

## Adversary Hearing Checklist

15 minutes; up to 25 suggested best practice

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

- Hearing set within 14 days of removal [Tex. Fam. Code § 262.201\(a\)](#) unless temporary order extended under [Tex. Fam. Code § 262.201\(a-3\)](#).
- Child's GAL/AAL has been appointed and notified of hearing. [Tex. Fam. Code § 107.011](#); [Tex. Fam. Code § 107.012](#)
- All necessary parties served. [Tex. Fam. Code § 102.009](#)
- Court of Continuing, Exclusive Jurisdiction identified. [Tex. Fam. Code § 155.101](#)

### At Hearing:

- Identify those present, note those not present, determine service on parties, and swear witnesses. [Tex. Fam. Code § 102.009](#)
- Parents not represented by attorney informed of right to be represented by an attorney, and if indigent and in opposition to suit, right to court-appointed attorney. [Tex. Fam. Code § 262.201\(a-1\)](#)
- If a parent claims indigence, hear evidence and make determination. [Tex. Fam. Code § 262.201\(a-3\)](#)
- Confirm that DFPS generated notice to relatives. [Tex. Fam. Code § 262.1095\(a\)](#)
- Determine if language interpretation is needed. [Tex. Gov't Code § 57.002](#)
- Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. [Tex. Fam. Code § 261.307\(a\)\(2\)](#); [Tex. Fam. Code § 262.201\(c\)](#)
- Review placement and determine whether DFPS and criminal background checks conducted and whether home studies have

been initiated. [Tex. Fam. Code § 262.114\(a-1\)\(2\)](#); [Tex. Fam. Code § 264.114\(b\)](#)

- Inquire about Indian/Native American Heritage. [25 U.S.C. § 1912](#); [Tex. Fam. Code § 262.201\(a-4\)](#)
  - Inquire of all parties if there's 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 if has seen client and when.
  - If AAL has not seen client, ensure form is provided. [Tex. Fam. Code § 107.004\(d\)\(2\)](#)
- Review and approve temporary Family Visitation Plan. [Tex. Fam. Code § 262.115](#)

### At the End of the Hearing:

- Determine if sufficient evidence to grant DFPS TMC of child; if not, return the child. Evidence is sufficient to satisfy a person of ordinary prudence and caution that:
  - There was a danger to physical health or safety of the child, which was caused by the act or failure to act of the person entitled to possession. [Tex. Fam. Code § 262.201\(b\)\(1\)](#)
  - The urgent need for protection required the immediate removal of the child and reasonable efforts made to prevent or avoid removal. [Tex. Fam. Code § 262.201\(b\)\(2\)](#)
  - Reasonable efforts have been made to enable the child 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\(b\)\(3\)](#)
  - There is a continuing danger to the physical health or safety of the child and for the child to remain in the home is

contrary to the welfare of the child. [Tex. Fam. Code § 262.201\(c\)](#)

- If evidence is sufficient to appoint DFPS as TMC, inform parents that their rights may be terminated or limited. [Tex. Fam. Code § 262.201\(c\)](#)
- If citation by publication required, render temporary order without regard to citation being published. [Tex. Fam. Code § 262.205\(d\)](#)
- Determine if aggravated circumstances are alleged or exist. [Tex. Fam. Code § 262.2015](#)
- Determine whether family violence has occurred and Protective Order necessary or available. [Tex. Fam. Code § 262.201\(c\)](#)
- Determine whether child 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 child with:
  - Child's noncustodial parent; or
  - Another relative of the child if placement with the noncustodial parent is inappropriate. [Tex. Fam. Code § 262.201\(e\)](#)
- 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 DNA testing [Tex. Fam. Code § 160.502](#)
  - Dismissal date. [Tex. Fam. Code § 263.401](#)
  - Transfer to court of continuing, exclusive jurisdiction, if applicable. [Tex. Fam. Code § 262.203](#)

#### 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 Mary Jane Smith*
  - *Tell me what efforts you made to enable Mary Jane to return home*
  - *Tell me specifically the continuing danger to Mary Jane if she is returned home*
- Review services with parents, as applicable or appropriate. [Tex. Fam. Code § 263.105](#)
- Set status hearing date and announce in open court. [Tex. Fam. Code § 263.201\(a\)](#)
- Ask 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 cultural issues we need to understand?*

#### Well-being issues that may be pertinent at Adversary Hearing:

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

## Status Hearing Checklist

15 minutes; up to 25 suggested best practice

### Prior to Hearing, review 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](#)
- 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 45<sup>th</sup> day after appointed TMC. [Tex. Fam. Code § 263.101](#)
- Form 2085-E designating education decision-maker filed with court. [Tex. Fam. Code § 263.004](#)
- Notification regarding consent for medical care filed with the court. [Tex. Fam. Code § 266.004\(c\)](#)
- Parent attorneys appointed. [Tex. Fam. Code § 107.013](#)
- Dismissal date set. [Tex. Fam. Code § 263.401](#)
- Child received developmentally appropriate assessment by no later than 45<sup>th</sup> day after child entered TMC of DFPS. [Tex. Fam. Code § 266.012](#)

### At Hearing:

#### Due Process and General Matters

- Identify those present, note those not present, determine service on parties, and swear witnesses. [Tex. Fam. Code § 102.009](#)
- 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](#)

- Advise parents of right to counsel; determine indigence; appoint counsel. [Tex. Fam. Code § 263.203](#); [Tex. Fam. Code § 263.0061](#)
- Determine whether parent, alleged father, or relative before the court submitted Child Placement Resources Form. [Tex. Fam. Code § 263.201\(c\)](#)
- Determine status of paternity issues and whether Paternity Registry searched. [Tex. Fam. Code § 263.202\(a\)\(1\)](#)
- Determine status of initiated home studies. [Tex. Fam. Code § 262.114\(a\)\(b\)](#) [BP at Status Hearing]
- Review current and alternative placements. [Tex. Fam. Code § 263.002](#)
- Review the conservatorship appointment and substitute care of the child. [Tex. Fam. Code § 263.002\(1\)](#)
- Inquire about Indian/Native American Heritage. [25 U.S.C. Ch. 21](#); [Tex. Fam. Code § 263.202\(f-1\)](#)
  - Inquire of all parties if there's 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\(a\)](#)
- Ask Child's Attorney Ad Litem if has seen client and when.
  - If AAL has not seen client, ensure form is provided. [Tex. Fam. Code § 107.004\(d\)\(2\)](#)
- 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)

KEY: Statutory Court Findings Best Practices Well-Being

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, it 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\(e\)](#)
  - 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\(b\)](#)

### **At the End of the Hearing:**

- Determine whether the Service Plan is reasonably 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](#); [Tex. Fam. Code § 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 applicable. [Tex. Fam. Code § 262.203](#)

### Best Practices:

- Set first Permanency Hearing Before Final Order and announce in open court. [Tex. Fam. Code § 263.304](#)
- 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 reasonably 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?*
- Ask 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 cultural issues we need to understand?*

- Young adult presence at hearing or opinion about education or medical care. [Tex. Fam. Code § 263.302](#) (BP at Status Hearing); [Tex. Fam. Code § 266.007\(c\)](#)

### Well-being issues that may be pertinent at Status Hearing:

- Education Decision-maker, school stability, education goals, progress, school-related issues. [Tex. Fam. Code § 263.004](#); [Tex. Educ. Code § 25.001\(g\)](#); [Tex. Educ. Code § 25.001\(g-1\)](#)
- Medical Consenter may need to be identified or updated. [Tex. Fam. Code § 263.202\(e\)](#)
- Review psychiatric care, especially if child or youth prescribed psychotropic medication. [Tex. Fam. Code § 266.007\(a\)\(4\)](#)



## Permanency Hearing Before Final Order Checklist

15 Minutes; up to 25 suggested best practice

### Prior to Hearing, review 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:
  - Notification regarding consent for medical care. [Tex. Fam. Code § 266.004](#)
  - Form 2085-E identifying Education Decision-maker. [Tex. Fam. Code § 263.004](#)
  - Visitation Plan. [Tex. Fam. Code § 263.107](#)

### At Hearing:

- Identify those present, note those not present, determine service on parties, and swear witnesses. [Tex. Fam. Code § 102.009](#); [Tex. Fam. Code § 263.306\(a-1\)\(1\)](#)
- 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 (TJJJD) 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\(a-1\)\(2\)\(A\)](#)
- Ensure that each parent, alleged father or relative provided locating information for absent parents, alleged fathers, or relatives. [Tex. Fam. Code § 263.306\(a-1\)\(2\)\(B\)](#)
- Determine status of paternity issues and whether Paternity Registry searched. [Tex. Fam. Code § 160.421](#)
- Determine if language interpretation is needed. [Tex. Gov't Code § 57.002](#)
- Advise unrepresented parents of right to counsel; determine indigence; appoint counsel. [Tex. Fam. Code § 263.0061](#)
- Inquire about Indian/Native American Heritage. [25 U.S.C. §1912](#); [Tex. Fam. Code § 263.306](#)
  - Inquire of all parties if there's 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 whether child or parent is not 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, then issue Order for DFPS to initiate the process.
  - Determine if notice given to appropriate Consulate.
- Review extent of compliance with temporary orders and service plan and extent to which progress has been made. [Tex. Fam. Code § 263.306\(a-1\)\(3\)](#)
- Ensure parties and those present have the opportunity to present evidence and be heard. [Tex. Fam. Code § 263.0021\(b\)](#)
- 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\(a-1\)\(4\)\(A\)](#)
  - 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\(a-1\)\(4\)\(B\)](#)
  - 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\(a-1\)\(4\)\(C\)](#)
  - Whether the child has been provided the opportunity, in a developmentally appropriate manner, to express opinion about medical care. [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(D\)](#)
  - For a child receiving psychotropic medication, whether the child has:
    - been provided nonpharmacological interventions.
    - seen prescribing physician every 90 days for review. **(See Topical Checklist: Medical and Mental Health Care)** [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(E\)](#)
  - 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: Education)** [Tex. Fam. Code § 263.306\(a-1\)\(4\)\(F\)](#)
  - 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\(a-1\)\(4\)\(G\)](#)
  - 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\(a-1\)\(4\)\(H\)](#)
- 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](#)
  - Ask Child's Attorney Ad Litem if has seen client and when.
    - If AAL has not seen client, ensure form is provided. [Tex. Fam. Code § 107.004\(d\)\(2\)](#)
    - AAL should be knowledgeable about medical care and education goals and progress. [Tex. Fam. Code § 107.003\(b\)](#); [Tex. Fam. Code § 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 consentor. [Tex. Fam. Code § 107.004\(b\)\(3\)](#)

#### **At End of Hearing:**

- 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\(a-1\)\(5\)](#)
- 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\(a-1\)\(6\)](#)
- 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\(a-1\)\(7\)](#)

#### 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 Mary Jane 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 Mary Jane with her 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 about their future;
  - Youth 16 and older must be enrolled in Preparation for Adult Living (PAL);
  - 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.
- Ask 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 cultural issues we need to understand?*

## Well-being issues that may be pertinent at Permanency Hearing:

### Medical Care and Mental Health: (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, include 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 or rule of court. [Tex. Fam. Code § 266.007](#)

### Education and Educational Decisions:

#### (See Topical Checklist: 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
  - Whether transportation is available
  - 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.
- Educational 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.

## Final Hearing Checklist (for non-jury trial)

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

- Notice provided to parties within 45 days of setting for trial. [Tex. R. Civ. P. 245](#)
- All parties have been served. [Tex. Fam. Code § 102.009](#)
- Legal relief sought by parties properly plead. [Tex. Fam. Code § 102.003](#); [Tex. Fam. Code § 102.008](#)
- Ensure compliance with the Indian Child Welfare Act, if applicable. [25 U.S.C. § 1912](#)

### At 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 **Grounds for Termination Checklist**
  - 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)

- Closing arguments, unless waived

### 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, and as to Best Interest of child. [Tex. Fam. Code § 101.007](#); [Tex. Fam. Code § 161.001](#)
  - 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, 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; 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\(a\)](#)
- 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 90 days 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\(a\)](#)

**Best Practices:**

- Remind Parent Attorney of appellate duties.
- Set initial placement review hearings sooner than statutorily required to ensure progress toward the child's permanency goal.
- Continue appointment of child's attorney ad litem (AAL) and guardian ad litem (GAL) until child reaches permanency through reunification, adoption, or conservatorship being given to an individual.

## Termination Grounds Checklist

### 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: [Tex. Fam. Code § 161.001\(b\)\(1\)\(J\)](#)
      - 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\(b\)\(1\)\(K\)](#)
- been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under [Tex. Fam. Code Title 3](#) for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  - [Tex. Penal Code § 19.02](#) (murder);
  - [Tex. Penal Code § 19.03](#) (capital murder);
  - [Tex. Penal Code § 19.04](#) (manslaughter);
  - [Tex. Penal Code § 21.11](#) (indecent with a child);
  - [Tex. Penal Code § 22.01](#) (assault);
  - [Tex. Penal Code § 22.011](#) (sexual assault);
  - [Tex. Penal Code § 22.02](#) (aggravated assault);
  - [Tex. Penal Code § 22.021](#) (aggravated sexual assault);
  - [Tex. Penal Code § 22.04](#) (injury to a child, elderly individual, or disabled individual);
  - [Tex. Penal Code § 22.041](#) (abandoning or endangering child);
  - [Tex. Penal Code § 25.02](#) (prohibited sexual conduct);
  - [Tex. Penal Code § 43.25](#) (sexual performance by a child);
  - [Tex. Penal Code § 43.26](#) (possession or promotion of child pornography);
  - [Tex. Penal Code § 21.02](#) (continuous sexual abuse of young child or children);
  - [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [Tex. Penal Code § 20A.02\(a\)\(8\)](#) (trafficking of persons); and
  - [Tex. Penal Code § 43.05\(a\)\(2\)](#) (compelling prostitution); [Tex. Fam. Code § 161.001\(b\)\(1\)\(L\)](#)
- had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of [Tex. Fam. Code § 161.001\(D\)](#) or [Tex. Fam. Code § 161.001\(E\)](#) or substantially equivalent provisions of the law of another state; [Tex. Fam. Code § 161.001\(b\)\(1\)\(M\)](#)
- 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\(b\)\(1\)\(N\)](#)
- failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing

- conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under [Tex. Fam. Code Chapter 262](#) for the abuse or neglect of the child; [Tex. Fam. Code § 161.001\(b\)\(1\)\(O\)](#)
- used a controlled substance, as defined by [Tex. Health & Safety Code Chapter 481](#), in a manner that endangered the health or safety of the child, and:
  - failed to complete a court-ordered substance abuse treatment program; or
  - after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance; [Tex. Fam. Code § 161.001\(b\)\(1\)\(P\)](#)
- knowingly engaged in criminal conduct that has resulted in the parent's:
  - conviction of an offense; and
  - confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition; [Tex. Fam. Code § 161.001\(b\)\(1\)\(Q\)](#)
- been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription; [Tex. Fam. Code § 161.001\(b\)\(1\)\(R\)](#)
- voluntarily delivered the child to a designated emergency infant care provider under [Tex. Fam. Code § 262.302](#) without expressing an intent to return for the child; or [Tex. Fam. Code § 161.001\(b\)\(1\)\(S\)](#)
- been convicted of:
  - the murder of the other parent of the child under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 19.02](#) or [Tex. Penal Code § 19.03](#);
  - criminal attempt under [Tex. Penal Code § 15.01](#), or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under [Tex. Penal Code § 15.01](#), to commit the offense described by [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(i\)](#) or [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)\(ii\)](#); or
  - 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\(b\)\(1\)\(T\)\(i\)](#); [Tex. Fam. Code § 161.001\(b\)\(1\)\(T\)](#); and
- that termination is in the best interest of the child. [Tex. Fam. Code § 161.001\(b\)\(2\)](#)

### **Termination of an Alleged Biological Father**

[Tex. Fam. Code § 161.002](#)

- Except as otherwise provided by this section, the procedural and substantive standards for termination of parental rights apply to the termination of the rights of an alleged father. [Tex. Fam. Code § 161.002\(a\)](#)
- The rights of an alleged father may be terminated if:
  - After being served with citation, he does not respond by timely filing an admission of paternity or a counterclaim for paternity under [Tex. Fam. Code Chapter 160](#); [Tex. Fam. Code § 161.002\(b\)\(1\)](#)

- The child is over one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed, he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), and after the exercise of due diligence by the petitioner:
    - his identity and location are unknown; or
    - his identity is known but he cannot be located; [Tex. Fam. Code § 161.002\(b\)\(2\)](#)
  - The child is under one year of age at the time the petition for termination of the parent-child relationship or for adoption is filed and he has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#); or [Tex. Fam. Code § 161.002\(b\)\(3\)](#)
  - He has registered with the paternity registry under [Tex. Fam. Code Chapter 160](#), but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful, despite the due diligence of the petitioner. [Tex. Fam. Code § 161.002\(b\)\(4\)](#)
- The termination of the rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(2\)](#) or [Tex. Fam. Code § 161.002\(3\)](#) rendered on or after January 1, 2008, does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under [Tex. Fam. Code Chapter 160](#). [Tex. Fam. Code § 161.002\(c-1\)](#)
  - The termination of rights of an alleged father under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) does not require service of citation by publication on the alleged father. [Tex. Fam. Code § 161.002\(d\)](#)
  - The court shall not render an order terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(2\)](#) or [Tex. Fam. Code § 161.002\(3\)](#) unless the court receives evidence of a certificate of the results of a search of the paternity registry under [Tex. Fam. Code Chapter 160](#) from the vital statistics unit indicating that no man has registered the intent to claim paternity. [Tex. Fam. Code § 161.002\(e\)](#)
  - The court shall not render an order terminating parental rights under [Tex. Fam. Code § 161.002\(b\)\(4\)](#) unless the court, after reviewing the petitioner's sworn affidavit describing the petitioner's effort to obtain personal service of citation on the alleged father and considering any evidence submitted by the attorney ad litem for the alleged father, has found that the petitioner exercised due diligence in attempting to obtain service on the alleged father. The order shall contain specific findings regarding the exercise of due diligence of the petitioner. [Tex. Fam. Code § 161.002\(f\)](#)
- Involuntary Termination: Inability to Care for Child** [Tex. Fam. Code § 161.003](#)
- The court may order termination of the parent-child relationship in a suit filed by DFPS if the court finds that:
    - The parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
    - The illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;
    - DFPS has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with [Tex. Fam. Code § 161.003\(c\)](#);
    - DFPS has made reasonable efforts to return the child to the parent; and
    - The termination is in the best interest of the child. [Tex. Fam. Code § 161.003\(a\)](#)

- ❑ Immediately after the filing of a suit under this section, the court shall appoint an attorney ad litem to represent the interests of the parent against whom the suit is brought. [Tex. Fam. Code § 161.003\(b\)](#)
- ❑ A hearing on the termination may not be held earlier than 180 days after the date on which the suit was filed. [Tex. Fam. Code § 161.003\(c\)](#)
- ❑ An attorney appointed under [Tex. Fam. Code § 161.003\(b\)](#) shall represent the parent for the duration of the suit unless the parent, with the permission of the court, retains another attorney. [Tex. Fam. Code § 161.003\(d\)](#)

### **After Denial of Prior Petition to Terminate**

[Tex. Fam. Code § 161.004](#)

- ❑ The court may terminate the parent-child relationship after rendition of an order that previously denied termination of the parent-child relationship if:
  - The petition under [Tex. Fam. Code § 161.004](#) is filed after the date the order denying termination was rendered;
  - The circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;

- The parent committed an act listed under [Tex. Fam. Code § 161.001](#) before the date the order denying termination was rendered; and
  - Termination is in the best interest of the child. [Tex. Fam. Code § 161.004\(a\)](#)
- ❑ At a hearing under this section, the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child. [Tex. Fam. Code § 161.004\(b\)](#)

### **Best Interest Factors to Consider**

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

- 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; and
- The plans for the child by these individuals or the agency seeking custody.



## Permanency Hearing After Final Order Checklist

15 minutes; up to 25 minutes suggested best practice

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

- If parental rights terminated, ensure first Permanency Hearing After Final Order set within 90 days of final order date. [Tex. Fam. Code § 263.501\(b\)](#)
- If parent rights not terminated, ensure first Permanency Hearing After Final Order set within 6 months of final order date. [Tex. Fam. Code § 263.501\(a\)](#)
- Persons entitled to notice given at least 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 § 263.502\(a\)](#), and, in addition to elements required by [Tex. Fam. Code § 253.502](#), includes:
  - Summary of Medical Care. [Tex. Fam. Code § 266.007](#)
- The court file includes:
  - Notification regarding consent for medical care. [Tex. Fam. Code § 266.004](#)
  - Form 2085-E identifying Education Decision-maker. [Tex. Fam. Code § 263.004](#)

### At Hearing:

- Identify those present, note those not present, and swear witnesses. [Tex. Fam. Code § 102.009](#); [Tex. Fam. Code § 263.5031](#)
- Ensure child in attendance 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\(2\)](#)
- 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\(3\)\(A\)](#)
  - 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\(3\)\(B\)](#)
  - 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\(3\)\(C\)](#)
  - 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
    - APPLA, including appointing a relative as PMC or returning the child to a parent, is appropriate for the child. [Tex. Fam. Code § 263.5031\(1\)\(D\)](#)

- 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. [Tex. Fam. Code § 263.5031\(1\)\(E\)](#)
- 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\(1\)\(F\)](#)
- 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\(1\)\(G\)](#)
- For a child receiving psychotropic medication, whether the child:
  - has been provided appropriate nonpharmacological interventions, therapies, or strategies to meet the child’s needs; or
  - has been seen by the prescribing physician, physician assistant, or advanced practice nurse at least once every 90 days. [Tex. Fam. Code § 263.5031\(1\)\(H\)](#) (**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\(1\)\(I\)](#) (**See Topical Checklist: Education**)
- For a child for whom DFPS has been named MC 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\(1\)\(J\)](#)
- Whether DFPS has identified a family or other caring adult who has made a permanent commitment to the child. [Tex. Fam. Code § 263.5031\(1\)\(K\)](#)
- Determine whether child is citizen of the United States.
  - 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. [8 C.F.R. § 204.11](#)
- Ensure those present have the opportunity to present evidence and be heard. [Tex. Fam. Code § 263.0021](#)
- Confer with child, if age 4 or older, in developmentally appropriate manner

regarding child's permanency plan. [Tex. Fam. Code § 263.302](#)

- Determine the child is receiving appropriate medical care and has been provided the opportunity to express his/her opinion about 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 § 263.503](#)
- Ask Child's Attorney Ad Litem if has seen client and when.
  - If AAL has not seen client, ensure form is provided. [Tex. Fam. Code § 107.004\(d\)\(2\)](#)
  - AAL should also be knowledgeable about medical care and education goals and progress. [Tex. Fam. Code § 107.003\(b\)](#); [Tex. Fam. Code § 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 consentor. [Tex. Fam. Code § 107.004\(b\)\(3\)](#)

### **At End of 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 180 days 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 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 in your placement.*
- *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 Mary Jane 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 Mary Jane with her grandmother, etc.*

### Set Next 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 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.

- Determine if child has been advised of eligibility for Family Group Decision-Making or Circles of Support in regard to his future.
- Determine if child has been enrolled in PAL or provided transitional services after 14<sup>th</sup> birthday.
- Ask 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 cultural issues we need to understand?*

### **Well-being issues that may be pertinent at Permanency Hearing After Final Order:**

#### **Medical Care and Mental Health:**

- 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 nonpharmacological 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;
  - Whether transportation is available;
  - 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.
- Educational 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/normalcy activities.
- As needed, child evaluated for and receiving special education services.
- If child 14 or older, has postsecondary education plan.



## De Novo Hearing Checklist

- 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 3<sup>rd</sup> working day after receiving notice of:
  - The substance of the associate judge's report as provided by [Tex. Fam. Code § 261.011](#); 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 3<sup>rd</sup> 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 30<sup>th</sup> 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 YOUTH EDUCATION JUDICIAL CHECKLIST

## **School Readiness**

- If the child is age 0-3, child assessed for Early Childhood Intervention (ECI) services. [34 C.F.R. Part 303](#)
- If the child is age 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 enrolled in and has transportation to current school. [Tex. Educ. Code § 25.001\(a\)](#)
- Child remains in current school, regardless of additional placement changes. [Tex. Educ. Code § 25.001\(g\); Tex. Educ. Code § 25.001\(g-1\)](#)
- School changes occur at the end of grading periods. **(BP)**
- School changes do not conflict with standardized testing or final exams. **(BP)**

## **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 § 153.371](#)
- DFPS provided EDM Form 2085-E to child's school and information regarding the EDM given to others. [Tex. Fam. Code § 263.004](#)

## **School Enrollment**

- Child immediately enrolled in a new school if a change was required. [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; Tex. Fam. Code § 263.5031](#)

- What does the child say about school and where wants to attend?
- Child in an appropriate school.
- Child progressing academically and on grade level.
- Additional school supports addressed as needed.
- Child involved in extracurricular activities.
- Discipline issues addressed (truancy, suspension, expulsion, restraints).
- Child's caretaker signed annual form to prohibit corporal punishment at school. [Tex. Educ. Code § 37.0011](#)

## **Post-Secondary Education** [Tex. Fam. Code § 263.306; Tex. Fam. Code § 263.5031](#)

- 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](#)
- Child has a college or career plan. **(BP)**
- Child and his caregivers 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; Tex. Educ. Code § 54.367](#)

## **Special Education** [34 C.F.R. Part 300](#)

- If needed, child evaluated for special education placement and services.
- If eligible:
  - Date of child's last Admission, Review, and Dismissal (ARD).
  - Child has Individualized Education Program (IEP) that is current, appropriate, and in force.
  - Surrogate parent appointed for child. [Tex. Fam. Code § 263.0025](#)

**(BP) denotes a Best Practice**



# INDIAN CHILD WELFARE ACT

## When Does ICWA Apply?

- In a “child custody proceeding” defined as an action effecting foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement; and [25 U.S.C. § 1903\(1\)](#)
- Involving an “Indian child” defined as
  - Unmarried, under the age of 18, and a member of a federally-recognized Indian Tribe; or
  - Unmarried, under the age of 18, *eligible* for membership in a Tribe and is the biological child of a member of a federally-recognized Indian Tribe. [25 U.S.C. § 1903\(4\)](#)

**Each of the 500-plus federally-recognized tribes determines eligibility for membership or enrollment, not the court.**

## If ICWA applies, please refer to NCJFCJ ICWA Checklists:

<http://www.ncjfcj.org/sites/default/files/ICWAChecklistFullDoc.pdf>

## Notice 25 U.S.C. § 1912(a)

- The child’s parent, Indian Custodian, and Tribe have been notified by registered mail, return receipt requested.
- If Tribe cannot be determined, the court must ensure notice to the Secretary of the Interior and the Bureau of Indian Affairs by registered mail, return receipt requested.
- Finding on the record that timely notice was or was not provided as required.

**If not sure, but there is reason to believe the child might be an Indian child, NOTIFY!**

## Placement Preferences 25 U.S.C. § 1915(a)-(b)

- Placement according to ICWA Preferences, defined in descending order (extended family, tribal foster home, or tribal community) unless good cause shown for child to be moved.

## 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.
  - Must include testimony of a “qualified expert witness” defined by ICWA in descending preferential order, with the highest preference given to a member of the child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs in childrearing practices. [25 U.S.C. § 1912\(e\)](#)
  - Finding of “Active Efforts” to prevent removal from the home. [25 U.S.C. § 1912\(d\)](#)
- 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. [25 U.S.C. § 1912\(f\)](#)
  - Supported by testimony of a “qualified expert witness”. [25 U.S.C. § 1912\(f\)](#)
  - Finding that “Active Efforts” have been made to return the child to the home. [25 U.S.C. § 1912\(d\)](#)

**Best practices for Active Efforts include:** (i) early contact and active engagement with the child’s tribe; (ii) higher level of efforts using methods and providing services that are culturally appropriate; and (iii) commitment to the spirit of ICWA in the context of the historical trauma.



# MEDICAL AND MENTAL HEALTH CARE FOR FOSTER YOUTH

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

## **Eligibility:**

- All children in DFPS conservatorship and young adults in extended foster care or those young adults who have returned to foster care, up to age 22. [Tex. Fam. Code § 264.101\(a-1\)](#); [Tex. Fam. Code § 264.101\(a-2\)](#)
- All youth who turned 18 in foster care and received healthcare through Medicaid (STAR Health or other), but who did not return to extended foster care, are covered under STAR Health or STAR Medicaid under the Affordable Care Act up to age 26. [Affordable Care Act PL 111-148](#)

## **Information Required in DFPS Permanency and Placement Review Hearing Court Reports:**

- Nature of any emergency medical care provided to child and circumstances necessitating care, include injury or acute illness of child.
- All medical and mental health treatment child is receiving and child's progress with treatment (this includes ANY physical, dental, eye, immunization, and mental health issues).
- 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 his/her 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 info required by DFPS or rule of court. [Tex. Fam. Code § 266.007](#)

## **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](#)
- DFPS has provided any parent who retains rights notice of initial prescriptions or changes in dosage. [Tex. Fam. Code § 264.018](#)
- Each AAL and GAL has reviewed the medical care. [Tex. Fam. Code § 107.002 \(b-1\)](#); [Tex. Fam. Code § 107.003\(b\)\(1\)](#)
- Each AAL has elicited from client his/her view on the medical care being provided. [Tex. Fam. Code § 107.003\(b\)\(2\)](#)
- AAL has advised youth 16 and older of the right to request medical consentor designation from the court. [Tex. Fam. Code § 107.003\(b\)\(3\)](#)



# HUMAN TRAFFICKING JUDICIAL CHECKLIST

## **Has child been 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\(a\)\(7\)](#);
  - Received a benefit from participating in a venture that involves an enumerated sex offense; OR
  - Engaged in sexual conduct with a trafficked child, [Tex. Penal Code § 20A.02\(a\)\(8\)](#)
- Child under 18 years of age, regardless of trafficker's knowledge [Tex. Penal Code § 20A.01\(1\)](#), [Tex. Penal Code § 20A.02\(b\)\(1\)](#)

## **What is child labor trafficking?**

- A person knowingly:
  - Trafficked child with intent that the child engage in forced labor or services [Tex. Penal Code § 20A.01\(2\)](#), [Tex. Penal Code § 20A.01\(4\)](#), [Tex. Penal Code § 20A.02\(a\)\(5\)](#); OR
  - Received a benefit from participating in a venture that involves forced child labor or services including knowingly receiving forced child labor or services [Tex. Penal Code § 20A.02\(a\)\(6\)](#)
- Child under 18 years of age, regardless of trafficker's knowledge [Tex. Penal Code § 20A.01\(1\)](#), [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\(1\)\(L\)](#)

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

- DFPS made report:
  - To law enforcement and the National Center for Missing and Exploited Children (NCMEC)
  - No later than 24 hours after learning a child is missing or abducted [42 U.S.C. § 671\(a\)\(35\)](#)
- Within 24 hours of learning child missing or returned to care after missing, DFPS notified:
  - Law enforcement, court, child's AAL and GAL, and parents (unless no known location, TPR, or relinquishment) [Tex. Fam. Code § 264.123](#)
- After a missing child returns to care, DFPS interviewed the child about:
  - Why the child was missing;
  - Where the child stayed while missing; and
  - Whether the child was a victim of sex trafficking while missing [Tex. Fam. Code § 264.123\(f\)](#)

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

- Multiple runaways from foster care placement in a short period of time
- Changes in school attendance habits, appearance, socio-economic status and possessions, friend groups, interests, school activities, vocabulary, demeanor, attitude, and sexual behavior
- Unexplained injuries: bruising, swelling, redness, cigarette burns



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

## JUDICIAL BENCH CARD<sup>1</sup>

### 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.<sup>2</sup>

### 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?<sup>3</sup>

### Preparations for court attendance

- Ensure that your courtroom is child friendly.<sup>4</sup>
- Ensure all children are accompanied by a familiar caregiver.

### Possible questions to ask the caregiver about the infant

- Is the infant forming healthy attachments?<sup>5</sup> With whom?
- Is the infant meeting developmental milestones?<sup>6</sup>

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.

<sup>1</sup> 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.

<sup>2</sup> The social worker or caregiver can provide the court with a picture.

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> Please refer to the Milestone Chart.



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

## JUDICIAL BENCH CARD<sup>1</sup>

### 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.<sup>2</sup>

### 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.<sup>3</sup>
- 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).<sup>4</sup>
  - Who does the child look to for help in answering questions?

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.

- 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?<sup>5</sup>

<sup>1</sup> 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.

<sup>2</sup> The social worker or caregiver can provide the court with a picture.

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

<sup>4</sup> 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).

<sup>5</sup> 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.<sup>6</sup>
- 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?<sup>7</sup> With whom?
- Is the child meeting developmental milestones?<sup>8</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> Please refer to the Milestone Chart.

# ENGAGING SCHOOL-AGE CHILDREN (AGES 5-11) IN THE COURTROOM

## JUDICIAL BENCH CARD<sup>1</sup>

### 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.<sup>2</sup>

### 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.<sup>3</sup>
- 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.<sup>4</sup> 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.<sup>5</sup>
  - 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.<sup>6</sup>

### Preparations for court appearance

- Ensure that your courtroom is child friendly.<sup>7</sup>
- 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.

<sup>1</sup> 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.

<sup>2</sup> The social worker or caregiver can provide the court with a picture.

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

<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> Signs may include squirming, lying down, or fussing.

<sup>7</sup> 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?

# ENGAGING ADOLESCENTS (AGES 12-15) IN THE COURTROOM

## JUDICIAL BENCH CARD<sup>1</sup>

### 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.<sup>2</sup>

### 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.<sup>3</sup>
- 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.<sup>4</sup>
- Ask directed questions.<sup>5</sup>
- 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.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- 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.

<sup>1</sup> 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.

<sup>2</sup> The social worker or caregiver can provide the court with a picture.

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

<sup>4</sup> An example of an abstract question is "How well do you get along with your family?"

<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup>
- 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?<sup>10</sup>
- 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?

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<sup>9</sup> Rewarding all attempts at participation adds to the youth's sense of control and self-confidence.

<sup>10</sup> 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](http://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](http://www.abanet.org/child/education/blueprint).

# ENGAGING OLDER ADOLESCENTS (AGES 16+) IN THE COURTROOM

## JUDICIAL BENCH CARD<sup>1</sup>

### 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.<sup>2</sup>

### Communicate with the youth during the court hearing

- Use age-appropriate language.<sup>3</sup>
- 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.<sup>4</sup>
- Avoid legal jargon and acronyms.
- Ask directed questions.<sup>5</sup>
- 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.<sup>6</sup>
- 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.<sup>7</sup>
- 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.<sup>8</sup>
- 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.

<sup>1</sup> 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.

<sup>2</sup> The social worker or caregiver can provide the court with a picture.

<sup>3</sup> Older adolescents can understand more complex concepts.

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

<sup>5</sup> 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?

<sup>6</sup> 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.

<sup>7</sup> 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?

<sup>8</sup> 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?<sup>9</sup>
- 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?

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<sup>9</sup> 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](http://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](http://www.abanet.org/child/education/blueprint).

# JURISDICTION UNDER THE UCCJEA

Child moves to Texas from State A with a parent before Texas CPS files child protection suit.

Under any circumstances, Texas courts have jurisdiction to enter temporary orders for the protection of a child, no matter what has previously transpired.

Texas court has EMERGENCY jurisdiction to render temporary protective orders  
Tex. Fam. Code §152.204

Does the other parent of the child continue to reside in State A?

YES NO

\* The Texas court has jurisdiction to make an initial child custody determination and may modify a custody determination from State A, when applicable.  
TFC §152.201-202

Is there a prior child custody order issued with proper jurisdiction by State A, or has state A commenced a child custody proceeding involving the same child?

YES NO

The Texas court shall immediately communicate with the court of the first state to resolve the emergency, protect the safety of the parties and the child and determine the duration of the temporary order.  
Tex. Fam. Code §152.203

Other state  
RETAINS DECLINES

Is Texas the "home state" of the child?  
TFC §152.102(7)

NO YES

A court exercising jurisdiction under Ch. 262 is not required to transfer the suit to a court in which a parent has filed suit for dissolution of marriage before a final order is rendered under Ch. 263, Subchapter E.  
TFC §262.203(c)

The Texas court may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum and that a court of another state is a more appropriate forum.  
TFC §152.207

\* Unless an exception applies based on a party's assertion that the child is in Texas as a result of an abduction or other unjustifiable conduct. Tex. Fam. Code § 152.208.



## Jurisdiction and Venue Decisions Involving the Court of Continuing, Exclusive Jurisdiction

The court issues orders for the protection of the child under **Chapter 262**.

Is there a prior **final order** regarding this child in a different county?

Yes

No

The court that issued the final order has established **Continuing, Exclusive Jurisdiction**.  
TFC §155.001

Has the child resided in the current county for at least six months?

Yes

No

Transfer to the Ch. 262 court is **mandatory** and that court can order transfer from the CCEJ.  
  
TFC §§155.201(b); 262.203(a)(2)

Transfer to the Ch. 262 court is **discretionary**.  
TFC §155.202.  
(convenience of parties and interests of justice); and the CCEJ orders the transfer.

Transfer to the CCEJ authorized subject to TFC Ch. 155 and §262.203(a)(1)

Transfer pursuant to change of venue Ch. 103

Is there a **pending suit** in another county regarding this child?

Yes

No

A motion to transfer and consolidation order is necessary.  
See TFC §§6.407; 155.202

The Ch. 262 court has jurisdiction to issue a final order.

**NOTE:**

A dissolution filed *after* a DFPS SAPCR does not force transfer to the divorce court.

TFC § 262.203(c)

