to achieve that goal.

SETTING PERMANENCY GOALS

Some children may have a stated goal in the permanency plan but no realistic path to obtain the goal. For example, a child's goal could be adoption, but the child may be placed in an RTC with no current pre- adoptive homes available to meet their needs. In addition, a child's preference for what permanency looks like might change over time, particularly for older youth.

Just like a child's permanency goal might change, a child's permanency options might change as well, thereby requiring the child's attorney to fully engage in understanding the options and what might be required as a result of the change. For instance, a child might develop a mental health or medical issue that requires intervention that temporarily or permanently alters the child's permanency options. On the other hand, the circumstances of an older sibling or other relative of a child might change, creating a new placement option for a child, thus possibly creating a new permanency option.

When the path to permanency is not clearly defined for a child, an attorney can help by assessing the reasons contributing to the child's current circumstances and by exploring creative solutions. This might require the attorney to mine the case record for other names or passed placements that have been overlooked in prior permanency planning. In some cases, a permanency conference with all the child's advocates and certain service providers in attendance can be helpful.

Relative Conservatorship

If the permanency goal includes a relative or kin caregiver, it is important for the attorney to identify the Kinship Caseworker working with the child's kinship placement. Maintaining communication with the Kinship Caseworker can be very important when moving forward with a child's permanency plan.

If the child is placed with kin, an attorney should develop a rapport with the child's kinship caregiver. Consistent and productive communication will continue to be critical as the attorney for their child client's permanency.

> **Child's Attorney Practice Tip**: If kinship funds are scheduled to end before permanency is achieved, consider whether a request to extend the kinship fund payments would be appropriate given the case-specific circumstances. An extension of kinship funds is not automatic and might require a motion and a court order in some situations.

A child's attorney must know what the permanency plan is, the specific steps that must be accomplished before permanency with a final order is achieved and have regular contact with the placement and the child to ensure the case is on track to accomplish those steps and to have a clear understanding of the progress made toward permanency. It is important for the child's attorney to be aware of any issue that might arise and to assess whether a solution to those issues might require a court order.

> **Child's Attorney Practice Tip**: In some situations, DFPS policy might prohibit DFPS from taking specific actions necessary to overcome a barrier to kinship permanency. A child's attorney can assist with determining what is needed to overcome the barrier, including filing a motion and requesting a court order. Being familiar with any relevant DFPS policies can assist with determining the best advocacy for the child.

It is very helpful for the child's attorney to have ongoing conversations with the kinship caregiver to learn their understanding of the permanency plan and to help monitor their preparedness to achieve that child's permanency plan.

- Is the permanency plan for the kinship caregiver to be granted Non-Parent Sole Managing Conservator of the child?
- Is the permanency plan for the kinship caregiver to be named Non-Parent Sole Managing Conservator of the child with a Permanency Care Agreement (PCA)?
- Are there unresolved matters delaying permanency, such as a child's ongoing therapeutic needs or medical issues?
- Is there testing or an evaluation that needs to be completed before further progress can be made?

In some cases, a child's permanency plan might not be adoption, even though the child is eligible for adoption as a result of the termination of a parent's rights or a parent's death. There are several reasons why this might be the case:

- A child who is 12 years old or older might not want to be adopted.

- A barrier might exist preventing a kinship placement from being licensed to adopt a child but does not prevent another conservatorship arrangement.

A child who initially did not want to be adopted might change their mind. In this case, the attorney ad litem will need to know if adoption is a viable option.

- Is the kinship placement already licensed? If not, is the kinship placement willing to become licensed?
- Is becoming licensed to adopt a realistic process for the kinship placement?

Child's Attorney Practice Tip: A child's attorney might encounter conversations with the kinship caregiver that relate to specific legal matters relevant to the permanency plan. As the child's attorney, it is inappropriate to provide legal advice to the child's kinship caregiver. The child's attorney can be prepared for this by making sure legal resources are made available to the kinship caregiver, should they need to confer about a legal matter or have general legal questions. Texaslawhelp.org or the Family HelpLine are two such resources which kinship placements might find helpful.[28]

Relative and Non-relative Adoption

ADOPTION PREPARATION

It is critical for a child's attorney to advise child clients about what it means to be adopted. The child's attorney can ensure that the child understands the legal and practical effects of adoption. Factors to discuss include:

- The adoptive family will become the child's new family and will be obligated to take care of and provide for the child as if they were the child's biological family;
- If the plan is a non-relative adoption, it is unlikely that the child will have continued communication or visitation with the child's biological parent after adoption.

If a child 12 years or older is eligible for adoption, it is important for the child's attorney to talk with the child about the requirement of consent and what it means to consent. First and foremost, a child's attorney should ask the child whether they want to be adopted.

- If the child is eligible to be adopted, but does not want to be adopted, is there another viable permanency option?
- Does the child need a pause in the adoption preparation process to explore issues with adoption or options other than adoption in a therapeutic setting?
- If the child wants to be adopted, has the adoptive parent been identified?
- Is the child in agreement with adoption by the identified adoptive parent or has the child identified someone else?
- Is the child currently living with the person the child has identified?

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[28] Texas Law Help website. Available online at https://www.texaslawhelp.org; Texas Legal Services Center Family Helpline website. Available online at https://www.tlsc.org/family. Last visited on January 30, 2026.

Adoption can have an impact on sibling relationships if siblings are not adopted as a group. A child's attorney should consider the importance of preserving sibling relationships and if appropriate for the clients, advocate for adoption as a sibling group.

If the child's adoptive family members are biological or symbolic relatives, there might be an opportunity for the child to maintain some form of contact with a biological parent now or in the future. It is important for the child's attorney to understand any parameters stated in court orders or circumstances related to the child's specific permanency plan when talking with a child about adoption.

> **Child's Attorney Practice Tip**: Work with DFPS to include information about the child's important relationships to relatives and fictive kin when families come forward seeking to adopt to determine if they may be amenable to maintaining these relationships in some manner, or at least maintaining the contact information to provide to the child at some later time. Also, if the siblings will not be adopted together but want continued contact, file a Petition for Continued Sibling Access. Tex. Fam. Code § 153.551.

To identify whether a potential adoptive family is a good fit, the child strengths and challenges should be considered

- Does your child client have special needs?
- Does the trauma your child client experienced indicate that it would be best for the child to be an "only child" or be a part of a larger family?

DFPS will prepare profiles of the child that will be used to find potential adoptive families. DFPS will need photos of the child to include in such materials and often has professional organizations who take those photos.

Action Steps

- Obtain contact information of the current adoption caseworker and the adoption supervisor.
- Review the prospective adoptive parent's home study. Schedule a meeting with the individual.
- Identify if the prospective adoptive parent is already licensed to adopt, and if not identify where they are in the licensing process and what remains to be done.
- Identify the agency that will issue or that has issued the license.
- Identify the agency case manager who is working with the family.
- Familiarized yourself with the conditions that deem a child eligible for post-adoption assistance.
- Reviewed the post-adoption assistance requirements that relate to your client's specific circumstances, such as age, race, disability, and siblings.
- Identify if licensing expenses are delaying progress.

> **Child's Attorney Practice Tip**: Consider requesting a court order for DFPS to cover the licensing expenses. DFPS may have access to community resources that can help or cover the expenses if ordered to do so.

Child's Attorney Practice Tip: Adoption after age two and age six can affect the availability of an adoption subsidy. If the child is close to either age and would be eligible for post-adoption assistance once they reach that age, consider requesting a court order that no adoptive placement occur until the child reaches the relevant age. If you are uncertain as to whether the adoptive parent wants to wait until that time, ask for a court order that no adoptive placement occur before the next hearing and talk with the caregiver to see what they want. Not all caregivers want to wait, and it is important that they have the opportunity to think this through. Explore whether there are other circumstances that might deem a child eligible without waiting.

Child's Attorney Practice Tip: Ask DFPS to review the profiles (most often prepared in connection with the Texas Adoption Resource Exchange known as "TARE" or Heart Galleries) and the photos to be sure that they accurately portray your client. The child's challenges should be included in a carefully presented manner so that potential adoptive families are informed enough to determine whether they can accept and support the child's needs.

Sometimes DFPS, the court, or even the child can "rush" permanency. Especially for older youth, a child's attorney should counsel their child clients about the dangers of rushing adoption with a family they may not have spent much time with and the loss of benefits if they are adopted before turning 18. Failed adoptions involving older youth can leave them at risk for housing instability and exploitation, and without the support or benefits designated for youth who age out of foster care.

Another Planned Permanent Living Arrangement (APPLA)

APPLA occurs when a child ages out of foster care without positive legal permanency. Sometimes referred to as Independent Living, APPLA means the child will remain in the care of DFPS until adulthood. APPLA is a last-resort permanency option once the options of reunification, adoption by a relative or kin, permanent guardianship by relative or kin, or unrelated adoption options were exhausted or determined not to be in the best interests of the child. By law, DFPS must demonstrate and document a compelling reason to pursue APPLA. Tex. Fam. Code § 263.3026(b).

WHEN YOUR CLIENT CHOOSES APPLA

Some youth choose to age out of care for a variety of reasons. An attorney ad litem should take the time necessary to thoroughly understand the youth's goals and wishes. This includes periodically checking in with the youth since their goals and wishes can change over time. A child might have a clear goal, especially at age 16 or 17 that includes the desire to extend their time in care to continue to prepare for independence.

While aging out of foster care might not be the first choice for any child, it remains important for the child's attorney to listen to what a youth needs, wants, and expresses as a permanency goal. For instance, it can be very important for a child's attorney to review the Extended Care Agreement with their client well before the youth turns 18. The attorney can help explain the options, the terms of the agreement, and the consequences. It might take more than one client meeting to review these options. It is important for the attorney to ensure the child understands that signing the agreement does not commit them to extended care if they change their mind and they choose another permanency option. However, entering an extended care agreement before turning 18 will provide another option, especially if that child is uncertain as to what path to take.

SERVICE PLANNING AND PREPARATION FOR ADULT LIVING FOR APPLA YOUTH

DFPS, together with foster care providers, is required to address the unique challenges facing children in PMC who must transition to adult living.

- Preparation for adult living begins at age 14 with an independent life-skill assessment, commonly known as the Casey Life-Skills Assessment (CLSA). DFPS must update the assessment annually through the youth's plan of service in coordination with the youth, the youth's caseworker, the youth's Preparation for Adult Living (PAL) worker, and caregiver. Tex. Fam. Code § 264.121(a-4) and (a-5).
- The youth's caseworker also is required by DFPS policy to ensure that the Child's Plan of Service (CPOS) addresses life skills. CPS Policy Handbook § 6241.1.[29]
- If the youth's level of care is basic, DFPS requires caseworkers to review the CPOS every 6 months. For children with higher levels of care, DFPS requires CPOS to review every 3 months. CPS Policy Handbook § 6241.22.[30]

Child's Attorney Practice Tip: If the child is 14 years of age or older, the court is required to determine whether services are needed to assist the child in transitioning from substitute care to independent living are available in the child's community. Tex. Fam. Code § 263.5031(a)(4)(G). In addition, if DFPS' permanency goal is APPLA, the court is specifically required to determine if DFPS has conducted a CLSA and if DFPS has addressed the permanency plan, including the child's housing plan and the results of the CLSA. Tex. Fam. Code § 263.5031(a)(4)(F). If DFPS fails or refuses to conduct or update the CLSA or fails to update the CPOS to address the scores, the child's attorney can ask the court for appropriate orders.

Practice Tip: For an in-depth understanding of the youth's knowledge and confidence, and to ensure your youth has given the assessment a good effort, ask to review the youth's responses to the CLSA. Information about how to interpret the CLSA and to develop a learning plan for a youth can be found in the Resources To Inspire Guide.[31] The guide contains helpful links to websites where youth can learn and practice life skills.

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29 CPS Policy Handbook § 6241.1. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp#CPS_6241_1. Last visited on January 30, 2026.

30 CPS Policy Handbook § 6241.1. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp#CPS_6241_22. Last visited on January 30, 2026.

31 Casey Family Programs Life Skills Toolkit: Resources to Inspire Guide. Available online at https://www.casey.org/media/CLS_project_PracticeGuide.pdf. Last visited on January 30, 2026.

In order to access most transitional living services, such as the Transitional Living Allowance, youth are required to complete life skills training or Preparation for Adult Living (PAL) classes. PAL classes are generally offered to youth age 16 or older through local Transitional Living Centers; however, if approved, a youth may complete the PAL Life Skills Independent Study Guide instead of attending trainings. CPS Policy Handbook § 10223.[32] DFPS requires that life-skill trainings cover financial management, health and safety, housing and transportation, job readiness, life decisions and responsibilities, and personal and social relationships. CPS Policy Handbook § 10222.[33]

> **Child's Attorney Practice Tip**: Even if youth refuse to complete PAL classes, DFPS should still offer services to the youth to assist them in their transition from substitute care. Ensure the youth has a Transition Plan (*see* DFPS form K-908-2500) and that the youth's transition plan includes provisions to assist the youth in managing their housing needs after they leave care. If the youth takes prescription medication, the transition plan should include provisions to assist the youth in managing the use of medication and in managing the youth's long-term physical and mental health needs. Also, ensure the youth was provided with the identification documents and information listed in Tex. Fam. Code § 264.121(e) (i.e., birth certificate, a social security card, a personal identification certificate, etc.).

32 CPS Policy Handbook § 6241.1. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x10200.asp#CPS_10223; https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp. Last visited on January 30, 2026.

33 CPS Policy Handbook § 6241.1. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x10200.asp#CPS_10222; https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp. Last visited on January 30, 2026.

Representation of Children in the Permanent Managing Conservatorship (PMC) of DFPS

Children in the PMC of DFPS continue to face the same issues and needs faced by children in the TMC of DFPS. However, with the absence of a statutory deadline, no settings for a trial on the merits, and often no parents' counsel, it can be even more critical for the child's attorney ad litem to monitor the child's service plan and permanency goal. In addition, family and community connections, normalcy activities, and permanency planning are of the utmost importance for a child in the PMC of DFPS.

See the *Permanency Hearings After Final Order* section of this toolkit for the statutory requirements for PMC Hearings.

Potential Outcomes

PMC WITH TERMINATION OF PARENTAL RIGHTS

In cases involving the termination of parental rights, the court most often will grant PMC of a child to DFPS, and this conservatorship status will remain in place until further court order. The child's attorney should monitor the possibility of an appeal since this might delay achieving permanency for the child. Most child welfare cases will transfer from a conservatorship unit to an adoption unit even during an appellate period. Permanency goals for the child will still require planning and monitoring.

PMC WITHOUT TERMINATION OF PARENTAL RIGHTS

In some cases, the court might grant PMC to DFPS without terminating the parents' rights, in order to further address a child's needs or a family's circumstances. Such cases often involve older youth, a developmentally disabled parent or child, or a child with significant mental health or medical issues.

Special Issues for Children in the PMC of DFPS

FAMILY AND SIBLING CONNECTIONS

Children who have been separated from their siblings, especially older youth, should be advised of their right to petition the court for access to their siblings, either while still minors or when they become adults. The sibling who was separated from a child may file an original suit for access or a suit for modification in the county where the child lives. 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.

NORMALCY ACTIVITIES

Normalcy activities take on a heightened importance for children in PMC of DFPS. *See* the *Normalcy* section of this toolkit for more information.

ACADEMIC ACHIEVEMENT AND SUPPORT

Children in PMC may experience frequent placement changes that can affect their school stability. Efforts should be made to maintain educational progress as much as possible. Special attention should be paid to ensure that children are given the opportunity to attend the same school after a placement change (unless it is not in their best interest), to participate in activities and sports, to be immediately enrolled if a school change is needed, and to obtain their high school diploma from a new school under the requirements from their previous school if they transferred in 11th or 12th grade. *See* the *School Stability Under Federal & State Law* section of this toolkit.

PLACEMENT AND PERMANENCY ISSUES AND OPTIONS

Children with certain issues in their history may be more difficult to place in regular and extended foster care. *See* the *Placement* and *Older Youth in Care* sections of this toolkit for more information.

RECONSIDERATION OF A TERMINATED PARENT AS A PLACEMENT

After a termination, a parent could later become an appropriate and viable placement option for a child. As discussed in the *Reinstatement of Parental Rights* section of this toolkit, in certain circumstances, parties may petition the court to reinstate parental rights. If reinstatement of parental rights is not appropriate, parents may still be reconsidered as placement options post-termination for youth in the PMC of DFPS. Accordingly, the child's attorney for a child in PMC should consider parents whose rights have been terminated as placement options, especially in cases where other placement options are limited or lacking.

A parent whose rights are terminated may be an appropriate placement when:

- The parent's circumstances have changed enough to make them a safe placement, even if full reinstatement of rights may not be appropriate. (e.g., parent is living with a suitable individual who will be protective or has undergone drug treatment and maintained sobriety for an adequate period of time); or
- The child's circumstances have changed to reduce the child's vulnerability as it relates to the parent's unfitness (e.g., the child's is older, or the child has overcome a mental or physical disability).

In any case in which the parent is being considered as a placement after their rights were terminated, it is critical that the child's attorney consult with and determine the child's desires and openness to such a placement, while being sensitive to their trauma history. *See* the *Reinstatement of Parental Rights* section of this toolkit for more information.

Older Youth in Foster Care

An attorney representing teenage youth in foster care must be aware of several specific duties the attorney, DFPS, and the courts have regarding older youth, as well as best practices that can help prevent negative outcomes for youth who age out of DFPS care.

Legal Requirements Before a Youth's 18th Birthday

MEDICAL CONSENT

Child's Attorney Duties Tex. Fam. Code §§ 107.003(b)(3)(A), 266.010

Once a child turns 16, the child's attorney must advise the child of their right to request the court authorize the child to consent to the child's own medical care and file a motion if the youth wants to request that authority. Though the duty applies once the child turns 16, an attorney should begin advising and building rapport with the client regarding the issue well ahead of the child's birthday. The child's attorney should advise the child that if the court allows the child to consent to their own medical care, DFPS will require them to complete the Caregiver Medical Consent Training and, if applicable, the Psychotropic Medication for Children in Foster Care Training. CPS Policy Handbook § 11140.[34]

IDENTIFICATION ISSUES

DFPS Duties Tex. Fam. Code § 264.121(a-7), (e), (e-1)

By age 16, DFPS must provide youth with original or certified copies of the following:

- Birth certificate
- Social Security card
- Texas Identification Card or Driver's License

By age 18, DFPS must also provide youth with the following:

- Immunization records
- Health passport
- A Medicaid card or other proof of Medicaid enrollment or insurance card from the health plan that provides health coverage to the youth.

Before a youth leaves foster care, if the youth is age 14 or older, DFPS must ensure that the youth has an e-mail address through which the youth may receive encrypted copies of personal documents and records. DFPS has compiled a complete list of these documents and information owed to youth in care in the DFPS Personal Documents for Youth Resource Guide.[35]

The youth's caseworker must assist the youth with developing a plan for keeping the documents in a safe place and inform the youth about the documents the youth is required to receive before the youth exits foster care. Tex. Fam. Code § 261.121(e-4).

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[34] CPS Policy Handbook § 11140. Available online at https://www.dfps.texas.gov/handbooks/cps/files/CPS_pg_x11000.asp#CPS_11140; https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp. Last visited on January 30, 2026.

[35] DFPS Personal Documents for Youth Resource Guide. Available online at https://www.dfps.texas.gov/handbooks/CPS/Resource_Guides/Personal_Documents_Resource_Guide.pdf. Last visited on January 16, 2026.

Child's Attorney Duties Tex. Fam. Code § 107.003(b)(3)(B)

Once a child turns 16, the child's attorney must ascertain whether the child has received:

- Original or certified copy of their birth certificate
- Social Security card
- Texas Identification Card or Driver's License
- Any other documents DFPS determines appropriate

Child's Attorney Practice Tip: If the attorney ascertains the child does not have the required documents, the attorney should advocate both inside and outside of court to assist the youth in obtaining the documents. That could mean helping the youth connect with appropriate government offices that can assist them in acquiring documents, working with DFPS to obtain documents, or setting hearings in front of the judge to request orders that missing documents be produced.

Child's Attorney Practice Tip: It is essential that the youth knows and understands their immigration status and has all their original immigration documents. Assumptions about citizenship can have serious consequences for the youth later in life. Do not rely on third-hand explanations and seek outside immigration expertise if necessary. If the youth appears to not have immigration status or documents, attorneys should verify whether DFPS staff is working on obtaining legal immigration status or documentation of their status and regular progress is being made. *See* the *Special Immigrant Juvenile Status* section of this toolkit for more information.

Child's Attorney Practice Tip: A child's attorney should ensure youth have access to their credit report and receive a copy of it before exiting care. Credit issues such as identity theft can occur regardless of the age of the child so ensure the report is done as soon as possible. DFPS is required to run and review a credit report for youth between the ages of 14 and 17 every year.

Child's Attorney Practice Tip: Verify that each identification document has the youth's correct name and that the name is spelled correctly. It is also important to ask the youth what name they prefer and if they want to change their legal name. Youth may have strong negative feelings about their legal name, but they may not be aware they can change it. If there is a problem with the youth's name or if the youth wants to change their name, it is much easier to correct the mistake or change the name before the youth turns 18. Be aware that in order to amend a birth certificate based on a name change order, Vital Statistics requires that the order includes the child's date of birth, place of birth, full name in the official birth record, and the new name to be listed on the birth record. If the birth certificate needs to be amended, follow up with DFPS to ensure they complete this task before the youth exits care.

Preparing for Transition to Adulthood

PREPARATION FOR ADULT LIVING

The Preparation for Adult Living (PAL) program involves an independent living skills assessment, life skills classes, transition planning, conferences, and training events. Services may start as early as age 14 but must begin by age 16.[36] Tex. Fam. Code § 264.121. PAL services are usually offered by local service providers who will also provide voluntary aftercare case management for the youth between age 18 and age 21. DFPS has dedicated PAL coordinators to help youth access benefits when they leave care.

Youth with disabilities should not be excluded from the PAL program. DFPS must make appropriate accommodations that allow for meaningful participation. Tex. Fam. Code § 264.121(a)(4).

Circle of Support (COS) meetings will be scheduled for youth who are on track to age out of foster care.[37] A COS is centered on the youth and is the preferred method of transition planning. The youth is permitted to invite foster care providers, teachers, parents, siblings, relatives, mentors, attorneys, CASAs, and friends. In addition to attending the COS, attorneys should help prepare the youth for the COS. A COS may feel intimidating to a youth but going over the structure and purpose of the meeting in advance can help reduce anxiety. This is particularly important as the effects of trauma can impede the youth's ability to plan ahead and see a future for themselves. If an initial COS does not adequately address the youth's transition needs, a child's attorney can request an additional COS and help the youth plan ahead for the meeting. This may be especially necessary if the youth experiences frequent placement changes as they near their 18th birthday.

EXTENDED FOSTER CARE

Youth who wish to remain in extended foster care after their 18th birthday must meet one of the following eligibility criteria:

- Attend high school or a program leading to a high school diploma or a high school equivalency certificate (GED);
- Attend college or higher learning institution, or post-secondary vocational program or technical program (6 credit hour minimum);
- Participate in an employment program or activity that promotes or removes barriers to employment;
- Work at a job at least 80 hours per month; or
- Have a documented medical condition that limits other activities.

Not later than six months before the youth's 18th birthday, DFPS must complete all necessary paperwork to ensure the youth has housing on the date the youth enters extended foster care.

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36 DFPS Preparation for Adult Living Program webpage. Available online at https://www.dfps.texas.gov/child_protection/Youth_and_Young_Adults/Preparation_For_Adult_Living/. Last visited on February 4, 2026.

37 DFPS Circle of Support webpage. Available online at https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/circles_of_support.asp. Last visited on February 4, 2026.

DFPS must also review the qualifications and requirements for the youth's housing not later than 90 days before their 18th birthday. Tex. Fam. Code § 264.1214.

Supervised Independent Living (SIL) is a program available only to young adults in extended foster care that allows them to live independently in a supervised living arrangement while their expenses are paid by DFPS.[38] SIL placement locations can be apartments, college dorms, or shared housing. If permitted by the property owner, DFPS should allow the young adult to co-sign the lease for their housing.

If a young adult chooses not to remain in extended foster care, they can return any time before they turn 21, as long as there is a placement available. This is an available option regardless of whether the Trial Independence period has ended or if the court still has Extended Jurisdiction.

TRANSITIONAL SERVICES AND BENEFITS

Healthcare

- **Former Foster Care Children's Medicaid (FFCC)**: Young adults are eligible only if they were in DFPS conservatorship and received federally funded Medicaid on their 18th birthday; this benefit is not dependent on means; youth are eligible for this benefit until age 26. Note that a youth who is incarcerated does not receive Medicaid, so a youth who is in juvenile or adult jail or prison on their 18th birthday will not qualify for FFCC.
- **Medicaid for Transitioning Foster Care Youth (MTFCY)**: Young adults are eligible for this benefit if they were not receiving federally funded Medicaid, but were in DFPS conservatorship, on their 18th birthday. Youth are eligible for this benefit until age 21 and must be under 400% of the Federal Poverty Guideline.
- **Maintaining Medicaid Eligibility**: All Medicaid recipients, including young adults formerly in foster care, must renew their Medicaid eligibility once every 12 months. To ensure continuous coverage, young adults must provide their current mailing address to HHSC. If the young adult's address changes without noticing HHSC, and HHSC receives returned mail and cannot locate the young adult, the young adult's Medicaid benefits will be denied. A young adult can report an address change online through the Your Texas Benefits website, the Your Texas Benefits mobile app, calling 211, in person at a local Medicaid eligibility office, or by in writing by mail or by fax.[39] Young adults must also respond to requests for information from HHSC and may need to verify that they are a Texas resident and/or their immigration status.

Transitional Expenses

- **Transitional Living Allowance (TLA)**: This cash benefit of $1,000 is available in two separate payments of $500 each. It is available to young adults who were in foster care on their 18th birthday, who completed the PAL life skills class, who are transitioning to independent or supervised living, and were in a paid placement within 24 months of requesting the benefit. Recipients must meet the same eligibility criteria as extended

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[38] DFPS Supervised Independent Living webpage. Available online at https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/Extended_Foster_Care/supervised_independent_living.asp. Last visited on February 4, 2026.

[39] Your Texas Benefits website. Available online at https://www.YourTexasBenefits.com/Learn/Home. Last visited on January 30, 2026.

foster care and must receive the benefit before their 21st birthday. CPS Handbook § 10241.[40]

- **Aftercare Room and Board (ARB)**: This is an emergency benefit of up to a maximum of $3,000 paid, in increments of no more than $500 per month, directly to landlords or utility companies or as a grocery store gift card. It is available to young adults who were in foster care on their 18th birthday and demonstrate emergency financial need. They must meet the same eligibility criteria as extended foster care and must receive the benefit before their 21st birthday. CPS Handbook § 10251.[41]

Education

- **Tuition/Fee Waiver**: This benefit waives tuition and fees for all Texas public institutions of higher education (including 2-year colleges, 4-year universities, and technical schools). Eligible youth or young adults, including some youth who are reunified with parents, must enroll in a dual credit or college credit course before their 27th birthday to lock in the benefit. Once the benefit is activated, it does not expire. Tex. Educ. Code § 54.366. Adopted youth may also be eligible for the waiver and have no age by which they must enroll to maintain the benefit. Tex. Educ. Code § 54.367.

> **Child's Attorney Practice Tip**: The eligibility criteria for the tuition and fee waiver, as well as assessing which programs qualify for the waiver, is complex. Contact the regional Preparation for Adult Living specialist to verify eligibility.

- **Education and Training Voucher (ETV)**: This is a federal cash benefit of up to $5,000 per year for expenses related to college or training programs (e.g., housing, food, books, childcare, computer equipment, other expenses). Eligible young adults can receive the benefit until age 23 (available to more than only aged out foster youth). 40 Tex. Admin. Code § 700.1613.

> **Child's Attorney Practice Tip**: Some aftercare benefits are contingent based on how the child exits care. It is important to advise the client well before their 18th birthday on the benefits which might be available under each exit type. For example, an older youth who wants to be adopted will lose many benefits associated with aging out of foster care but access other benefits. Attorneys should consider advising their older youth clients on the option of an adult adoption after the client turns 18.

40 CPS Policy Handbook § 10241. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x10200.asp#CPS_10241; https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp. Last visited on January 30, 2026.

41 CPS Policy Handbook § 10251. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_x10200.asp#CPS_10251; https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6200.asp. Last visited on January 30, 2026.

Child's Attorney Practice Tip: Explaining health insurance and financial benefits to youth can be challenging. Attorneys should take the time to explain them in a way that youth can understand. The Texas Foster Youth Justice Project also has resources that can help youth understand the benefits in a way that is accessible to them.[42]

Housing

- **Rental Assistance Voucher Programs**: If a young adult is not able or willing to remain in extended foster care, they may be eligible for a rental assistance program specifically for youth who have experience in foster care. The Family Unification Program (FUP) Voucher and the Foster Youth to Independence (FYI) Voucher are available to young adults 18-24 years of age and can provide up to 36 months of rental assistance.[43]
- Section 811 Project Rental Assistance: Young adults aging out of foster care with a documented disability may apply for Section 811 rental assistance which they may potentially receive until age 62. They must be referred to the program by DFPS.[44]
- DFPS regional housing liaisons are designated to help young adults apply and get on the wait lists for these opportunities.[45]

Extended Jurisdiction

Extended jurisdiction allows the court to retain a young adult's case on the court's docket after the young adult turns 18, hold review hearings to determine whether the young adult is receiving appropriate services, and order DFPS to provide certain services to the young adult. The court may not compel a young adult to attend a hearing and the young adult still maintains all the rights of any adult of the same age. Tex. Fam. Code §§ 263.601-263.608. When a young adult turns 18, DFPS conservatorship is dismissed and the court is prohibited from appointing DFPS or the Department of Aging and Disability Services as the managing conservator or guardian of a young adult. Tex. Fam. Code § 263.607. The young adult can choose to either remain in Extended Foster Care (EFC) or can exit DFPS' care to live independently, also known as Trial Independence (TI). When a young adult makes a decision to remain in EFC or to begin TI, the young adult is considered to be in Extended Court Jurisdiction. The court may retain jurisdiction until age 21 at the young adult's request.

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42 Texas Foster Youth Justice Project website. Available online at https://texasfosteryouth.org/resources-for-youth/. Last visited on February 4, 2026.

43 U.S. Department of Housing and Urban Development Family Unification Program webpage. Available online at https://www.hud.gov/helping-americans/housing-choice-vouchers-family; U.S. Department of Housing and Urban Development FYI Vouchers for the Foster Youth to Independence webpage. Available online at https://www.hud.gov/hud-partners/public-indian-housing-fyi. Last visited on February 4, 2026.

44 Texas Department of Housing and Community Affairs Section 811 Project Rental Assistance Program webpage. Available online at https://www.tdhca.texas.gov/programs/section-811-project-rental-assistance-program. Last visited on February 4, 2026.

45 DFPS Regional Youth Housing Liaisons webpage. Available online at https://dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/Housing/regional_housing_liaisons.asp. Last visited on February 4, 2026.

TRANSITIONAL LIVING SERVICES

A young adult who stays in EFC may or may not be receiving Transitional Living Services (TLS).[46] TLS are multipurpose and include circles of support, preparation for adult living classes, education and training vouchers, college tuition and fee waivers, and other related services and support of young people 16 to 21 or up to 22 years of age who are currently or formerly in foster care, or who are transitioning out of care.

PATHS FOR YOUNG ADULTS AGING OUT OF FOSTER CARE

Path 1 – Extended Foster Care Tex. Fam. Code § 263.602.

For a young adult in EFC, a review hearing is held every six months. A young adult can exit EFC for TI at any time prior to age 21. For those remaining in EFC, the court's extended jurisdiction ends at age 21.

Path 2 – Trial Independence Tex. Fam. Code § 263.6015.

If at age 18 the young adult decides to not stay in EFC, he or she exits to Trial Independence (TI) which automatically extends up to six months. Trial Independence may be extended up to 12 months by court order. The young adult can choose to return to EFC during the TI period or at any time before age 21. A young adult may or may not use TLS while in TI but receiving TLS effects the court's extended jurisdiction over the youth's case.

No hearings are required by the court during TI, but the young adult may request a hearing, or the court may set hearings on its own motion as long as the court maintains jurisdiction. At a hearing, a court may review and make orders regarding the services being provided to youth, identification documents the youth may need, and sibling contact if the youth has siblings in DFPS conservatorship.

Path 2A – Trial Independence without Transitional Living Services

If the young adult does not receive TLS, the court's jurisdiction ends on the last day of the month in which the young adult's TI period ends or upon the young adult's 21st birthday, whichever is earlier, unless the court has extended jurisdiction until age 21.

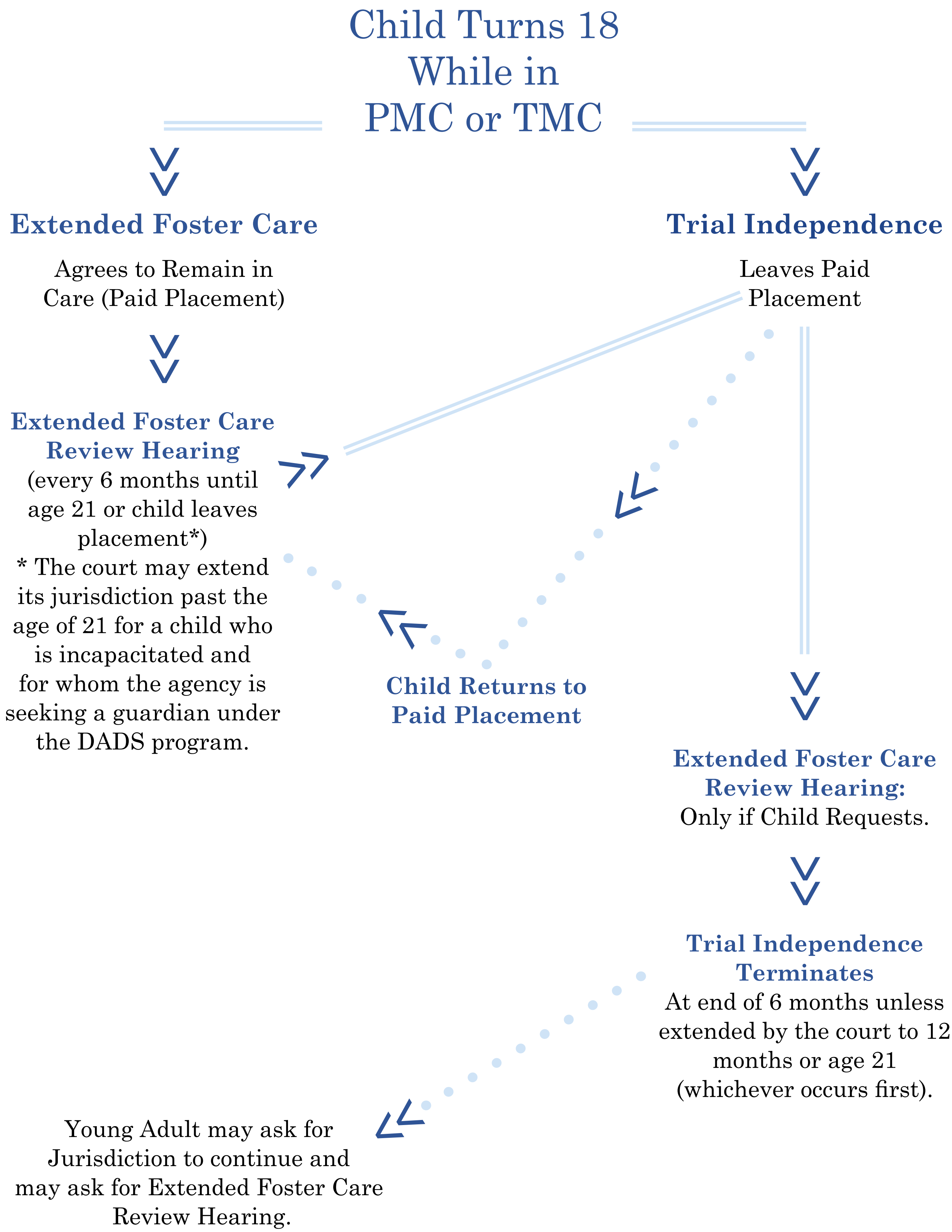
Path 2B – Trial Independence with Transitional Living Services

Prior to the young adult's TI period ending, the young adult can request a voluntary extension of the court's jurisdiction beyond the TI period if the young adult is currently receiving TLS. The court's jurisdiction ends when the young adult turns 21, or before, if the young adult withdraws consent to the court's extended jurisdiction.

> **Child's Attorney Practice Tip**: In the court hearing immediately before a child client turns 18, consider submitting a motion to extend the court's jurisdiction until age 21. This establishes a safety net that causes no harm and allows the young adult to request assistance from the court if needed for an additional amount of time.

46 DFPS Transitional Living Services webpage. Available online at https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/. Last visited on February 4, 2026.

Child Turns 18 While in PMC or TMC



Paternity

Establishing the Parent-Child Relationship

The Mother-Child Relationship is established between a woman and a child by:

- The woman giving birth to the child;
- An adjudication of the woman's maternity; or
- The adoption of the child by a woman.

The Father-Child Relationship is established between a man and a child by:

- An unrebutted presumption of a man's paternity of the child. Tex. Fam. Code § 160.204;
- An effective acknowledgment of paternity under Subchapter D of Tex. Fam. Code § 160.204, unless the acknowledgment has been rescinded or successfully challenged;
- An adjudication of the man's paternity;
- The adoption of a child by the man; or
- The man's consent to assisted reproduction by his wife under Subchapter H, which resulted in the birth of the child. Tex. Fam. Code § 160.201.

Types of Fathers as Defined in the Texas Family Code

- Presumed
- Alleged (or putative)
- Acknowledged
- Adjudicated
- Unknown

PRESUMED FATHER

- A man who is married to the mother of the child and the child is born during the marriage;
- A man who is married to the mother of the child and the child is born before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;
- A man who is married to the mother of the child before the birth of the child in apparent compliance with the law, even if the attempted marriage is or could be declared invalid and the child is born during the invalid marriage or before the 301st day after the date the marriage it terminated by death, annulment, declaration of invalidity, or divorce;
- A man who married the mother of the child after the birth of the child in apparent compliance with law, regardless of whether the marriage is or could be declared invalid, he voluntarily asserted his paternity of the child, and:
    - the assertion is in a record filed with Vital Statistics;
    - he is voluntarily named as the child's father on the child's birth certificate; or
    - he promised in a record to support the child as his own.
- A man who during the first two years of the child's life, continuously resided in the

household in which the child resided and represented to others that the child was his own.

Tex. Fam. Code § 160.204.

ALLEGED FATHER

A man who alleges himself to be, or is alleged to be, the genetic father or possible genetic father of a child, but his paternity has not been determined. Tex. Fam. Code § 101.0015. An alleged father cannot establish paternity or create a presumption of paternity by registering with the Paternity Registry, but timely registration entitles him to notice of an action for termination of parental rights or adoption of a child he may have fathered. Tex. Fam. Code § 160.402(a).

Methods of Establishing an Alleged Father's Paternity

- The mother of a child and the man claiming to be the biological father sign an acknowledgment of paternity with the intent to establish the man's paternity. Tex. Fam. Code § 160.301. A valid acknowledgment of paternity filed with Vital Statistics is the equivalent of an adjudication of the paternity of a child and confers all rights and duties. Tex. Fam. Code § 160.305.
- An alleged father can testify in open court and ask the court to establish paternity.
- Genetic testing is done. DFPS may obtain genetic testing through the Office of the Attorney General. Any party, attorney ad litem, or guardian ad litem for the child may request that genetic testing be ordered by the court to establish paternity.
- If the alleged father refuses to submit to genetic testing, the court may adjudicate paternity contrary to his position. Tex. Fam. Code § 160.622.

As soon as a legal father is established, any other potential candidates can be dismissed.

ACKNOWLEDGED FATHER

A man who has executed an Acknowledgement of Paternity (AOP). A valid AOP filed with the VSU is the equivalent of an adjudication of paternity. Tex. Fam. Code §§ 160.301, 160.305(a).

ADJUDICATED FATHER

A man who has been adjudicated by a court to be the father of a child. Adjudication can be accomplished by an admission of paternity under penalty of perjury during a hearing or in response to a refusal to submit to genetic testing. Tex. Fam. Code §§ 160.623, 160.622(b). A signed Acknowledgment of Paternity that has been filed with the Department of State Health Services is also the equivalent of an adjudication of paternity. Tex. Fam. Code § 160.305(a).

Paternity Registry

Vital Statistics maintains a paternity registry. A man who wants to be notified of a proceeding for the adoption or the termination of parental rights regarding a child he may have fathered may register before the birth of the child or no later than the 31st day after the child's birth. The registrant has the responsibility of keeping his information current with Vital Statistics. A man who has filed with the paternity registry within the requisite time frame is entitled to be served with notice of a suit involving the child. Registering with the paternity registry also establishes a basis for personal jurisdiction of a person who is not a Texas resident.

If no father-child relationship can be established, a petitioner (DFPS) seeking termination of parental rights or adoption must obtain a certificate of the results of a search of the paternity registry. If the petitioner (DFPS) has reason to believe that conception or birth of the child may have occurred in another state, the petitioner must obtain a certificate from the paternity or putative father registry of that state. Tex. Fam. Code § 160.421(b).

The VSU shall furnish a certificate of the results of a search of the registry on request by an individual, a court, or an agency listed in Tex. Fam. Code § 160.412(b). Tex. Fam. Code § 160.422(a). The certificate of results of the search must include a digitized or written signature on behalf of the unit and state that a search has been made of the registry and the registration containing the information required to identify the registrant has been found and attached to the certificate or has not been found. Tex. Fam. Code § 160.422(b).

Estoppel of Paternity

The Texas Legislature has recognized that in certain circumstances it may be in the best interest of the child not to have the child's understanding of their paternity disrupted. The value of maintaining the child's relationship with the man identified to the child as their father may prevent interested parties from litigating the issue, including denying a Motion for Genetic Testing. *See* Tex. Fam. Code §§ 160.607, 160.608, 160.609.

> **Child's Attorney Practice Tip**: For a child without an Adjudicated or Presumed Father, asking for DNA testing on any alleged father who is present at the hearing can save time and prevent delays to permanency. If the petition does not include a request to terminate the rights of the unknown father, a child's attorney should consider including the request in their counter-petition.

Child Support and Kinship Support

Child Support

All parents have a duty to support their child. The court may order either or both parents to support a child as follows, per Tex. Fam. Code § 154.001:

Child support may be ordered:

- Until the child is 18 years of age or until graduation from high school, whichever occurs later;
- Until the child is emancipated through marriage, removal of disabilities of minority by court order, or by other operation of law;
- Until the death of the child; or
- If the child is disabled as defined in Tex. Fam. Code § 154.302, for an indefinite period.

The court may order each parent who is financially able to pay support a child for whom DFPS has been appointed managing conservator. This support continues until the earliest of:

- The child's adoption;
- The child's 18th birthday or graduation from high school, whichever occurs later;
- The removal of the child's disabilities of minority by court order, marriage or other operation of law;
- The death of the child; or
- If the child is disabled as defined in Tex. Fam. Code § 154.302, for an indefinite period.

If the court presiding over a SAPCR involving DFPS orders child support payments or modifies existing child support payments so that the payments be made to DFPS, the court must notify the Office of the Attorney General (OAG) within 10 days of rendering the order. Tex. Fam. Code § 154.001(b-1).

Note that upon terminating a parent's rights, the court may order that parent to pay child support post- termination. Tex. Fam. Code § 154.001(a-1). In the absence of evidence of a party's resources, the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week. Tex. Fam. Code §154.068.

When computing net resources available for payment of child support, refer to charts and tables in Tex. Fam. Code Chapter 154, Subchapter B. This includes: child support tax charts; definition of net resources; additional factors for the court to consider; application of guidelines to net resources, and computing support for children in more than one household, etc.

If the obligor's monthly net income is not greater than the amount described by Tex. Fam. Code § 154.125(a), and the obligor's monthly net resources are equal to or greater than the amount described by Tex. Fam. Code § 154.125(c), the court shall presumptively apply the following schedule in rendering the child support order:

Basic Guideline Child Support					
Number of children	1	2	3	4	5
% Net monthly	20%	25%	30%	35%	40%

Tex. Fam. Code § 154.129 allows for a determination of child support amount for the children before the court by applying the percentages in the table below to the obligor's net resources in lieu of performing the Basic Guideline computation.

	Number of children before the court					
		1	**2**	**3**	**4**	**5**
Number of other children for whom the obligor has a duty of support	0	20.00%	25.00%	30.00%	35.00%	40.00%
	1	17.50%	22.50%	27.38%	32.20%	37.33%
	2	16.00%	20.63%	25.20%	30.33%	35.43%
	3	14.75%	19.00%	24.00%	29.00%	34.00%
	4	13.60%	18.33%	23.14%	28.00%	32.89%
	5	13.33%	17.86%	22.50%	27.22%	32.00%
	6	13.14%	17.50%	22.00%	26.60%	31.27%
	7	13.00%	17.22%	21.60%	26.09%	30.67%

Practice Tip: The Texas Office of the Attorney General (OAG) website has a child support calculator available for use on their website.[47]

Minimum Wage Chart						
Minimum Wage	Gross Monthly Income	Net Monthly Income	1 child (20%)	2 children (25%)	3 children (30%)	4 children (35%)
7.25	$1256.67	$1121.54	$224.31	$280.39	$336.46	$392.54

Practice Tip: When child support is ordered, the court shall order that child support be payable through the state disbursement unit (SDU). *See* Tex. Fam. Code § 154.004(a). The OAG monitors payment of child support through the SDU and if a delinquency occurs, the OAG has a right to seek enforcement of child support and can move to enforce the child support order. Texas law requires the court to order that income be withheld from the disposable earnings of the obligor for the payment of child support. *See* Tex. Fam. Code § 158.001.

The OAG prescribes forms as authorized by federal law in a standard format entitled "Income Withholding for Support (IWO) Form, Instructions & Sample."[48] *See* Tex. Fam. Code § 158.106(a). The form is published in 1 Tex. Admin. Code § 55.118.

47 Texas Office of the Attorney General Child Support Calculator. Available online at https://csapps.oag.texas.gov/monthly-child-support-calculator. Last visited on February 4, 2026.

48 U.S. Department of Health & Human Services Office of Child Support Enforcement Income Withholding for Support Form Instructions and Sample. Available online at https://acf.gov/css/form/income-withholding-support-iwo-form-instructions-sample. Last visited on February 4, 2026.

Relative and Kinship Placement Support

RELATIVE OR OTHER DESIGNATED CAREGIVER ASSISTANCE PROGRAM

The Relative and Other Designated Caregiver (RODC) program supports continuity and stability for children in the conservatorship of DFPS by providing financial assistance to eligible kinship caregivers. Note that DFPS may enter into Caregiver Assistance Agreements (CAA) with a relative or other designated caregiver who has not been licensed as a foster parent.

Caregivers Without PMC of the Child -- Monthly Reimbursement Payment and Medicaid

The child must be:

- In the managing conservatorship of DFPS; and
- Placed in the home by DFPS.

The caregiver must:

- Be related to the child or have a longstanding and significant relationship with the child;
- Be formally approved by DFPS as a caregiver (i.e., have an approved home assessment);
- Not be a licensed or verified foster home or group foster home; and
- Sign and abide by a written caregiver assistance agreement, which includes a commitment to:
  - be available as a continuing placement for the child for at least six months;
  - participate in specialized kinship training as recommended and provided by DFPS;
  - comply with DFPS requirements limiting or facilitating contact between the parents and the child;
  - apply for other forms of assistance, including financial and medical, for which the child may be eligible; and
  - comply with any other child-specific requirements or limitations.

The caregiver's household income may not exceed:

- 300% of current poverty level, as determined annually by federal poverty guidelines. (Caregivers with a household income over 300% are not eligible.)

The duration of the reimbursement is:

- Up to 12 months after placement of the child in the caregiver's home
- Up to 18 months with a one-time, six-month extension for good cause. Examples of circumstances that justify good cause include:
  - Attempting to find a previously absent parent of the child;
  - Awaiting the expiration of the timeline for an appeal of an order in a suit affecting the parent child relationship;

- o Allowing additional time for the caregiver to complete the approval process for verification or adoption of a child;
- o Waiting for approval of the child placement from another state;
- o A delayed determination of the child's "Indian child" status, or when awaiting the approval of the Indian child's Tribe; or
- o Any other circumstance involving the child or caregiver that DFPS deems as justification for an extension.

If a child changes placement:

- The payment will follow the child, but the duration of the payment stays the same. For example, if a child lives with a grandmother for four months and then moves to an aunt, the 12-month payment does not restart for the aunt.

Caregivers With PMC of the Child – Annual Reimbursement Payment (No Medicaid)

If a caregiver receives PMC of a child, the caregiver can request a $500 annual reimbursement per child

for child related costs.

The child must have been:

- Previously in the managing conservatorship of DFPS; and
- Placed in the home by DFPS.

The caregiver must:

- Meet all of the requirements for caregivers without PMC (e.g., not be a licensed or verified foster caregiver);
- Have obtained PMC of the child after September 1, 2017; and
- Continue to comply with the signed caregiver assistance agreement.

The caregiver's household income does not exceed:

- 300% of current poverty level, as determined annually by federal poverty guidelines. (Caregivers with a household income over 300% are not eligible.)

The duration of the payment is:

- Up to three years or until the child turns 18, whichever comes first.

PERMANENCY CARE ASSISTANCE PROGRAM (PCA)

The goal of the PCA program is to provide financial support to kinship caregivers who want to provide a permanent home to children who cannot be reunited with their parents. PCA requires the caregiver to become a licensed/verified foster parent and obtain PMC of the child.

PCA includes one-time reimbursement of nonrecurring expenses, monthly payment, and Medicaid.

The child must:

- Have been previously in the managing conservatorship of DFPS;
- Have been placed in the home by DFPS;
- Have demonstrated a strong attachment to the prospective permanent kinship conservator;
- Not have reunification or adoption as a permanency option (DFPS has already ruled these out for the child);
- If at least 14 years of age, have been consulted by DFPS about the prospective permanent kinship conservator's commitment to assume PMC of the child; and
- Have resided in the caregiver's home since it was licensed/verified for at least six consecutive months.

The caregiver must:

- Be a relative of the child or have had a longstanding and significant relationship with the child prior to DFPS placing the child in the home;
- Have a strong commitment to caring permanently for the child;
- Have been eligible for the receipt of foster care reimbursements on behalf of the child (i.e., caregiver must become a licensed or verified foster parent to the child) for at least six consecutive months prior to the effective date of the PCA agreement;
- Enter into a PCA agreement with DFPS on behalf of the child prior to becoming the child's permanent kinship conservator; and
- Obtain PMC of the child.

The court must NOT issue an order that includes any of the following:

- Naming either of the child's parents as Joint Managing Conservator (JMC) of the child;
- Naming DFPS as JMC of the child; or
- Awarding possessory conservatorship to any parent of the child under circumstances DFPS determines have the effect of reunifying the child with that parent.

Practice Tip: The earlier the relative/caregiver begins the process, the earlier they can become eligible to finalize a PCA agreement which can increase options for negotiation at the end of the case and avoid unnecessary extensions of the deadline. Courts are also required to inform relatives caring for children of the ability to apply for PCA at the Adversary Hearing, Status Hearing, and Permanency Hearings before and after a final order. Tex. Fam. Code §§ 262.201(n-1), 263.202(i), 263.306(c)(2), 263.5031(a)(3).

Inability to Care & Parents with Disabilities

Inability to Care

In certain circumstances, DFPS may file for termination of a parent's rights based on the parent's mental illness or deficiency without alleging one of the termination grounds in Tex. Fam. Code § 161.001.

STATUTE

Tex. Fam. Code § 161.003

The court must find:

- That the parent has a mental or emotional illness, or mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
- That the illness or deficiency will probably continue to render the parent unable to provide for the child's needs until the child's 18th birthday;
- That DFPS has been Temporary or Sole Managing Conservator for at least six months prior to the termination hearing;
- That DFPS made reasonable efforts to return the child to the parent; and
- That termination is in the child's best interest.

> **Parent's Attorney Practice Tip**: The needs of the child also affect the impact of the deficiency. For example, a parent's deficiency may prevent them from being able to meet the emotional needs of a 3-year-old who throws tantrums, but the same parent might be able to meet the emotional needs of an 11-year-old.

ADVOCACY

When representing a parent who has a mental or emotional deficiency, an attorney still owes their client a duty of zealous advocacy to ensure their client's rights are protected and that DFPS makes reasonable efforts to return the child to the parent.

Federal law prohibits governmental entities, including DFPS and the courts, from discriminating against people with disabilities in their programs, services, and activities. Once it is determined that a parent or caregiver has an intellectual or developmental disability and/or a mental illness, DFPS is obligated to work with the family to identify possible services and supports that can assist the caregiver in meeting the needs of their child. If a caseworker suspects that a parent has an intellectual or mental disability, they must contact the Developmental Disability specialist at DFPS so that a member of that team can work with the parent on whatever services are required. This policy is based on Section 504 of the Rehabilitation Act of 1973, as well as the Americans with Disabilities Act, which requires governmental entities to make accommodations for people with disabilities.

Parents With Disabilities

Parents with mental or intellectual disabilities are equally entitled to accommodations as those with physical disabilities. DFPS is legally mandated to make reasonable accommodations and modifications for disabled parents and caregivers so that they have equal access to services, and so that they can complete the services according to their abilities. An attorney may need to advocate for transportation assistance for a parent, relocation of a service or visit to an accessible facility, or referral to agencies that can help with various supports.

> **Parent's Attorney Practice Tip**: Accommodations, modifications, and supports must be individualized, and there is no one size that fits all. Therefore, it is important to understand the client's strengths and limitations to effectively advocate for them and the accommodations needed. DFPS has a policy handbook called "Working with Parents with Disabilities." This can be a helpful resource to use when advocating for accommodations for the parent, particularly as they relate to Family Service Plans. The National Research Center for Parents with Disabilities also has helpful information specifically on how an attorney can effectively safeguard the rights of a parent with disabilities.[49]

[49] The National Center for Parents with Disabilities website. Available online at https://heller.brandeis.edu/parents-with-disabilities/index.html. Last visited on February 4, 2026.

Incarcerated Parents

Generally, an incarcerated parent has the same rights and duties as a parent who is not incarcerated, and an attorney owes their client the same duties of zealous advocacy to protect their client's rights and ensure that reasonable efforts are made to return the child to the parent.

The Texas Department of Criminal Justice (TDCJ) is the agency which manages the overall operation of the state's prison system, parole, and state jail systems. The agency also provides funding, training, and certain oversight of community supervision.

Types Of Correctional Facilities

CORRECTIONAL CENTERS (PRIVATE)

These are privately operated correctional centers that house Correctional Institutions Division (CID) offenders.

COUNTY JAILS

County jails are managed by the county sheriff or designee. The county jail facility's primary role is to hold defendants awaiting trial or those who have been convicted and sentenced to county jail.

FEDERAL PRISONS

Federal prisons are managed and run by the U.S. government and houses inmates who have been convicted of a federal crime. The Federal Bureau of Prisons (BOP) is responsible for the centralized administration of federal prisons.

STATE JAIL FACILITIES

State jails house individuals who have committed felony crimes (primarily property crimes and low- level controlled substance offenses) that have a maximum sentence of two years and a mandatory term of community supervision. Some state jails are privately operated and house state felons as well as CID transfer offenders.

How to Locate an Incarcerated Parent

To locate a parent in a TDCJ Facility (a Texas prison or State Jail):

- Contact the TDCJ Office of Classification and Inmate Transportation Division by email at classify@tdcj.texas.gov or by phone at 936-437-6231; [50]
- Call the TDCJ Inmate Locator/General Information Line at (936) 295-6371 or 1-800-535-0283; or
- Use the TDCJ Inmate Information Search webpage.[51]

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[50] TDCJ Classification and Inmate Transportation Division webpage. Available online at https://www.tdcj.texas.gov/divisions/citd/classification.html. Last visited on February 4, 2026.

[51] TDCJ Inmate Information Search webpage. Available online at https://inmate.tdcj.texas.gov/InmateSearch/start.action. Last visited on February 9, 2026.

PARENTS NOT UNDER TDCJ SUPERVISION

If the parent is confined in a facility other than TDCJ, the following links may be useful:

- Federal Bureau of Prisons (BOP) online inmate locator.[52]A list of BOP facility locations is also available.[53] The BOP Office of Public Affairs is available by phone at (202) 307-3198 or by email at webmaster@bop.gov.
- Victim Information and Notification Everyday (Vine Link) to locate a parent who may be incarcerated in another state.[54]
- Corrections Department by state to locate a parent in another state.

PARENTS IN COUNTY JAILS

To determine if a parent is incarcerated in a county jail, conduct a search of the county's website in order to locate the parent or contact the county jail directly.

Attendance at Hearings and Trial

Even if a client is incarcerated, they still have a right to be present at the statutory hearings.

> **Parent's Attorney Practice Tip**: If a client wants to attend a hearing or trial via phone or video conference, contact the correctional facility well before the scheduled hearing to determine what is required to make the client available at the scheduled time. If the client wants to attend in person, a bench warrant will be required, and the best practice is to work with the court and the attorney representing DFPS to facilitate the bench warrant.

Service Plan

A client's incarceration does not mean they cannot participate in services. To find out what services are available to an incarcerated parent, contact the facility or visit the TDCJ Rehabilitation and Reentry Division webpage.[55] Some county facilities also have classes available for their inmates. Attorneys should contact the county jail to obtain a list of services available for their parent client and inquire into programming available both on-site and through distance learning. There may be programs that parents can participate in via mail correspondence even if classes are not being offered on-site.

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52 Federal Bureau of Prisons Inmate Locator. Available online at https://www.bop.gov/inmateloc/. Last visited on February 9, 2026.

53 Federal Bureau of Prisons Facility Locations. Available online at https://www.bop.gov/locations/list.jsp. Last visited on February 9, 2026.

54 Department of Homeland Security Vine website. Available online at https://vinelink.dhs.gov/#!/map. Last visited on February 9, 2026.

55 TDCJ Rehabilitation and Reentry Division webpage. Available online at https://www.tdcj.texas.gov/divisions/rrd/index.html. Last visited on February 9, 2026.

Visitation

A client's incarceration does not mean that visitation with their child is impossible or inappropriate.

If the court is reluctant to order visitation with an incarcerated parent, there are studies which indicate that allowing contact between children and parents who are incarcerated can mitigate the harms of separation for the child. Please *see* the *Additional Resources* section of this toolkit for more information.

If visitation is ordered by the court, it is important for the parent's attorney to explain to the parent client that they need to notify their attorney if the parent is not permitted visits by the facility as a result of disciplinary sanction, because of facility security, transfer to another facility, or release from a facility or program.

> **Parent's Attorney Practice Tip**: Contact the correctional facility about the facility's family visitation policy, including procedures and restrictions (such as whether all visitors must be on the offender's visiting list before being approved to visit) and determine if there is a social worker or chaplain who can help with arranging parent-child visits at the facility.

An incarcerated parent may send written correspondence to their child. However, it is prudent to advise the client that the content of written correspondence is not confidential and discuss what information is and is not appropriate to include in written letters.

Placement

A client's incarceration does not mean that they are unable to assist in providing information about or facilitating a placement for their child. Relatives and fictive kin of an incarcerated parent may be placement options or other sources of support for the child and family. A parent client should be given the opportunity to provide that information as soon as possible after appointment. Please *see* the *Placement* section of this toolkit for more information when considering placement issues.

Parents with an Open Criminal Case

A parent client may have an additional criminal component to a case filed by DFPS. This can be difficult to navigate as actions taken in the child welfare case can directly affect the criminal case and there are important aspects to consider from the outset for both the child welfare and criminal cases.

Information Gathering

Questions to ask the client include:

- When and where were they arrested? What state and county?
- What are the pending charges? Have they been filed?
- Is there an alleged victim? Does the client know the alleged victim? If so, how? Does the client have any previous convictions?
- Do they have a criminal attorney? (If they do not have an attorney, it is important they understand their right to an attorney, including a court-appointed attorney.)

If the client does not know the above information, then the parent attorney may research the answers as part of an independent investigation into the client's case. The parent attorney can contact the criminal prosecutor or criminal defense attorney to make inquiries, and if those professionals cannot be identified, run an independent criminal record search. Even though the information above pertains to the criminal case, understanding the criminal case is necessary to better represent a client in the child welfare case.

If the parent client does not have a criminal attorney, consider assisting them in the process to apply for one. There may be applications and affidavits required, depending on where the criminal case is located. Parent attorneys may call the court directly for its specific process for appointing a criminal attorney.

CONFIDENTIALITY

It is crucial to establish the importance of confidentiality with the client and advise the client not to discuss the criminal case and any of its details with anyone besides their parent's attorney and their criminal attorney. The client has a Fifth Amendment right to remain silent as to any details regarding a current criminal investigation or ongoing case. The parent's attorney should strongly consider preparing the client to respond to questions from the investigator or caseworker in the child welfare case about the criminal charges so that the client may respond in a way that does not have negative implications for their criminal case.

> **Parent's Attorney Practice Tip**: The confidentiality discussion should take place during the initial contact with the client as a part of the attorney-client privilege explanation.

COMMUNICATION WITH DEFENSE COUNSEL

It is crucial to establish an open line of communication with a client's criminal attorney. Court-appointed criminal attorneys often have heavy caseloads which can slow their response time, but it is important to initiate a conversation as soon as possible to discuss the client's criminal case.

A parent's attorney in the child welfare case can provide information that assists the criminal defense attorney in preparing a dense and resolving the criminal case, including:

- Mitigating circumstances due to the parent's history and circumstances;
- Services the parent has completed in their child welfare case or is in the process of completing; and
- Effective ways to communicate with the parent.

Important things to consult with the client's criminal attorney about include:

- Upcoming court dates for both the child welfare and criminal case;
- The evidence being used (video, audio, police reports, etc.);
- The progress of the case;
- The general strategy of the defense attorney; and
- The status of plea negotiations with prosecution (what is the current offer).

> **Parent's Attorney Practice Tip**: Make it a priority to check in with the criminal attorney for updates prior to each statutory child welfare hearing, if not more frequently.

How The Criminal Case Affects the Child Welfare Case

SERVICES OVERLAP

It may be important for the criminal court to determine what services are being provided to the parent through the child welfare case. Must they be duplicated or substituted by probation services, or are the services being provided in the child welfare case sufficient? Ask the court to allow consolidation of services as much as possible. This is especially important if the transportation and/or time management necessary to comply with a wide array of services are challenges for the client.

> **Parent's Attorney Practice Tip**: Criminal cases involving domestic violence often have bond or probation conditions that require batterer intervention classes or components, which can be used to fulfill requirements of a DFPS service plan. Attorneys should also look into whether the conditions have a "stay away" provision or if there is an emergency protective order or full protective order in place as it may cause additional issues in the child welfare case if the victim is the other parent.
>
> Most bond or probation conditions will also require drug testing; however, the criminal case and civil child welfare cases will likely require independent testing. Caseworkers and probation officers will often communicate after failed tests but will want their own tests due to their own specific requirements.

PATTERN OF DANGEROUS CONDUCT

DFPS may use previous criminal convictions and pending charges against the client to show a pattern of dangerous behavior. It is important to view any offense reports that the prosecuting attorney may have on the client. Any altercation or incident with law enforcement, even if no arrest or charge was made, can be used to demonstrate a pattern of conduct that may endanger a child.

CONSEQUENCES OF DISPOSITIONS

If a criminal case is concluded or nearing its end, it is imperative to speak with the criminal attorney about the possible implications of different types of pleas. This is an extremely impactful part of the case, especially if a criminal charge is directly related to the child welfare case. Research and speak with a criminal attorney to better understand criminal case dispositions and collateral consequences that may impact the child welfare case.

> **Parent's Attorney Practice Tip**: Construct a timeline with the criminal case dates and the statutory deadlines for the child welfare case to better understand how the two cases may overlap or exist independently from each other.

FIFTH AMENDMENT CONSIDERATIONS

Fifth Amendment Does Apply to Civil Cases

The right against self-incrimination applies to both civil and criminal cases. *McCarthy v. Anderson*, 266 U.S. 34 (1924). The application is not dependent on the type of proceeding, but on whether the answers to the questions could subject the person who answers to criminal liability in the future. *Lefkowitz v. Turley*, 414 U.S. 70 (1973).

Testifying in a Civil Case

In a civil case, the state has the right to call the opposing party as a witness, but the individual retains their right against self-incrimination if they reasonably fear that the answer sought may be incriminating. *Texas Dept. of Pub. Safety Officers Ass'n v. Denton*, 897 S.W.2d 757, 760 (Tex. 1995).

No Blanket Assertion of Privilege

However, the party may not make a blanket assertion against self-incrimination in a civil case. They must assert the privilege in response to each question and the judge rules on whether the witness can assert his Fifth Amendment right to a given question. *In re Verbois,* 10 S.W. 3d 825, 828 (Tex. App.—Waco 2000).

Negative Inference Allowed

Unlike in a criminal case, the application of the Fifth Amendment in civil cases is not automatic and if the witness fails to testify, or fails to answer a question, it may be held against them. The factfinder is "free to draw negative inferences from [a witness's] repeated invocations of the Fifth Amendment." *Wilz Flournoy*, 228 S.W.3d 674, 677 (Tex. 2007).

> **Parent's Attorney Practice Tip**: Because of the significant differences in the application of the Fifth Amendment to criminal and civil cases, consult with the client's criminal attorney before the client testifies in a child welfare case.

RELEVANT CASE LAW

It is error to compel a parent to answer a question over their invocation of the 5th Amendment privilege against self-incrimination regarding their knowledge of the other parent's drug use which led to the children's removal. *In re B.C.*, No. 02-22-00256-CV, 2022 WL 17172338 (Tex. App.—Fort Worth Nov. 23, 2022, pet. denied)(mem. op.). Father's knowledge of mother's drug use around the children tended to incriminate the father under the child endangerment penal code statute, thus, the trial court erred in compelling the father to answer the question regarding his knowledge of the mother's use.

Reinstatement of Parental Rights

Statutes

Tex. Fam. Code §§ 161.301-161.304.

Parties That Can File for Reinstatement

- DFPS or a single source continuum contractor (SSCC)
- The attorney ad litem for the child
- A parent whose rights have been involuntarily terminated under Tex. Fam. Code §§ 161.001 or 161.003. Tex. Fam. Code § 161.302(a).

***Note**: DFPS policy states that the submission of an affidavit of voluntary relinquishment is not to be excluded for potential parental rights reinstatement because they are included in the list of involuntary grounds of termination under Tex. Fam. Code § 161.001. See CPS Policy Handbook § 5590.*[56]

Requirements of the Petition

CIRCUMSTANCES WHEN A PETITION CANNOT BE FILED

A petition for reinstatement *cannot be filed if*:

- Termination occurred in a private suit in which DFPS was not a party;
- It has been less the two years since the parent's rights were terminated;
- The child has been adopted, or is the subject of an adoption placement agreement;
- There is a pending appeal; or
- It has been less than one year since a court denied a previous petition for reinstatement.

Practice Tip: Parents of children who have been adopted and then later returned to the conservatorship of DFPS may still be eligible for reinstatement.

REQUIRED CONTENTS OF THE PETITION

The contents of the petition must be sworn to by the petitioner and 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 current residence of the child, if known;
- The name, current residence address and contact information for any party that participated in the termination hearing and has information relevant to the petition;
- A summary of grounds upon which the former parent's rights were terminated;

[56] CPS Policy Handbook § 5590. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_5560.asp#CPS_5590. Last visited on February 9, 2026.

- A statement of facts and evidence that shows the former parent is rehabilitated and has the capacity and willingness to carry out the responsibilities and duties of a parent under Tex. Fam. Code § 151.001. Examples of such evidence include:
  - mental health treatment,
  - substance abuse treatment,
  - employment history, or
  - other personal history demonstrating rehabilitation.
- A summary of prior requests or motions for reinstatement;
- A statement by the former parent seeking reinstatement;
- If the child is older than 12, a statement of the child's intent or willingness to consent to reinstatement.

Notice

Notice of the petition must be served on:

- The child or child's representative;
- The county attorney;
- The child's attorney ad litem;
- DFPS or SSCC, if applicable*;
- The former parent whose parental rights are sought to be reinstated, if they are not the petitioner; and
- The Tribal representative, if ICWA applies. Tex. Fam. Code § 161.302(e).

* If the petitioner is the former parent, they must provide 45 days' notice of their intent to file using a form created by the DFPS commissioner. Tex. Fam. Code § 161.302(d). Form Number 3800 (also called Form K-906-3800), entitled Notice of Intent of Former Parent to Petition Court to Reinstate Parental Rights and instructions about how to use this form can be found on the DFPS website.[57]

> **Practice Tip**: If a parent is unsure whether they are eligible for reinstatement of parental rights— for example, if they do not know whether their child has been adopted or is subject to an adoption placement agreement—the parent can submit form K-906-3800 to DFPS and receive a determination of eligibility in return.

[57] DFPS Forms webpage. Form number 3800. Notice of Intent of Former Parent to Petition Court to Reinstate Parental Rights. Available online at https://www.dfps.texas.gov/site_map/forms.asp. Last visited on February 9, 2026.

Hearing

STATUTE

Tex. Fam. Code § 161.303

TIMING

A hearing must be held no later than 60 days after the filing of the petition.

PURPOSE

For the court to take action regarding whether the parent's rights should be reinstated.

STANDARD OF PROOF

The petitioner has the burden of proof. Tex. Fam. Code § 161.303((b). The standard of proof required is preponderance of the evidence. Tex. Fam. Code § 105.005.

REQUIRED FINDINGS

For the court to reinstate the parent's rights, the court must find that:

- Reinstatement of parental rights is in the child's best interests;
- At least two years have passed since the issuance of the order terminating parental rights and an appeal of the order is not pending;
- The child has not been adopted and is not the subject of an adoption placement agreement;
- If the child is over 12 years old, that the child consents and desires to reside with the parent;
- The former parent has remedied the conditions that were grounds for rendering the order terminating parental rights; and
- The former parent is willing and able to perform parental duties as provided by Tex. Fam. Code § 151.001 including maintaining the health, safety, and welfare of the child.

If the child is less than 12 when the petition for reinstatement is filed, the court must consider the child's age, maturity, and ability to express a preference and may consider the child's preference regarding the reinstatement as one factor in the court's determination.

REQUIRED COURT ACTION

Grant the Petition

If the court grants the petition after a hearing, the court must issue a written order stating that all legal rights, powers, privileges, immunities, duties, and obligations of the former parent with respect to the custody, care, control, and support of the child are reinstated. Tex. Fam. Code § 161.304(c).

Deny the Petition

If the court denies the petition, it must make findings and detail reasons for the denial and must issue a statement prohibiting the filing of a subsequent petition for a year from the order of denial. Tex. Fam. Code § 161.304(d).

Defer Taking Action and Render Temporary Orders

The court may defer the decision on the petition and render a temporary order expiring after a period of six months during which DFPS remains the managing conservator and the former parent is the possessory conservator. Tex. Fam. Code § 161.304 (a)(3).

During the six-month time period, DFPS must monitor the possessory conservatorship of the former parent and when the temporary order expires, the court shall hold a hearing to determine whether to grant or deny the petition for reinstatement. Tex. Fam. Code § 161.304(b).

Benefits Eligibility for Child After Reinstatement

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.

TUITION AND FEE WAIVER

If the parent's rights are reinstated, the child may still be eligible for the tuition and fee waiver under the following circumstances:

- The child was in DFPS conservatorship on the day of the child's 14th birthday, if they were also eligible for adoption on or after that day; or
- The child is 14 years or older on or after June 1, 2016, and left PMC of DFPS to return to the legal responsibility of a parent; or
- The child is 16 years or older on or after June 1, 2016, and left TMC of DFPS to return to the legal responsibility of a parent; or
- The child enrolled in a dual credit course or other course in which a high-school student may earn joint high school and college credit and was in DFPS conservatorship on the day of enrollment; and
- The child enrolls in a public higher education institution or in a dual credit course before their 27th birthday.

Tex. Educ. Code § 54.366; 40 Tex. Admin. Code § 700.1630.

> **Practice Tip**: DFPS Preparation for Adult Living staff verify eligibility for the tuition and fee waiver, even if the child did not participate in PAL services.

EDUCATION AND TRAINING VOUCHER

The youth may still be eligible for ETV if the child was at least 16 and was likely to remain in DFPS foster care until turning 18 before the reinstatement was filed.

OTHER BENEFITS

- After reinstatement, youth are unlikely to retain qualification for Medicaid for former and transitioning foster youth.
- After reinstatement, youth will no longer be eligible for the waiver of driver's license or state identification fees.

Using a Trauma-Informed Lens for Interacting with Clients

Interactions with the child welfare system can be traumatizing for children and parents. Both children's and parents' attorneys may want to be familiar with techniques for interacting with clients who have experienced trauma. Tex. Fam. Code § 107.004 requires attorneys to participate in trauma training to qualify for appointments as an attorney ad litem of a child in a child welfare case. The training program must include trauma-informed care and the effect of trauma on children in DFPS' conservatorship. The following information is modified content from the Trauma-Informed Legal Advocacy Project. Please *see* the *Additional Resources* section in this toolkit for more information.

Legal Interviewing & Traumatic Triggers

CONSIDER THE PERSPECTIVE OF PARENTS AND CHILDREN WHO HAVE EXPERIENCECED TRAUMA

A person may feel distracted, anxious, and agitated and thus unable to meaningfully participate in an interview or conversation or may actively prevent a productive conversation from occurring. Trauma triggers are one factor that may explain why a child or parent client is having trouble connecting with others, including their own attorney. A trigger is something that evokes a memory of past traumatizing events, including the feelings, sensations, or memories associated with those experiences. Encountering triggers may cause someone to feel uneasy, afraid, or withdrawn even without them being consciously aware of these reactions. A trigger can make someone feel as if they are reliving a traumatic experience and can elicit a fight, flight, or freeze response. Many things can be a possible trigger for someone who has experienced trauma. A person might be triggered by a particular color of clothing, by the smell of a certain food, by certain phrases or behaviors, by their surroundings, by an individual's gender, by authority figures, or by the time of year. Internal sensations, such as rapid heartbeat, nausea, or tightened muscles can be triggers as well, or the person may feel nauseous or have other physical reactions ranging from being combative to shutting down.

A trigger may be associated with the traumatic experience without their conscious awareness and the client may not know why they are feeling or reacting a certain way. Children or adults who are triggered by traumatic memories may also appear bored or uninterested, talk about things in a flat or unemotional way, have a blank stare and spacey look, or appear to be shut down or checked out. They may ramble, avoid conversation, or deflect with humor. Their answers to questions may be slow and incomplete. Additionally, many families and communities involved with DFPS have been deeply affected by negative experiences with legal and administrative systems, such as criminal justice, immigration, and education systems. For these reasons, a client may distrust the child welfare system and anyone they associate with it.

WAYS TO HELP CLIENTS FEEL SAFE AND SUPPORTED

Offer Options in the Physical Space

Offer choices of where to meet, which chair they can use, and whether a nearby door is closed, open, or slightly ajar. Consider whether slight adjustments can be made to accommodate multiple seating options.

For example:

- "Which chair would be most comfortable for you?"
- "Would you prefer the door closed or slightly open?"

- "Is this room ok, or would you prefer to talk in another room or maybe outside?"
- "Do you feel safe in this space? If not, what would make you feel safe and comfortable?"
- "Do you feel safe with a male/female attorney?" "Would you feel safer with an attorney of a different gender?"

At the same time, be aware that sometimes options can be overwhelming to someone who is not accustomed to being given many choices. Be flexible and follow your client's preferences.

Encourage Self-Regulation

Experiencing trauma can disrupt a person's ability to manage emotions and calm themselves when they are starting to feel upset. Self-regulation may include listening to music, going for a walk, playing with a dog or cat, or simply taking a break. In the context of a legal meeting, options are more limited, but some strategies that may help a client self-regulate include doodling or coloring, fidgeting with toys or other objects, offering food or snacks, looking at calming pictures, and drinking water. If you make it clear to your client that their physical, mental, and emotional safety comes first, it can help you accomplish the goals of the meeting.

Explain Things in Advance

For people who have experienced trauma, it can be helpful to know in advance what is going to happen, who is going to be involved, and the scope of their participation. This includes telling someone how much time their attorney has available to meet with them, which can also help build trust. It can also be helpful to tell someone the types of matters that will be discussed during the meeting.

For example:

- "We have about a half an hour to talk today. I'd like to hear you talk about what happened when DFPS came to your home. Is that ok with you?"
- "I'm going to ask you some questions, and you can ask me questions at any time. Then we'll go over some of the paperwork DFPS gave you and I'll explain what it means. It should take about an hour, but we can take a break whenever you need to."

Offer Breaks

Taking breaks throughout a meeting can help the client stay present and engaged as well as feel physically and emotionally safe.

Be Thoughtful About Notetaking

Ask permission to take notes, specify what you're transcribing, and summarize the notes for your client at the end of the meeting. This can help keep build trust and rapport with your client. Also, do not allow your note taking to detract from being present with someone.

WAYS TO SUPPORT A CLIENT IF THEY APPEAR DISTRESSED

Notice and Validate their Feelings

Noticing and validating a client's feelings can help them to become aware of what is happening with them emotionally if they are not already aware. It also lets the client know their attorney cares about their emotional safety. This matters in part because these actions contradict what happens in many traumatic incidents, where a person's feelings of anxiety and fear are often ignored and dismissed, or where showing these feelings may be met with increased violence. Noticing and validating the client's feelings includes allowing the client to move through their feelings at their own pace.

For example:

- "That sounds really scary."
- "I can only imagine how hurtful that felt."
- "That sounds overwhelming for anyone to deal with."

It's important to be sincere but to remain within boundaries. Clients can detect when empathy seems empty or fake, but over empathizing with your client's feelings ("I experienced something exactly like that") risks making the conversation about you and not them.

Ask What Would Help

When making suggestions, offer several options whenever possible, rather than just asking "yes or no" questions. Asking someone how to help them when they seem triggered also reflects the relationship as a partnership of equal respect.

For example:

- "Let me know if I can get you a glass of water, or we can just sit together for a moment."
- "Would it help to have a moment to yourself or visit with your friend in the waiting room, or maybe something else?"

Use Open Body Language

If the client is very upset and agitated, it can be helpful for the attorney to use open body language so that the client knows that their attorney does not pose a threat. This includes keeping shoulders relaxed, keeping body posture and hands open and relaxed, and avoiding blocking the client from being able to exit or walk away.

Help the Client to Get Grounded in the Present

If a client seems anxious or uncomfortable, it may be because they feel they are unsafe in the current environment. There are tools to help a client feel safe and grounded in the present. Some examples include helping the client notice their breath, their physical presence, or physical things in the environment. For example:

- "You know we can sit here on this bench for as long as we need to. We are okay right now, you and me. We can just take our time, no one is going to bother us here."
- "Is it hard for you to focus on these questions? When that happens, some people say it helps them to just take a minute to notice themselves breathing in and out."

BUILDING TRUST AND UNDERSTANDING THE IMPACT OF TRAUMA

What is Happening from the Perspective of Parents and Children Involved with the Child Welfare System?

There are many reasons why someone might not share information, some of which may be related to experiencing trauma. Experiencing abuse, especially by a trusted person, can make it difficult to trust people in the future. Of course, someone's hesitations about sharing information may also reflect an awareness of real danger that the information shared will be held against them in court. Another reason that someone may not share information right away is that they do not remember the information, or they can't recall it in the way that it is being asked for.

Survivors of trauma do not always remember their experiences in chronological order or may have blocked out the memory entirely as a coping mechanism. On the other hand, survivors of trauma may remember events, but they may ascribe different meaning to the events than are reflected in legal definitions of abuse. Often, when someone experiences a traumatic event, the person may seem distant or they might dissociate, which means there is a change in their consciousness which disturbs the normally connected functions of identity, memory, thoughts, feelings, and experiences. Their understanding of what is happening and their experience of what is happening become disconnected. This is a protective coping mechanism that can keep someone emotionally safe during traumatic events, but it can affect the person's ability to recall those events, or other events that occur when the person experiences a traumatic trigger.

For a person who is agitated or disconnected because of a traumatic trigger, traumatic memory, or simply by being in an environment that does not feel safe to them, building a connection and developing trust are key to helping the person regulate their emotions and responses.

What Might Help Create Trust with the Client?

- Sharing your mission statement explaining your personal reasons for choosing to represent parents and children in DFPS cases.
- Being transparent with the client. For example,
    - being transparent about limitations on time and resources.
    - "I'm really glad you called. I have about five minutes to talk right now. If we need more time, we can schedule another call."
    - being transparent about the need for and use of information.
    - "Is there any reason why DFPS might say you were neglectful? The reason I'm asking is so that we can prepare together for every possible thing that DFPS might say, not because I don't believe you."
- Understanding fluctuations in the client's level of trust in their attorney over time.

Keep in mind that sharing personal information, such as details about experiences of abuse, can make someone feel vulnerable, especially if they have not shared that information before. Thus, in some cases, someone might share a lot about themselves in a meeting and then become more guarded, withdraw from the relationship, or even stop responding to calls altogether. As the relationship develops, the client may want to share more information, or they may even change parts of their story.

What Might Help a Client with Memory Recall?

Reminding or emphasizing the confidentiality of the attorney-client relationship can help establish a sense of safety. Use open-ended questions, if necessary, to gently facilitate more detail. Lay out topics in broad terms. If the client is a parent, the best approach is to start by letting the client tell their story from start to finish. If the client is a child, do not elicit details of abuse or neglect from the child, since discussions about abuse or neglect should occur with a trauma-informed mental health professional.

Preparing a Client for Court

Being involuntarily separated from a parent or child can be a traumatic experience. As the client approaches the hearing date, they may experience anxiety, sleep deprivation, and exhaustion. At court, parents may see the caseworker who made the decision to remove their children, which may be a triggering event for them. Parents and children may be seeing each other for the first time since removal. Encountering such reminders of trauma may cause the client to feel uneasy, afraid, or terrified, and they may re-experience what they felt when they were initially traumatized.

TOOLS FOR EMOTIONALLY PREPARING CLIENTS FOR COURT

- Offer a Tour of the Court Building Ahead of Time. Describe the logistical and spatial details of attending court, including where parties will wait before court opens, where they will take breaks, who will be in the courtroom, and the location of restrooms. There is a balance between giving someone enough information to help them know what to expect and giving them too much information, which could potentially overwhelm them. Let your client be the guide. If possible, take a tour of the courtroom itself.
- Identify Your Client's Supporters. Encourage the client to bring someone appropriate to court with them and explain local rules for courtroom decorum. If there is no family member or friend who can attend, suggest they ask someone they know through a support group, social activity, or church group to accompany them. If no one is available to attend in person, friends or family can show that they are there in spirit by sending notes and messages of support or trinkets that can be kept close. If a client has very limited support, they may want to find a peer support group such as the DFPS Parent Collaborative. If the client is seeing a therapist, it may help to have an appointment scheduled with the therapist as soon as possible after the hearing.
- Suggest Making a "Night Before" Plan. Not sleeping and not eating can have an impact on our ability to manage our emotions, but when a client is anxious, they may have a hard time doing both. Acknowledging to someone that this is often the case can help them to decide how they want to prepare. If unable to address these issues the night before, check in with the client prior to the hearing to see if they have had a meal and help them locate food options in the courthouse.
- Offer to Help Make a "What If " Plan. Consider asking the client whether they think anything about the court proceedings might be particularly difficult or triggering for them and make a plan for how to respond. Encourage the client to practice self- calming techniques prior to the day of court so that these become automatic and easier to access when stress makes it hard to think. Always follow the lead of the client to see how much they want to plan.
- Make a Plan for Dealing with Stress at Court. It can help to ask the court for a recess when the client feels they need one or when observing them experiencing a trauma response. While on break, validate their feelings. Acknowledge that what's happening may be very upsetting and that they are doing a great job. Sometimes just silently being with someone for a few minutes can help them to calm themselves and prepare to continue.

Avoiding Burnout and Practicing Self-Care

An attorney's office may be the first place where a client can safely show frustration and anger.

This may cause attorneys to feel unappreciated or perceive the client as "demanding" and "difficult." Over time, attorneys may feel that working with challenging clients in this complex area of law might be too difficult.

SIGNS OF BURNOUT AND SECONDARY TRAUMA

Burnout can manifest as exhaustion, cynicism, and ineffectiveness.

Secondary Trauma (sometimes called vicarious trauma) refers to the effects of working empathically with and feeling responsibility toward people who have survived the trauma of abuse, violation, and discrimination.

Consider whether working on these cases made it harder as an attorney to:

- Feel positive about the work.
- Feel competent.
- Get things done and feel productive.
- Stay positive.
- Stay calm and manage emotions.
- Feel safe.
- Trust the client, or trust others.

SELF-CARE STRATEGIES

- Keep in mind that this may be the first time the client felt safe enough to show emotion.
- Set boundaries with clients.
- Plan out specific times to work on challenging cases.
- Keep positive thoughts in mind about the attorney's role in the case.
- Ask a co-worker or colleague to remind you about positive aspects of the work.
- Take time to reflect on personal feelings and responses, both in the context of individual interactions and after big successes or losses.
- Use calming or grounding techniques for yourself during phone calls (e.g., coloring, fidget tools).
- Use a checklist to remember when interacting with clients, such as not to take things personally, etc.
- Utilize additional support to help the client (e.g., connect them with a therapist or the DFPS Parent Collaboration Groups).
- Utilize available assistance such as the Texas Lawyers Assistance Program (TLAP).[58] The program provides confidential help for law students, lawyers, and judges who have challenges related to substance use and mental health issues. TLAP can be reached online, by calling 1-800-343-TLAP, or texting TLAP to 555888.

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58 Texas Lawyer's Assistance Program website. Available online at https://www.tlaphelps.org/. Last visited on February 9, 2026.

Indian Child Welfare Act (ICWA)

Purpose

The Indian Child Welfare Act of 1978 (ICWA) is a federal law that imposes special standards and requirements when a child welfare agency seeks to intervene to protect an "Indian child" as defined by statute. The law was enacted to protect not only Indian children, but their families and Tribes.

Statutes

Federal statutes governing ICWA are 25 U.S.C. §§ 1901-1963; 25 C.F.R. Part 23 Guidelines for Implementing the Indian Child Welfare Act (Bureau of Indian Affairs, 2016). Relevant state statutes are Tex. Fam. Code §§ 262.201(f), 263.202(f-1), 263.306(a-1)(3).

When Does ICWA Apply?

ICWA applies to any "child custody proceeding" involving an "Indian child," if the court "knows or has reason to know that an Indian child is involved." 25 U.S.C. § 1912(a).

CHILD CUSTODY PROCEEDINGS

A suit seeking foster care placement, termination of parental rights, pre-adoptive, or an adoptive placement is subject to ICWA. ICWA does not apply to most juvenile delinquency actions. It also does not apply to custody actions in divorce or separation proceedings (unless custody may be awarded to a non-parent), nor to Court Ordered Services cases under Tex. Fam. Code § 264.203.

INDIAN CHILD

An "Indian child" is a child who is either:

- An unmarried person under age 18 who is either a member of an Indian Tribe; or
- Eligible for membership and the biological child of a member.

25 U.S.C. § 1903(4).

There are more than 500 federally recognized Tribes and children from any of these Tribes can be found in Texas. There are also three federally recognized Tribes with tribal reservations in Texas:

- Ysleta del Sur Pueblo, also known as the Tigua, in El Paso;
- Kickapoo Tribe of Texas, in Eagle Pass; and
- Alabama Cushatta Tribe of Texas, near Livingston.

A child residing on a reservation has specific legal protections 25 U.S.C. § 1911(a), and, in some cases, DFPS and the Tribe have a written protocol for handling these cases.

A Tribe's determination regarding the child's status is conclusive and a "state court may not substitute its own determination regarding a child's membership or eligibility for membership in a Tribe or a parent's membership in a Tribe." 25 C.F.R. § 23.108(b).

While it is the responsibility of DFPS to notify any Tribe identified by the family in order to confirm or deny a child's status as an "Indian child" under ICWA, attorneys for parents and children should inquire about the possibility of Native American heritage and inform the court of any such information if it becomes known to them.

REASON TO KNOW AN INDIAN CHILD IS INVOLVED IN THE CASE

A court has reason to know a child is an Indian child if:

- Any party, Tribe, or agency informs the agency or court that the child is an Indian child;
- Any participant, officer of the court or agency involved in the proceedings informs the court it has discovered such information;
- The child gives the court reason to know he or she is an Indian child;
- The domicile or residence of the child, parent or Indian custodian is on a reservation;
- The court is informed the child is or has been a ward of a Tribal court; or
- The court is informed either parent or the child has a Tribal membership card.

25 C.F.R. § 23.107(c).

Texas courts are required to ask the parties whether the child or child's family has Native American heritage and to identify any Native American Tribe the child may be associated with at the Adversary, Status, and Permanency Hearings. Tex. Fam. Code §§ 262.201(f), 263.202(f-1), 263.306(a-1)(3).

If the court knows or has "reason to know" that an "Indian child" is the subject of a child welfare suit, DFPS must give each parent and identified Tribe and any Indian custodian (caretaker) notice of ICWA rights. 25 U.S.C. § 1912(a).

> **Practice Tip**: In every case, attorneys for parents and children should confirm that every parent, extended family member, and any child old enough has been asked whether there is any Native American family heritage. The court must also instruct the parties to inform the court of any such information that arises later. 25 C.F.R. § 23.107(a).

What Changes if the Case is Identified as an ICWA Case?

INITIAL HEARING

A hearing must be held where DFPS must show by clear and convincing evidence, including testimony of a qualified expert witness, that the parent's continued custody "is likely to result in serious emotional or physical damage to the child," to warrant a foster care placement. 25 U.S.C.§ 1912(e). This finding cannot be made until 10 days after notice of ICWA has been provided and is subject to a 20-day extension on request of a parent or Tribe. To avoid the need to continue the hearing, the best practice is to set this hearing at least 30 days out. ICWA also requires that DFPS make "active efforts" to reunify among other legal requirements.

***Note**: The hearing must occur no matter how far along in the case the confirmation is made that the child is an "Indian child."*

PLEADINGS

If ICWA applies, DFPS should plead concurrently under the Texas Family Code and ICWA. In the jurisdiction of the Houston 14th District Court of Appeals, however, pleadings should be limited to the ICWA findings, without parallel Texas Family Code pleadings. *In re W.D.H.*, 43 S.W.3d 30 (Tex. App.— Houston 2001, pet. denied).

TRIBAL AND STATE JURISDICTION

Whether the state court or Tribal court has jurisdiction over a case involving an Indian child depends on where the child resides, whether transfer to the Tribal court is requested, and whether an exception to the mandatory transfer provision applies. If a case involves an Indian child, however, the state court proceedings must comply with ICWA, whether or not the Tribe intervenes, or the case is transferred to a Tribal court.

Exclusive Jurisdiction on the Reservation

If the child's residence or domicile is on the reservation, or if the child has been made a ward of the Tribal court, the Tribal court has exclusive jurisdiction, except when jurisdiction is otherwise vested in the state. 25 U.S.C. § 1911(a).

Emergency Exception

When an Indian child who resides on a reservation is temporarily off the reservation and emergency removal or placement is necessary "to prevent imminent physical damage or harm to the child," the state child welfare agency may act despite the fact the Tribal court otherwise has exclusive jurisdiction. 25 U.S.C. § 1922. In such circumstances, the state child welfare agency must act promptly to: (1) end the removal or placement as soon as it is no longer necessary to prevent imminent physical damage or harm to the child; and (2) move to transfer the case to the jurisdiction of the Tribe or return the child to the parents, as appropriate.

Concurrent Jurisdiction Off the Reservation

If the child's residence or domicile is not on the reservation, the Tribal and state court have concurrent jurisdiction. 25 U.S.C. § 1911(b). Even in this circumstance, however, there is a presumption of Tribal jurisdiction in cases involving an Indian child. *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989).

BURDEN OF PROOF

Foster Care Placement – Clear and Convincing Evidence

Including qualified expert witness (QEW) 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 by DFPS and proved unsuccessful. 25 U.S.C. § 1912(d).

Termination of Parental Rights – Evidence Beyond a Reasonable Doubt

Including 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 by DFPS but proved unsuccessful. 25 U.S.C. § 1912(f).

PLACEMENT

ICWA mandates that placements for foster care and adoption be made according to statutory preferences, unless good cause is shown to deviate from the preferences. 25 U.S.C. § 1915; 25 C.F.R. § 23.129-131.

The statutory preferences give priority as follows:

Foster Care or Pre-Adoptive Placement

- A member of the child's extended family;
- A foster home licensed, approved, or specified by child's Tribe;
- An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- An institution for children approved by the Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

25 U.S.C. § 1915(b); 25 C.F.R. § 23.131(b).

For an Adoptive Placement

- A member of the child's extended family;
- Other members of the child's Tribe; or
- Other Indian families.

25 U.S.C. § 1915(a); 25 C.F.R. § 23.130.

Departing from ICWA Preferences

The Tribe can by resolution alter the order of preferences. 25 U.S.C. § 1915(c). The Tribe's preference should then be followed as long as it is still the least restrictive setting appropriate to the needs of the child.

A party seeking to depart from the placement preferences must show by clear and convincing evidence, on the record or in writing, that there is "good cause" to depart from the placement preferences. The court's determination of good cause must be made on the record or in writing and be based on one or more of the following factors:

- The request of the "Indian child's" parent;
- Request of the child of sufficient age and capacity;
- Ability of placement to maintain sibling attachment;
- The "extraordinary physical, mental, or emotional needs" of the child; and
- The unavailability of a suitable placement (despite a diligent search and active efforts to locate one).

25 C.F.R. § 23.132(b)-(c).

MANDATORY TRANSFER TO TRIBAL COURT

A parent, an Indian custodian, or the child's Tribe may petition the state court to transfer a suit involving an Indian child to the Tribal court. Transfer to the Tribal court is mandatory, unless the court makes a finding of good cause not to transfer, the Tribe declines transfer, or either parent objects. 25 U.S.C. § 1911(b); 25 C.F.R. § 23.117.

The court cannot consider the following factors in assessing good cause:

- The advanced stage of the proceedings, if notice to the Tribe did not occur until an advanced stage;
- Whether there was no petition to transfer in a prior proceeding involving the child;
- Whether transfer would affect the child's placement;
- The child's cultural connections with the Tribe or its reservation; or
- The socio-economic conditions of the Tribe, Bureau of Indian Affairs (BIA) social services, or the judicial systems.

25 C.F.R. § 23.118(c).

RIGHT TO INTERVENE

The Tribe and the Indian custodian have the right to intervene in the state court action at any time in the proceedings. 25 U.S.C. § 1911(c). Intervention may be accomplished informally, by oral statement, or formally. Most important, if an Indian child is involved, ICWA applies whether or not the child's Tribe intervenes.

Who is a Qualified Expert Witness (QEW)?

The statute does not define what constitutes a qualified expert under ICWA. The Regulations require that an expert be qualified to testify as to whether the child's continued custody by the parent or custodian is "likely to result in serious emotional or physical damage," and direct that an expert should be qualified to testify as to the "prevailing social and cultural standards" of the child's Tribe. 25 C.F.R. § 23.122. The social worker assigned to the child's case may not serve as an expert (although a caseworker may testify otherwise, as to the parent's compliance with the service plan, visitation, and other issues).

Without question, the child's Tribe is the best source for an expert. Understandably, many tribal members do not want to take a position in a court proceeding adverse to a fellow tribal member and with very small Tribes, the pool of potential experts is limited. Courts with capability should allow participation by phone, video conferencing, or other methods. 25 C.F.R. § 23.133.

ICWA Finding is Essential

The best practice is to request in every child welfare case that the trial court make a finding on the record as to whether ICWA applies. If the record is silent, a party may raise the issue on appeal, and an appellate court may remand the case for purpose of making this finding. By far the most significant impact of failing to identify an ICWA case is that if key ICWA provisions are violated, a final order can be invalidated. The remedy for violation of key ICWA provisions is a petition to invalidate. 25 U.S.C. § 1914. Similarly, if there is not sufficient information in the record to assess whether ICWA applies, an appeal can be abated.

Interstate Placements (ICPC)

What is the ICPC?

If a child may be placed in another state, the Interstate Compact on the Placement of Children (ICPC) may require approval from that state. (*See* Tex. Fam. Code Chapter 162, Subchapter B). When the ICPC applies, child protective services in the receiving state provides an assessment before a placement and monitoring after a placement. This is a multi-step administrative process between the sending and receiving states and can take some time to complete.

When does the ICPC Apply?

Generally, ICPC applies to placements for adoption or foster care, and in group homes or residential placement.

When does the ICPC not Apply?

- Birth parents placing with a non-custodial birth parent, or a relative as long as no court has assumed jurisdiction of the child to be placed;
- Relatives placing with birth parents or another relative as long as no court has assumed jurisdiction of the child to be placed;
- If a child is being placed in a hospital or school;
- Tribal Placements;
- Visits, as long as they meet the required criteria.

Practice Tip: The ICPC is not a fast process. Any attorney can request a court order for an expedited ICPC in certain circumstances. Note that this expedites the process for DFPS, but it does not expedite the ICPC process in the receiving state.

Visits Outside Texas

A visit is excluded from the ICPC under Regulation 9 of the ICPC Regulations if it is for brief social or cultural experience; and

- The visit has a definite end date; and
- The visit is no longer than 30 days, or begins and ends within a school vacation; and
- There has been no request for a home study or supervision.

Expedited Requests for Placement with a Relative

An expedited order requires an approval or denial within 20 business days. A judge can sign an order for an expedited placement under Regulation 7 of the ICPC Regulations if the proposed placement is with a parent (subject to non-custodial parent policy below), stepparent, grandparent, adult uncle or aunt, adult sibling, or legal guardian, and one of the following criteria apply:

- The child was unexpectedly placed in foster care because the parent/guardian was recently incarcerated; is unable to care for the child due to a medical, mental, or physical condition; or is recently deceased;

- The child is four years of age or younger, and can include older siblings sought to be placed with the same proposed placement;
- The court finds that the child or sibling has a substantial relationship with the proposed placement; or
- The child is currently in an emergency placement.

Placement with a Non-Custodial Parent

State courts throughout the nation have reached different conclusions on whether ICPC procedures apply when courts place a child with an out of state biological parent. Texas courts had followed the Association of Administers of the Interstate Compact on the Placement of Children (AAICPC) Regulations that state ICPC procedures do apply to placement with parents in certain circumstances However, in 2017, the Fourth Court of Appeals rejected outright application of the ICPC to an out-of-state parent. *In the Interest of C.R.-A.A.*, 521 S.W.3d 893 (Tex. App.—San Antonio, no pet.).

To address child safety in this circumstance, DFPS policy requires the caseworker to assess an out-of- state parent without using the ICPC. CPS Policy Handbook § 4513.1.[59] If the assessment reveals no concerns, the court can place the child and dismiss the case as to that child without further monitoring. If the assessment reveals concerns, DFPS must request a noticed hearing and prove the parent's unfitness in order to invoke the ICPC. CPS Policy Handbook § 4513.13.[60]

59 CPS Policy Handbook § 4513.1. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4513_1. Last visited on February 9, 2026.

60 CPS Policy Handbook § 4513.13. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_4500.asp#CPS_4513_13. Last visited on February 9, 2026.

Special Immigrant Juvenile Status (SIJS)

Statutes

8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11; United States Customs and Immigration Service (USCIS) Policy Manual[61]

What is Special Immigrant Juvenile Status (SIJS)?

Federal law permits eligible foster children to "self-petition" for a Special Immigrant Juvenile visa, which is the first of a two-step process required to obtain permanent resident status (a "green card"). 8 U.S.C. § 1101(a)(27)(J).

What Does a State Court Have to Do with a Foster Child's Immigration Status?

Federal law requires a predicate order from a family court (or other court with jurisdiction over the custody and care of juveniles such as a DFPS proceeding) before a child can apply for SIJS. The family court or DFPS court order must include three findings:

- That the child has been "declared a dependent of the court or has been placed by the court under the custody of a state agency or an individual or entity appointed by the court;"
- That reunification of the child with one or both parents "is not viable as a result of abuse, neglect or abandonment or a similar basis found under state law;" and
- That it is "not in the child's best interest to be returned to the parent or child's country of origin or last habitual residence."

USCIS policy now requires evidence of the factual basis for these statutory findings, in order to demonstrate that the order is bona fide, and not requested primarily for the purpose of immigration relief. For this reason, all SIJ orders should reference the facts underlying each finding.

In addition, USCIS construes "lack of viable reunification" to mean "that the court intends for its determination that the child cannot reunify with their parent (or parents) remains in effect until the child ages out of the juvenile court's jurisdiction." USCIS Policy Manual, Vol. 6, Part J., Chapter 2. C.2.[62]

If a child or youth has a SIJS order obtained before these policy changes, it may be necessary to request an amended SIJS order.

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[61] USCIS Policy Manual. Available online at https://www.uscis.gov/policy-manual. Last visited on February 9, 2026.

[62] USCIS Policy Manual, Vol. 6, Part J, Chapter 2.C.2. Available online at https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2. Last visited on February 9, 2026.

Practice Tip: If a child or youth in foster care was not born in the U.S., the attorney for the child or the child's parent should check with the caseworker to find out if:

- Notice been sent to the foreign consulate;
- Repatriation or placement in the home country is viable; or
- The child may need assistance to obtain immigration status or U.S. citizenship. It is important to start the process as soon as possible due to the lengthy timeline and the serious risks and limitations that impact an undocumented youth or young adult.

For more information, consult your local DFPS Regional Attorney's Office. Also *see* CPS Policy Handbook § 6700 (International and Immigration Issues).[63]

[63] CPS Policy Handbook § 6700. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_6700.asp. Last visited on February 9, 2026.

School Stability Under Federal & State Law

School is often a source of stability as well as a place for academic and social development of children and youth in foster care. If a child has been removed from their home or is changing placements, consider the potential impact on the child's education and what efforts can be made to keep the child in the same school, if possible.

Statutes

Fostering Connections to Success and Increasing Adoptions Act, 43 U.S.C. § 675 et seq. Every Student Succeeds Act (ESSA) 20 U.S.C. § 6301 et seq. The Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400 et seq.; 34 C.F.R. Part 300 Texas Education Code, Texas Family Code.

Requirements for School Stability

- A child's initial placement into care and any subsequent placement changes must take into account the appropriateness of the child's educational setting and the proximity to the school the child is enrolled in at the time of the placement or placement change. 42 U.S.C. § 675(1)(G)(i).
- DFPS must coordinate with school districts to ensure that the child remains in the same school the child was attending at the time of the initial placement or any subsequent move, unless it is not in the child's best interests to remain in that school. 42 U.S.C. § 675(1)(G)(ii)(I), 20 U.S.C. § 6311(g)(1)(E)(i).
- DFPS and the school district must collaborate to ensure that the child is transported to the previous school, if necessary. 20 U.S.C. § 6312(c)(5)(B).
- If remaining in the prior school is not in the child's best interest, the child must be immediately enrolled in a new school, even without records normally required for enrollment. 42 U.S.C. § 675(1)(G)(ii)(II), 20 U.S.C. § 6311 (g)(1)(E)(ii).
- DFPS must ensure the child's education records are provided to the new school within 30 days. State law requires that the child's school records are transferred to the new school not later than the 10th working day after the date the student begins enrollment at the new school. Tex. Educ. Code §§ 25.002(g), 25.007(b)(1).
- The child is entitled to attend public school in the district in which the foster parents reside, free of any charge to the foster parents or the agency. A durational residence requirement may not be used to prohibit a child from fully participating in any activity sponsored by the school district, including extracurricular activities. Tex. Educ. Code § 25.001(f).
- The child is also entitled to continue to attend the school he or she was enrolled in before entering conservatorship, or at the time of a placement change, without payment of tuition, until he or she completes the highest grade offered at the school at the time of placement. The child is entitled to continue to attend the school even if the child leaves conservatorship. Tex. Educ. Code § 25.001(g)- (g-1).

Special Education Services

- If a child with a disability who is eligible to receive special education services transfers to a new school district during the school year, the new district must schedule an Admission, Review, and Dismissal (ARD) meeting within 30 days and provide the child services comparable to those described in the child's Individual Educational Program (IEP) from the previous district until the new district either adopts the child's previous IEP or develops a new IEP, or, if the transfer is from another state, until the new district conducts an evaluation (if it determines it is necessary) and develops a new IEP. 20 U.S.C. § 1414(d)(2)(C)(i), Tex. Educ. Code § 25.007(9), 19 Tex. Admin. Code § 89.1050(j).
- If the child does not receive special education but a disability is suspected, the child must be referred for a special education evaluation. An evaluation may be initiated by any person involved in the education or care of the student. 20 U.S.C. § 1414(a)(1).
- Children eligible to receive special education services must have a parent identified to make related decisions. If a parent does not retain education decision-making rights, the child is placed in a foster home, and the foster parent is willing and able, the foster parent will serve as parent for special education decision-making purposes. Otherwise, a surrogate parent must be appointed by the school, and can be appointed by the court, to make special education decisions on behalf of the child. Tex. Educ. Code §§ 29.015; 29.0151; Tex. Fam. § Code 263.0025.

Responsibilities of DFPS, the Court, and Other Parties

- A child's attorney ad litem and guardian ad litem are required to determine whether the child's educational needs and goals have been identified and addressed before each scheduled Permanency Hearing. Tex. Fam. Code §§ 107.002(i), 107.004(d-2).
- DFPS must designate an individual to make the day-to-day educational decisions for a child in conservatorship, and must provide that individual's name (as well as the name of any surrogate parent appointed for the child for special education decision-making purposes, if applicable) to the court and the child's school within five days after the initial Adversary Hearing, and must update the court in the next permanency progress report if there are any changes to the education decision-maker or surrogate parent. Tex. Fam. Code § 263.004.
- DFPS must notify the child's attorney ad litem, CASA volunteer, caregiver, and education decision-maker of any notification from the school regarding a significant school event such as disciplinary action, referral to special education, or other event. Tex. Fam. Code § 264.018(a)(5) (D), Tex. Educ. Code § 25.007(b)(10).
- The court is required at each Permanency Hearing to determine whether an education decision- maker for the child has been identified, whether 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 any serious disciplinary events. Tex. Fam. Code §§ 263.306(a-1)(5)(G), 263.5031(a)(4)(J).
- If a caregiver desires to educate the child in a home setting, DFPS may ask the court to make a finding that home-schooling is not in the best interests of a child in conservatorship because it does not meet the child's academic and social needs and goals. Tex. Fam. Code § 263.0045.

Family First Preservation Services Act (FFPSA)

The Family First Prevention Services Act of 2018, also referred to as FFPSA, was signed into law as part of the Federal Bipartisan Budget Act of 2018 (H.R. 1892). FFPSA creates opportunities for Title IV-E federal funding reimbursement of services that are aimed at preventing a child's entry into foster care. Services include support for mental health, substance abuse, and other supports for parents. FFPSA has four central provisions aimed at increasing prevention services, support to kinship caregivers, addressing congregate care, and older youth.

Prevention Services

FFPSA allows for a 50% matching of federal Title IV-E funds for states who invest in evidence-based prevention services for families with children who are at imminent risk of entering the foster care system. Programs can address mental health, substance abuse, and parenting skills and supports and must meet certain criteria set out in FFPSA for reimbursement eligibility.

Kinship Caregivers

FFPSA provides support for kinship caregivers and Texas is working to develop, enhance, and evaluate Kinship Navigator programs. Currently, Texas caregivers can receive support through their DFPS Kinship Caseworker.

Congregate Care

In an effort to reduce the number of children in congregate care, Title IV-E federal fund reimbursement is available to children in foster homes, Qualified Residential Treatment Programs (QRTPs), and special settings for pregnant or parenting teens, youth transitioning out of foster care, and youth who are at risk for sex trafficking. QRTPs have a very strict model as defined within FFPSA, including court oversight.

Older Youth

FFPSA extends the age for independent living services for young adults formerly in foster care up to age 23 and extends eligibility for Education and Training Vouchers (ETV) for qualifying youth to age 26. For more information, *see* the *Older Youth in Care* section of this toolkit.

Family Preservation Services Pilot Program

The Family Preservation Services pilot program, referred to as Texas Family First or TFF, allows DFPS to dispose of an investigation by allowing the child to return home and providing time-limited family preservation services— subject to FFPSA qualifications—to children who are candidates for foster care or who are pregnant and parenting foster youth. As required, the pilot program was implemented in one urban and one rural jurisdiction and at least one jurisdiction where Community-Based Care had been implemented. The child's safety must be the primary concern in authorizing services. DFPS must use Title IV-E Funds to pay for legal representation or provide counties with a matching reimbursement for the costs of legal representation and use the Texas Temporary Assistance for Needy Families (TANF) program to provide in-home support services. DFPS must obtain a court order to compel the family of a candidate for foster care to participate in services but need not obtain a court order to provide services to pregnant or parenting foster youth. Tex. Fam. Code § 262.403.

Servicemembers Civil Relief Act (SCRA)

The SCRA provides certain protections for servicemembers involved in a civil action, including a child custody proceeding, while the member is in the military or within 90 days after release from the military.

Statute

50 U.S.C. §3901 et seq.

Missing Parent

If a parent has not appeared in a child custody suit, whether or not this is due to military service, DFPS must file an Affidavit of Military Service.[64] 50 U.S.C.S. § 3931(b)(1). The best practice is to request a search of the military database before the Status Hearing, if any parent has not been located.

The DFPS diligent search unit includes a search of the US Military Database and the certificate of military service or non-service in the FINDRS Report provided to a requestor. Alternatively, a search can be performed on the U.S. military website.[65]

> ***Note****: A search for military service requires a parent's date of birth, last name and first name or initial, and ideally, social security number.*

A search of the military database will generally result in either a Certificate of Non-Service, or a Certificate of Service. The Certificate should be attached to an Affidavit of Military Service, provided to parties and counsel of record, and filed with the court.

Default Judgment

If a parent has not appeared in a child welfare suit, no default judgment can be taken unless:

- DFPS has filed an Affidavit of Military Service with a Certificate of Service or Non-Service; and
- An attorney has been appointed for the parent. 50 U.S.C. § 3931(b)(2).

If the court determines there may be a defense which cannot be presented without the parent's presence or the attorney has been unable to contact the parent after exercising due diligence, the court shall grant a stay for at least 90 days. 50 U.S.C. § 3931(d).

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64 DFPS Affidavit Regarding Military Service. Available online at https://www.dfps.texas.gov/application/Forms/showFile.aspx?NAME=2068.doc. Last visited on February 9, 2026.

65 Defense Finance and Accounting Service Verification of Military Service webpage. Available online at https://www.dfas.mil/Garnishment/verifyservice/. Last visited on February 9, 2026.

After Notice

If a parent in the military has notice of a child custody suit, the court on its own motion may stay the suit, or on request of the servicemember, the court shall stay the action for at least 90 days, if there is proof that the military duty materially affects the servicemember's ability to appear, and the servicemember provides a letter stating a date when the servicemember will be available; or, provides a letter from the service members commanding officer confirming military duty prevents the servicemember's appearance and leave is not authorized. 50 U.S.C. § 3932(b).

Child Custody Protection

If a court renders a temporary custody order solely based on the deployment or anticipated deployment of a servicemember parent, the court shall limit the order to the time justified by the deployment. 50 U.S.C. § 3938(a). Moreover, a parent's absence as a result of a deployment may not be the sole factor in determining the best interest of child for purposes of a request for a permanent custody. 50 U.S.C. § 3938(b). Similar protections are provided in state law. Tex. Fam. Code § 156.006(c).

Checklists

The Children's Commission includes check lists in the Texas Child Welfare Law Bench Book and Bench Cards for judges presiding over DFPS cases to utilize at each statutorily required hearing to ensure the court is meeting statutory requirements and implementing best practices. It may be useful for attorneys representing parents and children to become familiar with the check lists to better understand the obligations and expectations of the court.

The following checklists are included in this toolkit for reference:

- Required Participation in Services Hearing Checklist
- Adversary Hearing Checklist
- Status Hearing Checklist
- Permanency Before Final Order Hearing Checklist
- Final Hearing Checklist
- Permanency After Final Order Hearing Checklist
- Reasonable Efforts Checklist
- Termination Grounds Checklist

Required Participation in Services Hearing Checklist

15 minutes; up to 25 suggested best practice

Statutory

Prior to the Hearing:

- ☐ Hearing within 14 days of petition unless good cause for extension
- ☐ Child's GAL/AAL appointed
- ☐ Parents' AAL appointed
- ☐ Parties served

At the Hearing:

- ☐ Determine need for language interpretation
- ☐ Identify parties present and served
- ☐ Determine indigence
- ☐ Determine good cause if AAL has not seen child
- ☐ Ensure services are specific and narrowly tailored

Court Findings

At the End of the Hearing:

- ☐ Determine if sufficient evidence to order participation in services by parent(s) or caregiver(s) for the child; if not, deny required participation in services. Evidence sufficient to satisfy a person of ordinary prudence and caution that:
  - Abuse or neglect occurred, or
  - Substantial risk of abuse or neglect, or
  - Continuing danger to the physical health or safety of child caused by an act or failure to act by named party/parties; and
  - Services necessary to ensure the physical health or safety of child.
- ☐ ISSUE COURT ORDER
  - State findings;
  - Make appropriate temporary orders under Chapter 105 to ensure safety of the child, excluding orders that place the child outside the child's home or in the conservatorship of DFPS;
  - Order the participation in services narrowly tailored to address court findings;
  - Set dismissal deadline of 180 days; and
  - Schedule review hearing within 90 days.

Review Hearings:

- ☐ Address continued need for temporary order and dismiss if no longer a continued need.
- ☐ Set review hearing within 90 days if temporary order continued.
- ☐ Determine if good cause to extend dismissal deadline if DFPS shows continued need for services beyond original 180-day dismissal deadline.

Best Practices

- ☐ Engage parties with direct questions
- ☐ Review services with parents
- ☐ Set Review Hearing date within 90 days
- ☐ Give notice in open court
- ☐ Engage parties with direct questions:
  - *Do you understand the purpose of the court ordered services?*
- ☐ Consider the following questions:
  - *How are these services specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*
  - *Is there a need for ongoing services or can the case be dismissed today?*

Adversary Hearing Checklist

15 Minutes; up to 25 suggested best practice

Statutory

Prior to the Hearing:

- ☐ Hearing within 14 days of removal unless temporary order extended
- ☐ Child's GAL/AAL appointed
- ☐ Parties served
- ☐ Certified copy of child's birth certificate filed separately under seal
- ☐ CCEJ identified

At the Hearing:

- ☐ Determine need for language interpretation
- ☐ Identify parties present and served
- ☐ Inform parents of right to attorney
- ☐ Determine indigence
- ☐ Before commencing the hearing:
  - Confirm DFPS informed the alleged perpetrator of their right to create an audio or video recording of the interview and to request an administrative review of DFPS findings
  - Confirm that upon first contact DFPS provided the alleged perpetrator with information relating to investigation procedures
- ☐ DFPS provided notice to relatives
- ☐ Child Placement Resources Form/efforts to identify/locate parties not present
- ☐ Child provided opportunity to provide information about possible relative or other caregiver
- ☐ CPS and criminal background checks conducted and home studies initiated
- ☐ Determine if child can be placed with relative and note evidence
- ☐ If child with relative, inform about Permanency Care Assistance (PCA)
- ☐ Inquire about Indian/Native American Heritage
- ☐ Determine good cause if AAL has not seen child

Court Findings

At the End of the Hearing:

- ☐ Determine sufficient evidence regarding the parent from whom the child was removed to grant DFPS TMC of child; if not, return child to that parent
- ☐ Document danger to child to return to home or remain in home and remaining in home is contrary to welfare; reasonable efforts to prevent removal and to return child home
- ☐ If TMC to DFPS, inform parents that rights may be terminated or limited
- ☐ If cite by pub needed, may render temporary order anyway
- ☐ Determine aggravated circumstances alleged or exist
- ☐ If family violence, protective order necessary or available
- ☐ Place the child with a parent not involved in the removal unless there is evidence that the parent cannot be located or is unwilling to take possession of the child or possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts to enable possession
- ☐ Place child with a relative unless not in best interest
- ☐ Determine whether DFPS is able to place child with relative or other designated caregiver; note evidence supporting finding either way
- ☐ ISSUE COURT ORDER
  - Service
  - Notice of removal
  - Parentage or DNA testing
  - Dismissal date
  - Transfer CCEJ, if applicable
  - Describe reasonable efforts

Best Practices

- ☐ Engage parties with direct questions
- ☐ Review services with parents
- ☐ Set Status Hearing date
- ☐ Open court notice
- ☐ Consider the following questions:
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*

Well-being Issues

- ☐ School stability, education goals, progress, and issues, and Education Decision-Maker
- ☐ Medical care and behavioral or psychiatric care
- ☐ Young adult presence at hearing or opinion about education or medical care

Status Hearing Checklist

15 Minutes; up to 25 suggested best practice

Statutory

Prior to the Hearing:

- ☐ Hearing 60 days after DFPS appointed TMC, unless aggravated circumstances
- ☐ Persons given 10 days' notice of hearing
- ☐ If parent is unrepresented, inform of right to counsel, determine indigency, and appoint attorney
- ☐ Visitation Plan filed at least 10 days before
- ☐ Family Plan of Service filed no later than 45th day after DFPS appointed TMC
- ☐ Developmentally appropriate assessment no later than 45th day after DFPS appointed TMC
- ☐ Texas Health Steps Exam no later than 30th day after DFPS appointed TMC
- ☐ Notice of Education Decision-Maker (Form 2085-E) filed
- ☐ Designation of Medical Consenter (Form 2085-B) filed
- ☐ Dismissal date set

At the Hearing:

- ☐ Identify parties present and served
- ☐ DFPS due diligence to locate parties
- ☐ DFPS provided notice to relatives
- ☐ Need for language interpretation
- ☐ Inform parents of right to attorney
- ☐ Paternity issues/Paternity Registry
- ☐ Child Placement Resources Form filed
- ☐ Review current and alternative placements
- ☐ Child provided opportunity to provide information about possible relative or other caregiver
- ☐ If present, give caregiver opportunity to provide information
- ☐ If child with relative, inform about Permanency Care Assistance (PCA)
- ☐ If the child is placed in a RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate
- ☐ Review conservatorship and substitute care of the child
- ☐ Inquire about Indian/Native American Heritage
- ☐ DFPS held or plans to hold Permanency Planning Meeting
- ☐ If AAL hasn't seen client, determine good cause
- ☐ Address citizenship issues
- ☐ Review child's medical care

Family Plan of Service (SP)

- ☐ Determine if:
  - SP developed jointly with parents
  - Each term reviewed/discussed with parents; parents understand
  - Parents informed of rights with SP process
  - Noted if parent not able or willing to participate in development of SP
  - Plan has primary and concurrent goal
  - Plan is signed by parents and DFPS
- ☐ Parent has opportunity to comment on SP
- ☐ Court can modify SP at any time

Visitation Plan (VP)

- ☐ Review VP:
  - Age and safety of child at/during visitation
  - Desires of each parent regarding visitation
  - Location of each parent and child
  - Transportation to/from visits
  - DFPS/other resources available to support visitation
- ☐ Court may modify VP at any time
- ☐ If find visitation not in child's best interest, include in order reasons and specific steps parent must take to have visitation

Court Findings

At the End of the Hearing:

- ☐ Determine whether SP narrowly tailored for specific issues identified by DFPS
- ☐ Determine whether any SP with goal of reunification adequately ensures that reasonable efforts made to enable parents to provide safe environment for child
- ☐ Advise/warn parents & parties:
  - Custodial rights and duties subject to restriction or termination or child not returned unless parent demonstrates willingness and ability to provide child with safe environment
  - Progress under SP reviewed at all hearings, including review of newly acquired knowledge or skills
- ☐ Incorporate SP into court order and render additional, appropriate orders to require compliance with or implement SP
- ☐ ISSUE COURT ORDER:
  - Dismissal date
  - May transfer to court of continuing, exclusive jurisdiction, if CCEJ exists

Best Practices

- ☐ Set first Permanency Hearing Before Final Order and announce in open court
- ☐ Check status of initiated home studies
- ☐ Engage parties with direct questions
  - *Do you understand the purpose of the Service Plan?*
- ☐ Ask direct and specific questions of the Department about reasonable efforts:
  - *What about this plan is narrowly tailored to address specific issues present in Ms. Smith's case?*
- ☐ Consider the following questions:
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*

Well-being Issues

- ☐ School stability, education goals, progress, and issues, and Education Decision-Maker
- ☐ Medical Consenter may need to be identified or updated
- ☐ Review psychiatric care, especially if child or youth prescribed psychotropic medication
- ☐ Young adult presence at hearing or opinion about education or medical care

Permanency Hearing Before Final Order Checklist

15 Minutes; up to 25 suggested best practice

Statutory

Prior to the Hearing:

- ☐ If first Permanency Hearing (PH), scheduled within 180 days after DFPS named TMC
- ☐ If subsequent PH, scheduled within 120 days of last PH
- ☐ 10 days' notice provided
- ☐ DFPS Permanency Progress Report filed at least 10 days before PH and includes:
  - Child's Permanency Plan
  - Summary of Medical Care
- ☐ The court file includes:
  - Notification of Medical Consenter Form 2085-B
  - Education Decision-Maker Form 2085-E
  - Visitation Plan

At the Hearing:

- ☐ Identify those present
- ☐ Child in attendance
- ☐ DFPS due diligence to locate and serve parties not present
- ☐ Paternity issues/Paternity Registry
- ☐ DFPS asked parents to provide locating information for absent parents, alleged fathers, or relatives
- ☐ If parent is unrepresented, inform of right to counsel, determine indigency, and appoint attorney
- ☐ Need for language interpretation
- ☐ Inquire about Indian/Native American Heritage
- ☐ Address citizenship issues
- ☐ Compliance with orders/Service Plan and progress made
- ☐ Parties and those present heard and provided opportunity to present evidence
- ☐ If caregiver is present, must be given opportunity to provide information about the child
- ☐ Review efforts to place child with a relative
- ☐ If child with relative, inform about Permanency Care Assistance
- ☐ Review Permanency Progress Report:
  - Safety and well-being of child
  - Child's needs (medical/special)
  - Child's placement
  - Evidence as to whether DFPS is able to place with relative
  - Child's primary and alternative permanency goals
  - DFPS reasonable efforts to finalize permanency plan
  - Child provided opportunity to express opinion about medical care
  - Child provided opportunity to provide information about possible relative or other caregiver
  - For child receiving psychotropic medication, whether child has:
    - been provided non-pharmacological interventions.
    - seen prescribing physician every 90 days for review
  - Child's Education Decision-Maker identified, education needs and goals identified and addressed, and major changes in school performance or disciplinary events
  - If 14 or older, transition services to assist from care to independent living
  - For child with goal of APPLA:
    - child's desired permanency outcome; and
    - whether APPLA best permanency plan; if so, provide compelling reasons why not in child's best interest to:
      - return home,
      - adoption,
      - placed with legal guardian, or
      - placed with a fit and willing relative
    - whether DFPS has conducted an Independent Living Skills (ILS) assessment for all youth 16 and older in TMC
    - whether DFPS has addressed the goals identified in the youth's permanency plan
    - if 16 or older, whether DFPS provided required documents
    - if 18 or older, or the disabilities of minority were removed, whether DFPS provided youth with required documents and information
- ☐ If the child is placed in an RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate
- ☐ Child receiving appropriate medical care
- ☐ Child has regular, ongoing opportunities for age-appropriate normalcy activities, including those not in child's service plan
- ☐ If AAL hasn't seen client, determine good cause

Permanency Hearing Before Final Order Checklist

continued

Court Findings

At the End of the Hearing:

- ☐ Return the child to the parent or parents unless, with respect to each parent, there is a continuing danger to the health and safety of the child and returning home is contrary to the welfare of the child.
- ☐ Advise/warn custodial rights and duties subject to restriction or termination
- ☐ Incorporate changes or modifications to Service Plan into order
- ☐ Likely date child returned home, placed for adoption, or placed in PMC
- ☐ Set next PH within 120 days or sooner
- ☐ Announce dismissal date and any upcoming hearings

Best Practices

- ☐ If lack of notice, consider resetting hearing to secure attendance
- ☐ Engage parties with direct questions
- ☐ Engage youth
- ☐ Ask DFPS direct, child-specific questions about reasonable efforts towards primary and concurrent goal
- ☐ If not moving to positive permanency, set timelines and tasks to be completed prior to next hearing
- ☐ AAL knowledgeable about child's needs and legal objectives
- ☐ Set next PH at 90 instead of 120 days
- ☐ For Older Youth:
  - Family Group Decision Making
  - Preparation for Adult Living (PAL)
  - If will turn 18 while in foster care:
    - discuss extended foster care and trial independence
    - ensure referrals to Texas Workforce Commission
    - ensure appropriate documents in possession before leave care
- ☐ Consider the following questions:
  - *What is preventing this child from returning home today?*
  - *How is my decision specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*

Well-being Issues

Medical and Mental Health Care

- ☐ Summary of medical care:
  - Nature of emergency medical care
  - All medical and mental health treatment receiving and progress
  - Any medication prescribed/progress
  - Caregiver compliance with treatment plan
  - Adverse reaction or side effects
  - Diagnosis or diagnostic tests
  - Activity to avoid that affect effectiveness of treatment
  - Other info required

Education and Educational Decisions

- ☐ Enrolled and in appropriate grade
- ☐ Remain in current school, even if placement changes
- ☐ If change placement, determine:
  - Where child wants to attend school
  - How child will be transported
  - Whether change coordinated with grading and testing periods
  - Whether records/credits transferred
- ☐ If 0-3, child assessed for developmental milestones through ECI
- ☐ If 0-5, enrolled in Early Head Start, Head Start, or Pre-Kindergarten
- ☐ Education Decision-Maker Form 2085-E on file
- ☐ School supports and disciplinary issues
- ☐ Extracurricular activities/normalcy
- ☐ Evaluated for/receiving special education
- ☐ If 14 or older, postsecondary education plan

Final Hearing Checklist for Non-Jury Trial

Statutory

Prior to the Hearing:

- ☐ Notice provided to parties within 45 days of trial
- ☐ All parties served
- ☐ Legal relief properly plead
- ☐ Compliance with Indian Child Welfare Act, if applicable

At the Hearing:

- ☐ Note appearances of all parties present
- ☐ Take announcements about readiness to proceed to trial
- ☐ Rule on any pending pretrial motions
- ☐ Opening Statements, unless waived
- ☐ Presentation of evidence
- ☐ Evidence
  - Grounds for termination
  - Best interest of the child; for factors *see Holley v. Adams*:
    - desires of the child
    - emotional and physical needs of child now and in future
    - emotional and physical danger to child now and in future
    - parental abilities of individuals seeking custody
    - programs available to assist those individuals to promote best interest of child
    - plans for child by these individuals or by agency seeking custody
    - stability of home or proposed placement
    - acts or omissions of parent which may indicate that existing parent-child relationship not a proper one
    - any excuse for acts or omissions of the parent
  - Reasonable efforts by DFPS
- ☐ Closing arguments, unless waived

Court Findings

At the End of the Hearing:

- ☐ Determine if met burden of proof:
  - Termination of Parental Rights: Clear and Convincing Evidence (Grounds + Best Interest + Reasonable Efforts)
  - Conservatorship: Preponderance of the Evidence
  - If ICWA applies: Beyond a Reasonable Doubt
- ☐ If termination, appoint DFPS or individual as managing conservator (MC)
- ☐ If no termination and DFPS awarded MC, must find that:
  - Appointment of parent not in child's best interest because would significantly impair child's physical health or emotional development (Clear and Convincing Evidence); and
  - Not in child's best interest to appoint relative of child or another person as managing conservator
- ☐ If no termination and DFPS awarded MC, consider whether:
  - The child will turn 18 in not less than 3 years;
  - The child is at least 12 years old or has continuously expressed a strong desire against being adopted; and
  - Needs and desires of child
- ☐ Advise parties of right to appeal
- ☐ Set Permanency Hearing After Final Order (PHAFO) within 90 days if MC granted to DFPS with termination
- ☐ Set PHAFO within 180 days if MC granted to DFPS without termination
- ☐ Continue appointment of child's attorney ad litem (AAL), or guardian ad litem (GAL), or attorney in the dual role as long as the child is in the conservatorship of DFPS

Best Practices

- ☐ Remind Parent Attorney of appellate duties
- ☐ Set initial hearings sooner than statutorily required to ensure progress toward child's permanency goal

Permanency Hearing After Final Order Checklist

15 Minutes; up to 25 suggested best practice

Statutory

Prior to the Hearing:

- ☐ If parental rights terminated, first Permanency Hearing (PH) within 90 days of final order
- ☐ If parent rights not terminated, first PH within 180 days of final order
- ☐ 10 days' notice of hearing
- ☐ DFPS Permanency Progress Report filed 10 days before hearing; includes
  - Summary of Medical Care
- ☐ The court file includes:
  - Notification of Medical Consenter Form 2085-B
  - Education Decision-Maker Form 2085-E

At the Hearing:

- ☐ Identify those present
- ☐ Child in attendance
- ☐ Review DFPS efforts to notify of hearing
- ☐ Review Permanency Progress Report:
  - Child's safety and well-being
  - Child's needs (medical/special)
  - Child provided opportunity to provide information about possible relative or other caregiver
  - Child's placement, noting evidence as to whether DFPS can place child with relative
  - If in institutional care, efforts to ensure least restrictive environment
  - Primary/alternative permanency goals
  - DFPS reasonable efforts to finalize the permanency plan:
    - due diligence to place for adoption if rights terminated and child eligible; or
    - APPLA, including appointing relative as PMC or returning the child to parent, if appropriate for child
  - For child with APPLA goal:
    - desired permanency outcome; and
    - whether APPLA best permanency plan; if so, compelling reasons why not in child's best interest to:
      - return home,
      - be placed for adoption,
      - be placed with legal guardian, or
      - Be placed with fit and willing relative.
    - whether DFPS has conducted an Independent Living Skills (ILS) assessment for all youth 16 and older in TMC or PMC
    - whether DFPS has conducted an ILS for all youth 14 and older in PMC
    - whether DFPS has addressed the goals identified in the youth's permanency plan
    - if 16 or older, whether DFPS provided required documents
    - if 18 or older, or disabilities of minority were removed, whether DFPS provided youth with required documents and information
  - If 14 or older, services to assist in transitioning from care to independent living in community
  - Receiving appropriate medical care and provided opportunity to express opinion on medical care
  - If receiving psychotropic medication:
    - provided appropriate non-pharmacological interventions, therapies, or strategies to meet needs; or
    - seen by prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days
  - Education Decision-Maker and education needs and goals identified, major changes in school performance or serious disciplinary events
  - For child in PMC without termination, whether DFPS to provide services to parent for up to 6 months after PH if:
    - child not placed with relative or other individual, including foster parent, seeking PMC; and
    - court determines further efforts at reunification with parent:
      - in best interest of child; and
      - likely to result in child's safe return to parent
  - DFPS identified family or other caring adult with permanent commitment to child
  - If the child is placed in an RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate

- ☐ 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.
- ☐ Address citizenship issues
- ☐ Ensure those present given opportunity to be heard and if caregiver is present, must be allowed to provide information
- ☐ If child with relative, inform about Permanency Care Assistance
- ☐ Confer with child about permanency plan
- ☐ If AAL has not seen client, determine good cause

Court Findings

At the End of the Hearing:

- ☐ Issue court order
- ☐ Set next PH within 180 days

Best Practices

- ☐ If inadequate notice, consider resetting hearing to secure attendance
- ☐ Engage parties with direct questions
- ☐ Engage youth
- ☐ Ask DFPS direct, child-specific questions about both primary and concurrent goal
- ☐ Next PH by 90 or 120 instead of 180 days
- ☐ For youth who will turn 18 while in care:
  - Discuss extended foster care and trial independence
  - Ensure referrals to Texas Workforce Commission
  - Ensure delivery of documents *before* leave care
- ☐ Youth advised of eligibility for Family Group Decision Making or Circles of Support to discuss future plans
- ☐ Youth enrolled in PAL or provided transitional services after 14th birthday
- ☐ Consider the following questions:
  - *What is preventing this child from achieving positive permanency?*
  - *How is my decision specific to this child and this family?*
  - *Are there issues impacting this family that we need to understand?*

Well-being Issues

Medical and Mental Health Care

- ☐ Summary of medical care:
  - Nature of emergency medical care
  - All medical and mental health treatment receiving and progress
  - Any medication prescribed/progress
  - Caregiver compliance with treatment plan
  - Adverse reaction or side effects
  - Diagnosis or diagnostic tests
  - Activity to avoid that affect effectiveness of treatment
  - Other info required

Education and Educational Decisions

- ☐ Enrolled in school/in appropriate grade
- ☐ Remains in current school, if placement change
- ☐ If placement change, determine:
  - Where child wants to attend school
  - How the child will be transported
  - Whether change coordinated with grading and testing periods
  - Whether records/credits transferred
- ☐ If 0-3, child assessed for developmental milestones through ECI
- ☐ If 0-5, child enrolled in Early Head Start, Head Start, or Pre-Kindergarten
- ☐ Education Decision-Maker Form 2085-E on file
- ☐ School supports and disciplinary issues
- ☐ Extracurricular activities/normalcy
- ☐ Evaluated/receiving special ed services
- ☐ If 14 or older, postsecondary education plan

Reasonable Efforts Findings Checklist

> **Best Practice Tip:** At the beginning of each hearing, consider swearing in the parent(s), social worker, and guardian ad litem if testimony about reasonable efforts is taken.

Ex Parte Emergency Removal Hearing

Tex. Fam. Code § § 262.102(a)(6), 262.107(a)(5)

- What specific efforts did DFPS make to prevent removal?
- Were DFPS' efforts to locate all parents reasonable based on the circumstances?
- If the child was already removed, what efforts did DFPS make or what efforts can DFPS make today to eliminate the need for removal?
- Are DFPS' efforts reasonable based on the circumstances of the child and each parent?

Adversary Hearing

Tex. Fam. Code § 262.201(g)(2),(3), (g-1)(2)

- What specific efforts did DFPS make to prevent removal?
- What efforts did DFPS make or what efforts can DFPS make to enable the child to return home? (Ask the parents and all parties and participants for input.)
- What efforts did DFPS make to enable possession by a parent who was not involved in the removal?
- Has DFPS made reasonable efforts to locate any missing or unknown parents?
- Are DFPS' efforts reasonable based on the circumstances of the child and each parent?
- If placement with a parent is not currently an option, what efforts did DFPS make to place the child with a relative or kinship caregiver?

Status Hearing

Tex. Fam. Code § 263.202(b)(1)

- Does the service plan ensure that DFPS makes reasonable efforts to address the conditions leading to removal and reunify the family?
- Is the service plan narrowly tailored to address the individualized needs of the child and each parent?
- Are DFPS' efforts reasonable based on the circumstances of the child and each parent?
- Has DFPS made reasonable efforts to locate any missing or unknown parents?
- If placement with a parent is not currently an option, what efforts did DFPS make to place the child with a relative or kinship caregiver?

Permanency Hearing Prior to Final Order

Tex. Fam. Code § 263.306(a-1)(5)(C)

- What specific efforts did DFPS make to finalize the primary and concurrent permanency goals for the child?
- What specific efforts did DFPS make to address the conditions leading to removal and reunify the child and family?
- What specific efforts did DFPS make to finalize an alternative permanent plan for the child?
- If there continues to be any missing or unknown parents, has DFPS made reasonable efforts to locate them?
- Are DFPS' efforts reasonable based on the circumstances of the child and each parent?
- If placement with a parent is not currently an option, what efforts did DFPS make to place the child with a relative or kinship caregiver?

Reasonable Efforts Findings Checklist

continued

Final Hearing

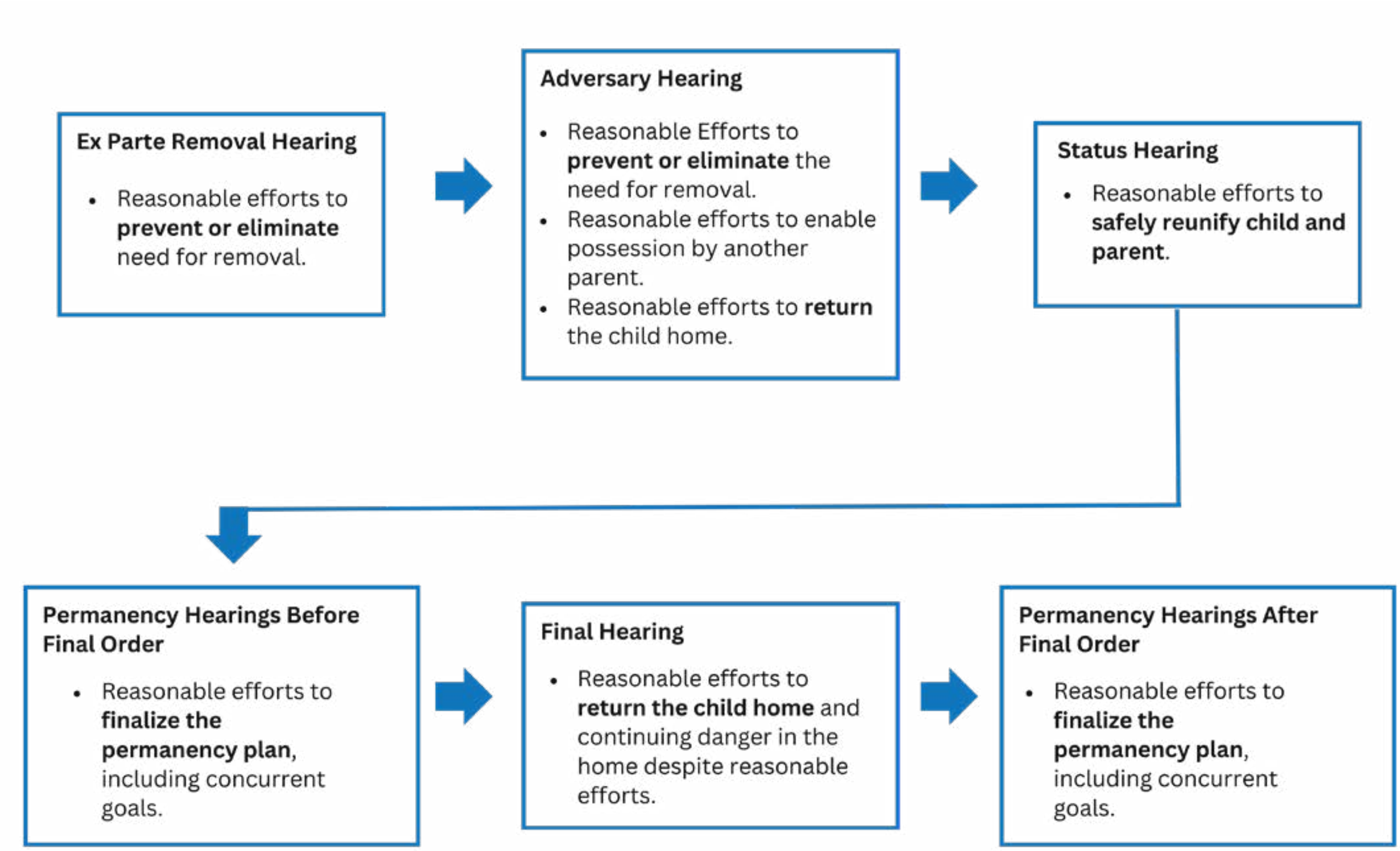
Tex. Fam. Code § 161.001(f)-(g)

- What specific efforts did DFPS make to return the child to the parent prior to the commencement of a trial on the merits?
- Is there a continuing danger to the child in the home despite reasonable efforts being made?

Permanency Hearing After Final Order

Tex. Fam. Code § 263.5031(a)(4)(E)

- What specific efforts did DFPS make to finalize permanency for the child, including continued efforts to locate and identify safe and appropriate relatives and kinship caregivers?
- Are DFPS' efforts reasonable based on the circumstances of the child?
- If final permanency was not achieved, what efforts did DFPS make to achieve final permanency for the child?
- Has DFPS made reasonable efforts to determine whether a parent's circumstances have materially and substantially changed so that they may be considered a safe and appropriate option for the child?



Termination Grounds Checklist

Statutory

Involuntary Termination of the Parent-Child Relationship

Tex. Fam. Code § 161.001

- ☐ In this section, "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:
    - 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)
- ☐ 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)
    - been the major cause of:
      - the failure of the child to be enrolled in school as required by the Education 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)

Statutory

- 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 (indecency 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, elderly individual, or disabled individual);
  - 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 Tex. Penal Code § 20A.02(a)(8) (trafficking of persons); and
  - 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 childbased on a finding that the parent's conduct was in violation of Tex. Fam. Code § 161.001(D) or Tex. Fam. Code § 161.001(E) or substantially equivalent provisions of the law of another state; Tex. Fam. Code § 161.001(b)(1)(M). To proceed under this ground, the petition for termination must 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 the Department of Family and Protective Services for not less than six months, and:
  - the department 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)
- 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)(O)
- 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)(P)

Statistics

- 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)(Q)
- 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)(R)
- 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)(S)(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)(S)(i); or
  - the sexual assault of the other parent of the child under Texas Penal Code §§ 22.011 or 22.021, or 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)(S);
- 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 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 convicted of criminal solicitation of a minor under Tex. Penal Code § 15.031, or online solicitation of a minor under Tex. Penal Code § 33.021 or other under a law of another state, federal law, 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 §§ 15.031 or 33.021. 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); **AND**
- DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home. Tex. Fam. Code § 161.001(f).

Prohibited Findings

☐ 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

Statutory

- Declined immunization for the child for reasons of conscience, including a religious belief;
- Sought a second opinion for a child's medical care or transferred a child's medical care to a new provider or facility;
- Allowed a child to engage in appropriate independent activities;
- Refused 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, unless the refusal:
  - Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
  - Results in an observable and material impairment to the growth, development, or functioning of the child; or
- Chose a recognized alternative health care treatment or therapy for the child that could be considered as new, emerging, or nonstandard, unless the treatment or therapy:
  - Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
  - Results in an observable and material impairment to the growth, development, or functioning of the child. Tex. Fam. Code § 161.001(c)

This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter. Tex. Fam. Code § 161.001(e)

Termination of an Alleged Biological Father

Tex. Fam. Code § 161.002

☐ Except as otherwise provided by this section, 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 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; Tex. Fam. Code § 161.002(b)(1)
- 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; Tex. Fam. Code § 161.002(b)(2)
- 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 Tex. Fam. Code § 161.002(b)(3);
- 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)(4)

☐ The termination of the rights of an alleged father under Tex. Fam. Code § 161.002(b)(2) or Tex. Fam. Code § 161.002(3) rendered on or after January 1, 2008, 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 Tex. Fam. Code § 161.002(3) unless the court receives evidence of a certificate of the results of a search of the paternity 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)

Statotory

- ☐ The court shall not render an order 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)

Involuntary Termination: Inability to Care for Child

Tex. Fam. Code § 161.003

- ☐ 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 the termination held in accordance with Tex. Fam. Code § 161.003(c);
  - DFPS has made reasonable efforts to return the child to the parent; and
  - The termination is in the best interest of the child. Tex. Fam. Code § 161.003(a)
- ☐ Immediately after the filing of a suit under this section, 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)
- ☐ A hearing on the termination may not be held earlier than 180 days after the date on which the suit was filed. Tex. Fam. Code § 161.003(c)
- ☐ 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)

After Denial of Prior Petition to Terminate

Tex. Fam. Code § 161.004

- ☐ 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 this section, 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)

Common Acronyms & Abbreviations

Acronym	Explanation	Comments
AAL	Attorney ad litem	An attorney who provides services for the purposes of a specific legal action only, including representation of a child, and who owes to their client the duties of undivided loyalty, confidentiality, and competent representation.
AC	Administrative Closure	Administrative Closure occurs when DFPS intervention is unwarranted based on information that comes to light after the case is assigned for investigation.
ADO	Adoption Caseworker	The DFPS caseworker assigned once the case is transferred to the adoption unit.
ADR	Alternative Dispute Resolution	A method of settling conflict outside of litigation, (e.g., mediation).
AOP	Acknowledgment of Paternity	An acknowledgement of paternity is a legal document that allows parents who are not married to establish legal paternity. Both parents must sign an AOP, under penalty of perjury, that the man is the genetic father of the child. When an AOP is filed with Texas Vital Statistics, the genetic father becomes the child's legal father with all the rights and duties of a parent.
AR	Alternative Response	A type of service provided to some families who were the subject of an investigation of child abuse and neglect allegations without including a substantiation of the allegations or an entry of perpetrators into the Central Registry. Includes services and support to help families resolve safety issues and reduce future involvement with DFPS.
ARD	Admission, Review, and Dismissal	The process by which a student's parents and school staff meet at least annually to: 1) decide whether a student has an eligible disability; 2) determine what special education and related services will be provided; and 3) develop an Individualized Education Program (IEP).
APPLA	Another Planned Permanent Living Arrangement	A permanent legal arrangement for a child designed to promote stability and permanency in a child's life; refers to permanent placements other than a reunification with a parent, adoption, or permanent managing conservatorship to a relative.
APS	Adult Protective Services; Webpage	APS's mission is to protect older adults (age 65 or older) and persons with disabilities from abuse, neglect, and exploitation by investigating and providing or arranging for services, if needed, to stop or prevent further harm.
ASFA	Adoption and Safe Families Act	The Adoption and Safe Families Act of 1997 (Public Law 105-89) was enacted by the United States Congress to improve the safety of children, promote adoption and other permanent homes for children who needed them, and support families. According to the Children's Bureau, ASFA also required child protection agencies to provide more timely assessment and intervention services to children and families involved with child welfare. Additionally, reasonable efforts requirements are included in ASFA.

Acronym	Explanation	Comments
BIA	Bureau of Indian Affairs; Website	The BIA is a United States federal agency within the Department of the Interior which renders services to indigenous Americans in federally recognized tribes (directly or through contracts, grants, or compacts) to approximately 1.9 million Native Americans and Alaska Natives.
BVS/VSU	Bureau of Vital Statistics/Vital Statistics Unit	The State agency responsible for maintaining legal records for birth, death, marriage, adoption, and paternity.
CAC	Child Advocacy Center	A child advocacy center is a safe, child-friendly, specially equipped facility that completes forensic interviews of children. CACs also provide additional services such as counseling and intervention services during the course of an investigation and prosecution of child abuse cases.
CANS	Child and Adolescent Needs and Strengths	A tool developed by DFPS for children's services to support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes.
CAPTA	Child Abuse Prevention and Treatment Act	CAPTA is a federal law that was originally enacted on January 31, 1974 (P.L. 93-247) and amended several times. According to the Children's Bureau, CAPTA provides federal funding and guidance to states in support of prevention, assessment, investigation, prosecution, and treatment activities and provides grants to public agencies and nonprofit organizations, including Indian Tribes and Tribal organizations, for demonstration programs and projects.
CASA	Court Appointed Special Advocate; Website	A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child abuse, neglect, or other dependency matters, and submits a formal report proffering advisory recommendations as to the best interests of a child. In some jurisdictions, volunteers without formal legal training, such as CASAs, are appointed to represent abused and neglected children and serve in the capacity of a Guardian ad litem (GAL).
CBC	Community-Based Care; Website	A newer model of serving children and families through partnerships with private Single Source Continuum Contractors (SSCCs) in designated catchment areas across the State. The model allows local communities to meet the unique and individual needs of children and their families by tapping into the strengths and resources of each community. Most DFPS duties will transition to local service networks, each operated by a Single Source Continuum Contractor (SSCC).
CCEJ	Court of Continuing, Exclusive Jurisdiction	Upon rendition of a final order in a Suit Affecting the Parent-Child Relationship (SAPCR), a court acquires continuing, exclusive jurisdiction over all subsequent matters regarding the child unless otherwise provided by the Family Code.
CFSR	Child and Family Services Review	A Federal-State collaborative effort designed to help ensure that quality services are provided to children and families through State child welfare systems.

Acronym	Explanation	Comments
CIP	Court Improvement Program; Website	The highest court of each State and territory participating in the Court Improvement Program (CIP) receives a grant from the Children's Bureau to complete a detailed self-assessment and develop and implement recommendations to enhance the court's role in achieving stable, permanent homes for children in foster care. In Texas, the Children's Commission is the recipient of CIP funds.
COS	Circle of Support	A meeting held soon after a youth who has been removed from the home reaches age 16. Its primary purpose is to develop a transition plan for the youth and to connect youth to supportive and caring adults who can help the youth when the youth leaves foster care.
COS	Court Ordered Services	A type of CPS case during which services are ordered by the court for the family, without DFPS having temporary managing conservatorship of the child. Depending on jurisdictional practice, this may also be referred to as a Motion to Participate (MTP), Order to Participate (OTP), or Participation case.
CPA	Child Placing Agency	CPAs are licensed by DFPS and required to conform to minimum standards. They verify and oversee non-agency foster placements.
CPC	Child Protection Court	CPCs are courts that specialize in child welfare cases. As of January 2025, there are 30 CPCs in Texas that operate under the Office of Court Administration which cover 147 counties total.
CPI	Child Protective Investigations; Website	A division of Texas DFPS that examines reports of child abuse or neglect and determines if there are any threats to the safety of the children in the home and whether parents are willing and able to adequately manage those threats to keep the children safe. This unit and their caseworkers are also commonly referred to by the acronym INV for investigations.
CPOS	Child Plan of Service	The Child Plan of Service outlines the services to be provided, who is responsible for the completion of that service, and establishes goals for the child.
CPS	Child Protective Services; Website	A division of Texas DFPS that provides services to children and families in their own homes; places children in foster care; provides services to help youth in foster care make the transition to adulthood; and places children in adoptive homes.
CPU	Centralized Placement Unit	The CPU reviews a child's information, tracks placement vacancies, and determines the least restrictive placement option that best meets the needs of a child when a child is in the custody of DFPS.
CSCAL	Child Safety Check Alert List	This is an automated program operated by the Texas Department of Public Safety as part of the Texas Crime Information Center to assist DFPS in locating families that move before CPS begins or finishes an investigation or move during the provision of services by DFPS.

Acronym	Explanation	Comments
CVS	Conservatorship/ Conservatorship Unit; Website	"Conservatorship" is defined as the legal care, custody, and control of a child given by court order. CVS also stands for the unit and type of caseworker who is involved with a child when the DFPS has custody of that child.
CWB	Child Welfare Board; Website	Child Welfare Boards are developed and funded in some Texas counties to help meet needs of children and youth in foster care by using county funding to support DFPS' efforts.
CWOP	Child Without Placement	CWOP is used to describe a child's status as not having a licensed placement (for example, residing in a nontraditional location such as a hotel while still being supervised by DFPS or an SSCC). Child Watch is a term also used to describe the status of children without a placement.
DFPS/ TDFPS	Texas Department of Family and Protective Services; Website	The state agency charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes.
DIF	Desarollo Integral de la Familia; Website	Mexico's Child Welfare Agency. When a parent is located in Mexico, DIF can be of assistance to DFPS when attempting to reunite a child with that parent.
DPS	Texas Department of Public Safety; Website	The state agency created to provide public safety services by enforcing laws, administering regulatory programs, managing records, educating the public, and managing emergencies, both directly and through interaction with other agencies.
DSHS	Texas Department of State Health Services; Website	The Texas Department of State Health Services promotes optimal health for individuals and communities while providing effective health, mental health, and substance abuse services to Texans.
DSM	Diagnostic and Statistical Manual of Mental Disorders; Website	The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a guidebook widely used by mental health professionals in the diagnosis of many mental health conditions. The DSM is published by the American Psychiatric Association and has been revised multiple times since it was first introduced in 1952. The most recent edition is the fifth, or the DSM-5.
ESSA	Every Child Succeeds Act	ESSA is a federal education law passed in December 2015. ESSA contains several educational stability provisions related to the education of children and youth in foster care that mirror the Fostering Connections to Success and Increasing Adoptions Act of 2008. ESSA also requires designated points of contact in education and child welfare systems, assurances that schools will coordinate with child welfare to develop transportation plans for children in foster care, and beginning in December 2018, disaggregated data on children and youth in foster care is included in the reporting requirements.

Acronym	Explanation	Comments
ETV	Education and Training Voucher; Website	The federally funded ETV program serves those eligible students ages 16 up to age 23 by providing up to $5,000 a year to attend college or vocational programs.
FFPSA	Family First Prevention Services Act	The Family First Prevention Services Act was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act reforms the federal child welfare financing streams (Title IV-E and Title IV-B of the Social Security Act) to provide services to families who are at risk of entering the child welfare system. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in- home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in congregate care.
FBSS	Family-Based Safety Services; Webpage	A type of service provided to some families who were the subject of an investigation of child abuse and neglect allegations. Also known as Family Preservation, FBSS includes services to families to prevent removal of the child from the home.
FGC	Family Group Conference	FGCs are a type of Family Group Decision Making. During an FGC, the child's family joins with relatives, friends, and community members to develop a plan for the child and family. These are generally held after a child is removed but may also be used before removal when the family receives FBSS.
FGDM	Family Group Decision Making	FGDM is a collaborative approach to service planning and decision- making, which involves the child or youth and their family joining CPS staff to develop a service plan for the child.
FPOS	Family Plan of Service	A plan designed to help parents access assistance from sources other than CPS and to develop the sufficient capacity to protect their children from abuse or neglect.
FSNA	Family Strengths and Needs Assessment	A tool developed to identify and create collaborative agreements about what the Family Plan of Service should address and determines strengths that may help with child safety.
FTM	Family Team Meeting	A type of Family Group Decision Making that is generally held before a child is removed from the home but also may be held during other stages of services, such as when a family receives FBSS or when a child is in DFPS conservatorship.
GAL	Guardian ad litem	A person appointed by a judge to represent the best interests of an allegedly abused or neglected child. In many counties the GAL is a CASA.
GRO	General Residential Operation	A residential child-care operation that provides childcare for 13 or more children or young adults.
HHSC	Health and Human Services Commission	HHSC is a state agency which oversees operations of the health and human services system.
HSEGH	Health, Social, Educational and Genetic History	The HSEGH report provides the child's information to prospective adoptive families.

Acronym	Explanation	Comments
ICPC	Interstate Compact on the Placement of Children	The federal ICPC, originally enacted in 1960, provides a legal framework for the timely placement of children across state lines, the suitability of prospective families, and the provision of needed support services. The compact (1) applies to the interstate placement of children in the foster care system and children placed across state lines for adoption; (2) requires the development of time frames for completion of the approval process; (3) establishes clear rulemaking authority, (4) provides enforcement mechanisms; (5) clarifies state responsibility; and (6) ensures states' ability to purchase home studies from licensed agencies to expedite the process.
ICU staff/ LPS	I See You Staff/ Local Permanency Specialist	DFPS changed the title for I See You (ICU) staff to Local Permanency in 2017. The I See You worker for a child is officially called the Local Permanency Specialist (LPS); however, references to an I See You caseworker are still common. When a child who is in the conservatorship of DFPS is placed in an out-of-region placement, the region where the child is placed must provide the supervision and a portion of the case management services for the child. The Local Permanency Specialist provides these services, known as courtesy supervision. The CVS caseworker must request services and supervision by a LPS within seven days of the placement.
ICWA	Indian Child Welfare Act	The Indian Child Welfare Act, adopted by Congress in 1978, applies to child custody proceedings in state courts involving "Indian" children -- children of Native American ancestry.
IDD	Intellectual and Developmental Disability	IDDs are differences that are usually present at birth and that uniquely affect the trajectory of the individual's physical, intellectual, and/or emotional development. Conditions can affect multiple body parts or systems. Intellectual disability is characterized by differences with both, intellectual functioning or intelligence and adaptive behavior. Developmental disability is a broader category of often lifelong challenges that can be intellectual, physical, or both.
IEP	Individualized Education Program	An IEP is a plan for each child who qualifies for special education and related services that is developed, reviewed, and revised by the ARD committee, of which parents are invited to be active members. It includes the student's present levels of academic achievement and functional performance, participation in state and district-wide assessments, transition services, annual goals, special factors, special education, related services, supplementary aids and services, extended school year services, and least restrictive educational setting.
IMPACT	Information Management Protecting Adults & Children in Texas	According to DFPS, IMPACT is the main application DFPS uses to record case information about the children and adults the agency protects. DFPS uses IMPACT to document all stages of service of a case, including when someone reports abuse, neglect, or exploitation and when those cases are investigated.
IOP	Intensive Outpatient Treatment	An addiction treatment program that is designated for participants to receive intensive drug treatment while living at home.

Acronym	Explanation	Comments
IV-E	Title IV-E	Title IV-E of the Social Security Act provides a federal funding stream to states for costs related to the provision of foster care, including costs related to legal representation of DFPS, parents, and children.
JMC	Joint Managing Conservatorship	JMC sets out shared rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions are awarded to one party. Tex. Fam. Code § 101.016. In DFPS cases, it is possible for a parent or a relative to share JMC of a child in the conservatorship of DFPS.
JPO	Juvenile Probation Officer	Juvenile Probation Officers provide supervision to youth involved with juvenile probation departments and youth dually in the custody of the Department of Family and Protective Services (DFPS).
LOC	Level of Care; Webpage	For children not served under T3C, there are five service levels of care: basic, moderate, specialized, intense, and intense plus. 40 TAC Section 700.2301-700.2367.
MOU	Memorandum of Understanding	An MOU is an agreement between two parties in the form of a legal document. It is not fully binding in the way that a contract is, but it expresses an interest in performing a service or taking part in an activity.
MSA	Mediated Settlement Agreement	An MSA is a form of alternative dispute resolution (ADR) that settles the case via negotiation under the guidance of a qualified neutral third party. An MSA is binding on the parties if properly executed, and a court may only decline to enter the MSA if a specific exception applies. Tex. Fam. Code § 153.007(c)-(e); Tex. Fam. Code § 153.0071(e-1).
MTP/OTP	Motion to Participate/Order to Participate	A type of child welfare case during which services are ordered by the court for the family, without DFPS having temporary managing conservatorship of the child. Depending on jurisdictional practice, this may also be referred to as a Required Participation, Court Ordered Services (COS), or Participation case.
OAG	Texas Office of the Attorney General; Website	The OAG is a Texas state agency that serves as legal counsel to all boards and agencies of state government; issues legal opinions when requested by the Texas Governor, heads of state agencies, and other officials and agencies as provided by Texas statutes; sits as an ex-officio member of state committees and commissions; and defends challenges to state laws and suits against both state agencies and individual employees of the State.
PAL	Preparation for Adult Living (PAL) Program; Webpage	A program within CPS to provide support and services to help youth prepare for independent adult living upon departure from DFPS care and support. According to DFPS, PAL policy requires that youth 16 and older who are in substitute care and likely to remain in care until at least age 18, and who can qualify for services up to their 21st birthday, receive services to prepare them for adult living. With funding availability, regions may serve any youth age 14 or older on whom Child Protective Services has an open case.

Acronym	Explanation	Comments
PC	Permanency Conference	A Permanency Conference is held when it is not possible or appropriate to hold a Family Group Conference. A PC is held for a child or youth in DFPS conservatorship for the purposes of developing or reviewing the child's or youth's permanency plan; developing or reviewing the family service plan; resolving barriers to achieving a permanent living arrangement, as appropriate; and developing and reviewing the transition plan for youth age 14 and 15. Family Group Decision Making strategies are used to the extent possible and if appropriate to the situation.
PCSP	Parental Child Safety Placement	A Parental Child Safety Placement (PCSP) is a family-initiated, temporary, out-of-home placement made by a parent with a caregiver who is either related to the child or has a long- standing and significant relationship with the child or family that may occur when the family determines that a PCSP is more workable than having a supervision agreement for parent-child contact.
PMC	Permanent Managing Conservatorship	Placement of a child in the permanent conservatorship of an entity or person, by court order, (e.g., Texas DFPS or relative) with no intention of returning the child to the parent's custody. PMC is a term used solely in the context of child welfare law and is used to designate a managing conservator other than a parent. The designation of a non-parent as sole or joint managing conservator may be used in lieu of the term PMC.
QRTP	Qualified Residential Treatment Program	A childcare institution that has a treatment model as defined by the Family First Prevention Services Act (FFPSA). Both accreditation of the facility and court review of the placement are required to qualify for federal IV-E matching payments after a child's placement in a QRTP by the court.
RAPR	Refusal to Assume Parental Responsibility	Refusal to assume parental responsibility is characterized as 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.
RO	Ruled Out	This is one of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as Ruled Out, the information gathered during the investigation supports a reasonable conclusion that: 1) the alleged abuse did not occur; 2) the alleged perpetrator is 9 years old or younger; or 3) the alleged abuse or neglect did occur but there is sufficient evidence to reasonably conclude that the named alleged perpetrator is not responsible.
RTB	Reason to Believe	RTB is one of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as Reason to Believe, the information gathered during the investigation supports a reasonable conclusion that the alleged abuse or neglect did occur and that the alleged perpetrator is responsible for it.
RTC	Residential Treatment Center	According to Texas HHSC, an RTC provides therapeutic, residential care for children and adolescents to address needs such as mental illness, substance use, or other behavioral health problems. Children and adolescents live in an RTC for a short period of time as they work to meet their treatment goals.

Acronym	Explanation	Comments
SACWIS	Statewide Automated Child Welfare Information System	The SACWIS is a comprehensive automated case management tool that meets the needs of all staff (including social workers and their supervisors, whether employed by the State, county, or contracted private providers) involved in foster care and adoptions assistance case management. In Texas, the SACWIS system is called IMPACT.
SAPCR	Suit Affecting Parent-Child Relationship	A SAPCR refers to any lawsuit that affects the parent-child relationship, such as conservatorship of a child that has allegedly been abused or neglected by a parent or guardian.
SIJS	Special Immigrant Juvenile Status	SIJS is an immigration classification which allows immigrant children in the state child welfare system who cannot reunify with their parents due to abuse, abandonment, or neglect, and who meet certain other criteria, to obtain lawful permanent immigration status.
SMC	Sole Managing Conservator	An individual named by court order with the exclusive rights and duties of a parent to a child.
SSCC	Single Source Continuum Contractor	An SSCC is a non-profit or governmental entity with child welfare as a primary mission that contracts with DFPS to oversee delivery of services through the state's community- based care foster care program.
T3C	Texas Child-Centered Care; Website	A universal child assessment tool and placement process with 24 defined service packages and three add-on services, replacing the service level system for children in care.
TANF	Temporary Aid for Needy Families	The Texas Temporary Assistance for Needy Families (TANF) program) is a support service for Texas families. The purpose of TANF is to provide financial and medical assistance to needy dependent children and the parents or relatives with whom they are living. Eligible TANF households receive monthly cash and Medicaid benefits.
TCIC	Texas Crime Identification Center	TCIC provides immediate access 24/7 for law enforcement agencies throughout Texas to data regarding the stolen status of property and the wanted, missing, sex offender, or protective order status of persons.
TEA	Texas Education Agency	TEA is the state agency dedicated to elementary and secondary education.
TFC	Texas Family Code	The laws and statutes that govern Texas family law are contained in the TFC, including laws related to child welfare.
TMC	Temporary Managing Conservatorship	The awarding of conservatorship of a child to Texas DFPS. This may include children remaining in their home with orders from the court for particular requirements to ensure the safety of the child, or the removal of a child from the family for safety and well-being purposes.
TPM	Transition Plan Meeting	According to DFPS, a Transition Plan Meeting is held soon after a youth who has been removed from the home reaches age 14. A TPM tends to be a shorter and more DFPS-driven conference with fewer participants than a Circle of Support. A TPM is used as an alternative to the Circle of Support when youth do not desire one or a Circle of Support cannot be convened.

Acronym	Explanation	Comments
TPR	Termination of Parent Rights	Termination of parental rights severs a legal parent-child relationship between a child and one or both parents, including alleged (possible) parents. Termination can be voluntary or involuntary.
TRCP	Texas Rules of Civil Procedure	The TRCP govern all civil lawsuits filed in Texas. They are designed to “obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law” and to provide for efficient disposition of cases.
UCCJEA	Uniform Child Custody Jurisdiction Enforcement Act	The UCCJEA is a uniform state law enacted by all states except for Massachusetts, the District of Columbia, Guam, and the Virgin Islands. The UCCJEA addresses a court’s subject matter jurisdiction in child custody cases, specifically answering the question of whether a court has the power to decide a custody case in which more than one state, tribe, or territory is involved. The law specifies which court has the power to decide a custody case, not how the court should decide the case, which is governed by the jurisdiction’s general child custody laws.
UTC	Unable to Complete	For an investigation to be designated as UTC, the information gathered during the investigation supports a reasonable conclusion that the caseworker could not gather enough information because the caseworker could not locate a principal, or a principal was uncooperative.
UTD	Unable to Determine	UTD is one of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as UTD, the information gathered during the investigation supports a reasonable conclusion that the allegation does not meet the criteria for unable to complete, but: 1) the information gathered is not enough to determine whether the abuse or neglect occurred, or 2) there is enough information to determine that abuse or neglect occurred, but there is not enough information to determine if the alleged perpetrator is responsible.

Common DFPS Intake Narrative Abbreviations

Abbreviation	Definitions
AB	Absent Parent
AP	Alleged Perpetrator
AN	Anonymous
AU	Aunt/Uncle
AV	Attorney Ad Litem
BA	Babysitter
CO	Cousin
DA	Daughter
EC	Emergency Contact
ES	Ex-Spouse
FA	Father (includes acknowledged, presumed, or alleged)
FK	Fictive Kin
FM	Other Family Member
FO	Foster Child
FP	Foster Parent
FQ	Foster Sibling
FR	Friend
FV	Family Violence Shelter
GC	Grandchild
GG	Godparent
GU	Guardian
LA	Law Enforcement
MGFA/PGFA	Maternal Grandfather/Paternal Grandfather
MGMO/PGMO	Maternal Grandmother/Paternal Grandmother
MO	Mother
NE	Neighbor
NN	Niece/Nephew
NR	Nurse
OV	Oldest Victim
PA	Parent
PB	Parent (Birth)
PC/PP	Client's Paramour/Parent's Paramour
PO	Probation Officer
PR	Service Provider
SB	Sibling
SC	School Personnel
SL	Self
SO	Son
SP	Spouse

Abbreviation	Definitions
SR	Step-Child
SS	Step-Sibling
ST	Step-Parent
STFA/STMO	Step-Father/Step-Mother
UH	Unrelated Home Member
UK	Unknown
UP	Unpaid Caregiver
XX	Other

DFPS Case Determination Abbreviations

Abbreviation	Definitions
ABAN	A case determination of Abandonment
EMAB	A case determination of Mental or Emotional Injury
MDNG	A case determination of Medical Neglect
NSUP	A case determination of Non-Support
NSUP	A case determination of Neglectful Supervision
PHAB	A case determination of Physical Abuse
PHNG	A case determination of Physical Neglect
RAPR	A case determination of Refusal to Assume Parental Responsibility
SXAB	A case determination of Sexual Abuse
SXTR	A case determination of Sex Trafficking

Additional Resources

The following is a non-exhaustive list of additional reference materials.

Children's Commission

- Website: http://texaschildrenscommission.gov/
- Email: children@txcourts.gov

Child Support

- Office of Attorney General: https://www.oag.state.tx.us/child-support

Child Welfare Legal Advocacy

- American Bar Association Center on Children and the Law: https://www.americanbar.org/groups/public_interest/child_law/
- National Association of Counsel for Children: https://nacchildlaw.org/
- State Bar of Texas Child Protection Law Section: https://childprotectionlawtx.com/

Court-Appointed Special Advocates

- Texas CASA: https://texascasa.org/

Department of Family and Protective Services

- Website: http://www.dfps.texas.gov/

Disability - Advocates & Information

- Disability Rights Texas: https://www.disabilityrightstx.org/en/home/

Domestic Violence

- Texas Council on Family Violence: https://tcfv.org/

Education

- Texas Education Agency Foster Care and Student Success webpage: https://tea.texas.gov/special-populations-and-support/foster-care-and-student-success/foster-care-student-success

Federal Child Welfare Policy

- Administration for Children and Families Children's Bureau: https://www.acf.hhs.gov/cb

Foster Care Ombudsman

- Website: https://www.hhs.texas.gov/about/your-rights/office-ombudsman/hhs-ombudsman-foster-care-help
- Phone: (844) 286-0769

Hotlines & Helplines

- Texas Abuse & Neglect Hotline

- Website: https://www.txabusehotline.org/Login/Default.aspx
- Phone: 1-800-252-5400

- Texas Legal Services Center Family Helpline:
  - Website: https://www.tlsc.org/family
  - Phone: 1-844-888-6565
- Texas Youth Helpline:
  - Website: https://www.dfps.texas.gov/youth-helpline/
  - Phone: (800) 989-6884

Human Trafficking

- Office of the Governor: https://gov.texas.gov/organization/cjd/childsextrafficking

Immigration & Citizenship

- U.S. Immigration and Custom Enforcement (ICE):
  - Attorney Information and Resources: https://www.ice.gov/detain/attorney-information-resources
  - Detained Parents Directive: https://www.ice.gov/detain/parental-interest

Incarcerated Parents

- DFPS Incarcerated Parents Resource Guide: https://www.dfps.texas.gov/handbooks/CPS/Resource_Guides/Incarcerated_Parents_Resource_Guide.pdf

Indian Child Welfare Act

- Bureau of Indian Affairs: https://www.bia.gov/

International

- Consular Notification and Access: https://travel.state.gov/content/travel/en/consularnotification.html

Interstate Compact on Placement of Children (ICPC)

- Association of Administrators of the ICPC:
  - Website: https://www.aphsa.org/AAICPC/default.aspx
  - Phone: (202) 682-0100

Mental Health

- National Alliance on Mental Illness (NAMI): https://www.nami.org/Home
- Texas Judicial Commission on Mental Health: http://texasjcmh.gov/

National Council of Juvenile and Family Court Judges

- National Council of Juvenile and Family Court Judges (NCJFCJ) Enhanced Resource Guidelines: https://www.ncjfcj.org/publications/enhanced-resource-guidelines/

Older Youth

- Texas Foster Youth Justice Project: http://texasfosteryouth.org/

Paternity

- Office of Attorney General of Texas: https://www. texasattorneygeneral.gov/child-support/paternity
- Texas Dept. of State Health Services Vital Statistics: https://www.dshs.texas.gov/vital-statistics/frequently-asked-questions/paternity-faqs

Substance Use

- National Center for Substance Abuse and Child Welfare: https://ncsacw.samhsa.gov/
- Texas HHSC Outreach, Screening, Assessment & Referral Facilities: https://www.hhs.texas.gov/services/mental-health-substance-use/mental-health-substance-use-resources/outreach-screening-assessment-referral

SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Children's Commission

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Austin, Texas 78701
texaschildrenscommission.gov