REMOVAL

Legal Overview of Removal of Children

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 262. Procedures in Suit by Governmental Entity to Protect Health & Safety of Child

Tex. Fam. Code Chapter 262 governs the circumstances in which DFPS may seek managing conservatorship of a child if there is an immediate need for the child's removal from the home due to child abuse or neglect. Tex. Fam. Code Chapter 262, Subchapter B. However, in some cases, if in the opinion of DFPS, a real and unacceptable risk of harm to the child exists, even in the absence of an actual emergency, DFPS may proceed under Tex. Fam. Code § 262.113.

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A. Removal or Conservatorship of a Child

1. Authorized Actions by Governmental Entity

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

2. Child's Health and Safety is Paramount Concern

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

B. Jurisdiction, Venue, and Transfer

1. Jurisdiction

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

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

2. Venue

Venue lies in the county where the child resides, and generally speaking that county is where the child's parent lives, unless:

- Another court has continuing exclusive jurisdiction under Tex. Fam. Code Chapter 155; or
- Venue is fixed in a suit for dissolution of marriage under Tex. Fam. Code Subchapter D, Chapter 6. Tex. Fam. Code § 103.001(a).

3. Transfer

The court hearing the case under Tex. Fam. Code Chapter 262 is not required to transfer the suit to a court in which a parent has filed suit for divorce before a final order for the protection of the child has been rendered under Tex. Fam. Code Chapter 263, Subchapter E. Tex. Fam. Code § 262.203(c). The court hearing the CPS case may, however, as a matter of discretion, transfer the suit to the court hearing a divorce suit or to another court in which a suit affecting the parent child relationship is pending, even if there is not yet a final order in either court. Tex. Fam. Code § 262.203(a).

Pursuant to Tex. Fam. Code § 262.203, an order of transfer must include:

- The date of any future hearings in the case that have been scheduled by the transferring court;
- Any date scheduled by the transferring court for the dismissal of the suit under Tex. Fam. Code § 263.401; and
- The name and contact information of each attorney ad litem or guardian ad litem appointed in the suit. Tex. Fam. Code § 262.203(d).

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

- The 10th day after the date of receiving the order of transfer; or
- The date of the first scheduled hearing after the transfer. Tex. Fam. Code § 262.203(e).

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

- The pleadings in the pending proceeding and any other document specifically requested by a party;
- Certified copies of all entries in the minutes;
- A certified copy of each final order; and
- A certified copy of the order of transfer signed by the transferring court. Tex. Fam. Code § 155.207(a).

On receipt of the pleadings, documents, and orders from the transferring court, the clerk of the transferee court shall docket the suit and shall notify the judge of the transferee court, all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed. Tex. Fam. Code § 155.207(c).

C. Emergency Removal With a Court Order

1. Filing a Petition Before Taking Possession of a Child

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

- There is an immediate danger to the child's physical health or safety or the child has been the victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;
- There is no time, consistent with the physical health or safety of the child, for a full Adversary Hearing; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child. Tex. Fam. Code § 262.101.

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

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

- There is an immediate danger to the physical health or safety of the child or the child has been the victim of neglect or sexual abuse and that continuation in the home would be contrary to the child's welfare;
- There is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full Adversary Hearing; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child. Tex. Fam. Code § 262.102(a).

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

- Abused or neglected another child in a manner that causes serious injury to or the death of the other child; or
- Sexually abused another child. Tex. Fam. Code § 262.102(b).

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

- Child abuse or neglect has occurred; and
- The child requires protection from family violence by a member of the child's family or household. Tex. Fam. Code § 262.102(c).

3. Removal of Alleged Perpetrator of Physical/Sexual Abuse

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

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

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

- There is immediate danger to the physical health or safety of the child or the child has been the victim of sexual abuse;
- There is no time, consistent with the physical health or safety of the child, for an Adversary Hearing;
- The child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child;
- The parent or other adult with whom the child will continue to reside in the child's home is likely to make reasonable efforts to monitor the residence and report to DFPS and appropriate law enforcement any attempt by the alleged perpetrator to return to the residence; and
- The issuance of the order is in the best interest of the child. Tex. Fam. Code § 262.1015(b).

The temporary restraining order:

- Is to be served on the alleged perpetrator as well as the adult with whom the child will continue to reside. Tex. Fam. Code § 262.1015(c).
- Expires not later than the 14th day after the order was rendered, unless the court grants an extension under Tex. Fam. Code § 262.201(a-3). Tex. Fam. Code § 262.1015(d).
- Requires that the other adult with whom the child will continue to reside make a reasonable effort to monitor the residence and report to DFPS and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence. Tex. Fam. Code § 262.1015(e).

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

- The presence of the alleged perpetrator in the child's residence constitutes a continuing danger to the physical health or safety of the child; or
- The child has been the victim of sexual abuse and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the residence. Tex. Fam. Code § 262.1015(f).

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

4. Failure to Report Perpetrator's Return

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

5. Criminal Offense for Returning to Child's Residence

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

D. Emergency Removal Without a Court Order

1. Taking Possession Without a Court Order

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

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;

- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe there is an immediate danger to the physical health or safety of a child;

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03;

- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03; or

- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the parent or person who has possession of the child is currently using a controlled substance as defined by Tex. Health & Safety Code Chapter 481 and the use constitutes an immediate danger to the physical health or safety of the child. Tex. Fam. Code § 262.104(a).

Special Issue: The statute appears to discourage emergency removal if prior notice and hearing is feasible without endangering the child. The exact nature of the emergency is determined by the DFPS caseworker or officer at the scene. According to the CPS Handbook, a caseworker should consider emergency removal only if other options for protecting the child are ruled out. Please see the CPS Handbook § 5412 located at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_5400.asp.

2. Special Case for Methamphetamine

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

3. Initial Hearing Requirement After Removal

If a child has been taken into possession without a court order by a governmental entity, the court in which a suit has been filed shall hold an initial hearing on or before the first working day after the date the child is taken into possession. Tex. Fam. Code § 262.106.

The court shall render orders that are necessary to protect the physical health and safety of the child. Tex. Fam. Code § 262.106(a).

If the court is unavailable for a hearing on the first working day, then, and only in that event, the hearing shall be held no later than the first working day after the court becomes available, provided that the hearing is held no later than the third working day after the child is taken into possession. Tex. Fam. Code § 262.106(a).

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

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

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

4. Standard for Decision at Initial Hearing After Taking Possession

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

- There is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child, or the evidence shows that the child has been the victim of sexual abuse or of trafficking under Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03 on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
- Continuation of the child in the home would be contrary to the child's welfare; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child. Tex. Fam. Code § 262.107(a).

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

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

- Sexually abused another child. Tex. Fam. Code § 262.107(b).

5. Taking Possession of Child in Emergency With Intent to Return Home

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

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

E. Expedited Hearing and Appeal

1. Expedited Hearing

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

2. Expedited Appeal

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

3. Subsequent Allegation

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

F. After Ex Parte Order Authorizing Removal

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

A temporary order, temporary restraining order, or attachment of the child issued under Tex. Fam. Code § 262.102(a) expires not later than 14 days after the date it is issued unless it is extended as provided by Tex. R. Civ. P. 680 or Tex. Fam. Code § 262.201(a-3). Tex. Fam. Code § 262.103.

2. Temporary Managing Conservatorship

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

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

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

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

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

3. Setting Date for Full Adversary Hearing

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

Special Issue: Because the full Adversary Hearing must be scheduled no later than the 14th day from the date the child is taken into custody, many judges schedule the full Adversary Hearing at the time the ex parte order is signed. Scheduling the full Adversary Hearing at the time the ex parte order is signed not only provides notice to the parent of the Adversary Hearing, but pursuant to Section 262.102 [Emergency Order Authorizing Possession of a Child] the temporary order, temporary restraining order, or attachment of a child must contain the following statement prominently displayed in boldface type, capital letters, or underlined: "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

4. Attorney ad Litem and Guardian Ad Litem Appointments

4.1 Mandatory Appointment of Attorney ad Litem and Guardian ad Litem

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

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

4.2 Discretionary Appointment of Parent Attorney

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

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

- Has the powers and duties of an attorney ad litem appointed under Tex. Fam. Code § 107.0131; and
- If applicable, shall:
  - conduct an investigation regarding the petitioner's due diligence in locating and serving citation on the parent; and
  - interview any parent or other person who may have information relating to the identity or location of the parent. Tex. Fam. Code § 107.0141(b).

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

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

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

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

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

4.3 Court-Maintained Appointment Lists

Each court in this state shall establish and maintain a list of all attorneys who are qualified to serve as an attorney or guardian ad litem or mediator and are registered with the court. Tex. Gov't Code § 37.003(a). Guardians ad litem or other persons

appointed under a program authorized by Tex. Fam. Code § 107.031 are exempt from this list. Tex. Gov't Code § 37.002. A court annually shall post each list at the courthouse of the county in which the court is located and on any Internet website of the court. Tex. Gov't Code § 37.005. Courts will also be required to use a rotation system to appoint attorneys unless certain exceptions apply. Tex. Gov't Code § 37.004.

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

- The name of each person appointed by the court as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The name of the judge and the date of the order approving compensation to be paid to a person appointed as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The number and style of each case in which an a person was appointed as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The number of cases each person was appointed by the court to serve as an attorney ad litem, guardian ad litem, guardian or mediator for a case in that month;
- The total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian or mediator appointed by the court in that month and the source of the compensation; and
- If the total amount of compensation paid to a person appointed to serve as an attorney ad litem, guardian ad litem, guardian or mediator for one appointed case in that month exceeds $1,000, any information related to the case that is available to the court on the number of hours billed to the court for the work performed by the person or the person's employees, including paralegals, and the billed expenses. Tex. Gov't Code § 36.004(a)(1)-(6).

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

- Submit a copy of the report to the Office of Court Administration; and
- Post the report at the courthouse of the county in which the court is located and on any Internet website of the court. Tex. Gov't Code § 36.004(b).

If a court fails to provide to the clerk of the court information required for the report submitted under Tex. Gov't Code § 36.004, the court is ineligible for any grant money

awarded by this state or a state agency for the next state fiscal biennium. Tex. Gov't Code § 36.005.

Special Issue: A recent Attorney General Opinion stated that a court is unlikely to conclude that Senate Bill 1876, passed in 2015 and which mandated court-maintained appointment lists, is unconstitutional under Tex. Const. art. II, § 1 or is unconstitutionally vague. Att'y Gen. Op. No. KP-0071 (2016).

4.4 Office of Child Representation and Office of Parent Representation and Managed Assigned Counsel Program

a. Office of Child Representation and Office of Parent Representation

The Texas Family Code authorizes governmental entities, including a county or group of counties, to create offices of child representation or parent representation. Tex. Fam. Code Chapter 107, Subchapter E; Tex. Fam. Code § 107.061; Tex. Fam. Code §107.062; Tex. Fam. Code § 107.063; Tex. Fam. Code § 107.066; Tex. Fam. Code § 107.068; Tex. Fam. Code § 107.069; Tex. Fam. Code § 107.070; Tex. Fam. Code § 107.071; and Tex. Fam. Code § 107.072.

An office of child representation is an entity that used public money to provide legal representation and services for a child in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a child under Tex. Fam. Code § 107.012. Tex. Fam. Code § 107.064.

An office of parent representation is an entity that uses public money to provide legal representation and services for a parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which the appointment is mandatory for a parent under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.065.

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

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

A managed assigned counsel program may be operated with public money for the purpose of appointing counsel to provide legal representation and services for a child or parent in a suit filed by a governmental entity seeking termination of the parent-child relationship or the appointment of a conservator for the child in which

appointment is mandatory for a child under Tex. Fam. Code § 107.012 and for a parent under Tex. Fam. Code § 107.013. Tex. Fam. Code § 107.102(a).

4.5 Duties and Required Training of Child's Attorney Ad Litem

The duties and responsibilities of attorneys ad litem are found in Tex. Fam. Code § 107.003 and Tex. Fam. Code § 107.004.

Tex. Fam. Code § 107.004 requires that the attorney for the child file a written statement with the court indicating that the attorney ad litem complied with Tex. Fam. Code § 107.004(d)(1), if the child or individual is not present at the court hearing. This requirement is not intended to require that the attorney state what the child said in the meeting. It only requires that the attorney file with the court a written statement of compliance with the meeting provision in Tex. Fam. Code § 107.004.

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

- A sufficient time before the hearing to allow the attorney ad litem to prepare for the hearing in accordance with the child's expressed objectives of representation; and
- In a private setting that allows for confidential communications between the attorney ad litem and the child or individual with whom the child ordinarily resides, as applicable. Tex. Fam. Code § 107.004(d-1).

Special Issue: This implies that a brief meeting in the hallway before a hearing is not sufficient to comply with an attorney's obligation to meet with his or her client (or other individual). The meeting should occur sufficiently in advance of the hearing date to allow time to prepare for the hearing in light of the information obtained at the meeting. This might be a subject of judicial inquiry during the hearing.

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

4.6 Duties of Parent Attorney

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

a. Duration of Appointment of Parent Attorney

Tex. Fam. Code § 107.016 provides for continuity of representation for parents who appeal a termination or managing conservatorship order, stating:

- An order appointing DFPS as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court; and
- An attorney appointed under Tex. Fam. Code Chapter 107, Subchapter B to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:
  - the date the suit affecting the parent-child relationship is dismissed;
  - the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or
  - the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record. Tex. Fam. Code § 107.016.

4.7 Duties of Parent Appointed to Represent Alleged Father

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

- Conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Tex. Fam. Code Chapter 160;
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and
- Conduct an independent investigation to identify or locate the alleged father, if applicable. Tex. Fam. Code § 107.0132(a).

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

appoint the attorney ad litem to continue to represent the father's interests as a parent under Tex. Fam. Code § 107.013(a)(1) or Tex. Fam. Code § 107.013(c). Tex. Fam. Code § 107.0132.

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

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

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

a. Duties

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

- Conduct an investigation regarding the petitioner's due diligence in locating the parent;
- Interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and
- Conduct an independent investigation to identify or locate the parent, as applicable. Tex. Fam. Code § 107.014(a).

b. If Parent Identified and Located

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

- Provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:
  - disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or
  - the parent has been a victim of family violence; and
- If appropriate, assist the parent in making a claim of indigence for the appointment of an attorney. Tex. Fam. Code § 107.014(b).

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

- Order that the information not be disclosed; or
- Render any other order the court considers necessary. Tex. Fam. Code § 107.014(c).

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

c. If Parent Not Located or Identified

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

4.9 Required Attorney Training

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

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

Tex. Fam. Code § 107.0131 provides enumerated duties for parents' attorneys, including three hours of CLE training and meeting with the client before each hearing. Tex. Fam. Code § 107.0131. Tex. Fam. Code § 107.0131 also requires that the continuing legal education relate to representing parents in child protection cases and focus on the duties of an attorney ad litem in, and the procedures of and best practices

for, representing a parent in a proceeding under Tex. Fam. Code Subtitle E. Tex. Fam. Code § 107.0131(b)(2). An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case must complete at least three hours of continuing legal education relating to the representation of a parent in a proceeding under Tex. Fam. Code Subtitle E each year before the anniversary date of the attorney's listing. Tex. Fam. Code § 107.0131(c).

The State Bar of Texas currently offers a number of online Continuing Legal Education (CLE) courses in the CPS Library of TexasBar CLE related to representation of all parties on the CPS docket, including the following webinars:

- Child Abuse & Neglect Workshop from 2015 Advanced Family Law Conference
- Representing Texas Parents in Abuse and Neglect Cases (2013)
- Special Education Advocacy for Kids in the Foster Care System (2013)
- Trial Skills in the CPS Case (2013)
- Moving from Ordinary to Extraordinary Representation in CPS Cases (2015)
- Child Protection Legislative Update - 84th Legislative Session (2015)
- Thinking Ahead: Dealing with Appeals Issues in CPS Cases (2015)
- Effective Representation of Children and Aged Out Foster Youth: Beyond the Basics (2016)
- Tips and Traps from Appointment Through Trial; Effective Representation of a Parent in a CPS Case (2016)
- Special Issues in CPS Parent Representation: teen parent; non-offending parent, undocumented/ ESL, deportation, ICE, DAPA, incarcerated parent (2016)

Additional webinars are added to the CPS online library periodically. Please select the CPS practice area when using the following link in order to access the current offerings: http://www.texasbarcle.com/CLE/OCSearch2.asp.

These webinars are free to judges. Attorneys who currently take appointments to represent children and parents can on a CPS docket, as well as attorneys who pledge to take appointments, can qualify for a discount when registering for any of these webinars.

Several of these webinars have qualified to meet the statutory three hour education requirements for attorneys to qualify for court appointments on child protection dockets.

5. Notice Requirement to Parent Regarding Legal Representation

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

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

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

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

The written notice requirements must include, among other things:

- The reasons why the child was removed;
- Contact information for the caseworker;
- A summary of legal rights; and
- A statement that the parent has the right to hire an attorney. Tex. Fam. Code § 262.109(c).

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

- The inability to locate the parent or caretaker;
- The child is an abandoned infant delivered to an emergency care provider; or
- For other good cause. Tex. Fam. Code § 262.109(d).

Special Issue: DFPS is responsible for providing service of citation and notice of several matters relating to agency activities relating to a lawsuit (investigations, removals, review hearings, etc.). While the same word "notice" is often used for both, it is important to distinguish between service and notice. The Texas Family Code requires that DFPS provide notice to parents of the investigation and removal of a child, as well as notice to relatives of the removal, and notice to parties, relatives, caregivers, and child if age 10 or older, of all review hearings. These notice obligations, however, do not need to be executed in accordance with the rules governing service under the Texas Rules of Civil Procedure. Tex. Fam. Code § 263.0021 provides several methods of notice available to DFPS.

In lawsuits filed by DFPS, the agency is responsible for obtaining service of citation containing the original petition and providing notice of trial settings and other events during the pendency of the legal case. With respect to service of citation, Tex. Fam. Code § 102.009(c) directs that service be made "as in other civil cases." Accordingly, DFPS is responsible for obtaining service of citation to all parties listed in Tex. Fam. Code § 102.009(a). Service must be accomplished via the method prescribed in Tex. R. Civ. P. 106 and by a person authorized pursuant to Tex. R. Civ. P. 103.

6. Information Provided to Relatives and Certain Individual; Investigation

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

- Related to the child within the third degree of consanguinity;
- An adult relative of the alleged father if DFPS has a reasonable basis to believe the alleged father is the child's biological father; or
- Identified as a potential relative or designated caregiver as defined by Tex. Fam. Code § 264.751 on the proposed Child Placement Resources Form provided under Tex. Fam. Code § 261.307, and may provide information regarding an adult who DFPS determines has a long-standing and significant relationship with the child. Tex. Fam. Code § 262.1095(a).
- The written notice must include, among other things:
  - notice that the child is in the state's custody;
  - options available for participation in the care and placement and support of the family;
  - options that may be lost if the individual fails to timely respond;
  - include the date, time and location of the Status Hearing, if known. Tex. Fam. Code § 262.1095(b).

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

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

G. Filing Suit Prior to Taking Possession of Child

1. When it is Not Necessary to Remove a Child Prior to Notice and Hearing

An original suit filed by a governmental entity that requests to take possession of a child after notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- Reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home; and
- Allowing the child to remain in the home would be contrary to the child's welfare. Tex. Fam. Code § 262.113.

H. Service of Citation

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

- A managing conservator;
- A possessory conservator;
- A person having possession of or access to the child under an order;
- A person required by law or by order to provide for the support of the child;
- A guardian of the person of the child;
- A guardian of the estate of the child;
- Each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Tex. Fam. Code Chapter 161;
- An alleged father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father as provided by Tex. Fam. Code Chapter 161

or unless the petitioner has complied with the provisions of Tex. Fam. Code § 161.002(b)(2), (3), or (4);

- A man who has filed a notice of intent to claim paternity as provided by Tex. Fam. Code Chapter 160;
- DFPS, if the petition requests that DFPS be appointed as managing conservator of the child;
- The Title IV-D agency, if the petition requests the termination of the parent-child relationship and support rights have been assigned to the Title IV-D agency under Tex. Fam. Code Chapter 231;
- A prospective adoptive parent to whom standing has been conferred under Tex. Fam. Code § 102.0035; and
- A person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment under Tex. Fam. Code Chapter 161 or to whom consent to adoption has been given in writing under Tex. Fam. Code Chapter 162. Tex. Fam. Code § 102.009(a).

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

AND

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

AND

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

Waiver of Citation

Tex. Fam. Code § 102.0091 allows for waiver of citation. A party to a suit under Tex. Fam. Code Title 5 may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition. Tex. Fam. Code § 102.0091(a).

The party executing the waiver may not sign the waiver using a digitalized signature. Tex. Fam. Code § 102.0091(b). The waiver must contain the mailing address of the party executing the waiver. Tex. Fam. Code § 102.0091(c).

Notwithstanding Tex. Civ. Prac. & Rem. Code § 132.001, the waiver must be sworn before a notary public who is not an attorney in the suit, unless the party executing the waiver is incarcerated. Tex. Fam. Code § 102.0091(d). The Texas Rules of Civil Procedure do not apply to a waiver executed under Tex. Fam. Code § 102.0091. Tex. Fam. Code § 102.0091(e).

I. Evaluation of Identified Relatives and Other Designated Individuals

1. Background/Criminal History Checks

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

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

For more on out of state placements, see generally the Interstate Compact on Placement of Children[4] and the Bench Book chapter on *The Interstate Compact on the Placement of Children (ICPC)*.

2. Home Study Filed With Court

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

- A copy of each proposed Child Placement Resources Form completed by the parent or other person having legal custody of the child;
- A copy of any completed home study performed; and
- The name of the relative or other designated caregiver, if any, with whom the child has been placed. Tex. Fam. Code § 262.114(a-1).

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

- The reasons why DFPS has not placed the child with a relative or other designated caregiver listed on the proposed Child Placement Resources Form; and

- The actions DFPS is taking, if any, to place the child with a relative or other designated caregiver. Tex. Fam. Code § 262.114(a-2).

J. Placement

1. Child Placement Resources Form

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

DFPS:

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

A foster parent with whom the child previously resided shall be considered for placement if:

- DFPS determines that placement of the child with a relative or designated caregiver is not in the child's best interest; and
- The placement is available and in the child's best interest. Tex. Fam. Code § 262.114(c).

2. Caregiver Visit With Child; Information

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

- Arrange a visit between the child and the proposed caregiver; and
- Provide the proposed caregiver with a form, which may be the same form DFPS provides to nonrelative caregivers, containing information, to the extent it is available, about the child that would enhance continuity of care for the child, including:

- the child's school information and educational needs;
- the child's medical, dental, and mental health care information;
- the child's social and family information; and
- any other information about the child DFPS determines will assist the proposed caregiver in meeting the child's needs. Tex. Fam. Code § 264.7541(a).

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

3. Unacceptable Facilities for Housing Child

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

K. Visitation Schedule

1. Visitation With Certain Children

Applicable only to a child:

- Who is in the temporary managing conservatorship of DFPS; and
- For whom the goal of DFPS is reunification of the child with the child's parent. Tex. Fam. Code § 262.115(b).

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

- DFPS determines that visitation is not in the child's best interest; or
- Visitation with the parent would conflict with a court order relating to possession of or access to the child. Tex. Fam. Code § 262.115(c).

2. Temporary Visitation Schedule

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

the schedule remains in effect until a visitation plan is developed under Tex. Fam. Code § 263.107. Tex. Fam. Code § 262.115(d).

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

L. Placement When Child Victim of Human Trafficking

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

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in Tex. Penal Code § 20A.02 or Tex. Penal Code § 20A.03. Tex. Fam. Code § 262.011.