SUPREME COURT CHILDREN'S COMMISSION

TEXAS CHILD WELFARE LAW BENCH BOOK

SEPTEMBER 2026

Children's Commission®
SUPREME COURT OF TEXAS PERMANENT JUDICIAL COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

ACKNOWLEDGMENTS

This 2026 Texas Child Welfare Law Bench Book (Bench Book) is organized into the following sections: Statutory, Legal Essentials, Federal, Health, Well-being, Safety, System Issues, and Family Connections. The content was updated in September 2026.

This project is supported by the Court Improvement Program grant, awarded by the United States Department of Health and Human Services Administration for Children and Families to the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Children's Commission). The information in this publication was developed by the Bench Book Advisory Committee and the staff of the Children's Commission. Any resource materials or other written contributions provided by the Children's Commission should not be read as an advisory issued by the Supreme Court of Texas or any other court. Contributions to this Bench Book are not rulings on specific cases or legal issues but are solely intended to address the improvement of the law, the legal system, and the administration of justice related to child welfare cases.

Children's Commission Staff:

Jessica Arguijo, *Communications Manager*

Jamie Bernstein, *Executive Director*

Renée Castillo-De La Cruz, *Senior Staff Attorney*

Scott Cooley, *Senior Staff Attorney*

Tiffany Edwards, *Program Specialist*

Brenda Kinsler, *Senior Staff Attorney*

Chelsea Martinez, *Program Specialist*

Patrick Passmore, *Finance Manager*

Milbrey Raney, *Assistant Director*

Elizabeth Schmidt, *Juvenile Justice Staff Attorney*

Willette Sedwick, *Accountant*

Andrea Vicencio, *Program Specialist*

The Honorable Robert Hofmann, *Senior Jurist in Residence*

The Honorable Piper McCraw, *Jurist in Residence*

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INVESTIGATIONS

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

A. Initiation of an Investigation

Initiation of an investigation requires:

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

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

- Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under Tex. Penal Code § 21.02, indecency with a child under Tex. Penal Code § 21.11, sexual assault under Tex. Penal Code § 22.011, or aggravated sexual assault under Tex. Penal Code § 22.021;
- Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- Compelling or encouraging the child to engage in sexual conduct as defined by Tex. Penal Code § 43.01, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Tex. Penal Code § 20A.02(a)(7) or (a)(8), solicitation of prostitution under Tex. Penal Code § 43.021, or compelling prostitution under Tex. Penal Code § 43.05(a)(2);
- Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Tex. Penal Code § 43.21 or pornographic;
- The current use by a person of a controlled substance as defined by Tex. Health & Safety Code Chapter 481, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Tex. Health & Safety Code Chapter 481;

- Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Tex. Penal Code § 43.25;
- Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Tex. Penal Code § 20A.02(a)(5), (a)(6), (a)(7) or (a)(8), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or
- Forcing or coercing a child to enter into a marriage.

Tex. Fam. Code § 261.001(1).

Abuse does not include:

- The refusal by a person responsible for a child's care, custody, or welfare to affirm:
  - a child's perception of the child's gender, including a refusal to use a child's preferred name or pronouns, regardless of whether the child's name has been legally changed; or
  - a child's expressed sexual orientation.

Tex. Fam. Code § 261.001(1-a).

"Neglect" means an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety. Tex. Fam. Code § 261.001(4).

"Neglect" includes:

- The leaving of a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- The following acts or omissions by a person:
  - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;
  - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
  - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services have been offered and refused;
  - placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child; or
  - placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Tex. Fam. Code § 261.001(1)(E), (1)(F), (1)(G), (1)(H), or (1)(K) committed against another child;

- The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or
- A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy.

Tex. Fam. Code § 261.001(4)(A).

Neglect does not include:

- The refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of DFPS if:
  - the child has a severe emotional disturbance;
  - the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
  - the person has exhausted all reasonable means available to the person to obtain the mental health services described by Tex. Fam. Code § 261.001(4)(B)(i)(b);
- Allowing the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture;
- A decision by a person responsible for a child's care, custody, or welfare to:
  - obtain an opinion from more than one medical provider relating to the child's medical care;
  - transfer the child's medical care to a new medical provider; or
  - transfer the child to another health care facility;
- The refusal by a person responsible for a child's care, custody, or welfare to affirm:
  - a child's perception of the child's gender, including a refusal to use a child's preferred name or pronouns, regardless of whether the child's name has been legally changed; or
  - a child's expressed sexual orientation;
- The refusal by a person responsible for a child's care, custody, or welfare to administer or consent to the administration of a 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
- Choosing 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 § 261.001(4)(B).

The DFPS Commissioner shall adopt rules to prohibit DFPS from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. Tex. Fam. Code § 261.002(b)(1). *See* CPS Policy Handbook § 2390.[1]

***Special Issue**: If a parent temporarily relinquishes custody of their child to DFPS in order to obtain certain mental health services the parent is unable to obtain for the child on their own with the intent of having the child return home, DFPS may not enter a finding of abuse or neglect against the parents or guardian of the child. DFPS may file a petition requesting temporary joint managing conservatorship with the child's caregivers in order to assist in obtaining the necessary medical treatment to enable the child to safely return home. As there is no opposition to the appointment of DFPS as a joint managing conservator, the parents are not entitled to the appointment of an attorney. (Please note that this is not a Refusal to Accept Parental Responsibility or "RAPR" case.)*

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

- Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
- Has resulted in an observable and material impairment to the growth, development, or functioning of the child.

Tex. Fam. Code § 261.111(b).

"Exploitation" includes:

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

2. By a Person Responsible for a Child's Care, Custody, or Welfare

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

Tex. Fam. Code § 261.001(5).

B. Making a Report

DFPS sets out the mandatory requirements for an investigation in CPS Policy Handbook § 2200.[2]

1. Call to the Hotline

An investigation of child abuse or neglect usually starts with a call to the hotline. Reports can also be submitted online on the Texas Abuse Hotline Website.[3] The reporter must self-identify but the identity of the reporter is confidential. Tex. Fam. Code § 261.201(a)(1). However, a court may order disclosure of the identity of the reporter or the information obtained through the investigation. Tex. Fam. Code § 261.201(b).

2. Lay Person's Duty to Report

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

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

3. Professional's Duty to Report

If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, the professional shall make a report no later than the 24th hour after the professional first suspects that the child has been abused or neglected. Tex. Fam. Code § 261.101(b).

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

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

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

4. Failure to Report

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

Failure to report when required is punishable as a Class A misdemeanor, except that the offense is a state jail felony if the child was a person with an intellectual disability who resided in a state supported living center

or a facility licensed under Tex. Health & Safety Code Chapter 252 and the actor knew the child suffered serious bodily injury. Tex. Fam. Code § 261.109(b).

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

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

5. Immunities

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

6. False Reports

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

C. Fourth Amendment Requirements in an Investigation

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

1. Consent

An evaluation of consent is based on the totality of the circumstances and under a standard of objective reasonableness. Silence or passivity cannot form the basis of consent to enter. Also, mere acquiescence to a show of lawful authority is insufficient to establish voluntary consent. Once consent is given, the consent may be limited, qualified, or withdrawn. *Gates*, 537 F.3d at 420-21.

2. Court Order

If a caseworker cannot gain consent, they may seek a court order to allow entrance for an interview, examination, or investigation. The court may order admission by DFPS to the home, school, or other place where the child may be for an interview, examination, and investigation if the court has good cause to believe the child is in imminent danger of aggravated circumstances or has probable cause to believe the admission is necessary to protect the child from abuse or neglect. Tex. Fam. Code § 261.303(b). A hearing for an order may not be ex parte unless the court has probable cause to believe there is no time, consistent with the health and safety of the child, for a full hearing. Tex. Fam. Code § 261.303(f). The order must include the court's findings regarding the sufficiency of the evidence. Tex. Fam. Code § 261.303(g). The court must provide a copy of the order to a party upon request. Tex. Fam. Code § 261.303(h).

3. Exigent Circumstances

If there is not time to obtain a court order, however, DFPS can still enter or remain in a home, even absent consent, if there are exigent circumstances. Under this standard, there must be a reasonable cause to believe

that the child is in immediate danger. Entering or remaining in the home for the sole purpose of interviewing the child does not suffice. *Gates*, 537 F.3d at 421-23.

4. Anonymous Report

DFPS is not authorized to accept an anonymous report of abuse or neglect of a child. Tex. Fam. Code § 261.104(b)(1). An individual wishing to make an anonymous report may contact any local or state law enforcement agency. Tex. Fam. Code § 261.104(b)(2). If a law enforcement agency receives an anonymous report of child abuse or neglect and refers the report to the Department, the Department must conduct an investigation to determine whether there is any evidence to corroborate the report. Tex. Fam. Code § 261.304(a). The report must be corroborated through a preliminary investigation that can include an interview of the child's teachers or peers, an interview of the child at the school, or by looking for injuries on the child without removing any of the child's clothing. An investigation can include a visit to the child's home unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit, an interview with and examination of the child, and an interview with the child's parents. Tex. Fam. Code § 261.304(b).

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

5. Taking Child into Separate Room for an Interview

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

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

Consistent with *Gates*, DFPS policy provides that transporting a child from school requires parental consent, a court order, or a reasonable belief, based on corroborated information, that the child has been abused or neglected and probably will experience further abuse upon returning home at the end of the school day. *Gates*, 537 F.3d at 429, 433; CPS Policy Handbook § 2246.1.[4] Although there is currently no express statutory provision authorizing such an order, Tex. Fam. Code § 261.303 may be applicable.

7. Immediate Removal

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

***Special Issue**: Upon first contact with a parent or other person having legal custody of a child, the DFPS investigator must provide them with a written summary that includes an explanation that any statement or admission made by the person to anyone may be used against the person in a criminal case, as a basis to remove the child, or as a basis to terminate the person's relationship with the child.*

The summary must also include known allegations under investigation and the investigator must verbally notify the person of their right to:

- *Not speak with any agent of DFPS without legal counsel present;*
- *Receive assistance from an attorney;*

- *Have a court-appointed attorney if the person is indigent, they are the parent of the child, and DFPS seeks a court order under Tex. Fam. Code Chapter 262 or 264;*
- *Record any interaction or interview subject to the understanding that the recording may be disclosed to DFPS, law enforcement, or another party under a court order;*
- *Refuse to allow the investigator to enter the home or interview the children without a court order;*
- *Have legal counsel present before allowing the investigator to enter the home or interview the child;*
- *Withhold consent to the release of any medical or mental health records;*
- *Withhold consent to any medical or psychological examination of the child; refuse to submit to a drug test; and*
- *Consult with legal counsel prior to agreeing to any proposed voluntary safety plan.*

DFPS must document that verbal notice was provided to the person and DFPS must adopt a form to document that the person received the written and oral summary and provide a signed copy to the person's attorney, if represented.

If the person does not receive the verbal notification and written summary, any information obtained from the person, and any other information that would not have been discovered without that information, is not admissible for use against the person in any civil proceeding.

Tex. Fam. Code § 261.307.

Additionally, upon making contact, a DFPS investigator must notify the person subject to an investigation that they have the right to make an audio recording of the interview, that the recording is subject to subpoena, and that they may request a copy of DFPS recording policy. Tex. Fam. Code § 261.3027. The investigator must also inform the person subject to an investigation in writing before conducting the interview that they may request an administrative review of DFPS findings, and the person shall sign an acknowledgement of receipt. Tex. Fam. Code § 261.3091.

D. Orders in Aid of Investigation

1. Interference

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

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

- Finds that DFPS has probable cause to conduct the investigation; and
- Has reason to believe that the person may remove the child from the state.

Tex. Fam. Code § 261.306(b).

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

2. Court Orders

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

- Admission to the home, school, or place where a child may be for the interview, examination, and investigation if the court has good cause to believe the child is in imminent danger of aggravated circumstances or has probable cause to believe the admission is necessary to protect the child from abuse or neglect. Tex. Fam. Code § 261.303(b);
- A child's physical, psychological, or psychiatric examination or the release of related medical records if the court has probable cause to believe the order is necessary to protect the child from abuse or neglect. Tex. Fam. Code § 261.303(c); or
- A parent's or caregiver's medical or mental examination and/or access to related records, for good cause shown. Tex. Fam. Code § 261.305(b).

A hearing for an order regarding interference with an investigation may not be ex parte unless the court has probable cause to believe there is no time, consistent with the physical health or safety of the child, for a full hearing. Tex. Fam. Code § 261.303(f). The court's order must include the court's findings regarding the sufficiency of evidence supporting the order. Tex. Fam. Code § 261.303(g).

If DFPS seeks an order to access medical or mental health records for a parent or caregiver of a child, the court shall appoint an attorney at the hearing relating to the examination or release of their medical records, if the court determines that the parent or person is indigent. Tex. Fam. Code § 261.305(c). The parent or person responsible for the child's care is entitled to notice and hearing prior to such a court order. Tex. Fam. Code § 261.305(d).

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

When an order in aid of investigation is requested under Tex. Fam. Code § 261.303, courts might consider whether:

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

ALTERNATIVES TO REMOVAL

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

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

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

DFPS can also:

- File for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order; or
- Assist a parent or other adult with whom a child resides in obtaining a protective order.

Tex. Fam. Code § 262.1015(a-1).

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

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

1. Court Orders

The court may order:

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

2. Expiration of the Temporary Restraining Order

The order remains in effect for up to 14 days, unless the court grants an extension under Tex. Fam. Code § 262.201(e). Tex. Fam. Code § 262.1015(d).

3. Violation of Temporary Restraining Order

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

4. Child with Sexually Transmitted Disease

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

B. Agreed Order for Removal of Alleged Perpetrator

An alleged perpetrator of abuse or neglect may also agree in writing to an order of removal under Tex. Fam. Code § 262.1015 subject to the approval of the court. The agreed order may not be used against an alleged perpetrator as an admission of child abuse or neglect and is enforceable civilly or criminally but is not enforceable as a contract. The person affected by an agreed order may request that the court terminate the order and the court must terminate the agreed order upon a finding that the order is no longer needed and that terminating the order is in the best interest of the child. Tex. Fam. Code § 262.1016.

C. Protective Orders

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

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

1. Temporary Ex Parte Protective Order

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

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

A temporary ex parte protective order can be used to:

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

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

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

A temporary ex parte protective order can be enforced through a civil contempt proceeding, and certain provisions can be criminally enforced. Tex. Fam. Code § 83.0025; Tex. Penal Code § 25.07(a).

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

2. Protective Order

A protective order may be issued by a court upon a finding that family violence has occurred. Tex. Fam. Code § 85.001. The court does not need to find that family violence is likely to occur in the future in order to render a protective order, only that family violence has occurred. Tex. Fam. Code § 85.001(a)-(b). Additionally, if a respondent's parental rights have been terminated, there is a presumption that family violence has occurred. Tex. Fam. Code § 81.0015(2). An agreed protective order can be civilly and criminally enforceable regardless of whether the court makes the required findings.

Upon a finding that there are reasonable grounds to believe that an applicant is the victim of an offense listed in Tex. Code Crim. Proc. art. 7B.001(a)(1) or (2), a court may issue a protective order that includes a statement of these findings. Tex. Code Crim. Proc. art. 7B.003. A protective order issued under Tex. Code Crim. Proc. art. 7B.003 may be effective for the duration of the lives of the offender and victim or for any shorter period stated in the order. If no period is stated in the order, the order is effective until the second anniversary of the date the order was issued. Tex. Code Crim. Proc. art. 7B.007(a).

***Special Issue**: For a protective order against a parent exceeding two years, the court must (1) make the requisite findings using a clear and convincing standard and (2) consider the child's best interest. Stary v. Ethridge,* 712 S.W.3d 584, 595-96 (Tex. 2025).

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

- Immediate or continued abuse or neglect to the child;
- Someone illegally taking the child from the home in which the child is placed;
- Behavior that poses a threat to the caregiver with whom the child is placed; or
- Someone committing an act of violence against the child or the child's caregiver.

Tex. Fam. Code § 261.504.

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

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

An application for a protective order may be filed in:

- The county in which the applicant resides;
- The county in which the respondent resides; or

- Any county in which the family violence is alleged to have occurred.

Tex. Fam. Code § 82.003.

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

- Prohibit a party from removing a child who is a member of the family or household from the possession of a person named in the order, or the jurisdiction of the court, Tex. Fam. Code § 85.021(1)(A)(i)-(ii);
- Order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence, including completion of a Battering Intervention and Prevention Program (BIPP), Tex. Fam. Code § 85.022(a);
- Prohibit the person found to have committed family violence from:
  - committing family violence;
  - communicating:
    - directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
    - a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and
    - if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;
  - going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;
  - going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;
  - engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
  - possessing a firearm, unless the person is a peace officer, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision;
  - tracking or monitoring personal property or a motor vehicle in possession of an applicant or the applicant's family or household without the applicant's effective consent, including by using a tracking device, physically following, or causing another to physically follow the applicant or family member.

Tex. Fam. Code § 85.022(b).

There is a presumption that family violence has occurred if:

- The respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:

    - an offense under Tex. Penal Code Title 5, for which the court has made an affirmative finding that the offense involved family violence under Tex. Code Crim. Proc. art. 42.013; or
    - an offense under Tex. Penal Code Title 6; and
- The respondent's parental rights with respect to the child have been terminated.

Tex. Fam. Code § 81.0015.

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

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

- The first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or
- The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

Tex. Fam. Code § 85.025(c).

Each protective order must specify when the order expires and must provide notice of any extensions that may apply as a result of the person's confinement or imprisonment. Tex. Fam. Code § 85.026(d).

A court must use the standardized protective order form developed by the Office of Court Administration (OCA) to issue a temporary ex parte order under Tex. Fam. Code Chapter 85. Failure to use the form does not affect the validity or enforceability of the order. Tex. Fam. Code § 85.0221.

Pursuant to Tex. Fam. Code § 85.026, each protective order including a temporary ex parte order, must contain the following in boldfaced type, capital letters, or underlined:

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

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

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

"IF A PERSON SUBJECT TO A PROTECTIVE ORDER IS RELEASED FROM CONFINEMENT OR IMPRISONMENT FOLLOWING THE DATE THE ORDER WOULD HAVE EXPIRED, OR IF THE ORDER

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

> "(1) THE FIRST ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF MORE THAN FIVE YEARS; OR
>
> "(2) THE SECOND ANNIVERSARY OF THE DATE THE PERSON IS RELEASED, IF THE PERSON WAS SENTENCED TO CONFINEMENT OR IMPRISONMENT FOR A TERM OF FIVE YEARS OR LESS."

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

Tex. Fam. Code § 85.026(a).

“DURING THE TIME IN WHICH THIS ORDER IS VALID AND SUBJECT TO TRANSFER, THE ORDER PREVAILS OVER ANY OTHER ORDER RENDERED IN A SUIT FOR DISSOLUTION OF A MARRIAGE OR A SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP TO THE EXTENT OF ANY CONFLICT BETWEEN THE ORDERS.” Tex. Fam. Code § 85.026(b).

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER." Tex. Fam. Code § 85.026(c).

Each protective order must be:

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

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

- Inform the clerk of the court that a final order has been rendered; and
- Forward a copy of the final protective order to the court in which the suit is pending.

Tex. Fam. Code § 85.062(c).

If a protective order was rendered before the filing of a SAPCR or while the suit is pending, the court that rendered the order shall, on the motion of a party or the court’s own motion, transfer the protective order to the court having jurisdiction over the suit if the court finds that the transfer will not negatively impact the safety of any person protected by the order. Tex. Fam. Code § 85.064(a).

If a protective order that affects a party’s right to possession of or access to a child is rendered after the date a final order was rendered in a SAPCR, on the motion of a party or on the court’s own motion, the court shall

transfer the protective order to the court of continuing, exclusive jurisdiction if the court finds that the transfer will not negatively impact the safety of any person protected by the order. Tex. Fam. Code § 85.064(b).

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

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

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

3. Temporary Restraining Order

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

For more information on the impacts of domestic violence in child welfare cases, *see* the *Domestic Violence* chapter of this Bench Book.

D. Relinquishing Custody of Child to Obtain Certain Services

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

1. Severe Emotional Disturbance Defined

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

2. Option of Joint Managing Conservatorship Between Parent and DFPS

Before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance to obtain mental health services for the child, DFPS must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS. Tex. Fam. Code § 262.352. DFPS provides guidance to caseworkers on the decision-making process about whether to offer a Joint Managing Conservatorship to a parent of a child with severe emotional disturbance in the DFPS Investigation and Referral to DSHS Residential Treatment Center Bed Resource Guide.[5]

E. Child Safety Check Alert List

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

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

- Investigating a report of child abuse or neglect;
- Providing protective services to a family receiving family-based support services; or
- Providing protective services to the family of a child in the managing conservatorship of DFPS.

Tex. Fam. Code § 261.3022(a).

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

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

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

Tex. Fam. Code § 261.3022(c).

If law enforcement encounters a child or other person listed on the TCIC child safety check alert list, the law enforcement officer shall follow the procedures described by the Tex. Code Crim. Proc. art. 2A.056. Tex. Fam. Code § 261.3023.

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

- Immediately contact DFPS on the dedicated law enforcement telephone number for statewide intake;
- Request information from DFPS regarding the circumstances of the case involving the child or other person; and
- Request information from the child and the other person regarding the child's safety, well-being, and current residence.

Tex. Code Crim. Proc. art. 2A.056(b).

The peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child. Tex. Code Crim. Proc. art. 2A.056(c).

If the peace officer determines that the circumstances described by Tex. Fam. Code § 262.104 exist, the officer may take temporary possession of the child without a court order as provided by Tex. Fam. Code § 262.104. If the peace officer does not take possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to DFPS. Tex. Code Crim. Proc. art. 2A.056(d).

A peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS shall report to TCIC that the child or other person has been located and to whom the child was released, as applicable. Tex. Code Crim. Proc. art. 2A.056(e).

A law enforcement officer who locates a child listed on the TCIC child safety check alert list shall report that the child has been located in the manner prescribed by Tex. Code Crim. Proc. art. 2A.056. Tex. Fam. Code § 261.3024(a).

If DFPS locates a child who has been placed on the child safety check alert list established under Tex. Fam. Code § 261.3022 through a means other than information reported to DFPS by a law enforcement officer under Tex. Code Crim. Proc. art. 2A.056, DFPS shall report to TCIC that the child has been located. Tex. Fam. Code § 261.3024(b).

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

REQUIRED PARTICIPATION

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

Please *see* the Checklist Section for the Required Participation Checklist.

A. Filing the Petition

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

- Alleviating the effects of the abuse or neglect that has occurred;
- Reducing a continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; or
- Reducing a substantial risk of abuse or neglect caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; and
- Permitting the child and any siblings of the child to receive services.

Tex. Fam. Code § 264.203(a)-(b).

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

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

Tex. Fam. Code § 264.203(d).

B. Mandatory Appointment of Attorney

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

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

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

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

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

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

C. Hearing

1. Ex Parte Orders Prohibited

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

2. When Must Hearing Be Held

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

3. Burden of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution. Tex. Fam. Code § 264.203(m).

4. Court Actions Before the Hearing

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

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the motion, the right to a court-appointed attorney.

Tex. Fam. Code § 264.203(i).

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

- Income;
- Source of income;
- Assets;
- Property ownership;
- Benefits paid in accordance with a federal, state, or local public assistance program;
- Outstanding obligations; and
- Necessary expenses and the number and ages of the parent's dependents.

Tex. Fam. Code § 264.203(j).

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

5. Required Findings for Court Ordered Services

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

- Abuse or neglect has occurred or there is a substantial risk of abuse or neglect or continuing danger to the physical health or safety of the child caused by an act or failure to act of the parent, managing conservator, guardian, or other member of the child's household; and
- Services are necessary to ensure the physical health or safety of the child.

Tex. Fam. Code § 264.203(m).

6. Court Actions if Required Participation Granted

If a court renders an order granting the Department's petition, the court must:

- State its findings in the order;
- Make appropriate temporary orders under Tex. Fam. Code Chapter 105 necessary to ensure the safety of the child, except that the court may not issue a temporary order that places the child outside of the child's home or in the conservatorship of the Department; and
- Order participation in specific services narrowly tailored to address the findings made by the court.

Tex. Fam. Code § 264.203(n).

Tex. Fam. Code § 105.001 provides that a court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order:

- For the temporary conservatorship of the child;
- For the temporary support of the child;
- Restraining a party from disturbing the peace of the child or another party;
- Prohibiting a person from removing the child beyond a geographical area identified by the Court; or
- For payment of reasonable attorney's fees and expenses.

A parent, managing conservator, guardian, or other member of a household ordered to participate in services may obtain those services from a qualified provider selected by the person. Tex. Fam. Code § 264.2031(a). A managing conservator, guardian, or other member of a household who is not a parent is responsible for the cost of those services. Tex. Fam. Code § 264.2031(b). An individual who successfully completes the services ordered under Tex. Fam. Code § 264.203(a) must obtain verification from the service provider of that completion, and DFPS must accept the provider's verification as proof of completion. Tex. Fam. Code § 264.2031(c).

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

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

D. Non-Perpetrators

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

E. Dismissal Date

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

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

The court may extend an order up to an additional 180 days only if the court finds:

- The extension is necessary to allow the person time to complete ordered 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;
- The completion of the services is necessary to ensure the physical health and safety of the child; and
- The extension is requested by the person or the person's attorney.

Tex. Fam. Code § 264.203(s).

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

Tex. Fam. Code Chapter 262 governs the circumstances in which DFPS may seek managing conservatorship of a child if there is an immediate need for the child's removal from the home due to child abuse or neglect. Tex. Fam. Code Chapter 262, Subchapter B.

Please *see* the Checklist Section for the Reasonable Efforts Checklist.

A. Removal or Conservatorship of a Child

1. Authorized Actions by Governmental Entity

A governmental entity with an interest in the child may file a suit affecting the parent-child relationship requesting an order or take possession of a child without a court order. Tex. Fam. Code § 262.001(a).

2. Child's Health and Safety is Paramount Concern

When determining if reasonable efforts have been made with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home, the child's health and safety is the paramount concern. Tex. Fam. Code § 262.001(b).

3. Restriction on Removal

DFPS may not take possession of a child based on evidence that:

- The parent homeschooled the child;
- The parent is economically disadvantaged;
- The parent has been charged with a nonviolent misdemeanor (other than one listed in Tex. Penal Code Title 5 or 6, or involves family violence as defined by Tex. Fam. Code § 71.004;
- The parent provided or administered low-THC cannabis if the low-THC cannabis was prescribed for the child;
- The parent declined immunization for a child for reasons of conscience, including religious belief;
- The parent sought a second opinion for a child's medical care or transferred a child's medical care to a new provider or facility;
- The parent allowed a child to engage in independent activities;
- The parent tested positive for marijuana unless the parent's marijuana use caused significant impairment to the child's physical or mental health or emotional development;
- The parent 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
- The parent 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 § 262.116(a).

Tex. Fam. Code § 262.116 does not prohibit DFPS from gathering or offering evidence of these actions as part of an effort to take possession of a child. Tex. Fam. Code § 262.116(d).

B. Jurisdiction, Transfer, and Venue

1. Jurisdiction

A suit brought by DFPS requesting an order under Tex. Fam. Code Chapter 262 may be filed in a court with jurisdiction to hear the suit in the county in which the child is found. Tex. Fam. Code § 262.002.

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

If a court of this state has acquired continuing, exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child except as provided by Tex. Fam. Code Chapter 155, Tex. Fam. Code § 103.001(b), or Tex. Fam. Code Chapter 262. Tex. Fam. Code § 155.001(c).

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) governs jurisdiction over child custody issues between Texas and other states.[6] Tex. Fam. Code Chapter 152 codifies the UCCJEA into state law.

Except as provided in Tex. Fam. Code § 152.204, a Texas court may not modify a child custody determination made by a court of another state unless:

- The Texas court has jurisdiction to make an initial determination under Tex. Fam. Code § 152.201(a)(1)-(2); and
- The court of the other state determines it no longer has exclusive continuing jurisdiction, or that the Texas court would be a more convenient forum, or either court determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state. Tex. Fam. Code § 152.203.[7]

For more information, *see* UCCJEA Flow Chart.[8]

2. Transfer

On receiving notice that a court exercising emergency jurisdiction under Chapter 262 has ordered the transfer of a suit affecting the parent-child relationship under Tex. Fam. Code § 262.203(a)(2), a court of continuing, exclusive jurisdiction (CCEJ) must transfer the proceedings to the court exercising jurisdiction under Tex. Fam. Code Chapter 262. Tex. Fam. Code § 155.201(d). The court exercising emergency jurisdiction under Tex. Fam. Code Chapter 262 may transfer the suit affecting the parent-child relationship to the CCEJ if the transfer is necessary for the convenience of the parties and if transfer is in the child's best interest. Tex. Fam. Code § 262.203(a)(1). A court exercising jurisdiction under Tex. Fam. Code Chapter 262 may also transfer the suit affecting the parent-child relationship if grounds exist for transfer based on improper venue, to the court having venue of the suit under Tex. Fam. Code Chapter 103. Tex. Fam. Code §§ 103.002, 262.203(a)(3). However, a court exercising jurisdiction under Tex. Fam. Code Chapter 262 is not required to transfer the suit to a court in which a parent has filed a suit for dissolution of marriage before a final order for

the protection of the child has been rendered. After a final order is rendered, either party may move to transfer the suit affecting the parent-child relationship to the court hearing the dissolution suit. Tex. Fam. Code §§ 6.407(b), 262.203(c). For more information, *see* CCEJ Decisions Chart.[9]

A motion to transfer relating to a suit filed under Tex. Fam. Code Chapter 262 may be filed separately from the petition and is timely filed while the case is pending. Tex. Fam. Code § 262.203(b).

DFPS is required to file a transfer order issued under Tex. Fam. Code § 262.203(a)(2) with the clerk of the CCEJ so that the clerk of the CCEJ can, within the time required by Tex. Fam. Code § 155.207(a), transfer the case to the court exercising jurisdiction under Chapter 262. Tex. Fam. Code § 155.204. Pursuant to Tex. Fam. Code § 262.203, an order of transfer must include:

- The date of any future hearings in the case that have been scheduled by the transferring court;
- Any date scheduled by the transferring court for the dismissal of the suit under Tex. Fam. Code § 263.401; and
- The name and contact information of each attorney ad litem (AAL) or guardian ad litem (GAL) appointed in the suit.

Tex. Fam. Code § 262.203(d).

The court to which a suit affecting the parent-child relationship is transferred may retain an attorney ad litem or guardian ad litem appointed by the transferring court. If the court finds that the appointment of a new attorney ad litem or guardian ad litem is appropriate, the court shall appoint that attorney ad litem or guardian ad litem before the earlier of:

- The 10th day after the date of receiving the order of transfer; or
- The date of the first scheduled hearing after the transfer.

Tex. Fam. Code § 262.203(e).

Tex. Fam. Code § 155.207 addresses the transfer of court files from one jurisdiction to another. Not later than the 10th working day after the date an order of transfer is signed, the clerk of the court transferring a proceeding shall send to the proper court to which the transfer is being made:

- A transfer certificate and index of transferred documents;
- A copy of each final order;
- A copy of the order of transfer signed by the transferring court;
- A copy of the pleadings in the pending proceeding and any other document specifically requested by a party;
- A copy of the transfer certificate and index of transferred documents from each previous transfer; and
- A bill of any costs that have accrued in the transferring court.

Tex. Fam. Code § 155.207(a).

On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the clerk of the

transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. Tex. Fam. Code § 155.207(c).

3. Venue

An original suit must be filed in the county where the child resides, unless:

- Another court has continuing exclusive jurisdiction under Tex. Fam. Code Chapter 155; or
- Venue is fixed in a suit for dissolution of marriage under Tex. Fam. Code Subchapter D, Chapter 6.

Tex. Fam. Code § 103.001(a).

A child resides in the county where the child's parents reside or the child's parent resides, if only one parent is living, with certain exceptions. Tex. Fam. Code § 103.001(c).

C. Emergency Removal With a Court Order

1. Filing a Petition Before Taking Possession of a Child

An original suit filed by a governmental entity requesting permission to take possession of a child without prior notice and a hearing must be supported by a sworn affidavit of a person with personal knowledge stating facts sufficient to satisfy a person with ordinary prudence and caution that:

- There is an immediate danger to the child's physical health or safety or the child has been the victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;
- There is no time, consistent with the physical health or safety of the child, for a full Adversary Hearing;
- The child could not be adequately protected by a kick-out order of the perpetrator under Tex. Fam. Code § 262.1015 or Tex. Fam. Code § 262.1016.
- The placement with a relative or designated caregiver under a Parental Child Safety Placement (PCSP) was:
  - offered but refused;
  - was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or
  - would pose an immediate danger to the child; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

Tex. Fam. Code § 262.101(a).

The affidavit must describe with specificity in a separate section all reasonable efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.101(b).

2. Emergency Order Authorizing Possession of a Child Prior to Removal

Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Tex. Fam. Code § 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child, the court must find that:

- There is an immediate danger to the physical health or safety of the child or the child has been the victim of neglect or sexual abuse;
- Continuation in the home would be contrary to the child's welfare;
- There is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full Adversary Hearing;
- The child could not be adequately protected by a kick-out order of the perpetrator under Tex. Fam. Code § 262.1015 or Tex. Fam. Code § 262.1016.
- The placement with a relative or designated caregiver under a PCSP was:
- offered but refused;
- was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or
- would pose an immediate danger to the child; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Tex. Fam. Code § 262.102(a).

The emergency removal order must describe with specificity in a separate section all reasonable efforts made to prevent or eliminate removal or return the child home. Tex. Fam. Code § 262.102(e).

In determining whether there is an immediate danger to the physical health or safety of a child, the court may consider whether the child's household includes a person who has:

- Abused or neglected another child in a manner that causes serious injury to or the death of the other child; or
- Sexually abused another child.

Tex. Fam. Code § 262.102(b).

The court may not order an emergency removal based solely on the medical opinion of a doctor under contract with DFPS who has not examined the child. Tex. Fam. Code § 262.102(b-1).

The court shall render a temporary order under Tex. Fam. Code Title 4 for the protection of the child if the court finds that, based on the recommendation of or request by DFPS:

- Child abuse or neglect has occurred; and
- The child requires protection from family violence by a member of the child's family or household.

Tex. Fam. Code § 262.102(c).

3. Removal of Alleged Perpetrator of Physical/Sexual Abuse

If DFPS determines after an investigation that child abuse has occurred and that the child would be protected in the child's home by the removal of the alleged perpetrator of the abuse, DFPS shall file a petition for the removal of the alleged perpetrator from the residence rather than attempt to remove the child from the residence. Tex. Fam. Code § 262.1015(a).

Notwithstanding Tex. Fam. Code § 262.1015(a), if DFPS determines that a protective order under Tex. Fam. Code Title 4 provides a reasonable alternative to obtaining an order under Tex. Fam. Code § 262.1015(a), DFPS may file an application for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order or can assist the parent or other adult with whom the child resides in obtaining a protective order. Tex. Fam. Code § 262.1015(a-1). For more information, *see* the *Alternatives to Removal* chapter of this Bench Book.

A court has the authority to issue a temporary restraining order for the removal of an alleged perpetrator if the DFPS petition states facts sufficient to satisfy the court that:

- There is immediate danger to the physical health or safety of the child or the child has been the victim of sexual abuse;
- There is no time, consistent with the physical health or safety of the child, for an Adversary Hearing;
- The child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child;
- The parent or other adult with whom the child will continue to reside in the child's home is likely to make reasonable efforts to monitor the residence and report to DFPS and appropriate law enforcement any attempt by the alleged perpetrator to return to the residence; and
- The issuance of the order is in the best interest of the child.

Tex. Fam. Code § 262.1015(b).

The temporary restraining order:

- Is to be served on the alleged perpetrator as well as the adult with whom the child will continue to reside. Tex. Fam. Code § 262.1015(c).
- Expires not later than the 14th day after the order was rendered, unless the court grants an extension under Tex. Fam. Code § 262.201(e). Tex. Fam. Code § 262.1015(d).
- Requires that the other adult with whom the child will continue to reside make a reasonable effort to monitor the residence and report to DFPS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence. Tex. Fam. Code § 262.1015(e).

The court shall order the removal of an alleged perpetrator if the court finds that the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the child's residence and that:

- The presence of the alleged perpetrator in the child's residence constitutes a continuing danger to the physical health or safety of the child; or

- The child has been the victim of sexual abuse and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the residence.

Tex. Fam. Code § 262.1015(f).

Removal of an alleged perpetrator from the child's home was cited by the Supreme Court of Texas as a means of protecting a child, short of separating the child from the parents and placing the child in foster care. *See In re Tex. Dep't of Fam. & Protective Servs.*, 255 S.W.3d 613, 615 (Tex. 2008) (orig. proceeding).

4. Failure to Report Perpetrator's Return

A person commits an offense if the person is a parent or other person with whom a child resides, the person is served with an order, and the person fails to make a reasonable effort to monitor the residence of the child or to report to DFPS and the appropriate law enforcement agency an attempt by the alleged perpetrator to return to the residence. An offense under this section is a Class A misdemeanor. Tex. Fam. Code § 262.1015(g).

5. Criminal Offense for Returning to Child's Residence

A person commits an offense if, in violation of a court order under this section, the person returns to the residence of the child the person is alleged to have abused. An offense under this subsection is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this subsection. Tex. Fam. Code § 262.1015(h).

D. Emergency Removal Without a Court Order

1. Taking Possession Without a Court Order

If there is no time to obtain a temporary order, temporary restraining order or attachment under Tex. Fam. Code § 262.102(a) before taking possession of the child consistent with the health and safety of that child, an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions only:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe there is an immediate danger to the physical health or safety of a child;
- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03;
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03; or
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled

substance as defined by Tex. Health & Safety Code Chapter 481 and the use constitutes an immediate danger to the physical health or safety of the child.

Tex. Fam. Code § 262.104(a).

An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take possession on personal knowledge or information furnished by another, that has been corroborated by personal knowledge, that would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine. Tex. Fam. Code § 262.104(b).

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

A petition filed after taking possession of a child in an emergency must be supported by an affidavit that comports with the grounds stated above. The affidavit must also state that based on the affiant's personal knowledge:

- That continuation in the home would be contrary to the child's welfare;
- There was no time, consistent with the child's health and safety, for a full adversary hearing under Tex. Fam. Code Subchapter C;
- That the child could not be adequately protected by a kick-out order of the perpetrator under Tex. Fam. Code § 262.1015 or Tex. Fam. Code § 262.1016.
- That placement with a relative or designated caregiver under a parental child safety placement (PCSP) was:
  - offered but refused;
  - was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or
  - would pose an immediate danger to the child; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

Tex. Fam. Code § 262.105(b).

The affidavit must describe with specificity in a separate section all reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.105(c).

2. Initial Hearing Requirement After Removal

If a child has been taken into possession without a court order by a governmental entity, the court in which a suit has been filed shall hold an initial hearing on or before the first business day after the date the child is taken into possession. Tex. Fam. Code § 262.106. The court shall render orders that are necessary to protect the physical health and safety of the child. Tex. Fam. Code § 262.106(a).

If the court is unavailable for a hearing on the first business day, then, and only in that event, the hearing shall be held no later than the first business day after the court becomes available, provided that the hearing

is held no later than the third business day after the child is taken into possession. Tex. Fam. Code § 262.106(a).

For the purpose of determining the first business day after the date the child is taken into possession, the child is considered to have been taken into possession by DFPS on the expiration of the five-day period permitted pursuant to Tex. Fam. Code § 262.007(c) or Tex. Fam. Code § 262.110(b). Tex. Fam. Code § 262.106(d).

The initial hearing may be ex parte (without notice to the parents) and proof may be by sworn petition or affidavit if a full Adversary Hearing is not practicable. Tex. Fam. Code § 262.106(b).

If the initial hearing is not held within the time required, the child shall be returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child. Tex. Fam. Code § 262.106(c).

3. Standard for Decision at Initial Hearing After Taking Possession

The court must order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity, unless the court is satisfied that:

- The evidence shows that one of the following circumstances exists:
  - there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child;
  - the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03 on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
  - the parent or person who has possession of the child is currently using a controlled substance as defined by Tex. Health & Safety Code Chapter 481, and the use constitutes an immediate danger to the physical health or safety of the child; or
  - the parent or person who has possession of the child has permitted the child to remain on premises used for the manufacture of methamphetamine;
- Continuation of the child in the home would be contrary to the child's welfare;
- That the child could not be adequately protected by a kick-out order of the perpetrator under Tex. Fam. Code § 262.1015 or Tex. Fam. Code § 262.1016.
- That placement with a relative or designated caregiver under a PCSP was:
- Offered but refused;
- Was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or
- Would pose an immediate danger to the child; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Tex. Fam. Code § 262.107(a).

In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child.

Tex. Fam. Code § 262.107(b).

If the court does not order the return of the child at an initial hearing under Tex. Fam. Code § 262.107(a), the court must describe in writing and in a separate section the reasonable efforts, consistent with the circumstances and providing for the safety of the child, that were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.107(c).

***Special Issue**: Ex parte hearings authorized under Tex. Fam. Code Chapter 262 must be recorded by audio or video recording or a court reporter transcription. On request of a party to the suit, the court must provide a copy of the record of an ex parte hearing to the party. Tex. Fam. Code § 262.206(b-c). DFPS must provide notice of an ex parte hearing if DFPS has received notice that a parent who is a party is represented by an attorney. Tex. Fam. Code § 262.206(d).*

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4. Taking Possession of Child in Emergency with Intent to Return Home

An authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer may take temporary possession of a child without a court order on discovery of a child in a situation of danger to the child's physical health or safety when the sole purpose is to deliver the child without unnecessary delay to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child. Tex. Fam. Code § 262.110(a).

Until a parent or other person entitled to possession of the child takes possession of the child, DFPS may retain possession of the child without a court order for not more than five days. On the expiration of the fifth day, if a parent or other person entitled to possession does not take possession of the child, DFPS shall take action under Tex. Fam. Code Chapter 262 as if DFPS took possession under Tex. Fam. Code § 262.104. Tex. Fam. Code § 262.110(b).

E. Expedited Hearing and Appeal

1. Expedited Hearing

DFPS is entitled to an expedited hearing under Tex. Fam. Code Chapter 262 in any proceeding in which a hearing is required if DFPS determines that a child should be removed from the child's home because of an immediate danger to the physical health or safety of the child. Tex. Fam. Code § 262.112(a).

2. Expedited Appeal

In any proceeding in which an expedited hearing is held under Tex. Fam. Code § 262.112(a), DFPS, a parent, guardian, or other party to the proceeding is entitled to an expedited appeal on a ruling by the court that the child may not be removed from the child's home. Tex. Fam. Code § 262.112(b).

3. Subsequent Allegation

If a child is returned to the child's home after a removal in which DFPS was entitled to an expedited hearing under Tex. Fam. Code § 262.112 and the child is subject of a subsequent allegation of abuse or neglect, DFPS or any other interested party is entitled to an expedited hearing on the removal of the child from the child's home in the manner provided by Tex. Fam. Code § 262.112(a) and to an expedited appeal in the manner provided by Tex. Fam. Code § 262.112(b). Tex. Fam. Code § 262.112(c).

AFTER REMOVAL

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

A. Procedures after Order Authorizing Removal

1. Duration of Temporary Order, Temporary Restraining Order, and Attachment

A temporary order, temporary restraining order, or attachment of the child issued under Tex. Fam. Code § 262.102(a) expires not later than 14 days after the date it is issued unless it is extended as provided by Tex. R. Civ. P. 680 or Tex. Fam. Code § 262.201(e). Tex. Fam. Code § 262.103.

2. Temporary Managing Conservatorship

The court has the authority to issue a temporary order as described in Tex. Fam. Code § 105.001, including an order for temporary conservatorship of a child, which may be rendered without notice and an Adversary Hearing if the order is an emergency order sought by a governmental entity. Tex. Fam. Code § 105.001(h).

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child. Tex. Fam. Code § 153.002.

The managing conservator must be a parent, a competent adult, DFPS, or a licensed child-placing agency. Tex. Fam. Code § 153.005(b).

A voluntary agreement to temporary managing conservatorship cannot be used as an admission by the parent that the parent engaged in conduct that endangered the child. Tex. Fam. Code § 262.013.

The rights and duties of a non-parent appointed as sole managing conservator are listed in Tex. Fam. Code § 153.371.

A temporary order in a suit affecting a parent-child relationship rendered in accordance with Tex. Fam. Code § 105.001 is not required to include a temporary parenting plan. The court may not require the submission of a temporary parenting plan in any case by local rule or practice. Tex. Fam. Code § 153.602.

3. Setting Date for Full Adversary Hearing

Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full Adversary Hearing shall be held not later than the 14th day after the date of the child was taken into possession by the governmental entity, unless the court grants an extension under Tex. Fam. Code § 262.201(e) or (e-1). Tex. Fam. Code § 262.201(a).

B. Attorney ad Litem and Guardian ad Litem Appointments

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

In a suit filed by a governmental entity requesting termination of the parent-child relationship or to be named conservator of a child, the court shall appoint an attorney ad litem to represent the interests of the child immediately after the filing, but before the full Adversary Hearing, to ensure adequate representation of the child. Tex. Fam. Code § 107.012. For more information regarding the role and responsibilities of an attorney ad litem, *see* Tex. Fam. Code § 107.003 and Tex. Fam. Code § 107.004.

In a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for a child, the court shall appoint a guardian ad litem to represent the best interests of the child immediately after the filing of the petition but before the full Adversary Hearing. Tex. Fam. Code § 107.011(a). For more information regarding the role and responsibilities of a guardian ad litem, *see* Tex. Fam. Code § 107.002.

2. Discretionary Appointment of Parent Attorney

Tex. Fam. Code § 107.0141 states that the court may appoint an attorney ad litem to represent the interests of a parent for a limited period beginning at the time the court issues a temporary restraining order or attachment of the parent's child under Tex. Fam. Code Chapter 262 and ending on the court's determination of whether the parent is indigent before commencement of the full Adversary Hearing. Tex. Fam. Code § 107.0141(a).

An attorney ad litem appointed for a parent under this section:

- Has the powers and duties of an attorney ad litem appointed under Tex. Fam. Code § 107.0131; and
- If applicable, shall:
  - conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and
  - interview any parent or other person who may have information relating to the identity or location of the parent.

Tex. Fam. Code § 107.0141(b).

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Inform the parent of the parent's right to be represented by an attorney ad litem appointed by the court, if the parent is indigent and appears in opposition to the suit;
- If the parent claims indigence and requests an attorney ad litem beyond the period of the temporary appointment under Tex. Fam. Code § 107.0141, assist the parent in making a claim of indigence for the appointment of an attorney ad litem; and
- Assist the parent in preparing for the full Adversary Hearing under Tex. Fam. Code Chapter 262, Subchapter C.

Tex. Fam. Code § 107.0141(c).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Tex. Fam. Code § 107.013(a)(1). Tex. Fam. Code § 107.0141(d).

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by Tex. Fam. Code § 107.0141(e), the court shall discharge the attorney ad litem from the appointment. Tex. Fam. Code § 107.0141(e).

If the attorney ad litem identifies or locates the parent, and the court determines that the parent is not indigent, the court shall discharge the attorney ad litem from the appointment. Tex. Fam. Code § 107.0141(f).

3. Court-Maintained Appointment Lists

Each court in this state shall establish and maintain a list of all attorneys who are qualified to serve as an attorney or guardian ad litem or mediator and are registered with the court. Tex. Gov't Code § 37.003(a). Guardians ad litem or other persons appointed under a program authorized by Tex. Fam. Code § 107.031 are exempt from this list. Tex. Gov't Code § 37.002. A court annually shall post each list at the courthouse of the county in which the court is located and on any Internet website of the court. Tex. Gov't Code § 37.005. Courts will also be required to use a rotation system to appoint attorneys unless certain exceptions apply.

Tex. Gov't Code § 37.004.

Additionally, the clerk of each court shall prepare a report on court appointments for an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case before the court in the preceding month or note that no appointments were made for the preceding month. Tex. Gov't Code § 36.004(a). The report on court appointments must include:

- The name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
- The name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
- The number and style of each case in which a person was appointed as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
- The number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for a case in that month;
- The total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator appointed by the court in that month and the source of the compensation; and
- If the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian, mediator, or competency evaluator for one appointed case in that month exceeds $1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses.

Tex. Gov't Code § 36.004(a)(1)-(6).

Not later than the 15th day of each month, the clerk of the court shall:

- Submit a copy of the report to the Office of Court Administration; and
- Post the report at the courthouse of the county in which the court is located and on any Internet website of the court.

Tex. Gov't Code § 36.004(b).

If a court fails to provide to the clerk of the court information required for the report submitted under Tex. Gov't Code § 36.004, the court is ineligible for any grant money awarded by this state or a state agency for the next state fiscal biennium. Tex. Gov't Code § 36.005.

Each county must biannually report to the Texas Indigent Defense Commission a copy of all formal and informal rules and forms governing the procedures the county uses to provide indigent parents and children with counsel, any fee schedule used by the court, and information on the court's compliance with Tex. Gov't Code Chapter 37 including the lists and rotation system required under that chapter. Counties must also annually report information on the number of appointments made to each attorney and information provided to the county by those attorneys under Tex. Fam. Code § 107.0042. Tex. Gov't Code § 79.0365.

4. Office of Child Representation and Office of Parent Representation and Managed Assigned Counsel Program

a. Office of Child Representation and Office of Parent Representation

The Texas Family Code authorizes governmental entities, including a county or group of counties, to create offices of child representation or parent representation. Tex. Fam. Code Chapter 107, Subchapter E; Tex. Fam. Code § 107.251; Tex. Fam. Code § 107.252; Tex. Fam. Code § 107.253; Tex. Fam. Code § 107.256; Tex. Fam. Code § 107.258; Tex. Fam. Code § 107.259; Tex. Fam. Code § 107.260; Tex. Fam. Code § 107.261; and Tex. Fam. Code § 107.262.

An office of child representation is an entity that uses public money to provide legal representation and services for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a child under Tex. Fam. Code § 107.012. Tex. Fam. Code § 107.254.

An office of parent representation is an entity that uses public money to provide legal representation and services for a parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a parent under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.255.

b. Managed Assigned Counsel Program for the Representation of Certain Children and Parents

The Texas Family Code also includes provisions authorizing the creation of managed assigned counsel programs. Tex. Fam. Code Chapter 107, Subchapter F; Tex. Fam. Code § 107.101; Tex. Fam. Code § 107.102; Tex. Fam. Code § 107.103; Tex. Fam. Code § 107.104; Tex. Fam. Code § 107.105; Tex. Fam. Code § 107.106; Tex. Fam. Code § 107.107; Tex. Fam. Code § 107.108.

A managed assigned counsel program may be operated with public money for the purpose of appointing counsel to provide legal representation and services for a child or parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which appointment is mandatory for a child under Tex. Fam. Code § 107.012 and for a parent under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.302(a).

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

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

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

best interest of the child. If the attorney represents a child considered for placement in a Residential Treatment Center (RTC), Qualified Residential Treatment Program (QRTP), or similar setting, the attorney has additional required duties under Tex. Fam. Code § 107.004(f).

The required meeting under Tex. Fam. Code § 107.004(d) must take place:

- A sufficient time before the hearing to allow the attorney ad litem to prepare for the hearing in accordance with the child's expressed objectives of representation; and
- In a private setting that allows for confidential communications between the attorney ad litem and the child or individual with whom the child ordinarily resides, as applicable.

Tex. Fam. Code § 107.004(d-1).

***Special Issue**: The meeting between the AAL and child client should occur sufficiently in advance of the hearing date to allow time to prepare for the hearing based on the information obtained at the meeting. This initial, required meeting might be a subject of judicial inquiry during the hearing as judges may want to hear from the AAL whether the AAL met with their child client. If the AAL was non-compliant with the statutory requirement, judges may inquire as to whether there was good cause for the non-compliance, and what the AAL plans to do in order to ensure that they can arrange a prompt initial meeting with their child client.*

Tex. Fam. Code § 107.004(d-2) also requires that an attorney ad litem appointed to represent a child in the managing conservatorship of DFPS shall, before each scheduled hearing under Tex. Fam. Code Chapter 263 and 264, determine whether the child's educational needs and goals have been identified and addressed. Tex. Fam. Code § 107.004(d-2).

Tex. Fam. Code § 107.004(d-3) requires that an attorney ad litem review the child's safety and well-being, including any effects of trauma to the child, and take appropriate action, including requesting a review hearing when necessary to address an issue of concern. Attorneys ad litem must also provide proof that the attorney completed a training program on trauma-informed care and the effect of trauma on children in DFPS conservatorship. Tex. Fam. Code § 107.004(b-1)(2).

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

6. Duties and Duration of Appointment of Parent Attorney

Tex. Fam. Code § 107.0131 requires an attorney appointed to represent a parent to abide by the parent's objectives for representation. Tex. Fam. Code § 107.0131(a)(1)(H).

An attorney appointed under Tex. Fam. Code Chapter 107, Subchapter B to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

- the date the suit affecting the parent-child relationship is dismissed;
- the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
- the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

Tex. Fam. Code § 107.016(2).

7. Duties of Parent Appointed to Represent Alleged Father

Except as otherwise provided by Tex. Fam. Code § 107.0132(b) and (d), an attorney ad litem appointed under Tex. Fam. Code § 107.013 to represent the interests of an alleged father is required to:

- Conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Tex. Fam. Code Chapter 160;
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and
- Conduct an independent investigation to identify or locate the alleged father, if applicable.

Tex. Fam. Code § 107.0132(a).

Tex. Fam. Code § 107.0132 provides duties for an attorney appointed to represent an alleged father who cannot be located. Specifically, those duties are limited to conducting an investigation regarding the petitioner's due diligence in locating the alleged father, and conducting an independent investigation to locate the father, including interviewing parties or persons with knowledge of the identity or location of the alleged father. If located, the attorney ad litem shall provide to each party and the court the alleged father's name and locating information. If appropriate, the court may allow the attorney to assist the alleged father in establishing paternity. If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father's interests as a parent under Tex. Fam. Code § 107.013(a)(1) or (c). Tex. Fam. Code § 107.0132.

If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father. Tex. Fam. Code § 107.0132. On receipt of the summary required by Tex. Fam. Code § 107.0132(d), the court shall discharge the attorney from the appointment. Tex. Fam. Code § 107.0132(d).

8. Duties of Attorneys Appointed to Represent Parents Whose Identity or Location is Unknown or Who Has Been Cited by Publication

Tex. Fam. Code § 107.014 addresses situations when an attorney is appointed to represent a parent whose identity or location is unknown or who has been cited by publication.

a. Duties

Except as provided by Tex. Fam. Code § 107.014(b) and (e), an attorney ad litem appointed under Tex. Fam. Code § 107.013 to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

- Conduct an investigation regarding the petitioner's due diligence in locating the parent;
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and
- Conduct an independent investigation to identify or locate the parent, as applicable.

Tex. Fam. Code § 107.014(a).

b. If the Parent is Identified and Located

If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:

- Provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:
  - disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or
  - the parent has been a victim of family violence; and
- If appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.

Tex. Fam. Code § 107.014(b).

If the court makes a finding described by Tex. Fam. Code § 107.014(b)(1)(A) or (B), the court may:

- Order that the information not be disclosed; or
- Render any other order the court considers necessary.

Tex. Fam. Code § 107.014(c).

If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Tex. Fam. Code § 107.013(a)(1). Tex. Fam. Code § 107.014(d).

c. If the Parent is Not Located or Identified

If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by Tex. Fam. Code § 107.014(e), the court shall discharge the attorney from the appointment. Tex. Fam. Code § 107.014(e).

9. Required Attorney Training

Tex. Fam. Code § 107.004 requires continuing legal education for attorneys appointed to represent children. An attorney ad litem appointed for a child in a proceeding under Tex. Fam. Code Subtitle E shall complete at least three hours of continuing legal education relating to representing children in child protection cases as described in Tex. Fam. Code § 107.004(c) as soon as practicable after the attorney ad litem is appointed per Tex. Fam. Code § 107.004(b). An attorney ad litem is not required to comply with Tex. Fam. Code § 107.004(d) if the court finds that the attorney ad litem has experience equivalent to the required education. Tex. Fam. Code § 107.004(b).

An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child protection case must complete at least three hours of continuing legal education relating to the representation of a child in a proceeding under Tex. Fam. Code Subtitle E each year before the anniversary date of the attorney's listing. Tex. Fam. Code § 107.004(b-1). The continuing legal education must focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a child in a proceeding under Tex. Fam. Code Subtitle E. Tex. Fam. Code § 107.004(c)(2). Additionally, attorneys must complete a training program regarding trauma-informed care and the effect of trauma on children in the conservatorship of DFPS. Tex. Fam. Code § 107.004(b-1)(2). Completing the trauma training may satisfy the training requirement of Tex. Fam. Code § 107.004(b-1).

Tex. Fam. Code § 107.0131 provides enumerated duties for parents' attorneys, including three hours of CLE training and meeting with the client before each hearing. Tex. Fam. Code § 107.0131 also requires that the continuing legal education relate to representing parents in child protection cases and focus on the duties of an attorney ad litem in, and the procedures of and best practices for, representing a parent in a proceeding under Tex. Fam. Code Subtitle E. Tex. Fam. Code § 107.0131(b)(2). An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case must complete at least three hours of continuing legal education relating to the representation of a parent in a proceeding under Tex. Fam. Code Subtitle E each year before the anniversary date of the attorney's listing. Tex. Fam. Code § 107.0131(c).

10. Notice Requirement to Parent Regarding Legal Representation

The temporary order, temporary restraining order, or attachment of a child rendered by the court must contain the following statement prominently displayed in boldface type, capital letters, or underlined:

"YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU." Tex. Fam. Code § 262.102(d).

DFPS or other agency must give written notice to each parent of the child or to the child's conservator or legal guardian when a representative of DFPS or other agency takes possession of a child. Tex. Fam. Code § 262.109(a).

The written notice must be given as soon as practicable, but in any event not later than the first business day after the date the child is taken into possession. Tex. Fam. Code § 262.109(b).

The written notice requirements must include, among other things:

- The reasons why the child was removed;
- Contact information for the caseworker;
- A summary of legal rights; and
- A statement that the parent has the right to hire an attorney.

Tex. Fam. Code § 262.109(c).

The court may, but is not required to, waive the required notice under special circumstances, such as:

- The inability to locate the parent or caretaker;
- The child is an abandoned infant delivered to an emergency care provider; or
- For other good cause.

Tex. Fam. Code § 262.109(d).

C. Information Provided to Relatives and Certain Individuals

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

- Related to the child within the fourth degree of consanguinity;
- An adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child's biological father; or
- Identified as a potential relative or designated caregiver as defined by Tex. Fam. Code § 264.751 on the proposed Child Placement Resources Form provided under Tex. Fam. Code § 261.307 and may provide information regarding an adult who DFPS determines has a long-standing and significant relationship with the child. Tex. Fam. Code § 262.1095(a).
- The written notice must include, among other things:
  - notice that the child is in the state's custody;
  - options available for participation in the care and placement and support of the family, the methods by which the individual may exercise those options, and any requirements the individual must satisfy to exercise those options, including the requirement that the individual be evaluated by the DFPS under Tex. Fam. Code § 262.114 before the individual may serve as a substitute caregiver; and the deadlines before which the individual must respond to exercise those options;
  - options that may be lost if the individual fails to timely respond;
  - the date, time, and location of the Status Hearing, if applicable; and
  - information regarding the procedures and timeline for a suit affecting the parent-child relationship.

Tex. Fam. Code § 262.1095(b).

DFPS is not required to provide information to a person who has criminal or family violence history. Tex. Fam. Code § 262.1095(c).

DFPS must provide the information immediately after the person has been identified and located. Tex. Fam. Code § 262.1095(d-1).

DFPS must use due diligence to identify and locate all individuals described by Tex. Fam. Code § 262.1095(a) within 30 days of the date DFPS files the SAPCR. Tex. Fam. Code § 262.1095(d). The failure of a parent or alleged father to complete the Child Placement Resources Form does not relieve DFPS of its duty to seek information about persons under Tex. Fam. Code § 262.1095(d). Tex. Fam. Code § 262.1095(e).

D. Service of Citation

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

- A managing conservator;
- A possessory conservator;
- A person having possession of or access to the child under an order;
- A person required by law or by order to provide for the support of the child;
- A guardian of the person of the child;

- A guardian of the estate of the child;
- Each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Tex. Fam. Code Chapter 161;
- An alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Tex. Fam. Code Chapter 161 or unless the petitioner has complied with the provisions of Tex. Fam. Code § 161.002(b)(2), (b)(3), or (b)(4);
- A man who has filed a notice of intent to claim paternity as provided by Tex. Fam. Code Chapter 160;
- DFPS, if the petition requests that DFPS be appointed as managing conservator of the child;
- The Title IV-D agency, if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency under Tex. Fam. Code Chapter 231;
- A prospective adoptive parent to whom standing has been conferred under Tex. Fam. Code § 102.0035; and
- A person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Tex. Fam. Code Chapter 161 or to whom consent to adoption has been given in writing under Tex. Fam. Code Chapter 162.

Tex. Fam. Code § 102.009(a).

Alleged fathers are not parents as defined in Tex. Fam. Code § 101.024 and do not have the right to a court-appointed attorney other than one appointed pursuant to Tex. Fam. Code § 107.013(a)(3) to monitor the due diligence of DFPS in checking the paternity registry under Tex. Fam. Code Chapter 160. However, alleged fathers have the right to service of citation unless that right is waived in an affidavit of waiver of interest in the child or forfeited by failing to register with the paternity registry. Tex. Fam. Code § 102.009(a)(8).

Citation may be served on any other person who has or who may assert an interest in the child. Tex. Fam. Code § 102.009(b).

Citation on the filing of an original petition in a suit shall be issued and served as in other civil cases. Tex. Fam. Code § 102.009(c).

For more information about service and waivers of citation, *see* the *Service of Citation* chapter of this Bench Book.

E. Evaluation of Identified Relatives and Other Designated Individuals

1. Background/Criminal History Checks

Before a full Adversary Hearing, DFPS must perform a background and criminal history check on the relatives or other designated individuals identified as a potential relative or designated caregiver, as defined by Tex. Fam. Code § 264.751, on the proposed Child Placement Resources Form provided under Tex. Fam. Code § 261.307.

DFPS shall determine which relative or other designated individual would be the most appropriate substitute caregiver, if any, before the full Adversary Hearing. Until DFPS identifies such a caregiver, DFPS must continue to explore substitute caregiver options. The time frames do not apply to a relative or other designated individual located in another state. Tex. Fam. Code § 262.114(a).

For more on out of state placements, *see* generally the Interstate Compact on Placement of Children[10] and *The Interstate Compact on the Placement of Children (ICPC)* chapter of this Bench Book.

2. Home Study Filed with Court

At the full Adversary Hearing, DFPS shall, after redacting any social security numbers, file with the court:

- A copy of each proposed Child Placement Resources Form completed by the parent or other person having legal custody of the child;
- A copy of any completed home study performed; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed.

Tex. Fam. Code § 262.114(a-1).

If the child has not been placed with a relative or other designated caregiver by the time of the full Adversary Hearing, DFPS shall file with the court a statement that explains:

- The reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and
- The actions DFPS is taking, if any, to place the child with a relative or other designated caregiver.

Tex. Fam. Code § 262.114(a-2).

DFPS must record the results of the home studies of potential relatives or designated caregivers in the Information Management Protecting Adults and Children in Texas (IMPACT) system. Tex. Fam. Code § 262.114(a-3).

F. Placement

1. Child Placement Resources Form

DFPS may place a child with a relative or other designated caregiver identified on the proposed Child Placement Resources Form.

DFPS:

- Must determine if that the placement is in the best interest of the child;
- Must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver;
- May place the child before conducting the background and criminal history check or home study required by Tex. Fam. Code § 262.114(a). Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, DFPS must begin the home study of the relative or other designated caregiver. DFPS must complete the home study as soon as possible unless otherwise ordered by a court; and
- Must provide a copy of an informational manual required under Tex. Fam. Code § 261.3071 to the relative or other designated caregiver at the time of the child's placement.

Tex. Fam. Code § 262.114(b).

DFPS must consider placement with a foster parent with whom the child previously resided if:

- DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest; and
- The placement is available and is in the child's best interest.

Tex. Fam. Code § 262.114(c).

In making placement decisions, DFPS must give preference in hierarchical order, from relatives, fictive kin, foster homes, and GROs. Tex. Fam. Code § 262.114(d).

If a child is not placed with a relative, the court shall at each hearing under Tex. Fam. Code Chapter 262, include in its findings a statement on whether DFPS has elicited information regarding potential caregivers from the child. Tex. Fam. Code § 262.0022(1).

***Special Issue**: Courts are also required at each permanency hearing held under Chapter 263 to review the placement of each child who is not placed with a relative caregiver or designated caregiver as defined by Tex. Fam. Code § 264.751 and make a finding as to whether DFPS is able to place the child with a relative or designated caregiver and to state the evidence that supports the finding. Tex. Fam. Code § 263.002(b).*

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2. Caregiver Visit with Child; Information

Before placing a child with a proposed relative or other designated caregiver, DFPS must:

- Arrange a visit between the child and the proposed caregiver; and
- Provide the proposed caregiver with a form (which may be the same form DFPS provides to nonrelative caregivers) containing information, to the extent it is available, about the child that would enhance continuity of care for the child, including:
  - the child's school information and educational needs;
  - the child's medical, dental, and mental health care information;
  - the child's social and family information; and
  - any other information about the child DFPS determines will assist the proposed caregiver in meeting the child's needs.

Tex. Fam. Code § 264.7541(a).

DFPS may waive the requirements if the proposed relative or other designated caregiver has a long-standing or significant relationship with the child and has provided care for the child at any time during the 12 months preceding the date of the proposed placement. Tex. Fam. Code § 264.7541(b).

3. Unacceptable Facilities for Housing Child

When a child is taken into possession and no allegations of delinquent conduct, conduct in need of supervision, or criminal conduct have been made, that child may not be held in isolation or in a jail, juvenile detention facility, or other secure detention facility. Tex. Fam. Code § 262.108.

G. Visitation Schedule

1. Visitation with Certain Children

DFPS must develop a temporary visitation schedule for children in the temporary managing conservatorship of DFPS when the goal is reunification with the child's parent. Tex. Fam. Code § 262.115(b).

DFPS shall ensure that a parent who is otherwise entitled to possession of the child has an opportunity to visit the child not later than the fifth day after the date DFPS is named temporary managing conservator of the child unless:

- DFPS determines that visitation is not in the child's best interest; or
- Visitation with the parent would conflict with a court order relating to possession of or access to the child.

Tex. Fam. Code § 262.115(c).

2. Temporary Visitation Schedule

Before a hearing conducted under Tex. Fam. Code Chapter 262, Subchapter C, DFPS, in collaboration with each parent of the child, must develop a temporary visitation schedule for the child's visits with each parent. The visitation schedule may conform to the minimum visitation policies of DFPS. DFPS shall consider the factors listed in Tex. Fam. Code § 263.107(c) in developing the temporary visitation schedule. Unless modified by court order, the schedule remains in effect until a visitation plan is developed under Tex. Fam. Code § 263.107. Tex. Fam. Code § 262.115(d).

DFPS may include the temporary visitation schedule in any report DFPS submits to the court before or during a hearing under Tex. Fam. Code Chapter 262, Subchapter C. The court may render any necessary order regarding the temporary visitation schedule. Tex. Fam. Code § 262.115(e).

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

H. Placement of Child Victim of Human Trafficking

A court in an emergency, initial, or full Adversary Hearing conducted under Tex. Fam. Code Chapter 262 may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with Tex. Hum. Res. Code § 42.0531, if the court finds that:

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03.

Tex. Fam. Code § 262.011.

ADVERSARY HEARING

A Full Adversary Hearing occurs after a court grants an ex parte order approving the removal of a child from a parent or caretaker; this hearing is to be held within 14 days of the date the child was taken into possession by DFPS. Tex. Fam. Code § 262.201. Courts across Texas differ in the way Full Adversary Hearings are held, but in all cases DFPS has the burden to show why its recommendations should be approved by the court, including why a child should be in substitute care.

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

A. Hearing After Emergency Removal With or Without a Court Order

1. When Must Hearing Be Held

A hearing must be held not later than the 14th day after the date the child was taken into possession by DFPS unless the court grants an extension pursuant to Tex. Fam. Code § 262.201(e) or (e-1). Tex. Fam. Code § 262.201(a).

2. Extension

Although Tex. Fam. Code § 262.103 allows for the temporary order, temporary restraining order, and attachment of a child to be extended, there is no specific provision for the extension of the Adversary Hearing beyond the 14th day. If the hearing cannot be held within the 14 days, some courts convene and reset the hearing, while others rely on case law which indicates that the failure to conduct the Adversary Hearing does not deprive the court of its jurisdiction. *In the Interest of J.M.C.*, 109 S.W.3d 591, 595 (Tex. App.—Fort Worth 2003, no pet.).

The court may, for good cause shown, postpone the full Adversary Hearing for up to seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted if the parent and the appointed attorney agree in writing. If the court postpones the full Adversary Hearing, the court shall extend a temporary order, temporary restraining order, or attachment issued by the court under Tex. Fam. Code § 262.102(a) for the protection of the child until the date of the rescheduled full Adversary Hearing. Tex. Fam. Code § 262.201(e).

For parents who are not indigent but who appear in opposition, the court may, for good cause shown, postpone the full Adversary Hearing for up to seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing. A postponement under this subsection is subject to the limits and requirements prescribed by Tex. Fam. Code § 262.201(e) and Tex. Fam. Code § 155.207. Tex. Fam. Code § 262.201(e-1).

3. Burden/Standard of Proof

Findings must be based on sufficient evidence to satisfy a person of ordinary prudence and caution. Tex. Fam. Code § 262.201(g).

4. Duties of DFPS Prior to Adversary Hearing

Tex. Fam. Code § 262.014 requires DFPS, at the request of the attorney for a parent who is a party in the suit or the attorney ad litem for the parent's child, before the adversary hearing, to provide the name of any person the Department intends to call as a witness to the allegations (except the name of a Department employee), a copy of any offense report relating to the allegations contained in the petition that will be used

to refresh a witness's memory, and a copy of any photo, video, or recording that will be presented as evidence.

5. Court Must Confirm Required Notice to Alleged Perpetrator was Provided

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

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

Tex. Fam. Code § 262.2011.

6. Required Findings if Child to Remain in Care

a. Danger to Physical Health and Safety Finding

There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03, which was caused by an act or failure to act of the person entitled to possession from whom the child is removed and for the child to remain in the home is contrary to the welfare of the child. Tex. Fam. Code § 262.201(g)(1).

b. Urgent Need to Protect Finding

The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal. Tex. Fam. Code § 262.201(g)(2).

In determining whether there is a continuing danger to the physical health or safety of the child under Tex. Fam. Code § 262.201(g), the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child.

Tex. Fam. Code § 262.201(i).

c. Reasonable Efforts Finding

Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. Tex. Fam. Code § 262.201(g)(3). The order must describe with specificity in a separate section all reasonable efforts made to prevent or eliminate removal or return the child home and to place the child with a non-custodial parent. Tex. Fam. Code § 262.201(g-2).

***Special Issue**: What constitutes a reasonable effort will depend on the circumstances of the case. For example, if the reasons for removal were neglectful supervision, the attempt by DFPS to institute a safety*

plan allowing an appropriate relative to move into the home may be considered a reasonable effort to prevent removal.

7. Court Actions/Orders if Child to Remain in Care

a. Issue an Appropriate Temporary Order

A temporary order rendered under Tex. Fam. Code Chapter 262 is valid and enforceable until properly superseded by a court with jurisdiction to do so. A court to which the suit has been transferred may enforce by contempt or otherwise a temporary order properly issued under Tex. Fam. Code Chapter 262. Tex. Fam. Code § 262.204.

b. Admonish and Notify Parents

Inform each parent in open court that parental and custodial rights and duties may be subject to restriction or termination unless the parent is willing and able to provide a safe environment for the child. Tex. Fam. Code § 262.201(m).

Before the commencement of the full Adversary Hearing, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

Tex. Fam. Code § 262.201(c).

c. Order Placement with Another Parent

The court must place the child with the parent who did not endanger the child or perpetrate abuse or neglect unless the parent cannot be located, or the court finds that possession of the child by the parent constitutes a continuing danger to the child despite reasonable efforts by DFPS to enable that person's possession. Tex. Fam. Code § 262.201(g-1). If such a person is located by DFPS after the Adversary Hearing and makes a written request for possession of the child, DFPS must notify the court and request a hearing. Fam. Code § 262.201(q).

d. Order Placement with a Relative

If it is not safe to return a child to either parent, the court must place a child with a relative unless it is not in the best interest of the child. Tex. Fam. Code § 262.201(n).

e. Render Protective Order, if Necessary

If the court finds that the child requires protection from family violence by a member of the child's family or household, the court shall render a protective order for the child under Tex. Fam. Code Chapter 105. Tex. Fam. Code § 262.201(k).

f. Inquire About Native American Heritage

The court shall ask all parties present at the full Adversary Hearing whether the child or the child's family has a Native American heritage and identify any Native American Tribe with which the child may be associated.

Tex. Fam. Code § 262.201(f). For more information regarding requirements when a child has a Native American heritage, *see* the *Indian Child Welfare Act* chapter of this Bench Book.

g. Set Status Hearing

Although not statutorily required, the Status Hearing date is usually set at the Adversary Hearing when open court notice to parties can be given.

***Special Issue**: Courts should consider setting the dates for Status, Permanency, and Final Hearings at the start of the case as it helps provide all parties and interested persons with notice of future hearings.*

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

Both statute and case law encourage the use of alternatives to removal as long as the child is protected. *See* the *Alternatives to Removal* chapter of this Bench Book. If the court orders the return of the child to the parent or does not remove the child, the same alternatives are available to the court.

C. Mandatory Appointment of Attorney for Parent

When DFPS files a petition requesting termination or seeking conservatorship of a child, the court must appoint an attorney for the following persons:

- An indigent parent who responds in opposition to either termination of parental rights or to the appointment of DFPS as managing conservator, Tex. Fam. Code § 107.013(a)(1);
- A parent served by publication, Tex. Fam. Code § 107.013(a)(2);
- An alleged father who failed to register with paternity registry and whose identity or location is unknown, Tex. Fam. Code § 107.013(a)(3); and
- An alleged father who registered with the paternity registry but cannot be personally served. Tex. Fam. Code § 107.013(a)(4).

In a suit described by Tex. Fam. Code § 107.013(a), if a parent is not represented by an attorney at the parent's first appearance in court, the court shall inform the parent of:

- The right to be represented by an attorney; and
- If the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court.

Tex. Fam. Code § 107.013(a-1).

The court may appoint one attorney for both parents if they are both entitled to such an appointment and the court finds that their interests are not in conflict and there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties. Tex. Fam. Code § 107.013(b).

The court shall require a parent who claims indigence under Tex. Fam. Code § 107.013(a) to file an affidavit of indigence pursuant to Tex. R. Civ. P. 145(b) before the court may conduct a hearing to determine the parent's indigence under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.013(d).

The court may consider additional evidence at that hearing, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the court determines the parent is indigent, the court shall appoint an attorney ad litem to represent the parent. Tex. Fam. Code § 107.013(d).

However, if DFPS has alleged grounds for termination of parental rights under Tex. Fam. Code § 161.003(b) based on inability to care for the child, the court must appoint an attorney when the petition is filed and without regard to opposition or indigence.

For more information on the Discretionary Appointment of Parent Attorney, *see* the *After Removal* chapter of this Bench Book.

D. Establishing the Parent-Child Relationship

1. The Mother-Child Relationship

The mother-child relationship is established between a woman and a child by:

- The woman giving birth to the child;
- An adjudication of the woman's maternity; or
- The adoption of the child by a woman.

Tex. Fam. Code § 160.201(a).

2. The Father-Child Relationship

The father-child relationship is established between a man and a child by:

- An unrebutted presumption of a man's paternity of the child under Tex. Fam. Code § 160.204;
- An effective acknowledgment of paternity under Tex. Fam. Code Subchapter D, unless the acknowledgment has been rescinded or successfully challenged;
- An adjudication of the man's paternity;
- The adoption of a child by the man; or
- The man's consenting to assisted reproduction by his wife under Tex. Fam. Code Subchapter H, which has resulted in the birth of the child.

Tex. Fam. Code § 160.201(b).

3. Types of Fathers

- Presumed
- Alleged (or putative)
- Acknowledged
- Adjudicated
- Unknown

E. Presumed Father

A man is a Presumed Father if:

- He is married to the mother of the child and the child is born during the marriage;
- He is married to the mother of the child and the child is born before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce;
- He is married to the mother of the child before the birth of the child in apparent compliance with the law, even if the attempted marriage is or could be declared invalid and the child is born during the invalid marriage or before the 301st day after the date the marriage it terminated by death, annulment, declaration of invalidity or divorce;
- He married the mother of the child after the birth of the child in apparent compliance with law, regardless of whether the marriage is or could be declared invalid, he voluntarily asserted his paternity of the child; and
    - the assertion is in a record filed with the bureau of vital statistics,
    - he is voluntarily named as the child's father on the child's birth certificate, or
    - he promised in a record to support the child as his own.
- During the first two years of the child's life, he continuously resided in the household in which the child resided, and he represented to others that the child was his own.

Tex. Fam. Code § 160.204(a).

A presumption of paternity may be rebutted only by:

- An adjudication under Tex. Fam. Code Subchapter G; or
- The filing of a valid denial of paternity by a presumed father, pursuant to Tex. Fam. Code § 160.303, in conjunction with the filing by another person of a valid acknowledgement of paternity as provided by Tex. Fam. Code § 160.305.

Tex. Fam. Code § 160.204(b).

F. Alleged Father

A man is an Alleged Father (sometimes called "putative father") if:

- He alleges himself to be, or is alleged to be, the genetic father or possible genetic father of a child, but his paternity has not been determined.

An alleged father cannot establish paternity or create a presumption of paternity by registering with the Paternity Registry, but timely registration entitles him to notice of an action for termination of parental rights or adoption of a child he may have fathered. Tex. Fam. Code § 160.402(a).

There are several ways an alleged father may establish paternity:

- The mother of a child and the man claiming to be the biological father may sign an acknowledgment of paternity with the intent to establish the man's paternity. Tex. Fam. Code § 160.301. A valid acknowledgment of paternity filed with the vital statistics unit is the equivalent of

an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties. Tex. Fam. Code § 160.305.

- Both the mother and alleged father can testify in open court and ask the court to establish paternity.
- Genetic testing. DFPS may obtain genetic testing through the Office of the Attorney General.

As soon as a legal father is established, any other potential candidates can be dismissed.

G. Acknowledged Father

A man is an Acknowledged Father if:

- He has executed an Acknowledgement of Paternity (AOP) pursuant to Tex. Fam. Code § 160.302. A valid AOP filed with the Vital Statistics Unit (VSU) of the Texas Department of State and Health Services is the equivalent of an adjudication of paternity.

***Special Issue**: Although the Texas Family Code refers to the Vital Statistics Unit (VSU), the Texas Department of State Health Services currently refers to that office as the Vital Statistics Section (VSS). The statutory references have not been updated to reflect the agency's current terminology.*

H. Adjudicated Father

A man is an Adjudicated Father if:

- He has been adjudicated by a court to be the father of a child. Adjudication can be accomplished by an admission of paternity of a child, by filing a pleading to that effect, or by admitting paternity under penalty of perjury during a hearing. Tex. Fam. Code § 160.623.
- Also, a valid Acknowledgment of Paternity that has been filed with the vital statistics unit is the equivalent of an adjudication of the paternity of a child and confers on the acknowledged father all rights and duties of a parent. Tex. Fam. Code § 160.305(a).

I. Paternity Registry

The VSU maintains a paternity registry. A man who wants to be notified of a proceeding for the adoption or the termination of parental rights regarding a child he may have fathered must register before the birth of the child or not later than the 31st day after the child's birth. Tex. Fam. Code § 160.402(a). The registrant has the responsibility of keeping his information current with the bureau. Tex. Fam. Code § 160.402(c). A man who has filed with the paternity registry within the requisite time frame is entitled to be served with notice of a suit involving the child. Tex. Fam. Code § 160.403. Registering with the paternity registry also establishes a basis for personal jurisdiction of a person who is not a Texas resident. Tex. Fam. Code §§ 159.201(a)(7), 160.604.

If no father-child relationship can be established or if a father-child relationship has been established, but the father has not been served with citation and has not signed a relinquishment of parental rights with regard to the child, and DFPS seeks termination of parental rights or adoption, DFPS must obtain a certificate of the results of a search of the paternity registry. Tex. Fam. Code § 160.421 and Tex. Fam. Code § 160.422(d). If DFPS has reason to believe that conception or birth of the child have may occurred in another state, DFPS must obtain a certificate from paternity or putative father registry of that state. Tex. Fam. Code § 160.421(b). DFPS must file the certificate of the results of a search of the registry with the court before a proceeding for

the adoption of or termination of parental rights regarding a child may be concluded. Tex. Fam. Code § 160.422(c).

The VSU shall furnish a certificate of the results of a search of the registry on request by an individual, a court, or an agency listed in Tex. Fam. Code § 160.412(b). Tex. Fam. Code § 160.422(a). The certificate of results of the search must include a digitized or written signature on behalf of the unit and state that a search has been made of the registry and the registration containing the information required to identify the registrant has been found and attached to the certificate or has not been found. Tex. Fam. Code § 160.422(b).

J. Identification of CCEJ

A suit brought by DFPS as provided by Chapter 262 may be filed in a court with jurisdiction to hear the suit in the county in which the child is found. Tex. Fam. Code § 262.002. If at the conclusion of the full adversary hearing the court renders a temporary order, DFPS must request identification of the CCEJ as provided by Tex. Fam. Code Chapter 155. Tex. Fam. Code § 262.202. Upon request, VSU must (1) identify the court that last had CCEJ of the child in a suit and give the docket number of the suit; or (2) state that the child has not been the subject of a suit. Tex. Fam. Code § 155.101.

A court shall have jurisdiction over a suit if it has been, correctly or incorrectly, informed by VSU that the child has not been the subject of a suit and the petition states that no other court has continuing, exclusive jurisdiction over the child, unless VSU notifies the court that it has furnished incorrect information regarding the existence of another court with CCEJ before rendition of a final order. Tex. Fam. Code § 155.103. Additionally, if a request for information from VSU relating to the identity of the CCEJ of the child has been made, a final order, except an order of dismissal, may not be rendered until the information is filed with the court. Tex. Fam. Code § 155.104(a). If a final order is rendered in the absence of the filing of the information from VSU, the order is voidable on a showing that a court other than the court that rendered the order had CCEJ. Tex. Fam. Code § 155.104(b).

If a transfer is necessary, please *see* Jurisdiction, Transfer, and Venue section above.

K. Placement with Relatives or Designated Caregiver

1. Before the Adversary Hearing

DFPS must:

- Evaluate each person listed on the Child Placement Resources Form to determine who would be most the appropriate substitute caregiver;
- Complete a home study of the most appropriate caregiver, Tex. Fam. Code § 262.114(a); and
- Conduct background and criminal history checks of the relatives or other designated individuals identified as potential relatives or designated caregivers on the Child Placement Resources Form. *See* CPS Policy Handbook § 6610.[11]

DFPS may place the child with the relative or designated caregiver identified on the proposed placement form if DFPS determines that the placement is in the best interest of the child. DFPS must complete the background and criminal history check and conduct a preliminary evaluation of the relative or other designated caregiver's home before the child is placed with the relative or other designated caregiver. Tex. Fam. Code § 262.114(b).

Not later than 48 hours after the time that the child is placed with the relative or other designated caregiver, DFPS shall begin the home study of the relative or other designated caregiver. Tex. Fam. Code § 262.114(b). DFPS shall complete the home study as soon as possible unless otherwise ordered by a court. Tex. Fam. Code § 262.114(b).

DFPS must provide an informational manual required by Tex. Fam. Code § 261.3071 to the relative or other designated caregiver at the time of the child's placement. Tex. Fam. Code § 262.114(b).

2. At the Adversary Hearing

DFPS must, after redacting any social security numbers, file with the court:

- A copy of each proposed Child Placement Resources Form;
- A copy of any completed home study; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed.

Tex. Fam. Code § 262.114(a-1).

The court shall inquire from all parties whether the child has had the opportunity to provide information regarding potential caregivers and whether individuals identified by the child are listed on the proposed Child Placement Resources Form. Tex. Fam. Code § 262.201(l-1).

If the child has been placed with a relative or designated caregiver, the court shall inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for a Permanency Care Assistance program under Tex. Fam. Code Chapter 264, Subchapter K. Tex. Fam. Code § 262.201(n-1).

***Special Issue**: The Permanency Care Assistance (PCA) program gives financial support to kinship caregivers who want to provide a permanent home to children in the TMC or PMC of DFPS who cannot be reunited with their parents or adopted. Monthly payments are $400 to $545 per month, depending upon the needs of each child. To qualify for PCA, kinship caregivers must apply to become foster parents, care for the child as foster parents for at least six months, negotiate and sign a PCA Agreement before a court grants them managing conservatorship of the child, and obtain an order from a court naming them the managing conservator of the child after the PCA Agreement has been signed. For more information, see the Permanency Care Assistance chapter of this Bench Book.*

If the child has NOT been placed by the time of the full Adversary Hearing, DFPS shall file with the court:

- A statement that explains the reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and
- The actions DFPS is taking, if any, to place the child with a relative or other designated caregiver.

Tex. Fam. Code § 262.114(a-2).

***Special Issue**: Courts must make a finding at the Adversary Hearing as to whether DFPS is able to place the child with a relative or other designated caregiver and state the evidence that supports the finding,*

including whether DFPS asked the child in a developmentally appropriate manner to identify an adult who could be a relative or designated caregiver, and whether DFPS has the option of placing the child with a relative or designated caregiver. Tex. Fam. Code § 262.0022.

DFPS may file with the court the temporary visitation schedule developed pursuant to Tex. Fam. Code § 262.115(d). The court may render any necessary order regarding the temporary visitation schedule. Tex. Fam. Code § 262.115(e).

3. Modifying Child Support

Tex. Fam. Code § 154.001 requires the court to notify the Office of the Attorney General within 10 days if a court presiding over a SAPCR involving DFPS orders child support payments or modifies child support payments that require the payments be made to DFPS.

A court may require an unemployed or underemployed obligor to participate in a program that provides employment assistance, skills training, or job placement services. Tex. Fam. Code § 154.017.

Tex. Fam. Code § 234.007(a) requires all parties who pay child support under temporary or final orders to pay child support through the state disbursement unit, including child support employers who are court-ordered to withhold from the obligor's income.

The Office of the Attorney General must distribute a child support payment received on behalf of a child placed in substitute care by DFPS to the appropriate state agency in accordance with applicable federal laws or regulations. Tex. Fam. Code § 231.101(f).

4. Further Consideration of Former Foster Parent

DFPS must consider placing a child who has previously been in the managing conservatorship of DFPS with a foster parent with whom the child previously resided if DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest and the placement is available and in the child's best interest. Tex. Fam. Code § 262.114(c).

L. Aggravated Circumstances

If the court finds aggravated circumstances, it may:

- Waive the requirements of formulating a service plan and making reasonable efforts to return the child to a parent; and
- Accelerate the trial schedule.

Tex. Fam. Code § 262.2015(a).

To view the list of aggravated circumstances, *see* Tex. Fam. Code § 262.2015(b).

***Special Issue**: One of the offenses that constitutes aggravated circumstances is knowingly subjecting a child to sex trafficking, receiving a benefit from a venture that involves sex trafficking, or engaging in sexual conduct with a trafficked child.*

The court must also:

- Find that reasonable efforts to make it possible for the child to safely return home are not required;
- Set and conduct the initial Permanency Hearing within 30 days of making this finding; and
- Set the final hearing.

Tex. Fam. Code § 262.2015(c)-(d).

***Special issue**: There is no required time frame for a trial on the merits other than before the dismissal date set pursuant to Tex. Fam. Code § 263.401.*

M. Decisions Regarding Education Required at Adversary Hearing

1. Designation of Education Decision-Maker

Tex. Fam. Code § 263.004 requires DFPS to provide notice to the court and others of the entity or person holding education decision-making authority. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a non-parent managing conservator pursuant to Tex. Fam. Code § 153.371, which includes the right to make decisions regarding the child's education and the right to designate the school the child will attend and to enroll the child in the school, subject to any eligibility or admission requirements. Tex. Fam. Code § 153.371(10)-(11).

Unless the court order limits the rights and duties of DFPS under Tex. Fam. Code § 153.371(10) to make decisions regarding the child's education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. 1415(b) and Tex. Educ. Code § 29.001(10), for purposes of decision-making regarding special education services, if applicable.

Tex. Fam. Code § 263.004(a).

Not later than the fifth day after the date of an Adversary Hearing held under Tex. Fam. Code § 262.201 is concluded, DFPS must file the information required by Tex. Fam. Code § 263.004(a) with the court and provide a copy to the school the child attends. Tex. Fam. Code § 263.004(b).

***Special Issue**: The notice required by Tex. Fam. Code § 263.004 will be provided by DFPS via Form 2085E, Designation of Education Decision-Maker. For more information regarding this form, see the Education chapter of this Bench Book.*

If a person other than a person identified under Tex. Fam. Code § 263.004(a) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS shall file the updated information in a permanency progress report filed under Tex. Fam. Code § 263.303 or Tex. Fam. Code § 263.502. The updated information must be provided to the school the child attends not later than the 5th day after the date of the designation or assignment. Tex. Fam. Code § 263.004(c).

2. DFPS Must Ensure the Child Returns Child to School After Removal

If DFPS takes possession of a child during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible. Tex. Fam. Code § 264.115(a).

If the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible, DFPS shall notify the school in writing that the child is unable to attend school. If the child's physical or mental condition improves so that the child's attendance is feasible, DFPS shall ensure that the child immediately returns to school. Tex. Fam. Code § 264.115(b).

DE NOVO HEARING

Please *see* the Checklist Section for the De Novo Hearing Checklist.

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

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

A. Objection to Associate Judge

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

B. De Novo Hearings

Tex. Fam. Code § 201.015 applies to a request for a de novo hearing before the referring court for matters adjudicated by an associate judge appointed under Tex. Fam. Code Chapter 201, Subchapter A and C. When a case is referred to an associate judge for any authorized purpose, a party may request a de novo hearing before the referring court by filing a written request with the clerk of the referring court not later than the third working day after the date the party receives notice of the substance of the associate judge's ruling or order. Tex. Fam. Code § 201.015(a). In child welfare cases, the requesting party must also file the request with the referring court. Tex. Fam. Code § 201.2042(b). The referring court must conduct the de novo hearing within thirty days of the request. Tex. Fam. Code § 201.015(f). De novo hearings are limited to the specific issues stated in the de novo hearing request. Tex. Fam. Code § 201.015(b); *see In re L.R.*, 324 S.W.3d 885, 890 n.5 (Tex. App.—Austin 2010, orig. proceeding) ("[T]he de novo hearing before the referring court is limited to those issues raised in the hearing request").

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

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

C. De Novo Hearing vs. Trial De Novo

The Supreme Court of Texas held in *In the Interest of A.L.M.-F.* that neither Tex. Fam. Code § 201.015 nor any other provision of the Texas Family Code expressly confers a right to a jury trial in a de novo hearing.[12] The *A.L.M.-F* case distinguishes a De Novo Hearing and a Trial De Novo. A "trial de novo" is a new and independent action in the reviewing court with "all the attributes of an original action" as if no trial of any kind has occurred in the court below.[13] But a de novo hearing under Tex. Fam. Code Chapter 201 is not equivalent to a new trial as review by the referring court under Tex. Fam. Code § 201.015 is not entirely independent of the proceedings before the associate judge. Accordingly, the term "de novo hearing," as used in Tex. Fam. Code Chapter 201, does not equate to a "trial de novo." Rather, the term "de novo hearing" has meaning that is unique to the associate judge referral statutes and governed by the procedures specified in the authorizing statutes.[14] As stated above, de novo hearings are limited to the specific issues stated in the de novo hearing request. Tex. Fam. Code § 201.015(b).

D. Judicial Action on Associate Judge's Proposed Order or Judgment

Parties can forego their right to have their case decided by the referring court in two ways: a party can waive the right to a de novo hearing by executing a waiver prior to the hearing or trial before the associate judge, or post-hearing, the party can fail to or forego filing a request for a de novo hearing within the time required by statute. For an associate judge hired by a district court, the referring court may adopt, modify, or reject the proposed order, hear further evidence, or recommit the matter. Tex. Fam. Code § 201.014(a). For Child Protection Court associate judges, the proposed order or judgment of the associate judge becomes the order of the referring court by operation of law without ratification by the referring court. Tex. Fam. Code § 201.2041(a). Regardless of whether a de novo hearing is requested before the referring court, a proposed order or judgment rendered by an associate judge that meets the requirements of Tex. Fam. Code § 263.401(d) is considered a final order for purposes of Tex. Fam. Code § 263.401. Tex. Fam. Code § 201.014(b), Tex. Fam. Code § 201.2041(b).

INTERVENTIONS

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

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

A. General Standing

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

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

1. Standing to File Original Suit

An original suit may be filed at any time by:

- A parent of the child;
- The child through a representative authorized by the court;
- A custodian or person having the right of visitation with or access to the child appointed by an order of a court of another state or country;
- A guardian of the person or of the estate of the child;
- A governmental entity;
- The Department of Family and Protective Services;
- A licensed child placing agency;
- A man alleging himself to be the father of a child filing in accordance with Tex. Fam. Code Chapter 160, subject to the limitations of that chapter, but not otherwise;
- A person other than a foster parent, relative, or designated caregiver of a child placed by the Department of Family and Protective Services, who has had exclusive care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition;
- A person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Tex. Fam. Code Chapter 161 or to whom consent to adoption has been given in writing under Tex. Fam. Code Chapter 162;
- A person who is the foster parent, relative, or designated caregiver of a child placed by the Department of Family and Protective Services in the person's home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition unless:
  - the child has been returned to the parent under Tex. Fam. Code § 263.403; or

- the child has been placed with a parent and the suit by the Department of Family and Protective Services has been dismissed under Tex. Fam. Code § 263.401;

- A person who is a relative of the child within the 4th degree of consanguinity, as determined by Tex. Gov't Code Chapter 573, if the child's parents are deceased at the time of the filing of the petition;
- A person who has been named as a prospective adoptive parent of a child by a pregnant woman or the parent of the child, in a verified written statement to confer standing executed under Tex. Fam. Code § 102.0035, regardless of whether the child has been born; or
- Subject to Tex. Fam. Code § 102.003(d), a person who is an intended parent of a child or unborn child under a gestational agreement that complies with the requirements of Tex. Fam. Code § 160.754.

Tex. Fam. Code § 102.003(a).

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

Notwithstanding the time requirements of Tex. Fam. Code § 102.003(a)(11), a person who is the foster parent of a child may file a suit to adopt a child for whom the person is providing foster care at any time after the person has been approved to adopt the child. The standing to file suit under Tex. Fam. Code § 102.003(c) applies only to the adoption of a child who is eligible to be adopted. Tex. Fam. Code § 102.003(c).

2. Exclusive Care, Control, and Possession

Tex. Fam. Code § 102.003(a)(9) provides standing to a person, other than a foster parent, relative, or designated caregiver of a child placed by DFPS, who has had exclusive care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition.

***Special Issue**: The standard recently changed from "actual" to "exclusive" care, control, and possession. The court must continue to apply the "actual care, control, and possession" standard to suits filed before September 1, 2025.*

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a. Time-Specific in Applicability

- No standing when child in home for only five and a half months at time of filing. *In the Interest of E.C.*, No. 02-13-00413-CV, 2014 WL 3891641, at *2 (Tex. App.—Fort Worth Aug. 7, 2014, no pet.) (mem. op).
- No standing when child in home for only three months at time of filing. *In the Interest of C.M.J.*, No. 02-12-00036-CV, 2012 WL 6632748, at *2 (Tex. App.—Fort Worth Dec. 21, 2012, no pet.) (mem. op).

b. Elements of "Actual Care, Control, and Possession"

- Under *Jasek v. Tex. Dep't of Fam. & Protective Servs.*, the court looked to the composite elements of the care, control, and possession in reaching its decision, considering:
  - the individual asserting standing under Tex. Fam. Code § 102.003(a)(9) will have:

        - lived in a home where the child consistently and frequently stayed overnight;
        - financially supported the child;
        - participated in the child's education; and
        - fed, clothed, and provided health care to the child.
    - "actual control" does not require the authority to make legal decisions for the child.

Jasek v. Tex. Dep't of Fam. & Protective Servs., 348 S.W.3d 523, 532-37 (Tex. App.—Austin 2011, no pet.); *see also In the Interest of H.S.*, 550 S.W.3d 151, 157 (Tex. 2018).

- A non-parent's "actual care, control, and possession" of a child does not need to be exclusive to have standing under Tex. Fam. Code § 102.003(a)(9). *In the Interest of H.S.*, 550 S.W.3d 151, 158 (Tex. 2018).

3. Standing to Request Termination and Adoption

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

- A stepparent of the child;
- An adult who, as the result of a placement for adoption, has had actual possession and control of the child at any time during the 30-day period preceding the filing of the petition; or
- An adult who has adopted, or is the foster parent of and has petitioned to adopt, a sibling of the child.

Tex. Fam. Code § 102.005.

4. Standing for Certain Relatives and Other Persons

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

- The order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; or
- Both parents, the surviving parent, or the managing conservator or custodian either filed the petition or consented to the suit.

Tex. Fam. Code § 102.004(a).

a. Relatives and degrees of consanguinity:

- A parent or child (relatives in the first degree);
- A brother, sister, grandparent, or grandchild (relatives in the second degree); and
- A great-grandparent, great-grandchild, aunt who is a sister of a parent of the child, an uncle who is the brother of a parent of the child, a nephew who is the child of a brother or sister of the child, or a niece who is a child of a brother or sister of the child (relatives in the third degree).

Tex. Gov't Code § 573.023(c).

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

- Step-grandfather excluded. *In the Interest of E.C.,* No. 02-13-00413-CV, 2014 WL 3891641, at *3 (Tex. App.—Fort Worth, Aug. 7, 2014, no pet.) (mem. op.).
- Step-uncle excluded. *In the Interest of A.M.S.*, 277 S.W.3d 92, 98-99 (Tex. App.—Texarkana 2009, no pet.).
- Great-aunt or great-uncle excluded. *In the Interest of N.L.D.,* 344 S.W.3d 33, 37-38 (Tex. App.—Texarkana 2011, no pet.).

c. Proving Significant Impairment pursuant to Tex. Fam. Code § 102.004(a)

- Significant impairment of child's physical health and emotional development found with evidence of parental drug use and criminal convictions and incarceration. *In the Interest of K.D.H.*, 426 S.W.3d 879, 888-90 (Tex. App.—Houston [14th Dist.] 2014, no pet.).
- Significant impairment of child's physical health and emotional well-being found with evidence of physical and emotional abuse of the child even if the last alleged incident occurred months before the filing of the petition when the parent's ideas regarding discipline had not changed during the period and the parent had not received any counseling or other services during that time to mitigate the risk of continued abuse. *In re McDaniel,* 408 S.W.3d 389, 397-99 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding).
- Significant impairment of emotional development found where a parent fails to send their child to school on a regular basis and fails to provide necessary therapeutic interventions for a child with poor school performance and behavioral issues. *Mauldin v. Clements*, 428 S.W.3d 247, 264-65 (Tex. App.—Houston [1st Dist.] 2014, no pet.).
- Acts or omissions that constitute significant impairment include, but are not limited to, physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior by a parent. *In the Interest of M.P.,* No. 13-21-00013-CV, 2022 WL 1572267, at *5 (Tex. App.—Corpus Christi-Edinburg May 19, 2022, no pet.) (mem. op); *see also In re B.B.M.,* 291 S.W.3d 463, 469 (Tex. App.—Dallas 2009, pet. denied).

d. Applicability and Implications of Tex. Fam. Code § 102.004(a) in Child Welfare Cases

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

5. Required Affidavit for Standing of Nonparent

A nonparent who initiates or intervenes in a suit affecting the parent-child relationship in which another party to the suit is a parent of the child of the child shall execute and serve with the nonparent's initial pleading an affidavit that:

- Attests, based on the nonparent's personal knowledge or representations made to the nonparent by a person with personal knowledge of the matter, that denying the relief sought would significantly impair the child's physical health or emotional development; and

- Contains facts that support the allegation.

Tex. Fam. Code § 102.0031(a).

The Court must deny the relief sought and dismiss the suit or strike the intervention, as applicable, unless the court determines, based on the affidavit, that the affidavit contacts facts adequate to support the allegations. Tex. Fam. Code § 102.0031(b).

B. Standing to Intervene in a Pending Suit

An original suit requesting possessory conservatorship may not be filed by a grandparent or other relative or other person. However, a grandparent or other relative or other person may intervene in a pending suit under Tex. Fam. Code § 102.004(b-1) or (b-2), as applicable. Tex. Fam. Code § 102.004(b).

A grandparent or other relative of the child within the fourth degree of consanguinity may intervene in a pending suit filed by a person authorized to do so under Tex. Fam. Code Chapter 102 if there is satisfactory proof to the court that the appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development. Tex. Fam. Code § 102.004(b-1).

The court may grant a person, other than a grandparent or other relative of the child within the fourth degree of consanguinity, subject to the requirements of Tex. Fam. Code § 102.004(b-3), if applicable, deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under Tex. Fam. Code Chapter 102 if there is satisfactory proof to the court that the appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development. The court may not grant a person leave to intervene unless each parent consents to the intervention. Tex. Fam. Code § 102.004(b-2).

A foster parent, relative, or designated caregiver may only be granted leave to intervene under Tex. Fam. Code § 102.004(b-2) if the foster parent, relative, or designated caregiver would have standing to file an original suit as provided by Tex. Fam. Code § 102.003(a)(11). Tex. Fam. Code § 102.004(b-3).

***Special Issue**: A grandparent, other relative of the child within the fourth degree of consanguinity, or other person can only utilize Tex. Fam. Code § 102.004(b) in SAPCRs that have not yet resulted in a final order. In the context of child welfare cases, the SAPCR is no longer pending once DFPS is appointed PMC of the child.*

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1. Case Law related to Substantial Past Contact

Courts have applied the standard definition of "substantial" from the Random House Dictionary as "of ample or considerable amount, quantity, size, etc." and have evaluated the amount of actual contact and not the difficulties of the intervening party maintaining contact. *In the Interest of C.M.C.*, 192 S.W.3d 866, 871-72 (Tex. App.—Texarkana 2006, no pet.).

"Substantial past contact" has been found to involve more than seeing a child regularly during their life. Substantial past contact has been shown by parties who have "frequently cared for the children, lived nearby, and spent a great deal of time with the family." *Blackwell v. Humble,* 241 S.W.3d 707, 722 (Tex. App.—Austin 2007, no pet.).

Relatives who have cared for a child for as few as 7 weeks have been found to have substantial past contact. The Court's analysis focused on the caretaker's daily supervision of the child during that time and found the intervening party to have established substantial past contact in undertaking the daily functions of legal custody during that time. *In the Interest of A.L.W.,* No. 02-11-00480-CV, 2012 WL 5439008, at *5 (Tex. App.—Fort Worth Nov. 8, 2012, pet. denied) (mem. op.); *see also In the Interest of R.I.,* 610 S.W.3d 581, 590 (Tex. App.—Tyler 2020, no pet.).

In a case of first impression, the Dallas Court of Appeals has held that grandparents, as opposed to "other persons," are not required to establish "substantial past contact" under Tex. Fam. Code § 102.004(b). *In the Interest of Nelke,* 573 S.W. 3d 917, 922-23 (Tex. App.—Dallas 2019, no pet.).

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

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2. Evidence that Appointment of Parent(s) as Managing Conservator Would Significantly Impair the Child's Physical Health and Emotional Development

A person with substantial past contact with a child will be unable to show evidence that the appointment of a parent as the managing conservator would cause significant impairment when facts show only speculation of potential harm if the parent is appointed conservator. *In the Interest of S.M.D.,* 329 S.W.3d 8, 16 (Tex. App.—San Antonio 2010, pet. dism'd).

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

3. "Significant Impairment" During Reunification Phase of a Child Welfare Case

Alleged father who had independently raised the child for two and a half years submitted to paternity testing and was dismissed as a party to the case after genetic testing ruled him out as the father. He intervened alleging substantial past contact. He was denied leave to intervene because he failed to show that the appointment of the mother as sole managing conservator would significantly impair the child's physical health and emotional development. Testimony offered by the Department at multiple hearings had shown that she had complied with all court orders and service plan requirements, that the child had already been placed with her, and that the Department was recommending dismissal of the case. The Court of Appeals found no abuse of discretion in the trial court's refusal to grant leave to intervene. *L.J. v. Tex. Dep't of Fam. & Protective Servs.,* No. 03-11-00435-CV, 2012 WL 3155760, at *7 (Tex. App.—Austin August 1, 2012, pet. denied) (mem. op.).

C. Foster Parent Interventions

1. General Standing Provision: Tex. Fam. Code § 102.003(a)(11)

An original suit may be filed at any time by a person who is the foster parent, relative, or designated caregiver of a child placed by DFPS in the person's home for at least 12 months ending not more than 90 days preceding the date of the filing of the petition unless the child has been returned to the parent under Tex. Fam. Code § 263.403 or the child has been placed with a parent and the suit by DFPS has been dismissed under Tex. Fam. Code § 263.401. Tex. Fam. Code § 102.003(a)(11).

2. Foster Parent Intervention Limited

The court may grant persons other than a grandparent or other relative of the child within the fourth degree of consanguinity with substantial past contact with a child leave to intervene in a pending suit if they can provide satisfactory proof to the court that the appointment of a parent as Sole Managing Conservator or both parents as Joint Managing Conservators would significantly impair the child's physical health or emotional development and each parent consents to the intervention. Tex. Fam. Code § 102.004(b-2). However, a foster parent, relative, or designated caregiver may only be granted leave to intervene under Tex. Fam. Code § 102.004(b-2) if the foster parent, relative, or designated caregiver would have standing to file an original suit as provided by Tex. Fam. Code § 102.003(a)(11). Tex. Fam. Code § 102.004(b-3).

D. Limitations on Standing

1. Limitations on Standing

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

- A former parent whose parent-child relationship has been terminated by court order;
- The father of the child; or
- A family member or relative by blood, adoption, or marriage of either a former parent whose parent-child relationship has been terminated or the father of the child.

Tex. Fam. Code § 102.006(a).

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

- Has a continuing right to possession of or access to the child under an existing court order; or
- Has the consent of the child's managing conservator, guardian, or legal custodian to bring the suit.

Tex. Fam. Code § 102.006(b).

The limitations on filing suit imposed by Tex. Fam. Code § 102.006 do not apply to a relative within the fourth degree of consanguinity of a former parent whose parent-child relationship with the child has been terminated by court order if the relative files an original suit or a suit for modification requesting managing conservatorship of the child not later than the 90th day after the date the parent-child relationship between the child and the parent is terminated. Tex. Fam. Code § 102.006(c).

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

Courts have affirmed that Tex. Fam. Code § 102.006(c) serves to limit the standing of particular individuals when the parent-child relationship has been terminated; it does not confer standing. *In the Interest of N.A.D.,* 397 S.W.3d 747, 749 (Tex. App.—San Antonio 2013, no pet.); *L.H. v. Tex. Dep't of Fam. & Protective Servs.,* No. 03-13-00348-CV, 2014 WL 902555, at *2 (Tex. App.—Austin Mar. 6, 2014, no pet.) (mem. op.).

2. Consequences of Missing the 90-Day Deadline

Even parties who would otherwise have standing will lose that standing if they fail to file their petition for custody or adoption within 90 days after the date the termination order was rendered.

Petition to adopt children by aunt with substantial past contact filed 7 months after parental rights were terminated was barred by Tex. Fam. Code § 102.006(c) because it had not been filed within 90 days of the termination order. *In the Interest of A.M.*, 312 S.W.3d 76, 82 (Tex. App.—San Antonio 2010, pet. denied).

E. Petitions to Modify the Parent-Child Relationship

The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child must show that the modification is in the child's best interest and:

- The circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:
  - the date of the rendition of the order; or
  - the date of the signing of a mediated or collaborative law settlement on which the order is based;
- The child is at least 12 years of age and has expressed to the court in chambers as provided by Section 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or
- The conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.

Tex. Fam. Code § 156.101(a).

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

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

- The child's present environment may endanger the child's physical health or significantly impair the child's emotional development;
- The person who has the exclusive right to designate the primary residence of the child is the person seeking or consenting to the modification and the modification is in the best interest of the child; or
- The person who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for at least six months and the modification is in the best interest of the child.

Tex. Fam. Code § 156.102(b).

The court shall deny the relief sought and refuse to schedule a hearing for modification under this section unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation listed

in Tex. Fam. Code § 156.102(b) are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, the court shall set a time and place for the hearing. Tex. Fam. Code § 156.102(c). In a jury trial, a jury verdict regarding the right to determine the child's primary residence for a joint or sole managing conservator may be authorized by the court. Tex. Fam. Code § 105.002(c)(1).

A modification of the right to determine primary residence must include a sworn affidavit that shows that the child's present environment may endanger the child's physical health or emotional development. *See In the Interest of N.A.D.*, 397 S.W.3d 747, 749, 751 (Tex. App.—San Antonio 2013, no pet.) (holding that Tex. Fam. Code § 102.006 did not confer standing and the procedural requirements of Tex. Fam. Code § 156.102 applied in cases where a modification of the Department's conservatorship of a child is sought).

F. Practical Considerations

1. Timing

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

Grandmother filed petition in intervention two months before dismissal date when permanency plan changed from reunification to termination although she had been aware of the case for over a year. Motion to Strike granted and affirmed by appellate court as within the discretion of the Court. *In the Interest of C.A.L.,* No. 2-05-308-CV, 2007 WL 495195 (Tex. App.—Fort Worth Feb. 15, 2007, no pet.) (mem. op.).

Grandfather who lived in Kentucky filed an intervention two months before trial. (Waiting to file an intervention when out of state and required ICPC study problematic). *Anderson v. Tex. Dep't of Fam. & Protective Servs.*, No. 03-06-00327-CV, 2007 WL 1372429, at *5 (Tex. App.—Austin May 9, 2007, pet. denied) (mem. op).

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

A trial court abuses its discretion if it strikes a petition in which (1) the intervener could bring the same action, or any part thereof, in their own names, (2) the intervention will not complicate the case by an excessive multiplication of the issues, and (3) the intervention is almost essential to effectively protect the interveners' interest. In applying that analysis, the court found that even though the intervention was filed only two weeks before trial that the intervening party had standing and should have been allowed to participate in the trial. *Seale v. Tex. Dep't of Fam. & Protective Servs.*, No. 01-10-00440-CV, 2011 WL 765886, at *4 (Tex. App.—Houston [1st Dist.] Mar. 3, 2011, no pet.) (mem. op.).

2. Procedural Issues

a. Effect of Intervention

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

A grandparent or other relative of the child within the fourth degree of consanguinity may intervene in a pending suit filed by a person authorized to do so under Tex. Fam. Code Chapter 102 if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint

managing conservators would significantly impair the child's physical health or emotional development. Tex. Fam. Code § 102.004(b-1).

b. Leave of Court

The court may grant a person, other than a grandparent or other relative of the child within the fourth degree of consanguinity, deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under Tex. Fam. Code Chapter 102 if there is satisfactory proof to the court that appointment of a parent as sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development. The court may not grant a person leave to intervene unless each parent consents to the intervention. Tex. Fam. Code § 102.004(b-2).

Following the plain language of the statute, the court finds a request for leave to intervene is necessary under Tex. Fam. Code § 102.004(b) and that the Intervener's Amended Petition for Intervention which requested that the court "grant the relief requested in this intervention" be read as a request for leave to intervene. *In the Interest of A.T.*, No 14-14-00071-CV, 2014 WL 11153028, at *9 (Tex. App.—Houston [14th Dist.] July 15, 2014, no pet.) (mem. op.).

A court found that Tex. R. Civ. P. 60 does not apply to interventions filed under Tex. Fam. Code § 102.004(b). The court noted that the legislature developed a separate provision governing intervention in family law cases and gave the trial court discretion to determine whether to allow an intervention even when the statutory requirements are met. Court then found that no written motion to strike was required. *L.J. v. Tex. Dep't of Fam. & Protective Servs.*, No. 03-11-00435-CV, 2012 WL 3155760, at *7-8 (Tex. App.—Austin Aug. 1, 2012, pet. denied) (mem. op.).

c. Imperfect Pleadings Can Establish Standing

Appellate courts review standing issues by construing the pleadings in favor of the petitioner and by looking to the pleader's intent. The question is whether a party provides other parties and the court fair notice of their claim. *Jasek v. Tex. Dep't of Fam. & Protective Servs.,* 348 S.W.3d 523, 530 (Tex. App.—Austin 2011, no pet.); *In the Interest of D.A.,* No. 02-14-00265-CV, 2015 WL 510255, at *2-3 (Tex. App.—Fort Worth, February 5, 2015) (mem. op.).

STATUS HEARING

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

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

A. Timing and Notice

1. Hearing is Mandatory

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

2. Timing of Status Hearing

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

3. Notice Must Be Given Pursuant to Tex. Fam. Code § 263.0021

Notice of a hearing under Tex. Fam. Code Chapter 263 shall be given to all persons entitled to notice of the hearing. Tex. Fam. Code § 263.0021(a).

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

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

Tex. Fam. Code § 263.0021(b).

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

Notice of a hearing under Tex. Fam. Code Chapter 263 may be given:

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

Tex. Fam. Code § 263.0021(c).

B. Mandatory Findings

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

- DFPS has exercised due diligence to locate all necessary persons, including an alleged father of the child, regardless of whether the alleged father is registered with the paternity registry under Tex. Fam. Code § 160.402. Tex. Fam. Code § 263.202(a)(1).
- After reviewing the report filed by DFPS under Tex. Fam. Code § 263.007 detailing its efforts to identify, locate, and provide information to each adult described by Tex. Fam. Code § 262.1095(a), and order DFPS to make further efforts, if warranted. Tex. Fam. Code § 263.202(f).
- The child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. Tex. Fam. Code § 263.0021(f).
- The child and each parent, alleged father, or relative of the child before the court have furnished to DFPS all available information necessary to locate another absent parent, alleged father, or relative of the child through the exercise of due diligence. Tex. Fam. Code § 263.202(a)(2).
- A plan that has the goal of returning the child to the parent adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child. Tex. Fam. Code § 263.202(b)(1). The court shall give the child's parents the opportunity to comment on the service plan. Tex. Fam. Code § 263.202(g).
- The parents have reviewed and understand the plan, the plan is narrowly tailored to address any specific issues identified by DFPS, and the child's parents and the representative of DFPS have signed the plan. Tex. Fam. Code § 263.202(b)(2)-(4).
- If the child is placed in an RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code § 263.002 and Tex. Fam. Code § 263.00201 respectively. Tex. Fam. Code § 263.202(b)(5)-(6).
- The court has identified the individual who has the right to consent to medical treatment for the child under Tex. Fam. Code § 266.004. Tex. Fam. Code § 263.202(e).

- The court is directed to inquire at the Status Hearing whether parents or other parties have provided information necessary to locate an alleged father, an absent parent, or a relative of the child. It is left to the court to decide what action, if any, should be taken in response to a negative answer. Tex. Fam. Code § 263.202(a)(2).
- The court is required, after reviewing and making any necessary modifications, to incorporate the service plan into the orders of the court and may render additional appropriate orders to implement or require compliance with the plan. Tex. Fam. Code § 263.202(b-1).

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

C. Court Shall Advise/Warn Parents

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

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

2. Court Shall Warn Parents

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

3. Court Shall Advise Parent of Appointment of Attorney

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

Tex. Fam. Code § 263.0061 requires notice to parents of right to counsel. At the Status Hearing required by Tex. Fam. Code Chapter 263, Subchapter C and at each Permanency Hearing required by Tex. Fam. Code Chapter 263, Subchapter D, the court shall inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

Tex. Fam. Code § 263.0061(a).

If a parent claims indigence and requests the appointment of an attorney in a proceeding under Tex. Fam. Code Chapter 263, Subchapter C and Subchapter D, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is

indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. Tex. Fam. Code § 263.0061(b).

4. Court Shall Review Visitation Plan

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

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

D. Court Review of the Service Plan

1. Service Plan Shall Be Filed

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

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

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

2. Contents of the Service Plan

The service plan must:

- Be specific;
- Be in writing and in a language that the parents understand, or made otherwise available;
- Be prepared by DFPS in conference with the child's parents;
- State appropriate deadlines;
- Specify the primary permanency goal and at least one alternative goal;
- State the steps necessary to:
  - return the child to the child's home if the placement is in foster care;
  - enable the child to remain in the child's home with the assistance of a service plan if placement is in the home under DFPS' supervision; or
  - otherwise provide a permanent safe placement for the child;
- State the actions and responsibilities that are necessary for the child's parents to take to achieve the plan goal during the period of the service plan and the assistance to be provided to the parents by DFPS or other agency toward meeting that goal;

- State any specific skills or knowledge that the child's parents must acquire or learn, as well as any behavioral changes the parents must exhibit, to achieve the plan goal;
- State the actions and responsibilities that are necessary for the child's parents to take to ensure that the child attends school and maintains or improves the child's academic compliance;
- State the name of the person with DFPS whom the child's parents may contact for information relating to the child if other than the person preparing the plan; and
- Prescribe any other term or condition that DFPS determines to be necessary to the service plan's success.

Tex. Fam. Code § 263.102(a).

The service plan shall include the following statement:

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

3. Service Plans for Children Under Two Years of Age

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

4. Effective Date

The service plan takes effect when:

- The child's parents and the appropriate representative of DFPS sign the plan; or
- The court issues an order giving effect to the plan without the parents' signatures.

Tex. Fam. Code § 263.103(d).

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

5. Court Implementation of Service Plan

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

A parent may obtain services in their service plan by a qualified or licensed provider selected by the parent. The services must be designed to achieve the goals of the service plan and may be provided remotely. The provider must certify whether the parent has satisfactorily completed the service. DFPS must reimburse the service provider at the same rate as DFPS' contracted providers in the region. Tex. Fam. Code § 263.1021.

E. Court Review of Visitation Plan

For more information regarding visitation and relevant forms, *see* the *Family Visitation* chapter of this Bench Book.

1. Visitation Plan

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

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

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

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

Tex. Fam. Code § 263.107(c).

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

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

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

2. Review of Visitation Plan; Modification

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

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

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

3. Court Implementation of Visitation Plan

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

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

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

Tex. Fam. Code § 263.109(b).

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

F. Child Placement Resources Form

The court shall require each parent, alleged father, or relative of the child present at the Status Hearing to file a Child Placement Resources Form, if they have not already done so. Tex. Fam. Code § 263.201(c).

The court shall inquire from all parties whether the child has had the opportunity to provide information regarding potential caregivers and whether individuals identified by the child are listed on the proposed Child Placement Resources Form. Tex. Fam. Code § 263.202(h).

If the child has been placed with a relative or designated caregiver, the court shall inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for a Permanency Care Assistance (PCA) program. Tex. Fam. Code § 263.202(i).

G. Permanency Planning Meetings

1. Timing of Permanency Planning Meetings

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

The initial permanency planning meeting is to occur within 45 days after DFPS removes a child to develop an initial Family Plan of Service (FPOS) and visitation plan. Permanency planning meetings should also occur before scheduled permanency hearings, after a significant update to the child's permanency goal, and as soon as possible after a final court order naming DFPS as permanent managing conservator of a youth age 16 or older with a permanency goal of Another Planned Permanency Living Arrangement (APPLA) and any time after that, if there is no progress toward achieving positive permanency for the youth. CPS Policy Handbook § 6251.[15]

2. Permanency Planning Meeting Requirements

At each permanency planning meeting, DFPS shall:

- Identify any barriers to achieving a timely permanent placement for the child;
- Develop strategies and determine actions that will increase the probability of achieving a timely permanent placement for the child; and
- Use the family group decision-making model whenever possible.

Tex. Fam. Code § 263.009(b).

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

As long as a child remains in a QRTP, DFPS must provide the court with the following information at the Status Hearing and at each Permanency Hearing:

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

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

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

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

I. Assessments

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

The assessment must include:

- A screening for trauma;
- Interviews with individuals who have knowledge of the child's needs. Tex. Fam. Code § 266.012(a)(1); and
- A screening for risk of commercial sexual exploitation using a validated, evidence-informed tool selected by the child Sex Trafficking Prevention Unit established under Tex. Gov't. Code § 772.0062 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(a)(2).

For more information, including other assessments such as Texas Health Steps and Required Medical Exams, *see* the *Health Care for Texas Children in Foster Care: STAR Health* chapter of this Bench Book.

J. Inquiry Regarding Child's Native American Heritage

The court shall ask all parties present at the Status Hearing whether the child or the child's family has a Native American heritage and identify any Native American Tribe with which the child may be associated. Tex. Fam. Code § 263.202(f-1). For more information regarding requirements when a child has a Native American heritage, *see* the *Indian Child Welfare Act* chapter of this Bench Book.

PERMANENCY HEARING BEFORE FINAL ORDER

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

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

A. Permanency Hearing Before Final Order

1. Initial Permanency Hearing

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

2. Subsequent Permanency Hearing

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

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

B. Hearing Notice is Mandatory

Notice of a hearing under Tex. Fam. Code Chapter 263 shall be given to all persons entitled to notice of the hearing. Tex. Fam. Code § 263.0021(a).

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

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

- A volunteer advocate appointed for the child, if the appointment was not dismissed in the final order;
- The child if:
  - the child is 10 years of age or older; or
  - the court determines it is appropriate for the child to receive notice; and
- Any other person or agency named by the court to have an interest.

Tex. Fam. Code § 263.0021(b).

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

Notice of a hearing under Tex. Fam. Code Chapter 263 may be given:

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

Tex. Fam. Code § 263.0021(c).

C. Permanency Plan for Child is Required

1. Permanency Plan

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

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

2. Permanency Goals

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

- Reunification of the child with a parent or other individual from whom the child was removed;
- Termination of parental rights and adoption of the child by a relative or other suitable individual;
- Award of permanent managing conservatorship of the child to a relative or other suitable individual; or

- Another planned, permanent living arrangement for the child (APPLA).

Tex. Fam. Code § 263.3026(a).

***Special Issue**: With passage of the Preventing Sex Trafficking and Strengthening Families Act (SFA) into law in 2014, there are NO permissible uses of APPLA for any child under 16 years of age and use of APPLA is limited for youth ages 16 and older. Courts must ask each youth with a permanency plan of APPLA about their desired permanency outcome and determine at each permanency review hearing that APPLA is the best permanency plan for the child. Texas law also requires courts to document the agency's unsuccessful efforts to achieve a preferred outcome. With passage of SFA, courts must find that APPLA is the best permanency plan. Tex. Fam. Code § 263.306(a-1)(5)(I)(ii).*

D. Permanency Progress Report is Required; Contents

1. Filing the Permanency Progress Report

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

- Each party;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's volunteer advocate.

Tex. Fam. Code § 263.303(a).

2. Contents of the Permanency Progress Report

The report must contain:

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

Tex. Fam. Code § 263.303(b).

3. Filing a Response

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

E. Procedural and Due Process Issues

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

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

  Tex. Fam. Code § 263.306(a-1)(1)-(2).
- Inform each parent not represented by an attorney of:
  - the right to be represented by an attorney; and
  - if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

  Tex. Fam. Code § 263.0061.
- Determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. Tex. Fam. Code § 263.0021(f).

F. Mandatory Actions, Findings, and Considerations

1. Place/Return Child

The court must make a finding as to whether DFPS is able to place the child with a relative or other designated caregiver and state the evidence that supports the finding. Tex. Fam. Code § 263.002(b).

The court shall review the permanency progress report to determine whether the child has had the opportunity, in a developmentally appropriate manner, to identify any adults, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child. Tex. Fam. Code § 263.306(a-1)(5)(E).

If the child has been placed with a relative or designated caregiver, the court shall inform the individual serving as a placement for the child of the ability to become a licensed foster parent and apply for a Permanency Care Assistance program. Tex. Fam. Code § 263.306(c)(2).

If the child is placed in an RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code § 263.002 and Tex. Fam. Code § 263.00201 respectively. Tex. Fam. Code § 263.306(a-1)(5)(J)-(K).

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

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

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

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

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

3. Review Permanency Progress Report

The court must also review the permanency progress report to determine:

- The safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
- The continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
- The appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child;
- Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
- For a child receiving psychotropic medication, whether the child:
    - has been provided appropriate non-pharmacological interventions, psychosocial therapies, or behavior strategies to meet the child's needs; or
    - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
- Whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and whether there have been major changes in the child's school performance or there have been serious disciplinary events;
- For a child 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community; and
- For a child whose permanency goal is APPLA:
    - the desired permanency outcome for the child, by asking the child; and
    - whether, as of the date of the hearing, another planning permanent living arrangement is the best permanency plan for the child and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
        - return home;
        - be placed for adoption;
        - be placed with a legal guardian; or

        - be placed with a fit and willing relative.
    - whether DFPS has:
        - conducted an independent living skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3);
        - addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the ILS assessment;
        - provided a youth 16 years and older with the documents and information listed in Tex. Fam. Code § 264.121(e); and
        - provided a youth who is 18 years or has had the disabilities of minority removed, the documents and information listed in Tex. Fam. Code § 264.121(e-1).
- If the child is placed in an RTC or QRTP, whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code § 263.002 and Tex. Fam. Code § 263.00201 respectively.

Tex. Fam. Code § 263.306(a-1)(5).

4. Inquire About Child and Family's Native American Heritage

The court shall ask all parties present whether the child or the child's family has a Native American heritage and identify any Native American tribe with which the child may be associated. Tex. Fam. Code § 263.306(a-1)(3). For more information regarding requirements when a child has a Native American heritage, *see* the *Indian Child Welfare Act* chapter of this Bench Book.

5. Determine Date of Dismissal

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

6. Set Final Hearing

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

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

G. Mandatory Child-Specific Considerations

1. Child's Attendance is Mandatory

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

***Special Issue**: In 2008, the ABA National Child Welfare Resource Center on Legal and Judicial Issues produced five judicial bench cards to assist judges in preparing, accommodating, and interviewing children who attend court. The judicial bench cards are broken down by age: Ages 0-12 months, 1-3 years, 3-5 years,*

5-11 years, 12-15 years, and 16 years and over. These bench cards are included in the Checklist section of this Bench Book.

2. Age-Appropriate Normalcy Activity

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

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

Tex. Fam. Code § 264.001(1).

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

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

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

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

- The overall health and safety of the child;
- The child's age, maturity, and development level;
- The best interest of the child based on the caregiver's knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;
- The behavioral history of the child and the child's ability to safely participate in a proposed activity;
- The importance of encouraging the child's social, emotional, and developmental growth; and
- The importance of providing the child with the most family-like experience possible.

Tex. Fam. Code § 264.001(5).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency (CPA) caring for a child in the managing conservatorship of DFPS is not liable for harm

caused to the child resulting from the child's participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child's participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. Tex. Fam. Code § 264.114(c).

3. Placement Decisions

Tex. Fam. Code § 264.107 requires DFPS, when making placement decisions, to consult with the child's caseworker, attorney ad litem, and guardian ad litem and with any court-appointed volunteer advocate for the child, except when making an emergency placement that does not allow time for the required consultations. Tex. Fam. Code § 264.107(e). The guardian ad litem is entitled to be consulted and provide comments regarding the child's placement and must be granted access to a child in the child's placement. Tex. Fam. Code § 107.002(c)(7), (8).

***Special Issue**: Courts are required at each permanency hearing held under Tex. Fam. Code Chapter 263 to review the placement of each child who is not placed with a relative caregiver or designated caregiver as defined by Tex. Fam. Code § 264.751, to make a finding as to whether DFPS is able to place the child with a relative or designated caregiver, and to state the evidence that supports the finding. Tex. Fam. Code § 263.002(b).*

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4. Temporary Emergency Supervision

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

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

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

- the type of placement;
- the location of the placement;
- the date DFPS or the SSCC contacted the placement; and
- the reason DFPS or the SSCC determined the placement was not appropriate.

Tex. Fam. Code § 263.0022(c).

5. Child Age 14 or Older

The court must ensure that if the child is 14 years or older, services are in place to assist the child in making the transition from substitute care to independent living if the services are available in the community. Tex. Fam. Code § 263.306(a-1)(5)(H).

6. Texas Juvenile Justice Department (TJJD)

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

7. Summary of Medical Care

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

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

Tex. Fam. Code § 266.007(a).

8. Permanency Plan for a Child Age 16 or Older

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

- The permanency plan submitted to the court includes the services planned for the child to make the transition from foster care to independent living; and
- This transition is in the best interest of the child.

Tex. Fam. Code § 263.307(c).

For more information, *see* the *Best Interest* chapter of this Bench Book.

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

As long as a child remains in a QRTP, DFPS must provide the court with information at the Status Hearing and at each Permanency Hearing demonstrating that:

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

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

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

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

I. Review of Placement of a Child in a Residential Treatment Center

Based on the court's determination under Tex. Fam. Code § 263.002, the court must review at the permanency hearing whether continued placement is appropriate. Tex. Fam. Code § 263.306(a-1)(5)(J). The court must determine whether:

- The child's needs can be met through placement in a family-like setting;
- The RTC can provide the most effective and appropriate level of care for the child;
- If the RTC is the least restrictive setting consistent with the child's best interest and individual needs; and
- If the RTC is consistent with the short-term and long-term goals for the child, as specified by the child's permanency plan.

Tex. Fam. Code § 263.002(e).

When making the determination, the court may consider: any medical, psychological, or psychiatric assessments; the child's current treatment plan and progress being made; any significant medical, legal, or behavioral incidents involving the child; the reasons for the child's discharge from current or former placement; the programs available at the RTC; the RTC's discharge plan; whether there are other programs that more effectively meet the child's needs; and other relevant information. Tex. Fam. Code § 263.002(f).

J. Medical Consent

1. Medical Care and Treatment

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

2. Medical Consenter

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

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

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

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

Tex. Fam. Code § 266.004(h-2).

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

3. Consent by Child 16 Years of Age

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

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

4. Assumption of Financial Responsibility by Medical Consenters

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

- Limit or restrict a foster child's access to Medicaid benefits, including in-network benefits provided under the Medicaid managed care program;
- Change or limit the rights of parents of children in the temporary managing conservatorship of DFPS; or
- Limit a court's authority to order DFPS to assume financial responsibility for the cost of services provided to a foster child by an out-of-network provider. Tex. Fam. Code § 266.0043(d).

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

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

K. Children Who are Missing or Victims of Sex Trafficking

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

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's parent unless the parent:
  - cannot be located or contacted;
  - has had the parent's parental rights terminated; or
  - has executed an affidavit of relinquishment of parental rights.

Tex. Fam. Code § 264.123(a).

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

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

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

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

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

Tex. Fam. Code § 264.123(d).

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

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

Tex. Fam. Code § 264.123(e).

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

For more information, *see* the *Commercial Sexual Exploitation of Children* chapter of this Bench Book.

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

L. Notice of Significant Events

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

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

Not later than 24 hours after an event described by Tex. Fam. Code § 264.018(d), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS and the parent's attorney, if represented by an attorney, of:

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

Tex. Fam. Code § 264.018(d).

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

- The child's parent, and the parent's attorney, if represented by an attorney;
- An attorney ad litem appointed for the child under Tex. Fam. Code Chapter 107;
- A guardian ad litem appointed for the child under Tex. Fam. Code Chapter 107;
- A volunteer advocate appointed for the child under Tex. Fam. Code Chapter 107; and
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee.

Tex. Fam. Code § 264.018(e).

As soon as possible but not later than 48 hours after DFPS becomes aware of a significant event, as defined by Tex. Fam. Code § 264.018(a)(5), affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to:

- The child's parent, and the parent's attorney, if represented by an attorney;
- An attorney ad litem appointed for the child under Tex. Fam. Code Chapter 107;
- A guardian ad litem appointed for the child under Tex. Fam. Code Chapter 107;
- A volunteer advocate appointed for the child under Tex. Fam. Code Chapter 107;
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
- A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
- Any other person determined by the court to have an interest in the child's welfare.

Tex. Fam. Code § 264.018(f).

A significant event means:

- A placement change, including failure by DFPS to locate an appropriate placement for at least one night;
- A significant change in medical condition, as defined by Tex. Fam. Code § 264.018(a)(4);
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication, as defined by Tex. Fam. Code § 266.001;
- A major change in school performance or a serious disciplinary event at school;
- Placement of a child in a QRTP program as that term is defined by 42 U.S.C. § 672(k)(4) or RTC as defined by Tex. Fam. Code § 263.001 or placement conferences to determine the appropriateness of a QRTP or RTC placement; or
- Any event determined to be significant under DFPS rule.

Tex. Fam. Code § 264.018(a)(5).

For purposes of Tex. Fam. Code § 264.018(f), if a hearing for the child is conducted during the 48-hour notice period described by Tex. Fam. Code § 264.018(f), DFPS shall provide notice of the significant event at the hearing. Tex. Fam. Code § 264.018(g).

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

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

Tex. Fam. Code § 264.018(h).

Notwithstanding Tex. Fam. Code § 264.018(h), DFPS must provide notice under Tex. Fam. Code § 264.018 to a parent's attorney, if the parent is represented by an attorney if:

- DFPS cannot locate the parent; or
- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS' efforts to involve the parent.

Tex. Fam. Code § 264.018(h-1).

A person entitled to notice from DFPS under Tex. Fam. Code § 264.018 must provide current contact information. Tex. Fam. Code § 264.018(j).

DFPS must document all notifications and attempted notifications made under Tex. Fam. Code § 264.018 in the child's case record. Tex. Fam. Code § 264.018(m)

FINAL HEARING

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

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

A. Case Must Be Dismissed Within One Year

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

B. Court May Extend Dismissal Date if Extraordinary Circumstances

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

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

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

Tex. Fam. Code § 263.401(b).

If, after commencement of the initial trial on the merits within the time required by Tex. Fam. Code § 263.401(a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court schedules a new date on which the suit will be automatically dismissed, makes further temporary orders, and sets a new trial date pursuant to Tex. Fam. Code § 263.401(b-1).

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

1. Limits on the Extensions

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

In the Interest of J.L.C., 194 S.W.3d 667, 673 (Tex. App.—Fort Worth 2006, no pet.) (Mother's request for extension of one year deadline binds her to 18 months maximum for decision.);

In re J.H.G., 302 S.W.3d 304, 306 (Tex. 2010) (Mother's failure to challenge the trial court's extension of the statutory deadline in her statement of points waived the issue on appeal.);

In the Interest of J.E.P., No. 04-18-00241-CV, 2018 WL 4903061, at *3 (Tex. App.—San Antonio Oct.10, 2018, pet. denied) (mem. op.) (By rejecting the trial court's proposed trial date, which was the only date left available within the one-year deadline, father effectively agreed to the extension.);

In the Interest of J.-R.A.M., No. 10-20-00221-CV, 2020 WL 7866877, at *3 (Tex. App.—Waco Dec. 30, 2020, pet. denied) (mem. op.) (Failure to enter a written order or to specifically set a dismissal date does not affect the validity of an order granting an extension pursuant to emergency orders issued by the Texas Supreme Court regarding the COVID-19 State of Disaster. The emergency orders do not expressly require compliance with an extension granted after the initial extension.);

In the Interest of A.R., No. 11-20-00152-CV, 2020 WL 7258023, at *4 (Tex. App.—Eastland Dec. 10, 2020, pet. denied) (mem. op.) (It is well within the trial court's discretion to deny a request for a continuance despite any assertion that a party needs more time to complete services due to the COVID-19 pandemic disrupting services.);

In the Interest of A.W. a/k/a A.R.W., 623 S.W.3d 519, 522 (Tex. App.—Waco 2021, no pet.) (The Twenty-Ninth Emergency Order requires that an extension order entered under COVID-19 provisions where a case has not yet entered an extension order pursuant to Tex. Fam. Code § 263.401(b) must still adhere to its requirements.).

2. Failure to Resolve Case Before Dismissal Date

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

3. Motion to Dismiss

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

4. Effect of Dismissal

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

Dismissal of the suit filed by DFPS also does not bar another party with standing from proceeding to trial on the suit against the parents. An attorney ad litem appointed to represent the child is entitled to request a hearing or a trial on the merits. Tex. Fam. Code § 107.003(a)(3)(B). *See also In re Bishop*, 8 S.W.3d 412, 420 (Tex. App.—Waco 1999, orig. proceeding) (dismissal is without prejudice and does not affect pleadings of intervenor relative and guardian ad litem); *In the Interest of J.C.*, 250 S.W.3d 486 (Tex. App.—Ft. Worth 2008, pet. denied.) (foster parents sought and obtained termination of parent's rights after DFPS suit was dismissed).

DFPS may file a new petition after dismissal but must look to the current situation in the home in order to find evidence sufficient to establish a continuing danger exists for the child if returned home. A parent must be appointed managing conservator of the child unless the appointment would significantly impair the child's physical health or emotional development. Tex. Fam. Code § 153.131(a). *See also In re Cochran*, 151 S.W.3d 275, 280 (Tex. App.—Texarkana 2004, orig. proceeding) (past terminations alone are not sufficient to deny placement with parents absent evidence of current danger to the health or safety of the child).

C. Child Missing from Substitute Care

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

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

Tex. Fam. Code § 263.4012(a).

If the court retains jurisdiction under Tex. Fam. Code § 263.4012(a) but does not commence the trial on the merits before the dismissal date, the court's jurisdiction over the suit is terminated, and the suit is automatically dismissed without a court order. Tex. Fam. Code § 263.4012(b).

D. Monitored Return

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

1. Findings and Orders Required for a Monitored Return

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

- Finds that retaining jurisdiction is in the best interest of the child;
- Orders DFPS to:
  - return the child to the child's parent; or
  - transition the child, according to a schedule determined by DFPS or the court from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child's return;
- Orders DFPS to continue to serve as temporary managing conservator of the child; and
- Orders DFPS to monitor the child's placement to ensure that the child is in a safe environment.

Tex. Fam. Code § 263.403(a).

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

If the court renders an order under Tex. Fam. Code § 263.403, the court shall:

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

2. Failed Monitored Return

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

An order terminating a parent's rights after a failed monitored return was upheld as the clear and unambiguous language of Tex. Fam. Code § 263.403(c) allowed for the order to be entered after the 18 months authorized by Tex. Fam. Code § 263.401. *In the Interest of J.W.M.*, 153 S.W.3d 541, 545 (Tex. App.—Amarillo 2004, pet. denied); *see also In re Neal*, 4 S.W.3d 443, 445 (Tex. App.—Houston [1 Dist.] 1999, orig. proceeding). If the court renders an order, the court must include in the order specific findings regarding the grounds for the order and set a new dismissal date for the SAPCR. *Id.;* Tex. Fam. Code § 263.403(d).

E. Final Hearing

At the final hearing, the court may either:

- Enter a final decree of conservatorship that returns the child to the parent or caregiver and dismisses DFPS;

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

1. Parties

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

2. Required Notice of Trial

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

3. Burden of Proof at Final Hearing

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

a. Termination

In a termination suit, DFPS has the burden to present clear and convincing evidence of at least one ground for termination; that termination is in the best interest of the child; and that DFPS made reasonable efforts to return the child to the parent before commencement of a trial on the merits, and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent. The court does not have to make a finding regarding reasonable efforts if a service plan for the parent was waived due to aggravated circumstances under Tex. Fam. Code § 262.2015. Tex. Fam. Code § 161.001(f)(2). Clear and convincing evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Tex. Fam. Code § 101.007.

The Due Process Clause of the 14th Amendment requires the State to support the parental unfitness finding in a termination case by clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 768-69 (1982); *In the Interest of G.M.*, 596 S.W.2d 846, 847 (Tex. 1980).

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

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

- The parent sought a second opinion for a child's medical care or transferred a child's medical care to a new provider;
- The parent 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
- The parent 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).

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

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

b. Conservatorship

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

c. Indian Child Welfare Act (ICWA)

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

4. Grounds for Termination of Parental Rights

a. Personal Service Required Unless Prongs Met Under Tex. Fam. Code § 161.208

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

- DFPS has made a diligent effort to locate a missing person who has not been personally served and a relative of that parent; and
- A relative located by DFPS has had a reasonable opportunity to request appointment as a managing conservator of the child or DFPS has not been able to locate the missing parent or a relative of the missing parent.

Tex. Fam. Code § 161.208.

b. Involuntary Termination of Parent-Child Relationship

Pursuant to Tex. Fam. Code § 161.001(a), "born addicted to alcohol or a controlled substance" means a child:

- Who is born to a mother who during the pregnancy used a controlled substance, as defined by Tex. Health & Safety Code Chapter 481, other than a controlled substance legally obtained by prescription, or alcohol; and
- Who, after birth as a result of the mother's use of the controlled substance or alcohol:
    - 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(b) provides the list of grounds for involuntary termination of parental rights. The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that:

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

abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth. Tex. Fam. Code § 161.001(b)(1)(H);

- contumaciously refused to submit to a reasonable and lawful order of a court under Tex. Fam. Code Chapter 261, Subchapter D. Tex. Fam. Code § 161.001(b)(1)(I);
- been the major cause of:

- the failure of the child to be enrolled in school as required by the Tex. Educ. Code; or
- the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

Tex. Fam. Code § 161.001(b)(1)(J);

- executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Tex. Fam. Code Chapter 161. Tex. Fam. Code § 161.001(b)(1)(K);
- been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Tex. Fam. Code Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  - Tex. Penal Code § 19.02 (murder);
  - Tex. Penal Code § 19.03 (capital murder);
  - Tex. Penal Code § 19.04 (manslaughter);
  - Tex. Penal Code § 21.11 (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), (8) (trafficking of persons); and
  - Tex. Penal Code § 43.05(a)(2) (compelling prostitution).

Tex. Fam. Code § 161.001(b)(1)(L);

- had the parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Tex. Fam. Code § 161.001(b)(1)(D) or (E) or substantially equivalent provisions of the law of another state; Tex. Fam. Code § 161.001(b)(1)(M). The petition for termination must filed before the first anniversary of the date DFPS was granted managing conservatorship in a case where the parent's rights were terminated based on a (D) or (E) finding. Tex. Fam. Code § 161.001(d-1);
- constructively abandoned the child who has been in the permanent or temporary managing conservatorship of DFPS for not less than six months, and:
  - DFPS has made reasonable efforts to return the child to the parent;
  - the parent has not regularly visited or maintained significant contact with the child; and
  - the parent has demonstrated an inability to provide the child with a safe environment.

Tex. Fam. Code § 161.001(b)(1)(N);

***Special Issue**: The statutory termination ground for failure to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of a child in the managing conservatorship of DFPS, often referred to as the "O ground," was repealed by the 89th Texas Legislature. All subsequently listed grounds in Tex. Fam. Code § 161.001(b)(1) were also re-alphabetized. Effective September 1, 2025, the change in the law applies to suits affecting the parent-child relationship pending in trial court and to suits affecting the parent-child relationship filed on or after September 1, 2025.*

- 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);
- voluntarily delivered the child to a designated emergency infant care provider under Tex. Fam. Code § 262.302 without expressing an intent to return for the child. Tex. Fam. Code § 161.001(b)(1)(R);
- been convicted of:
  - the murder of the other parent of the child under Tex. Penal Code § 19.02 or Tex. Penal Code § 19.03, or under a law of another state, federal law, the law of a foreign country, or

the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 19.02 or Tex. Penal Code § 19.03;

- criminal attempt under Tex. Penal Code § 15.01, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 15.01, to commit the offense described by Tex. Fam. Code § 161.001(b)(1)(T)(i);
- criminal solicitation under Tex. Penal Code § 15.03, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 15.03, of the offense described by Tex. Fam. Code § 161.001(b)(1)(T)(i); or
- the sexual assault of the other parent of the children under Tex. Penal Code § 22.011 or Tex. Penal Code § 22.021 or other under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Tex. Penal Code § 22.011 or Tex. Penal Code § 22.021.

Tex. Fam. Code § 161.001(b)(1)(S);

- been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Tex. Penal Code § 22.011 or Tex. Penal Code § 22.021, or other under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense Tex. Penal Code § 22.011 or Tex. Penal Code § 22.021. Tex. Fam. Code § 161.001(b)(1)(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 Tex. Fam. Code § 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).

c. Reasonable Efforts

In a suit for termination of the parent-child relationship filed by DFPS, the court may not order termination under Tex. Fam. Code § 161.001(b)(1) unless the court finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that:

- The department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or
- Reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Tex. Fam. Code § 262.2015.

Tex. Fam. Code § 161.001(f).

If DFPS made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court must include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home. Tex. Fam. Code § 161.001(g).

d. Involuntary Termination: Inability to Care for Child

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

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

Tex. Fam. Code § 161.003(a).

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

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

e. Termination of the Rights of an Alleged Biological Father

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

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

- After being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under Tex. Fam. Code Chapter 160;
- The child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under Tex. Fam. Code Chapter 160, and after the exercise of due diligence by the petitioner:
    - his identity and location are unknown; or
    - his identity is known but he cannot be located;

- The child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under Tex. Fam. Code Chapter 160; or
- He has registered with the paternity registry under Tex. Fam. Code Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner.

Tex. Fam. Code § 161.002(b).

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

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

The court shall not render an order terminating parental rights under Tex. Fam. Code § 161.002(b)(2) or (b)(3) unless the court receives evidence of a certificate of the results of a search of the paternity registry under Tex. Fam. Code Chapter 160 from the vital statistics unit indicating that no man has registered the intent to claim paternity. Tex. Fam. Code § 161.002(e).

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

5. Best Interest

For termination of parental rights to be granted, a court must find by clear and convincing evidence that it is in the best interest of a child for parental rights to be terminated. Considerations for best interest include, but are not limited to, those listed in Tex. Fam. Code § 263.307 and in *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976).

***Special Issue**: While at least one of the grounds for involuntary termination of parental rights may exist, and DPFS may have made reasonable efforts to return the child home, it may not always be in the best interest of a child for parental rights to be terminated. If it is also not in the best interest of a child to name a parent as the managing conservator of the child, alternatives such as naming DFPS or a non-parent as the managing conservator of the child while awarding possessory conservatorship to a parent should be considered.*

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a. *Holley* Factors

The case *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976), sets forth factors used to evaluate the evidence relating to best interest, which include but are not limited to:

- The desires of the child;

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

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

"The absence of evidence about some of these [*Holley*] considerations would not preclude a fact finder from reasonably forming a strong conviction or belief that termination is in the child's best interest, particularly if the evidence were undisputed that the parental relationship endangered the safety of the child. Other cases, however, will present more complex facts in which paltry evidence relevant to each consideration mentioned in *Holley* would not suffice to uphold the jury's finding that termination is required." *In the Interest of C.H.*, 89 S.W.3d 17, 27 (Tex. 2002).

"Evidence about placement plans and adoption are, of course, relevant to best interest. However, the lack of evidence about definitive plans for permanent placement and adoption cannot be the dispositive factor; otherwise, determinations regarding best interest would regularly be subject to reversal on the sole ground that an adoptive family has yet to be located. Instead, the inquiry is whether, on the entire record, a fact finder could reasonably form a firm conviction or belief that termination of the parent's rights would be in the child's best interest—even if the agency is unable to identify with precision the child's future home environment." *Id.* at 28.

"The Department is required to prove by clear and convincing evidence that termination of a parent's right to his children is in the children's best interest. . . . In determining whether the evidence is legally sufficient to support a best-interest finding, we 'consider the evidence that supports a deemed finding regarding best interest and the undisputed evidence,' and ignore evidence a fact-finder could reasonably disbelieve. *In the Interest of E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (citation omitted) (quoting *In the Interest of J.F.C.,* 96 S.W. 3d 256, 268 (Tex. 2002)).

"A trial court's best-interest finding must be supported by clear and convincing evidence in the record. . . . [It is error to rely] on a *lack* of evidence to contradict a finding as if it were evidence supporting the finding. . . . A lack of evidence does not constitute clear and convincing evidence." *E.N.C.*, 384 S.W.3d at 808 (emphasis in original) (citation omitted).

6. Presumptions Involved in Conservatorship

a. Parent Acts in the Best Interest of Their Child

It is a rebuttable presumption that a parent acts in the best interest of their child and that it is in the best interest of a child to be in the care, custody, and control of a parent. Tex. Fam. Code § 153.002(b). In a suit between a parent and nonparent, the nonparent may overcome the presumption by proving by clear and convincing evidence that denial of the relief requested would significantly impair the child's physical health or emotional development. If the court renders an order in the suit granting relief to the nonparent, the court shall state in the order:

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

Tex. Fam. Code § 153.002(c).

b. Parent Should Be Appointed as Managing Conservator

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

c. Parent with History of Domestic Violence or Sexual Abuse

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

Under Tex. Fam. Code § 153.004(e), it is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present neglect, abuse or family violence by that parent, or any person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of possession of or access to the child. Tex. Fam. Code § 153.004(e). The statute further provides that courts may consider whether a protective order was rendered under Tex. Fam. Code Chapter 85, Title 4, against the parent or other person during the two-year period preceding the filing of the suit or during the pendency of the suit in determining whether there is evidence of a history or pattern of past or present child neglect, abuse or family violence by a parent or other person. Tex. Fam. Code § 153.004(f). For more information about dynamics of family violence in a child welfare case, *see* the *Domestic Violence* chapter of this Bench Book.

d. Parent Should Be Appointed as Possessory Conservator

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

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

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

- There is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit; or

- The parent engaged in conduct that constitutes an offense under Tex. Penal Code § 21.02, Tex. Penal Code § 22.011, Tex. Penal Code § 22.021, or Tex. Penal Code § 25.02, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

Tex. Fam. Code § 153.004(d).

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

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

- Appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and
- It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator.

Tex. Fam. Code § 263.404(a).

7. Considerations in Naming DFPS as Permanent Managing Conservator

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

- The child will reach 18 years of age in not less than three years;
- The child is 12 years or older and has expressed a strong desire against termination or has continuously expressed a strong desire against being adopted; and
- The needs and desires of the child.

Tex. Fam. Code § 263.404(b).

***Special Issue**: The court is required to continue the appointment of the GAL or the AAL for the child, or an attorney serving in the dual role, as long as the child remains in DFPS conservatorship. Tex. Fam Code § 107.016(1)(A). However, courts should continue with the permissive appointment of both the child's AAL and GAL, if both have been appointed, under Tex. Fam. Code § 107.016(1)(B) as long as the child is in the conservatorship of DFPS.*

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8. Final Order Appointing DFPS as Managing Conservator of Certain Abandoned Children ("Baby Moses" Law)

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

- Is the child's biological parent;
- Intends to relinquish parental rights and consents to the termination of parental rights with regard to the child; and

- Intends to waive the right to notice of the suit terminating the parent-child relationship.

Tex. Fam. Code § 263.407(a).

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

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

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

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

Tex. Fam. Code § 263.407(c).

9. Requirements for Appointment of Nonparent as Managing Conservator

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

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

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

Tex. Fam. Code § 263.408(a)(1).

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

- Authorize immunization of the child or any other medical treatment that requires parental consent;
- Obtain and maintain health insurance coverage for the child and automobile insurance for the child, if appropriate;

- Enroll the child in a day-care program or school, including kindergarten;
- Authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;
- Authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
- Authorize employment of the child;
- Apply for and receive public benefits for or on behalf of the child; and
- Obtain legal services for the child and execute contracts or other legal documents for the child.

Tex. Fam. Code § 263.408(a)(2).

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

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

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

PERMANENCY HEARING AFTER FINAL ORDER

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

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

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

A. When Permanency Hearing After Final Order is Conducted

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

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

B. Notice of the Permanency Hearing After Final Order

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

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

- DFPS;

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

Tex. Fam. Code § 263.0021(b).

Notice of a hearing under Tex. Fam. Code Chapter 263 may be given:

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

Tex. Fam. Code § 263.0021(c).

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

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

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

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

D. Permanency Progress Report After Final Order

1. Filing the Permanency Progress Report After Final Order

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

2. Copies of Report Provided

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

3. Permanency Progress Report Contents

The permanency progress report must contain:

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

Tex. Fam. Code § 263.502(a-1).

E. Conducting a Permanency Hearing After Final Order

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

- Identify all persons and parties present at the hearing;
- Review the efforts of DFPS or other agency in notifying persons entitled to notice under Tex. Fam. Code § 263.0021;
- For a child placed with a relative or designated caregiver, review the efforts of DFPS to inform the caregiver of the option to become a verified foster home and of the availability of the PCA program; and
- Review the permanency progress report to determine:
  - the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
  - whether the child has had the opportunity to provide information regarding potential caregivers;
  - whether DFPS placed the child with a relative or other designated caregiver and the continuing necessity and appropriateness of the placement of the child, including with respect to a child who has been placed outside of this state, whether the placement continues to be in the best interest of the child;
  - if the child is placed in institutional care, whether efforts have been made to ensure that the child is placed in the least restrictive setting consistent with the child's best interest and special needs;

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

- the appropriateness of the primary and alternative permanency goals for the child, whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child, and whether:
  - DFPS has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption; or
  - another permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child;
- for a child whose permanency goal is another planned permanent living arrangement:
  - the desired permanency outcome for the child, by asking the child;
  - whether, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child, and, if so, provide compelling reasons why it continues to not be in the best interest of the child to:
    - return home;
    - be placed for adoption;
    - be placed with a legal guardian; or
    - be placed with a fit and willing relative;
  - whether DFPS has:
    - conducted an independent living skills (ILS) assessment under Tex. Fam. Code § 264.121(a-3);
    - addressed the goals identified in the child's permanency plan, including the child's housing plan, and the results of the ILS assessment;
    - provided a youth 16 years and older with the documents and information listed in Tex. Fam. Code § 264.121(e); and
    - provided a youth who is 18 years or has had the disabilities of minority removed, the documents and information listed in Tex. Fam. Code § 264.121(e-1);
- if the child is 14 years of age or older, whether services that are needed to assist the child in transitioning from substitute care to independent living are available in the child's community;
- whether the child is receiving appropriate medical care and has been provided the opportunity, in a developmentally appropriate manner, to express the child's opinion on any medical care provided;
- for a child receiving psychotropic medication, whether the child:

        - has been provided appropriate non-pharmacological interventions, therapies, or strategies to meet the child's needs; or
        - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days;
    - whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and there are major changes in the child's school performance or there have been serious disciplinary events;
    - for a child for whom DFPS has been named managing conservator in a final order that does not include termination of parental rights, whether to order DFPS to provide services to a parent for not more than six months after the date of the Permanency Hearing if:
        - the child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
        - the court determines that further efforts at reunification with a parent are:
            - in the best interest of the child; and
            - likely to result in the child's safe return to the child's parent; and
    - whether DFPS has identified a family or other caring adult who made a permanent commitment to the child; and
    - if a child is placed in an RTC or QRTP, determine whether continued placement in an RTC or QRTP is appropriate according to Tex. Fam. Code § 263.002 and Tex. Fam. Code § 263.00201 respectively.

Tex. Fam. Code § 263.5031(a).

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

At the hearing, the court must also determine whether the child's caregiver is present at the hearing and allow the caregiver to testify if the caregiver wishes to provide information about the child. Tex. Fam. Code § 263.0021(f).

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

As long as a child remains in a QRTP, DFPS must provide the court with information at the Status Hearing and at each Permanency Hearing demonstrating that:

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

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

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

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

G. Review of Placement of a Child in a Residential Treatment Center

Based on the court's determination under Tex. Fam. Code § 263.002, the court must review at the permanency hearing whether continued placement is appropriate. Tex. Fam. Code § 263.5031(a)(4)(M). The court must determine whether:

- The child's needs can be met through placement in a family-like setting;
- The RTC can provide the most effective and appropriate level of care for the child;
- If the RTC is the least restrictive setting consistent with the child's best interest and individual needs; and
- If the RTC is consistent with the short-term and long-term goals for the child, as specified by the child's permanency plan.

Tex. Fam. Code § 263.002(e).

When making the determination, the court may consider: any medical, psychological, or psychiatric assessments; the child's current treatment plan and progress being made; any significant medical, legal, or behavioral incidents involving the child; the reasons for the child's discharge from current or former placement; the programs available at the RTC; the RTC's discharge plan; whether there are other programs that more effectively meet the child's needs; and other relevant information. Tex. Fam. Code § 263.002(f).

H. Court Orders Related to Permanent Managing Conservatorship

1. Court Ordered Services for Parents

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

- The child has not been placed with a relative or other individual, including a foster parent, who is seeking permanent managing conservatorship of the child; and
- The court determines that further efforts at reunification with a parent are:
  - in the best interest of the child; and
  - likely to result in the child's safe return to the child's parent.

Tex. Fam. Code § 263.5031(a)(4)(K).

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

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

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

Tex. Fam. Code § 161.004(a).

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

In a suit for modification between a parent and a nonparent, the nonparent, if required to overcome the presumption under Tex. Fam. Code § 153.002(b), must overcome the presumption by clear and convincing evidence and may not overcome the presumption on the basis of a prior order granting relief to the nonparent if the parent agreed to the prior order. Tex. Fam. Code § 156.008.

3. Child Committed to Texas Juvenile Justice Department or Missing from Care

Unless the child is adopted or permanent managing conservatorship of the child is awarded to an individual other than the department, a court required to conduct permanency hearings for a child for whom the department has been appointed permanent managing conservator may not dismiss a suit affecting the parent-child relationship filed by the department regarding the child while the child is:

- Committed to the Texas Juvenile Justice Department or released under the supervision of the Texas Juvenile Justice Department; or
- Missing from the child's substitute care provider.

Tex. Fam. Code § 263.501(g).

I. Foster Youth Bill of Rights and Ombudsman's Office

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

- Abuse, neglect, exploitation, discrimination, and harassment;
- Food, clothing, shelter, and education;
- Luggage to transport the child's personal belongings;
- Medical, dental, vision, and mental health services, including the right of the child to consent to treatment;
- Emergency behavioral intervention, including what methods are permitted, the conditions under which it may be used, and the precautions that must be taken when administering it;

- Placement with the child's siblings and contact with members of the child's family;
- Privacy and searches, including the use of storage space, mail, and the telephone;
- Participation in school-related extracurricular or community activities;
- Interaction with persons outside the foster care system, including teachers, church members, mentors, and friends;
- Contact and communication with caseworkers, attorneys ad litem, guardians ad litem, and court-appointed special advocates;
- Religious services and activities;
- Confidentiality of the child's records;
- Job skills, personal finances, and preparation for adulthood;
- Participation in a court hearing that involves the child;
- Participation in the development of service and treatment plans;
- If the child has a disability, the advocacy and protection of the rights of a person with that disability; and
- Any other matter affecting the child's ability to receive care and treatment in the least restrictive environment that is most like a family setting.

Tex. Fam. Code § 263.008(b).

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

- Orally in the child's primary language, if possible, and in simple, non-technical terms; or
- For a child who has a disability, including an impairment of vision or hearing, through any means that can reasonably be expected to result in successful communication with the child.

Tex. Fam. Code § 263.008(c).

The Health and Human Services Commission must appoint an ombudsman for children and youth in foster care. Tex. Gov't Code § 523.0352(2). The ombudsman receives complaints from children and youth in the conservatorship of the department as provided under Tex. Gov't Code § 523.0356(b)(1)(A)(i); informs children and youth in the conservatorship of the department who file a complaint about the result of an ombudsman's investigation of the complaint, including whether the ombudsman was able to substantiate the child's or youth's complaint; and collaborates with DFPS to develop an outreach plan for children and youth in DFPS conservatorship to promote awareness of the ombudsman program. Tex. Gov't Code § 523.0357.

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

- Toll-free phone: 1-844-286-0769 (8am to 5pm, Monday through Friday)
- Toll-free fax: 1-888-780-8099
- Mail: Texas Health and Human Services Commission
  Foster Care Ombudsman, MC H-700
  P O Box 13247
  Austin, Texas 78711-3247
- Online: HHS Ombudsman Foster Care Help[16]

***Special Issue**: Judges, Parents, Attorneys, CASAs, and other individuals with inquiries and complaints about a child or youth's case may continue to contact the DFPS Office of Consumer Affairs[17] by phone at 1-800-720-7777 or by email at OCA@dfps.texas.gov.*

J. Transitional Services

1. Transition to Independence

DFPS has a duty to address unique challenges facing youth in conservatorship transitioning to independence, including efforts to improve transition planning and providing experiential life skills-training. Tex. Fam. Code § 264.121. The life skills-training must include instruction on financial literacy, including, but not limited to, understanding the timeline to file taxes, protecting against identity theft, and preparing a budget. For youth 17 or older, the training must also include lessons related to insurance, civic engagement, and identification documents. Tex. Fam. Code § 264.121(a-2).

DFPS must conduct an independent living skills (ILS) assessment for all youth 16 and older in DFPS Temporary or Permanent Managing Conservatorship and must conduct an ILS assessment for all youth who are at least 14 years of age but younger than 16 years of age and in DFPS Permanent Managing Conservatorship. Tex. Fam. Code § 264.121(a-3)-(a-4). DFPS must annually update the youth's ILS assessment to determine the skills acquired by the youth during the preceding year. Tex. Fam. Code § 264.121(a-5).

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

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

- Identify the cost of housing in relation to the youth's sources of income, including any benefits or rental assistance available to the youth;
- If the youth's housing goals include residing with family or friends, state that DFPS has addressed the following with the youth:
    - the length of time the youth expects to stay in the housing arrangement;
    - expectations for the youth regarding paying rent and meeting other household obligations;
    - the youth's psychological and emotional needs, as applicable; and
    - any potential conflicts with other household members, or any difficulties connected to the type of housing the youth is seeking, that may arise based on the youth's psychological and emotional needs;
- Inform the youth about emergency shelters and housing resources, including supervised independent living (SIL) and housing at colleges and universities, such as dormitories;
- Require DFPS to review a common rental application with the youth and ensure that the youth possess all of the documentation required to obtain rental housing; and

- Identify any individuals who are able to serve as cosigners or references on the youth's application for housing.

Tex. Fam. Code § 264.121(i).

2. Housing for Youth Aging out of Care

DFPS offers a Youth Housing Program within the Transitional Living Services Division to assist in locating housing for as many youth as possible and to end homelessness for those transitioning from foster care to successful adulthood.[18] Each region has a youth housing liaison who serve as the local points of contact.[19]

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

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

Tex. Fam. Code § 264.1214.

3. Provision of Copies of Certain Records

DFPS must ensure that each youth acquires a copy and a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under Tex. Transp. Code Chapter 521, on or before the date the on which the youth turns 16 years old. Tex. Fam. Code § 264.121(e).

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

- The youth's birth certificate;
- The youth's immunization records;
- The information contained in the youth's health passport;
- A personal identification certificate under Tex. Transp. Code Chapter 521;
- A social security card or a replacement social security card, if appropriate; and

- A Medicaid card or other proof of the youth's enrollment in Medicaid or an insurance card from a health plan that provides health coverage to foster youth.

Tex. Fam. Code § 264.121(e-1).

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

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

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

Tex. Fam. Code § 264.121(e-4).

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

Attorneys and guardians ad litem, along with other advocates, are responsible for ascertaining whether youth in care have received a copy of the documents referenced in Tex. Fam. Code § 264.121(e) and (e-1). Tex. Fam. Code § 107.003(b). Courts are also required to determine whether DFPS has provided the youth with documents required by Tex. Fam. Code § 264.121(e), and for youth 18 years or older, or who has had the disabilities of minority removed, whether DFPS has provided the youth with the documents and information listed in Tex. Fam. Code § 264.121(e-1). Tex. Fam. Code § 263.306(a-1) and Tex. Fam. Code § 263.5031(a)(4)(F)(vi).

For more information about how to support youth who are transitioning from foster care, please visit the Texas RioGrande Legal Aid Texas Foster Youth Justice Project website, including A Guide for Those "Aging Out" of Foster Care in Texas.[20]

Special Issue: *Judges can help ensure youth receive their identification documents by:*

- *Asking youth at every hearing about their identification documents and discuss safe handling;*
- *Requiring caseworkers to bring identification documents to court, review documents to determine if they are original, certified copies, and verify that the documents move with the youth when they change placements;*
- *Reviewing all the youth's identification documents and verifying that the names listed are consistent and in the youth's legal name;*
- *If the youth is a non-citizen, inquiring whether DFPS referred the youth to the DFPS Regional Immigration Specialist;*
- *If all identification documents have not been obtained, setting follow-up hearings for 30-60 days later to keep the process moving and require DFPS to provide updates at each hearing about the steps taken to obtain the documents;*

- *Ordering DFPS to complete a fee waiver form for Youth or Young Adult In Foster Care Residency Verification for a Driver License or State Identification Card[21] and provide it to the youth so they can receive a fee waiver at DPS for the issuance of a driver license or ID card and establish their Texas residency, and obtain their Texas birth certificate on their own in appropriate circumstances; and*
- *If a request for a birth certificate to foster care eligibility specialists is delayed more than 30 days, consider ordering DFPS to take Texas-born youth to the local birth certificate office with a completed fee waiver form and necessary identification documents.*

EXTENDING FOSTER CARE FOR TRANSITIONING YOUTH

A. Extended Jurisdiction

1. Young Adult & Extended Foster Care

"Young adult" is a person who was in the conservatorship of DFPS on the day before the person's 18th birthday. Tex. Fam. Code § 263.601(4).

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

Under the Fostering Connections Act, a young adult can voluntarily remain in foster care after their 18th birthday (referred to as "Extended Foster Care") if they meet certain requirements.

The Extended Foster Care program in Texas is eligible for Title IV-E funding from the federal government until the young adult's 21st birthday. 42 U.S.C. § 675(8)(B) (defining a "child" for purposes of Title IV-E to include an individual who has attained age 18, who has not attained age 19, 20, or 21, as the State may elect, and who meets one of the specified education, employment, or medical-condition requirements). Young adults who regularly attend high school or a GED program may remain in Extended Foster Care until the last day of the month of their 22nd birthday or until the young adult completes or withdraws from the high school or GED program, whichever occurs first. Tex. Fam. Code § 264.101(a-1)-(a-2). In Texas, the eligibility requirements for extended foster care are that the young adult over age of 18 is:

- Regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate;
- Regularly attending an institution of higher education or a postsecondary vocational or technical program (at least six credit hours enrollment);
- Participating in a program or activity that promotes or removes barriers to employment;
- Employed for at least 80 hours a month; or
- Incapable of performing the activities described above due to a documented medical condition.

Tex. Fam. Code § 264.101(a-1).

2. Extended Jurisdiction after the Young Adult's 18th Birthday

Any court with jurisdiction over a young adult on the day before their 18th birthday will automatically continue to have jurisdiction of the young adult beyond their 18th birthday for at least six months and must retain the case on their docket while the young adult is in extended foster care and during trial independence. Tex. Fam. Code § 263.602(a).

***Special Issue**: Ordering trial independence for a period of 12 months is encouraged; however, the statute requires a minimum trial independence period of six months.*

While a young adult is in extended foster care, the Texas Family Code requires the court to conduct periodic hearings every six months, and must make specific findings regarding the young adult's living arrangement, the permanency plan, whether the young adult participated in developing the plan, whether it reflects independent living skills and appropriate services in order for the young adult to achieve independence, and whether additional services are needed to meet the young adult's needs. Tex. Fam. Code § 263.602(b).

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

B. Trial Independence

"Trial independence" allows young adults who exit foster care on their 18th birthday or any time prior to their 21st birthday while participating in extended foster care to return voluntarily to extended foster care for additional support. A young adult may return within six months of leaving care, or within 12 months if authorized by a court order, provided they continue to meet the eligibility requirements for extended foster care.

Trial independence is mandatory for a period of at least six months beginning on:

- The date of the young adult's 18th birthday; or
- The date the young adult exits extended foster care.

Tex. Fam. Code § 263.6015(b).

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

Each time a young adult exits foster care (originally at 18 or extended foster care), the young adult will complete a new six-month period (or a 12-month period if authorized by a court order) of trial independence. Tex. Fam. Code § 263.6015(d).

A young adult's trial independence status ends on the young adult's 21st birthday. Tex. Fam. Code § 263.6015(e).

***Special Issue**: Pursuant to DFPS policy, the caseworker must ask the court to approve a 12-month trial period of independence beginning on the date that the young adult leaves foster care after turning 18. Trial independence applies to all young adults who turn 18 while in DFPS conservatorship, regardless of placement, including those on runaway status or living in a non-paid placement. Twelve months is the maximum period of trial independence. CPS Policy Handbook § 5611.1.*[22]

The court must also maintain jurisdiction over a young adult age 18 or older who temporarily leaves foster care for a "trial independence" period. This is so that if/when the young adult returns to foster care, the young adult (and DFPS) will not lose eligibility for federal funding. This allows DFPS to draw down federal dollars to help provide services to young adults who exit and later return to care. This statutory structure assists the child welfare agency in ensuring federal funding to assist with extended foster care services. Without it, DFPS would not be able to serve many of the young adults who leave foster care after turning 18 and later find they

need to return to care for additional support and services while they transition to independence. The court may extend its jurisdiction beyond the end of trial independence through the young adult's 21st birthday if the young adult requests it and receives transitional living services from DFPS. Tex. Fam. Code § 263.6021. This gives the young adult the opportunity to return to court to ensure they are receiving appropriate or additional service if needed without having to remain in extended foster care. A young adult who consents to the continued jurisdiction of the court has the same rights as any other adult of the same age. Tex. Fam. Code § 263.608. A young adult who enters or reenters extended foster care after a period of trial independence must complete a new trial independence period upon exiting extended foster care. Each trial independence period may last no more than one year. Tex. Fam. Code § 263.6015.

***Special Issue**: Young adults may still reenter extended foster care after trial independence ends. When young adults reenter extended foster care after trial independence ends, services are paid for with state dollars, rather than federal.*

Unless the court extends its jurisdiction over a young adult beyond the end of trial independence as provided by Tex. Fam. Code § 263.6021(a) or Tex. Fam. Code § 263.603(a), the court's extended jurisdiction over a young adult terminates on the earlier of:

- The last day of the month in which trial independence ends; or
- The young adult's 21st birthday.

Tex. Fam. Code § 263.602(f).

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

For more information, *see* an Extended Court Jurisdiction Flow Chart developed by DFPS.[23]

Unless the young adult reenters extended foster care before the end of the court's extended jurisdiction described by Tex. Fam. Code § 263.6021(a), the extended jurisdiction of the court terminates on the earlier of:

- The young adult's 21st birthday; or
- The date the young adult withdraws consent to the extension of the court's jurisdiction in writing or in court.

Tex. Fam. Code § 263.6021(b).

For more information, *see* a Brief Overview of Transitional Living Services developed by DFPS.[24]

C. Rights of Young Adults

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

While the young adult is only eligible for federally funded extended foster care if they return during trial independence, the young adult may return to extended foster care, even if the trial independence period has expired, at any time prior to the month of their 21st birthday as long as a placement is available and they meet the requirements. 40 Tex. Admin. Code § 700.346(e).

While the court's jurisdiction automatically terminates by the young adult's 21st birthday or sooner, young adults may continue to receive extended foster care benefits until the young adult's 22nd birthday if the young adult is regularly attending high school or a program leading toward a high school diploma or high school equivalence certificate (GED program). 40 Tex. Admin. Code § 700.346(c).

It is important to remember that even though a young adult may meet all eligibility criteria for extended foster care, there is no guarantee that a placement will be found for the young adult. If there is no placement available, the young adult may not enter extended foster care. Young adults who are most vulnerable to not having a placement available to them are those who have had recent psychiatric hospital admissions, those with juvenile and criminal history, those with allegations of abuse against another child that were not ruled out, and those with a history of behavioral problems in past placements.

D. Extended Jurisdiction in Guardianship Situation

The court may also extend its jurisdiction on its own motion without the young adult's consent if it believes that a young adult may be incapacitated[25] and in order to allow DFPS to refer the young adult to the Health and Human Services (HHS) Guardianship Services Program (formerly known as the Department of Aging and Disability Services or DADS) for guardianship services as required by Tex. Hum. Res. Code § 48.209. Tex. Fam. Code § 263.603(a).

However, the court's extended jurisdiction under this section automatically terminates on the earliest of the date (1) HHS Guardianship Services Program determines a guardianship is not appropriate under Tex. Hum. Res. Code Chapter 161; (2) a court with probate jurisdiction denies an application to appoint a guardian; or (3) a guardian is appointed and qualifies under the Texas Estates Code. Tex. Fam. Code § 263.603(b).

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

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

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

E. Role of Attorney ad Litem, Guardian ad Litem, or Volunteer Advocate

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

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

F. Prohibited Appointments and Orders

The court may not appoint DFPS or HHS Guardianship Services Program as the managing conservator or guardian of the young adult. Tex. Fam. Code § 263.607(a).

A court may not order DFPS to provide a service to a young adult unless DFPS:

- Is authorized to provide the services under state law; and
- Is appropriated money to provide the services in an amount sufficient to comply with the court order and DFPS obligations to other young adults for whom DFPS is required to provide similar services.

Tex. Fam. Code § 263.607(b).

G. Supervised Independent Living

The Supervised Independent Living (SIL) program is a type of voluntary placement in Extended Foster Care which allows young adults who are accepted into a SIL program to live in a more independent setting, including apartments, dorms, and shared housing.[26] Young adults receive casework and support services to help them become independent and self-sufficient.

If a young adult is accepted by a SIL program, the young adult receives case management and support services to help them become independent and self-sufficient through a DFPS contracted provider. There is no daily in-home supervision by an adult, therefore the young adult has increased responsibilities.

1. Benefits of SIL Program

Through SIL, a young adult has increased responsibilities and support to transition to independent living with help such as:

- Meeting their own needs with limited guidance
- Experiencing age-appropriate mistakes and consequences and learning responsible behaviors
- Managing finances
- Managing their own time including scheduling appointments
- Developing connections with family, caring adults, and supportive networks
- Leaving the SIL setting for employment, education, social and other activities

2. Achieving identified education and employment goals

- Accessing community resources
- Experiencing life skills
- Establishing important relationships

3. Eligibility requirements for SIL

SIL is available for a young adult who is able to:

- Demonstrate a reasonable level of maturity and ability to manage the expectations required in a SIL setting with no supervision and case management; and
- Meet eligibility requirements for Extended Foster Care.[27]

SIL with Enhanced Case Management (ECM) services, which are additional support or services to help young adults be able to adjust to and maintain independence, is available to a young adult who is able to:

- Demonstrate a reasonable level of maturity and ability to manage the expectations required in a SIL setting with no supervision and case management;
- Has a history of complex needs that require additional case management to be able to successfully adjust to a (SIL) placement;
- Meet eligibility requirements for enhanced case management services;[28] and
- Meet eligibility requirements for Extended Foster Care.[29]

Through SIL with ECM, a young adult receives assistance with:

- Scheduling and managing their own medical, educational, and employment services - through community-based providers, governmental agencies, and other organizations
- Arranging transportation to necessary appointments
- Developing and monitoring a medication management plan
- Improving their daily life skills

***Special Issue**: If the youth is applying for SIL with ECM, additional required documents will need to be sent along with application and other forms.*

The young adult in a SIL placement must meet the Extended Foster Care eligibility requirements within 30 days of placement.

A 17-year-old youth in DFPS conservatorship may apply for a SIL placement but is not eligible for placement until their 18th birthday. Youth may apply for a SIL program 45 days prior to their 18th birthday, but there may be situations that allow application submission earlier, such as a SIL which is college-based or SIL apartment waitlists.

4. SIL settings

SIL settings can include:

- Apartments
- Non-College Dorms
- College Dorms – Note that ECM is not permitted in college dorm settings
- Shared Housing
- Host Homes

For more information about SIL settings, *see* DFPS' Types of SIL Settings webpage.[30]

5. **Requesting a SIL Placement:**

Step 1: The young adult discusses SIL with the DFPS/SSCC caseworker. The young adult completes the DFPS SIL application and gives it to the DFPS/SSCC caseworker.

Step 2: The DFPS/SSCC caseworker will then include their comments and complete their required sections of the SIL application. Youth and DFPS/SSCC caseworker comments are required in all applicable sections for the application to be considered complete.

Step 3: The DFPS/SSCC caseworker sends the completed and approved SIL application and other required forms to the SIL Coordinator through a mailbox established by DFPS or the Single Source Continuum Contractor. After review, the DFPS/SSCC SIL Coordinator sends an email approving or denying the application.

Step 4: If approved, the DFPS/SSCC SIL Coordinator will send the DFPS/SSCC caseworker an email with necessary forms and next steps.

Step 5: The DFPS/SSCC caseworker discusses the available SIL placement options with the young adult and submits the application packet to the agreed providers. Placement of a Legacy young adult into a SSCC Catchment area must follow the protocol outlined in the designated SSCC's Joint Operations Manual.

Step 6: Upon initial acceptance by a SIL provider, the young adult and DFPS/SSCC caseworker hold discussions with the SIL provider. If the young adult, DFPS/SSCC caseworker, and SIL provider agree on the placement, then a placement date is identified and the placement is completed.

Special Issue: *If an SIL application is denied, the SIL Coordinator will provide the caseworker with the reason(s) for the denial. If the young adult is able to address the identified reasons for denial, or if there is a change in circumstances, a new application can be submitted to the SIL Coordinator. A young adult has 30 days after placement to come into compliance with extended foster care requirements. As a result, a SIL application should not be denied solely because the young adult is not currently employed or enrolled in school.*

H. Resources

DFPS website:

- CPS Policy Handbook § 10400 - Extended Foster Care for Youth Who are Age 18 or Older[31]
- Extended Court Jurisdiction Flowchart[32]
- Extended Foster Care Resource Guide[33]
- Extended Foster Care webpage[34]
- Supervised Independent Living webpage[35]
- Transitional Living Services handout[36]

Texas Foster Youth Justice Project:

- Aging Out Guide[37]

APPEALS

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

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

A. Specific Grounds Must Be Stated in Trial Court Judgment

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

B. Parent Deemed Indigent on Appeal

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

C. Attorney Ad Litem for a Parent Required to Remain on Case

The attorney ad litem appointed to represent the parent or an alleged father is required to remain on the case until the case is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the duty or replaced by another attorney after a finding of good cause is rendered by the court on the record. Tex. Fam. Code § 107.016(2).

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

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

The Texas Rules of Appellate Procedure require the trial court to direct the official or deputy reporter to commence the preparation of the reporter's record and arrange for a substitute reporter, if necessary. There are extensions of time available under certain circumstances. Tex. R. App. P. 28.4(b)(1), (2).

E. Application of Tex. Civ. Prac. & Rem. Code § 13.003 Prohibited

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

F. Effective Assistance of Counsel

Case law has established that if a parent is entitled to court-appointed counsel, the parent is entitled to effective assistance of counsel. *In the Interest of J.O.A., et. al.,* 283 S.W.3d 336, 341-43 (Tex. 2009). The Supreme Court of Texas has held that the right to appointed counsel extends to proceedings in the Supreme Court of Texas, including a Petition for Review as well as an *Anders* brief and motion to withdraw. *In the Interest of P.M.,* 520 S.W.3d 24, 26-28 (Tex. 2016).

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

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

H. Notice of Appeal and Appellant Duties

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

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

I. Case Law Update

Each year, DFPS produces a case law update of select child welfare cases at the Advanced Family Law Child Abuse and Neglect Workshop. The 2026 DFPS Termination Case Law Update was prepared by the DFPS Appellate Unit staff.[38]

ADOPTION

Adoption creates the legal parent-child relationship between the adopted child and adoptive parents for all purposes. Tex. Fam. Code § 162.017(a). An adopted child is entitled to inherit from and through the child's adoptive parents as though the child were the biological child of the parents. Tex. Fam. Code § 162.017(b). Through adoption, the new parents make a commitment to the court and to the child that they will provide for all aspects of the child's well-being, thereby concluding the decision-making and monitoring roles of the court.

A. Petition for Adoption

1. Where Petition Must Be Filed

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

2. Spouses Must Join in Petition

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

3. When to Proceed

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

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

B. Documentation Required

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

- Criminal History Reports: The court shall order each person seeking to adopt the child to obtain their own criminal history reports. The court shall accept a criminal history record for each person seeking to adopt the child provided by DFPS or by a licensed child-placing agency that received the information from DFPS, if the information was obtained not more than one year before the court ordered the record obtained. Tex. Fam. Code § 162.0085(a).

- Pre-Adoptive Social Study and Post-Placement Social Study: In a suit for adoption, pre-adoptive and post-placement social studies must be conducted as provided in Tex. Fam. Code Chapter 107, unless the court waives the requirement for the performance of an adoption evaluation under Tex. Fam. Code § 107.153(a-1). Tex. Fam. Code § 162.003.
- Health, Social, Educational, and Genetic History (HSEGH) Report: Unless the adoptive parent is a grandparent, aunt or uncle, or stepparent, a HSEGH Report is required. Tex. Fam. Code § 162.005(a). If the child's biological parents cannot be located and there is insufficient information to complete the HSEGH report, the court may waive the HSEGH report. Tex. Fam. Code § 162.008(c).
- DFPS must ensure that any Child Placing Agency, Single Source Continuum Contractor (SSCC), or other person placing a child for adoption receives a copy of the HSEGH in preparation for the adoption. The report must be received not later than the 45th day after the latter of: the date the child's primary permanency plan goal is changed to adoption or the date the court renders an order terminating parental rights with regard to the child. Tex. Fam. Code § 162.005(c).
- Tex. Fam. Code § 162.007(a) requires that the child's health history include information, to the extent known by DFPS, whether the child's birth mother consumed alcohol during pregnancy and whether the child has been diagnosed with Fetal Alcohol Spectrum Disorder (FASD).
- Interstate Compact Compliance Statement. Tex. Fam. Code § 162.002(b)(2).
- Written consent forms signed by the managing conservator, in most cases DFPS, and the child, if age 12 or over. Tex. Fam. Code § 162.010.
- A report or response from the child's Indian tribe, if applicable.
- Order terminating parental rights, if rights have previously been terminated.

***Special Issue**: In a suit for adoption that is uncontested, the court may waive the requirement for the performance of an adoption evaluation of a prospective adoptive parent if that prospective parent is a stepparent of the child and the court has reviewed the investigative records of the department and any criminal history record information maintained by the Department of Public Safety relating to the prospective parent. Tex. Fam. Code § 107.153(a-1).*

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1. Adoption Order from a Foreign Country

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

2. Outgoing Convention Adoption Cases

- An outgoing Convention adoption involves the adoption of a child resident in the United States by an individual or individuals residing in a Convention country when, in connection with the adoption, the child has moved or will move between the United States and the Convention country.
- An outgoing Convention adoption must comply with processes established by the Intercountry Adoption Act of 2000 (IAA) and its implementing regulations that afford adoptees the recognition of their adoption in another Convention country. Such compliance is also key to the adoptee's ability to enter and permanently reside in another Convention country.
- An outgoing Convention adoption will involve a State court's issuance of either a final adoption decree or an order granting custody for the purpose of adoption in another Convention country.
- For more information, *see* the U.S. Department of State Office of Children's Issues Guide for State Authorities on Outgoing Adoption Cases from the United States to another Convention Country.[39]

C. Hearing

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

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

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

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

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

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

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

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3. Adoption Hearing Takes Precedence Over Other Settings

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

***Special Issue**: A number of judges have developed a special ceremony for consummating an adoption, including letting the child bang the gavel, the judge descending from the bench to join the family in pronouncement, and including all extended family members and guests in the proceedings. Most families will want to take photos with the judge when the hearing is concluded. Judges can support timely permanency by holding more than one Adoption Day each year (i.e. in addition to the annual Adoption Day every November), by holding 30- or 60-day adoption progress hearings to closely track efforts to find an adoptive home as well as efforts to consummate adoption, and by engaging in candid discussions about adoption with older children.*

4. Additional Information

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

DFPS or an SSCC may not set a maximum age or maximum age differential for an adoptive parent but may consider the health and expected lifespan of each prospective adoptive parent when determining best interest. Tex. Fam. Code § 162.604.

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

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

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

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

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

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

5. Rehoming

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

D. Final Order

A court of continuing jurisdiction loses continuing jurisdiction when an order of adoption is rendered by a court where the adoption suit was filed under Tex. Fam. Code § 103.001(b). Tex. Fam. Code § 155.004(a).

***Special Issue**: An order for adoption rendered under Tex. Fam. Code § 103.001(b) on or after September 1, 2015, but before September 1, 2019, is a final order and is not subject to appeal on the basis the court rendering the order did not have continuing exclusive jurisdiction. Acts 2019, 86th Leg., R.S., ch. 136, H.B. 1854, § 2(b).*

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

REINSTATEMENT OF PARENTAL RIGHTS

A. Petition for Reinstatement

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

A petition for reinstatement may be filed if:

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

Tex. Fam. Code § 161.302(b).

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

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

***Special Issue**: A parent whose rights to their child have been terminated is viewed as fictive kin by DFPS for the purposes of any placement requests prior to an order granting reinstatement of parental rights. A request for placement of the child with an individual who lives out of state prior to an order granting reinstatement of parental rights would require DFPS to request an ICPC. For more information, see the Interstate Compact on the Placement of Children (ICPC) chapter of this Bench Book.*

B. Hearing

A hearing must be held within 60 days of filing and the petitioner has the burden of proof. The court must find by preponderance of the evidence that reinstatement of parental rights is in the child's best interest, the former parent has remedied the conditions that were the grounds for termination, the former parent is willing and capable of performing parental duties as provided in Tex. Fam. Code § 151.001, at least two years have passed since the order terminating parental rights was issued and no appeal of that order is

pending, the child has not been adopted and is not the subject of an adoption placement agreement, and the child consents to the reinstatement and desires to reside with the parent (if 12 years of age or older). If the child is younger than 12 years old, the court shall consider the child's age, maturity, and ability to express a preference and may consider the child's preference regarding the reinstatement as one factor in making the determination. Tex. Fam. Code § 161.303.

C. Orders

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

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

LEGAL ESSENTIALS

SERVICE OF CITATION

BEST INTEREST

BURDEN OF PROOF

EVIDENCE

CONTEMPT

SERVICE OF CITATION

A. Service of Citation

In lawsuits filed by DFPS, the agency is responsible for obtaining service of citation containing the original petition and providing notice of trial settings and other events during the pendency of the legal case. Citation on the filing of an original petition in a SAPCR shall be issued and served "as in other civil cases." Tex. Fam. Code § 102.009(c). However, most courts do not require service on all those entitled to service before proceeding with the Adversary Hearing. The court may proceed with temporary orders prior to any required service by publication. Tex. Fam. Code § 262.201(o).

1. Parties to be Served

DFPS is responsible for obtaining service of citation on the following parties:

- Each parent (including an alleged father), unless the parent's rights are terminated, the alleged father executed a waiver of interest in the child, or a parent signs a waiver of service;
- A managing or possessory conservator, guardian, or other person with court-ordered access to the child;
- A person required by law or by order to provide for the support of the child;
- A prospective adoptive parent with standing or a conservator designated in an affidavit of relinquishment; and
- The Texas Attorney General's Office or any other child-support agency (if child-support payments may be affected).

See CPS Policy Handbook § 5230 Service by Citation.[40]

Citation may be served on any other person who has or who may assert an interest in the child. Tex. Fam. Code § 102.009(b).

Service must be accomplished via the method prescribed in Tex. R. Civ. P. 106 and by a person authorized pursuant to Tex. R. Civ. P. 103.

2. DFPS Must Make a Diligent Effort to Locate Parent and Relatives

If a parent, as defined by Tex. Fam. Code § 160.102(11), of the child has not been personally served in a suit in which DFPS seeks termination, DFPS must make a diligent effort to locate that parent. Tex. Fam. Code § 161.107(b). If a parent has not been personally served and cannot be located, DFPS shall make a diligent effort to locate a relative of the missing parent to give the relative an opportunity to request appointment as the child's managing conservator. Tex. Fam. Code § 161.107(c).

If a missing parent is believed to be living in a foreign country, DFPS must ask family members in the United States for contact information, contact the consulate of that country, and request assistance in locating the parent. If a missing parent is believed to be living in Mexico, DFPS must follow policies outlined in CPS Policy Handbook § 5233.33 Searching for Residents of a Foreign Country.[41]

3. Relative Defined for Diligent Search Purposes

A relative means a parent, grandparent, adult sibling, or child. Tex. Fam. Code § 161.107(a)(2). If DFPS is not able to locate a missing parent or a relative of that parent and sufficient information is available concerning the physical whereabouts of the parent or relative, DFPS shall request the Office of the Attorney General to use the parental locater service to determine the location of the missing parent or relative. Tex. Fam. Code § 161.107(d).

DFPS shall be required to provide evidence to the court to show what actions were taken by DFPS in making a diligent effort to locate the missing parent and relative of the missing parent. Tex. Fam. Code § 161.107(e).

4. Citation by Publication and Diligent Search

Once DFPS has made the effort and has been unsuccessful, DFPS can file a Motion to Cite by Publication under Tex. R. Civ. P. 109.

Tex. R. Civ. P. 109 requires that before citation by publication can be issued by the clerk, the petitioner must file an affidavit of due diligence. That rule also requires the court trying the case to inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the known parent who cannot be located, before granting any judgment on such service.

5. Waiver of Citation

Tex. Fam. Code § 102.0091 allows for waiver of citation. A party to a suit under Tex. Fam. Code Title 5 may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the part acknowledging receipt of a copy of the filed petition. Tex. Fam. Code § 102.0091(a).

The party executing the waiver may sign the waiver using a digitized signature. Tex. Fam. Code § 102.0091(b). The waiver must contain the mailing address of the party executing the waiver. Tex. Fam. Code § 102.0091(c).

Notwithstanding Tex. Civ. Prac. & Rem. Code § 132.001, the waiver must be sworn before a notary public who is not an attorney in the suit, unless the party executing the waiver is incarcerated. Tex. Fam. Code § 102.0091(d). The Texas Rules of Civil Procedure do not apply to a waiver executed under Tex. Fam. Code § 102.0091. Tex. Fam. Code § 102.0091(e).

***Special Issue**: The Office of Court Administration's Public Information website is available for posting citations and other public or legal notice required to be posted on the website or requested to be posted by a court or court clerk. For more information, visit the Citation by Publication and Court Notices Website.*

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6. Appearance by Party

A party may enter an appearance in open court in person, by attorney, or by a duly authorized agent. This appearance must be noted on the court's docket and entered on the record and has the same force and effect as if the party had been served with citation. Tex. R. Civ. P. 120. The filing of an answer also constitutes an appearance of a party and dispenses with the necessity for the issuance or service of citation on a party. Tex. R. Civ. P. 121.

7. Service of Process in a Foreign Country

The method of service to be used when a parent is found to be living in a foreign country is detailed in Tex. R. Civ. P. Rule 108a. There are several alternative methods listed, including as provided by Tex. R. Civ. P. 106(a), and pursuant to the terms and provisions of any applicable international agreement.

B. Notice

DFPS is responsible for providing service of citation and notice of several matters relating to agency activities relating to a lawsuit (investigations, removals, review hearings, etc.). While the word "notice" is often used for both, it is important to distinguish between service and notice. The Texas Family Code requires that DFPS provide notice to parents of the investigation and removal of a child, as well as notice to relatives of the removal, and notice to parties, relatives, caregivers, and child if age 10 or older, of all review hearings. These notice obligations, however, do not need to be executed in accordance with the rules governing service under the Texas Rules of Civil Procedure. Tex. Fam. Code § 263.0021(c) provides several methods of notice available to DFPS.

***Special Issue**: Service of citation is required upon the filing of an original petition to give named parties notice of the suit. DFPS should include notice of any upcoming scheduled hearings, such as the adversary hearing, with the citation to comply with the requirement that all persons entitled be given 10 days' notice of a hearing. Tex. Fam. Code § 263.0021(b). In addition to giving notice of a hearing along with service of citation, notice may be given in a temporary order following a full adversary hearing, in an order following a hearing under Tex. Fam. Code Chapter 263, in open court, or in any manner that would provide actual notice to a person entitled to notice. Tex. Fam. Code § 263.0021(c).*

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1. The Right to Notice

The Petitioner, which is usually DFPS, must ensure that notice of the lawsuit is provided to those who are sued.

2. Methods of Providing Notice of Hearing

The requirements for citation are different from requirements for notice of motions or of particular hearings. Citation generally must be by personal service on the Respondent unless citation is waived by the Respondent, forfeited under the "paternity registry" process, or given by some form of substituted service, including citation by publication, as authorized by the Texas Rules of Civil Procedure.

Once citation is complete and a return of service is on file, notice may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager, or in person, by mail, by commercial delivery service, by fax, by email, or by such other manner as the court in its discretion may direct.

Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by telephonic document transfer after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Notice may also be served by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. Tex. R. Civ. P. 21a.

3. Information Provided to Relatives and Certain Individuals; Investigation

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

- Is related to the child within the fourth degree of consanguinity, as defined under Tex. Gov't Code Chapter 573;
- Is an adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child's biological father; or
- Anyone who is identified as a potential relative or designated caregiver on the proposed Child Placement Resources Form.

Tex. Fam. Code § 262.1095(a)(1).

DFPS may provide information to each adult DFPS is able to identify and locate who has a long-standing and significant relationship with the child. Tex. Fam. Code § 262.1095(a)(2).

The written notice must include:

- A statement that the child is in the state's custody;
- Options available for participation in the care and placement and support of the family;
- Options that may be lost if the individual fails to timely respond;
- The date, time, and location of a Hearing under Tex. Fam. Code Chapter 263, if applicable; and
- Information regarding the procedures and timeline for a suit affecting the parent-child relationship under Tex. Fam. Code Chapter 262.

Tex. Fam. Code § 262.1095(b).

DFPS is not required to provide information to a person who has criminal or family violence history. Tex. Fam. Code § 262.1095(c).

DFPS must use due diligence to identify and locate all individuals described by Tex. Fam. Code § 262.1095(a) within 30 days of the date DFPS files the SAPCR. In order to identify and locate individuals, DFPS shall seek information from each parent, relative, alleged father of the child, and the child in an age-appropriate manner. Tex. Fam. Code § 262.1095(d). The failure of a parent or alleged father to complete the Child Placement Resources Form does not relieve DFPS of its duty to seek information about persons under Tex. Fam. Code § 262.1095(d). Tex. Fam. Code § 262.1095(e).

4. Report Regarding Notification of Relatives

Tex. Fam. Code § 263.007 requires DFPS to provide the court with a report regarding their compliance with Tex. Fam. Code § 262.1095. The court should review this report to assess DFPS' diligent efforts. Tex. Fam. Code § 263.007.

5. Notice to Parents of Right to Counsel

Before commencement of the full Adversary Hearing, if an attorney has not already been appointed under Tex. Fam. Code § 107.013, the court must inform each parent not represented by an attorney of:

- The right to be represented by an attorney; and
- If a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

Tex. Fam. Code § 262.201(c).

Tex. Fam. Code § 107.0141 allows the court to appoint an attorney for a parent whenever the SAPCR is filed, but if a parent's first appearance is at the Adversary Hearing and the parent requests the appointment of an attorney, then the court shall require the parent to complete and file with the court an affidavit of indigence. The court may consider additional evidence to determine whether the parent is indigent, including evidence relating to the parent's income, source of income, assets, property ownership, benefits paid in accordance with a federal, state, or local public assistance program, outstanding obligations, and necessary expenses and the number and ages of the parent's dependents. If the appointment of an attorney for the parent is requested, the court shall make a determination of indigence before commencement of the full Adversary Hearing. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent. Tex. Fam. Code § 262.201(d).

6. Foreign Consulates

When DFPS takes possession of a child who was born in another country who is not a U.S. citizen, DFPS must notice the foreign consul of the country of which the child is a citizen. *See* CPS Policy Handbook § 6714 Working with the Foreign Consulate.[42]

To notify a foreign consulate that DFPS has removed a child, the caseworker must:

- Complete Form 2650 Letter to Foreign Consulates;
- Send the completed form to the designated consulate by mail, return receipt requested, or by fax and include the confirmation notice when filing it with the court; and
- Send a copy of the notice to the attorney representing DFPS.

Caseworkers should contact the DFPS Immigration Specialist for consular office contact information. CPS Policy Handbook § 6714.1 Giving Notice to a Foreign Consulate.[43]

BEST INTEREST

The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child. Tex. Fam. Code § 153.002(a).

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

A. Factors in Determining Best Interest of Children

The *Holley* factors below are a non-exhaustive list of factors to consider:

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

Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976).

Factors in determining the best Interest of the child include, but are not limited to:

- Child's age and physical and mental vulnerabilities;
- Frequency and nature of out-of-home placements;
- History of abusive or assaultive conduct by the child's family or others with access to home;
- History of substance abuse by child's family or others with access to home;
- Whether the perpetrator of the harm to child has been identified; and
- For children 16 years of age or older, whether the permanency plan includes services to help the child transition from foster care to independent living.

Tex. Fam. Code § 263.307(b).

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

B. Hearings Requiring a Best Interest Determination

1. The Adversary Hearing

a. When considering placement with relative:

- The court shall place a child with a relative unless placement with a relative is not in the best interest of the child. Tex. Fam. Code § 262.201(n).

2. **Permanency Hearing Before a Final Order**

   a. **When determining whether to meet with a child:**

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

   b. **When determining whether to send a child home:**

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

C. Court Decisions Requiring a Best Interest Determination

1. **Transferring a case to the Court of Continuing Exclusive Jurisdiction (CCEJ):**

- The court shall order transfer to the CCEJ if the court finds the transfer is necessary for the convenience of the parties and is the best interest of the child. Tex. Fam. Code § 262.203(a)(1).

2. **Denying a parent visitation:**

- If the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that:
  - states the reasons for finding that visitation is not in the child's best interest; and
  - outlines specific steps the parent must take to be allowed to have visitation with the child.

  Tex. Fam. Code § 263.109(b).

3. **When considering unsupervised visitation in the context of family violence*:***

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

4. **Extending the dismissal date considerations:**

- Unless the court has commenced the trial on the merits, the court may not retain the suit on the court's docket after one year unless the court finds that extraordinary circumstances necessitate the child remaining in the TMC of the department and that continuing TMC is in the best interest of the child. Tex. Fam. Code § 263.401(b).

5. **Ordering a monitored return:**

- The court may find that retaining jurisdiction under this section is in the best interest of the child. Tex. Fam. Code § 263.403(a)(1).

6. **Appointing DFPS as managing conservator of a child without termination of parental rights:**

- The court may appoint DFPS as managing conservator of a child without terminating the rights of the parent of the child if the court finds that:
  - appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and
  - it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

  Tex. Fam. Code § 263.404(a).

7. **Ordering the termination of parental rights:**

- In addition to proof by clear and convincing evidence of a ground for termination and reasonable efforts, the court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that termination is in the best interest of the child. Tex. Fam. Code § 161.001(b)(2).

D. DFPS Decisions That Must Consider Best Interest

1. **When considering placement:**

- In selecting a placement for a child, DFPS shall consider whether the placement is in the child's best interest. In determining whether a placement is in a child's best interest, DFPS shall consider whether the placement:
  - is the least restrictive setting for the child;
  - is the closest in geographic proximity to the child's home;
  - is the most able to meet the identified needs of the child; and
  - satisfies any expressed interests of the child relating to placement, when developmentally appropriate.

  Tex. Fam. Code § 264.107(c).

2. **When assessing a relative or designated placement:**

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

BURDEN OF PROOF

A. Good Cause

Good cause is defined in Black's Law Dictionary as a "legally sufficient reason." *Good Cause*, Black's Law Dictionary (12th ed. 2024), available at Westlaw. The definition also states that "good cause is often the burden placed upon a litigant . . . to show why a request should be granted or an action excused." *Id.*

This burden of proof applies to:

- Hearing for an order in aid of investigation admission by DFPS to the home, school, or other place where the child may be for an interview, examination, and investigation where the court must find good cause to believe that the child is in imminent danger of aggravated circumstances under Tex. Fam. Code § 262.2015(b). Tex. Fam. Code § 261.303(b)(1).
- Hearing requesting access to medical records for a parent or caregiver with a history of medical or mental illness. For good cause shown, the court shall order the examination or allow DFPS to have access to the records under terms and conditions prescribed by the court. Tex. Fam. Code § 261.305(b).

B. Probable Cause

Probable cause is most often used in criminal cases and applies in the Family Code when DFPS is seeking orders in aid of an investigation. Courts have not defined probable cause in relation to orders in aid of an investigation, but in the criminal context probable cause is defined both in relation to a warrantless seizure of evidence and in the application for a warrant to search for evidence.

For a warrantless search, Texas courts have defined probable cause as "when reasonably trustworthy facts and circumstances within the knowledge of the officer on the scene would lead a man of reasonable prudence to believe that the instrumentality . . . or evidence of a crime will be found." *Igboji v. State*, 666 S.W.3d 607, 613 (Tex. Crim. App. 2023) (quoting *Estrada v. State*, 154 S.W.3d 604, 609 (Tex. Crim. App. 2005)).

In the context of an application for a search warrant, Texas courts have held that probable cause exists if the facts contained within the four corners of a search warrant affidavit, and the reasonable inferences drawn therefrom, justify the magistrate's conclusion that the object of the search is probably on the premises at the time of the issuance. *Cassias v. State*, 719 S.W.2d 585, 587-88 (Tex. Crim. App. 1986).

This burden of proof applies to:

- Hearing for an order in aid of investigation admission by DFPS to the home, school, or other place where the child may be for an interview, examination, and investigation, or an order to release records by the parent, or to order a medical, psychological, or psychiatric examination of the child. The court must find probable cause that the request is necessary to protect a child from abuse or neglect. Tex. Fam. Code § 261.303(b)(2), (c).

C. Sufficient Evidence to Satisfy a Person of Ordinary Prudence and Caution

The standard "ordinary prudence and caution" requires a minimal showing of evidence, less than a preponderance but enough to persuade a reasonable person, similar to the "probable cause" required for a search warrant. This burden of proof applies to:

- Hearing on a request for court-ordered participation. Tex. Fam. Code § 264.203(m);
- Filing Petition Before Taking Possession of Child. Tex. Fam. Code § 262.101;
- Taking Possession of a Child in Emergency Without a Court Order. Tex. Fam. Code § 262.104; and
- Full Adversary Hearing. Tex. Fam. Code § 262.201.

D. Preponderance of the Evidence

To show a "preponderance of evidence" is to have evidence that is of greater weight or is more convincing than the evidence that is offered in opposition to it. A metaphor to illustrate the concept of preponderance is the scales of justice rising slightly higher on one side; that is enough to meet the standard of "preponderance of the evidence." It is the standard of proof which is generally used in civil cases. Tex. Fam. Code § 105.005. This burden applies to:

- 60 Day Status Review;
- Aggravated Circumstances;
- Permanency Hearing before Final Order;
- Final Order Awarding Permanent Managing Conservatorship (PMC) (without termination);
- Permanency Hearing after Final Order;
- Adoption Hearing; and
- Hearing on reinstatement of parental rights. Tex. Fam. Code § 161.303.

E. Clear and Convincing

To meet a "clear and convincing" burden of proof is to show the measure or degree of proof that will produce in the mind of the trier of fact (either a judge or a jury) a firm belief or conviction as to the truth of the allegations sought to be established. It is a higher burden than "Preponderance of the Evidence," but not as high as "Beyond a Reasonable Doubt." The burden applies to:

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

F. Beyond a Reasonable Doubt

The standard "beyond a reasonable doubt" is met when the trier of fact is fully satisfied or entirely convinced that something occurred. The burden applies to:

- Termination cases subject to the Indian Child Welfare Act. 25 U.S.C. § 1912(f).

The "beyond a reasonable doubt" standard that applies in ICWA cases is the highest standard of proof in a termination of parental rights case under Texas law, indicating the significance of this decision for the trier of fact.

EVIDENCE

Cases involving child abuse and neglect present evidentiary issues and procedures unique to this area of the law. This chapter will provide an overview of statutory provisions related to child welfare cases.

A. Applicability of Rules of Evidence

Unless otherwise provided, the Texas Rules of Evidence apply as in other civil cases. Tex. Fam. Code § 104.001.

B. Exclusionary Rule

If a person who is the subject of an investigation does not receive the verbal notification and written summary required by Tex. Fam. Code § 261.307, any information obtained from the person, and any other information that would not have been discovered without that information, is not admissible for use against the person in any civil proceeding. Tex. Fam. Code § 261.307(e).

C. Facilitating Child Testimony at Trial

1. Prerecorded Statement of Child

If a child 12 years of age or younger is alleged in a suit under Tex. Fam. Code Title 5 to have been abused, the recording of an oral statement of the child recorded prior to the proceeding is admissible into evidence if:

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

Tex. Fam. Code § 104.002.

2. Prerecorded Videotaped Testimony of the Child

On the motion of a party to the proceeding, the court may order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court, the finder of fact, and the parties to the proceeding. Tex. Fam. Code § 104.003(a).

Only an attorney for each party, an attorney ad litem for the child or other person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the equipment may be present in the room with the child during the child's testimony. Tex. Fam. Code § 104.003(b).

Only the attorneys for the parties may question the child. Tex. Fam. Code § 104.003(c).

The persons operating the equipment shall be placed in a manner that prevents the child from seeing or hearing them. Tex. Fam. Code § 104.003(d).

The court shall ensure that:

- The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and not altered;
- Each voice on the recording is identified; and
- Each party to the proceeding is afforded an opportunity to view the recording before it is shown in the courtroom.

Tex. Fam. Code § 104.003(e).

3. Remote Televised Broadcast of Testimony of Child

If in a suit a child 12 years of age or younger is alleged to have been abused, the court may, on the motion of a party to the proceeding, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed-circuit equipment in the courtroom to be viewed by the court and the parties. Tex. Fam. Code § 104.004(a).

The procedures that apply to prerecorded videotaped testimony of a child pursuant to Tex. Fam. Code § 104.003 apply to the remote broadcast testimony of a child. Tex. Fam. Code § 104.004(b).

4. Substitution for In-Court Testimony of Child

If the testimony of a child is taken as provided by Tex. Fam. Code Chapter 104, the child may not be compelled to testify in court during the proceeding. Tex. Fam. Code § 104.005(a).

The court may allow the testimony of a child of any age to be taken in any manner provided by Tex. Fam. Code Chapter 104 if the child, because of a medical condition, is incapable of testifying in open court. Tex. Fam. Code § 104.005(b).

5. Hearsay Statement of Child Abuse Victim Can Be Allowable

In a suit affecting the parent-child relationship, a statement made by a child 12 years of age or younger that describes alleged abuse against the child, without regard to whether the statement is otherwise inadmissible as hearsay, is admissible as evidence if, in a hearing conducted outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability and:

- The child testifies or is available to testify at the proceeding in court or in any other manner provided for by law; or
- The court determines that the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child.

Tex. Fam. Code § 104.006.

6. Case Law

a. Admissibility of videotaped statement of a child

"To determine whether it is necessary to use [a] videotape in lieu of [a] child's testimony in order to protect [their] welfare, the trial court should hear evidence regarding the specific child witness, the child's welfare at the time of trial, and the circumstances making it necessary to use the statement rather than the child's testimony in court or by alternative means such as closed circuit television." *In the Interest of S.P.*, 168 S.W.3d 197, 208 (Tex. App.—Dallas 2005, no pet.).

"Regardless of the admissibility of [a] videotaped statement under Tex. Fam. Code § 104.002, that section does not authorize the trial court to admit [child's] videotaped statement in lieu of [their] testimony at trial without requiring the Department to make the child available to testify." *S.P.*, 168 S.W.3d at 209-10.

b. Age of child when statement is made

Tex. Fam. Code § 104.006, which applies to statements made by a child 12 years of age or younger, conditions the age of the child on when the statements were made, not on when the trial court later determines the admissibility of the child's statements at trial. *In the Interest of K.L.*, 91 S.W.3d 1, 15 (Tex. App.—Fort Worth 2002, no pet.).

c. Child testimony by alternative means is a case-by-case determination

"[A]n exception to the right of face-to-face confrontation exists when the State shows that a special procedure is necessary to protect child witnesses from the trauma of testifying in court. . . . The determination of whether such alternative forms of testimony are necessary should be made on a case-by-case basis. In making such a determination, courts should consider whether: (1) use of a video is necessary to protect the welfare of the child; (2) the trauma to the child comes from exposure to the abuser, rather than from the courtroom generally; and (3) the emotional distress to the child would be more than minimal." *In the Interest of R.V., Jr.*, 977 S.W.2d 777, 781 (Tex. App.—Fort Worth 1998, no pet.) (citations omitted).

d. Nonverbal communication during a child interview

"[Q]uestions directed to a child must be open-ended and not suggestive of a response." Additionally, an interviewer's nonverbal communication may not contribute to the making of a particular statement. *James v. Texas Dep't of Human Servs.*, 836 S.W.2d 236, 240-41 (Tex. App.—Texarkana 1992, no writ.).

e. Confrontation Clause

"[A] statement cannot fall within the Confrontation Clause unless its primary purpose was testimonial. Statements by very young children will rarely, if ever, implicate the Confrontation Clause. [Additionally,] statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers." *Ohio v. Clark*, 576 U.S. 237, 245, 247-48, 249 (2015).

f. Statement of Abuse

"The therapist's determination that [the child] had suffered significant emotional difficulty due to her parents' continuous fighting, drug use, lack of food and care for the children, and spanking or slapping of [the child] was sufficient for the trial court as the factfinder to have determined that the incidents together rose to the level of abuse." *In the Interest of E.M.*, 494 S.W.3d 209, 218 (Tex. App.—Waco 2015, pet. denied) (allowing therapist testimony about statements child made to her).

A child's testimony about parent's drug use, how the child was placed in charge of a younger sibling, how the family found their food in dumpsters, how the family drove around at night to try to find a place to sleep, and how the children were spanked with belts, fell within the definition of abuse under Tex. Fam. Code § 261.001(1) for the purposes of Tex. Fam. Code § 104.006. *In the Interest of M.R.*, 243 S.W.3d 807, 812 (Tex. App.—Fort Worth 2007, no pet.).

g. Reliability of Statement

"[T]he analysis provided in case law from this Court relating to [Tex. Crim. Proc. Code art. 38.072] is an appropriate guide for courts to follow in determining reliability [of a statement] pursuant to [Tex. Fam. Code § 104.006]…In making its determination of reliability pursuant to section 104.006, just like in article 38.072, . . . the focus of the inquiry must remain upon the outcry statement, not the abuse itself. A child's outcry statement may be held reliable pursuant to article 38.072 even when it contains vague or inconsistent statements about the actual details of the sexual abuse…[T]he same [is] true as it relates to section 104.006." *E.M.*, 494 S.W.3d at 218-19.

A child's statements introduced in a caseworker's report were not reliable because the report did not describe the circumstances of the interview, including who was present. Additionally, there was no evidence of whether the child was asked leading questions or allowed to tell what happened to her, and there was no evidence that the child understood the difference between truth and lies. *In the Interest of E.A.K.,* 192 S.W.3d 133, 146-47 (Tex. App.—Houston [14th Dist.] 2006, pet. denied).

Tex. Fam. Code § 104.006 "is the civil analogue of [Tex. Crim. Proc. Code art. 38.072] … [and courts can use] the same type of analysis [when applying section 104.006]…The reliability referred to in article 38.072 is the reliability of the child's declaration, not the witness relaying the child's declaration." *M.R.,* 243 S.W.3d. at 813-14.

h. Admissibility of videotaped statement of a child

"Tex. Fam. Code § 104.006 does not require the trial court to make a finding that the witness' statement in lieu of the child's testimony is necessary to protect the child's welfare if the child does *not* testify… [O]nly if a child is *unavailable* to testify is the trial court required to make a finding that admission of the witness' statement in lieu of the child's testimony is necessary to protect the child's welfare." *In the Interest of K.L.*, 91 S.W.3d 1, 16 (Tex. App.—Fort Worth 2002, no pet.) (emphasis in original).

D. Video Testimony of Certain Professionals

In a proceeding brought by DFPS concerning a child who is alleged in a suit to have been abused or neglected, the court may order that the testimony of a professional be taken outside the courtroom by videoconference:

- On the agreement of the department's counsel and the respondent's counsel; or
- If good cause exists, on the court's own motion.

Tex. Fam. Code § 104.007(b).

In ordering testimony to be taken as provided by Tex. Fam. Code § 104.007(b), the court shall ensure that the videoconference testimony allows:

- The parties and attorneys involved in the proceeding to be able to see and hear the professional as the professional testifies; and

- The professional is able to see and hear the parties and attorneys examining the professional while the professional is testifying.

Tex. Fam. Code § 104.007(c).

Professional means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or healthcare facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers. Tex. Fam. Code § 104.007(a); Tex. Fam. Code § 261.101(b).

If the court permits the testimony of a professional by videoconference as provided by Tex. Fam. Code § 104.007 to be admitted during the proceeding, the professional may not be compelled to be physically present in the court during the same proceeding to provide the same testimony unless ordered by the court. Tex. Fam. Code § 104.007(d).

E. Testimony from Forensic Assessment Center Network (FACN)

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

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

The FACN allows for consultations with physicians who are board certified in a relevant field or specialty, including radiologists, geneticists, orthopedists, and endocrinologists. Physicians must also have experience in diagnosing treating certain specific conditions such as rickets, Ehlers-Danlos Syndrome, and other medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment. Tex. Fam. Code § 261.3017(b). More information about referrals to the FACN is available in CPS Policy Handbook § 2233 Complex Medical Investigations,[44] and the DFPS Forensic Assessment Center Network (FACN) Resource Guide.[45]

A healthcare practitioner who makes a report of suspected abuse or neglect of a child or was involved in reviewing the case, including a member of a review team under Tex. Fam. Code § 261.312 or a multidisciplinary team under Tex. Fam. Code Chapter 264, Subchapter E, may not provide forensic assessment services in connection with an investigation arising from the report. This applies regardless of whether the health practitioner is a member of the FACN. Tex. Fam. Code § 261.30175(b).

An exigent removal of a child may not be based solely on the opinion of a medical professional under contract with DFPS who did not conduct a physical examination of the child. However, if the physician who conducted the physical examination and the FACN physician both agree that abuse or neglect occurred, both opinions may be used for an emergency removal. CPS Policy Handbook § 2233.15.[46]

F. Allegations of Abuse and Neglect and Attorney-Client Privilege

1. General Duty to Report

A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report. Tex. Fam. Code § 261.101(a).

2. Mandatory Reporters

If a professional with reasonable cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Tex. Penal Code § 21.11, and the professional has reasonable cause to believe that the child has been abused as defined by Tex. Fam. Code § 261.001(1), the professional shall make a report not later than the 24th hour after the hour the professional first has reasonable cause to believe that the child has been or may be abused or neglected or is a victim of an offense under Tex. Penal Code § 21.11. Tex. Fam. Code § 261.101(b).

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

3. Privileged Communication

In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of a privileged communication except in the case of communications between an attorney and client. Tex. Fam. Code § 261.202.

G. Testimony of Children's Ad Litems

1. Attorney ad Litem

An attorney ad litem or an attorney serving in the dual role of attorney and guardian ad litem for a child may not:

- Be compelled to produce attorney work product developed during the appointment as an attorney;
- Be required to disclose the source of any information;
- Submit a report into evidence; or
- Testify in court except as authorized by Tex. Disciplinary Rules Prof'l Conduct R. 3.08.

Tex. Fam. Code § 107.007(a).

Tex. Fam. Code § 107.007(a) does not apply to the duty of an attorney to report child abuse or neglect under Tex. Fam. Code § 261.101. Tex. Fam. Code § 107.007(b).

2. Guardian ad Litem

Unless the guardian ad litem is an attorney who has been appointed in the dual role and subject to the Texas Rules of Evidence, the court shall ensure in a hearing or in a trial on the merits that a guardian ad

litem has an opportunity to testify regarding, and is permitted to submit a report regarding, the guardian ad litem's recommendations relating to:

- The best interests of the child; and
- The bases for the guardian ad litem's recommendations.

Tex. Fam. Code § 107.002(e).

In a nonjury trial, a party may call the guardian ad litem as a witness for the purpose of cross-examination regarding the guardian's report without the guardian ad litem being listed as a witness by a party. If the guardian ad litem is not called as a witness, the court shall permit the guardian ad litem to testify in the narrative. Tex. Fam. Code § 107.002(f).

In a contested case, the guardian ad litem shall provide copies of the guardian ad litem's report, if any, to the attorneys for the parties as directed by the court, but not later than the earlier of:

- The date required by the scheduling order; or
- The 10th day before the date of the commencement of the trial.

Tex. Fam. Code § 107.002(g).

Disclosure to the jury of the contents of a guardian ad litem's report to the court is subject to the Texas Rules of Evidence. Tex. Fam. Code § 107.002(h).

H. Prohibition of Certain Testimony Not Applicable in DFPS Cases

Tex. Fam. Code § 104.008 requiring an expert to conduct a child custody evaluation prior to testifying about conservatorship or possession of or access to a child does not apply to a suit in which DFPS is a party. Tex. Fam. Code § 104.008(c).

I. Business Records Exception to Hearsay

Tex. R. Evid. 902 provides that an original or copy of a record is self-authenticating and meets the business records hearsay exception requirements of Tex. R. Evid. 803(6), if the record is filed fourteen days before trial and is accompanied by an affidavit that complies with Tex. R. Evid. 902(B).

1. Drug Test Results

Admission of drug test results using a business records affidavit are subject to a hearsay objection. For proper admission of drug test results, the source of the testing, the method used, and/or the circumstances or preparation of the test must indicate trustworthiness. Laying the proper foundation typically requires the testimony of three different people: a chain of custody witness, an expert to establish the reliability and proper techniques and testing protocol, and an expert to testify to the results. *See in re K.C.P.*, 142 S.W.3d 574, 579-80 (Tex. App.—Texarkana 2004, no pet.).

Drug test results accompanied by affidavits generally tracking Tex. R. Evid. 803(6) and 902(10), and describing chain-of-custody procedures, testing procedures, and analyst qualifications, were admissible where there was no evidence indicating a lack of trustworthiness.. *In the Interest of E.B.*, No. 11-19-00001-CV, 2019 WL 3955974, at * 3 (Tex. App.—Eastland Aug. 22, 2019, no pet.) (mem. op.). Records of drug test results must also show sufficient indicia of trustworthiness or reliability to bring them within the business records exception to the hearsay rule. *In the Interest of A.T.*, No. 02-04-00355-CV, 2006 WL 563565, at *3-

4 (Tex. App.—Fort Worth Mar. 9, 2006, pet. denied) (mem. op.) *citing In the Interest of K.C.P.*, 142 S.W. 3d 574, 578-79 (Tex. App.—Texarkana 2004, no pet.).

2. Case Law

The following case law was provided by the Texas Department of Family & Protective Services.

a. Indicia of trustworthiness or reliability

In the Interest of E.B., No. 11-19-00001-CV, 2019 WL 3955974 (Tex. App.—Eastland Aug. 22, 2019, no pet.) (mem. op.)

In the Interest of A.T., No. 02-04-00355-CV, 2006 WL 563565 (Tex. App.—Fort Worth Mar. 9, 2006, pet. denied) (mem. op.)

b. Live testimony not required for drug test records admitted under the business-records exception

In the Interest of K.R.K.-L.H., 671 S.W.3d 761 (Tex. App.—Beaumont 2023, pet. denied)

In the Interest of E.B., No. 11-19-00001-CV, 2019 WL 3955974 (Tex. App.—Eastland August 22, 2019, no pet.)(mem. op.)

In the Interest of C.M.-L.G., No. 14-16-00921-CV, 2017 WL 1719133 (Tex. App.—Houston [14th Dist.] May 2, 2017, pet. denied) (mem. op.)

In the Interest of L.G.R., 498 S.W.3d 195 (Tex. App.—Houston [14th Dist.] 2016, pet. denied)

In the Interest of M.R.D.W., No. 14-17-00506-CV, 2017 WL 6045575 (Tex. App.—Houston [14th Dist.] Dec. 7, 2017, no pet.) (mem. op.)

In the Interest of C.W., No. 02-14-00274-CV, 2014 WL 7139645 (Tex. App.—Fort Worth, Dec. 12, 2014, no pet.) (mem. op.)

In the Interest of Z.N.M., No. 14-17-00650-CV, 2018 WL 358480 (Tex. App.—Houston [14th Dist.] Jan. 11, 2018, no pet.) (mem. op.)

c. Admission of drug test results through other testimony

In the Interest of D.J.H., No. 04-11-00815-CV, 2012 WL 1654953(Tex. App.—San Antonio May 9, 2012, no pet.) (mem. op.); *see* also *In the Interest of A.D.H.–G.*, No. 12-16-00001-CV, 2016 WL 3182610 (Tex. App.—Tyler June 8, 2016, no pet.) (mem. op.)

In the Interest of K.C.P., 142 S.W.3d 574 (Tex. App.—Texarkana 2004, no pet.)

In the Interest of A.G., No. 13-17-00318-CV, 2017 WL 4546984 (Tex. App.—Corpus Christi Oct. 12, 2017, no pet.) (mem. op.)

d. Inferences drawn from behavior and testimony

In the Interest of C.R., 263 S.W.3d 368 (Tex. App.—Dallas 2008, no pet.)

In the Interest of C.A.B., 289 S.W.3d 874(Tex. App.—Houston [14th Dist.] 2009, no pet.).

In the Interest of M.L.C., No. 04-17-00459-CV, 2017 WL 6597828 (Tex. App.—San Antonio Dec. 27, 2017, pet. denied) (mem. op.)

In re K.P., 498 S.W.3d 157(Tex. App.—Houston [1st Dist.] 2016, pet. denied)

In the Interest of D.M., 58 S.W.3d 801 (Tex. App.—Fort Worth 2001, no pet.).

CONTEMPT

Information in this chapter is taken from the Texas Center for the Judiciary Bench Book chapter on Contempt. This version does not include information on judges' actions in court when witnessing contempt, drafting orders, enforcing orders, and appellate remedies. Please contact the Texas Center for the Judiciary for access to its bench book, additional and detailed guidance, and associated forms.[47]

A. Introduction

Texas law recognizes two kinds of contempt and two different types of remedies:

- Direct contempt occurs in the presence of the court during court proceedings and is immediately punishable by the court; and
- Indirect or constructive contempt which occurs outside the court's presence and dictates stricter procedural standards.

The remedies for contempt are similarly divided into two categories:

- Civil or coercive; and
- Criminal or punitive.

The remedy used by the court, not the conduct of the contemnor, defines the contempt remedies as civil or criminal. Although the term "contempt of court" conjures images of unchecked authority, in reality, the power is limited. A high percentage of contempt judgments are set aside by appellate courts. Exacting standards apply.

B. Direct Contempt

The essence of direct contempt is that the offending conduct obstructs or tends to obstruct the proper administration of justice.[48] Direct contempt is characterized by an unwarranted interruption of orderly court proceedings and for the most part is unrelated to the issues on trial. The interruption diverts attention from the trial and delays the proceedings until the interruption is addressed by the court. Direct contempt can be addressed by the court immediately unless the contempt involves an officer of the court.[49] However, the power to punish immediately for direct contempt flows from observing the conduct and the exigency of the situation. Once the immediate need to maintain decorum or address the interruption has passed, the power to punish summarily also ends.[50] Examples of direct contempt include:

- Refusal to obey a specific court order during trial proceedings;
- Expressing improper remarks or indifference to the court's actions; or
- Disobeying the judge's instruction to cease a disturbance in court.

C. Indirect Contempt

Indirect or constructive contempt occurs outside the court's presence and does not involve a disruption of orderly court proceedings. Unlike direct contempt, in constructive contempt the issue generally does relate to the case on trial and is most often characterized by a dispute between the parties to the litigation regarding enforcement of a court order. Constructive contempt does not interfere with or interrupt court proceedings since it is the very focus of court proceedings scheduled to address it. Although time is important, it does not have the urgency of direct contempt and, consequently, the law imposes much more

stringent procedural standards on constructive contempt hearings. Examples of indirect or constructive contempt include:

- Having a conversation with a juror after trial begins;
- Secreting assets from a court-appointed receiver; and
- Failure to obey a court order.

D. Remedies for Contempt

Tex. Gov't Code § 21.001(a) gives courts the inherent power to maintain control of court proceedings and enforce lawful orders through the power of contempt. Although all contempt proceedings are quasi-criminal, it is the character of the relief which the proceeding will afford that defines the proceeding as civil or criminal.[51] On a finding of contempt, the court may respond to the contempt by applying the civil/coercive remedy sanction, or the criminal/punitive sanction, or a combination of both.

E. Civil / Coercive

Civil contempt, more accurately known as coercive contempt, has the purpose of securing compliance with a court order. To be enforceable by coercive contempt the order must be clear and unambiguous.[52] Due process standards apply in indirect contempt proceedings to assure that the contemnor is offered adequate safeguards. Due process for civil or coercive contempt requires:

- Full and complete notice of the conduct with which the contemnor is charged;[53]
- Adequate notice of the court order alleged to have been violated;[54]
- Ample time to prepare and respond to the allegation;[55]
- Reasonable notice of the time and date of the contempt hearing;[56]
- The right to appointed counsel if the alleged contemnor is indigent; [57]
- The right to a jury trial if the potential punishment exceeds 6 months in jail;[58]
- The right to be advised by the court of the right to a jury if punishment could exceed 6 months in jail; [59] and
- The ability to comply with the court order.[60]

F. Criminal / Punitive

The nature of criminal contempt is punitive, to punish past errant behavior, and is most commonly assessed in direct contempt cases. It is an unconditional sentence for punishment or deterrence.[61] Criminal contempt proceedings for contumacious and disruptive conduct during court proceedings may be dealt with immediately by the judge, unless committed by a court officer.

G. Burden of Proof

The burden of proof for a punitive contempt order is beyond a reasonable doubt.[62] There is a division of authority on the burden of proof required in cases addressing civil or coercive contempt. Tex. Fam. Code § 105.005 provides for a preponderance of the evidence standard, cited in *In re Smith*, 981 S.W.2d 909, 911 (Tex. App--Houston [1st Dist.] 1998, no pet.). However, the 5th Circuit has said that the movant bears the burden of establishing the elements of contempt by clear and convincing evidence in a civil contempt proceeding[63] and the Southern District of Texas has held the standard to be clear and convincing for civil contempt as well.[64]

H. Jury

Case law has held that there is no general right to a jury trial in cases of contempt.[65] However, offenses considered "serious" entitle the person charged to the 6th Amendment right to a jury.[66] Under Texas law, punishment of six months incarceration or less and a fine of $500 or less is considered a petty offense, insufficient to trigger the right to trial by jury.[67] Punishment exceeding six months' incarceration entitles the contemnor to a jury, and the judge must advise the contemnor of the right to jury.[68] At what point in the contempt proceeding the case is determined to be serious or petty is subject to conflicting authority. One Court of Appeals has held that if "confinement *may* exceed six months," then the contempt offense is serious and constitutional safeguards (i.e., the right to a jury) should be given.[69] However, another Court of Appeals has held that the actual punishment imposed determines whether the character of the contempt is serious or petty.[70]

I. Authority

References to contempt in the Texas Family Code:

- Tex. Fam. Code § 157.001(b) – Motion for Enforcement
- Tex. Fam. Code § 157.424 – Relation to Motion for Contempt
- Tex. Fam. Code § 105.001(f) – Temporary Orders Before Final Order
- Tex. Fam. Code § 81.004(a) – Contempt for Nonpayment of Fee

Statutory Limitations on Contempt – Tex. Gov't Code § 21.002

- Punishment is limited to six months in county jail and/or fine of up to $500;
- Cumulative punishment cannot exceed 18 months; and
- Court officers held in contempt are entitled to a personal recognizance bond and another judge to determine the validity of the contempt.

Court Officers – Tex. Gov't Code § 21.002(d) requires that an officer of the court held in contempt by a trial court shall, upon request, be released on personal recognizance until a *de novo* determination of guilt or innocence by another judge assigned by the regional administrative judge. Court officers include attorneys, court reporters, attorneys ad litem, and receivers.

J. Orders of Contempt

Orders of contempt must:

- Be in writing, definite, and certain;[71]
- Clearly state in what respect the court's earlier order was violated;[72]
- Notify the contemnor of how they violated the previous order;[73]
- Be signed by the judge within a short, reasonable time after finding of contempt;[74]
- If it is punitive, it must specify the exact punishment imposed;[75] and
- If it is coercive, it must clearly state what the contemnor must do to purge himself of contempt.[76]

If the contemnor is to be incarcerated, the orders of contempt must be accompanied by an order of commitment, and no person may be held for contempt without a written order of commitment. Orders of

commitment must provide the precise punishment assessed or, in the case of coercive contempt, the things contemnor must do to be purged of contempt.[77]

FEDERAL

FAMILIES FIRST PREVENTION SERVICES ACT (FFPSA)

INDIAN CHILD WELFARE ACT (ICWA)

THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

FAMILY FIRST PREVENTION SERVICES ACT (FFPSA)

The Family First Prevention Services Act of 2018 (also referred to as FFPSA) was enacted as part of Public Law 115-123.[78] FFPSA creates opportunities for Title IV-E federal funding reimbursement of services that are aimed at preventing a child's entry into foster care. Services include support for mental health, substance abuse, and other supports for parents. FFPSA has four central provisions aimed at increasing prevention services, support to kinship caregivers, addressing congregate care, and older youth.

A. Prevention Services

FFPSA allows for a 50% reimbursement of federal Title IV-E funds for states that invest in evidence-based prevention services for families with children who are at imminent risk of entering the foster care system. Programs can address mental health, substance abuse, and parenting skills and supports and must meet certain criteria set out in FFPSA for reimbursement eligibility.

B. Kinship Caregivers

Additional support for kinship caregivers is provided through a Kinship Navigator program. The program links kinship caregivers to a range of support and services. At this time, Texas does not have any approved Kinship Navigator programs, but caregivers can receive support through their DFPS kinship caseworker. Please *see* DFPS Kinship Care website[79] for related resources.

C. Congregate Care

In an effort to reduce the number of children in congregate care, Title IV-E federal fund reimbursement is available to children in foster homes, qualified residential treatment programs (QRTPs), and special settings for pregnant or parenting teens, youth transitioning out of foster care, and youth who are at risk for sex trafficking. QRTPs have a very specific model as defined within FFPSA, including court oversight.

D. Older Youth

FFPSA extends the age for independent living services for young adults formerly in foster care up to age 23 and extends eligibility for Education and Training Vouchers (ETV) for qualifying youth up to age 26. For more details about services for transitioning youth, *see* the Post-Secondary Opportunities section of the *Education* chapter of this Bench Book.

E. Texas Family First Pilot Program

Family preservation service means time-limited, family-focused services, including services subject to the Family First Prevention Services Act and services approved under the Title IV-E state plan provided to the family of a child who is:

- A candidate for foster care to prevent or eliminate the need to remove the child and to allow the child to remain safely with the child's family;
- A pregnant or parenting foster youth; or
- A member of a household that is subject to an order rendered under Tex. Fam. Code § 264.203.

Tex. Fam. Code § 262.401(3).

Under Tex. Fam. Code § 262.402, the Texas Family First pilot program allows DFPS to dispose of an investigation by allowing the child to return home and providing time-limited family preservation services—subject to Family First Prevention Services Act (FFPSA) qualifications—to children who are candidates for foster care or pregnant and parenting foster youth. The pilot program must be implemented in one urban and one rural jurisdiction and at least one jurisdiction where Community Based Care has been implemented. The child's safety must be the primary concern in authorizing services. DFPS must use Title IV-E Funds to pay for legal representation or provide counties with a matching reimbursement for the costs of legal representation and use the Texas Temporary Assistance for Needy Families (TANF) program or other department funds to provide in-home support services. DFPS must obtain a court order to compel the family of a candidate for foster care to participate in services but need not obtain a court order to provide services to pregnant or parenting foster youth. Tex. Fam. Code § 262.403.

DFPS must file a petition in the jurisdiction where the child is located, and the petition must be accompanied by an affidavit stating sufficient facts for the court to make the required findings. The petition must also include a safety risk assessment that documents the process for the child to remain at home with appropriate family preservation services, the specific reason that DFPS should provide services to the family, and the manner in which the services will mitigate the risk. The court must hold a hearing within 14 days of filing the petition, may grant a 14-day extension for good cause, and may render temporary restraining orders per Tex. Fam. Code § 105.001. Services may be provided to the child or any siblings of the child. Tex. Fam. Code § 262.404.

Attorneys ad litem for parents and children must be appointed when the petition is filed. However, if the parent is not found indigent, the attorney for the parent may be dismissed at the 14-day hearing and the court shall order the parent to pay the attorney's cost. Tex. Fam. Code § 262.405.

The court must deny the petition unless it makes findings under the ordinary prudence and caution standard that abuse and neglect has occurred, or there is substantial risk of abuse or neglect or continuing danger, and that family preservation services are necessary to ensure the physical health or safety of the child and family preservation services are appropriate based on the risk assessment. The court's order for family preservation services must identify and require specific services narrowly tailored to address the issues and include a statement whether the services are appropriate to address the risk factors. The court may order services for a parent whose rights to another child were terminated. If the court finds clear and convincing evidence that aggravated circumstances exist, the court may order that services not be provided. Tex. Fam. Code § 262.406.

The family preservation plan must be developed with the family and be written in a manner that is clear and understandable to the parent in a language the parent understands. The plan must include a safety risk assessment, the reasons for DFPS involvement, be narrowly tailored to address the concerns, list the specific services the family will receive, state the manner by which the services mitigate the risk factors, specify the tasks the family must complete, and include contact information for DFPS or SSCC staff who will be the point of contact for the family. Tex. Fam. Code § 262.407.

The family must sign the plan, but DFPS may submit the family preservation services plan without the parents' signatures if they refuse to sign. The plan remains in effect for 180 days unless the plan is amended or revoked by the court. A person affected by the plan may make a motion to modify at any time. Tex. Fam. Code § 262.408.

The plan may be amended at any time and if the parents are not willing to participate in amending the plan, DFPS can submit the amended plan without the parents' signatures. The amended plan is then valid for 180 days, or until the amended plan is modified or revoked by the court. Tex. Fam. Code § 262.409.

The court may review the amended plan, render additional orders, and omit any service the court deems inappropriate or not narrowly tailored. Tex. Fam. Code § 262.410.

A parent, managing conservator, guardian, or other member of a household ordered to participate in services may obtain services from a qualified provider of their choosing, and the provided services must be similar in scope and duration to the services in the service plan. A managing conservator, guardian, or other member of a household who is not a parent and who obtains family preservation services from a provider selected by the person is responsible for the cost of those services. A person who successfully completes the required services must obtain verification from the service provider. Tex. Fam. Code § 262.411.

Court orders must be reviewed in 90 days and the court must set subsequent reviews every 90 days to review the continue need for the order. Tex. Fam. Code § 262.412.

The court may extend the order for 180 days upon a showing by DFPS of a continuing need for the order. The court may grant an additional 180-day extension if the court finds that the extension is necessary to complete the services ordered, DFPS made a good faith effort to provide services, the parent made a good faith effort to complete services, completing services is necessary to ensure the child's safety, and the extension is requested by the parent or their attorney. Tex. Fam. Code § 262.413.

The case shall be dismissed once the order expires. Tex. Fam. Code § 262.414.

DFPS may contract for services, including contracting with a Single Source Continuum Contractor (SSCC) to provide services in areas with Community-Based Care (CBC). Courts may order services not subject to FFPSA but must identify a method of financing the services and who will pay for them. Tex. Fam. Code § 262.415.

F. Resources

1. National

- The ABA Center on Children and the Law created the Family First Prevention Services Act of 2018, A Guide for the Legal Community (2018) which helps the legal profession understand FFPSA, identify opportunities for legal advocacy and judicial decision making, and support the implementation of FFPSA.[80]

2. Department of Family and Protective Services

- DFPS Texas Family First webpage[81]

INDIAN CHILD WELFARE ACT (ICWA)

This chapter is modified from content originally provided in the DFPS Attorney Manual and used with DFPS permission.

Please see the Checklist Section for the ICWA Checklist.

A. Purpose and Background

The Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901 – 1963; 25 C.F.R. Part 23, is a federal law that imposes special standards and requirements when a child welfare agency seeks to intervene to protect an "Indian child," as defined by statute 25 U.S.C. § 1903(4). At the time of the law's passage, Congressional testimony documented the significant impact that decades of family separation had on Native children, their families, and their Tribes. The law was enacted to protect not only "Indian children," but their families and Tribes. 25 U.S.C. § 1902.

In 2013, the United States Supreme Court interpreted ICWA narrowly, restricting the rights of a non-custodial, biological parent who has never had custody of an "Indian child" and limiting the circumstances when the placement preferences apply in *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013). In response, the Department of the Interior, Bureau of Indian Affairs (BIA), issued updated Guidelines[82] and a binding Final Rule to the regulations implementing ICWA (known as Final Rule or Regulations) to clarify Congressional intent. 81 FR 38778-01, 2016 WL 3228279, at *38864 (June 14, 2016) and codified at 25 C.F.R. Part 23. Effective in December 2016, the Final Rule:

- Clarifies terms used in the statute such as what actions are necessary to prevent the breakup of an Indian family using the rule's definition of "active efforts";
- Provides definitive signposts for ICWA compliance;
- Allows for notice of involuntary proceedings by certified mail, return receipt requested, as a less costly alternative to registered mail, return receipt requested;
- Provides flexibility to allow local procedures for emergency removal and placement, as long as ICWA's statutory standard for emergency removal and placement is met, and is as short as possible;
- Continues to allow for consideration of each child's unique circumstances, but establishes some parameters to ensure that ICWA's purposes are not frustrated;
- Ensures that states have the flexibility to determine the best way to maintain their records and no longer requires the proposal for maintaining all "Indian child" custody records in a single location;
- Leaves intact a parent's prerogative to choose an adoptive family for their child in voluntary proceedings and requires that the parents review families who meet the placement preferences before making a final decision; and
- Protects confidentiality of the parties in all child custody proceedings, requiring the BIA, states, and Tribes to keep information confidential.

B. When Does ICWA Apply?

ICWA applies to any “child custody proceeding” involving an “Indian child,” if the court "knows or has reason to know that an Indian child is involved.” 25 U.S.C. § 1912(a).

1. Child Custody Proceedings

A suit seeking foster care placement, termination of parental rights, pre-adoptive, or adoptive placement is subject to ICWA. ICWA does not apply to most juvenile delinquency actions, nor does it apply to custody actions in divorce or separation proceedings (unless custody may be awarded to a non-parent).

A foster care placement is any action removing an Indian child from its parents or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated. 25 U.S.C. § 1903(1)(i).

The Regulations clarify that ICWA applies to a voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand." 25 C.F.R. § 23.103(a)(1)(ii). This does not include voluntary placement made without threat of removal by a state agency, if a parent or Indian custodian may regain custody on demand. 25 C.F.R. § 23.103(b)(4). If a parent or Indian custodian consents to voluntary foster care placement, that consent can be withdrawn at any time by filing a written document or testifying in court. 25 C.F.R. § 23.127(b).

2. “Indian Child”

An “Indian child” is an unmarried person under age 18 who is either a member of an Indian Tribe or eligible for membership and is the biological child of a member. 25 U.S.C. § 1903(4). An Indian Tribe includes any of the more than 500 federally recognized Tribes in the U.S. If DFPS becomes involved with an “Indian child” associated with any of these Tribes, ICWA will likely apply.

There are also three federally recognized Tribes with reservations in Texas:

- Ysleta del Sur Pueblo, also known as the Tigua, in El Paso;
- Kickapoo Traditional Tribe of Texas, in Eagle Pass; and
- Alabama Coushatta Tribe of Texas near Livingston.

Native children who reside on one of these reservations have specific legal protections (*see* Tribal and State Jurisdiction section below) and, in some cases, DFPS and the Tribe have agreed to a written protocol for handling these cases in the form of a Memorandum of Understanding or an Intergovernmental Agreement.

3. Reason to Know

A court has reason to know a child is an “Indian child":

- If any party, Tribe, or agency informs the agency or court that the child is an “Indian child”;
- Any participant, officer of the court, or agency involved in the proceedings informs the court it has discovered such information;
- The child gives the court reason to know he or she is an “Indian child”;

- The domicile or residence of the child, parent, or Indian custodian is on a reservation or in an Alaska Native village;
- The court is informed the child is or has been a ward of a Tribal court; or
- The court is informed that either parent or the child has a Tribal membership card.

25 C.F.R. § 23.107(c)(6).

4. How Are Possible "Indian Children" Identified?

A common reason for failure to comply with ICWA is the failure to identify children subject to ICWA. Two important requirements are designed to remedy this problem:

At the Adversary, Status, and each Permanency Hearing, Texas courts are required to ask the parties whether the child or child's family has Native American heritage and identify any Native American Tribe with which the child may be associated. Tex. Fam. Code § 262.201(f), Tex. Fam. Code § 263.202(f-1), and Tex. Fam. Code § 263.306 (a-1)(3).

The Regulations require that the state court judge ask each participant at the commencement of any of the above proceedings whether the person knows or has reason to know the child is an "Indian child" and to instruct the parties to inform the court of any such information that arises later. 25 C.F.R. § 23.107(a).

By far the most significant impact of failing to identify an ICWA case is that a final order can be invalidated if key ICWA provisions are violated. The remedy for violation of key ICWA provisions is a petition to invalidate. 25 U.S.C. § 1914. Similarly, if there is not sufficient information in the record to assess whether ICWA applies, an appeal can be abated. In either scenario, permanency is delayed.

***Special Issue**: A statement from a non-party family member that the child may have Native American heritage may be sufficient to trigger ICWA protections. If any parent or family member's response suggests an "Indian child" may be involved in a DFPS case, it is critical to document as much information as possible about the family history, because this information is often vital to a Tribe's ability to verify a child's or parent's membership status. If all family members deny any tribal family history, this should also be documented. If there is any information to suggest a tribal association, giving the Tribe notice and following up as necessary to verify a child's status can eliminate a potentially devastating delay that can undermine permanency.*

C. Tribal and State Jurisdiction

Whether the state court or Tribal court has jurisdiction over a case involving an "Indian child" depends on where the child resides, whether transfer to the Tribal court is requested, and whether an exception to the mandatory transfer provision applies. If a case involves an "Indian child," however, the state court proceedings must comply with ICWA, whether the Tribe intervenes or the case is transferred to a Tribal court. Please *see* Placement Preferences Section below for more information on when ICWA applies.

1. Exclusive Jurisdiction on the Reservation

If the child's residence or domicile is on the reservation, or if the child has been made a ward of the Tribal court, the Tribal court has exclusive jurisdiction, except when jurisdiction is otherwise vested in the state by existing federal law. 25 U.S.C. § 1911(a).

2. Emergency Exception

When an “Indian child” who resides on a reservation is temporarily off the reservation and emergency removal or placement is necessary “to prevent imminent physical damage or harm to the child,” the state child welfare agency may act despite the fact the Tribal court otherwise has exclusive jurisdiction. 25 U.S.C. § 1922. In such circumstances, the state child welfare agency must act promptly to: (1) end the removal or placement as soon as it is no longer necessary to prevent imminent physical damage or harm to the child; and (2) move to transfer the case to the jurisdiction of the Tribe or return the child to the parents, as appropriate.

3. Concurrent Jurisdiction Off the Reservation

If the child’s residence or domicile is not on the reservation, the Tribal and state court have concurrent jurisdiction. 25 U.S.C. § 1911(b). Even in this circumstance, however, there is a presumption of Tribal jurisdiction in cases involving an “Indian child.” *Mississippi Band of Choctaw Indians v. Holyfield,* 490 U.S. 30, 36 (1989).

D. Required Notice

ICWA imposes many specific requirements governing the timing, the type of notice, and the persons and entities entitled to notice. *In the Interest of R.R.*, 294 S.W.3d 213, 220-21 (Tex. App.—Fort Worth 2009, no pet.). One overarching issue is that without notice, a Tribe cannot confirm or deny “Indian child” status. Even if a child turns out not to be subject to ICWA, if there is evidence of possible “Indian child” status, proof of compliance with notice requirements can be essential to counter a challenge based on violation of ICWA. As the party seeking foster care placement of, or termination of parental rights to, an “Indian child,” the State is responsible for providing notice.[83] 25 C.F.R. § 23.111(a)(1).

1. When is Notice Required?

Notice is required for each "child-custody proceeding." 25 C.F.R. § 23.2. 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. *Id.* This means that any Suit Affecting the Parent Child Relationship (SAPCR) filed by DFPS requires notice. 25 U.S.C. § 1912(a); 25 C.F.R. § 23.2.

2. Timing (10 + 20 days)

No “foster care placement or termination of parental rights” hearing can be held until at least ten (10) days after notice is received (subject to an additional 20 days if the parent/custodian/Tribe requests additional time for preparation). 25 U.S.C. § 1912(a); 25 C.F.R. § 23.112(a).[84]

To avoid a delay and potential challenge to the court’s jurisdiction, the best practice is to set the initial hearing at least 30 days after notice is given (in effect, this assumes that a 20-day continuance is requested and granted).

3. When Identity of Parent / Indian Custodian is Known

Notice of a pending custody proceeding involving an “Indian child” must be sent to:

- Every known parent;
- Indian custodian;
- Each identified Tribe; and

- Regional Director, Bureau of Indian Affairs (a representative of the Secretary of Interior).

25 U.S.C. § 1912(a)-(b); 25 C.F.R. § 23.11(a).

4. When Identity is Not Known

If the identity or location of a parent or Indian custodian is not known or the identity of the Tribe cannot be determined, *Notice to Bureau of Indian Affairs: Parent, Custodian or Tribe of Child Cannot be Located or Determined* must be sent to:

- Regional Director, Bureau of Indian Affairs (a representative of the Secretary of Interior).

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

5. How to Send Notice

DFPS notices must include the required documents, advisements, specific child and family information, and hearing information required by 25 C.F.R. § 23.111. A copy of the petition must be attached as well as any additional family history, including family trees or copies of membership cards. Family history information can be critical to a Tribe's ability to determine membership status.

If a parent has requested anonymity, the agency and the court should maintain confidentiality and relevant court documents should be under seal. 25 C.F.R. § 23.107(d).[85]

The Regulations allow giving notice by registered or certified mail, with return receipt requested in either case. 25 C.F.R. § 23.11(a); 25 C.F.R. § 23.111(c). As a practical matter, certified mail is preferred because this allows delivery to someone other than the addressee. If the intended recipient of registered mail is not available, registered mail must be returned to sender, making it necessary to resend notice. Notice may be sent by personal service or electronically in addition, but this does not satisfy the service requirement. 25 C.F.R. § 23.111(c). Particularly where an email contact is provided, sending a duplicate notice this way is the best practice to expedite the process of determining a child's status.

A copy of each notice sent, with the return receipt or other proof of service must be filed with the court and should be admitted into evidence at trial. 25 C.F.R. § 23.111(a)(2).

6. Parent/Indian Custodian

A “parent” includes the biological or adoptive parent of an “Indian child,” including a non-Indian parent. 25 U.S.C. § 1903(9); 25 C.F.R. § 23.2. An alleged father must acknowledge paternity or be legally determined to be the father before being recognized as a parent. *In the Interest of V.L.R.*, 507 S.W.3d 788, 794 (Tex. App.—El Paso 2015, no pet.) (unidentified Tribe of a child's unwed father who fails to establish paternity is not the child's Tribe).

A primary impact of the U.S. Supreme Court's *Baby Girl* opinion was to limit the rights of a father who was a registered Tribal member but never had custody of his child. The Court found that an action for termination of parental rights against such a father could proceed without meeting the higher burden of proof or standards in 25 U.S.C. § 1912(d) and (f). *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2561-63 (2013). The Court reasoned that ICWA was designed to prevent the breakup of an Indian family. Under these specific facts, because the father had never had custody of the child, the family was not being broken up. The impact of this decision is limited by the following:

- The *Baby Girl* decision does not impact other substantive rights under ICWA, including the right to notice and appointment of counsel for indigent parents; and

- A Texas court declined to extend the *Baby Girl* rationale to a parent who had prior custody of an "Indian child," albeit not for the preceding twelve years; *In the Interest of V.L.R.* 507 S.W.3d 788 (Tex. App.—El Paso 2015, no pet.).

Tex. Fam. Code § 263.202(a)(1) and CPS Policy Handbook § 5232[86] require that a diligent search be conducted and notice provided to a parent, including an alleged father. This section of the Family Code also requires certain findings be made by the court in its status order concerning whether the Department has exercised due diligence, among other required findings.

The Regulations now define "continued custody" to include physical and/or legal custody (including under Tribal law or custom) that a parent "already has or had at any point in the past," and specify that a biological mother has had custody of a child. 25 C.F.R. § 23.2.[87]

"Indian custodian" is broadly defined as "any Indian person who has legal custody of an Indian child under Tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child." 25 U.S.C. § 1903(6).

7. More Than One Tribe

If a child has ties to more than one Tribe, notice to each Tribe is essential so that each Tribe can make a determination of membership or eligibility. If more than one Tribe responds affirmatively, the Regulations direct the Tribes to designate the child's Tribe and if the Tribes do not agree, the state court must do so, based on specified criteria. 25 C.F.R. § 23.109(c).[88]

8. Contact Information

The best resource for contact information for individual Tribes is the ICWA notice published in the Federal Register or the BIA's website using the ICWA Designated Agents Listing.[89]

For Tribes without a listing, the Regulations mandate the State must contact the Tribe directly to find out the proper contact person. If the Tribe fails to respond to written communication, a best practice is to seek assistance from the Bureau of Indian Affairs.

For notice to the BIA Regional Director:

For child custody proceedings in Texas, *except for notice to the Ysleta del Sur Pueblo of El Paso County*:

Southern Plains Regional Director
Bureau of Indian Affairs
P.O. Box 368
Anadarko, Oklahoma 73005
(405) 247-6673 Ext. 217; Fax: (405) 247-2895

For child custody proceedings in *El Paso and Hudspeth counties in Texas, including Ysleta del Sur Pueblo*:

Southwest Regional Director
BIA
1001 Indian School Road NW
Albuquerque, New Mexico 87104
Phone: (505) 563-3103; Fax: (505) 563-3101

9. After Initial ICWA Notice

Once the initial Notice of Pending Custody Proceeding Involving “Indian Child” is sent as required, send notice to the same listed persons and Tribes as follows:

- Unless or until a Tribe confirms a child is not a member or eligible for Tribal membership, DFPS will send notice of interim hearings, permanency planning meetings, family group conferencing or similar meetings to all persons and Tribes entitled to notice by regular first-class mail; and
- If the pleadings are amended, or a final hearing is set, DFPS will send a new Notice of Pending Custody Proceeding Involving “Indian Child,” with the petition and any additional child and family history information attached, by certified or registered mail, return receipt requested. 25 U.S.C. § 1912(a); 25 C.F.R. § 23.111. As with the original petition, the return receipt should be filed with the court and entered as an exhibit at trial.

E. “Indian Child” Determination

A Tribe’s determination regarding the child’s status is conclusive and a "State court may not substitute its own determination regarding a child's membership in a Tribe, a child’s eligibility for membership in a Tribe, or a parent's membership in a Tribe." 25 C.F.R. § 23.108(b).[90] Certain factors relied upon by courts in the past in determining whether a case is subject to ICWA are expressly excluded from this determination, including: a family's involvement with the Tribe and cultural, social, religious or political activities, the child's blood quantum, or whether the parent ever had custody. 25 C.F.R. § 23.103(c).[91] If the only identified Tribe confirms that a child is neither a member nor eligible for membership, this evidence supports a request that the court find that ICWA does not apply. *In the Interest of A.W. and M.W.*, 590 S.W.3d 68, 71 (Tex. App.—Texarkana 2019, pet. denied) (trial court did not err in finding ICWA did not apply where Tribe made determination that neither parent nor the children were eligible for membership, despite parents’ proof of ancestors being listed in the Dawes Rolls).

If a Tribe fails to respond after being properly noticed, counsel should first verify that the agency has exercised due diligence to communicate with the Tribe by phone, fax, or email. A state court may rely on facts or documentation indicating a Tribal determination or membership or eligibility, such as an enrollment document, to make a determination regarding “Indian child” status. 25 C.F.R. § 23.108(c).[92]

In the more common scenario, when documents showing a Tribal determination are not available, a Tribe's failure to respond to notice may present a distinct difficulty. Once the court confirms by way of report, declaration, or testimony on the record that due diligence was used to identify and work with all potential Tribes, the Regulations direct the court to "[t]reat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an ‘Indian child’…" 25 C.F.R. § 23.107(b).[93]

Depending on the nature of the evidence that gave the court reason to know that the child is an “Indian child” and prompted notice, imposing ICWA's requirements without confirmation from a Tribe or independent evidence may not be legally supportable. Until there is further case law interpreting the Regulations, the determination of a child's Indian status in the absence of tribal input may depend on the court's assessment of the nature and quality of the initial report of possible “Indian child” status and the evidence available after proper notice is provided.

The Regulations state that there is no exception to ICWA based on the premise that if the child's parent does not have a social, cultural, or political connection with an Indian Tribe then ICWA should not apply. This judicially created doctrine, called the existing Indian family doctrine, is now specifically denounced in the Regulations.

One appellate court held that once proper notice is given in compliance with ICWA, if the tribe fails to respond or intervenes but fails to make a membership or eligibility determination, the burden then shifts to the party asserting the child's Indian status to demonstrate that ICWA should apply. *See, e.g., In re A.M. and A.B.*, No. 02-21-00313-CV, 2022 WL 325473, at *2 (Tex. App.—Fort Worth Feb. 3, 2022, pet. denied) (mem. op.).

F. Emergency Removal

If an emergency removal is necessary "to prevent imminent physical damage or harm to [an Indian] child," the petition or supporting documents must contain specific information including the child or family's Tribal affiliation, the specific imminent physical damage or harm, and the active efforts made to prevent the removal and to return the child to the home. 25 C.F.R. § 23.113(d). DFPS has an ICWA removal affidavit which conforms to these requirements.

An emergency removal must be terminated as soon as it is no longer necessary to prevent imminent physical damage or harm. An emergency removal will terminate on the:

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

If a child is not returned home or the case is transferred to the Tribe, all proceedings must comply with ICWA. If a party asserts or the court has reason to believe an "Indian child" may have been improperly removed or retained, the court must terminate the proceedings unless returning the child would subject the child to "substantial and immediate danger or threat of such danger." 25 U.S.C. § 1920; *see also* 25 C.F.R. § 23.113(a), (c).[94]

G. Special Setting Following Emergency Hearing

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

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

When an "Indian child" is subject to removal, the best strategy is to set another hearing at the earliest possible date that accommodates the 30-day notice requirement applicable when a foster care placement is requested under ICWA. 25 U.S.C. § 1912. At that time, an ICWA-compliant hearing can be conducted.

H. Rights of the Parents, Indian Custodian, and Tribe

The parents or an Indian custodian of an "Indian child" and the child's Tribe have specific rights under ICWA.

It is recommended that courts with the capacity permit family members and Tribes to participate by telephone, video conference, and other means. 25 C.F.R. § 23.133.[95] If there is reason to know a parent or Indian custodian has limited English proficiency, the court must provide interpreter services. 25 C.F.R. § 23.111(f).[96]

1. Mandatory Transfer to Tribal Court

A parent, an Indian custodian, or the child's Tribe may petition the state court to transfer a suit involving an "Indian child" to the Tribal court. A transfer request may be made orally on the record or in writing, at any stage of the proceedings. 25 C.F.R. § 23.115.[97] On receipt of a transfer request, the state court should immediately ensure the Tribal court is notified. Notice may include a request for timely response regarding whether the Tribe will decline the transfer. 25 C.F.R. § 23.116.

Transfer to the Tribal court is mandatory, unless the court makes a finding of good cause not to transfer, the Tribe declines transfer, or either parent objects. 25 U.S.C. § 1911(b); 25 C.F.R. § 23.117.[98] The court **cannot** consider the following factors in assessing good cause:

- The advanced stage of the proceedings, if notice to the Tribe did not occur until an advanced stage;
- Whether there was no petition to transfer in a prior proceeding involving the child;
- Whether transfer would affect the child's placement;
- The child's cultural connections with the Tribe or its reservation; or
- The socio-economic conditions of the Tribe, BIA social services, or the judicial systems.

25 C.F.R. § 23.118(c).

The basis for any decision denying transfer must be a written order or in a statement on the record. 25 C.F.R. § 23.118(d). If transfer is ordered, the state court must promptly forward the court records and work with the Tribal court to accomplish a smooth transfer with minimal disruption in services to the family. 25 C.F.R. § 23.119.

2. Appointment of Counsel

Appointment of counsel for indigent parents or Indian custodians is mandatory under ICWA, whether the action is for removal and placement in foster care or for termination of parental rights. 25 U.S.C. § 1912(b). If a parent or Indian custodian appears without an attorney, the court must give an advisement of specific rights provided under ICWA. Appointment of counsel for a child is discretionary, but state law requires appointment of an attorney ad litem for a child if DFPS seeks conservatorship or termination. Tex. Fam. Code § 107.012. Note that the Texas Family Code provisions concerning admonishment of a right to counsel and appointment of an attorney to an indigent parent are not supplanted by 25 U.S.C. § 1912(b). Courts should abide by both sets of statutes if ICWA applies.

3. Right to Review Records

In a proceeding for emergency removal, foster care placement, or termination of parental rights, each party (including the child's Tribe and custodian) has the right to review all reports and records filed with the court. 25 U.S.C. § 1912(c); 25 C.F.R. § 23.134.[99] Even before a Tribe intervenes or in the event a Tribe elects not to intervene, it is good practice to share these records with the child's Tribe, if requested. Unless

prohibited by confidentiality rules, sharing information promotes collaboration with the Tribe, in terms of locating resources, experts, or vital family history information.

4. Right to Intervene

The Tribe and the Indian custodian have the right to intervene in the state court action at any time in the proceedings. 25 U.S.C. § 1911(c). Intervention may be accomplished informally, by oral statement, or formally. Most important, if an "Indian child" is involved, ICWA applies whether or not the child's Tribe intervenes.

5. Full Faith and Credit

ICWA requires that all courts give full faith and credit to the "public acts, records, and judicial proceedings" of any federally recognized Indian Tribe regarding "Indian child" custody proceedings. 25 U.S.C. § 1911(d).

6. Preemption

Texas courts have held that ICWA will preempt Texas state law where: 1) Congress has enacted a specific framework to remove that area of law from the state realm; 2) Congress specifically preempted state law; or 3) a state law directly conflicts with the force or purpose of a federal law. Accordingly, courts have determined that ICWA preempts Texas law where a statute or rule conflicts with the purpose or force of ICWA. *In the Interest of J.J.T.*, 544 S.W.3d 874, 879 (Tex. App.—El Paso 2017, no pet.) (Texas rules requiring written request to intervene preempted by ICWA).

I. Placement Preferences

ICWA mandates that placements for foster care and adoption be made according to statutory preferences, unless good cause is shown to deviate from the preferences. 25 U.S.C. § 1915; 25 C.F.R. § 23.129-131. The court must consider the preference of the "Indian child" or child's parent, where appropriate. 25 C.F.R. § 23.131(d); 25 C.F.R. 23.132(b). In a voluntary proceeding, if a parent requests anonymity, the court must give weight to that request in applying the preferences. 25 C.F.R. § 23.129(b).

All placements must be in the least restrictive setting that:

- Most approximates a family, taking sibling attachment into consideration;
- Allows any special needs to be met; and
- Is in reasonable proximity to the child's home, extended family, and siblings.

25 C.F.R. § 23.131.

The statutory preferences give priority as follows:

1. Foster Care or Pre-Adoptive Placement

- A member of the child's extended family;
- A foster home licensed, approved, or specified by child's Tribe;
- An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- An institution for children approved by the Tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

25 U.S.C. § 1915(b); 25 C.F.R. § 23.131(b).[100]

2. For an Adoptive Placement

- A member of the child's extended family;
- Other members of the child's Tribe; or
- Other Indian families.

25 U.S.C. § 1915(a); 25 C.F.R. § 23.130.

3. Departing from ICWA Preferences

The Tribe can by resolution alter the order of preferences. 25 U.S.C. § 1915(c). The Tribe's preference should then be followed as long as it is still the least restrictive setting appropriate to the needs of the child.

A party seeking to depart from the placement preferences must show by clear and convincing evidence, on the record or in writing, that there is "good cause" to depart from the placement preferences. 25 C.F.R. § 23.132. The court's determination of good cause must be made on the record or in writing and be based on one or more of the following factors:

- The request of the "Indian child's" parent;
- Request of the child of sufficient age and capacity;
- Ability of placement to maintain sibling attachment;
- The "extraordinary physical, mental, or emotional needs" of the child; and
- The unavailability of a suitable placement (despite a diligent search and active efforts to locate one).

25 C.F.R. § 23.132(b)-(c).

Neither the relative socioeconomic status of a placement nor ordinary bonding flowing from time spent in a non-preferred placement made in violation of ICWA will support deviation from preferences. 25 C.F.R. § 23.132(d)-(e).

This creates yet another incentive to identify a child subject to ICWA quickly to avoid a child bonding with a caretaker before a placement consistent with these preferences can be made.

In the *Baby Girl* case, the Supreme Court held that if no party eligible for preference formally seeks placement, the placement preferences do not apply. *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2564 (2013). This shifts the burden to a potential placement to seek placement, which is at odds with the best placement practices for child welfare cases. Regardless of a child's ethnicity, DFPS does not wait for placements to come forward but seeks out extended family, fictive kin, and other placement resources. When an "Indian child" is identified, the Tribe is notified and may also identify potential placements. Any appropriate potential placement is assessed, and a placement selected consistent with the statutory preferences and good casework practice. As a result, a potential placement's failure to make a formal request would not impact the selection process in a DFPS child protection suit.

J. Conservatorship or Termination of Parental Rights of "Indian Child"

1. Burden of Proof

If ICWA applies, the burden of proof and standards for an order placing a child in foster care (in effect a removal) or a final order seeking permanent managing conservatorship or termination of parental rights are different than under the Texas Family Code. In summary, if ICWA applies the requirements are:

a. Foster Care Placement – Clear and Convincing Evidence

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e). The state must also show active efforts were made to provide remedial services and rehabilitative programs and that those were unsuccessful in preventing removal. 25 U.S.C. § 1912(d).

b. Termination of Parental Rights – Evidence Beyond a Reasonable Doubt

The evidence must include qualified expert testimony that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and active efforts to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made but proved unsuccessful. 25 U.S.C. § 1912(d), (f). Note that in most jurisdictions, the findings for termination of parental rights under the Texas Family Code must be made by clear and convincing evidence and the ICWA findings are made by evidence beyond a reasonable doubt. Courts under the 14th Court of Appeals (Houston) are the exception to this rule, where only the ICWA findings are to be made in the final order of termination. *In the Interest of W.D.H., III.*, 43 S.W.3d 30, 34-35 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

2. Causal Relationship

Whether a foster care placement or termination of parental rights is at issue, there must be evidence of "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 to the particular child." 25 C.F.R. § 23.121(c).[101] Without a causal relationship, evidence 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).

3. Active Efforts

There must be evidence of "active efforts" to alleviate the cause for removal, taking into account the prevailing social and cultural conditions and way of life of the "Indian child's" Tribe. 25 U.S.C. § 1912(d). 25 C.F.R. § 23.120.[102] Active efforts are intended primarily to maintain and reunite an "Indian child" with their family or Tribal community and constitute more than reasonable efforts.

"Active efforts" is generally construed to require more than the "reasonable efforts" otherwise required for children in foster care. The Regulations offer detailed examples of what constitutes active efforts:

- Conducting a comprehensive assessment of the circumstances of the "Indian child's family," with a focus on safe reunification as the most desirable goal;

- Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- Identifying, notifying, and inviting representatives of the "Indian child's" Tribe to participate in providing support and services to the "Indian child's" family and in family team meetings, permanency planning, and resolution of placement issues;
- Conducting or causing to be conducted a diligent search for the "Indian child's" extended family members, and contacting and consulting with extended family members to provide family structure and support for the "Indian child" and the "Indian child's" parents;
- Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- Taking steps to keep siblings together whenever possible;
- Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the "Indian child" during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the "Indian child's" parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- Monitoring progress and participation in services;
- Considering alternative ways to address the needs of the "Indian child's" parents and, where appropriate, the family, if the optimum services do not exist or are not available; and
- Providing post-reunification services and monitoring.

25 C.F.R. § 23.2.

Special Issue: *Strategies that promote diligent identification of Tribes, incorporate appropriate Tribal services, help families overcome barriers, promote involvement of the Tribe, and maintain sibling relationships and family visits are all encouraged.*

The Guidelines recommend that state agencies work with Tribes, parents, and other parties as soon as possible, even in an emergency situation, to begin providing active efforts to reunite the family.[103] *To the extent possible, DFPS staff should work with a child's Tribe, extended family, Tribal social services, and individual Indian caregivers to tailor appropriate services for individual families.*

The Regulations specify that active efforts must be documented in detail in the record. 25 C.F.R. § 23.120(b).

Courts have concluded that "active efforts" does not require "absolutely every effort." *In the Interest of L.M.B.*, 54 Kan. App.2d 285, 307 (Kan. Ct. App. 2017). However, in *Children, Youth & Families Dep't v. Yodell B.*, the court found merely creating a service plan and referring the father to parenting classes without providing more direct assistance did not constitute active efforts. *State ex rel.* 367 P.3d 881, 886-87 (N.M. Ct. App. 2015). *See* case notes at the end of this chapter for additional examples of what does and does not constitute active efforts.

K. Who is a Qualified Expert Witness?

The statute does not define what constitutes a qualified expert witness under ICWA. The Regulations require that an expert be qualified to testify as to whether the child's continued custody by the parent or custodian is "likely to result in serious emotional or physical damage," and direct that an expert should be qualified to testify as to the "prevailing social and cultural standards" of the child's Tribe. 25 C.F.R. § 23.122. The social worker assigned to the child's case may not serve as an expert (although a caseworker may testify otherwise, as to the parent's compliance with the service plan, visitation, and other issues).

Without question, the child's Tribe is the best source for an expert. If the Tribe is in agreement with the agency's legal strategy and has an expert willing and able to testify, this is ideal. However, if a Tribe has a policy against termination of parental rights or is not in agreement with DFPS on a specific case, finding an ICWA expert can be challenging. Understandably, many Tribal members do not want to take a position in a court proceeding adverse to a fellow Tribal member and with very small Tribes, the pool of potential qualified expert witnesses is limited. Courts with capability should allow participation by phone, video conferencing, or other methods. 25 C.F.R. § 23.133.

L. Voluntary Relinquishment of Parental Rights

ICWA imposes significantly different requirements for a valid voluntary relinquishment of parental rights, or "consent[] . . . to termination of parental rights," as ICWA denotes a specific process when an "Indian child" is involved. 25 U.S.C. § 1913(a). The most significant difference is that a valid relinquishment to terminate parental rights must be in writing and be taken on the record before a judge. The Guidelines also state that notice of voluntary proceedings to the Indian Tribe is a recommended practice, while the statutory notice provision is limited to involuntary proceedings. 25 U.S.C. § 1912(a).[104]

In addition, ICWA requires the judge to attach a certificate that indicates that the terms and consequences of the consent were fully explained and that the parent or Indian custodian fully understood the explanation whether provided in English or by an interpreter. 25 U.S.C. § 1913(a). Consent to voluntary relinquishment of parental rights cannot be given until the eleventh day after birth of the child and must contain the child's name, birth date, the name of the child's Tribe, any Tribal affiliation and membership, name and address of the consenting parent or Indian custodian, and the name and address of the person or entity that arranged any adoptive or pre-adoptive placement.

Unlike a relinquishment made to DFPS under the Texas Family Code, a parent of an "Indian child" may withdraw consent for any reason at any time prior to entry of a final decree of termination or adoption. If consent is obtained by fraud or duress, a parent may withdraw consent and the court shall invalidate a decree of adoption up to two years after entry of the decree (or beyond the two years if otherwise permitted under state law). 25 U.S.C. § 1913(c)-(d).

M. Related Case Notes

1. U.S. Supreme Court

Haaland v. Brackeen, 143 S. Ct.1609 (2023) (Court left intact the entirety of ICWA as it (1) affirmed the Fifth Circuit's finding that ICWA does not exceed Congress's power under Article I; (2) held ICWA does not violate the anticommandeering doctrine under the 10th Amendment, thereby reversing the Fifth Circuit; and (3) found the individual plaintiffs and the State of Texas did not have standing to challenge on equal protection and nondelegation grounds and therefore did not address on the merits.) For background on this

case, *see* the Children's Commission's past Resource Letters sent on July 1, 2021, August 21, 2019, December 7, 2018, and November 9, 2018.

Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013) (Court held: (1) the higher burden of proof and standard for termination of parental rights under ICWA do not apply to Indian parent who never had custody and cannot resume or continue to have custody of an "Indian child;" (2) requirement that "active efforts" be made to prevent the breakup of an Indian family does not apply to a parent who abandons a child before birth and never had custody; and (3) placement preferences do not bar a non-Indian family from adopting when no other eligible candidate [relative, Tribal member, or other Indian person] seeks to adopt an "Indian child").

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) (denial of Tribe's motion to vacate adoption decree reversed on appeal, where both parents were members of the Tribe and resided on the reservation, left the reservation prior to twins' birth and signed consent to adoption. Where children neither reside nor are domiciled on reservation, 25 U.S.C. § 1911(b) creates concurrent but presumptive Tribal jurisdiction that requires the state court to transfer jurisdiction unless good cause is shown or the Tribe declines).

2. Texas Courts

a. "Indian Child" Status

E.A.H. v. *Tex. Dep't of Fam. & Protective Servs.*, No. 03-17-00816-CV, 2018 WL 2451824 (Tex. App.—Austin June 1, 2018, no pet.) (mem. op.) (where Department gave notice with relevant family history to three Cherokee Tribes and BIA and none confirmed "Indian child" status, ICWA does not apply and notice to other Tribes on the Dawes Rolls not required).

In the Interest of C.C. and Z.C., No. 12-17-00114-CV, 2018 WL 718987 (Tex. App.—Tyler February 6, 2018, no pet.) (mem. op.) (ICWA does not apply where parent's asserted affiliation is with Azteca, which is not a federally recognized Tribe for purposes of ICWA.); original case, *In the Interest of C.C. and Z.C.*, No. 12-17-00114-CV, 2017 WL 3184319 (Tex. App.—Tyler, June 30, 2017, no pet.) (termination reversed where documents in clerk's record indicated Father reported "Indian blood" but trial court failed to make determination of child's status; case remanded for determination of child's Indian status).

In the Interest of A.E., No. 05-17-00425-CV, 2017 WL 4707488 (Tex. App.—Dallas October 20, 2017, pet. denied.) (mem. op.) (where mother denied Indian heritage until trial was underway, appellate court abated case for further investigation; after caseworker testified that twenty recognized Tribes all responded that the child was neither enrolled nor eligible for enrollment, trial court did not know or have reason to know of "Indian child" status).

C.D.G.D.M., v. Tex. Dep't of Fam. & Protective Servs., No. 03-17-00477-CV, 2017 WL 4348237 (Tex. App.—Austin September 27, 2017, no pet.) (mem. op.) (ICWA does not apply where Department gave notice to all Cherokee Tribes and all concluded that the child did not meet "Indian child" definition).

In the Interest of T.R., 491 S.W.3d 847 (Tex. App.—San Antonio 2016, no pet.) (termination affirmed where Mother repeatedly denied Native American ancestry; great-grandmother reported no family member was registered with the Choctaw Nation, and her own membership was in a Cherokee Tribe not recognized by Congress).

In the Interest of Z.C., No. 12-15-00279-CV, 2016 WL 1730740 (Tex. App.—Tyler April 29, 2016, no pet.) (mem. op) (termination abated and remanded for trial court to make findings as to "Indian child" status; three permanency reports referencing "Indian child" status and report from CASA volunteer that father refused hair follicle drug test on grounds that he was Indian and could not cut hair was sufficient to trigger duty to give notice to the Tribe); *In the Interest of Z.C.*, No. 12-15-00279-CV, 2017 WL 1534050 (Tex. App.—Tyler Apr. 28, 2017) (mem. op.) (On remand, proceeding reinstated and proper notice was sent. The court found child's possible Tribe was not an ICWA-recognized Tribe. Trial court judgment was then affirmed).

In the Interest of D.D, No.12-15-00192-CV, 2016 WL 7401925 (Tex. App.—Tyler Nov. 9, 2016, pet. denied) (mem. op.) (in separate opinions involving two parents, appeal of termination case abated and remanded for failure to address issue of child's Tribal heritage and give proper notice despite references in the record to family Tribal history).

In the Interest of N.A., No. 02-13-00345-CV, 2014 WL 814195 (Tex. App.—Fort Worth, Feb. 28, 2014, no pet.) (mem. op.) (information in progress reports that mother reported her great-great-grandfather was a registered Cherokee sufficient to trigger notice to Tribe requirement).

In the Interest of C.T., No. 13-12-00006-CV, 2012 WL 6738266 (Tex. App.—Corpus Christi-Edinburg, Dec. 27, 2012, no pet.) (mem. op.) (where child's grandmother testified that the child was half-Indian because she is half Black Foot and the mother is half Cheyenne, but failed to indicate whether parents or children were members or children were eligible for membership, failure to apply ICWA was not considered error).

In the Interest of J.J.C., 302 S.W.3d 896 (Tex. App.—Waco 2009, no pet.) (allegation that maternal grandmother is member of Chippewa Indian Nation sufficient to give court "reason to believe" that "Indian child" was involved).

In the Interest of R.R., 294 S.W.3d 213 (Tex. App.—Fort Worth 2009, no pet.) (where grandmother is enrolled Tribal member and Tribe requested more information, notice to Tribes and Bureau of Indian Affairs required before trial court can determine child's status as "Indian child").

In the Interest of R.M.W., 188 S.W.3d 831 (Tex. App.—Texarkana 2006, no pet.) (assertion of Indian heritage or blood without evidence of membership or eligibility for membership in an Indian Tribe insufficient to put court on notice of "Indian child;" court distinguishes *Doty-Jabbaar* [below], noting DFPS did not admit child was Indian, and court made no finding that any children were Tribal members).

Doty-Jabbaar v. Dallas Cnty. Child Protective Servs., 19 S.W.3d 870 (Tex. App.—Dallas 2000, pet. denied) (termination reversed for failure to adhere to ICWA requirements where court concluded "it is apparent [the agency] acknowledged the child's status as an 'Indian child' …" when caseworker notified the Tribe in a prior proceeding for termination of parental rights and again in this case but failed to apply ICWA).

b. Notice

In the Interest of A.H., No. 04-21-00367-CV, 2022 WL 527661 (Tex. App.—San Antonio Feb. 23, 2022, pet. denied) (mem. op.) (ICWA notice is not required where the trial court had no reason to believe A.H. was an "Indian child" under ICWA, whether or not the original trial court asked each participant about the child's Native American ancestry, when Mother was given an opportunity to provide evidence at a de novo trial).

In the Interest of S.J.H., 594 S.W.3d 682 (Tex. App.—El Paso 2019, no pet.) (reversed and remanded for failure to provide notice to a potential Tribe, even as other Tribes were notified and determined ineligible).

In the Interest of A.E., No. 02-19-00173-CV, 2019 WL 4784419 (Tex. App.—Fort Worth Oct. 1, 2019, pet. denied) (mem. op.) (ICWA notice requirement must be strictly adhered to under 25 C.F.R. § 23.111(a)(2), (d)).

In the Interest of A.M., 570 S.W.3d 860 (Tex. App.—El Paso 2018, no pet.) (ICWA notice is not required during an emergency removal).

In the Interest of T.R., 491 S.W.3d 847 (Tex. App—San Antonio, 2016, no pet.) (ICWA notice is not required where Mother repeatedly denied Native American ancestry and great-grandmother reported no family member was registered with the Choctaw Nation and her own membership was in a Cherokee Tribe not recognized by Congress).

In the Interest of K.S., 448 S.W.3d 521 (Tex. App.—Tyler 2014, pet. denied) (failure to strictly comply with formal notice not basis for invalidation where Tribe had actual notice, intervened, and participated in case).

In the Interest of R.R., 294 S.W.3d 213 (Tex. App.—Fort Worth 2009, no pet.) (strict compliance with specific ICWA notice requirements necessary to avoid exposing a termination decree to a petition to invalidate at some future date).

c. ICWA Application

In the Interest of A.M., 570 S.W.3d 860 (Tex. App.—El Paso 2018, no pet.) (Alleged defects in temporary orders do not invalidate a final termination order when the final order complies with all ICWA requirements, including supporting qualified expert witness testimony and all necessary ICWA findings).

In the Interest of J.J.T., 544 S.W. 3d 874 (Tex. App.—El Paso 2017, no pet.) (termination judgment reversed where Tribal intervention denied at trial as untimely and not in writing).

Villarreal v. Villarreal, No. 04-15-00551-CV, 2016 WL 4124067 (Tex. App.—San Antonio Aug. 3, 2016, no pet.) (mem. op.) (divorce is not "child custody proceeding" subject to ICWA).

In the Interest of E.G.L., 378 S.W.3d 542 (Tex. App.—Dallas 2012, pet. denied) *(*ICWA does not apply to a suit by stepfather seeking adjudication of father's paternity and appointment as conservator).

B.O. v. Tex. Dep't of Fam. & Protective Servs., No. 03-12-00676-CV, 2013 WL 1567452 (Tex. App.—Austin, Apr. 12, 2013, no pet.) (mem. op.) (argument that ICWA should apply because father is a Tribal member even though children are not members or eligible for membership in a Tribe rejected).

Comanche Nation v. Fox, 128 S.W.3d 745 (Tex. App.—Austin 2004, no pet.) (ICWA does not apply to a proceeding to modify child conservatorship where no public or private agency is attempting to remove a child from an Indian family).

Doty-Jabbaar v. Dallas Cnty. Child Protective Servs., 19 S.W.3d 870, 877 (Tex. App.—Dallas 2000, pet. denied) (even if Tribe does not intervene, court must apply ICWA if "Indian child" involved and "[w]hen, as here, an ICWA proceeding takes place in state court, rather than a Tribal forum, the trial court should take great precautions to ensure the prerequisites of the ICWA have been satisfied").

d. Burden of Proof

In the Interest of R.H., 693 S.W.3d 846 (Tex. App.—Fort Worth 2024, pet. denied) (A rendition of the required ICWA and state-court findings, followed by unequivocal language terminating a parent's rights that is not limited solely to the state-court grounds, is sufficient to support a termination under the ICWA standard).

In the Interest of G.C., No. 10-15-00128-CV, 2015 WL 4855888 (Tex. App.—Waco, Aug. 13, 2015, no pet.) (mem. op) (Section 1912(f)'s requirement of a finding beyond a reasonable doubt is limited to the finding expressly stated in Section 1912(f) and does not apply to the termination findings under the Texas Family Code).

In the Interest of K.S., 448 S.W.3d 521 (Tex. App.—Tyler 2014 pet. denied) (There must be proof beyond a reasonable doubt that active efforts to prevent the breakup of the Indian family were made and proved unsuccessful).

But see In the Interest of W.D.H., 43 S.W.3d 30 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (termination order reversed, citing failure to make requisite ICWA findings and error in making findings on best interest ("an Anglo standard") and on statutory grounds for termination under the Texas Family Code).

e. Pleadings and Jury Charge

In the Interest of G.C., No. 10-15-00128-CV, 2015 WL 4855888 (Tex. App.—Waco, Aug. 13, 2015, no pet.) (mem. op.) (Concurrent application of ICWA and the Texas Family Code to proceedings involving "Indian children" provides additional protection to parents of "Indian children" because it requires the party seeking termination to prove state and federal grounds before the parent-child relationship may be terminated).

In the Interest of K.S., 448 S.W. 3d 521 (Tex. App.—Tyler 2014, pet. denied) (When ICWA applies, both ICWA and the Texas Family Code must be satisfied; it is not error to submit broad form jury charge where charge included instruction on statutory language and burden of proof under both ICWA and the Texas Family Code; and there must be proof beyond a reasonable doubt that "active efforts" were made and were unsuccessful to prevent the breakup of the Indian family under 25 U.S.C. § 1912(d)).

In the Interest of W.D.H., 43 S.W.3d 30 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (termination order reversed, citing failure to make requisite ICWA findings and error in making findings on best interests, "an Anglo standard", and on statutory grounds for termination under the Texas Family Code; Father's whereabouts and status as a member of the Cheyenne-Arapaho Tribe of Oklahoma were unknown when child was removed at birth and only after reunification was in progress and father was convicted of burglary did he advise the agency he was one-fourth Indian).

f. Active Efforts

In the Interest of K.S., 448 S.W.3d 521 (Tex. App.—Tyler 2014, pet. denied) (In *dicta* the court observes, "But when aggravated circumstances exist and reasonable efforts for reunification are not required by the family code, the ICWA requirements must still be satisfied because they provide a higher degree of protection than state law," an approach consistent with the generally strict interpretation of ICWA by Texas courts).

g. Qualified Expert Witness

N.M. v. Tex. Dep't of Fam. & Protective Servs., No. 03-19-00240-CV, 2019 WL 4678420 (Tex. App.—Austin Sept. 26, 2019, no pet.) (mem. op.) (termination order reversed where no qualified expert witness testified as required under ICWA).

In the Interest of D.L.N.G., No. 05-19-00206-CV, 2019 WL 3214151 (Tex. App.—Dallas, July 17, 2019, no pet.) (mem. op.) (reversed and remanded trial court's final order finding that the trial court failed to comply with ICWA requirement of a qualified expert witness before appointing the foster parents as managing conservators).

In the Interest of D.E.D.I., 568 S.W.3d 261 (Tex. App.—Eastland 2019, no pet.) (The trial court was able to determine that the Indian Tribe's representative met the requirements for a qualified expert witness even though the Department did not specifically designate her, and the trial court did not expressly certify her as a qualified expert witness).

S.P. v. Tex. Dep't of Fam. & Protective Servs., No. 03-17-00698-CV, 2018 WL 1220895 (Tex. App.—Austin, Mar. 9, 2018, no pet.) (mem. op.) (testimony of foster parent and Department caseworker failed to satisfy requirement for evidence, including qualified expert testimony, that "the continued custody of the child by the parent is likely to result in the serious emotional or physical damage to the child," and necessitated remand).

In the Interest of V.L.R., 507 S.W.3d 788 (Tex. App.—El Paso 2015, no pet.) (caseworker without Tribal membership, recognition by Tribe of her substantial experience in the delivery of child and family services to Indians, or knowledge of the prevailing social and cultural standards and childrearing practices within the Tribe, was not a qualified expert witness).

Doty-Jabbaar v. Dallas Cnty. Child Protective Servs., 19 S.W.3d 870 (Tex. App.—Dallas 2000, pet. denied) (without reference to the particular grounds for removal, court found social worker's nine and a half years of experience insufficient qualification as ICWA expert, citing the lack of evidence of social worker's education and familiarity with Indian culture and childrearing practices).

h. Jurisdiction/Transfer

In the Interest of S.R.P., No. 07-21-00002-CV, 2021 WL 1881036 (Tex. App.—Amarillo May 10, 2021, pet. denied) (mem. op.) (The appellate court dismissed the appeal for lack of jurisdiction where the trial court ordered the case transferred to the District Court for the Citizen Potawatomi Nation on motion of the Nation after trial court terminated parental rights. The appellate court noted that there are times when Texas and an Indian Tribe may share jurisdiction over a child but in this case the Tribe has exclusive jurisdiction under 25 U.S.C. § 1911).

Yavapai-Apache Tribe v. Mejia, 906 S.W.2d 152 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding [leave denied]) (error to use "best interests of the child" and the children's lack of contact with the Tribe to determine good cause to deny transfer to Tribal court; court approves use of a modified forum non conveniens doctrine, citing location of evidence and witnesses, to assess good cause and affirm denial of transfer, and observing that "[w]hen a state court keeps a case in a concurrent jurisdiction setting, it is still required to apply the relevant sections of the ICWA. In other words, avoiding Tribal court jurisdiction does not render the ICWA inapplicable").

i. Remedy for ICWA Violation

In the Interest of V.L.R., 507 S.W.3d 788 (Tex. App.—El Paso 2015, no pet.) (violation of ICWA requires reversal of termination judgment).

In the Interest of G.D.P., No. 09–14–00066–CV, 2014 WL 3387639 (Tex. App.—Beaumont July 10, 2014, no pet.) (mem. op.) (parties agreed to reverse termination judgment based on violation of ICWA).

In the Interest of P.J.B., No. 10-12-00286-CV, 2013 WL 1286677 (Tex. App.—Waco Mar. 28, 2013, no pet.) (no violation where appeal abated and trial court found ICWA did not apply).

In the Interest of J.J.C., 302 S.W.3d 896 (Tex. App.—Waco 2009, no pet.) (trial court's failure to follow ICWA can be raised for the first time on appeal; appeal abated pending trial court determination of "Indian child" status); *disp. on merits*, 2010 WL 1380123 (Tex. App.—Waco, Apr. 7, 2010, no pet.) (mem. op.) (termination reversed and remanded based on determination that children were "Indian children") .

Doty-Jabbaar v. Dallas Cnty. Child Protective Servs., 19 S.W. 3d 870 (Tex. App.—Dallas 2000, pet. denied) (termination judgment reversed for failure to adhere to ICWA requirements.)

j. Standard of Review

In the Interest of V.L.R., 507 S.W.3d 788 (Tex. App.—El Paso 2015, no pet.) (where burden of proof is beyond a reasonable doubt in ICWA termination case, the *Jackson v. Virginia*, 99 S. Ct. 2781 (1979) standard requires review of evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found 25 U.S.C. § 1912(d) and (f) were satisfied beyond a reasonable doubt).

N. Resources

- Bureau of Indian Affairs, Quick Reference Sheet for State Court Personnel[105]
- National Council of Juvenile and Family Court Judges (NCJFCJ), Indian Child Welfare Act Judicial Benchbook[106]
- 2021 Texas Indian Child Welfare Act Summit Webinar[107]

THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)

The Interstate Compact on the Placement of Children (ICPC) is a model contract that was drafted in 1960 and is legally binding on all states that adopt it. Texas adopted the ICPC in 1995 and it is codified in Tex. Fam. Code § 162.102. The purpose of the ICPC is to ensure that children placed out of their home state receive the same protections and services that would be provided if they remained in their home state.

To see any specific ICPC regulations mentioned throughout this chapter, *see* the ICPC Regulations.[108] *See further*, CPS ICPC policy in the CPS Policy Handbook §§ 4500 and 9000.[109]

Some recent efforts to improve the Texas ICPC process include:

- The overall processing of expedited home study requests;
- Regional ICPC coordinators have been tasked to assist Texas caseworkers with the ICPC process;
- Through the data warehouse reports, Texas ICPC/State Office jointly with the ICPC regional coordinators routinely track and monitor the timeliness and status of incoming and outgoing home study requests; and
- The implementation of a National Electronic Interstate Compact Enterprise (NEICE) system for quickly and securely exchanging ICPC data and documents electronically between states to expedite completion of ICPC and placement of the child.

A. Purpose of the ICPC

The purpose of the ICPC is to protect the child(ren) and cooperate with the participating states in the interstate placement of children so that:

- The child is placed in a safe and suitable environment;
- The receiving state has the opportunity to assess that the proposed placement is not contrary to the interests of the child and that its applicable laws and policies have been followed before it approves the placement;
- The sending state obtains enough information to evaluate the proposed placement;
- The care of the child is promoted through appropriate jurisdictional arrangements; and
- The sending agency or individual guarantees the child's legal and financial protection.

B. ICPC Applicability

Generally, the ICPC applies to any interstate placement of a child over whom the court has jurisdiction.

1. **ICPC Applies to the Following Placements:**

- Placements that are preliminary to an adoption whether public or private adoption;
- Placements in a licensed or approved foster home, including related and unrelated caregivers;
- Placements with relatives when a parent or relative is not making the placement (i.e., the parent does not have legal custody/right to make the placement); and

- Placements in group homes or residential placement, including accused or adjudicated delinquents placed in institutions in other states.

2. **The ICPC Does Not Apply to the Following Placements:**

   - Birth parents placing with a non-custodial birth parent, or a relative if no court has assumed jurisdiction of the child to be placed;
   - Relatives placing with birth parents or another relative if no court has assumed jurisdiction of the child to be placed;
   - A court with jurisdiction that transfers the child to an out of state parent; (note that the receiving state has no responsibility for supervision or monitoring a placement made under these circumstances);
   - Placements into schools where the primary purpose for the placement is educational;
   - Placements into medical and mental facilities;
   - Tribal Placements (*See* the *Indian Child Welfare Act* section within this chapter); and
   - Visits, as long as the visit meets the definition under the ICPC Section I.D.3 (*See* also *Visits vs. Placement* section within this chapter).

3. **Placement of a Child with an Out of State Parent**

State courts throughout the nation have reached different conclusions on whether ICPC procedures apply when courts place a child with an out-of-state biological parent. Until 2017, Texas courts had followed the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations that state ICPC procedures do apply to placement with parents in certain circumstances, but no Texas court had addressed the issue directly.

DFPS will not initiate an ICPC home study request on a non-offending, non-custodial parent residing in another state unless it is ordered to do so by the court with jurisdiction over the SAPCR. Instead, DFPS will assess the non-custodial parent's fitness to care for the child. The policy related to out of state placements with non-offending parents is found in the CPS Policy Handbook § 4513.1.[110]

In May 2017, the Fourth Court of Appeals ruled that despite Texas's adoption of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations, the plain unambiguous wording of ICPC Article III excluded biological parents as placements subject to ICPC procedures. The court ruled the compact does not apply to interstate placement of children with their natural parent and therefore the determination whether to place the child with the out of state parent is left to the court's discretion. *In re C.R.-A.A.*, 521 S.W.3d 893, 904-07 (Tex. App.—San Antonio 2017, no pet.). Note that i *C.R.-A.A.* is still the most recent and prevalent Texas case which discusses the ICPC not applying to children placed out-of-state with a biological parent.

C. Jurisdiction vs. Process

When a case comes before a juvenile or family court, the issue of jurisdiction will always precede the question of whether the ICPC applies. Thus, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), and the Parental Kidnapping Prevention Act (PKPA) must be considered to determine whether the court and child welfare agency have continuing jurisdiction over child custody, which is precedent to the question of authority to place a child out-of-state. The *J.D.S. v. Franks case* differentiates between the jurisdictional components of the UCCJA and the purview of the ICPC. *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995). In *Franks*, the

Supreme Court of Arizona explained that compliance with the ICPC is not a prerequisite for exercising jurisdiction because the ICPC merely establishes a procedure to follow when a placement is made. Thus, the validity of a court's exercise of jurisdiction depends on the UCCJA (or UCCJEA) and PKPA. *Franks*, 893 P.2d at 743-44. *Franks* spells out that the ICPC governs procedure, whereas the UCCJA (or UCCJEA) and PKPA govern jurisdiction. Likewise, in *White v. Adoption of Baby Boy D.*, the Supreme Court of Oklahoma held that the ICPC does not negate subject matter jurisdiction. *White v. Adoption of Baby Boy D.*, 2000 OK 44, 10 P.3d 212, 222 (Okla. 2000).

D. Court Leadership

The National Council of Juvenile and Family Court Judges recommends close judicial monitoring to ensure that a case is moving according to the ICPC timeframes.[111] Special hearings may be required to ensure that certain activities are completed in a timely manner. Lack of understanding of the ICPC and its requirements is often cited as a problem that causes delays in an ICPC placement. Other delays are built into the ICPC process itself.

Special Issue: *Many receiving states routinely deny home studies, especially on non-custodial parents, and there is no appeal process – a highly criticized flaw in the ICPC. Texas judges should consider directly contacting the judge in the receiving jurisdiction to ask for assistance in completing the ICPC process in the receiving state and for assistance with home studies that are stalled or denied without sufficient explanation and no recourse for reconsideration.*

E. Expedited Placement Request

Under certain conditions, a court may request an expedited home study in order to speed up ICPC approval or denial by a receiving state for placement of a child. This requires a court order that sets out the elements of ICPC Regulation 7. Cases involving a child who is under the jurisdiction of a court are eligible, if at least one of the following criteria is met for a child who is being considered for placement in another state with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or the child's guardian:

- There is unexpected dependency due to the sudden or recent incarceration, incapacitation, or death of a parent or guardian. Incapacitation means a parent or guardian is unable to care for a child due to a medical, mental, or physical condition of a parent or guardian; or
- The child sought to be placed is four years of age or younger, including older siblings sought to be placed with the same proposed placement resource; or
- The court finds that any child in the sibling group sought to be placed has a substantial relationship with the proposed placement resource. Substantial relationship means the proposed placement has a familial or mentoring role with the child, has spent more than cursory time with the child, and has established more than a minimal bond with the child; or
- The child is currently in an emergency placement.

Expedited placement option is not available where:

- The child has already been placed in the receiving state in violation of the ICPC, unless a visit has been approved in writing by the receiving state Compact Administrator and a subsequent order entered by the sending state court authorizing the visit with a fixed return date in accordance with ICPC Regulation 9; or

- The intention of the sending state is to place the child for licensed or approved foster care or adoption. In the event the intended placement is already licensed or approved in the receiving state at the time of the request, such licensing or approval would not preclude application of ICPC Regulation 7.
- The court places the child with a parent from whom the child was not removed, the court has no evidence the parent is unfit, does not seek any evidence from the receiving state the parent is either fit or unfit, and the court relinquishes jurisdiction over the child immediately upon placement with the parent.

It is not within a judge's discretion to make all orders expedited. The situation must fit those criteria outlined in ICPC Regulation 7 for priority placement to be available; ordering expedited cases is not a matter of discretion for judges. [112]

F. Visits vs. Placement

Although some judges grant "extended visits" for children in other states, these longer times spent in other states may actually be deemed an illegal placement with significant consequences. ICPC Regulation 9 defines a "visit," which is distinguished from a placement on the basis of purpose, duration, and the intention of the person or agency with responsibility for planning for the child as to the child's place of abode. For example, if the purpose of a visit is to provide the child with a social or cultural experience of short duration, such as a camp stay or visit with a friend or relative, and is less than 30 days, it will be presumed to be a visit. A stay of more than 30 days, but not longer than the duration of a school vacation period, can also be considered a visit. A stay that does not have a terminal date will be considered a proposed placement. Once a home study or supervision request has been made by the sending agency, there is a rebuttable presumption that the intent of any stay in the receiving state that exceeds 30 days is for placement and not simply a visit.

G. ICPC and Victims of Commercial Sexual Exploitation

The ICPC may be implicated in trying to place victims in the few facilities that can provide the extensive services needed for survivors of the commercial sexual exploitation of children (CSEC). As the needs of this population can be complex, only a limited number of residential institutions can provide this high level of care. Services for victims often require multi-systemic and long-term care, and the cost of housing a child in a residential facility can be expensive. Additionally, the operation of residential facilities is legally and practically complicated, and unfeasible for many counties. Thus, CSEC victims may not have a variety of placements which fit their needs, forcing placing agencies to look outside the home state. There are various organizations that also recommend victims be removed from the original geographic area of exploitation during restorative services. There are only a handful of facilities throughout the country that specifically provide placement and services for victims of commercial sexual exploitation.

H. The Indian Child Welfare Act and the ICPC

Because the ICPC is a compact adopted by states as state law, the federal ICWA law preempts conflicting state law. Thus, the ICPC does not apply to interstate placements of an "Indian child" if the placement is being made within an Indian reservation unless:

- The tribal government requests ICPC services;
- The Tribe has adopted the ICPC; or
- The Tribe has an existing Title IV-E agreement with the state requiring ICPC compliance.

If an "Indian child" is being placed interstate but not within a reservation, the ICPC applies to that placement. However, the placement requirements of ICWA preempt any ICPC requirements that interfere with or impede the implementation of the placement required by ICWA. For information about placement preferences and requirements when ICWA is involved, *see* the *Indian Child Welfare Act* chapter of this Bench Book.

I. Related Case Notes

In re C.R.-A.A., 521 S.W.3d 893 (Tex. App.—San Antonio 2017, no pet.) established that the ICPC does not apply to an interstate child placement with that child's natural parent. The court held that the ICPC does not apply to placement with a child's non-offending parent in another state. Article III of the ICPC prohibits a state from sending to another state "any child for placement in foster care or as a preliminary to adoption." The court held that a biological parent is excluded from Article III, by both the plain, ordinary, unambiguous meaning of the term and an analysis of the ICPC's legislative history that indicates the drafters did not intend for it to apply to natural parents. Furthermore, the court reasoned that even Texas's adoption of the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) Regulations that state ICPC procedures do apply to placement with parents in certain circumstances cannot override the plain meaning of Article III. The court concluded that it is inappropriate to resort to rules of construction or extrinsic aids when there is no ambiguity in the language and that, when Texas adopted the AAICPC, it did so within the limits of state law which specify that rules or regulations that contravene statutory language or impose additional, excessive, or contrary burdens on the statutory provision are invalid.

Prospective adoptive parents who were Colorado residents with whom a child had been placed by the child's Texas managing conservator argued that the Colorado court where the petition for adoption was pending had jurisdiction over the child. Rejecting this argument, a Texas Court of Appeals in *Unger v. Baker*, No. 01-89-00803-CV, 1989 WL 97743 (Tex. App.—Houston [1st Dist.] Aug. 18, 1989) (not designated for publication) held that under Article V(a) of the ICPC, the managing conservator, as the sending agency, retained jurisdiction over the child because the child had not yet been adopted. Therefore, the child was subject to the jurisdiction of the Texas trial court in which the managing conservator had filed a motion to remove the child from the temporary placement with the prospective adoptive parents and overruled the prospective adoptive parents' motion for leave to file mandamus seeking rescission of the Texas trial court's order overruling their special appearance to contest the Texas court's jurisdiction.

J. Additional Resources

- American Public Human Services Association (APHSA) website for ICPC Regulations and additional information[113]
- National Council of Juvenile and Family Court Judges, ICPC: A Manual and Instructional Guide for Juvenile and Family Court Judges[114]
- Vivek Sankaran, Foster Kids in Limbo: The Effects of the Interstate Compact on the Placement of Children on the Permanency of Children in Foster Care (2014)[115]

HEALTH

STAR HEALTH

CHILDREN WITH DISABILITIES

PSYCHOTROPIC MEDICATION

SUBSTANCE USE DISORDERS

TRAUMA-INFORMED CARE

HEALTH CARE FOR TEXAS CHILDREN IN FOSTER CARE: STAR HEALTH

Please *see* the Checklist Section for the Medical and Mental Health Care Checklist.

STAR Health is a comprehensive, managed care program operated by one statewide managed care organization designed to better coordinate and improve access to health care for:

- Children in DFPS conservatorship (under age 18);
- Young adults in DFPS Extended Foster Care (age 18 through the month of the person's 22nd birthday);
- Young adults who were previously under DFPS conservatorship and who have returned to foster care through voluntary foster care agreements (age 18 through the month of the person's 21st birthday); and
- Young adults who aged out of foster care at age 18 and who are eligible for Medicaid services (age 18 through 20 years).

Not all children are eligible for the STAR Health program. STAR Health does not cover children who are:

- In state conservatorship who are placed outside of Texas;
- From other states but placed in Texas;
- From other states who are placed in Texas Medicaid-paid facilities, such as children in nursing homes, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF-IID), or State-Supported Living Centers; or
- In DFPS conservatorship but adjudicated and placed in a Texas Juvenile Justice Department (TJJD) facility. (This population receives healthcare services through TJJD.)

Unless otherwise indicated, children who are ineligible for STAR Health benefits receive Medicaid through fee-for-service Medicaid.

Adoption Assistance/Permanency Care Assistance (AA/PCA)

- Children in Adoption Assistance or Permanency Care Assistance will be enrolled in STAR, STAR Health, or STAR Kids after a transition period. During the transition period they remain enrolled in STAR Health.
- Adoption Assistance/Permanency Care Assistance members who get Supplemental Security Income (SSI), Medicare, or 1915(c) waiver services can choose whether to stay in STAR Health or enroll in STAR Kids.

A. Unique Features of STAR Health

For those children who are covered by STAR Health, STAR Health provides a full range of Medicaid-covered medical, dental, vision, prescription, and behavioral health services, in addition to service coordination, information sharing and other program benefits, including:

- A Medical Home for each child (meaning a doctor, or other Primary Care Provider (PCP), or PCP Team to oversee care);
- Immediate enrollment for immediate healthcare benefits;
- Access to health care through a network of providers (doctors, nurses, hospitals, clinics, psychiatrists, therapists, etc.) specifically recruited for their history and expertise in treating children who have been abused or neglected and who are offered ongoing trainings on such issues;
- The Health Passport, which is a web-based, secure health information tool which utilizes claims data to provide information on healthcare services including Texas Health Steps medical checkups, immunizations, lab results, prescriptions, the Family Strengths and Needs Assessments (FSNA), the Texas Child and Adolescent Needs and Strengths (CANS) assessments, Psychotropic Medication Utilization Reviews (PMUR), and service plans to medical consenters, caseworkers, and healthcare providers;
- PMURs to determine if the prescribed medication treatments are within the parameters outlined in the Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (7th Edition) (Parameters);[116]
- STAR Health liaisons who work directly with DFPS Well-Being Specialists and DFPS Clinical Coordinators to assist with resolving any barriers to services that children in foster care might encounter;
- STAR Health Service Coordinators work directly with each child or youth and their caregiver to assist with service delivery. Each child or youth is assigned to a Service Coordinator who provides ongoing support. This includes annual face-to-face visits and regular telephonic outreach. STAR Health Service Coordination uses a three-tiered model to administer specialized care management;
- Disease management which provides coordinated healthcare interventions and health education for members with asthma, diabetes, and other chronic or complex conditions, including behavioral health conditions or diseases;
- STAR Health liaisons are available to work with the judiciary and court team to educate on STAR Health benefits to avoid gaps in care and service delays.
- STAR Health Transition Specialists to assist youth with activities to ensure a smooth transition to independence and adulthood, including education about their medical care and referrals to support services, as needed;
- Medical advisory committees to monitor healthcare provider performance; and
- The following are features of all Medicaid managed care programs:
    - nursing and behavioral health 24/7 helplines for caregivers and caseworkers; and
    - licensed and degreed managed care organization (MCO) staff and service coordination teams who coordinate physical and behavioral healthcare and access to other non-Medicaid benefits and resources, including for complex cases.

B. Physical Healthcare Benefits Provided by STAR Health

Medicaid-covered physical healthcare benefits include but are not limited to:

- Ambulance services;
- Birthing services provided by a physician and Certified Nurse Midwife (CNM) in a licensed birthing center;
- Cancer screening, diagnostic, and treatment services;
- Chiropractic services;
- Community First Choice[117] services, which is a federal program that includes personal assistance services, habilitation, emergency response services, and support consultation;
- Dental services;
- Durable medical equipment and medical supplies;
- Early Childhood Intervention (ECI) services;
- Family planning;
- Hearing exams/hearing aids;
- Home healthcare services, such as private duty nursing, skilled nursing, and personal care services;
- Hospital care, including emergency and inpatient services;
- Lab tests/X-rays;
- Physical, occupational, and speech therapies;
- Podiatry;
- Prenatal care;
- Prescription drugs and biological drugs;
- Preventive care through Texas Health Steps;
- Specialty physician services;
- Telemedicine/telehealth services (applies to certain procedure codes);
- Organs and tissue transplant services; and
- Vision services.

C. Behavioral Health Benefits Provided by STAR Health

Medicaid-covered behavioral health benefits include:

- Applied Behavior Analysis services for the treatment of autism for children through 20 years of age;

- Outpatient Mental Health Services to include psychotherapy (individual, group, and family), psychiatric diagnostic evaluation with and without medical services, psychological, neurobehavioral and neuropsychological testing, and pharmacological management;
- For members 20 years of age and younger, Mental Health Targeted Case Management to include intensive and routine case management services;
- Mental Health Rehabilitation Services to include crisis intervention services (including mobile crisis services), medication training and support, and skills training and development (can be provided to the child/youth, Legally Authorized Representative [LAR] or primary caregiver);
- Inpatient psychiatric services that include admissions to acute care hospitals and institutions for mental disease (IMDs) (public or private psychiatric facility);[118]
- Substance use disorder services to include assessment, counseling (individual and group), residential treatment, and withdrawal management and Medication-Assisted Treatment (MAT) services;
- Screening, Brief Intervention, and Referral to Treatment (SBIRT) services for persons 10 years of age and older;
- For members 20 years of age and younger, Health and Behavior Assessment and Intervention (HBAI) services;
- Collaborative Care Model (CoCM) services that integrate the services of behavioral healthcare managers (BHCMs) and psychiatric consultants with primary care provider oversight to proactively manage behavioral health conditions as chronic diseases, rather than treating acute symptoms;
- For members 20 years of age and younger, Certified Family Partner services;
- For members 21 years and older, Peer Specialist services;
- Telemedicine/telehealth services (applies to certain procedure codes);
- Court-ordered services (outpatient and inpatient), if the person is not considered to be incarcerated; and
- In-lieu-of services (ILOSs) and settings offered by the STAR Health MCO that substitute for Medicaid state plan services or settings, as allowed under federal regulations. ILOSs must be a medically appropriate and cost-effective substitute for the covered service or setting under the Medicaid state plan. The Medicaid member must not be required by the MCO to use the ILOS and the MCO is not required to offer it. The following new services were added Medicaid ILOSs as part of the implementation of Senate Bill 1177 (86th Regular Legislative Session): partial hospitalization services, intensive outpatient program services, and Coordinated Specialty Care.

D. Value Added Services Provided by STAR Health

Value Added Services include:

- Extra vision services providing $150 for choice of upgraded eyeglass frames and lenses or contact lenses not covered by Medicaid.

- Up to $30 every quarter for over-the-counter items that are not covered by Medicaid. Over-the-Counter Mail Order Program information.
- My Health Pays® Rewards Program offering financial, non-cash incentives up to $150 for members who complete wellness visits, dental checkups, and more. Age restrictions apply.
- Sports or school physicals for members ages 4 through 18 years old.
- $50 reward for members who complete a postpartum visit within 7-84 days of delivery.
- $35 gift card for members ages 6 through 20 who go to a follow-up doctor visit within 7 days of their mental health or substance abuse related hospital discharge.
- Small grants are available for members to be used for non-Medicaid covered benefits and other items. Members are eligible to receive the gift one time per year.
    - $50 for members ages 0 through 17 years in the form of gift cards that can be used for items such as art supplies, clothing, and shoes.
    - $100 for members 18 through 20 years.
        - $50 in the form of gift cards that can be used for items members may need.
        - $50 loaded onto a prepaid card that can be used for education, household utilities, telecommunications, transportation, and more.

E. Transitioning Foster Care Youth

The Patient Protection and Affordable Care Act (PPACA), commonly called the Affordable Care Act (ACA), requires states to provide Medicaid coverage to youth and young adults under age 26 years who were in foster care and were receiving Medicaid when they aged out of foster care.

The Former Foster Care Children (FFCC) program provides healthcare coverage to youth who aged out of foster care at age 18 years, were receiving Medicaid coverage at the time they aged out, who are a U.S. citizen, and meet all other Medicaid eligibility criteria. This coverage is available through age 25 years under two separate programs, based on age:

- Young adults ages 18 through 20 years are automatically enrolled in the STAR Health program, but can switch to the STAR program, if they prefer; and
- Young adults ages 21 through 25 years must choose a STAR or STAR+PLUS program health plan.

For foster youth 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, coverage is provided by the Medicaid for Transitioning Youth (MTFCY) program in STAR Health for youth who:

- Were in DFPS conservatorship on their 18th birthday or older;
- Do not have other health coverage and meet program rules for income;
- Meet program rules for income; and
- Are a U.S. citizen or have a qualified alien status, such as a green card.

It is not necessary for a court to extend jurisdiction beyond age 18 years for this coverage to apply. For more information, *see* the *Extending Foster Care for Transitioning Youth* chapter of this Bench Book.

Special Issue: *All Medicaid recipients, including youth formerly in foster care, must renew their Medicaid eligibility once every 12 months. To ensure continuous coverage, youth must provide their current mailing address to HHSC. If a youth changes their address without notifying HHSC, and HHSC receives returned mail and cannot locate the youth, the youth's Medicaid benefits will be denied. A youth can report an address change online through www.YourTexasBenefits.com, the Your Texas Benefits mobile app, by calling 2-1-1 (Option 2 after selecting a language), in person at a local Medicaid eligibility office, or by reporting the change in writing by mail or by fax. Youth must also respond to requests for information from HHSC and may need to verify that they are a Texas resident or their immigration status. As of December 10, 2022, youth formerly in foster care can self-attest to their Texas residency at application and redetermination rather than provide documentation (such as a driver's license or a utility bill).*

F. Child and Family Assessments

Texas Health Steps: All children entering DFPS conservatorship must receive a comprehensive, preventive healthcare checkup within 30 days of entering DFPS conservatorship known as the "Texas Health Steps" medical checkup. The checkup helps identify the child's unique healthcare needs and helps DFPS make decisions that are in the child's best interest. This checkup is repeated annually or according to the Texas Health Steps periodicity schedule.

Medical Exam Within Three Business Days: Beginning September 1, 2023, a change to the "Three-Day Exam" policy means that not all children will automatically receive a Three-Day Exam. Only qualifying children who enter DFPS conservatorship will receive an initial medical examination from a physician or other healthcare provider authorized by state law to conduct a medical examination by the end of the third business day after the child is removed from the child's home. Tex. Fam. Code § 264.1076. Qualifying circumstances are if the child was removed for physical or sexual abuse, has an obvious physical injury, has a chronic medical condition, is medically complex, or has a diagnosed mental illness. Tex. Fam. Code § 264.1076. Each child is assessed individually for qualification. Exceptions include the youth being in an inpatient hospital setting or requiring urgent medical treatment at the time of removal.

Vaccinations Prohibited During Three-Day Exam: A physician or healthcare provider cannot administer a vaccination at this "Three-Day Exam" without parental consent except for an emergency tetanus vaccination, and only if the physician or other healthcare provider determines that an emergency requires a vaccination. The prohibition of vaccinations does not apply once DFPS is named the child's managing conservator. The restriction on vaccinations applies only to vaccinations (except for tetanus) administered under the medical exam required by Tex. Fam. Code § 264.1076. Thus, the prohibition is limited only to the population receiving the exam and only restricts what can be done during the exam. This restriction is lifted once DFPS is granted conservatorship. Outside of these circumstances, the law neither expands nor restricts a parent's right to withhold consent for immunization either under Tex. Fam. Code § 32.101 or Tex. Health & Safety Code § 161.004. However, *see* Tex. Fam. Code § 266.002 and Tex. Fam. Code § 266.004 regarding a court's authorization to issue orders related to medical care for children in foster care. *See In re Womack*, 549 S.W.3d 760, 766-67 (Tex. App.—Waco 2017, orig. proceeding) holding that to the extent Tex. Fam. Code § 266.004 and Tex. Fam. Code § 32.101(c) conflict, Tex. Fam. Code § 32.101(c) is more specific and is the controlling statute.

Texas Child and Adolescent Needs and Strengths (CANS) Assessment: Children and youth ages 3 to 17 years must receive a CANS Assessment completed by an in-network STAR Health clinician within 30 days of removal. Prior to conducting the CANS, the CPS caseworker will conduct the FSNA with the family, identify targeted interventions, and work with the family to prioritize goals and tasks.

DFPS uses the results of the CANS to evaluate each child's needs and strengths. This assessment assists in service planning, informs placement decisions, and reduces the number of assessments administered to children in DFPS conservatorship. As of January 1, 2025, DFPS began using an enhanced CANS 3.0 assessment tool.[119]

Family Strength and Needs Assessment (FSNA): DFPS administers the FSNA to assess how the family is functioning and to aid in developing a plan of service for the family. Although the FSNA and CANS will not be attached to court reports, judges may hear DFPS staff providing testimony or information regarding findings or recommendations that come from these assessments.

Special Issue: *Many courts prefer to schedule a Status Hearing within a few days of the Adversary Hearing to jump-start services to families. However, this must be balanced with the need for both the STAR Health clinician and the CPS caseworker to have the time to utilize the CANS and FSNA tools with fidelity. The law requires that the CANS be administered within 45 days of removal, and DFPS policy sets the completion date at 30 days. The FSNA is conducted with the family within the first three weeks of removal and is used to inform the CANS. Allowing time for a thorough assessment and coordination of efforts should produce child and family service plans that set a path toward achieving permanency as quickly as possible for the child and family.*

Developmental Disability Assessment: DFPS is also required to assess whether a child has a developmental disability as soon as possible after the child is placed in DFPS conservatorship, and if the assessment indicates an intellectual disability, to ensure that a referral for a determination of such is made as soon as possible. Tex. Fam. Code § 264.1075.

G. Medical Consent

Generally, healthcare providers require someone with the legal authority to consent to medical care for a child to provide informed consent for the child before the healthcare provider will initiate care. Texas law requires the court to specifically authorize an individual or DFPS to consent to medical care for each child in DFPS conservatorship. Tex. Fam. Code §§ 153.371-153.377 and Tex. Fam. Code § 266.004(c) provide the legal bases for DFPS' authority to make medical decisions for children and youth in DFPS conservatorship. When the court authorizes DFPS to consent to the child's medical care, the caseworker must designate a medical consenter, a backup medical consenter, and coordinate medical information. It is the responsibility of the medical consenter and backup medical consenter to become knowledgeable of the child's medical condition, known medical history, and medical needs before consenting to medical care or treatment.

1. Informed Consent

Medical consent means making a decision on whether to agree to or not agree to a medical test, treatment, procedure, or a prescription medication. Informed consent means the medical consenter gets complete information about the proposed medical care to provide an understanding of the benefits and risks of the treatment before making a decision. The goal is to make sure that the medical consenter makes an informed decision about the child's health care.

Before consenting to any health care, the medical consenter must understand:

- The child's symptoms and medical diagnosis;

- How the treatment will help the condition;
- What happens if the treatment is not applied; and
- The side effects and risks associated with the treatment. *See* Tex. Fam. Code § 266.004(h); CPS Policy Handbook § 11130.

Special Issue: *A person otherwise authorized to consent to the immunization of a child may not consent for the child if the person has actual knowledge that a parent, managing conservator, guardian, or other person who under the law of another state or a court order may consent for the child and has expressly refused to give consent to the immunization, has been told not to consent for the child, or has withdrawn a prior written authorization for the person to consent. Tex. Fam. Code § 32.101(c).*

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2. Choosing a Medical Consenter

When a judge gives DFPS the authority to consent to medical care for a child in conservatorship, the agency designates up to four primary and/or backup medical consenters to make healthcare decisions for the child. The two primary medical consenters are usually the child's caregivers or a caseworker and another CPS staff person. The goal of designating multiple consenters is to ensure that a consenter can be present in person when the child receives treatment. This is particularly important when the child is being prescribed psychotropic medications.

DFPS may choose medical consenters and backup medical consenters who are live-in caregivers with knowledge of the child's medical history and needs, such as:

- Foster parents;
- Relatives;
- CPS caseworkers, supervisors, or other CPS staff;
- Parents whose rights have not been terminated, if in child's best interest.

Medical consenters and backup medical consenters must be individuals, not a facility or a facility's shift staff. DFPS may not choose medical consenters and backup medical consenters who are employees of staffed facilities such as Residential Treatment Centers (RTCs), emergency shelters, or intermediate care facilities for individuals with developmental disabilities. CPS caseworkers are usually designated in these cases.

Once the caseworker designates a medical consenter, and the medical consenter meets training requirements, the caseworker must issue Form 2085-B Designation of Medical Consenter (which provides authorization to consent to medical care) to the medical consenter and backup medical consenter, all of whom must sign the form. The CPS caseworker must consent to medical care until a medical consenter and backup medical consenter have been designated and have signed the form.

When the court names an individual as medical consenter, that person is ultimately responsible for the medical decisions for that child and reports directly to the court.

In some cases, the court allows a youth 16 or 17 years old to be their own medical consenter, if other requirements are met. Tex. Fam. Code § 266.010.

Attorneys ad litem and DFPS staff are required to inform 16 and 17 year olds in foster care of their right to ask the court whether they can consent to their own medical care. Tex. Fam. Code § 107.003(b)(3) and Tex. Fam. Code § 264.121.

DFPS requires both designated primary medical consenters (including youth designated by the court as their own medical consenter) and backup medical consenters to complete the following two department-approved trainings before being allowed to make medical or healthcare decisions:

- DFPS Medical Consent Training for Caregivers; and
- DFPS Psychotropic Medication Training.

3. Temporary Medical Consenters

There are times when medical consent is required for a youth in foster care and the DFPS staff identified as a medical consenter is unavailable.[120] Temporary back up medical consenters are allowed for all medical reasons, not just psychotropic medication. Temporary back up medical consenters can be identified when primary and back up medical consenters cannot provide consent for the following reasons:

- Timely notice of the appointment was not received;
- They are unable to be present due to illness or unforeseen circumstances; or
- An emergency existed where immediate treatment is needed and a delay in medical or psychiatric care could put the child in danger.

In these instances, DFPS and SSCC staff members may be identified as temporary medical consenters to medical treatment, hospital admission, and prescription medications. To provide this consent, they must prepare for the appointment by reviewing the child's condition, current medications, and response to treatment.

4. Informed Consent for Psychotropic Medications

Texas law requires the medical consenter to attend all appointments with the healthcare provider when a child may be prescribed psychotropic medication. The medical consenter must always have a complete discussion with the child's healthcare provider in order to consider options for the child or youth that do not involve medication before or at the same time as using psychotropic medication. According to Texas law, consent to giving a psychotropic medication is valid only if:

- It is given voluntarily and without undue influence, and
- The consenter receives information (given verbally or in writing) describing:
  - the specific condition to be treated;
  - the beneficial effects on that condition expected from the medication;
  - the probable health and mental health consequences of not consenting to the medication;
  - the probable clinically significant side effects and risks associated with the medication;
  - the generally accepted alternative medications and non-pharmacological interventions to the medication, if any; and
  - the reasons for the proposed course of treatment.

Tex. Fam. Code § 266.0042.

Texas law requires medical consenters to assure that the child prescribed a psychotropic drug has an office visit with the prescribing healthcare provider at least once every 90 days to allow the practitioner to:

- Appropriately monitor for side effects of the medicine;
- Decide whether the medicine is helping the child; and
- Decide whether continuing the medicine is recommended for the child.

Tex. Fam. Code § 266.011.

The medical consenter must attend these medical appointments with the child and provide documentation of the medical appointment to the caseworker by the next business day.

5. Guidance for Youth Who are Their Own Medical Consenter

If a court determines that a youth is capable of consenting to their own medical care, the caseworker must:

- Educate the youth about their medical care and the process for making informed decisions on an ongoing basis;
- Ensure the youth completes the DFPS Medical Consent Training for Caregivers;
- Ensure a youth who has been prescribed psychotropic medication, or is considering taking psychotropic medication, completes the DFPS Psychotropic Medication Training; and
- Offer ongoing support and guidance to the youth.

Before reaching age 16, DFPS must advise the youth of the right to request a hearing to determine whether the youth may be authorized to consent to their own medical care. DPFS provides the youth with training on informed consent and the provision of medical care as part of the Preparation for Adult Living (PAL) program. Tex. Fam. Code § 266.010(l).

Youth in DFPS conservatorship who are not authorized by the court to be their own medical consenters at age 16 or 17 will become their own medical consenters when they turn 18. Conservatorship caseworkers must ensure that 17-year-old youth complete the *DFPS Medical Consent Training* for *Caregivers* and *DFPS Psychotropic Medication Training* if the youth have prescription psychotropic mediations, no later than 90 days before becoming 18 years of age.

Tex. Fam. Code § 264.121(g) requires DFPS to ensure that the youth's transition plan includes provisions to assist the youth in managing the use of any medication and in managing the child's long-term physical and mental health needs after leaving foster care, including provisions that inform the youth about:

- The use of the medication;
- The resources that are available to assist the youth in managing the use of the medication;
- Informed consent; and
- The youth's right to request to be their own medical consenter.

Tex. Fam. Code § 264.121(g)(1).

For youth 17 years or older taking medication, DFPS must ensure the youth's transition plan includes a program supervised by a healthcare professional to assist the youth with independently managing their medication. Tex. Fam. Code § 264.121(g)(2).

The youth's caseworker and caregivers should help the youth get information about any medical condition(s), tests, treatment, and medications, and support them in making informed decisions.

If a youth's healthcare decision puts the youth at risk of harm, the court can overrule a youth's decision to refuse medical care even after authorizing the youth to make medical decisions. To do so, the court must find by clear and convincing evidence that the medical care is in the best interest of the youth and also find one of the following:

- The youth lacks the capacity to make the decision;
- Not getting the care will result in observable and material impairment of growth, development, or functioning of the youth; or
- The youth is at risk of causing substantial bodily harm to self or others.

Tex. Fam. Code § 266.010(g)(1)-(3).

In these situations, DFPS may file a motion asking the court to order a specific medical treatment or to allow DFPS to consent to medical care for the youth. The motion must include the youth's reasons for refusing medical care and a statement signed by the physician explaining why medical care is necessary. Tex. Fam. Code § 266.010(d)-(e).

6. Assumption of Financial Responsibility by Medical Consenters

During the 89th Regular Legislative Session, a bill added Tex. Fam. Code § 266.0043 providing for the authority of child's medical consenter to access and obtain certain care, to include behavioral health services, for foster children. Beginning March 1, 2026, a medical consenter other than DFPS may assume financial responsibility for medical care, including behavioral health services, provided to a child in foster care by an out-of-network provider engaged by the medical consenter on behalf of the child. For that purpose, assuming financial responsibility may include the medical consenter enrolling the child in a health insurance plan. DFPS would not be liable for the cost of such care, unless a court orders DFPS to cover the cost of the medical care. The assumption of financial responsibility authorized by this section of the family code may not be construed to:

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

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

A Medicaid Managed Care Organization (MCO) is prohibited from taking adverse action to prevent or discourage a recipient from accessing health care and related services and benefits in accordance with Tex. Fam. Code § 266.0043. STAR Health program managed care is required to contract between a Medicaid MCO and the Health and Human Services Commission to require that the MCO comply with that prohibition against taking adverse action. Nothing can be construed to confer liability on a Medicaid MCO

for the cost of health care and related services provided to a child in foster care by an out-of-network provider engaged by a medical consenter on behalf of the child. Tex. Govt. Code § 540.0807.

H. Admission of a Child in DFPS Custody to an Inpatient Mental Health Facility

DFPS may request admission to an inpatient mental health facility only if a physician states that the child has a mental illness or demonstrates symptoms of a serious emotional disorder and presents a serious risk of harm to themselves or others. Tex. Health & Safety Code § 572.001(a-2). DFPS may not admit a child in DFPS conservatorship to an inpatient mental health facility based on the child's consent to be admitted.

The admission is considered a significant event for purposes of Tex. Fam. Code § 264.018 and requires notice to all parties entitled to notice and to the court of continuing jurisdiction within three days of admission. DPFS must continue to review the need for continued placement and if DFPS determines there is no longer a need for inpatient treatment, DFPS must notify the facility administrator that the child may no longer be detained without an application for court-ordered mental health services.

I. Monitoring Psychotropic Medications

In February 2005, DFPS, the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC) released a "best practices" guide to ensure the proper use of psychotropic medications for the children in foster care.

The Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health: Medication Tables (7th version)[121] are the most recent versions of these guidelines. They serve as a resource for physicians and clinicians who care for children diagnosed with mental health disorders. The guides provide recommendations for the appropriate use of psychotropic medications for children served by the public behavioral health system in Texas, including those in foster care, and includes nine criteria indicating the need for review of the child's clinical status.

Since April 2008, STAR Health has conducted PMURs on the children whose medication treatment falls outside of the expectations of the Parameters.

PMUR Process for STAR Health Members FAQ and Stakeholder Manual explains this process and how to request a review.[122] Please also *see* the *Psychotropic Medication* chapter of this Bench Book.

J. End of Life Medical Decisions

If a child in DFPS conservatorship has been diagnosed with an "irreversible condition" or a "terminal condition" and medical professionals suggest withholding or withdrawing life-sustaining treatment, the regular process for medical consent does not apply and the caseworker and supervisor must follow the procedures outlined below. However, any party may seek court intervention at any time if all parties do not agree on a course of action or if any party is concerned about the child's rights. CPS Policy Handbook § 11720.

If parental rights have not been terminated and the child's attending physician recommends end-of-life care, the parents have the authority to make the end-of-life decisions even if DFPS is the temporary managing conservator (TMC) or permanent managing conservator (PMC) of the child. DFPS staff or other medical consenters do not have the legal authority to consent in these circumstances. CPS Policy Handbook § 11721.

If parental rights have been terminated as to both parents, or the parents are deceased and the attending physician recommends end-of-life care, the caseworker and supervisor must:

- Obtain a written statement from the attending physician certifying that the child has a terminal or irreversible condition, and that the physician recommends withholding or withdrawing life-sustaining treatment;
- Request a second opinion or a review by a hospital medical or ethics review board if there are any concerns regarding the recommendation of the attending physician;
- Confirm that there is no relative, fictive kin, or other individual with possessory or custodial rights of the child. If one of these individuals is available, that person must be consulted for end-of-life decisions, if possible;
- Notify and discuss the recommendation with the program director, regional director, regional attorney, attorney representing DFPS, the child's attorney ad litem, guardian ad litem, CASA (if applicable), and any other legal party to the case; and
- Notify and consult with the court of continuing jurisdiction. CPS Policy Handbook § 11722.

K. Health Passport

The Health Passport is a web-based, secure health information tool which utilizes claims data to provide information on healthcare services for every child, youth, or young adult enrolled in the STAR Health program. The Health Passport is not a full medical record. It contains the following information:

- A record of healthcare visits and services with any network provider;
- Immunizations, lab results, and prescriptions received;
- Healthcare forms such as psychotropic reviews, service plans, Texas Health Steps forms, CANS results, and the FSNA;
- Allergies, vital signs, height, weight, and record of future scheduled appointments if entered by network providers;
- A two-year history from prior to entering foster care if the child received Medicaid or Children's Health Insurance Program (CHIP) coverage in the past; and
- Name and phone number of the STAR Health Service Coordinator.

Medical consenters, caseworkers, network providers, some CASA staff, and some residential provider staff are able to view Health Passport records. STAR Health Network providers are able to enter data into Health Passport.

Only a DFPS staff member may give a printed copy of the Health Passport or sections of the Health Passport to other persons or entities, including judges.

L. Court Orders for Medical Services

If a healthcare professional has been consulted regarding a healthcare service, procedure, or treatment for a child in DFPS conservatorship, a court must make findings in the record supporting its decision if the court declines to follow the recommendation of the healthcare professional. Tex. Fam. Code § 266.005.

***Special Issue**: If the child needs a service not covered by Medicaid, the judge may order that a physician assess the need for the service if that has not already been done. Also, the judge may order the service and DFPS will seek that service through a private pay contract. When entering orders for services that are not covered by Medicaid, a judge might consider drafting an order that provides DFPS the maximum flexibility in contracting because a particular provider may not be in the position to fulfill the contract as dictated by the court order. Also, a copy of the signed order should be sent via fax to Superior HealthPlan at 1-866-702-4837 or the court order can be escalated through the DFPS Well-being Specialist who works directly with the STAR Health Liaison.*

STAR Health is required to pay for Medicaid covered services ordered by a court pursuant to the statutory citations listed below. STAR Health cannot deny, reduce, or controvert the court's orders for Medicaid inpatient mental health covered services for members from birth through age 20, when such inpatient mental health services are provided pursuant to:

- A court order; or
- As a condition of probation.

STAR Health cannot deny, reduce, or controvert the court orders for Medicaid inpatient mental health covered services for members of any age if the court-ordered services are delivered in an acute care hospital.

STAR Health may not limit substance use disorder treatment or outpatient mental health services for members of any age provided pursuant to:

- A court order; or
- A condition of probation.

STAR Health cannot apply its own utilization management criteria through prior authorizations, concurrent reviews, or retrospective reviews for such services. Any modification or termination of services must be presented to the court with jurisdiction over the matter for determination. A member who has been ordered to receive treatment pursuant to a court order can only appeal the court order through the court system. STAR Health is required to have a mechanism to receive court order documents from providers at the time of an authorization request.

STAR Health must provide all Medicaid inpatient psychiatric covered services to members and outpatient covered services to members of any age who have been ordered to receive the services by:

- A court of competent jurisdiction including services ordered pursuant to the Tex. Health & Safety Code Chapters 573, Subchapters B and C, Tex. Health and Safety Code Chapter 574, Subchapters A-G, Tex. Fam. Code 55, Subchapter D; or
- As a condition of probation.

Federal statute prohibits Medicaid funding for services delivered to Medicaid members ages 21-64 years of age while residing in an IMD. For STAR Health members ages 21 years of age or older, STAR Health may provide inpatient services for acute psychiatric conditions in a free-standing psychiatric hospital for up to 15 days per calendar month in lieu of an acute care inpatient hospital setting as allowed by 42 C.F.R. § 438.6(e).

STAR Health must provide Medicaid-covered substance use disorder treatment services, including substance use disorder residential treatment services, required as a court order consistent with Tex. Health and Safety Code Chapter 462, Subchapter D, or as a condition of probation.

These requirements are not applicable when the member is considered to be incarcerated.

M. References

Key STAR Health Phone Numbers

Organization	Phone Number
Superior HealthPlan Member Services Hotline	1-866-912-6283
HHSC Managed Care Ombudsman	1-866-566-8989

Nonemergency Medical Transportation Services

Nonemergency Medical Transportation[123] (NEMT) services provide medical transportation services for youth who do not have a way to get to covered healthcare services. NEMT services allow the youth to arrange a ride to a doctor's office, dentist's office, hospital, drug store, or any place that provides covered healthcare services. Types of rides and related covered expenses include:

- Public transportation (for example, the city bus);
- A taxi, ride share, or van service;
- Commercial transit, like a bus or plane, to go to another city for an appointment;
- Money for gas;
- Meals and lodging for children and youth age 20 years and younger staying overnight to get covered healthcare services; and
- Payment for some out-of-state travel.

If STAR Health youth need medical transportation services, it is recommended to contact the SafeRide Appointments/Call Center at 1-855-932-2318; TTY: 7-1-1. Additionally, the "Where's My Ride" line at 1-855-932-2319; TTY: 7-1-1 is available to schedule a return ride home from an appointment or to check on the status of a scheduled ride. If there is a complaint about services, it is recommended to contact the phone number on the back of the member ID card.

N. Who to Contact with Health Care Questions

DFPS developed a STAR Health mailbox which is staffed by the DFPS medical services team and is checked each business day. The email address is: DFPSStarHealth3In30@dfps.texas.gov.

Superior STAR Health staff are also available to serve as a liaison to help court teams navigate through the STAR Health program and avoid gaps in care and services to children and youth. Superior STAR Health can help court teams:

- Facilitate interactions between Superior STAR Health, caseworkers, and Child-Placing Agencies to provide a single point of contact.

- Access to Superior STAR Health Liaisons who conduct education and provide court teams and caregivers with customized information packets.
- Enhance communication with court teams and Superior STAR Health pertaining to referrals and follow-up for improved accountability, collaborative efforts and streamlined resolutions.
- Collaborate with court teams to achieve better outcomes for members and foster parents.
- Offer Superior STAR Health benefits education including, but not limited to, the 24/7 Nurse Advice Line and NEMT options through the Superior STAR Health training team.
- Obtain assistance from Superior Member Advocates with Medicaid-related needs and barriers court teams identify by calling 1-866-912-6283.
- Address pending needs and resources during the staffing that occurs outside of court proceedings.
- Follow identified cases until referrals are completed and members are linked with appropriate services.

To set up a court meeting and training, provide the following information by email to Superior STAR Health at SH_JudicialMailbox@superiorhealthplan.com.

- Your name;
- Your contact number;
- Your email address; and
- What Superior STAR Health can assist you with.

Additional Links / Resources:

- Texas DFPS Star Health webpage[124]
- Superior HealthPlan STAR Health website[125]

CHILDREN WITH DISABILITIES

A. What Laws and Policies Protect Individuals with Disabilities?

A number of federal laws protect individuals with disabilities from discrimination in public and private settings. Some of these laws include:

- The Americans with Disabilities Act (ADA) 42 U.S. Code § 12101 et seq., which prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications;
- The Rehabilitation Act of 1973, which prohibits discrimination by any entity that receives federal funds;
- The Individuals with Disabilities Education Act (IDEA) 20 U.S.C. § 1400, et. seq., which requires states to provide students with disabilities special education and related services;
- The Fair Housing Act 42 U.S.C. § 3601 et seq. which addresses discrimination in housing;

See Guide to Disability Rights Laws for a summary of federal laws.[126]

B. Children with Disabilities in DFPS Care

Children with disabilities in DFPS conservatorship must be provided with a placement and services to meet their needs.

The Home and Community-based Services (HCS) Medicaid Waiver program provides comprehensive, individualized community-based services to individuals with intellectual and developmental disabilities, including to children within DFPS conservatorship who qualify, so that they can live in the community.

Please note that an individual must still meet general eligibility criteria for the HCS program as well as the specific criteria below.

Source of HCS Slot	Eligibility Criteria	Process to Access
DFPS Aging Out of Care (AOC)	▪ Close to aging out of conservatorship (age 16 or older) and in need of continued care beyond age 18. ▪ Live in a foster home or a residential facility. Note: the youth cannot continue to live in a residential facility once enrolled in the HCS waiver. ▪ There are a very limited number of these slots so they should not be used for youth who can access another type of waiver or the HCS waiver using a different slot type.	▪ When the transition plan is staffed at age 16, DFPS Developmental Disability Specialist (DDS) determines if an HCS slot is needed. ▪ The Developmental Disability Specialist (DDS) completes referral forms and submits to DFPS state office where referrals are prioritized based on situation and age. ▪ ***Contact:*** Developmental Disabilities Program Specialist, State Office

Source of HCS Slot	Eligibility Criteria	Process to Access
Promoting Independence (PI)	▪ Any age. ▪ Registered on the HCS interest list. ▪ Reside in a large, private ICF-MR. Large is defined as 14 or more beds.	▪ HHSC offers HCS slots to individuals who are residents of large ICFs-MR and on the HCS interest list. HCS slot offers are made to these individuals to ensure these individuals move within 365 days of being registered on the PI list. If the slot is turned down, HHSC ensures the youth remains on the PI list. CPS staff should secure guidance from the DDS before accepting or declining an HCS slot as other services may be impacted. ▪ The DDS may also request that the ICF-MR conduct a staffing to determine if another "living option" is appropriate.
Small/Medium Intermediate Care Facility (ICF-MR) Rider	▪ Under the age of 22. ▪ Reside in a small, private ICF-MR (6 beds) or a medium, private ICF-MR (7-13 beds). ▪ There are very few of these slots available.	▪ HHSC offers slots based on an individual's interest list date. ▪ The DDS may also request that the ICF-MR conduct a staffing to determine if another "living option" is appropriate.
Money Follows the Person (MFP)	▪ Under the age of 22 for Home and Community Based Services (HCS). ▪ Residing in a nursing facility. ▪ Note: Money Follows the Person (MFP) also applies to other Medicaid Waivers: Community Living Assistance and Support Services (CLASS) (any age), Medically Dependent Children Program (MDCP) (under 21), Community Based Alternatives (CBA) (21 or older), and Deaf-Blind Multiple Disabilities (DB-MD) (18 or older).	▪ HHSC conducts the Permanency Planning process every 6 months for residents in nursing facilities. Alternative services/options are discussed and if placement into the community is desirable, the MRA notifies HHSC requesting an HCS slot. After age 22 this option ends.

Source of HCS Slot	Eligibility Criteria	Process to Access
State Supported Living Center	▪ Residing in a State Supported Living Center.	▪ The Service Planning Team (SPT) at the facility determines if and when an individual is referred for community placement. Once the SPT makes that determination, HHSC offers an HCS slot to that individual and community placement must occur within 6 months. ▪ The DDS can request a "living option" staffing at any time. ▪ The decision to accept an HCS slot is ultimately made by either DFPS or the guardian if there is one.
State Hospital Multiple Disability Unit (MDU)	▪ Committed to a state mental health hospital.	▪ Upon admittance, the DDS can request that HHSC put the youth on the MDU HCS waiting list; wait time for a slot varies and discharge from the hospital may be required before a slot is available.
Interest List	▪ HHSC determines eligibility when the individual's name comes to the top of the list.	▪ DDS should put any child they suspect may have a disability on the interest lists for all waivers at the time the child comes into care. This is important to do even if the goal for the child is reunification as waivers are an important resource for birth families. ▪ ***Contact:*** local LIDDA office

DFPS Developmental Disability Specialists are the main point of contact for information about serving children with disabilities in the child welfare system. Responsibilities for the Developmental Disability Specialist are outlined in the CPS Policy Handbook § 6411.41, Responsibilities of the Developmental Disability Specialist and CPS Policy Handbook § 6412, Children with Primary Medical Needs and Special Health Care Needs.

Relevant CPS Policy Handbook sections include:

- 4117 Specific Placement Considerations for Children or Youth Who Have Primary Medical Needs
- 4118 Placing Children with Intellectual or Developmental Disabilities
- 4131.1 Durable Medical Equipment
- 6237 Permanency Planning for Children with Intellectual or Developmental Disabilities in Institutional Settings
- 6420 Preparation for Long-Term Care or Support in Adulthood for Youth with Disabilities
- 14170 Supplemental Security Income (SSI) for Children in Foster Care
- 6421.2 Ensuring Funding and Eligibility for Services

Relevant DFPS Resource Guides include:

- Mental Health Resource Guide
- Education for Children Resource Guide
- HCS Resource Guide
- Preparation for Long Term Care and Support Resource Guide

Additional educational information on IDD and HCS placements can be accessed in the archived May 2025 webinar on Representing Children with Intellectual and Developmental Disabilities in Child Welfare Cases and the related Power Point and Medicaid Waiver Comparison Chart.

C. Benefits from the Social Security Administration

1. Child receives income from Supplemental Security Income (SSI) or Retirement, Survivors, and Disability Insurance (RSDI)

A child entering DFPS conservatorship may be entitled to various benefits through the Social Security Administration (SSA).[127] If the child is currently receiving benefits, DFPS must promptly notify SSA that the child is under DFPS conservatorship so that DFPS can apply to become the representative payee of the child's benefits.[128] Once SSA approves DFPS to be the child's representative payee, DFPS will generally remain the payee until DFPS conservatorship ends or until the young adult exits extended foster care. Regional SSI Coordinators oversee this process of applying for the transfer to DFPS as the representative payee. When a child or young adult exits foster care or extended foster care, the child's caregiver or the young adult must go to an SSA office to request the transfer of SSI or RSDI benefits to the caregiver or the young adult as payee.

Special Issue: *Obtaining transportation to this appointment can help to ensure that the benefits transfer to the young adult is successfully completed.*

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2. SSI for a child in traditional foster care

Children in foster care may qualify for the federal benefit of Supplemental Security Income due to a mental or physical disability. Supplemental Security Income (SSI) is available to children with disabilities who have limited income and resources. For a child in foster care, the DFPS SSI Coordinator may apply for SSI

benefits for a child who is also eligible for Title IV-E foster care assistance. If DFPS claims Title IV-E foster care assistance for the child's maintenance payment, DFPS cannot use the child's SSI benefit to offset the Title IV-E foster care payment.[129]

Special Issue: *The decision to apply for SSI while a child is in foster care is based upon the amount of the child's foster care payment. The regional eligibility specialist should be consulted with questions regarding funding reimbursement.*

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3. SSI for a child in a relative or kinship placement

DFPS does not make foster care payments to non-licensed relatives or kinship caregivers but sends the SSA benefits to these caregivers to meet the child's daily needs. The SSI coordinator asks SSA to reinstate the child's SSI benefits when the situation meets both of the following criteria:

- SSA had suspended the child's SSI benefits due to Title IV-E eligibility.
- The child is placed with a non-licensed relative or kinship caregiver. CPS Policy Handbook § 14171.2 Changes that Affect Claiming SSI or Title IV-E Benefits.

The caseworker should contact the DFPS regional SSI Coordinator to inquire about applying for Social Security benefits.[130]

4. SSI Applications for youth aging out of care

While under the conservatorship of DFPS, the SSI Coordinator submits SSI applications on behalf of the youth. Under DFPS policy, if a youth in care has a disability and may be eligible for SSI, the DFPS caseworker should contact the regional SSI Coordinator to discuss applying when the youth turns 17 years old. Since youth may not meet the adult definition of disability,[131] SSI applications should be filed well before a youth's 17th birthday to prevent delay in application processing and additional delays if an unfavorable decision needs to be appealed.

Special Issue*: It is critical for youth to have their funding source switched before they age out, so youth should apply for SSI by age 16 to avoid delay with waitlists. For youth who have not had SSI before, the process can be very lengthy.*

SSA requires each SSI recipient or potential recipient who is 18 years old to be evaluated according to adult listing of impairments.[132] Aside from individual identification, DFPS state office sends a quarterly report to regional SSI coordinators identifying youth in foster care who are 17 years old and are potentially eligible for SSI, regardless of their eligibility for Title IV-E assistance.[133]

5. Preserving SSI benefits for young adults in extended foster care

Young adults in extended foster care may continue to receive SSI benefits, but the payments will continue to be paid to DFPS. However, young adults in extended foster care must be aware and mindful of factors that could make them ineligible to continue receiving benefits. For example, the young adult may not accumulate more than $2,000 in cash assets or their benefit payment may be reduced or terminated; young adults who may also be working, receiving scholarships, or have some other income (such as annuity payments) need to be educated and reminded to notify DFPS of any income they receive and may have to inform DFPS of funds in any bank accounts they have. Once a young adult exits extended foster care, they

must go to an SSA office to request to become their own payee. Young adults may consider applying for an ABLE Account in which to place funds that may make them ineligible to continue receiving SSI benefits.[134] Another option for preserving benefit eligibility is a Master Pooled Trust account through the Arc of Texas.

D. Parents and Other Adult Caregivers with Disabilities and Child Welfare

Federal law prohibits governmental agencies, including child welfare and court systems, from discriminating against people with disabilities in their services, programs, and activities. Agencies in the child welfare system must provide accommodations to ensure persons with disabilities have equal opportunity to access services to ensure safety, permanency, and well-being for the children and families DFPS serves.

See the DFPS Resource Guide – Working with Persons with Disabilities for information, including specific suggestions for reasonable accommodations for a parent with a disability when child safety is involved.

E. What Resources are Available for Children and Adults with Disabilities?

- Special Needs Training for Parents and Caregivers[135]
- Disability Rights Texas (DRTx) provides legal representation and advocacy for individuals with disabilities.[136] DRTx can help caregivers and caseworkers advocate for services for a child with disabilities in the school system, appeal denials of Medicaid services, or advocate for other community-based services, or may be appointed as a child's ad litem in limited counties.
- EveryChild Inc. provides assistance and support for children with disabilities to reside in a family setting.[137]
- Texas Health and Human Services Disability webpage includes disability-related resources and information.[138]
- Home and Community-based Services (HCS) is a Medicaid waiver program that provides services and support for individuals with intellectual disabilities.[139]
- The Judicial Commission on Mental Health Texas Mental Health and Intellectual and Developmental Disabilities Law Bench Book is a procedural guide for Texas judges hearing cases regarding persons with mental illness and/or intellectual and developmental disabilities (IDD).[140]
- Local Intellectual and Developmental Disability Authorities (LIDDA) and Local Mental Health Authorities (LMHA) support children and adults in crisis. Local LIDDA and LMHA contacts are available on the Texas Health and Human Services webpage.[141]
- Navigate Life Texas is a website developed by HHS to explain resources for families with children who have disabilities and special health care needs.[142]

PSYCHOTROPIC MEDICATION

Psychotropic medications are substances that affect the mind and alter mental processes, such as perception, mood, and behavior. Psychotropic drugs include stimulants, antidepressants, antipsychotics, and mood stabilizers. Some children need to use psychotropic medications long-term to treat mental health disorders that they inherited or developed, such as attention deficit hyperactivity disorder (ADHD), major depressive disorder, or psychosis. Other children need to use psychotropic medications on a more temporary basis to help relieve severe emotional stress and help them function in school, at home, and in the community.

The use of psychotropic medication in children in foster care may be life-saving and relieve challenging and sometimes severe symptoms of mental health disorders. Children and youth in foster care may benefit from medication to address mental illness exacerbated by the effects of trauma brought on from exposure to abuse or neglect. However, studies have shown that psychotropic medications can have serious side effects on adults using them, and the effects of long-term use in children and adolescents remain largely unknown. Some psychotropic medications do not have Food and Drug Administration (FDA) approved labeling for use in children.[143] Therefore, it is imperative that a comprehensive evaluation be performed before beginning treatment with psychotropic medication for a mental, emotional, or behavioral disorder. Except in the case of an emergency, a child should receive a thorough health history, biopsychosocial assessment, mental status exam, and physical exam before being prescribed a psychotropic medication.[144]

Per Tex. Fam. Code § 266.001(7), a “psychotropic medication” is defined as a medication that is prescribed for the treatment of symptoms or psychosis or another mental, emotional, or behavioral disorder and that is used to exercise an effect on the central nervous system to influence or modify behavior, cognition, or affective state. The term includes the following categories when used as described by Tex. Fam. Code § 266.001(7):

- Psychomotor stimulants;
- Antidepressants;
- Antipsychotics or neuroleptics;
- Agents for control of mania or depression;
- Anti-anxiety agents; and
- Sedatives, hypnotics, or other sleep-promoting medications.

Tex. Fam. Code § 266.001(7).

Texas led the nation in creating oversight protocols in 2005 when the 79th Texas Legislature enacted Senate Bill 6. This sweeping legislation proposed reforms for DFPS, including a plan to place all children and youth in foster care under a single comprehensive managed care system. Texas was the first state to develop a "best practices" guide for oversight of psychotropic medications for children in foster care. Released in 2005 and most recently updated in July 2025, DFPS, the Department of State Health Services (DSHS), and the Health and Human Services Commission (HHSC) developed the Psychotropic Medication Utilization Parameters for Children and Youth in Texas Public Behavioral Health (7th Edition) (Parameters).[145] The Parameters are updated periodically and serve as a resource for physicians and clinicians who care for children diagnosed with mental health disorders.

Additionally, DFPS' Behavioral Health Services Division includes a Behavioral Health Services Division Administrator, a Trauma-Informed Care Manager, six regional Trauma-Informed Care Program Specialist positions, a Behavioral Health Program Specialist Lead position, three Substance Use Program Specialists, two Child and Adolescent Needs and Strengths (CANS) Program Specialists, and three Mental Health Program Specialists. For more information about this division, *see* the *Substance Use Disorders* chapter of this Bench Book.

The Texas Legislature also enacted Tex. Fam. Code Chapter 266 which governs medical care and education services for children in foster care primarily through three processes:

- Medical Consenter;
- Agency Oversight; and
- Judicial Review.

A. Medical Consenter

Tex. Fam. Code § 266.004(h) requires medical consenter training, which must include training related to informed consent for the administration of psychotropic medication and the appropriate use of psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications. Tex. Fam. Code § 266.004(h-1).

Each person required to complete a training program under Tex. Fam. Code § 266.004(h) must acknowledge in writing that the person:

- Has received the training described by Tex. Fam. Code § 266.004(h-1);
- Understands the principles of informed consent for the administration of psychotropic medication; and
- Understands that non-pharmacological interventions should be considered and discussed with the prescribing physician, physician assistant, or advanced practice nurse before consent to the use of a psychotropic medication.

Tex. Fam. Code § 266.004(h-2).

The DFPS Medical Consent Training for Caregivers is available online and typically takes an estimated two and half hours to complete.[146]

DFPS also has a two-hour online Psychotropic Medication Training for DFPS staff, foster parents and residential providers, relative caregivers, and youth medical consenters.[147]

1. Informed Consent

Although the term "informed consent" as it relates to medical care for a child in foster care is not defined in Tex. Fam. Code Chapter 266, the Texas Legislature has defined consent for psychotropic medication. Consent to the administration of a psychotropic medication is valid only if:

- The consent is given voluntarily and without undue influence;
- The person authorized by law to consent for the foster child receives verbally or in writing information that provides:

- the specific condition to be treated;
- the beneficial effects on that condition expected from the medication;
- the probable health and mental health consequences of not consenting to the medication;
- the probable clinically significant side effects and risks associated with the medication; and
- the generally accepted alternative medications and non-pharmacological interventions to the medication, if any, and the reasons for the proposed course of treatment.

Tex. Fam. Code § 266.0042.

The Parameters describe what is meant by "informed consent" by stating that consent to medical treatment in non-emergency situations must be obtained from appropriate parties with the child or adolescent assenting before beginning psychotropic medication, which includes discussing the following with the prescribing provider before consenting:

- A DSM-5 (or current edition of the American Psychiatric Association's [APA] Diagnostic and Statistical Manual of Mental Disorders) psychiatric diagnosis for which the medication is being prescribed;
- Expected benefits of treatment;
- Risks of treatment, including common side effects, laboratory findings, and uncommon but potentially severe adverse events;
- Risks of no treatment; and
- Alternative treatments available and the overall potential benefit to risk ratio of treatment.[148]

Included in the idea of informed consent is the consideration of alternative treatments and trauma-informed care. The concept of trauma-informed care is a paradigm shift for the entire system and acts as a lens through which children, youth, and families experiencing the child welfare system are viewed. The Introduction and General Principles Section of the Parameters promote a trauma-informed child and family-serving system where all parties involved recognize and respond to the varying impact of traumatic stress on those who have contact with the system, including youth, caregivers, and service providers. A robust trauma-informed system should not only screen for trauma exposure and related symptoms, but also use culturally and linguistically appropriate, evidence-based assessments and treatment.

In 2015, the 84th Texas Legislature added Tex. Fam. Code § 266.012 regarding comprehensive assessments. Described in detail in the Health Care chapter herein, the comprehensive assessment for children and youth in state conservatorship is called CANS and is administered in a developmentally appropriate way not later than the 45th day after the date a child enters the conservatorship of DFPS. This statute was updated in 2017 to require that any Single Source Continuum Contractor (SSCC) providing therapeutic foster care services to a child ensure that the child receives a comprehensive assessment at least once every 90 days. Tex. Fam. Code § 266.012(c). The assessment must include:

- A screening for trauma; and
- Interviews with individuals who have knowledge of the child's needs.

Tex. Fam. Code § 266.012(a)(1).

DFPS requires that children and youth placed in substitute care ages 3 to 17 years old receive a CANS assessment within 30 days of removal. The CANS is used to gather information about the strengths and

needs of the child and family and is used in Service Planning to assist the child and family in reaching their goals.[149] DFPS may consent to health care services ordered or prescribed by a health care provider authorized to order or prescribe health care services regardless of whether services are provided under the medical assistance program under Tex. Hum. Res. Code Chapter 32, if DFPS otherwise has the authority under Tex. Fam. Code § 266.004 to consent to health care services. Tex. Fam. Code § 266.004(k).

2. Monitoring Use of Psychotropic Drugs

The medical consenter shall ensure that the child has been evaluated by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days to allow the physician, physician assistant, or advanced practice nurse to:

- Appropriately monitor the side effects of the medication; and
- Determine whether:
  - the medication is helping the child achieve the treatment goals; and
  - continued use of the medication is appropriate.

Tex. Fam. Code § 266.011.

B. Agency Oversight

The Parameters provide recommendations for the appropriate use of psychotropic medications for children served in the public behavioral health system, including children in foster care. They include criteria indicating the need for review of the child's clinical status. Medical consenters, caregivers, judges, attorneys, and advocates also use the Parameters as they fulfill their duties of advocacy and oversight.

1. Medication Review

The STAR Health Managed Care Organization (MCO) oversees automated reviews of pharmacy claims data for all children in foster care receiving psychotropic medications to identify medication treatments which appear to be outside the Parameters. Additionally, STAR Health MCO clinical staff routinely conduct telephonic health screenings when children newly enter DFPS conservatorship or change placements.

The telephonic health screening includes screening of the child's psychotropic medications treatment. The screening process includes criteria such as:

- Does the child have a documented mental health diagnosis?
- What is the child’s age? (Prescriptions might need further review if the child is under age 3 or 4, depending on the class of medication.)
- Is the child taking two or more medications from the same drug class? (Two mood stabilizers and long and short acting stimulants from the same “family” are allowed, but two or more medications from the same class call for further review.)
- Is the child prescribed four or more psychotropic medications regardless of the class?

2. Psychotropic Medication Utilization Review

The Psychotropic Medication Utilization Review (PMUR)[150] process is designed to determine whether a child's psychotropic medication treatment is outside of the Parameters and, if so, whether a consultation call from a STAR Health child psychiatrist to the prescribing physician is indicated. A PMUR can be initiated

by the STAR Health MCO if indicated by a health screening or pharmacy claim review. A PMUR may also be triggered by a request from any judge, attorney, caseworker, advocate, foster parent, medical consenter, or other concerned person working with the child. The PMUR examines child-specific clinical information about a child's diagnoses, medication dosage, and whether the medication treatment is in compliance with the Parameters. The STAR Health MCO has committed to prioritize responses to inquiries from judges concerning children under their supervision. PMUR findings are usually sent to the child's caseworker or can be faxed or emailed directly to the court, if requested.

All PMUR requests are reviewed by one of five STAR Health Licensed Behavior Health Clinicians who gather medical records and screen children's psychotropic medication treatment for compliance with the Parameters. If the treatment is outside the Parameters, the clinician refers the case to a STAR Health child psychiatrist to conduct a PMUR. The child psychiatrist outreaches to the treating physician, works with the treating physician to reduce polypharmacy if indicated, and prepares a PMUR report. The PMUR report will contain a formal determination about the foster child's medication treatment. The possible determinations are as follows:

- Medication treatment within Parameters;
- Medication treatment outside Parameters. Medication treatment reviewed and found to be within the standard of care;
- Medication treatment is outside Parameters and there is opportunity to reduce polypharmacy; or
- Medication treatment is outside Parameters and there is risk for or evidence of significant side effects.

The STAR Health MCO is in a good position to intervene and educate the prescribing physician because it holds a contract with these providers to participate in STAR Health. Physicians and other clinicians who appear to consistently prescribe outside the Parameters despite risk for or evidence of significant side effects, or when there is an opportunity to reduce polypharmacy, are referred to the Quality of Care (QOC) review process. Additional records are examined for pervasive patterns of over-prescribing or dangerous prescribing. Qualifying cases may be referred to the Peer Review Committee for further investigation and action. The Peer Review Committee is established by the MCO and consists of network providers to review PMUR concerns for STAR Health Members that exceed the QOC thresholds. Superior HealthPlan also utilizes consultant physicians as needed to review specific specialist issues if a need is identified. The results of Quality Improvement and Peer Review Committee investigations and actions are confidential and may not be released to or discussed with the public. All QOC issues are tracked and trended. Any practitioner showing a pattern or trend may be placed on corrective action and/or face disciplinary action up to and including termination of contract, if warranted.

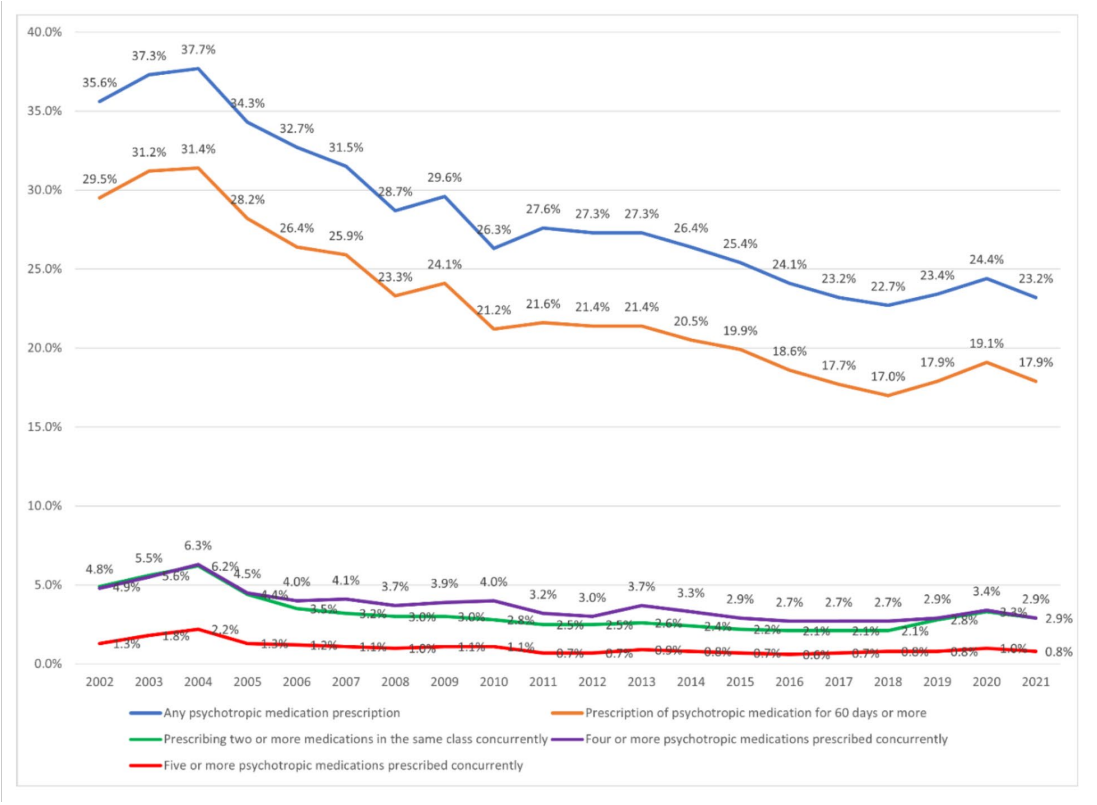
A PMUR cannot address whether other medications might be effective, and this process is not the appropriate avenue to address immediate concerns about new medications or medication side effects. Instead, the informed consent process is considered the appropriate avenue to inquire about new medications and side effects. In these situations, the STAR Health MCO recommends that the Medical Consenter contact the prescribing physician directly. DFPS also employs CPS Nurse Consultants in each administrative region to assist CPS staff with children's health issues, including questions about psychotropic medications.

Please *see* the PMUR Process for STAR Health Members FAQ and Stakeholder Manual for more information on the process.[151]

3. Effect of Texas' Oversight Process

As a result of the various improvements to Texas' oversight process, including hiring a Medical Director at DFPS, implementing the Parameters as a statewide monitoring system, and launching managed care and clinical consultation by the STAR Health programs, the prescription patterns of psychotropic medications for Texas children experiencing foster care have improved significantly. Since implementation of the Parameters in 2005, the use of psychotropic medications in Texas foster care has decreased substantially from a high of 31.4% in 2004 to 12.1% in 2024 for children prescribed psychotropic medications for 60 days or more.[152] It should be noted in 2020, HHSC revisited the foster care prescription data from State Fiscal Years 2002 to 2021 using the new psychotropic drug list and other methodological changes to provide a single consistent historical timeline. Previous versions of the cited report incorporated changes as they occurred. Due to programming code changes, additional data becoming available, and additional medications being added to the list of psychotropic medications, the data have changed from previous versions of the report.[153] When reviewing the chart below, please note that it contains a new data measurement regarding "any psychotropic medication prescription," as indicated by the blue line. The use of any children prescribed psychotropic medications in Texas foster care has decreased substantially from a high of 37.7% in 2004 to 17.7% in 2024.

Percentage of Children and Youth in Texas Foster Care Receiving Psychotropic Medications by Measure*



*Please note that psychotropic medications may be used off-label for medical reasons.

C. Parental Notification of Certain Medical Conditions

DFPS must provide notice of significant events regarding a child in foster care to the child's biological parents and others under Tex. Fam. Code § 264.018 in a manner that would provide actual notice to a person entitled to the notice, including the use of electronic notice whenever possible. Tex. Fam. Code § 264.018(c).

Not later than 24 hours after an event described by Tex. Fam. Code § 264.018(d), DFPS shall make a reasonable effort to notify a parent of a child in the managing conservatorship of the DFPS and the parent's attorney, if represented by an attorney, of:

- A significant change in medical condition of the child;
- The enrollment or participation of the child in a drug research program under Tex. Fam. Code § 266.0041;
- An initial prescription of a psychotropic medication; and
- A change in the child's placement.

Tex. Fam. Code § 264.018(d).

As soon as possible but not later than 48 hours after DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS, DFPS shall provide notice of the significant event to the child's parent and the parent's attorney, if represented by an attorney. Tex. Fam. Code § 264.018(f).

Under Tex. Fam. Code § 264.018(a)(5), a significant event includes:

- A placement change, including failure by DFPS to locate an appropriate placement for at least one night;
- A significant change in medical condition;
- An initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication;
- A major change in school performance or a serious disciplinary event at school;
- A placement in a qualified residential treatment program, as that term is defined by 42 U.S.C. § 672(k)(4); or placement in a residential treatment center as defined by Tex. Fam. Code § 263.001, including meetings or conferences to determine the appropriateness of such a placement; or
- Any event determined to be significant under DFPS rule.

For purposes of Tex. Fam. Code § 264.018(f), if a hearing for the child is conducted during the 48-hour notice period, DFPS shall provide notice of the significant event at the hearing. Tex. Fam. Code § 264.018(g).

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

- DFPS cannot locate the parent;
- A court has restricted the parent's access to the information;

- The child is in the permanent managing conservatorship of DFPS and the parent has not participated in the child's case for at least six months despite DFPS' efforts to involve the parent;
- The parent's rights have been terminated; or
- DFPS has documented in the child's case file that it is not in the best interest of the child to involve the parent in case planning.

Tex. Fam. Code § 264.018(h).

Even if DFPS is not required to provide notice to a parent of a child in the managing conservatorship of DFPS as provided by Tex. Fam. Code § 264.018(h), DFPS shall provide notice under Tex. Fam. Code § 264.018 to a parent's attorney if the parent is represented by an attorney if:

- DFPS cannot locate the parent; or
- The child is in the PMC of DFPS and the parent has not participated in the child's case for at least six months despite DFPS' efforts to involve the parent.

Tex. Fam. Code § 264.018(h-1).

A person entitled to notice from DFPS under Tex. Fam. Code § 264.018 must provide current contact information pursuant to Tex. Fam. Code § 264.018(j).

D. Judicial Review

The judiciary is charged with oversight of the safety, permanency, and well-being of the children in their courts. Tex. Fam. Code § 266.007 requires that the judge overseeing the case review a summary of the medical care being provided to the child at each hearing held pursuant to Tex. Fam. Code Chapter 263, specifically the Permanency Hearings Before and After Final Order.

1. Court Shall Review Medical Summary

Tex. Fam. Code Chapter 266 requires the summary of medical care to include:

- The nature of any emergency medical care provided to the child and the circumstances necessitating emergency medical care, including any injury or acute illness suffered by the child;
- All medical and mental health treatment that the child is receiving and the child's progress with the treatments;
- Any medication prescribed for the child and the condition, diagnosis, and symptoms for which the medication was prescribed and the child's progress with the medication;
- The degree to which the child or foster care provider has complied or failed to comply with any plan of medical treatment for the child;
- Any adverse reaction to or side effects of any medical treatment provided to the child;
- Any specific medical condition of the child that has been diagnosed or for which tests are being conducted to make a diagnosis; and
- Any activity that the child should avoid or should engage in that might affect the effectiveness of the treatment, including physical activities, other medications, and diet.

Tex. Fam. Code § 266.007.

Additional information may be required to effectively oversee that informed consent has been given. Tex. Fam. Code Chapter 266 requires that judges review the medical care at each hearing conducted under Tex. Fam. Code Chapter 263.

The court must determine whether the child has been provided the opportunity, in a developmentally appropriate manner, to express opinion about medical care. Tex. Fam. Code § 263.306(a-1)(5)(D). For a child receiving psychotropic medication, the court must determine whether the child has:

- Been provided appropriate psychosocial therapies, behavior strategies, and non-pharmacological interventions; and
- Seen their prescribing physician at least every 90 days for review.

Tex. Fam. Code § 263.306(a-1)(5)(F).

2. Youth in Foster Care Must Be Heard at Each Hearing Held Under Tex. Fam. Code Chapter 263

The Family Code provides that sixteen and seventeen-year-olds can serve as their own medical consenter with a judicial determination that the youth is capable of the role. Tex. Fam. Code § 266.010. If the youth is not the medical consenter, Tex. Fam. Code § 266.007(c) requires that the youth be provided the opportunity to express to the court their views on the medical care being provided. Further, Tex. Fam. Code § 263.302 requires that the youth attend Permanency Hearings Before and After Final Order.

***Special Issue**: Although it may be difficult to routinely include youth in their hearings, supporting youth attendance and participation in hearings is very important. This is especially impactful for older youth, as they are more likely than younger youth to be prescribed psychotropic medications.*

The regular use of videoconferencing has now made it easier for youth to attend hearings and judges should consider the mental health benefits of doing so for a youth when given the opportunity for youth to advocate for themselves. For more ideas on involving youth in the court process, *see* the *Child and Youth Voice* chapter of this Bench Book.

3. Judicial Psychotropic Medication Information Line

Judges can contact the Judicial Medication Information Email Box which allows judges to submit a request for general medication information to SH_JudicialMailbox@superiorhealthplan.com. Judges should expect a response to general questions within 5 business days.

Emails are reviewed by a STAR Health Behavioral Health Service Coordinator, who has support from the STAR Health Behavioral Health Team, including a Medical Director (child psychiatrist), a Clinical Pharmacist, and Clinical Managers. (An example of an appropriate type of question for the email box is: "What are the side effects of a medication or combination of medications on a 12-year-old girl who weighs 100 pounds?")

The STAR Health MCO also maintains a 24/7 Behavioral Health hotline with access to behavioral health professionals when urgent needs arise. The hotline can be reached at 1-866-912-6283. For more details on this program, *see* *Health Care for Texas Children in Foster Care: STAR Health* chapter of this Bench Book.

4. Some Courts Use Standardized Court Report

A standardized court report may help provide a summary of medical information that directly follows Tex. Fam. Code § 266.007. A standardized report may include the child's age and weight as well as information about medication and dosage, condition and diagnosis, symptom(s) being treated, last medication review, and the prescribing physician.

5. Some Courts Use Specific Forms and Practices

Some Texas child welfare judges have adopted a practice of ordering that in non-urgent situations, medical consenters must appear in court before giving consent to medication treatments that fall outside the Parameters. Also, to augment the information-sharing process, some judges ask the medical consenters to complete a checklist of questions before appearing in court to ensure that the consenter considered the many steps to informed consent (as defined by the Parameters).

SUBSTANCE USE DISORDERS

A. Statewide Overview of Substance Use

The impact of a Substance Use Disorder (SUD) on the family and individual family members merits attention, as each family and each family member is uniquely affected by the person using substances. Impacts of substance use on the family may include financial challenges, legal problems, and emotional distress.[154] According to the National Center on Substance Abuse and Child Welfare, parental substance use was a condition associated with removal in 55.1% of removals of children under the age of one and 34% of children over the age of one in 2025.[155]

1. Relevant Trends

According to the Department of State Health Services, in 2024 there were more than 4,400 deaths due to Unintentional Drug Poisoning in Texas.[156] Additionally, data from the 2024 Treatment Episode Data Set showed that continues to remain the top primary substance use among admissions to treatment.[157] Texas Health and Human Services Commission (HHSC) funds an array of substance use services to help individuals and families address substance use and misuse. For more information, please visit HHSC Substance Use Disorder Services webpage.

For information about drug-related deaths and trends in Texas, please visit the Department of State Health Services Texas Health Data Dashboard.[158]

2. Useful Definitions

- Substance Use: The use—even one time—of any substance.[159]
- Substance Misuse: The use of any substance in a manner, situation, amount, or frequency that can cause harm to users or to those around them. For some substances or individuals, any use would constitute misuse (e.g., under-age drinking, injection drug use).[160]
- Substance Use Disorder (SUD): A medical illness caused by repeated misuse of a substance or substances. According to the DSM-5, substance use disorders are characterized by clinically significant impairments in health, social function, and impaired control over substance use and are diagnosed through assessing cognitive, behavioral, and psychological symptoms.[161]
- Recovery: a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. The process of recovery is highly personal and occurs via many pathways. It may include clinical treatment, medications, faith-based approaches, peer support, family support, self-care, and other approaches. Recovery is characterized by continual growth and improvement in one's health and wellness and managing setbacks. Because setbacks are a natural part of substance use, resilience becomes a key component of recovery.[162]

Every public health region in Texas has an Outreach, Screening, Assessment and Referral (OSAR) program which can assist any Texas resident with finding appropriate treatment and community resources. To find local resources and additional assistance, please visit the HHSC OSAR webpage.[163] Individuals can also locate substance use services in their area by visiting the Health and Human Services - Substance Use Service Locations map.[164]

B. Pregnant Women and Relapse Prevention and Safety Plans

1. Pregnant Women and Substance Use

Neonatal abstinence syndrome (NAS) is a treatable condition that newborns may experience as a result of prenatal exposure to certain substances, most often opioids. Neonatal Opioid Withdrawal Syndrome (NOWS) is a related term that refers to the symptoms that infants may experience as a result of exposure to opioids.[165] Pregnant women using opioids should not discontinue opioid use due to the risk of maternal return to use, overdose, withdrawals, and fetal demise. The American College of Obstetricians and Gynecologists (ACOG) and SAMHSA recommend Medications for Opioid Use Disorder (MOUD), previously referred to as Medication Assisted Treatment or MAT, as a best practice in managing an opioid use disorder in pregnancy.[166] Research also indicates women with substance use disorder should continue their opioid agonist pharmacotherapy (MOUD) postpartum. The postpartum period represents a time of increased vulnerabilities, and women with opioid use disorder experience recurrence far more often in the postpartum period compared with during pregnancy.[167]

Since 1994, SAMHSA has designated pregnant women as a federal priority population in SUD treatment services. To better meet the needs of this priority population HHSC has a variety of substance use treatment services specifically designed to treat pregnant women and women with dependent children including withdrawal management, residential and outpatient treatment, and Medications for Opioid Use Disorder.

Special Issue: *"Medication for Opioid Use Disorder" (MOUD) is the recommended term to replace MAT. "Return to use" is the recommended term to avoid shame and stigma associated with the term "relapse," however "relapse" and "relapse prevention" are still commonly used terms.*

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2. Recurrence/Return to Use Prevention

According to the National Center on Substance Abuse and Child Welfare, research shows medications used in MOUD, when provided at the proper dose, have no adverse effects on a person's intelligence, mental capability, physical functioning, or employability. Medications for Opioid Use Disorder, along with a range of clinical and supportive services, can help people achieve stability while focusing on other aspects of their recovery, such as finding work, housing, or enhancing their parenting skills.[168]

At this time, there are no standardized resources statewide for the Department of Family and Protective Services (DFPS). Department of Family and Protective Services accesses state-funded and community resources that offer individualized treatment approaches to meet the needs of parents and families. Relevant DFPS policy states the following regarding recurrence (relapse) prevention planning:

- Relapse is a return to a pattern of substance use after a period of non-use.
- In the relapse safety plan, the person, along with a trusted support system, plans to ensure the safety of the child or children in case relapse becomes an issue.
- Court orders supersede any actions that the person requests in the relapse safety plan.
- A relapse safety plan can be developed at any stage of service."

Please *see Relapse Safety Plan* CPS Policy Handbook § 3382.2 for more information.[169]

C. DFPS Response to Substance Use Disorders

The Child Abuse Prevention and Treatment Act (CAPTA) (P.L. 93-247) was originally enacted in 1974, was last reauthorized in 2010, and amended most recently in 2019; additionally, certain provisions were amended by the Comprehensive Addiction and Recovery Act (CARA) of 2016 and the Victims of Child Abuse Act Reauthorization Act of 2018 (P.L. 115-424).[170]

Under these federal laws, states are required to have plans of safe care for infants born and identified as being affected by substance use or withdrawal symptoms of both legal and illegal substances. The plans of safe care are required to "ensure the safety and well-being of such infant following [the infant's] release from the care of healthcare providers" to be achieved through "addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver." 42 U.S.C.S. § 5106a(b)(1)-(2).

To avoid confusion, DFPS does not utilize the unique federal term "plan of safe care" as set forth in CARA, as there are a number of DFPS tools and policies that reference "plans." Statewide Intake protocols, safety and risk assessment tools, and the service planning process used in different stages of service, collectively mean that the state meets the requirements under the CARA plans of safe care.

Examples of types of plans that do not include removal include: use of Parental Child Safety Placements (PCSP) to assure safety as the parent initiates or becomes engaged in services; use of residential substance use disorder treatment programs that allow a mother (or father in a few programs) to live in a treatment setting with the child, when appropriate; use of Medication-Assisted Treatment in combination with behavioral therapies; and the guidance of specialized drug courts in some areas. While access to treatment can be challenging, families referred by DFPS are considered a state priority population for state-funded substance use intervention and treatment services. In Texas, a client who is not pregnant and is referred to an HHSC-funded substance use intervention or treatment service by DFPS must be admitted to services within 72 hours or 3 business days, depending on the program or services.

Doctors and nurses are required by mandatory reporting laws to report suspected child abuse and neglect if they have reasonable cause to believe the child has been abused as defined by statute. Tex. Fam. Code § 261.101(b). Definitions of child abuse in Texas law include the current use of controlled substances by an adult in a manner or to the extent that the use results in physical, mental, or emotional injury to a child. Tex. Fam. Code § 261.001(1)(I).

DFPS Statewide Intake advances any reports of substance-exposed infants to the field for an investigation. During the investigation, multiple steps occur including: a child assessment, parental assessment, holistic family assessment, safety planning, and the development of initial services. In some cases, the parent has sufficient support and is protective and/or engaged in treatment services, thereby eliminating the need for further DFPS involvement beyond investigation. Other parents may be assisted in development of a plan and access to services during the investigation stage of services, or a Family-Based Safety Services (FBSS) stage may be opened to provide ongoing services without removal. Where safety cannot be assured, DFPS will seek removal of the infant.

***Special Issue**: The birth of a substance-exposed infant does not result in an automatic removal of that child, nor even an automatic disposition of child abuse or neglect. Each family's specific circumstance is assessed. DFPS works closely with Health and Human Services agency partners who provide substance use intervention or treatment services to strengthen the State's response to parents who engage in substance use or misuse.*

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1. Behavioral Health Division at DFPS

DFPS has a Behavioral Health Services Division within CPS, with Behavioral Health and Substance Use Disorder Specialists spread throughout the state. The division is part of a broader CPS Medical Services Division that supports staff meeting medical, behavioral health, and dental needs for children in DFPS conservatorship. The Behavioral Health Division also provides support and subject matter expertise to staff in Family-Based Safety Services, where children are not in DFPS conservatorship. The combined Medical and Behavioral Health teams assist legacy and SSCC direct delivery staff with access to Medicaid services (STAR Health) and other public behavioral health services available to children and families. The broader team includes Well-Being Specialists, Nurse Consultants, CANS Program Specialist, and supporting staff. These positions complement two additional Substance Use Program Specialists and two Mental Health Program Specialists who report to Child Protective Investigations. The combined team works together to overcome barriers to services, and provide support, resources, and technical assistance to direct delivery staff in their work with families and youth through every stage of service.

D. Resources

- American Addiction Centers' Information on Addiction Signs, Symptoms, Effects, and Treatment[171] and Addiction Cravings: Symptoms, Treatment and Relapse Prevention[172]
- Children and Family Futures[173]
- Child Welfare Information Gateway Information on Family Treatment Drug Court[174]
- National Center on Substance Abuse and Child Welfare (NCSACW)[175]
- National Council of Juvenile and Family Court Judges Substance Use and the Courts (NCJFCJ)[176]
- National Institute on Drug Abuse[177]
- Substance Abuse and Mental Health Services Administration (SAMHSA)[178]
- Texas Health and Human Services Mental Health and Substance Use[179]

TRAUMA-INFORMED CARE

A. Trauma

The concept of trauma and the accompanying research have shifted the paradigm about the way in which systems, organizations, professionals, and caregivers approach and serve children, youth, young adults, parents, and families who experience the child welfare system. The field of trauma and trauma-informed care is constantly evolving and expanding. The information in this chapter is intended to give judges a basic understanding of these topics to help them consider approaching child welfare cases in a trauma-informed manner.

40 Tex. Admin. Code § 702.701(a) defines trauma as resulting from "an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening with lasting adverse effects on the individual's functioning or the individual's mental, physical, social, emotional, or spiritual well-being."[180]

Some examples of traumatic experiences include:[181]

- Physical, sexual, or psychological abuse and neglect (including trafficking);
- Witnessing and/or experiencing violence, whether in the family or in the community;
- Loss of loved ones or traumatic grief;
- Natural and technological disasters or terrorism;
- Serious accidents;
- Medical trauma; and/or
- Military family-related stressors (e.g., deployment, parental loss, or injury)

B. Trauma Impacts a Child's Development and Health

The groundbreaking 1998 study on Adverse Childhood Experiences (ACEs) and the replicated studies which followed demonstrate that a high number of ACEs and the related experience of childhood stress is linked to poor health outcomes, including obesity, diabetes, depression, heart disease, cancer, and stroke as well as alcohol and drug abuse, low graduation rates, and poor employment outcomes.[182] The presence of ACEs does not mean that a child is guaranteed to experience poor life outcomes. Positive experiences and protective factors can prevent children from experiencing adversity and protect against many negative health and life outcomes.[183]

Undoubtedly, children and youth who experience abuse or neglect, are removed from their families, or interact with the child welfare system are vulnerable to experiencing trauma. Further, many parents and caregivers may have their own experiences with trauma. Families experiencing the child welfare system are more likely to feel supported and build resilience if the child welfare system and adjacent systems can respond to the needs of children and families through a trauma-informed lens. This requires judges, attorneys, court staff, and other stakeholders to understand how traumatic responses manifest in the children and families in front of the court and subsequently consider adapting the court environment and practices accordingly. In doing so, serving children and families can move beyond responding to behaviors to promoting healing.

It is important to note that no age is immune to the effects of traumatic experiences, including infants and toddlers. Traumatic stress will manifest differently from child to child and will depend on the child's age and developmental level.[184]

Children who are not experiencing consistent safety, comfort, and protection may develop ways of coping that allow them to survive and function day-to-day. These learned adaptations make sense when a physical and/or emotional threat is pervasive but are not helpful once a person is no longer under such threats.[185] Additionally, unaddressed trauma can lead to long-term effects into adulthood.

Some potential effects of trauma are:[186]

- Difficulties with emotional regulation, focus, and self-control (when in fight or flight mode, the brain loses executive functions that do not serve fight or flight, such as higher learning and problem-solving which contribute substantially to school success);
- Anxious and/or avoidant behaviors;
- Difficulty developing strong, healthy attachment to caregivers and others;
- Distrust of people in authority, who may be seen as threats;
- Over-responding or under-responding to sensory stimuli;
- Misinterpreting motives, facial expressions, and/or body language in others;
- Feeling isolated and/or having difficulty playing well with others;
- Difficulty with problem solving and/or decision-making;
- Chronic or recurrent physical complaints;
- Potential impacts to self-efficacy; and/or
- More likely to engage in high-risk behaviors.

C. Trauma-Informed Child Welfare System

40 Tex. Admin. Code § 702.701(b) defines trauma-informed as:

An individual, program, organization, or system that is trauma-informed fully integrates knowledge about trauma into policies, procedures, and practices by:

- Realizing the widespread impact of trauma, understanding potential paths for recovery, and acknowledging the compounding impact of structural inequities related to culture, history, race, gender, identity, locale, and language;
- Recognizing the signs and symptoms of trauma in clients, families, staff, and others involved with the system;
- Maximizing physical and psychological safety and responding to the impact of structural inequities on individuals and communities;
- Building healthy, trusting relationships that create mutuality among children, families, caregivers, and professionals at an individual and organizational level; and
- Striving to avoid re-traumatization.

D. Statutory Requirements for Trauma-Informed Care Training

1. Training for Attorney Ad Litems

As of September 1, 2021, an attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child welfare case must provide proof that the attorney has completed a training program regarding trauma-informed care and the effect of trauma on children in DFPS conservatorship. Attorneys should complete the training as soon as practicable once placed on the appointment list. Thereafter, an attorney must provide proof each year of compliance with the statute. Tex. Fam. Code § 107.004(b)-(b-3).

An attorney ad litem is responsible for periodically reviewing the child's safety and well-being, including effects of trauma to the child. Tex. Fam. Code § 107.004(d-3). Attorney ad litem training must include information regarding:

- The symptoms of trauma and the impact that trauma has on a child, including how trauma may affect a child's development, emotions, memories, behavior, and decision-making;
- Attachment and how a lack of attachment may affect a child;
- The role that trauma-informed care and services can have in a child's ability to build connections, feel safe, and regulate the child's emotions to help the child build resiliency and overcome the effects of trauma and adverse childhood experiences;
- The importance of screening children for trauma and the risk of mislabeling and inappropriate treatment of children without proper screening, including the risks and benefits associated with the use of psychotropic medication;
- The potential for re-traumatization of children in DFPS Conservatorship; and
- The availability of:
    - research-supported, trauma-informed, non-pharmacological interventions; and
    - trauma-informed advocacy to increase a child's access, while the child is in DFPS conservatorship, to:
        - trauma-informed care; and
        - trauma-informed mental and behavioral health services.

Tex. Fam. Code § 107.004(b-4).

2. DFPS Training

In 2011, the Texas Family Code was amended to require DFPS to include training in trauma-informed programs and services in any training which DFPS provides to foster parents, adoptive parents, kinship caregivers, department caseworkers, and department supervisors. Tex. Fam. Code § 264.015.

DFPS caseworkers are required to complete an initial, in-person training on trauma-informed care during their basic skills development training and an annual refresher course online. Supervisors and mentors are also required to complete a secondary trauma training. The DFPS internal learning management system offers several optional trainings on trauma-related topics.

3. Residential Child Care Contract (RCCC) Requirements

As of September 1, 2015, DFPS required all caregivers and employees who are subject to RCCC for direct care to complete:

- At least eight hours of trauma-informed care training prior to being the only caregiver responsible for children; and
- At least two hours of trauma-informed care annually, and contractors may select their own curriculum/model for the annual refresher training.[187]

Since 2015, DFPS and SSCC organizations are required to institute a comprehensive psychosocial assessment tool to assess all children who enter the foster care system within 45 days. The tool must include a trauma assessment and an interview with at least one individual who knows the child. DFPS utilizes the Child and Adolescent Needs and Strengths (CANS) to assess children and youth placed in substitute care within 30 days. Tex. Fam. Code § 266.012.

4. Related Fields

Since 2013, the Texas Human Resources Code requires trauma-informed care training for certain staff of county and state juvenile facilities, including probation officers, supervision officers, correctional officers, parole officers and court-supervised community-based program personnel. Tex. Hum. Res. Code § 221.002(c-1) and Tex. Hum. Res. Code § 221.0061.

E. Emergency Behavior Interventions

Many trauma-informed care trainings promote specific strategies including self-care approaches, peer-provided services, arts programs, and comfort rooms to enhance healing and to provide a means to avoid the use of restraint and seclusion. Generally, if a trauma response is triggered, allowing time, space, and support can help re-establish self-regulation.

In Texas, the Administrative Code offers the following guidelines on utilizing Emergency Behavior Interventions, such as restraints and seclusion, on children in General Residential Operations and Residential Treatment Centers. These guidelines are summarized in the chart which follows.

1. Restraint/Seclusion May Only Be Used:

- As last resort

  26 Tex. Admin. Code § 748.2455(a)(1)-(2); 26 Tex. Admin. Code § 749.2055(a)(1)-(2); 26 Tex. Admin. Code § 748.2551(a); and 26 Tex. Admin. Code § 749.2151

- After less restrictive and more positive measures have been tried and failed

  26 Tex. Admin. Code § 748.2455(a)(1)-(2); 26 Tex. Admin. Code § 749.2055(a)(1)-(2); 26 Tex. Admin. Code § 748.2551(a); and 26 Tex. Admin. Code § 749.2151(a)

- Only in an emergency situation or to administer intra-muscular medication or other physician prescribed medication

  26 Tex. Admin. Code § 748.2455(a)(2); 26 Tex. Admin. Code § 749.2055(a)(2); 26 Tex. Admin Code § 748.43(22); and 26 Tex. Admin. Code § 749.43(25) (Definition of emergency situation)

- When immediately necessary

  26 Tex. Admin. Code § 748.43(20); 26 Tex. Admin. Code § 749.43(23) (Definition of Emergency Behavioral Intervention (EBI); 26 Tex. Admin Code § 748.43(22); and 26 Tex. Admin. Code § 749.43(25) (Definition of emergency situation)

- To prevent imminent probable death or substantial physical injury

  26 Tex. Admin. Code § 748.43(20); 26 Tex. Admin. Code § 749.43(23) (Definition of EBI); 26 Tex. Admin. Code § 748.43(22); 40 Tex. Admin. Code § 749.43(25) (Definition of emergency situation); 26 Tex. Admin. Code § 748.43(68); and 26 Tex. Admin. Code § 749.43(72) (Definition of substantial physical injury)

- Never as punishment, retaliation, means of compliance, convenience, or treatment

  26 Tex. Admin. Code § 748.2463 and 26 Tex. Admin. Code § 749.2063

2. Types of Restraints That May Be Administered with Restrictions:

- Short personal restraint and personal restraint

  26 Tex. Admin. Code § 748.2451(a)(1)-(2); 26 Tex. Admin. Code § 749.2051(a)(1)-(2); 26 Tex. Admin. Code § 748.43(51), (65); and 26 Tex. Admin. Code § 749.43(52), (69) (Definition of personal restraint and short personal restraint)

- Emergency medication

  26 Tex. Admin. Code § 748.2451(a)(3); 26 Tex. Admin. Code § 749.2051(a)(3); 26 Tex. Admin. Code § 748.2753 (simultaneous use with another EBI); 26 Tex. Admin. Code § 749.2233 (simultaneous use with personal restraint); 26 Tex. Admin. Code § 748.43(21); and 26 Tex. Admin. Code § 749.43(24) (Definition of emergency medication)

- Seclusion

  26 Tex. Admin. Code § 748.2451(a)(4); 26 Tex. Admin. Code § 748.2651; 26 Tex. Admin. Code § 748.43(63); 26 Tex. Admin. Code § 749.43(67) (Definition of seclusion); and 26 Tex. Admin. Code § 749.2051(b)

- Mechanical restraint

  26 Tex. Admin. Code § 748.2451(a)(5) (only in Residential Treatment Centers); 26 Tex. Admin. Code § 748.2701; 26 Tex. Admin. Code § 748.2703; 26 Tex. Admin. Code § 748.2755 (simultaneous use with emergency medication); 26 Tex. Admin. Code § 748.43(39); 26 Tex. Admin. Code § 749.43(40) (Definition of mechanical restraint); and 26 Tex. Admin. Code § 749.2051(b)

3. Restraint/Seclusion May Only Be Administered by:

- A caregiver qualified in emergency behavior interventions

  26 Tex. Admin. Code § 748.2453; 26 Tex. Admin. Code § 749.2053; (Requirements); 26 Tex. Admin. Code § 748.947; 26 Tex. Admin. Code § 749.947 (Annual training requirements) 26 Tex. Admin. Code § 748.863(a); 26 Tex. Admin. Code § 749.863(a) (Pre-service training requirements); 26 Tex. Admin. Code § 748.930; and 26 Tex. Admin. Code § 749.930 (Training hours).

- Whose duties include the direct care, supervision, guidance, and protection of child

  26 Tex. Admin. Code § 748.43(5) and 26 Tex. Admin. Code § 749.43(9)

Figure: 26 Tex. Admin. Code § 748.2553

Type of Emergency Behavior Intervention	The caregiver must release the child if any of the following apply:
(1) Short personal restraint	(A) Immediately when an emergency health situation occurs during the restraint and the caregiver must obtain treatment immediately; or (B) Within one minute, or sooner if the danger is over or the emergency situation no longer exists.
(2) Personal restraint	(A) Immediately when an emergency health situation occurs during the restraint. The caregiver must obtain treatment [for the child] immediately; (B) Within one minute of the implementation of a prone or supine transitional hold; (C) As soon as the child's behavior is no longer a danger to himself or others; (D) As soon as the medication is administered; or (E) When the maximum time allowed for personal restraint is reached.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) Immediately when an emergency health situation occurs during the seclusion and the caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the regulated behaviors188; (D) When the maximum time allowed for seclusion is reached; (E) If the child falls asleep in seclusion, the caregiver must: (i) Unlock the door; (ii) Continuously observe the child until he awakens; and (iii) Evaluate his overall well-being; or (F) If the child is receiving emergency care services: (i) As soon as the child is no longer a danger to himself or others; (ii) Upon the arrival of a medical professional; or (iii) Upon assistance from law enforcement or the fire department.
(5) Mechanical restraint	(A) Immediately when an emergency health situation occurs during the restraint and the caregiver must obtain treatment immediately; (B) As soon as the child's behavior is no longer a danger to himself or others; (C) No later than five minutes after the child begins exhibiting the regulated behaviors; (D) When the maximum time allowed for mechanical restraint is reached; or (E) If the child falls asleep in the mechanical restraint. In this situation, the caregiver must release the child from the restraint and continuously observe the child until he awakens and evaluate him.

4. **A Child Must Be Released from a Restraint/Seclusion:**

- Immediately if an emergency health situation arises

  26 Tex. Admin. Code § 748.2553(1)(A), (2)(A), (4)(A), and (5)(A); 26 Tex. Admin. Code § 749.2153(1)(A), (2)(A); 26 Tex. Admin. Code § 748.2603; and 26 Tex. Admin. Code § 749.2203

- Immediately once the danger is over

  26 Tex. Admin. Code § 748.2553(2)(C) and 26 Tex. Admin. Code § 749.2153(2)(C)

- Once maximum time allowed is reached

  26 Tex. Admin. Code § 748.2553(2)(E); 26 Tex. Admin. Code § 749.2153(2)(E); and 26 Tex. Admin. Code § 748.2553(2)(E), (4)(D)

Figure: 26 Tex. Admin. Code § 748.2801

Types of Emergency Behavior Intervention	**The maximum length of time is:**
(1) Short personal restraint	One minute.
(2) Personal restraint	(A) For a child of any age, 30 minutes; (B) A prone or supine personal restraint transitional hold may not exceed one minute.
(3) Emergency medication	Not applicable.
(4) Seclusion	(A) For a child under nine years old, one hour. (B) For a child nine years old or older, two hours.
(5) Mechanical restraint	(A) For a child under nine years old, 30 minutes. (B) For a child nine years old or older, one hour.

When restraining/secluding, a written order is required:

- By a licensed physician when administering emergency medications

  26 Tex. Admin. Code § 748.2501(3) and 26 Tex. Admin. Code § 749.2101(3)

- By a licensed psychiatrist when administering mechanical restraints

  26 Tex. Admin. Code § 748.2501(5)

- By a licensed psychiatrist, physician, or psychologist when administering successive restraints

  26 Tex. Admin. Code § 748.2501(2); 26 Tex. Admin. Code § 749.2101(2)(A); 26 Tex. Admin. Code § 748.2751(3); and 26 Tex. Admin. Code § 749.2231(a)

- When using restraints simultaneously

  26 Tex. Admin. Code § 748.2501(2); 26 Tex. Admin. Code § 749.2101(2)(A); 26 Tex. Admin. Code § 748.2753(a)(3), (b); 26 Tex. Admin. Code § 749.2233(a) (Emergency medications with personal restraint); and 26 Tex. Admin. Code § 748.2755(a)(3), (b) (Mechanical restraints with emergency medications)

- When maximum length of time allowed is exceeded

  26 Tex. Admin. Code § 748.2805; however, under 26 Tex. Admin. Code § 749.2283, time extension prohibited.

- Also *see*: 26 Tex. Admin. Code § 748.2505; 26 Tex. Admin. Code § 749.2105 (Content of written orders); 26 Tex. Admin. Code § 748.2507; 26 Tex. Admin. Code § 749.2107 (PRN orders); and 26 Tex. Admin. Code § 748.2807 (verbal orders to exceed maximum time allowed)

Figure: 26 Tex. Admin. Code § 748.2501

Type of Emergency Behavior Intervention	**Are written orders required to administer the intervention for a specific child?**	**Who can write orders for the use of the intervention for a specific child?**
(1) Short personal restraint	NO.	Not applicable.
(2) Personal restraint	NO. However, successive restraints, a restraint simultaneous with emergency medication, and/or a restraint that exceeds the maximum time limit all require orders as specified in this subchapter. PRN orders are also permitted under 26 Tex. Admin. Code § 748.2507 of this title (relating to "Under what conditions are PRN orders permitted for a specific child?").	Not applicable.
(3) Emergency medication	YES.	A licensed physician.
(4) Seclusion	YES, except written orders are not required when [professionals] provide emergency care services to the child placed in seclusion.	A licensed psychiatrist, psychologist, or physician.
(5) Mechanical restraint	YES.	A licensed psychiatrist.

A review of the use of emergency behavior intervention for a specific child is triggered when:

- Personally restrained four times in a seven-day period or more than 12 times in 30-day period or same child personally restrained more often than order allows.

  26 Tex. Admin. Code § 748.2901(a)(2) and 26 Tex. Admin. Code § 749.2331(b)(2)

- Emergency medications used three times in a thirty-day period

  26 Tex. Admin. Code § 748.2901(3) and 26 Tex. Admin. Code § 749.2331(3)

- Secluded more than twelve hours or three times in a seven-day period

  26 Tex. Admin. Code § 748.2901(a)(4) (Note that this is not applicable to foster care placements.)

- Mechanically restrained more than three hours or three times in a seven-day period

  26 Tex. Admin. Code § 748.2901(a)(5) (Note that this is not applicable to foster care placements.)

Restraint/Seclusion that is NOT allowed:

- Mechanical restraint may not be simultaneously used with seclusion or pursuant to PRN order

  26 Tex. Admin. Code § 748.2757 and 26 Tex. Admin. Code § 748.2507(5)

- No chemical restraints

  26 Tex. Admin. Code § 748.1119(1); 26 Tex. Admin. Code § 749.1021(1); 26 Tex. Admin. Code § 748.2451(b); 26 Tex. Admin. Code § 749.2051(b); 26 Tex. Admin. Code § 748.43(7); and 26 Tex. Admin. Code § 749.43(12) (Definition)

- Prone or supine restraints except for a transitional hold for 1 minute or less or as a last resort

  26 Tex. Admin. Code § 748.2605(b); 26 Tex. Admin. Code § 749.2205(b)-(c); 26 Tex. Admin. Code § 748.2461(b)(1); 26 Tex. Admin. Code § 749.2061(b)(1); 26 Tex. Admin. Code § 748.2553(2)(B); 26 Tex. Admin. Code § 749.2153(2)(B); 26 Tex. Admin. Code § 748.2801(2)(B); and 26 Tex. Admin. Code § 749.2281(2)(B)

- Foster care placements may never administer chemical restraints, mechanical restraints, or seclusion.

Also *see* other relevant provisions:

- 26 Tex. Admin. Code § 748.1119 and 26 Tex. Admin. Code § 749.2051 (Techniques prohibited)
- 26 Tex. Admin. Code § 748.2303 and 26 Tex. Admin. Code § 749.1953 (May not use or threaten corporal punishment)
- 26 Tex. Admin. Code § 748.2307 and 26 Tex. Admin. Code § 749.1957 (Methods of punishment prohibited)
- 26 Tex. Admin. Code § 748.2605 and 26 Tex. Admin. Code § 749.2205 (Prohibited physical restraint techniques)
- 26 Tex. Admin. Code § 748.2705 (Types of mechanical & other restraint devices prohibited)

F. Trauma Work in Texas

1. Reports

- Trauma Informed Texas[189]
- Trauma-Informed Care Final Report, The Meadows Mental Health Policy Institute for Texas[190]
- Building a Network of Trauma Informed Courts in Texas, Texas Alliance of Child and Family Services [191]

2. Statewide Initiatives

a. The Statewide Collaborative on Trauma-Informed Care

In July 2017, the Children's Commission launched the Statewide Collaborative on Trauma-Informed Care (SCTIC), which aims to elevate trauma-informed policy in the Texas child welfare system by creating a statewide strategy to support system reform, organizational leadership, cross-systems collaboration, and community-led efforts with data-informed initiatives to develop champions, consensus, and funding. The SCTIC began as a planning group with the Children's Commission, Meadows Mental Health Policy Institute (MMHPI), Texas CASA, and the Department of Family and Protective Services and created workgroups to carry out its mission.

b. Behavioral Health Division at DFPS

In Fiscal Year 2019, DFPS formed the Behavioral Health Services Division within CPS, managed as a separate division within the CPS Medical Services Division. The division includes a Behavioral Health Services Division Administrator, three Behavioral Health Services Program Specialists, three Substance Use Program Specialists, one CANS Program Specialist, and a Mental Health Program Specialist Lead. The Medical Services Division is a statewide team that covers medical, physical, and dental issues for CPS with Nurse Consultants and Well-Being Specialists. The Medical Services Division focuses on the services provided through STAR Health. The Behavioral Health Services Division Administrator is located in Lubbock, Texas, and manages the statewide team which focuses on the public behavioral health system. The Behavioral Health Services Program Specialists are located in Houston, Fort Worth, and San Antonio, Texas. The Mental Health Program Specialist Lead is located in Waco, Texas. The CANS Program Specialist helps to manage the eCANS system, in which CANS 3.0 assessments for children in conservatorship are entered, and is located in Rockwall, Texas.

The division includes three Substance Use Program Specialists located in San Antonio, Dallas, and Houston, Texas. These positions complement two additional Substance Use Program Specialists and two Mental Health Program Specialists who report to Child Protective Investigations. These staff work together to provide support, resources, and technical assistance to direct delivery staff in their work with families experiencing substance use disorders through every stage of service.

Both the Medical Services and Behavioral Health Services teams not only support children in conservatorship, but also assist with investigations and Family-Based Safety Services cases when the need arises. Additionally, the teams work with CPS and SSCC staff statewide and are generally located in the regions they support.

In 2023, in accordance with Article II Rider 44 of the 88th Texas Legislature, the Department created the Office of Behavioral Health Strategy to provide coordination and cooperation between DFPS and the myriad of state funders and local providers of pediatric behavioral healthcare as a means to improve access to

services for youth in DFPS conservatorship. The goals of the office are to identify the behavioral health needs of DFPS youth, address barriers to care, improve access to services, and identify and recommend ways to expand the capacity of the children's behavioral health system to meet the unique needs of youth in DFPS conservatorship. This includes recommendations on how to improve access to STAR Health services, address policy and procedural barriers, and improve behavioral health outcomes for DFPS involved children and youth.

c. Cross-Systems Trauma-Informed Care initiative

The Texas Health and Human Services Commission (HHSC) Office of Mental Health Coordination leads a Cross Systems Trauma-informed Care (CSTIC) initiative. The vision of the CSTIC is a coordinated behavioral health system, as envisioned by the Texas Statewide Behavioral Health Strategic Plan, which is healing-centered and trauma-informed in its foundation and unified in its implementation of a person-centered and family-focused approach across Texas. The CSTIC initiative involves working with state agencies across Texas to advance trauma-informed organizations, culture, and services. The collaboration includes representatives from state agencies who receive state funding for behavioral health training or services. As part of the CSTIC initiative, HHSC leads an internal Trauma Transformation Team with representatives from different divisions and departments within the agency who facilitate trauma-informed change within HHSC. Additionally, beginning in 2020, the Cross-Systems Trauma-Informed Care Projects Committee collaborated with The University of Texas at Austin Texas Institute for Excellence in Mental Health to develop free trauma-informed care training modules for professionals seeking high-quality, in-depth training. Over several years, the committee helped develop a multi-session, trauma-informed care training named Trauma-Informed Care Basics.

d. Children's Advocacy Centers (CAC) Practice Model

In 2013, the Texas Legislature raised the standard for mental health services in CACs, requiring that all mental health services be trauma-focused and evidence-based. Additionally, mental health services must be provided by professionals who have a master's degree and are licensed, or who are students in an accredited graduate program and supervised by a licensed mental health professional.

e. Trauma-Informed Care Specialty Network

Created by STAR Health, the Trauma-Informed Care Specialty Network allows its providers to list the training on trauma that they have pursued and helps identify providers who have been trained in trauma-informed care in the STAR Health network for caseworkers, caregivers, and others in the child welfare community. STAR Health also offers TIC trainings to CPA, kinship families, RTC staff, and Emergency Shelter staff.

3. Examples of Community-Level Initiatives

a. North Texas Foster Care Consortium

Established in 2015 to promote collaboration and information sharing among the many stakeholders committed to the well-being of children in the child welfare system, the North Texas Foster Care Consortium facilitates productive partnerships and sponsors informative programming, drawing on the resources of integrated healthcare and other service providers, child advocates, policy groups, child placing agencies, education liaisons, foster parents, court personnel, single source continuum contractors, and DFPS leadership.

b. The Travis County Collaborative for Children (TCCC)

Led by Texas Christian University's (TCU) Karyn Purvis Institute of Child Development (KPICD), the TCCC implemented system-wide changes to the way children in Travis County are cared for during and after their time in state custody. TCCC's goal is to accelerate healing and speed to permanency for children in foster care utilizing KPICD's research-based Trust-Based Relational Intervention (TBRI®) principles and practices.

c. The South Texas Trauma-Informed Care Consortium

The South Texas Trauma Informed Care Consortium is a collaboration between The Children's Shelter, Voices for Children, and City of San Antonio Metro Health Department that brings together community participants who are committed to addressing the impact of trauma.

G. Tips to Improve Decision-Making in Child Welfare Hearings

Consider these important concepts when serving children, youth, and families involved in the child welfare system so that their individualized needs are identified and addressed.[192]

Make sure parties and key witnesses are present and if they are not present, verify whether they were properly served/subpoenaed.

- Review petition out loud with all parties present to ensure it includes allegations specific to each parent. If there is no dangerous act or omission on part of a parent, the child goes home with that parent.
- Review the petition on the record with all parties present to confirm that it includes allegations specific to each parent. If the petition does not allege an act or omission by a parent that poses an immediate danger to the child, the court should consider whether the child can be safely remain with that parent.
- Engage the parents by name and allow parents, youth, and caregivers an opportunity to be heard.
- Inquire if reasonable efforts were made to prevent removal. Assure family decision making tools were utilized
- Confirm that family decision-making tools, such as a Family Team Meeting (FTM), were utilized.
- Ask yourself if the family's background, customs, and traditions have been taken into account with the events and circumstances that led to the removal. Think about whether these aspects of the family actually make a child unsafe or at risk, even if they are different from your own expectations of family life and parenting.
- Ask what is preventing the child from returning home or to a relative TODAY? And consider whether any of the barriers preventing the child from returning home are related to a systemic issue that is making it more difficult for the parent or child to access the support they need.
- Consider the appropriateness of current placement and whether it provides trauma responsive supports and services.
- Allow opportunity during the hearing for discussion and concerns related to systemic issues for parents and/or children involved in the case.

- Close the hearing with a specific question to ensure that the parties understand what happened or allow an opportunity for parents to ask questions about anything they did not understand.

H. National Resources

- NCJFCJ:
  - Trauma-Informed Courtroom Practices: A Bench Card for Judges[193]
  - Ten Things Every Juvenile Court Judge Should Know about Trauma and Delinquency[194]
  - Assessing Trauma for Juvenile and Family Courts[195]
- National Center for State Courts Study of Virtual Child Welfare Hearings Facilitating Trauma-Responsive Virtual Hearings for Dependency Cases[196]
- National Child Traumatic Stress Network (NCTSN) Bench Cards for the Trauma-Informed Judge[197]
- Mental Health America (MHA) Position Statement on Seclusion and Restraint[198]

I. Training Resources

- Children's Commission's Judicial Trauma Institute[199]
- Trauma Informed Texas traumainformedtexas.com[200]
- DFPS Trauma-Informed Care Training[201]
- NCTSN Learning Center[202]
- Superior HealthPlan, the STAR Health Managed Care Organization (MCO), offers online webinars through their parent organization, Centene Foster Care[203]

WELL-BEING

EDUCATION

CHILD AND YOUTH VOICE

EDUCATION

Please *see* the Checklist Section for the Foster Care & Education Checklist.

A. Education Data

National studies show that youth in foster care have poor educational outcomes when compared to their peers in the general population. Youth in foster care are more likely to be suspended or expelled, score lower on statewide standardized tests, repeat a grade, drop out of school, and are less likely to graduate. For more information on these studies, *see* Legal Center for Foster Care & Education, Foster Care & Education Data At A Glance.[204]

Although many children experience educational challenges, students in foster care face additional hurdles, including multiple residential and school changes, missed school days for visits with parents and siblings, court appearances, or therapeutic or other case-related appointments that are only available during school hours, as well as an often chaotic educational, social, emotional, and family history prior to entering foster care.

Children and youth who are of school-age and in foster care may also find themselves lost between child welfare and education – two systems with overlapping, but often inadequate ongoing and effective communication. If Texas judicial, child welfare, and education stakeholders coordinate efforts, especially during school transitions, students in foster care are less likely to experience a damaging loss of records, credits, services, and support systems, each of which can hinder academic success.

B. School Stability

Special Issue: *School is often a source of stability as well as a place for academic and social development of children and youth in foster care. If a child must be removed from their home or change placements, consider the potential impact on the child's education and what efforts can be made to keep the child in the same school, if possible.*

1. Fostering Connections

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act) includes important provisions regarding the educational stability of students in foster care, calling on child welfare agencies to keep the child in the same school any time the child's placement changes, unless it is not in the child's best interest.[205] 42 U.S.C. § 675. If the child cannot remain in the same school, the child must be promptly enrolled in a new school. The legislation also increases the amount of federal funding that may be used to cover education-related transportation costs and requires child welfare agencies to work with Local Education Agencies (LEAs)[206] to ensure educational stability. Provisions in the Fostering Connections Act highlight the importance of improving educational outcomes of children and youth in foster care across the nation.

a. Education Stability Provisions of the Fostering Connections Act

- *Proximity to school* – Each placement decision for a child in foster care must take into account the appropriateness of the child's current educational setting and the proximity to the school in which the child is enrolled. 42 U.S.C. § 675(1)(G)(i).

- *Coordinate with local education agencies* – The child welfare agency must coordinate with LEAs to ensure that the child can remain in the school where the child is enrolled at the time of each placement. 42 U.S.C. § 675(1)(G)(ii)(I). For further detail, *see* U.S. Departments of Education and Health & Human Serv., Admin. for Children & Families (2014).[207]
- *Immediate enrollment and timely transfer of records* – Alternatively, if remaining in that school is not in the child's best interests, the agencies must ensure that the child is immediately enrolled in the new school and that all educational records are provided to the new school. 42 U.S.C. § 675(1)(G)(ii)(II).
- *Transportation* – Foster care maintenance payments may cover reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. 42 U.S.C. § 675(4)(A).

2. Educational Stability Plan

To meet the requirements of the Fostering Connections Act regarding education stability, DFPS must develop, in accordance with 42 U.S.C. § 675, a plan to ensure the educational stability for children in foster care. Tex. Fam. Code § 264.1072.

In recognition of the need for agency coordination, DFPS must collaborate with TEA to develop policies and procedures to ensure that the needs of children in foster care are met in every school district. Tex. Fam. Code § 266.008(d).

3. Every Student Succeeds Act

In December 2015, the most recent reauthorization of the Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA), became law.[208] 20 U.S.C. § 6301 et seq.. ESSA also mirrors in the education law many of the provisions affecting students in foster care included in the Fostering Connections Act.

a. Education Stability Provisions of the Every Student Succeeds Act

- *Best interest determination* – A child in foster care is entitled to enroll or remain in their school of origin unless a determination is made that it is not in the child's best interest to attend the school of origin. The decision must be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. 20 U.S.C. § 6311(g)(1)(E)(i). The school of origin is the school in which a child is enrolled at the time of placement in foster care. If a child's foster care placement changes, the school of origin is then considered the school in which the child is enrolled at the time of the placement change. For further detail, *see* Ensuring Educational Stability and Success for Students in Foster Care Non-Regulatory Guidance (2024)..[209]
- *Streamlined transitions* – When a determination is made that it is not in the child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment. 20 U.S.C. § 6311(g)(1)(E)(ii). The enrolling school must immediately contact the school last attended by the child to obtain relevant academic and other records. 20 U.S.C. § 6311(g)(1)(E)(iii).
- *Liaisons at the state and local education agencies* – ESSA requires each State Educational Agency (SEA) to identify a point of contact for coordinating with the state child welfare agency

regarding the education of children in foster care.. 20 U.S.C. § 6311(g)(1)(E)(iv). LEAs must also designate a point of contact if the corresponding child welfare agency provides written notice that it has designated an employee to serve as a point of contact for the LEA. 20 U.S.C. § 6312(c)(5)(A).

- *Transportation* – LEAs must ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner and in accordance with 42 U.S.C. 675(4)(A). LEAs must also ensure that, if there are additional costs incurred in providing transportation to maintain children in foster care in their schools of origin, the local educational agency will provide transportation to the school of origin if:
  - the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation;
  - the LEA agrees to pay for the cost of such transportation; or
  - the LEA and the local child welfare agency agree to share the cost of such transportation. 20 U.S.C. § 6312(c)(5)(B).

4. School Placement – Texas Law

A student is entitled to remain in the school in which they were enrolled at the time when they entered the conservatorship of DFPS or at the time of any subsequent placement change, when placed at a residence outside the attendance area of the school. A student is entitled to attend school without payment of tuition until they complete the highest grade offered at the school at the time of their enrollment, even if the student leaves DFPS conservatorship. Tex. Educ. Code § 25.001(g)-(g-1). *See* School of Origin Determinations for Students in Foster Care for additional guidance.[210]

Special Issue: *Although Tex. Educ. Code § 25.001(g) and (g-1) allow a child to remain in their school at the time of placement into foster care, it does not address related transportation issues, including costs of transportation and the person responsible for providing it. Transportation plans required under ESSA may create opportunities for some school districts to work with the caregiver to find a solution to the transportation challenge.*

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5. McKinney-Vento Homeless Assistance Act

Previously, a child who is "awaiting foster care placement" met the federal McKinney-Vento Homeless Assistance Act ("McKinney-Vento") definition of homeless and the child was entitled to attend the school that the child attended when permanently housed or the school in which the child was last enrolled, with transportation and other services provided by the district. 42 U.S.C. § 11431 et seq.[211] ESSA amended McKinney-Vento and effective December 10, 2016, the "awaiting foster care placement" was removed from the definition of homelessness but continues to include children and youth in certain situations. P.L. 114–95. For more information on this change, *see* guidance from the Department of Education, Education for Homeless Children and Youths Program Non-Regulatory Guidance.[212] Children without placement, sometimes referred to as children in "child watch" or "CWOP"[213] are in a living situation that may temporarily meet the McKinney-Vento definition of homelessness. In these scenarios, students in foster care may be staying in offices, churches, dorms, or hotels/motels under the supervision of DFPS on a temporary basis while DFPS is in the process of identifying an appropriate setting where the child can live. Additionally, there are scenarios when a student in DFPS managing conservatorship returns to live with their biological family in a living situation that may be McKinney-Vento eligible.

C. Roles and Responsibilities Related to Education

1. Designation of Education Decision-Maker

Tex. Fam. Code § 263.004 requires DFPS to provide notice to the court and others of the person holding education decision-making authority for a child or youth in DFPS conservatorship. Generally, when appointed temporary or permanent managing conservator, DFPS is given the rights and duties of a non-parent managing conservator pursuant to Tex. Fam. Code § 153.371, which includes the right to make decisions regarding the child's education. Tex. Fam. Code § 153.371(10).

Unless the court order limits the rights and duties of DFPS under Tex. Fam. Code § 153.371(10) to make decisions regarding the child's education, DFPS must file with the court the name and contact information for each person who has been:

- Designated by DFPS to make educational decisions on behalf of the child; and
- Assigned to serve as the child's surrogate parent in accordance with 20 U.S.C. § 1415(b) and Tex. Educ. Code § 29.001(10), for purposes of decision-making regarding special education services, if applicable. Tex. Fam. Code § 263.004(a).

Not later than the fifth day after the date of an adversary hearing held under Tex. Fam. Code § 262.201 is concluded, DFPS must file the information required by Tex. Fam. Code § 263.004(a) with the court and provide a copy to the school the child attends. Tex. Fam. Code § 263.004(b).

If a person other than a person identified under Tex. Fam. Code § 263.004(a) is designated to make educational decisions or assigned to serve as a surrogate parent, DFPS must include the updated information in a permanency progress report filed under Tex. Fam. Code § 263.303 or Tex. Fam. Code § 263.502. The updated information must be provided to the school which the child attends not later than the fifth day after the date of the designation or assignment. Tex. Fam. Code § 263.004(c).

In order to comply with this mandate, DFPS created Form 2085-E Designation of Education Decision-Maker,[214] to be filled out by the caseworker and provided to the school by the child's caregiver.

Special Issue: *Every student in DFPS conservatorship will have an education decision-maker. Only certain students in foster care who are eligible to receive special education services will also have a surrogate parent appointed as outlined below.*

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2. Court Hearings

During each permanency hearing before and after final order, the Court must review the permanency progress report to determine whether an education decision-maker for the child has been identified, the child's education needs and goals have been identified and addressed, and if there have been major changes in the child's school performance or whether there have been serious disciplinary issues. Tex. Fam. Code § 263.306(a-1)(5)(G); Tex. Fam. Code § 263.5031(a)(4)(J).

Special Issue: *In light of DFPS' duty to notify the court of the name and contact information of the education decision-maker, if DFPS does not include the required information regarding the education decision-maker in the permanency progress report, the court might inquire on the record about the identity of the education decision-maker for the child during the Permanency Hearings Before or After Final Order.*

Upon request of a person providing substitute care for a child who is in the managing conservatorship of DFPS, DFPS shall allow the person to provide the child with an education in the home setting unless:

- The right of DFPS to allow the education of the child in a home setting has been specifically limited by court order;
- A court at a hearing conducted under Tex. Fam. Code Chapter 263 finds, on good cause shown through evidence presented by DFPS in accordance with the applicable provisions in the CPS Policy Handbook, that education in the home setting is not in the best interest of the child; or
- DFPS determines that federal law requires another school setting. Tex. Fam. Code § 263.0045.

3. Notice of Significant Education Events

School districts, campuses, and open-enrollment charter schools must provide notice to the child's educational decision-maker and caseworker regarding events that may significantly impact the education of a child, including:

- Requests or referrals for an evaluation under Section 504, Rehabilitation Act of 1973, 29 U.S.C. § 794, or special education under Tex. Educ. Code § 29.003;
- Admission, Review, and Dismissal (ARD) committee meetings;
- Manifestation determination reviews required by Tex. Educ. Code § 37.004(b);
- Any disciplinary actions under Tex. Educ. Code Chapter 37 for which parental notice is required;
- Citations issued for Class C misdemeanor offenses on school property or at school-sponsored activities;
- Reports of restraint and seclusion, including information about the restraint including the circumstances and details surrounding its use required by Tex. Educ. Code § 37.0021;
- Use of corporal punishment as provided by Tex. Educ. Code § 37.0011; and
- Appointment of a surrogate parent for the child under Tex. Educ. Code § 29.0151.

Tex. Educ. Code § 25.007(b)(10).

Special Issue: *State law requires schools to notify caseworkers of the enumerated major education events, including the issuance of a Class C misdemeanor citation at school. Please note, however, that since 2013, ticketing is no longer permitted for school-related misbehavior constituting a Class C misdemeanor.*

DFPS must provide notice of significant events, including a major change in school performance (such as any failing grade in a reporting period that jeopardizes the student's advancement to the next grade level) or a serious disciplinary event at school not later than 48 hours after DFPS becomes aware of a significant event affecting a child in the conservatorship of DFPS. This notice must be provided to:

- The child's parent and the parent's attorney, if represented by an attorney;
- An attorney ad litem appointed under Tex. Fam. Code Chapter 107;

- A guardian ad litem appointed under Tex. Fam. Code Chapter 107;
- A volunteer advocate appointed for the child under Tex. Fam. Code Chapter 107;
- The licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee;
- A foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and
- Any other person determined by the court to have an interest in the child's welfare. Tex. Fam. Code § 264.018(a)(5)(D), (f); 40 Tex. Admin. Code § 700.1355(a)(4).

4. Education-Related Requirements for AALs and GALs

Before each scheduled hearing under Tex. Fam. Code Chapter 263, an attorney ad litem appointed to represent a child in the managing conservatorship of DFPS must determine whether the child's educational needs and goals have been identified and addressed. Tex. Fam. Code § 107.004(d-2).

A guardian ad litem appointed to represent a child in the managing conservatorship of DFPS shall determine whether the child's educational needs and goals have been identified and addressed before each scheduled hearing under Tex. Fam. Code Chapter 263. Tex. Fam. Code § 107.002(i). Guardians ad litem are required by law to interview the child's educators. Tex. Fam. Code § 107.002(b).

5. Decisions Related to Special Education

A foster parent for a child may act as a parent for the child, as authorized under 20 U.S.C. § 1415(b), if:

- The rights and duties of DFPS to make decisions regarding the child's education under Tex. Fam. Code § 153.371 have not been limited by court order; and
- The foster parent agrees to participate in making special education decisions on the child's behalf and complete a training program that complies with TEA minimum standards before the next ARD meeting but no later than 90 days after assuming the role. Tex. Fam. Code § 263.0025(a-1), Tex. Educ. Code § 29.015 (a), and Tex. Educ. Code § 29.015(b).

A school district may not require a foster parent to retake a training program to continue to serve as a child's parent or to serve as the surrogate parent for another child if the foster parent has completed a training provided by DFPS, a school district, an Education Service Center, or any other entity that receives federal funds to provide special education training to parents. Tex. Educ. Code § 29.015(b-1).

Special Issue: *A foster parent may serve as parent for the purposes of making special education-related decisions from the day the child is placed in their home and appointment of a surrogate parent is not necessary unless the foster parent is unable or unwilling to serve in that role.*

Under the Individuals with Disabilities Education Act (IDEA), if a "parent" cannot be identified or located the school district must assign an individual to act as a surrogate for the parent for a child with a disability in foster care who is eligible to receive special education services. 20 U.S.C. § 1415(b)(2)(A). The school district has 30 days to appoint a surrogate parent upon determining the need for a surrogate parent. 20 U.S.C. § 1415(b)(2)(B).

To ensure the educational rights of a child are protected in the special education process, the court may appoint a surrogate parent for the child if:

- The child's school district is unable to identify or locate a parent for the child; or
- The foster parent of the child is unwilling or unable to serve as a parent for the purposes of Tex. Fam. Code Chapter 263, Subchapter A.

Tex. Fam. Code § 263.0025(b).

Special Issue: *School districts have a mandatory duty to appoint a surrogate parent if a parent cannot be identified or located. Courts have permissive authority to appoint a surrogate parent.*

Except as provided by Tex. Fam. Code § 263.0025(d), the court may appoint a person to serve as a child's surrogate parent if the person is willing to serve in that capacity and meets the requirements of 20 U.S.C. § 1415(b). Tex. Fam. Code § 263.0025(c). Employees of DFPS, TEA, a school or school district, or any other agency involved in the education or care of the child cannot serve as surrogate parents, including employees of SSCCs. Tex. Fam. Code § 263.0025(d).

The court may appoint a child's guardian ad litem or court-certified volunteer advocate, as provided by Tex. Fam. Code § 107.031(c), as the child's surrogate parent. Tex. Fam. Code § 263.0025(e). To act as a surrogate parent for the child, the volunteer advocate must complete a training program for surrogate parents that complies with minimum standards established by TEA rule within the time specified by Tex. Educ. Code § 29.015(b). Tex. Fam. Code § 107.031(c)(4); 19 Tex. Admin. Code § 89.1047.

In appointing a person to serve as the surrogate parent for a child, the court must consider the person's ability to meet the following qualifications:

- Be willing to serve in that capacity;
- Exercise independent judgment in pursuing the child 's interests;
- Ensure that the child 's due process rights under applicable state and federal laws are not violated;
- Complete a training program that complies with minimum standards established by TEA rule within the time specified in Tex. Educ. Code § 29.015(b);
- Visit the child and the school where the child is enrolled;
- Review the child 's educational records;
- Consult with any person involved in the child's education, including the child's teachers, caseworkers, court-appointed volunteers, guardian ad litem, attorney ad litem, foster parent and caregiver; and
- Attend meetings of the child's ARD committee.

Tex. Educ. Code § 29.0151(d); Tex. Fam. Code § 263.0025(f).

Special Issue: *Consider appointing a surrogate parent for each youth placed in a residential facility who receives special education services.*

As required by Tex. Educ. Code § 29.001(c)(6)(G), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

- The identification of a student with a disability;
- The collection of evaluation and re-evaluation data relating to a student with a disability;
- The ARD committee process;
- The development of an Individualized Education Program (IEP), including the consideration of transition services for a student who is at least 14 years of age;
- The determination of least restrictive environment;
- The implementation of an IEP;
- The procedural rights and safeguards available under IDEA; and
- Where to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities; and
- The duties and responsibilities of surrogate parents as required under Tex. Educ. Code § 29.0151(d).

19 Tex. Admin. Code § 89.1047(c)(1).

If a court appoints a surrogate parent for a child with a disability under Tex. Fam. Code § 263.0025 and the school district determines that the surrogate parent is not properly performing the duties listed under Tex. Educ. Code § 29.0151(d), the district shall consult with DFPS regarding whether another person should be appointed to serve as the surrogate parent for the child. Tex. Educ. Code § 29.0151(f).

On receiving notice from a school district under Tex. Educ. Code § 29.0151(f), if DFPS agrees with the district that the appointed surrogate parent is unable or unwilling to properly perform the duties required under Tex. Educ. Code § 29.0151:

- DFPS must promptly notify the court of the agreement; and
- As soon as practicable after receiving notice under Tex. Educ. Code § 29.0151(g)(1), the court must:
  - review the appointment; and
  - enter any orders necessary to ensure the child has a surrogate parent who performs the required duties.

Tex. Educ. Code § 29.0151(g).

For more information on special education, *see* Section F of this chapter *Special Education and Section 504*.

D. School Transitions

1. Foster Care Liaison in Each Texas School District and at the Texas Education Agency

Texas supports school stability and successful transitions for students in foster care through a network of state, regional, and local partners, including:

- **Local Education Agency (LEA) Foster Care Liaisons**, who are required in each school district and open-enrollment charter school to assist with enrollment, records transfer, and educational supports for students in DFPS conservatorship. Tex. Educ. Code § 33.904.

- **Education Service Center (ESC) Foster Care Champions**, who provide regional training, technical assistance, and support to local education agencies.
- **DFPS Regional Education Specialists**, who collaborate with schools, caregivers, caseworkers, and other stakeholders to address educational needs and promote school stability.
- **Cross-system collaboration** among schools, DFPS, courts, attorneys, caregivers, and community partners to support educational continuity and student success.

Texas Education Agency (TEA) must designate at least one agency employee to act as a liaison regarding educational issues related to students in DFPS conservatorship. Tex. Educ. Code § 25.007(b)(14).

TEA's Commissioner's Rules Concerning Transition Assistance for Highly Mobile Students Who Are Homeless or in Substitute Care (19 Tex. Admin. Code Chapter 89, Subchapter FF) require LEAs to implement transition supports for students experiencing school moves. Among other requirements, school systems must:

- Convene an enrollment conference with a student experiencing homelessness or in foster care within the first two weeks of enrollment, or as soon as feasible.
- Provide a welcome packet to students experiencing homelessness or in foster care within the first two weeks of enrollment.

TEA has also developed implementation resources, including its Transition Assistance Toolkit.

For more information, *see* ESSA Designated Points of Contact for Students in Foster Care, and TEA's Foster Care and Student Success Webpage.

For more information, *see ESSA Designated Points of Contact for Students in Foster Care*.[215]

2. Enrollment

If DFPS takes possession of a child under Tex. Fam. Code Chapter 262 during the school year, DFPS shall ensure that the child returns to school not later than the third school day after the date an order is rendered providing for possession of the child by DFPS, unless the child has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible. Tex. Fam. Code § 264.115(a).

Special Issue: *DFPS policy requires enrollment within two days of the initial removal or placement change. See the CPS Policy Handbook § 13300.*

A child may be enrolled by any person showing evidence of legal responsibility of the child. Tex. Educ. Code § 25.001(j). A child in foster care may attend a school free of charge, whether the school is their school of origin or is in the district where the foster parent resides. Tex. Educ. Code § 25.001(g), (g-1), (f). A school district shall accept a child for enrollment in a public school without the documentation required by Tex. Educ. Code § 25.002(a) if DFPS has taken possession of the child under Tex. Fam. Code Chapter 262. DFPS must ensure that the documentation is furnished to the school district not later than the 30th day after the date the child is enrolled in the school. Tex. Educ. Code § 25.002(g).

A child may be provisionally admitted to an elementary or secondary school if the child has begun the required immunizations and if the child continues to receive the necessary immunizations as rapidly as is medically feasible. Tex. Educ. Code § 38.001(e).

Special Issue: *In general, DFPS delegates day-to-day decision-making to the child's caregiver, including responsibility for school enrollment. Upon enrollment in school, a caregiver should present the applicable DFPS 2085 Placement Authorization and Education Decision-Maker forms to ensure the school recognizes the caregiver's legal authority to enroll the child. These documents also serve to notify the school that the child is in foster care and to provide the name of the education decision-maker and the surrogate parent, if applicable. For more information on acceptable forms for school enrollment, see PEIMS Coding Supplemental Guidance.*[216]

3. Records Transfer

TEA must assist in the transition of students in substitute care from one school to another by ensuring that school records for a student in substitute care are transferred to the student's new school not later than the 10th working day after the date the student begins enrollment at the school. Tex. Educ. Code § 25.007(b)(1). For more information on school withdrawals and records transfers, *see* Education Best Interest Decision-Making and Coordination.[217]

Special Issue: *Districts failing to provide the required information within 10 calendar days of a written request by the receiving school district may be reported to the Texas Records Exchange Help Desk: (512) 463-7246 or by email to TREx@tea.texas.gov.*

4. Education Passport

Each child in DFPS conservatorship must have an education passport. The education passport contains educational records of the child, including the names and addresses of educational providers, the child's grade-level performance, and any other important educational information. Tex. Fam. Code § 266.008(a). DFPS shall maintain the passport as part of DFPS records for the child as long as the child remains in foster care. Tex. Fam. Code § 266.008(b). DFPS has a duty to make the education passport available to any person authorized by law to make educational decisions for the child in foster care. Tex. Fam. Code § 266.008(c)(1).

Special Issue: *For more information about the education passport, referred to as the Education Portfolio or "green binder," see:*

CPS Policy Handbook § 13400
Education for Children Resource Guide

5. Confidentiality of Education Records

The federal Family Educational Rights and Privacy Act of 1974 (FERPA) allows for release of student records between school districts without parental consent in compliance with a court order upon enrollment in the receiving school. 20 U.S.C. § 1232g.[218]

The Uninterrupted Scholars Act of 2013 amended FERPA to permit caseworkers and other child welfare or tribal organization representatives to access personally identifiable student information without parental

consent and allows for disclosure of student records pursuant to a judicial order related to a child welfare proceeding without further notice to the parent. 20 U.S.C. § 1232g (b)(2)(B).[219]

The Uninterrupted Scholars Act provisions also apply to special education-related records for children ages birth to 21 with disabilities under IDEA Parts B and C.[220]

6. Credit Transfer and Recovery

In recognition of the challenges facing students in foster care, TEA is now required to develop policies and procedures to address:

- Awarding credit (including partial credit if appropriate) for course work, including electives, completed by a student in substitute care while enrolled at another school. Tex. Educ. Code § 25.007(b)(3);
- Placing a student in comparable courses or educational programs to those offered at a previous school to the extent comparable courses and programs are available. Tex. Educ. Code § 25.007(b)(4);
- Allowing a student in substitute care who was previously enrolled in a course required for graduation the opportunity, to the extent practicable, to complete the course at no cost to the student before the beginning of the next school year. Tex. Educ. Code § 25.007(b)(11); and
- Ensuring that a student in substitute care who is not likely to receive a high school diploma before the 5th school year following the student's enrollment in grade 9, as determined by the district, has the student's course credit accrual and personal graduation plan reviewed. Tex. Educ. Code § 25.007(b)(12).

School districts must make credit by examination available, at any point during the school year, to students in foster care. 19 Tex. Admin. Code § 74.24(a)(2). Credits earned towards state graduation requirements in an accredited school district are transferable and must be accepted by another school district in the state. 19 Tex. Admin. Code § 74.26(a)(1). A school district shall award credit proportionately to a student in substitute care who successfully completes only one semester of a two-semester course. 19 Tex. Admin. Code § 74.26(e).

E. Attendance and School Experience

1. School Year

A child who is required to attend school under Tex. Educ. Code § 25.085 shall attend school each school day for the entire period the program of instruction is provided. Tex. Educ. Code § 25.085(a). Unless specifically exempted by Tex. Educ. Code § 25.086, a child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade and who has not yet reached the child's 19th birthday, shall attend school. Tex. Educ. Code § 25.085(b). Upon enrollment in prekindergarten or kindergarten, attendance is also compulsory. Tex. Educ. Code § 25.085(c).

Special Issue: *When considering the timing of a school move, courts, DFPS, and school staff should be aware of both the sending and receiving local school district calendars, including the administration schedule for the State of Texas Assessment of Academic Readiness (STAAR) and other standardized tests, which can be found on the TEA website and on local school district websites. It is most helpful to*

children and youth in care, and least disruptive to schools, to avoid making a school change during a testing period.

2. Minimum Attendance for a Class Credit or a Final Grade

A student in any grade level from kindergarten through grade 12 may not be given credit or a final grade for a class unless the student is in attendance for at least 90% of the days the class is offered. Tex. Educ. Code § 25.092(a). A student who is in attendance for at least 75% but less than 90% of the days a class is offered may be given credit or a final grade for the class if the student completes a plan approved by the school's principal that provides for the student to meet the instructional requirements of the class. Tex. Educ. Code § 25.092(a-1). Tex. Educ. Code § 25.092(a) does not apply to a student who receives credit by examination for a class as provided by Tex. Educ. Code § 28.023. Tex. Educ. Code § 25.092(a-2).

3. Excused Absences for Court-Ordered Activities

A school district shall excuse a student in DFPS conservatorship from attending school, including travel, if the student is participating, as determined and documented by DFPS, in an activity which is:

- Ordered by a court under Tex. Fam. Code Chapter 262 or Chapter 263, provided that it is not practicable to schedule the participation outside of school hours; or
- Required under a service plan under Tex. Fam. Code Chapter 263, Subchapter B.

Tex. Educ. Code § 25.087(b)(1)(F).

A student whose absence is excused under Tex. Educ. Code § 25.087(b) may not be penalized for that absence, shall be counted as if the student attended school for purposes of calculating the average daily attendance of students in the school district, and must be allowed a reasonable time to make up schoolwork missed on those days. Tex. Educ. Code § 25.087(d).

Special Issue: *If feasible, judges may consider scheduling court hearings for school-aged children outside of school hours or allowing for the child's participation via video conferencing such as Zoom. Additionally, to ensure a child does not incur unnecessary unexcused absences, it is helpful to clarify in the court order which appointments and activities require the child's presence or involvement.*

4. Truancy

Texas law requires school districts to implement truancy prevention measures before referring a student to truancy court. If a student fails to attend school without excuse on three or more days or parts of days within a four-week period, the district must initiate truancy prevention measures designed to address the underlying causes of the student's attendance concerns. These measures may include behavior improvement plans, counseling, mentoring, mediation, community-based services, or other interventions. Tex. Educ. Code § 25.0915(a-1), (a-4).

If a student fails to attend school without excuse on 10 or more days or parts of days within a six-month period in the same school year, the school district generally must refer the student to a truancy court within 10 school days of the student's 10th absence for truant conduct under Tex. Fam. Code § 65.003(a). Tex. Educ. Code § 25.0951(a). Truant conduct may be prosecuted only as a civil case in a truancy court. Tex. Fam. Code § 65.003(b).

A school district may delay or decline a referral if it is implementing truancy prevention measures and determines those measures are succeeding and that delaying or foregoing referral is in the student's best interest. Tex. Educ. Code § 25.0951(d).

If a student fails to attend school without excuse as specified by Tex. Educ. Code § 25.0951(a), the district may file a complaint against the student's parent for Parent Contributing to Nonattendance under Tex. Educ. Code § 25.093 if the district provides evidence of the parent's criminal negligence. Tex. Educ. Code § 25.0951(b).

It is an affirmative defense to an allegation of truant conduct if the absences have been excused by a school official or the court, were involuntary, or resulted from the child's voluntary absence from home because of abuse as defined by Tex. Fam. Code § 261.001. Tex. Fam. Code § 65.003(c).

5. Students in Foster Care

School attendance is mandatory for students in foster care, as it is for all children subject to Texas compulsory attendance requirements under Tex. Educ. Code § 25.085. Students in foster care may be required to attend court-ordered, medical, therapeutic, placement-related, or case-management appointments that occur during school hours. Caregivers should make reasonable efforts to schedule appointments outside of school hours when possible. When that is not possible, caregivers and school personnel should work collaboratively to minimize disruptions to instruction, secure missed assignments, and support the student's continued academic progress.

When attendance concerns arise, school personnel should contact the caregiver promptly. If attendance concerns persist or the caregiver is unresponsive, school personnel should notify the student's DFPS caseworker, SSCC case manager, or other appropriate child welfare representative as early as possible. Early communication may help address barriers to attendance and prevent escalation of truancy concerns.

School districts should recognize that chronic absenteeism among students in foster care may be connected to trauma, placement changes, transportation challenges, behavioral health needs, or other foster care-related circumstances. Attendance concerns should be addressed through a student-centered and trauma-informed approach whenever possible.

Importantly, a school district shall offer additional counseling to a student and may not refer the student to truancy court if the district determines that the student's truancy is the result of being in the state foster care program. Tex. Educ. Code § 25.0915(a-3).

Attendance data, including absences and tardiness, should be reviewed during student-focused meetings to identify barriers to attendance and appropriate interventions.

For general attendance requirements, *see* the current TEA Student Attendance Accounting Handbook. For additional information on truancy proceedings, visit the Texas Judicial Branch Truancy Reform Training Materials webpage.

6. Extracurricular Activities

A child in foster care may attend a school free of charge in the district where the foster parent or relative caregiver resides, and a durational residence requirement may not be used to prohibit that child from fully participating in any activity sponsored by the school district. Tex. Educ. Code § 25.001(f). The Office of the Attorney General of Texas interpreted this language to mean that the University Interscholastic League (UIL) cannot apply any durational residency requirement to children placed in foster care, regardless of whether the placement is the child's first placement or a move from one placement to another.[221]

7. Discipline

If a school district permits the use of corporal punishment as a method of student discipline, the person having lawful control of a student must provide a signed, written statement each school year to prohibit corporal punishment for that student. Tex. Educ. Code § 37.0011(c). It is DFPS' policy to prohibit the use of corporal punishment for all children in foster care and caregivers are directed to "opt out" of school policy on corporal punishment in writing on an annual basis.[222]

Schools are required to designate a campus administrator to serve as a campus behavior coordinator. Tex. Educ. Code § 37.0012. In addition to other duties, the campus behavior coordinator must promptly notify the student's parent or guardian if the student is placed into in-school or out-of-school suspension, placed in a disciplinary alternative education program, expelled, or placed in a juvenile justice alternative education program or is taken into custody by a law enforcement officer. Tex. Educ. Code § 37.0012(d). A campus behavior coordinator must:

- Promptly contact the parent or guardian by telephone or in person; and
- Make a good faith effort to provide written notice of the disciplinary action to the student, on the day the action is taken, for delivery to the student's parent or guardian. Tex. Educ. Code § 37.0012(d).

Tex. Educ. Code § 37.0012 also allows for the principal or other designee to provide notice if the campus behavior coordinator is unable or unavailable to promptly provide notice. Tex. Educ. Code § 37.0012(f). Written notice may be mailed if the child's parent or guardian is not reached by the end of the first business day after the disciplinary action is taken. Tex. Educ. Code § 37.0012(e).

Each school district must adopt a student code of conduct that specifies consideration will be given as a factor in each decision concerning suspension, removal to a disciplinary alternative education program, expulsion, or placement in a juvenile justice alternative education program, regardless of whether the decision concerns a mandatory or discretionary action, to:

- Self-defense;
- Intent or lack of intent at the time the student engaged in the conduct;
- A student's disciplinary history;
- A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct;
- A student's status in the conservatorship of DFPS; or
- A student's status as a student who is homeless. Tex. Educ. Code § 37.001(a)(4).

With limited exceptions for serious offenses, a student who is enrolled in a grade level below grade three may not be placed in out-of-school suspension. Tex. Educ. Code § 37.005(c). The school district must provide a student placed in in-school or out-of-school suspension an alternative means of receiving all coursework, including at least one option that does not require the internet. Tex. Educ. Code § 37.005(e).

8. High School Graduation

Graduation planning includes review of a Personal Graduation Plan (PGP) for some junior high or middle school students and all high school students. Tex. Educ. Code § 28.0212 and Tex. Educ. Code § 28.02121. For further information on the graduation programs, *see* the TEA Graduation Toolkit.[223]

Special Issue: *A PGP provides each student with a roadmap for academic progress, graduation, and college and career readiness. A PGP is a helpful tool to keep students in foster care on track for graduation, especially when their progress is disrupted by school changes.*

If a student in the 11th or 12th grade fails to comply with the end-of-course assessment instrument performance requirements under Tex. Educ. Code § 39.025 for not more than two courses, the school district that the student attends shall establish an individual graduation committee at the end of or after the student's 11th grade year to determine whether the student may qualify to graduate. Tex. Educ. Code § 28.0258.[224]

If an 11th or 12th grade student in the conservatorship of DFPS transfers to a different school district and is ineligible to graduate from the district to which the student transfers, the district from which the student transferred shall award a diploma at the student's request, if the student meets the graduation requirements of the district from which the student transferred. Tex. Educ. Code § 28.025(i).

F. Special Education and Section 504

1. The Individuals with Disabilities Education Act

Under the Individuals with Disabilities Education Act (IDEA), all children with disabilities between the ages of 3 and 21 are entitled to a Free, Appropriate Public Education (FAPE). 20 U.S.C. § 1412(a)(1)(A). A child qualifies for special education if they have an identified disability and that disability adversely affects the child's performance in school. 20 U.S.C. § 1400 et seq. and Tex. Educ. Code § 29.003.

2. Section 504

Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal law aimed at protecting individuals from discrimination on the basis of a physical or mental disability that substantially impairs a major life activity.[225] 29 U.S.C. § 794.

Special Issue: *Some children may qualify for Section 504 accommodations to "level the playing field" without changing what the child is expected to master. Examples of Section 504 accommodations could include additional time to complete an exam or preferred seating in the classroom.*

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3. Referral and Consent

School districts have a "Child Find" duty to identify, locate, and evaluate children with disabilities to determine which children are currently receiving needed special education and related services. 20 U.S.C. § 1412(a)(3)(A).

If a parent or legal guardian makes a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the district shall, not later than the 15th school day after the date the district receives the request:

- Provide an opportunity for the parent or legal guardian to give written consent for the evaluation; or
- Refuse to provide the evaluation and provide the parent or legal guardian with notice of procedural safeguards under 20 U.S.C. § 1415(b) and Tex. Educ. Code § 29.004(c).

If the rights of a parent have been terminated or subrogated by court order or the school has made reasonable efforts and cannot locate the parent, an initial evaluation may be initiated without parental consent. 20 U.S.C. § 1414(a)(1)(D)(iii).

The school has 45 days to complete a full individual and initial evaluation of the student for special education services. Tex. Educ. Code § 29.004(a)(1).

4. Individualized Education Program

Children who receive special education services will have an IEP. 20 U.S.C. § 1414(d). Members of the child's IEP team, known in Texas as the ARD committee, participate in the formulation and approval of the IEP.[226] Tex. Educ. Code § 29.005. A student's ARD committee must meet at least annually to review a student's Behavioral Intervention Plan (BIP) to account for changes in circumstances. Tex. Educ. Code § 29.005(h).

It is the responsibility of the school district to ensure that the ARD Committee includes:

- The parents of a child with a disability;
- Not less than one regular education teacher of such child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher, or where appropriate, not less than one special education provider of such child;
- A representative of the local educational agency who:
  - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - is knowledgeable about the general education curriculum; and
  - is knowledgeable about the availability of resources of the local educational agency;
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 20 U.S.C. § 1414(d)(1)(B)(ii)-(vi);
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

- Whenever appropriate, the child with a disability. 20 U.S.C. § 1414(d)(1)(B).

5. Special Education Transitions

A receiving school must accept a referral for special education services made for a student in substitute care by a school previously attended by the student. Tex. Educ. Code § 25.007(b)(9). If there is an existing IEP for the child, the receiving school must provide services comparable to those described in the previous IEP, until it either adopts the previous IEP or develops a new IEP. 20 U.S.C. § 1414(d)(2)(C)(i)(I) and Tex. Educ. Code § 25.007(b)(9).

6. Manifestation Determination Review

The right to FAPE includes students who have been suspended or expelled from school. 20 U.S.C. § 1412(a)(1)(A). Members of the ARD Committee must conduct a manifestation determination review within 10 school days of any decision to change the educational placement, including suspension, removal, or expulsion, of a student with a disability due to a violation of the student code of conduct to determine if:

- The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- The conduct in question was the direct result of the local educational agency's failure to implement the IEP. 20 U.S.C. § 1415(k)(1)(E) and Tex. Educ. Code § 37.001(a)(4)(D)-(E).

7. Graduation

A child who successfully completes their IEP under Tex. Educ. Code § 29.005 is eligible for a high school diploma. Tex. Educ. Code § 28.025(c).

G. Eligibility for Special Programs

1. Prekindergarten

A school district must offer free prekindergarten if it identifies at least 15 eligible children who are at least four years old. Tex. Educ. Code § 29.153(a-1). A child is eligible for prekindergarten, without paying tuition, if the child is or ever has been in the conservatorship of DFPS following an Adversary Hearing held as provided by Tex. Fam. Code § 262.201, or in foster care in another state or territory if the child resides in Texas. Tex. Educ. Code § 29.153(b)(6). A child who is eligible under Tex. Educ. Code § 29.153(b) at the age of three remains eligible for prekindergarten for the following school year. Tex. Educ. Code § 29.153(e-1).

Special Issue: *The school district will require a prekindergarten verification letter from DFPS to verify eligibility for children currently or formerly in DFPS conservatorship. School districts may also accept additional documentation such as adoption court orders or the DFPS 2085s. For children not in Texas DFPS conservatorship, the letters will likely need to be obtained through the child welfare agency of the state where the child was in foster care.*

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2. Compensatory, Intensive, or Accelerated Instruction

Students in foster care are considered to be at risk of dropping out of school and are eligible for supplemental education services. Tex. Educ. Code § 29.081(d)(1)(K). A school district shall offer an intensive program of instruction to any student who does not perform satisfactorily on an assessment instrument administered under Tex. Educ. Code Chapter 39, Subchapter B, or is not likely to receive a high

school diploma before the fifth school year following the student's enrollment in the 9th grade, as determined by the district. Tex. Educ. Code § 28.0213(a).

3. Nutrition

Students in foster care are categorically eligible for all U.S. Department of Agriculture child nutrition programs including the National School Lunch Program / School Breakfast Program, Special Milk Program, Fresh Fruit and Vegetable Program, Summer Food Service Program, and the Child and Adult Care Food Program. 42 U.S.C. § 1758.[227]

Special Issue: *Schools use DFPS Form 2085 to verify that a child is in foster care and thus eligible for free school meals. If it is not otherwise addressed in the court reports, a court might ask the caseworker about whether the child's nutritional needs are being met in both the school and home settings. Foster or relative caregivers may not be required to provide personal financial information to determine eligibility.*

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4. Early College

An at-risk student, as defined by Tex. Educ. Code § 29.081, can participate in an early college education program that:

- Enables a participating student to combine high school courses and college-level courses during grade levels 9 through 12;
- Allows a participating student to complete high school and enroll in a program at an institute of higher education that will enable the student to, on or before the fifth anniversary of the date of the student's first day of high school, receive a high school diploma and either an applied associate degree as defined by the Texas Higher Education Coordinating Board (THEB) rule; or an academic associate degree, as defined by the THEB rule, with a completed field of study curriculum developed under Tex. Educ. Code § 61.823 that is transferable toward a baccalaureate degree at one or more general academic teaching institutions, as defined by Tex. Educ. Code § 61.003;
- Includes articulation agreements with colleges, universities, and technical schools in this state to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and
- Provides a participating student flexibility in class scheduling and academic mentoring.

Tex. Educ. Code § 29.908(b).

5. Dual Credit

Each school district shall implement a program under which students may earn the equivalent of at least 12 semester credit hours of college credit in high school. Tex. Educ. Code § 28.009(a).

A program implemented under Tex. Educ. Code § 28.009 must provide a student the opportunity to earn credit for a course or activity, including an apprenticeship or training hours:

- Which satisfies a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree and is approved by the Texas Higher Education Coordinating Board (THECB); and

- For which a student may earn credit concurrently toward both the student's high school diploma and postsecondary academic requirements. Tex. Educ. Code § 28.009(a-1).

A school district is not required to pay a student's tuition or other associated costs for taking a course under this section. Tex. Educ. Code § 28.009(a-2).

H. Post-Secondary Opportunities

Special Issue: *During hearings involving middle and high school students in foster care, courts may inquire about the youth's post-secondary education goals. If the youth or caregiver is present at the hearing, a court may encourage options, including vocational and technical training, certificate programs, and two and four-year higher education opportunities.*

1. Tuition and Fee Waiver

A student is exempt from the payment of tuition and fees charged by a state-supported institution of higher education for a dual credit course or other course for which a high school student may earn joint high school and college credit, if the student:

- Was in the conservatorship of DFPS:
  - on the day preceding the student's 18th birthday; or
  - on or after the student's 14th birthday, if the student was also eligible for adoption on or after that day; or
  - on the day the student graduated from high school or received the equivalent of a high school diploma; or
  - on the day preceding the date the student is adopted or permanent managing conservatorship (PMC) is awarded to a person other than a parent, if that date is on or after September 1, 2009; or
  - during an academic term in which the student was enrolled in a dual credit course or other course for which a high school student may earn joint high school and college credit; and
- Enrolls in an institution of higher education in Texas as an undergraduate student or in a dual credit course or other course for which a high school student may earn joint high school and college credit not later than the student's 27th birthday.

Tex. Educ. Code § 54.366(a).

Additional criteria for youth to qualify for the tuition and fee waiver:

- Notwithstanding Tex. Educ. Code § 54.366(a)(1), a child who exits the conservatorship of DFPS and is returned to the child's parent, including a parent whose parental rights were previously terminated, may be exempt from the payment of tuition and fees if DFPS determines that the child is eligible. Tex. Educ. Code § 54.366(c).
- Youth age 14 or older in the permanent managing conservatorship (PMC) or youth age 16 or older in the temporary managing conservatorship (TMC) of DFPS on or after June 1, 2016 who subsequently exit conservatorship to the legal responsibility of a parent are eligible for the tuition and fee waiver. 40 Tex. Admin. Code § 700.1630(a).

- If after exiting the foster care system the youth returns to DFPS conservatorship, the youth's eligibility will be based on their current foster care circumstances. 40 Tex. Admin. Code § 700.1630(b).

A student is also exempt from the payment of tuition and fees if the student was adopted and was the subject of an adoption assistance agreement under Tex. Fam. Code Chapter 162, Subchapter D, that:

- Provided monthly payments and medical assistance benefits; and
- Was not limited to providing only for the reimbursement of nonrecurring expenses, including reasonable and necessary adoption fees, court costs, attorney's fees, and other expenses directly related to the legal adoption of the child. Tex. Educ. Code § 54.367(a).

Note that Tex. Educ. Code § 54.2001(g) specifically states the conditional receipt of the exemptions and waivers does not apply to students who receive the exemption in accordance with Tex. Educ. Code § 54.366 or Tex. Educ. Code § 54.367. Tex. Educ. Code § 54.2001(g)(3).

2. Information about Higher Education

TEA and the Texas Higher Education Coordinating Board (THECB) must develop outreach programs to ensure that students in the conservatorship of DFPS or adopted students in grades 9-12 are aware of the availability of the exemptions from the payment of tuition and fees. Tex. Educ. Code § 54.366(b) and Tex. Educ. Code § 54.367(b).

TEA must also develop procedures to ensure that a student in substitute care who is in grade 11 or 12 be provided information regarding tuition and fee exemptions under Tex. Educ. Code § 54.366 for dual-credit or other courses provided by a public institution of higher education for which a high school student may earn joint high school and college credit. Tex. Educ. Code § 25.007(b)(13).

Special Issue: *Regional Preparation for Adult Living (PAL) staff or the adoption eligibility specialists determine eligibility for the tuition and fee waiver. For more information about informing youth and young adults about the waiver, see the CPS Policy Handbook § 10300. For information about issuing the letter, see CPS Policy Handbook § 10311.*

In coordination with DFPS, each school district must facilitate the transition of each child enrolled in the district who is eligible for a tuition and fee waiver under Tex. Educ. Code § 54.366, and who is likely to be in the conservatorship of DFPS on the day preceding the child's 18th birthday to an institution of higher education by:

- Assisting the child with the completion of any applications for admission or financial aid;
- Arranging and accompanying the child on campus visits;
- Assisting the child in researching and applying for private or institution-sponsored scholarships;
- Identifying whether the child is a candidate for appointment to a military academy;
- Assisting the child in registering and preparing for college entrance examinations, including, subject to the availability of funds, arranging for the payment of any examination fees by the department; and
- Coordinating contact between the child and a liaison officer designated under Tex. Educ. Code § 61.0908 for students formerly in DFPS conservatorship. Tex. Fam. Code § 264.1212(c).

Special Issue: *To encourage post-secondary success, it is important for the court, attorneys ad litem, schools, caseworkers, and others to explain the tuition and fee waiver and other benefits to assist youth with their successful transition out of foster care. Two great resources for youth in care are the websites for the Texas Youth Helpline and Transitional Living Services.*

3. Education Training Voucher (ETV) and Other Programs

Under the *John H. Chaffee Foster Care Independence Program*, eligible youth ages 16 up to age 23 are entitled to up to $5,000 an academic school year for no more than five years consecutive or non-consecutive (15 semesters in Texas) to cover education-related expenses from the federal ETV program.[228] 42 U.S.C. § 677.

Students must meet one of these criteria:

- Have a high school diploma or GED or be exempt from required school attendance; or
- The student is enrolled in a dual-credit course or other course at an institution of higher education for which the student will earn a high school diploma and college credit.

To be eligible for the ETV Program a youth or young adult must:

- be at least 16 and in DFPS foster care, or are in extended foster care; or
- have aged out of DFPS foster care or were legally emancipated by a court while in DFPS foster care and are not yet age 23; or
- have been adopted from DFPS foster care after turning age 16 and not yet age 23; or
- have entered the Permanency Care Assistance (PCA) program after turning age 16 and are not yet age 23.

Other Eligible Students include:

- Youth placed in the custody of the Texas Juvenile Justice Department or under the jurisdiction of a local juvenile probation department who were receiving Title IV-E foster care payments the day before turning age 18 and are not yet age 23; or
- Tribal youth or young adults in tribal foster care who are not yet age 23.

For more details about the DFPS Education and Training Voucher program, *see* the following resources:

- DFPS Education and Training Voucher web page[229]
- CPS Policy Handbook §§ 10320-10328[230]

For more general information about the Preparation for Adult Living services, Education and Training Voucher program and other higher education resources, *see* the DFPS Transitional Living Services webpage.[231]

4. Liaisons at THECB and Institutions of Higher Education

Each institution of higher education, as defined by Tex. Educ. Code § 61.003, must designate at least one employee of the institution to act as a liaison officer for current and incoming students at the institution who are or were formerly in the conservatorship of DFPS. Tex. Educ. Code § 51.9356(b). The liaison officer

shall provide to those students information regarding support services and other resources available to the students at the institution and any other relevant information to assist the students. Tex. Educ. Code § 51.9356(d).

The THECB must designate at least one employee of the board to act as a liaison officer for current and incoming students at institutions of higher education who were formerly in the conservatorship of DFPS. The liaison officer shall assist in coordinating college readiness and student success efforts relating to those students. Tex. Educ. Code § 61.0908.

Special Issue: *The THECB maintains a Foster Care Liaison List with contact information for designated liaisons at Texas institutions of higher education.*

I. Resources

The Texas Blueprint

- The Texas Blueprint: Transforming Education Outcomes for Children and Youth in Foster Care (Texas Blueprint)[232]

Resource Guide for Foster Care Liaisons in School Districts

- Foster Care & Student Success: Texas Systems Working Together to Transform Education Outcomes of Students in Foster Care[233]

Texas Court Appointed Special Advocates (CASA) Educational Advocacy Toolkit

- Educational Advocacy Guidebook[234]

Foster Care and Education Data Workgroup Infographic

- Texas Commits to Transform Education Outcomes of Students in Foster Care: Findings from the Texas Blueprint Implementation Data Workgroup[235]

Every Student Succeeds Act (ESSA)

- School of Origin Determination for Students in Foster Care[236]
- Education Best Interest Decision-Making and Coordination[237]
- ESSA Designated Point of Contact for Students in Foster Care[238]

Confidentiality Guide

- Information Sharing between Child Welfare and Schools: Maintaining Privacy and Promoting Educational Success[239]

Transition Planning

- Transition Planning Guide for Students in Foster Care Receiving Special Education Services[240]

Higher Education

- DFPS College Resource Chart[241]
- Texas Higher Education Information and Resource Guide for Foster Care Liaisons[242]
- Texas Higher Education Coordinating Board Foster Care Liaisons List[243]

Judicial Checklists

- Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges, Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care[244]

Websites

- American Bar Association Legal Center for Foster Care and Education[245]
- Children's Commission Foster Care and Education[246]
- Texas DFPS Child Protective Services Handbook[247]
- Texas Education Agency Foster Care and Student Success[248]

CHILD AND YOUTH VOICE

Please *see* the Checklist Section for the ABA Child Interview Bench Cards.

A. Presence in Court

1. The Law

Tex. Fam. Code Chapter 263 mandates that all children and youth who are in the conservatorship of DFPS attend all permanency hearings. Specifically, Tex. Fam. Code § 263.302 states that the child shall attend each permanency hearing, unless the court specifically excuses the child's attendance, and that the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. Tex. Fam. Code § 263.302.

The law does not require or appear to contemplate that the child will attend an Ex Parte, Adversary Hearing, Status Hearing, or any hearings for Orders to Participate cases filed under Tex. Fam. Code § 264.203. Although there are different interpretations, many read the law to say that the child must attend each permanency hearing, unless the judge makes an individual determination that excuses that child from attending a specific hearing. Issuing a blanket order excusing a child from attending permanency hearings or even more generally, for all children to be excused from all permanency hearings, is not considered a best practice. Additionally, and of note, youth who are committed to the Texas Juvenile Justice Department may (and should) attend permanency hearings by video, telephone, or in person. Tex. Fam. Code § 263.302.

2. Pros of Involving Children in Court Proceedings

There have been many studies by the American Bar Association as well as Court Improvement Programs around the country on this singular issue, and children in foster care repeatedly express the desire to be involved in decisions about their lives.[249] Children are often told that "the judge makes the decisions." Being involved in court proceedings gives children a sense of control, helps them understand the process, and provides direct contact with the court which benefits the judge and the child. There are other reasons to engage a child in court, including the following factors: attorneys are not always reliable and informed advocates; hearing quality is better when the judge can hear directly from the child; hearings can present an opportunity for parent-child visitation; and foster parents and relatives caring for the child often attend because they bring the child to the hearing.

3. Cons of Involving Children in Court Proceedings

There are also cons of involving or requiring the presence of children in child welfare hearings. A few examples include the following factors: missed time in school and other important events for children, information shared in court can be emotionally damaging for children, and children, at times, may not want to attend. Other obstacles include lack of transportation; timing of court dockets are not accommodating; notice is inadequate; and judges are sometimes uncomfortable speaking with and interviewing children.

B. Child and Youth Engagement

Making court attendance a positive experience for children and youth is critical. Judges can help make the experience for everyone feel more beneficial by utilizing the following practices and setting expectations for the courtroom:

- Ensure attorneys and caseworkers do their job by helping to prepare the child for the hearing.
- Learn child-specific interviewing techniques so that engaging the child in conversation is easier. Even young children have the competence to tell adults what they want and need when questioned in an age-appropriate manner.
- Restructure dockets and offer to schedule hearings involving children in the afternoon, after school.
- Employ video conferencing as a convenient alternative for children, youth, and their caregivers.
- Invite youth to submit letters or other information to the court.

Generally, every child should appear at every Permanency Hearing. The Family Code presumes that all children will attend their Permanency Hearings but also accommodates the occasion when children should be excused from attending by the judge. The expectation is that the court will excuse a child on a case-by-case basis and not operate under a blanket order or rule.

For a more complete report on the benefits of youth in court and practical tips for accommodating their presence, please read the Children's Commission's July 2016 report on Youth Presence in Court Proceedings.[250]

To hear examples from youth formerly in care about their different experiences attending permanency hearings, judges can access the 2021 Judicial Trauma Institute session Learning from the Experts: A Panel Discussion on Lived Experience[251] and the 2022 presentation Enhancing the Experience of Children & Youth in Court: How Judges and Attorneys Can Prepare and Support Youth Attending Court.[252]

C. Talking with Children and Youth in Court

Children and youth involved in the child welfare system can often feel disconnected from what is occurring around them. By speaking with youth directly and involving them in the process, they are given the opportunity to share their feelings, desires, and needs. Talking with children requires some skill; below are some questions that can help get the conversation started. Sharing some of your own answers to the questions can create a more natural conversation and help the youth feel more comfortable and willing to share honestly. Acknowledging some of their answers in the moment and later will also let them know you are hearing them. For a full example by age group, consult the New York State Permanent Judicial Commission on Justice for Children's 2008 handbook "Tools for Engaging Children in Their Court Proceedings."[253]

1. Initial Questions

- Make introductions.
- Did I pronounce your name correctly?
- Do you know who everyone is here?
- How old are you?

- Tell me about something that has happened to you since I last saw you.
- Tell me about something that you did recently that you are proud of.

2. **School**
   - What is your favorite subject?
   - Are there any subjects where you would like to have additional help? (older youth)
   - Have you changed schools during the school year? When was the last time?
   - What would help you do better in school?
   - Have you started to think about college or vocational school? (older youth)
3. **Friends**
   - What do you do for fun?
   - Who do you do that with?
4. **Family**
   - When was your last visit with your family?
   - What did you do at your last visit with your siblings? When was that?
   - What kind of chores do you have?
5. **Health**
   - Have you been to the doctor since I last saw you? The dentist?
   - Who would you talk to if you do not feel well or have any questions about your health?
6. **Feelings**
   - What makes you feel happy?
   - What worries you the most?
   - When you think about the future, what are you most concerned about? What are you most excited about?
7. **Wrap-up Questions**
   - Did anyone use any words you did not understand today?
   - Did you want to tell me anything? Do you want to talk with me separately?
   - Do you have any questions for me or for anyone else here?

Making notes on the conversation with the child or youth may be beneficial so that when they return for their next conference, any concerns can be readdressed. Following up on small details can also help create a more trusting relationship with the child or youth.

D. Normalcy

1. What Is Normalcy?

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

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

Tex. Fam. Code § 264.001(1).

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

At each Permanency Hearing After a Final Order, Tex. Fam. Code § 263.5031(b) requires that the court review DFPS' efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by Tex. Fam. Code § 264.001; this may include activities not listed in the child's service plan.

DFPS established a pilot program to assist youth in foster care to achieve financial security and independence. The program must include an agreement with financial institutions to establish saving and checking accounts for youth in foster care between the ages of 14 and 21. The youth in foster care are to be the sole owners of the accounts even without a co-signor. The financial institution may not require maintenance, overdraft, insufficient funds, inactivity, or other penalty fees. DFPS may partner with non-profits and foundations to provide matching funds for deposits. Tex. Fam. Code § 264.1215. For more information, *see* DFPS Financial Pilot webpage.[254]

2. Reasonable and Prudent Parent Standard

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

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

- The overall health and safety of the child;
- The child's age, maturity, and development level;
- The best interest of the child based on the caregiver's knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;

- The behavioral history of the child and the child's ability to safely participate in a proposed activity;
- The importance of encouraging the child's social, emotional, and developmental growth; and
- The importance of providing the child with the most family-like experience possible.

Tex. Fam. Code § 264.001(5).

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

E. Resources

- For a more complete report including the importance of normalcy and tips for encouraging normalcy, please read the Children's Commission's May 2019 Normalcy for Children and Youth in Foster Care Round Table Report.[255]
- Juvenile Law Center, Promoting Normalcy for Children and Youth in Foster Care Guide [256]
- Texas CASA, Normalcy Matters Guide[257]

SAFETY

DOMESTIC VIOLENCE

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC)

DOMESTIC VIOLENCE

A. Background

Domestic violence can co-occur with abuse and neglect in child welfare cases. The following information, tools, and resources are designed to support judges' understanding of the complexities of domestic violence and to support informed decision making when these dynamics impact a child welfare case. Additionally, judges are encouraged to contact their local Family Violence Center or the Texas Council on Family Violence (TCFV) to access opportunities for education and training. TCFV's statewide directory includes family violence service providers and community partners in Texas. For support or assistance in identifying a local program, please reference TCFV's service directory, and for more general information please reference the TCFV website.

Domestic violence, also referred to as family violence, can be described as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.[258] Family violence is defined in Tex. Fam. Code § 71.004. In this chapter, these terms are used interchangeably. Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Physical aggression is not always a tactic that is utilized in domestic violence; however, if it is used, physical aggression may or may not show physical evidence of harm.

Another central aspect of domestic violence dynamics is coercive control. Coercive control describes a pattern of intentional controlling behaviors by an intimate partner such as monitoring activities, exerting financial control, intimidation including by threatening children or pets, and humiliation.[259] While coercive control can include physical violence, it by definition involves emotional abuse and can result in psychological trauma.[260]. The cumulative effect of coercive control minimizes the victim's ability to access resources and support, thereby promoting isolation.[261]

Domestic violence can include the domestic violence perpetrator (hereinafter referred to as perpetrator) taking away access to resources needed by the survivor parent and the children as well as removal of psychological or emotional support. In a child welfare case, coercive control can manifest as the perpetrator taking away access to resources and/or documents as a threat, consequence, or barrier for the survivor parent participating in the child welfare investigation process, signing a safety plan, or getting a protective order. This could also take the form of the perpetrator making threats about the children, employment, or basic needs. These actions by the perpetrator increase risk to the survivor parent and the children and can compromise the survivor parent's ability to protectively parent and in turn increase the negative impact that domestic violence has on the children. It is crucial to respond to domestic violence in a way that supports the protective capacities of the survivor parent and bolsters protective factors for the children, while simultaneously holding the perpetrator accountable for the impact that their behavior and parenting choices have on the family.

It is important to note that witnessing family violence, in and of itself, is not defined as child abuse under Texas law. However, co-occurrence of domestic violence and child neglect or abuse is common and domestic violence constitutes the single greatest precursor of child maltreatment fatalities.[262] In FY 2025, the Texas DFPS' Child Maltreatment Fatalities and Near Fatalities Annual Report[263] documented that out of the 99 child abuse and neglect related fatalities in Texas, the following circumstances were present:

- A documented history of domestic violence in was identified in 60 case reviews;
- 41 families had active domestic violence present in their home environment; and
- For the 28 child fatalities where the family had a history of domestic violence and reported active concerns for domestic violence, 78.5 percent of those fatalities were due to physical abuse.

A common response by perpetrators is an unwillingness to participate in the child welfare process, including choosing not to engage in conversations, meetings, and services. This can leave the survivor parent accountable for addressing all safety concerns on their own, even when they may not be the cause of all safety concerns. It is important to note that a survivor parent's decision to leave an abusive relationship may leave them without the financial resources to care for the child and might result in a loss of employment, housing, and childcare. Additionally, survivors may experience coerced debt, when an abusive partner uses fraud, threat or force to create debt in the survivor parent's name, making financial stability more challenging. Poverty has a compounding impact on survivor parents due to the isolation, coercion, and economic abuse they may experience. Instead of leaving, the survivor parent may stay in the relationship as a protective response, believing that the perpetrator will do more serious harm if the survivor parent tries to leave. Notably, women who leave their abusive partners have a 75% greater risk of being killed than those who stay and there is a notable increase of violence upon separation for at least two years.[264] Texas Council on Family Violence's annual Texas Intimate Partner Fatality Report entitled "Honoring Texas Victims" has documented over time that approximately half of all women in Texas who were killed by their intimate partners had taken steps to leave the relationship.[265]

Exposure to domestic violence can have long-lasting negative effects on children's physical and emotional well-being. Children who are removed from their home as a result of domestic violence may also then experience the trauma of being separated from the survivor parent. Also, the separation of the children from the survivor parent creates more opportunity for the perpetrator to use the children as a tool to manipulate the survivor parent. These threats can add to other sources of pressure to stay in a domestic violence situation, such as cultural practices or norms, religious pressures, and the desires of the children to return to their home.

B. Judicial Responses to Child Welfare Cases Involving Domestic Violence

Judges may consider taking the following steps to have a positive impact on the safety and stability of families experiencing domestic violence:

- **Keep the courtroom environment in mind**: Consider any safety considerations that might come up such as waiting rooms, safe entry, and safe exit areas. If available, courts might offer to have an advocate present to provide support to the survivor parent.
- **Keep the children's safety in mind**: It is common for the perpetrator to use the children to control the survivor parent. Perpetrators may threaten to gain sole custody, kill, kidnap, or otherwise harm children if the survivor parent leaves. Services, planning, and hearings should be conducted with the safety and well-being of the children as a primary concern and in the context of domestic violence dynamics.
- **Keep the domestic violence survivor parent's safety in mind**: If virtual hearings or separate testimony/hearings are an option, consider allowing the survivor parent to make the decision about which hearing format suits their safety needs. In addition to upholding the victim-

advocate privilege as outlined later in this section regarding Tex. Fam. Code Chapter 93, judges might consider holding separate hearings at different times to discuss each parent's individual portion of the case if there are concerns by the survivor parent about continued use of intimidation, threats, manipulation, or retaliation by the perpetrator. Also, the child's safety and well-being are closely connected to that of the survivor parent.

- **Address the trauma of removing children from the survivor parent**: Considerations may include placing the children with relatives or fictive kin who the survivor parent identifies as safe and supportive for the shortest duration while the survivor parent plans for their next step and seeks safety. Note that placement with the perpetrator's family could lead to continuing coercion and/or collusion against the survivor parent by the perpetrator or the perpetrator's family depending on their relationship with the perpetrator.
- **Recognize the effects of trauma for the survivor parent**: Trauma, such as that which a victim of domestic violence experiences, can affect memory and behavioral responses. Recognizing the complex nature of trauma can allow for an understanding of how traumatic experiences can shape survivor parents' responses in a child welfare case, as such responses may differ from those which are typically expected.
- **Recognize the danger of separation**: Separation from an abusive partner increases the risk of lethality when domestic violence is a dynamic in the relationship, as can pursuing legal options such as protective orders, divorce, custody, and mediation. Additionally, because the perpetrator's actions often directly involve, target, and impact the children in the family, the fear of being harmed might impact the information that the survivor parent and their children share with caseworkers or other individuals.
- **Order additional services for the perpetrator**: Address the parenting and behavior choices that they are inflicting on the survivor and the children. This may include mental health support and substance use services as well as Batterer Intervention and Prevention Programs (BIPPs) discussed in more detail below.
- **Recognize the benefits of supervised visitation**: Limiting and/or supervising the access of the perpetrator is best provided by a supervised visitation and exchange program whose staff are trained in the dynamics of domestic violence. Trained staff can identify when a perpetrator is using the children to control the survivor parent or to gain access to information, including new contact information. If the visits cannot be supervised by trained staff, then it is recommended to consult with the survivor parent about who they can identify as a safe person and arrange for that person to provide for access and visitation with the children for the survivor parent. For examples of supervised visitation programs please *see* information provided by Faith and Liberty's Place[266] Family Center in Dallas, Texas and The Safe Alliance[267] in Austin, Texas.
- **Create a Service Plan based on the survivor's experiences and strengths**: Judges can encourage a culture where the survivors' experiences are heard, valued, and considered in safety planning, and where the survivor parent's supports, strengths, and protective factors are identified and bolstered. Service plans should be tailored to address safety concerns and should include input from the survivor parent.
- **Include the survivor parent in placement decisions**: When possible, keeping the children and survivor parent safe and together is preferred. If separation must occur due to safety concerns, judges can request input from the survivor parent about placement for the children

with relatives or fictive kin who the survivor parent trusts. This should be a time-limited placement that allows for safe visitation by the survivor parent and should address any safety concerns that the survivor parent identifies.

- **Recognize the potential for ongoing domestic violence during the child welfare case, even if the parents are separated**: A perpetrator can continue to intimidate, manipulate, and harm a survivor parent during a child welfare case. Some examples might include using the children to garner information about the survivor parent, making false reports to CPS or to law enforcement and/or filing for a protective order under false allegations to control the survivor parent, taking away access to transportation or funds, tracking phone calls and the location of the survivor parent, and violating stay-away orders. An option for safe communication can be through a phone app such as Our Family Wizard. Also, judges should be aware that records kept by child welfare caseworkers can be requested and obtained by the perpetrator, and that these records can give the perpetrator access to the survivor parent's or child(ren)'s location and increase the danger posed to them. Such confidentiality concerns can be addressed through redaction. Finally, Tex. Fam. Code § 153.010 now prohibits courts from ordering joint counseling sessions between victims of family violence or sexual abuse and their abusers. It also bans coercive practices such as isolating children from their support systems during court-ordered counseling.
- **Consider how to maintain safety in mediation**: In cases involving domestic violence, judges and attorneys should ensure that the mediator has completed the required minimum four hours of training on family violence per Tex. Civ. Prac. & Rem. Code § 154.052 (b) and consider selecting a mediator who has specific expertise or experience mediating with parents for whom domestic violence is an issue. In addition, judges and attorneys should solicit feedback from the domestic violence victim/survivor parent about what precautions should be implemented and consider orders to ensure the safety of all parties participating in mediation. Finally, related information and suggestions on best practices about mediation when domestic violence is involved can be found in the Texas Council on Family Violence Child Custody Mediators Training Series and Children's Commission Mediation Round Table Report.

Effective September 1, 2023, judges no longer need to find that family violence is "likely to occur in the future" in order to issue a family violence protective order under the Family Code. All references that family violence is "likely to occur in the future" have been struck from the Family Code and struck from nearly all Code of Criminal Procedure provisions. Additionally, the presumption language in Tex. Fam. Code 81.0015 defining whether family violence has occurred no longer contains the "likely to occur in the future" language and strikes that the respondent is "seeking or attempting to seek contact with the child" from the list of conditions that trigger the presumption.

C. Batterers Intervention and Prevention Programs

Opportunity exists to increase the expectations of the child welfare system around understanding and safely addressing the dynamics of domestic violence. This can include increased partnerships with domestic violence experts and making appropriate referrals for services when domestic violence is identified such as to a Batterers Intervention and Prevention Program (BIPP).

Many accredited BIPPs in Texas contract with DFPS and therefore are available free of charge to participants. TCFV can provide a list of these contracted providers upon email request to policy@tcfv.org. For accredited non-contracted BIPPs, please check the TDCJ website. If a BIPP is not available, individual counseling with a practitioner who specializes in working with individuals who use violence, power, control,

and coercion is recommended. Ordering Anger Management classes is not recommended since perpetrators can use information from those classes to become more effective at controlling their intimate partners while minimizing the visibility of their possessive behavior, parenting choices, and coercive control. Also of note is that BIPPs are monitored and audited regularly and use evidence-based curricula, while Anger Management programs do not face the same level of standardization and accountability. To learn more about BIPPs, *see* "The Efficacy of Battering Intervention and Prevention Programs."[268]

Ordering domestic violence perpetrators to participate in BIPP sends the message to the survivor parent and the family that the perpetrator is accountable for their choices that impact the safety of their children and family. BIPPs are designed to give clients the skills to treat their partners and children with respect and handle conflict without violence. However, these programs cannot guarantee safety for survivor parents or "fix" someone who has chosen to utilize abusive and coercive behaviors that harm and disrupt the family functioning of the survivor parent and their children.

Asking follow-up questions of the perpetrator about the parenting choices that they are making, and confirming their attendance, participation, and progress with the BIPP is critical.

Below are some suggested questions for judges to ask of the **person enrolled in the BIPP**, during and after their participation in the program:

Understanding Prior History:

- Have you previously participated in services to address similar behaviors?
- What services? How often? For how long did you participate in those services?
- What behavior changes, if any, did you notice from participating in those services?
- What helped you to continue those behavior changes?
- How long did those behavior changes last?
- Did you reach out for additional support if you chose to use tactics such as manipulation, coercion, threats, weapons, physical violence, emotional violence, and psychological violence against the survivor parent?
- Did you think those services were beneficial?

Prior to Attendance of BIPP (or other court-ordered services):

- What are two hopes that you have for your relationship with your children?
- What are two behaviors about yourself that you would like to improve or change?
- What are two things you are proud of yourself for?
- What are two ways that you think your child's other parent supports your children to grow?
- What are two ways you show your children that you care?
- What do you think your children would say about how they know when you are upset, frustrated, or angry?

During Service Participation:

- What are you learning from the services?

- What is / was your role in creating an unsafe environment for your child?
- What is your role in creating a safe environment for your child?
- What is / was your role in disrupting the safe environment for your child?
- Can you give me three examples of ways that you are making different choices? What would you have normally done and what did you choose instead? What supported you in making the decision?
- Can you share with me two examples of your behaviors that you are worried causes safety concerns or fear for the survivor parent? How about for your children?
- How do those behaviors impact your child's health, well-being, and relationship with you, their other parent and other family members?

After Completed Attendance of a Batterer Intervention and Prevention Program:

- Did you think those services were beneficial?
- What did you learn that you did not know before or understood differently this time?
- How has the program impacted your behavior choices?
- Can you share one example of a choice that you made but did not take responsibility for this week?
- If you had another opportunity to make that choice, what would you do?
- Can you share about some of the decisions that you made and the impact they made on your family?

Judges can order service plans that are designed to hold batterers accountable for the domestic violence, not the adult victims of domestic violence. For example, goals and strategies in service plans should focus on the batterers changing their violent behavior as opposed to the adult victims of domestic violence controlling the batterer's behavior.[269]

Asking follow-up questions of the perpetrator about the parenting choices that they are making, and confirming their attendance, participation, and progress with the BIPP is critical.

For more information about how to inquire about and support safe parenting choices by the perpetrator, judges might access resources available through the Safe and Together Institute.

D. Supporting Survivor Parent Safety

Increasing the safety of a domestic violence survivor is inextricably linked to increasing the safety of their children. Courts can support survivor safety by encouraging DFPS to connect the survivor to informed safety and support services, legal services, housing support, and other economic resources. Encouraging this collaboration between the department and the survivor can enhance safety of the children by helping to establish long-term safety and stability.

Below are some suggested questions that judges might consider asking the **survivor parent**. Please note it is critical to ask these questions outside the presence of the perpetrator.

Questions that Support Safety and Security:[270]

- What support do you need to continue to parent and feel safer?
- What support, services, or resources do you need to continue to run your home while continuing to keep your children safe?
- Do you have access to a car or another mode of transportation?
- Do you have the continued ability or inability to pay rent and buy food?
- What other needs do you have?
- Are you aware if you currently have any active protective orders against the perpetrator or if you have had an active protective order against them in the past?

If the Survivor Parent Has a Substance Use Concern:

- What are the factors in place that contribute to your continued substance use/abuse?
- If so, what factors were in place that supported you staying clean/sober?
- What factors were in place that led to your continued use?
- Has the perpetrator ever disrupted your attempts at sobriety?
- What support do you need on this issue?

If the Survivor Parent Has a Mental Health Concern:

- What are the factors in place that contribute to your mental health challenges?
- Have you ever tried to address your mental health before?
- If so, what factors were in place that supported you feeling well?
- What factors were in place that led you to feeling unwell?
- Has the perpetrator ever disrupted your attempts to care for your mental health and wellness?
- What support do you need on this issue?

Questions that Promote Safety for the Survivor Parent and the Children:

- What are you already doing that is helping to keep you and your children safe?
- How can we support you to continue those protective strategies and actions?
- What additional supports will help you keep yourself and your child safe and together?

E. Protecting Privacy

Addressing safety issues must be at the forefront of any survivor parent and their families' needs. A survivor parent fleeing a perpetrator often seeks services and shelter from a family violence center to escape a violent home, and those survivor parents who stay in the home need a safe avenue to discuss the violence and make a safety plan as well. Judges might recommend their local family violence center as a resource for free and confidential services for survivor parents. Domestic violence agencies can support survivors in a variety of ways, including addressing trauma concerns, stability, and safety planning, along with housing, food, and other basic needs as well as providing confidential therapeutic support. It is important to note that

family violence centers are bound by Tex. Hum. Res. Code. Chapter 51 and the Family Violence Prevention and Services Act (FVPSA) to have all services be voluntary. While a referral can be made, the survivor parent chooses when and if to seek services.

Advocates at family violence centers know that trust is crucial to build with survivors as the trauma and violence they have experienced in an intimate relationship is difficult to share. Being able to do so confidentially represents a critical component to feeling safe and provides the circumstances for a survivor to be able to share intimate details without having to worry about them later being revealed or used against them as they rebuild their lives. Victim-advocate privilege, outlined in Tex. Fam. Code Chapter 93, supports survivors seeking help and engaging in services offered at a family violence center which offer a range of services from shelter to counseling and legal advocacy. This law is further supported by federal confidentiality protections found in the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA).[271]

The confluence of these laws creates a safety net for survivors. When DFPS or courts compel information or circumvent the privacy protections afforded by law, this can create safety risks and send a message to survivors that seeking support and safety may be used against them. Texas law does not allow disclosure except in narrow instances. Absent a properly executed release of information signed by a survivor who has consented to the privilege disclosure with an advocate, Texas victim-advocate privilege law attaches to all confidential communications and the advocate or family violence center must not disclose them outside of a few exceptions. Exceptions to this privilege include:

- Mandatory reporting of child abuse and neglect and adult abuse, neglect, and exploitation.
- An in-camera review by a judge to assess if the family violence center holds a specific document that proves forfeiture by wrongdoing in the event of a proceeding under Tex. Code Crim. Proc. Ann. art. 38.49.
- If an advocate serving as an expert witness reviews confidential communication and then derives an opinion based on the review of that information.

Judges play a critical role in upholding the carefully constructed privacy laws in Texas and can serve to uphold survivor safety when confidentiality and privilege laws are upheld and carefully navigated. For example, Tex. Fam. Code § 82.011 requires courts to inform applicants for a protective order that they have the option of keeping their mailing address and county of residence confidential from the respondent upon request.. Additionally, per Tex. Fam. Code § 87.004 the court clerk is required to maintain a confidential record of this information on request by a person protected by the order and Tex. Fam. Code § 85.007 requires the court to inform applicants or an adult member of the family or household of a person protected by an order of their right to have the information excluded from the protective order and, upon request, to exclude the information from the public records of the court.

Privilege and Confidentiality Questions for Judges to Consider:

- Have relevant state and federal privacy statutes addressed whether disclosure of survivor information is permissible?
- Is there any other way to access needed information without breaching the critical privacy protections survivors of family violence receive from family violence centers?
- Will seeking this information put the survivor parent or their children at risk?

- Who would have access to these records after disclosure and how would it help the family or affect their safety?

F. Firearm Safety and Addressing Known Lethality Factors

Research has consistently shown that certain factors create a high lethality risk for survivors, including the presence of firearms in the home where domestic violence is occurring, stalking, and strangulation. The following information focuses on firearm safety in particular. Child welfare professionals and judges should identify whether firearms are present in the home and/or available to the perpetrator. Even if a person legally possesses a firearm, if they have used their access to a firearm or the actual firearm to threaten any person in the family or at the home, there is a real risk to safety of all persons, including children, that should be taken seriously by child welfare stakeholders.

In 2024, TCFV's Honoring Texas Victims report[272] documented that 161 Texans were victims of intimate partner homicide. This number includes 137 women and 24 men. Out of the total number of homicides, 144 victims were killed with a firearm.[273] Firearms amplify the inherent power and control dynamics characteristic of abusive intimate relationships. When perpetrators have access to a firearm, the risk of intimate partner murder increases dramatically.[274]

Child welfare professionals may not be aware of an existing dynamic of domestic violence between the parents by the time the case comes to court, unless a mandatory report was made by police who went out on a domestic violence call. In addition, it is unlikely that a child welfare investigator will be immediately aware of whether or not the domestic violence perpetrator owns a firearm.

Questions for Judges to Ask About Firearm Safety:

- Does the perpetrator own or have access to a gun?
- Is the perpetrator prohibited from possessing a firearm under the law?
- Does the perpetrator have any prior history of domestic violence or a history of using weapons (including plea deals and charges that were deferred)?
- Has the perpetrator ever threatened to kill the survivor parent, the children, or themselves?
- Has the perpetrator ever threatened the survivor parent with a gun or weapon prior to the hearing?
- Ask the survivor parent and the perpetrator if there are any guns or weapons in the home. To minimize risks to the survivor parent and children, do not ask the survivor parent questions directly related to their own safety in open court. Instead, involve a domestic violence advocate from your local domestic violence program who could ensure that the survivor has access to information, safety planning and support if they choose.
- If guns are present and there is concern about how to move forward to decrease the lethality risk for the survivor parent and children, judges are encouraged to reach out to their local Domestic Violence Program, or access the TCFV Program Directory.

Federal Laws Addressing Domestic Violence and Firearms

Federal law[275] prohibits possession of a firearm or ammunition by persons convicted of a misdemeanor crime of domestic violence, which is defined as:

- A misdemeanor under Federal, State, Tribal, or local law;
- Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, and
- Committed by one of the following:
  - a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common,
  - a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian,
  - a person similarly situated to a spouse, parent, or guardian of the victim, or
  - a person who has a current or recent former dating relationship with the victim.

In addition, unlike Texas law, a conviction for a family violence class C offense of assault by offensive contact can qualify as a prohibiting conviction. *See United States v. Castleman*, 134 S. Ct. 1405 (2014).

Orders of Protection

Federal law prohibits possession of firearms or ammunition by a respondent in any order which restrains the person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The federal definition of intimate partner is limited to the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. Also, the order must be one issued after a hearing in which the person received actual notice and had an opportunity to participate.

Texas Laws Addressing Family Violence and Firearms

Texas law prohibits family violence and dating violence Class A misdemeanants from possessing firearms for five years after release from confinement or community supervision.

- Tex. Penal Code § 46.04(b) (Unlawful Possession of a Firearm)

Respondents to ex parte and permanent protective orders are prohibited from possessing firearms for the duration of the order.

- Tex. Penal Code § 46.04(c) (Unlawful Possession of a Firearm)
- Tex. Penal Code § 25.07(a)(4) (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case); and Tex. Penal Code § 25.07(g) (penalty for violation of a protective order increased when deadly force is used and for repeated violations)
- Tex. Fam. Code § 85.026 (Warning on Protective Order)
- If a magistrate includes a firearm prohibition in a magistrate's order of emergency protection issued after an arrest, possession of a firearm by the respondent during the duration of the order is a violation of state law. Tex. Code Crim. Proc. Ann. art. 17.292 (Magistrate's Order for Emergency Protection)
- Tex. Penal Code § 46.04(c) (Unlawful Possession of a Firearm)

G. Intersection of Child Welfare and Child Custody Cases

Concurrent and future family and criminal cases involving the same parents and children in a child welfare case can impact the long-term safety, stability, and well-being of the child and family. Therefore, information emanating from a child welfare case where domestic violence is involved can impact concurrent and subsequent divorce, custody, and protective order applications in a way that is aligned with prioritizing child safety if appropriate case documentation is maintained, and the court issues related findings. It is common for the perpetrator to use custody orders and other issues related to the children, including exchanges and visitation, to continue to threaten and harass the survivor parent. Fathers who are violent towards the mothers of their children are twice as likely to seek sole custody of their children as non-abusive fathers.[276] It is important for final orders in a child welfare case to address conservatorship and access with information about known safety risks spelled out so that support for long-term safety for survivor parents and children is clear in the event of a future Suit Affecting the Parent Child Relationship (SAPCR).

Similarly, documentation during the child welfare case can impact the ongoing safety of the survivor parent and child even after the child welfare case has ended. Case documentation should include an accurate identification of the perpetrator, clearly identified patterns of the dangerous behaviors that initiated the original and ongoing safety concerns, as well as documentation of the additional negative impacts that those behaviors had on family functioning. Case documentation should include any issues with exchanges and visitation. Documentation of the services ordered to support behavior change by the perpetrator and whether or not they complied and completed services is critical. Such documentation should include detailed attendance records of their participation in court-ordered services, including their participation in the BIPP and whether the perpetrator parent received a finding of contempt.

H. Recent Legislative Changes Relating to Protective Orders

In the 89th Regular Legislative Session, several legislative changes were made which impact protective orders.

Under Tex. Fam. Code § 81.012, a protective order prevails over any other conflicting order in a divorce or SAPCR. Tex. Fam. Code § 85.064 requires that protective orders that were in place prior to or during a SAPCR case be transferred to the SAPCR court with the intention of reducing risk of conflicting rulings. Also, Tex. Fam. Code § 85.064 requires that prior to such transfer, it must be determined that the transfer will not negatively impact the safety of individuals protected by the order.

Tex. Code Crim. Proc. Ann. art 17.292(j) now extends the duration of an emergency protective order in family violence cases from 30-60 days to 60-90 days. Also, the duration of emergency protective orders issued under Tex. Code Crim. Proc. Ann. art 17.292(b)(2) was extended from 60-90 days to 90-120 days for the use or exhibition of a deadly weapon during the commission of an assault.

Additionally, the Texas Supreme Court recently held that a parent's due process rights required meeting a "clear and convincing" evidentiary standard as well as the best interest of the child in order to support a protective order prohibiting contact between a parent and a child for more than two years' duration. *Stary v. Ethridge,* 712 S.W.3d 584, 592-96 (Tex. 2025).

I. Relevant Law

- Tex. Fam. Code § 261.501 (filing application for a protective order in a CPS case)
- Tex. Fam. Code § 262.102(c) (temporary order)

- Tex. Fam. Code § 262.201(k) (adversary hearing)
- Tex. Fam. Code § 262.116 (a)(3)(c) (removal: misdemeanor exception)
- Tex. Fam. Code § 262.1095(c) (family violence exception to providing information)

J. Resources

Battered Women's Justice Project

- Firearm Checklist for Judges

Center for Court Innovation

- Supporting Domestic Violence Survivors' Safety During the Court Process

Children's Commission

- Domestic Violence in Child Welfare Cases: Best Practices for Judges and Attorneys Webinar

National Child Traumatic Stress Network

- National Domestic Violence Awareness Month Resources
- Bench Card for the Trauma-Informed Judge

National Council on Juvenile and Family Court Judges Bench Cards:

- Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence
- Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide
- Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence
- A Judicial Checklist for Children and Youth Exposed to Violence

Quality Improvement Center on Domestic Violence in Child Welfare (QIC-DVCW):

- Protective Factors for Survivors of Domestic Violence Issue Brief
- Relational and Systemic Accountability for Persons Who Use Violence Issue Brief

Texas Council on Family Violence (TCFV):

- Resources for Survivors of Domestic Violence

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Please *see* the Checklist Section for the Human Trafficking Checklist.

A. Definition of Human Trafficking

Commercial sexual exploitation of children, also known as human trafficking, is a term that refers to labor and sex trafficking of minors and adults. While all forms of trafficking are dangerous and exploitative, children and youth in foster care are especially vulnerable to child sex trafficking.

1. Federal Law

Under the federal Trafficking Victims Protection Act,[277] severe forms of trafficking in persons are defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(11).

The term "sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. 22 U.S.C. § 7102(12). A "commercial sex act" is defined as any sex act on account of which anything of value is given to or received by any person. 22 U.S.C. § 7102(4).

Special Issue: *Force, fraud, or coercion are not required elements of sex trafficking when the victim is a child or disabled individual. In addition, geographic movement of the child is not required, and money need not be exchanged to prove a child was trafficked. Traffickers often manipulate children with promises of food, clothing, shelter, protection, and love. Children and youth cannot traffic themselves.*

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2. Trafficking of Children Defined

In Texas, "trafficking" is defined as transporting, enticing, recruiting, harboring, providing, or otherwise obtaining a person by any means. Tex. Penal Code § 20A.01(4).

For sex and labor trafficking offenses, a "child" is defined as a person younger than 18 years of age. Tex. Penal Code § 20A.01(1). Both child sex and labor trafficking are offenses in Texas regardless of whether the actor knew the age of the child at the time of the offense. Tex. Penal Code § 20A.02(b)(1).

3. Child Sex Trafficking

Texas law defines child sex trafficking as knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of, conduct prohibited by:

- Continuous Sexual Abuse of Young Child or Disabled Individual, Tex. Penal Code § 21.02;
- Indecency with a Child, Tex. Penal Code § 21.11;
- Sexual Assault, Tex. Penal Code § 22.011;

- Aggravated Sexual Assault, Tex. Penal Code § 22.021;
- Prostitution, Tex. Penal Code § 43.02;
- Solicitation of Prostitution, Tex. Penal Code § 43.021;
- Promotion of Prostitution, Tex. Penal Code § 43.03;
- Online Promotion of Prostitution, Tex. Penal Code § 43.031;
- Aggravated Promotion of Prostitution, Tex. Penal Code § 43.04;
- Aggravated Online Promotion of Prostitution, Tex. Penal Code § 43.041;
- Compelling Prostitution, Tex. Penal Code § 43.05;
- Sexual Performance by a Child, Tex. Penal Code § 43.25;
- Employment Harmful to Children, Tex. Penal Code § 43.251; or
- Possession or Promotion of Child Pornography, Tex. Penal Code § 43.26.

Tex. Penal Code § 20A.02(a)(7).

Alternatively, a person commits the crime of child sex trafficking if that person knowingly receives a benefit from participating in a venture that involves an activity described by Tex. Penal Code § 20A.02(a)(7) or engages in sexual conduct with a child trafficked in the manner described in Tex. Penal Code § 20A.02(a)(7). Tex. Penal Code § 20A.02(a)(8).

The landmark case of *In re B.W.* addressed the issue of whether a thirteen-year-old child can be adjudicated a juvenile delinquent for committing the offense of prostitution. The Supreme Court of Texas held that a child under the age of 14 lacks capacity to consent to sex and thus cannot be charged with the offense of prostitution. The court found that, "[c]hildren are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution, and experts have described in detail the extent to which they are manipulated and controlled by their exploiters." *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010).

Another defense to the offense of prostitution is that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Tex. Penal Code § 20A.02 or Tex. Penal Code § 43.05. Tex. Penal Code § 43.02(d).

Special Issue: *Other terms referring to child sex trafficking include Commercial Sexual Exploitation of Children (CSEC), Commercial Sexual Exploitation of Youth (CSEY), Domestic Child Sex Trafficking (DCST), and Domestic Minor Sex Trafficking (DMST).*

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4. Child Labor Trafficking

In Texas, a person commits child labor trafficking by knowingly trafficking a child with the intent that the trafficked child engage in forced labor or services. Tex. Penal Code § 20A.02(a)(5). In addition, knowingly receiving a benefit from participating in a venture that involves an activity described by Tex. Penal Code § 20A.02(a)(5), including by receiving labor or services the person knows are forced labor or services, constitutes labor trafficking. Tex. Penal Code § 20A.02(a)(6).

"Forced labor or services" is defined as labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion. Tex. Penal Code § 20A.01(2).

Special Issue: *Force, fraud, or coercion are required elements of child labor trafficking or adult labor or sex trafficking. Under Texas law, child sex trafficking can be accomplished by any means. Force, fraud, or coercion are not required.*

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5. Continuous Trafficking of Persons

A person commits the offense of continuous trafficking of persons if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Tex. Penal Code § 20A.02 against one or more victims. Tex. Penal Code § 20A.03(a).

B. Trafficking and Child Welfare

1. DFPS Investigations Involving Trafficking

The definition of child abuse includes compelling or encouraging a child to engage in sexual conduct as defined by Tex. Penal Code § 43.01 including compelling or encouraging a child in a manner that constitutes an offense of trafficking of persons under Tex. Penal Code § 20A.02(a)(7) or (8), solicitation of prostitution under Tex. Penal Code § 43.021, or compelling prostitution under Tex. Penal Code § 43.05(a)(2). Tex. Fam. Code § 261.001(1)(G).

Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Tex. Penal Code § 20A.02(a)(5), (a)(6), (a)(7), or (a)(8), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections also constitutes child abuse. Tex. Fam. Code § 261.001(1)(L).

Special Issue: *DFPS policy outlines the circumstances when a person traditionally responsible for a child's care, custody, or welfare can be investigated by DFPS as an alleged perpetrator of sex or labor trafficking. This includes a member of the child's family or household as defined by Tex. Fam. Code § 71.005. For more detailed information, see CPS Policy Handbook § 2380 Child Trafficking (Sex and Labor Trafficking) Investigations and Tex. Fam. Code § 261.001(5).*

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2. Trafficking May be Considered as Basis for Removal of Child

If there is no time to obtain a temporary order, temporary restraining order, or attachment under Tex. Fam. Code § 262.102(a) before taking possession of a child consistent with the health and safety of that child, an authorized DFPS representative, a law enforcement officer, or a juvenile probation officer may take possession of a child without a court order under the following conditions related to trafficking:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03; or
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to

believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03.

Tex. Fam. Code § 262.104(a)(3)-(4).

3. Standard for Decision at Initial Hearing After Taking Possession Includes Consideration of Trafficking

The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity, unless the court is satisfied that:

- The evidence, in relevant part, shows that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03 on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
- Continuation of the child in the home would be contrary to the child's welfare;
- The child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Tex. Fam. Code § 262.1015 or Tex. Fam. Code § 262.1016 or a protective order issued under Tex. Fam. Code Title 4;
- Placing the child with a relative or designated caregiver or with a caregiver under a paternal child safety placement agreement authorized by Tex. Fam. Code Chapter 264 was offered but refused; was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or would pose an immediate danger to the physical health or safety of the child; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Tex. Fam. Code § 262.107(a).

In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child.

Tex. Fam. Code § 262.107(b).

4. Required Findings at Adversary Hearing if Child Victim of Trafficking to Remain in Care

In a suit filed under Tex. Fam. Code § 262.101 or Tex. Fam. Code § 262.105, at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03, which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

- The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Tex. Fam. Code § 262.201(g).

If, at the conclusion of a full adversary hearing, the court renders an order under Tex. Fam. Code § 262.201(g) or (g-1), the court must describe in writing and in a separate section the reasonable efforts that were made to enable the child to return home and the substantial risk of a continuing danger if the child is returned home, as required by Tex. Fam. Code § 262.201(g)(3); or the reasonable efforts that were made to enable a person's possession of the child and the continuing danger to the physical health or safety of the child as required by Tex. Fam. Code § 262.201(g-1)(2). Tex. Fam. Code § 262.201(g-2).

5. Aggravated Circumstances

The court may find under Tex. Fam. Code § 262.2015(a) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense of trafficking of persons under Tex. Penal Code § 20A.02(a)(7) or (a)(8). Tex. Fam. Code § 262.2015(b)(3)(O).

C. Risk Factors

1. Indicators

Children and youth who run away or experience foster care are at a higher risk of commercial sexual exploitation.[278] According to the Office of the Texas Attorney General, potential indicators (or "red flags") that a child may be a trafficking victim include:

- Changes in school attendance, habits, friend groups, vocabulary, demeanor, and attitude;
- Sudden appearance of luxury items — e.g., manicures, designer clothes, purses;
- Truancy (absence) from school;
- Sexually provocative clothing;
- Tattoos or branding;
- Refillable gift cards;
- Missing Events;
- Multiple phones or social media accounts;
- Lying about the existence of social media accounts;
- Inappropriate pictures posted online or stored on the phone;
- Unexplained injuries;
- Social interaction and schedule being strictly controlled by someone else; and/or
- Isolation from family, friends, and community.[279]

2. Screening

All children must receive a developmentally appropriate comprehensive assessment not later than the 45th day after the date a child enters the conservatorship of DFPS. The assessment must include a screening for risk of commercial sexual exploitation using a validated, evidence-informed tool selected by the child Sex Trafficking Prevention Unit established under Tex. Gov't. Code § 772.0062 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(a)(2).

The Commercial Sexual Exploitation Identification Tool (CSE-IT) is a tool used across the state to screen for commercial sexual exploitation. For more information, *see* the Office of the Texas Governor CSE-IT Tool[280] or Texas CASA CSE-IT Guidebook.[281]

Special Issue: *The availability of the internet means trafficking can happen anywhere. Traffickers often use the internet, including social media platforms, to recruit and exploit child victims. Teaching youth in foster care about internet safety is a critical part of any effort to prevent and address human trafficking.*

D. DFPS Reporting Requirements Regarding Child Sex Trafficking

Under the Preventing Sex Trafficking and Strengthening Families Act (SFA), DFPS must report immediately, and in no case later than 24 hours after receiving information on children or youth who have been identified as being a sex trafficking victim, to the law enforcement authorities.[282] 42 U.S.C. § 671(a)(34)(A).

Special issue*: Per DFPS policy, if a child or youth is a Confirmed or Suspected-Unconfirmed victim of human trafficking, staff must report this to law enforcement immediately, but no later than 8 hours after learning of the information. CPS Policy Handbook § 6462.*

Under SFA, DFPS is also required to develop and implement specific protocols for:

- Expeditiously locating any child missing from foster care;
- Determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements;
- Determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim (as defined in 42 U.S.C. § 675(9)(A));
- Reporting such related information as required by the Secretary of the Department of Health and Human Services; and
- DFPS must report immediately, and in no case later than 24 hours after receiving, information on missing or abducted children or youth to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children. 42 U.S.C. § 671(a)(35).

Special Issue: *The National Human Trafficking Hotline receives tips about human trafficking and makes referrals for services. For more information, please visit the National Human Trafficking Hotline website or call 1-888-373-7888.*

E. Children Who are Missing or Who are Victims of Sex Trafficking

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, according to CPS Policy Handbook § 6461, DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;
- The child's attorney ad litem;
- The child's guardian ad litem; and
- The child's parent unless the parent:
  - cannot be located or contacted;
  - has had the parent's parental rights terminated; or
  - has executed an affidavit of relinquishment of parental rights.

Tex. Fam. Code § 264.123(a).

DFPS must provide the notice required by Tex. Fam. Code § 264.123(a) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under Tex. Fam. Code § 264.123(a) cannot be notified within 24 hours. Tex. Fam. Code § 264.123(b). For additional information regarding DFPS policy about reporting requirements for caseworkers when a child or youth runs away or is missing, including notifying special investigators, *see* CPS Policy Handbook § 6461.1.

If a child has been reported as a missing child under Tex. Fam. Code § 264.123(a), DFPS must notify the persons described by Tex. Fam. Code § 264.123(a) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. Tex. Fam. Code § 264.123(c).

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

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

Tex. Fam. Code § 264.123(d).

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

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under Tex. Fam. Code § 264.123(d)(2);

- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by Tex. Fam. Code § 264.123(f).

Tex. Fam. Code § 264.123(e).

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

Additionally, if a child in DFPS conservatorship is identified as a Confirmed or Suspected-Unconfirmed victim of trafficking, whether familial or non-familial, the caseworker must assess the child's current service array and refer the child to appropriate services, as needed. Confirmed and Suspected-Unconfirmed victims of trafficking must be referred to the local Care Coordination Team (CCT), where a local CCT is in operation. The caseworker must document the assessment and referrals in a case narrative. CCT referral is also documented in the Trafficking Service Referral Survey. All needs and services identified for the child or youth must be addressed in the child's plan of service. Information regarding DFPS policy and procedure regarding confirmed or suspected victims of human trafficking can be found in CPS Policy Handbook § 6462.

F. Secure Agency Foster Home

A court in an emergency, initial, or full adversary hearing conducted under Tex. Fam. Code Chapter 262 may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with Tex. Hum. Res. Code § 42.0531, if the court finds that:

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03.

Tex. Fam. Code § 262.011.

A secure agency foster home which is verified under Tex. Hum. Res. Code § 42.0531 is one that provides:

- Mental health and other services specifically designed to assist children who are victims of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03, including:
  - victim and family counseling;
  - behavioral health care;
  - treatment and intervention for sexual assault;
  - education tailored to the child's needs;
  - life skills training;

    - mentoring; and
    - substance abuse screening and treatment as needed;
- Individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;
- 24-hour services; and
- Appropriate security through facility design, hardware, technology, and staffing.

Tex. Hum. Res. Code § 42.0531(c).

Special Issue: *Very few placements exist to address the physical, mental, and emotional needs of child sex trafficking victims. Judges can play a critical role in working with community stakeholders to develop local strategies to prevent trafficking and support survivors. Resources for judges include CSEY Advocates (available statewide) and Care Coordination teams where available. Information about these and other efforts are available through the Office of the Texas Governor's Child Sex Trafficking Team's webpage.*

G. Resources

Children's Commission

- Your Rights as a Survivor: A Guide for Caregivers of Children Who Experienced Sexual Abuse and Sexual Exploitation[283]

Department of Family and Protective Services

- Human Trafficking[284]

Familial Trafficking

- National Center for Missing & Exploited Children (NCMEC) What Perfection Hid: My Story of Survival and Hope[285]
- United States Department of State Navigating the Unique Complexities in Familial Trafficking[286]
- Texas Alliance of Child and Family Services Familial Trafficking: A Form of Child Abuse[287]
- RTI International Familial Trafficking Research to Advance[288]

National Center for Juvenile and Family Court Judges

- Domestic Child Sex Trafficking Series[289]
- Resource Center for Courts on Child Sex Trafficking[290]
- Voices from the Bench: Judicial Perspectives on Handling Child Sex Trafficking Cases[291]

National Center for Missing and Exploited Children - Child Sex Trafficking[292]

National Human Trafficking Hotline (888) 373-7888[293]

Office of the Texas Attorney General Human Trafficking webpage[294]

Office of the Texas Governor

- Child Sex Trafficking Team[295]
- Care Coordination and CSEY Advocacy[296]

Polaris Project - Human Trafficking[297]

Relevant DFPS Policy:

- Investigations: CPS Policy Handbook § 2380 Child Trafficking (Sex and Labor Trafficking)
- Conservatorship: CPS Policy Handbook § 6460 When a Child or Youth is Missing from DFPS Conservatorship
- Family-Based Safety Services: CPS Policy Handbook § 12811 Child Trafficking (Sex and Labor Trafficking)
- Older Youth:
  - CPS Policy Handbook § 10254 Trafficking Awareness
  - CPS Policy Handbook § 10431 Casework Activity

Texas CASA Anti-Child Trafficking Resources[298]

SYSTEM ISSUES

COMMUNITY-BASED CARE

DUAL STATUS

COMMUNITY-BASED CARE

A. What is Community-Based Care?

In 2017, DFPS started implementing Community-Based Care, also referred to as CBC, in certain geographic areas in the state known as "catchment" or "community" areas. CBC is intended to delegate or outsource certain activities and decisions about foster care delivery and case management, and it is implemented with measurable goals related to these decisions. CBC is designed to be implemented in stages. Stage I of CBC involves a Single Source Continuum Contractor (SSCC) handling the responsibility of finding safe, high-quality, nearby homes for children in paid foster care in the designated community area. Stage II is when the SSCC assumes responsibility for case management duties, including serving as the witness in the legal proceeding and assuming court-related responsibilities and authority in terms of the permanency plan and goals and how those will be carried out. Stage III begins at least 18 months after the contractor initiates providing case management to all children and families in the community area. In this stage, DFPS can assess the contractor's fiscal incentives and remedies for outcomes related to performance, including permanency outcomes. At each stage of CBC, the readiness of the provider to successfully partner with all stakeholders and to serve the children and families in its community area is critical to the success of the roll out.

B. The Single Source Continuum Contractor

Generally, an SSCC is a non-profit organization which has a focus on child welfare and by law must be formed as a charitable organization. A local governmental entity can also serve as an SSCC. As part of the readiness process, DFPS is required to consider whether an SSCC has demonstrated experience in providing services to children and families in the community area.[299] As part of an application to secure a contract for CBC, each SSCC must develop a Community Engagement Plan that includes details about how the SSCC will involve faith-based entities, the judiciary, CASA, Child Advocacy Centers (CAC), service providers, foster families, biological parents, youth currently and formerly in foster care, relatives, child welfare boards, attorneys for both children and parents, and any other stakeholder the SSCC wants to include. Formation as a charitable organization provides limited legal protection to the SSCC under Tex. Civ. Prac. & Rem. Code Chapter 84. The legal protections are limited to acts or omissions that occur while the entity or person is acting within the course and scope of the entity's contract with the Department as well as services provided and the person's duties for the entity and only if insurance coverage in the minimum amounts required by Tex. Civ. Prac. & Rem. Code Chapter 84 are in force and effect at the time of the cause of action for personal injury, death, or property damage accrues.

C. The Effect of CBC on Courts and Court Process

Stage II of CBC requires that DFPS transfer case management duties, which include court-related duties, to the single, lead agency who serves the community area so that these duties become the responsibility of the SSCC and its subcontractors which provide client services or residential care services. Court-related duties will be the responsibility of the SSCC, including preparation of court reports, appearing in court and mediation, offering testimony, complying with all court orders that would ordinarily bind DFPS, and ensuring the child is progressing toward the child's permanency goals in accordance with federally mandated guidelines. The SSCC's subcontractors may be called to appear in court or offer testimony related to the delivery of services, but the primary legal duties are to be completed by the SSCC. DFPS is the party to the lawsuit, and the SSCC acts as DFPS' agent. SSCC employees will confer with and operate under an attorney-client relationship with legal counsel as set forth in statute, whether DFPS is represented by a

regional attorney, a county attorney, or a district attorney. Records that are related to the SSCC's provision of services in a community area are subject to the Public Information Act in the same manner as DFPS records.

D. Monitoring of the SSCC by DFPS

Rather than serve in its traditional role in CBC areas, DFPS, consistent with state and federal law, provides quality oversight and assurance to ensure contract compliance, conduct assessments of fiscal and qualitative performance of the SSCC and subcontractors, as well as create and administer a dispute resolution process. DFPS also monitors the transfer of case management services, and has the statutory authority to review, approve, or disapprove a contractor's recommendation with respect to a child's permanency goal.

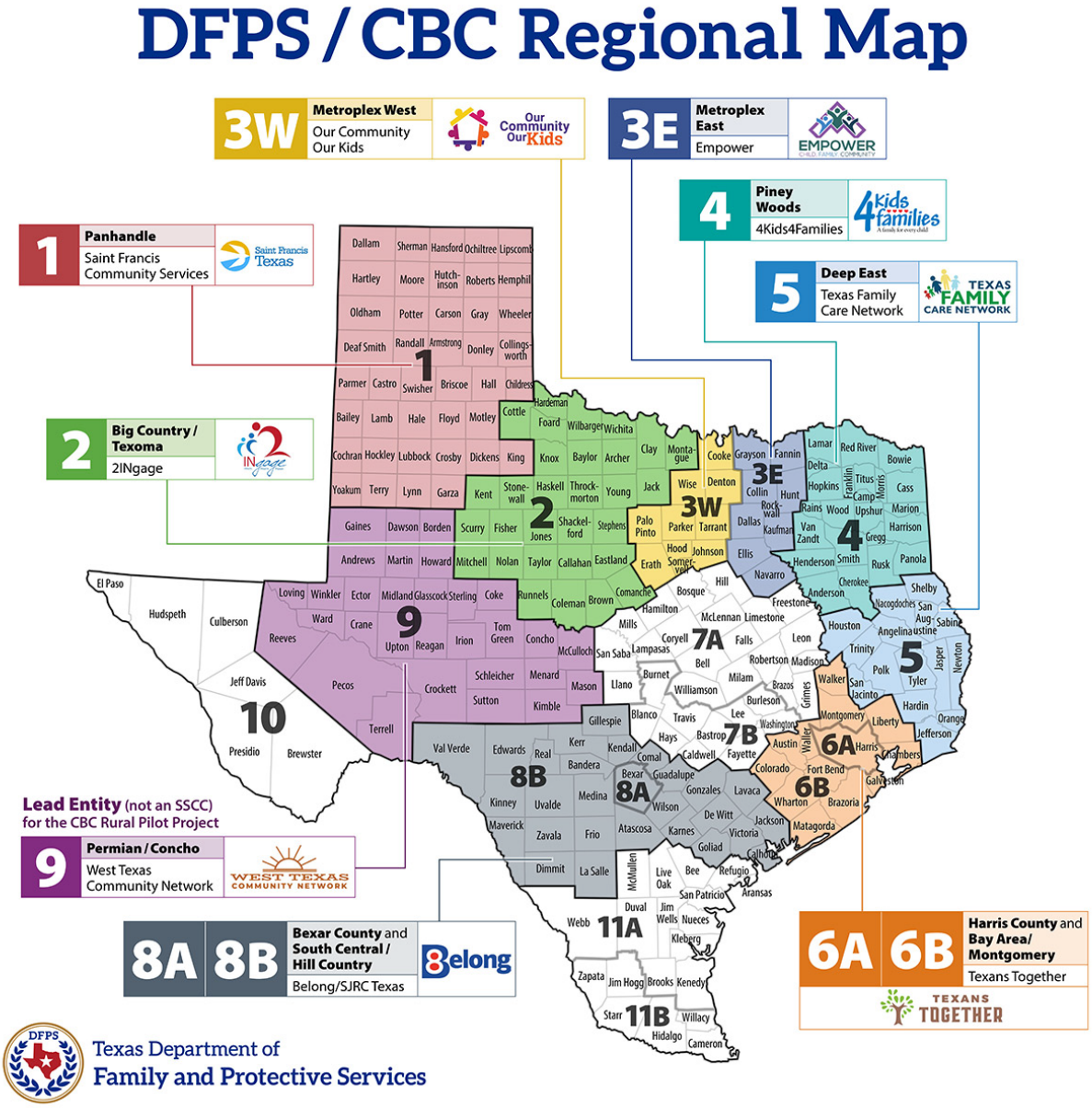
E. The Role for Judges in Community-Based Care

The role for judges in all aspects of community-based care cannot be overstated. Judges are a critical partner in planning, implementation, and oversight of this model for provision of child welfare services and permanency. Judges are encouraged to work closely with DFPS and the Office of Community-Based Care Transition (OCBCT) as CBC expands into a community area where their court is located as well as to be in continued communications with all partners as Stage I is implemented. Stage II more directly impacts the courts. Judicial oversight remains critical both in legacy and CBC areas to ensure due process for children and families. This oversight includes ongoing communication with the SSCC to clarify roles and expectations, streamline required court and legal processes, and resolve any issues. As the process evolves, these children and families will be well-served by judges who remain informed about the ever-changing landscape of CBC.

F. Community-Based Care Resources

In 2021, the Office of Community Based Care Transition was established as an independent office that is administratively attached to DFPS. The office assesses community areas where CBC services may be implemented, develops a plan for implementing CBC in each community area in Texas, including the order in which CBC will be implemented in each community area, a timeline for implementation, and an evaluation of CBC providers. Tex. Fam. Code § 264.172. Additional information about the implementation of CBC, including a map of the community areas and updates on the Implementation Plan, is available on the DFPS Community-Based Care webpage.[300]

G. Current SSCCs across Texas



Map current as of June 2026

DUAL STATUS YOUTH

A. Definitions

A “dual system child” is a child who, prior to the child’s 18th birthday, was referred to the juvenile justice system and was involved in the child welfare system. Tex. Fam. Code § 51.11.

A "dual status child" means a child who has been referred to the juvenile justice system and is:

- In the temporary or permanent managing conservatorship of the Department of Family and Protective Services;
- The subject of a case for which family-based safety services have been offered or provided by the department;
- An alleged victim of abuse or neglect in an open child protective investigation; or
- A victim in a case in which, after an investigation, the department concluded there was reason to believe the child was abused or neglected.

Tex. Fam. Code § 51.02(3-a).

Special Issue: *Dual system is a broader term that captures a youth who is involved with both systems at any time whereas dual status means the system involvement is concurrent.*

B. Data on Dual Status Youth

National studies provide some insight of the intersecting between youth who experience both the child welfare system and the juvenile justice system. Children and youth who experience abuse or neglect are at a 47% greater risk of being juvenile justice involved, compared to the general population.[301] Females and African American youth are overrepresented among youth involved in both the child welfare and juvenile justice systems compared to their peers with involvement in one of these systems.[302] Among youth involved in both systems, 92% first experience the child welfare system then become juvenile justice involved.[303] Although prevalence is hard to quantify and dependent on the definition used for the population, it is estimated that 45-75% of first-time juvenile petitions involve dual system youth.[304] Involvement in both the child welfare and juvenile justice systems is associated with higher risks for mental health, education, and vocation challenges as well as higher rates of recidivism, longer stays in detention, placement instability, and poor permanency outcomes.[305]

C. Guardian ad Litems and Court Appointed Special Advocates

A guardian ad litem may serve in both the juvenile case and the child welfare case. If the guardian ad litem is serving in both cases and is an attorney, the guardian ad litem may need to become more familiar with the juvenile proceedings.

A non-attorney guardian ad litem must be very careful not to investigate any pending juvenile charges nor offer testimony concerning the guilt or innocence of a dual status child. Questions or investigations could lead the non-attorney guardian ad litem to become a witness against the child in violation of Tex. Fam. Code 51.11.

D. Considerations for Dual Status Youth

Several large, urban areas have implemented the Crossover Youth Practice Model developed by Georgetown University or the RFK Children's Action Corps Dual Status Youth and Probation Reform Models, including Travis, Bexar, Harris, McLennan, Tarrant, El Paso, and Dallas Counties.[306] The Child Protection Courts also have jurisdiction to hear dual status cases pursuant to Tex. Fam. Code Chapters 51 and 201. These courts utilize a "one family, one court" model where the same judge hears both the child welfare and juvenile justice cases.

For cases involving dual status youth, some court considerations include:

- Upcoming court dates for both the child welfare and juvenile cases;
- Progress of each case;
- What services are being provided in each case;
- Disposition in the juvenile case, including placement options if the child is not going to be released on probation; and
- Whether the records in the juvenile case can later be sealed.[307]

***Special Issue**: If more than one court is involved, coordination is critical to ensure statutory timelines are met and there is minimal duplication of services. Inquire about the status of a juvenile case for a dual status child on a regular basis, at least during each statutory child welfare hearing, and more often if the child is in detention.*

E. Resources

The Children's Commission Dual Status Task Force Final Report[308] captures recommendations from the Task Force about what data, training, tools, resources, and practices may be necessary to better understand and improve outcomes for youth involved in both the child welfare and juvenile justice systems.

FAMILY CONNECTIONS

FAMILY VISITATION

PERMANENCY CARE ASSISTANCE (PCA)

RELATIVE AND OTHER DESIGNATED CAREGIVER ASSISTANCE PROGRAM

MEXICAN CONSULAR RELATIONS

FAMILY VISITATION

A. Court Duties

Per Tex. Fam. Code § 263.107, not later than the 30th day after the date DFPS is named temporary managing conservator (TMC) of a child for whom the goal of DFPS is reunification with the parent, DFPS must develop a visitation plan in collaboration with each parent. In determining the frequency and circumstances of visitation, DFPS must consider the safety and best interest of the child, the child's age, the desires of each parent regarding visitation with the child, the location of each parent and the child, and the resources available to DFPS, including resources to ensure visitation is properly supervised and providing transportation to and from the visit.

DFPS must file the visitation plan with the court no later than 10 days before the Status Hearing, and the court must review the plan, taking into consideration the factors specified in Tex. Fam. Code § 263.107. Tex. Fam. Code § 263.107(d).

A visitation plan may be amended by mutual agreement of the child's parents and the department or as the department considers necessary to ensure the safety of the child. An amendment to the visitation plan must be in the child's best interest and may not conflict with a court order relating to possession of or access to the child. The department must file a copy of any amended visitation plan with the court. Tex. Fam. Code § 263.107(e).

Per Tex. Fam. Code § 263.109, after reviewing an original or amended visitation plan, the court must render an order regarding the parent's visitation with a child that the court determines is appropriate. The court may modify, or order the department to modify, an original or amended visitation plan at any time. Tex. Fam. Code § 263.108(b). Parents who are entitled to visitation under a visitation plan may petition the court to request review and modification of an original or amended plan. Tex. Fam. Code § 263.108(c).

Tex. Fam. Code § 263.109(b) states that if the court finds that visitation between a child and a parent is not in the child's best interest, the court shall render an order that states the reasons for finding that visitation is not in the best interest of the child, and that outlines specific steps the parent must take to have visitation with the child.

Also, if the order requires supervised visitation to protect the health and safety of the child, it must outline specific steps the parent must take to have the level of supervision reduced. Tex. Fam. Code § 263.109(c).

B. DFPS Best Practice Guide

DFPS issued an updated Child and Family Visitation Best Practice Guide for the field in 2025.[309] This guide provides Department employees with policy, guidance, and tools to assess the appropriateness of visitation, how to develop the visitation plan, how to engage fathers and other family members in the visitation process, the role of the foster parents, and how to move from one level of supervision to another. Information from the guide is included below.

1. Basic Principles Promoted by the Best Practice Guide

a. Visitation is essential for a child's well-being

The primary purpose of visitation is to maintain the parent-child attachment, reduce a child's sense of abandonment, and preserve a child's sense of belonging as part of a family and community. A child needs

to see and have regular contact with their parent(s) and siblings, as these relationships are the foundation of child development.

b. Visitation is fundamental to permanency

Visitation facilitates permanency planning, promotes timely reunification, and helps in the decision-making process to establish alternative permanency plans. Visitation maintains and supports the parent-child relationship necessary for successful reunification.

c. Visitation is vital to a child maintaining family relationships and cultural connections

Maintaining family connections has lifelong significance for a child. Regular visitation maintains their relationships with siblings and others who have a significant role in a child's life. When a child loses family connections, they also lose family history, medical history, and cultural history and information. Visitation is considered to be the heart of reunification, but even when reunification is not likely, parents, siblings and extended family continue to be important in a child's life.

d. Visitation and family contact should never be used as a reward or punishment but should always be considered a right of families and children

The absence of regular and frequent parent-child visitation or contact may have serious consequences for both a child and parent(s). Without visitation, the relationship can deteriorate, and both can become emotionally detached. When parent-child attachment suffers, reunification becomes more difficult. The frequency of visitation can also significantly impact child well-being and permanency.

2. Benefits of Parent-Child Visitation

- Supports parent-child attachment;
- Eases the pain of separation for all;
- Maintains and strengthens family relationships;
- Reassures a child that their parents/primary caregivers are all right and helps the child to not blame themselves for placement in foster care;
- Supports the family in dealing with changing relationships;
- Motivates parent(s) to make positive changes in their life by providing reassurance that the parent-child relationship is important for a child's well-being;
- Provides opportunities for parent(s) to learn and try new skills;
- Supports a child's adjustment to the foster home;
- Enables the parent(s) to be active and stay current with their child's development, educational and medical needs, church and community activities;
- Provides opportunities for parent(s) to assess how their child is doing, and share information about how to meet their child's needs;
- Assists in the assessment and decision-making process regarding parenting capacities and permanency goals;
- Reduces the time in out-of-home care; and
- Increases the likelihood of reunification.

3. Supervision

Supervised visitation is utilized to ensure a child's physical and emotional safety during contact with a family member and/or to strengthen the parent-child relationship, as well as enhance parental protective actions. Per DFPS policy, the necessity for supervised visitation is determined through a safety assessment that identifies concerns for a child if their parent(s) have unsupervised contact with their child. If DFPS recommends to the court that visits be supervised, the visitation plan should include a summary statement of the assessed safety concerns and why supervision is necessary. In addition, DFPS should clearly explain to the parent(s) the specific safety concerns preventing less restrictive contact with their child and what demonstrated changes will support a modification to the level of supervision.

C. Stages of Supervision

The following Stages of Supervision guide was adapted by DFPS and provides descriptions of the levels of supervision. Caseworkers can use this tool for assessment and planning to help determine and clearly communicate the structure of a supervised visitation plan. Additional guidance related to this assessment tool can be found in the 2025 DFPS Visitation Best Practice Guide.[310]

D. Parent Information and Observation Form

This information is provided to parents to assist with pleasant and meaningful visits with their child. It was developed in partnership with parents and parent advocates.

- It is very important for you to attend every visit on time. If you do not do this, your child will be disappointed when they are at the visit and you are not. If you have a problem getting to the visit or know that you are likely to be late, contact your caseworker as soon as you can to inform the caseworker you will be late or are having a problem getting to the visit.
- It is best not to make promises to your child during visitation, but if you do make a promise, such as "next time I see you I will bring your favorite book from home," make sure you fulfill that promise.
- You can bring toys, clothes, and pictures from home to the visit. If you have questions about the appropriateness of an item, contact your caseworker prior to the visit.
- Show your child affection (i.e., hugs and handholding) during the visit unless you have specifically been ordered not to by the court or your caseworker.
- The visit will be observed and there are two reasons for this: to ensure the safety and well-being of your child, and to gather information that will help improve future visits.
- Your child may ask difficult questions such as "when can I come home?" You should not respond with a specific date because that can change along the way and you don't want to disappoint your child. A good response could be "I hope it is soon, but I'm so glad I get to see you now." Your child will probably ask this several times and possibly every time they talk to you.
- Your child may also not behave in a way you expect. If your child is fussy or upset, it may be because so much change is happening in your child's life or your child is tired or had a bad day. Take this opportunity to positively comfort, support, and talk to your child about what is going on in their life.

- If your child talks to you about their foster parent or family, you should listen and respond in a positive way. Although it may be difficult that your child cannot be with you right now, you should be as supportive as possible of the foster parent or family because they are taking care of your child and it is important that your child not feel bad about that. If you do have a concern about the foster parent or family, do not discuss it with your child or in front of your child. Inform the caseworker of your concerns after the visit, and if you have a lawyer, you may want to discuss with him/her as well.
- If you have questions about the visit or what was observed during the visit, you should feel free to ask the person observing you. If the person observing your visit uses a visitation observation form to document what happens at the visit, you should be given a copy of that form.
- If you have questions about your case or future visits, ask your caseworker after the visit.
- Don't talk to your child about your child welfare case or caseworker during the visit. Use this opportunity to spend time with your child and enjoy your child's company. If your child asks questions about your case, suggest that the child ask the caseworker. If your child has an attorney ad litem or a CASA volunteer, you might also suggest that your child ask them any case-related questions.
- You may have a difficult time after and between visits. Talk to people in your life about how you are feeling. It might even be a good idea to tell them about the visit ahead of time, so you can have support ready for you. At the end of your visit, goodbyes can be difficult for you and your child. During the last 5 minutes, plan what you will do on your next visit together. Try putting it on paper and letting the child take it home with them. During the visit you can give your child something from home or draw a picture with them, so they have something to hold onto in between visits. Do not prolong the goodbye as it will make it harder for you and your child.
- If the visit didn't go as you had hoped or planned, don't be hard on yourself! Learn about what you need to improve and remember that there are no perfect parents. You just need to keep trying to be the best parent you can be for your child!

1. Observation

DFPS has also implemented a visitation observation form that is intended to document what occurs at supervised visits. The observer is asked to fill out responses to certain questions.

After the visitation session, the observer is required to provide the parent or adult with the form, and the parent/adult is asked to sign it. Parents can make notes on the observation form regarding how the visit went, whether the parent has any questions or concerns about the recorded information, and if the parent has anything he/she would like to add about the visit. Please *see* the Parent/Supportive Adult Visitation Record and Observation Form for more information.[311]

2. DFPS Review and Revision of Visitation Plan

Per DFPS, the visitation plan should be reviewed by DFPS monthly to determine progress, update goals, and determine if it is appropriate to consider changes in supervision, location, and setting. If there has been little or no progress towards developing protective actions and meeting case goals found during two consecutive monthly reviews, the caseworker is directed to initiate a formal or informal family meeting to determine how to modify the visitation plan to include a more intensive level of parent coaching/guidance around visitation.

PERMANENCY CARE ASSISTANCE (PCA)

A. What Is Permanency Care Assistance?

The Permanency Care Assistance (PCA) Program provides certain benefits and supports to qualifying kinship families who take permanent managing conservatorship (PMC) of a child. Tex. Fam. Code Chapter 264, Subchapter K and Tex. Admin. Code Title 40, Chapter 700, Subchapter J, Division 2 set out the requirements for PCA.

Caregivers who receive PCA are eligible for:

- Monthly cash assistance similar to adoption assistance;
- Medicaid health coverage on behalf of the child; and
- A one-time reimbursement of nonrecurring expenses, including legal fees, incurred in the process of obtaining custody of the child, up to a maximum of $1,200. Tex. Fam. Code § 264.852(d), 40 Tex. Admin. Code § 700.1025, and 40 Tex. Admin. Code § 700.1043.

The maximum monthly payments are the same as those for adoption assistance and depend upon the child's authorized service level or, under T3C, the child's recommended service package at the time the PCA is negotiated. 40 Tex. Admin. Code § 700.1039(c)-(d). Factors that are considered when negotiating the amount of monthly PCA to be made include:

- The child's present need for services in relation to the permanent kinship conservator's income, expenses, circumstances, and plans for the future;
- Benefits needed to assist the permanent kinship conservator in meeting the child's needs and the permanent kinship conservator's responsibilities for meeting those needs;
- Any and all sources of income and support that are specifically designed for the child such as Retirement, Survivor, Disability Insurance (RSDI), or Veteran's Administration (VA) benefits;
- Whether a publicly funded source may be sued to meet the child's needs, even if the permanent kinship placement does not choose to take advantage of the publicly funded source; and
- The actual or estimated costs of meeting the child's medical needs that cannot be met through private insurance or Texas Medicaid.

40 Tex. Admin. Code § 700.1039(b).

The maximum monthly amount of assistance payments under a PCA agreement may not exceed the amount of the monthly foster care maintenance payment DFPS would pay to a foster care provider caring for the child for whom the kinship caregiver is providing care. Tex. Fam. Code § 264.854.

***Special Issue**: There may be additional funding for enhanced PCA benefits but this will depend on the availability of funds and is not required by the Family Code.*

Caregivers who apply must be:

- Related to, or have a longstanding and significant relationship with, the child / children before the child is placed. 40 Tex. Admin. Code § 700.1029(b)(1); and
- Verified by a child placing agency and provide verified foster care for the child in the managing conservatorship of DFPS for at least six months after verification pursuant to 40 Tex. Admin. Code § 700.1031(c) and before the court awards PMC and dismisses the case. 40 Tex. Admin. Code § 700.1029(b)(2).

DFPS may enter into a PCA Agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets the eligibility criteria under federal and state law and DFPS rule. Tex. Fam. Code § 264.852(b). A court may not order DFPS to enter into a PCA agreement with a kinship provider unless the kinship provider meets the eligibility criteria under federal and state law and DFPS rule, including the requirements relating to criminal history background check of a kinship provider. Tex. Fam. Code § 264.852(c).

Special Issue: *The Health and Human Services Commission (HHSC) must allow a child-placing agency to issue a provisional license for a kinship provider who meets the basic safety requirements provided by Commission rule and the kinship provider issued a provisional license must complete all licensing requirements within the time provided by the rule.*

If a sibling is placed by DFPS in the same home of a child who is already the subject of a PCA agreement, the caregiver automatically meets the definition of relative or fictive kin. If the caregiver and DFPS agree on the appropriateness of the arrangement and, if DFPS has TMC or PMC of the joining sibling at the time the agreement is signed, the family must enter into a PCA agreement for the sibling before the court awards PMC of the sibling to the kin/caregiver and dismisses DFPS from the case. 40 Tex. Admin. Code § 700.1029(c).[312]

A caregiver receiving PCA is not eligible for the Relative and Other Designated Caregiver Program. 40 Tex. Admin. Code § 700.1002(b). Relatives who do not meet the eligibility criteria under the PCA program may be eligible for benefits under the Relative and Other Designated Caregiver Program. 40 Tex. Admin. Code § 700.1055.

B. What Should Courts Do?

The court must inform relative and designated caregivers serving as placement for a child of the ability to become a licensed foster parent and apply for PCA at the Adversary Hearing, Status Hearing, and Permanency Hearings Before and After a final order. Tex. Fam. Code § 262.201(n-1); Tex. Fam. Code § 263.202(i); Tex. Fam. Code § 263.306(c)(2); and Tex. Fam. Code § 263.5031(a)(3).

Before awarding PMC to a kinship caregiver under this program and dismissing DFPS from a case, the court should ensure that:

- DFPS has determined that reunification and adoption are not appropriate permanency options for the child;
- The caregiver is verified (being verified refers to the family being approved as a foster home under the minimum standards set by Licensing. HHSC licenses child placing agencies, and in turn, child placing agencies verify foster homes);

- The child has been placed with the verified kin for at least six months following the date of the verification; and
- DFPS and the kinship caregiver have signed a PCA Agreement, and it is on file prior to the award of PMC to the caregiver; that is, the child must be in the TMC or PMC of DFPS on the day before PMC is transferred to the relative.

The one-year deadline to dismiss a case still applies. For example, if the 12-month deadline is approaching, and a child has not lived with their verified caregiver for at least six months after the verification, the case must be extended under Tex. Fam. Code § 263.401 or PMC must be awarded to DFPS in order to allow sufficient time to satisfy the 6-month verified foster care requirement prior to the relative being awarded PMC.

Before entering a final order that awards permanent custody of a child in DFPS conservatorship to a relative, the court must verify that the relative was offered the opportunity to become a licensed foster placement to qualify for a PCA agreement and that the relative declined and the child placing agency has been notified of the declination. Tex. Fam. Code § 263.409.

C. How Does PCA Affect Older Youth?

Extended PCA benefits are available to eligible youth to permit them to remain eligible for PCA through the month in which they turn 21 years old. Youth in this category can also apply for Education Training Vouchers (ETV) for vocational or college pursuits by contacting regional PAL staff.

If DFPS first entered into a PCA agreement with a youth's kinship provider after the child's 16th birthday, and before the child's 18th birthday, DFPS may continue to provide PCA payments until the last day of the month of the youth's 21st birthday under Tex. Fam. Code § 264.855 and 40 Tex. Admin. Code § 700.1053, provided the youth or permanent managing conservator submits documentation sufficient to establish that the youth:

- Regularly attends high school (or a program leading toward a high school diploma or high school equivalency certificate);
- Regularly attends an institution of higher education (or a postsecondary vocational or technical program);
- Works at least 80 hours a month;
- Participates in a program or activity that promotes employment or removes barriers to it; or
- Is incapable of performing the activities described above because of a documented medical condition.

The Preventing Sex Trafficking and Strengthening Families Act (federal legislation passed by U.S. Congress on September 29, 2014) allows for the preservation of a child's eligibility for PCA payments in the event the caregiver dies or becomes incapacitated if a PCA-Successor (a person appointed to permanently care for the child in the event that the caregiver is no longer able) replaces the caregiver as the child's legal guardian.

PCA payments may continue to a PCA-Successor if all of the following conditions are met:

- The kinship caregiver completes an amendment to the Permanency Care Assistance Agreement to name a potential PCA-Successor to receive PCA benefits on the child's behalf in the event of their death or incapacitation;
- The PCA-Successor submits to DFPS the required background check information and that information meets DFPS standards;
- The PCA-Successor signs a Permanency Care Assistance Agreement with DFPS; and
- The PCA-Successor submits to DFPS proof demonstrating legal custody of the child was given by the court.

The PCA-Successor cannot begin receiving PCA payments from DFPS until the PCA-Successor signs a Permanency Care Assistance Agreement and assumes legal custody of the child. 40 Tex. Admin. Code § 700.1061(b). If the PCA-Successor signs the Permanency Care Assistance Agreement after being given legal custody of the child by the court, DFPS may grant retroactive benefits back to the date legal custody was granted, for a period not to exceed 12 months. 40 Tex. Admin. Code § 700.1061(c).

The terms and conditions of the PCA Agreement originally signed by the kinship caregiver will also apply to the PCA-Successor. 40 Tex. Admin. Code § 700.1061(d).

D. What About Social Security Administration Benefits and Child Support?

While kinship families serve as foster parents, they receive a monthly foster care payment from DFPS. If the child in the kinship family's care receives Social Security Administration (SSA) benefits also or if child support monies have been court-ordered, DFPS receives and uses these funds to offset the cost of the child's foster care payments. The kinship family will receive the foster care payments in lieu of the child's SSA benefits or child support they may have previously received from DFPS. When the court gives PMC to the kinship family and PCA benefits begin, the kinship family must apply with the SSA to become the representative payee of the child's SSA benefits and arrangements must also be made for the kinship family to receive any child support payments that have been court-ordered.

E. Resources

Texas DFPS

- Permanency Care Assistance webpage[313]
- Permanency Care Assistance: Key Issues for Judges[314]

Center for Public Policy Priorities

- Fostering Connections to Success and Increasing Adoptions Act: What it Means for Texas[315]

RELATIVE AND OTHER DESIGNATED CAREGIVER (RODC) PROGRAM

A. What is the Relative and Other Designated Caregiver Program?

The Relative and Other Designated Caregiver Program (RODC) supports continuity and stability for children in the conservatorship of DFPS by providing financial assistance to eligible kinship caregivers. Under the RODC, DFPS may enter into Caregiver Assistance Agreements (CAA) with a relative or other designated caregiver who has not been verified as a foster parent or otherwise licensed to provide 24-hour residential childcare to provide monetary assistance for caring for children in the Temporary Managing Conservatorship of the Department. Tex. Fam. Code Chapter 264, Subchapter I and Tex. Admin. Code Title 40, Chapter 700, Subchapter J, Division 1 set out the requirements for the RODC.

B. Who Qualifies?

Caregivers are eligible for the RODC payment if:

- The child they are caring for is currently in the managing conservatorship of the Department. 40 Tex. Admin. Code § 700.1003(a);
- The caregiver is related to, or has a longstanding and significant relationship with, the children or the family of the children. 40 Tex. Admin. Code § 700.1003(b)(1);
- They have an approved home assessment. Tex. Fam. Code § 264.754(b) and 40 Tex. Admin. Code § 700.1003(b)(2);
- They are not already verified as foster parents or as a group home and receiving foster care maintenance payments. Tex. Fam. Code § 264.751(1)(A), (3)(A); and 40 Tex. Admin. Code § 700.1003(b)(4);
- They sign and abide by a Caregiver Assistance Agreement. 40 Tex. Admin. Code § 700.1003(b)(3); and
- The total household income does not exceed 300% of the federal poverty limit. Tex. Fam. Code § 264.775(b) and 40 Tex. Admin. Code § 700.1003(c).
- A relative of other designated caregiver is not eligible to receive benefits under the RODC on behalf of any child for whom the caregiver is also receiving either foster care reimbursement or PCA. 40 Tex. Admin. Code § 700.1002(b).

C. What Types of Assistance are Available to Eligible Caregivers?

Subject to the availability of funds and based upon the family's need, eligible caregivers may receive two types of cash assistance:

- a monthly payment, per child in the managing conservatorship of DFPS that has been placed in the caregiver's home; and
- an annual reimbursement for DFPS approved child-related expenses if the caregiver has obtained permanent managing conservatorship of the child. 40 Tex. Admin. Code § 700.1005.

D. What is the Monthly Payment?

The RODC monthly payment is currently set at $12.67 per day, per child; this is approximately $385.38 per month, per child.

E. How Long Can the Caregiver Receive Monthly Payments?

The monthly reimbursement payments are available for up to 12 months after placement of the child in the caregiver's home with a one-time, six-month extension for good cause. Tex. Fam. Code § 264.775(b-1) and 40 Tex. Admin. Code § 700.1007(d).

Examples of Circumstances that Justify Good Cause for Payments to Go Beyond 12 Months:

- The identification, release, or location of a previously absent parent of the child;
- Awaiting the expiration of the timeline for an appeal of an order in a suit affecting the parent-child relationship;
- Allowing additional time for a kin caregiver to complete the approval process for verification or adoption of the child;
- Waiting for approval of a child's placement from another state;
- A delayed determination of the child's Indian Child status, or when awaiting the approval of the Indian Child's Tribe; or
- Any other circumstance involving the child or caregiver that DFPS deems as justification for an extension.

40 Tex. Admin. Code § 700.1007(d).

F. What if the Child Moves?

The payments follow the child, but the duration of the payment stays the same. For example, if a child lives with an eligible grandmother for 4 months and then moves to an eligible aunt's home for 8 months, the 12-month payment period does not restart for the aunt.

G. How is the RODC Monthly Payment Dispersed?

The payment is paid similar to foster care payments, but because it is considered a reimbursement, it is paid in arrears. In other words, the payments are determined by the number of days the child was with the kinship caregiver the previous month. Payments are processed for care days in the prior month on or about the 15th of each month and disbursed at the end of that month for care days in the prior month.

H. Should Relatives Still Apply for TANF before Receiving the RODC Payment?

Grandparents are no longer required to apply for and be denied the Temporary Assistance for Needy Families (TANF) Grandparent Grant (a one-time payment of $1,000 per sibling group) before qualifying for the RODC Payment. Grandparents should still apply for the TANF Grandparent Grant and may receive it in addition to the RODC payment.

I. What if a Caregiver Receives PMC of the Child?

If a caregiver meeting the eligibility requirements above receives PMC of a child previously in the conservatorship of DFPS, the caregiver can request the $500 annual reimbursement per child for DFPS approved child-related costs. DFPS can reimburse caregivers in this amount for up to three years or until the child turns 18, whichever comes first. Tex. Fam. Code § 264.775(f) and 40 Tex. Admin. Code § 700.1009.

J. What Can Judges Do to Support RODC Payments?

- Be familiar with the eligibility criteria;
- Know that DFPS can only make the payment based on a reimbursement process; and
- Understand that if courts make orders regarding different dates of payments, this may delay the payment process for other relative caregivers, since every region is processing a large number of relative caregiver payments every month according to a set schedule.

K. RODC Program Report

DFPS is required to publish a Relative and Other Designated Caregiver Placement Program Report[316] on the funds disbursed, permanency outcomes for the children who are placed with relatives, and the length of time between the beginning of RODC and the award of PMC to the caregiver. Tex. Fam. Code § 264.762.

MEXICAN CONSULAR RELATIONS

A. Background

DFPS has agreements with the Mexican Consular Offices to help carry out DFPS' obligations under the Consular Convention between the United States of American and the United Mexican States signed at Mexico City on August 12, 1942, and the Vienna Convention on Consular Relations, signed in Vienna on April 24, 1963.

There are 11 Consular Offices throughout the state. Please *see* the Mexican Consular Offices in Texas for a directory of offices and contacts.[317]

B. Definitions

"**Mexican Minor**" means an unmarried individual, under the age of eighteen, who is a national of Mexico or a national of Mexico and another country (or countries) as long as one of those countries is not the United States of America.

"**Mexican Family**" means a family with at least one parent who was either born and/or currently resides in Mexico, regardless of their immigration status in the United States of America.

"**Custodian**" means a person taking responsibility for a Mexican Minor's care.

"**DIF**" means the Agency for Integral Family Development. This is the agency in Mexico which is responsible for child welfare.

C. Required Procedures

Identifying Minors Born in Mexico

- Federal law requires that DFPS verify the citizenship and immigration status of children in foster care. 42 U.S.C. § 671(a)(27).
- DFPS will make best efforts to determine a child's country of birth as soon as possible after a child comes into DFPS custody.
- If a child reported to be born in Mexico has no birth record, the DFPS caseworker will request certified copies of the Mexican birth certificates. DFPS will seek assistance from the Consulate in order to obtain certified copies of birth certificates, an alternate record of birth, or a record of documentation that no birth record exists, from Mexico.

Notification to the Consulate

- DFPS has the duty to notify the Consulate – and will endeavor to do so in writing – when DFPS assumes custody of a Mexican Minor.
- DFPS will endeavor to provide the following information in its notice to the Consulate, when available:
  - name of the Mexican Minor;
  - date of birth of the Mexican Minor;
  - names of the parents or custodian; and

- name and phone number of the caseworker and supervisor responsible for the DFPS case.

- Once DFPS assumes custody of a Mexican Minor, DFPS will endeavor to send notice without delay, by facsimile, mail, with return receipt requested, or email, to the Consulate with responsibility for the county where the DFPS legal case is filed. CPS Policy Handbook § 6714.1.[318]

Consular Referrals

- If DFPS takes custody of a child of a Mexican Family, the agency will make best efforts to provide the child's parents or custodian with a referral to the Mexican Consulate, regardless of the child's citizenship status.
- DFPS will also make best efforts to provide the child´s parents with written information in Spanish and English about the legal proceeding filed by DFPS.

Confidentiality and Additional Information

- With respect to any notice, communications, records, or other information shared pursuant to the Procedures, the Consulate is subject to the confidentiality provisions established in federal and state law; this includes the confidentiality provisions in the Texas Family and Human Resources Codes.
- Subject to these confidentiality provisions, the Consulate may contact DFPS to obtain additional information regarding a child welfare legal proceeding filed by DFPS involving a Mexican Minor.

Interviews

- A consular officer has the right to interview a Mexican Minor in DFPS legal custody. In order to arrange for an interview, the Consulate must contact the DFPS caseworker or supervisor assigned to the legal case.

Special Immigrant Juvenile Status

- When a Mexican Minor in the custody of DFPS is eligible to obtain the Special Immigrant Juvenile Status (SIJS), pursuant to 8 U.S.C. § 1101(a)(27)(J) or other immigration relief, DFPS will seek assistance from the Consulate in order to obtain the necessary documentation from Mexico, including a certified copy of the birth record, an alternate record of birth, or a record of documentation that no birth record exists.

Assistance Provided by DIF

- DFPS will seek assistance from the Consulate in order to obtain from DIF the appropriate socio-economic (home) studies of families in Mexico who may be eligible to obtain custody of a child in the custody of DFPS. Upon receipt of the home studies, the Consulate will immediately transmit the information to the DFPS caseworker responsible for the case.
- DFPS will provide the Consulate all relevant information to assist DIF in locating a parent or family member of a child in DFPS custody who resides in Mexico.
- When a child in DFPS custody is placed in the custody of a person who lives in Mexico, DFPS will request the Consulate to implement the necessary coordination measures with DIF, in

order to carry out the repatriation or placement of said child, procuring their welfare and providing them with all the necessary services.

- DFPS will request the Consulate to obtain assistance from DIF for the reunification of the minor with the relative in Mexico who will assume custody and to take the necessary measures to ensure the welfare of the minor.

Amendments of Birth Certificates

- DFPS will work to obtain an amended birth certificate for a minor who will be placed in Mexico with a parent(s) whose name does not appear on the birth certificate, in accordance with the applicable law and any court order regarding parentage. DFPS may obtain assistance from the Consulate for this purpose.

Locating Persons in Mexico

- DFPS will seek assistance from the Consulate in order to locate parents residing in Mexico to facilitate notice and service of process of a child welfare proceeding brought by DFPS. DFPS may also request assistance from the Consulate for locating extended family members or other persons who may be able to provide a placement or otherwise support a child's permanent plan.

Mutual Exchange of Contact Information

- DFPS will exchange with the Consulate the names, titles, and contact information for appropriate staff to contact for issues relating to the Procedures, and update that information as necessary.

Review of Procedures

- At a minimum, DFPS staff may ask the Consulate to review annually issues arising from the application of the Procedures. The Consul General and the Commissioner of DFPS, or whoever they designate, may hold consultations as often as is necessary in order to review issues in the implementation of the Procedures and discuss cases of particular import.

Outreach and Training Activities

- DFPS will participate in joint outreach activities focused on Mexican communities in Texas, to promote healthy families, provide education about foster care and adoption opportunities, permanency, child abuse prevention strategies, and ongoing initiatives of mutual interest. In addition, DFPS will collaborate with the Consulate to develop and distribute training and information on best practices regarding Mexican Minors in Texas.

Contact by Consulate

- Notwithstanding the Procedures, the Consulate may contact, at any time as appropriate, the DFPS Commissioner or Deputy Commissioner, the DFPS Office of General Counsel, the Court Appointed Special Advocate, and/or the Office of Attorney General of the State of Texas.

Terms of Procedures

- The Procedures will be in force from the date of issuance unless modified in writing by the DFPS Commissioner or the Commissioner's designee.
- For more information, please review the DFPS International and Immigration Issues Resource Guide.[319]

CHECKLISTS WITH CITES

REQUIRED PARTICIPATION IN SERVICES HEARING CHECKLIST

ADVERSARY HEARING CHECKLIST

STATUS HEARING CHECKLIST

PERMANENCY HEARING BEFORE FINAL ORDER CHECKLIST

TERMINATION GROUNDS CHECKLIST

FINAL HEARING CHECKLIST

PERMANENCY HEARING AFTER FINAL ORDER CHECKLIST

REASONABLE EFFORTS FINDINGS CHECKLIST

DE NOVO HEARING CHECKLIST

FOSTER CARE & EDUCATION CHECKLIST

MEDICAL & MENTAL HEALTH CARE CHECKLIST

INDIAN CHILD WELFARE ACT (ICWA) CHECKLIST

HUMAN TRAFFICKING CHECKLIST

REQUIRED COURT ADMONISHMENTS CHECKLIST

CAREGIVER NOTICE AND ENGAGEMENT CHECKLIST

ABA ENGAGING CHILDREN IN THE COURTROOM BENCH CARDS

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

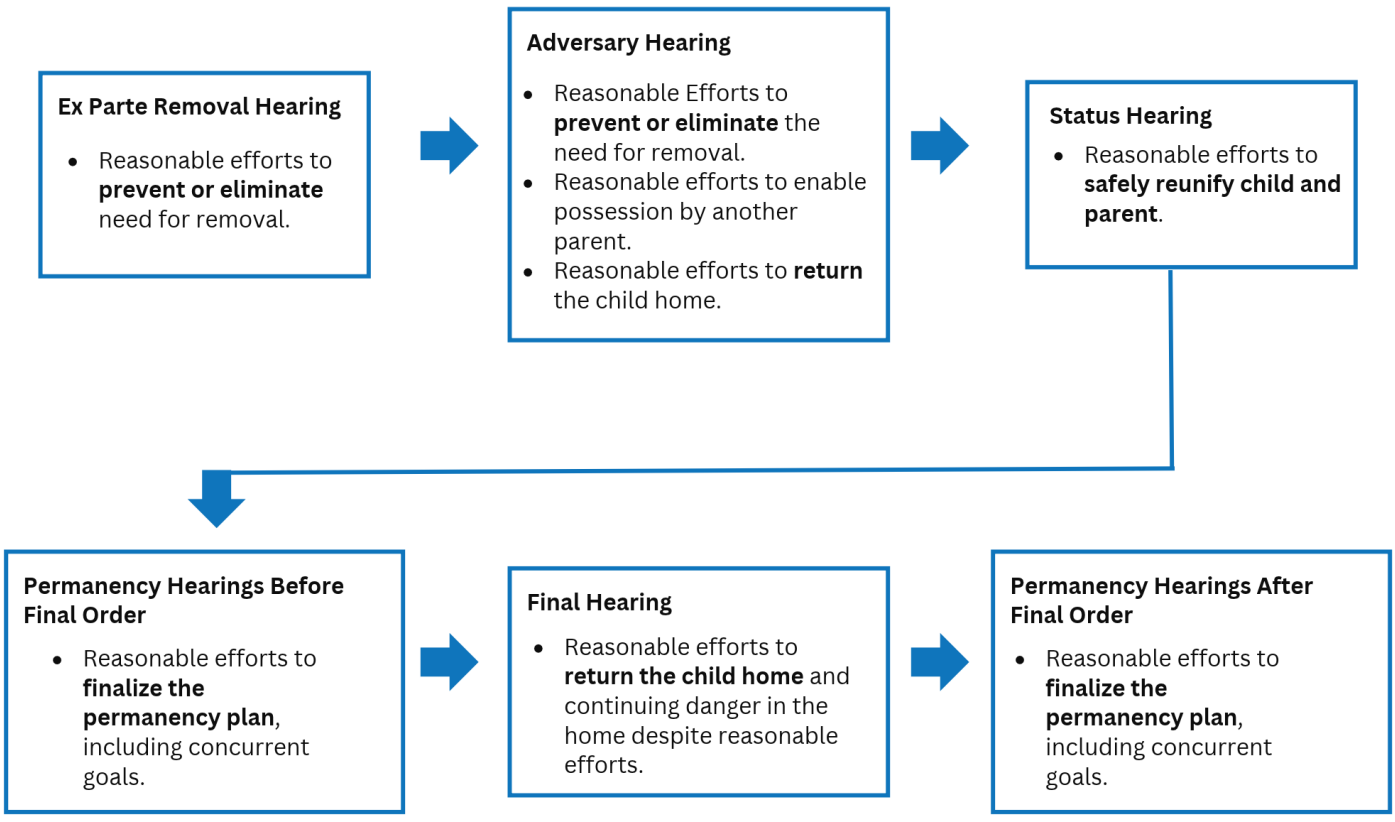
Tex. Fam. Code § 161.001(f)-(g)

- 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.

This publication was made possible in collaboration with Casey Family Programs, whose mission is to provide, improve – and ultimately prevent the need for – foster care.

REFERENCE MATERIALS

COMMON ACRONYMS AND ABBREVIATIONS

ENDNOTES

COMMON ACRONYMS AND ABBREVIATIONS

Acronym	Explanation	Comments
AAL	Attorney ad litem	An attorney who provides services for the purposes of a specific legal action only, including representation of a child, and who owes to their client the duties of undivided loyalty, confidentiality, and competent representation.
AC	Administrative Closure	Administrative Closure occurs when DFPS intervention is unwarranted based on information that comes to light after the case is assigned for investigation.
ADR	Alternative Dispute Resolution	A method of settling conflict outside of litigation (e.g., mediation).
AFCARS	Adoption and Foster Care Analysis and Reporting System	An application that collects case-level information on all children in foster care for whom state child welfare agencies have responsibility for placement, care, or supervision, and information on children who are adopted under the auspices of the state's public child welfare agency.
AJR	Administrative Judicial Region; Website	The state of Texas is divided into 11 administrative judicial regions. Each region has a presiding judge who is appointed by the Governor to serve a four-year term.
AOP	Acknowledgement of Paternity	An acknowledgement of paternity is a legal document that allows parents who are not married to establish legal paternity. Both parents must sign an AOP, under penalty of perjury, that the man is the genetic father of the child. When an AOP is filed with Texas Vital Statistics, the genetic father becomes the child's legal father with all the rights and duties of a parent.
APPLA	Another Planned Permanent Living Arrangement	A permanent legal arrangement for a child designed to promote stability and permanency in a child's life; refers to permanent placements other than reunification with a parent, adoption, or permanent managing conservatorship to a relative.
ARIF	Administrative Review of Investigation Findings	An informal, administrative process that gives an individual the opportunity to challenge their designation as a perpetrator of abuse or neglect of a child.

Acronym	Explanation	Comments
ASFA	Adoption and Safe Families Act	The Adoption and Safe Families Act of 1997 (P.L. 105-89) was enacted by the United States Congress to improve the safety of children, promote adoption and other permanent homes for children who needed them, and support families. According to the Children's Bureau, ASFA also required child welfare agencies to provide more timely assessment and intervention services to children and families. Additionally, ASFA paved the way for concurrent planning (simultaneously identifying and working on a secondary goal, such as guardianship, with a relative) by requiring that agencies make reasonable efforts to find permanent families for children in foster care should reunification fail. Finally, ASFA required a petition for termination to be filed if a child had been in care 15 out of 22 months.
AR	Alternative Response	A type of service provided to some families who were the subject of an investigation of child abuse and neglect allegations without including a substantiation of the allegations or an entry of perpetrators into the Central Registry. Includes services and support to help families resolve safety issues and reduce future involvement with DFPS.
ARD	Admission, Review, and Dismissal	The process by which a student's parents and school staff meet at least annually to 1) decide whether a student has an eligible disability; 2) determine what special education and related services will be provided; and 3) develop an Individualized Education Program (IEP).
BIA	Bureau of Indian Affairs	The United States federal agency within the U.S. Department of the Interior which maintains government-to-government relationships with Indian tribes and facilitates support for tribal people and tribal governments. The BIA provides services directly to federally recognized Tribes through contracts, grants, or compacts.
BVS/VSU	Bureau of Vital Statistics/Vital Statistics Unit	The state agency responsible for maintaining legal records for birth, death, marriage, adoption, and paternity. Also referred to as the Vital Statistics Section (VSS) by HHSC.
CAC	Child Advocacy Center	A safe, child-friendly, specially equipped facility that completes forensic interviews of children. CACs also provide additional services such as counseling and intervention services during the course of an investigation and prosecution of child abuse cases.
CANS	Child and Adolescent Needs and Strengths	A tool developed by DFPS for children's services to support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of outcomes.

Acronym	Explanation	Comments
CAPTA	Child Abuse Prevention and Treatment Act	A federal law that was originally enacted on January 31, 1974 (P.L. 93-247) and has been amended several times. According to the Children's Bureau, CAPTA provides federal funding and guidance to states in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit organizations, including Indian Tribes and Tribal organizations, for demonstration programs and projects.
CASA	Court Appointed Special Advocate; Website	A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child abuse, neglect, or other dependency matters, and submits a formal report proffering advisory recommendations as to the best interests of a child. In some jurisdictions, volunteers without formal legal training, such as CASAs, serve in the capacity of a Guardian ad litem (GAL).
CCEJ	Court of Continuing, Exclusive Jurisdiction	Upon rendition of a final order in a Suit Affecting the Parent-Child Relationship (SAPCR), a court acquires continuing, exclusive jurisdiction over all subsequent matters regarding the child unless otherwise provided by the Family Code. Also referred to as Court of Continuing Jurisdiction (CCJ).
CFRT	Texas Child Fatality Review Team; Website	A multidisciplinary, multi-agency group, mandated by state law which oversees and assists the work of local review teams in Texas, and works to develop a statewide understanding of the scope and magnitude of childhood mortality.
CFSR	Child and Family Services Review	A Federal-State collaborative effort designed to help ensure that quality services are provided to children and families through State child welfare systems.
CIP	Court Improvement Program; Website	The highest court of each State and territory participating in the Court Improvement Program (CIP) receives a grant from the Children's Bureau to complete a detailed self-assessment and develop and implement recommendations to enhance the court's role in achieving stable, permanent homes for children in foster care. In Texas, the Children's Commission is the recipient of CIP funds.
COS	Circle of Support	A meeting held soon after a youth who has been removed from the home reaches age 16. Its primary purpose is to develop a transition plan for the youth and to connect youth to supportive and caring adults who can help the youth when the youth leaves foster care.
COS	Court Ordered Services	A type of child welfare case during which services are ordered by the court for the family, without DFPS having temporary managing conservatorship of the child. Depending on jurisdictional practice, this may also be referred to as a Motion to Participate (MTP), Order to Participate (OTP), or Required Participation case.

Acronym	Explanation	Comments
CBC	Community Based Care	A newer model of serving children and families through partnerships with private Single Source Continuum Contractors (SSCCs) in designated catchment areas across the State. Often referred to as Privatization.
CPA	Child Placing Agency	An agency that is licensed by DFPS and required to conform to minimum standards. They verify and oversee non-agency foster placements.
CPC	Child Protection Court	A court that specializes in child welfare cases.
CPI	Child Protective Investigations; Website	A division of Texas DFPS that examines reports of child abuse or neglect and determines if there are any threats to the safety of the children in the home and whether parents are willing and able to adequately manage those threats to keep the children safe.
CPS	Child Protective Services; Website	A division of Texas DFPS that provides services to children and families in their own homes; places children in foster care; provides services to help youth in foster care make the transition to adulthood; and places children in adoptive homes.
CPOS	Child Plan of Service	The written plan that outlines the services to be provided, who is responsible for the completion of that service, and establishes goals for the child.
CPCMS	Child Protection Case Management System	The court case management system used by Child Protection Courts.
CPU	Centralized Placement Unit	A unit at DFPS that reviews a child's information, tracks placement vacancies, and determines the least restrictive placement option that best meets the needs of a child when a child is in the custody of DFPS.
CRCG	Community Resource Coordination Group	A group that is a collaboration of local public and private agencies, organizations, and families which work together to meet the needs of individuals which no one agency can meet. According to HHS, CRCGs identify services gaps, break down barriers, and find ways to improve the health of their community.
CSCAL	Child Safety Check Alert List	This is an automated program operated by the Texas Department of Public Safety as part of the Texas Crime Information Center to assist DFPS in locating families that move before DFPS begins or finishes an investigation or that move during the provision of services by DFPS.
CVS	Conservatorship/ Conservatorship Unit; Website	The term used to define the legal care, custody, and control of a child given by court order. CVS also stands for the unit and type of caseworker who is involved with a child when the DFPS has custody of that child.
CWB	Child Welfare Board; Texas Council of CWBs Website	These Boards are developed and funded in some Texas counties to help meet needs of children and youth in foster care by using county funding to support DFPS' efforts.

Acronym	Explanation	Comments
CWOP	Child Without Placement	CWOP is used to describe a child's status as not having a licensed placement (for example, residing in a location such as a hotel, while still being supervised by DFPS or an SSCC). Sometimes referred to as Child Watch.
DFPS	Texas Department of Family and Protective Services; Website	The state agency charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes.
DPS	Texas Department of Public Safety; Website	The state agency created to provide public safety services by enforcing laws, administering regulatory programs, managing records, educating the public, and managing emergencies, both directly and through interaction with other agencies.
DSM	Diagnostic and Statistical Manual of Mental Disorders	The guidebook used by mental health professionals in the diagnosis of many mental health conditions. The DSM is published by the American Psychiatric Association and has been revised multiple times since it was first introduced in 1952.
DSHS	Texas Department of State Health Services; Website	The state agency that promotes optimal health for individuals and communities while providing effective health, mental health, and substance abuse services to Texans.
ESSA	Every Student Succeeds Act	A federal education law passed in December 2015. ESSA contains several educational stability provisions related to the education of children and youth in foster care that mirror the Fostering Connections to Success and Increasing Adoptions Act of 2008. ESSA also requires designated points of contact in education and child welfare systems, assurances that schools will coordinate with child welfare staff to develop transportation plans for children in foster care, and beginning in December 2018, disaggregated data on children and youth in foster care will be included in the reporting requirements.
FFPSA	Family First Prevention Services Act	A federal law that was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act reforms the federal child welfare financing streams (Title IV-E and Title IV-B of the Social Security Act) to provide services to families who are at risk of entering the child welfare system. The bill aims to prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training. It also seeks to improve the well-being of children already in foster care by incentivizing states to reduce placement of children in congregate care.
FBSS	Family-Based Safety Services; Website	A type of service provided to some families who were the subject of an investigation of child abuse and neglect allegations. Also known as Family Preservation, FBSS includes services to families to prevent removal of the child from the home.

Acronym	Explanation	Comments
FCA	Fostering Connections to Success and Increasing Adoptions Act	According to the Children's Bureau, the 2008 Fostering Connections to Success and Increasing Adoptions Act (P.L. 110–351) amended the Social Security Act to improve outcomes for children in foster care, connect and support relative caregivers, and offer incentives for adoption. Fostering Connections enhanced services for youth aging out of care and created new programs to help children and youth in or at risk of entering foster care to reconnect with family members.
FGC	Family Group Conference	A type of Family Group Decision Making. During an FGC, the child's family joins with relatives, friends, and community members to develop a plan for the child and family. These are generally held after a child is removed but may also be used before removal when the family receives FBSS.
FGDM	Family Group Decision Making; Website	FGDM is a collaborative approach to service planning and decision-making, which involves the child or youth and their family joining CPS staff to develop a service plan for the child.
FPOS	Family Plan of Service	A plan designed to help parents access assistance from sources other than DFPS and to develop the sufficient capacity to protect their children from abuse or neglect.
FSNA	Family Strengths and Needs Assessment	A tool developed to identify and create collaborative agreements about what the Family Plan of Service should address and determines strengths that may help with child safety.
FTM	Family Team Meeting	A type of Family Group Decision Making that is generally held before a child is removed from the home, but also may be held during other stages of services, such as when a family receives FBSS or when a child is in DFPS conservatorship.
GAL	Guardian ad litem	A person appointed by a judge to represent the best interests of an allegedly abused or neglected child. In many counties the GAL is a CASA.
GRO	General Residential Operation	A residential child-care operation that provides childcare for 13 or more children or young adults.
HHSC	Health and Human Services Commission; Website	A state agency which oversees operations of the health and human services system.
HSEGH	Health, Social, Educational and Genetic History	The report that provides the child's information to prospective adoptive families.

Acronym	Explanation	Comments
ICPC	Interstate Compact on the Placement of Children	The federal law, originally enacted in 1960, provides a legal framework for the timely placement of children across state lines, the suitability of prospective families, and the provision of needed support services. The compact (1) applies to the interstate placement of children in the foster care system and children placed across state lines for adoption; (2) requires the development of time frames for completion of the approval process; (3) establishes clear rulemaking authority, (4) provides enforcement mechanisms; (5) clarifies state responsibility; and (6) ensures states' ability to purchase home studies from licensed agencies to expedite the process.
ICWA	Indian Child Welfare Act	The federal law, adopted by Congress in 1978, applies to child custody proceedings in state courts involving "Indian" children -- children of Native American ancestry.
IDD	Intellectual or Developmental Disability	A term used to describe differences that are usually present at birth and that uniquely affect the trajectory of the individual's physical, intellectual, and/or emotional development. Conditions can affect multiple body parts or systems. Intellectual disability is characterized by differences with both intellectual functioning or intelligence and adaptive behavior. Developmental disability is a broader category of often lifelong challenges that can be intellectual, physical, or both.
IDEA	Individuals with Disabilities Education Act	A federal law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.
IEP	Individualized Education Program	An IEP is a plan for each child who qualifies for special education and related services that is developed, reviewed, and revised by the ARD committee, of which parents are active members. It includes the student's present levels of academic achievement and functional performance, participation in state and district-wide assessments, transition services, annual goals, special factors, special education, related services, supplementary aids and services, extended school year services, and least restrictive educational setting.
IMPACT	Information Management Protecting Adults & Children in Texas	According to DFPS, IMPACT is the main application DFPS uses to record case information about the children and adults the agency protects. DFPS uses IMPACT to document all stages of service of a case, including when someone reports abuse, neglect, or exploitation and when those cases are investigated.
IOP	Intensive Outpatient Treatment	An addiction treatment program that is designated for participants to receive intensive drug treatment while living at home.
IV-E	Title IV-E	Title IV-E of the Social Security Act provides a federal funding stream to states for costs related to the provision of foster care, including costs related to legal representation of DFPS, parents, and children.

Acronym	Explanation	Comments
JMC	Joint Managing Conservatorship	A legal status that sets out shared rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions is awarded to one party. Tex. Fam. Code § 101.016. In DFPS cases, it is possible for a parent or a relative to share JMC of a child in the conservatorship of the Department.
JPO	Juvenile Probation Officer	Officers who provide supervision to some youth involved with the juvenile justice system or dual status youth with child welfare and juvenile justice involvement.
LOC	Level of Care; Website	For children who are not served by T3C, there are five service levels of care for children in the conservatorship of DFPS: basic, moderate, specialized, intense, and intense plus. 40 TAC §§ 700.2301-700.2367.
LPS	Local Permanency Specialist	DFPS changed the title for what was referenced to as "*I See You*" staff to Local Permanency Specialist in 2017. The *I See You* worker for a child is officially called the Local Permanency Specialist (LPS); however, references to an *I See You* caseworker are still common. When a child who is in the conservatorship of DFPS is placed in an out-of-region placement, the region where the child is placed must provide the supervision and a portion of the case management services for the child. The Local Permanency Specialist provides these services, known as courtesy supervision. The CVS caseworker must request services and supervision by an LPS within seven days of the placement.
MOU	Memorandum of Understanding	An agreement between two parties in the form of a legal document. It is not fully binding in the way that a contract is, but it expresses an interest in performing a service or taking part in an activity.
MSA	Mediated Settlement Agreement	A form of alternative dispute resolution (ADR) that settles the case via negotiation under the guidance of a qualified neutral third party. An MSA is binding on the parties if properly executed, and a court may only decline to enter the MSA if a specific exception applies. Tex. Fam. Code § 153.007(c)-(e); Tex. Fam. Code § 153.0071(e-1).
NCJFCJ	National Council of Juvenile and Family Court Judges; Website	The mission of the National Council of Juvenile and Family Court Judges is to provide all judges, courts, and related agencies involved with juvenile, family, and domestic violence cases with the knowledge and skills to improve the lives of the families and children who seek justice.
NCSC	National Center for State Courts; Website	The mission of NCSC is to improve the administration of justice through leadership and service to state courts and courts around the world.

Acronym	Explanation	Comments
OAG	Office of the Attorney General; Website	The Texas state agency that serves as legal counsel to all boards and agencies of state government; issues legal opinions when requested by the Texas Governor, heads of state agencies, and other officials and agencies as provided by Texas statutes; sits as an ex-officio member of state committees and commissions; and defends challenges to state laws and suits against both state agencies and individual employees of the State.
OCA	Office of Court Administration; Website	The mission of OCA is to provide resources and information for the efficient administration of the Judicial Branch of Texas.
PAL	Preparation for Adult Living; Website	A program within DFPS to provide support and services to help youth prepare for independent adult living upon departure from DFPS' care and support. According to DFPS, PAL policy requires that youth 16 and older who are in substitute care and likely to remain in care until at least age 18, and who can qualify for services up to their 21st birthday, receive services to prepare them for adult living. With funding availability, regions may serve any youth age 14 or older on whom Child Protective Services has an open case.
PC	Permanency Conference	A Permanency Conference is held when it is not possible or appropriate to hold a Family Group Conference and is held for a child or youth in DFPS conservatorship for the purposes of developing or reviewing the child's or youth's permanency plan; developing or reviewing the family service plan; resolving barriers to achieving a permanent living arrangement, as appropriate; and developing and reviewing the transition plan for youth age 14 and 15. Family Group Decision Making strategies are used, to the extent possible and appropriate to the situation.
PC	Possessory Conservatorship	A legal status when a person is appointed by the court in child custody case with specific rights and duties for possession and access to a child.
PCSP	Parental Child Safety Placement;	A family-initiated, temporary, out-of-home placement made by a parent with a caregiver who is either related to the child or has a long-standing and significant relationship with the child or family that may occur when the family determines that a PCSP is more workable than having a supervision agreement for parent-child contact.
PJMC	Permanent Joint Managing Conservatorship	A legal term under Tex. Fam. Code § 101.016 used in child custody cases to indicate the long-term sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party.

Acronym	Explanation	Comments
PMC	Permanent Managing Conservatorship	Placement of a child in the permanent conservatorship of an entity or person, by court order, (e.g., Texas DFPS or relative) with no intention of returning the child to the parent's custody. PMC is a term used solely in the context of child welfare law and is used to designate a managing conservator other than a parent. The designation of a non-parent as sole or joint managing conservator may be used in lieu of the term PMC.
QRTP	Qualified Residential Treatment Program	A childcare institution that has a treatment model as defined by the Family's First Prevention Services Act (FFPSA).
RAPR	Refusal to Assume Parental Responsibility	RAPR is characterized as the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason.
RSDI	Retirement, Survivors, and Disability Insurance	A federally funded program managed by the Social Security Administration. This program is for people who do not or cannot work anymore, and their spouse and dependents. To be eligible for RSDI payments, the person must have worked a minimum number of years (typically ten, but this can change on a case-by-case basis) and been paid Federal Insurance Contribution Act taxes during these years.
RO	Ruled Out	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as Ruled Out, the information gathered during the investigation supports a reasonable conclusion that: 1) the alleged abuse did not occur; 2) the alleged perpetrator is 9 years old or younger; or 3) the alleged abuse or neglect did occur but there is sufficient evidence to reasonably conclude that the named alleged perpetrator is not responsible.
RTB	Reason to Believe	One of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as Reason to Believe, the information gathered during the investigation supports a reasonable conclusion that the alleged abuse or neglect did occur and that the alleged perpetrator is responsible for it.
RTC	Residential Treatment Center	According to Texas HHS, an RTC provides therapeutic, residential care for children and adolescents to address needs such as mental illness, substance use or other behavioral health problems. Children and adolescents live in an RTC for a short period of time as they work to meet their treatment goals.
SACWIS	Statewide Automated Child Welfare Information System	The comprehensive automated case management tool that meets the needs of all staff (including social workers and their supervisors, whether employed by the State, county, or contracted private providers) involved in foster care and adoptions assistance case management. In Texas, the SACWIS system is called IMPACT.

Acronym	Explanation	Comments
SAPCR	Suit Affecting Parent-Child Relationship	Any lawsuit that affects the parent-child relationship, such as conservatorship of a child that has allegedly been abused or neglected by a parent or guardian.
SIJS	Special Immigrant Juvenile Status	An immigration classification which allows immigrant children in the state child welfare system who cannot reunify with their parents due to abuse, abandonment, or neglect, and who meet certain other criteria, to obtain lawful permanent immigration status.
SMC	Sole Managing Conservatorship	A legal status when an individual is named by court order with the exclusive rights and duties of a parent to a child.
SPA	Support Program Administrator	Regional points of contact who supervise program staff members who provide services and support to CPS staff and children and youth in substitute care. Their programs include, but are not limited to, education, developmental disabilities, and well-being.
SSI/SSDI	Supplemental Security Income/Supplemental Security Disability Income	The program that provides monthly payments to adults and children with a disability or blindness who have income and resources below specific financial limits. The SSDI program pays benefits to the disabled person and certain family members of the disabled person, if the person is "insured" meaning they worked long enough, recently enough, and paid Social Security taxes on their earnings.
SSCC	Single Source Continuum Contractor	A non-profit or governmental entity with child welfare as primary mission that contracts with DFPS to oversee delivery of services through the state's community-based care foster care program. The Single Source Continuum Contractors (SSCC) are responsible for implementing the Community-Based Care (CBC) model for foster care services in their designated catchment areas. The implementation of CBC in each catchment area occurs in stages with increased responsibility assigned to the SSCC at each stage, requiring DFPS to assess risk and readiness on an ongoing basis prior to moving to the next stage.
T3C	Texas Child-Centered Care; Website	A universal child assessment tool and placement process with 24 clearly defined service packages and three add-on services, replacing the current Service Level System for children in care.
TBRI®	Trust-Based Relational Intervention	Developed by Texas Christian University's Institute of Child Development, TBRI employs evidence-based principles and practices to accelerate healing and permanency for children in foster care.
TCIC	Texas Crime Identification Center	TCIC provides immediate access 24/7 to law enforcement agencies throughout Texas to data regarding the stolen status of property and the wanted, missing, sex offender, or protective order status of persons.
TEA	Texas Education Agency; Website	The state agency dedicated to elementary and secondary education.

Acronym	Explanation	Comments
TFC	Texas Family Code	The laws and statutes that govern Texas family law are contained in the TFC, including laws related to child welfare.
THECB	Texas Higher Education Coordinating Board; Website	The state agency with a mission to serve as a resource, partner, and advocate for Texas higher education, resulting in a globally competitive workforce that positions Texas as an international leader.
TJMC	Temporary Joint Managing Conservatorship	A legal status that occurs when temporary managing conservatorship is granted to DFPS and the parent(s) or other person in a SAPCR where the state agency is a party to the lawsuit.
TMC	Temporary Managing Conservatorship	The awarding of conservatorship of a child to Texas DFPS. This may include children remaining in their home with orders from the court for particular requirements to ensure the safety of the child, or the removal of a child from the family for safety and well-being purposes.
TPM	Transition Plan Meeting	According to DFPS, a Transition Plan Meeting is held soon after a youth who has been removed from the home reaches age 14. A TPM tends to be a shorter and more DFPS-driven conference with fewer participants than a Circle of Support. A TPM is used as an alternative to the Circle of Support when youth do not desire one, or when a Circle of Support cannot be convened.
TRCP	Texas Rules of Civil Procedure	The TRCP govern all civil lawsuits filed in Texas. They are designed to "obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law" and to provide for efficient disposition of cases.
UTC	Unable to Complete	For an investigation to be designated as UTC, the information gathered during the investigation supports a reasonable conclusion that the caseworker could not gather enough information because the caseworker could not locate a principal, or a principal was uncooperative.
UTD	Unable to Determine	UTD is one of the possible dispositions given in a DFPS investigation of child abuse and neglect. For an investigation to be designated as UTD, the information gathered during the investigation supports a reasonable conclusion that the allegation does not meet the criteria for unable to complete, but: 1) the information gathered is not enough to determine whether the abuse or neglect occurred; or 2) there is enough information to determine that abuse or neglect occurred, but there is not enough information to determine if the alleged perpetrator is responsible.

DFPS Case Determination Abbreviations

Abbreviation	Definitions
ABAN	A case determination of Abandonment
EMAB	A case determination of Mental or Emotional Injury
MDNG	A case determination of Medical Neglect
NSUP	A case determination of Non-Support
NSUP	A case determination of Neglectful Supervision
PHAB	A case determination of Physical Abuse
PHNG	A case determination of Physical Neglect
RAPR	A case determination of Refusal to Assume Parental Responsibility
SXAB	A case determination of Sexual Abuse
SXTR	A case determination of Sex Trafficking

ENDNOTES

[1] CPS Policy Handbook § 2390. Available online at https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2390. Last visited June 15, 2026.
[2] CPS Policy Handbook § 2200. Available online at http://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp. Last visited June 15, 2026.
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[6] *In re Isquier*do, 426 S.W.3d 128, 131 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding).
[7] For more information, please *see* the Uniform Child Custody Jurisdiction and Enforcement Act Guide for Court Personnel and Judges developed by the National Council of Juvenile and Family Court Judges. Available online at https://www.ncjfcj.org/publications/uniform-child-custody-jurisdiction-and-enforcement-act-guide-for-court-personnel-and-judges/. Last visited June 15, 2026.
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The material in this report should not be construed as an advisory or ruling issued by the Supreme Court of Texas or any other court on specific cases or legal issues. Contributions to this report are solely intended to address the improvement of the law, the legal system, and the administration of justice related to child welfare cases.

Texas Children's Commission
201 W. 14th St.
Austin, Texas 78701
texaschildrenscommission.gov