Required Participation in Services Hearing Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ Hearing set within 14 days from the date of the filing of petition unless good cause for extension. Tex. Fam. Code § 264.203(f)
- ☐ AAL for child has been appointed and notified of hearing. Tex. Fam. Code § 264.203(g)
- ☐ AAL for parent has been appointed and notified of hearing. Tex. Fam. Code § 264.203(h)
- ☐ All necessary parties served. Tex. Fam. Code § 264.203(l)

At the Hearing:

- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Identify those present, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code § 102.009
- ☐ Prior to commencement of hearing, parents named in the suit are informed of their right to be represented by counsel, and if indigent and in opposition to suit, of right to court-appointed attorney. Tex. Fam. Code § 264.203(i)
- ☐ If parent claims indigence, hear evidence and make a determination. Tex. Fam. Code § 264.203(j)
- ☐ If the parent is found to be indigent, continue the appointment of attorney. If parent is found not to be indigent, release attorney at the end of the hearing and order parent to pay the county for cost of representation. If needed, reset the hearing for no more than 7 days. Tex. Fam. Code § 264.203(j)-(k)
- ☐ Ask child's Attorney Ad Litem if they have seen client and when.
- ☐ If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with client. Tex. Fam. Code § 107.004(e)

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 the request for required participation in services. Evidence must be sufficient to satisfy a person of ordinary prudence and caution that:
  - Abuse or neglect has occurred, or
  - There is substantial risk of abuse or neglect, or
  - There is continuing danger to the physical health or safety of the child caused by an act or failure to act by named party/parties; and
  - Services are necessary to ensure the physical health or safety of the child. Tex. Fam. Code § 264.203(m)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Court findings;
  - Appropriate temporary orders under Chapter 105 to ensure the safety of the child, excluding orders that place the child outside the child's home or in the conservatorship of DFPS;
  - Required participation in services narrowly tailored to address court findings;

  Tex. Fam. Code § 264.203(n)
  - A dismissal deadline of 180 days; and
  - A scheduled review hearing within 90 days.

  Tex. Fam. Code § 264.203(p)-(q)

Required Participation in Services Hearing Checklist

continued

Court Findings

Review Hearings:

- ☐ Address the continued need for the temporary order and dismiss if there is no longer a continued need. Tex. Fam. Code § 264.203(p)
- ☐ Set a review hearing within 90 days if temporary order is continued. Tex. Fam. Code § 264.203(p)
- ☐ Determine whether there is good cause to extend dismissal deadline if DFPS can show a continued need for services beyond the original 180-day dismissal deadline. Tex. Fam. Code § 264.203(r)-(s)

- The court may find good cause for extension if:
  - necessary to allow the person required to participate in services under the plan of service time to complete those services;
  - DFPS made a good faith effort to timely provide the services to the person;
  - the person made a good faith effort to complete the services; and
  - completion of the services is necessary to ensure the physical health and safety of the child; and
  - extension is requested by the person or the person's attorney.

Tex. Fam. Code § 264.203(s)

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

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ Was hearing set within 14 days of removal? Tex. Fam. Code § 262.201(a) unless temporary order extended under Tex. Fam. Code § 262.201(e) or (e-1)
- ☐ Child's GAL/AAL was appointed and notified of hearing. Tex. Fam. Code §§ 107.011, 107.012
- ☐ All necessary parties served. Tex. Fam. Code § 102.009
- ☐ A certified copy of the child's birth certificate was filed under seal and separate from any other document. Tex. Fam. Code § 102.008(c-1)
- ☐ Court of Continuing, Exclusive Jurisdiction identified. Tex. Fam. Code § 155.101

At the Hearing:

- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Identify those present, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code § 102.009
- ☐ Parents not represented by attorney are informed of right to be represented by an attorney, and if indigent and in opposition to suit, of right to court-appointed attorney and for good cause, postpone the hearing for up to 7 days to allow the attorney time to prepare. Tex. Fam. Code § 262.201(c), (e)
- ☐ Parents not represented by attorney are informed of right to be represented by an attorney, and if not indigent, but in opposition to suit, of right to hire an attorney and postpone hearing for up to 7 days to allow for hiring. Tex. Fam. Code § 262.201(e-1)
- ☐ If a parent claims indigence, hear evidence and make determination. Tex. Fam. Code § 262.201(d)
- ☐ Before commencing hearing, confirm in writing and in open court, that:
  - Before conducting an interview, DFPS informed the alleged perpetrator of their right to create an audio or video of the interview and to request an administrative review of the DFPS findings. Tex. Fam. Code § 262.2011(1); and
  - When DFPS first contacted the alleged perpetrator after initiating an investigation, DFPS provided the alleged perpetrator with the information required by Tex. Fam. Code § 261.307. Tex. Fam. Code § 262.2011(2)
- ☐ Confirm that DFPS generated notice to relatives. Tex. Fam. Code § 262.1095(a)
- ☐ Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. Tex. Fam. Code §§ 261.307(a)(2), 262.201(l)
- ☐ Determine whether the child has had the opportunity to provide information about relative or designated caregivers. Tex. Fam. Code § 262.201(l-1)(1)
- ☐ Review placement and determine whether DFPS and criminal background checks were conducted and whether home studies have been initiated. Tex. Fam. Code § 262.114(a-1)(2) and (b)
- ☐ Determine whether DFPS is able to place with relative and note evidence supporting decision. Tex. Fam. Code § 262.0022
- ☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance program. Tex. Fam. Code § 262.201(n-1)
- ☐ Inquire about Indian/Native American Heritage. 25 U.S.C. § 1912; Tex. Fam. Code § 262.201(f)
  - Inquire of all parties if there is Indian heritage in the family.
  - Determine which Tribes may be involved.
  - Ensure proper notice to parent, Tribe if known, and Secretary of the Interior and Bureau of Indian Affairs if Tribe unknown. **(*See* Topical Checklist: ICWA)**
- ☐ Ask Child's Attorney Ad Litem (AAL) if they have seen client and when.
- ☐ If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
- ☐ Review and approve temporary visitation schedule. Tex. Fam. Code § 262.115

Adversary Hearing Checklist

continued

Court Findings

At the End of the Hearing:

- ☐ Regarding the parent from whom the child was removed to grant DFPS TMC of child: return the child to that parent unless there is evidence sufficient to satisfy a person of ordinary prudence and caution that:
  - There was / is a danger to physical health or safety of the child, which was / is caused by the act or failure to act of the person entitled to possession. Tex. Fam. Code § 262.201(g)(1)
  - The urgent need for protection required the immediate removal of the child / or requires the removal and reasonable efforts have been made to prevent or avoid removal. Tex. Fam. Code § 262.201(g)(2)
  - Reasonable efforts have been made to enable a child who has been removed to return to the home but there is a substantial risk of a continuing danger if the child is returned home. Tex. Fam. Code § 262.201(g)(3)
- ☐ If there is a parent before the court who was not involved in the circumstances regarding the removal, place the child with that parent unless the evidence is sufficient to satisfy a person of ordinary prudence and caution 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 by DFPS to enable that person's possession.

Tex. Fam. Code § 262.201(g-1)

- ☐ If evidence is sufficient to appoint DFPS as TMC, inform parents that their rights may be terminated or limited. Tex. Fam. Code § 262.201(m)
- ☐ Determine if aggravated circumstances are alleged or exist. Tex. Fam. Code § 262.2015
- ☐ Determine whether family violence has occurred and if Protective Order necessary or available. Tex. Fam. Code § 262.201(k)
- ☐ Determine whether the child is a victim of human trafficking and needs placement in secure agency foster or group home. Tex. Fam. Code § 262.011
- ☐ Unless not in the child's best interest, place the child with a relative. Tex. Fam. Code § 262.201(n)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Service on all parties entitled to service. Tex. Fam. Code § 102.009
  - Notice of removal to all parties entitled to notice. Tex. Fam. Code § 262.1095
  - Parentage or genetic testing. Tex. Fam. Code § 160.502
  - Dismissal date. Tex. Fam. Code § 263.401
  - Transfer to court of continuing, exclusive jurisdiction, if necessary for convenience of parties and in child's best interest or order transfer of the SAPCR from the CCEJ or if grounds exist based on improper venue, order transfer of the suit to the court having venue of the suit under Tex. Fam. Code Ch. 103. Tex. Fam. Code § 262.203
  - Describe with specificity in a separate section all reasonable efforts made to return the child home or to place the child with a non-custodial parent. Tex. Fam. Code § 262.201(g-2)

Adversary Hearing Checklist

continued

Best Practices

- ☐ Review diligent efforts to locate parties not present.
- ☐ Engage parties with direct questions:
  - *Do you speak English?*
  - *Do you understand the purpose of this hearing?*
  - *Do you understand what I've explained about your parental rights?*
- ☐ Ask DFPS direct and specific questions about reasonable efforts.
  - *Tell me what efforts you made to prevent or eliminate the need to remove Sam Smith.*
  - *Tell me what efforts you made to enable Sam to return home.*
  - *Tell me specifically the continuing danger to Sam if he is returned home/remains in the home.*
- ☐ Review services with parents, as applicable or appropriate. Tex. Fam. Code § 263.105
- ☐ Set status hearing date and announce same in open court. Tex. Fam. Code § 263.201(a)
- ☐ 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

- ☐ Education Decision-Maker, school stability, education goals, progress, school-related issues. Tex. Fam. Code § 263.004; Tex. Educ. Code § 25.001(g), (g-1)
- ☐ Medical care and behavioral or psychiatric care. Tex. Fam. Code § 266.007
- ☐ Young adult presence at hearing or opinion about education or medical care. Tex. Fam. Code §§ 263.302, 266.007

Status Hearing Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ Hearing set no later than 60 days after DFPS appointed TMC unless aggravated circumstances. Tex. Fam. Code § 263.201
- ☐ Persons entitled to notice given 10 days' notice of hearing. Tex. Fam. Code § 263.0021
- ☐ If parent is unrepresented, inform of right to counsel, determine indigency, and appoint attorney if indigent and in opposition to suit. Tex. Fam. Code § 107.013
- ☐ DFPS filed copy of Visitation Plan at least 10 days before Status Hearing. Tex. Fam. Code § 263.107(d)
- ☐ DFPS filed Family Plan of Service (Service Plan) not later than 45th day after appointed TMC. Tex. Fam. Code § 263.101
- ☐ Child received developmentally appropriate assessment by no later than 45th day after DFPS appointed TMC. Tex. Fam. Code § 266.012
- ☐ Notice of Education Decision-Maker (Form 2085-E) filed with court. Tex. Fam. Code § 263.004
- ☐ Designation of Medical Consenter (Form 2085-B) filed with court. Tex. Fam. Code § 266.004(c)
- ☐ Dismissal date set. Tex. Fam. Code § 263.401

At the Hearing:

Due Process and General Matters

- ☐ Identify those present, including the child's caregiver, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code §§ 102.009, 263.0021(f)
- ☐ Review DFPS' due diligence to locate parties not present. Tex. Fam. Code § 263.202(a)(1)
- ☐ Confirm that DFPS notified relatives about removal. Tex. Fam. Code § 263.007
- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Inform each parent not represented by an attorney of right to counsel; determine indigence; appoint counsel if indigent and in opposition to suit. Tex. Fam. Code §§ 263.203, 263.0061
- ☐ Determine status of paternity issues and whether Paternity Registry searched. Tex. Fam. Code § 263.202(a)(1)
- ☐ Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. Tex. Fam. Code § 263.201(c)
- ☐ Review current and alternative placements. Tex. Fam. Code § 263.002
- ☐ Determine whether the child has had the opportunity to provide information about relative or designated caregivers. Tex. Fam. Code § 263.202(h).
- ☐ Determine status of initiated home studies. Tex. Fam. Code § 262.114(a)-(b) [Best Practice at Status Hearing]
- ☐ Determine if child's caregiver is present and given opportunity to provide information about the child. Tex. Fam. Code § 263.0021(f)
- ☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance (PCA) program. Tex. Fam. Code § 263.202(i)
- ☐ If the child is placed in a Residential Treatment Center (RTC) or Qualified Residential Treatment Program (QRTP), whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code §§ 263.002 and 263.00201 respectively. Tex. Fam. Code § 263.202(b)(5)-(6)
- ☐ Review the conservatorship appointment and substitute care of the child. Tex. Fam. Code § 263.002(a)(1)
- ☐ Inquire about Indian/Native American Heritage. 25 U.S.C. § 1912; Tex. Fam. Code § 263.202(f-1)
  - Inquire of all parties if there is Indian heritage in the family.
  - Determine which Tribes may be involved.
  - Ensure proper notice to parent, Tribe, if known, and Secretary of the Interior and Bureau of Indian Affairs, if Tribe unknown. **(*See* Topical Checklist: ICWA)**
- ☐ Determine if DFPS held or plans to hold Permanency Planning Meeting. Tex. Fam. Code § 263.009(a)

Status Hearing Checklist

continued

Statutory

- ☐ Ask child's Attorney Ad Litem (AAL) if they have seen client and when.
  - If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
- ☐ Determine whether child or parent is a citizen of the United States. 8 C.F.R. § 204.11
  - If not, determine if Special Immigrant Juvenile Status for the child (or teen parent) is appropriate, and issue Order for DFPS to initiate the process.
  - Determine if notice given to appropriate Consulate.
- ☐ Review medical care provided child since last hearing. Tex. Fam. Code § 266.007(a)

Family Plan of Service

- ☐ Determine if:
  - Original Service Plan was developed jointly with child's parents. Tex. Fam. Code § 263.103(a)
  - Each term and element discussed and parents informed of rights in connection with service plan process. Tex. Fam. Code § 263.103(a-1)
  - If parent not able or willing to participate in development of Service Plan, this is noted in the plan. Tex. Fam. Code § 263.103(a)
  - Parents have reviewed and understand the plan. Tex. Fam. Code § 263.202(b)(2)
  - The plan has both a primary and a concurrent goal. Tex. Fam. Code §§ 263.102(e), 263.3025(d)
  - Plan is signed by parents and DFPS. Tex. Fam. Code § 263.103(b)
- ☐ Provide parent opportunity to comment on Service Plan. Tex. Fam. Code § 263.202(g)
- ☐ Court can modify service plan at any time. Tex. Fam. Code § 263.105(c)

Visitation Plan

- ☐ Review Visitation Plan and consider:
  - Age and safety of child at/during visitation;
  - Desires of each parent regarding visitation;
  - Location of each parent and child;
  - Transportation to/from visits; and
  - Resources available to DFPS, including transportation and those necessary to ensure visitation is properly supervised.

Tex. Fam. Code § 263.107(c)

- ☐ Court may modify visitation plan at any time. Tex. Fam. Code § 263.108(b)
- ☐ If court finds visitation is not in child's best interest, include in order the reasons and the specific steps parent must take to have visitation. Tex. Fam. Code § 263.109(b)

Court Findings

At the End of the Hearing:

- ☐ Determine whether the Service Plan is narrowly tailored to address any specific issues identified by DFPS. Tex. Fam. Code § 263.202(b)(3)
- ☐ Determine whether any Service Plan that has the goal of reunification adequately ensures that reasonable efforts are made to enable the parents to provide a safe environment for the child. Tex. Fam. Code § 263.202(b)(1)
- ☐ Advise/warn parents and parties:
  - That custodial rights and duties may be subject to restriction or termination or child not returned unless parent demonstrates willingness and ability to provide child with safe environment. Tex. Fam. Code § 263.202(b)(2)
  - Progress under Service Plan is reviewed at all hearings, including review of newly acquired knowledge or skills. Tex. Fam. Code § 263.203(b)
- ☐ Incorporate Service Plan into the Court Order and render additional appropriate orders to implement or require compliance with the Service Plan. Tex. Fam. Code §§ 263.106, 263.202(b-1)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Dismissal date. Tex. Fam. Code § 263.401
  - Transfer to court of continuing, exclusive jurisdiction, if necessary for convenience of parties and in child's best interest or order transfer of the SAPCR from the CCEJ if necessary for convenience of parties and in child's best interest. Tex. Fam. Code § 262.203

Status Hearing Checklist

continued

Best Practices

- ☐ Set first Permanency Hearing Before Final Order and announce in open court. Tex. Fam. Code § 263.304
- ☐ Determine status of initiated home studies. Tex. Fam. Code § 262.114(a)-(b)
- ☐ Engage parties with direct questions.
  - *Do you understand the purpose of this hearing?*
  - *Do you understand the purpose of the Service Plan?*
  - *Were you given the chance to discuss or provide input into the Service Plan?*
  - *Do you understand what I've explained about your parental rights?*
- ☐ 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?*
  - *What about this service plan will help Ms. Smith provide a safe environment for her child?*
- ☐ 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 we need to understand?*

Well-being Issues

- ☐ Education Decision-Maker, school stability, education goals, progress, school-related issues. Tex. Fam. Code § 263.004; Tex. Educ. Code § 25.001(g), (g-1)
- ☐ Medical Consenter may need to be identified or updated. Tex. Fam. Code § 263.202(e)
- ☐ Child received Texas Health Steps exam no later than 30th day after DFPS appointed TMC.
- ☐ Review psychiatric care, especially if child or youth prescribed psychotropic medication. Tex. Fam. Code § 266.007(a)(4)
- ☐ Young adult presence at hearing or opinion about education or medical care. Tex. Fam. Code § 263.302 [Best Practice at Status Hearing]; Tex. Fam. Code § 266.007(c)

Permanency Hearing Before Final Order Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ If first Permanency Hearing, scheduled no later than 180th day after DFPS named TMC. Tex. Fam. Code § 263.304(a)
- ☐ If subsequent Permanency Hearing, scheduled within 120 days of last Permanency Hearing. Tex. Fam. Code § 263.305
- ☐ Persons entitled to notice given 10 days' notice of hearing, including children 10 and older. Tex. Fam. Code § 263.0021
- ☐ Whether DFPS Permanency Progress Report filed at least 10 days before hearing pursuant to Tex. Fam. Code § 263.303(a) and, in addition to elements required by Tex. Fam. Code § 263.306, includes:
  - Child's Permanency Plan. Tex. Fam. Code § 263.3025(b)
  - Summary of Medical Care. Tex. Fam. Code § 266.007
- ☐ The court file includes:
  - Designation of Medical Consenter (Form 2085-B). Tex. Fam. Code § 266.004
  - Notice of Education Decision-Maker (Form 2085-E). Tex. Fam. Code § 263.004
  - Visitation Plan. Tex. Fam. Code § 263.107

At the Hearing:

- ☐ Identify those present, including the child's caregiver, note those not present, determine service on parties, and swear witnesses. Tex. Fam. Code §§ 263.0021(f), 263.306(a-1)(1),(2)(A)
- ☐ Ensure child in attendance in person or by videoconference or phone unless specifically excused. Tex. Fam. Code § 263.302
  - Youth in Texas Juvenile Justice Department (TJJD) may attend in person or by telephone or videoconference.
- ☐ Determine DFPS due diligence to locate and serve parties not present. Tex. Fam. Code § 263.306(a-1)(2)(A)
- ☐ Determine status of paternity issues and whether Paternity Registry searched. Tex. Fam. Code § 160.421
- ☐ Ensure that DFPS obtained the assistance of a parent to provide locating information for absent parent, alleged father, relative, or other adult identified by the child as a potential relative or designated caregiver. Tex. Fam. Code § 263.306(a-1)(2)(B)
- ☐ Inform each parent not represented by an attorney of right to counsel; determine indigence; appoint counsel if indigent. Tex. Fam. Code § 263.0061
- ☐ Determine if language interpretation is needed. Tex. Gov't Code § 57.002
- ☐ Inquire about Indian/Native American Heritage. 25 U.S.C. § 1912; Tex. Fam. Code § 263.306(a-1)(3)
  - Inquire of all parties if there is Indian heritage in the family.
  - Determine which Tribes may be involved.
  - Ensure proper notice to parent, Tribe, if known, and Secretary of the Interior and Bureau of Indian Affairs, if Tribe unknown. **(*See* Topical Checklist: ICWA)**
- ☐ Determine if Special Immigrant Juvenile Status for the child (or teen parent) is appropriate. 8 C.F.R § 204.11
- ☐ Review extent of compliance with temporary orders and service plan and extent to which progress has been made. Tex. Fam. Code § 263.306(a-1)(4)
- ☐ Ensure parties and those present have the opportunity to present evidence and be heard. Tex. Fam. Code § 263.0021(b)
- ☐ Determine if child's caregiver is present and given opportunity to provide information about the child. Tex. Fam. Code § 263.0021(f)
- ☐ Determine whether DFPS is able to place with relative and note evidence supporting decision. Tex. Fam. Code § 263.002(b)
- ☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance (PCA) program. Tex. Fam. Code § 263.306(c)(2)

Permanency Hearing Before Final Order Checklist

continued

Statutory

☐ Review Permanency Progress Report to determine:

- Safety and well-being of child and whether child's needs, including any medical or special needs, adequately addressed. Tex. Fam. Code § 263.306(a-1)(5)(A)
- Continuing necessity and appropriateness of child's placement, including for a child placed outside Texas, whether the placement continues to be in the child's best interest. Tex. Fam. Code § 263.306(a-1)(5)(B)
- Appropriateness of the child's primary and alternative permanency goals and whether DFPS has made reasonable efforts to finalize the permanency plan. Tex. Fam. Code § 263.306(a-1)(5)(C)
- Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express opinion about medical care provided. Tex. Fam. Code § 263.306(a-1)(5)(D)
- Whether the child has had the opportunity to identify a relative or designated caregiver. Tex. Fam. Code § 263.306(a-1)(5)(E)
- For a child receiving psychotropic medication, whether the child has:
  - been provided non-pharmacological interventions.
  - seen prescribing physician every 90 days for review. **(*See* Topical Checklist: Medical and Mental Health Care)**

Tex. Fam. Code § 263.306(a-1)(5)(F)

- Whether child's Education Decision-Maker identified, the child's education needs and goals identified and addressed, and any major changes in child's school performance or disciplinary events. **(*See* Topical Checklist: Foster Care & Education)**

Tex. Fam. Code § 263.306(a-1)(5)(G)

- For child 14 years of age or older, whether transition services needed to assist the child from substitute care to independent living are available in the child's community. Tex. Fam. Code § 263.306(a-1)(5)(H)
- For a child whose permanency goal is APPLA:
  - child's desired permanency outcome; and
  - whether APPLA is the best permanency plan and, if so, provide compelling reasons why it continues not to be in the child's best interest to:
    - return home,
    - be placed for adoption,
    - be placed with a legal guardian, or
    - be placed with a fit and willing relative.

Tex. Fam. Code §263.306(a-1)(5)(I)

  - whether DFPS has conducted an Independent Living Skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3).
  - whether DFPS has addressed the goals identified in the youth's permanency plan.
  - for youth 16 years of age or older, whether DFPS has provided documents required by Tex. Fam. Code § 264.121(e).
  - for youth 18 years or older, or youth who had disabilities of minority removed, whether DFPS has provided youth with documents and information listed in Tex. Fam. Code § 264.121(e-1). Tex. Fam. Code § 263.306(a-1)(5)(I)(vi)
- If the child is placed in a Residential Treatment Center (RTC) or Qualified Residential Treatment Program (QRTP), whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code §§ 263.002 and 263.00201 respectively. Tex. Fam. Code § 263.306(a-1)(5)(J)-(K)

☐ Determine whether child is receiving appropriate medical care. Tex. Fam. Code § 266.007

☐ Review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. Tex. Fam. Code § 263.306(c)(1)

☐ Ask child's Attorney Ad Litem (AAL) if they have seen their client and when.

- If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
- AAL should be knowledgeable about medical care and education goals and progress. Tex. Fam. Code §§ 107.003(b), 107.004(d-2)
- AAL has duty to advise clients 16 and older of right to seek designation from the court to serve as own medical consenter. Tex. Fam. Code § 107.003(b)(3)(A)

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.
  - The court may return the child to the parent under a monitored return.

Tex. Fam. Code § 263.002(c)-(d).

- ☐ Determine whether to return the child to child's parents if the child's parents are willing and able to provide the child with a safe environment and return is in the child's best interest. Tex. Fam. Code § 263.306(a-1)(6)
- ☐ Advise/warn parents and parties that custodial rights and duties may be subject to restriction or termination or child not returned unless parent demonstrates willingness and ability to provide child with safe environment. Tex. Fam. Code § 263.006
- ☐ Incorporate any changes or modifications to the Service Plan into the court order. Tex. Fam. Code § 263.106
- ☐ Estimate likely date by which the child may be returned to and safely maintained in the child's home, placed for adoption, or placed in PMC. Tex. Fam. Code § 263.306(a-1)(7)
- ☐ Set next Permanency Hearing within 120 days or sooner, as appropriate. Tex. Fam. Code § 263.305
- ☐ Announce in open court the dismissal date and dates of any upcoming hearings. Tex. Fam. Code § 263.306(a-1)(8)
- ☐ **ISSUE COURT ORDER** and include or address:
  - Any changes or modifications to Service Plan. Tex. Fam. Code § 263.106
  - Notice of subsequent hearings. Tex. Fam. Code § 263.0021(c)(3).
  - Findings required by Tex. Fam. Code § 263.002(b)-(c), if applicable.

Best Practices

- ☐ If necessary parties, including child, did not receive notice, consider resetting hearing to secure their attendance.
- ☐ Engage parties with direct questions:
  - *Do you understand the purpose of this hearing?*
  - *Do you understand the DFPS permanency goal for you and your family?*
  - *Were you given the opportunity to discuss or provide input into this permanency plan?*
- ☐ Engage youth:
  - *Tell me how you feel about your medical care, school, grades, and activities.*
  - *Tell me how you're being treated where you live.*
  - *What do you want for your future?*
- ☐ REASONABLE EFFORTS: Ask direct and child-specific questions of DFPS about both the primary goal and the concurrent goal:
  - *If primary goal is reunification: please articulate the specific efforts you have made to reunify Sam with Ms. Smith; please be specific in describing your actions with regard to each.*
  - *If concurrent goal is permanent managing conservatorship to a relative: articulate the specific efforts you have made to place Sam with the grandmother, etc.*
- ☐ If child not moving toward positive permanency, set timelines and tasks that must be completed prior to next hearing.
  - Set next Permanency Hearing within 90 instead of 120 days.
- ☐ For Youth Receiving Transitional Living Services:
  - Youth 14 and older are:
    - eligible for Family Group Decision Making meetings about their future;
    - entitled to an Independent Living Skills assessment
  - Youth 16 and older must:
    - be enrolled in Preparation for Adult Living (PAL);
    - receive an Independent Living Skills assessment;
    - receive certain documents as outlined in Tex. Fam. Code § 264.121(e)

Permanency Hearing Before Final Order Checklist

continued

Best Practices

- All youth who turn 18 while in foster care are:
  - eligible for extended foster care and trial independence;
  - entitled to referrals to Texas Workforce Commission; and
  - entitled to have certain documents in their possession before they leave care, including a driver's license or identification card, birth certificate, social security card, immunization records, proof of enrollment in Medicaid, and copy of credit report.

☐ 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

***See* Topical Checklist: Medical and Mental Health Care**

☐ Permanency Report must include a summary of medical care, including:
- Nature of emergency medical care provided to child and circumstances necessitating care, including injury or acute illness of child.
- All medical and mental health treatment child is receiving and child's progress with treatment.
  - includes mental health, physical health, dental, eye exams, immunizations, and any physical mental health illnesses and treatments.
- Any medication prescribed for child, condition, diagnosis, and symptoms for which medication was prescribed and child's progress with medication.
- Degree to which child or foster care provider complied or failed to comply with any plan of medical treatment for child.
- Any adverse reaction to or side effects of any medical treatment provided to child.
- Any specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis.
- Any activity child should avoid or engage in that might affect effectiveness of treatment, including physical activities, other medications, and diet.
- Other info required by DFPS rule or by the court.

Tex. Fam. Code § 266.007

Education and Educational Decisions

***See* Topical Checklist: Foster Care & Education**

☐ Child enrolled in school and in appropriate grade.

☐ Child remains in current school, regardless of placement changes.

☐ If change in school required due to placement change, determine:
- Where child wants to attend school
- How the child will be transported
- Whether change can be coordinated with grading and testing periods
- Whether records and credits transferred

☐ If too young for school (0-3 years), child assessed for developmental milestones through ECI; if 0-5, child enrolled in Early Head Start, Head Start, or Pre-Kindergarten.

☐ Education Decision-Maker identified on Form 2085-E. Tex. Fam. Code § 263.004

☐ School supports and disciplinary issues addressed, including signed form prohibiting corporal punishment.

☐ Child involved in extracurricular activities.

☐ As needed, child evaluated for and receiving special education services.

☐ Child age 14 or older has postsecondary education plan.

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)

Termination Grounds Checklist

continued

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 (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 child based on a finding that the parent's conduct was in violation of Tex. Fam. Code § 161.001(D) or (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 be filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parent's rights were terminated based on a D or E finding. Tex. Fam. Code § 161.001(d-1)
- constructively abandoned the child who has been in the permanent or temporary managing conservatorship of 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)
  - 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)

Termination Grounds Checklist

continued

Statutory

- 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 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 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 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 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
- Declined immunization for the child for reasons of conscience, including a religious belief;

Termination Grounds Checklist

continued

Statutory

- 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

☐ 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, and 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 (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 (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)

Termination Grounds Checklist

continued

Statutory

☐ 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

☐ 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

☐ 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)

Final Hearing Checklist for Non-Jury Trial

Statutory

Prior to Final Hearing, review the court file to determine:

- ☐ Notice provided to parties not less than 45 days before first setting for trial. Tex. R. Civ. P. 245; Tex. Fam. Code § 263.0021
- ☐ All parties have been served. Tex. Fam. Code § 102.009
- ☐ Legal relief sought by parties with standing and properly pleaded. Tex. Fam. Code §§ 102.003, 102.008
- ☐ Ensure compliance with the Indian Child Welfare Act, if applicable; including notice to parent or Indian custodian, and the tribe or its Secretary. 25 U.S.C. § 1912

At the Hearing:

- ☐ Recite appearances of all parties present at the hearing.
- ☐ Take announcements regarding readiness to proceed to trial.
- ☐ Rule on any pending pretrial motions.
- ☐ Opening Statements, unless waived.
- ☐ Evidence
  - ***See* Termination Grounds Checklist**
  - *Holley v. Adams* best interest factors to consider:
    - the desires of the child
    - the emotional and physical needs of the child now and in the future
    - the emotional and physical danger to the child now and in the future
    - the parental abilities of the individuals seeking custody
    - the programs available to assist those individuals to promote the best interest of the child
    - the plans for the child by these individuals or by the agency seeking custody
    - the stability of the home or proposed placement
    - the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one
    - any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367 (Tex. 1976)

- DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home.

- ☐ Closing arguments, unless waived.

Court Findings

At the End of the Hearing:

- ☐ Determine if evidence meets burden of proof to support pleadings:
  - For Termination of Parental Rights: Clear and Convincing Evidence, specified as to:
    - each ground alleged against that parent,
    - best interest of child, and
    - whether 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 §§ 101.007, 161.001(b)(1), (b)(2), (f), 161.206(a-1)
  - For Conservatorship: Preponderance of the Evidence. Tex. Fam. Code § 105.005
  - For ICWA: Beyond a Reasonable Doubt. 25 U.S.C. § 1912(f)
- ☐ If termination is ordered, appoint a managing conservator (DFPS or other suitable individual). Tex. Fam. Code § 161.207
- ☐ If termination is NOT ordered and DFPS is awarded managing conservatorship, must find that:
  - Appointment of parent would not be in the child's best interest because it would significantly impair the child's physical health or emotional development (Clear and Convincing Evidence) Tex. Fam. Code § 153.002(c); and
  - It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator. Tex. Fam. Code § 263.404(a)

Final Hearing Checklist for Non-Jury Trial

continued

Court Findings

- ☐ If termination is NOT ordered and DFPS is awarded managing conservatorship, 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
  - The needs and desires of the child.

Tex. Fam. Code § 263.404(b)

- ☐ Advise parties of their right to appeal. Tex. Fam. Code § 263.405
- ☐ Set Permanency Hearing After Final Order for no later than six months after order if PMC granted to DFPS with termination. Tex. Fam. Code § 263.501(b)
- ☐ Set Permanency Hearing After Final Order for no later than 180 days if PMC granted to DFPS without termination. Tex. Fam. Code § 263.501(a)
- ☐ 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. Tex. Fam. Code § 107.016

Best Practices

- ☐ Remind Parent's Attorney of appellate duties.
- ☐ Set initial placement review hearings sooner than statutorily required to ensure progress toward the child's permanency goal.

Permanency Hearing After Final Order Checklist

Statutory

Prior to the Hearing, review the court file to determine:

- ☐ If parental rights terminated, ensure first Permanency Hearing After Final Order set within 90 days of final order date, then at least every six months thereafter. Tex. Fam. Code § 263.501(b)
- ☐ If parental rights not terminated, ensure first Permanency Hearing After Final Order set within 6 months of final order date, then at least every six months thereafter. Tex. Fam. Code § 263.501(a)
- ☐ Persons entitled to notice given at least 10 days' notice of hearing, including a child 10 years and older or the court determines it is appropriate for the child to receive notice. Tex. Fam. Code § 263.0021
- ☐ Whether DFPS Permanency Progress Report filed at least 10 days before hearing pursuant to Tex. Fam. Code § 263.502(a), and, in addition to elements required by Tex. Fam. Code § 263.502, includes:
  - Summary of Medical Care. Tex. Fam. Code § 266.007
- ☐ The court file includes:
  - Designation of Medical Consenter (Form 2085-B). Tex. Fam. Code § 266.004
  - Notice of Education Decision-Maker (Form 2085-E). Tex. Fam. Code § 263.004

At the Hearing:

- ☐ Identify those present, including the child's caregiver, note those not present, and swear witnesses. Tex. Fam. Code § 263.5031(a)(1)
- ☐ Ensure the child's attendance is in person or by videoconference or phone unless specifically excused.
  - Youth in Texas Juvenile Justice Department (TJJD) may attend in person or by telephone or videoconference. Tex. Fam. Code § 263.302
- ☐ Review DFPS efforts to provide notice under Tex. Fam. Code § 263.0021. Tex. Fam. Code § 263.5031(a)(2)
- ☐ Review the Permanency Progress Report to determine:
  - Child's safety and well-being and whether child's needs, including any medical or special needs, are being adequately addressed. Tex. Fam. Code § 263.5031(a)(4)(A)
  - Whether the child had an opportunity to identify a relative or designated caregiver. Tex. Fam. Code § 263.5031(a)(4)(B)
  - Whether DFPS placed child with a relative or other designated caregiver and the continuing necessity and appropriateness of child's placement, including with respect to child placed outside of state, whether the placement continues to be in the child's best interest. Tex. Fam. Code § 263.5031(a)(4)(C)
  - If the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive environment consistent with the child's best interest and special needs. Tex. Fam. Code § 263.5031(a)(4)(D)
  - The appropriateness of the primary and alternative permanency goals for the child,
  - whether DFPS has made reasonable efforts to finalize the permanency plan, including concurrent permanency goals, in effect for the child and whether:
    - DFPS exercised due diligence in attempting to place the child for adoption if parental rights are terminated and the child is eligible for adoption; or
    - Another Planned Permanent Living Arrangement (APPLA), including appointing a relative as PMC or returning the child to a parent, is appropriate for the child. Tex. Fam. Code § 263.3026

Tex. Fam. Code § 263.5031(a)(4)(E)

- For a child whose permanency goal is APPLA:
  - the desired permanency outcome for the child; and
  - whether, as of the hearing date, APPLA is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the child's best interest to:
    - return home,
    - be placed for adoption,
    - be placed with a legal guardian, or
    - be placed with a fit and willing relative.

Permanency Hearing After Final Order Checklist

continued

Statutory

- ◦ whether DFPS has conducted an Independent Living Skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3).
- ◦ whether DFPS has addressed the goals identified in the youth's permanency plan. for youth 16 years of age or older, whether DFPS has provided documents required by Tex. Fam. Code § 264.121(e).
- ◦ for youth 18 years or older, or has had disabilities of minority removed, whether DFPS has provided youth with documents and information listed in Tex. Fam. Code § 264.121(e-1).

Tex. Fam. Code § 263.5031(a)(4)(F)

- If the child is 14 or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community. Tex. Fam. Code § 263.5031(a)(4)(G)
- Whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided. Tex. Fam. Code §§ 263.5031(a)(4)(H), and 266.007
- For a child receiving psychotropic medication, whether the child:
  - ◦ has been provided appropriate non-pharmacological interventions, therapies, or strategies to meet the child's needs; or
  - ◦ has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days.

Tex. Fam. Code § 263.5031(a)(4)(I) **(*See* Topical Checklist: Medical and Mental Health Care)**

Whether an Education Decision-Maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events.

Tex. Fam. Code § 263.5031(a)(4)(J) **(*See* Topical Checklist: Foster Care & Education)**

- For a child for whom DFPS has been named Managing Conservator in a final order that does not include termination of parental rights,
- whether to order DFPS to provide services to a parent for not more than 6 months after the date of the permanency hearing if:
  - ◦ the child has not been placed with a relative or other individual, including a foster parent, who is seeking PMC of the child; and
  - ◦ the court determines that further efforts at reunification with a parent are:
    - ▪ in the best interest of the child; and
    - ▪ likely to result in the child's safe return to the parent.

Tex. Fam. Code § 263.5031(a)(4)(K)

- 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)
- If the child is placed in a Residential Treatment Center (RTC) or Qualified Residential Treatment program (QRTP), whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code §§ 263.002 and 263.00201 respectively. Tex. Fam. Code § 263.5031(a)(4)(M)-(N)

☐ Review DFPS efforts to ensure the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child's service plan. Tex. Fam. Code § 263.5031(b)

☐ Determine if Special Immigrant Juvenile Status (SIJS) for the child (or teen parent) is appropriate. 8 C.F.R. § 204.11

☐ Determine if child's caregiver is present and given opportunity to provide information about the child. Tex. Fam. Code § 263.0021(f)

☐ If the child has been placed with a relative or designated caregiver, inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for the Permanency Care Assistance (PCA) program. Tex. Fam. Code § 263.5031(3)

☐ Ensure those present have the opportunity to present evidence and be heard. Tex. Fam. Code § 263.0021(b)

Permanency Hearing After Final Order Checklist

continued

Statutory

- ☐ Confer with child, if age 4 or older, in developmentally appropriate manner regarding child's permanency plan. Tex. Fam. Code § 263.302
- ☐ Ask the child's Attorney Ad Litem (AAL) if they have seen their client and when.
  - If AAL has not seen client, determine whether the AAL has shown good cause for not meeting with the client. Tex. Fam. Code § 107.004(e)
  - AAL should also be knowledgeable about medical care and education goals and progress. Tex. Fam. Code §§ 107.003(b), 107.004(d-2)
  - AAL has duty to advise clients 16 and older of right to seek designation from the court to serve as own medical consenter. Tex. Fam. Code § 107.004(b)(3)

Court Findings

At the End of the Hearing:

- ☐ Ensure **FINDINGS** and **ISSUE COURT ORDER** which comports with determinations made pursuant to Tex. Fam. Code § 263.5031.
- ☐ Set next Permanency Hearing After Final Order no later than six months from date of present hearing. Tex. Fam. Code § 263.501(a)

Best Practices

- ☐ If necessary parties (including child) did not receive notice, consider resetting hearing to secure their attendance.
- ☐ Engage youth.
  - *Tell me how you feel about your medical care, school, grades, and activities.*
  - *Tell me how you're being treated in your placement.*
  - *What do you want for your future?*
- ☐ Engage caregivers with direct questions.
  - *Do you understand the purpose of this hearing?*
  - *Do you understand the DFPS permanency goal for the child(ren)?*
  - *Were you given the opportunity to discuss or provide input into this permanency plan?*
- ☐ REASONABLE EFFORTS: Ask direct and child-specific questions of DFPS about *both* the primary goal and the concurrent goal.
  - *If primary goal is adoption: please articulate the specific efforts you have made to find an adoptive home for Sam; please be specific in describing your actions with regard to each.*
  - *If concurrent goal is permanent managing conservatorship to a relative: articulate the specific efforts you have made to place Sam with the grandmother, etc.*
- ☐ Set next Permanency Hearing within 90 or 120 days instead of 180 days.
- ☐ For Youth Receiving Transitional Living Services:
  - Youth 14 and older are eligible for family group decision-making about their future;
  - Youth 16 and older must be enrolled in Preparation for Adult Living (PAL); and
  - All youth who will turn 18 while in foster care are:
    - Discuss eligibility for extended foster care and trial independence;
    - Ensure referrals to Texas Workforce Commission; and
    - Ensure certain documents in their possession *before* they leave care, including a driver's license or identification card, birth certificate, social security card, immunization records, proof of enrollment in Medicaid, and copy of credit report.
- ☐ Determine if the child has been advised of eligibility for Family Group Decision Making or Circles of Support in regard to their future.
- ☐ Determine if child has been 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?*

Permanency Hearing After Final Order Checklist

continued

Well-being Issues

Medical and Mental Health Care:

- ☐ Permanency Progress Report must include a summary of medical care, including:
  - Nature of emergency medical care provided to child and circumstances necessitating care, include injury or acute illness of child.
  - All medical and mental health treatment child receiving and child's progress with treatment.
  - This would include mental health exams, physical health exams, immunizations, dental and eye exams, and any physical mental health illnesses and treatments.
  - Any medication prescribed for child, condition, diagnosis, and symptoms for which medication was prescribed and child's progress with medication.
  - For child receiving psychotropic medication:
    - any psychosocial therapies, behavior strategies, or other non-pharmacological interventions provided to child;
    - dates since previous hearing of any office visits child has had with prescribing physician, physician assistant, or advanced practice nurse;
    - degree to which child or foster care provider complied or failed to comply with any plan of medical treatment for child;
    - any adverse reaction to or side effects of any medical treatment provided to child;
    - any specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis;
    - any activity child should avoid or engage in that might affect effectiveness of treatment, including physical activities, other medications, and diet; and
    - other info required by DFPS or rule of court.

Education and Educational Decisions:

- ☐ Child enrolled in school and in appropriate grade.
- ☐ Child remains in current school, regardless of placement changes.
- ☐ If change in school required due to placement change, determine:
  - Where child wants to attend school;
  - How the child will be transported;
  - Whether change can be coordinated with grading and testing periods; and
  - Whether records and credits transferred.
- ☐ If too young for school (0-3 years), child assessed for developmental milestones through ECI; if 0-5, child enrolled in Early Head Start, Head Start, or Pre-Kindergarten.
- ☐ Education Decision-Maker identified (Form 2085-E). Tex. Fam. Code § 263.004
- ☐ School supports and disciplinary issues addressed, including signed form prohibiting corporal punishment.
- ☐ Child involved in extracurricular/normalcy activities.
- ☐ As needed, child evaluated for and receiving special education services.
- ☐ If child 14 or older, has 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 continue 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

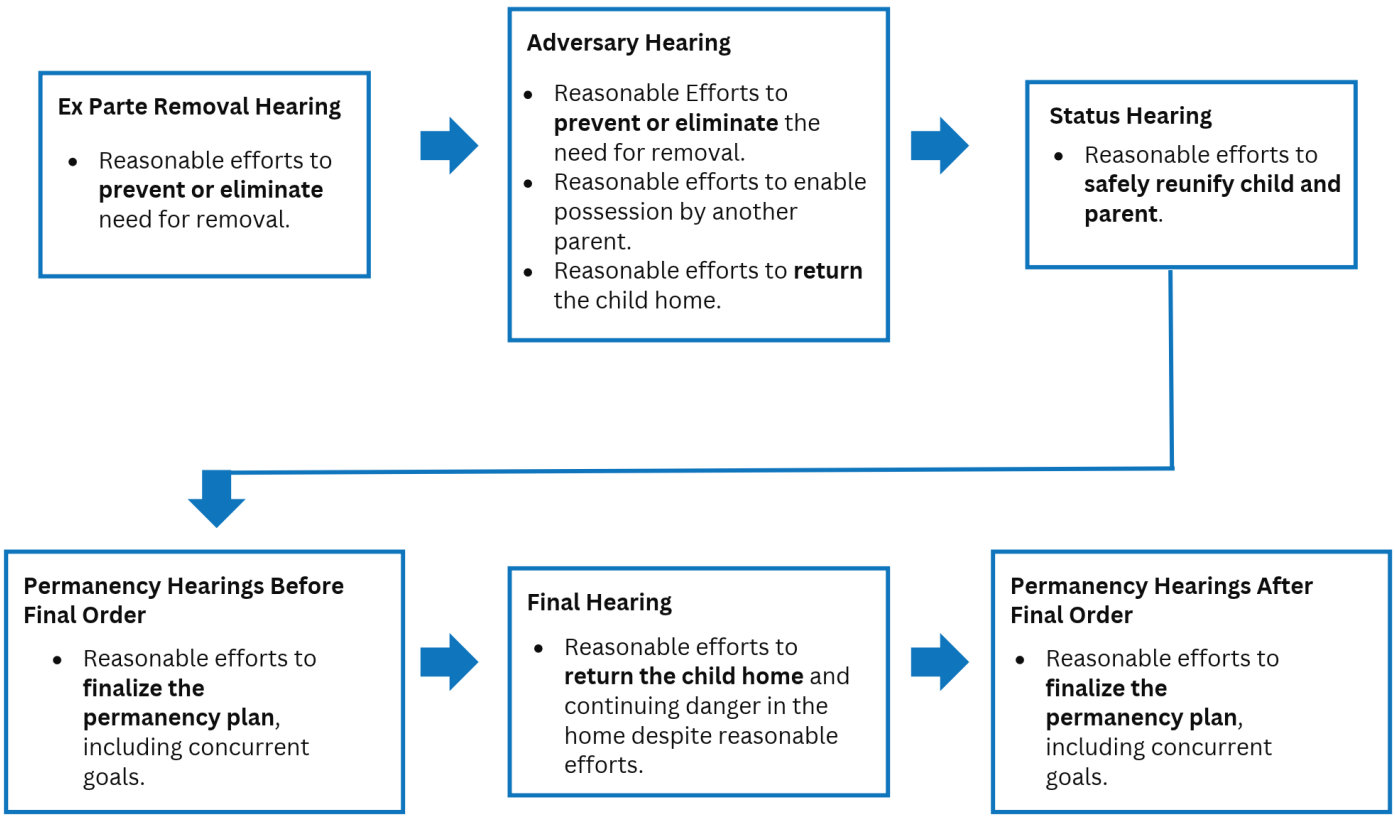
Tex. Fam. Code § 161.001(f)-(g)

- 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?



De Novo Hearing Checklist

Statutory

- ☐ Notice of right to de novo hearing was given to all parties by:
  - Oral statement in open court;
  - Posting in or outside courtroom of referring court; or
  - As directed by referring court.

Tex. Fam. Code § 201.012

- ☐ Notice of substance of associate judge's report, including proposed order, was provided:
  - In open court, by an oral statement or a copy of the associate judge's written report, including any proposed order;
  - By certified mail, return receipt requested; or
  - By facsimile transmission.

Tex. Fam. Code § 201.011(c)

- ☐ Associate judge signed and dated report, including any proposed order, and all other papers related to the case sent to the referring court. Tex. Fam. Code § 201.011(e)
- ☐ Party filed request with referring court and clerk of referring court not later than 3rd working day after receiving notice of:
  - The substance of the associate judge's report as provided by Tex. Fam. Code § 201.011; or
  - The rendering of the temporary order, if the request concerns a temporary order rendered by the associate judge under Tex. Fam. Code § 201.007(a)(14)(C).

Tex. Fam. Code § 201.015(a)

- ☐ De novo request specifies issues to be presented. Tex. Fam. Code § 201.015(b)
- ☐ If additional request for de novo hearing was filed by any other party, it was filed not later than the 3rd working day after date the initial request was filed. Tex. Fam. Code § 201.015(e)
- ☐ If the de novo request follows a jury trial, party requesting de novo may not demand a second jury in a de novo hearing before the referring court if the associate judge's proposed order or judgment resulted from a jury trial. Tex. Fam. Code § 201.015(i)
- ☐ Referring court, after notice to parties, shall hold de novo hearing not later than the 30th day after the date upon which the initial request for a de novo hearing was filed with the clerk of the referring court. Tex. Fam. Code § 201.015(f)
- ☐ During the de novo hearing before the referring court:
  - The parties may present witnesses on the issues specified in the request for the de novo hearing;
  - The referring court may consider the record from the hearing before the associate judge, including the charge to and verdict returned by a jury.

Tex. Fam. Code § 201.015(c)

Best Practices for Referring Courts

- ☐ Determine whether delay of de novo hearing impacts permanency of children the subject of the lawsuit.
- ☐ If unable to hear within 30 days, consider requesting a visiting judge to preside over the de novo hearing.
- ☐ Determine whether attorney files de novo request concurrently with motion to withdraw.

Best Practices for Associate Judges

- ☐ Follow up with referring court to determine if de novo hearing held.
- ☐ Inquire about status of de novo hearing at every statutorily mandated hearing pursuant to Tex. Fam. Code Chapter 263.

Foster Care & Education Checklist

School Readiness

- ☐ Children up to 3 years old assessed for Early Childhood Intervention (ECI) services. 34 C.F.R. Part 303
- ☐ Children ages 0-5 enrolled in Early Head Start, Head Start, or Pre-Kindergarten. 45 C.F.R. § 1305.2; Tex. Educ. Code § 29.153(b)

School Stability

- ☐ Child remains enrolled in and has transportation to the school the child attended prior to removal. Tex. Educ. Code § 25.001(a)
- ☐ Child remains in the school where the child is currently enrolled unless it is not in their best interest, regardless of additional placement changes. Tex. Educ. Code § 25.001(g), (g-1)
- ☐ School changes occur at the end of grading periods. **(Best Practice)**
- ☐ School changes do not conflict with standardized testing or final exams. **(Best Practice)**

Education Decision-Making

- ☐ DFPS has conservatorship and designated an Education Decision-Maker (EDM). Tex. Fam. Code § 153.371
- ☐ Parent retains or other person given specific education-related rights as appropriate. Tex. Fam. Code §§ 153.073, 153.371
- ☐ DFPS provided EDM Form 2085-E to child's school and information regarding the EDM filed with court. Tex. Fam. Code § 263.004
- ☐ Surrogate parent appointed to make decisions regarding special education if a foster parent is unwilling or unable to fulfill that role. Tex. Fam. Code § 263.0025

School Enrollment

- ☐ Child must attend their current school or be enrolled in a new school within three school days. Tex. Fam. Code § 264.115
- ☐ Education record or credit transfer issues addressed by court as necessary. Tex. Educ. Code § 25.007(b)

School Placement and School Success

Tex. Fam. Code §§ 263.306(G), 263.5031(J)

- ☐ Have the child's preferences regarding school placement and educational goals been discussed and considered?
- ☐ Child is enrolled in a school placement that meets their educational needs and is consistent with school stability requirements.
- ☐ Child academic progress is monitored, and supports are in place if the child is not performing at grade level.
- ☐ Additional school supports addressed as needed.
- ☐ Child involved in extracurricular activities.
- ☐ Discipline issues addressed (truancy, suspension, expulsion, restraints).
- ☐ Caregiver has completed any required documentation regarding the prohibition of corporal punishment in school. Tex. Educ. Code § 37.0011

Foster Care and Education Checklist

continued

Post-Secondary Education

Tex. Fam. Code §§ 263.306(G), 263.5031(J)

- ☐ If the youth is at least grade 9, personal graduation plan created and graduation endorsement 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

Post-Secondary Education

- ☐ Youth has identified postsecondary education, training, employment, military, or career goals and a plan to achieve them. **(Best Practice)**
- ☐ Child and caregiver know about high school graduation requirements and how to prepare and apply for post-secondary education. 42 U.S.C. § 677; Tex. Educ. Code §§ 54.366, 54.367
- ☐ Child and caregiver know how to contact the Preparation for Adult Living (PAL) coordinator and have information about the Tuition and Fee Waiver. Tex Educ. Code § 54.366

Special Education

34 C.F.R. Part 300

- ☐ Primary purpose is to ensure that all children with disabilities have access to a Free Appropriate Public Education (FAPE) that emphasizes special education and related services tailored to their unique needs.
- ☐ If needed, child evaluated for special education services.
- ☐ If eligible:
  - Date of child's last Admission, Review, and Dismissal (ARD) committee meeting.
  - Child has Individualized Education Program (IEP) that is current, appropriate, and in place.
  - ARD committee meets at least one time annually.
  - If child transfers schools, previous IEP implemented or a new IEP is developed and approved by ARD committee.
  - Transition planning is included in the IEP and is coordinated beginning no later than the age required under applicable federal and state special education requirements.

Medical and Mental Health Care Checklist

Note: *Physical (including immunizations), dental, vision, behavioral health, prescription drugs, and long-term services and supports for children in foster care are covered by Superior HealthPlan, contracted by HHSC to administer the STAR Health program.*

Eligibility

- ☐ All children in DFPS conservatorship and young adults in extended foster care or those young adults who have returned to extended foster care, through the month of the person's 22nd birthday. Tex. Fam. Code § 264.101(a-1)-(a-2)
- ☐ All young adults who turned 18 in foster care and received health care through Medicaid (STAR Health or other), but who did not return to extended foster care, are covered under STAR Health under the Affordable Care Act through the month of the person's 21st birthday, and STAR or STAR+PLUS Medicaid up to age 26 years. Pub. L No. 111-148 (Patient Protection and Affordable Care Act)
  - Former foster care children who are under the age of 21 years, 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 health care coverage and meet program rules.

Information Required in DFPS Permanency Review Hearing Court Reports:

- ☐ Nature of any emergency medical care provided to child and circumstances necessitating care, including injury or acute illness of child.
- ☐ All medical and behavioral health treatment child is receiving and child's progress with treatment (this includes ANY physical, dental, vision, behavioral health issues, and long-term services and supports).
- ☐ Any medication prescribed for child, condition, diagnosis, and symptoms for which medication was prescribed, and child's progress with medication.
- ☐ For child receiving psychotropic medication:
  - Any psychosocial therapies, behavior strategies, or other nonpharmacological interventions provided to child; and
  - The child has seen or is seeing their prescribing physician, physician assistant, or advanced practice nurse every 90 days.
- ☐ Degree to which child or foster care provider complied or failed to comply with any plan of medical treatment for child.
- ☐ Any adverse reaction to, or side effects of, any medical treatment provided to child.
- ☐ Any specific medical condition of child diagnosed or for which tests are being conducted to make diagnosis.
- ☐ Any activity child should avoid or engage in that might impact effectiveness of treatment, including physical activities, other medications, and diet.
- ☐ Other information required by DFPS or rule of court.

Tex. Fam. Code § 266.007

Medical and Mental Health Care Checklist

continued

Additional Requirements that Courts Should Monitor:

- ☐ Child has been provided the opportunity to comment on the medical care being provided. Tex. Fam. Code § 266.007(c)
- ☐ DFPS has provided notice to any parent who retains rights, and the parent's attorney if the parent is represented, of initial prescriptions or changes in dosage. Tex. Fam. Code § 264.018

Additional Requirements that Courts Should Monitor:

- ☐ Each GAL and AAL has reviewed the medical care provided to the child. Tex. Fam. Code §§ 107.002 (b-1), 107.003(b)(1)
- ☐ Each GAL and AAL has elicited from client his/her view on the medical care being provided. Tex. Fam. Code §§ 107.002(b-1)(2), 107.003(b)(2)
- ☐ AAL has advised youth 16 and older of the right to request medical consenter designation from the court. Tex. Fam. Code § 107.003(b)(3)
- ☐ Child received initial comprehensive, preventive Texas Health Steps medical checkup within 30 days of entering conservatorship.
- ☐ Child received 3-Day medical examination by the end of the third business day after the child is removed from the child's home, if the child was removed as the result of sexual abuse, physical abuse, or an obvious physical injury or has a chronic medical condition, a medically complex conditiont, or a diagnosed mental illness. Tex. Fam. Code § 264.1076(a), (b)(1)-(2).
- ☐ Child received 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.
- ☐ For youth 17 years or older taking medication, whether the youth's transition plan includes a program supervised by a health care professional to assist the youth with independently managing their medication. Tex. Fam. Code § 264.121(g)(2)

Indian Child Welfare Act (ICWA) Checklist

When Does ICWA Apply?

- ☐ In a "child custody proceeding" defined as any action, other than an emergency proceeding, that may result in a foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement as defined in 25 U.S.C. § 1903(1), 25 C.F.R. § 23.2, and Tex. Fam. Code § 152.102.
- ☐ Involving an "Indian child" defined as:
  - Unmarried, under the age of 18, and a member of an Indian Tribe; or
  - Unmarried, under the age of 18, eligible for membership in an Indian Tribe, and is the biological child of a member of a federally recognized Indian Tribe. 25 U.S.C. § 1903(4); 25 C.F.R. §23.2.

> **Note:** *Each Tribe determines eligibility criteria for membership or enrollment (not the court). If ICWA applies, please also refer to the NCJFCJ ICWA Checklists.*

Notice Requirements 25 U.S.C. § 1912(a); 25 C.F.R. § 23.11

- ☐ The child's parent, Indian custodian, and Tribe must be notified by registered mail or certified mail, return receipt requested, with copies to the appropriate Bureau of Indian Affairs (BIA) Regional Directors. Upon request of a party, the BIA will make a reasonable attempt to identify and locate the Tribe, parents, or Indian custodian.
- ☐ Finding on the record that timely notice was or was not provided as required.

> **Best Practice:** *If there is reason to believe that the child might be an Indian child, NOTIFY all of the above and make a finding on the record.*

Foster Care or Pre-adoptive Placement Preferences 25 U.S.C. § 1915(a)-(b); 25 C.F.R. §§ 23.129 - 23.132

- ☐ Child must be placed in the least restrictive setting that most approximates a family, taking into consideration sibling attachment; allows the Indian child's special needs (if any) to be met; and is in reasonable proximity to the Indian child's home, extended family, or siblings.
- ☐ Where the Tribe has not established a different order, preference for placement must be given in descending order to (1) extended family; (2) a foster home approved by the Tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (4) an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.
- ☐ The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent.
- ☐ If any party asserts that there is good cause not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties and the court. The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is "good cause" to depart from the placement preferences. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
  1. The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;

Indian Child Welfare Act (ICWA) Checklist

continued

1. The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
2. The presence of a sibling attachment that can be maintained only through a particular placement; or
3. The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

Special Evidentiary Rules

☐ **Threshold for Removal of the Child** 25 U.S.C. § 1912(e)

- *Clear and convincing evidence* that custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage. 25 C.F.R. § 23.121.
- Must include testimony of a "qualified expert witness" who is qualified to testify about whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. 25 U.S.C. § 1912(e); 25 C.F.R. § 23.122.
- Finding of "*Active Efforts*" to prevent to prevent the breakup of the Indian family and that those efforts have been unsuccessful. 25 U.S.C. § 1912(d); 25 C.F.R. § 23.120.

☐ **Threshold for Termination of Parental Rights**

- *Evidence beyond a reasonable doubt* that custody of the child by the parent of Indian custodian is likely to result in serious emotional or physical damage to the child and a causal relationship between the particular conditions in the home and the likelihood of serious emotional or physical damage to the child as a result. 25 U.S.C. § 1912(f); 25 C.F.R. § 23.121(b-c).
- Supported by testimony of a "qualified expert witness." 25 U.S.C. § 1912(f); 25 C.F.R. § 23.122(b).
- Without a causal relationship identified, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child. 25 C.F.R. § 23.121(d).
- Finding that "*Active Efforts*" have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful. 25 U.S.C. § 1912(d); 25 C.F.R. § 23.120.

Best Practices for Active Efforts include: *(i) early contact and active engagement with the child's Tribe; (ii) higher level of engagement and support for parents providing services that are specific to the needs of the family; and (iii) commitment to the spirit of ICWA. Remember that active efforts must be documented in detail in the record.*

Human Trafficking Checklist

Has child been a victim of 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 of child's age. Tex. Penal Code §§ 20A.01(1), 20A.02(b)(1)
- ☐ Violations that occur within 1000 feet of a school, juvenile detention facility, a children's shelter, or an RTC are subject to a first-degree felony enhancement. Tex. Penal Code § 20A.02(b-1)

Has child been a victim of labor trafficking?

- ☐ A person knowingly:
  - Trafficked child with intent that the child engages in forced labor or services Tex. Penal Code §§ 20A.01(2), (4), 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 of child's age. Tex. Penal Code §§ 20A.01(1), 20A.02(b)(1)
- ☐ Violations that occur within 1000 feet of a school, juvenile detention facility, a children's shelter, or an RTC are subject to a first-degree felony enhancement. Tex. Penal Code § 20A.02(b-1)

Under what circumstances will DFPS investigate trafficking?

- ☐ If a person traditionally responsible for child's care, custody, or welfare Tex. Fam. Code § 261.001(5):
  - 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)

Human Trafficking Checklist

continued

If a child has been missing from foster care, were the following steps taken?

Tex. Fam. Code § 264.123

- ☐ 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 after a missing child returned to care, DFPS notified law enforcement, court, child's AAL and GAL, and parents (unless no known location, TPR, or relinquishment).
- ☐ While a child is missing, DFPS made continuing efforts to locate the child including monthly contacts with law enforcement and former caregivers. Supervisory-level reviews were conducted quarterly for children 15 years and older.
- ☐ After a missing child returns to care, DFPS completed a recovery interview to determine any victimization that may have occurred during a missing event.

Are there any red flags to help identify child trafficking victims?

Note that this list is non-exhaustive

- ☐ Multiple missing episodes from placement;
- ☐ 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, cigarette burns;
- ☐ Tattoos or branding; and/or
- ☐ Hotel key cards or refillable gift cards.
- ☐ *See further* Office of Attorney General Signs of Trafficking.

Has commercial sexual exploitation screening occurred for child entering conservatorship?

- ☐ Effective September 1, 2025, all children in DFPS conservatorship within 45 days of entering care must receive a screening for risk of commercial sexual exploitation using a validated, evidence-informed tool if validation guidelines based on the child's age indicate the screening is appropriate or concerns of commercial sexual exploitation exist. Tex. Fam. Code § 266.012
- ☐ DFPS will use a Commercial Sexual Exploitation-Identification Tool that is validated for children 10 years and older, and may be utilized with younger children, if suspicion of commercial sexual exploitation exists.

Required Court Admonishments

Adversary Hearing

- **If a parent is not represented by an attorney:**

"You have a right to be represented by an attorney in this suit. If you are unable to afford an attorney and appear in opposition to this suit, you have the right to have an attorney appointed for you, subject to a determination of indigence by this court." Tex. Fam. Code §§ 107.013(a-1), (d), 262.201 (c)-(d).

- **If TMC is granted:**

"Your parental and custodial rights and duties may be subject to restriction or to termination unless you are willing and able to provide your child(ren) with a safe environment." Tex. Fam. Code § 262.201(m).

Status Hearing

- **If a parent is not represented by an attorney:**

"You have a right to be represented by an attorney in this suit. If you are unable to afford an attorney and appear in opposition to this suit, you have the right to have an attorney appointed for you, subject to a determination of indigence by this court." Tex. Fam. Code §§ 107.013(a-1), (d), 263.0061, 263.203(a).

- **At the end of the hearing:**

"Your progress under the service plan will be reviewed at all subsequent hearings, including a review of whether you have acquired or learned any specific skills or knowledge stated in the plan." Tex. Fam. Code § 263.203(b).

"Your parental and custodial rights and duties may be subject to restriction or to termination unless you are willing and able to provide your child(ren) with a safe environment." Tex. Fam. Code § 263.006.

Permanency Hearing Before Final Hearing

- **If a parent is not represented by an attorney:**

"You have a right to be represented by an attorney in this suit. If you are unable to afford an attorney and appear in opposition to this suit, you have the right to have an attorney appointed for you, subject to a determination of indigence by this court." Tex. Fam. Code §§ 107.013(a-1), (d), 263.0061.

- **At the end of the hearing:**

"Your parental and custodial rights and duties may be subject to restriction or to termination unless you are willing and able to provide your child(ren) with a safe environment." Tex. Fam. Code § 263.006.

Caregiver Notice and Participation in Court Hearings

Background

Caregivers may have information about a child's physical, emotional, educational, developmental, and social well-being that may assist the court in making decisions regarding placement, visitation, services, and permanency.

Under Tex. Fam. Code § 263.0021(b)(2), a caregiver includes:

- the foster parent,
- preadoptive parent,
- relative of the child who is providing care, or
- director or director's designee of the group home or general residential operation where the child is residing.

Caregivers are entitled to notice of the hearing at least 10 days in advance and are entitled to present evidence and be heard at the hearing. Tex. Fam. Code § 263.0021(b).

Notice Requirements

Under Tex. Fam. Code § 263.0021(c), notice of a hearing may be given:

- as provided by Tex. R. Civ. Proc. 21a;
- in a temporary order following a full adversary hearing;
- in an order following a hearing under this chapter;
- in open court; or
- in any manner that would provide actual notice to a person entitled to notice.

Caregivers are entitled to notice of the hearing at least 10 days in advance and are entitled to present evidence and be heard at the hearing. Tex. Fam. Code § 263.0021(b).

> **Note:** *DFPS policy directs the caseworker to notify the caregiver of the hearing. See DFPS CPS Policy § 5534, Notice Requirements for All Hearings Before the Final Order.*

Court Actions

In a hearing under Tex. Fam. Code Ch. 263, the court shall:

- determine whether the child's caregiver is present at the hearing;
- determine if confidentiality is a concern and identify the caregiver for the record either by role ("caregiver") or by name;
- document the caregiver's presence;
- allow the caregiver to testify if the caregiver wishes to provide information about the child.

See Tex. Fam. Code §§ 102.009, 263.0021(f).

Caregiver Notice and Participation in Court Hearings

Practice Tips

If a caregiver is not present, address the following questions:

- Was the caregiver provided notice?
  - If so, who provided the notice?
  - When was the notice provided?
  - How was the notice provided?
  - Were accommodations offered to facilitate participation? (i.e., virtual appearance, interpreter, work excuse letter)
  - Is there another reason the caregiver was unable to attend?

Determine if the caregiver wishes to testify as their appearance is not mandatory unless a party issued a subpoena.

Depending on the type of hearing, determine whether the caregiver will be sworn in to provide testimony, subject to cross-examination.

Clarify that testimony will be limited to information about the child.

Questions for the caregiver:

- From your personal experience and observations, do you have any information you want to share with the court about the child?
- Is the child in need of additional services or support (i.e., education, medical, mental health, normalcy)?
- As a caregiver, is there anything you need to help you care for the child (ex: daycare, transportation)?

ENGAGING YOUNG CHILDREN (AGES 0-12 MO) IN THE COURTROOM

JUDICIAL BENCH CARD[1]

Document court actions

Document in the court order:

- Whether the infant is present at the hearing.
- OR if not present, address the reasons why the infant is not in attendance.
  - Ask why the infant is not present and what efforts were made for the infant's attendance.
  - Explore and encourage resolution of transportation issues as a reason for nonattendance.
  - Depending on the situation, consider postponing the hearing until the infant can be present.
  - Request a current picture that will be introduced into the record.[2]

Observe the infant's behavior and appearance

- How does the child interact and respond to caregivers, parents, and guardians?
- Assess whether the child appears healthy and well kept.
- Does the child exhibit appropriate developmental milestones?[3]

Preparations for court attendance

- Ensure that your courtroom is child friendly.[4]
- Ensure all children are accompanied by a familiar caregiver.

Possible questions to ask the caregiver about the infant

- Is the infant forming healthy attachments?[5] With whom?
- Is the infant meeting developmental milestones?[6]

AGE	MILESTONES*
2 months	Lifts head up 45 degrees Laughs Smiles spontaneously
4 months	Rolls over Follows to 180 degrees Turns to rattling sound
6 months	Sits with no support Turns to voice Feeds self
9 months	Pulls to stand Says "Dada" and "Mama," nonspecific Waves bye-bye
12 months	Stands alone Can say 1 word Imitates activities
18 months	Runs Can remove garment Can point to at least 1 body part

*50% to 90% of children can perform these milestones.

The Milestone Chart was adapted from Hagan JF, Shaw JS, Duncan PM, eds. 2008. *Bright Futures: Guidelines For Health Supervision of Infants, Children, and Adolescents*, Third Edition, Elk Grove Village, IL: American Academy of Pediatrics and Schor EL, ed. 2004. *Caring For Your School-Age Child*, New York: Bantam Books.

[1] This bench card was created to assist judges when a child is present in the courtroom. It does not include what information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

[2] The social worker or caregiver can provide the court with a picture.

[3] Please refer to the Milestone Chart. For more information about child development, see Genie Miller Gillespie and Diane Boyd Rauber (eds.), *A Judge's Guide: Making Child-Centered Decisions In Custody Cases* (ABA Child Custody and Adoption Pro Bono Project and ABA Center on Children and the Law 2d ed. 2008).

[4] It may be necessary to address issues related to the infant's safety at the courthouse and the appropriateness of courtroom waiting areas. Judges may find it beneficial to have age-appropriate toys and books available.

[5] For more information about attachment, see JoAnne Solchany and Lisa Pilnik, *Healthy Attachment for Very Young Children in Foster Care*, Child Law Practice, Vol. 27, No. 6 (August 2008).

[6] Please refer to the Milestone Chart.

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For more information, see http://www.abanet.org/child/empowerment/home.html.

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ENGAGING TODDLERS (AGES 1-3) & PRESCHOOLERS (AGES 3-5) IN THE COURTROOM

JUDICIAL BENCH CARD[1]

Document court actions

Document in the court order:

- If the child is present and verbal, have him identify himself on the record.
- OR if the child is not present, address the reasons why the child is not in attendance.
  - What efforts were made and the accommodations offered to encourage the child's attendance.
  - Explore and encourage resolution of transportation issues as a reason for nonattendance.
  - Depending on the situation, consider postponing the hearing until the child can be present.
  - Request a current picture that will be introduced into the record.[2]

Communicate with the child during the hearing

- Keep language simple and age appropriate.
- Speak slowly and allow the child time to process the information.
- Use concrete terms.[3]
- Use names instead of pronouns.
- Stop at regular intervals to ask the child if he understands and if he has any questions.
- Ask the child to perform simple age-appropriate tasks (as outlined in the Milestone Chart).

Observe the child's behavior and appearance

- How does the child interact and respond to caregivers, parents, and guardians?
- Observe the child's demeanor when answering the questions (if verbal).[4]
  - Who does the child look to for help in answering questions?
  - Is he scared? Anxious? Avoidant?
  - Does he look to the caregiver for the "right" answer?
  - Assess whether the child appears healthy and well kept.
  - Does the child exhibit appropriate developmental milestones?[5]

AGE	MILESTONES*
12 months	Stands alone Can say 1 word Imitates activities
18 months	Runs Can remove garment Can point to at least 1 body part
24 months	Jumps up Combines words Puts on clothing
3 years	Balances on each foot 1 second Speech all understandable Can name a friend
4 years	Hops Names 4 colors Can copy a cross (+)
5 years	Can walk on tiptoes Can draw a person with head, body, arms, and legs Capable of lacing own shoes

*50% to 90% of children can perform these milestones.

The Milestone Chart was adapted from Hagan JF, Shaw JS, Duncan PM, eds. 2008. *Bright Futures: Guidelines For Health Supervision of Infants, Children, and Adolescents*, Third Edition, Elk Grove Village, IL: American Academy of Pediatrics and Schor EL, ed. 2004. *Caring For Your School-Age Child*, New York: Bantam Books.

[1] This bench card was created to assist judges when a child is present in the courtroom. It does not include what information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

[2] The social worker or caregiver can provide the court with a picture.

[3] Concrete terms refer to objects or events that are available to the senses. For example, use "in the backyard" instead of "area."

[4] Changes in a child's demeanor while answering questions may have several meanings. For example, a child could look to an adult for the answer because he is attached to that adult and wants to please him or her. On the other hand, the same action can mean that the child is afraid of the adult. For more information about questioning children, see Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (ABA Center on Children and the Law 2d ed. 1999).

[5] Please refer to the Milestone Chart. For more information about child development, see Genie Miller Gillespie and Diane Boyd Rauber (eds.), *A Judge's Guide: Making Child-Centered Decisions in Custody Cases* (ABA Child Custody and Adoption Pro Bono Project and ABA Center on Children and the Law 2d ed. 2008).

Preparations for court attendance

- Ensure that your courtroom is child friendly.[6]
- Ensure all children are accompanied by a familiar caregiver, such as a foster parent.
- Consult with the child's caregiver when scheduling the next hearing so it does not interfere with the child's normal daily routine, e.g., naptime, mealtime, etc.
- If the child is verbal:
  - If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
  - Have the agency invite him to submit drawings, cards, or other age-appropriate materials periodically. Refer to anything previously submitted.
  - Acknowledge anything that the child gives to the court while the child is present.
  - Thank the child for coming to court.
  - Encourage the child to attend the next hearing.
  - Ask the child whether he has anything to say before the hearing ends.

Possible questions to ask the child (if child is verbal)

- How old are you?
- Do you like where you are staying now?
- What do you like (not like) about where you are staying now? Suggest options (e.g., bedroom, pets, people who live there).
- Do you go to preschool or daycare? What things do you like to do while you are there?
- What kinds of things did you and your mommy (or daddy) do the last time you saw her (or him)?
- Do you feel sad or miss anyone? Suggest options (e.g., brothers, sisters, grandparents).
- Have you been to the doctor?
- Do you like the doctor?

Possible questions to ask the caregiver about the child

- Is the child forming healthy attachments?[7] With whom?
- Is the child meeting developmental milestones?[8]

[6] It may be necessary to address issues related to the child's safety at the courthouse and the appropriateness of courtroom waiting areas. Judges may find it beneficial to have age-appropriate toys and books available.

[7] For more information about attachment, see JoAnne Solchany and Lisa Pilnik, *Healthy Attachment for Very Young Children in Foster Care*, Child Law Practice, Vol. 27, No. 6 (August 2008).

[8] Please refer to the Milestone Chart.

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Engaging School-Age Children (ages 5-11) in the Courtroom

Judicial Bench Card[1]

Document court actions

Document in the court order:

- If the child is present, have him identify himself on the record.
- OR if the child is not present, address the reasons why the child is not in attendance.
  - What efforts were made and the accommodations offered to encourage the child's attendance.
  - Explore and encourage resolution of common reasons for nonattendance, including interference with the school schedule and transportation issues.
  - Depending on the situation, consider postponing the hearing until the child can be present.
  - Request a current picture that will be introduced into the record.[2]

Communicate with the child during the hearing

- Keep language simple and age appropriate.
- Talk with the child about his interests, likes, and dislikes.
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- Provide an age-appropriate list of legal terms to the child before court to which he may refer during the hearing.[3]
- Avoid legal jargon and acronyms.
- Encourage the child to ask questions, particularly if he doesn't understand a question or statement.
- Answer one question at a time.
- Recognize cultural differences in language.
- Avoid abstract questions.[4] Recognize that school-age children usually answer questions literally. *For example:* Q: Are you in school now? A: No. The child may be referring to where she is right now (the courtroom) instead of the broader question of whether she attends school.
- Publicly praise the child's accomplishments.

Observe the child's behavior and appearance

- Observe the child's interaction with caregivers, parents, and guardians.[5]
  - Does the child look to them for help, support, advice, etc.?
- Observe the child's physical appearance and health.
  - Is the child appropriately dressed?
  - Does the child look well-nourished?
  - Does the child have appropriate personal hygiene?
- Observe the child's body language.
  - Be mindful of signs that the child may be frustrated or overwhelmed.[6]

Preparations for court appearance

- Ensure that your courtroom is child friendly.[7]
- Ensure all children are accompanied by a support person at the hearing such as a foster parent, CASA, mentor, coach, or other adult role model.
- Have the agency encourage the child to submit report cards, letters, drawings, or other age-appropriate materials periodically. Refer to anything previously submitted.
- Read anything that the child gives to the court while the child is present.
- Review the outcome of the hearing with the child and answer any questions (or ensure that someone else will do so).
- Ensure the child understands what was ordered and why.
- If age appropriate, ask the child what he wants to accomplish before the next hearing.

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[1] This bench card was created to assist judges when a child is present in the courtroom. It does not include what information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

[2] The social worker or caregiver can provide the court with a picture.

[3] See Andrea Khoury, *With Me, Not Without Me: How to Involve Children in Court*, Child Law Practice, Vol. 26, No. 9 (November 2007).

[4] An example of an abstract question is "How well do you get along with your family?" For more information about questioning children, see Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (ABA Center on Children and the Law 2d ed. 1999).

[5] Please note that some school-age children act out behaviorally with those they trust because they feel safe enough to express their stress, fear, or frustration. The child may also be testing limits. In addition, changes in a child's demeanor while answering questions may have several meanings. For example, a child could look to an adult for the answer because he is attached to that adult and wants to please him or her. On the other hand, the same action can mean that the child is afraid of the adult.

[6] Signs may include squirming, lying down, or fussing.

[7] It may be necessary to address issues related to the child's safety at the courthouse and the appropriateness of courtroom waiting areas. Judges may find it beneficial to have age-appropriate toys and books available.

- Consult with the child and his caregiver when scheduling the next hearing so it does not interfere with the child's normal daily routine, including school.
- Keep a school district calendar on the bench to ensure there are no conflicts with state standardized tests.
- Thank the child for coming to court.
- Encourage the child to attend the next hearing.
- Ask the child whether he has any last questions, thoughts, or concerns.

Possible questions to ask the child

- How old are you?
- What is your best friend's name?
- What do you like (or not like) about where you are staying now?
- Do you see your mom and dad?
- Do you miss anyone? Provide options, e.g., brothers, sisters, grandparents.
- Where do you go to school?
- What grade are you in?
- Who is your favorite teacher?
- Who takes you to school?
- Are you having any problems in school?
- Do you have a tutor?
- What do you like to do before and after school?

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Engaging Adolescents (ages 12-15) in the Courtroom

Judicial Bench Card[1]

Document court actions

Document in the court order:

- If the youth is present, have him identify himself on the record.
- OR if the youth is not present, address the reasons why the youth is not in attendance.
  - What efforts were made and the accommodations offered to encourage the youth's attendance.
  - Explore and encourage resolution of common reasons for nonattendance, including interference with the school schedule and transportation issues.
  - In the absence of exceptional circumstances, postpone the hearing until the youth can be present.
  - Request a current picture that will be introduced into the record.[2]

Communicate with the youth during the court hearing

- Keep language simple and age appropriate.
- Talk with the youth about his interests, likes, and dislikes.
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- Provide an age-appropriate list of legal terms to the child before court to which he may refer during the hearing.[3]
- Avoid legal jargon and acronyms.
- Encourage the youth to ask questions, particularly if he doesn't understand a question or statement.
- Recognize cultural differences in language.
- Avoid abstract questions.[4]
- Ask directed questions.[5]
- Publicly praise the youth's accomplishments.

Observe the youth's behavior and appearance

- Observe the youth's interaction with caregivers, parents, and guardians.
  - Does the youth look to them for help, support, advice, etc.?
- Observe the youth's physical appearance and health.
  - Is the youth appropriately dressed?
  - Does the youth look well-nourished?
  - Does the youth have appropriate personal hygiene?

Preparations for court attendance

- Ensure that your courtroom is teen friendly.[6]
- Ensure all children are accompanied by a support person at the hearing such as the foster parents, CASA, mentor, coach, or other adult role model.
- Provide the youth with a task (e.g., taking notes) during the hearing.[7]
- Have the agency encourage the youth to submit report cards, letters, or other age-appropriate materials periodically. Refer to anything previously submitted.
- Read anything that the youth gives to the court while the youth is present.
- When appropriate, ask for the youth's input and opinions.
- Review the outcome of the hearing with the youth and answer any questions (or ensure that someone else will do so).
- Ensure the youth understands what was ordered and why.
- When appropriate, share court documents with the youth.[8]
- Ask the youth what he wants to accomplish before the next hearing.
- Consult with the youth and his caregiver when scheduling the next hearing so it does not interfere with the youth's normal daily routine, including school.

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[1] This bench card was created to assist judges when a child is present in the courtroom. It does not include what information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

[2] The social worker or caregiver can provide the court with a picture.

[3] See Andrea Khoury, *With Me, Not Without Me: How to Involve Children in Court*, Child Law Practice, Vol. 26, No. 9 (November 2007).

[4] An example of an abstract question is "How well do you get along with your family?"

[5] Where do you want to live? What do you like about your home? Do you know why you live away from home? Do you see your mom and dad? What things do you like to do with them? Do you wish you could see them more? For more information about questioning children, see Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (ABA Center on Children and the Law 2d ed. 1999).

[6] It may be necessary to address issues related to the youth's safety at the courthouse and the appropriateness of courtroom waiting areas. Judges may find it beneficial to have age-appropriate games and books available.

[7] Performing the task should be presented to the youth as an option and solely for his benefit. Performing the task may help the youth to focus attention and dissipate anxiety.

[8] Sharing documents increases awareness and gives the youth a sense of control.

- Keep a school district calendar on the bench to ensure there are no conflicts with state standardized tests.
- Thank the youth for coming to court. Reward even the smallest attempt at participation.[9]
- Encourage the youth to attend the next hearing.
- Ask the youth whether he has any last questions, thoughts, or concerns.

Possible questions to ask the youth

- How old are you?
- What do you like (or not like) about where you are staying now?
- Do you see your mom and dad?
- Do you miss anyone? Provide options, e.g., brothers, sisters, grandparents.
- Where do you go to school?[10]
- What grade are you in?
- Who are some of your friends?
- What courses are you taking?
- Who is your favorite teacher?
- Do you participate in any extracurricular activities?
- Have you thought about a career or what you want to do when you finish school?
- Are you having any problems in school?
- Do you have a tutor?
- What do you do on the weekends?

[9] Rewarding all attempts at participation adds to the youth's sense of control and self-confidence.

[10] For a more detailed list of questions to ask regarding school and related issues, see National Council of Juvenile and Family Court Judges, *Asking The Right Questions: A Judicial Checklist to Ensure That The Educational Needs of Children and Youth in Foster Care Are Being Addressed* (2005). Other resources to address education issues can be found at the Legal Center for Foster Care & Education website, www.abanet.org/child/education, and in the Legal Center's recent publication, *Blueprint For Change: Education Success For Children in Foster Care*, available at www.abanet.org/child/education/blueprint.

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ENGAGING OLDER ADOLESCENTS (AGES 16+) IN THE COURTROOM

JUDICIAL BENCH CARD[1]

Document court actions

Document in the court order:

- If the youth is present, have him identify himself on the record.
- OR if the youth is not present, address the reasons why the youth is not in attendance.
  - What efforts were made and the accommodations offered to encourage the youth's attendance.
  - Explore and encourage resolution of common reasons for nonattendance, including interference with the school schedule and transportation issues.
  - In the absence of exceptional circumstances, postpone the hearing until the youth can be present.
  - Request a current picture that will be introduced into the record.[2]

Communicate with the youth during the court hearing

- Use age-appropriate language.[3]
- Talk with the youth about his interests, likes, and dislikes.
- If helpful, offer to have a conversation in chambers, making sure it complies with all procedural rules.
- Provide an age-appropriate list of legal terms to the youth before court to which he may refer during the hearing.[4]
- Avoid legal jargon and acronyms.
- Ask directed questions.[5]
- Encourage the youth to ask questions, particularly if he doesn't understand a question or statement.
- Recognize cultural differences in language.
- Publicly praise the youth's accomplishments.

Observe the youth's behavior and appearance

- Observe the youth's interaction with caregivers, parents, and guardians.
  - Does the youth look to them for help, support, advice, etc.?
- Observe the youth's physical appearance and health.
  - Is the youth appropriately dressed?
  - Does the youth look well-nourished?
  - Does the youth have appropriate personal hygiene?

Preparations for court attendance

- Ensure that your courtroom is teen friendly.[6]
- Ensure all children are accompanied by a support person at the hearing such as the foster parents, CASA, mentor, coach, or other adult role model.
- Have the agency invite the youth to submit report cards, letters, drawings, stories, poems, or other age-appropriate materials periodically. Refer to anything previously submitted.
- Read anything that the youth gives to the court while the youth is present.
- When appropriate, ask for the youth's input and opinions.
- Talk with the youth about permanency options.[7]
- Review the outcome of the hearing with the youth and answer any questions (or ensure that someone else will do so).
- Ensure the youth understands what was ordered and why.
- When appropriate, share court documents with the youth.[8]
- Ask the youth what he wants to accomplish before the next hearing.
- Consult with the youth and his caregiver when scheduling the next hearing so it does not interfere with the youth's normal daily routine, including school.
- Keep a school district calendar on the bench to ensure there are no conflicts with state standardized tests.

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[1] This bench card was created to assist judges when a child is present in the courtroom. It does not include what information the judge should require from additional parties, such as a report from the child's therapist about the child's mental health status.

[2] The social worker or caregiver can provide the court with a picture.

[3] Older adolescents can understand more complex concepts.

[4] See Andrea Khoury, *With Me, Not Without Me: How to Involve Children in Court*, Child Law Practice, Vol. 26, No. 9 (November 2007).

[5] Where do you want to live? What do you like about your home? Do you know why you live away from home? Do you see your mom and dad? What things do you like to do with them? Do you wish you could see them more?

[6] It may be necessary to address issues related to the youth's safety at the courthouse and the appropriateness of courtroom waiting areas. Judges may find it beneficial to have age-appropriate games and books available.

[7] Questions that address permanency may include: Who do you spend most of your time with? Over the holidays, who do you spend time with? Is there a relative that you are close to? Is there a close family friend that you like to spend time with? Do you know what adoption is? Do you want to be adopted?

[8] Sharing court documents increases awareness and gives the youth a sense of control.

- Thank the youth for coming to court.
- Encourage the youth to attend the next hearing.
- Ask the youth whether he has any last questions, thoughts, or concerns.

Possible questions to ask the youth

- Who is your favorite teacher? Why?
- Do you participate in sports or other extracurricular activities?
- Is there anyone helping you with vocational or college applications?[9]
- When will you graduate?
- What are your post-graduation plans?
- Do you have an interest in the military?
- Do you have a mentor?
- Do you have someone you can call at anytime?
- Who do you rely on if you need help?
- Do you drive?
- What do you like to do on the weekends?
- Do you have a job?

[9] For a more detailed list of questions to ask regarding school and related issues, see National Council of Juvenile and Family Court Judges, *Asking the Right Questions: A Judicial Checklist to Ensure That the Educational Needs of Children and Youth in Foster Care Are Being Addressed* (2005). Other resources to address education issues can be found at the Legal Center for Foster Care & Education website, www.abanet.org/child/education, and in the Legal Center's recent publication, *Blueprint for Change: Education Success for Children in Foster Care*, available at www.abanet.org/child/education/blueprint.

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For more information, see http://www.abanet.org/child/empowerment/home.html.

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