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# SHELTER HEARING CHECKLIST

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## Taking Children into Custody § 39.401

Probable cause must exist that:

- Child abused, abandoned or neglected or is suffering from or imminent danger of illness or injury as a result of abuse, neglect or abandonment;
- Material violation of a condition of placement imposed by court; or
- No parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care,

## Placement/Continuation in Shelter § 39.402(1),(2)

Child may be placed/continued in shelter only if:

- One of the criteria in § 39.401(1) (above) applies and
- Court made specific finding of fact Regarding the necessity for removal, and
- Provision of services will not eliminate need for removal

## Alternatives to Shelter

- Voluntary protective services - the child will remain at home and the department shall assist the family
- Removal of alleged perpetrator
- In-home services

## Prior To Shelter Hearing

- Department must file affidavit/petition
  - Copies to parties prior to hearing
- Identify and locate legal custodians, parents of child
- Parents given actual notice - must at least have good faith effort to give notice - § 39.402(8)(b)
- Background check, homestudy on proposed or actual placement (criminal records, abuse registry checks)

## Placement

- Placement pending adjudication
- The parent shall notify the court and all parties of possible relative placements

## Shelter Hearing

- GAL appointed - § 39.402(8)(c)1
- Parents informed of right to counsel - § 39.402(8)(c)2
- Interpreters provided if necessary
- Parents present evidence - § 39.402(8)(c)3
- Department shall provide the court - § 39.402(8)(e), (f)
  - Law enforcement, medical reports and abuse hotline reports
  - Current or previous case plans - § 39.402(8)(f)1
  - Delinquency adjudications of parents - § 39.402(8)(f)2
  - Past or current protection order for domestic violence - § 39.402(8)(f)
  - Anywhere the child has lived in the past 12 months
- Parents must provide permanent mailing address - § 39.402(8)(g)
- Identity/whereabouts of any unknown parent, inquiry under - § 39.503, if needed.

## Findings Required in Order - §

39.402(8)(h)

- Written findings regarding necessity for placement in shelter. § 39.402(1), (2).
- Removal in best interests of child
- Services will not eliminate need for removal
- Continuation in the home is contrary to the welfare of the child because home situation presents substantial immediate danger to child.
- Probable cause to believe child is dependent or that the court needs

additional time – not to exceed 72 hours  
- § 39.402 (8)(h)4

- Department has made reasonable efforts to prevent the need for removal - § 39.402(10)
  - Written description of services and when available or why services are not available for the child
- Department deemed to have made reasonable efforts - § 39.402(8)(h)5.
- Notified parents of next hearing
- Notified parents of right to counsel

#### **No Probable Cause?**

- Dismiss petition
- Permit the department 72 hours to perfect probable cause - § 39.402(8)(d)2
- Non-offending parent given custody

#### **Visitation**

- Recommendation of the department - § 39.402(9)
  - None if clear and convincing that visitation not in the best interests of the child
- Must occur within 72 hours
- Sibling visitation (plan for frequent visitation)
- Grandparent visitation - § 39.509
- Conform with Keeping Children Safe Act - § 39.0139

#### **Other Issues**

- Establish paternity
- ICPC
- ICWA - Is the child a member of, or eligible for, membership in an Indian tribe?
- AAL appointed?
- Other court cases pending – avoid conflicting orders
- Child 3 years to school entry - Rilya Wilson Act - § 39.604
- Developmental disabilities

#### **Education**

- If placement requires change in schools review McKinney-Vento

- IEP for child

#### **Financial**

- The court shall order the parents to pay child support - § 39.402(11)

#### **Psychotropic Medication - § 39.407(3)(B)(1)**

- May continue if the medication is in its original container and it is a current prescription for the child
- The department must seek court approval for the continued administration of the medication
- Review Psychotropic Medication Guidelines*