
BURDEN OF PROOF

A. Sufficient Evidence to Satisfy a Person of Ordinary Prudence and Caution

The standard “ordinary prudence and caution” requires a minimal showing of proof, less than a preponderance but enough to persuade a reasonable person, similar to the “probable cause” required for a search warrant. This burden of proof applies to:

- Ex Parte Removal Hearing. [Tex. Fam. Code § 262.101](#);
- Taking Possession of a Child in Emergency Without a Court Order. [Tex. Fam. Code § 262.104](#); and
- Full Adversary Hearing. [Tex. Fam. Code § 262.201](#).
- Hearing on a request for court ordered participation. [Tex. Fam. Code § 264.203](#).

B. Preponderance of the Evidence

To show a “preponderance of evidence” is to have evidence that is of greater weight or is more convincing than the evidence that is offered in opposition to it. To understand how to meet this burden, one can picture the scales of justice where one side is slightly higher on one side; this slight raise on one side is enough to meet the preponderance of the evidence. It is the standard of proof which is generally used in civil cases. This burden applies to:

- 60 Day Status Review. [Tex. Fam. Code § 105.005](#);
- Permanency Hearing before Final Order. [Tex. Fam. Code § 105.005](#);
- Final Order Awarding Permanent Managing Conservatorship (PMC) (without termination). [Tex. Fam. Code § 105.005](#);
- Permanency Hearing after Final Order. [Tex. Fam. Code § 105.005](#); and
- Adoption Hearing. [Tex. Fam. Code § 105.005](#).
- Hearing on reinstatement of parental rights. [Tex. Fam. Code § 161.303](#).

C. Clear and Convincing

To meet a “clear and convincing” burden of proof is to show the measure or degree of proof that will produce in the mind of the trier of fact (either a judge or a jury) a firm belief or conviction as to the truth of the allegations sought to be established. More than just a “Preponderance of the Evidence” but not as much as “Beyond a Reasonable Doubt.” The burden applies to:

- Termination of Parental Rights. [Tex. Fam. Code § 161.001](#); and

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- An Order placing a child in foster care under the Indian Child Welfare Act. [25 U.S.C. § 1912\(e\)](#).

D. Beyond a Reasonable Doubt

The burden of proof “beyond a reasonable doubt” is met when the trier of fact is fully satisfied, or entirely convinced that something occurred. The burden applies to:

- Termination cases subject to the Indian Child Welfare Act. [25 U.S.C. §1912\(f\)](#).

The “beyond a reasonable doubt” standard which applies in ICWA cases is the highest standard of proof in a termination of parental rights case under Texas law, signaling the weight of this decision on the trier of fact.