

Harris County Child-Protection Collaborative Meeting



Harris County Judicial Round Table Follow-Up Report

Harris County is one of the largest and most diverse counties in Texas, and, as such, there are unique issues that impact its child-welfare population. As of the 2010 U.S. Census, Harris County had a population of 4.1 million, making it the most populous county in Texas. Roughly one-sixth of all Texans live in Harris County.¹ Twenty-nine percent of Harris County residents are under the age of 18. During the course of the 2010 fiscal year (Oct. 2009 – Sept. 2010), the foster care system in Harris County served a total of 7,346 children.² On average, there were 5,317 children in foster care on any given day in Harris County. To handle all of these cases, there are numerous judges and courts that have jurisdiction over child-protection issues. Because Harris County makes up such a significant portion of the Texas population, what happens in Harris County affects the state’s overall performance in the Child and Family Services Reviews (CFSR).³



An April 2010 judicial “Beyond the Bench” conference and an October 2010 report on children in long-term foster care, published by Texas Appleseed, helped shed light on key issues affecting Harris County.⁴ As a result of these findings, state and county judicial leaders have expressed interest in finding workable solutions to improve court processes and judicial practices in managing its child-protection cases.

Harris County’s large size creates distinct challenges that cannot always be properly addressed under the typical statewide approach. Accordingly, a more specific assessment of Harris County’s management of child-protection cases would assist the key players in developing more effective processes. In February 2011, the Children’s Commission, in partnership with the Texas Department of Family and Protective Services (DFPS), Casey Family Programs, Texas Appleseed, and the Center for Public Policy Priorities, sponsored a meeting of the Harris County District and Associate Judges from the Juvenile and Family Law Divisions to discuss barriers to permanency in Harris County child-protection cases and areas for improvement.

¹ Quick Facts: Harris County, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/48/48201.html>.

² Statistics for Harris County, Texas, Fostering Court Improvement, <http://fosteringcourtimprovement.org/tx/County/Harris/>.

³ Each state is required to submit data to the U.S. Department of Health & Human Services (HHS) for the purposes of a federal review of each state’s compliance with titles IV-B and IV-E of the Social Security Act. The review system (known as Child and Family Services Reviews or CFSRs) is administered by the Children’s Bureau, part of the HHS. The CFSRs enable the Children’s Bureau to: (1) ensure conformity with federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and (3) assist states to enhance their capacity to help children and families achieve positive outcomes. See *Children’s Bureau Child and Family Services Reviews Fact Sheet*, Administration for Children and Families, <http://www.acf.hhs.gov/programs/cb/cwmonitoring/recruit/cfsfactsheet.htm>.

⁴ See Texas Appleseed, *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas’ Courts & Legal System* (2010), available at http://www.texasappleseed.net/images/stories/reports/FosterCare-rev_press.pdf.

Concerns & Solutions

Case Delays

Section 263.401 of the Family Code requires that a child-protection Suit Affecting the Parent-Child Relationship must either commence trial on the merits or be dismissed within a year from the order awarding DFPS temporary conservatorship. However, in “extraordinary circumstances,” the court may grant a one-time extension not to exceed 180 days. In Harris County, over fifty percent of all cases are extended beyond the one-year deadline. While “extraordinary circumstances” are not defined by the Family Code, it cannot reasonably be interpreted to apply to a *majority* of all of the cases.

Accountability and Preparation

Although there are many factors that play a role in delaying permanency in child-protection cases, heavy case loads hinder preparation by county attorneys, parent and child attorneys, and caseworkers. There is a general awareness that not enough is accomplished in the interim between hearings. Caseworker turnover exacerbates this. The combination of these elements contributes to delays in achieving permanency.

Insufficient preparation by attorneys and participants not only delays cases, but leads to uninformed decisions. Adequate performance by caseworkers and attorneys is vital to improve the quality of the evidence before the court. Many judges and participants commented that there “isn’t enough time” for participants to complete all of the necessary work. There may also be a practice of putting off certain duties until just before a hearing, which contributes to the problems and to longer periods in foster care for children. Rather than accept various justifications for the lack of compliance, judges must communicate expectations to attorneys and caseworkers and hold them accountable for noncompliance. A programmatic and cultural shift to frontload cases, i.e., place more emphasis and accountability on identifying relatives, providing notice and service, and engaging the family in developing the family plan of service is essential to the improvement of case outcomes and timeliness.

Service of Citation and Notice

Similarly, many judges recognized issues with a failure to provide proper service of citation and notice in compliance with the rules of civil procedure. Of note, a recent study by DFPS found that there is not a clear delegation of these duties; in some areas caseworkers are responsible for making sure service is accomplished and in other areas the county attorneys take on the responsibility. Also, judges noticed that DFPS frequently fails to complete a search of the paternity registry database until the end of the case, and as a result, persons who should have received notice at the beginning of the case are not given a meaningful opportunity to participate. To ensure that due process is carried out, DFPS must make a clear delegation of these duties to either someone within the agency or the prosecuting attorney’s office. Many of these same issues were identified on a statewide level by the Children’s Commission in a December 2010 Round Table; the product of that round table could assist Harris County leaders in identifying similar issues at a local level.⁵

⁵ *Notice and Engagement Round Table*, Supreme Court of Texas Permanent Judicial Commission for Children, Youth & Families, <http://www.supreme.courts.state.tx.us/children/pdf/NoticeEngage.pdf>.

Most importantly, judges must demand excellence from those parties and practitioners appearing before them to ensure that the interests of vulnerable children and families are being properly served by our child-protection system.

Low Rate of Reunification

In accordance with the Texas Family Code and federal funding requirements, the primary goal in any child-protection case is to reunite the parent and child, after the parent has completed the necessary services to be able to safely care for the child. It is only after reunification is ruled out that other options are considered. However, in Harris County, a relatively low number of child-protection cases end in reunification: only twenty-one percent. This is one of the lowest reunification rates among the other large urban counties in the state.

There are several factors that may contribute to low reunification rates both statewide and in Harris County in particular, including increased substance abuse by parents and caregivers, coupled with scarce treatment resources, an increased emphasis on keeping children home at the outset through family based safety services, and on placing children with relatives.⁶ Also, states receive federal incentive payments for adoption, but not for reunification.

To increase reunification rates, Harris County should consider a programmatic and cultural shift to place more emphasis on the front-end of the case. Frontloading cases may increase reunification rates. In particular, there should be a renewed focus on effectuating notice and service of adult family members within the first sixty days of the case. Additionally, courts should initially concentrate on ordering only those services that are essential to determining the viability of reunification, including concrete services and training or substance abuse treatments.

Lack of Permanency

Of the children in DFPS custody in Harris County during the 2009 fiscal year, only twenty-four percent (less than one in four) exited to a permanent home, including reunification, permanent placement with relatives, and adoption. The remaining seventy-six percent stayed in DFPS custody or left the system with a nonpermanent outcome (e.g., aged out of foster care). As compared with the other large urban counties in Texas, Harris County had the lowest rate of children exiting DFPS custody to permanency. In other words, Harris County children are more likely to remain waiting in DFPS custody for several years.

Of the kids who aged out of DFPS custody during the 2009 fiscal year in Harris County, seventy percent of them had been in the system for three years or more. Thus, there appears to be a pattern of children waiting several years to achieve permanency only to end up aging out. Obviously, it would be much more efficient for the child-welfare system and better for the children to increase placement efforts earlier in the case, so that there are not so many children lingering in foster care. Again, greater emphasis placed on finding permanency within the first twelve months could improve the number of children exiting to a permanent home.

If a child remains in DFPS custody at the end of the temporary managing conservatorship (TMC) period, the child transitions into permanent managing conservatorship (PMC) with DFPS whether parental rights have been terminated or not. The Texas Applesseed report found that after this transition, the case

⁶ Recent policy changes have increased the use of family based safety services which involves the parent retaining legal custody instead of a removal. This means that removals involve only the most difficult and complicated cases which may make reunification more difficult, especially in light of scarce treatment services.

often loses its urgency and the attention of the attorneys and caseworkers. The statutory framework has established a one-year deadline for handling the legal case. As short as one year is, this statutory framework has created an environment whereby the greatest urgency occurs at the end of the twelve-month period, rather than at the beginning. This phenomenon may be contributing to the majority of Harris County cases being extended beyond the one-year deadline.

Also, once a child enters PMC, attorneys and guardians ad litem are often taken off the case. For those attorneys who continue, there is little training available to guide the attorney in advocating for a child's needs during the PMC stage. Because the adversarial stage is over, many attorneys do not understand their duties or the very different issues present in this later stage of the case. Regardless of whether the judge chooses to keep children's attorneys on the cases during the PMC stage, the court needs to make a concerted effort to emphasize expectations of all participants and hold participants accountable.

Lastly, it is essential to allow the child to have a voice in the case, especially in the PMC stage. Because of the profound effects the courts' decisions have on children's lives, it is only appropriate that courts allow the children to be heard. Accordingly, Texas law requires that the court allow the child to be involved in the case. However, many courts have difficulty meeting this obligation. Many judges explain that there is no place in the courthouse for the child. This can be remedied, however, and Harris County judges could make a concerted effort to allow children to have their voices heard, whether it be by enhancing courtrooms with video conferencing equipment or by creating child-safe rooms in courthouses. With the many businesses and corporations headquartered in Harris County, there are many opportunities to involve corporate partners to improve courthouses to accommodate these children.

Disproportionality

Although the permanency rate for children overall in Harris County is low, for some races and ethnicities it is worse than others. The permanency rate for white children is twenty-nine percent while the permanency rate for Latino children is twenty-six percent for African-American children is only twenty-two percent. In other words, African-American children in Harris County have the hardest time achieving permanency.

Harris County leaders should pay particular attention to the barriers to permanency that affect minority children and families, and should consider requiring training for child welfare stakeholders on how implicit bias may be impacting judicial and child protection decisions.

Case Management Complicated by Numerous Courts and Nonspecific Docket Times

Family Courts and Juvenile Courts have overlapping jurisdiction over child-protection issues. Family Courts decide matters and render judgments relating to families and children, including divorce, child custody, child support, visitation rights, protective orders and the emancipation of minors. Juvenile Courts decide matters involving adolescents who have not attained the age of majority, including criminal misconduct, juvenile delinquency and issues of neglect. Currently, there are ten family courts and three juvenile courts in Harris County. The judges of each of these courts employ associate judges to handle part of the case load. The ten family courts hear about half of the child-protection cases, and the three juvenile courts handle the other half.



The number of courts and judges, coupled with the Family Code's requirement that a case be before the court of continuing jurisdiction, complicates the filing of the case with the appropriate court. The court of continuing jurisdiction is not always properly identified, which causes cases to be filed in the improper court. As such, cases are being filed and transferred between the juvenile and family courts. This can delay a case being heard timely. The District Clerk has attempted to correct this issue by coding cases so that the computerized system catches potential courts of continuing jurisdiction.

Also, the courts are housed in three separate locations, causing logistical difficulties. Each court manages its own scheduling and docketing. Attorneys and caseworkers complain that they are sometimes scheduled to be in two different courts on the same date. The Harris County District Clerk helpfully suggested implementing a coding system that would recognize when attorneys or caseworkers are scheduled for more than one case at a particular time, in order to avoid such conflicts. It was also suggested that certain caseworkers and attorneys be assigned to only work in a particular court, but judges opined that doing so might cause an inequitable distribution of skilled attorneys and caseworkers.

Another problem that contributes to the inefficiencies and legal expense is the way the courts schedule the hearings. Many of the courts have one or two docket call times a day and set all of the day's cases for that time, rather than spacing them throughout the day. Thought should be given to implementing a scheduling system that would more specifically set the time of the hearing for a particular case so that caseworkers and attorneys would not have to block out an entire day for a single case and spend hours waiting for the case to be called. This would also save Harris County legal fees for attorneys who bill from the time they appear for a 9:00 docket call until their case is heard several hours later.

High Fees for Appointed Attorneys

Legal fees for court-appointed attorneys in child-protection cases are relatively high. Harris County may want to evaluate current legal representation appointment methods and compensation. As the Children's Commission detailed in its statewide *Legal Representation Study*, certain representation models and compensation structures have proven to be more cost-efficient and provide better quality service.⁷ Specifically, in urban areas with significant case loads, it may be more efficient and effective to provide representation through a central, county-run office that employs salaried attorneys, rather than appointing private attorneys paid on a per-hour or per-hearing basis. Harris County may want to consider establishing a parent and child legal representation division in its Public Defender's Office. This may require articulating the unique and complex issues of this practice area to the County Commissioner's Court to emphasize the importance of providing quality representation.

⁷ *Legal Representation Study*, Supreme Court of Texas Permanent Judicial Commission for Children, Youth & Families, <http://www.supreme.courts.state.tx.us/children/pdf/LRS.pdf>.

Additionally, Harris County could improve legal representation by clearly communicating expectations and duties of attorneys and holding attorneys accountable for not fulfilling their duties as required by the Family Code. For example, the judge could clarify the duties of an appointed attorney for an alleged father who is unknown or cannot be located by directing the attorney to start with a review of DFPS's efforts to identify or locate the father, to then proceed by conducting an independent



investigation to identify or locate the father. Also, judges could communicate expectations for children's attorneys that they see their clients and advocate according to their client's wishes. For attorneys who stay on cases after termination while the children are in the PMC of DFPS, judges should require the attorney to understand the child's need for permanency, stability, and well-being.

Lack of Countywide Oversight & Cooperation

The fragmented setup of the various courts makes collaboration between the courts very difficult. Further, the courts all have massive case loads and struggle to find time to hear all of their cases, leaving judges with little time to contribute to a countywide oversight effort. However, judges and other participants have indicated an increased awareness of the unique challenges within Harris County, and have identified forming a countywide review commission as a possible solution.

Next Steps: Forming a Harris County Council for Children & Families

Participants in the Harris County meeting agreed to take steps to form a judge-led, local child-protection council to promote informed discussion of local issues and to achieve structural change, data sharing, and collaboration. The Children's Commission is in a position to assist Harris County leaders in that effort, both through staffing and by sharing expertise and information. The Council may want to consider forming several workgroups or subcommittees to focus on discreet issues identified by the Council. A preliminary step to forming a Council and subcommittees would be to hold a local child welfare summit to allow the gathering of ideas and information regarding improvement of the child-welfare system.

In conjunction with these efforts, Harris County may want to partner with other organizations with similar missions such as Casey Family Programs and Texas Appleseed. Harris County may also want to explore local resources and donors to assist in these efforts.

The Children's Commission and its partners can provide assistance with a children's summit or with setting up a local child protection council. Harris County could implement a structure similar to the Children's Commission on a local level. Harris County could look to the directives included in the Supreme Court of Texas's order establishing the commission and appointment members as a guide. Links to the formation documents for the Children's Commission are provided below.

- Consultative Report to the Supreme Court establishing the need for a statewide commission for children, youth and families.
<http://www.supreme.courts.state.tx.us/children/reports/consultative-group-report.pdf>
- September 2007 Supreme Court Hearing regarding the need for an oversight commission
 - [Public Hearing Announcement](#)⁸
 - [Hearing Transcript](#)⁹
 - [Hearing Webcast](#)¹⁰
- November 2007 Supreme Court Order Creating Commission
<http://www.supreme.courts.state.tx.us/MiscDocket/07/07919300.pdf>
- November 2007 Supreme Court Order Appointing Commission Members
<http://www.supreme.courts.state.tx.us/MiscDocket/07/07919200a.pdf>
- Children’s Commission Website
<http://www.supreme.courts.state.tx.us/children/children.asp>
- Resources & Report’s Page of Commission Website
<http://www.supreme.courts.state.tx.us/children/resources.asp>

February 9, 2011 Harris County Judicial Round Table

Harris County District Judges:

Hon. Glenn Devlin	313 th Juvenile Court
Hon. Angela Ellis	315 th Juvenile Court
Hon. David Farr	312 th Family Court
Hon. Diane Guarigila	245 th Family Court
Hon. Michael Hay	246 th Family Court
Hon. Bonnie Hellums	247 th Family Court
Hon. Aneeta Jamal	314 th Juvenile Court
Hon. James Lombardino	308 th Family Court
Hon. Lisa Millard	310 th Family Court
Hon. Roy Moore	245 th Family Court
Hon. Conrad Moren	310 th Family Court
Hon. Robert Newey	311 th Family Court
Hon. Stephen Newhouse	313 th Juvenile Court
Hon. Deborah Patterson	257 th Family Court
Hon. John Phillips	314 th Juvenile Court
Hon. Denise Pratt	311 th Family Court
Hon. Charles Prine	309 th Family Court
Hon. Ricardo Ramos	308 th Family Court
Hon. Michael Schneider	315 th Juvenile Court

⁸ <http://www.supreme.courts.state.tx.us/children/pdf/PubHearingAnnouncementJudCom.pdf>

⁹ <http://www.supreme.courts.state.tx.us/children/pdf/ChildrenCommissionHearingTranscript.pdf>

¹⁰ <http://stmarytxlaw.mediasite.com/stmarytx/Viewer/Viewers/Viewer320TL.aspx?mode=Default&peid=7cca5175-524e-48cc-b40d-3493c23738c5&pid=8889833e-cfdf-4fe9-8124-07e6b7525511&playerType=WM7>

Hon. Ellen Shelton 312th Family Court
Hon. Meca Walker 247th Family Court
Hon. Judy Warne 257th Family Court

Staff and Guests:

Justice Eva Guzman, Chair, Supreme Court of Texas Children's Commission
Sarah Abrahams, Texas Strategic Consulting, Casey Family Programs
Tina Amberboy, Supreme Court of Texas Children's Commission
Jane Burstain, Center for Public Policy
Candace Broussard-White, DFPS Child Protective Services Managing Regional Attorney
Chris Daniel, Harris County District Clerk
Audrey Deckinga, Texas Department of Family and Protective Services, Child Protective Services
Scott Dixon, Texas Department of Family and Protective Services, Child Protective Services
Sheryl Dotson, Texas Department of Family and Protective Services
Katie Fillmore, Supreme Court of Texas Children's Commission
George Ford, Harris County Child Protective Services
Deborah Fowler, Texas Appleseed
Veronica Juarez, Office of Senator John Whitmire
Jeff Nelson, Office of Senator Tommy Williams
Rebecca Lightsey, Texas Appleseed
Teri Moran, Supreme Court of Texas Children's Commission
John Odam, Harris County
Carl Reynolds, Office of Court Administration
Tiffany Roper, Supreme Court of Texas Children's Commission
Vince Ryan, Harris County Attorney
John Specia, Jurist in Residence, Office of Court Administration

Persons Interested in Participating in Harris County Efforts:¹¹

Justice William J. Boyce, Texas Fourteenth District Court of Appeals
Justice Jeff Brown, Texas Fourteenth District Court of Appeals
Justice Laura Higley, Texas First District Court of Appeals
Justice Michael Massengale, Texas First District Court of Appeals
Chris Daniel, Harris County District Clerk
Sandra Hachem, Harris County Attorney's Office
Hon. Bill Henderson, Attorney at Law (former District Judge)
Lorraine Cervantes, Attorney at Law

¹¹ Not present at Judicial Round Table, but expressed interest in participating.