



FOSTER CARE CANDIDATE DETERMINATIONS

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A candidate for foster care is a child who is at serious and imminent risk of removal from his/her home and placement into foster care. The Social Security Act, Section 471(a)(15)(B)(i) provides the frame of reference for determining the point at which a child becomes a candidate for foster care by requiring that reasonable efforts to prevent a child's removal from the home be made. The probation department must either be pursuing the removal or making reasonable efforts to prevent the child's removal from the home. A child may not be considered a candidate for foster care simply because he/she has been described as being *at risk* due to circumstances such as social, interpersonal, or behavioral problems or a dysfunctional home environment.

There are three acceptable methods for documenting a child's status as a foster care candidate. The method used in Texas involves preparing a defined case plan clearly indicating that, absent effective preventative services, placement into foster care is the planned arrangement for the child. All candidacy information should be documented **in the case plan**. Currently, the Texas Juvenile Justice Department (TJJD) is able to consider information provided in collateral case-file documentation (e.g., chronological notes, referral documents, psychological or presentence reports); however, at some point, we may be required to rely solely on the information provided in the case-planning documents. For this reason, diligent efforts should be made to ensure all requirements for candidacy are documented in the actual case plan documents. This includes describing the circumstances placing the child at risk of harm, the parent/custodian's responses to the child's problematic behaviors, and the impact of those responses on the safety and well-being of the child. The case plan documents must also provide a description of the services that were offered or provided to the parent/custodian to mitigate the circumstances placing the child at risk of harm.

The decision to remove a child from his/her home is significant and is not made lightly. Therefore, a case plan that sets foster care as the plan for the child, absent effective preventative pre-placement services, is an indication of the severity of the circumstances in the home and of the fact that the child is at serious and imminent risk of removal; in other words, the department believes that a plan of action is necessary to prevent the child's removal. The case plan used to document a child's candidacy for foster care must include:

- a description of the circumstances in the home that place the child at serious and imminent risk of removal from the home;
- a description of services offered or provided to the parent/custodian to prevent the removal; and
- an indication that foster care will be the result if the services described in the plan are not effective.

When documenting services offered or provided to the parent/custodian, please note the following:

- On their own, broad descriptions of probation services such as probation supervision, community service, Intensive Supervision Probation, and others do not sufficiently meet the definition of *services* to address the risk factors placing a child at serious and imminent risk of removal.
- The department must identify and offer or provide specific services to the child and family to ameliorate the factors placing the child at risk of harm (e.g., parenting classes, counseling, substance abuse services).
- The services offered or provided must correlate with the risk factors identified in the home that place the child at risk of harm and be designed to address the behaviors of the parent/custodian(s) and child or other risk factors that place the child at serious and imminent risk of removal.

If completed fully and accurately, the case plans designed by TJJD, in collaboration with the Administration for Children and Families and the Texas Department of Family and Protective Services



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(DFPS), will meet the requirements to allow departments to claim administrative costs for foster care candidates.

DETERMINING CANDIDACY

Behavioral issues may be a factor in identifying serious and imminent risk of harm to a child that might result in his/her removal from the home. However the child’s behaviors cannot be the sole factor in determining whether a child is at risk of harm and whether that child is a candidate for foster care. If a child’s behaviors are to be used as a factor contributing to the child’s risk of harm in the home, additional information regarding the parent/custodian’s response to those behaviors—either an action or a failure to take action to keep the child safe—**must** be documented. In other words, what is the parent/custodian doing or failing to do to address the problematic behaviors that place the child at risk of harm?

A description of the child’s behaviors alone is insufficient to determine that the child is a candidate for foster care.

Once circumstances placing the child at serious and imminent risk of harm and of placement into foster care are identified and documented, the department must also document that reasonable efforts are being made to prevent the removal of the child from the home. It should be noted here that the plan for the child, absent preventative services, is placement into foster care. If the plan for the child is placement in a secure facility, commitment, or in any other setting that is not considered foster care, the child cannot be considered a candidate for foster care.

The case plan used to identify the child as a foster care candidate must document that services or other supports/programs are being offered or provided to the child and family to address the risk

SCENARIOS

The following scenarios are provided to illustrate and clarify candidacy determinations. For each item listed below, there must be supporting case file documentation as well as information about specific services offered or provided to the parent/custodian regarding this issue.

- The parent/custodian enables or minimizes the child’s behaviors or otherwise is unable to manage or prevent the child from engaging in behaviors that may place him/her at risk of harm. The parent/custodian is aware of the child’s behaviors but does not, or is unable to, provide the level of supervision that will curtail these behaviors. The parent/custodian does not report behaviors that place the child at risk of harm to appropriate personnel. In these circumstances, it is imperative that the parent/custodian’s response to the child’s behaviors is documented in the case plan. Examples may include but are not limited to the following:
 - The parent/custodian is unable to prevent, or minimizes, the child’s association with known gang members or individuals significantly older than the child.
 - The parent is unable to prevent the child from running away from home or does not report when the child runs away.
 - The parent is unable to prevent the child from engaging in criminal activity (theft, assaultive behavior, robbery, etc.) or engages in criminal activity with the child.



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- The parent/custodian exhibits a pattern of failure to provide transportation for the child to attend appointments, services, or programs designed to assist the child and/or fails to show up for court dates or various other essential appointments, such as counseling, school meetings, parenting classes, etc. Patterns of such behavior must be documented; one or two missed appointments is not considered a pattern and, therefore, is not sufficient to find that a child is at serious and imminent risk of removal from the home.
- The parent/custodian stays out all night, works hours that prevent him/her from providing adequate supervision, or otherwise does not provide or arrange for an adequate level of supervision to prevent the child from engaging in behaviors that place the child at risk of harm. If the lack of adequate supervision results (or could result) in harm to the child, this should be documented in the case file.
- The child has a serious substance use disorder and may be at risk of becoming addicted, may engage in criminal activity to obtain money to buy drugs, and/or may associate with individuals that place the child at risk of harm. The parent/custodian is aware of the problem but denies or minimizes it. The child continues to test positive for drug use, but the parent/custodian is uncooperative in the child's treatment or fails to attend related counseling or classes to help the child address the issue.
- The parent/custodian encourages the child to engage in criminal activity for monetary gain (e.g., prostitution, selling drugs, theft) or engages in such activities with the child. The parent/custodian provides illegal drugs to the child or involves the child in gang or drug activities.
- The child is witnessing domestic violence (physical or emotional abuse) in the home and is becoming increasingly more aggressive or assaultive to others. The mere exposure to domestic violence could place the child at risk of emotional harm if allowed to continue, regardless of how this manifests in the child's behavior. The parent/custodian's behavior places the child at risk of harm, which may result in removal of the child if the circumstances do not change.
- The parent/custodian uses illegal drugs/substances in the presence of the child or engages the child in the use of illegal drugs/substances in the home.
- The parent/custodian fails to provide adequate medical care for the child, does not fill necessary prescriptions (such as for mental health or a medical condition), or fails to maintain insurance or apply for medical assistance benefits for a child with special needs, each of which would place the child at risk of harm. The parent/custodian fails to provide necessary psychiatric care or minimizes the child's suicidal threats or attempts.
- The parent/custodian has a gang affiliation, associates with known gang members, or is involved in gang-related activities, and the child becomes involved with the gang and engages in dangerous activities that could place the child at risk of harm. The activities of both the child and parent/custodian should be documented in the case file.
- The parent/custodian allows inappropriate individuals to reside in, spend the night in, or visit the home or allows these individuals access to the child in some other way. Such individuals could include sex offenders, known gang members, or any significantly older individual allowed an overnight visit with a younger child.
- The parent/custodian exposes the child to pornography, allows the child access to pornography or other inappropriate materials or media, or encourages or engages with the child in the use of these materials.
- The parent/custodian allows or fails to prevent the child from engaging in unsafe activities such as driving without a license or possessing/using dangerous or illegal weapons. There must be case-file documentation explaining how these behaviors place the child at risk of harm.



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- The child lives with an aging relative who, due to age or infirmity, is unable to control behaviors that place the child at risk of harm. The case file should describe how the relative is unable to manage/control the child's behaviors and how these behaviors place the child at risk of harm.
- The parent/custodian is unable to provide a stable home for the child. For example, the parent/custodian may be homeless, live in a motel, live with different friends or relatives, or repeatedly send the child to live with different relatives.
- The parent/custodian has a health issue significant enough to impact his/her ability to provide adequate supervision to the child. This could include medical conditions that are outside the control of the parent/custodian (such as disabilities or infirmities) or issues the parent/custodian has the ability to control (such as the use of alcohol or drugs or other illegal substances).
- The parent/custodian locks the child out of the home, makes the child leave the home, moves away and leaves the child alone, or abandons the child.
- The parent/custodian engages in physical altercations with the child that may result in physical and emotional harm to the child.

The scenarios given above are only a few examples that may result in a child being considered at serious and imminent risk of removal from the home if preventative services are not successful. There are numerous other situations that also could result in physical or emotional harm to a child and could make the child a candidate for foster care. When identifying (and documenting) circumstances that place the child at serious and imminent risk of removal from the home and placement into foster care, remember the following key factors:

- The candidacy narrative **must** describe how the child is at risk of harm; descriptions of the child's behaviors alone are not sufficient. While it may seem obvious to the supervising officer how the child's safety is at risk, such information must be detailed in the case plan.
- The parent/custodian's response to the child's behaviors **must** be documented.
- Services to the family **must** be specific and **must** address the factors placing the child at risk of harm and removal from the home. For example, a child is at risk of harm because the parent/custodian works a night job and leaves the child unsupervised, which results in the child leaving the home and engaging in prostitution. In this situation, requiring the parent to participate in a weekly outing with the child is not sufficient or appropriate to address the circumstances placing the child at risk of harm. A weekly outing in this scenario would not be considered a specific service offered to the family. It is imperative that the service offered or provided address the circumstances placing the child at risk of harm.

In addition to the information above, [Section 2113 of the DFPS handbook](#) provides statutory definitions of child abuse and neglect that may be helpful in identifying circumstances that may place children at risk of harm.