

COURT 101 FOR FOSTER PARENTS

INTRODUCTION

This is not a legally binding document, nor does it serve as any type of legal precedent the court must follow. It merely contains opinions of the various contributors, which opinions may differ from that of legal experts or the court. Do not rely upon this document as a part of any legal proceeding or other matter related to a possible legal proceeding.

As a foster parent, you play a critical role in the life of a child. Not only are you responsible for the child's day-to-day care, but because you spend so much time caring for and observing them, you are able to provide the Texas Health and Human Service Commission's Department of Family and Protective Services (DFPS) and the court with valuable information they need to make important decisions regarding the child's welfare.

It is strongly recommended that foster parents attend all court hearings for the children in their care. As a foster parent, you have a right to receive notice of court hearings and you have the right to be heard in court. You are not automatically a party to a case; however, you may become a party if you petition to intervene and are granted that right. Your appearance at court hearings related to children in your care is also an indicator of the importance you place on your role as a foster parent and the future of the subject child. This handbook was written in order to help you understand the court process. It will provide you with valuable information about your rights and responsibilities, the role of key participants in the court process, and how you can be most effective in advocating for the best interests of the children in your care.

This handbook is not all-inclusive. You may have additional questions that can be answered by the child's DFPS social worker, the child's attorney or guardian ad litem, a Court Appointed Special Advocate (CASA) volunteer, or through training on the court system. Also, it is important to understand that there are specific local rules involved in juvenile court proceedings. Each judge has procedures and rules about what happens in his or her courtroom, and those rules may vary by location or by the particular judge involved in the case.

This Handbook has five sections:

- Personnel in the Courtroom
- Various Functions of Attorneys Involved
- Types of Court Hearings
- Courtroom Etiquette



- Glossary of Terms

We would greatly appreciate your input on how to make this handbook better for foster parents, so anything you feel is missing, please do not hesitate to contact the Tarrant County Bar Association.

GLOSSARY OF TERMS

Adjournment – the suspension of business or sessions, either for a fixed time, indefinitely, or until the opening of another term.

Adjudicatory Hearings – held by the juvenile and family court to determine whether a child has been maltreated or whether another legal basis exists for the State to intervene to protect the child.

Adoption and Safe Families Act (ASFA) – signed into law in November 1997 and designed to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. The law requires DFPS agencies to provide more timely and focused assessment and intervention services to the children and families that are served within the DFPS system.

CASA – court-appointed special advocates (usually volunteers) who serve to ensure that the needs and interests of a child in child protection judicial proceedings are fully protected.

Bailiff—a law enforcement officer who is situated in the courtroom to maintain order and provide security. One of the bailiff’s many responsibilities, in addition to keeping the court and its occupants safe, is checking you in upon your arrival in the courtroom.

Case Closure – the process of ending the relationship between the DFPS worker and the family that often involves a mutual assessment of progress. Optimally, cases are closed when families have achieved their goals and the risk of maltreatment has been reduced or eliminated.

Case Plan – the document that outlines the outcomes, goals, and tasks necessary to be achieved in order to reduce the risk of maltreatment.

Case Planning – the stage of the DFPS case process where the DFPS caseworker develops a case plan with the family members.

Caseworker Competency – demonstrated professional behaviors based on the knowledge, skills, personal qualities, and values a person holds.

Central Registry – a centralized database containing information on all substantiated/founded reports of child maltreatment.



Child Abuse Prevention and Treatment Act (CAPTA) – *see* Keeping Children and Families Safe Act.

Child Protection Concurrent Planning – identifies alternative plans for permanent placement of a child by addressing both reunification and legal permanency with a new parent or caregiver if reunification efforts fail.

Child Protective Services (DFPS) – the designated social services agency to receive reports, investigate, and provide intervention and treatment services to children and families in which child maltreatment has occurred.

Civil Contempt – a finding by the court of a willful failure to do something that a court has ordered, such as refusing to testify (when the court has found that no exception or privilege applies), or refusing to pay child support when there are ample funds to do so (and no other defense applies). The usual court sanction is incarceration for a term that lasts until the person in contempt complies with the court order.

Consent Decree – a decree entered by a court that is determined by the parties' agreement; a settlement between the parties that is subject to judicial approval and supervision.

Continuance – an adjournment of a case from one day to another or to a later hour of the same day.

Criminal Contempt – an act that obstructs justice or attacks the integrity of the court that is punishable by fine or imprisonment or both. Criminal contempt may be indirect or direct. Indirect contempt is contempt occurring outside the courtroom, such as a willful violation of a court's order. Direct contempt is disruptive or disrespectful behavior that occurs in the presence of the judge, such as uttering an epithet when the judge announces an unfavorable decision.

Cross-examination – (as opposed to direct examination) questioning of a witness (often referred to as a "hostile witness") by attorneys who represent the party opposing that witness's position. During cross-examination, leading questions are allowed.

Cultural Competence – a set of attitudes, behaviors, and policies that integrates knowledge about groups of people into practices and standards to enhance the quality of services to all cultural groups being served.

Declaratory Judgment – a court decision, which simply declares the rights of the parties or expresses the opinion of the court on a question of law without ordering anything to be done.

Delinquency – the commitment of an offense by a youth of what would be a crime if he or she were an adult.



Dependent Child – as used in statutes providing for the care of dependent, neglected, and delinquent children, the term means dependent upon the public support; any child under the age of 18 who is destitute, or whose home by reason of neglect by the parents is an unfit place for such child, or whose father, mother, guardian, or custodian does not properly provide for such a child.

Depositions – a part of the discovery process; transcribed oral examinations under oath.

Direct Examination -- (as opposed to cross examination) questioning of a witness (often referred to as a “friendly witness”) by attorneys who represent the party asserting that witness’s position. During direct examination, leading questions are usually not allowed.

Discovery (Written) – pretrial process that allows each party to obtain (or discover) information relevant to the case from the other parties. This process is often limited in form and amount by statutes.

Dispositional Hearings – held by the juvenile and family court to determine the legal resolution of cases after adjudication, such as whether placement of the child in out-of-home care is necessary, and what services the children and family will need to reduce the risk and to address the effects of maltreatment.

Dual Track – term reflecting new DFPS response systems that typically combine a non-adversarial, service-based assessment track for cases where children are not at immediate risk with a traditional DFPS investigative track for cases where children are unsafe or at greater risk for maltreatment.

Duces Tecum – a Latin term for a type of subpoena or court order that requires a person to produce for the court specified documents or records.

Due Process – the principle that every person has the protection of a day in court, representation by an attorney, and the benefit of procedures that are speedy, fair, and impartial.

Evaluation of Family Progress – the stage of the DFPS case process where the DFPS caseworker measures changes in family behaviors and conditions (risk factors), monitors risk elimination or reduction, assesses strengths, and determines case closure.

Exculpatory – evidence or testimony that exonerates or clears the defendant.

Ex Parte – on behalf of or involving only one party to a legal matter and in the absence of and usually without notice to the other party. In general, a party is not allowed to have ex parte communications with a judge during a proceeding.

Expert Testimony – opinion testimony about a subject that is outside the judge’s or jury’s knowledge or experience, provided by a witness with established expertise on that subject.



Family Assessment – the stage of the child protection process when the DFPS caseworker, community treatment provider, and the family reach a mutual understanding regarding the behaviors and conditions that must change to reduce or eliminate the risk of maltreatment, the most critical treatment needs that must be addressed, and the strengths on which to build.

Family Group Conferencing – a family meeting model used by DFPS agencies to optimize family strengths in the planning process. This model brings the family, extended family, and others important in the family’s life (e.g., friends, clergy, neighbors) together to make decisions regarding how best to ensure safety of the family members.

Family Unity Model – a family meeting model used by DFPS agencies to optimize family strengths in the planning process.

Full Disclosure – information provided to the family regarding the steps in the DFPS intervention process, the requirements of DFPS, the expectations of the family, the consequences if the family does not fulfill the expectations, and the rights of the parents to ensure that the family completely understands the process.

Guardian ad Litem – a lawyer or layperson who represents a child in juvenile or family court. Usually this person considers the “best interest” of the child and may perform a variety of roles, including those of independent investigator, advocate, advisor, and guardian for the child. A layperson who serves in this role is sometimes known as a court-appointed special advocate or CASA.

Hearsay – an out-of-court statement made by someone other than the witness that is offered for the truth of that statement. In general, hearsay testimony is not allowed unless it falls under certain exceptions.

Home Visitation Programs – prevention programs that offer a variety of family-focused services to pregnant mothers and families with new babies. Activities frequently encompass structured visits to the family’s home and may address positive parenting practices, nonviolent discipline techniques, child development, maternal and child health, available services, and advocacy.

Immunity – established in all child abuse laws to protect reporters from civil law suits and criminal prosecution resulting from filing a report of child abuse and neglect.

Initial Assessment or Investigation – the stage of the DFPS case process where the DFPS caseworker determines the validity of the child maltreatment report, assesses the risk of maltreatment, determines if the child is safe, develops a safety plan if needed to assure the child’s protection, and determines services needed.

Injunction – an equitable remedy in the form of a court order compelling a party to do or refrain from doing a specified act.



Intake – the stage of the DFPS case process where the DFPS caseworker screens and accepts reports of child maltreatment.

Interview Protocol – a structured format to ensure that all family members are seen in a planned strategy, that community providers collaborate, and that information gathering is thorough.

Jurisdiction – the power or right to exercise authority.

Juvenile and Family Courts – established to resolve conflict and to otherwise intervene in the lives of families in a manner that promotes the best interest of children. These courts specialize in areas such as child maltreatment, domestic violence, juvenile delinquency, divorce, child custody, and child support.

Keeping Children and Families Safe Act – The Keeping Children and Families Safe Act of 2003 (P.L. 108–36) included the reauthorization of the Child Abuse Prevention and Treatment Act (CAPTA) in its Title I, Sec. 111. CAPTA provides minimum standards for defining child physical abuse and neglect and sexual abuse that States must incorporate into their statutory definitions in order to receive Federal funds. CAPTA defines child abuse and neglect as “at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”

Kinship Care – formal child placement by the juvenile court and child welfare agency in the home of a child’s relative.

Liaison – the designation of a person within an organization who has responsibility for facilitating communication, collaboration, and coordination between agencies involved in the child protection system.

Litigant – a party to a lawsuit.

Mandated Reporter – individuals required by statutes to report suspected child abuse and neglect to the proper authorities (usually DFPS or law enforcement agencies). Mandated reporters typically include professionals, such as educators and other school personnel, health care and mental health professionals, social workers, childcare providers, and law enforcement officers. Some States identify all citizens as mandated reporters.

Multidisciplinary Team – established between agencies and professionals within the child protection system to discuss cases of child abuse and neglect and to aid in decisions at various stages of the DFPS case process. These teams also may be designated by different names, including child protection teams, interdisciplinary teams, or case consultation teams.



Neglect – the failure to provide for a child’s basic needs. Neglect can be physical, educational, or emotional. Physical neglect can include not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or coats). Educational neglect includes failure to provide appropriate schooling, special educational needs, or allowing excessive truancies. Psychological neglect includes the lack of any emotional support and love, chronic inattention to the child, exposure to spouse abuse, or drug and alcohol abuse.

Out-of-Home Care – childcare, foster care, or residential care provided by persons, organizations, and institutions to children who are placed outside their families, usually under the jurisdiction of juvenile or family court.

Overrule – to set aside the authority of a former decision; the act of court in rejecting a motion or objection made by a party to a lawsuit.

Parens Patriae Doctrine – originating in feudal England, a doctrine that vests in the State a right of guardianship of minors. This concept has gradually evolved into the principle that the community, in addition to the parent, has a strong interest in the care and nurturing of children. Schools, juvenile courts, and social service agencies all derive their authority from the State’s power to protect children who are unable to protect themselves.

Parent or Caretaker – person responsible for the care of the child.

Permanent Managing Conservatorship (PMC) - a legal term in Texas used in child custody cases. It means that a judge appoints a person to be legally responsible for a child without adopting the child. The court can give PMC to someone other than a parent, including DFPS, a relative, a close family friend, or a foster parent. PMC can only be given by a judge. The judge decides the rights and responsibilities, depending upon the specific situation.

(as defined on www.dfps.state.tx.us).

Petitions – a document containing allegations of child abuse or neglect that is typically filed by the DFPS attorney in juvenile court.

Physical Abuse – the inflicting of a nonaccidental physical injury upon a child. This may include, burning, hitting, punching, shaking, kicking, beating, or otherwise harming a child. It may, however, have been the result of over-discipline or physical punishment that is inappropriate to the child’s age.

Preponderance of the Evidence – the burden of proof for most civil cases, including child maltreatment proceedings. The attorney for DFPS or other petitioner must show by a preponderance of evidence that the abuse or neglect happened. This standard means that the evidence is more credible than the evidence presented by the defendant party. A



slightly higher standard (clear and convincing evidence) is applied when seeking final termination of the parent-child relationship.

Primary Prevention – activities geared to a sample of the general population to prevent child abuse and neglect from occurring. Also referred to as “universal prevention.”

Protective Factors – strengths and resources that appear to mediate or serve as a “buffer” against risk factors that contribute to vulnerability to maltreatment or against the negative effects of maltreatment experiences.

Protocol – an interagency agreement that delineates joint roles and responsibilities by establishing criteria and procedures for working together on cases of child abuse and neglect.

Psychological Maltreatment – a pattern of caregiver behavior or extreme incidents that convey to children that they are worthless, flawed, unloved, unwanted, endangered, or only of value to meeting another’s needs. This can include parents or caretakers using extreme or bizarre forms of punishment or threatening or terrorizing a child. The term “psychological maltreatment” is also known as emotional abuse or neglect, verbal abuse, or mental abuse.

Putative Father – the alleged or supposed male parent; the person alleged to have fathered a child whose parentage is at issue.

Respondent – an answering party in a proceeding in juvenile or family court.

Response Time – a determination made by DFPS and law enforcement regarding the immediacy of the response needed to a report of child abuse or neglect.

Review Hearings – held by the juvenile and family court to review dispositions (usually every 6 months) and to determine the need to maintain placement in out-of-home care or court jurisdiction of a child.

Risk – the likelihood that a child will be maltreated in the future.

Risk Assessment – to assess and measure the likelihood that a child will be maltreated in the future, frequently through the use of checklists, matrices, scales, and other methods of measurement.

Risk Factors – behaviors and conditions present in the child, parent, or family that likely will contribute to child maltreatment occurring in the future.

Safety – absence of an imminent or immediate threat of moderate-to-serious harm to the child.

Safety Assessment – a part of the DFPS case process in which available information is analyzed to identify whether a child is in immediate danger of moderate or serious harm.



Safety Plan – a casework document developed when it is determined that the child is in imminent or potential risk of serious harm. In the safety plan, the caseworker targets the factors that are causing or contributing to the risk of imminent serious harm to the child, and identifies, along with the family, the interventions that will control the safety factors and ensure the child’s protection.

Secondary Prevention – activities targeted to prevent breakdowns and dysfunctions among families who have been identified as at risk for abuse and neglect.

Service or Constructive Service – the act of delivering to, or informing someone of, a writ, summons, or other notice as prescribed by law.

Service Agreement – the casework document developed between the DFPS caseworker and the family that outlines the tasks necessary to achieve goals and outcomes necessary for risk reduction.

Service Provision – the stage of the DFPS casework process when DFPS and other service providers deliver specific services geared toward the reduction of risk of maltreatment.

Sexual Abuse – inappropriate adolescent or adult sexual behavior with a child. It includes fondling a child’s genitals, making the child fondle the adult’s genitals, intercourse, incest, rape, sodomy, exhibitionism, sexual exploitation, or exposure to pornography. To be considered child abuse, these acts have to be committed by a person responsible for the care of a child (for example a baby-sitter, a parent, or a daycare provider) or related to the child. If a stranger commits these acts, it would be considered sexual assault and handled solely by the police and criminal courts.

Status Offender – a juvenile under the jurisdiction of the court because of acts that would not be criminal if committed by an adult, but that indicate that the child is beyond parental control.

Status Offenses – transgressions of children that would not be crimes if they were legal age; primarily involve running away and truancy. The age for bringing such charges varies from State to State.

Substantiated – an investigation disposition concluding that the allegation of maltreatment or risk of maltreatment was supported or founded, as defined by State law or State policy. A DFPS determination means that credible evidence exists that child abuse or neglect has occurred.

Suspended Sentence – a sentence that the defendant will not have to serve if he or she complies with the conditions of probation.

Sustain – to allow or uphold as valid. For example, a court may sustain an objection to evidence in a court proceeding.



Temporary Managing Conservator (TMC) – a person or persons with certain designated interim or temporary rights, privileges, duties and powers as related to a child in their care. A Temporary Managing Conservator is generally awarded significantly more rights, duties, privileges and powers than a Temporary Possessory Conservator.

Temporary Possessory Conservator (TPC) - a person or persons with certain designated interim or temporary rights, privileges, duties and powers as related to a child in their care. A Temporary Possessory Conservator is generally awarded significantly less rights, duties, privileges and powers than a Temporary Managing Conservator.

Termination of Parental Rights Trial – a legal proceeding to free a child from a parent’s legal custody so that others can adopt the child. The legal basis for termination of parental rights involves considering the failure of the parent to support or communicate with the child for a specified period, parental failure to improve home conditions, extreme or repeated neglect or abuse, parental incapacity to care for the child, and/or extreme deterioration of the parent-child relationship. In making this finding, the court is determining that the parents will not be able to provide adequate care for the child in the future by using a standard of clear and convincing evidence. This burden of proof (referred to as clear and convincing evidence) is higher than preponderance of the evidence, which is generally used in civil abuse or neglect cases where termination is not sought.

Tertiary Prevention – treatment efforts geared to address situations where child maltreatment has already occurred, with the goals of preventing child maltreatment from occurring in the future and of avoiding the harmful effects of child maltreatment.

Transactional Immunity – a broader form of use immunity that bars prosecution of a witness for any event or transaction described in the witness’s compelled testimony, regardless of the source of the evidence against that person.

Treatment – the stage of the child protection case process when specific services are provided by DFPS and other providers to reduce the risk of maltreatment, support families in meeting case goals, and address the effects of maltreatment.

Universal Prevention – activities and services directed at the general public with the goal of stopping the occurrence of maltreatment before it starts. Also referred to as “primary prevention.”

Unsubstantiated (not substantiated) – an investigation disposition that determines that there is not sufficient evidence under State law or policy to conclude that the child has been maltreated or is at risk of maltreatment. A DFPS determination means that credible evidence does not exist that child abuse or neglect has occurred.

Use Immunity – bars the use of a witness’s compelled testimony and statements from being used directly or indirectly against that person in a subsequent trial.



Voir Dire – the inquiry of prospective jurors to determine if the jurors are fit for jury duty in a given case.

COURTROOM ETIQUETTE: HOW TO BEHAVE IN COURT

1. Clothing:
 - DO dress as if you are going to a professional job interview.
 - DO button shirts.
 - DON'T wear:
 - Shorts
 - Cut-offs
 - Tank Tops
 - Swim Wear
 - Clothing with obscenity on it
 - House slippers
 - Flip Flops
 - Halter Tops
 - Dirty Clothing
 - Micro-mini skirts
 - Shirts that expose your tummy (midriff shirts or similar clothing)
 - Work-out clothes
 - Plunging necklines

2. Phones/Technology Devices:
 - All mobile phones and pagers will be turned off (not just set to vibrate/silent) while in court.
 - Video or audio recording devices are not allowed in court

3. Food & Drink:
 - No Food
 - No Drinks (some courts provide water on the counsel tables or allow bottled water – check with the specific court regarding its rules)
 - No Chewing Gum

4. Talking:
 - No talking when Judge is in the courtroom.

5. Children:



- Do not bring children when you appear before a judge. Children are usually not allowed in the courtroom unless the judge has specifically requested their presence (such as a pre-arranged adoption proceeding). Children under the age of 18 are not to be brought to the Court for any reason (except adoptions) without the prior order/approval of the Judge. If the court grants a motion to confer with a child, the court coordinator will schedule the day and time the child is to appear and inform the appropriate party as to the day and time the child is to be brought to court. A staff member from Tarrant County Family Court Services attends all conferences with children and the Judge.

**Compiled from the Tarrant County Family Courts' online pages



Tarrant County Volunteer Attorney Services (TVAS) is a pro bono program supported by the Tarrant County Bar Foundation and Tarrant County Bar Association. This summary is not intended to be a substitute for legal advice from an attorney.

THE PEOPLE IN THE COURTROOM

- The Judge:** The Judge is the person who conducts the court hearings. He or she will listen to each side's admissible evidence, and will make a decision based upon the applicable evidentiary standard, which in almost all cases is the best interest of the child.
- The Bailiff:** The bailiff is a law enforcement officer who is assigned to the courtroom to maintain order and provide security. The bailiff is the person responsible for checking you in upon your arrival in the courtroom. The bailiff has a copy of the daily docket on their desk. The bailiff will call the court into session and announce the Judge. You will need to stand when the Judge enters the courtroom and takes the bench.
- The Court Reporter:** The Court Reporter is a professionally trained person who makes a verbatim record of all that is said during a hearing or trial. The Court Report can prepare a transcript of the recording for later use. If your case is heard by an Associate Judge, they will utilize a tape recorder to record the hearing.
- DFPS Caseworker:** The caseworker is assigned to your case by DFPS. He or she has the job of providing and coordinating services on the case and keeping in contact with the family on a regular basis. The caseworker coordinates visitation and access with the parents. The caseworker has the best interests of the child in mind. The caseworker will attend all hearings and will make recommendations about what kinds of services should be provided to the family.
- Guardian/Attorney Ad Litem (GAL/AAL)/Amicus Attorney:** A lawyer or layperson who represents a child in juvenile or family court. Usually, this person represents the best interest of the child and may perform a variety of roles, including those of independent investigator, advocate, and advisor. The Amicus Attorney also serves as an arm of the court. A layperson who serves in this role is sometimes known as a court-appointed special advisor or CASA.
- Attorney Ad Litem for Parents:** The parents are named respondents in the DFPS case. Parents involved in abuse and neglect cases are entitled to court-appointed representation if they cannot retain their own attorney. The parent's attorney role is to advocate for the best interest of their clients. Before speaking with the parents, obtain permission from their attorney even if they are married.



Parent's Attorney: The Parents involved in abuse and neglect cases are entitled to a court-appointed attorney if they cannot afford to hire an attorney themselves. The parent's attorney role is to advocate for their clients' rights and to make sure that parents receive the services to which they are entitled.

County Attorney: The county attorney files the first abuse/neglect petition and is responsible for initiating the abuse and neglect case. The county attorney works with the caseworker to make recommendations to the court regarding the child's best interest.

Court Appointed Special Advocate (CASA): These volunteers are specially screened and trained volunteers appointed by the court to assist the child and the Judge. They gather information about the child and provide recommendations to the Judge. The CASA volunteer's only role is to advocate for the best interests and safety of the child. Not every case will have a CASA volunteer.

Intervenors: In some cases interested parties will file their own petition to intervene in the DFPS case. For example a relative interested in having the child placed in their home.



TYPES OF COURT HEARINGS

There may be several court hearings. As Foster Parent(s) you are welcome to attend court hearings involving your foster child. You may be asked to attend by the DFPS social worker or the Guardian Ad Litem, but attendance by the Foster Parent(s) is usually not required, unless you are subpoenaed to appear.

EMERGENCY REMOVAL

If a child has been removed with no prior court order, the agency must appear in court no later than the next business day (usually this is an ex parte hearing/order) and provide sufficient evidence of “a continuing danger to the physical health or safety of the child if returned to the home or evidence that the child has been sexually abused and is at substantial risk of future sexual abuse.”

Alternatively, DFPS may seek an ex parte order prior to a removal and in that instance must provide sufficient evidence of “either an immediate danger to the physical health or safety of the child, or that the child has been a victim of neglect or sexual abuse.”

In addition, in either of these circumstances the agency must also provide sufficient evidence:

- that there is not sufficient time, consistent with the child’s physical health or safety, to hold an adversary hearing;
- that it would be contrary to the child’s welfare to remain in the home; and
- that reasonable efforts were made to prevent or eliminate the need for removal.

NON-EMERGENCY HEARING

If there is no urgent need for removal but the child’s safety is at risk if left in the parent’s care, DFPS can seek a court order authorizing removal following a noticed hearing. This type of order requires sufficient evidence to prove:

- that it would be contrary to the child’s welfare to remain in the home; and
- that reasonable efforts were made to prevent or eliminate the need for removal.

ADVERSARY (SHOW CAUSE) HEARING

Within 14 days after DFPS takes a child into custody in an ex parte proceeding, the court must revisit the issue of removal and either enter temporary orders or return the child to the family. This hearing is held prior to a child being placed in Foster Care. At this hearing the Judge appoints a Guardian Ad Litem for the child and signs the ex parte order to remove the child. This hearing can be contested.



STATUS REVIEW HEARING

This hearing is held within 3 months of the date the child was removed. At this hearing the Judge reviews the status of the child and the recommendations & findings of the Guardian Ad Litem and the DFPS caseworker. The purpose of the status hearing is to make sure that there is a service plan in place for the child, that everyone is aware of the service plan and all of its contents, and that the parents understand what must be completed in order to have the child returned.

INITIAL PERMANENCY HEARING

The initial permanency hearing must be held within 180 days after DFPS is named as temporary managing conservator of the child. The purpose of the permanency hearing is to evaluate the permanency plan for the child to ensure that a final order consistent with that permanency plan is rendered before the date for dismissal of the case.

The Judge will remove the case to make sure that the service plan is being followed. The judge will check to make sure the CFPS caseworker and others are doing what is ordered in the plan. If everyone agrees that the service plan needs to be changed, the judge may order those changes.

At this hearing, the Judge will tell the parents that their parental and custodial rights may be subject to restriction or termination unless they are willing and able to provide the child with a safe environment.

At this hearing it will be decided what plans, services or other temporary orders are necessary to ensure final orders are rendered prior to the dismissal deadline. At the close of the hearing, the judge may set a dismissal date and give notice in open court to all parties.

FINAL PERMANENCY HEARING

This hearing is held within 12 months of removal. The Judge can extend this hearing to 18 months if needed. The purpose of this hearing is to evaluate the permanency plan for the child to ensure that a final order consistent with that permanency plan is entered.

A final order is one that:

- Requires that the child be returned to the parents;
- Names a relative of the child or another person as the child's managing conservator;
- Without terminating the parent-child relations, appoint DFPS as the managing conservator of the child; or
- Terminates the parent-child relationship and appoints a relative of the child, another suitable person or DFPS as the managing conservator.



For all final hearings, testimony and evidence will be offered regarding the child's best interest.

SPECIAL CIRCUMSTANCES:

In some cases, laws applicable to special situations and populations require particularized knowledge to competently resolve a DFPS case. If you find yourself in a case with one of these issues, you must get help before you proceed. For example, if a case involves:

- a child with Native American heritage: Any removal or termination of parental rights of an "Indian child" is subject to the Indian Child Welfare Act.
- a foreign-born child: If a foreign-born child is in DFPS custody, DFPS must give notice to the foreign consul.
- an undocumented child: If an undocumented child cannot reunify with her family, the child will probably be eligible for Special Immigrant Juvenile Status, which is an avenue for obtaining Permanent Resident status.
- a child to be placed outside Texas: If a child will be placed outside of Texas, the Interstate Compact on the Placement of Children may require advance approval from the state where the child will be placed.
- a child from another state: If Texas does not have "home state" jurisdiction or there is a prior custody determination in another state, consult the Uniform Child Custody Jurisdiction and Enforcement Act to assess to what extent a Texas court can assert jurisdiction beyond temporary emergency jurisdiction.



DIFFERENT TYPES OF LAWYERS

There are several different types of lawyers you may encounter during the process. They might represent the interests of the child, the State, the parents, or even you as a foster parent. These are some of the attorneys you might run across during this time.

Attorney Ad Litem / Amicus Attorney—This attorney is appointed by the court to represent the legal interest of the child.¹ The attorney’s responsibilities are wide-ranging and include everything from interviewing the child to participating in any possible litigation or court proceedings on behalf of the child.² In situations where the attorney represents a child in the managing conservatorship of DFPS, the attorney ad litem also must assure the child’s educational needs are met.³ When an attorney ad litem or amicus attorney is appointed, the court will enter an order allowing the attorney immediate access to the child and the child’s information.⁴ The amicus attorney is also an arm of the Court.

Attorney for DFPS—In any court proceedings, DFPS will have an attorney present to represent its interests. This person may work for DFPS directly or possibly work the District Attorney or prosecutor’s office.

Attorney for Parents—The child’s parents may have an attorney to represent their own interests. That attorney may be a private attorney retained by the parent or parents or a court-appointed attorney, depending on the circumstances. By law, when the state files suit to terminate a parent-child relationship, the parent is entitled to representation. If the parent is indigent or meets certain other criteria, the court must appoint the parent or parents an attorney ad litem.⁵

Guardian Ad Litem—A guardian ad litem is a person appointed to represent the best interests of the child.⁶ Typically, the guardian ad litem either is not a lawyer or is a lawyer not acting in his/her professional capacity. However, in a suit to terminate the parent-child relationship, the court may appoint the attorney ad litem to serve in a dual role of attorney ad litem and guardian ad litem.⁷

¹ Tex. Family Code Ann. § 107.001.

² See Tex. Family Code Ann. § § 107.002-004.

³ Tex. Family Code Ann. § 107.002(i).

⁴ Tex. Family Code Ann. § 107.006.

⁵ Tex. Family Code Ann. § 107.013.

⁶ Tex. Family Code Ann. § 107.001(5).

⁷ Tex. Family Code Ann. § 107.0125.

