

Child Welfare Case Overview: What Attorneys Need to Know About Statutory Hearings and Deadlines

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Presentation Overview

Overview of a child welfare case

- Review of statutory requirements
- Required court findings

Recent legislative changes

- Reasonable Efforts

Helpful resources



Common Terms & Acronyms

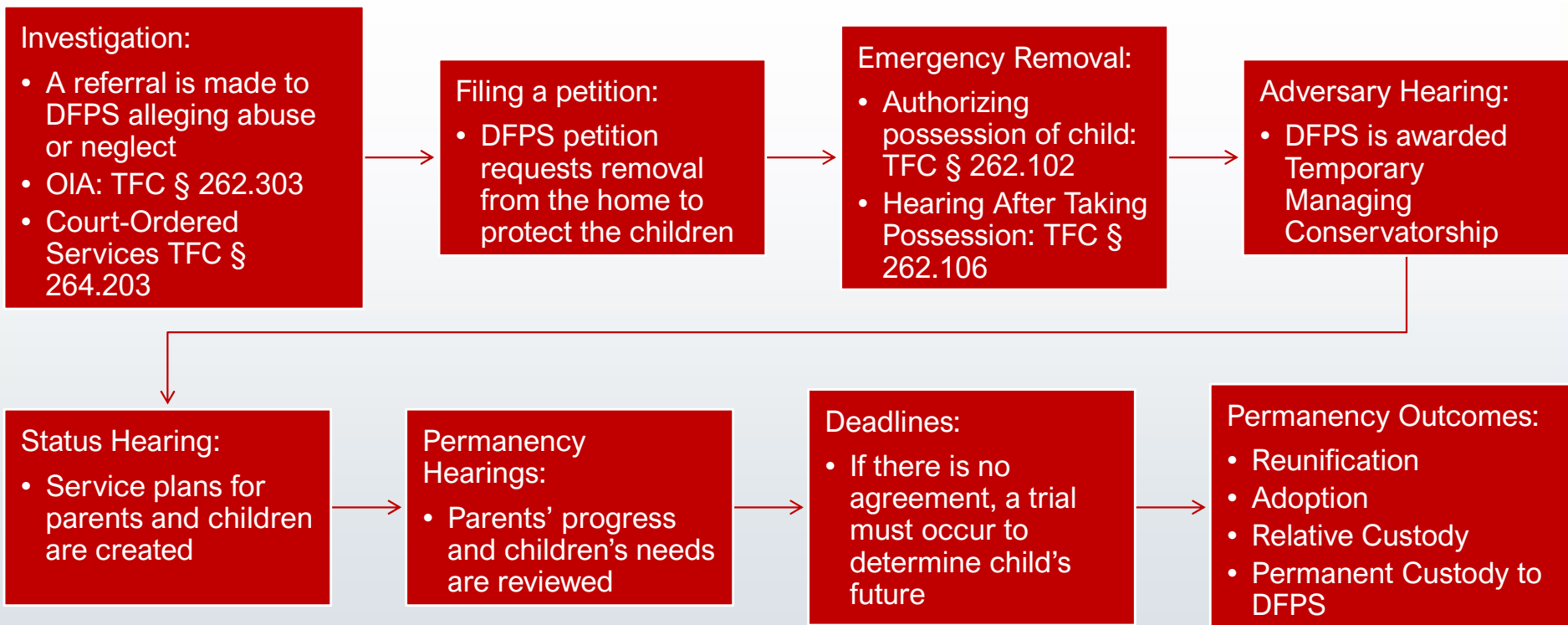
COS/MTP	Court Ordered Services/Motion to Participate
CPS	Child Protective Services
DFPS	Department of Family & Protective Services
TFC	Texas Family Code
TMC/PMC	Temporary or Permanent Managing Conservatorship



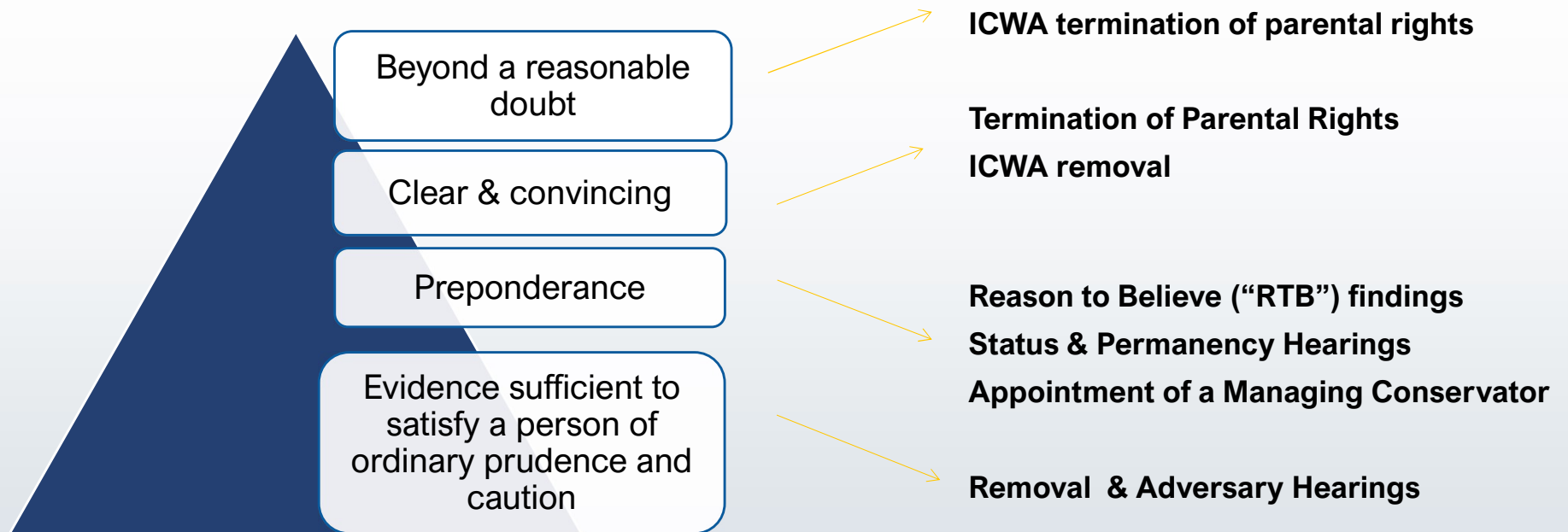


OVERVIEW OF A CHILD WELFARE CASE

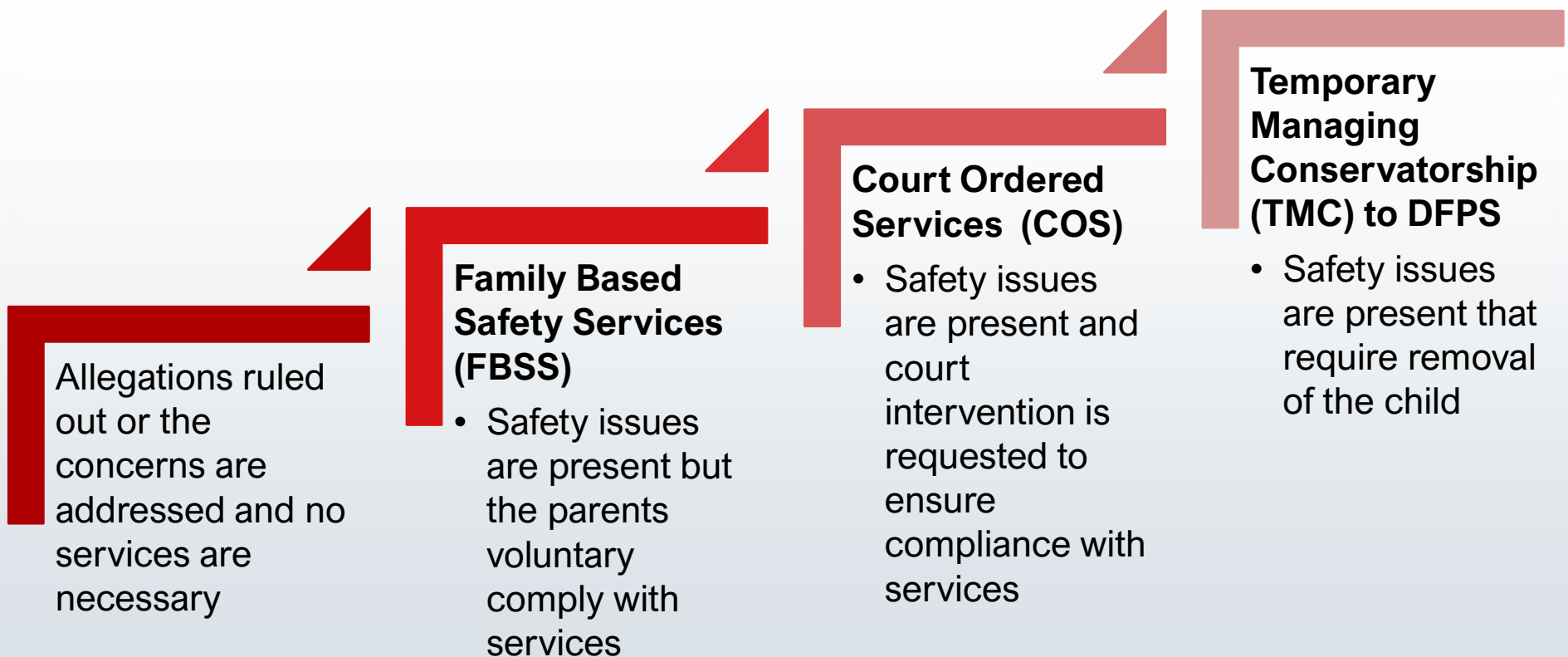
Legal Stages of a Child Welfare Case



The Burden of Proof in a CPS Case



Legal Options at the End of the Investigation





COURT-ORDERED SERVICES

Court-Ordered Services

The department may file a suit requesting the court to render a temporary order requiring the parent, managing conservator, guardian or other household member of the child's household* participate in services for which the department makes a referral or purchases for:

- Alleviating the effects of the abuse or neglect that has occurred;
- Reducing a continuing danger to the physical health or safety of the child; or
- Reducing a substantial risk of abuse or neglect; and
- Permit the child and any siblings of the child to receive the services.

TFC § 264.203(a)



Court-Ordered Services

Suit may be filed in a court with jurisdiction to hear the suit in the county in which the child is located. **TFC § 264.203(b)**

The court may render a temporary restraining order as provided by Section 105.001, but it cannot issue an order that places the child outside of the child's home or in the conservatorship of the department. **TFC § 264.204(e)**

Hearing shall be held not later than the 14th day after the petition is filed unless the court finds good cause to extend the date for not more than 14 days. **TFC § 264.203(f)**

The court shall appoint an AAL for a child and an AAL for a parent immediately upon filing the petition. **TFC § 264.203(g) and (h)**



At the Court-Ordered Services Hearing

Court Findings and Orders at the Conclusion of Hearing: **TFC § 264.203**

- Sufficient evidence that abuse or neglect has occurred or there is a substantial risk of abuse or neglect or there is a continuing danger to the physical health or safety the child; and
- Services are necessary to ensure the physical heath or safety of the child.

The court's findings shall be stated in the order.

The court can make appropriate orders under TFC Chapter 105.

Ordered services must be specific and narrowly tailored to address the Court's findings.



After the Initial Court-Ordered Services Hearing

Review Hearings every 90 days.

Order expires on the 180th day after the date the order is signed unless there is an extension.

Two possible extensions:

- The department can request a one-time extension on a showing of a continuing need. **TFC § 264.203(r)**
- The parent can request an additional extension on a finding of good faith effort by the department and the parent and that completion of services is necessary to ensure the physical health or safety of the child. **TFC § 264.203(s)**

An order can be terminated at any time upon request and the court must terminate on finding the order is no longer needed. **TFC 264.203(t)**



ADVERSARY HEARING

Adversary Hearing

Two types of removals require an adversary hearing: **TFC § 262.101** (filing petition before taking possession of child) or TFC § 262.105 (filing petition after taking possession of child in emergency).

TFC § 262.201: unless the child has already been returned, a full adversary hearing must be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension.

Before hearing, court must confirm CCEJ; that all parties have been served; and that attorney for the child (AAL) has been appointed.

Parents have the right to appointed counsel if indigent and to reset hearing to consult with counsel.



Disclosure of Certain Evidence

If, prior to the Adversary Hearing, the child or parent's attorney requests it, DFPS must provide:

- A list of witnesses (other than DFPS staff) who will testify
- A copy of any offense report, any photo, video or recording that may be used at the hearing. **TFC § 262.014**



At the Adversary Hearing

Court Findings and Orders at the Conclusion of Hearing: **TFC § 262.201**

Sufficient evidence regarding each parent to grant TMC to DFPS?

- Describe with specificity in a separate section all reasonable efforts made to prevent or eliminate removal or return the child home and to place the child with a non-custodial parent;
- Inform parents that their rights may be further restricted or terminated;
- Determine if aggravated circumstances, if alleged, exist;
- Issue protective orders, if necessary;
- Place child with relative unless not in child's best interest; and
- Schedule status hearing date.



What Are Reasonable Efforts?

Generally: statutorily mandated efforts that DFPS must make to preserve or reunify families and achieve permanency for children.

Pursuant to **TFC § 262.001(b)**, in determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home, the child's health and safety are the paramount concerns.

A finding of “no reasonable efforts” results in a loss of federal funding to the state agency.



STATUS HEARING

Status Hearing

60 days after the Adversary Hearing

Focus: the child's status and the parents' service plan

Parents given warning: if don't comply, face termination of parental rights

DFPS provides information about child's health to court

Court also reviews the visitation plan and sets dismissal date



At the Status Hearing

Court Findings and Orders at the Conclusion of Hearing: **TFC § 263.202**

Service Plan narrowly tailored to address any specific issues?

Reasonable efforts made in service plan to enable the child's parents to provide a safe environment for the child?

Have the parents have reviewed the service plan and been given a chance to comment on it?

Incorporate Service Plan into court order and render additional appropriate orders to implement or require compliance with the Service Plan;

If the child is placed in a Qualified Residential Treatment Program (QRTP) or Residential Treatment Center (RTC), whether continued placement in a QRTP or RTC is appropriate; and

Schedule permanency hearing date.





**PERMANENCY
HEARING – BEFORE
FINAL ORDER**

Permanency Hearings Before a Final Order is Entered

Occur every 3 months after the Status Hearing

Service plan and orders can be reviewed and modified

Children must attend the hearing unless specifically excused

Court looks at status of the children and whether parents are engaging in services

Permanency goal for child established

Trial settings are announced if necessary



What are Permanency Goals?

Positive Permanency Goals:

- Family Reunification
- Alternative Family
 - Relative Kinship Adoption
 - Relative Kinship Conservatorship
 - Unrelated Adoption
 - Unrelated Conservatorship

Other Permanency Goals:

- Another Planned Permanent Living Arrangement (APPLA)
- Foster Family DFPS Conservatorship
- Other Family DFPS Conservatorship
- Independent Living



At the Permanency Hearing Before Final Order

Court Findings and Orders at the Conclusion of Hearing: **TFC § 263.304**

- Order the return of the child to the parent unless is there a continuing danger to the physical health & safety of the child and returning home is contrary to child's welfare;
- Inform parents that their rights may be further restricted or terminated;
- Incorporate any changes or modifications to the Service Plan into the court order;
- If placed in a QRTP or RTC, whether child's continued placement is appropriate;



At the PH Before Final Order, cont.

Court Findings and Orders at the Conclusion of Hearing:

- Whether DFPS has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals;
- Schedule next permanency hearing date within 120 days or sooner; and
- Announce in open court the dismissal date and dates of any upcoming hearings.





STATUTORY DEADLINES

Initial Deadline

The initial deadline is 12 months after TMC is granted to DFPS.

If the court does not commence a trial on the merits prior to the deadline, the case is automatically dismissed.

Purpose: to achieve permanency for children in a timely manner and prevent children from languishing in the foster care system.



Extended Deadline

Upon a finding of extraordinary circumstances, the deadline can be extended pursuant to **TFC § 263.401**

- One time only, and
- Up to 6 months past the initial deadline but no longer.



Monitored Return

The court may retain jurisdiction and not dismiss the suit or render a final order if:

- The court finds that retaining jurisdiction is in the child's best interest;
- The court orders the department to return or transition the child to the home; and
- The department continues to serve as TMC and monitors the child's placement to ensure that the child is in a safe environment. **TFC § 263.403**
- The court must specify the grounds for rendering an order under the monitored return statute.



Monitored Return Disruption

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

TFC § 263.403(c)



Possible Outcomes Before the Deadline



Family Reunification:

The children are returned to one or both parents and the DFPS case is dismissed.



Relinquishment:

Both parents voluntarily relinquish their parental rights so the child can be adopted.



Conservatorship agreement with non-parent where DFPS is dismissed.



Return and Monitor:

child goes home but DFPS retains custody.



DFPS receives PMC of the children but the parents' rights are not terminated.



The case proceeds to a termination trial.





FINAL HEARING

Final Hearing | Trial

Must begin before the current deadline or the lawsuit will be dismissed by operation of law

Can be before a jury or a judge but there is constitutional right to have the trial before a jury

DFPS must prove by clear and convincing evidence that:

- There is at least one ground that can be met under the Family Code for terminating the parents' rights;
- It is in the best interests of the child that the parents' rights be terminated; and
- NEW: the court finds by clear and convincing evidence that DFPS made reasonable efforts to return the child to the parent before commencement of a trial on the merits, and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent.



Termination of Parental Rights

Severs legal relationship between parent and child

Legally frees child for adoption by another person, including relative(s)

3 prongs: termination ground + best interest of child + despite reasonable efforts by DFPS to return the child, a continuing danger remains in the home that prevents the return of the child to the parent

Higher burden of proof required (clear and convincing); in an ICWA case the burden of proof is even higher (beyond a reasonable doubt)

TFC §§ 101.007; 161.001(b)(1), (b)(2), and (f); 161.206(a-1)



At the Termination Trial

Court Findings and Orders at the Conclusion of 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, as well as to that parent, and as to best interest of child, and as to whether DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home
- For Conservatorship: Preponderance of the Evidence
- For ICWA: Beyond a Reasonable Doubt



At the Termination Trial, cont.

Court Findings and Orders at the Conclusion of Hearing

The court may not order termination of parental rights in a suit by DFPS unless the court finds by clear and convincing evidence that DFPS made reasonable efforts to return the child to the parent before commencement of a trial on the merits, and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent.

The court does not have to make a finding regarding reasonable efforts if a service plan for the parent was waived due to aggravated circumstances.

The court must include in a separate section of its order written findings describing with specificity the reasonable efforts DFPS made to return the child to the child's home.



At the Termination Trial, cont.

Court Findings and Orders at the Conclusion of Hearing

If termination is ordered, appoint a managing conservator (DFPS or other suitable individual).

If termination is NOT ordered and DFPS is awarded managing conservatorship, must find that:

- Appointment of parent would not be in the child's best interest because it would significantly impair the child's physical health or emotional development; 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.



At the Termination Trial, cont.

Court Findings and Orders at the Conclusion of Hearing

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.



At the Termination Trial, cont.

Court Findings and Orders at the Conclusion of Hearing

Advise parties of their right to appeal.

Set Permanency Hearing After Final Order for 90 days if PMC granted to DFPS with termination.

Set Permanency Hearing After Final Order for no later than 180 days if PMC granted to DFPS without termination.

Continue appointment of child's AAL, or Guardian Ad Litem (GAL), or attorney in the dual role as long as the child is in the conservatorship of DFPS.





**PERMANENCY
HEARING – AFTER
FINAL ORDER**

Permanency Review After One Year

Hearing at least once every 6 months if parental rights are not terminated. If parental rights are terminated, hearing within 90 days.

Court continues to review the case every 6 months.

At permanency hearings, the court will review the child's education needs and goals and participation in age-appropriate activities, among other factors.

Continues until child's permanency goal is achieved or child leaves care at age 18.



At the Permanency Hearing After Final Order

Court Findings and Orders at the Conclusion of Hearing: **TFC § 263.5031**

Determine:

- the safety and well-being of the child and whether the child's needs, including any medical or special needs, are being adequately addressed;
- whether the child has been provided the opportunity, in a developmentally appropriate manner, to identify any adult, particularly an adult residing in the child's community, who could be a relative or designated caregiver for the child;
- whether the department placed the child with a relative or designated caregiver and the continuing necessity and appropriateness of the placement of the child, and



At the Permanency Hearing After Final Order, cont.

Court Findings and Orders at the Conclusion of Hearing

- Determine the appropriateness of the primary and alternative permanency goals for the child, whether the department has made reasonable efforts to finalize the permanency plan, including the concurrent permanency goals, in effect for the child; and
- Address well-being issues such as education and medical and mental health.

If the child is placed in a QRTP or RTC, whether continued placement in an QRTP or RTC is appropriate.

Set next Permanency Hearing After Final Order no later than 180 days from date of present hearing.





RECENT LEGISLATIVE CHANGES

Recent Changes in the Law: What You Need to Know

Ex Parte Hearings

- NEW HB 968 and HB 1087: An emergency removal affidavit and emergency removal order must describe with specificity in a separate section all reasonable efforts made to prevent or eliminate removal or return the child home.
- NEW: Ex parte hearings under TFC Chapter 262 must be recorded by either audio or video or a court reporter transcription. **TFC § 262.206**



Recent Changes in the Law: What You Need to Know

Informing parents of their rights at investigative stage

- Requires a DFPS investigator upon first contact to provide a parent or alleged perpetrator with a written summary that must now include an explanation that any statement or admission made by the person to anyone may be used against the person in a criminal case, as a basis to remove the child, or as a basis to terminate the person's relationship with the child. **TFC § 261.307**

Exclusionary Rule

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



Recent Changes in the Law: What You Need to Know

Adversary Hearing:

- NEW HB 1087: Orders to describe with specificity in a separate section all reasonable efforts made to prevent or eliminate removal or return the child home and to place the child with a non-custodial parent.

More options for parents in service plan:

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



Recent Changes in the Law: What You Need to Know

Court oversight for child's placement at Residential Treatment Centers

- For placement reviews under TFC Chapter 263, if a child is placed or is awaiting placement in an RTC, the court must determine whether: the child's needs can be met through placement in a family-like setting; the RTC can provide the most effective and appropriate level of care for the child; if the RTC is the least restrictive setting consistent with the child's best interest and individual needs; and if the RTC is consistent with the short-term and long-term goals for the child, as specified by the child's permanency plan. **TFC § 263.002(e), (f)**
- At the Status Hearing, Permanency Hearings before and after a final order, the court is required to find whether continued placement in an RTC or QRTP is appropriate. **TFC §§ 263.202(b); 263.306(a-1); 263.5031(a)**



Resources

Children's Commission

- Website: <http://texaschildrenscommission.gov>
- Bench Book: <http://texaschildrenscommission.gov/for-judges/bench-book/>
- Legislative Update Report:
<https://texaschildrenscommission.gov/media/vayb3ebr/88th-session-legislative-update-report.pdf>
- Reevaluating Reasonable Efforts Findings Webcast:
<https://texaschildrenscommission.gov/for-judges/judicial-training/>





QUESTIONS?