



Supreme Court of Texas  
Permanent Judicial Commission For Children, Youth and Families

# Legal Representation Study

Assessment of Appointed Representation  
in Texas Child-Protection Proceedings

January 2011



SUPREME COURT OF TEXAS PERMANENT JUDICIAL  
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES



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## Acknowledgements

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## Message from Chair

The Supreme Court of Texas, as head of the judicial branch, is committed to improving the court system's handling of child-protection cases to promote the safety, well-being and permanency of children and families. In 2007, the Court created the Permanent Judicial Commission for Children, Youth and Families (the Children's Commission) to coordinate comprehensive efforts for systemic improvement. In its order creating the Children's Commission, the Court identified competent, quality representation in child-protection proceedings as essential to improving outcomes for Texas families.



Representing a client in a Child Protective Services (CPS) case presents many unique challenges. Unlike a traditional adversarial proceeding addressing a static legal claim, a CPS case typically evolves through a series of statutorily required hearings and often requires a concerted, collaborative effort between parties and other professionals. Both children and parents rely on their attorneys to guide them through this complex system and advocate for their interests. The applicable law is also multifaceted, involving both statutory law and administrative policies and regulations. In addition to understanding the substantive and procedural aspects of the case, attorneys must appreciate the emotional turmoil experienced by their clients and understand often present underlying issues such as substance abuse, family violence, poverty, and mental and physical health challenges.

The stakes in a CPS case are exceedingly high; parents may face the most serious of civil penalties—termination of their parental rights. Parents' interest in their children is of constitutional magnitude, and Texas recognizes the importance of this interest by providing both children and indigent parents with a statutory right to appointed counsel. Given the gravity of the ultimate decision that courts will make, the role of an attorney in a CPS case requires an individual who possesses not only knowledge and skill as a lawyer, but personal dedication to serving the needs of a vulnerable population.

The provision of quality legal services to indigent persons is not a new challenge for Texas. In 2001, the Texas Legislature enacted the Fair Defense Act to create minimum standards and uniformity in the appointment of criminal defense counsel. While the Act applies to criminal and juvenile cases, it does not extend to CPS cases. Without uniform standards, Texas courts continue to operate under varying local practices.

In an effort to optimize the quality of legal services in CPS cases, the Children's Commission embarked on a year-long study to assess how Texas courts provide representation to children and parents, and to make recommendations for improvement. It is my hope that this report will provide policy-makers, judges, and practitioners with information that will inspire them to work together to ensure that all children and parents involved in our legal system are protected and guided by a well-trained legal advocate.

Sincerely,

A handwritten signature in black ink that reads "Eva M. Guzman". The signature is written in a cursive, flowing style.

Justice Eva Guzman, *Chair*

## Executive Summary

Since its establishment, the Permanent Judicial Commission for Children, Youth and Families (Children’s Commission) has focused on improving legal representation in child protective services (CPS) cases.<sup>1</sup> In order to accurately identify legal representation practices and issues on a statewide level, in 2009, the Children’s Commission embarked on a year-long study of local practices in jurisdictions across the state. The study was designed to assess the timing, methods, and duration of attorney appointments in CPS cases. The study also collected information on training requirements, the availability of legal training, compensation, and judicial evaluation of attorney performance in the various jurisdictions and asked for participants’ suggestions for improving legal representation.

“The way legal representation is organized affects the quality of representation[.]”

- Center on Children and the Law, American Bar Association, *National Survey of Child Welfare Legal Representation Models* (2009).

Quality legal representation is essential to a CPS case given the importance of the interests involved. It is well established that a parent’s right to “the companionship, care, custody, and management of his or her children” is of constitutional magnitude.<sup>2</sup> While the U.S. Supreme Court has not held that parents have a *constitutional right* to court-appointed, publicly-funded counsel in every CPS case,<sup>3</sup> Texas law provides a statutory right to appointed counsel for children and indigent parents.<sup>4</sup> The Texas Supreme Court has held that the statutory right to counsel

necessarily includes the right to effective assistance of counsel.<sup>5</sup>

Unlike the adjudication of most types of cases, a court’s determination in a CPS case involves continuous reassessment through a series of hearings. Texas courts conduct approximately 90,000 child-protection hearings each year. The sheer number of child-protection proceedings and the large geographical size of Texas present real challenges in identifying systemic issues for court improvement.

The Texas trial court system is decentralized, leaving administration and funding responsibilities to each county. Counties bear the costs associated with providing statutorily mandated legal representation in CPS cases, so compensation and methods of appointment vary by jurisdiction

<sup>1</sup> Child Protective Services (CPS) is the child-welfare arm of the Texas Department of Family and Protective Services (DFPS or “Department”). The terms “Department,” “DFPS” and “CPS” in this study generally refer to the child protective services division of the agency.

<sup>2</sup> *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981) (citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1971)); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”).

<sup>3</sup> *See Lassiter*, 452 U.S. at 31–32 (“... neither can we say that the Constitution requires the appointment of counsel in every parental termination proceeding.”)

<sup>4</sup> TEX. FAM. CODE ANN. § 107.012 (Vernon 2008) (requiring appointment of attorney ad litem for child); *id.* § 107.013 (Vernon 2008) (mandating appointment of attorney for indigent parents, in addition to parents served by publication, alleged fathers registered with paternity registry, and alleged fathers whose locations are unknown). The terms “attorney” and “attorney ad litem” (sometimes abbreviated “AAL”) are used interchangeably in this report and refer generally to an attorney appointed in a child-protection case.

<sup>5</sup> *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003).

across the 254 counties of the state.<sup>6</sup> In most counties, the compensation for court-appointed attorneys in CPS cases is significantly lower than attorney compensation in private law matters, which makes it difficult to attract dedicated, qualified attorneys to serve on these cases.

Attorney skill level and experience also vary depending on the availability of training and eligibility requirements for appointment in a particular jurisdiction. This area of the law is highly specialized and complex. Not all attorneys who are appointed to represent children and parents in CPS cases are sufficiently trained in child-protection law and its related issues such as substance abuse, domestic violence, incarceration, poverty, and immigration.

The impact of CPS involvement is significant not only to the families involved but also Texas as a whole. Of the 6,510,210 children living in Texas, 40,840 of them were under the legal responsibility of the Department of Family and Protective Services (DFPS) during the 2009 fiscal year.<sup>7</sup> In 2009 alone, 12,107 children were removed from their homes as a result of abuse or neglect.<sup>8</sup>

Removing children from their homes is not only devastating to the children and parents, but it is also expensive for the taxpayer. A lawsuit filed by CPS can take 12 to 18 months to reach a legal resolution. Some cases last much longer. If the case is resolved by awarding DFPS Permanent Managing Conservatorship of a child, the case remains active until the child finds a permanent home and exits the foster care system. During the pendency of the average case, the federal, state, and local coffers spend tens of thousands of dollars to provide out-of-home placements for the child and services to the family struggling toward reunification. Based on a sampling of counties across the state during the 2009 fiscal year, Texas counties spent an estimated \$34 to 37 million a year on appointed attorneys' fees associated with CPS cases.<sup>9</sup> But, the legal fees pale in comparison to the more than \$1.2 billion spent annually on Child Protective Services in Texas.<sup>10</sup> In 2009, Texas spent over \$343 million on foster care alone, averaging out to almost \$13,000 per child in care.<sup>11</sup> It stands to reason that more effective resolution of CPS cases would save taxpayer money.

“If the adversarial process is working and the attorneys are engaged, we’re going to have fewer kids in state care.”  
- Bexar County Judge

More importantly, the longer a case lingers without resolution, the more emotionally traumatizing it is for children and their families. The damage has lasting effects on a child's development and academic achievement.<sup>12</sup>

<sup>6</sup> See TEX. FAM. CODE ANN. § 107.015 (Vernon 2008).

<sup>7</sup> Tex. Dep't of Family & Prot. Servs., *Annual Report and Data Book 2009* at 155, available at [http://www.dfps.state.tx.us/documents/about/Data\\_Books\\_and\\_Annual\\_Reports/2009/2009databook.pdf](http://www.dfps.state.tx.us/documents/about/Data_Books_and_Annual_Reports/2009/2009databook.pdf).

<sup>8</sup> *Id.* at 49.

<sup>9</sup> This estimate is based on a sampling of 28 counties from regions across Texas, including both urban and rural counties. The sample counties make up 54.0% of the state population and 50.83% of the state population of children in DFPS legal conservatorship. The total amount of attorneys' fees in CPS cases was collected from each sample county. The total attorneys' fees from the sample counties was extrapolated using the sample data (population and children in DFPS legal responsibility) to arrive at the state total. For more information, see [Appendix B: Calculation of Estimated Appointed Attorney Fees for CPS Cases in Texas](#).

<sup>10</sup> DFPS Fiscal Year 2009 expenses attributable to CPS. See *Annual Report and Data Book 2009*, *supra* note 7, at 109 (representing CPS expenses in Goals B and C and portions of the shared expenses in Goals A and F).

<sup>11</sup> *Annual Report and Data Book 2009*, *supra* note 7, at 164.

<sup>12</sup> Dylan Conger & Marni J. Finkelstein, *Foster Care and School Mobility*, 72 J. NEGRO EDUC. 97 (2003) (“[D]isadvantaged

Effective legal representation likely hastens a family's reunification or, where reunification is not a viable option, a child's placement in a permanent home, thereby shortening the time that a child must stay in foster care. A shorter length of time in foster care helps to protect family relationships, promote stability, and save taxpayer money. For instance, early appointment of a parent's attorney can help a parent complete tasks or services required in order to achieve reunification with his or her child. Without the early assistance of legal counsel, parents may feel alienated by the process, finding it nearly impossible to navigate the CPS and legal systems alone. In those situations, by the time attorneys are appointed for the parents, it is often too late for the parents to successfully complete their service plans before the lawsuit must reach a conclusion, and as a result, they lose their children.

Furthermore, like any case, the failure of an attorney to adequately carry out his or her duties can result in erroneous and untimely decisions. A diligent attorney, prepared to conduct an independent investigation of the facts and present evidence, helps test the reliability of CPS's allegations. Moreover, a good parent's attorney can provide guidance and assistance to help the parent to establish a safe and suitable home for his or her children. And in cases requiring termination, a zealous and educated child's attorney can mean the difference between the child languishing in foster care and finding a permanent home before turning 18. Because the stakes are extremely high with lifelong impacts on children and families, Texas must give serious consideration to improving representation.

The Children's Commission presents this Legal Representation Study (LRS) in an effort to identify issues and suggest solutions to increase the overall effectiveness of legal representation. The information in this report is intended to help policy-makers and judges evaluate representation in their jurisdictions and determine whether it can be improved by implementing different appointment models, compensation structures, training requirements, or evaluation tools. The report is also intended to highlight the importance of providing quality legal representation to these fragile families.

The study resulted in the following findings and recommendations, which are discussed in greater length in the report:

## **I. Method of Appointment**

Texas courts use various approaches, including rotation or random selection from a list of individual attorneys for each case, use of individual attorneys or law firms under contract with the jurisdiction, or use of salaried attorneys in county-run offices. County-run offices seem to be most feasible in more populous counties and allow attorneys to specialize in the field. While appointing individual attorneys allows the judge discretion to select the most experienced or trained attorney to handle the issues presented by a specific case, survey results indicate that it can be subject to abuse and inequitable distribution of assignments.

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backgrounds and troubled schools, combined with the trauma of being removed from home and the stigma of being in foster care, pose significant barriers to educational success for many foster children. Research indicates that, compared to the general student population, foster children have lower high school graduation rates, fewer years of schooling, lower levels of participation in college, and higher rates of participation in special education programs.”) (Internal citations omitted).

**Recommendation.** Because there is not one single method that would work for the entire state, jurisdictions should each develop an “Appointment of Counsel Plan.” Each plan should be developed in accordance with recognized minimum requirements to ensure fairness and oversight in the provision of quality legal representation.

**Recommendation.** Each jurisdiction should evaluate their current representation system and consider the feasibility and effectiveness of different representation models, such as public defender offices or contracting with local attorneys.

## II. Number of Attorneys

Several rural counties have an inadequate number of attorneys available for appointment. Of note, all counties experiencing this problem indicated that they do not reimburse attorneys for travel expenses, including mileage and time spent traveling to and from client meetings or court appearances.

**Recommendation.** Counties should consider adopting guidelines that would allow reimbursing attorneys for reasonable travel expenses associated with client representation and court appearances.

## III. Qualifications and Training

Most jurisdictions do not require training beyond the statutory 3-hour requirement for children’s attorneys ad litem. Some jurisdictions do not enforce this requirement or accept experience as a substitute for training. For parents’ attorneys, there is no statutory training requirement at all. In jurisdictions across the state, there are some appointed attorneys who are inexperienced and unqualified to serve in CPS cases but, nevertheless, continue to be appointed. Survey results indicate that some attorneys do not understand the applicable law or multi-disciplinary issues involved in a CPS case. Many of the attorneys take appointments in CPS cases to supplement their income but do not have any particular experience or training in this practice area.

**Recommendation.** Amend Chapter 107 of the Family Code to add required duties for attorneys ad litem for parents.

**Recommendation.** Amend Family Code Section 107.0045, relating to ethical obligations and discipline of attorneys, to also extend to parents’ attorneys.

**Recommendation.** Amend Chapter 107 to require a child’s attorney to represent the child’s expressed objectives to the judge even if the attorney is serving in the dual role.

**Recommendation.** Amend Chapter 107 of the Family Code to require attorneys to attend training as a prerequisite for appointment. Thereafter, attorneys should be required to attend training annually to maintain eligibility. The requirements should apply to both children’s and parents’ attorneys.

**Recommendation.** Training should be made more readily available for court-appointed attorneys, as well as retained attorneys, with all levels of experience and include evidence, procedure, ethics, and multi-disciplinary issues. All courses should be available online and at little or no charge.

#### IV. Timing of Appointment

In many jurisdictions, parents' attorneys are appointed much later in the case than children's attorneys. Appointment of parents' attorneys earlier in the case would result in better outcomes.

**Recommendation.** Amend Chapter 107 of the Family Code to require the appointment of attorneys for both children and parents immediately after filing of the case, but before the full adversary hearing. Indigence should be determined at the adversary hearing, and if the parent is not indigent, the attorney should be dismissed.

**Recommendation.** Amend the Family Code to require that DFPS advise parents of their right to a court-appointed attorney if they are unable to afford representation.

#### V. Duration of Appointment

The duration of appointment varies by jurisdiction. Parent representation sometimes ends at the final order and sometimes continues through the time for filing an appeal or after the exhaustion of the appellate process. Child representation sometimes ends at the final order or sometimes continues until the child is adopted or ages out of foster care. Family Code Section 107.016 currently gives courts the discretion to determine the length of time that the child's attorney remains appointed on the case.

**Recommendation.** Amend Chapter 107 of the Family Code to clarify the duration of the appointment for both parents' and children's attorneys. With respect to a child's attorney, representation should continue until the child exits the foster care system.

#### VI. Compensation

Texas places the burden of funding appointed representation on the counties, without any support from the state. As a consequence, compensation varies by jurisdiction, and most attorneys feel they are not adequately compensated.

**Recommendation.** Structure a compensation plan in a way that optimizes attorney performance and adequately and fairly compensates attorneys for documented reasonable and necessary work on a case, whether in court or out of court, including reimbursement for travel expenses.

**Recommendation.** The Children's Commission and other appropriate stakeholders should work to identify other sources to assist counties in funding appointed representation.

**Recommendation.** Provide incentives to attorneys who receive certification or attain specialization in this area.

## VII. Communication with Client

Attorneys do not meet or communicate with clients frequently enough. Attorneys need to meet and communicate with clients on a regular basis to effectively represent them.

**Recommendation.** Amend Chapter 107 of the Family Code to include responsibilities and duties of a parent’s attorney similar to those applicable to attorneys representing children.

**Recommendation.** Amend Family Code Section 107.004 to clarify that the requirement to “meet” with the child client is not satisfied by talking to the child in the courthouse a few minutes before the hearing or by sending a surrogate, such as a paralegal from the attorney’s office, to meet with the child.

**Recommendation.** In open court, judges should ask whether the appointed attorneys have been meeting and communicating with clients.

**Recommendation.** When the child is not present in court, require the child’s attorney to file a statement of compliance with Section 107.004(d), stating that the attorney satisfied the duty of meeting with the client.

## VIII. Quality of Representation

The quality of representation varies greatly around the state. Quality representation is affected by many issues, which are discussed in great detail in this report.

**Recommendation.** A stakeholder group should convene to make recommendations to improve the quality of legal representation and the proper enforcement of requirements.

**Recommendation.** Jurisdictions are encouraged to convene stakeholder groups to identify problems and solutions at a local level.

**Recommendation.** Jurisdictions should consider implementing additional training requirements and mentoring programs.

## IX. Accountability

Most judges do not have a set method of evaluating attorney performance or monitoring compliance with statutory requirements, and as a result, the quality of representation suffers. Judges need to monitor the quality of representation provided by appointed counsel and hold attorneys accountable for fulfilling their duties.

**Recommendation.** Establish a plan for evaluating qualifications of attorneys and their eligibility for appointment, similar to that applicable to juvenile cases.<sup>13</sup>

**Recommendation.** Create evaluation tools and checklists for judges to use, if desired, to determine whether the attorney is meeting statutorily-defined duties.

**Recommendation.** Develop a method of tracking attorneys' completion of required training, areas of expertise, and certification in child-welfare specialization.

**Recommendation.** Judges should routinely inquire whether attorneys have consulted with their clients and whether the attorney is acting in the dual role or substituting judgment, when appropriate.

**Recommendation.** When an attorney fails to understand the law or adequately prepare for a case, the judge should remove the attorney from the case and from the appointment list.

## Study Methodology

During the course of the study, the Children's Commission conducted numerous surveys and interviews of judges, court coordinators, appointed attorneys for children and parents, prosecutors representing the Department of Family and Protective Services (DFPS), front-line employees of the Child Protective Services (CPS) arm of DFPS, Court Appointed Special Advocates (CASA), and parents and children who were involved in child-protection cases.<sup>14</sup> The participants were from areas across the state including urban and rural counties, as well as rural jurisdictions served by Child Protection Courts (CPCs).<sup>15</sup>

Some sampling bias may be inferred. For instance, it is possible that attorneys most committed to child protection were overrepresented, as their dedication to the area of practice might also make them more interested in participating in the study. Despite this potential sampling bias, there were many responses that were consistent throughout the entire study, indicating the reliability of the data.

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<sup>13</sup> See TEX. FAM. CODE ANN. § 51.102 (Vernon 2008).

<sup>14</sup> For more information regarding the study's methodology, see Appendix C.

<sup>15</sup> Child Protection Courts, also called "Cluster Courts," are specialty courts created to assist trial courts in rural areas in managing their child abuse and neglect dockets. The CPCs each cover a group of rural counties. Associate judges travel to the counties to hear the cases. The associate judges are appointed by the presiding judges in the counties. The judges assigned to these dockets hear child abuse and neglect cases exclusively. The 17 Child Protection Courts operate in 130 counties, with 12 associate judges and six assigned judges. In fiscal year 2008, these courts held 23,687 hearings and issued 5,429 final orders. See Texas Courts Online: Courts: Specialty Courts Program, <http://www.courts.state.tx.us/courts/specialty.asp>.

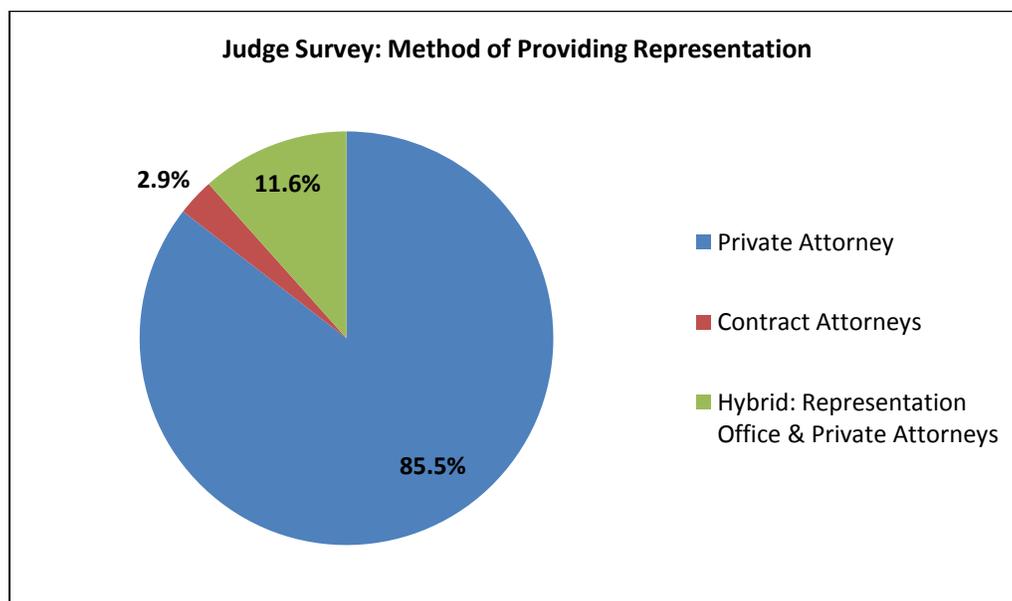
## Study Findings

### Method of Appointment

The Texas Family Code provides for the appointment of attorneys for children and parents in a CPS case but does not mandate a specific method or procedure for appointment. Texas courts use various approaches including rotation lists of private attorneys, county-run offices of representation, public defender's offices, and individual contracts with attorneys executed by counties or local jurisdictions.

Of the 69 judges participating in our survey:

- **85.5 percent** reported that their jurisdictions appoint **private attorneys** either randomly, based on experience, or by rotating through a list of attorneys eligible for appointment;
- **2.9 percent** reported providing legal representation with **contract attorneys**, paid a flat salary per month; and
- **11.6 percent** reported providing legal representation through a **hybrid model of appointed private attorneys and a representation office** (such as a Public Defender's Office or Office of Child Representation).



During one-on-one interviews, judges were asked about the advantages and disadvantages of using various methods of appointment. Most of the judges opined that a representation office/public defender model would probably provide better quality representation than private attorneys because it would allow counties to hire better-trained, more experienced attorneys to staff a fulltime office. Several judges and prosecutors said that attorneys in public defender or county-run offices seem to put more effort into the cases than private attorneys. Several judges explained that, when courts appoint from a list of attorneys, private attorneys do not get appointed frequently enough to sustain a living from CPS cases, so the attorneys practice predominately in other areas of the law and take CPS appointments to supplement their income. In other words, private attorneys, in some

jurisdictions, are not able to make a living specializing in CPS cases. One judge went on to explain that courts are sometimes unwilling to compensate private attorneys for their out-of-court work, so private attorneys generally spend less time preparing. Conversely, a salaried attorney working in a county-run public defender office is able to focus exclusively on this type of case and does not have the same pressure to keep hours low, as compensation is not based on hourly rates.

Regarding the advantages of appointing private attorneys, a few judges commented that it gave attorneys the opportunity to practice in other fields of law, which decreased the likelihood of burn-out in child-protection law. Also, a judge from an urban county commented that new attorneys bring “vitality, life, and competition” to the practice.

The opinions regarding the use of a random list versus a rotating list varied as well. Some judges were of the opinion that a random list could lead to abuse or inequitable distribution of cases. However, whether the judge used a random or rotating list, many maintained some flexibility to appoint attorneys based on experience and the needs of the client. For instance, some judges kept separate lists of experienced attorneys and had the flexibility to appoint one of these more experienced attorneys when needed.

Judges were split on the cost-effectiveness of particular models, and their opinions seemed to correlate with whether the judge served in a rural or urban area. Judges in urban areas thought that using a public defender or county-run office would be less expensive than appointing individual attorneys. However, some Child Protection Court judges (serving rural areas) responded that using a public defender or county-run office would be too costly for less populated counties with smaller CPS dockets. In these rural areas, there are not enough CPS cases to justify a full-time public defender.

### ***Judges Making Appointment***

Of the judges participating in the survey, 76.5 percent indicated that appointments are made by the judge that hears the child-protection case, 2.9 percent indicated that the appointments are made by another judge, and 20.6 percent indicated that it varies.

Frequently in urban counties, the judge making appointments is the same judge that hears the cases, and in the appropriate case, the judge may appoint an attorney based on knowledge of the attorney’s experience and performance. Thus, the judges have the benefit of their observations of the attorney’s performance and can stop appointing attorneys that have failed to perform in other cases.

However, the study also revealed that, in several Child Protection Courts (CPCs), the child’s attorney ad litem is appointed by the district judge in the county before the CPC judge receives the case. Under the CPC model, one associate judge travels around several counties hearing a specialty child-protection docket. The Family Code requires appointment of an attorney ad litem for the child “immediately after filing a suit.”<sup>16</sup> Because the CPC judge might not be in that particular county on the day the suit is filed, appointment of the child’s attorney ad litem is often left up to a district judge in the county of jurisdiction. The district judge may or may not be in the best position to evaluate a particular attorney for an appointment, and this in turn may affect the ability of the Child Protection

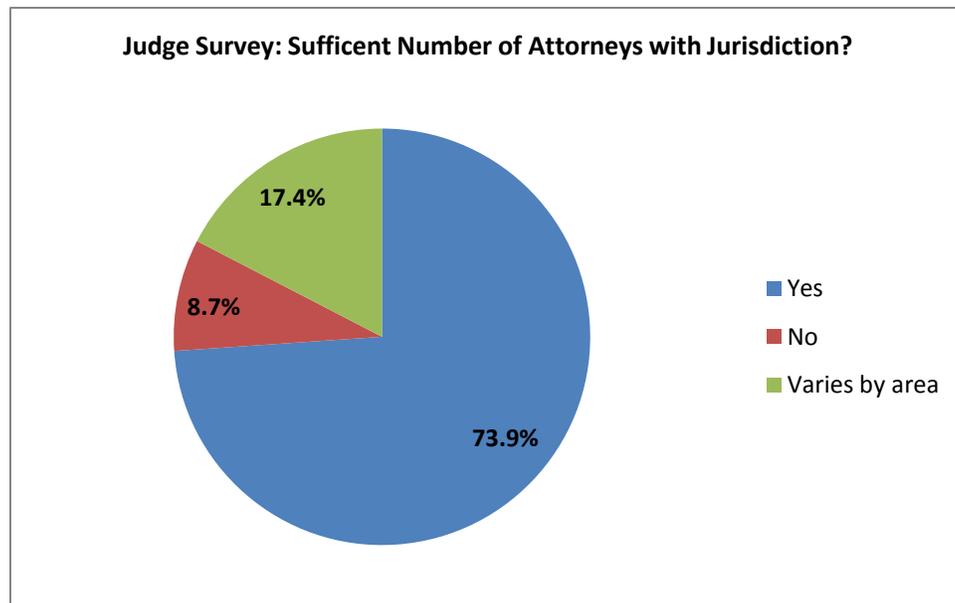
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<sup>16</sup> TEX. FAM. CODE ANN. § 107.012.

Court judge hearing the case to hold an attorney accountable or enforce a decision to prohibit an attorney from receiving appointments.

### ***Number of Attorneys Available***

The number of available attorneys in a court's jurisdiction influences its decisions regarding the use of various appointment methods. Of the judges participating in the survey, 73.9 percent stated that they have a sufficient number of attorneys available for appointment in CPS cases. However, 8.7 percent stated they do not have a sufficient number of attorneys, and 17.4 percent stated that it varies by area within their jurisdiction—some areas have sufficient attorneys while others do not.



While urban county judges reported no problems with the sufficiency of their attorney pools, a majority of the CPC judges reported that, in some of the small counties within their jurisdictions, they only have a few attorneys available for appointment. During interviews, several CPC judges explained that it becomes a problem when large families or conflicting interests require the appointment of several attorneys to a case. In those instances, the judges indicated they appoint attorneys from outside the county.

One problem compounding the availability of attorneys is that often travel expenses are not reimbursed. During interviews, several CPC judges explained that in areas with insufficient attorneys, they struggle to find attorneys that are willing to travel from surrounding counties because the county prohibits reimbursing the attorneys for travel time or mileage.

In areas with a shortage of attorneys, judges seemed to be more lenient in their expectations of attorneys for fear that they might lose the few attorneys willing to take the appointments. Thus, there seems to be a correlation between the number of attorneys and a judge's enforcement of requirements and performance standards.

## Qualifications & Training

### *Requirements for Appointment*

**24 percent** of judges surveyed reported that, in their jurisdictions, there are **no eligibility requirements** for attorneys seeking appointments in CPS cases.

Of the jurisdictions surveyed, some require certain training or experience as a prerequisite for appointment. Seventy-six percent of the judges participating in the survey indicated that their jurisdictions had eligibility requirements for attorneys seeking appointments. Many of the participants indicated that attorneys were required to complete three hours of Continuing Legal Education (“CLE”) training mandated by the Family Code.<sup>17</sup> Section 107.004 of the Texas Family Code requires that an “attorney ad litem appointed for a child” complete at least three hours of

CLE, focused on “the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 and 263.” The requirement under Section 107.004 is not an annual requirement, however. Also, there is no corresponding CLE requirement for parents’ attorneys.<sup>18</sup>

Currently, there is no statewide tracking system for compliance with the statutory training requirement. Further, the statutory language requiring “complet[ion] . . . *as soon as practical* after the attorney ad litem’s appointment” does not provide a clear deadline that can be enforced.<sup>19</sup> Consequently, enforcement is left solely to the county or the judge appointing the attorneys. In many of the jurisdictions, the requirement is not actively enforced. While 76 percent of judges reported having some eligibility requirements, only half of those reported having a system for tracking attorneys’ completion of those requirements. A CPC judge commented that he would be grateful for this type of system to communicate expectations and standards.

Several jurisdictions required additional training beyond the three-hour statutory requirement. Bexar County reported the most extensive requirements; attorneys who wish to be placed on the appointment list must complete 40 hours of specialized training related to child advocacy, observe relevant court proceedings, and participate in a mentoring program with an experienced attorney during their first year as a court-appointed attorney. Travis County requires attorneys to complete 30 hours of specialized training to be eligible for appointment and, then, eight hours of training annually thereafter. The South Plains Cluster Court, a primarily rural area, requires that attorneys complete a 12-hour video training course made available to attorneys in the jurisdiction.

### *Topics for Additional Training*

Participants from all jurisdictions commented that there are some appointed attorneys who are unqualified and unprepared to serve on CPS cases. While most indicated that it was not the norm, many participants exhibited an awareness of certain situations where unqualified attorneys were appointed on CPS cases and not held accountable for their inadequacies.

<sup>17</sup> See TEX. FAM. CODE ANN. § 107.004(b), (c) (Vernon 2008).

<sup>18</sup> Several study participants stated that CLE training focused only on representation of children in a CPS case, and spoke very little (if at all) on the representation of parents. Perhaps the reason for this is because the Family Code only requires that low cost training be provided on topics of child representation.

<sup>19</sup> TEX. FAM. CODE ANN. § 107.004(b).

Many judges, however, felt that the lawyers available for appointment in their jurisdictions were well qualified. Some judges went so far as saying that, “the quality of representation isn’t the problem,” but instead pointed to the lack of funding and attorneys not being compensated for their out-of-court preparation and travel. Other common responses included CPS failing to communicate events and hearings to the attorneys and a few problem attorneys that don’t have “their heart[s] . . . in the work.” While most judges felt their attorneys were qualified, about half of the judges surveyed mentioned that providing additional training would be beneficial.

Judges were asked to select, from a list of topics, the areas and types of training that would most benefit attorneys for parents and children. According to the judges’ responses, parents’ attorneys would benefit most from training regarding DFPS policies/procedures. Children’s attorneys would benefit most from training on child development and the role of substance abuse and mental health issues in child abuse and neglect cases.

Prosecutors were asked a similar question, allowing them to select one or more training topics that would most benefit attorneys representing children and parents.<sup>20</sup> A majority responded that attorneys could benefit from additional training on DFPS policies and procedures, the role of substance abuse and mental health issues, and applicable state and federal law and regulations relating to child-protection cases.

DFPS supervisors were asked for suggestions to improve legal representation and several suggested additional training or making completion of certain training a prerequisite for appointment. Generally, supervisors who recommended additional attorney training suggested that it focus on CPS policies and procedures. One supervisor recommended that attorneys be given an enumerated list of what CPS can and cannot do for parents and children. This suggestion was echoed by several attorneys who want to understand what CPS services are available to their clients.

### ***Availability of Training in Jurisdiction***

Of the judges surveyed, 42 percent indicated that specialized training in child-protection law was not available in their jurisdictions. Most of these judges served in rural areas.

Of the attorneys surveyed, 79.2 percent felt they had access to adequate training opportunities in their jurisdictions. Of the 20.8 percent of attorney participants who indicated they did not have adequate training opportunities, most were scattered across the various jurisdictions in Texas. However, all attorney respondents from the 4<sup>th</sup> & 5<sup>th</sup> Administrative Judicial Region Child Protection Court<sup>21</sup> indicated that there were not adequate training opportunities in their jurisdiction, which corresponds with the Court Coordinator responses from this area.

Section 107.004(c) of the Family Code mandates that the attorney ad litem training be available at “low cost” to “persons throughout this state, including on the Internet provided through the State Bar of Texas[.]” Currently, there is a course (“Representing Texas Children in Abuse and Neglect Cases (for Attorney Ad Litem Certification)”) offered through the Texas Bar CLE Website, but the course fee is \$130. The course cost is comparable to the costs of other CLEs offered on the website.

<sup>20</sup> Unlike the question posed to judges, the question asked of prosecutors did not address parents’ attorneys and children’s attorneys separately.

<sup>21</sup> The 4<sup>th</sup> & 5<sup>th</sup> Administrative Judicial Region CPC includes the counties of Duval, Frio, Jim Hogg, LaSalle, Webb, and Zapata.

However, whether the fee would be considered low cost by court-appointed attorneys is unknown. Also, a more updated training is needed; the course was filmed in October 2008 and its accreditation will expire in May 2011.<sup>22</sup> The course focuses on representation of children but does not discuss representation of a child in the permanent managing conservatorship of DFPS after termination of parental rights. The course provides no specific instruction on representing parents.

## Timing of Appointment

Study participants from across the state indicated that, while children's attorneys are appointed shortly after the case is filed, parents' attorneys are usually not appointed until sometime later in the case. Many participants noted that financial pressure on the judges is the primary factor in the later appointment of parents' attorneys.

To fully understand the importance of the timing, a review of the timeline of a case is helpful.

Day	Event	
0	Ex parte Emergency Hearing authorizing DFPS taking possession of child (Tex. Fam. Code §§ 262.102, 262.104). The court issues a temporary ex parte order authorizing DFPS's emergency possession of the child either before (§ 262.102) or shortly after (§ 262.104) DFPS takes possession of the child.	← <i>Most <b>children's</b> attorneys appointed immediately after filing of case and before 14-day hearing</i>
14	Full Adversary ("14-day") Hearing (Tex. Fam. Code § 262.201). At this hearing, the parent has the opportunity to contest DFPS's removal of the child. DFPS has the burden of proving its right to retain possession of a child because of a continuing danger. The court is required to return the child to the parent, unless the court finds sufficient evidence of continuing danger to the child. If the court finds a continuing danger, the court will issue an order for temporary managing conservatorship (TMC).	<i>Most <b>parents'</b> attorneys appointed at or sometime after 14-day hearing</i>
45	DFPS to File Service Plan (Tex. Fam. Code § 263.101). Not later than 45 days after the TMC order, the Department must file a service plan detailing the necessary actions and responsibilities of the parent to achieve the plan goal.	
60	Status Hearing (Tex. Fam. Code § 263.201). No later than 60 days after the TMC order, the court reviews child's status and service plan.	
180	First Permanency Hearing (Tex. Fam. Code § 263.304) Court reviews child's placement and service plan progress.	
300	Second Permanency Hearing (Tex. Fam. Code § 263.304) Court reviews child's placement and service plan progress.	
300-365	Trial/Final Order (unless dismissal date extended) (Tex. Fam. Code § 263.401) Court holds final trial on the merits regarding termination of parental rights.	

## The Law

While the Family Code mandates appointment of counsel for the child "immediately after filing, but before the full adversary hearing," the provisions addressing the timing of the appointment of counsel for parents is much less clear.<sup>23</sup>

<sup>22</sup> See Texas Bar CLE, *Representing Texas Children in Abuse and Neglect Cases (for Attorney Ad Litem Certification)*, [http://www.texasbarcle.com/CLE/OCSearchResults.asp?sSearchAreas=\\*&sSearchProgram=1784&sSortBy=Program&sCallingPage=OCSEARCH2.ASP](http://www.texasbarcle.com/CLE/OCSearchResults.asp?sSearchAreas=*&sSearchProgram=1784&sSortBy=Program&sCallingPage=OCSEARCH2.ASP).

<sup>23</sup> TEX. FAM. CODE ANN. §§ 107.012, 107.013.

Section 107.013 of the Family Code mandates appointment of an attorney for the parent in two separate provisions. Subsection (a) requires appointment of an attorney to represent the interests of “an indigent parent of the child who responds in opposition” to a suit filed by a governmental entity in which termination of the parent-child relationship is requested. Subsection (c) requires appointment of an attorney to represent the interests of “an indigent parent of the child who responds in opposition” to a suit filed by a governmental entity requesting temporary managing conservatorship of the child. Subsection (c) was added in 2005, in an attempt to ameliorate the effects of judges not appointing counsel for parents until shortly before a final trial on the merits of the case, which often occurred 10 to 12 months after a child was removed from the parent. The legislative history behind subsection (c) clearly shows that lawmakers intended to require the appointment of the parent’s attorney “at the beginning of a suit,” like the appointment of the attorney for the child.<sup>24</sup> However, unlike Section 107.012 (relating to the appointment of an attorney for the child), Section 107.013 does not explicitly set a deadline for the making the appointment.

In cases involving Native American families, federal law provides for the appointment of counsel. Specifically, the Indian Child Welfare Act (ICWA) provides, “In any case in which the court determines indigence, the parent or Indian custodian shall have the right to court-appointed counsel in *any removal, placement, or termination proceeding*. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where state law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.”<sup>25</sup> (Emphasis added.) Unlike the right under the Texas Family Code, the ICWA provides for appointed counsel “in any removal, placement, or termination proceeding” including private suits not involving CPS.<sup>26</sup>

### ***Appointment of Parents’ Attorneys***

The study revealed that the timing of the appointment of representation for parents varies by county, and sometimes within each county. As one prosecutor explained, “It seems that the appointment of attorneys for parents is inconsistent. Sometimes they are appointed immediately, sometimes they have to specifically ask, sometimes indigence is an issue, other times it does not appear to be considered. *I would like to see parents get attorneys more often and sooner in the case. Parents often do not understand the legal aspects of the case, they see the Department [CPS] as the enemy, and they need the guidance a good attorney can give them.*” (Emphasis added.) While some counties consistently appoint the parent’s attorney at the earliest opportunity, most counties still appoint parent attorneys at the

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<sup>24</sup> In the floor statement made by the author of this amendment, Representative Suzanna Hupp explained, “this will provide an attorney ad litem for the parents at the beginning of a suit filed by a governmental entity requesting temporary managing conservatorship of a child.” She explained, “Basically what is happening right now is that the children are instantly getting an ad litem. The indigent parent does not, and the parent doesn’t understand, doesn’t know what is going on, and don’t have anyone to represent them until it actually gets to the point where the court is removing [the parent’s rights to] the child.” Amend. 4 to Tex. C.S.S.B. 6 on the Floor of the House, 79th Leg., R.S. (Apr. 14, 2005) (Tex. House Chamber Broadcast Video/Audio from Apr. 14, 2005 Afternoon Session, at 1:28:40-1:31:20), available at <http://www.house.state.tx.us/fx/av/chamber79/041905b.ram>; see also H.J. of Tex., 79th Leg., R.S. 1880 (2005), available at <http://www.journals.house.state.tx.us/hjrn/79r/pdf/79rday51final.pdf#page=30>.

<sup>25</sup> Indian Child Welfare Act of 1978, 25 U.S.C. § 1912(b) (2006).

<sup>26</sup> *Id.*; see also *In re A.K.H.*, 502 N.W.2d 790 (Minn. App. 1993, review denied) (holding that ICWA required appointment of counsel for indigent mother even though case involved intrafamily dispute).

adversary hearing or later. An attorney appointed to represent a parent on the day of the adversary hearing is not in a position to provide adequate legal representation at a critical stage of the hearing, which can set the tone of the entire case. Study respondents reported that, in some cases, the parent’s attorney is not appointed until much later in the case, which deprives the parent of valuable opportunities for legal counsel and advocacy.

### ***Importance of Early Appointment***

“I think cases would move faster if all parents who are eligible were appointed attorneys . . . . At the beginning of the conservatorship case most parents are so hostile they refuse to work with the Department and feel the Department is not really working towards reunification. If they were appointed an attorney, they would have an intermediary to act on their behalf and hopefully help them understand that the sooner they start working with the Department instead of against the Department the sooner the possibility of reunification.”

- DFPS Supervisor, Region 4

The United States Department of Justice (D.O.J.) has recognized that “advance appointment of [a parent’s] attorney is necessary for effective representation.”<sup>27</sup> The D.O.J. explained, “The earlier the appointment occurs, the sooner the interests of the parent begin to be represented. Early appointment may enable the case to proceed faster, minimizing the length of separation between parent and child and clearing the way for delivery of needed services earlier rather than later.”<sup>28</sup>

Because of the importance of early representation for parents, the federal government encourages state courts handling child-protection cases to track and report the number of cases in which attorneys for parents were appointed in advance of the emergency removal hearing.<sup>29</sup> The D.O.J. identified the “emergency removal hearing” (comparable to the full adversary hearing under Texas law) as a

“critical stage of child abuse and neglect litigation” and explained that “[a]ctive and effective representation of the parents is important to ensuring that the emergency removal hearing fulfills its functions.”<sup>30</sup> (Emphasis added.)

In the context of a criminal case, the U.S. Supreme Court has concluded that, “a trial is unfair if the accused is denied counsel at a *critical stage* of his trial.”<sup>31</sup> (Emphasis added.) The U.S. Supreme Court has not held that an indigent parent has a right to court-appointed representation in every termination case, and thus, the holding in *United States v. Cronic* does not necessarily extend to every child-protection case. However, it would stand to reason that similar due process and fairness considerations might come into play.

<sup>27</sup> Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice, *Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide* 107 (Dec. 2008), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/223570.pdf>.

<sup>28</sup> *Id.* at 104.

<sup>29</sup> *Id.* at 101.

<sup>30</sup> *Id.* at 101; see also TEX. FAM. CODE ANN. § 262.201 (Vernon Supp. 2010) (“Full Adversary Hearing”).

<sup>31</sup> *United States v. Cronic*, 466 U.S. 648, 659 (1984) (explaining “The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding”).

The U.S. D.O.J. recognized that “[p]arents’ attorneys are important not only before and during the emergency removal hearing but throughout all stages of the litigation.”<sup>32</sup> It explained, “Many parents in abuse and neglect cases—especially individuals who are relatively uneducated and/or inarticulate—cannot effectively present legal arguments and issues that would work in their favor. Many are facing difficult life crises, including the trauma of having their child taken from them.”<sup>33</sup>

The D.O.J. guide noted, “If the parents’ attorneys are not involved prior to the emergency removal hearing, the court is more likely to place children away from the parents.”<sup>34</sup> The guide recognized that “effective representation of parents” may help accomplish the following:

- Prevent the unnecessary removal of a child from home by carefully evaluating the level of danger in the home and considering possible safe alternatives to removal.
- Limit the trauma both the child and parents may experience because of their separation by proposing early and frequent parent-child visits (supervised only as necessary).
- Speed casework when a child must be removed, by proposing early evaluations of the parents and the family unit and by making a more complete record, during the hearing, of the facts leading up to the removal of the child.
- Ensure that the child receives services that are needed immediately, such as medical care, psychological evaluation, and trauma counseling.
- Prevent any unnecessary interruption in the child’s education and ensure that educational services for the child will be appropriate.<sup>35</sup>

“I think parents may benefit more if they can have attorney’s appointed early in the case, as this is someone that will be able to help guide the parents and be an advocate for them. As the Department, we do try to help support the parents but some parents don’t see us as someone that they can trust.”

- DFPS Supervisor, Region 7

“I prefer that [parents’ attorneys] be appointed in the beginning of the case. Since the law in a CPS case is highly specialized, parents need good advice from the beginning. My experience is that we can achieve long lasting reunifications if we have attorneys to guide the parent(s) from the beginning.”

- Prosecutor from Urban County

Like the findings of the U.S. D.O.J., many participants in this study recognized the practical benefits of early appointment of parents’ attorneys. Many judges, attorneys, prosecutors, CASAs, and DFPS supervisors seemed to agree that early appointment of parents’ attorneys leads to better and timelier results. One prosecutor stated that when parents’ attorneys are appointed early, “in most of those cases the children go home because the parents have someone in their corner helping them with the CPS process.” Another prosecutor was of the opinion that attorneys for parents appointed “at the beginning” of the case “*helps resolve the cases in a more timely manner.*” (Emphasis added.)

<sup>32</sup>*Court Performance Measures in Child Abuse and Neglect Cases: Technical Guide*, *supra* note 27, at 102.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 101–02.

One prosecutor commented that parents' attorneys "should contest more vigorously at 14-day hearings." And, yet another explained, "While the delay in appointment [of a parent's attorney] is the parent's fault to some degree, *no one's best interest is served when a several-month delay in appointment of counsel for the parent occurs.*" That prosecutor went on to suggest that the Family Code be amended to mandate appointment of attorneys for parents, just as they are for children.

Although the Texas Family Code already requires appointment of an attorney for an indigent parent responding in opposition to a suits filed by DFPS requesting temporary managing conservatorship, which occurs when the petition is filed, the reality is that many parents' attorneys are not appointed until sometime later in the case.

### ***Parents are Unaware of Right to Court-Appointed Attorney***

Participants, including attorneys, judges, DFPS supervisors, Court Appointed Special Advocates (CASAs), parents, and prosecutors indicated that parents are generally unaware of their right to a court-appointed attorney and do not understand the income guidelines to establish indigence.

"Parents are generally unaware of their ability to have an attorney appointed."  
- Judge from Child Protection Court

"I believe parents should be provided with more information about statutory requirements that may entitle them to an appointed attorney... or other information concerning legal assistance or pro bono agencies... to assist them."  
- Prosecutor from Child Protection Court

"If the parents were encouraged to get a retained or court appointed lawyer earlier in the case, there might be a few more reunifications and a few less terminations."  
- Attorney from Child Protection Court

While the Family Code requires DFPS to provide parents with written materials informing parents of their "right to hire counsel,"<sup>36</sup> it does not require the judge to tell parents about that right. Further, nothing requires DFPS or the judge to inform parents of their right to a court-appointed attorney if they cannot afford to hire an attorney.

DFPS policy requires that, during an investigation and upon removal of the child, the caseworker must provide the parent with a handbook entitled *While Your Child is in Care*, which discusses the right to an attorney if the parent cannot afford one.<sup>37</sup> It is unclear whether providing the information in writing effectively notifies parents of their rights.

Some judges reported that they make it a practice to advise parents of their right to a court-appointed attorney at varying points in the case. However, some judges do not admonish parents of the right to an attorney and justify that DFPS is already providing parent with this information.

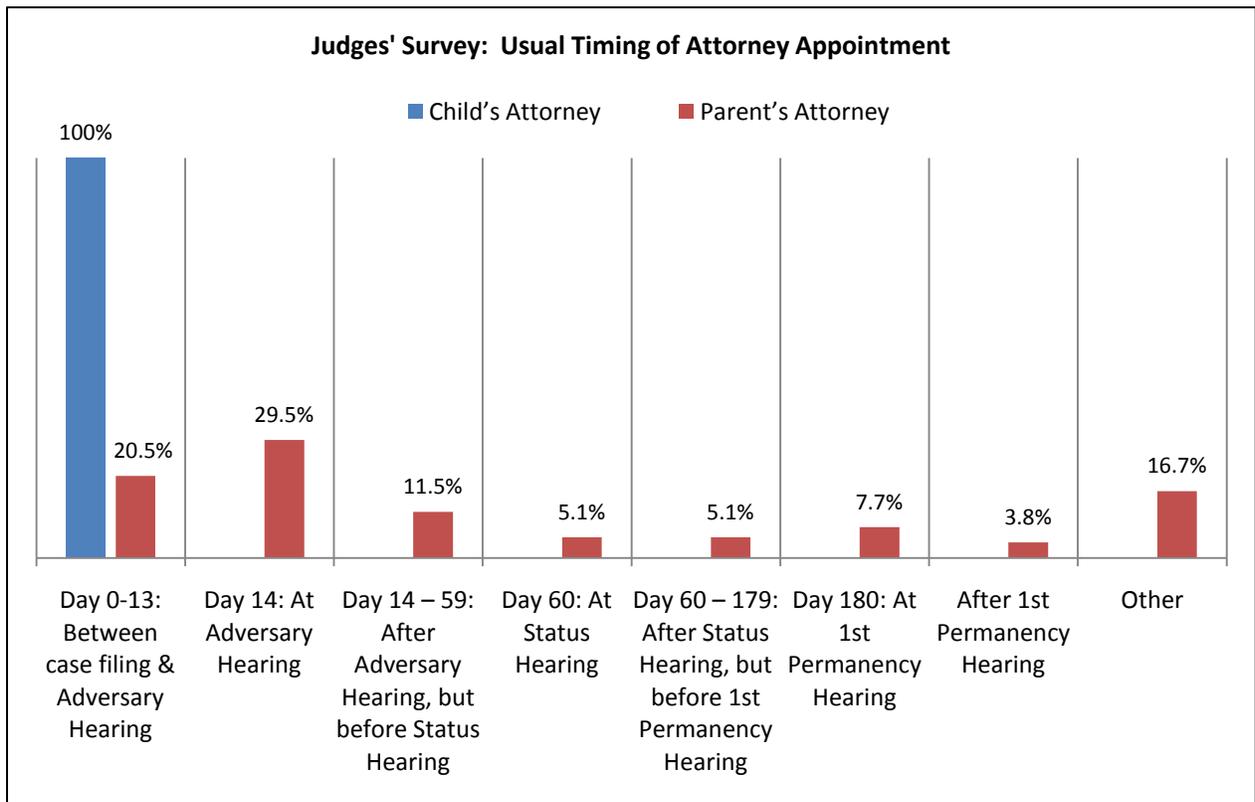
<sup>36</sup> TEX. FAM. CODE ANN. § 262.109(c)(4) (Vernon 2008).

<sup>37</sup> Tex. Dep't of Family & Prot. Servs., *While Your Child Is In Our Care: A Handbook for Parents*, [http://www.dfps.state.tx.us/Child\\_Protection/About\\_Child\\_Protective\\_Services/while\\_your\\_child.asp#q4](http://www.dfps.state.tx.us/Child_Protection/About_Child_Protective_Services/while_your_child.asp#q4).

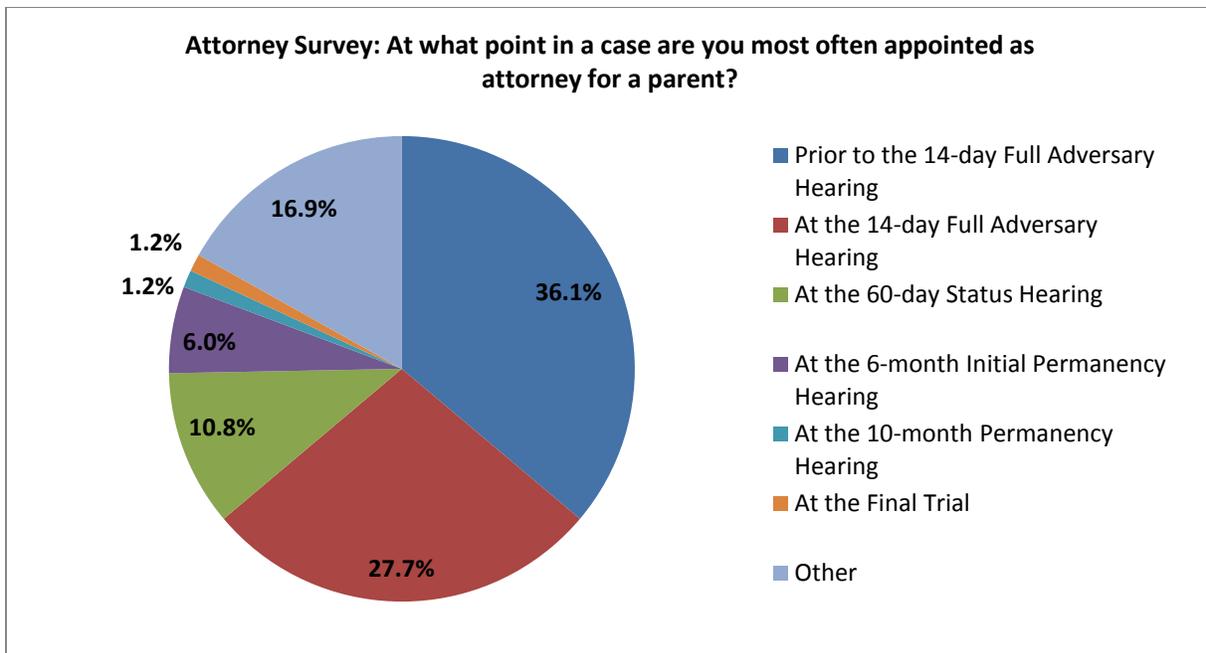
**Findings – Usual Timing of Appointment**

While 100 percent of judges indicated that they usually appointed the child’s attorney before the 14-day adversary hearing, judges normally appointed parents’ attorneys at some later point in the case. Judges’ responses regarding the timing of appointment of parents’ attorneys varied greatly. However, the most common response (representing 29.5 percent) was appointment of the parent’s attorney at the 14-day hearing. The chart below illustrates the judges’ responses as a percentage.

“Parents are the only party often without representation and it is necessary from the beginning.”  
 - DFPS Supervisor, Regions 2 & 9



As compared with judge responses, parents’ attorneys reported being appointed earlier in the case. Of the parents’ attorneys who participated, 36 percent indicated that they were appointed before the 14-day adversarial hearing. A majority of the attorney participants indicated that they are normally appointed to represent a parent at or sometime after the 14-day adversarial hearing, leaving them no time to contest the removal. When attorneys are appointed “at the 14-day hearing,” the attorneys may not get notice of the appointment for several days, so effectively the parent gets no legal representation at the adversary hearing.



Of the attorneys who responded “other,” all explained that they were appointed at some point after the 14-day adversary hearing. Some indicated that they were not usually appointed until “very late in the case” or “after pleadings are amended to seek termination,” which could be months into a case. One attorney practicing in a Child Protection Court indicated that he is usually appointed “before mediation or a couple of weeks prior to a merits hearing.”

Of the attorneys who participated in the survey, 43.4 percent stated that the timing of their appointment as a parent’s attorney was usually not sufficient to effectively represent the client and many shared the sentiment that they needed to be appointed earlier to properly represent the parent client. Specifically, attorneys explained that they need to have the opportunity to fight the allegations at the adversary hearing and, if the child is not returned at that hearing, guide the parents through the service plan to achieve reunification. An attorney practicing in the Panhandle area explained that not being able to represent the parent at the adversary hearing was a challenge to providing effective representation because it “typically sets the tone of the whole process and most clients do not know how to fight the allegations being made . . . . Once the Court has determined that sufficient evidence exists for removal, then the only way to have the child returned is to work within the system” and the child will not be returned for a year or longer in most cases.

Additionally, attorneys noted that early appointment is essential to establishing the parent client’s trust. One attorney explained that when he is appointed late in a case, he does not have adequate time to establish a relationship with the client and the client is not as honest and forthcoming with information that is necessary for effective representation.

As an exception to this norm, some jurisdictions appear to always appoint attorneys before the 14-day adversary hearing. Specifically, 100 percent of the attorney respondents from Bexar County, El Paso County, the Child Protection Court of the Rio Grande Valley East, and the North Texas Child Protection Court indicated that they were normally appointed before the 14-day full adversary hearing. These findings are also supported by the judges’ responses from those areas. Judges from

Bexar County stated that they appoint parents' attorneys "as soon as the case is filed" and "before indigence is determined." Similarly, an El Paso judge explained that appointments are usually made at the ex parte hearing, before the indigence determination.

This practice, however, may be inconsistent with the statutory requirements for appointment. The Family Code requires the parent to submit an affidavit of indigence and the court must hold a hearing prior to appointment of counsel.<sup>38</sup> Despite the statutory requirements, several judges reported appointing parents' attorneys before making an indigence determination. The judges explained that early appointment of parents' attorneys provides the parents with assistance during that *critical stage* at the beginning of the case. The judges stated that most parents involved in a CPS case are in fact indigent.<sup>39</sup> If it is later determined that the parent is not indigent, the attorneys may be removed from the case. The judges seemed to be of the opinion that the existing Family Code requirements for obtaining appointed counsel operated as a barrier in the usual child-protection case.

Despite the statutory change requiring appointment when DFPS files suit requesting conservatorship of a child, some courts adhere to the old practice of appointment only in termination cases. This may be because they are not aware the statute changed, they are under financial constraints, or they interpret the amended statute to be permissive as to when the appointment must be made since it does not specify a deadline like the statute governing the appointment of children's attorneys.<sup>40</sup>

In their study responses, some judges stated that they waited to appoint parents' attorneys until DFPS indicated it would seek termination, even though this point usually comes months into the case. One judge commented that "parents are generally unaware of their ability to have an attorney appointed," and, though he wished he could, the judge does not advise parents of that right because it would prove to be too costly to the county. Consequently, he appoints an attorney when "the parent asks for an attorney and is found indigent." The same judge commented that even after the parent files an application, he "drags his feet" in making the appointment if the case does not involve "critical" issues. Another judge admitted to not being

"In Fayette County, parents are not offered attorneys unless the Department is pursuing termination of parental rights. There was [a] recent case where a parent asked about getting an attorney and they were told that they did not need one at this time."

- DFPS Supervisor, Region 7

overly zealous when appointing attorneys to parents. He rationalized that appointment of attorneys for parents is unnecessary that early in the case because "many times the parents aren't present." One judge suggested that parents be required to come to court 24 to 48 hours after the emergency removal, so that the parent can have the opportunity to submit an affidavit of indigence and have counsel appointed prior to the 14-day adversarial hearing.

<sup>38</sup> TEX. FAM. CODE ANN. § 107.013(d).

<sup>39</sup> In a pilot project conducted by Travis County, it was determined that less than one percent of the parents involved in CPS cases were *not* indigent. Thus, more than 99 percent of the parents were indigent. For more information on the pilot project, see "[Travis County Representation Offices](#)" in the Texas Case Study Section of Appendix A.

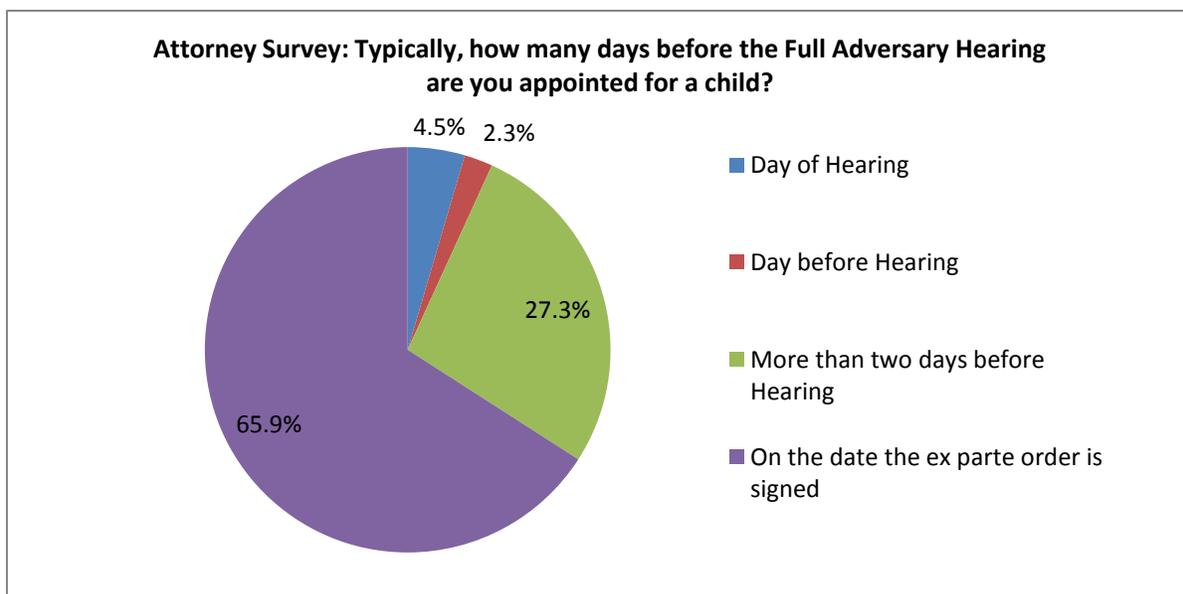
<sup>40</sup> Compare TEX. FAM. CODE ANN. § 107.012 ("Mandatory Appointment of Attorney ad Litem for Child"), with § 107.013 ("Mandatory Appointment of Attorney ad Litem for Parent").

Almost all judges indicated that they were under pressure from their counties to keep attorney costs low. Delay in appointing parents' attorneys may result in much more significant cost to the state; the longer the legal case continues, the more the state spends on foster care. Money for foster care and services for children and families is funded by federal funds and state general revenue, whereas the court-related expenses are funded by the county. However, saving the state money in foster care dollars does not directly benefit a county and so the chance of resolving cases more quickly by providing legal counsel earlier may be too intangible for counties.

### ***Child's Attorney***

Of the judges participating in our survey, 100 percent indicated that they usually appointed children's attorneys prior to the 14-day adversary hearing. During interviews, judges indicated that they appointed the child's attorney "immediately" after the case was filed.

These results are consistent with the responses provided by attorneys. The results of our attorney survey showed that children's attorneys are appointed very early in the case, allowing several days to prepare for the 14-day adversary hearing. Sixty-six percent of attorneys for children reported that they are appointed on the date the ex parte order is signed at the emergency hearing, up to 14 days before the adversary hearing. Eighty-five percent of attorney respondents indicated that the timing of their appointment to represent children allowed them to adequately represent their child client.



### **Duration of Appointment**

The duration of attorney appointments both for parents and children varies by court.

#### ***Parent's Attorney***

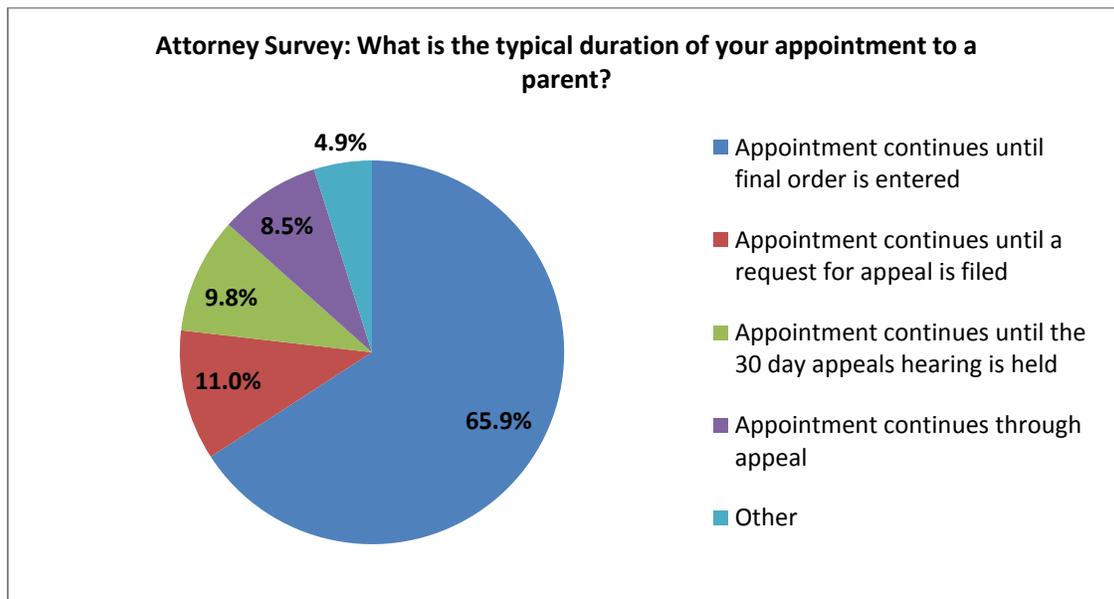
All judges consistently indicated that parents' representation continued through the final order, but the responses varied with regard to representation during the period following the final order.

The judges' responses regarding the duration of the parent's attorney included:

- Retaining appointed trial attorney until the parent decided whether to appeal;
- Retaining appointed trial attorney through initial post-trial process;
- Retaining appointment of the trial attorney until the Family Code Section 263.405 hearing,<sup>41</sup> at which time an appellate attorney is appointed if the parent is found to be indigent; or
- Retaining appointed trial attorney through the appeal.

Judges indicated that they consider whether the trial attorney seeks to be taken off the case when deciding whether to appoint a new attorney for an appeal.

Attorney survey responses were somewhat different from that of the judges. Sixty-six percent of parents' attorneys responded that their appointment continues through issuance of the final order. It is possible that attorneys understood the question to ask, "in the normal case, what usually happens?" Perhaps that is why so few indicated they remained through the appellate process, especially since a majority of CPS cases that result in a final order are not appealed.



The Texas Family Code is unclear about the duration of appointment. However, "[o]nce appointed, an attorney cannot withdraw without good cause and the court's permission, and withdrawal is subject to ethical restrictions."<sup>42</sup> The Family Code discusses appointing representation for an appeal in Section 263.405(e). It is not uncommon for appellate counsel to be substituted for trial counsel, but appellate counsel cannot be appointed until the appellant has been determined to be indigent on appeal.<sup>43</sup> The Texas Supreme Court has held that, during the days following the issuance of the final

<sup>41</sup> At the hearing conducted pursuant to Section 263.405 of the Texas Family Code, the trial court considers any motions for new trial, a party's claim of indigence, and whether an appeal is frivolous. TEX. FAM. CODE ANN. § 263.405(d) (Vernon 2008).

<sup>42</sup> *In re B.G.*, 317 S.W.3d 250, 254 (Tex. 2010) (citing TEX. R. CIV. P. 10; TEX. DISCIPLINARY R. PROF'L CONDUCT 6.01).

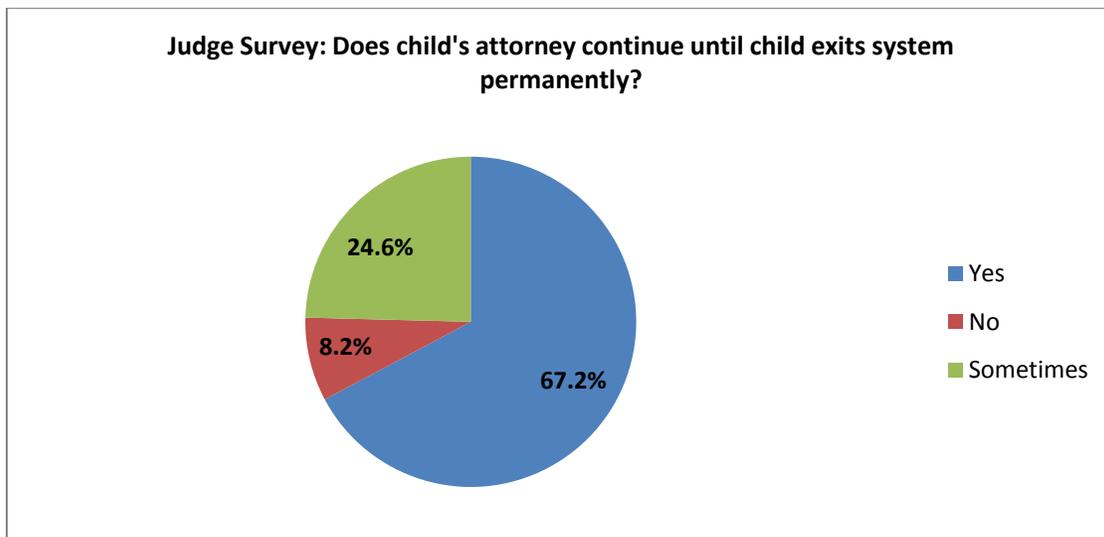
<sup>43</sup> TEX. FAM. CODE ANN. § 263.405(e).

order, a “[t]rial counsel’s failure to follow through with his representation until relieved of that duty was tantamount to abandoning his client at a critical stage of the proceeding.”<sup>44</sup>

Attorney and prosecutor participants indicated that parents did not have an attorney during “the key 30 days after a judgment is signed.”<sup>45</sup> Attorneys and judges provided varied responses regarding when a parent’s attorney’s appointment ends. One prosecutor suggested that a clear procedure be developed for how appointment during that 30-day period is handled.

### ***Child’s Attorney***

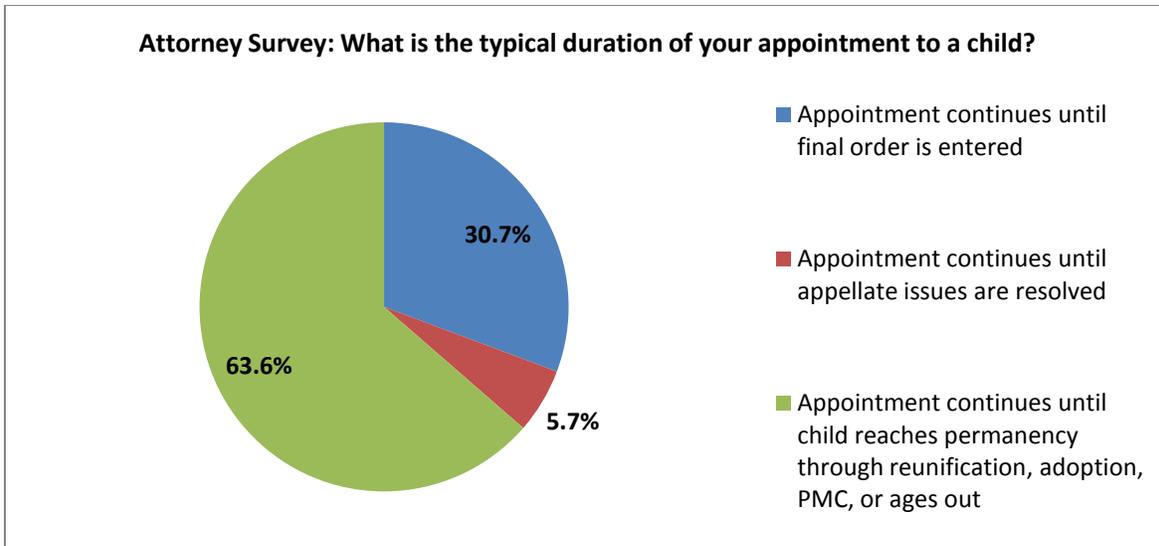
Of the judges surveyed, 67.2 percent indicated that the child’s attorney remains on the case until the child exits the system permanently and 24.6 percent of judges reported that “sometimes” the child’s attorney continues representation. Only 8.2 percent reported that children’s attorneys do not continue representation after a final order is issued giving DFPS permanent managing conservatorship.



During interviews, several judges explained that children’s attorneys are taken off the case once the final order has been issued because they rely on the guardian ad litem (or CASA) to follow the child through the PMC hearings. Ten percent of judges indicated that budget was a factor they considered in deciding whether a child’s attorney should continue. Several judges expressed a preference for CASA volunteers because their services do not cost the court money.

<sup>44</sup> *In re J.O.A.*, 283 S.W.3d 336, 343 (Tex. 2009) (citing *Rogers v. Clinton*, 794 S.W.2d 9, 10 n.1 (Tex. 1990)).

<sup>45</sup> Quoted language from prosecutor survey response.



Similarly, a majority of attorneys surveyed indicated that their appointment as a child's attorney normally continues until the child reaches permanency. Despite continuing representation for children who are in the permanent managing conservatorship (PMC) of DFPS, a recent study by Texas Appleseed found that many of the attorneys providing representation for children in PMC fail to understand or fulfill their statutorily mandated duties.<sup>46</sup> Appleseed's report pointed out that, when parental rights are terminated and a child is placed in PMC, the nature of the case changes; the adversarial process is over and most of the contentious legal issues have been resolved.<sup>47</sup> Many attorneys fail to understand their role during this stage of the case, so they do not do anything at all.<sup>48</sup> While the attorney's role is to give a voice to the child in the courtroom, that task is impossible if the attorney does not regularly visit the child.<sup>49</sup> Most of the children and youth interviewed as part of the Appleseed study stated that they did not know who their attorneys were.<sup>50</sup>

Consistent with our study, the Appleseed study also revealed that many children's attorneys do not visit or talk with the child but, instead, call the CASA volunteer and CPS caseworker a day or two before a hearing to ask how the child is doing.<sup>51</sup> Similarly, the Appleseed study noted that children's attorneys do not conduct any independent investigation into how their clients were doing; they "simply adopted the CPS progress report."<sup>52</sup>

Effective advocacy during all stages of the case is necessary to achieve timely permanency for the child, but the presence of a child's attorney is pointless if the attorney fails to meaningfully investigate the ongoing permanency and well-being issues affecting the child. Those needs and the child's wishes must be articulated to the judge. This sentiment was expressed by several of the judge participants. Of the judges who did not keep children's attorneys on the case during the PMC stage, several of the judges justified doing so because the attorneys do not provide any value and simply

<sup>46</sup> Texas Appleseed, *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas' Courts & Legal System* 84 (2010), available at [http://www.texasappleseed.net/images/stories/reports/FosterCare-rev\\_press.pdf](http://www.texasappleseed.net/images/stories/reports/FosterCare-rev_press.pdf).

<sup>47</sup> *Id.* at 85–86.

<sup>48</sup> *Id.* at 86.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 85.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 84–86.

rubberstamp whatever the CASA volunteer or CPS presents. Many of the judges commented that CASA volunteers do just as good of a job.

However, the role of the child’s attorney is not duplicative of CASA or CPS; it is only when an attorney fails to perform his or her duties that the attorney’s presence in the case is not helpful. When an attorney performs the duties required of the role, he or she can provide valuable advocacy and information during the PMC stage regarding possible adoptive families, relative placements, and the child’s ever-changing needs, to help the child to leave PMC as quickly as possible. Neither CASA volunteers nor CPS caseworkers represent the “child’s interests;” rather, they focus on what they believe to be in the “child’s best interest.” Instead of depriving children of an attorney to advocate for them and voice their concerns and wishes, judges should promote accountability and require attorneys to provide effective and meaningful representation at every stage.

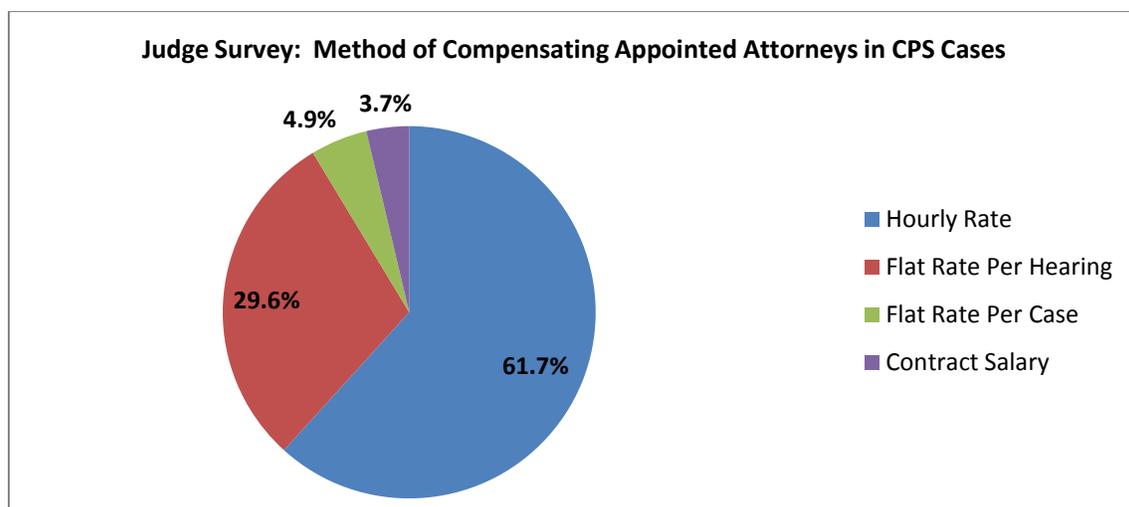
## Compensation

### *The Law*

Texas Family Code Section 107.015 provides that appointed attorneys should be compensated using the county’s general funds in accordance with the fee schedule that applies under Chapter 51 of the Family Code, relating to juvenile proceedings. Subsection (i) of Family Code Section 51.10 points to the fee schedule in Article 26.05 of the Code of Criminal Procedure. Thus, the law, as written, requires that attorneys be compensated according with the same rates applicable to appointed criminal lawyers.<sup>53</sup>

### *Study Findings*

The study revealed that compensation rates and methods vary by county but all were significantly below average billing rates for private cases. The study revealed that a majority of jurisdictions compensate attorneys based on an hourly rate.



<sup>53</sup> The study revealed that many jurisdictions do not compensate CPS attorneys based on the same fee schedule that is applicable to juvenile and criminal cases. However, that may be a good thing. The short, quasi criminal juvenile proceeding is not an appropriate model for the longer, civil child abuse case. By calling for the same fee schedule for both, the Family Code does not provide for adequate compensation for civil child-protection lawyers.

Court coordinators were asked to provide the compensation rates used in their jurisdictions. The chart below reflects the CPS compensation rates provided by court coordinators in surveyed counties.<sup>54</sup>

#### Attorney Compensation Rates by County or Court

	\$/ hour for in-court work	\$/hour for out-of-court work	\$ flat fee/case	\$ flat fee/hearing	\$ maximum amount paid per case
<b>Bexar</b>		\$20 +mileage for child & inmate visits		\$100-\$200	
<b>Collin</b>	\$100	\$100			
<b>Dallas</b> (rates for appointed private attorneys)	\$100	\$90			
<b>Denton</b>	\$125	\$125			
<b>El Paso</b>	\$70 to represent children; \$75 for appellate oral argument	\$55 to represent children; \$60 to prepare appeal	\$2,500 to represent parents		
<b>Harris</b>		\$75-\$100		Non-trial: \$125-225/day; Trial: \$300-400/day	Appeals: \$3,000 max Trial > 5 days: \$2,500 max
<b>Tarrant</b>	\$75-\$150	\$75-\$150		\$100	
<b>Travis</b> (rates for appointed private attorneys)	\$75	\$75			
<b>4th &amp; 5th Administrative Judicial Regions Cluster Court</b>	\$75	\$50			\$2,500
<b>Brazos River Valley Cluster Court</b>	\$75	\$50			
<b>Centex CPC</b>	\$75	\$50	\$2500 for appeals		
<b>CPC of South Texas</b>	\$60-\$70	\$40-\$70			
<b>CPC of the Hill Country</b>	\$60-\$75	\$60-\$75			
<b>CPC Rio Grande Valley East</b>				\$100- 250/ hearing; \$350- 450/ trial	

<sup>54</sup> The compensation rate data was collected in early 2010 and may have changed by the time of publication of this report.

	\$/ hour for in-court work	\$/hour for out-of-court work	\$ flat fee/case	\$ flat fee/hearing	\$ maximum amount paid per case
<b>North Texas CPC</b>	\$90-\$100	\$70-\$100		\$100-\$220	
<b>Northern Panhandle CPC</b>	\$75-\$100 (in complex cases only; hourly rate in lieu of flat fee per hearing)	\$75-\$100 (in complex cases only; hourly rate in lieu of flat fee per hearing)		\$175 -\$275/ hearing + mileage	
<b>Sabine Valley CPC</b>	\$60-\$85	\$40-\$85	\$350 minimum		
<b>South Plains Cluster Court</b>	\$75	\$75			
<b>Three Rivers Cluster Court</b>		\$100		\$100-\$150	

### *Hourly Rates*

Of the counties surveyed, most compensate attorneys based on an hourly fee schedule of around \$75 to \$125 an hour for in-court work. Most counties surveyed treat out-of-court differently than in-court-work, compensating attorneys at a lower rate, if anything at all.

“The problem is really when your bills get cut without an explanation from the District Judge.”  
- *Attorney from Child Protection Court*

The study also revealed that after attorneys submit their hours to the court, the judge frequently cuts their time due to budget constraints. Respondents to our attorney survey emphasized that the hourly rates are the maximum an attorney can get and explained that the judges always have the ability to adjust and reduce billing. A prosecutor from an

urban county indicated, “in order to do this job right, attorneys have to put in far more hours than courts are willing to pay for. Good Attorneys Ad Litem (AALs) cut their hours before they even bill them and then see them cut again.”

Attorneys expressed frustration that they are not adequately paid for out-of-court preparation and travel expenses. Attorneys indicated that this type of case is very time consuming if done correctly. In this area of the law, making home visits is essential to building trust and understanding the client by observing the client’s living situation. However, visiting a client often requires significant travel time and expense, which is not always compensated or reimbursed.

For a child’s attorney, making the visit may require a substantial amount of travel if the child is placed outside of his home county. Around 30 percent of children in substitute care are placed outside their home county and about two-thirds of those are more than 100 miles away.<sup>55</sup> Despite the importance of this out-of-court work, several jurisdictions will not allow attorneys to bill for this time or be reimbursed for travel. Participants in the attorney survey expressed that this practice by

<sup>55</sup> See Tex. Dep’t of Family & Prot. Servs., *Annual Report and Data Book 2008* at 125, available at [http://www.dfps.state.tx.us/documents/about/Data\\_Books\\_and\\_Annual\\_Reports/2008/Databook/DataBook08.pdf](http://www.dfps.state.tx.us/documents/about/Data_Books_and_Annual_Reports/2008/Databook/DataBook08.pdf); see also Sup. Ct. of Tex. Permanent Jud. Comm’n for Children, Youth & Families, *Videoconferencing Report* (2009).

the courts conveys the message that out-of-court preparation is less important in this area of the law and encourages attorneys to come to court unprepared. Many attorneys expressed frustration that inadequate compensation limits the service they can provide for their clients.

An attorney from the Child Protection Court of the Hill Country stated that, “The court rarely, if ever, compensates AAL’s for work out-of-court in several counties.” Similarly, another attorney practicing in the same jurisdiction stated he incurred significant travel time which was not reimbursed.

Some jurisdictions compensate attorneys for out-of-court work, but at a very low rate. Attorneys compensated at lower rates commented that it “gives little incentive to make time to visit with clients more.” Another attorney commented, “Twenty dollars an hour for an attorney to represent a client in any type of case is just too little. . . . *If I was compensated better, I would invest more time in this particular practice, but at the current rate, I simply cannot afford to.*” (Emphasis added.)

One judge commented that judges would like to pay more, but the county budget committee has denied requests. The same judge explained that the budget committee feels the low rates are appropriate and justify that “It’s just visiting the child. It’s non-legal.”

Several attorneys mentioned that CPS cases are more complex and require significantly more time than a private family law case. Specifically, CPS cases involve periodic hearings mandated by the Family Code during the 12 to 18 month pendency of the case prior to a final legal order and each hearing requires preparation and attention. However, when the courts pay attorneys at a fraction of the customary billing rate for private cases, attorneys are forced to spend more time taking private cases in order to pay their bills. While many attorneys noted that they take these cases out of civic duty, they all expressed that they had to focus their time on other types of cases to make ends meet.

The study revealed that some courts place a cap on the number of hours that can be claimed or the total amount of compensation that can be received on a case. When courts place a cap on the amount of hours an attorney can claim, the attorneys are unable to afford to put in the hours of preparation necessary for effective representation.

“Some [attorneys for children] don’t see their kids. They don’t get a travel allowance with appointments and therefore don’t want to drive to see them. They want us [DFPS] to bring the children to them. Often they will want them in court when [the children are] in out of region placements, just to see them and spend a little time with them. We have to transport them to court. [Providing attorneys with] a budget for travel would be good.”

- *DFPS Supervisor, Region 4*

“The amount attorneys are paid to take these cases sends a subtle message that says ‘we don’t want you to spend too much time here.’”

- *Child Protection Court Judge, explaining why adequate compensation is needed*

“Some judges limit the amount of time [that can be billed] to 10 hours per hearing, which when spread out over a 3-6 month period of time will mean less time to adequately represent your client.”

- *Attorney from Urban Area*

### ***Flat Fee Per Hearing***

Some counties compensate attorneys based on a flat fee per hearing or day of trial. However, some attorneys expressed that the fees can be inadequate when they have to wait several hours to be called. Additionally, some counties using this method of compensation do not compensate attorneys for their out-of-court work, a frequent topic of complaint among attorneys.

“I am paid \$150 per appearance with no consideration for actual time spent on the case.”

- *Attorney from Urban County*

Some attorneys commented that paying a flat fee per hearing sends the message that an attorney who shows up at court unprepared is worth the same value as the attorney who spends hours preparing for a case. For instance, Bexar County compensates attorneys’ in-court work at a flat fee of \$100 to \$200 per in court appearance, but compensates attorneys’ out-of-court work at a rate of \$20 per hour. A

judge from Bexar County explained that under the current pay schedule, 95 percent of what the county pays appointed attorneys is from hearings, giving attorneys little incentive to come to court well prepared.

An attorney practicing in one of the Child Protection Courts reported making a flat fee of \$100 per court appearance and \$200 to 500 per trial. He felt that the compensation was inadequate and explained, “I don’t believe \$200-\$500 for a trial is fair compensation when the trial lasts all day (and you spend another 2-5 hours preparing). Or \$100 per hearing when you spend four hours to have your case heard.”

### ***Flat Fee Per Case***

El Paso County’s pay schedule is unique, compensating parents’ attorneys with an upfront lump sum payment of \$2,500. However, El Paso County’s compensation rates for children’s attorneys follow the hourly rate model, paying \$70 per hour for in-court-work and \$55 per hour for out-of-court work. Regarding the \$2,500 flat rate per case for representing parents, one El Paso County attorney commented that “on some cases, it’s a small windfall” and “on others we take a significant loss.”

Some judges from other counties commented that the “payment up front model” would not work in their counties because after getting the lump sum payment at the beginning of the case, attorneys might not be as motivated for the duration of the case.

### ***Adequacy of Compensation***

**71 percent** of attorneys surveyed feel they are not adequately compensated.

Of the attorneys surveyed, 71 percent felt they were not adequately compensated for the time they spend on child-protection cases. The survey gave attorneys the option to elaborate on why they felt their compensation was or was not adequate. Many attorneys expressed frustration that the work was extremely complex as compared with other areas of the law but was compensated at a much lower rate. One

attorney explained that the fee schedule is already extremely low and judges often refuse to pay the disclosed rate for the number of hours worked. The attorneys explained that sometimes the judge offers the explanation that they spent an “excessive” amount of time preparing, but the attorneys felt that the amount of work was necessary to fulfill their duties to their clients. Attorneys also

expressed dissatisfaction that unqualified lawyers were being appointed and compensated at the same rates, despite their lack of knowledge and preparation.

Several attorneys explained that the rate of compensation is only a fraction of what they could make in private practice. One attorney mentioned he was board certified in family law and had a normal hourly rate of \$350. Similarly, others mentioned that the billing rates are a fraction of what could be made in other areas of practice.

Of the attorneys that stated that they felt they were adequately compensated for their time, most commented that they take the work for the emotional satisfaction of helping families in need. Others commented that it was all the counties could afford.

Generally, it seems like most of the attorney respondents take this type of work out of civic duty. The main source of their dissatisfaction is rooted in the judges' tendency not to compensate them for all of their work. Thus, while attorneys acknowledge the hourly rates are extremely low, they are mainly dissatisfied with having their billable hours cut after putting in the work.

There were trends in the level of dissatisfaction with compensation. There were several jurisdictions that had 100 percent of attorney participants indicating compensation was inadequate. Only two jurisdictions had less than 50 percent of the respondents indicating that compensation was inadequate.

Even though the vast majority of attorneys believe the compensation is inadequate, 53.3 percent of judges feel that compensation for appointed attorneys is adequate. Many of the judges justified the adequacy of compensation by explaining that it is all that the counties can afford. The judges' responses suggest that financial pressure is a driving factor in the timing of appointments and the compensation. During interviews with judges, several commented that they did not feel increasing the level of compensation would affect the quality of service. Specifically, many of them said the good attorneys are dedicated to this type of work.

### ***Timing of Payment***

Attorneys expressed frustration with the timing of payments for their legal representation. Several counties do not compensate attorneys until the end of the case, causing some attorneys significant financial hardship – especially since the average length of the legal case is usually more than 12 months. One attorney who appears before a Child Protection Court indicated that he did not receive payment until the end of the case and commented that, “For cases that drag on for more than a year, compensation comes only at the end—would be nice to have an interim payment.” Other counties indicated that attorneys are paid as frequently as they submit billing statements.

“I feel CPS cases are viewed as the justice system’s unwanted baby. . . . **Bad compensation makes it hard for attorneys to dedicate the time the cases need.**”

- *Attorney from Child Protection Court*

“Budgets have been cut for attorneys representing children; I still perform the same amount of work, but am concerned that a number of attorneys do not.”

- *Attorney from Urban County*

## Quality of Representation & Legal Services Provided

Responses varied regarding the quality of legal representation being provided. All participants seemed to convey that the majority of attorneys provide competent representation, but there are always those “few bad apples.” Specifically, respondents across all groups and jurisdictions indicated that there are a few attorneys that do not care about their quality of service and invariably fail to perform their duties as an attorney.

Many participants mentioned that the recent economic downturn has caused many attorneys that have no experience in this area of practice to seek appointments. Some counties do not have any or adequate requirements for attorneys who seek and receive appointments. Thus, some of the problems regarding quality may stem from the appointment of attorneys who have no experience or knowledge in this area of the law. One prosecutor commented that “better training or at least minimum standards” needs to be in place. That same prosecutor expressed that “some of these [attorneys] are just there to collect a check and truly are doing a disservice to the [clients].” Several respondents suggested adding minimum training and experience requirements to be on appointment lists. Specifically, with regard to experience, they suggested that attorneys without experience in this area be required to participate in a mentorship program with an experienced attorney.

Another facet of this problem is that courts are not adequately assessing the quality of service provided by attorneys and holding attorneys accountable. As a DFPS Supervisor from Region 7

“[P]robably 95 percent of [the attorneys] do not visit or know the current situation of their clients until the date of the hearing.”

– DFPS Supervisor, Region 10

“There are some attorneys that do not visit their client at all during the duration of a case. There are some attorneys that do not show up to hearings or staffings. . . . It is usually the same attorneys and still they continue to be appointed to cases.”

– DFPS Supervisor, Region 8

“These are the cases that need additional hand holding and TLC. The parents who have put themselves (and their children) in this situation need A LOT of help and guidance. Often, CPS is not able to provide that for them.”

– Attorney from Urban County

pointed out, “There seems to be no measures in place to ensure quality representation.” Similarly, a supervisor from Region 11 commented, “There is not much in place to hold them accountable to provide quality/ethical legal representation to parents or children.” A DFPS Supervisor from Region 7 commented, “if an AAL is not invested then it’s a waste of money for the county and a disappointment to the children.”

The most frequent complaint was that attorneys – both for children and parents – do not spend enough time with their clients. Although meeting with a child client is required by the Texas Family Code and certainly advisable with regard to parent clients, the inadequacy of attorneys’ communications with clients may relate to a court’s compensation schedule and not paying – or paying very little – for out-of-court work.

Many participants from various different groups commented that the public defender offices, such as the Travis County Office of Child Representation and Office of Parental Representation, tend to provide much higher quality legal representation. And, this model may prove to be more cost effective for some counties.

When participants were asked to identify areas needing improvement in attorney performance, the responses relating to parent's attorneys were significantly different from children's attorneys. Of the 94 attorneys participating in the survey, 89.4 percent indicated that they represent both children and parents. Although the majority of attorneys serve both types of clients, certain skills involved in each type of representation are different. In order to fully assess what training is needed for each, it is important to differentiate the types of duties each type of attorney performs. The child's attorney is responsible for speaking with the child in a developmentally appropriate manner and presenting the child's wishes to the court. In contrast, a parent's attorney must not only possess an understanding of child-protection law and related issues but must also have adequate trial skills.

### ***Attorneys for Parents***

#### ***Advocacy and Trial Skills***

Many respondents pointed out that some parents' attorneys lack the trial skills to adequately represent their clients. However, some participants pointed out that the attorneys may be discouraged from taking an adversarial trial approach because of certain judges' attitudes. Specifically, some participants commented that some judges discourage parents' attorneys from making repeated objections because that was not "the CPS case" way to try a case. Some attorneys feel that, in order to continue receiving appointments, they must conform to the judges' wishes. Similarly, one urban county prosecutor commented that parents' attorneys are "encouraged to social work the case and are often incompetent on the legal side and in issues of trial advocacy." Again, this seems to tie in with some judges' views that normal trial procedures and advocacy skills have no place in a CPS case. However, to a certain extent, these attitudes may prevent a parent from receiving due process.

"In instances when we are working with . . . attorneys who are new to CPS cases . . . the attorneys can pit the parents against DFPS and the working relationship is very hostile. In these situations the attorneys are often hindering the parents' progress because they are not encouraging their clients to try and work with the Department. This is very frustrating and can really affect the outcome of the case."

- DFPS Supervisor from Region 7

On the other hand, several participants commented that some parents' attorneys are overly combative and adversarial. Participants noted that attorneys that are not experienced in CPS cases frequently treat the case like a criminal proceeding and lack an understanding of the applicable standards under the Texas Family Code. These participants explained that an attorney's overly confrontational approach hurts the parents' chances of reunification with the child.

After the 14-day full adversarial hearing (finding sufficient evidence to support the removal), disproving DFPS's original reason for removing the child is not necessarily relevant. Thereafter, the focus of the case shifts to demonstrating the parent's suitability for reunification. The parent's cooperation is required to a certain degree in order to correct the problem that started the CPS case. Unlike a criminal case, the relevant behavior is not limited to a specific instance of past conduct; in the CPS case, the parent's improvement during the pendency of the case and ability to care for the child in the future are key issues. Accordingly, if an attorney tries to import a criminal trial strategy into a CPS case, he or she may foreclose opportunities for the parent to comply with services, demonstrate improvement, and establish that the parent can safely care for the child.

One prosecutor indicated that parents' attorneys who have an understanding of CPS policy and practices "spend less time questioning certain procedures and more time actually defending and supporting the client." In sum, in order to properly advise and advocate for a parent client, an attorney must have a familiarity with the unique procedures of a CPS case.

"Parents' attorneys should be required to meet with their clients rather than just seeing them at their court hearing. They have no time to prepare to represent them well. Children's attorneys need to be held accountable for having contact with the children they represent. They are making major decisions about these children's lives and often have not seen or talked to them."

- DFPS Supervisor, Region 2

**"Parents' attorneys generally show up to hearings not having talked to their clients since the last hearing. They want updates from the caseworkers as to what their clients have done and not done."**

- DFPS Supervisor, Region 2

"I would recommend that the attorneys spend more time working the case rather than waiting to have communications either right before the court hearing or a couple of days before a hearing."

- DFPS Supervisor, Region 4

### ***Communication with Client***

Many participants across the board indicated that parents' attorneys are often unavailable to answer parents' questions. For instance, one prosecutor commented that parents frequently call caseworkers with questions they should be asking their attorneys. While many participants suggested this was caused by attorneys' unavailability, it could also be a product of the client not appreciating the roles that the attorney and caseworker play.

Both parents and DFPS front-line supervisors indicated that communication is lacking between attorneys and their parent clients. DFPS responses included suggestions that attorneys explain the court proceedings to their clients more clearly, contact their clients regularly and meet with them at least one day prior to a hearing. This same observation was made by parents who were interviewed.

Conversely, when parents' attorneys responded to the survey question regarding challenges they faced when explaining court processes and procedures to their clients, one attorney noted "they are frequently uneducated, poor, and lack telephone or means of transportation." Additionally, many parents' attorneys indicated that communicating with a parent client is challenging because the parent is often hard to locate.

Several attorney participants noted that communication with parent clients early in the case

is vital to establishing a trusting relationship. Where that relationship is not formed, attorneys reported that clients are not honest with them and it hurts their ability to provide effective assistance.

### ***Helping Parent Take Advantage of Services***

Respondents indicated that the best parents' attorneys help their clients stay on track and take advantage of the services offered. Frequently, parents do not understand the requirements of the service plan or how to obtain the services. Accordingly, they frequently fail to complete the services unless they have an attorney guiding and motivating them through the process. To be effective in

this regard requires early appointment of parents' attorneys and frequent communication between attorney and client.

### ***Adequate Training***

Several study participants indicated that continuing legal education ("CLE") courses on child-protection law appear to primarily address representation of a child and, little (if any) information is provided regarding representation of parents. Participants suggested that, because representation of a child is significantly different than representing a parent, there should be training opportunities to address both topics.

Specifically, attorneys suggested that training cover services available to parents through DFPS to better understand the options available to help their clients. Attorneys suggested training on both the issues their clients' face (such as substance abuse and dependency, poverty, and mental disorders) and services available.

### ***Attorneys for Children***

Some study participants indicated that some children's attorneys do not view children as "real clients," and as a result, do not spend adequate time preparing and understanding the child's wishes.

However, this seems to be in clear conflict with the multitude of duties mandated by the Family Code, and suggested by the American Bar Association (ABA) and the National Association of Counsel for Children (NACC). For instance, the child's attorney is required to interview the child and all persons with significant knowledge of the child's history, participate in the litigation to the same extent as an attorney for a party, take any action consistent with the child's interests that the attorney considers necessary to expedite the proceeding, and, in a developmentally appropriate manner, advise the child and represent the child's expressed objectives of representation.<sup>56</sup>

"[M]any [attorneys] have never spoken with or to the children. They typically rely solely on the information provided by the caseworker or CASA before going into court or signing agreed orders."

- DFPS Supervisor, Region 2

"[I]t is very concerning that for the most part, ad-litem do not communicate with the children they get paid to represent except right before the hearing. Many times the children do not even know that they have an attorney."

- DFPS Supervisor, Region 7

### ***Children's Attorneys Not Advocating for Child's Wishes***

Many respondents across all survey groups indicated that some children's attorneys do not advocate for the children's expressed wishes. While the respondents expressed that some (usually a majority) of the attorneys do understand their role as a child's attorney ad litem, there are some attorneys in every jurisdiction who do not adequately represent their child clients. There seemed to be several reasons for this problem, including attorneys failing to meet with the child as required by law and attorneys misunderstanding their role as an ad litem as compared with dual role representation.<sup>57</sup>

<sup>56</sup> TEX. FAM. CODE ANN. §§ 107.003(1), 107.004(a) (Vernon 2008).

<sup>57</sup> "Dual role" means the role of an attorney who is appointed under Section 107.0125 to act as both guardian ad litem and attorney ad litem for a child in a suit filed by a governmental entity." TEX. FAM. CODE ANN. § 107.001(4) (Vernon 2008); see also TEX. FAM. CODE ANN. § 107.0125 (Vernon 2008).

***Failure to Meet with Child (§ 107.004)***

First, many survey respondents across all groups indicated that some children’s attorneys do not meet with their client prior to court as required by law. Section 107.004(d) of the Family Code requires that an attorney ad litem for a child must, before each court hearing, meet with the child, if the child is at least four years of age, or the individual with whom the child ordinarily resides, if the child is younger than four years of age.<sup>58</sup> Section 107.004(e) provides an exception to the meeting requirement in subsection (d), if the court finds the attorney has shown good cause that compliance with the requirement is not feasible or in the best interest of the child.<sup>59</sup>

The legislative intent behind the passage of these requirements in 2005 was to ensure that attorneys met with their child clients. However, after its enactment, courts and attorneys in several less populated counties complained that the requirement posed too great of a burden on attorneys who were inadequately compensated and that it operated as an unfunded mandate to counties. In response to a legislative request for an opinion, the Office of the Texas Attorney General interpreted the statute and opined that meeting with the client meant exactly that—an in person meeting.<sup>60</sup> During the 2007 Legislative Session, additional language was added to 107.004(e) to allow an attorney, on a showing of good cause, to comply with the pre-hearing meeting requirement by conferring with the child or other individual, as appropriate, by telephone or videoconference.<sup>61</sup>

One prosecutor expressed that this requirement is somewhat ambiguous as to whether the attorney is required to meet prior to the court date or if meeting just before the hearing satisfies the requirement. Additionally, there is ambiguity as to whether the attorney, himself, must meet with the child client or whether he can delegate the duty to his support staff.

Consistently, DFPS Supervisors responded that attorneys are not visiting or talking to their clients enough. Almost half of the 93 DFPS supervisors surveyed commented that many attorneys only make contact with their child client on the day of the scheduled court hearing. Some indicated that there are attorneys who do not meet with their child clients at all. A supervisor from Region 11 explained, “Most AAL’s [do] not even meet with the children even if they are sitting in the court room [sic]. If they do take the time, it is usually five minutes.” While the Region 11 supervisor acknowledged that there were a “few AAL’s” that take a “more active role,” she stated that “out of thirty AAL’s appointed, only two or three appear to have a vested interest in meeting with the child.” Similarly, a supervisor from Region 2 commented, “Most of the time, AAL’s are not seeing the children, except right before court or hearings . . . Also, it appears most AAL’s do not read child plans of service.” Among the DFPS supervisors surveyed, these types of responses were the norm across all regions of the state.

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<sup>58</sup> TEX. FAM. CODE ANN. § 107.004(d).

<sup>59</sup> *Id.* § 107.004(e).

<sup>60</sup> Op. Tex. Att’y Gen. No. GA-0405 (2006).

<sup>61</sup> *See* TEX. FAM. CODE ANN. § 107.004(e).

Youth participants also responded both in the written survey and interviews, that their attorneys did not return calls, meet with them, or inform them of upcoming hearings or other case progress. It is unclear whether this is due to lack of participation on the attorney's part or a lack of understanding on the youth's part of the court process and the role of each party in the case. One foster youth indicated that she did not know she had an attorney until after she aged out of care because the attorney never spoke with her. The youth reported that her parents' rights were terminated without an attorney ever speaking to her about her wishes. Increased participation and communication by attorneys would help their child-clients better understand the proceedings and feel empowered in their own case.

DFPS supervisors consistently emphasized the importance of observing children in their environment. A DFPS Supervisor from Region 7 explained that it is frustrating when "the attorneys make recommendations without observing visits or meeting with the children." They suggested that attorneys be required to visit the children in their placements on a regular basis and significantly increase communication so that the attorney will have a better understanding of his client and can make an informed recommendation to the court. Several participants suggested that child's attorneys be given training on child development and the psychological trauma a child experiences as a result of a CPS case; they indicated that attorneys need to appreciate the lifelong impact the child-welfare system has on a child and hopefully take their jobs more seriously.

Responses from attorneys, prosecutors, and DFPS supervisors indicated that judges are not adequately enforcing the attorney's obligation to meet with the child client. Even when judges ask the attorneys if they met the requirement, attorneys are at times dishonest. Prosecutors reported witnessing attorneys lying to judges about meeting with their clients. One prosecutor indicated that caseworkers often feel like they cannot speak up in court to tell the judge that the attorney has not actually visited the child and suggested that judges direct questions

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"If you're going to represent me, you need to know me." - *Youth*

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"[The attorneys ad litem] usually speak with the caseworkers the day of the hearing. . . . It is often difficult to find an ad-litem that will visit a child in the current placement, however they will appear at the hearing and not be in favor of the placement."

- *DFPS Supervisor, Region 6*

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"The main concern with the children's attorneys is that most of the attorneys do not go out and visit with their children. **There have been some cases where the children did not know they had an attorney.** If a caseworker does not go out and see the children every month the Department receives a Sanction. If the attorney does not see the children they receive a slap on the wrist. They should also be held to the same accountability as the [case]workers."

- *DFPS Supervisor, Region 8*

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"I think that ad litem should have to visit with the children they represent and **do more than simply taking our [CPS's] word or other provider's word on how the children are doing.**"

- *DFPS Supervisor, Region 7*

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"It should not be allowed for an attorney to make a recommendation on behalf of their client if they have not visited with him/her or their caregivers."

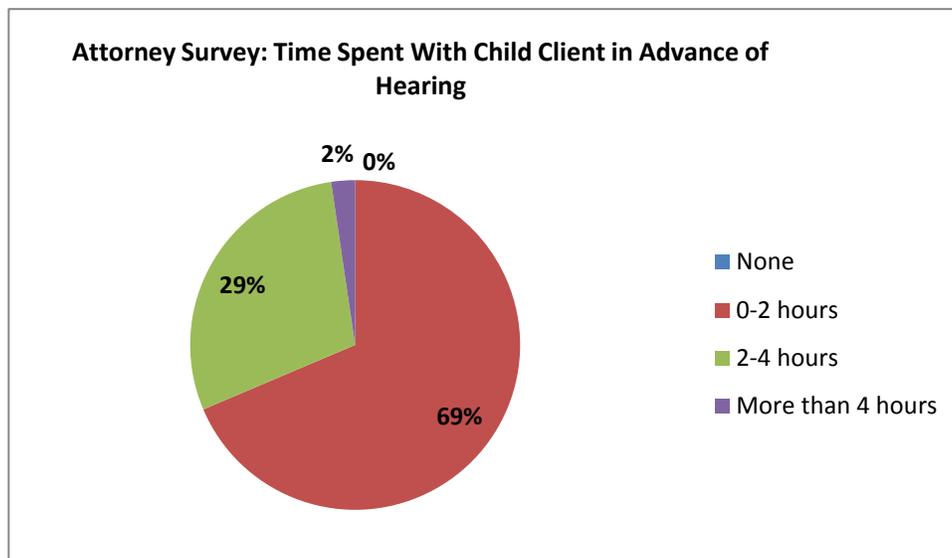
- *DFPS Supervisor, Region 11*

“I know the GAL [guardian ad litem/CASA] is the eyes and ears for the AAL [attorney ad litem] but their roles differ depending on the age of child[.]”

– DFPS Supervisor, Region 7

to the attorneys and other parties and participants to determine whether attorneys are actually meeting with the child clients. Additionally, participants suggested that judges hold attorneys accountable by enforcing the disciplinary provisions referenced in the Family Code.<sup>62</sup>

Other participants indicated that, when a child’s attorney does not meet with the client, the attorney relies on the caseworker or CASA for the information he or she presents at trial. Because neither the CASA nor the DFPS caseworker has the legal duty to advocate for the child’s expressed wishes, the information provided by those entities might not include the child’s wishes. While it is important for the child’s attorney to discover the information held by DFPS and CASA, it does not in any way satisfy the attorney’s obligation to meet with the child and obtain information from the child client directly.



Sixty percent of attorneys reported that they spend at least thirty minutes, but no more than two hours with their child-clients in advance of every hearing. Fifty percent indicated that, in addition to the time they spend with their clients in advance of trial, mediation or hearings, attorneys contact their clients at least once a month. Fifty percent reported that they only see their clients in advance of trial, mediation or hearings. Thirty-four percent of attorneys indicated that they see their clients about once per month.

### ***Understanding Difference Between Attorney Ad Litem and Dual Role***

Second, some children’s attorneys do not understand that the law requires he or she advocate for the child’s expressed wishes when serving as attorney ad litem.

Similarly, some attorneys appointed in a dual role do not understand or fail to advise the court when the dual role is no longer appropriate. A prosecutor from an urban county opined that, when

<sup>62</sup> See TEX. FAM. CODE ANN. § 107.0045 (Vernon 2008).

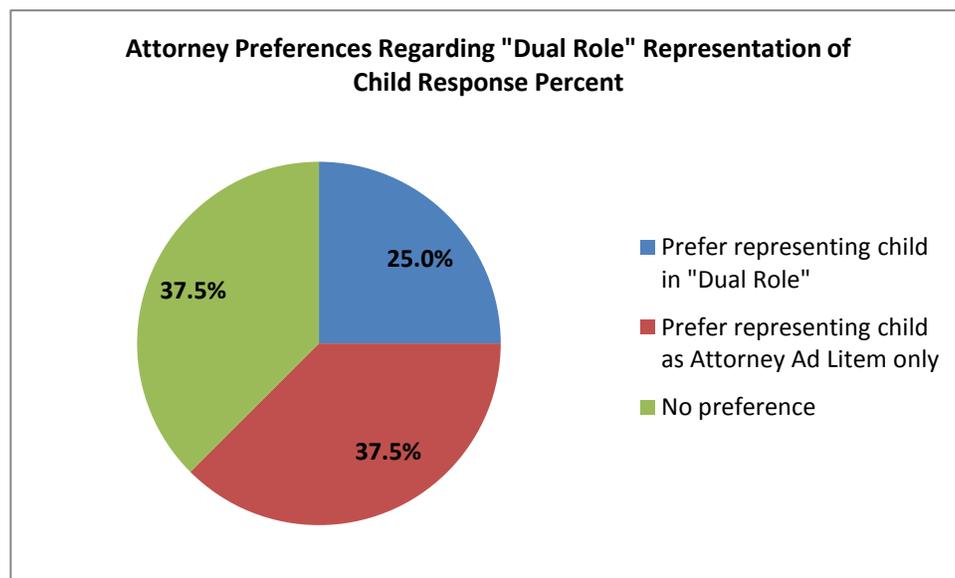
attorneys are appointed to serve in the dual role, “the children suffer because their voices are drown[ed] out by the attorney—who most times uses his/her substitute[d] judgment even when it is not appropriate.” In response to a question regarding the effectiveness of the dual role, another prosecutor stated, “Attorneys often simply substitute their judgment for that of the child, without evaluating the child’s wishes and whether or not the wishes are consistent with the child’s best interest.”

It is unclear whether these dual role attorneys fail to bring conflicts to the court’s attention because they do not recognize the conflict or because they do not feel comfortable asking the judge to remove them from the dual role.

### ***Use of Dual Role***

Of the judges surveyed, 78.3 percent said that they use dual role representation. Only 21.7 percent reported never using the dual role. Of the judges who do not appoint attorneys in a dual role, three judges mentioned that there is “an inherent conflict of interest” in the dual role representation and the duties are “impossible to ethically satisfy.” Others explained that they preferred not to use the dual role because they felt appointing an attorney ad litem *and* a guardian ad litem (“two sets of eyes and ears”) was more beneficial.

Attorneys surveyed were divided regarding their preference for being appointed in a dual role. Of those who responded, 25 percent prefer representing a child in the dual role; 37.5 percent prefer acting as attorney ad litem only; and 37.5 percent have no preference.



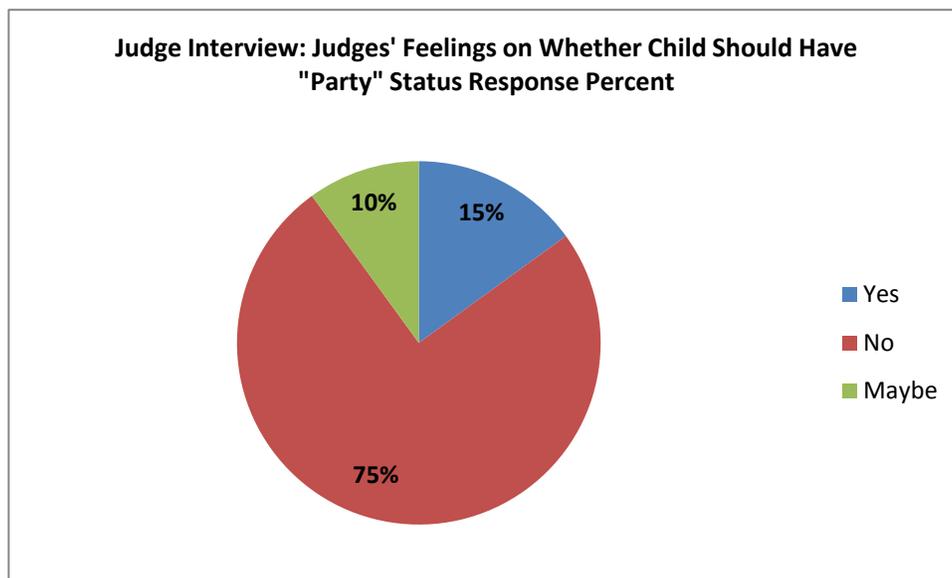
In an open ended question, prosecutors were asked what effect dual role representation has on a case. Many noted that its effectiveness depends on the age and maturity of the child. Some commented that appointment in the dual role was the default in their jurisdictions, and that a guardian ad litem is appointed if a conflict presents itself. However, one prosecutor noted that it “usually forces a late appointment of a guardian who is unfamiliar with the case and unprepared to proceed.” Another prosecutor commented that the dual role “can only work if the attorney works hard at familiarizing herself or himself with each and every aspect of the facts of the case and the

needs of the child and engages all parties.” Other prosecutors indicated that they preferred use of a separate attorney ad litem and guardian ad litem because the guardian ad litem acts as another set of eyes and ears for the case. Attorneys who preferred use of separate roles often commented that the CASA guardian ad litem program in their area was strong. One prosecutor explained “a dual role attorney generally does not have the ability to spend as much time with the child as a GAL [guardian ad litem] does. . . . GALs bring a unique and valuable perspective to the case. Second, dual role attorneys cannot testify at trial. GALs are often key witnesses at trial.”

### ***Child as Party***

Under Texas law, a child who is the subject of a child-protection case is not actually a party to the suit. However, the attorney ad litem appointed to represent the child is directed to “participate in the conduct of the litigation to the same extent as an attorney for a party.”<sup>63</sup>

While a child’s wishes are obviously important to the case, most participants felt that children do not need to be “parties” to the case. The majority of judges who responded to this question (15 of 20, or 75 percent) felt that the child should not be a party. Many of these judges explained that children were adequately represented and their voices were being heard under the existing system. One judge explained that “children often do not have the mental faculty required of them to be a party.” Another judge pointed out that children are rarely in court for hearings and commented, “Why make the child a party if no one is going to bring him to court?”



Only three of the 20 judges (or 15 percent) felt that the child should be a party and that the child was adversely affected by not having party status.

Two of the 20 judges felt that “maybe” the child should be a party, but one explained that giving a child party status would be a “slippery slope.”

<sup>63</sup> TEX. FAM. CODE ANN. § 107.003(1)(F).

### ***Evaluating Child's Needs and Obtaining Appropriate Services***

Several DFPS supervisors, CASA volunteers, and prosecutors participating in the study reported incidences when children's attorneys advocate for or against a particular placement without having visited the child in that environment. DFPS supervisors noted that judges give serious consideration to the opinions of the attorneys ad litem, which is dangerous when the attorney has spent little or no time evaluating the suitability of the placement.

The attorney ad litem's role in evaluating the child's needs and the suitability of a placement is especially important where a child requires a higher level of care. Beyond a child's basic needs (food, clothing, and shelter), there are behavioral and educational needs that must be met as well. Where a child has special needs, it is especially important that the attorney take an active role in making sure the child's needs are met and advocating for any changes that might be appropriate.

In many cases, visiting the child at his or her placement will require a significant amount of travel because children are often placed outside of their home county.<sup>64</sup> Out-of-county placements are especially common for children requiring a higher level of care.<sup>65</sup> If it is determined that a child requires "specialized" or "intense" services, the child must be placed in a facility that can meet those needs, such as a residential treatment center (RTC). Many areas of Texas do not have an RTC and must send children to other areas for treatment. For instance, a judge from Dallas County explained that he frequently sends children to Tyler, Houston, and San Antonio because there are no RTCs in the Dallas area. It is vital that attorneys appreciate the gravity of the decisions made in a child-protection case, and make the effort to fully investigate and advocate for their child clients, including seeing them in their placements. As previously discussed, the Family Code allows the trial court to "authorize an attorney ad litem to [satisfy the duty of meeting with the child client] by conferring with the child or other individual, as appropriate, *by telephone or video conference.*"<sup>66</sup> Notably, some RTCs in the state have videoconferencing equipment, so the option of using the technology to satisfy the duty could be considered.

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<sup>64</sup> See *Annual Report and Data Book 2008*, *supra* note 55, at 125; see also *Videoconferencing Report*, *supra* note 55.

<sup>65</sup> See *Appendix 6340-A: Definitions of Service Levels*, CPS Handbook, Tex. Dep't of Family & Prot. Servs., available at [http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS\\_px\\_6340a.jsp#CPS\\_apx6340a](http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_px_6340a.jsp#CPS_apx6340a).

<sup>66</sup> TEX. FAM. CODE ANN. § 107.004(e) (emphasis added).

## Recommendations

Both state and federal law expressly recognize the importance of timely resolution of child-protection cases.<sup>67</sup> When parents and children do not have legal representation early in the process, permanency is often delayed. One way to promote prompt resolution of child-protection cases is to ensure that both parents and children have the assistance of timely-appointed, well-trained advocates.

Effective representation would hasten a child's reunification with a parent or placement in a permanent home, thereby shortening the time that a child must linger in paid foster care. This would protect family relationships, promote stability, and save taxpayer money. Effective representation would also reduce appeals by parents claiming ineffective assistance of counsel. Such appeals can delay permanency for years, leaving the child in limbo waiting for the issuance of the appellate opinion. If the parent prevails on appeal on an issue of ineffective assistance, the parent is entitled to a new trial, which further delays permanency.

Because of the special nature of these types of cases, the failure of a parent's or child's attorney to adequately perform his or her duties diminishes the quality of the evidence before the court and may result in inappropriate or untimely decisions. Without the benefit of an attorney to conduct an independent investigation of the facts and present evidence, the court only hears one side of the case. In addition to offering evidence, an effective attorney can test the reliability of DFPS's evidence by cross-examining witnesses or pointing out inconsistencies in records. The court's decision is based on the evidence presented at trial and the arguments made by counsel, so the quality of an attorney's performance can have a profound impact on the outcome of the case. These decisions have extremely high stakes and lifelong impacts on children and families, and accordingly, serious consideration must be given to improving representation.

However, finding a solution that works for every jurisdiction in Texas is no easy task. Because each jurisdiction faces unique challenges, some decisions must be made at the local level. Accordingly, judges need to implement representation models that meet the unique needs of their jurisdictions and take an active role in ensuring that attorneys provide quality representation. Judges, as gatekeepers of the judicial system, need to raise the bar to ensure that qualified attorneys are serving on these cases.

Some issues can be addressed at a statewide level. In making recommendations for the entire state, however, one must be mindful that barriers to entering this area of practice (such as training and mentorship programs) might be harmful to areas that already do not have enough practitioners.

Therefore, based on the study results and these concerns, Texas should implement the following recommendations to improve representation in child-protection cases.

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<sup>67</sup> See, e.g., Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 622, 625, 629, 675 (1997); TEX. FAM. CODE ANN. § 263.307 (Vernon 2008) (providing a statutory presumption that prompt and permanent placement of child in safe environment is in child's best interest).

## I. Method of Appointment

### A. *Require Counties to Develop Appointment of Counsel Plan*

The Legislature should require counties/jurisdictions to develop an appointment of counsel plan for attorneys in child-protection cases. The Texas Fair Defense Act, which applies to criminal and juvenile cases, requires judges to develop public plans for the required qualifications and appointment of indigent defense counsel.<sup>68</sup> Unfortunately, there is no parallel for child-protection appointments.

The state could strengthen legal representation in child-protection cases by requiring each county to develop an appointment of counsel plan, detailing training and eligibility requirements, procedures for adding and removing attorneys from the list of eligible attorneys, standards for evaluating attorney performance, and methods of appointment and compensation. As is required in a juvenile case under Section 51.102(b)(2) of the Family Code, the plan should recognize the differences in qualifications and experience necessary for appointment in various types of cases and clients.<sup>69</sup> Each jurisdiction should maintain a list of attorneys available for appointment that specifies the type or difficulty level of case for which the attorney is eligible for appointment (i.e. parent or child client, special needs client, fluency in foreign language, etc.). When an attorney fails to understand the law or adequately prepare for a case, the judge should remove the attorney from the case and, when appropriate, from the appointment list.<sup>70</sup>

The plan should be developed taking into consideration the American Bar Association (ABA) Standards of Practice for Lawyers Representing Children in Child Abuse and Neglect Proceedings, as well as the National Association of Counsel for Children Standards of Representation, and the ABA Standards for Representing Parents in Abuse and Neglect Cases.

### B. *Counties Should Consider the Effectiveness of Various Representation Models*

As the ABA stated in a recent report, “The way legal representation is organized affects the quality of representation[.]”<sup>71</sup> Jurisdictions should utilize models of representation and compensation that optimize the quality of service provided to clients. Because it would be unwise to require one particular representation model for the entire state, each jurisdiction should consider the feasibility and effectiveness of different representation models and implement a system that meets the jurisdiction’s needs.

As discussed in Appendix A, various jurisdictions across the nation have developed innovative systems for providing legal representation. Representation offices staffed with salaried attorneys and support staff, including social workers, seem to be the most effective in achieving reunification of families and timely resolutions. By using social workers and support staff, the representation offices are able to provide more comprehensive service to clients at a lower cost.

While not as effective as representation offices, selecting qualified contract attorneys also seems to ensure that qualified attorneys are appointed. Some states have an agency that manages attorney

<sup>68</sup> See TEX. CODE CRIM. PROC. ANN. art. 1.051 (Vernon Supp. 2010); TEX. FAM. CODE ANN. § 51.102 (Vernon 2008).

<sup>69</sup> TEX. FAM. CODE ANN. § 51.102(b)(2).

<sup>70</sup> See TEX. CODE CRIM. PROC. ANN. art. 26.04(k) (Vernon Supp. 2010) (removal of counsel in criminal case).

<sup>71</sup> Ctr. on Children & the Law, Am. Bar Ass’n, *National Survey of Child Welfare Legal Representation Models* (2009).

qualifications for appointment and selects qualified contract attorneys. The agency reevaluates attorneys' eligibility for contract renewal on an annual basis.

Where using salaried or contract attorneys is not feasible, jurisdictions appointing private attorneys should implement qualification requirements and compensation models that optimize the level of service. Compensating attorneys on an hourly basis (including time spent out of court preparing) seems to be more effective than compensating attorneys on a flat rate per case or per hearing. Where attorneys are compensated based on a flat rate per case or hearing, there is no incentive to spend time outside of court preparing and encourages attorneys to come to court less prepared.

## II. Number of Attorneys Available

### ***A. Areas with Inadequate Number of Attorneys Should Reimburse Reasonable Travel***

Notably, all areas reporting an inadequate number of attorneys also indicated that travel expenses and time were not reimbursed, and attorneys commented that this attributed to their reluctance to take appointments. Counties should adopt a policy and develop guidelines that would allow reimbursement of travel expenses to encourage attorneys from surrounding areas to take the appointments. Alternatively, counties experiencing this problem should consider other representation models and compensation methods, such as individual or law firm contracts or a public defender model, to find a solution that works for that jurisdiction and considers the number of CPS cases on the dockets in that jurisdiction.

## III. Qualifications and Training

### ***A. Required Duties***

Chapter 107 of the Family Code should be revised with regard to duties of attorneys. Currently, the chapter focuses on duties owed by attorneys for children, without any direction regarding representation of parents. Specifically, Section 107.0045, relating to discipline of attorneys, speaks only to those duties applicable to children's attorneys. Attorneys for parents should be subject to similar standards.

### ***B. Ensure that Child's Expressed Wishes are Heard***

When a child is not present in court or available to speak with the judge, the child's attorney, regardless of whether the attorney is serving in a dual role or as the attorney ad litem, should be required to report the child's expressed wishes, if the child is old enough to form an opinion and has conveyed that opinion to the attorney. This could be accomplished through an oral report to the judge, a written statement filed in the case, or through the testimony of a witness.

### ***C. Minimum Training Requirements***

Currently, the Texas Family Code requires an attorney ad litem appointed for a *child* in a CPS case to complete three hours of continuing legal education in child advocacy or have experience determined by the court to be equivalent to that training.<sup>72</sup> However, the currently law contains no training

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<sup>72</sup> TEX. FAM. CODE ANN. § 107.004(b).

requirement for attorneys who are appointed to represent *parents*. This inconsistency needs to be addressed, as attorneys for both parents and children need to receive training.

Chapter 107 of the Texas Family Code should be amended to require child-protection specific training for both parents' and children's attorneys as a prerequisite to appointment. Thereafter, attorneys should be required to attend specialized training annually.

### **1. *Both Parent and Child Representation Issues***

Training should incorporate the different skills necessary for each type of representation (parent and child). Several respondents commented that currently most continuing legal education (CLE) and training opportunities in child-protection law focused on representation of children and spent little or no time on the representation of parents. Training should be comprehensive in covering both. The attorney survey indicated that 89.6 percent of the respondents represented both parents and children, so for most practitioners, training in both areas would be helpful.

### **2. *Multi-Disciplinary Social Issues***

This area of the law is particularly complex and cases are frequently intertwined with social issues. Attorneys must assess their clients' ability to comprehend not only the legal process but the expectations of DFPS. Thus, training for attorneys representing parents and children must go beyond substantive law and include discussion of problems the client might be facing. Specifically, attorneys should receive training on identifying and addressing certain issues their client might be facing, including but not limited to substance abuse, domestic violence, criminal, mental health, education, poverty, immigration, and cognitive difficulties. Attorneys should be provided with information on the services available to their client through DFPS and other organizations. Additionally, attorneys should be provided training on kinship programs and availability of financial assistance for relatives who wish to become permanent caretaker.

Parents' attorneys should receive training on strategies for achieving the best results for parent clients. Many judges commented that some attorneys are overly combative which makes it more difficult for a parent to achieve reunification with the child. Since the structure of a child-protection case involves not only attacking DFPS's allegations, but also showing that the parent is fit to care for his or her children, the case necessarily requires a unique approach. Parents' attorneys should also receive training on assisting the parent client; the attorneys should be provided with techniques on motivating their parent client to complete the service plan and strategies for working with DFPS to obtain appropriate services.

Children's attorneys should be provided with training on child development and the psychological trauma and developmental effects that can result from a CPS case. Additionally, training should emphasize the duties of an attorney ad litem under Family Code Sections 107.003 and 107.004 and possible consequences for not fully performing requirements.

### **3. *Ethical Obligations***

Training should provide a review of the State Bar of Texas Disciplinary Rules of Professional Conduct relating to the required duties of an attorney. Specifically, attorneys should be reminded of obligations to clients, such as the duty to "keep a client reasonably informed about the status of a

“There is a huge volume of attorneys, both appointed and retained, in Region 8 who absolutely violate the spirit of child protection courts and lack adequate knowledge of the Family Code. It makes it very cumbersome to adequately protect children’s interests when there are attorneys involved who fail to understand or properly practice the Family Code. Retained attorneys often lack appropriate experience and training in the area of CPS cases. I would like to see a statutory requirement for training in CPS cases if you are going to practice them at all, NOT just if you are to be appointed.”

- *Attorney from South Central Texas*

matter and promptly comply with reasonable requests for information.”<sup>73</sup> Additionally, “In representing a client, a lawyer shall not: (1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.”<sup>74</sup> Training sessions should discuss these rules in the context of a CPS case and examine potential consequences, both to the lawyer and the case, of noncompliance.

Further, training should discuss that minimal compensation does not minimize the duties owed to a client. Rule 6.01 of the Disciplinary Rules of Professional Conduct allows an attorney to avoid appointment for good cause if “representing the client is likely to result in an unreasonable financial burden on the lawyer.” If an attorney accepts the appointment, however, they are obligated to perform duties to the fullest.

The ethical training should also include recognizing conflicts that may arise in representation, including representing two clients (i.e. both parents or multiple siblings) and representation of a child in the dual role. Attorneys need to be able to recognize conflicts and take the appropriate action.

#### **4. Evidence, Procedure, Trial Skills, and Appellate Practice**

The study revealed that some of the attorneys who are best at understanding the social work side of a case are lacking in trial skills. When asked what type of training parents’ attorneys most needed, a majority of judges mentioned evidence and procedure.

Additionally, the study revealed that there are few attorneys who adequately understand appellate practice. While the court could continue reserving appellate appointments for those select attorneys, all attorneys need to understand the process in order to properly move for new trial or present a statement of points for appeal within the 15 day window after the final judgment is rendered.<sup>75</sup> Thus, all attorneys on a CPS case must understand at least the initial process of preserving issues for appeal.

#### **5. Encourage Retained Counsel to Attend Child-Welfare Law Training**

Several participants in the study indicated that it is not only appointed representation that is deficient. A prosecutor from Dallas County pointed out that the survey questions were focused on appointed attorneys and opined that the study should focus on the deficiencies of retained counsel

<sup>73</sup> Tex. Disciplinary R. Prof’l Conduct 1.03.

<sup>74</sup> *Id.* 1.01(b).

<sup>75</sup> *See* TEX. FAM. CODE ANN. § 263.405(b).

as well. The prosecutor commented, “Appointed attorneys are more likely to know the Family Code sections that relate to CPS and [are] more likely to know CPS policy.”

#### ***D. Availability of Training***

Texas needs to make it a priority to provide better legal training at no cost or very low cost for attorneys representing children and parents. Attorneys from rural counties indicated that training was not available or that training opportunities were very limited. Some rural counties offer training but only once a year. To make the training more readily accessible in all areas year-round, the training program should be made available online or by video. Additionally, online training material indexed by topic could be beneficial to practitioners who need a quick refresher in a particular area.

The Children’s Commission should work collaboratively with the State Bar of Texas and local bar associations to increase the availability of free or low cost training for attorneys who represent DFPS, parents, and children in CPS cases.

### **IV. Timing of Appointment**

#### ***A. Timing of Appointments for Parents***

Texas Family Code Section 107.013 should be amended to clarify the time at which an attorney for a parent must be appointed. Subsections (a) and (c) should be revised to include a clear deadline for appointment of attorneys for parents from whom the child is removed. Specifically, appointment of the parent’s attorney should be made “immediately after the filing, but before the full adversary hearing,” as is required for the appointment of a child’s attorney.<sup>76</sup>

Additionally, the statute should be amended to allow a presumption of indigence, or alternatively, omit the requirement of a parent’s affidavit and a hearing on indigence prior to appointment of parent’s counsel. These practices often delay appointment and result in parents not having legal representation during a crucial time in the case. Several jurisdictions already follow the practice of immediately appointing parents’ counsel. The jurisdictions report that the earlier appointment of counsel for parents results in better outcomes, and they justify the practice because most all parents (more than 99 percent) involved in a CPS case are indigent and attorneys can easily be removed from a case if the parent is not indigent. Section 107.013 of the Texas Family Code should be amended accordingly to require courts to appoint an attorney unless the parent affirmatively refuses counsel. If it is later determined that a parent is not indigent, the attorney should be dismissed from the case, if not retained by the parent. Thus, the benefits outweigh the cost of appointment for parents who are not indigent.

#### ***B. Ensure Parents are Advised of Right to Counsel***

The study revealed that many parents are not aware of their right to appointed counsel. At least one judge stated he used parents’ ignorance as justification for not appointing attorneys early in the process. While written materials from DFPS must inform a parent about the “right to hire counsel,”<sup>77</sup> nothing requires the judge to tell a parent about that right. Further, nothing requires either DFPS or the judge to inform parents of their right to appointed counsel if they are indigent.

<sup>76</sup> See TEX. FAM. CODE ANN. § 107.012.

<sup>77</sup> TEX. FAM. CODE ANN. § 262.109(c)(4) (Vernon 2008).

Relying on DFPS's duty to provide a written admonishment of a parent's right to "hire" counsel when the vast majority of the parents involved in child-protection cases are found to be indigent and eligible for a court-appointed attorney seems ineffective. The Family Code should be amended to require DFPS to admonish parents of their right to a court-appointed attorney and the procedures for requesting an appointed attorney.

## **V. Duration of Appointment**

### ***A. Clarify Duration/Continuation of Appointment***

The Family Code should be amended to provide procedures for the duration and continuation of representation. Specifically, the appointment of a parent's attorney should continue after the final order is issued to allow for the filing of a motion for new trial or a statement of points for appeal. The parent's attorney should remain on the case until the period has passed for the filing of post-trial motions or a new attorney is appointed. With respect to a child's attorney, representation should continue until the child reaches permanency.

## **VI. Compensation**

### ***A. Fair and Adequate Compensation***

The quality of legal representation generally relates to the level of compensation. Certain methods of compensation and fee structures may create disincentives. For instance, a low flat fee, per hearing or per case, is a disincentive to an attorney to spend a great deal of time preparing for a case. While it is recognized that there will always be some lawyers truly dedicated to this area of practice without monetary incentive, it would be beneficial to structure compensation in a way that optimizes attorney performance.

Across the board, most jurisdictions are faced with budget pressure from the counties that pay for court-appointed representation. In order to stay within the allocated budget for attorney's fees, or to avoid criticism from a commissioner's court, judges feel pressured to keep attorney costs low. In some areas, this involves judges cutting the hours billed by attorneys, which effectively denies them payment for work already performed. Attorneys recognize the reality that they might not be paid for much of their out-of-court preparation, and in some cases, this can motivate attorneys to over-bill to ensure they are compensated for the time actually spent. It seems evident that county budgetary problems are, to an extent, dictating the level of service that an attorney provides in a case.

Many attorneys said that judges expect them to be satisfied with the "emotional payment" that comes from taking these cases. While many attorneys noted that they take these cases out of civic duty and are not motivated by the money, it is not equitable or reasonable to expect quality legal services for free. Moreover, this approach is inconsistent with the nationwide effort to have attorneys specialize in this area of practice. Without adequate compensation, no attorney can afford to specialize in this one area of law.

As is required in the criminal context, courts should be required to adopt fee schedules that state reasonable fixed rates (or maximum and minimum rates), taking into consideration reasonable and

necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.<sup>78</sup> The appointed attorneys shall be paid a reasonable fee for performing necessary services, “based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel[.]”<sup>79</sup> The courts should develop “a form for the appointed counsel to itemize the types of services performed,” and require that attorneys submit a completed itemized form to receive payment.<sup>80</sup>

### ***B. Create Other Sources of Funding***

Because local budgets are growing tighter, a workgroup formed by the Children’s Commission should examine how Texas could fund attorney ad litem appointments in a manner that provides adequate compensation, and promotes an equitable burden on the governmental agencies involved in the lawsuit.

### ***C. Implement Compensation Model that Optimizes Attorney Performance***

While it might be unwise to force one particular model on all jurisdictions, survey respondents indicated that salaried attorneys, contract attorneys, and hourly compensated private attorneys were most effective with the model using salaried and contract attorneys being the most favored. Where feasible, counties should consider opening representation offices staffed with salaried attorneys, contract with qualified attorneys, or compensate appointed private attorneys on a hourly basis, in that order of preference. These models seem to be the most equitable and most likely to optimize attorney performance.

### ***D. Adequate and Fair Compensation for Reasonable and Necessary Work***

Courts must provide adequate compensation for attorney’s time spent preparing for a case.<sup>81</sup> Collecting evidence and interviewing clients and potential witnesses is an essential part of effective representation. Judges should not encourage attorneys to rely on the information collected by DFPS or the guardian ad litem. Putting attorneys in this situation may also cause conflict and resentment between these stakeholders because others view the attorney as not doing his or her job by trying to get information from others involved in the case. Similarly, judges should not regard an attorney’s out-of-court investigation as unnecessary, since it is required by statute.

During study interviews, several judges expressed opinions that visiting with a child client out-of-court is less important than time in court. To be an effective advocate, the opposite is true, and the Family Code recognizes the importance of interviewing the child and conducting discovery by mandating that the child’s attorney partake in these activities.<sup>82</sup> The Family Code mandates that an attorney for a child “participate in the conduct of the litigation to the same extent as an attorney for a party.” Thus, the court’s influence, whether communicated expressly or indirectly by refusing adequate compensation for out-of-court time, encourages attorneys to rely on other parties for discovery, in conflict with the statutory mandate.

<sup>78</sup> See TEX. CODE CRIM. PROC. ANN. art. 26.05(c) (Vernon Supp. 2010) (compensation of appointed criminal counsel).

<sup>79</sup> See *id.* art. 26.05(a).

<sup>80</sup> See *id.* art. 26.05(c).

<sup>81</sup> See *id.* art. 26.05(a)(2) (providing that, in criminal cases, appointed counsel “shall be paid a reasonable attorney’s fee for . . . reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires”).

<sup>82</sup> See TEX. FAM. CODE ANN. § 107.003(1).

Billing statements that detail the time spent preparing and meeting with client and other persons with knowledge in the case could also be used as a method of evaluating whether the attorney is meeting with his client.

Where a detailed billing statement is submitted and substantiated, attorneys should be compensated for all of the reasonable and necessary fees and expenses, including expenses for investigation.<sup>83</sup> Also, because visiting the client in his or her environment is vital to understanding the client and building trust, attorneys should be reimbursed for their reasonable and necessary travel expenses.

Many attorneys expressed frustration that judges drastically reduced the hours billed without explanation. This practice should be eliminated, as it promotes instability within the CPS case practice and is a disincentive for attorneys that might otherwise be interested in focusing in this area of the law.

As is required in the criminal context, a judge who disapproves of a requested amount of payment should be required to “make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.”<sup>84</sup> Also, as is provided in the criminal context, “[a]n attorney whose request for payment is disapproved” shall be permitted to “appeal the disapproval . . . by filing a motion with the presiding judge of the administrative judicial region.”<sup>85</sup> The Texas Family Code should be amended to add provisions similar to those applicable to criminal cases in Article 26.05 of the Texas Code of Criminal Procedure.

Additionally, attorneys should receive payment reasonably promptly after submitting an itemized billing statement.<sup>86</sup> The practice of delaying payments until the end of a case causes frustration among practitioners and places the burden of financing legal representation of a case on the backs of the attorneys when the duty resides with the court and the county.

### ***E. Incentives for Attorneys who Specialize in Child-Welfare Law***

Since 2009, qualifying Texas attorneys may apply to become certified as child-welfare specialists. This certification, offered through the National Association of Council for Children and approved by the Texas Board of Legal Specialization, is given to attorneys who have a sufficient amount of experience and who pass a certification examination. Jurisdictions should consider providing an incentive to attorneys who receive certification, such as giving them priority on the appointment list.

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<sup>83</sup> See TEX. CODE CRIM. PROC. ANN. art. 26.05(d) (providing that counsel in noncapital criminal case “shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts.”).

<sup>84</sup> See *id.* art. 26.05(c).

<sup>85</sup> See *id.*

<sup>86</sup> See *id.* (permitting counsel to appeal judge’s failure to act “by the 60<sup>th</sup> day after the date the request for payment is submitted.”).

## VII. Communication with Client

### 1. *Clarify Requirement to Meet with Client Before Each Hearing*

Section 107.004(d) of the Texas Family Code was intended to require meaningful client meetings between attorneys and child clients before each hearing. However, the survey revealed that attorneys are not meeting this requirement. Some attorneys disregard the requirement altogether (likely due to a lack of enforcement), while others attempt to satisfy the duty by sending a paralegal or by meeting with a client at the courthouse a few minutes before the hearing.

The meeting required by Section 107.004 must be meaningful—allowing for candid dialog and confidentiality—which cannot be had in the hallway of the courthouse a few minutes before a hearing. Section 107.004(d) should be clarified to require attorneys to meet with their client outside of court. Meeting with the child client the day of the hearing is not sufficient. While it is understood that in some situations meeting with the child at an out-of-town placement is unfeasible, the attorney still must make efforts to communicate with the client prior to the hearing. An attorney must understand the child’s objectives for representation in advance of the hearing so that the attorney can properly investigate issues and prepare for the court appearance.

Amending the statute is justified for several reasons. Many times children do not attend the court proceedings, so an attorney cannot count on the child being present; if the child does not attend court, it is too late to speak to the child before the hearing. Also, children might not be comfortable to speak with their attorneys candidly and honestly in the courthouse setting. Accordingly, the attorney would be more likely to get an accurate understanding of the child’s wishes by speaking with him or her in a comfortable/nonthreatening environment. Even more importantly, the attorney needs to see where and under what conditions the child is living.

Further, the attorney and child client must develop objectives for representation and a legal strategy; tasks which cannot be left to a non-lawyer assistant. Under certain situations, sending a social worker or other non-lawyer to meet with the child may be very helpful and appropriate. However, that meeting does not satisfy the attorney’s obligation to meet with the client.

### 2. *Statement of Compliance*

When the child is not present in court, the attorney should be required to file a statement evidencing compliance with Section 107.004(d). This will help the court to ensure that clients are receiving adequate legal representation and make it easier to enforce the attorney’s duty to meet with the client.

## VIII. Quality of Representation

### A. *Statewide Minimum Standards*

While some discretion should be left to the jurisdictions, consideration should be given to implementing certain statewide standards. The Children’s Commission should convene a stakeholder group to make recommendations to improve the quality of legal representation and the proper enforcement of requirements.

### ***B. Encourage counties to enact more stringent requirements***

The survey revealed that several jurisdictions required additional training or mentoring requirements above and beyond the current statewide, statutory requirement of three-hour minimum requirement set by the state.<sup>87</sup> In the counties that have imposed these types of requirements, opinions on attorneys' quality of representation seem to be more favorable.

Some counties indicated that they were happy with the workings of their current systems and did not want it to be changed by statewide policy. For instance, several survey participants from Bexar County stated that the county required attorneys to have 40 hours of training before being eligible for appointment; these participants felt the training requirements worked well in Bexar County and expressed that they did not want statewide policy to change the requirements.

## **IX. Accountability**

“Judges need to make attorneys more accountable to cases, just as they do for CPS caseworkers. **Stop appointing the attorneys who don't show quality work.** It's obvious who visits their clients and who doesn't. It's obvious who is passionate and who isn't. Sadly, some of these lawyers think everything can be handled through their blackberry.”

- DFPS Supervisor, Region 6

### ***A. Develop a Tracking Tool***

The State Bar of Texas should develop a tracking tool to monitor compliance with training requirements. The State Bar of Texas currently has the capacity to track generally the number of hours of CLE each attorney attends annually. If CLE courses are identified as training that meets the requirements, the State Bar can assess how many and which attorneys attended the qualifying courses.

### ***B. Encourage Judges to Take an Active Role***

Courts have great ability to positively influence the quality of legal representation. Judges may implement prerequisites for appointment. Judges are also in the best position to observe attorney performance and assess whether attorneys are fulfilling their duties to their clients. Additionally, judges have the unique capability to inspire and impress upon the attorneys the importance of effective representation by providing training and publications for CLE seminars.

### ***C. Manage Appointment List***

Before being appointed to a case, an attorney should be required to submit an affidavit swearing that the attorney is familiar with the applicable law and standards in CPS cases, understands his or her ethical duties, and recognizes that if the attorney fails to fulfill all duties he or she may be subject to sanction and/or removal from the appointment list.

In creating and maintaining the list of eligible attorneys, judges should utilize a system to document each attorney's completion of training (both required and additional), special skills and expertise, and quality of performance. Judges should regularly review the list of attorneys and eliminate those attorneys who frequently fail to carry out their duties.

<sup>87</sup> TEX. FAM. CODE ANN. § 107.004(b).

#### ***D. Evaluate Attorney Performance***

Judges should use an evaluation tool to assess attorney performance during hearings and implement a system for educating or mentoring those attorneys who are not prepared, fail to carry out their duties, or do not understand the applicable law. Because the parents and children involved in these cases often do not have the sophistication to identify deficiencies in an attorney's performance, it is essential that judges take an active role in monitoring the quality. While many courts indicated that attorney performance was evaluated by judge's observation, the study did not indicate that formal review procedures or criteria are in place in any jurisdiction surveyed. Many respondents from all groups surveyed thought that judges need to take a greater role in policing the quality of representation.

Participants frequently suggested that judges make sure that attorneys are meeting and communicating with their clients. Several participants suggested that the court begin each hearing by asking the attorney when the attorney last saw the client or requiring the attorney to submit detailed billing statements at each hearing, detailing visits with the client.

A stakeholder group convened by the Children's Commission should examine whether developing standards for representation and whether creating a tool to evaluate the quality of legal representation would be helpful.

#### ***E. Enact and Enforce Penalties***

The legislature (or alternatively, each jurisdiction) should be attentive to whether attorneys violate standards or fail to fulfill their ethical duties of representation.

## **Conclusion**

Texas statute provides the right to court-appointed representation to children and indigent parents involved in CPS suits, but adequate representation is not always provided. Too often the representation is perfunctory and so deficient as not to amount to representation at all. Meanwhile, the children and parents are subjected to the trauma of a CPS case without proper advocacy to guide their course. At the root of the problem are structural deficiencies in the appointed legal representation system, including insufficient funding and lack of oversight.

Texas law does not provide any standards for management or oversight of attorney appointments in CPS cases. The Texas Family Code currently has statutory requirements regarding an appointed attorney's duties and minimal training, but these requirements are not actively enforced. Throughout the study, attorney and judge participants offered various explanations for why the existing requirements were not followed or enforced. The most common reason for noncompliance is related to funding. Counties have broad discretion in the administration and funding of court appointments for CPS cases. Decisions are heavily influenced by the constraints of local budgets, often without consideration of the aggregate. For instance, in an effort to keep legal fees under control, judges delay appointments of attorneys for parents and often provide inadequate attorney compensation. Attorneys often fail to fulfill their duties because they are insufficiently compensated for the level of representation that is required. The bottom line, according to many: there is not enough money to do the job right.

Variations in judicial practices across jurisdictions also contribute to the inconsistent quality of appointed legal services. Jurisdictions manage appointments under their own local rules, making it difficult to identify shortcomings, as there are no uniform benchmarks for comparison. Although courts must have flexibility regarding appointments and compensation, the lack of guidelines under the existing system allows so much discretion that it sometimes results in abuse and favoritism, as well as low-quality representation.

Inadequate legal representation results in poor outcomes for families. Cases are drawn-out, family relationships are forever broken, and children linger in foster care for years. Not only are the poor outcomes emotionally traumatizing to the families involved, they also come at a substantial cost to the taxpayer. The small savings to counties by skimping on legal services pales in comparison to the state costs associated with providing foster care for children and remedial services to families.

Enacting a system for oversight and statewide minimum standards for appointment of counsel would provide a guideline for compliance and ensure the timely appointment of qualified attorneys. The system, however, should leave an appropriate amount of discretion with judges and counties. As a practical matter, judges and attorneys should work together to ensure legal representation works for everyone involved. By demanding excellence of each other, judges and attorneys can work to elevate this area of practice. Hopefully, this report will increase awareness and lead to both statutory and practical changes to improve the quality of appointed legal representation in CPS cases and result in better outcomes for Texas' children and families.

## APPENDIX

## Appendix A: Representation Model

### National Case Studies

Over the last few years, various jurisdictions across the nation have recognized the importance of quality representation for all parties in the child-welfare system.<sup>88</sup> These jurisdictions have acknowledged that poor representation leads to devastating effects to the families involved and huge costs to the states. When a child is removed, the state must provide foster care support payments, services, caseworker and court time, and resources to children and families who may have avoided the need to be separated in the first place or could have been safely reunited sooner. When the parties have an effective voice in the process, they are able to address problems more efficiently. In recognizing these principles, several jurisdictions have developed specialty offices or programs to provide representation in an innovative way. Some of these approaches are presented below as a model of a system that has worked in other areas of the United States and in Texas.

As a component of the legal representation study, Commission staff evaluated existing representation models within the State of Texas and nationwide. Many jurisdictions, included in this report, noted the same problems ensuring quality legal representation for all parties, including inconsistency in attorney compensation,<sup>89</sup> inadequacy in amount of attorney compensation,<sup>90</sup> deficiencies and variance in attorney skill,<sup>91</sup> lack of communication between attorney and client,<sup>92</sup> attorneys failing to represent parents outside of court appearances,<sup>93</sup> and attorneys failing to properly prepare for hearings<sup>94</sup>.

Several jurisdictions have responded by crafting innovating solutions to address these issues. One type of representation model that stands out from the rest is the Institutional Model, which employs attorneys, social workers, and paralegals to provide clients with comprehensive service. The Oversight Agency Model, which utilizes a state or county-run oversight agency, and the Contract Attorney Model were also studied.

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<sup>88</sup>Ctr. on Children & the Law, Am. Bar Ass'n, *Summary of Parent Representation Models* 1 (2009), <http://www.abanet.org/child/parentrepresentation/Summary%20of%20Parent%20Representation%20Models.pdf>.

<sup>89</sup> See, e.g., Ctr. on Children & the Law, Am. Bar Ass'n, *Legal Representation for Parents in Child Welfare Proceedings: A Performance-based Analysis of Michigan Practice* 4 (2009), [http://www.abanet.org/child/parentrepresentation/michigan\\_parent\\_representation\\_report.pdf](http://www.abanet.org/child/parentrepresentation/michigan_parent_representation_report.pdf) (noting that Michigan places burden of funding representation on its counties without support from state causing compensation to vary).

<sup>90</sup> *Id.* at 7 (“Compensation is inadequate” which “reflects as much on a failure to appreciate the complexity of this type of legal representation as on budgetary constraints,” and noting, “[w]ith few exceptions, attorneys representing parents are not compensated for ‘out-of-court work[.]’”).

<sup>91</sup> *Id.* at 4 (noting Michigan attorney “attitudes about their ethical responsibilities” and “recognition of the ethical and practical requirements of representing parents in abuse and neglect proceedings varies considerably.”); Minn. Jud. Branch, *Report of Children’s Judicial Initiative: Parent Legal Representation Workgroup to Minnesota Judicial Counsel* (2008) (“quality of representation . . . varies from county to county.”).

<sup>92</sup> *Legal Representation for Parents in Child Welfare Proceedings: A Performance-based Analysis of Michigan Practice*, *supra* note 89, at 4 (noting “hallway exchanges of information are accepted as a substitute for private office interviews, overlooking the inherent value of office consultation.”).

<sup>93</sup> *Id.* at 5 (noting Michigan attorneys “do not always advocate for their clients during the months or weeks between court appearances.”).

<sup>94</sup> *Id.* at 6 (“[O]ut-of-court work is essential to guaranteeing that the client is successful in reuniting with his/her children” but “[u]nfortunately, data from this study show that most Michigan attorneys do little out-of-court advocacy”).

## Institutional Model

The “institutional model” gets its name from its bringing together of multi-disciplinary professionals to provide clients with comprehensive services both in and out of the courtroom. Like a public defense system, this model primarily uses salaried staff attorneys to provide legal representation. This model provides the benefits of in-house supervision, training, and support staff such as investigators, social workers, and paralegals.<sup>95</sup>

This model appears to be successful, in part, because it allows the office to provide both advocacy and legal advice inside and outside of the courtroom. By using non-legal professionals, offices that use this approach can incorporate social work services at a much lower rate than attorneys’ fees. Having these services available helps clients to complete services and achieve permanency more quickly, which results in children spending less time in foster care.

This representation model can be very beneficial for parents. Parents in child-protection cases may feel alienated by social workers who remove their children from their care, those social workers may not be as effective in explaining and motivating parents to develop and complete a service plan. With the institutional model, the parent has the benefit of a social worker whose allegiance is to the parent only. That loyalty builds trust with parent clients who benefit immensely from that working relationship.

This model has already tried and proven effective in one Texas County. Both the Office of Child Representation and Office of Parent Representation use institutional models to provide clients with legal representation and the assistance of case workers. For a more detailed discussion, please see the discussion of the [Travis County Representation Offices](#) on page 74.

### ***New York Center for Family Representation, Inc.***

The Center for Family Representation, Inc. (CFR) in New York City provides high-quality comprehensive representation to parents involved in child-protection cases. CFR recognized that many experts in the field were calling for “an approach that would provide comprehensive services to families, early on, before a problem or crisis became a danger to a child – and, should foster care be inevitable, an approach that could continue providing services to help the family reunify safely.”<sup>96</sup> In response, the CFR designed a comprehensive approach providing each parent client with a “Community Advocacy Team” consisting of an attorney, a social worker, and a parent advocate (a parent who has experienced the CPS system and has been successfully reunited with his or her children).<sup>97</sup> Under CFR’s model, parents are given an advocate team early on that provides additional referrals to services such as substance abuse treatment and counseling. CFR’s social workers and parent advocates accompany parents to meetings to insure protective concerns are addressed while helping parents stay engaged in every aspect of the process. Traditionally, state caseworkers have not had this same effectiveness because they were responsible for “both investigat[ing] the parent and offer[ing] the parent services,” so most parents did not trust the caseworkers.<sup>98</sup> The CFR approach is

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<sup>95</sup> *Id.* at 55.

<sup>96</sup> Cen. For Family Representation, Inc., *Bringing Innovative Legal Services to Scale, A Brief History of CFR’s Community Advocacy Teams: from Pilot to Promise* (2010), [http://www.cfrny.org/new\\_legal.asp](http://www.cfrny.org/new_legal.asp).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

effective because it gives parents confidential advocacy in addition to social services when a risk to their child is first identified.<sup>99</sup> If the case goes to court or the children are removed, CFR attorneys represent the parents until the case is over.<sup>100</sup> In some cases, CFR attorneys and social workers continue to work with clients after the end of a court case to secure better housing and job training for the client in a wrap-around approach aimed at sustaining the reunification.<sup>101</sup>

During its initial pilot phase between 2004 and 2005, the CFR served 75 families a year.<sup>102</sup> In situations where representation began during the child protective investigation prior to removal, the program was successful in avoiding foster care in 95 percent of situations.<sup>103</sup> Where representation began after a parent had been charged with neglect and a child placed in care, the program boasted an average foster care stay of 4.5 months, as compared to a statewide average of more than four years.<sup>104</sup>

Since its pilot phase, the program has grown and now serves more than 600 new families a year.<sup>105</sup> Of the families involved in the CFR program, in 50 percent of the cases, children never enter foster care.<sup>106</sup> Of those who do enter foster care, the children of families involved in the CFR program spend, on average, 73 percent less time in care.<sup>107</sup>

According to its website, the Center cost “a fraction of the cost of foster care: foster care costs between \$18,000 and \$49,000 per child per year, while the annual cost of CFR’s team is between \$4000 and \$6600 per family.”<sup>108</sup> The Center’s operating revenue is derived from government contracts for parent representation and support from private foundations, corporations, and individuals. The program also is successful at keeping children from reentering foster care. Of the children that were part of the CFR program, less than 1 percent reentered foster care, as compared with the statewide figure of 11.4 percent.<sup>109</sup>

### ***Bronx Defenders***

New York is also home to the Bronx Defenders, an organization providing high-quality comprehensive representation to parents involved in a child-protection case.<sup>110</sup> The Bronx Defenders, like CFR, employs an institutional model of representation, including a salaried staff of lawyers, investigators, social workers and parent advocates. The program began in 2003, representing criminal clients who had concurrent Family Court cases. In 2007, Bronx Defenders was selected by the City of New York to expand their successful interdisciplinary team model and

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Cen. For Family Representation, Inc., *Family Matters Newsletter* 3 (2009), [http://www.cfrny.org/pdf/newsletter\\_winter09.pdf](http://www.cfrny.org/pdf/newsletter_winter09.pdf).

<sup>102</sup> *Bringing Innovative Legal Services to Scale, A Brief History of CFR’s Community Advocacy Teams: from Pilot to Promise*, *supra* note 96.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Family Matters Newsletter*, *supra* note 101.

<sup>110</sup> *Summary of Parent Representation Models*, *supra* note 88, at 11.

became the first institutional provider of parent representation in the Bronx Family Court.<sup>111</sup> In addition to providing representation, the Bronx Defenders also advocate for policy and systematic reform.

### ***Brooklyn Family Defense Project***

The Brooklyn Family Defense Project (BFDP) provides representation to more than 800 families each year that are at risk of losing custody of their children.<sup>112</sup> The institution started in 2007 on a New York City contract to fill a gap in Family Court representation for underprivileged parents in custody and neglect hearings.<sup>113</sup> The City awarded three such contracts, the other two recipients being the New York Center for Family Representation and the Bronx Defenders.<sup>114</sup> BFDP staff attorneys, who are affiliated with Legal Services NYC, are appointed by judges to represent parents after the judge makes a finding of indigence. BFDP recognizes that many of their clients face challenges such as homelessness, mental illness, physical disabilities, addiction, and family violence. BFDP strives to address these issues and “provide high quality legal representation to protect parents’ due process rights while promoting access to the services necessary to build safe and stable families.”<sup>115</sup> To accomplish this mission, BFDP attorneys work collaboratively with a team of social workers, paralegals, and parent advocates, similar to the model in the other New York offices. BFDP also works closely with the New York University School of Law’s Family Defense Clinic, the Hunter School of Social Work, and other local schools to receive added support on cases and help train new generations of family defense professionals.<sup>116</sup>

“Our clients, first of all, they’re poor. The system is totally stacked against them. Everybody in the system is telling them that they’re bad a parent. ... A lot of our cases are just about poverty.”  
- Lauren Shapiro, Director of the Brooklyn Family Defense Project

Currently, BFDP has roughly 1,500 open cases, each of which takes an average of two years to complete.<sup>117</sup> While the cases are open, about half of the children are in foster care and half remain at home.<sup>118</sup> During this time, BFDP provides not only legal services, but also works to ensure that its clients have other services to help parents overcome a lack of basic necessities such as housing or food.

<sup>111</sup> The Bronx Defenders, *Family Defense* (2009), <http://www.bronxdefenders.org/our-work/we-fight-keep-families-together>.

<sup>112</sup> Legal Services NYC – Brooklyn Family Defense Project, [http://www.legalservicesnyc.org/index.php?option=com\\_content&task=view&id=89&Itemid=129](http://www.legalservicesnyc.org/index.php?option=com_content&task=view&id=89&Itemid=129).

<sup>113</sup> Samuel Newhouse, *In Brooklyn, An Institution Dedicated to Keeping Families Whole*, BROOKLYN DAILY EAGLE, Sept. 15, 2010, [http://www.brooklyn eagle.com/categories/category.php?category\\_id=4&id=38079](http://www.brooklyn eagle.com/categories/category.php?category_id=4&id=38079).

<sup>114</sup> *Id.*

<sup>115</sup> Legal Services NYC – Brooklyn Family Defense Project, *supra* note 112.

<sup>116</sup> *Id.*

<sup>117</sup> Newhouse, *supra* note 113.

<sup>118</sup> *Id.*

### ***Detroit Center for Family Advocacy***

The Detroit Center for Family Advocacy (CFA) provides legal advocacy and social work services to low-income families to prevent the unnecessary placement and prolonged stay of children in foster care.<sup>119</sup> CFA lawyers, with the assistance of social workers and parent advocates, use legal mechanisms—such as guardianships, child custody or personal protection orders, and educational advocacy—to enable family members to protect and provide for children without the need for expensive and traumatic out-of-home placement. The CFA also assists kinship and other caregivers to overcome legal obstacles in adopting or obtaining permanent guardianship, and allowing children to exit government foster care.

CFA is organized under the University of Michigan Law School and accepts cases involving families who reside anywhere in Detroit, although its primary focus is on the Osborn neighborhood, which has one of the highest rates of removal in the state.<sup>120</sup> The Center receives most of its referrals from the North Central Children’s Services District, which services the Osborn neighborhood.<sup>121</sup>

CFR accepts both child-protection and foster care cases, but is selective in which ones it takes on.<sup>122</sup> Specifically, CFR only accepts child-protection cases in which the child-protection agency has made a finding of abuse or neglect by a preponderance of evidence and identified a low to high (but not immediate) risk warranting the provision of services.<sup>123</sup> Additionally, to be eligible for CFR assistance in a CPS case, the CFR must determine that legal advocacy on behalf of the parent, guardian, or caretaker will help that person provide a safe and stable home for the child. For CFR to take a foster care case, the child must be in foster care, and the provision of legal services to a potential permanent caregiver could remove obstacles to the child exiting from care and could facilitate permanent placement.<sup>124</sup>

The CFA receives financial support from the Wayne County Department of Child and Family Services, the University of Michigan and other private donors.<sup>125</sup>

### ***Los Angeles Dependency Lawyers, Inc.***

Los Angeles Dependency Lawyers, Inc. (LADL) is a private, non-profit organization that provides representation to parents in Los Angeles County dependency court.<sup>126</sup> LADL is comprised of an executive office and four law firms, totaling 109 lawyers.<sup>127</sup> LADL’s staff also includes social workers and investigators.<sup>128</sup> LADL provides representation to 97 to 98 percent of the parents in the Los

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<sup>119</sup> Detroit Center for Family Advocacy Homepage, <http://www.law.umich.edu/centersandprograms/ccl/cfa>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*; *Zero to Three Secondary Prevention Services & CPS Involvement*, Children’s Trust Fund 2–3, [http://www.michigan.gov/documents/ctf/CPS\\_Dispositions\\_0-3\\_Eligibility\\_257148\\_7.pdf](http://www.michigan.gov/documents/ctf/CPS_Dispositions_0-3_Eligibility_257148_7.pdf).

<sup>124</sup> Detroit Center for Family Advocacy Homepage, *supra* note 119.

<sup>125</sup> *Id.*; Detroit Cen. for Family Advocacy, *An Innovative Model to Reduce the Number of Children in Foster Care*, <http://www.law.umich.edu/centersandprograms/ccl/specialprojects/Documents/CFA%20Final%20Brochure%209-09.pdf>.

<sup>126</sup> Los Angeles Dependency Lawyers – About Us, [http://www.ladlinc.org/About\\_Us.htm](http://www.ladlinc.org/About_Us.htm).

<sup>127</sup> *Id.*

<sup>128</sup> *Summary of Parent Representation Models*, *supra* note 88, at 5.

Angeles County child-protection system.<sup>129</sup> Attorneys are appointed to represent clients at the first calling of the case, and representation normally continues until the court is no longer involved in the case.<sup>130</sup>

### ***Children’s Law Center of Los Angeles, California***

The Children’s Law Center of Los Angeles (CLC) is a nonprofit, public interest legal organization that provides representation to children in child-welfare cases.<sup>131</sup> CLC’s staff, made up of attorneys and other professionals, advocate for the child both in and out of court to advocate for the services and support that each child needs.<sup>132</sup> The Center was created by the Los Angeles Superior Court in 1990 to serve as appointed counsel for children and has since grown to a 220 person staff of lawyers, paralegals, and investigators.<sup>133</sup> CLC is appointed to represent “more than 90% of the nearly 30,000 children under the jurisdiction of the [Los Angeles County] dependency court.”<sup>134</sup> CLC attorneys represent children as attorneys ad litem or in a dual role.<sup>135</sup>

On a broader level, CLC advocates for systematic reform on local, statewide, and national levels.<sup>136</sup> CLC also promotes system improvement by making training material available on state and federal law, as well as appellate case updates. CLC is funded by private donations, government contracts, and grants.<sup>137</sup>

### ***KidsVoice, Pittsburgh, Pennsylvania***

Founded in 1908 as the Legal Aid Society of Pittsburgh, KidsVoice provides full-service advocacy to children and involved in child abuse and neglect cases.<sup>138</sup> KidsVoice uses a multi-disciplinary approach to advocacy that provides comprehensive services and takes full account of each child’s physical and emotional needs. The staff of over 60 professionals includes both attorneys and experts in social work, mental health, education, child development, case management and substance abuse services.<sup>139</sup> The attorneys serve as guardians ad litem, advocating for the best interest of the child. The support staff helps to investigate and deliver informed recommendations in court and provide for the child’s physical and emotional needs. In addition to case-specific advocacy, KidsVoice advocates for children before the legislature and in the community to achieve systematic change.

KidsVoice is a private nonprofit organization that is funded through government contracts, grants and donations and has an annual budget of around \$3.8 million.<sup>140</sup> The office’s approach is designed

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*; Los Angeles Dependency Lawyers – About Us, *supra* note 126.

<sup>131</sup> Children’s Law Center of Los Angeles Homepage, <http://www.clcla.org>.

<sup>132</sup> *Id.*

<sup>133</sup> Children’s Law Center of Los Angeles, About CLC, <http://www.clcla.org/about.htm>.

<sup>134</sup> *Id.*; *see also* Children’s Law Center of Los Angeles Homepage, *supra* note 131.

<sup>135</sup> Nat’l Ass’n of Counsel for Children, *Child Welfare Law Office Program Directory* 17 (2007), available at [http://www.naccchildlaw.org/resource/resmgr/clcp/directory\\_2007.pdf](http://www.naccchildlaw.org/resource/resmgr/clcp/directory_2007.pdf).

<sup>136</sup> Children’s Law Center of Los Angeles Homepage, *supra* note 131.

<sup>137</sup> Children’s Law Center, CLC Supporters, [http://www.clcla.org/clc\\_supporters.htm](http://www.clcla.org/clc_supporters.htm); *Child Welfare Law Office Program Directory*, *supra* note 135, at 17.

<sup>138</sup> KidsVoice, About Us, <http://www.kidsvoice.org/about.aspx>.

<sup>139</sup> *Id.*; KidsVoice, About Us, Scott Hollander, <http://www.kidsvoice.org/scott.aspx>.

<sup>140</sup> *Child Welfare Law Office Program Directory*, *supra* note 135, at 88.

with specific protocols and outcome measures so that the success of KidsVoice can be replicated across the country by other child advocacy agencies. The KidsVoice attorneys are actively involved in training other attorneys interested in opening a child-advocacy offices and willing to share their insight from their 100 years in operation.

## Oversight Agency Model

This model relieves the individual counties of administrative responsibilities for determining attorney eligibility and managing a list of attorneys, but in some cases might leave financial responsibilities with the counties.<sup>141</sup> While this office may use a small full-time staff to address systemic issues in child-protection cases, representation is largely provided by contract attorneys in local jurisdictions. To be eligible for a contract position, attorneys are required to meet certain training requirements and follow practice standards. Additionally, in some areas, the contract attorneys are provided with resources such as social workers, investigators, and experts as needed.

### *Washington State Office of Public Defense, Parent Representation Program*

The Washington State Office of Public Defense (OPD) provides state-funded attorney representation and case support to indigent parents, custodians and legal guardians involved in the child-protection system.<sup>142</sup> The program operates in 25 of Washington's 39 counties.<sup>143</sup> In the remaining 14 counties, the county is responsible for providing parents' representation.<sup>144</sup> The OPD contracts with attorneys to provide representation and oversees their performance. The OPD has a 14-person staff, consisting of the director, deputy director, social services manager, an Appellate Program manager, three Parents' Representation Program managers, two Public Defense Services managers, an executive assistant, two administrative assistants, one financial analyst, and one fiscal analyst.<sup>145</sup>

The OPD enters into contracts in each program county with private attorneys, law firms, and public defender agencies.<sup>146</sup> The OPD does not direct an attorney's actions, conduct, or case strategies, as long as the attorney's conduct is consistent with the terms of the contract, court rules, state law and professional rules and standards.<sup>147</sup> The OPD sets manageable caseload limits, implements professional standards of practice and provides access to expert services, independent social workers, and case support services, so that program attorneys can better assist their clients.<sup>148</sup>

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<sup>141</sup> *Legal Representation for Parents in Child Welfare Proceedings: A Performance-based Analysis of Michigan Practice*, *supra* note 89, at 55.

<sup>142</sup> *Summary of Parent Representation Models*, *supra* note 88, at 15.

<sup>143</sup> *Id.* at 15–16.

<sup>144</sup> Wash. State Office of Pub. Def., *Reunification and Case Resolution Improvements in Office of Public Defense (OPD) Parents Representation Program Counties 4* (2010), available at [http://www.opd.wa.gov/reports/Dependency%20&%20Termination%20Reports/100325\\_ReunificationOutcomes.pdf](http://www.opd.wa.gov/reports/Dependency%20&%20Termination%20Reports/100325_ReunificationOutcomes.pdf).

<sup>145</sup> Washington State Office of Public Defense Homepage, <http://www.opd.wa.gov>.

<sup>146</sup> Wash. State Office of Pub. Def., *Parents Representation Program Standards of Representation 1* (2009), <http://www.opd.wa.gov/ParentsRepresentation/090401%20Program%20Attorney%20Standards.pdf>.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

The program maintains strict standards regarding the attorney's role, caseload limit, client communication, and required training and experience.<sup>149</sup> These include requiring attorneys to attend trainings hosted by the OPD, maintaining a standard caseload of 80 active cases at any given time, and communicating with their clients on specified schedules and about specific topics.<sup>150</sup> Attorneys are required to continue to represent clients from the initial court proceeding through all subsequent dependency and/or termination proceedings until the case is closed.<sup>151</sup> In addition to representing their clients, the contract attorneys are also involved in efforts to improve the child-welfare system. The attorneys are expected to participate in Court Improvement projects, symposiums, juvenile court administrative meetings, and similar conferences.<sup>152</sup>

Washington State has experienced measurable improvement in reunifications and timely resolution of cases as a result of the OPD program. In 2009, counties participating in the OPD program experienced a 39 percent increase in reunifications (i.e. dismissal of dependency case after a child has been returned home to a biological parent or legal guardian).<sup>153</sup> The OPD Program's reunifications were also more successful. Prior to the OPD program, the rate of case refilling (i.e. child being abused or neglected after being reunited) was 5.3 percent within one year and 8.4 percent within two years. After the OPD program, those numbers dropped to 3.4 percent during the first year and 5.3 percent during the second year.<sup>154</sup> Additionally, those counties participating in the OPD program experienced more timely case resolutions. Prior to the OPD program, 59.5 percent of the cases filed were resolved within 31 months. After the OPD program, 70.4 percent of cases were resolved within 31 months, demonstrating an 18.3 percent increase in the rate of timely resolutions.<sup>155</sup>

### ***Colorado Office of the Child's Representative***

The Colorado Office of the Child's Representative (OCR) is a state agency charged with improving best interest representation for children.<sup>156</sup> The office contracts with over 250 attorneys who represent youth in child abuse and neglect, delinquency, domestic relations, paternity, truancy, and probate cases.<sup>157</sup> Additionally, OCR is charged with establishing fair and realistic rates of compensation, setting minimum practice and training standards, providing oversight and training for attorneys, and working collaboratively with the state CASA.<sup>158</sup>

The contract attorneys who handle these cases serve as guardians ad litem to children, representing a child's best interest rather than the child's expressed objectives.<sup>159</sup> Annually, OCR screens attorney candidates and provides courts with a list of attorneys determined to be eligible for appointment. OCR accepts applications from interested attorneys and reviews the applications in conjunction with surveys distributed to all CASA agencies, court facilitators, administrators, and judicial officers. As

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<sup>149</sup> *Id.* at 3.

<sup>150</sup> *Id.* at 3–4.

<sup>151</sup> *Id.* at 3.

<sup>152</sup> *Id.* at 9.

<sup>153</sup> *Reunification and Case Resolution Improvements in Office of Public Defense (OPD) Parents Representation Program Counties*, *supra* note 144, at 2.

<sup>154</sup> *Id.* at 7.

<sup>155</sup> *Id.* at 3.

<sup>156</sup> Colorado Office of the Child Representative Homepage, <http://coloradochildrep.org>.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

part of the review process, OCR conducts visits to each judicial district and meets with county attorneys who represent the social services agency. During the visits, OCR staff meets with attorneys under contract and interviews new applicants. OCR uses this as an opportunity to review the competency and quality of attorney services and identify any systematic needs which might involve other agencies, appropriations, rules of court, and legislation.

The office is funded through an appropriation by the State Legislature to the Judicial Department.<sup>160</sup> The OCR compensates attorneys and paralegals at the hourly rates.<sup>161</sup> Attorneys are required to submit detailed billing statements either online, through the online bill-pay system managed by OCR, or mailed paper copies.<sup>162</sup>

### ***Connecticut's Office of Chief Child Protection Attorneys***

The Office of Chief Child Protection Attorneys (CCPA) is a statewide office overseeing representation for children and parents in child-protection, custody, and support cases. The nine full-time staff members at CCPA manage the panel of eligible contract attorneys by recruiting, screening, and contracting with attorneys.<sup>163</sup> Additionally, the CCPA staff sets performance standards, provides training, manages a mentoring system, and conducts regular audits of attorney performance and the system as a whole.<sup>164</sup>

To be eligible for appointment, attorneys must complete an application, followed by a background and reference check process with CCPA.<sup>165</sup> All new applicants are interviewed. The CCPA observes existing contract attorney performance and does not renew contracts of attorneys who are not providing adequate representation.<sup>166</sup> The CCPA is selective in awarding contracts in an attempt to increase the level of quality of representation.<sup>167</sup>

Contract attorneys are paid at either an hourly rate or flat rate per case.<sup>168</sup> Both types of attorneys are required to submit monthly billing forms, detailing their hours worked and when they last visited their clients. The CCPA accounting staff reviews these billing statements to assess the quality of service provided and ensure that attorneys are not over-billing. In making these assessments, the CCPA recently concluded that hourly billing is more cost effective, as it compensates attorneys as they complete work.<sup>169</sup> Thus, the CCPA has started to phase out flat rate contracts.

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<sup>160</sup> COLO. REV. STAT. § 13-91-106 (2009).

<sup>161</sup> OCR's Billing and Payment Procedures, [http://coloradochildrep.org/attorney\\_center](http://coloradochildrep.org/attorney_center).

<sup>162</sup> *Id.*

<sup>163</sup> Conn. Comm'n on Child Protection, *Second Annual Report of the Chief Child Protection Attorney* 20 (2009), [http://www.ct.gov/ccpa/lib/ccpa/CCPA\\_Ssecond\\_Annual\\_Report\\_FY\\_2008.pdf](http://www.ct.gov/ccpa/lib/ccpa/CCPA_Ssecond_Annual_Report_FY_2008.pdf); see also CCPA: Contact Us, <http://www.ct.gov/ccpa/cwp/view.asp?a=2587&q=315064>.

<sup>164</sup> *Second Annual Report of the Chief Child Protection Attorney*, *supra* note 163, 6–8.

<sup>165</sup> *Id.* at 20.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 21.

<sup>169</sup> *Id.*

## Contract Attorneys

Some jurisdictions use a pool of paid and/or volunteer attorneys to represent parents or children in CPS cases. This type of model is normally government operated, and unlike the contract attorneys described under the “Oversight Agency Model” above, these attorneys generally receive no supervision or assistance in the way of resources.

### *Arkansas Juvenile Division*

In 2001, the Arkansas Legislature established a state-sponsored program for the appointment and payment of attorneys to represent children and indigent parents in child-welfare cases.<sup>170</sup> The Act provided the Arkansas Supreme Court with authority to adopt qualifications and standards of practice for parents’ and children’s attorneys and appropriate funding to pay for representation. Under the standards adopted by the Supreme Court, appointment of counsel for both indigent parents and children occurs at the time of the emergency ex parte order or when the dependency petition is filed.<sup>171</sup>

In October 2007, Arkansas converted from a court-appointed system to a state contract system for providing representation.<sup>172</sup> Under the contract system, the Arkansas Administrative Office of the Courts (AOC) contracts with attorneys to represent children in every judicial circuit.<sup>173</sup> Currently, the ad-litem for children program has 32 full-time attorneys and 53 part-time contractor attorneys providing statewide legal representation for an average of 5,438 abused and neglected children in an average of 3,275 cases.<sup>174</sup>

To be eligible for an attorney contract, each attorney must complete 10 hours of initial qualification CLE specific to dependency-neglect cases hosted by the AOC and a clinical requirement for each of the various types of hearings in dependency-neglect cases by participating in the hearings as co-counsel for a qualified attorney.<sup>175</sup> To apply for a contract, attorneys are required to submit applications, which are reviewed in conjunction with input from others in the district where the attorney practices, including the judge and attorneys in the area.<sup>176</sup> Applicants are required to articulate their interest in the area of law to assure that the attorney has the right philosophy to provide effective representation.<sup>177</sup> If attorneys pass this stage, they are interviewed, reference checks are performed, and the attorney will be offered employment or a contract if selected. Once selected, new attorneys are provided with an individual orientation, including manuals, reference materials, and required forms. After meeting the initial requirements, attorneys must continue to receive four hours of specific continuing legal education annually to remain qualified.

<sup>170</sup> *Summary of Parent Representation Models*, *supra* note 88, at 2.

<sup>171</sup> *Id.*; Arkansas Attorney Ad-Litem Program, [https://courts.arkansas.gov/adlitem/public/aal\\_description.cfm](https://courts.arkansas.gov/adlitem/public/aal_description.cfm).

<sup>172</sup> *Summary of Parent Representation Models*, *supra* note 88, at 2.

<sup>173</sup> Arkansas Attorney Ad-Litem Program, *supra* note 171.

<sup>174</sup> *Id.*

<sup>175</sup> Arkansas Attorney Ad-Litem Program, Initial Training Requirements, [https://courts.arkansas.gov/adlitem/public/qual\\_training.cfm](https://courts.arkansas.gov/adlitem/public/qual_training.cfm).

<sup>176</sup> Arkansas Attorney Ad-Litem Program, Description of How to Become a DN AAL, [https://courts.arkansas.gov/adlitem/public/become\\_aal.cfm](https://courts.arkansas.gov/adlitem/public/become_aal.cfm).

<sup>177</sup> *Id.*

These recently implemented requirements have proved effective at elevating the level of practice and ensuring quality representation. At present, 39 percent of the attorneys have more than 11 years experience in child abuse and neglect representation, 31 percent have over eight years experience, and 30 percent have 4 to 6 years experience.<sup>178</sup>

## Hybrid Model

Hybrid models provide representation through both full-time staff attorneys and contract attorneys. While representation is largely handled by contract attorneys, staff attorneys may also handle some direct parent representation, in addition to overseeing eligibility for contract positions, training, and attorney performance.

### *Massachusetts Committee for Public Counsel Services*

In Massachusetts, the Committee for Public Counsel Services (CPCS), a state agency, is responsible for providing legal services to the indigent in civil and criminal matters.<sup>179</sup> A division of CPCS, the Children and Family Law (CAFL) Division of CPCS oversees court-appointed attorneys for both children and parents in child-protection cases.<sup>180</sup> CAFL operates as a type of hybrid model, including representation by staff attorneys and specially certified private attorneys overseen by CAFL. Approximately 10 percent of the cases are handled by staff attorneys, and the remaining 90 percent are handled by a panel of approximately 800 specially trained private attorneys.<sup>181</sup> To be eligible for the private attorney panel, attorneys must apply to CAFL, and if selected, attorneys must participate in three days of substantive child-welfare training, a half-day training on medical and psychological issues, and two days of trial skills training specially tailored to child-welfare cases. Additionally, after completing the training, attorneys must work with a mentor attorney for at least 18 months. Once approved to be on the panel, attorneys must complete 8 hours of CLE training annually.<sup>182</sup> In Massachusetts, the attorneys receive a flat hourly rate for work done both in and out of the courtroom.<sup>183</sup>

## Information on Starting an Office

### *The NACC National Children's Law Office Program*

The National Association of Counsel for Children's (NACC) National Children's Law Office Program (CLOP) is designed to improve the delivery of legal services to abused and neglected children through improved children's law office operation.<sup>184</sup> CLOP is designed to identify the nation's children's law offices, bring them together into a national children's law office network, and provide resources and guidance for law office operation.

<sup>178</sup> *Id.*

<sup>179</sup> *Summary of Parent Representation Models*, *supra* note 88, at 8–9.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> CAFL Trial Panel Certification Requirements, [http://www.publiccounsel.net/Certification\\_Requirements/civil\\_cases/trial\\_panel.html](http://www.publiccounsel.net/Certification_Requirements/civil_cases/trial_panel.html).

<sup>183</sup> Comm. for Pub. Counsel Servs., *Policies and Procedures Governing Billing and Compensation 2* (2006), [http://www.publiccounsel.net/Certification\\_Requirements/pdf/MANUALCHAP5\\_sec33.pdf](http://www.publiccounsel.net/Certification_Requirements/pdf/MANUALCHAP5_sec33.pdf).

<sup>184</sup> Children's Law Office Program (CLOP) – National Association of Counsel for Children, [http://www.naccchildlaw.org/?page=Law\\_Office](http://www.naccchildlaw.org/?page=Law_Office).

The NACC, through the Children's Law Office Program, has created a Guidebook of office operation designed to promote best practice in a child representation office. The Guidebook and other CLOP materials can be accessed below.

### **NACC Child Law Office Resources**

#### **Guidebook for Operating Child Representation Office**

Nat'l Ass'n of Counsel for Children, *Child Welfare Law Office Guidebook: Best Practice Guidelines for Organizational Legal Representation of Children in Abuse, Neglect, and Dependency Cases* (2006), available at <http://www.naccchildlaw.org/resource/resmgr/clop/clopguidebookfinal4-06.pdf>.

#### **Directory of Existing Child Representation Offices**

Nat'l Ass'n of Counsel for Children, *Child Welfare Law Office Program Directory* (2007), available at [http://www.naccchildlaw.org/resource/resmgr/clop/directory\\_2007.pdf](http://www.naccchildlaw.org/resource/resmgr/clop/directory_2007.pdf).

#### **Children's Law Office Symposium Notes & Findings**

Nat'l Children's Law Office Symposium, *Creating and Running a Model Children's Law Office, Post Symposium Session Notes and Findings* (June 2007), available at <https://naccchildlaw.site-ym.com/resource/resmgr/Docs/SymposiumFindings6-07.pdf>.

#### **Office Policy Resources**

Office Policy Resources – National Associate of Counsel for Children, [http://www.naccchildlaw.org/?page=CLOP\\_Resource](http://www.naccchildlaw.org/?page=CLOP_Resource).

## Texas Case Studies

While most jurisdictions in Texas reported appointing private attorneys appointed from a list or a wheel, there were a few counties that reported using innovated models for providing representation.

### *Travis County Representation Offices*

In 2009, Travis County opened the Office of Parental Representation (OPR) and the Office of Child Representation (OCR), to provide improved legal representation and slow the dynamic growth of appointed private attorneys' fees in the county. Prior to the establishment of OPR and OCR, almost all representation in Travis County CPS cases was handled by private attorneys appointed from a rotation list. While the sheer volume of cases still necessitates the appointment of private attorneys in many situations, having an office of legal experts in this field benefits not only OCR's and OPR's clients but also the private attorneys who frequently seek advice on complex legal questions.

“Because a lot of [private attorneys] don't have the people, social workers, and staff that we have, it's tough for them to dedicate the resources to these cases like we can.”

- Lori Kennedy, OPR Managing Attorney

The attorneys in both offices specialize in this area of the law, and their frequent exposure to similar cases enables them to quickly recognize the issues, recommend solutions, and advocate for timely resolutions. The attorneys at the offices interact with each other and the prosecutors on a daily basis, which fosters a positive working relationship, allows for a constant dialog, and builds mutual respect. The OPR and OCR attorneys are at the courthouse for every docket, just like the prosecutors. The managing attorney for OPR commented, “We are now an institutional player.” Having that type of presence is beneficial to the clients because it allows the attorneys and social workers at the offices to pick up the phone and quickly get answers to questions. By comparison, private attorneys are generally less familiar with the system and do not have relationships with the “key players,” so it takes longer for them to find answers or solutions.

The attorneys at OCR and OPR also pride themselves in their efforts to preserve family bonds. Both offices spend time to find relatives and engage family members in the process so that children are more likely to be placed with family members. Also, the offices emphasize the importance of visitations between the parent and the child and between siblings. The attorneys employed by the offices commented that generally private attorneys do not spend enough time advocating in this area and do not understand the importance of preserving family bonds during the pendency of the case. Visitations between parent and child keep the parent hopeful and motivated to complete service plans and fight for reunification with the child. If reunification is not an option, engaging family members is still important because a relative placement is always preferred over an unfamiliar foster home. Using relative placements is also more cost effective for the state than paying for a child to be placed in foster care.

The OPR and OCR each have an annual budget of \$673,000, and were launched with a Court Improvement Program (CIP) grant from the Children's Commission.<sup>185</sup> The offices have already

<sup>185</sup> See Roger Jefferies, *Travis County Overview of Legal Representation in CPS Cases and Analysis of Associated Attorneys Fees (FY2008 through FY2010 to date)* 1 (2010).

proven to be more cost-effective than providing representation with appointed private attorneys. While the offices handle approximately the same number of cases as court-appointed private attorneys, Travis County spends about 25 percent less on OCR and OPR than it does on the appointed private attorneys' fees. Because the project is less than three years old, Travis County continues collecting and analyzing data to evaluate the cost effectiveness of the offices. Once the startup costs are accounted for, the OPR and OCR predict the operation will become more cost efficient over time.

**Office of Child Representation:** The OCR is usually appointed by the judge as soon as a case is opened. OCR is frequently appointed to represent multiple siblings within one case, and, if a conflict arises, a private attorney is appointed. The OCR is staffed with four attorneys, two administrative assistants, and a social worker who works exclusively on outreach to children in CPS cases.<sup>186</sup>

OCR's representation is largely modeled after the ABA Standards for Lawyers Representing Children. OCR typically has 200 open cases involving as many as 400 child-clients. While each attorney is responsible for their individual cases, certain attorneys frequently concentrate on a particular type of case, such as sexual assault, or cases with large groups of siblings.

The OCR staff works closely as a team to ensure comprehensive services for their clients.<sup>187</sup> They seek to increase safety, stability and permanency for clients through legal and case management services. The support staff in the office frees up attorneys and the social worker to spend more time working directly with the clients.<sup>188</sup> The staff social worker provides vital client assessments, coordinates additional services for the clients, helps to develop strong working relationships with providers, and helps to assess the appropriateness of potential client placements.<sup>189</sup>

**Office of Parent Representation:** The OPR acts as a type of public defender's office, providing representation to indigent custodial parents in child-protection cases. Typically, OPR represents the primary or custodial parent involved in the case, and when more than two parents exist in a case (i.e. a mother and several alleged or biological fathers), multiple private attorney appointments are necessary if those parents meet the indigence requirements. OPR is typically appointed on the day of the first adversary court hearing, unless the client has contacted OPR in advance of the hearing or the case qualifies for immediate referral. The OPR managing attorney stated that her office is only automatically appointed if the parent is a minor or alleged to have the "inability to care for the child" due to a mental or emotional illness or mental deficiency.<sup>190</sup>

OPR consists of four attorneys, two paralegals, one social worker and one administrative assistant.<sup>191</sup> OPR's social worker, formerly a social worker with CPS, helps to improve outcomes for families by bridging the gap between community resources and services that the parents need. The office typically handles 160 pending cases, which are delegated to staff members by the managing attorney. The managing attorney matches cases with the attorney that is best suited to handle the particular

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<sup>186</sup> Interview with Leslie Hill, Managing Attorney, Travis County Office of Child Representation, Austin, Tex. (Sept. 24, 2010).

<sup>187</sup> See Jefferies, *supra* note 185, at 5.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Interview with Lori Kennedy, Managing Attorney, Travis County Office of Parental Representation, in Austin, Tex. (Sept. 24, 2010).

<sup>191</sup> *Id.*

issues. The attorneys at OPR feel that having a support staff is very helpful because someone is always at the office to answer the phone and help clients. Parent clients are frequently frustrated with the system and want to “vent,” so the support staff are there to listen to the parents and help, which is important to establish trust with the client. The support staff time is also less expensive than attorney time, so utilizing support staff is more cost effective. The OPR attorneys commented that clients get about double the time with the OPR attorneys and staff than a client would get with a private attorney.

While it is too early to have statistical results, the OPR attorneys believe they have been able to achieve better case outcomes for their clients as compared with parents represented by private attorneys. For instance, if OPR plans to challenge a removal at the 14-day adversary hearing, most of the time the prosecutors will negotiate an agreement because the OPR attorneys have established a reputation for themselves as making challenges only when merited. This not only provides parents with more favorable results, but also saves court resources. Of the cases that have closed thus far, only 25 percent of the clients represented by the OPR have resulted in termination or relinquishment of parental rights. Almost 60 percent of the cases resulted in the children being returned to their parents. In the remaining 19 percent of the cases, OPR had to withdraw from representing the client due to a conflict.

**OCR & OPR’s Recommendations for Starting Office:** Both OCR & OPR opined that a similar representation model would be beneficial in other areas of the state. Both offices commented that opening a representation office requires a great deal of collaborative planning with judges, prosecutors, private attorneys, and other stakeholders. Specifically, the key players need to set boundaries for obtaining information and working together.

While the OCR and OPR has worked in Travis County, an urban area, the attorneys at the offices also felt a similar model would be effective in a rural area so long as the budgets allowed for travel. The managing attorney from OCR pointed out that representing a child already frequently involves a great deal of travel (i.e. to visit the child at an out of county placement). Attorneys from both offices stressed that, in order for the model to work in a rural area, there would have to be a central office staffed with support staff and a social worker where parents would always be able to reach someone. The OPR managing attorney stressed that it is imperative for parents to have representation at the beginning of the case and have frequent communication to build trust. Thus, the traveling attorney would need to have the flexibility to meet with the parent shortly after being appointed.

**Travis County Early-Appointment Pilot Program:** In 2009, Travis County launched a pilot program in one of its courts to increase the early involvement of parents in a CPS case. The project sought to provide all parents with an attorney at the beginning of a case before the parent’s first appearance in court. Recognizing that many parents’ first contact with the court system was at the first court hearing (the 14-day adversary hearing), the program sought to appoint attorneys prior to the 14-day adversary hearing to ensure that indigent parents were provided with adequate representation.<sup>192</sup> The program ran from September 2009 through April of 2010. At the ex parte hearing, the court would appoint an attorney for a parent named in DFPS’s petition seeking termination of parental rights, conservatorship, or court ordered services. The appointment was limited in purpose to consultation with the parent client regarding eligibility for appointed counsel

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<sup>192</sup> Memorandum from Judge Darlene Byrne of the 126<sup>th</sup> Judicial Dist. Ct. to Prospective Parent Representation Pilot Project Attorney Participants (Feb. 23, 2010) (on file with author).

under Texas Family Code Section 107.013 and assisting the parent in completing an “Affidavit of Indigence and Request for Court-Appointed Attorney.” If eligible, the attorney would submit the affidavit of indigence to the court. If the court determined the parent to be indigent, the court would issue a full appointment order so that the attorney could begin preparing for the 14-day adversary hearing and would continue to represent the parent for the pendency of the suit. If the parent was not determined to be indigent, the limited appointment automatically terminated. Of the 151 cases under the pilot program, less than 1 percent of the parents did not qualify for appointed attorneys under Section 107.013.<sup>193</sup> The average cost per early-appointment was \$203.75.<sup>194</sup> Because most of the cases under the program are still open, the project’s overall impact on the outcome of cases is still being collected and analyzed. However, it is estimated that the project did not increase overall costs because the same services were being provided – just at a different time in the case.

### ***Dallas County Public Defender’s Office, Family Division***

The Family Division of the Dallas County Public Defender’s Office provides representation in juvenile, child support enforcement, and CPS cases.<sup>195</sup> The Public Defender’s Office opened over 20 years ago to provide representation to indigent criminal defendants. A few years after opening, the office added a Family Division, which has been providing CPS representation for children and indigent parents for the last 15 years.<sup>196</sup> The Family Division has nine staff attorneys and one paralegal that focus on family law cases.<sup>197</sup> The Family Division has two branches, both located in the same buildings as the courts hearing these cases.<sup>198</sup> Judges have stated that it is beneficial having the offices housed in the same building with the courts because the attorneys are more available and accessible to both the courts and clients.<sup>199</sup>

The office is appointed to represent both parents and children in CPS cases but, because of conflicts, can only represent one or the other in any given case.<sup>200</sup> While the public defenders are usually appointed to provide representation at trial, sometimes they are also appointed for appeals.<sup>201</sup> The funding for the office is provided by Dallas County. Because the office cannot represent more than one party in a case, Dallas County also relies on private attorneys to provide representation in CPS cases.

The supervisor of the Family Division said that, in Dallas County, the public defender model is more cost effective than appointing private attorneys.<sup>202</sup> The supervisor also commented that the attorneys at the public defender’s office are able to provide better quality representation because they practice exclusively in this area of the law and attend specialized training. He explained that the

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<sup>193</sup> Telephone Interview with Katy Gallagher-Parker, Staff Attorney for Judge Byrne, 126<sup>th</sup> Judicial Dist., in Austin, Tex. (Sept. 27, 2010).

<sup>194</sup> Calculated by multiplying the average of 2.68 average attorney hours at \$75 per hour, plus \$2.75 average additional fees per appointment. *Id.*

<sup>195</sup> Dallas County Public Defender’s Office, Family Law Division, Introduction, [http://www.dallascounty.org/department/pubdefender/family\\_law.htm](http://www.dallascounty.org/department/pubdefender/family_law.htm).

<sup>196</sup> Telephone Interview with Charles Vaughn, Supervisor, Family Div., Dallas Co. Pub. Defender’s Office, in Dallas, Tex. (Oct. 11, 2010).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

attorneys are able to develop working relationships with the district attorney's office (which represents DFPS) and CPS caseworkers, which makes the attorneys more efficient in getting information and finding solutions. Given the success of the Dallas County Public Defender's Office, the supervisor thought that the public defender model would be beneficial in other areas of the state.

### ***Contract Attorneys***

As a variation between appointing private attorneys from a list and having a public defender's office, some courts have contract attorneys. A judge in Smith County (a mid-sized county) uses seven contract attorneys that are paid a monthly salary of \$5,000. The judge commented that the model was more effective and affordable than appointing private attorneys that are paid hourly. The judge said that the biggest disadvantage to appointing individual attorneys from an open, rotating list is that the quality of service and compensation are poor; she felt the contract attorney model solved both of these problems. She explained that, with this model, the contract attorneys are able to focus on this area of the law and there is very little turnover. Fayette County, a smaller, more rural county, employs a similar model but its contract attorneys also provide representation in criminal and juvenile cases. Fayette County contracts with three attorneys to provide representation to children and indigent parents in CPS cases and indigent defendants in criminal and juvenile cases. The attorneys are paid a flat fee of \$40,000 per year and are permitted to also maintain private law practices on the side. A judge from Fayette County explained that the contract attorneys do not specialize in one area of the law (i.e. exclusively CPS cases) but he would like to see that in the future.

## **Texas Law School Clinics**

### ***Children's Rights Clinic at the University of Texas School of Law***

With the assistance of licensed supervising attorneys, students in the Children's Rights Clinic represent children involved in Travis County child-protection cases.<sup>203</sup> The Clinic involves classroom and practical components and is staffed by two full-time, in-house attorneys that serve as professors and supervisors.<sup>204</sup> After receiving a supervised practice card, student attorneys ad litem are assigned six to eight cases in varying stages of litigation during the semester.<sup>205</sup> Through the Clinic, students have the opportunity to serve as "first chair" counsel in court hearings, prepare pleadings, attend mediations, and, in some cases, participate in trials on the merits.<sup>206</sup> Student attorneys are responsible for maintaining contact with their clients, interviewing parties and witnesses, and negotiating with parties to facilitate the desired outcome for their clients.<sup>207</sup>

### ***Child Advocacy Clinic at the SMU Dedman School of Law***

Like the UT program, the SMU Law Child Advocacy Clinic involves both classroom and courtroom components.<sup>208</sup> The classes cover applicable federal and state law, procedural and ethical issues

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<sup>203</sup> Clinical Education at UT Law – Children's Rights Clinic, <http://www.utexas.edu/law/clinics/childrens/>.

<sup>204</sup> Clinical Education at UT Law – Children's Rights Clinic – Additional Course Information, [http://www.utexas.edu/law/clinics/childrens/additional\\_info.php](http://www.utexas.edu/law/clinics/childrens/additional_info.php).

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> SMU Dedman School of Law – The Clinic Experience, <http://www.law.smu.edu/ChildAd/The-Clinic-Experience.aspx>.

involved in the legal representation of children, and litigation skills.<sup>209</sup> The course includes guest lecturers from interdisciplinary fields, which in past semesters have included psychologists, child development specialists, CASA directors, public defenders, assistant district attorneys, mediators, social workers, detectives, and forensic interviewers. The course also focuses on “cross-cultural lawyering,” to help students better understand their client’s world and behaviors as the client understands it.<sup>210</sup> At the beginning of the program, each student is assigned a mentor attorney. The students go to court with their mentor attorneys and have the opportunity to observe all aspects of the case.<sup>211</sup>

As for the courtroom component, students are appointed by the Dallas County Juvenile District Courts in CPS cases to provide *pro bono* representation for children in the dual role.<sup>212</sup> During the course of the semester, students are assigned one or two cases and provide representation to child clients at hearings, mediation proceedings, and trial, under the close supervision of the director.<sup>213</sup> Students are supervised by the program director who meets with students weekly for tutorials to discuss the status of each case.<sup>214</sup> The students have the opportunity to interview child clients, their family members, and other professionals, investigate the CPS removal, monitor family services, conduct home studies on potential relative placements for the children, and observe the child and parent during visits.<sup>215</sup>

## Regional Public Defenders in Texas Rural Criminal Cases

Appointing attorneys in rural areas is often a challenge due to the limited number of attorneys in the area.<sup>216</sup> In response to this problem, the Texas Task Force on Indigent Defense recently approved funding for a public defender’s office to represent indigent criminal defendants in Dickens County and possibly 15 other counties through local agreements. The office will be phased in over several years, starting with only one attorney and with the potential of up to three attorneys if all 16 counties participate.<sup>217</sup> If the other counties opt in, this regional public defender will travel between the participating counties.<sup>218</sup> Additionally, the grant will provide over \$100,000 to purchase video conference equipment to facilitate communication when travel is not feasible.<sup>219</sup>

While the public defender in Dickens County will only serve on criminal appointments, rural counties may be able to use a similar model for appointments in CPS cases. Considering that many rural areas in Texas already group counties together in one Child Protection Court docket, pooling attorneys in similar clusters may be a logical solution.

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*; W.W. Caruth Jr. *Child Advocacy Clinic Alumni Share Their Experiences and the Impact it had on Their Lives*, THE ADVOCATE 1 (Fall/Winter 2007), available at [http://www.law.smu.edu/getmedia/84195b0e-3040-4af4-836f-07eca573ab21/childcare\\_newsletter](http://www.law.smu.edu/getmedia/84195b0e-3040-4af4-836f-07eca573ab21/childcare_newsletter).

<sup>213</sup> SMU Dedman School of Law – The Clinic Experience, *supra* note 208.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Mary Robbins, *Funding Ok'd for Public Defender Office to Assist 16 Counties*, TEX. LAWYER, June 21, 2010, <http://www.law.com/jsp/tx/PubArticleFriendlyTX.jsp?id=1202462812673&slreturn=1&hbxlogin=1>.

<sup>217</sup> *Id.*

<sup>218</sup> Press Release, Tex. Task Force on Indigent Def., *Task Force Awards \$2.5 million in New Programs to Represent Poor* (June 9, 2010), available at <http://www.bellcountytexas.com/Press%20release%20060910%20discretionary%20grants.pdf>.

<sup>219</sup> *Id.*

## Appendix B: Calculation of Estimated Appointed Attorney Fees for CPS Cases in Texas

Because funding appointed representation in CPS cases is left to each county, there is no statewide calculation of the total amount spent on attorney fees in Texas. To estimate the statewide total, a survey of 28 sample counties was conducted, covering both rural and urban regions across Texas. The sample counties composed 53.8% of Texas' population and 50.8% of the children in DFPS legal responsibility. The 28 sample counties reported spending a total of \$18.6 million in appointed attorney fees in 2009. To estimate the total attorney fees for the state, the sample data was extrapolated using both the ratios for population and children in DFPS legal responsibility. The population and children in DFPS legal responsibility figures produced estimates of \$34.6 million and \$36.6 million respectively. Thus, it is estimated that the total cost of attorneys' fees appointed in CPS cases is between \$34.6 and \$36.6 million.

The table below reflects the sample data and calculation.

	2008 Population Estimate (from Texas Data Center)	Children in DFPS Legal Responsibility (DFPS 2009 Databook)	Appointed Attorneys' Fees in CPS Cases (2009 FY)
Bexar County	1,593,859	4,579	\$ 2,285,852.00
Cameron County	391,857	552	\$ 401,151.00
Carson County	6,399	14	\$ 3,550.00
Chambers County	33,225	39	\$ 18,522.00
Cochran County	3,454	10	\$ 3,250.00
Colorado County	21,725	19	\$ 8,020.00
Cooke County	40,176	76	\$ 52,978.00
Dallas County	2,377,477	2,992	\$ 3,612,254.00
Denton County	627,725	451	\$ 699,138.00
Duval County	12,275	41	\$ 17,550.00
El Paso County	749,721	659	\$ 872,065.00
Harris County	3,922,115	6,944	\$ 6,684,853.00
Harrison County	64,285	104	\$ 21,656.00
Hockley County	22,210	108	\$ 71,609.00
Hunt County	84,035	239	\$ 230,643.00
Kaufman County	97,872	144	\$ 154,003.00
Kimble County	4,666	15	\$ 4,175.00
Motley County	1,465	3	\$ 1,550.00
Parmer County	9,647	33	\$ 9,448.00
Polk County	46,263	118	\$ 62,440.00
Rusk County	48,369	67	\$ 68,349.00
Tarrant County	1,716,365	1,966	\$ 1,171,989.00
Travis County	956,901	1,233	\$ 1,886,044.00

Uvalde County	25,776	93	\$ 31,233.00
Ward County	10,089	15	\$ 9,035.00
Wharton County	42,262	40	\$ 14,110.00
Willacy County	21,037	88	\$ 91,425.00
Wood County	42,124	118	\$ 97,528.00

Survey Sample (total)	12,973,374	20,760	\$ 18,584,420.00
Texas	24,105,417	40,840	

Sample Percent of Texas	53.82%	50.83%	
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<b>Estimated Texas CPS Spending for Attorneys' Fees by Population Extrapolation</b>	<b>\$ 34,531,124.58</b>
<b>Estimated Texas CPS Spending for Attorneys' Fees by Children in DFPS Legal Responsibility Extrapolation</b>	<b>\$ 36,560,101.77</b>

## Appendix C: Methodology

In developing the overall approach and methodology for the Legal Representation Study (LRS), the Children's Commission staff consulted with a workgroup consisting of experts in child and parent representation and designed a series of surveys and interview questions targeted at assessing procedures for appointing attorneys and the quality of legal representation being provided.

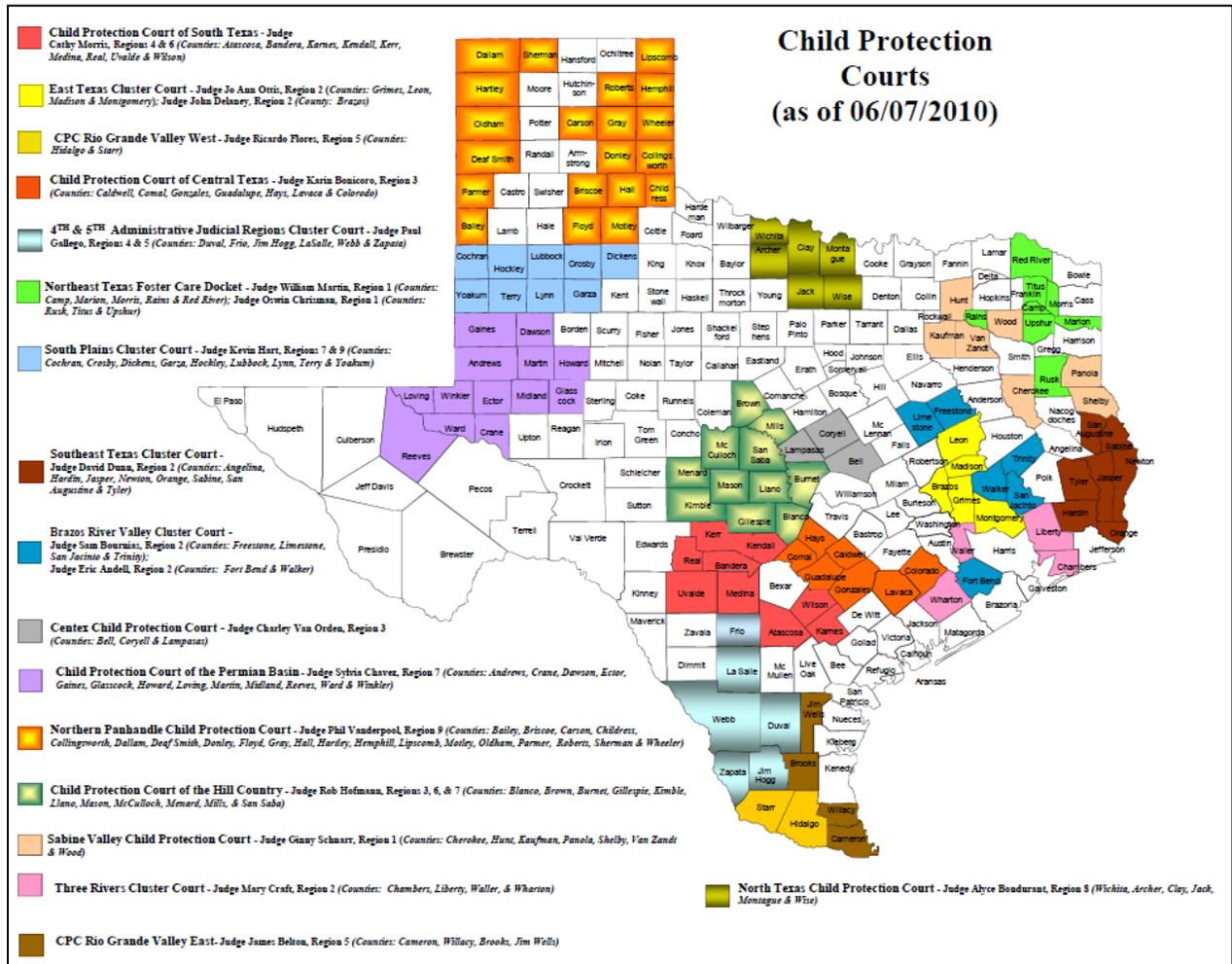
### Research Questions

The study was developed to address the following issues:

- Attorney appointment methods (such as appointment by judge in accordance with local custom or rule by rotation, random selection, specialization, or open or closed lists)
- Representation models (such as appointed private attorneys; representation offices that utilizes managing attorney, associate attorneys and support staff, such as a public defender's office; or contracts executed by local jurisdictions with individual attorneys or firms);
- Timeliness and duration of appointment of attorneys for children and parents;
- Availability of specialized training in child-protection law and training requirements for appointment (if any), including the number of hours required, whether the jurisdiction uses a method of tracking attorneys' qualifications and completion of training, and recommendations regarding statutory training requirements;
- Local practices regarding standards and requirements for serving as a court-appointed attorney, including methods and criteria for evaluating attorney qualifications;
- Methods for evaluating attorney performance and the quality of the legal representation provided to parents and children;
- Compensation rates and methods (hourly, flat fee per hearing/case), whether in-court time is compensated differently than out-of-court work, and whether payment is based on level of experience;
- Total annual amount each county spends on court appointments in child-protection cases;
- Use of the dual role attorney for a child and its impact on the child and case;
- Whether children should have "party" status; and
- Recommendations for improving the quality of representation.

## Participants

The study included participants from the eight most populous counties (Bexar, Collin, Dallas, Denton, El Paso, Harris, Tarrant, and Travis), various smaller rural counties, and the seventeen child-protection courts in Texas. The map below shows the seventeen child-protection courts in Texas.



Within these jurisdictions, the study sought participation of judges and court coordinators who regularly hear CPS cases, in addition to appointed attorneys, CPS prosecutors, DFPS supervisors, Court Appointed Special Advocate (guardian ad litem) supervisors, and parents and youth that had been the subject of a CPS legal case.

## Design

With the assistance of Commission members and the work group, the Commission staff designed survey and interview questions to elicit responses from the various participants. A statement regarding confidentiality was included at the beginning of each survey and interview document.

## **Procedure**

### ***Court Coordinator Questionnaire***

In October 2009, the Children’s Commission began identifying judges who regularly hear child protection cases in the eight most populous counties. These included district court judges with family, juvenile, and general jurisdiction. Additionally, judges presiding over Child Protection Courts were identified. In total, sixty-two judges were selected to participate in the study: forty-four in the most populous counties and eighteen in Texas Child Protection Courts (otherwise known as Cluster Courts).

The following month, each of these identified judges received a letter from Texas Supreme Court Justice Harriett O’Neill explaining the purpose of the study and requesting participation. Attached was a questionnaire (called the “Court Coordinator Questionnaire”) to be completed by the judge or the judge’s court coordinator, administrator or other appropriate staff member. The questionnaire was designed to gather information regarding compensation rates for attorneys, the billing processes and procedures utilized by the court, court appointment methods, and frequency and handling of appeals. Completed questionnaires were accepted via email, regular mail, or fax. Follow-up emails and telephone calls were made to judges and court staff in order to obtain the maximum number of responses.

Of the sixty-two requests for participation, twenty-five individual “Court Coordinator Questionnaire” responses were received, including at least one court coordinator in each of the eight most populous counties and ten of the Child Protection Courts.

### ***Judge Interviews***

After each Court Coordinator Questionnaire response was received, the corresponding judge was contacted for either an in-person or telephone interview. The Commission staff completed interviews of twenty-three judges: twelve judges in some of the most populous counties and eleven Child Protection Court judges.

The interview questions addressed general issues of representation and the method, timeliness, and duration of the appointment of attorneys for parents and children. Judges were asked for their opinions on ways to improve the quality of representation and perceived obstacles, in addition to a multiple-choice question regarding the types of training they would suggest for attorneys.

### ***Judge Survey***

In an effort to obtain responses from a broader range of judge participants, in November 2010, the Commission staff requested participation through an email listserv to all judges in the state hearing child-protection cases. The email requested the judges’ participation and included a web address to the online questionnaire.

Sixty-nine judges completed the survey. Twenty-one of the judges presided over courts in urban areas. Thirty-five of the judges presided over courts in rural areas that were not part of a child protection cluster court. Thirteen of the judges presided over specialty child protection cluster courts covering multiple rural counties.

The survey questions addressed the model of representation and method, timeliness, and duration of the appointment of attorneys for parents and children. Judges were also asked about the factors motivating the timing and duration of appointment.

### ***Attorney Questionnaire***

The Commission staff requested participation from attorneys who attended training sponsored or funded by the Commission. Additionally, the Commission staff obtained appointment lists from court coordinators. Depending on the contact information available, attorneys were emailed or mailed a memo from the Children's Commission requesting participation in the study. A web address to the online questionnaire was listed at the bottom of the memo.

In total, the questionnaire was sent to 616 attorneys. Ninety-four attorneys submitted valid responses, fifty-two of whom indicated they predominately work in one of the eight most populous counties and forty-two of whom indicated they predominately work in a Child Protection Court. Three attorneys indicated they represent only parents, seven indicated they represent only children, and eighty-six indicated they represent parents and children.

The questionnaire included multiple choice questions, scaled questions, and open-ended questions and allowed participants to skip questions relating to representing children or parents if they did not pertain to a respondent's particular type of client. The questionnaire included sections regarding the timeliness and duration of appointment, challenges in representing a client in a CPS case, compensation, and training. Attorneys were asked questions regarding the amount of time spent preparing for hearings, mediation, and trial, as well as questions regarding the nature and extent of attorney-client communication pertaining to each type of client. Attorneys were asked whether they used support staff and how much of the attorney's practice was dedicated to child-protection law. Finally, attorneys were asked to provide additional information they found relevant or make specific recommendations for improving legal representation.

### ***Prosecutor Questionnaire***

The Children's Commission obtained the name of prosecutors who handle child-protection cases from various jurisdictions' websites and by asking court coordinators. In total, 128 prosecutors were identified and received a memo from the Children's Commission, via email or mail, requesting participation in the study and providing a web address to the questionnaire. The Texas District and County Attorneys Association also emailed a similar memo to the district attorneys in the eight most populous counties, requesting that CPS prosecutors respond to the survey.

Thirty-eight prosecutors submitted responses; however, two of those were blank and were excluded. Twenty-three prosecutors indicated they work in one of the eight most populous counties; nine indicated they work in a Child Protection Court; one indicated s/he works in both a large county and a Child Protection Court; and three skipped the question.

The questionnaire included open-ended and multiple choice questions. Open-ended questions related to preparedness of attorneys, dual-role appointments, and timeliness and duration of appointment of attorneys. Additionally, the survey requested recommendations for improving legal representation. Finally, prosecutors were asked to select areas of training from which most attorneys might benefit, such as evidence, procedure and state and federal law.

### ***Department of Family and Protective Services Questionnaire***

It was the original intent of the Children's Commission to include Department of Family and Protective Services (DFPS) caseworkers in the study. However, DFPS recommended that we seek responses from agency supervisors in order to gain a broad, experienced perspective. Upon receiving feedback from DFPS, the questionnaire was tailored to seek relevant information from DFPS regional supervisors. DFPS's legal relations specialist emailed supervisors in each of the DFPS regions to request participation in the study. A total of ninety-four responses were received via email and mail from supervisors in all eleven DFPS regions. The questionnaire included open-ended questions pertaining to the timeliness and duration of the appointment of attorneys, interactions between appointed attorneys and DFPS, and requests for specific recommendations for improving legal representation.

### ***Court Appointed Special Advocate (CASA) Questionnaire***

In the fall of 2009, the Children's Commission provided copies of the questionnaire to the CASA Program Operations Director for distribution to CASA supervisors attending the CASA annual conference. Sixteen responses were returned, and responses were analyzed by region. Similar to the DFPS Questionnaire, the CASA Questionnaire included only open-ended questions pertaining to interaction between attorneys, clients, and CASA volunteers, the attorneys' preparedness for hearings, mediations, and trials, dual-role appointments, the timeliness and duration of appointment of attorneys, and a request for specific recommendations for improving legal representation.

### ***Parent Questionnaire and Interviews***

The intent of the Parent Questionnaire and interview questions was to assess the quality of legal representation parents received in their child-protection cases. Commission staff faced several challenges in seeking participation from parents: parents with open cases were reluctant to be questioned or interviewed; attorneys did not want parents commenting on the quality of their representation; and parents whose cases were closed were difficult to identify. With guidance from DFPS, the LRS study focused on Parent Collaboration Groups, a meeting of DFPS staff, parent liaisons (parents who have received services from CPS), and parents who are receiving CPS services. The Commission staff attended a meeting in McLennan County attended by eleven parents.

At the meeting, questionnaires were distributed and responses were received from eleven parents. However, three parents indicated that they retained private counsel (and did not have court-appointed legal representation), so their responses were excluded. The questionnaire included multiple choice questions, yes or no questions, and scaled questions. Parents were asked background questions regarding the outcome of their cases, whether they had an attorney (appointed or retained), the timing of the attorney's appointment, as well as questions pertaining to jury trials and appeals. Parents were then asked a variety of closed-ended (yes or no) and scaled questions pertaining to their experience with their attorney, and mediation, if the parent had participated in mediation.

After the questionnaires were completed and briefly reviewed, the Parent Collaboration Group was interviewed collectively. The group interview lasted one hour, and parents were given the opportunity to discuss in detail their experiences with their attorneys and the court process.

### ***Youth Questionnaire and Interviews***

To identify youth participants, the Commission staff elicited feedback from three groups—the Statewide Youth Leadership Council, Change for Today and Tomorrow, and Texas Network of Youth Services. The Statewide Youth Leadership Council, a program sponsored by DFPS, allows CPS youth from across the state with an opportunity to provide input regarding the improvement of the state’s foster care system on a quarterly basis. Change for Today and Tomorrow is a program within Dallas’s Transition Resource Action Center that provides youth receiving services in North Texas with an opportunity to develop their leadership skills while receiving information regarding their legal rights. Texas Network of Youth Services provides, in part, a spring break camp that gives youth receiving CPS services an opportunity to interact with other youth across the state.

The Commission staff attended meetings of the Statewide Youth Leadership Council and Change for Today and Tomorrow and distributed the Youth Questionnaire. After a quick review of responses, Commission staff conducted group interviews. The Commission staff also visited the Texas Network of Youth Services camp in Hays County. In total, fifty-one youth completed the questionnaire, and thirty youth participated in interviews. The questionnaire included multiple choice questions, yes or no questions, and scaled questions. Youth were asked questions regarding their experience, the outcome of their cases, and whether they had an attorney and/or additional advocates in their cases.



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SUPREME COURT OF TEXAS PERMANENT JUDICIAL  
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

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**Texas Court Improvement Program (CIP)  
FY 2010 Assessment of the Basic,  
Data Collection and Analysis,  
and Training Grants**

**December 31, 2010**

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## **INTRODUCTION{TC "INTRODUCTION" \F C \L 1}**

The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Commission) was created in 2007 and has been the grant administrator of the Texas Court Improvement Program (CIP) grants since 2008. The Commission oversees numerous projects and programs aimed at improving the safety, permanency, and well-being of children, youth and families in the Texas child welfare system.

A multidisciplinary executive-level group, the Commission is led by judges. It is chaired by Justice Eva Guzman, Supreme Court of Texas (Supreme Court), and is composed of officials from the Department of Family and Protective Services (DFPS) and Child Protective Services (CPS), non-profit foundation and state bar leaders, private attorneys, legislators, judges and other elected officials, and other child welfare stakeholders. The Commission's structure includes a general advisory group called the Collaborative Council and three standing committees – Basic Projects, Technology and Training – each of which oversees issue-specific workgroups and projects. In June 2010, the Supreme Court formed an Education Committee to work toward improving education outcomes for foster children. In addition to CIP grant-funded projects, the Commission directs several other ad hoc committees and workgroups and numerous staff-led projects.

The Commission links to a larger stakeholder community through its 40-member Collaborative Council, whose members include foster families, attorneys, CASAs, parent advocates, and former foster youth. Representatives from institutions of juvenile justice, mental health and education are also included, as well as representatives from the private provider community, children's advocacy centers and many other child-protection and child and family advocacy groups.

The Commission facilitates a weekly conference call led by the Commission's Executive Director that keeps the Commission, DFPS and other stakeholders connected and up-to-date on one another's activities. The Administrative Director of the Office of Court Administration (OCA) is a regular attendee, as well as OCA's jurist in residence, Judge John J. Specia, (ret.). The weekly meetings have created a vital, ever-strengthening connection between the judiciary, CPS, and other stakeholders. Maintaining weekly contact not only furthers better understanding of one another's challenges, it also gives attendees a chance to brainstorm about ideas and solutions and identify opportunities to support one another. The frequency, consistency, and the high priority leaders have given the meetings has been key in establishing and growing the new culture of collaboration that, on the state level, has become the norm rather than the exception. The Commission's inclusive, collaborative structure and broad, high-level membership has injected new energy into, and enhanced the visibility of, the state's court improvement efforts.

### **Administration of Grant Funds**

The Commission granted CIP awards to subgrantees and funded several staff-directed and contract projects aimed at fulfilling its CIP strategies.

**1.1 {tc "New Grant Application and Review Process" \f C \l 2}Grant Application and Review Process**

All fiscal year (FY) 2010 grant recipients applied for grants in a timely manner per grant application instructions posted on the Commission's website at <http://www.supreme.courts.state.tx.us/children.asp>. The Commission's Executive Director took over all grant administration duties in 2010 with the departure of the full-time grant manager. She employed a simple, two-step process to ensure fairness as well as consistency with federal program instructions and the Commission's strategic plan.

The executive director reviewed applications and referred them to one of the three standing Commission committees – Basic Projects, Technology, or Training. The committees reviewed each recommendation (and if requested, the full application) and determined whether to send it to the Commission for funding approval. See Commission, Committee and Collaborative Council members in Appendix A.

A list of all CIP-funded projects with a brief description is shown below.

<b>FY2010 Grant-Funded Projects</b>			
<b>Project Name</b>	<b>Brief Description</b>	<b>Award</b>	<b>Grant</b>
Brazos Valley	National Adoption Day Activities	\$850	Basic
Bowie County	National Adoption Day Activities	\$1,500	Basic
Travis County Office of Child Representative	Public Defender model of representing children in CPS cases	\$100,000	Basic
Travis County Office of Parental Representation	Public Defender model of representing parents in CPS cases	\$100,000	Basic
ChildSafe – Family Drug Court Partnership	Assessment /coordination of child trauma services for drug court	\$46,083	Basic
Texas Foster Youth Justice Project	Foster youth hotline and legal representation	\$80,000	Basic
Tarrant County Challenge Family Drug Court	Case management services for drug courts that includes a research component.	\$100,000	Basic
Texas Loves Children (TLC) Website	Web-based legal resource for attorneys	\$250,000	Basic
Texas CASA – Expansion and Development	Statewide training and expansion	\$237,800	Basic
Harris County	Infant & Toddler's Court	\$50,000	Basic
Dallas County	Videoconferencing Project	\$50,000	Data

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OCA CPC Judicial Support	Judicial support	\$20,400	Basic
Texas Data Enabled Courts for Kids (TexDECK)	Data management, software, and court services development and coordination	\$264,582	Data
OCA CPC Annual Judicial Conference	CPC Annual Training	\$29,300	Training
DFPS Attorney Training	Attorney Training	\$5,000	Training
Texas Center for the Judiciary	Judicial training and national conference sponsorship	\$635,841	Training

**FY2010 Contract Projects**

Project Name	Brief Description	Award	Grant
NACC Attorney Training	Attorney ad litem training – 8 in FY010	\$85,000	Training
Jurist in Residence	Judicial consultation services	\$28,000	Basic

**FY2010 Staff-Directed Projects**

Project Name	Brief Description
Judicial Technical Assistance	Court-specific reports on permanency measures
Round Table Series	Collaborative discussion of relevant child abuse and neglect issues
Advocacy Inc. Legal Representation Project	Provide free legal representation for dually managed youth
CPS Judges Bench Book	Judicial resource
Legal Representation Study	Statewide survey / study of legal representation in Texas
Children in Long Term Care / Texas Appleseed Study	Study of children and youth in long term care
State Task Force on Disproportionality	State effort to reduce disparity and disproportionality
CFSR / PIP Participation	PIP development
Child Welfare Law Certification	Certification Exam held in Spring 2010; 3 pre-examination “Red Book” Trainings held in FY 2010
Education Committee	Effort to improve educational outcomes for foster children

Child Welfare Law Certification	Attorney specialization
Strategic Planning	Effort to revise Commission's strategic plan
Mediation Project	Study of mediation in CPS cases
Summit III	National Judicial Leadership Conference

## Development

The Commission staff engages in several levels of program administration and development through overseeing grant funded projects, managing staff directed projects, staffing committee and commission meetings, and travel to attend and present at various conferences.

### 2.1 Staff {tc "Site Visits and Program Monitoring" \f C \l 2}Site Visits and Conference Attendance

#### Executive Director

Date	Location	Purpose
October 2009	Bastrop Austin Waco	Strategic Planning Committee National Judicial Summit Attorney Training - Child Abuse and Neglect
December 2009	Dallas	Speaker at National Zero to Three Conference - Program Development for CIP
January 2010	Dallas	Attended conference and accepted award on behalf of Justice O'Neill
March 2010	Bastrop	Commission Transition Planning
April 2010	Dallas New York Galveston San Antonio	Program Development meeting in Dallas, TX Attended conference "Charter a better future for youth" in NYC Harris County Beyond the Bench Training TX Meeting with Bexar County about child welfare data
May 2010	Bastrop	Implicit Bias Training / Bench Book meeting
June 2010	Denver	Conference "Using Technology in Courts"
July 2010	Dallas Washington Houston	CASA Foundation meeting CIP Data and Tech / Agency and Courts Conferences Beyond the Bench Conference follow-up
August 2010	San Antonio San Antonio	CPS Judicial Conference Advanced Family Law Conference
September 2010	Houston Bastrop	Presentation to Annual TASB/TASA Conference First Education Committee meeting

#### Assistant Director

<b>Date</b>	<b>Location</b>	<b>Purpose</b>
October 2009	Bastrop Waco Ft. Worth	Strategic Planning Committee Attorney Training - Child Abuse and Neglect Attorney Training - Child Abuse and Neglect
November 2009	Dallas	Attorney Training - Child Abuse and Neglect
December 2009	Harlingen	Attorney Training - Child Abuse and Neglect
March 2010	Bastrop	Attended transition /future planning for Commission
April 2010	Galveston	Harris County Beyond the Bench
May 2010	Washington Bastrop San Marcus	Symposium regarding educational needs of foster youth in Washington, DC Implicit Bias Training / Bench Book meeting Conference related to education of foster youth
July 2010	San Diego	Nat. Council of Juvenile & Family Court Judges Annual Conf. in San Diego, CA
August 2010	San Antonio San Antonio	CPS Judges Conference Advanced Family Law Conference
September 2010	Houston Bastrop	Presentation to Annual TASB/TASA Conference First Education Committee meeting

**Project Attorney**

<b>Date</b>	<b>Location</b>	<b>Purpose</b>
May 2010	Bastrop	Bench Book meeting
June 2010	Denver	Conference "Using Technology in Courts"
July 2010	Washington	CIP Data and Tech / Agency and Courts Conferences
August 2010	New Braunfels	Multidisciplinary meeting with Judge Bonicoro
August 2010	San Antonio	CPS Judicial Conference
August 2010	San Antonio	Advanced Family Law Conference

**IMPACT SUMMARY**

The Commission's strategies are:

1. Promote judicial leadership to improve the administration of justice in child protection cases;
2. Identify and promote best practices to improve outcomes affecting safety, permanency, and well-being in child protection cases;
3. Improve awareness about the need to strengthen courts for children, youth, and families in child protection cases;
4. Improve the quality of legal representation in child protection cases; and,
5. Promote accountability for improvements in courts that administer justice in child protection cases.

To help achieve these strategies, subgrantees were required to develop and include in their grant application a set of evaluation measures that would best track project accomplishments. Data collected from subgrantees thus far indicates that CIP funds have impacted a large number of people through direct services or program involvement.

<b>FY2010 Summary of Numbers Served</b>	
<b>Total number of people or agencies that benefited from CIP funds via collaborative efforts, training events, case management tools, project consultation, or direct grant funding</b>	<b>34,830</b>
Number of judges served through at least one project	925
Number of attorneys served through at least one project	11,292
Number of guardian <i>ad litem</i> s (CASA) served through at least one project	8,649
Number of collaborative agencies participating with subgrantees	200 +
Number of parents and children served through at least one project	41,130
Number of training events held	15
Number that attended training events	782
Number of hours provided that met statutory or licensure standards for judges, attorneys, or GALs*	5720
*GAL – Guardian ad litem in this context is CASA volunteers	

In addition to overseeing grant-related administrative and fiscal duties, Commission staff spent substantial time and effort on many other court improvement efforts and projects, such as:

- Published two annual reports, one for the fiscal year ending September 30, 2009 and the other for the calendar year ending December 31, 2010.
- Developed and distributed a Jurist in Residence Letter, which is a periodic communication that focuses on a specific issue or problem judges face while hearing CPS cases, such as the permanency care assistance program. (Appendix B). The letters are sent from Judge John Specia, OCA’s Jurist in Residence to the Commission.
- Published a *Better Courts for Kids and Families* newsletter. (Appendix C)
- Participated in the Statewide Task Force on Disproportionality that meets quarterly.
- Developed an online Bench Book for child protection judges, in development during FY2010 and launched November 2010.
- Conducted a Legal Representation Study to assess how various Texas courts appoint and compensate attorneys and how much specialized child welfare training is required of appointed counsel.
- Partnered with the National Association of Counsel for Children (NACC) on eight local training conferences attended by 267 attorneys who represent the child welfare agency, parents and children in child protection cases.
- Continued a partnership with Texas Appleseed in a research study on children who are in the permanent managing conservatorship of DFPS that focuses on barriers to permanency and ways to overcome them. The report was published in November 2010.
- Participated in the statewide Public-Private Partnership, an ambitious effort to redesign foster care in Texas.

- Contributed to development of the state's Program Improvement Plan (PIP) – especially court-related strategies – to address the most recent CFSR findings. (Commission Executive Director, Tina Amberboy, is a formal member of the PIP planning team).
- Helped to initiate and fund a legal representation project for dually managed youth, who are foster youth who are incarcerated within the Texas Youth Commission system, and foster youth with extreme disabilities who reside in a State Supported Learning Center (formerly State Schools). Two Advocacy, Inc., attorneys travel throughout the state to represent more than 65 dually managed youth or youth in State Supported Learning Centers. The program is expanding to include youth who are at risk of involvement in the juvenile justice system.
- Held one Round Table discussion on foster children and youth who are in the Permanent Managing Conservatorship (PMC) of DFPS.
- Funded 2,577 additional copies of The Foster Youth Justice Project's *Guide to Those Aging out of Foster Care in Texas*, which Texas Rio Grande Legal Aid has distributed to foster youth and those who work with them.
- Provided judicial training to 311 judicial officers or court personnel through the Texas Center for the Judiciary's training conferences and national conferences.
- Funded continued refinements and support for the new Child Protection Case Management System (CPCMS) that was developed with CIP funds and launched in 2009 in the 17 Texas child protection specialty courts. The CPCMS system incorporates several of the *Building a Better Court* performance measures that were published in early 2009.
- Funded and participated in OCA-sponsored Annual Child Protection Court Update held in October 2009, which trained 32 attendees, including Child Protection Court judges and their court staff.
- Provided two Red Book trainings through the National Association of Counsel for Children to 62 Texas attorneys. The trainings help attorneys prepare for the exam for Child Welfare Law Certification that was approved in May 2009. In 2010, 12 Texas attorneys and one judge took the exam and became certified.

### **ONGOING, MEANINGFUL COLLABORATION**

The Commission's creation and activities have increased the visibility of child protection issues at the state and local levels and its collaborative structure has encouraged greater stakeholder participation in court improvement initiatives. The Commission engages in and promotes a culture of collaboration in Texas between the judiciary, DFPS, and other stakeholders through routine and scheduled interaction and through joint projects. Commission staff is active in many collaborative activities and, in addition to staffing and overseeing many of the aforementioned projects, also engaged in the following activities between October 1, 2009 and September 30, 2010:

- Sponsored and participated in weekly collaborative conference calls with child welfare stakeholders, including DFPS executive leaders. Commission staff organized and held 25 weekly collaborative conference calls that lasted approximately one hour each and included several collaborative partners on each call. Collaborative partners who attended the vast majority of these calls included the CPS Assistant Commissioner and

other high-level CPS staff, the OCA director and his staff, Commission and Supreme Court staff, and representatives from Texas CASA and the Texas Center for the Judiciary. Occasionally, other invitees, such as judges and legislative staff, attended the meetings, depending on the issues addressed. The weekly collaborative meetings often served as a springboard for ideas that became staff-directed projects. During the calls, each partner provided a brief synopsis of their organization's current efforts and concerns and described how they thought other collaborative partners might assist or be affected. The meetings served to inform partners of the many ongoing initiatives in Texas to improve the child protection system.

- Sponsored, funded, facilitated, or participated in an additional 26 Commission meetings, committee or workgroup meetings, or conference calls with at least 130 individual stakeholders for a total of 1007 collaborative hours. (See Appendix D).
- Commission staff participated in several collaborative calls and meetings as part of its partnership with Texas Appleseed, which has conducted a comprehensive study about barriers to permanency for youth who are in the Permanent Managing Conservatorship of DFPS. Fulbright and Jaworski, a prominent Texas law firm, donated over 500 pro bono hours to this project. The law firm of McGinnis, Lochridge, and Kilgore also contributed pro bono service to the project.
- More than child 34,830 individual stakeholders participated in or benefited from a Commission-sponsored activity or grant-funded activity in FY 2010.
- Commission-funded and Commission-sponsored activities generated more than \$1.8 million dollars worth of in-kind or cash match in FY 2010.

## **BASIC GRANT PROJECTS**

The strategic plan included in Texas' 2010 Basic CIP grant application included broad, statewide efforts to improve safety, permanency, and well-being for children and families in the child welfare system. The Commission's strategic plan encompasses these efforts and goes beyond them to further its mission of developing and implementing policy initiatives to strengthen courts for children, youth and families, thereby improving the safety, permanency, and well-being of all involved.

The Commission's Basic Projects Committee oversees the basic grant funds and helps implement the Commission's strategic plan goals related to them. Members of the Basic Projects Committee include representatives of the judiciary, DFPS, Texas CASA and Commission staff. Basic grant funds are used to fund projects through grant agreements or contracts with outside organizations and through staff-directed projects. Using these funds, the Commission worked to improve the state child welfare system through:

- Funding expenses associated with Commission meetings and member travel.
- Supporting the activities of the executive director and other Commission staff, including strategic and program development, implementing the CIP grant program, conducting site visits, attending judicial and child welfare conferences, and both coordinating and attending stakeholder meetings.

- Disseminating information to the judiciary and stakeholders through the Commission’s website, newsletter, meeting minutes, Jurist in Residence communications, other publications, and personal contacts.
- Ensuring that statewide collaboration on all CIP grant activities were conducted in a meaningful and ongoing manner.
- Advocating for projects that improve court performance and practices throughout the state.

**Summaries of Basic Grant Projects**

<b>3.1 Brazos Valley National Adoption Day</b>
<b>Amount of Award</b> \$850.00
<b>Subgrantee/Fiscal Agent</b>
Voices for Children, Inc., CASA of Brazos Valley
<b>Corresponding Item in FY 2010 Grant Application</b>
National Adoption Day <sup>1</sup>
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• 12 children were adopted into 6 families.</li> <li>• Media coverage increased community awareness.</li> <li>• A state senator made presentations.</li> <li>• Provided a free training session to local attorneys about the adoption process; attended by 3 attorneys.</li> <li>• Provided opportunity to recruit volunteer advocates.</li> <li>• Created a celebratory community event to increase community awareness.</li> </ul>
<b>Collaboration</b>
Voices for Children, Inc., CASA of Brazos Valley, Texas CPS, local newspaper and television.

<b>4.1 Bowie County National Adoption Day</b>
<b>Amount of Award</b> \$1,500
<b>Subgrantee/Fiscal Agent</b>
Texarkana Young Lawyers Association
<b>Corresponding Item in FY 2010 Grant Application</b>
National Adoption Day <sup>2</sup>
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• 4 adoptions were completed.</li> <li>• Provided free attorney training for 3.5 CLE hours.</li> <li>• Distributed "What's Happening: In Court?" a free activity book for children.</li> <li>• Increased the number of attorneys qualified to take CPS cases.</li> <li>• Provided opportunity to recruit volunteer advocates.</li> <li>• Created a celebratory community event to increase community awareness.</li> </ul>
<b>Collaboration</b>

<sup>1</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Basic Grant Application, August 30, 2009, pg 10, item 4.5

<sup>2</sup> Ibid

Texas Department of Family and Protective Services , CASA, Texas CPS, local media
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<b>5.1 Travis County Office of Child Representation</b>
<b>Amount of Award: \$100,000</b>
<b>Subgrantee/Fiscal Agent</b>
Travis County
<b>Corresponding Item in FY 2010 Grant Application</b>
Office of Child Representation <sup>3</sup>
<b>Project Description</b>
Travis County OCR provides early, consistent legal representation to children by attorneys who have subject area expertise, institutional knowledge, and experience with the CPS dockets of Travis County.
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• Provided legal counsel for 539 clients in 296 case assignments.</li> <li>• Received 243 new cases totaling 446 new clients.</li> <li>• Closed 96 cases – and about 33% were closed due to case conflicts such as prior representation of a party to a case – attributable largely to the long work histories of OCR staff.</li> <li>• Each OCR attorney completed at least 8 hours of Continuing Legal Education allowing them to be appointed to the College of the State Bar.</li> <li>• Instituted court protocol to request release of information from parents at the initial hearing, which often decreases the delay of waiting to get the information from CPS.</li> <li>• Addition of social worker case management has strengthened legal representation compared to the private appointment model. The social worker gathers and gets crucial information to attorneys faster which reduces delays as well as increases the pool of potential placements.</li> <li>• Responsible for decline in Travis County's expenditures on private attorney's fees in CPS cases – 15% in the first nine months of FY2010, of which 9% is believed to OCR.</li> <li>• Presented 14 trainings on issues on child abuse and neglect that received high approval ratings.</li> <li>• Staff participated in court-sponsored Brown Bag CLE training.</li> <li>• Oversight Committee met almost seven times.</li> <li>• Refined office policies and procedures and gained approval from Oversight Committee.</li> <li>• Created a rotating, on-call system for OCR attorneys to improve accessibility and prompt response time.</li> <li>• Created a forms bank to increase efficiency.</li> <li>• Completed first of 3-phase professional evaluation by George Mason University to evaluate OCR's efficiency and outcomes. The evaluation showed that many community stakeholders believe legal representation has improved with OCR.</li> <li>• Continued to refine case management database to improve data collection.</li> </ul>
<b>Collaboration</b>
Attorney General (Child Support Division), Austin Bar Association (Adoption Day,

<sup>3</sup> Ibid, pg. 12, item 4.11

outreach), Austin Recovery (site visit), Center for Child Protection (site visit), Children's Commission Collaborative Council, DFPS (State Office, Investigations, Child Welfare Board, Conservatorship, Family Group Conferences, Adoptions), Model Court, Collaborative Council, Cincinnati Model Court Site Visit, SafePlace, Travis County Database Committee, Travis County Family Search and Engagement Committee, Travis County Mental Health Public Defender's Office, Travis County Juvenile Probation/Gardner Betts (site visit), Travis County Placement Docket Work Group (monthly), Travis County District Judges (quarterly meetings with Judge Darlene Byrne), University of Texas School of Law Children's Rights Clinic, University of Texas School of Law Domestic Violence Clinic, University of Texas School of Social Work

<b>6.1 Travis County Office of Parental Representation</b>
<b>Amount of Award: \$100,000</b>
<b>Subgrantee/Fiscal Agent</b>
Travis County
<b>Corresponding Item in FY 2010 Grant Application</b>
Office of Parental Representation <sup>4</sup>
<b>Project Description</b>
The Travis County Office of Parental Representation (OPR) provides early, competent legal representation and social worker services to primary parents who have had or who are at risk of having their children removed by the Texas Department of Family and Protective Services due to allegations of abuse or neglect.
<b>Activities and Accomplishments</b>
<p>OPR has:</p> <ul style="list-style-type: none"> <li>• Been named, "Best of Austin 2009 – Best New Family Friendly Government Office" by the Austin Chronicle.</li> <li>• Represented 283 individual clients during grant period.</li> <li>• Closed 88 cases and reunified 52 families, or 60% of closed cases.</li> <li>• Accepted 100 % of all cases appointed.</li> <li>• All OPR attorneys have exceeded 45 hours of Continuing Legal Education allowing them to be appointed to the College of the State Bar.</li> <li>• Oversight Committee met almost monthly.</li> <li>• Refined office policies and procedures and gained approval from Oversight Committee.</li> <li>• Completed Judicial Survey. Respondent judges (13) "strongly agreed" or "agreed" that their dealings with OPR were professional, accurate and that OPR staff had superior knowledge of the law. Respondent judges said OPR demonstrated skills in trial advocacy and was aware of the community services available to our clients.</li> <li>• Completed first of 3-phase professional evaluation by George Mason University to evaluate OPR's efficiency and outcomes summarized in a report that:             <ul style="list-style-type: none"> <li>○ Recognized OPR as having quickly become a resource in the legal community.</li> <li>○ Determined that OPR achieved many of its goals in its first year of operation.</li> <li>○ Noted how OPR attorneys have been described by others as zealous advocates for their clients and put their needs first.</li> </ul> </li> </ul>

<sup>4</sup> Ibid, pg. 11, item 4.10

- Staff Social worker conducts assessments on each client as early as possible in the case and provides an individualized case management plan that may change during course of case.
- Staff social worker involved with efforts to reduce disproportionality such as committee involvement and training system stakeholders. involvement, social worker conducts training
- The effect of OPR being involved early in most cases has led to appropriate placements, faster determination of client’s needs and greater success of reunifying families and/or permanency in our cases.
- Staff serves as a resource for technical support to private attorneys on the rotation list for TDFPS cases and out-of-county attorneys.
- By participating in court-sponsored CLE events open to the public, OPR is expanding the public’s awareness of child welfare topics as well as being successful in establishing relationships with key players in this area of law.
- OPR has been successful in securing expanded visitation hours by modifying standard supervised visitation for all parents from one hour a week to two hours, twice a week.
- Reduced civil attorney fees for the county – in the first 9 months of 2010, civil attorney fee expenditures have declined by 15% over 2010, which had a reduction of 9%.
- Expanded the ability to find extended family members through collaboration committee efforts.
- OPR has conducted monthly multidisciplinary training for OPR, DA’s office, and CASA.
- Assisted the Travis County Domestic Relations Office with obtaining protective orders for clients prior to court proceedings.
- Staff involved with efforts to help youth aging out of care through Transition Court, and with the Cross-Over docket, which handles cases where clients are involved in both a criminal and Child Protection cases.

**Collaboration**

Office of Child Representation (OCR), District Attorney’s Office, University of Texas School of Law Children’s Rights Clinic, DFPS, CASA of Travis County, Travis County Office of Domestic Relations, Search and Engagement Committee, CrossOver Docket,

<b>7.1 ChildSafe / Family Drug Court Partnership</b>
<b>Amount of Award: \$46,083</b>
<b>Subgrantee/Fiscal Agent</b>
Alamo Children’s Advocacy Center, d.b.a. ChildSafe, is a nonprofit children's advocacy center in Bexar County.
<b>Corresponding Item in FY 2010 Grant Application</b>
Alamo Children's Advocacy Centers (ChildSafe) <sup>5</sup>
<b>Project Description</b>
This ChildSafe project provides a continuum of services to families in the Bexar County Family Drug Court (FDC) who are identified as having a sexual abuse issue. ChildSafe offers services to the child who makes the outcry of sexual abuse, their siblings, and non-

<sup>5</sup> Ibid pg. 10, item 4.4

offending family members. The CIP grant pays for a part-time case coordinator to coordinate services between ChildSafe and the Bexar County Family Drug Court.
<b>Activities and Accomplishments</b>
<p>The Case Coordinator:</p> <ul style="list-style-type: none"> <li>• Reviewed 724 court affidavits to assess for sexual abuse of children.</li> <li>• Attended FDC meetings.</li> <li>• Provided services to 105 families, six of which were from FDC and 99 from the CPS Courts. The 105 families included 188 children and 31 parents.</li> <li>• Increased by 27% the number of individuals served from the year before.</li> <li>• Screened more families for services than in the previous year by committing more of the case coordinator's time to review all of the affidavits from FDC and CPS courts.</li> <li>• Increased the interaction between ChildSafe and judges.</li> <li>• Of the families ChildSafe had served, there were no new referrals to CPS during the grant.</li> </ul>
<b>Collaboration</b>
Family Violence Prevention Services, Family Service Association, Alpha Home, The Patrician Movement, ChildSafe, CPS, Bexar County Family Drug Court, Judges Saldana and Sakai, Mid-coast Family Services

<b>8.1 Texas Foster Youth Justice Project</b>
<b>Amount of Award: \$80,000.</b>
<b>Subgrantee/Fiscal Agent</b>
Texas RioGrande Legal Aid (TRLA) is one of three legal aid service corporations in Texas. It serves most of South Central and Far West Texas.
<b>Corresponding Item in FY 2010 Grant Application</b>
Texas Foster Youth Justice Project <sup>6</sup>
<b>Project Description</b>
The Foster Youth Justice Project provides information and services to foster youth, especially those who are in long term care and/or are aging out of care, using a 24-hour legal hotline, a website, training conferences and publications. Project staff in many cases also provides direct legal representation.
<b>Activities and Accomplishments</b>
<p>Core activities:</p> <ul style="list-style-type: none"> <li>• Provided legal information to foster youth.</li> <li>• Provided direct representation to foster youth in 211 cases involving matters such as family law (often involving domestic violence), landlord tenant, consumer, sealing juvenile and criminal records, barriers to higher education, obtaining CPS records, problems with identification documents (not having them or having documents with different/incorrect names), public benefits including food stamps and SSI, among others.</li> <li>• Trained the staff of agencies serving foster youth.</li> <li>• Conducted 10 separate training conferences for current/former foster youth.</li> <li>• Provided Pro Se legal resources.</li> </ul>

<sup>6</sup> Ibid, pg. 11, item 4.8

- Promoted safety, permanency and well-being for foster youth by informing them of their basic rights, transition services, educational options, medical decision making and health insurance options.
- Began creation of a pro se litigant resource library.
- Conducted outreach by traveling and making presentations.
- Maintained and updated an informational website.
- Telephone hotline staffed by legal assistant who interviews youth and refers information to appropriate attorney and provides significant guidance to callers about, for example, negotiating the system.
- Received 125 requests for materials.
- Published:
  - 2, 577 copies of the 2nd edition of "A Guide to Those Aging out of Foster Care in Texas."
  - 661 copies of "A Guide to Sealing Juvenile Records."
  - 95 project posters.
  - 1,360 project brochures.
  - Street Smart (guide to local laws that impact youth for a variety of cities) : 61
- Project director served on the DFPS Transitional Living Services work group that made extensive recommendations to the legislature.
- Conducted outreach to foster youth in partnership with local CASA and PAL programs.
- 17,644 – number of website page views
- 15,402 – number of unique website-visitor IP addresses

**Collaboration**

Family Violence Prevention Services, Family Service Association, Alpha Home, The Patrician Movement, ChildSafe, CPS, Bexar County Family Drug Court, Judges Saldana and Sakai, Mid-coast Family Services

<b>9.1 Tarrant County Challenge Family Drug Court</b>
<b>Amount of Award: \$100,000.00</b>
<b>Subgrantee/Fiscal Agent</b>
Tarrant County Challenge
<b>Corresponding Item in FY 2010 Grant Application</b>
Tarrant County Challenge Activities <sup>7</sup>
<b>Project Description</b>
Tarrant County Challenge is a nonprofit agency that works to reduce substance abuse in Tarrant County. It partners with Tarrant County courts to serve people involved with CPS cases who have substance abuse problems. The CIP grant helps fund the position of intensive case manager in the Tarrant County Family Drug Court.
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• Continued collaborative model with a full-time intensive case manager.</li> <li>• Served 27 families with 42 children.</li> <li>• Drug court successes have energized the community and spurred community support,</li> </ul>

<sup>7</sup> Ibid, pg. 11, item 4.7

for example, a dentist provided some free dental care and another provider offered some extra recovery services to drug court graduates.

- Added a representative from the Department of Assistive and Rehabilitative Services join to collaborative group in order to strengthen services.
- Family Drug Court (FDC) staff continues to provide technical assistance. Additionally, the Tarrant County FDC has provided ongoing technical assistance to DFPS, Longview FDC, Dallas FDC, and several others jurisdictions that are planning to start drug courts.
- Several elected officials from local and state government attended the FDC hearings and have expressed how impressed and moved they are by the successes the program is experiencing.
- Better case documentation, communication and accountability was facilitated with new web-based case management database that allows the Judge, ICMs, CPS workers and FDC supervisor to access client case records from any computer with internet access.
- Increased the number of judicial reviews that parents have with the FDC judge.
- Provided parents with incentives/rewards to reinforce NA/AA attendance, to participate in treatment, obtain a job, and manage stress.

**Collaboration**

323rd District Court, Department of Family and Protective Services, Tarrant County Challenge, Lena Pope Home, Recovery Resource Council, CASA of Tarrant County, MHMR – Addiction Services, MHMR – Mental Health, MHMR – ECI, MHMR – Evaluation, VOA Light, VOA Riverside, Nexus Recovery Center, North Texas Addictions Counseling and Education, Salvation Army, Union Gospel Mission, The Next Step, The Women’s Center, Texas Wesleyan School of Law, Bearden Investigative Agency, Community Enrichment Center – Adopt-a-Family Program, Ladder Alliance, Positive Influences, Red Oak Books, Community Learning Center.

**10.1 Texas Loves Children (TLC) Website**

**Amount of Award: \$250,000**

**Subgrantee/Fiscal Agent**

Texas Loves Children

**Corresponding Item in FY 2010 Grant Application**

Texas Lawyers for Children Website<sup>8</sup>

**Project Description**

Texas Loves Children, Inc. is a nonprofit agency in Dallas that has developed a website and online communication tools for attorneys and judges. Staff also conducts legal training. The CIP grant helps fund the salaries of TLC staff and contract personnel.

**Activities and Accomplishments**

The TLC website project seeks to raise the standard of practice by equipping judges and attorneys with a comprehensive, topically organized, word-searchable online legal resource, as well as a communication tools and services such as secure discussion boards and email alerts. TLC's information and tools help courts make better recommendations and decisions in child protection cases.

<sup>8</sup> Ibid, pg. 11, item 4.9

- Of the 1425 registered users, 11 judges and 55 attorneys responded to an online survey; 100% of the 11 judges and 96% of the 55 attorneys said the online center helped them achieve the best interest of the children involved in their cases.
- Continued ongoing updates and expansion of the online child abuse library with new materials and resources. The library focuses on legal, medical, and psychological information pertinent to child abuse and neglect and child protection.
- Updated and expanded communication and collaboration tools.
- Provided critical new information about changes in state and federal legal developments and breaking news in Texas, with analysis on how would impact children’s cases.
- Continued statewide pro bono registry that provides a way for attorneys from all fields of practice to register to assist in children’s cases.
- Continued partnering with the Texas Young Lawyers Association and the State Bar Committee on Child Abuse and Neglect to recruit pro bono attorneys to represent a specific population of children who are in the state's permanent managing conservatorship and who do not have a legal advocate.
- Added 1,263 new materials.
- Received in November 2010 the “Award for Excellence in Social Innovation” given by the Dallas Center for Nonprofit Management that recognizes *“a novel solution to a social problem that is more effective, efficient and sustainable... and demonstrates significant positive change around a specific social issue.”*
- Added announcements and content at the request of Commission staff, such as training opportunities, the Commission's Jurist in Residence letter, and information about Travis County's model court.
- Sent 20 email alerts to judges and attorneys about time-sensitive news.
- Posted 31 news alerts to the home page.
- Created an email network for participants of the Commission's PMC Round Table after the conference ended to allow participants to continue communications and information sharing.
- Distributed and gathered information for the Commission by emailing registered users information such as links to Commission surveys and notices of Commission-sponsored training scholarships.
- Continued partnership with Texas Foster Youth Justice Project by posting information on TLC's web site about the project.
- Continued collaboration with Advocacy, Inc, by posting training materials and information about their dually managed youth project.
- Added 102 registered users to a total of 1,425.
- 22, 348 – number of visits to the website.
- 212,676 – Number of page views.

**Collaboration**

Texas Child Protection Specialty Courts, Texas Association of Child Protection Judges (TACPJ), Department of Family and Protective Services, Office of General Counsel, Office of Court Administration, Texas District and County Attorneys Association (TDCAA), State Bar of Texas, Committee on Child Abuse and Neglect, Tarrant County District Attorney’s Office, Harris County Attorney’s Office, National Center for Prosecution of Child Abuse, National

Clearinghouse on Child Abuse and Neglect (now Child Welfare Information Gateway), Fort Worth – Tarrant County Young Lawyers Association, Texas Young Lawyers Association, and the National Council of Juvenile and Family Court Judges, Center for Public Policy Priorities, the National Child Protection Training Center, and the ABA Center on Children and the Law.

<b>11.1 Texas CASA – Expansion and Development</b>
<b>Amount of Award: \$237,800</b>
<b>Subgrantee/Fiscal Agent</b>
Texas CASA, Inc., advocates for abused and neglected children in the court system through the development, growth and support of local CASA programs.
<b>Corresponding Item in FY 2010 Grant Application</b>
Texas CASA, Inc. <sup>9</sup>
<b>Project Description</b>
With Texas CASA’s support, local CASA programs recruit, train, and supervise volunteers to serve as court-appointed guardians ad litem or special advocates in child protection services cases. The CIP grant helps fund various recruitment efforts and training courses for both staff and volunteers.
<b>Activities and Accomplishments</b>
<p><b>Strengthening local CASA program's capacity to provide effective and consistent advocacy for children through volunteers:</b></p> <ul style="list-style-type: none"> <li>• Increased the number of CASA volunteers to 6,619 in 2010 from 5,446 in 2009, a 17.2% increase.</li> <li>• 20,818 – Number of children CASA served.</li> <li>• 200 – Number of judges served.</li> <li>• 311 – Number of persons trained.</li> <li>• Launched new recruitment campaign, <b>Recruitment 360</b>, based on the popular Volunteer Roundup Word of Mouth program:             <ul style="list-style-type: none"> <li>○ Trained 86 persons, 99% of evaluations agreed or strongly agreed that the training met their expectations.</li> </ul> </li> <li>• <b>Volunteer Education:</b> This 16-hour conference is a train-the-trainer course and was attended by 27 CASA staff.</li> <li>• <b>Advocacy and Volunteer Management Training:</b> Twenty-six persons attended this core-skills training, which met the expectations of 96% of participants.</li> <li>• <b>Executive Director Leadership Institute:</b> Created by best-selling authors, this 2-day course covers practices of exemplary leaders. Executive directors of 58 CASA programs attended, and 93% said it met their expectations.</li> <li>• <b>Training of New Executive Directors:</b> Four sessions were provided and attended by 38 new executive directors, 100% of whom said it met their expectations.</li> <li>• <b>New one-day course suggested by the Texas CASA Statewide Volunteer Council:</b> This new course that puts together CASA staff and volunteers to share experiences and discuss best practices was attended by 76 participants and met the expectations of 93%.</li> </ul>

<sup>9</sup> Ibid, pg.8, item 4.2

- **Web-based training modules:** Although Texas CASA staff thoroughly researched this training option, it was found to be cost-prohibitive, so two alternatives have been suggested.
  - *Provide local programs with training modules that can be customized for their jurisdiction.*
  - *Provide a series of short webinars on program management or child advocacy best practices.*

**Expanding CASA services into additional counties**

Texas CASA provided intensive, as-needed support – staff time and training – to both the staff and boards of start-up CASAs and those interested in expanding services.

- The state's 69th CASA program – established in Williamson County -- completed its first year of services.
- Three local CASA programs are seeking to expand into neighboring counties, and one already has – the Harrison County CASA in Marshall, Texas, expanded to Marion County.

**Collaboration**

National CASA, DFPS, Texas C-Bar, Greenlights, leaders within the CASA network, attorneys ad litem, and speakers with expertise in accounting, public relations and leadership development

<b>12.1 Harris County Infant and Toddlers Court</b>
<b>Amount of Award: \$ 50,000</b>
<b>Subgrantee/Fiscal Agent</b>
Harris County
<b>Corresponding Item in FY 2010 Grant Application</b>
None
<b>Project Description</b>
This project is the creation of a court docket specifically for CPS cases involving infants and toddlers aged 0 – 3, and it is based on the Zero to Three model. The project's goals include ensuring a continuum of services, providing education about the issues affecting this population, creating a replicable program, reducing parental recidivism, building local capacity, implementing and utilizing data tracking and utilization models, and identifying cost-saving measures. These goals will be accomplished through improved access to primary and mental health care, access to Early Child Intervention (ECI) services, increased visitation, addiction recovery, family conferencing, and overall use of a collaborative, therapeutic and problem-solving judicial approach. CIP funds support the expenses for personnel/salary required for start-up activities. Because the docket is not yet operational, this project will be included in next year's report.

<b>13.1 Dallas County Videoconferencing Project</b>
<b>Amount of Award: \$ 50,000</b>
<b>Subgrantee/Fiscal Agent</b>
Dallas County
<b>Corresponding Item in FY 2010 Grant Application</b>
None

<b>Project Description</b>
This is a project to install a video conferencing system in two Dallas County Juvenile District courts (304th and 305th) to allow children and youth more participation in their cases. Court staff has developed protocols for using the system, and procedures such as securing rooms and scheduling the system's use. Because the system is not yet operational, this project will be included in next year's report.

<b>14.1 OCA CPC Judicial Support</b>
<b>Amount of Award: \$20,400</b>
<b>Subgrantee/Fiscal Agent</b>
The Office of Court Administration (OCA)
<b>Corresponding Item in FY 2010 Grant Application</b>
Office of Court Administration <sup>10</sup>
<b>Project Description</b>
The CIP grant pays for internet connectivity via wireless air cards for CPC judges, which allows them to access the web-based CPCMS.
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• Provided wireless data cards to all judges and court staff to maintain the case management system that provides updated docket information.</li> <li>• Allows judges who travel the vast majority of the time to stay in touch with their court coordinator in their home jurisdiction.</li> </ul>
<b>Collaboration</b>
Staff of the Permanent Judicial Commission for Children, Youth and Families, 129 Texas counties, Child Protection Court Advisory Council, Office of Court Administration, 17 Child Protection Courts.

**TECHNOLOGY GRANT PROJECTS**

The Commission's Technology Committee is responsible for vetting technology projects that meet CIP and Commission goals and making recommendations to the Commission. The Commission charged the Technology Committee with implementing the Commission's strategic plan goals that relate to data collection and analysis. Members of the Technology Committee include representatives of the judiciary, DFPS, Texas CASA, attorneys and Commission staff. Technology grant funds are used to fund projects through grant agreements or contracts with outside organizations, and through staff-directed projects. Using Technology grant funds, the Commission worked to improve the state child welfare system by:

- Funding expenses associated with Commission meetings, member travel, and meeting-related expenses.
- Supporting the activities of the executive director and other Commission staff, including strategy and program development, implementing the CIP grant program, conducting site visits, representing Texas courts, attending judicial and child welfare conferences, and attending coordinating stakeholder meetings.

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<sup>10</sup> Ibid, pg. 9, item 4.3.

- Disseminating information to the judiciary and stakeholders through the Commission’s website, newsletter, meeting minutes, Jurist in Residence communications, other publications, and personal contacts.
- Ensuring statewide collaboration on all CIP grants is conducted in a meaningful and ongoing manner.
- Advocating for projects that improve court performance and practices throughout the state.

**Summaries of Technology Grant Projects:**

<b>15.1 Texas Data Enabled Courts for Kids (TexDECK)</b>
<b>Amount of Award: \$264,582</b>
<b>Subgrantee/Fiscal Agent</b>
The Texas Office of Court Administration (OCA) is the administrative arm of the state's court system and provides technical and administrative services to certain trial and appellate courts.
<b>Corresponding Item in FY 2010 Grant Application</b>
Proposed List of Data Grant Projects for FY2010 <sup>11</sup>
<b>Program Description</b>
TexDECK is the name of a group of CIP-funded projects all aimed at improving data collection and analysis in child protection cases and integrating the exchange of information between courts, the state's child protective agency, and related government entities. CIP funds pay primarily for the TexDECK project manager's salary and additional contracted IT professional services. Ongoing TexDECK projects include collaborating with national groups who are working to establish data exchange standards and creating and updating comprehensive case management software.
<b>Activities and Accomplishments</b>
<p><b>Functional Requirements Study (FRS)</b></p> <p>As the blueprint for building child-protection case management software, the Functional Requirements Study is a document that maps, as far as possible, every step in a child-protection case. In FY 2010, the FRS was upgraded from version 1.0 to version 2.0, adding items that address Toolkit Outcome Measures and the following items that were identified since publication of version 1.0, to include:</p> <ul style="list-style-type: none"> <li>• OCA CPCMS as a Case Study and will include all system Help files:</li> <li>• User Guide</li> <li>• Outcome Measures – Data Field Matrix</li> <li>• System Utilization Guidelines (as directed from the Presiding Judges)</li> <li>• Medication Chart &amp; Notes</li> </ul> <p><b>Child Protection Case Management System (CPCMS)</b></p> <p>TexDECK staff created CPCMS, a state-of-the-art, case management software system for child protection courts.</p>

<sup>11</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Training Grant Application, August 30, 2009, pgs 9-10, items 5.2-5.5

- Launched CPCMS in late 2009 for the state's 17 Child Protection Courts (CPC) – child protection specialty courts formerly called Cluster Courts.
- Because CPC courts handle child protection cases in 130 (mostly rural) of the state's 254 counties, the use of CPCMS affects significant numbers of individuals involved in the state's child protection system, including:
  - 11, 551 children and youth.
  - 6,888 parents.
  - 1,755 CASAs or other volunteers.
  - 20 judges and 18 of their staff members.
  - 9,238 attorneys.
- Added specifications to CPCMS that allows it to capture 20 of the 30 measures in the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases*. This makes it possible for CPC courts to capture and analyze nationally recognized outcome measures.
- Added several reporting functions to CPCMS.
- Continued efforts to encourage other Texas courts to adopt CPCMS or some of its components by advising Texas courts of the availability of the CPCMS source code, database schema, and all supporting documentation at no cost.
- Worked with CPC courts for solutions to improve internet connectivity because CPCMS is a web-based software system and its functionality is affected by the availability and speed of courts' internet.
- Worked with the County Information Resource Agency (CIRA) to explore the possibility of their hosting the CPCMS system and implementing it in their member counties. The project was put on hold because of timing complications but will be revisited in 2011 for possible implementation in 2012.
- Worked with another consortium of Texas counties (The TechShare program of the Texas Conference of Urban Counties (CUC) to explore implementing CPCMS in three urban counties, Tarrant, Bexar and Dallas. The project was put on hold because of timing complications but will be revisited in 2011 for possible implementation in 2012.
- Began working with Tarrant County to develop and implement a case management system based on CPCMS.

### **Data Interchange Standards**

OCA, through the TexDECK project, has continued working with the National Center for State Courts (NCSC) and a workgroup of state and national members to develop national data interchange standards, which is the technology necessary to allow direct (computer-to-computer) data exchange between the courts and the child protection agency.

- TexDECK staff contributed to the completion of some of the critical components (or data models) called Information Exchange Packet Documents (IEPDs) that will facilitate future direct data exchange. The following five of the eight IEPDs the workgroup identified as first priorities were completed in 2010:
  - Court findings
  - Dependency petition
  - Hearing notification
  - Placement change notification

○ Representation notification.  
Two of the eight (Court report and Service plan) were completed in 2009 and one (Case plan) is in development.

**Collaboration**

Texas DFPS, Texas CPS, 323rd District Court (Tarrant County), 126th Judicial District Court (Travis County), 311th District Court (Harris County), 330th Family Court District (Dallas County), CPCMS Advisory Group, Child Protection Court of Central Texas, Sabine Valley Child Protection, South Plains Cluster Court, Child Protection Court of the Hill Country, Child Protection Court of the Rio Grande Valley West, Brazos River Valley Cluster Court, Centex Child Protection Court, North Texas Child Protection Court, Child Protection Court of South Texas

**TRAINING GRANT PROJECTS**

The Commission's Training Committee is responsible for vetting judicial, attorney and multidisciplinary training projects that meet CIP and Commission goals and making recommendations to the Commission. Training grant funds are used to fund projects through grant agreements or contracts with outside organizations, and through staff-directed projects. The Commission charged the Training Committee with implementing the Commission's strategic plan goals that relate to training judges, attorneys and other stakeholders around the state through:

- Funding expenses associated with Commission meetings, member travel, and meeting-related expenses.
- Supporting the activities of the executive director and other Commission staff, including strategic and program development, implementing the CIP grant program, conducting site visits, representing Texas courts, attending judicial and child welfare conferences, and attending and coordinating stakeholder meetings.
- Disseminating information to the judiciary and stakeholders through the Commission's website, newsletter, meeting minutes, Jurist in Residence communications, other publications, and personal contacts.
- Ensuring statewide collaboration on all CIP grants is conducted in a meaningful and ongoing manner.
- Advocating for projects that improve court performance and practices throughout the state.

**Summaries of Training Grant Projects:**

<b>16.1 OCA CPC Annual Judicial Training</b>
<b>Amount of Award: \$29,300</b>
<b>Subgrantee/Fiscal Agent</b>
The Office of Court Administration (OCA)
<b>Corresponding Item in FY 2010 Grant Application</b>
Child Protection Court Annual Update <sup>12</sup>

<sup>12</sup> Ibid, pg. 8, item 4.6

<b>Project Description</b>
The CIP grant funds and OCA conducts an annual 2-day training for OCA's 17 CPC judges. The project also pays to send CPC judges to other relevant training conferences.
<b>Activities and Accomplishments</b>
Judicial training helps child protection court judges and staff improve their knowledge, skills and abilities to facilitate consistent decisions for safety, permanency and well being of children brought before them. <b>CPC Annual Conference, Oct. 5-6, 2009</b>
<ul style="list-style-type: none"> <li>• 32 judges and staff attended.</li> <li>• 146.25 – Number of CLE hours attendees earned.</li> <li>• Conference received an average rating of 5 on a scale of 1 to 5.</li> </ul>
<b>Other Training Conferences</b> (and number that attended)
<ul style="list-style-type: none"> <li>• TACA Conference (1)</li> <li>• NCSCS Fundamental Issues of Caseflow Management (4)</li> <li>• Texas Judicial Summit (1)</li> <li>• NCJFCJ Annual Conference (1)</li> </ul>
<b>Collaboration</b>
Staff of the Permanent Judicial Commission for Children, Youth and Families, 129 Texas counties, Child Protection Court Advisory Council, Office of Court Administration, 17 Child Protection Courts, the CEO of Centene Corporation's Foster Care Program, the Director of STAR Health, Texas Department of Family and Protective Services

<b>17.1 DFPS Attorney Training</b>
<b>Amount of Award: \$5,000</b>
<b>Subgrantee/Fiscal Agent</b>
Texas Department of Family and Protective Services
<b>Corresponding Item in FY 2010 Grant Application</b>
None
<b>Project Description</b>
A grant agreement between Commission and DFPS reimbursed the travel expenses of seven DFPS prosecutors to attend the State Bar of Texas Advanced Family Law Conference in August 2010.
<b>Activities and Accomplishments</b>
Better legal representation will lead to more timely resolution of child welfare cases, ensuring that children are placed in a permanent home more quickly.
<ul style="list-style-type: none"> <li>• 7 DFPS attorneys attended the Advanced Family Law Conference.</li> </ul>
<b>Collaboration</b>
DFPS, State Bar of Texas, State Bar of Texas Child Abuse and Neglect Committee

<b>18.1 Texas Center for the Judiciary: Judicial Training and National Conference Sponsorship</b>
<b>Amount of Award: \$635, 841</b>

<b>Subgrantee/Fiscal Agent</b>						
Texas Center for the Judiciary is a nonprofit corporation established in 1973 by the Judicial Section of the State Bar of Texas to provide continuing judicial education programs for the state's judiciary and supportive personnel.						
<b>Corresponding Item in FY 2010 Grant Application</b>						
Status of Current CIP Training Grant Projects <sup>13</sup>						
<b>Project Description</b>						
The Texas Center for the Judiciary conducted four in-state training programs (Beyond the Bench, Associate Judges Conference, CPS Judicial Conference, and Disproportionality - Implicit Bias) and coordinated scholarships for two national training programs (National Council of Juvenile and Family Court Judges (NCJFCJ) and National Conference on Juvenile and Family Law (NCJFL).						
<b>Activities and Accomplishments</b>						
<b>Training Conferences</b>						
<b>Texas Center for the Judiciary Conferences</b>	<b>Date</b>	<b>Location</b>	<b>Total Persons</b>	<b>Number Judges</b>	<b>CLE or CJE Hrs</b>	<b>Total CLE or CJE Hrs</b>
Beyond the Bench / Harris County	April 2010	Galveston	138	22	10	220
Associate Judges	July 2010	Austin	96	69	12	828
CPS Judges	August 2010	San Antonio	96	48	12	576
Disproportionality / Implicit Bias	May 2010	Bastrop	35	24	10.5	252
<b>National Scholarships</b>						
NCJJ Annual	March 2010	Las Vegas	60	54	17	918
NCJFCJ Annual	July 2010	San Diego	52	48	17.25	840
<b>Total Trained</b>			<b>477</b>			
				<b>Total Judges</b>	<b>265</b>	
					<b>Total CLE/CJE</b>	<b>3634</b>
<b>Post-training surveys reveal training's positive results</b>						
When judges and other stakeholders are trained on relevant and important issues, they are better equipped to make decisions leading to increased safety, permanency and well being for children and families.						
At each TCJ training course, participants commit to completing a survey six months later to describe how they've changed their behavior or applied what they learned as a result of the training, and what kinds of action plans subsequently implemented. Completed surveys show that most training participants return to their communities and immediately begin trying to apply what they learned. For example, participants of the September 2009 Beyond the Bench have already implemented or will soon implement many new processes to						

<sup>13</sup> Ibid, pgs 7-8, items 4.2-4.5

improve court performance.

**Based on a Beyond the Bench conducted in FY2009, participant judges reported that as a result of the 2009 Beyond the Bench training they now:**

- Conduct routine transition hearings for youth in long term care when they turn 16.
- Introduce the "Child's Court Report" into the court process.
- Use mediations more often, on a case by case basis.
- Order drug assessments earlier in the court process.
- Conduct regular collaborative meetings with other stakeholders, usually monthly.
- Collaborate with Attorney General's office to try to get temporary child support orders in CPS cases.
- Require reports from attorneys ad litem describing their efforts to meet with their child or youth clients.
- Implement teleconferencing or video conferencing to allow more youth participation mainly, but also others, such as an undocumented parent who cannot cross the Mexico/Texas border.
- **Rio Grande Initiative:** Several judges along the border of Mexico, from Laredo to Brownsville, created this multidisciplinary effort to provide training to participants in court cases, recruit service providers, and work together to address pressing problems.

**Changes other stakeholders have made or will make:**

- The Kingsville police department will:
  - Include a module on CPS and CASA in its new-officer training.
  - Participate in a multidisciplinary response team that addresses child protection issues.
  - Police officers visit CPS worker and CASA volunteers at their places of business as part of a community policing initiative.
- Staff of the Ricardo Independent School District actively supports their local CASA in fundraising and recruitment efforts.

**Overall, judges and others who have attended TCJ training courses have indicated that as a result of the training, they:**

- (1) Are more likely to ask about the health, medical care, school attendance, and other indicators that children are being properly cared for;
- (2) Have an enhanced awareness of child-protection issues;
- (3) Have greater cross-disciplinary communication; and
- (4) Have more tools that enhance their ability to make better-informed decisions**

**Collaboration**

Associates in Human Development Counseling, LLC Rolling Meadows IL, Brief Therapy Institute Dallas, Advocacy, Inc., Center for Public Policy Priorities, Advocacy, Inc., Univ. of Oklahoma, Dept. of Pediatrics, Supreme Court Children's Commission, Travis Consulting Co., Chapin Hall at the Univ of Chicago, Santa Maria Hostel, National Screening Center, Child Advocates, Inc., Brazoria County, Law Office of Macy Cassin, Harris County Sheriff's Office, Law Offices of George Clevenger, Connolly & Shireman, LLP, Family Time Crisis & Counseling

Center, Texas Children's Hospital, Harris Co. Juvenile Probation Dept, CPS, Homes with Hope, Claudia Canales, Attorney, Donna Everson, Attorney, Farias Law Firm, Macy Cassin, Attorney, Harris County, Harris County Attorney's Office, The Griffith Law Firm, PLLC., Harris Co. Attorney's Office, Katie Flynn, Brian Fischer, Attorney, CPD Division Chief, Vickie Longwill, Attorney, City of Houston Police Dept., City of Pasadena Police Department, Harris County Protective Services, Wendy L. Prater, Attorney at Law, Law Office of Karina A. Ramirez, Marc Ritter, Attorney, Raul Rodriguez, Attorney, Harris Co. Children's Crisis Care Center, Connolly & Shireman, LLP, Harris County DA's Office, Harris Co. Children's Assessment Center, Law Office of Patrick Upton, Kathleen Vossier, Attorney, Bobbie Young, Attorney, Carel Stith, Attorney, Eric McFerren, Attorney, Harris Co. Juvenile Probation, Houston Works USA, DePelchin Children's Center, Supreme Court of Texas, Courthouse & Law Enforcement Center, Plunkett & Gibson, Circuit Court of Cook County, Sacramento State University, Polk County Court, Harris County MHMR, Betty Blackwell Attorney, Casey Family Programs, Child Prot. ct. of Central Texas, Thompson Coe Attorneys, Hon. Len Edwards, State of Wisconsin, Office of Attorney General, A-STEP Seminars, Univ. of Texas School of Law, Peoples Institute for Survival and Beyond, Port Arthur HOPE, Office of Court Administration, Justice of the Peace, NCJFCJ Nat'l Conference, Nat'l Conf on Juvenile & Family Law, Justice Court Training Center, Texas CASA, Casey Family Programs, Tx Health and Human Services, Dr. Connie Almeida, Psychologist, Transitions, Casa de Esperanze, State of Texas Deputy General Counsel, Texas Lawyers for Children, Texas Youth Connection, Tracy Harting, Attorney, Chadwick Sapenter, Simpson Martin, L.L.P.

<b>19.1 NACC 33rd Annual Conference</b>
Amount of Award: \$ 130,000
<b>Subgrantee/Fiscal Agent</b>
National Association of Counsel for Children
<b>Corresponding Item in FY 2010 Grant Application</b>
Child Welfare Law Conference <sup>14</sup>
<b>Project Description</b>
<p>The NACC annual training conference offers nationally known expert speakers on multi-disciplinary topics designed to provide attendees with the tools needed to provide effective legal representation in child abuse and neglect cases.</p> <p>The Commission gave an award statement to the NACC in FY2010 to provide:</p> <ul style="list-style-type: none"> <li>• Registration scholarships for Texas attorneys to attend the conference.</li> <li>• Funding for speaker-related expenses.</li> </ul> <p>The conference was held October 20-23, 2010, in Austin, Texas, and will be included in the FY2011 report.</p>

<sup>14</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Training Grant Application, August 30, 2009, pg 9, item 4.9

**CONTRACT PROJECTS**

<b>20.1 NACC Attorney Training</b>					
<b>Amount of Total Award: \$180,00</b>					
<b>Amount Used in FY2010: \$85,000</b>					
Grant period was FY2009 and FY2010 – Training conducted over two years.					
<b>Corresponding Item in FY 2010 Grant Application</b>					
Attorney Training <sup>15</sup>					
<b>Project Description</b>					
The Commission signed an \$180,000 contract in September 2008 with the National Association of Counsel for Children (NACC) to develop and conduct between 14 and 17 statewide training conferences for attorneys who represent children, parents, or the child welfare agency in child protection cases. Nine conferences were conducted in FY 2009 and eight in FY 2010.					
<b>Activities and Accomplishments</b>					
<p>Provided basic and advanced attorney training regarding legal representation in child protection cases. Better legal representation will lead to more timely resolution of child welfare cases, ensuring that children are placed in a permanent home more quickly.</p> <ul style="list-style-type: none"> <li>• Conducted eight trainings in FY 2010.</li> <li>• Produced a manual for Texas attorneys representing parents and children in CPS cases that all attendees received. Available online at: <a href="http://www.supreme.courts.state.tx.us/children/pdf/TXTrainingManual.pdf">www.supreme.courts.state.tx.us/children/pdf/TXTrainingManual.pdf</a>.</li> <li>• Coordinated with courts in six sites regarding training needs.</li> <li>• Developed scripts and PowerPoints for future on-line training.</li> <li>• Promoted work of Children’s Commission.</li> </ul>					
<b>Name of Event</b>	<b>Date(s)</b>	<b>Location</b>	<b># Attended</b>	<b>CLE</b>	<b>Total CLE</b>
The Abuse and Neglect Case: A Practitioner’s Guide	October 2, 2009	Longview	31	8	248
The Abuse and Neglect Case: A Practitioner’s Guide	October 20, 2009	Waco	19	7.5	142.5
The Abuse and Neglect Case: A Practitioner’s Guide	October 22, 2009	Fort Worth	41	7.5	307.5
Red Book Training	October 28, 2009	Houston	37	5.5	203.5
The Abuse and Neglect Case: A Practitioner’s Guide	November 6, 2009	Dallas	72	7.5	540
Red Book Training	November 7, 2009	Dallas	25	5.5	137.5
The Abuse and Neglect Case: A Practitioner’s Guide	December 2, 2009	Harlingen	23	7.5	172.5

<sup>15</sup> Ibid, pg. 10, item 5.7

Case: A Practitioner's Guide					
The Abuse and Neglect Case: A Practitioner's Guide	December 4, 2009	Corpus Christi	19	7.5	142.5
<b>Totals</b>			<b>267</b>	<b>56.5</b>	<b>1,894</b>

**Collaboration**

Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families; National Association of Counsel for Children, Children's Law Center of Los Angeles, The State Bar of Texas, Texas Lawyers for Children, Texas CASA, Texas Office of Court Administration, The Texas Department of Family and Protective Services, The Travis County Office of Parent Representation, The Texas Children's Justice Act, The Texas District and County Attorneys Association, Children's Rights Clinic, The University of Texas School of Law, W.W. Caruth, Jr. Child Advocacy Clinic, Southern Methodist University Dedman School of Law, Austin Bar Association, Court Appointed Family Advocates Section, Children's Justice Center of El Paso, Center for Public Policy Priorities, Harris County Attorney's Office, Bexar County District Attorney's Office, Tarrant County District Attorney's Office, The Honorable Dean Rucker, Midland County, The Honorable Patricia Macias, El Paso County, Judge Oscar Gabaldon, El Paso County, The Honorable Darlene Byrne, Travis County, Judge Charles Montemayor, Bexar County, Judge Richard Garcia, Bexar County, The Honorable John Specia, Bexar County, The Honorable Larry Thorne, Jefferson County, The Honorable Bonnie Hellums, Harris County, The Honorable Donald Dowd, Cass County, The Honorable Robin Sage, Gregg County, The Honorable Gary Coley, McLennan County, Judge Ellen Smith, Tarrant County, The Honorable Cheryl Shannon, Dallas County, The Honorable Terry Shamsie, Nueces County, Judge Cathy Morris, Child Protection Court of South Texas, Judge Jo Ann Ottis, East Texas Cluster Court, Judge Ricardo Flores, Child Protection Court of the Rio Grande Valley West, Judge Karin Bonicoro, Child Protection Court of Central Texas, Judge Paul Gallego, 4<sup>th</sup> and 5<sup>th</sup> Administrative Judicial Regions Cluster Court, Judge William Martin, Northeast Texas Foster Care Docket, Judge Kevin Hart, South Plains Cluster Court, Judge David Dunn, Southeast Texas Cluster Court, Judge Eric Andell, Brazos River Valley Cluster Court and Three Rivers Cluster Court, Judge Sam Bournias, Brazos River Valley Cluster Court, Judge Charles Van Orden, Centex Child Protection Court, Judge Sylvia Chavez, Child Protection Court of the Permian Basin, Judge Philip Vanderpool, Northern Panhandle Child Protection Court, Judge Robert Hofmann, Child Protection Court of the Hill Country, Judge Virginia Schnarr, Sabine Valley Child Protection Court, Judge Mary Craft, Three Rivers Cluster Court, Judge Alyce Bondurant, North Texas Child Protection Court, Judge James Belton, Child Protection Court of the Rio Grande Valley East

<b>21.1 Jurist in Residence</b>
<b>Amount: \$28,000</b>
<b>Subgrantee/Fiscal Agent</b>
Office of Court Administration (OCA)
<b>Corresponding Item in Strategic Plan</b>

None
<b>Project Description</b>
The CIP grant pays for the expert consulting services of Senior District Judge John Specia (ret).
<b>Activities and Accomplishments</b>
<p>The Jurist in Residence (JIR) project was created to foster judicial leadership and promote greater expertise among child protection judges. John J. Specia, a retired District Judge, serves as the Jurist In Residence and assists the Children’s Commission in fulfilling its strategies to improve safety, permanency and well-being for children and families involved in the Texas child protection system. The Commission uses the JIR for various projects that impact improvements to courts and court processes. In FY 2010, the JIR met with Commission staff and DFPS executives and staff on a regular basis to plan, discuss, and strategize about the CPS Permanency Data, the CPS Bench Book, Mediation in CPS cases, judicial training for Beyond the Bench and Implicit Bias in Judicial Decision-making, partnerships with the National Council of Juvenile and Family Court Judges (NCJFCJ), and served on the Texas Applesseed Permanency Study Workgroup.</p> <p>The JIR also met with judges around the state, including traveling to Austin, Dallas, Harlingen, Houston, and D.C., and spoke at several conferences on behalf of the Children’s Commission.</p>
<b>Collaboration</b>
See above

**STAFF-DIRECTED PROJECTS**

<b>22.1 Judicial Technical Assistance</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
None
<b>Project Description</b>
<p>Primarily, a report that evaluates a jurisdiction’s performance on several permanency outcome measures is provided to judges who request it. The data on outcome measures are extracted from the CPS databases and are among those that all states are required to collect as part of the federal evaluation process. Data analysis is available on the following metrics:</p> <p><b>With regard to Timeliness</b> - Percentage of final orders issued within 1 year, Number of final orders issued after more than 1 year, Mean time from TPR to adoption for children who were adopted.</p> <p><b>With regard to Permanency outcomes</b> – Percentage of children who reunify from TMC, Percentage of children exiting TMC into PMC, Of the children who enter PMC, percentage who enter PMC without TPR, Age break down of children entering PMC without TPR, Percentage of children who are in PMC without TPR and have a subsequent TPR within 12 months, Percentage of relative PMC versus relative adoption, Of children exiting TMC or PMC, percentage who exit to a permanent home, Of children who aged out, percentage who were in</p>

care 3 or more years, Of children who exited PMC with TPR, percentage who did not exit to a permanent home, Percentage of children who left care and who reentered care within 12 months.

**Activities and Accomplishments**

This joint project with the Center for Public Policy Priorities resulted from the well-received February 2010 PMC Round Table. Judges may use a jurisdiction-specific report based on data to help them identify areas for improvement. To date, a permanency data analysis has been provided to Bexar County, Travis County, Tarrant County, Gregg County, the Cen-Tex Child Protection Court, and requests are pending for Harris County, Anderson County, Brazos County, the Brazos River Valley Cluster Court #1, Ellis County, and Smith County. We have also used the following counties as comparison counties in preparing the specific county summaries: Harris, Dallas, McLennan, Henderson, Smith, Northeast Texas Foster Care Docket, Sabine Valley Child Protection Court, Child Protection Court of Central Texas, South Plains Cluster Court, and Brazos River Valley Cluster Court #1.

**Collaboration**

NCJFCJ, TCJ, DFPS, Casey Family Programs, Applesseed Inc., Advocacy Inc., Center for Public Policy Priorities, Bexar County, Travis County, Tarrant County, Gregg County, the Cen-Tex Child Protection Court, and requests are pending for Harris County, Anderson County, Brazos County, the Brazos River Valley Cluster Court #1, Ellis County, and Smith County, Harris, Dallas, McLennan, Henderson, Smith, Northeast Texas Foster Care Docket, Sabine Valley Child Protection Court, Child Protection Court of Central Texas, South Plains Cluster Court

**23.1 Round Table Series**

**Corresponding Item in Strategic Plan**

Round Table Series<sup>16</sup>

**Project Description**

The goal of the Round Table Series is to advance ideas that result in sound executive agency policy, carefully planned legislation, and improved judicial handling of child protection cases. Each Round Table brings together a multidisciplinary group of subject matter experts and stakeholders to discuss issues affecting child protection in Texas.

**Activities and Accomplishments**

***PMC Round Table***

The topic of this Round Table, held in February, was about the large number of children in the state's permanent managing conservatorship (PMC) and what judges could do to both reduce their numbers and keep the population from rebuilding. Data about PMC children from around the state was examined, such as when and how they exit care, and the discussion included ways that the data could inform decision-making. The discussion satisfied a CPS Program Improvement Plan (PIP) project, and a paper on the discussion was posted on the Commission's website. There were 50 attendees. The Judicial Technical Assistance project (see item 20.1) resulted from this Round Table.

<sup>16</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, August 30, 2009, Basic Grant Application, pg 13, item 4.15; Training Grant Application, pg 8, 4.8; Data Grant Application, pg 10, item 5.7

<p><b>Collaboration</b></p> <p>Office of General Counsel, DFPS, William B. Connolly &amp; Associates, 247th District Court, 38th District Court, Office of Court Administration, Casey Family Programs, Bexar County District Attorney's Office, Texas CASA, Inc., Children's Advocacy Centers of Texas, Child Protection Court of South Texas, 305th District Court, Texas Department of Family &amp; Protective Services, 126th District Court, Travis County District Attorney's Office, Texas Department of Health &amp; Human Services Commission, Dallas County District Attorney's Office, Harris County Attorney's Office, Texas Department of Family &amp; Protective Services, Child Protective Services, DFPS, The University of Texas School of Law, Center for Public Policy Priorities</p>
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<p><b>24.1 Advocacy Inc. Legal Representation Project</b></p>
<p><b>Corresponding Item in FY 2010 Grant Application</b></p> <p>Formerly TYC/CPS Dually Managed Youth / Advocacy Inc. Project<sup>17</sup></p>
<p><b>Project Description</b></p> <p>This project provides free legal representation to dually managed youth, who are foster youth who are incarcerated within the Texas Youth Commission system, and foster youth with extreme disabilities who reside in a State Supported Learning Center (formerly State Schools). Two Advocacy, Inc., attorneys travel throughout the state to represent more than 65 dually managed youth, or youth in State Supported Learning Centers. The program is expanding to include youth who are at risk of getting involved in the juvenile justice system. Providing legal representation should lead to improved outcomes for these youth.</p>
<p><b>Activities and Accomplishments</b></p> <p>This project directly resulted from a Commission workgroup that started meeting in 2008 to improve the outcomes of dually managed youth. In FY 2010, Advocacy Inc. hired two attorneys who travel around the state representing some 76 clients, most of whom are dually managed youth but also including some are youth who are at risk for involvement in the TYC system. Although the Children's Commission budgeted \$50,000 in CIP funds for this project in FY2010, the funds were not used because Advocacy Inc. received enough funds to cover first year costs from two nonprofit foundations – The Meadows and Rees-Jones Foundations.</p> <ul style="list-style-type: none"> <li>Placed 20 of 21 eligible clients within the community.</li> </ul>
<p><b>Judicial and Attorney Training/Technical Assistance</b></p> <p>At the request of local judges, the project's attorneys provided continuing legal education training to judges and attorneys in Bexar County in February. The presentation was well-received and led to an additional invitation to present at a meeting of Bexar County attorneys and CPS case workers in June. Additionally, project attorneys presented at the August 2010 Annual CPS Judges' Conference, giving a 2-hour presentation to 35 judges regarding efforts to improve outcomes for dually managed youth.</p>
<p><b>Collaboration</b></p> <p>Texas Department of Family and Protective Services, National Association of Counsel for</p>

<sup>17</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Basic Grant Application, August 30, 2009, pg 12, item 4.14

Children, Texas Youth Commission – various facilities, state supported living centers (SSLCs) – various facilities, Bexar County Family Court, The Meadows Foundation, Rees-Jones Foundation, Texas Access to Justice Foundation, 323rd District Court in Tarrant County, 286th Dist Court in Hockley County, 397th District Court in Grayson County, 217th District Court in Angelina County, District Court of Willacy County, 64th District Court of Hale County, 313th District Court of Harris County, 315th District Court of Harris County, 321st District Court of Smith County, 207th District Court of Caldwell County

<b>25.1 CPS Judges Bench Book</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
Bench Book <sup>18</sup>
<b>Project Description</b>
In FY2010, the Children's Commission developed an online Bench Book for CPS judges. The Bench Book was officially launched in November 2010.
<b>Activities and Accomplishments</b>
The CPS Bench Book is a valuable resource for judges who hear CPS cases because it provides essential information in a user-friendly way. The Bench Book is a tool that will help judges make better decisions, resulting in improved safety, permanency and well being of children in the CPS system. It is organized by event (e.g., investigations, removals, adversary, status, permanency, placement, final hearing, appeals, and adoption) and topically (ICPC, ICWA, Medical Care, Permanency Care Assistance). It is accessible via a secure log-in on the Texas Center for the Judiciary (TCJ)'s website and includes free access to specific citations in Lexis/Nexis. It currently contains not only statutory requirements and checklists, but also informative chapters on other important topics such as Disproportionality, STAR Health and the Permanency Care Assistance program and numerous links to helpful guidelines, forms and other websites. Additional content, including case law, DFPS policy, and best practice tips, will be added over the next year.
<b>Collaboration</b>
Bench Book Planning Committee members, Texas Department of Family and Protective Services, Texas Center for the Judiciary

<b>26.1 Legal Representation Study</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
Legal Representation Study <sup>19</sup>
<b>Project Description</b>
In this study, stakeholders in the child protection system were interviewed and/or surveyed to determine how legal representation for children and parents in CPS cases is handled around the state. Study results will be used as the basis for system, policy, and practice changes to improve outcomes for children and families in the child protection system.
<b>Activities and Accomplishments</b>

<sup>18</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Basic Grant Application, August 30, 2009, pg 12, item 4.12

<sup>19</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Data Grant Application, August 30, 2009, pg 10, item 5.6

The advisory group is reviewing the study, which is scheduled to be released in January 2011. Study results show findings that are similar to Appleseed’s PMC study and confirm what many stakeholders in the child-protection community had anticipated. The study shows that much variation exists in almost every aspect of CPS legal representation in Texas – from the timing and length of appointments to the size of the pool of available, qualified attorneys. While attorney compensation rates, qualification standards and training opportunities also differ from county to county, one constant surfaced. According to the majority of those stakeholders surveyed who are *not* child or parent attorneys – specifically, current or former child and parent clients, CPS caseworkers and CASA volunteers –attorneys for children and parents do not communicate enough or at all with other principle parties and interested persons, including their own clients.

**Collaboration**

Legal Research Study Advisory Group, Legal Research Study Workgroup, Texas CASA, DFPS, Texas Appleseed, survey participants, including judges and court coordinators who regularly hear CPS cases, appointed attorneys, CPS prosecutors, DFPS supervisors, Court Appointed Special Advocate (guardian ad litem) supervisors, and parents and youth that had been the subject of a CPS legal case from the following counties: Bexar, Collin, Dallas, Denton, El Paso, Harris, Tarrant, and Travis, and from the 17 Texas Specialty Child Protection Courts,

**27.1 Children in Long-Term Care/Texas Appleseed Study**

**Corresponding Item in FY 2010 Grant Application**

Children in Long-Term Care / Texas Appleseed <sup>20</sup>

**Project Description**

The Commission supported a study conducted by Texas Appleseed on children in the state's permanent managing conservatorship (PMC) to determine barriers to permanency and ways to improve their outcomes.

**Activities and Accomplishments**

The study findings, released in November 2010, reinforced known problems such as youth reporting that they did not had a voice in court proceedings. Most stakeholders interviewed or surveyed – including a wide spectrum of attorneys, judges, youth and other stakeholders – said they believe the overall quality of statewide legal representation for PMC children suffers from a lack of well-trained attorneys and inadequate compensation of appointed counsel. Study findings suggest that the timing and length of attorney appointments may correlate with the size of a county's budget. The study results provide information that can be used to recommend policy and legislative changes to improve outcomes for children who are stuck in long term foster care.

**Collaboration**

McGinnis, Lochridge & Kilgore, L.L.P, Research & Planning Consultants, LP. , The RGK Foundation, Rees-Jones Foundation, The Meadows Foundation, Texas Bar Foundation, Harold Simmons Foundation, Rockwell Fund, Texas Department of Family and Protective Services, Casey Family Programs, Center for Public Policy Priorities, 126th District Court,

<sup>20</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Training Grant Application, August 30, 2009, pg 12, item 4.13

Child Protective Services, 38th District Court, Uvalde, 126th District Court, Travis County, Fulbright & Jaworski, L.L.P., Travis County Juvenile Court,, Advocacy, Inc., 307th District Court, Gregg County, CASA Texas, Gunderson, Sharpe & Walke, L.L.P., 225th District Court, Bexar County, Temple-Inland

<b>28.1 State Task Force on Disproportionality</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
None
<b>Project Description</b>
The mission of the Statewide Task Force on Disproportionality is to reduce disproportionality and disparities in child welfare by partnering with communities and systems with shared vision and leadership. The Commission's executive director is a member of the multidisciplinary Task Force that meets at least quarterly. Task Force members must guide and share in the leadership roles, be accountable to their own systems, and work collaboratively to strengthen the work.
<b>Activities and Accomplishments</b>
In FY 2010, the Executive Director participated in several meetings of the Task Force on Disproportionality and partnered with other task force members to sponsor a judicial training regarding implicit bias in judicial decision-making. In FY 2011, the Commission will sponsor training for judges on how to reduce disproportionality and disparities in child welfare.
<b>Collaboration</b>
The Alabama-Coushatta Tribe, Casey Family Programs, Texas State University-San Marcos, DFPS, Greater Faith Community Church, Office of Court Administration, Travis County Model Court, Houston Leadership Council, PVAMU Texas Juvenile Crime Prevention Center, DFPS State Advisory Council, HHSC-Civil Rights Division, San Antonio Police Department, Children's Crisis Care Center, Texas CASA, School of Social Work Stephen F. Austin University, Travis County Parent Advocacy Center, University of Texas at Austin Department of Diversity and Community Engagement, Kickapoo Traditional Tribe of Texas, Ysleta del Sur Pueblo, Austin Community College, Department of State Health Services, Texas Juvenile Probation Commission, Texas Foster Family Association, El Paso Family Court, Tyler ISD, The Hogg Foundation-UTA, City of Lubbock, Travis County Office of Parental Representation, American Indian Community Partner

<b>29.1 CFSR/PIP Participation</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
Collaboration with the Texas Department of Family and Protective Services and Other Stakeholders to Implement Strategic Plan <sup>21</sup>
<b>Project Description</b>
Judicial collaboration with the state's child welfare agency is accomplished through close communications between Commission members and staff, and DFPS officials. The Commission's Executive Director is a member of the CFSR/PIP state team and actively

<sup>21</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Basic Grant Application, August 30, 2009, pgs 6-7

recruits judges to participate in the CFSR/PIP process.
<b>Activities and Accomplishments</b>
<p>As part of its agreement to assist with the Program Improvement Plan (PIP), the Children’s Commission:</p> <ul style="list-style-type: none"> <li>Facilitated a Round Table discussion on permanency data and exits from care. Staff of The Center for Public Policy Priorities (CPPP) analyzed the data used at the Round Table, presented a report, and moderated and facilitated the discussion. Link to the product of that Round Table here: <a href="http://www.supreme.courts.state.tx.us/children/pdf/CompletePMCSummary.pdf">http://www.supreme.courts.state.tx.us/children/pdf/CompletePMCSummary.pdf</a></li> <li>Implemented the Judicial Technical Assistance project in partnership with CPPP staff that provide data analysis and technical assistance. Court-specific reports and analysis of permanency data have been completed for the following jurisdictions: Bexar County, Travis County, Tarrant County, Gregg County, and the Cen-Tex Child Protection Court.</li> </ul> <p>Reports are pending for: Harris County, Anderson County, Brazos County (Bryan), the Brazos River Valley Cluster, Ellis County, and Smith County. To show comparisons among a variety of jurisdictions, permanency data from the following counties was included in each report: Harris, Dallas, McLennan, Henderson, Smith, Northeast Texas Cluster, Sabine Valley Cluster, Central Texas Cluster, South Plains Cluster, and Brazos River Valley Cluster Court.</p> <ul style="list-style-type: none"> <li>Commission staff in FY2011 will work with DFPS, Texas Appleseed, and Casey Family Programs, to construct outreach efforts centered around the Texas Appleseed Report on children in long term care.</li> </ul>
<b>Collaboration</b>
Texas Department of Family and Protective Services, Casey Family Programs, Appleseed Inc., Advocacy Inc., Center for Public Policy Priorities, counties and child protection court jurisdictions listed above.

<b>30.1 Child Welfare Law Certification</b>
<b>Corresponding Item in FY 2010 Grant Application</b>
Child Welfare Law Certification <sup>22</sup>
<b>Project Description</b>
The Texas Board of Legal Specialization in May 2009 approved the application of the National Association of Council for Children (NACC) to offer Child Welfare Law Certification to Texas attorneys.
<b>Activities and Accomplishments</b>
<p>In FY 2010, the Children's Commission provided two Red Book trainings through NACC to 62 Texas attorneys (see item 17.1, NACC Attorney Training) to help them prepare for the 2010 Child Welfare Law Certification exam.</p> <ul style="list-style-type: none"> <li>Twelve attorneys and one judge from Texas took the 2010 exam and became certified.</li> </ul>
<b>Collaboration</b>

<sup>22</sup> Texas Court Improvement Program (CIP), 2010 Grant Applications & Strategic Plans, Training Grant Application, August 30, 2009, pg 9, item 4.10

NACC, Texas Board of Legal Specialization, Travis County Office of Child Representation, Travis County Office of Parental Representation

**31.1 Education Committee**

**Project Description**

To develop initiatives designed to improve courts and court practice regarding educational outcomes of children and youth in the child protection system, the Supreme Court of Texas created the Education Committee as a new standing commission committee in June 2010. The Supreme Court order creating the Education Committee gave it the following directives:

- Identify and assess challenges to educational success of children and youth in the Texas foster care system;
- Identify and recommend judicial practices to help achieve better educational outcomes for children and youth in foster care;
- Seek to improve collaboration, communication, and court practice through partnerships with the Department of Family and Protective Services, the Texas education system, and stakeholders in the education and child-protection community;
- Identify training needs regarding educational outcomes for the judiciary and for attorneys who represent DFPS, children, and parents in child protection cases;
- Seek to develop a collaborative model that will continue systemic improvement of educational outcomes;
- Make recommendations regarding the exchange and sharing of education-related data; and,
- Provide the following to the Children’s Commission:
  - 1) Preliminary report regarding the first meeting of the committee and the committee’s structural organization and goals by no later than December 31, 2010;
  - 2) Interim report by no later than August 31, 2011 regarding the progress of the committee; and,
  - 3) Final report by no later than March 31, 2012 regarding the progress of the committee and specific recommendations for further progress.

**Activities and Accomplishments**

The Education Committee held its first meeting September 30-October 1, 2010, and its activities will be reported in the FY 2011 report.

**Collaboration**

Texas Department of Family and Protective Services, Casey Family Programs, Texas CASA, Texas Education Agency, the Texas Association of School Boards, the Texas Association of School Administrators, the American Bar Association Legal Center on Foster Youth and Education

**32.1 Strategic Planning**

**Project Description**

At its April 30, 2010 meeting, the Commission directed the three standing committees to review the existing strategic plan and submit their comments or proposed changes to the Strategic Planning Committee, which met on August 19, 2010. The Strategic Planning Committee is chaired by Harper Estes and membership includes chairs of each committee

(Basic - Robin Sage, Technology - Karin Bonicoro, Training - Camile DuBose, Education – Patricia Macias, Legislative – Dean Rucker), Commission Vice Chair Darlene Byrne, and Audrey Deckinga, the DFPS Assistant Commissioner for CPS.
The Children's Commission will vote on the revised strategic plan in FY 2011.
<b>Activities and Accomplishments</b>
After two meetings, the committee decided to broaden the strategic plan goals under three headings: <b>Evaluate, Educate, and Improve</b> . The suggested tools to accomplish the goals would be judicial leadership, collaboration and cultural awareness/Disproportionality.
The amended Strategic Plan has not been presented for adoption by the Commission. A more in depth report on the Strategic Plan will be included in the FY2011 Report.
<b>Collaboration</b>
Harper Estes; chairs of each of the four standing Commission committees: Basic – Judge Robin Sage, Technology – Judge Karin Bonicoro, Training – Judge Camile DuBose, Education – Judge Patricia Macias, Legislative – Judge Dean Rucker); Commission Vice Chair and Judge Darlene Byrne; Audrey Deckinga, DFPS Assistant Commissioner for CPS; and Joyce James, Associate Deputy Executive Commissioner, HHSC Center for Elimination of Disproportionality and Disparities

<b>33.1 Mediation Project</b>
<b>Project Description</b>
This joint project between the Children’s Commission, the Center for Public Policy Dispute Resolution and the Mediation Clinic at the University of Texas School of Law, and possibly the Lyndon B. Johnson School of Public Affairs at the University of Texas, will focus on collecting and analyzing data related to mediations held in child welfare cases. The study may look at examination of short and long-term impacts of CPS mediation; the impact of mediation on child safety and permanency measures; using family group decision-making in conjunction with mediation; and examination of types of cases referred to mediation. Further reports on this project, which is in development, will be made in the FY 2011 report.
<b>Activities and Accomplishments</b>
<ul style="list-style-type: none"> <li>• The Training Committee approved \$25,000 for this project at its July 2010 meeting</li> <li>• Children’s Commission staff and partners began meeting to develop the parameters of the project, including identifying data to collect as “baseline”</li> </ul>
<b>Collaboration</b>
The Mediation Clinic at the University of Texas School of Law, the Center for Public Policy Dispute Resolution at the University of Texas School of Law

<b>34.1 Summit III</b>
<b>Project Description</b>
Third National Judicial Leadership Summit on the Protection of Children
<b>Activities and Accomplishments</b>
The Commission hosted the third meeting of state court chief justices and high-level leaders in state child welfare agencies October 15-17, 2009. With more than 300

participants, the Texas conference had the highest-ever attendance with 48 states sending multidisciplinary teams of judges, child welfare agency directors, education directors and state court administrators. The National Center for State Courts (NCSC) coordinated the 2-day training conference that included workshops and peer exchange events on:

- Foster Connections to Success Act
- Cross-Over Youth and Dually Managed Youth
- Performance Measurements for Courts
- Engaging Youth In and Out of Court
- Educational Success for Children in Care – Blueprint For Change
- Disproportionality in Foster Care
- Legal Representation for Children and Parents
- Transition to Adulthood: Permanency For Older Youth
- Collaborating for Kids: Child Welfare / Courts / Education
- Engaging Relatives to Care for Youth
- Performance Measures for Courts
- Data Exchange

Improving education outcomes for foster children was the conference focus, and each state team developed an improvement plan for their state. The Commission's new standing education committee created by Supreme Court order June 2010 was a direct result of the Texas Summit III team's work plan.

The first summit was held in Minneapolis in 2005 as a response to the national call to action in the Pew Commission's 2004 Foster Care report that urged states to develop a collaborative approach between the judiciary and child welfare agencies to improve outcomes for foster children. The report also encouraged judges to take a leadership role in collaborative efforts and court improvement activities.

**Collaboration**

Conference of Chief Justices, Conference of State Court Administrators, National Center for State Courts, National Council of Juvenile and Family Court Judges, Casey Family Programs, the Pew Charitable Trusts, American Public Human Services Association, The Supreme Court of Texas

**APPENDIX A: COMMISSION, COMMITTEE AND COLLABORATIVE COUNCIL MEMBERS**

**CHILDREN'S COMMISSION**

<b>HON. EVA GUZMAN, CHAIR</b>	<b>HARPER ESTES</b>	<b>HON. DEAN RUCKER</b>	<b>STAFF</b>
<b>HON. HARRIET O'NEILL, CHAIR EMERITUS</b>	<b>JOE GAGEN</b>	<b>FAIRY DAVENPORT RUTLAND</b>	<b>TINA AMBERLEY, EXECUTIVE DIRECTOR</b>
<b>HON. DALENE EYENE, VICE CHAIR</b>	<b>HON. BONNIE CEANE HELLMUS</b>	<b>HON. CHERRY LEE SHANNON</b>	<b>THEFANY ROPER, ASSISTANT DIRECTOR</b>
<b>JUDGE KARIN BONICORD</b>	<b>JOYCE M. JAMES</b>	<b>HON. YVONNE GONZALEZ TOURELLES</b>	<b>KRISTI TAYLOR, PROJECT MANAGER</b>
<b>AUDREY DECKINGA</b>	<b>HON. PATRICIA A. MACIAS</b>	<b>G. ALLAN VAN FLEET</b>	<b>TEJI MOZAN, COMMUNICATIONS MANAGER</b>
<b>HON. CAMILLE G. DUBOSE</b>	<b>DR. OCTAVIO MARTINEZ</b>	<b>HON. EFF WENTWORTH</b>	<b>MARI AARON, EXECUTIVE ASSISTANT</b>
<b>BRUCE ESTERLINE</b>	<b>SELINA MURIELS</b>		<b>HON. JOHN SPECIA (LEFT)</b>
	<b>CAROLYNE RODRIGUEZ</b>		<b>FIRST 18 RESIDENCE</b>
			<b>OFFICE OF COURT ADMINISTRATION</b>
			<b>CARL RENGLIDS</b>
			<b>ALMOND LEGAL ADMINISTRATOR</b>
			<b>OFFICE OF COURT ADMINISTRATION</b>

**COMMITTEES**

<b>BASIC PROJECTS</b>	<b>TECHNOLOGY</b>	<b>TRAINING</b>	<b>EDUCATION</b>	<b>STRATEGIC PLANNING</b>
<b>HON. ROBIN SAGE, CHAIR</b>	<b>JUDGE KARIN BONICORD,</b>	<b>HON. CAMILLE G. DUBOSE,</b>	<b>HON. PATRICIA MACIAS,</b>	<b>HARPER ESTES, CHAIR</b>
<b>JOE GAGEN</b>	<b>CHAIR</b>	<b>CHAIR</b>	<b>CHAIR</b>	<b>HON. DARLENE EYENE,</b>
<b>HON. RONNIE CEANE HELLMUS</b>	<b>CATHERINE BARBITT</b>	<b>MARI KAY BECKETT</b>	<b>HON. CHERRY SHANNON,</b>	<b>VICE-CHAIR</b>
<b>COLLEEN MCCALL</b>	<b>JUDGE OSCAR GAMALDON</b>	<b>CATY COCKERHAM</b>	<b>BARBARA ELIAS PERCIPIOL</b>	<b>JUDGE KAREN BONICORD</b>
<b>HON. MICKY PENNINGTON</b>	<b>HON. GILFORD JONES</b>	<b>ALICI EMERSON</b>	<b>ALICI EMERSON</b>	<b>AUDREY DECKINGA</b>
<b>CAROLYNE RODRIGUEZ</b>	<b>ELIZABETH KEMARHI</b>	<b>DIHERA EMERSON</b>	<b>DIHERA EMERSON</b>	<b>HON. CAMILLE G. DUBOSE</b>
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<b>JUDGE VIRGINIA SCHNARR</b>	<b>HON. CHERYL LEE SHANNON</b>	<b>D.J. TESSIER</b>	<b>TRACY LAETING</b>	<b>HON. DEAN RUCKER</b>
<b>HON. CHERYL LEE SHANNON</b>	<b>HON. DIANE UNDERWOOD</b>	<b>LINDA DICKEY</b>	<b>HON. JAGAR MCCORMIE</b>	<b>HON. ROBIN SAGE</b>
<b>HON. DIANE UNDERWOOD</b>	<b>HON. DOUG WARNE</b>	<b>G. ALLAN VAN FLEET</b>	<b>SHONIKA ODOM</b>	
<b>STAFF: TINA AMBERLEY</b>	<b>BRVAN WILSON</b>	<b>FAIRY DAVENPORT RUTLAND</b>	<b>PAUL PARKER</b>	
<b>KRISTI TAYLOR</b>	<b>STAFF: TINA AMBERLEY</b>	<b>JUDGE TILIN SMITTI</b>	<b>STAFF: THEFANY ROPER</b>	

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	<b>MEGHAN WEILER</b>
	<b>AARON WILLIAMS</b>

## APPENDIX B: JURIST IN RESIDENCE LETTERS



TO: Texas Judges Hearing Child Protective Services Cases

FROM: Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration

DATE: January 2010

RE: STAR Health & Psychotropic Medications

Greetings fellow judges! This is the first in what I hope and intend to be a monthly note, giving you current and compelling information you need for hearing your CPS docket. If you have any questions or topics that you would like to see covered, please let me know at [jurist@courts.state.tx.us](mailto:jurist@courts.state.tx.us).

For the first installment, I wanted to pass along information on health services for children in foster care provided through [STAR Health program](#), which contracts with DFPS through Superior HealthPlan, for physical and behavioral health care services for the benefit of children in care.

**Q:** What does STAR Health do?

**A:** STAR Health delivers physical and behavioral health services for each child in DFPS conservatorship and maintains an electronic "medical home" for each child.

**Q:** When is a child eligible for STAR Health services?

**A:** Upon entry to conservatorship and services can begin immediately.

**Q:** Who is excluded?

**A:** Children who are: placed outside of Texas; children from other states but placed in Texas; residents in Medicaid-paid facilities (nursing homes, state schools); children dually eligible for Medicaid and Medicare; children who have been adopted and the adoption is finalized; in hospice; in DFPS conservatorship, but placed in a TYC facility or on probation.

**Q:** Are older, transitioning youth covered?

**A:** Yes. Youth who have aged out but have remained in paid foster care past their 18th birthday are eligible until the month of their 22nd birthday. Youth who leave foster care at age 18 are eligible for coverage until their 21st birthday. Youth who are 21 and 22 are eligible for coverage if they are attending college or technical school. They must apply by calling 1-800-248-1078. It is not necessary for a court to extend jurisdiction beyond age 18 for this coverage to apply.

**Q:** Does STAR Health cover prescription medication?

**A:** No. Prescription medications are provided through the Vendor Drug Program through Health and Human Services, and not through STAR Health.

**Q:** Do services need to be court ordered?

**A:** No. As long as the service is medically necessary, no court order is required. However, if a judge orders a particular service or specific care that is covered by Medicaid, a signed copy of the order should be sent ASAP by DFPS via fax to Superior at 1-866-702-4837.

**Q:** What happens if I order a service that is not covered by Medicaid?

**A:** DFPS will seek that service through a private pay contract. When entering orders for services that are not covered, Judges should consider drafting an order that provides DFPS the maximum flexibility in contracting because not all providers are available even in a private contract situation.

**Q:** Does STAR Health monitor the use of psychoactive medications?

**A:** STAR Health routinely monitors the use of psychiatric medications in children who are in care to ensure compliance with state parameters and for appropriate prescribing.

**Q:** What is a Psychotropic Medication Utilization Review (PMUR)?

**A:** A review of the use of psychiatric medications for any child in care can be made by any caseworker, judge, foster parent, medication consentor or other concerned entity. A judge can request a PMUR by calling 1-866-912-6283 or by submitting an



TO: Texas Judges Hearing Child Protective Services Cases  
FROM: Hon. John Specia (ret.), Jurist in Residence, Office of Court Administration  
DATE: February 2010  
RE: Opportunities in 2010

Greetings fellow judges! For this installment of our Jurist in Residence letter series, I want to pass along information about several exciting opportunities brought to you and attorneys who appear before you by the Permanent Judicial Commission for Children, Youth and Families (Children's Commission). This is my second communication, giving you current and compelling information you may find useful for hearing your CPS docket. If you have any questions or topics that you would like to see covered, please let me know at [jurist@courts.state.tx.us](mailto:jurist@courts.state.tx.us).

**Trial Skills Training for Attorneys** – Do you have a promising litigator in your jurisdiction who can benefit from trial skills training? Stay tuned for information about scholarship opportunities to attend National Institute of Trial Advocacy (NITA) training. To recommend an attorney for this outstanding opportunity, please get in touch with Tiffany Roper at 512/463-3182 or [tiffany.ropert@courts.state.tx.us](mailto:tiffany.ropert@courts.state.tx.us).

**2010 National Child Welfare Law Conference in Austin** – Over a hundred scholarships to cover registration fees will be awarded to qualifying Texas attorneys to attend the NACC's annual child welfare conference October 20-23, 2010 in Austin. We expect a huge Texas presence at this educational and informative conference. Go to [www.naccchildlaw.org/?page=TexasScholarship](http://www.naccchildlaw.org/?page=TexasScholarship) for more information.

**Scholarships for Advanced Family Law Child Abuse and Neglect Track** – Texas attorneys now have the option to attend only the one-day child abuse and neglect track during the weeklong Advanced Family Law Conference. Scholarships are available to cover the registration fees of the one-day track, which will be held August 11, 2010 in San Antonio. Look for more information regarding the scholarships on the Commission website, <http://www.supreme.courts.state.tx.us/children.asp>, in coming months.

**Funding for Local Training** – Do you have training issues unique to your jurisdiction? Would you like to bring a nationally recognized speaker to your legal community? Funding may be available to cover some training-related expenses. Contact Tiffany Roper for more information.

**Technology** – The Task Force on Indigent Defense (TFID) released its annual Request for Applications for courts to use to improve indigent defense systems in criminal and juvenile cases. The Intent to Submit Application deadline is February 26, 2010. Although TFID funding is earmarked for criminal and juvenile cases, courts who hear criminal or juvenile *and* CPS cases may use TFID funds for technology, such as videoconferencing equipment or software for tracking cases, collaterally in child protection cases. To find out more information, please contact TFID at 800/499-0656.



TO: Texas Judges Hearing Child Protective Services Cases  
FROM: Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration  
DATE: March 8, 2010  
RE: Permanency Care Assistance Program

Greetings fellow judges! For this installment of our Jurist in Residence letter series, I want to pass along important information about the Permanency Care Assistance (PCA) program, which is how Texas plans to implement a very important aspect of the *Fostering Connections to Success and Increasing Adoptions Act of 2008*.

**Q: What is the Permanency Care Assistance (PCA) Program?**

**A:** The program provides to qualifying kinship families who take Permanent Managing Conservatorship (PMC) of a child:

- Monthly cash assistance similar to adoption assistance;\*
- Medicaid health coverage; and
- A one-time reimbursement of nonrecurring expenses, including legal fees, incurred in the process of obtaining custody of the child, up to a maximum of \$2,000.

\* The maximum monthly PCA payments are the same as those for adoption assistance and depend upon the child's authorized service level (ASL) at the time the PCA agreement is negotiated.

For more information, go to, [www.supreme.courts.state.tx.us/children/pdf/FAQPCA.pdf](http://www.supreme.courts.state.tx.us/children/pdf/FAQPCA.pdf).

**Q: What are the most important things a judge must know about the PCA Program?**

**A:** Before awarding PMC to a relative under this program, the judge should ensure that:

1. The caregiver is verified;
2. The child has been placed with the verified kin for at least six months following the date of the verification;
3. DFPS has determined that reunification and adoption are not appropriate permanency options for the child;
4. DFPS and the kin have signed a PCA Agreement and it is on file PRIOR TO the award of PMC to the caregiver; and
5. Benefits begin once the Court awards PMC to the kin/caregiver

**Q: Which kinship families qualify?**

**A:** A caregiver who is:

1. related or who has a longstanding relationship with the child prior to the child being placed with the caregiver; and
2. a verified foster parent and has served as a verified foster parent of the child for at least *six consecutive months* after becoming verified and prior to appointment as PMC of the child.



To: Texas Judges Hearing Child Protective Services Cases  
From: Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration  
Date: April 15, 2010  
RE: Permanency Care Assistance Program

Greetings fellow judges! This is a follow up to the previous JIR sent to you on March 8, 2010 in response to several questions I received regarding the issue of verification under the new Permanency Care Assistance (PCA) Program.

**Q: Are the requirements to become verified more stringent than those for licensing?**

**A:** In Texas, foster homes are verified, not licensed. Licenses are granted by DFPS to Child Placing Agencies who in turn verify foster homes. The verification process is the same for all homes regardless of whether the home is being verified to take a child in preparation for a PCA agreement or as a regular foster home. However, as part of the verification process, DFPS can elect to waive certain non-safety issues that might otherwise prevent a home seeking verification to provide foster care to non-relatives from being verified. An example of this is square footage per child or person or the requirement that children of a certain age sleep in separate beds.

**Q: Who is responsible for verifying relative caregivers who wish to enter into a PCA Agreement?**

**A:** Any Child Placing Agency as well as DFPS can verify relatives (fictive or biological) for PCA.

**Q: Is there funding available to accommodate the increase in applications for verification?**

**A:** No. DFPS will use existing resources to accommodate verifications processed by DFPS and CPAs.

**Q: Will DFPS provide services to verified placements once the PCA Agreement is final?**

**A:** There are no post-PCA services at this time. However, DFPS will continue to use existing appropriations to provide services for CPS children in verified placements.

**Q: How long are verifications valid and can they be issued on a temporary basis?**

**A:** Verifications do not have an end date. CPAs are required to re-evaluate a home for compliance with minimum standards at least once every two years.

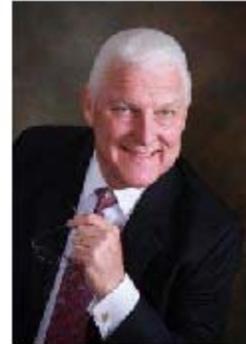
**Q: When does a family stop receiving foster care payments and begin receiving PCA payments?**

**A:** Once PMC is awarded the foster care payments end and the PCA payments begin.

**Q: If the relative switches CPAs during the six month period, must the family become re-verified and start the six month process again?**

**A:** Because each CPA independently verifies foster homes, the home would have to undergo the verification process again. However, the six consecutive month process that requires the child live with the family does not. As long as the child's residence does not change, the six consecutive month residency process is not interrupted even though the home must start the verification process over. [Click here for more information about the PCA program.](#)

If you have any questions or topics that you would like to see covered, please let me know at [jurist@courts.state.tx.us](mailto:jurist@courts.state.tx.us).



TO: Texas Judges Hearing Child Protective Services Cases  
FROM: Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration  
DATE: September 1, 2010  
RE: Implicit Bias in Judicial Decision-Making

I wanted to update you on a very worthwhile conference I attended this summer. The conference was on implicit bias in judicial decision-making and how cultural and institutional racism contributes to the over-representation of African American children and families in our child protection system. These practices also affect the Native American and Hispanic populations of our state. Another term you may have heard recently to describe the over-representation of African-American children is "Disproportionality."

**Q: How do we know Disproportionality, or over-representation exists?**

**A:** Numerous studies indicate that African-American children are overrepresented in child welfare systems across our nation. In Texas, although African-American children make up about 12% of the child population, they account for almost 28% of the children removed from their homes due to allegations of abuse and neglect.

Not only are they removed at higher rates nationally and in Texas, once they enter foster care, a lower percentage of African-American children are successfully reunited with their families and a higher percentage age out of foster care without an adoptive family or other permanent placement. The data also shows that African-American families are less likely than Anglo families to receive in-home family services to prevent removal. See the [DFPS Webpage on Disproportionality](#), and the [March 2010 DFPS report on Disproportionality](#).

Disproportionality in various state systems, such as juvenile justice and child welfare, has been on the national and state radar for years. In Texas, efforts to address the issue gained traction when the 79th Legislature mandated an analysis – which controlled for other factors such as family structure and poverty – to determine whether Texas had a problem, and if so, to create a remediation plan. [79th Legislative Session, Senate Bill 6](#).

**Q: Do we know what variables influence Disproportionality?**

**A:** One very strong predictor of whether a child will be removed is poverty. More than 60% of the children removed in Texas come from families with annual incomes of \$10,000 or less, and poverty rates are higher among African-American families.

**Q: Why should judges care about Disproportionality?**



**To:** Texas Judges Hearing Child Protective Services Cases  
**From:** Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration  
**Date:** October 5, 2010  
**RE:** Extending Foster Care Beyond 18

I wanted to share information about a very important provision of the federal Fostering Connection to Success and Adoptions Act (FCA) that will affect many of the transitioning young adults on your CPS dockets. As I've mentioned previously, the FCA, which was signed into law in October 2008, is bringing sweeping changes to how child welfare agencies and the judiciary manage foster care cases. One very important change coming your way quickly is extended care.

**Q: What is Extended Care?**

**A:** Effective October 1, 2010, the federal Fostering Connections Act allows states to claim federal Title IV-E dollars for more young adults who opt to remain in extended foster care after turning 18 with the court maintaining oversight. Young adults may now remain in extended foster care until their 21st birthday, provided they participate in one of the required activities – completing a secondary education, attending college or a vocational program, working at least 80 hours per month, or attending a job training program, or are unable to participate in any of these activities due to a documented medical condition. Young adults continuing to complete a high school diploma or GED may stay in extended foster care until their 22nd birthday.

**Q: What do judges need to know to extend care for a young adult aging out of foster care?**

**A:** Starting October 1st, if a young adult turning 18 after that date chooses to extend foster care, the court **MUST** extend its jurisdiction, **HOLD** periodic review hearings, and **MUST** make a judicial determination at least once a year that DFPS has made reasonable efforts to finalize the young adult's permanency plan.

The following findings need to be made to enable DFPS to provide the most robust services for young adults in extended care:

1. The court has jurisdiction over the case pursuant to Texas Family Code Sections 263.601 et seq.
2. The young adult's living arrangement is safe and appropriate;
3. Reasonable efforts have been made to place the young adult in the least restrictive environment necessary to meet the needs of the young adult;
4. DFPS is making reasonable efforts to finalize the permanency plan in effect for the young adult:



**To:** Texas Judges Hearing Child Protective Services Cases  
**From:** Hon. John Specia (ret.), Jurist in Residence  
Office of Court Administration  
**Date:** December 1, 2010  
**RE:** Bench Book for CPS Judges

Texas Judges hearing CPS cases now have a state-of-the-art information tool at their fingertips! The Children's Commission has created a web-based bench book that is the first of its kind for CPS Judges in Texas. Now, judges can link to the online CPS Bench Book anywhere that has internet access and scroll through its user-friendly navigation for guidance through a hearing or an entire CPS case. It includes a legal overview of the CPS process, hearing checklists, and useful topical information that covers most CPS matters, from Alternatives to Removal to Appeals and Adoptions.

Simply log-in to the CPS Bench Book through the Texas Center for the Judiciary's (TCJ's) website just like you would to access any of the other Bench Books on the TCJ site. For TCJ password help, call Michele at (512) 482-8986, or email her at [michelem@yourhonor.com](mailto:michelem@yourhonor.com)

**Step by step instructions:**

1. Go to: [www.yourhonor.com](http://www.yourhonor.com)
2. Click on Texas Judiciary ONLY on the top left of the screen
3. Click on CPS Bench Book at the bottom of the screen
4. Enter your log-in and password; for example:

User name: jjudge

Password: judge

This will take you directly to the Bench Book. The navigation is laid out in the "How To" section on the left side of the opening screen.

Judges who access the Bench Book through the TCJ website have free access through Lexis-Nexis to those statutes, case law and other periodicals that are cited in the bench book and linked from it. Live links are indicated by blue text that is also underlined in blue.

**NOTE:** Each time you access the Bench Book if you use Windows Internet Explorer 8 or IE8, you will be asked whether you would like to view mixed content (secure and non-secure information). You must choose "NO" in

order to prevent Internet Explorer 8 or IE8 from blocking the Lexis-Nexis site because it is a website external to TCJ's website and therefore presents "mixed" or unsecure content. From that point forward, you should be able to access any other Lexis link. If you use a browser like Firefox or Google Chrome, you will not see this message.

If you would like to disable this feature, you can do so by following these simple steps:

1. Open IE 8 and select *Tools > Internet Options*
2. Select the *Security* tab
3. Make sure that the "Internet Zone" is highlighted, then click on *Custom Level...*
4. Scroll down the list and look for "Display mixed content" (approximately ¼ way down the list), then select *Enable*
5. Click on "OK" (this will close the box)
6. Click on "OK" again (this will close the Internet Options box)
7. Close Internet Explorer and then re-open it to begin with the new setting

NOTE: Depending on your level of access, your network administrator may need to change this setting for you.

The Bench Book has been tested by a workgroup of judges who contributed to its development. However, as with any new tool, user feedback is critical. Please let us know what problems you encounter, or if you find inaccurate or incomplete information. The Children's Commission will continually add and update content and repair broken links. If you have comments or corrections or if you would like to participate in the editing or updating of the Bench Book, please send an email to [children@courts.state.tx.us](mailto:children@courts.state.tx.us) or [children@txcourts.gov](mailto:children@txcourts.gov) or to Teri Moran at [teri.moran@txcourts.gov](mailto:teri.moran@txcourts.gov).

## APPENDIX C: *BETTER COURTS FOR KIDS* NEWSLETTER



## Better Courts for Kids and Families

*Newsletter of the Permanent Judicial Commission for Children, Youth and Families*

*Fall 2010*



### **Justice Eva Guzman Appointed Chair of Children's Commission**

Children's Commission members welcomed their new chair, Justice Eva Guzman, on August 20, the day she presided over her first Commission meeting. The Supreme Court appointed Justice Guzman as the new chair on June 21. She replaces Justice Harriet O'Neill, who accepted the appointment of Children's Commission's Chair Emeritus, just before retiring from the Court this June.

Justice Guzman brings to her new role a long history of commitment to children's issues, having devoted many volunteer hours to organizations that aid children, such as serving on the boards of Texas CASA, The Escape Center, Wesley Community Center, The Chinquapin School and the Advisory Council of The Salvation Army Boys and Girls Clubs of Metropolitan Houston.

Justice O'Neill first introduced Justice Guzman to Commission members at the April meeting. "She is steeped in children's issues, and we are lucky to have her," Justice O'Neill said.

Justice Guzman told Commission members she was honored to have been asked to serve as chair. "I am both privileged and delighted to be given this opportunity to continue the important work Justice O'Neill started for our state," Justice Guzman said.

Governor Rick Perry appointed Justice Guzman to the Supreme Court on October 8, 2009. She began her judicial career in 1999 when she was appointed to Harris County's 309th District Court, a seat she subsequently won by election in 2000. In 2001, she was appointed to the Texas 14th Court of Appeals in Houston where she served until her 2009 Supreme Court appointment.

### **Courts Using Data as Self-Evaluation Tool and Finding it's More Than Just a Four-Letter Word**

*Commission offers free, confidential data analysis to help judges assess their court's handling of CPS cases*

The Children's Commission began a new project this year that offers judges who hear CPS cases a new tool to help them gauge their court's performance compared to other Texas courts in about a dozen measures of permanency. The project centers on a few of the statistics that all states must collect and report to the federal Administration for Children and Families (ACF), which in turn is used to rate every state's child welfare system.

In the Judicial Technical Assistance (JTA) project, interested judges simply fill out and sign a short request form ([click here for the form](#)) and fax it to Commission staff. The form lists 13 measures that DFPS can extract from its databases that are specific to a judge's jurisdiction, such as the percentage of final orders issued within one year and the percentage of children who left care and who reentered care within 12 months (see sidebar for all 13 measures). The Commission has contracted with an expert who analyzes the data and provides a report that helps explain each data measure in its proper context as well as variables that could influence it.

"These reports can help judges identify their court's strengths and weaknesses," Senior District Judge John Specia said. "The data analysis can be a very valuable tool for judges to see how their court is doing in certain areas compared to other Texas courts and to national standards."

*"Data is a language we need to learn as judges if we want to participate and hold our own in policy discussions," – Judge John Specia*

Most Texas courts haven't had any way to evaluate their handling of child protection cases for lack of even basic processes or systems designed for the task, according to Judge Specia. "As judges, we all strive to do what's best for children and families in our courts, but we've never really had much in the way of concrete data to tell us one way or the other how we're actually doing," Judge Specia said.

"Aggregate data can help us see where the system needs to be improved and can inform our decision making, as well as help us determine an appropriate leadership focus," Judge Specia said. Another JTA project benefit is that the 13 permanency measures are among those that ACF uses every few years as part of its Child and Family Services Review (CFSR), where it grades each state's overall child welfare system – of which courts are an integral part, and on which their decisions have significant bearing.

About 10 courts have requested a JTA report since the project began in May. Judge Specia sees the program as a very tangible, useful means for helping judges not only make better decisions, but also for becoming more conversant in the language of data. "It's a language we need to learn if we want to participate and hold our own in policy discussions," Judge Specia said. "Because data is, after all, a language that policymakers already use to assess us."

### Taking a Little Bite Out of the Elephant

#### *Texas dually managed youth now getting legal representation*

Because their number rarely exceeds 100 among a population that teeters above 25,000, the unique legal needs of dually managed Texas youth (foster youth who are also involved with the juvenile justice system) had historically not topped many official to-do lists. Once incarcerated, a foster youth's case complications would begin. A dreary pattern of unintentional but almost routine neglect of their legal (and other) needs would typically follow, thanks mainly to insufficient inter-agency communication processes and seemingly blurred lines of responsibility between the Texas Youth Commission (TYC) and Child Protective Services (CPS).

Though small, they were a group of kids for whom the phrase "falling through the cracks" could have been invented, some experts agreed. That is, until one advocate's appeal to the Children's Commission culminated not only in a 2009 statute raising the bar for their legal oversight, but also in a grant-sponsored program that now provides free legal representation to any of these youth who need it.

*"As far as I know, no one else in the country is doing anything like what we're doing here in Texas," –  
Richard Lavallo, Austin Attorney*

Since January 2010, two Advocacy Inc. attorneys, Ian Spechler and Dustin Rynders, have traveled around the state tending to the legal needs of their 65 clients, 50 of whom are involved with TYC or are at risk of involvement, and 15 who reside in state-supported living centers. Advocacy Inc. is an

Austin-based nonprofit group that advocates for people with disabilities. Richard Lavallo, one of its senior attorneys, is a member of the Commission's Collaborative Council and was the person who in 2008 urged the Commission to look into the plight of these youth.

Until then, Mr. Lavallo had been thoroughly skeptical about the Children's Commission. "I expected it would be just another group that would rubber stamp the same old status quo of a dysfunctional system," Mr. Lavallo said, "But I was absolutely proven wrong."

Before he knew it, he was part of a Commission-directed multi-disciplinary work group that developed an MOU outlining new communication commitments between TYC and CPS. From there, Mr. Lavallo wrote and found backing for a bill that required courts to better monitor dually managed youth. A few months later, the Commission partnered with the Rees Jones Foundation, Texas Access to Justice Foundation and the Meadows Foundation to fund the salaries for hiring two attorneys to represent the crossover youth in Texas, and helped secure private funding that covered the project's first-year costs.

"Needless to say, I was totally impressed," Mr. Lavallo said. "And I'm no longer a skeptic about the Commission." At first, Mr. Lavallo feared it would be hard to get enough cases, but it didn't take long before judges heard about the no-cost-to-their-county's service, and happily began appointing the young attorneys to the cases. The project has expanded to include representing some at-risk youth, mainly because judges who have heard about the program have asked for help keeping at-risk youth away from trouble. Mr. Spechler and Mr. Rynders have already begun working with TYC and CPS on several systemic problems these youth face (see article below).

"As far as I know, no one else in the country is doing anything like what we're doing here in Texas," Mr. Lavallo said. "And I don't believe any of this could ever have happened without the Commission."

**Release Review Panel Catch-22 is Just One Unique Problem Crossover Youth Face**  
Advocacy, Inc. attorneys are working with TYC and CPS officials to address some of the unique problems dually managed youth commonly face.

**Hurdle to getting released**  
Right now, crossover youth typically run into a difficult systemic problem right before TYC discharges them, when they go before a release review panel that will determine whether or when they may leave, according to Ian Spechler, one of the two Advocacy Inc. attorneys who represent these youth. "The panel is holding it against our kids that they're foster children and often don't yet have any place to go," Mr. Spechler said, because it's difficult for CPS staff to reserve beds when they don't know what the panel will decide. "It's a situation where youth need a placement approved before TYC releases them but at the same time CPS can't have a placement approved until we know they're getting out." While the agencies work on a solution, Mr. Spechler plans to also develop more relative and fictive kin placements and take advantage of the [permanency care assistance program](#).

**Mental health barriers**  
When a youth leaves TYC and switches to a parole caseworker from the caseworker in the facility, in addition to the usual potential for information loss in that exchange TYC's standing order that restricts youth to their placement for 30 days post release can prevent access to needed care, Mr. Spechler said.

"Because they cannot leave, their mental health care often lags behind. We try to keep judges informed of these situations." There is also insufficient trauma therapy available when youth are incarcerated, according to Mr. Spechler. "A large portion of these youth have been sexually and physically abused or have experienced neglect, and many have trouble sleeping because of what they've experienced," Mr. Spechler said, adding that he is working with TYC and CPS to address this need.

**Safety concerns**  
Their history abuse and neglect also contributes to mental health problems and behaviors that tend to put them at a higher risk for being picked on or bullied by other youth in these facilities, according to Advocacy attorney, Dustin Rynders. "A lot of our youth don't necessarily feel safe. So we try to encourage judges to encourage TYC and CPS to collaboratively develop good safety plans so they'll feel safe in these facilities," Mr. Rynders said.

**Court participation**  
By law all youth are supposed be attending their hearings. And while a few have attended in person or by phone, Mr. Spechler said. "As a matter of course, most of our youth are not attending theirs."

"Most of these kids are older teenagers who understand what's going on and have a stake in it, and they want to participate," Mr. Rynders said. "They're always asking, 'What's going on with my case?'" Mr. Rynders sees videoconferencing as the best solution, and says getting if for his clients is another ongoing effort.

## Children's Commission Honors and Says Goodbye to Justice Harriet O'Neill

Justice Harriet O'Neill, who spearheaded the creation of the Children's Commission and served three years as its chair, presided over her last meeting this April before retiring from the court two months later. "It has been a privilege and an honor to work with all of you," Justice O'Neill told attendees at the April meeting. "I'm proud of the collaborative effort we have begun and look forward to seeing it continue under the capable leadership of Justice Guzman."

Chief Justice Wallace Jefferson said he and the other Supreme Court Justices have been amazed at Justice O'Neill's accomplishments. "Not long after the Commission was created, I began to hear from Chief Justices around the country who had heard that we were doing something extraordinary in Texas, something different," Justice Jefferson said. "Harriet's vision of judicial leadership is being realized, and is demonstrating how courts can have a pro-active role that improves the lives of citizens."

Justice O'Neill's leaving, although [unwanted], is yet another example of the success of her vision, Justice Jefferson said, because the work will go on without her. "She visualized a Commission that would not be personality based or temporary," Justice Jefferson said. "But rather one that would outlast her – a permanent Commission, grounded in a shared commitment to improving courts for families."

At that April meeting, Children's Commission Executive Director, Tina Amberboy, presented the unsuspecting Justice Neill with the first award that the Children's Commission intends to periodically bestow on persons or organizations for their noteworthy service to children. Justice O'Neill received a prolonged standing ovation as she received the award named in her honor – The Harriet O'Neill Award for Excellence.



*The Harriet O'Neill Award for Excellence is shown in the foreground at the April Children's Commission meeting.*



*Chief Justice Wallace Jefferson is shown with Justice O'Neill at her informal goodbye party at the Supreme Court.*



*Justice O'Neill waves goodbye at her last Children's Commission meeting as chair this April.*

In addition to the award, the Children's Commission staff had put together a commemorative book of letters to Justice O'Neill from Commissioners, Collaborative Council and Committee members, legislators and others. A farewell reception in her honor followed the April Commission meeting.

"I can't tell you what this means to me," Justice O'Neill said. "It has been an honor to work with each and every one of you, and I look forward to continuing our work for many more years to come."

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**APPENDIX D: MATCH TOTALS**

<b>GRAND TOTAL MATCH - FY 2010</b>				
<b>October 1, 2009 - September 30, 2010</b>				
	Basic	Data	Training	TOTALS
TOTAL SUBGRANTEE MATCH (CASH + IN-KIND)	<u>\$1,155,254.00</u>	<u>\$94,504.00</u>	<u>\$465,360.00</u>	<u>\$1,715,118.00</u>
TOTAL COMMISSION MEETING/ACTIVITY MATCH (CASH + IN-KIND)	\$49,569.04	\$2,510.47	\$59,689.04	<u>\$111,768.54</u>
TOTAL COMBINED MATCH (MEETING/SUBGRANTEE)	\$1,204,823.04	\$97,014.47	\$525,049.04	<u>\$1,826,886.54</u>
		<b>GRAND TOTAL ALL MATCH</b>		<b>\$1,826,886.54</b>

**APPENDIX D: COMMISSION MEETING / ACTIVITY MATCH**

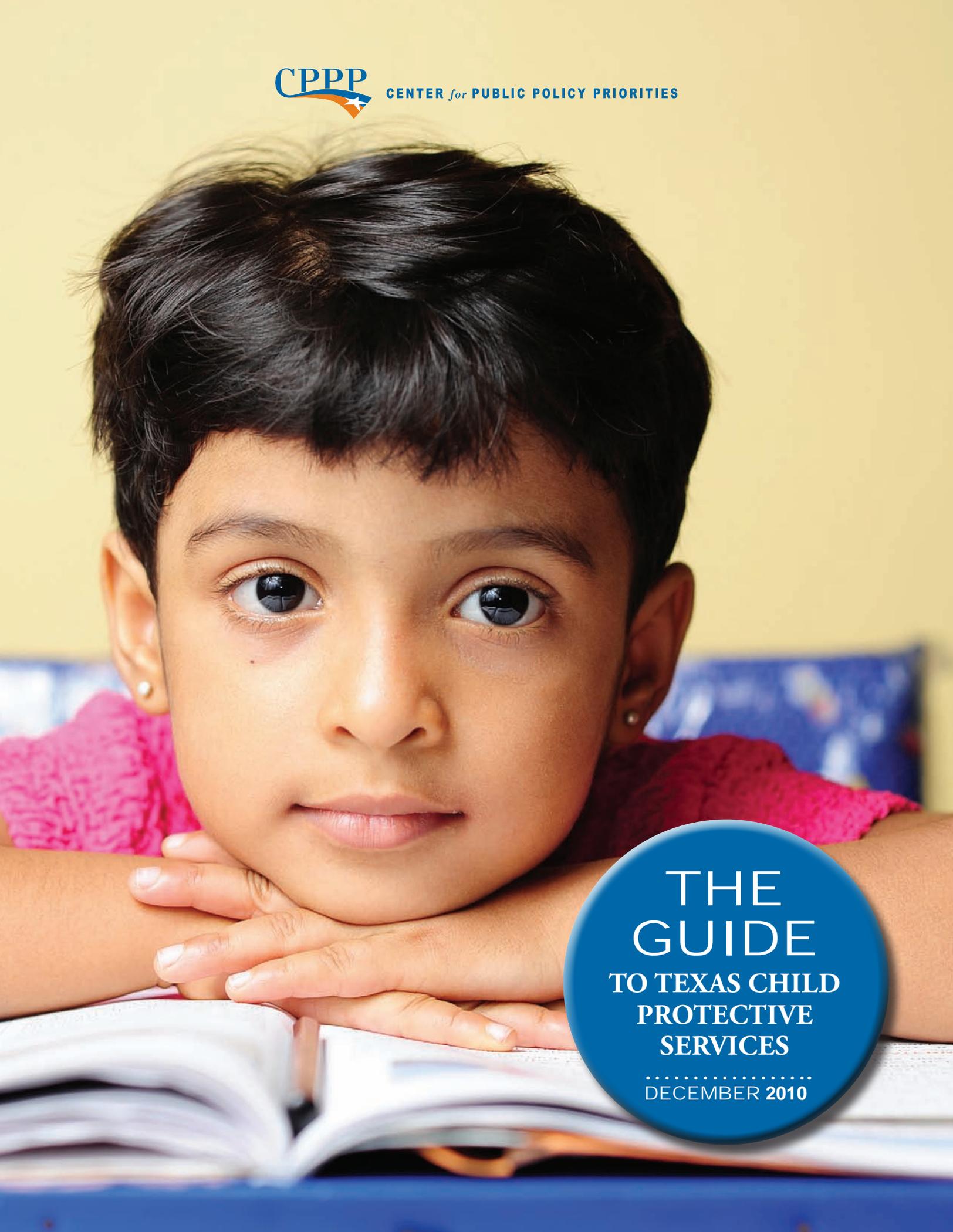
Commission Meeting / Activity Match				
First	Last	Hourly Rate	Hours	Value
Mari	Aaron	\$0.00	8.50	\$0.00
Tina	Amberboy	\$0.00	48.00	\$0.00
Catherine	Babbitt	\$30.00	5.00	\$150.00
Emy Lou	Baldridge	\$100.00	3.00	\$300.00
Andy	Barbee	\$30.00	4.00	\$120.00
Conni	Barker	\$50.00	13.00	\$650.00
Lisa	Black	\$0.00	4.00	\$0.00
Nin	Blankenship	\$0.00	0.50	\$0.00
Roy	Block	\$35.00	6.00	\$210.00
Karin	Boniforo	\$45.34	23.00	\$1,042.82
Phil	Breitenbucher	\$0.00	1.50	\$0.00
Dewey	Britt	\$0.00	4.00	\$0.00
Jane	Burnsain	\$35.00	4.00	\$140.00
Darlene	Byrne	\$67.31	22.00	\$1,480.82
Jan	Capouch	\$0.00	4.00	\$0.00
Audrey	Carmical	\$0.00	4.00	\$0.00
Carole	Clark	\$67.31	5.00	\$336.55
Irene	Clements	\$30.00	16.00	\$480.00
Cathy	Cooksham	\$30.00	10.50	\$315.00
Jary	Coley	\$65.31	4.00	\$261.24
William B.	Connolly	\$30.00	3.00	\$90.00
Elizabeth	Cox	\$30.00	3.00	\$90.00
Kevin	Cox	\$30.00	4.00	\$120.00
Susan Hopkins	Craven	\$45.00	6.00	\$270.00
Hahn	Dao	\$0.00	1.50	\$0.00
Ken	DeCenchio	\$0.00	1.00	\$0.00
Audrey	Deckinga	\$0.00	10.00	\$0.00
Simi	Denson	\$0.00	1.00	\$0.00
Camille Glasscock	DuBose	\$67.31	10.50	\$706.78
De Shaun	Ealoms	\$0.00	3.00	\$0.00
Barbara	Elias-Perofful	\$65.00	15.00	\$975.00
Nico	Emerson	\$0.00	4.75	\$0.00
Debra	Emerson	\$0.00	15.00	\$0.00
Eima Salinas	Ender	\$67.31	6.00	\$403.86
Bruce	Esterline	\$500.00	8.00	\$4,000.00
Christopher	Falleian	\$30.00	3.00	\$90.00
Amy	Fitzgerald	\$0.00	3.00	\$0.00
Mike	Foster	\$30.00	10.00	\$300.00
Natalie	Furdek	\$0.00	1.50	\$0.00
Oscar	Gabaldon	\$50.48	5.00	\$252.40
Joe	Gagen	\$100.00	16.00	\$1,600.00
Stewart W.	Gagnon	\$600.00	6.00	\$3,600.00
Katy	Gallagher-Parker	\$30.00	1.00	\$30.00
Eileen	Garcia	\$20.00	4.00	\$80.00
Richard	Garcia	\$50.48	11.00	\$555.28
Gail	Gonzales	\$0.00	4.00	\$0.00
Gwen	Gray	\$0.00	0.50	\$0.00
Sylvia	Greigo	\$20.00	9.00	\$180.00
Eva	Guzman	\$72.00	6.00	\$432.00
David	Halpern	\$30.00	9.00	\$270.00
Steven	Hardt	\$0.00	3.00	\$0.00
Kevin	Hart	\$45.31	4.00	\$181.24
Tracy	Harting	\$30.00	2.00	\$60.00
Robert	Hartman	\$30.00	6.00	\$180.00
Jason	Hassay	\$30.00	7.50	\$225.00
John	Hathaway	\$45.31	4.00	\$181.24
Nene	Heiligenstein	\$0.00	4.00	\$0.00
Bonnie	Hellums	\$67.31	9.00	\$605.79
Bruce	Hermes	\$0.00	3.50	\$0.00
Leslie	Hill	\$0.00	16.00	\$0.00
Rob	Hoffman	\$45.31	4.00	\$181.24
Julie	Hooten	\$0.00	1.00	\$0.00
Shannon	Ireland	\$30.00	7.00	\$210.00
Joyce	James	\$0.00	12.00	\$0.00
DeJuana	Jemigan	\$30.00	4.00	\$120.00
Gilford	Jones	\$67.31	1.00	\$67.31
Tim	Kennedy	\$0.00	16.50	\$0.00
Liz	Krommel	\$0.00	5.50	\$0.00
Richard	LaVallo	\$30.00	17.00	\$510.00
Stephanie	Ledeema	\$0.00	9.00	\$0.00
Tracy	Levins	\$30.00	3.00	\$90.00
Rebecca	Lightsey	\$40.00	13.00	\$520.00
Terresa	Limas	\$0.00	1.00	\$0.00

FY 2010 Texas CIP Grants Assessment

Doug	Lowe	\$30.00	4.00	\$120.00
Jessica	Lynch	\$12.00	10.00	\$120.00
Patricia A.	Madias	\$67.31	10.00	\$673.10
William	Martin	\$78.00	4.00	\$304.00
Octavio	Martinez	\$203.00	3.00	\$609.00
Coleen	McCall	\$0.00	11.00	\$0.00
Jamar	McCortle	\$30.00	21.50	\$645.00
F. Scott	McCown	\$85.00	9.00	\$765.00
Selena	Mireless	\$30.00	4.00	\$120.00
Georgina	Morales	\$0.00	4.00	\$0.00
Teri	Moran	\$0.00	34.50	\$0.00
Robert	Nolan	\$31.73	5.50	\$174.52
Kathleen	Ochoa	\$0.00	7.00	\$0.00
Shaneka	Odern	\$0.00	2.00	\$0.00
Katie	Ogden	\$30.00	3.00	\$90.00
Harriet	O'Neill	\$72.00	9.00	\$648.00
Beth	Page	\$0.00	4.00	\$0.00
Fam	Parker	\$0.00	5.00	\$0.00
Ron	Pope	\$67.31	4.00	\$269.24
Judy	Powell	\$35.00	6.00	\$210.00
Mena	Ramon	\$100.00	5.00	\$500.00
Ruben	Reyes	\$67.31	0.50	\$33.66
Carl	Reynolds	\$120.00	18.50	\$2,220.00
Carolynne	Rodriguez	\$75.00	13.00	\$975.00
Tillary	Roper	\$0.00	36.00	\$0.00
Dean	Rudler	\$85.00	22.00	\$1,870.00
Fairy Davenport	Rutland	\$85.00	13.50	\$1,147.50
Robin	Sage	\$85.00	36.00	\$3,060.00
Peter	Sakai	\$67.31	2.00	\$134.62
Chadwick	Sapenter	\$30.00	4.00	\$120.00
Barbara	Schafer	\$30.00	1.50	\$45.00
Virginia	Schnarr	\$46.03	8.00	\$368.24
Johana	Scott	\$35.00	6.00	\$210.00
Cheryl Lee	Shannon	\$67.31	20.00	\$1,346.20
Janet	Shankle	\$0.00	6.00	\$0.00
Jodie	Smith	\$30.00	1.00	\$30.00
Christie	Smith	\$0.00	2.00	\$0.00
Ellen	Smith	\$46.31	7.50	\$339.83
Andrea	Sparla	\$40.00	4.00	\$160.00
John	Specia	\$0.00	29.00	\$0.00
Arman	Steege	\$0.00	9.00	\$0.00
Kristi	Taylor	\$0.00	18.50	\$0.00
Jim	Terrell	\$30.00	3.00	\$90.00
Glenn	Terry	\$30.00	3.00	\$90.00
Kenneth	Thompson	\$0.00	6.00	\$0.00
Lisa	Thompson	\$0.00	11.00	\$0.00
Jessica	Tyler	\$35.00	4.00	\$220.00
Jinda	Uecker	\$35.00	5.00	\$175.00
Alan	Underwood	\$85.00	2.00	\$170.00
St. Alan	Van Fleet	\$85.00	3.00	\$2,040.00
Sina	VanOsselaer	\$40.00	3.00	\$120.00
Archie	Vargas	\$30.00	6.00	\$180.00
Karen	Walker	\$1.00	2.00	\$2.00
Doug	Wame	\$85.00	5.00	\$425.00
Aaron	Williams	\$0.00	3.00	\$0.00
Gary	Williams	\$0.00	4.00	\$0.00
Sryan	Wilson	\$75.00	7.00	\$525.00
	<b>TOTAL MEETING HOURS</b>		<b>1007.25</b>	<b>\$44,015.44</b>
	<b>TOTAL TRAVEL HOURS</b>		<b>138.95</b>	<b>\$10,933.10</b>
	<b>VALUE FOR MATCH</b>		<b>1148.28</b>	<b>\$54,948.54</b>
	<b>NACC Training</b>			<b>\$38,890.00</b>
	<b>GRAND TOTAL</b>			<b>\$111,788.54</b>
	<b>Collaborative Meetings</b>			
	# meetings	25		
	avg time	1		
	total meeting time	25		
	avg # participants	8		
	total meeting time * Total meeting hours	150		



CENTER *for* PUBLIC POLICY PRIORITIES



**THE  
GUIDE  
TO TEXAS CHILD  
PROTECTIVE  
SERVICES**

.....  
DECEMBER 2010



## CPPP

For 25 years, the Center for Public Policy Priorities has been a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. The center pursues this mission through independent research, policy analysis and development, public education, advocacy, coalition-building, and technical assistance.

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Jane Burstain joined the center in 2008. She is responsible for child welfare policy and budget issues. Before joining the center, she served as an Adjunct Professor at Pepperdine University, where she taught a family policy class in the Masters of Public Policy Program. Before that she worked as an attorney representing children in the Los Angeles child welfare system with the Children's Law Center. She earned a Ph.D. in Policy Analysis from the Pardee RAND Graduate School in 2008 with her dissertation addressing how to improve outcomes for adolescent mothers in the child welfare system. Jane also earned a Juris Doctor, *Magna Cum Laude*, Order of the Coif, in 1995 from the University of California, Hastings College of the Law, and a Bachelor of Science in Finance from the University of Virginia in 1989.

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## Acknowledgement

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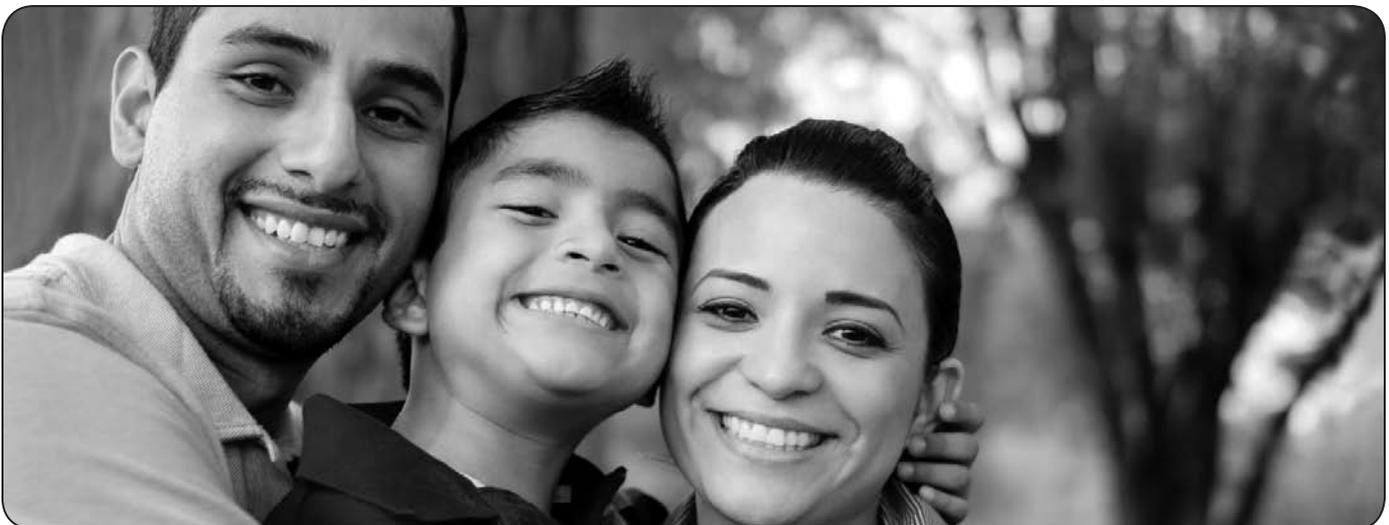
# INTRODUCTION

The goal of a child welfare system is to ensure that children are protected from abuse and neglect, preferably by helping families safely care for children in their own homes. When that's not possible, the system looks for other alternatives, so that all children grow up in a loving, permanent home. Many different individuals and groups help make this happen in Texas.

The Texas Department of Family and Protective Services (DFPS) is the state agency charged with protecting children from abuse and neglect.<sup>1</sup> DFPS fulfills this mandate through its Child Protective Services (CPS) Division. Courts also play a critical role. If the abuse or neglect is serious enough to warrant removing children from their home, courts become the ultimate arbiter of what happens to them. The federal government and Texas Governor and Legislature are involved as well, creating laws that govern how CPS operates and establishing policy priorities for the system through what is funded in the CPS budget. Finally, advocates, organizations that work with children and families and the families themselves play a crucial role in ensuring that the system works in supporting families and communities to keep children safe and protected.

In recent years, there have been significant efforts to improve the CPS system in Texas. CPPP has participated in many of these efforts and this guide is a continuation of our work. Chapter 1 discusses how Texas fits into a national context and recent state reform efforts. Chapter 2 describes how the system is structured based on a review of federal and state law, the Texas administrative code and CPS internal policy. It also uses data to describe how children and families are actually moving through the system.<sup>2</sup>

This guide is primarily designed as a resource for researchers, advocates, policymakers, and those who work in and with the CPS system. This overview should make it easier to identify and address problem areas and policy gaps so the system can better support families and their communities in providing safe and permanent homes for all the children of Texas.



# CHAPTER 1

## THE TEXAS CPS STORY

*This chapter discusses how Texas CPS fits into a national context and recent state reform efforts.*



### Texas CPS in a National Context<sup>3</sup>

There is wide variation among the states as to how their child welfare system is structured and operates.

Texas CPS is a centralized, state-administered system. This means that, although there are numerous CPS offices around the state, they are all governed by one set of internal policies and procedures. Although most child welfare systems in the country operate with a similar structure, there are some that have a decentralized, county-administered system where each county child welfare office has its own set of policies and procedures for administering the system.<sup>4</sup>

With respect to child abuse and neglect prevention, compared to other states, Texas has the lowest coverage rate. In Texas, about five of every 1,000 children receive prevention services. The national average is almost nine times higher at about 44 of every 1,000 children.

There is no federal law defining child abuse or neglect so each state has its own statutory standards and practice. Putting the definition into practice, there is wide variation among the states. The percentage of completed investigations that a state agency confirms as involving abuse or neglect ranges from 7 percent (Kansas) to 58 percent (Massachusetts), with a national average of 23 percent. Texas falls in the middle with a confirmation rate of 25 percent.

There also is no federal law about what to do once a state has determined child abuse or neglect has occurred. There are generally three options: do nothing, provide services to the family with the child in the home, or provide services to the family but remove the child from the home. There are differences among the states with respect to which options they pursue. The percentage of confirmed victims who receive some type of post-investigation service ranges from 25 percent (Tennessee) to 100 percent (Iowa and New Hampshire), with a national average of 63 percent. Texas is lower than the national average with 55 percent of confirmed victims receiving some type of post-investigative service.

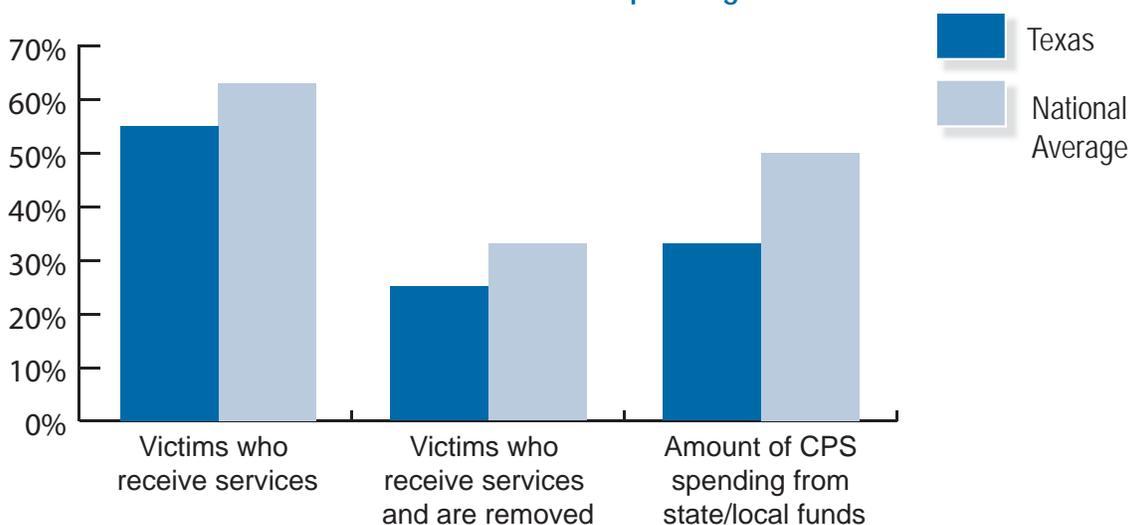
With respect to how services are provided, the percentage of confirmed victims who are provided services and removed from their home ranges from 6 percent (Florida) to 100 percent (South Dakota), with a national average of 33 percent.<sup>5</sup> As with services, Texas is lower than the national average: 25 percent of victims in Texas who receive services are removed.

There are also differences among the states as to how the child welfare system is funded. According to the Urban Institute's 2005 Child Welfare Survey, Texas' CPS system ranks fifth highest nationally, below Mississippi, North Dakota, Connecticut, and Oregon, in its reliance on federal funds. The survey found that only 33 percent of Texas' child welfare spending comes from state or local sources with the remaining 67 percent coming from federal funds. Nationally, on average, the split was more

: equitable with state or local funds accounting for 50 percent of child welfare
 : spending and 50 percent funded through federal sources. A full discussion of how
 : federal funds are used to support Texas' CPS system is in our report, *Federal Funds*
 : *for CPS*.

: In sum, Texas is a low-service, low-removal state that spends little of its own money
 : to pay for its CPS system.

How Texas Compares to the National Average for Providing Services,
 Removals and State Spending on CPS



## Recent Efforts to Improve the Texas CPS System

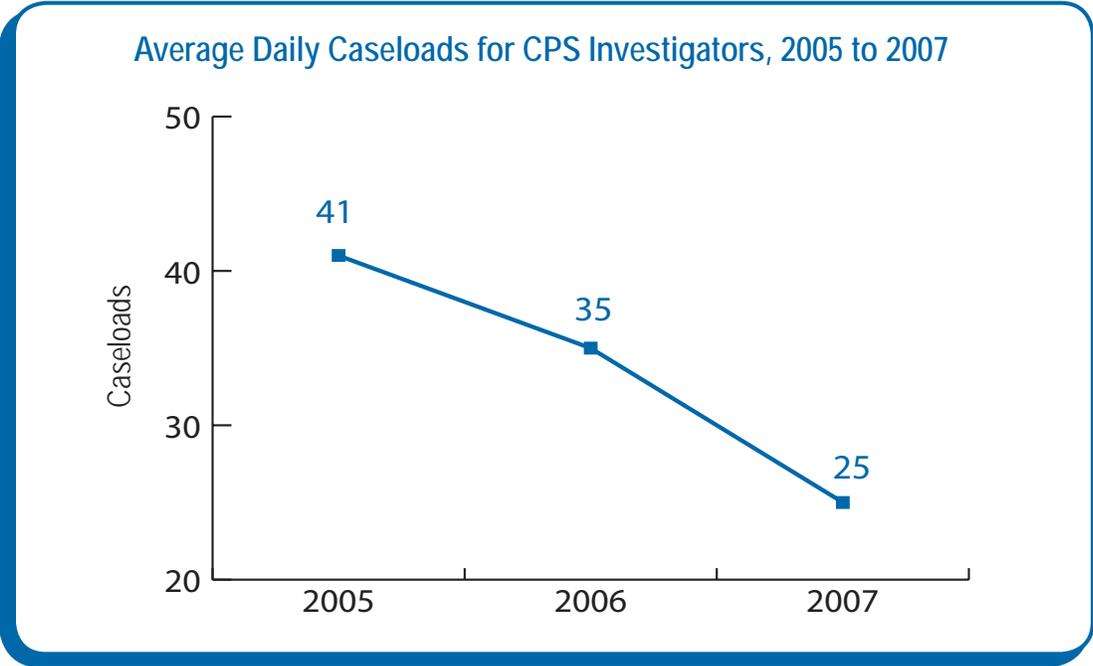
### STATE LEGISLATIVE AND CPS REFORMS<sup>6</sup>

In 2004, there were several high profile tragedies regarding children involved with the Texas CPS, prompting a special report by the Texas Comptroller.<sup>7</sup> The report garnered significant attention and eventually resulted in the Office of the Investigator General (OIG) conducting a review of CPS. The OIG review found that CPS had difficulty with its investigations as caseworkers were overwhelmed with work, with some handling more than 100 cases at a time. The review also found that caseworkers did not have the necessary resources and supervisor support to make good decisions. In response, in January 2005, the Governor issued an executive order creating a special division within CPS for investigations.

As a follow up to the Governor's order, the 2005 Texas Legislature initiated a comprehensive reform of CPS, culminating in Senate Bill 6 (SB 6). The initial plan was for CPS to focus on investigations and whether a child could safely stay in their home or needed to be removed into state custody. For the case management functions that happen after an investigation, including supervising and providing services to families and handling the legal case should a child be removed, the plan was to privatize them.

• To strengthen investigations, SB 6 required CPS to hire caseworkers with forensic investigation experience and build partnerships with law enforcement. The Legislature also funded a significant number of new investigators to reduce caseloads, along with administrative and support staff. As part of its focus on the front-end of the CPS system, SB 6 also created new funding streams to support child abuse and neglect prevention.

• During the legislative interim in 2005 and 2006, CPS worked to implement SB 6.<sup>8</sup> It hired new caseworkers for investigations, growing its investigations front line staff by 37 percent from 2005 to 2007. The new staff helped reduce investigation caseloads, which fell from an average of 41 cases in 2005 to 25 cases in 2007, a 40 percent decline.<sup>9</sup>



• CPS also changed its internal operations. Up to this point, CPS had workers who specialized in investigations as well as those who specialized in managing families already receiving CPS services and supervision. But the caseworkers were not necessarily part of a functional unit. To keep as many front-line staff as possible after the budget reduction in 2003, CPS significantly cut and consolidated its administration. Investigators and caseworkers supervising families had to share support services and staff. Supervisors were each given more caseworkers to manage and often one supervisor would be handling both investigators as well as those who supervised families already receiving CPS services.

• With the new resources the Legislature provided as part of the reform effort, CPS expanded on the Governor's executive order. In addition to creating a specialized investigations unit, it created a unit of caseworkers to work with families under CPS supervision while the child stayed at home, referred to as family based safety services (FBSS). It also created a unit of caseworkers to specialize in working with families when the children had been removed from the home and taken into state custody,

referred to as conservatorship. Each functional unit had its own support staff and supervisors who, along with the caseworker, specialized in managing a particular aspect of the CPS system. CPS reduced the number of caseworkers assigned to a supervisor. With fewer caseworkers to manage, supervisors could spend more time training and supporting them. CPS also made efforts to improve recruitment and retention of caseworkers including improved training, assignment of mentors for new caseworkers, introducing mobile technology for workers, and leadership and training programs for supervisors.<sup>10</sup>

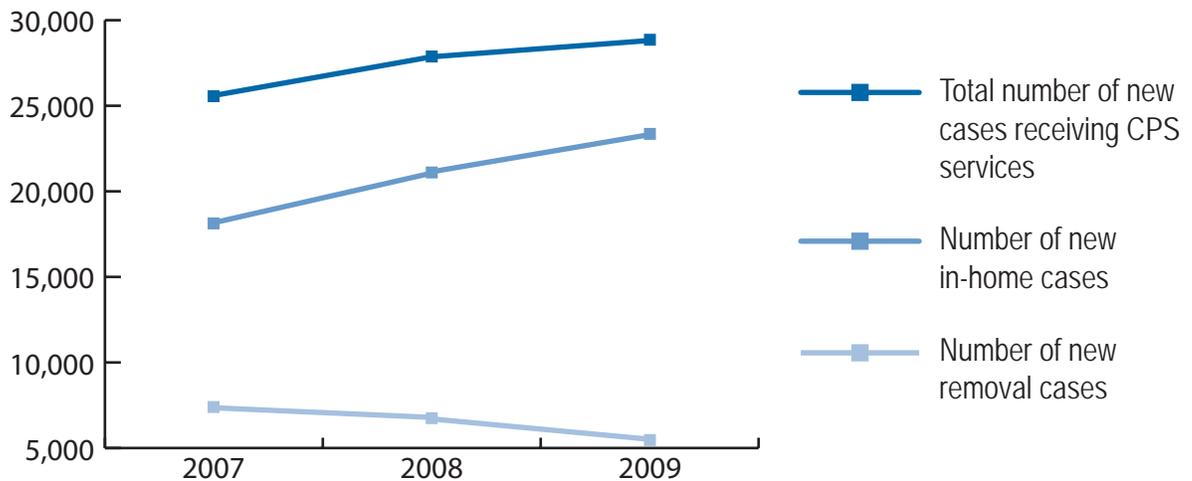
In 2007, the Legislature continued the reform efforts through Senate Bill 758 (SB 758), which focused on strengthening the case management functions that happen after an investigation is concluded and CPS becomes actively involved with the family.<sup>11</sup> Although the plan in SB 6 had been to privatize these functions, for a myriad of reasons, SB 758 shifted to keeping those functions within CPS, scaling back the privatization mandate to a 5 percent pilot, which was ultimately not funded.<sup>12</sup> A full discussion of privatization efforts for CPS in Texas is in our report, *Drawing the Line between Public and Private Responsibility in Child Welfare: The Texas Debate*.

The primary focus of SB 758 was to keep more children involved with CPS safely in their homes. As with SB 6, this involved making sure CPS had the resources to do the job right. The legislature funded a significant number of new FBSS and conservatorship caseworker positions to reduce overall caseloads. With caseloads at a manageable level, caseworkers could visit with children and families more often and ensure the children were safe and families were getting needed services. SB 758 required CPS to better engage families in the service planning and decision making process through collaborative meetings involving not only the family, but their relatives, friends and others who could provide support. It also provided additional funds to support services to help keep children safe in their homes from the outset, or to return them home faster in the case of a removal. But SB 758 recognized that not every child could go home, and so focused on improving foster care as well. It required CPS to concentrate on developing more and better homes and to work on eliminating disparate outcomes for certain races and ethnicities.

Over the legislative interim in 2007 and 2008, CPS worked to implement the SB 758 requirements.<sup>13</sup> Focusing on keeping more children in their home, CPS started family team meetings (FTM) during the investigation stage. In an FTM, CPS gets the parents and extended family together and helps them develop a plan to keep the child safe in the short-term to prevent the need for removal. Through these and other efforts, CPS was able to reduce removals. On the cases it opened for services, CPS removed fewer children, keeping more of them in their homes from the outset. In 2007, the removal rate on new cases was 29 percent.<sup>14</sup> This declined to 19 percent by 2009. This seems to represent a real shift in practice. Even though the removal rate subsequently increased to 23 percent in 2010<sup>15</sup>, most likely due to the recent economic downturn, it is still lower than it's been in the last 15 years.

Although the removal rate went down, the total number of new families CPS supervised and served increased from 2007 to 2009 by 13 percent. As a result, the number of children in state custody declined while the number of children receiving FBSS, or in-home services, increased.

### How Cases Were Opened for Services in 2007 to 2009



CPS hired additional conservatorship and FBSS caseworkers. From 2007 to 2009, CPS increased the number of conservatorship caseworkers by 30 percent. The influx of new caseworkers, along with the decline in removals, helped reduce conservatorship caseloads from an average of 43 cases in 2007 to 28 cases in 2009, a 35 percent decline. The 35 percent increase in FBSS caseworkers, however, was largely offset by the number of new families coming into FBSS. As a result, FBSS caseloads remained relatively constant, declining from a little over 20 cases in 2007 to 19 cases in 2009.

CPS also addressed the SB 758 requirement to improve foster care. It contracted for an independent needs assessment to look at gaps in the quality and quantity of placements and recommend ways to improve services. CPS streamlined the process for approving foster and adoptive homes and established specialists in three regions of the state to help eliminate disparate outcomes for children of color.

A full discussion of CPS' internal reform efforts from 2005 to 2008 and the impact on CPS internal operations is in our report, *A Better Understanding of Caseworker Turnover in Child Protective Services*.

In 2009, the Legislature continued the emphasis on supporting families and relative caregivers through increased funding for caseworkers and services. It continued the work on improving foster care by increasing payments to foster parents and the agencies that manage them. But it also focused on improving outcomes for children

in CPS care. Instead of one comprehensive bill, however, there were a several bills focusing on different issues, including:

- Improving coordination among the various state agencies that provide services to children and families in CPS.
- Improving the permanency planning process so that all children get a meaningful chance at finding a permanent, safe home to grow up in.
- Creating procedures to deal with youth in CPS custody who are also involved in the juvenile justice system.
- Helping youth who will age out of the system to get the preparation and documentation they need before leaving care so they can successfully transition into living on their own.

A full discussion of the CPS related legislation from the 2009 Legislature is in our report, *Child Protective Services and the 81<sup>st</sup> Legislature*.

Efforts to improve the system have continued since 2009, through several different task forces or workgroups. The Senate Bill 2080 task force is working on improving child abuse and neglect prevention. The House Bill 2225 task force is studying how to eliminate barriers to permanency. And the House Bill 1912 work group is looking at ways to improve outcomes for emancipating youth. They will all submit a report and make recommendations to the next Legislature, which convenes in January 2011.

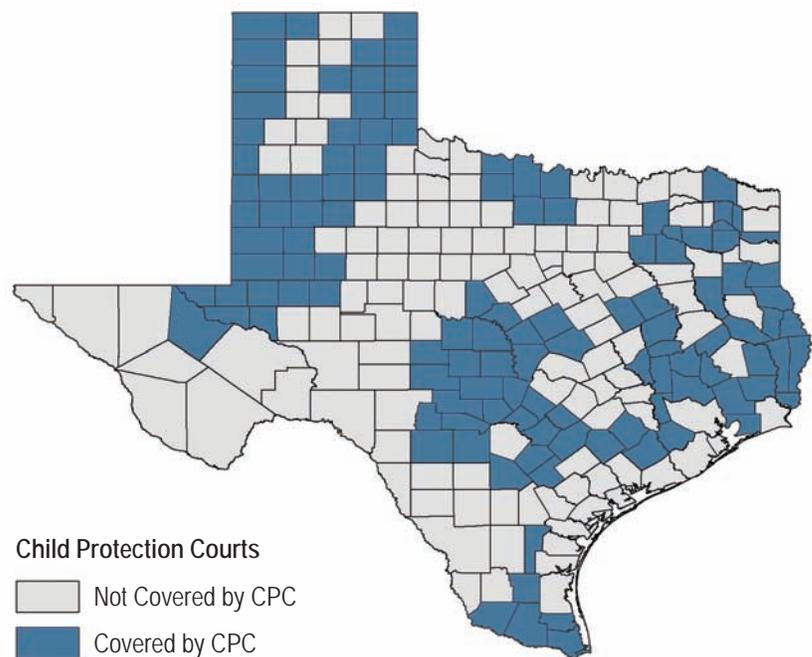
CPS has also continued its internal reform efforts, starting a project to redesign the foster care system to reduce how often a child is moved and place children closer to home.<sup>16</sup> Foster family homes are recruited, trained, and managed by a private child placing agency (CPA) or CPS. For children in foster family homes at the end of 2009, 85 percent lived in a CPA managed home. When a CPA manages a foster home, it provides ongoing support and training to the foster families and daily on-going support for each child in the home. Through its redesign project, CPS is exploring ways to better align its payment structure so CPAs and other providers of care have flexibility in how they provide services to the child while, at the same time, CPS has a way to measure their performance. CPS is also looking to expand the CPAs' role, allowing them to provide services to not only the child, but to the parents, as well. CPS, however, will maintain control over case management including the legal aspects of the case and making recommendations to the judge about what should ultimately happen with the family. CPS is limiting the redesign to what it can pay for within its current budget.

To inform its efforts, CPS has contracted with outside organizations to provide data analysis and conduct surveys, interviews, and focus groups to get stakeholder input. DFPS also formed the Public Private Partnership (PPP), which consists of foster care providers, judges, child advocates, and former foster care youth, along with agency staff. The PPP provides input about the redesign and will ultimately make recommendations to the DFPS commissioner about how it should be structured. Using all of this input, DFPS intends to present a comprehensive plan to the Legislature in January 2011. Although it does not intend to ask for additional funding, DFPS does anticipate the need for greater flexibility in how it spends the foster care and services funding in its budget.

## EFFORTS TO IMPROVE THE JUDICIAL PROCESS FOR CPS CASES

During the past 5 or 6 years that the Legislature and CPS have been working to improve how CPS operates, there have also been efforts to improve the way the courts handle CPS cases. Legal cases involving CPS are complicated and often require more judicial resources and expertise than a typical criminal or civil case. This can be especially difficult in rural counties where judicial resources are stretched thin. To address this problem, Texas created courts that specialize in CPS cases for rural areas, referred to as Child Protection Courts (CPCs).<sup>17</sup> For a CPC, a senior judge or an associate judge specially trained in CPS issues is appointed and travels to designated rural counties to hear all their CPS cases. Currently, there are 17 CPCs in Texas.

### Counties Covered by Child Protection Courts



Source: Texas Office of Court Administration

Other than the CPC's, which are administered by the Office of Court Administration, Texas courts are decentralized. Although all courts in Texas must comply with the Texas Family Code provisions governing CPS cases, the individual jurisdictions decide how to administer the cases. In some areas, one or more judges are designated to hear CPS cases. In others, CPS cases are assigned on a rotating basis to all the family or juvenile court judges. In some cases, the judge is an elected district court judge and, in others, it is an appointed associate judge. Some jurisdictions have one judge hear all aspects of a case, while in others, multiple judges hear various parts of the same case. Given this structure, historically, there has been no way for the judiciary to identify broad systemic issues or to implement statewide improvements related to CPS. To address this gap, in 2007, the Texas Supreme Court created the Permanent Commission for Children, Youth and Families (the Children's Commission) to

coordinate statewide efforts to enhance the understanding of judges and attorneys about the CPS system and ensure that they have the resources they need to make good decisions.

Since its inception, the Children's Commission has conducted and supported training and education for judges and attorneys working on CPS cases, both statewide and in individual jurisdictions. Annually, the Commission provides over \$500,000 to the Texas Center for the Judiciary for state and national training programs for judges who hear CPS cases. In 2009, it created *The Child Abuse and Neglect Case: A Practitioner's Guide*,<sup>18</sup> which provides a comprehensive overview of what attorneys need to know to effectively handle CPS cases, including practice tips and resources, and it has developed a CPS bench book for judges to use. The Children's Commission also provides technical assistance to judges to help them identify systemic barriers to achieving optimal outcomes for children and families. It provides data analysis to individual courts about permanency outcomes for children in their jurisdictions. Through Texas Appleseed, a non-profit organization aimed at promoting social and economic justice for all Texans, the Children's Commission also formed a partnership to take a comprehensive look at children in the long-term care of the state and how courts can work to improve their outcomes. The work culminated in a recent report: *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas' Courts & Legal System*. Finally, the Children's Commission has been instrumental in facilitating collaboration among all the parties involved in the system, including judges, attorneys, CPS, advocacy groups, and private providers.

## FEDERAL EFFORTS TO IMPROVE THE CPS SYSTEM

The federal government has also had a hand in effecting change to the Texas CPS system. In return for the financial support it provides, the federal government requires a state to conform to certain standards and achieve certain outcomes.<sup>19</sup> The process by which the federal government reviews a state's performance is called the Child and Family Services Review (CFSR). The Children's Bureau, which is part of the U.S. Department of Health and Human Services, conducts the review. For the CFSR, the Children's Bureau looks at data, reviews individual cases and conducts interviews and focus groups with a wide range of stakeholders. Through the CFSR, the Children's Bureau assesses a state's performance based on how its overall system is working and the outcomes it achieves for children and families, comparing the state to specified goals.

The performance goals for the CFSR are set very high and the Children's Bureau does not expect states to actually meet all of them. Instead, the objective is to focus each state on continuous improvement so that they are always striving to achieve better outcomes for children and families. Not a single state met all of the specified goals during the first or second CFSR round.

When a state does not meet the specified goals, it must develop a program improvement plan (PIP) which outlines steps it will take to improve its performance. Through the PIP, however, the state does not have to meet the original CFSR goals. Instead, the state and the Children's Bureau negotiate how much improvement the state has to make during a specified time period. If the state does not complete the PIP as agreed, it is subject to financial penalties.

Texas recently completed its second CFSR in 2008, which identified several underlying barriers to achieving optimal outcomes for children and families. Some of the barriers the CFSR identified include:

- Failure to sufficiently visit and engage families and children because of high caseworker turnover and caseloads.
- Children spending too long in care because it takes too long to get a final order and too many children are going into long-term care without being freed for adoption.
- Failure to provide appropriate services to meet the needs of children and parents because the service plans are not tailored to the families' specific needs and a lack of available services, especially in rural areas.
- Children move around too much while in foster care.

*A detailed description of the most recent CFSR results for Texas is available online.*

To address the barriers identified in the CFSR, CPS developed a PIP<sup>20</sup> with four overarching goals of: 1) strengthening critical decision making skills of CPS staff; 2) removing barriers to permanency; 3) enhancing placement capacity through a redesign the Texas foster care system; and 4) strengthening in-home services.

Some of the specific tasks CPS has agreed to do in the PIP include:

- Reviewing caseworker training and developing a strategic plan to address any gaps.
- Collaborating with the Children's Commission to get judges and other stakeholders to use data to improve permanency outcomes.
- Developing policies to work with incarcerated parents.
- Providing trauma informed training to caseworkers and caregivers.
- Revising policy on safety planning for drug exposed infants.

*A full description of the PIP is available online.*

## CONCLUSION

*Texas is a low-services, low-removal state that relies heavily on federal funding to support its child welfare system. But within this context, there have been extensive efforts on multiple levels in recent years to improve how the CPS system operates.*

## CHAPTER 2 THE TEXAS CHILD WELFARE SYSTEM: HOW IT WORKS

*This chapter describes how the Texas child welfare system is structured based on a review of federal law, Texas law and the administrative code, and CPS internal policy. It starts with child abuse and neglect prevention and then moves through each step in the CPS process for handling abuse and neglect cases. This includes reporting child abuse and neglect, assessing a report, investigating a report, opening a case for services and how families and children receive services and supervision. In each section, we use DFPS data from 2009 to show how children and families are actually moving through the system.*



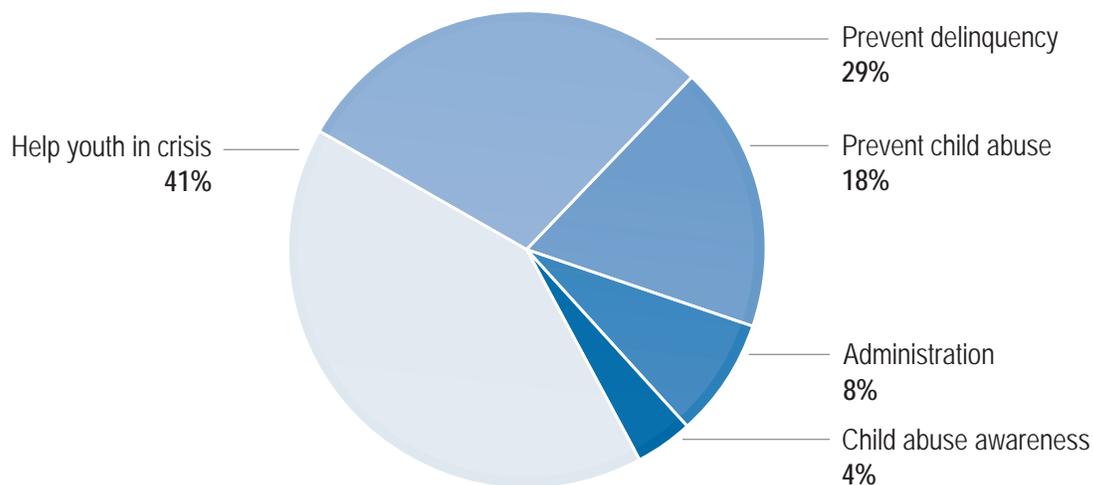
### Child Abuse and Neglect Prevention

CPS provides prevention services through the Prevention and Early Intervention (PEI) division. The Legislature created PEI in 1999 to coordinate prevention and early intervention programs. PEI has a very small annual budget of \$46 million, representing only about 4 percent of CPS' overall budget.

With this small budget, PEI is required to address a broad range of negative outcomes for children including child abuse, delinquency, running away, truancy, and dropping out of school.<sup>21</sup> As a result, PEI has to split its limited resources among three different areas, all of which provide important services to vulnerable constituencies: (1) delinquency prevention; (2) helping youth in crisis; and (3) child abuse and neglect prevention.<sup>22</sup>

Other than its Youth and Runaway Hotlines to help youth in crisis, which are primarily manned by volunteers, PEI provides no direct services. Instead, it contracts with community organizations to provide services, passing through about 92 percent of its budget directly to the community organizations.<sup>23</sup> Only 8 percent of the PEI budget is spent on full time PEI employees and administration to monitor and enforce contracts and run the Hotlines.<sup>24</sup>

Prevention and Early Intervention Annual Budget for 2010 (Total of \$46 million)



There are three primary PEI programs to prevent child abuse and neglect in at-risk families before a crisis occurs or a family becomes involved with (CPS).<sup>25</sup> They are: (1) Texas Families Together and Safe (TFTS); (2) Family Strengthening Services (FSS); and (3) Community Based Child Abuse Prevention (CBCAP).

In 2009, the University of Houston evaluated TFTS, FSS, and CBCAP, finding that families in all three programs experienced a statistically significant increase in protective factors and resiliency after completing the services.<sup>26</sup> It also found that only about 5 percent of the participating families had a confirmed child abuse or neglect allegation while receiving services or in the 12 months thereafter.<sup>27</sup> Finally, families were very satisfied with the services they received. The average score on the post-service survey was 6.4 out of seven.

Because of its limited resources, however, PEI can only reach a fraction of the families that need services. In 2009, more than 4,900 families participated in one of the three child abuse and neglect prevention programs.<sup>28</sup> That same year, there were more than 40,000 confirmed cases of abuse or neglect.<sup>29</sup> That means that even if PEI could have identified those families that were actually going to abuse or neglect their children, it could have only provided services to prevent the abuse or neglect to about one in eight.

And PEI's budget may be getting even smaller. To fulfill its mandate to cut 10 percent of its overall budget for the upcoming biennium, DFPS has proposed to reduce PEI's budget by 84 percent. That would leave PEI with an annual overall budget of about \$9 million and ten full time staff to administer its ten different programs.<sup>30</sup> As the proposed cuts are generally across the board<sup>31</sup>, the annual combined budget for TFTS, FSS, and CBCAP would be about \$2.8 million.

Were the legislature to make the proposed cuts, PEI's budget would be so small that it would effectively lose its ability to support any meaningful level of direct services. Based on the projected number of confirmed child abuse and neglect cases for 2012, even if PEI could identify who these families would be, TFTS, FSS and CBCAP collectively could only provide services to about 3 percent of them.<sup>32</sup> At this point, PEI would cease to exist as a statewide services program and may be required to completely restructure the way it does business.

A full discussion of PEI's operations and the impact of the proposed budget cuts are in our report, *Child Abuse and Neglect Prevention: How to Do It Better*.



## Reporting Child Abuse and Neglect

Reporting child abuse and neglect is primarily governed by the Texas Family Code (Family Code). Under the Family Code, everyone in Texas is required to report suspected abuse or neglect.<sup>33</sup> Anyone making a report in good faith is protected from criminal or civil liability even if it turns out no abuse or neglect occurred.<sup>34</sup> Reports can be made anonymously, and even if a reporter identifies himself, his identity is kept confidential.<sup>35</sup>

Child abuse and neglect can be reported over the telephone, in-person, by mail or fax or through the internet. Despite the multiple avenues available, however, the vast majority of reports are still made over the telephone.

The chart below details the source of child abuse and neglect reports on completed investigations in 2009. Professionals such as teachers, doctors and law enforcement were the most common source of child abuse and neglect reports, followed by family, friends and parents and then other sources. Only about 5 percent of the reports were from an anonymous source.

Source of Reports on Completed Investigations in 2009

Source	Number	Percent
School	36,494	19%
Medical Personnel	31,811	16%
Law Enforcement	30,351	16%
Other	24,380	13%
Relative	23,392	12%
Parent	16,004	8%
Friend/Neighbor	13,386	7%
Anonymous	9,212	5%
DFPS Staff	5,686	3%
Child Care Facility	1,794	1%
Victim	633	<1%
<b>Total Reports</b>	<b>193,143</b>	



### Assessing a Child Abuse or Neglect Report

All reports about child abuse and neglect are routed through statewide intake (SWI), a division within DFPS that does an initial assessment. SWI also receives reports for adult protective services and child care licensing and fields numerous requests for information or referrals. SWI has internal policies and procedures about how to classify an intake (e.g., as a request for a referral or a report of abuse).<sup>36</sup> In 2009, SWI had more than 690,000 intakes. Of those, more than 300,000 were general requests for information and referrals. Of the remaining intakes, the vast majority related to CPS. A small number of the CPS calls were case related special requests, with over 250,000 calls identified as a child abuse or neglect report.<sup>37</sup>

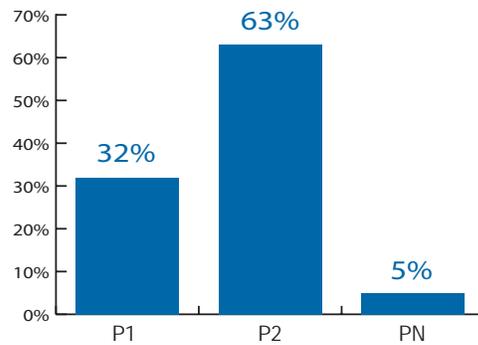
The Family Code sets forth the statutory definitions of child abuse and neglect.<sup>38</sup> As the statute cannot delineate every type of inappropriate behavior or situation, the definitions are fairly broad. CPS has operationalized these definitions in its internal policy, identifying specific factors for SWI to consider in whether a report meets the statutory definition.<sup>39</sup>

After getting as much information as possible about the allegations, SWI assigns the report a priority based on the type and seriousness of the alleged abuse or neglect. How SWI assigns priorities is primarily governed by the Texas Administrative Code (Administrative Code) and CPS internal policy.<sup>40</sup>

In its assessment, SWI assigns a case as a “priority none,” or a PN if it does not appear the child will be abused or neglected in the near future, or the allegations

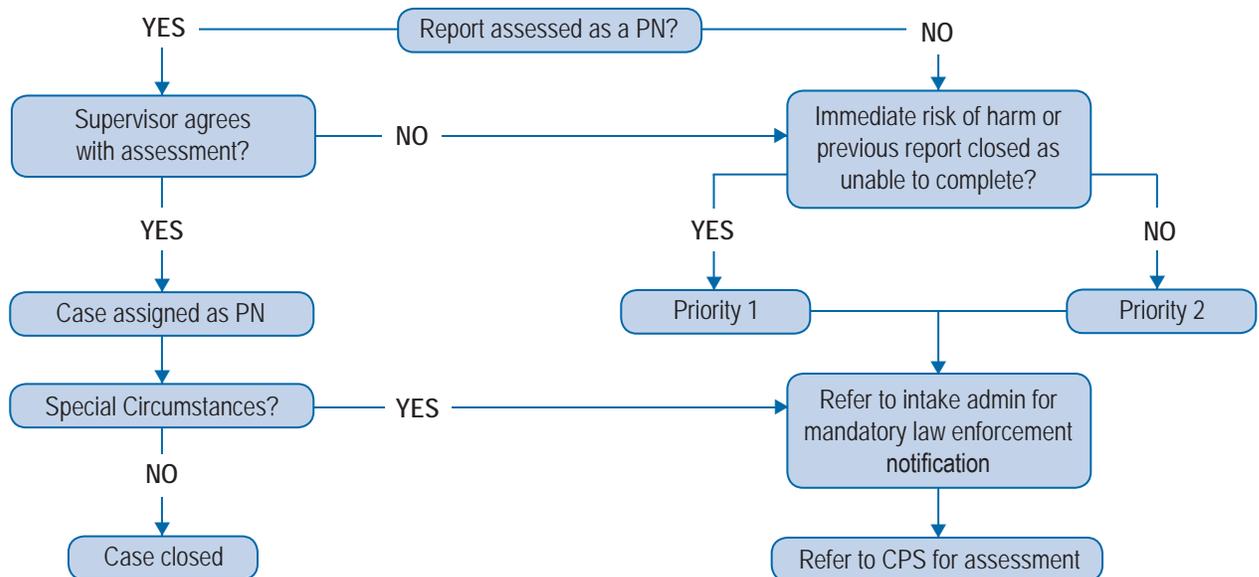
are too vague or general to determine whether a child has been or is likely to be abused or neglected. A report may also be assigned a PN when there is not enough information to locate the child or family or the intake is being sent to another state. Reports involving an immediate risk of abuse or neglect that could result in serious harm or death or a family with a case that was previously closed within the last year as unable to complete are assigned a priority 1 (P1). All others are assigned a priority 2 (P2). In 2009, SWI assigned the majority of reports a P2.

### Priorities Assigned to Child Abuse and Neglect Reports in 2009



SWI refers certain PN reports<sup>41</sup> and all P1 and P2 reports to the regional CPS offices for further assessment. SWI closes without further action PN reports that are not referred to a CPS regional office.

### SWI Intake Process for a Child Abuse and Neglect Report





## Investigating a Child Abuse or Neglect Report

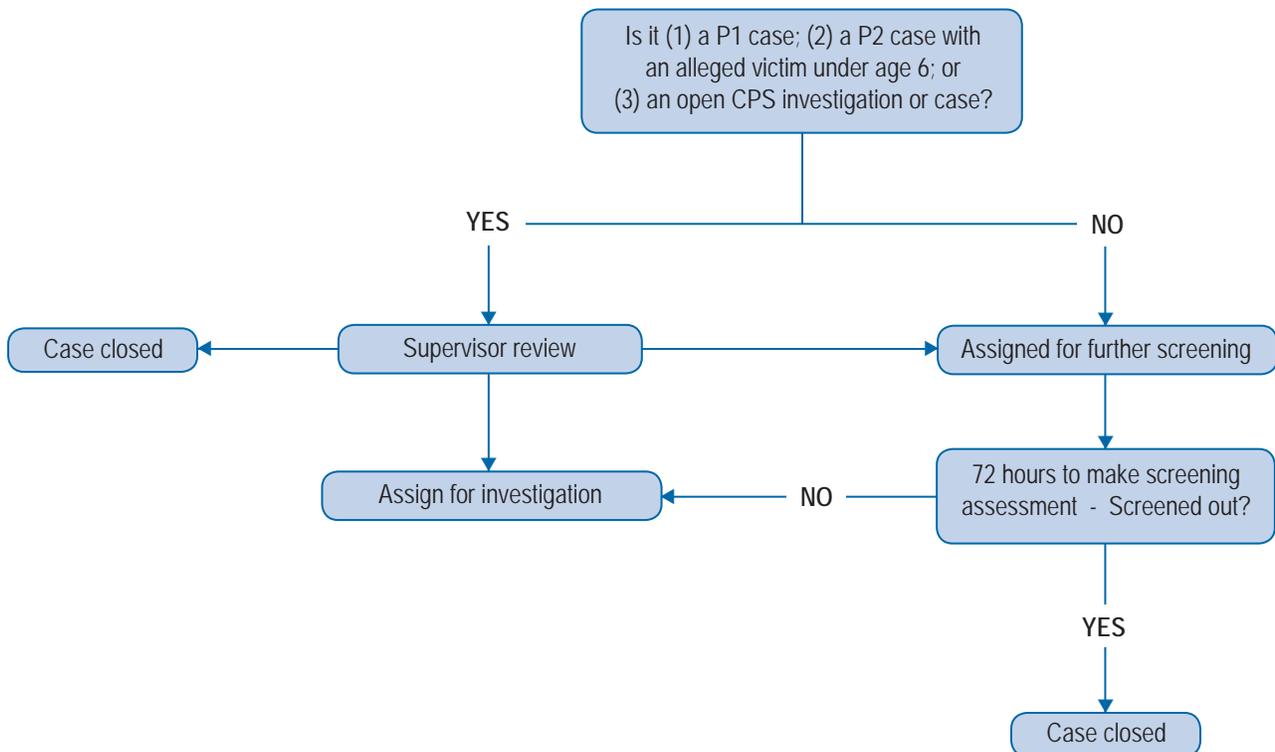
### ASSIGNING A CASE FOR INVESTIGATION

The Family Code allows CPS flexibility in responding to cases SWI refers to its regional offices.<sup>42</sup>

Under current CPS policy, a CPS supervisor reviews all P1 cases, all P2 cases where the victim is 5 years or younger, and all new reports on families that are already under investigation or receiving CPS services. After reviewing the case, the supervisor can close it without an investigation, refer it for further screening or refer it to be assigned for an investigation.<sup>43</sup> All P2 cases where the alleged victim is 6 years or older and all PN cases are referred to a formal screening. In 2009, more than one in five of the reports SWI referred to CPS went through the formal screening process.

In the formal screening process, CPS contacts individuals, other than the alleged victim and perpetrator, who may have relevant information about the alleged abuse or neglect. If the screening shows that abuse or neglect in the foreseeable future is unlikely, there is insufficient information to determine if the abuse or neglect occurred or to locate the child or family, or that the allegation has already been investigated or is the responsibility of another agency, CPS closes the case without further action.

### How Child Abuse and Neglect Investigations Are Assigned for Investigation



In total, one in six reports were closed by SWI, a CPS supervisor or through the formal screening process without being assigned for an investigation and more than 213,000 cases were assigned for investigation.

### Assigning Cases for Investigation in 2009

Cases assigned for formal screening	22%
Cases closed without an investigation	16%
Number of cases assigned for investigation	213,332
Average daily caseload of a CPS investigator	21 cases

### CONDUCTING AN INVESTIGATION

To determine whether a report of abuse or neglect is true and, if so, who the alleged perpetrator is, the Family Code provides that an investigator can visit the home, interview parents, children, and others who have relevant information, and obtain a medical, psychological, or psychiatric examination or records of the children in the home.<sup>44</sup> The Family Code requires CPS to notify the parents about any investigation.<sup>45</sup>

The Family Code requires a special procedure for investigations based on an anonymous report.<sup>46</sup> CPS first conducts a preliminary investigation to determine whether there is corroborating evidence for the report. This preliminary investigation can include interviewing and examining the child and interviewing the parents and anyone else with relevant information. If no corroborating evidence is found, CPS must close the investigation without any action.

In the event the parents refuse to cooperate with an investigation, the Family Code provides that CPS can seek a court order to pursue the investigation if it can show “good cause.”<sup>47</sup>

If exigent circumstances exist, however, then the caseworker can proceed without parental consent or a court order. In July 2008, the United States Court of Appeal for the Fifth Circuit published a decision in *Gates v. the Texas Department of Family and Protective Services*<sup>48</sup> that clarified when exigent circumstances exist. CPS subsequently clarified its internal policy to reflect the *Gates* ruling.<sup>49</sup>

Under *Gates*, whether exigent circumstances exist depends on what the caseworker is doing. For the purposes of entering or remaining in a private home, exigent circumstances exist when a child is in immediate danger.

To remove a child from a public school for an interview, a caseworker must have a reasonable belief that the child was abused and probably will be abused again if they go home at the end of the school day. Although not controlling, the child’s express desires about being transported are a factor to consider. An anonymous tip, absent some showing that it is reliable, is insufficient to justify removal for an interview. Instead, the tip must be corroborated through a preliminary investigation that can include an interview of the child’s teachers or peers or an interview of the child at the school or by looking for injuries on the child without removing any clothing (e.g., on the face or hands).

A full discussion of the *Gates* case is available in our report *The Gates Case: What It Means for Child Protective Services*.

To facilitate child interviews, many counties have a child advocacy center (CAC). Authorized under the Family Code,<sup>50</sup> CACs have child-friendly interview facilities and employ multi-disciplinary teams that include individuals who specialize in interviewing children. In 2009, the 64 CACs in Texas provided services to 40,000 children, most of whom were alleged victims of sexual abuse.<sup>51</sup> Before transporting a child to a CAC or other location for an interview, CPS must attempt to notify the parent.<sup>52</sup>

### COMPLETING AN INVESTIGATION

There are no Family or Administrative Code provisions regarding how long an investigation should take. Under CPS internal policy for cases that will be closed without providing services to or supervision of the family, the investigator should complete the investigation within 30 days.<sup>53</sup> If the investigator intends to recommend that a case be opened for services and supervision, however, there is no specific time frame by which the investigation must be completed.<sup>54</sup>

Once an investigation is completed, all the allegations and alleged perpetrators are given a designation and then the case is given an overall disposition. This process is governed by the Administrative Code and CPS internal policy.

### DESIGNATING AN ALLEGATION

Some allegations are administratively closed.<sup>55</sup> An anonymous report that cannot be corroborated is administratively closed. An administrative closure can also occur because a non-CPS entity has legal authority to investigate. For example, allegations of abuse or neglect in a foster home are investigated by child care licensing, not CPS.<sup>56</sup> An allegation can also be administratively closed for other reasons such as the allegations have already been investigated or the children are safe with no obvious indication of risk of abuse or neglect. Before administratively closing an allegation for one of these other reasons, however, the investigator must at least interview someone other than an alleged victim or perpetrator.



If an allegation is not administratively closed, it is identified as confirmed (or reason to believe) or unconfirmed (includes ruled out, unable to complete, or unable to determine).<sup>57</sup>

To confirm an allegation, there must be a preponderance of evidence that the alleged abuse or neglect occurred. The most common confirmed allegation is neglectful supervision.

### Confirmed Allegations in 2009

Allegation Type	Number	Percent
Neglectful supervision	49,588	62%
Physical abuse	13,875	17%
Physical neglect	6,570	8%
Sexual abuse	6316	8%
Medical neglect	2109	3%
Emotional abuse	648	1%
Refusal to accept parental responsibility	625	1%
Abandonment	205	<1%
<b>Total</b>	<b>79,936</b>	

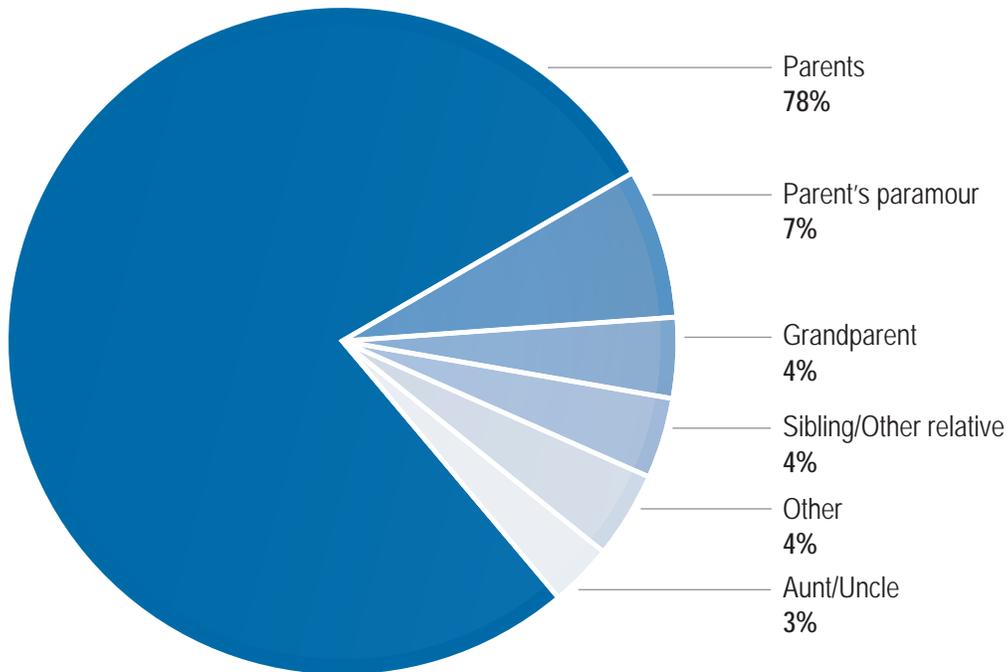
An allegation is “ruled out” when it is reasonable to believe from all the evidence that the abuse or neglect did not occur. An allegation is given an “unable to complete” designation when the family is uncooperative or the family has moved and cannot be located and there is not enough information to make a substantive determination about the allegation. All other allegations are designated as “unable to determine.”

In the case of an unable to complete allegation, if a family is uncooperative and the child is at risk, the investigator should seek a court order to aid in the investigation. If the family has moved, the investigator makes efforts to find out where the family currently lives, including a referral to a special investigator for follow up.<sup>58</sup> If CPS still cannot locate the family, the Family Code provides that CPS may ask the prosecuting attorney to go to court and get an order to place the alleged perpetrator and alleged victim on a child safety check alert list.<sup>59</sup> If law enforcement comes in contact with someone on the list, they should get information about the child’s well-being and the family’s current address and either remove the child, if the circumstances meet the Family Code standards for removal without a court order, or provide the information to CPS.<sup>60</sup> Once either law enforcement or CPS locates the child, the child and alleged perpetrator are removed from the list.<sup>61</sup>

### DESIGNATING A PERPETRATOR

In addition to investigating whether the abuse or neglect occurred, investigators also look at who was involved in it.<sup>62</sup> An individual is designated as a perpetrator if a preponderance of evidence shows that they are responsible for the abuse or neglect and had responsibility for the care, custody, and control of the child. Parents are the most common designated perpetrator.

## Perpetrator's Relationship to the Oldest Victim in Confirmed Cases in 2009



If the investigator administratively closes an allegation or finds that an alleged perpetrator did not abuse or neglect the children, an alleged perpetrator is designated as being “not involved.” Alleged perpetrators can also get a designation of “unknown” if an investigator is unable to complete or unable to determine their role.

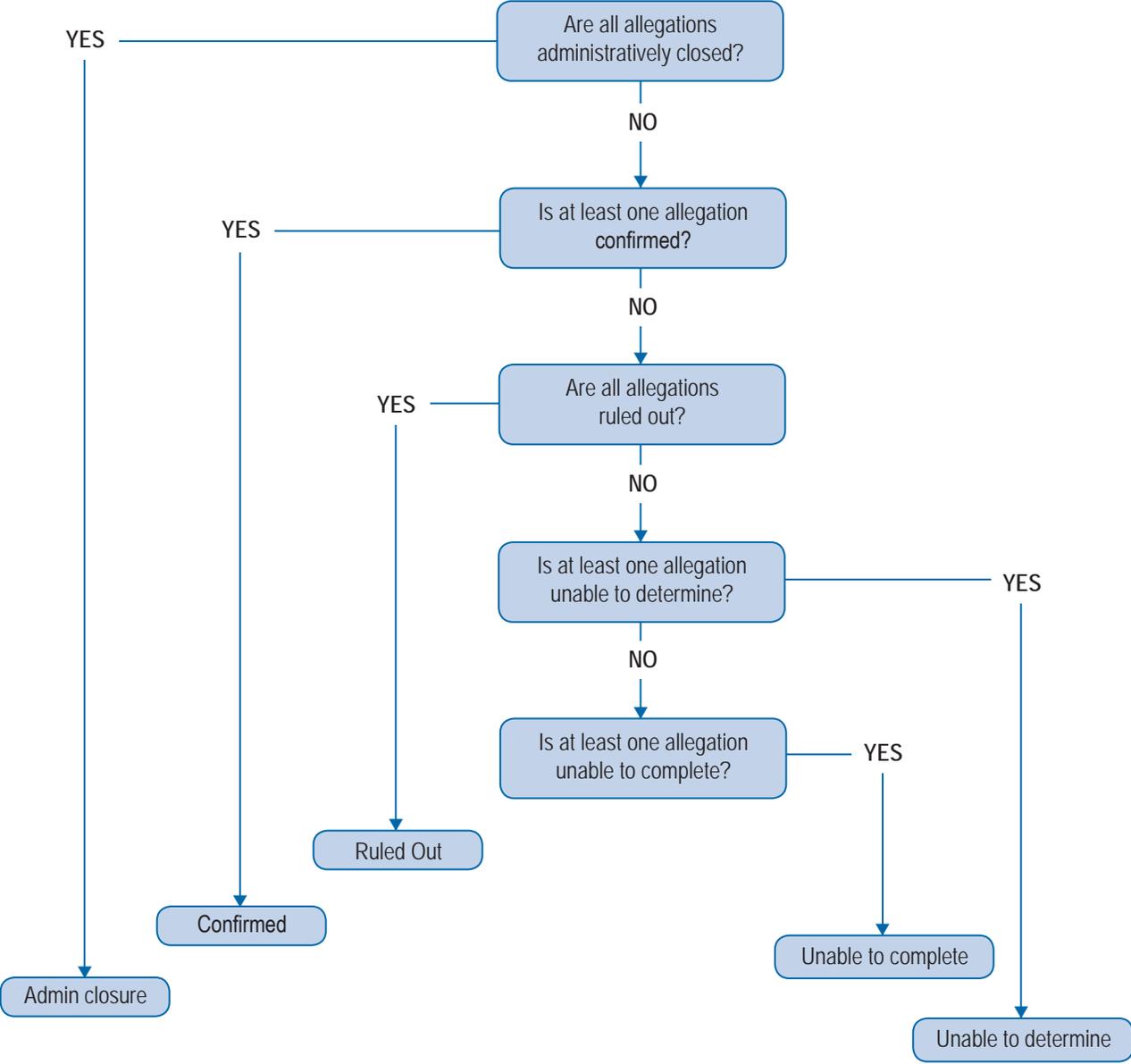
Under the Family Code, if CPS finds that an alleged perpetrator did not commit the abuse or neglect, it must give the individual notice about their right to remove information about their alleged role from CPS records.<sup>63</sup>

### OVERALL CASE DISPOSITION

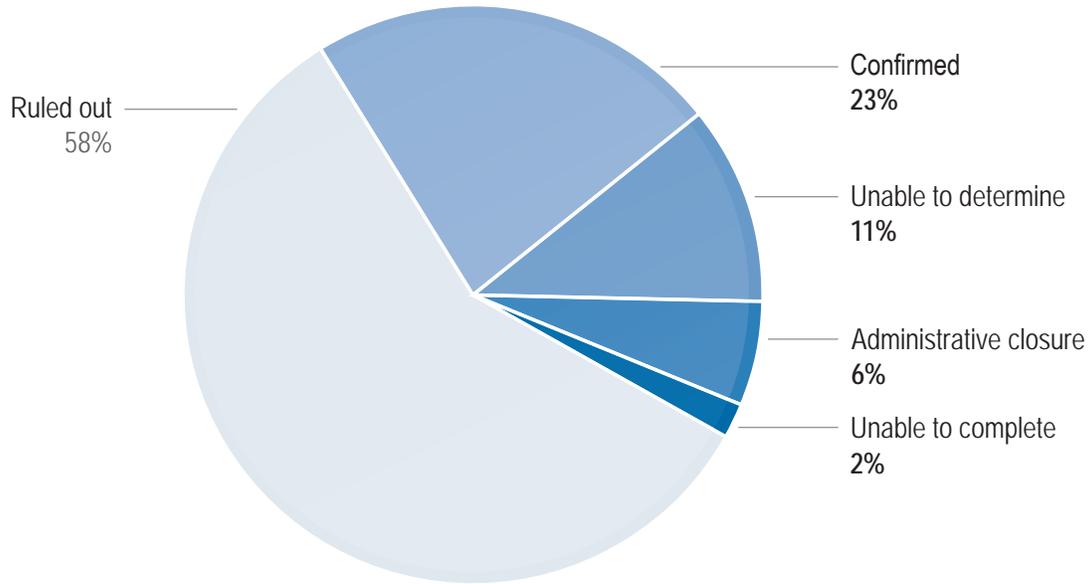
Once all the allegations and alleged perpetrators have been given a designation, the case is assigned an overall disposition. CPS internal policy provides a process through which cases with multiple types of allegation designations are assigned an overall disposition.<sup>64</sup>

Before a case can be administratively closed, a supervisor and program director must approve it. The majority of completed investigations in 2009 were ruled out and about one in four were confirmed.

# How to Give a Case an Overall Disposition



Case Dispositions in 2009<sup>65</sup>  
(Total 175,924)



## Opening a Case for Services

In addition to investigating the allegation of abuse or neglect, an investigator also assesses the child's safety in the home. This process is primarily governed by the Administrative Code and CPS internal policy.<sup>66</sup>

It is this safety assessment, not the allegation or case designation, which determines whether a family will receive services and supervision. As a result, there are cases where an allegation is confirmed but the family is not eligible for services because there is no ongoing risk indicated. There are also cases where the allegations cannot be confirmed but the family can still receive services because of an ongoing risk. If the case involves a child under the age of 4 with a case designation of confirmed, unable to complete, or unable to determine, and the plan is to close the case without services, a child safety specialist must review the case to make sure closing it is appropriate.<sup>67</sup>

The vast majority of confirmed cases have a finding of ongoing risk. But more than 1 in 4 unconfirmed cases also have an ongoing risk finding. Almost all cases that have a risk finding are opened for services.

When a case is open for services, it is either with the parents retaining legal custody, referred to as an in-home case, or with CPS taking the child out of the home, referred to as a removal or substitute care case. In 2009, only two of every ten cases opened for services involved substitute care.

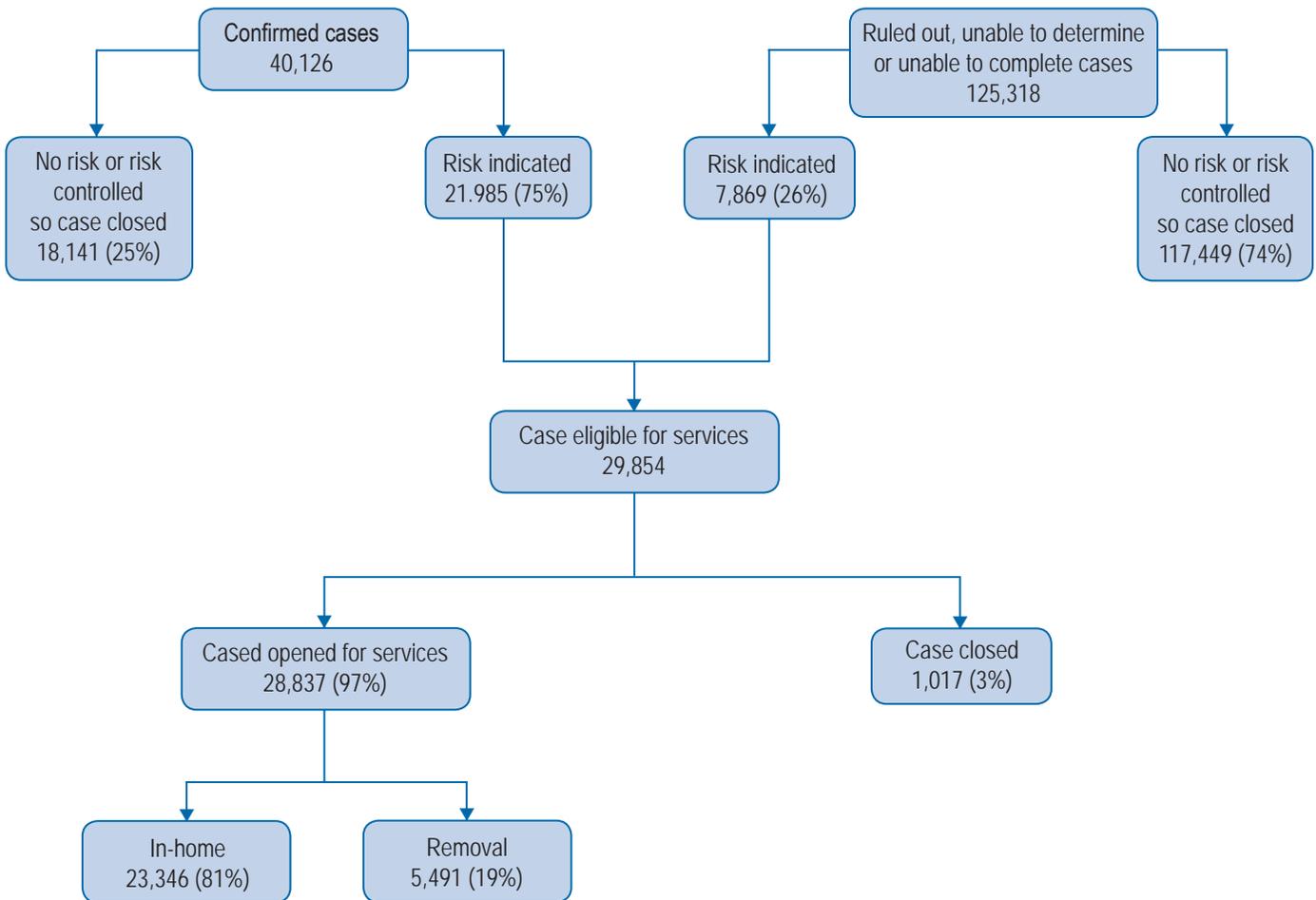
Before removing a child, CPS must have parental consent, a court order or exigent circumstances. For a removal, *Gates* defined exigent circumstances as reasonable

cause to believe that the child is in imminent danger of physical or sexual abuse if they remain in the parent’s custody. In making this determination, no one factor is dispositive. Instead, a caseworker must take into account all of the circumstances including:

1. Whether there is time to get a court order;
2. The nature of the abuse (its severity, duration and frequency);
3. The strength of the evidence supporting the abuse allegations;
4. The risk that the parent will flee with the child;
5. Whether less extreme alternatives are available; and
6. Possible harm to the child if removed.

If a child is removed, the Family Code requires CPS to provide the written notice to the parents as soon as possible but no later than one working day after the removal.<sup>68</sup>

### How Cases Were Opened for Services in 2009





## Providing Services to Families

In both in-home and substitute care cases, CPS develops a written plan in which it details tasks and services the parents must complete so the child can live safely in the home and the family can function without CPS supervision.<sup>69</sup> The services identified in the plan should be tailored to a family's individual circumstances and can include programs such as parenting classes, substance abuse treatment and counseling.

To better engage families in this service planning process, CPS holds two types of collaborative meetings.<sup>70</sup> The first is a family team meeting (FTM) that usually occurs during the investigation stage. In an FTM, CPS facilitates a meeting with the parents and extended family to develop a safety plan to prevent the need for removal. In 2009, CPS conducted more than 11,000 FTMs. The second type of meeting is a family group conference (FGC). This type of meeting occurs after a child has been removed and is broader than an FTM. It includes not only family but friends, neighbors, and others in the community interested in helping and supporting the family. In an FGC, the family identifies its goal for the child (e.g., return home) and then the participants identify the tasks needed to achieve that goal and identify available support and resources for the family. In 2009, CPS conducted more than 3,600 FGCs.

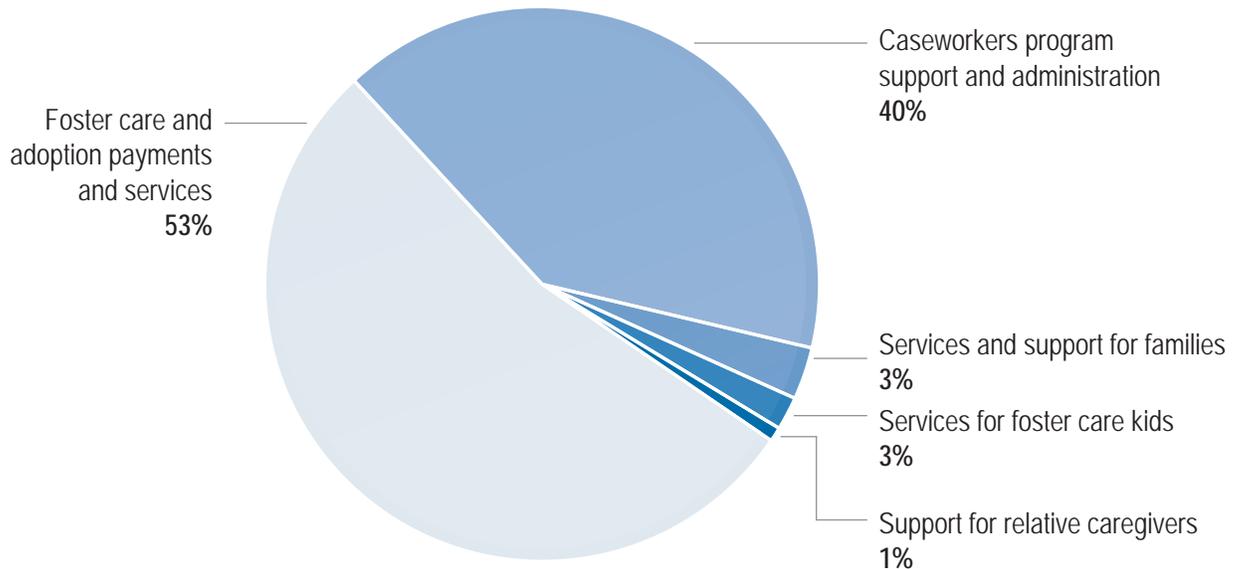
Although CPS identifies what services the parents must complete, it does not usually provide those services directly. Instead, since most families involved with CPS are low income,<sup>71</sup> the parents must primarily rely on services provided through Medicaid and other state agencies such as substance abuse treatment and mental health services provided through the Department of State Health Services (DSHS). But access to such services can be limited, especially in rural areas. In 2009, DSHS only had funds to meet about 6 percent of the substance abuse treatment needs among those who would qualify for state-supported services.<sup>72</sup> Ongoing mental health treatment at one of DSHS' community mental health centers is also limited. Only those with a diagnosis of schizophrenia, severe major depression, or bipolar are eligible and, even for these individuals, services may not be readily available. As a result, parents involved with CPS often have a long wait to receive substance abuse or mental health treatment, if the services are even available in their community.

CPS does have a small budget to purchase services for families who do not qualify for other programs. With respect to substance abuse, CPS has annual budget of \$1 million for treatment and \$4 million to pay for substance abuse testing.<sup>73</sup> CPS also has an annual budget of about \$12 million to purchase services such as parent training and psychological assessments and therapy for families. Finally, CPS has \$20 million in its current annual budget to subsidize protective day care services to help keep young children safe in their homes while their parents complete the service plan.

CPS' services budget used to include a program that helped families in neglect cases where poverty was a significant underlying problem and it had success in preventing removals and keeping children safe in their homes.<sup>74</sup> But CPS discontinued the program as part of the mandated budget cuts this year.

In total, only 3 percent of the current CPS budget is dedicated to services to support families on in-home cases or families in substitute care who are trying to regain custody of their children.

### CPS 2010 Budget<sup>75</sup> — Total of \$1.2 Billion



• The priorities in the CPS budget reflect the federal financing structure in that the  
• Texas Legislature is only willing to fund what the federal government will help pay  
• for. The primary federal child welfare funding stream supports caseworkers, CPS  
• administrative costs, and those children who have been removed from their home  
• and placed in foster care or are adopted,<sup>76</sup> which is why those items make up almost  
• all of the CPS budget. Although federal law favors keeping children in their homes  
• if possible<sup>77</sup> and the majority of children in all state child welfare systems receive in-  
• home services,<sup>78</sup> there are limited federal funds to support such services. Since the  
• Texas legislature is unwilling to allocate much in the way of state funds, it's only a  
• small part of the CPS budget.



### In-Home Cases

• FBSS caseworkers work with families on in-home cases. Each family, regardless of  
• the number of children involved, counts as one case.<sup>79</sup>

• Although the parent retains legal custody of the child for an in-home case, it does not  
• necessarily mean the child is living in the home. If a safety assessment indicates that  
• the child is in danger of serious harm and the parents do not have the necessary ability  
• to protect the child, CPS may allow the parent to identify another home where the  
• child can stay in lieu of a formal removal.<sup>80</sup> Such an arrangement is referred to as a  
• parental child safety placement and can occur during the investigation stage, during  
• the time the family is receiving in-home services, or both. There are no Family or  
• Administrative Code provisions regarding this process. It is governed solely by CPS  
• internal policy.

• Although CPS policy provides a basic structure for how parental child safety  
• placements work, there are several areas that need greater detail to ensure that

the placements are appropriate, that everyone understands their rights and responsibilities, and that the placements last no longer than necessary. A discussion of how to address the policy gaps for parental child safety placements is in our recent [written testimony to the Texas House Human Services Committee](#). CPS is in the process of reviewing its policy on this topic.

A family’s participation in an in-home case is voluntary in the sense that there is usually no court involvement or supervision. For some in-home cases, however, the parents refuse to participate in services. In these cases, the Family Code provides that CPS may ask a judge to order the parents to participate in the services without removing the child.<sup>81</sup> But there are no specific statutory provisions in the Family Code regarding the circumstances under which such an order would be appropriate or how long such an order can remain in effect.

Neither the parents nor the child are required to be appointed an attorney in any in-home case, even if the parent is indigent and under a court order for services.<sup>82</sup>

Under CPS internal policy, the service plan for an in-home case must be reviewed at least every three months and revised at least every six months.<sup>83</sup> The Administrative Code provides that an in-home case should be closed when the family no longer needs services. In 2009, the average in-home case was closed after seven months. If, despite services, the family still cannot protect the child, the child is removed into substitute care, although this seldom occurs.<sup>84</sup>

Usually when CPS closes an in-home case, there is no further involvement with the family. In 2009, less than 1 in 10 families on in-home cases had any further CPS involvement<sup>85</sup> in the 12 months after their case was closed.

### In-Home Cases in 2009

Families receiving in-home services	36,352
FBSS Caseworkers	730
Average families on FBSS daily caseload	19
Estimate of children on FBSS average caseload <sup>86</sup>	52
Children receiving FBSS services who are removed <sup>87</sup>	3%
Average time before an in-home case is closed	7.2 months
Families that have further CPS involvement within 12 months after case closed	9%



### Substitute Care Cases

Substitute care, or conservatorship, caseworkers work with families and children in cases involving a removal. Each child and the family counts as a separate case. In other words, a family with two children and two parents counts as three cases. Similarly, a family with two children and one parent counts as three cases.<sup>88</sup>

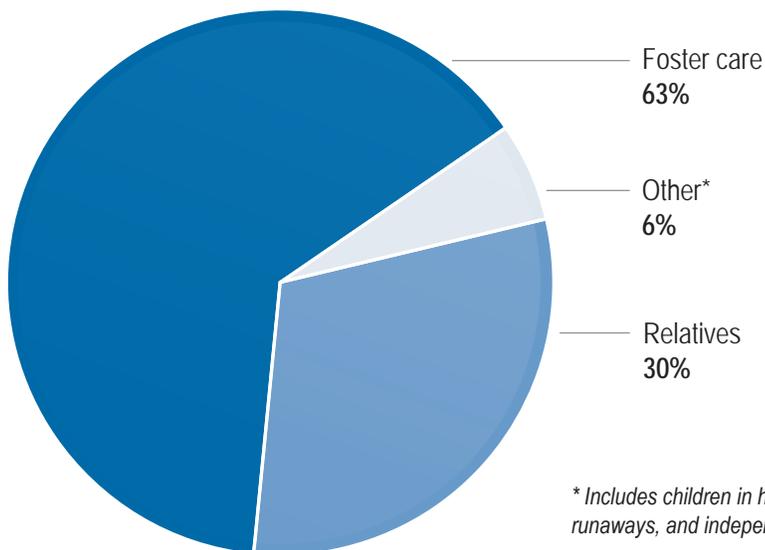
## CPS Supervision of Substitute Care Cases in 2009

Children in substitute care during the year	39,733
Substitute care caseworkers	1,527
Daily average substitute care caseload	28
Estimated no. of children on substitute care caseload <sup>89</sup>	20

### TYPES OF SUBSTITUTE CARE

Children in substitute care generally live with a relative or in foster care. The following sections describe how these two types of care function.

### Where Children in Substitute Care Were Living at the End of 2009



### RELATIVE CARE

Under federal law, relatives get preference as a placement for children who are removed.<sup>90</sup> To facilitate such placements, federal law requires CPS to conduct a diligent search for all grandparents and other relatives and provide them with notice when a child is removed.<sup>91</sup> Federal law leaves it to the states to define a relative. Texas defines the term broadly to include not only those related to a child by marriage or blood, but also “fictive” kin who are not related but, nonetheless, have an established relationship with the child.<sup>92</sup>

Texas does not require relative caregivers to be licensed foster parents and, generally, few relatives get licensed on their own. But this may change as a new federal law now requires CPS to provide notice to relatives about the option of getting licensed.

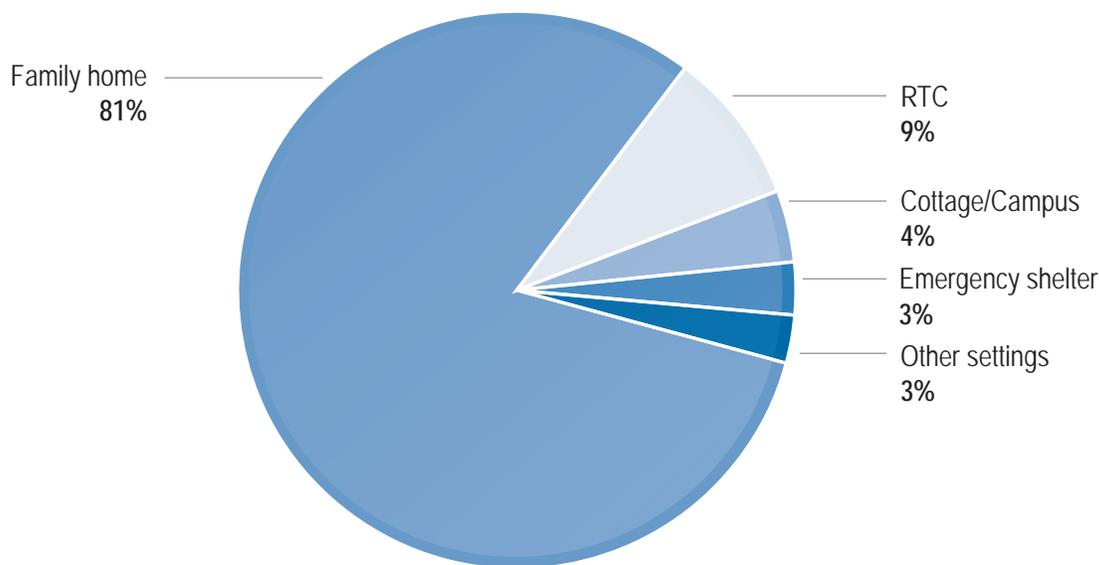
All children in CPS custody, even those living with unlicensed relatives, have their medical needs covered through Medicaid under the STAR Health program. Any relatives that get licensed also get a payment to care for the child just like any other foster parent. The only financial support available to non-licensed relative caregivers, however, is a one-time up to \$1,000 upfront payment per sibling group and up to \$500 in reimbursable expenses per child per year for up to three years<sup>93</sup> and subsidized day care, although not all non-licensed relatives are eligible for these programs. In 2009, CPS made an upfront payment and/or reimbursed expenses for more than 8,400 children and provided day care for almost 4,000 children living with relatives.<sup>94</sup>

#### FOSTER CARE

Although the majority of children in state custody live in foster care, it is not always available where needed. As a result, children are often forced to live far away from their communities, disrupting their school and family relationships. In May 2010, only 45 percent of children in foster care lived in their home county.<sup>95</sup>

There are several types of foster care. Foster care can be a family home, a cottage or campus setting, an emergency shelter, or a residential treatment center (RTC) where children receive 24-hour care. There are also a few children living in other types of settings such as camps, maternity homes, hospitals, juvenile detention, or state schools.<sup>96</sup> Children living in foster care at the end of 2009 predominantly lived in a family home, although about one in ten lived in an RTC.

Type of Foster Care for Children in Substitute Care at the End of 2009



As discussed in Chapter 1, the vast majority of foster family homes are managed by a private CPA. At a minimum, private CPAs must pay their foster parents the same rate as established for CPS managed homes, although they can pay them more.

The rate paid to a foster care provider is supposed to reimburse them for the cost of caring for the child and, for CPAs, the cost of supporting and managing the homes. The Health and Human Services Commission (HHSC) determines how much the rate should be by calculating an average overall rate for each type of placement using a methodology set forth in the Administrative Code.<sup>97</sup> Once HHSC calculates the average overall rates per the Administrative Code methodology, the Legislature decides how much of the rate it will fund. Generally, the Legislature funds less than the HHSC calculated average costs.

As discussed in Chapter 1, CPS is currently in the process of redesigning how it pays for foster care.

### Percentage of HHSC Calculated Foster Care Costs the Legislature Funded for the 2010-11 Biennium

Setting	Percentage Funded
Foster family	83%
CPAs	87%
RTCs	79%
Emergency shelters	79%

### THE COURT PROCESS

Once a child is removed into substitute care, the courts become involved and the process is primarily governed by the Family Code and federal law. Federal law generally requires CPS to first try to get the child safely back home.<sup>98</sup> Absent certain aggravated circumstances, the parents are initially given an opportunity to resolve the problem that led to the abuse or neglect and regain custody of, or reunify with, the child.<sup>99</sup> The first section describes this reunification part of the process.

If the child cannot be safely returned home during the reunification period, the focus of the case shifts to finding the child another permanent home. The second section describes this part of the process and consists of two different tracks. In most cases, the parents' rights are terminated and CPS works to get the child adopted. In others, the parents' rights are not terminated and so the child is not eligible for adoption. In these cases, CPS works to find the child another type of permanency.

### THE REUNIFICATION PROCESS

Whenever CPS removes a child, even under exigent circumstances, CPS must go to court and get temporary legal custody of the child, referred to as temporary managing conservatorship (TMC).<sup>100</sup> At the initial hearing, a judge determines whether there is an immediate danger to the child's physical health or safety to justify removal and whether CPS made reasonable efforts to prevent the removal.<sup>101</sup>

Within 14 days there is another court hearing where the judge must send the child home unless there is a continuing danger to the child's physical health or safety.<sup>102</sup> This hearing is referred to as the adversary hearing.

CPS' legal case is pursued through a prosecuting attorney, although who the attorney is varies from county to county. In some cases it is the county attorney, in others it is district attorney, and in still others, the case is prosecuted by a CPS attorney.<sup>103</sup>

Once CPS starts the lawsuit, the judge appoints an attorney to represent the child's interests right away or, at least, no later than the adversary hearing.<sup>104</sup> If CPS is seeking to terminate the parent's rights and the parent is indigent and opposes the termination, the judge should appoint them an attorney as well, although there is some debate as to when the attorney must be appointed.<sup>105</sup> The counties, and not the state, pay for the cost of court appointed attorneys for both the children and the parents. As a result, there is significant variation around the state regarding how attorneys are appointed and paid and how they practice.

In addition to appointing an attorney for the child, judges are also required to appoint a guardian ad litem (GAL) to represent the child's best interests.<sup>106</sup> The child's attorney may serve as the GAL or the judge can appoint a separate individual altogether.<sup>107</sup>

Often judges will appoint a volunteer from one of the Court Appointed Special Advocate (CASA) programs to act as a GAL.<sup>108</sup> CASA programs operate locally with support from Texas CASA, the statewide association of CASA programs. The local CASA programs train volunteers about how the CPS process works and how to advocate for a child's best interests. In counties where the attorney also serves as a GAL, a judge may still appoint a CASA volunteer to help gather information about the child and family and to make recommendations about what should happen. In 2009, over 5,600 CASA volunteers from one of the 69 local CASA programs served almost 20,000 children in CPS custody.<sup>109</sup>

If the child remains in CPS custody after the adversary hearing, CPS develops a service plan as discussed above and within 60 days, the judge holds a status hearing to review the service plan and make sure things are on track.<sup>110</sup>

During the reunification period, CPS generally keeps legal custody of the child and there are interim hearings to check on the family's progress, referred to as permanency hearings. The first permanency hearing is held within six months after the judge appoints CPS as TMC.<sup>111</sup> Permanency hearings should be held at least every four months thereafter until a final decision about what should happen is made.<sup>112</sup>

The parents, the attorneys, the CASA, the child's caregiver, and anyone else the judge finds to have an interest in the child should be notified about when the permanency hearings are scheduled.<sup>113</sup> But the practice about who provides notice varies around the state.

For the permanency hearings, CPS writes a report about how the family is doing and makes recommendations about what should happen.<sup>114</sup> The judge reviews the report and any other information provided at the hearing and determines, among other things, whether the child can be safely returned to the parents.<sup>115</sup> If so, the judge can either close the case or keep the case open and continue to monitor the family for a period of time to make sure the child is safe.<sup>116</sup>

If the child is not returned home at any of the permanency hearings and CPS wants to free the child for adoption by terminating parental rights, the case is set for trial. Before the trial, however, the parties may try to mediate, or come to an agreement about what should happen. If CPS, the child's attorney and GAL and the parents can all agree about what should happen to the child, the parties enter into a mediated settlement agreement instead of a trial. Once the parties enter into a mediated settlement agreement, there is some debate as to whether a judge has to accept it.<sup>117</sup>

If the case goes to trial, in order to terminate parental rights so a child is free for adoption, CPS must prove that the parent engaged in one of the acts of abuse or neglect set forth in the Family Code and that termination is in the child's best interests.<sup>118</sup>

Within one year, based on either a mediated settlement or other agreement or the outcome of a trial, the judge should issue a final order about what should happen to the child.<sup>119</sup> This timeframe can be extended for an additional six months in extraordinary circumstances, or when the child is returned home on a monitored basis.<sup>120</sup>

### General Timeframe for Substitute Care Cases While CPS is Temporary Managing Conservator

Adversary hearing	14 days
Status hearing	60 days
First permanency hearing	6 months
Second permanency hearing	10 months
Judge makes a final order about what should happen	12 months
Percentage of cases in 2009 with a final order within 12 months	60%

There are four possible outcomes when a judge issues a final order: return the child home, terminate parental rights so the child can be adopted, appoint a relative as the child's legal caregiver, or continue state custody without terminating parental rights. Children in this last category have limited options as they are not available for adoption. As a result, there must be specific findings and careful consideration the child's age, opinion about adoption and any special medical or behavioral problems before such an order is made.<sup>121</sup>

#### FINDING THE CHILD AN ALTERNATIVE PERMANENT HOME

For children who remain in state care after the reunification period is over, CPS retains legal custody, becoming the permanent managing conservator (PMC) both for children with parental rights terminated and children with parental rights intact. Despite the name, however, this is meant to be a temporary condition so that these children should only stay in CPS custody until a truly permanent home is found.

While they remain under court supervision, children in PMC must have a hearing to review their status at least every six months, although children who are free for

adoption must have their first review hearing within three months.<sup>122</sup> As with the permanency hearings, CPS writes a report about how the child is doing and makes recommendations about what should happen.<sup>123</sup> The judge reviews the report and any other information provided at the hearing. For children on an adoption track, the judge looks at, among other things, progress in getting the child adopted.<sup>124</sup> For children who are not eligible for adoption, the judge looks at, among other things, progress in getting the child into another type of permanent home.

## OUTCOMES FOR CHILDREN IN SUBSTITUTE CARE

There are generally four types of outcomes for children in substitute care: (1) return home; (2) a relative taking permanent custody; (3) adoption by a non-relative; or (4) aging out or emancipating from the system at age 18.<sup>125</sup> The first three outcomes are what the system strives to achieve for every child, generally in that order. The last outcome is what the system tries to avoid.

Youth who age out of the system have no permanent place to call home and often have a difficult time.<sup>126</sup> They are less likely than their peers in the general population to achieve academic milestones, including high school graduation and postsecondary education, which are the foundations of self-sufficiency. These youth are less likely to be employed and, even when they are employed, are more likely to be in jobs that do not pay a living wage. They are more likely to experience violence, homelessness, mental illness, and other poor health outcomes. They are more likely to be incarcerated, to abuse substances, and to experience early parenthood out-of-wedlock.

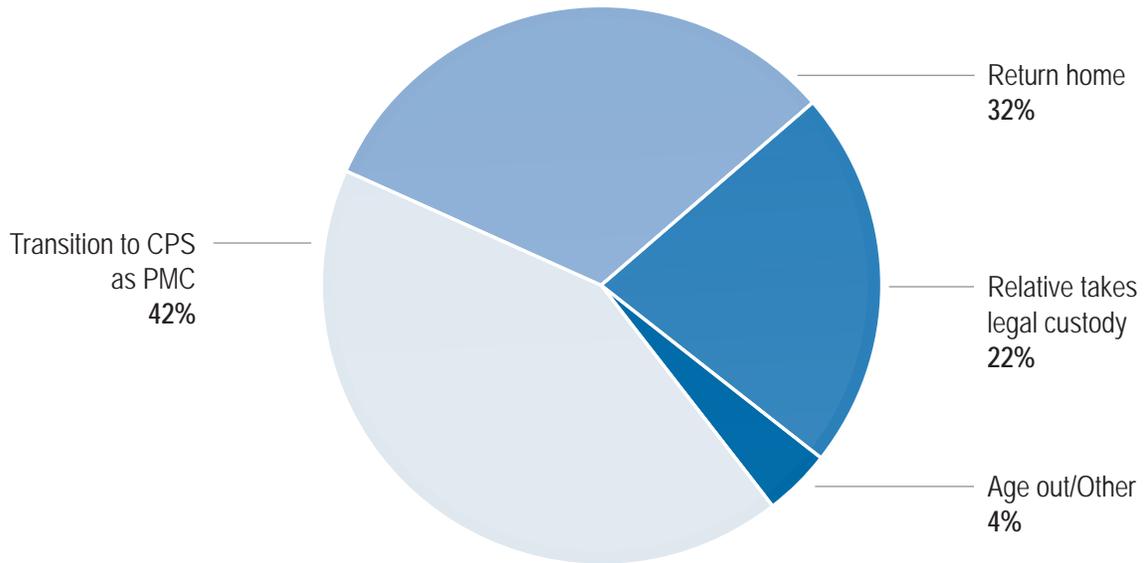
Usually, data on outcomes in substitute care is presented by simply grouping together all children who left substitute care during the year. Then the various outcomes are compared (e.g., how many returned home versus how many were adopted). This method, however, does not capture the nuances of how the process actually works. Not all children are eligible for all the different types of outcomes at each stage in the process. Instead, a child's outcome is related to where they are in the process when they leave substitute care. For example, the only children who can be adopted are those who have moved past the reunification period and are on an adoption track. As a result, a better way of capturing how the system is working to achieve permanency is to examine each type of outcome separately, which is what we have done in the sections below.<sup>127</sup>

### LEAVING SUBSTITUTE CARE TO RETURN HOME

Although children can, and do, return home at any point in the process, the emphasis is to get them home safely as soon as possible, preferably during the reunification process. And, in fact, the vast majority of children who do return home do so during the reunification period.<sup>128</sup> Therefore, to explore how well the system is moving children back into their own homes, we look at how children flowed through the reunification process.

In 2009, over 12,000 children transitioned out of the reunification process. But only one in three of these children actually returned home. The majority left with a relative taking legal custody or transitioned into CPS as a PMC or, in a few cases, aged out or had an other exit such as running away.

## How Children Transitioned Out of the Reunification Process in 2009



As discussed in Chapter 1, Texas is a low removal state. The vast majority of families under CPS supervision receive services through FBSS or in-home cases. That means that children are likely only removed in the most difficult or extreme circumstances. As a result, one would expect that families with children in substitute care would have a challenging time resolving their underlying problems, making reunification more difficult.

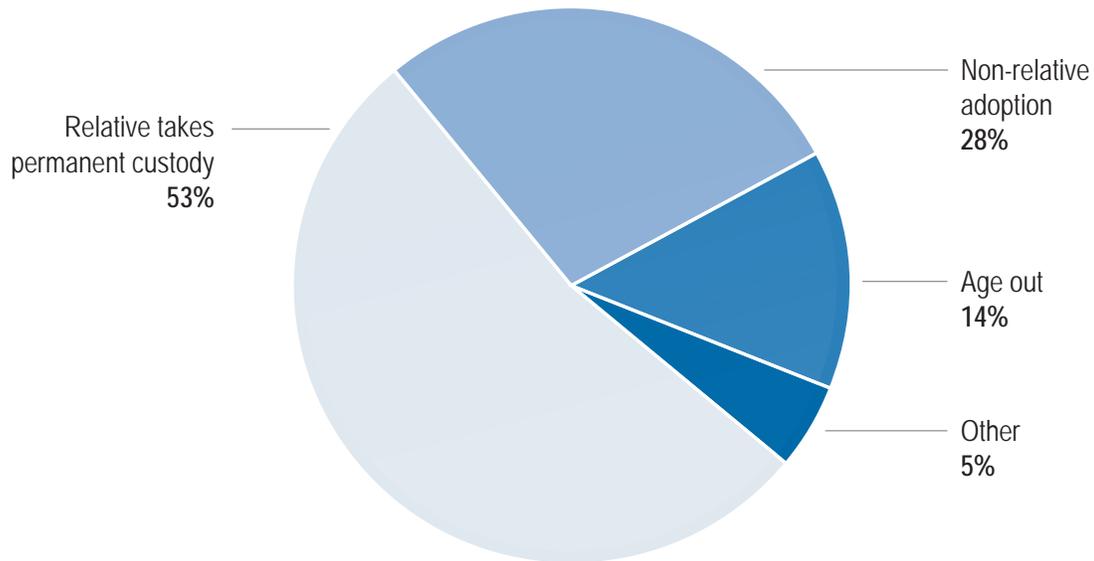
The lack of available services for parents seeking to reunify can make reunification difficult as well. For example, substance abuse is one of the most common problems among families in substitute care cases. In 2009, about 60 percent of the children removed from their home, or more than 7,000 children, had parental substance abuse identified as an issue.<sup>129</sup> In order for these children to return safely home, their parents' substance abuse problem has to be addressed. But, as discussed above, the primary source of substance abuse treatment for parents working with CPS is through DSHS state-supported programs, which often have long-wait lists, if they are available at all.

The vast majority of children who return home have their cases closed and do not come back into substitute care. In 2009, less than 5 percent of children who returned home with their case closed came back into substitute care again within 12 months.<sup>130</sup>

### A RELATIVE PROVIDES A PERMANENT HOME

The majority of children who left substitute care in 2009 but did not return home went to permanently live with a relative.<sup>131</sup>

## How Children Who Did Not Return Home Left CPS Custody in 2009



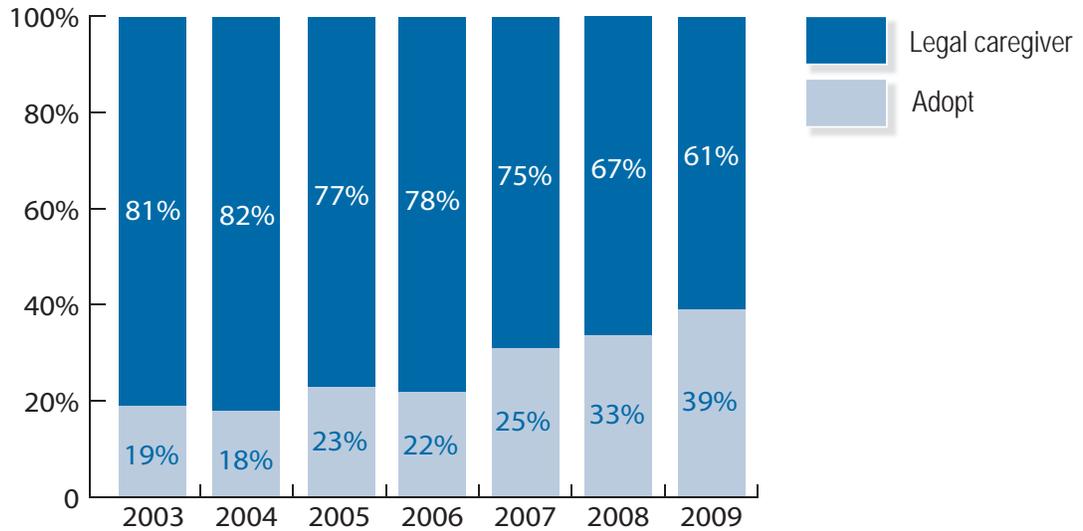
There are two ways a relative can take permanent custody—adopt the child or become the child’s legal caregiver. The process for a relative to adopt is the same as for anyone else. The parents’ rights to the child must be legally terminated and the relative must meet the criteria for an adoptive parent, including an adoptive home study. In most circumstances, relatives who adopt are eligible for an ongoing monthly payment from the state to help support the child, called an adoption subsidy.<sup>132</sup>

A relative can become a child’s legal caregiver without terminating parental rights. And, unlike adoption, when the child is already living with the relative, there is no separate CPS administrative approval process. Legal custody is simply transferred from CPS to the relative. Historically in Texas, however, relatives who became a child’s legal caregiver were not eligible for ongoing financial support.

Despite the lack of financial support, in 2009, the majority of relatives who took permanent custody did so as the child’s legal caregiver, although the share of relatives who adopt has been growing over time.

In the future, however, the trend may start shifting back as relatives who take legal custody may now be eligible for financial support. In 2009, Texas enacted the Permanency Care Assistance (PCA) program, a new optional federal program. Under the PCA, in some circumstances, relatives who have been caring for a child as a licensed foster parent for at least six months before becoming the legal caregiver are eligible for financial support similar to an adoption subsidy.<sup>133</sup> Since the program just started in 2011, there is no data available yet as to how many relatives will be eligible for this program or the impact it will have on the type of permanency relatives provide.

### Type of Permanent Relative Custody for Children Leaving Substitute Care 2003 to 2009



#### ADOPTION

Of the children who were eligible for adoption<sup>134</sup> and who left substitute care in 2009, the vast majority were adopted. As discussed above, relatives are playing an increasingly important role in this process. In 2009, 43 percent of all adoptions were to relatives.

For those who were adopted in 2009, it took, on average, about two-and-a-half years to get the adoption completed (time from removal to time adoption consummated). Finding the child an adoptive home and getting the adoptive home study and other administrative tasks completed was the longest part of the process.

#### Timeframes for Adoptions in 2009

Average time from removal to final order terminating parental rights	13 months
Average time from final order to finding a home and completing all adoption requirements	15 months
Average time from finishing adoption requirements to consummating adoption	2 months

But children who are eligible for adoption do not always find a permanent home. In 2009, of the children who were eligible for adoption and who left substitute care, almost one in ten left without a permanent home, either through aging out or some other exit such as running away.

### AGING OUT

In 2009, over 1,400 youth left substitute care by aging out. On average, these youth spent more than five years living in substitute care and, while in care, changed homes almost twice every year.

The majority of youth who aged out were in long-term care and not eligible for adoption. To help these youth achieve better outcomes, in 2009 the Legislature amended the Family Code. Now at the placement review hearings, the judge must look at what CPS has done to move forward with some type of permanent home for these children, reviewing all available options. CPS must work with the child's current caregiver to see if they are willing to provide a permanent home, look for relatives who would be willing to care for the child and evaluate whether return home or termination of parental rights would now be appropriate.<sup>135</sup> If return home looks like it may be the only viable option, the judge can order six months of further services for the parent to facilitate the transition.

Quite a few youth who aged out were eligible for adoption. To address this problem, *the Texas Appleseed report* recommends that the judge hold a special hearing for children who are eligible for adoption and have been in substitute care a long time. At this hearing, the judge would review whether adoption is still an appropriate option for the child and, if not, what other permanency options may be available.

Even with CPS and the courts best efforts, however, some children will not find a permanent home before turning 18. For these youth, the focus may shift to a different type of permanency in the form of another planned, permanent living arrangement (APPLA). But even in this type of permanency plan, the intent is that the child will have a permanent connection to an appropriate adult, even though the state retains legal custody until the child ages out or emancipates from the system.<sup>136</sup> This type of permanency is not preferred and, legally, is only available if there is a compelling reason why one of the other options won't work.<sup>137</sup>

To help these youth better transition to living on their own, in Texas, children who age out at 18 can still stay in foster care in some circumstances until age 21.<sup>138</sup> To the extent the youth turns 18 and leaves foster care, the youth can still return to foster care under some circumstances until age 21 or, sometimes, even until age 22.<sup>139</sup> At the end of 2009, there were 531 youth who had aged out of care in 2009 or before, but were still living in foster care.

A recent amendment to the Family Code which took effect in 2010 will now allow youth who age out of CPS custody at 18 to also request that the judge continue to review their case up until age 21.<sup>140</sup>

# CONCLUSION

With respect to how CPS operates, taken as a whole, the Family and Administrative Code and CPS internal policy provide a fairly structured, detailed, and comprehensive set of procedures and practices. And while these procedures and practices may not be uniformly implemented everywhere in the state, as a centralized state agency, CPS helps enforce consistency through its statewide training and oversight.

The judicial process for handling CPS cases is less structured. As Texas has a decentralized judicial system, the only mandatory judicial procedures and practices for CPS cases are in the Family Code. As with most statutory frameworks, however, the Family Code does not always provide extensive detail about how to implement the various provisions. And since there is no judicial corollary to the Administrative Code or CPS internal policy, judges have significant discretion in how they handle CPS cases. This can lead to different judicial practices around the state for children in substitute care. As discussed in Chapter 1, the Children's Commission has been a significant help in this regard, encouraging consistency with their statewide trainings, practice guides, technical assistance and collaborative convening.

With respect to outcomes, the vast majority of parents involved with CPS retain legal custody of their children from the outset, receive in-home services and have their case closed without the need for further CPS intervention.

Outcomes for families where children are removed into substitute care, however, are more complicated. Since most children stay in their homes at the outset, removals generally involve the most serious or complicated cases. This reality, combined with the lack of available substance abuse and mental health services for parents involved with CPS, can make reunification difficult. The reunification process only results in about one in three children returning home.

For those children who do not return home, the majority leave substitute care with a relative taking permanent custody. The relative is usually the child's legal caregiver, but in an increasing number of cases, the relative adopts the child. In addition to relative adoptions, there are also many non-relatives, such as foster parents, who adopt children. But not all children leave substitute care with a permanent home. About one in ten children end up leaving CPS custody by aging out at age 18, many of whom had been eligible for adoption. Much of the recent reform efforts have focused on addressing this problem both by improving the process for finding these children a permanent home and, when that's not possible, by helping them to successfully transition to living on their own.



## Endnotes

- 1 Texas Human Resources Code §40.002.
- 2 Unless otherwise noted, all data references are from the DFPS 2009 databook and all budget references are from the DFPS 2010 operating budget. Unless otherwise noted, all years refer to the state fiscal year which runs from September 1 to August 31.
- 3 Unless otherwise noted, all data in this section is from *Child Maltreatment 2008*. U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. Unless otherwise noted, the national averages are weighted to reflect the percentages for the nation overall rather than an average of all the state percentages.
- 4 13 states have a county-administered system: California, Colorado, Georgia, Maryland Minnesota, Nevada, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Virginia and Wisconsin. *National Study of Child Protective Services Systems and Reform Efforts: Review of State CPS Policy*. U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation and Administration for Children and Families Administration on Children, Youth and Families Children's Bureau. April 2003. Available at: <http://aspe.hhs.gov/hsp/cps-status03/state-policy03/index.htm>. (Accessed on October 30, 2009).
- 5 *Child Maltreatment 2008*. U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau.
- 6 Unless otherwise noted, all information about CPS' reform efforts in 2004 and 2005 is from the House Committee on Human Services, Texas House of Representatives, Interim Report 2006. Available at: <http://www.house.state.tx.us/committees/reports/79interim/humanServices.pdf>. (Accessed on October 12, 2010).
- 7 *A Special Report on the Texas Foster Care System: Forgotten Children*. Texas Comptroller. April 2004.
- 8 Unless otherwise note, the information about CPS' reform efforts in 2005 and 2006 is from the DFPS 2006 Annual Report.
- 9 The 2005 caseload data comes from a DFPS presentation to the House Committee on Human Services dated Feb. 21, 2008.
- 10 DFPS Rider 13 - Human Resources Management Plan. October 19, 2007.
- 11 Unless otherwise noted, all information regarding SB 758 is from the DFPS SB 758 Implementation Progress Report, dated September 1, 2008.
- 12 Texas Family Code §264.106(c).
- 13 Unless otherwise noted, all information on CPS' efforts over 2007 and 2008 interim is from the DFPS SB 758 Implementation Progress Report, dated September 1, 2009.
- 14 We calculated the removal rate as the number of cases opened in substitute care/the number of all cases opened for services. To compare removals between years, it is better to use a rate versus the actual number of removals. When the number of removals changes, it is impossible to tell whether it's because there are more cases coming into CPS, or because CPS is removing children more often on the cases that it receives. A rate takes into account, or controls for, differences in how many cases come into CPS, so you can compare between years how often CPS is removing children.
- 15 Through May 2010 based on DFPS data.
- 16 Unless otherwise noted, all information about CPS' foster care redesign is from a DFPS presentation entitled Improving Child/Youth Placement Outcomes: A System Redesign, dated September 1, 2010.
- 17 The National Evaluation of the Court Improvement Program, available at: <http://www.pal-tech.com/cip/txCase.cfm>. Accessed on October 5, 2010.
- 18 Accessed on October 7, 2010.
- 19 Unless otherwise noted, all information in this section is from Texas' Child and Family Services Review in 2002 and 2008.
- 20 Unless otherwise noted, all information about the PIP is from the DFPS PIP dated April 1, 2010.
- 21 Texas Family Code §265.001(3).
  
- 22 DFPS 2009 databook.
- 23 DFPS 2010 operating budget.
- 24 DFPS 2010 operating budget.
- 25 PEI also administers the Community Based Family Services program which serves families whom CPS investigated but whose allegations were unsubstantiated and who do not participate in CPS family based safety services. This program was started in 2009 and served only 110 families. PEI also administers the Tertiary Child Abuse Prevention program which works with children who have left the CPS system. It also was started in 2009 and is very small, serving only 32 families. The Services to At-Risk Youth (STAR) program provides services designed to increase knowledge and awareness of child abuse and neglect and promote good parenting in the general population.
- 26 Unless otherwise noted, all information in this paragraph is from: The Interagency Coordinating Council for Building Healthy Families. *Findings from the 2008-2009 Evaluation of Child Abuse and Neglect Prevention Programs and Services*. December 2009.
- 27 While this percentage is low, there is no comparison, or control, group. As a result, it is unclear what the level of confirmed abuse among the participating families would have been if they hadn't received the services. So it is impossible to tell whether the programs prevented abuse and neglect in the families they served. Difficulty in measuring the impact on abuse or neglect is a problem inherent in virtually every prevention program.
- 28 DFPS 2009 databook, updated.
- 29 DFPS 2009 databook.
- 30 Letter from Commissioner Suehs to Representative Mike Villarreal dated August 11, 2010.
- 31 The CBCAP budget will not be cut as it is funded entirely through federal money which cannot be spent on any other program.
- 32 Assuming 16 percent of families served by FSP and TFTS in 2009 are served in 2010, and 100 percent of families served by CBCAP in 2009 are served in 2010 for a total of 1,377 families. DFPS' most recent LAR projects 47,518 confirmed cases of child abuse and neglect in 2012.
- 33 Texas Family Code §261.101(a).
- 34 Texas Family Code §261.106(a).
- 35 Texas Family Code §261.201(a).

- 36 SWI handbook §2300, et seq.
- 37 SWI received a total of 690,430 calls. Of those, 303,687 were requests for information and referrals, 278,752 calls related to CPS, 99,971 calls related to adult protective services, and 8,020 calls related to child care licensing. Of the CPS related calls, 26,223 were case related special requests and 252,529 child abuse and neglect reports.
- 38 Texas Family Code §261.001.
- 39 CPS Handbook §2410 and Appendix 2131. The CPS policy handbook is available online at: <http://www.dfps.state.tx.us/handbooks/CPS/default.jsp>. Accessed on September 14, 2010.
- 40 Unless otherwise noted, all information in this section is based on the Texas Administrative Code (TAC) §700.505 and CPS Handbook §§2141, 2142 and 2143.
- 41 In 2009, CPS revised its policy to refer the following PN reports to the CPS regional office: (1) reports containing limiting information; (2) reports where the investigation history is pertinent to risk; (3) when a child 5 years or younger lives in the home; (4) when additional calls are needed to see if an investigation is needed; (5) reports made by CPS staff; (6) sensitive or high profile cases; (7) when there is already an open case on the family; and (8) cases that are borderline P2.
- 42 Texas Family Code §261.3015.
- 43 Unless otherwise noted, all information in this section is based on CPS Handbook §§2144, 2146 and 2223.2.
- 44 Texas Family Code §261.302 and 261.303.
- 45 Texas Family Code § 261.307.
- 46 Unless otherwise noted, information in this section is based on Texas Family Code §261.304 and CPS Handbook §2224.43.
- 47 Texas Family Code § 261.303.
- 48 37 F.3d 404 (5<sup>th</sup> Cir. 2008). At the time of the initial lawsuit, DFPS was called the Department of Protective and Regulatory Services.
- 49 CPS Handbook §1230.
- 50 Texas Family Code §264.400 et. seq.
- 51 Children's Advocacy Centers of Texas, Inc.'s 2009 Annual Report. Available at: [http://www.cactx.org/files/2009\\_CACTX\\_Annual\\_Report.pdf](http://www.cactx.org/files/2009_CACTX_Annual_Report.pdf). Accessed on September 15, 2010.
- 52 Texas Family Code §261.302(b-1).
- 53 CPS Handbook §2223.4.
- 54 CPS Handbook §2223.4.
- 55 Unless otherwise noted, all information on administrative closures is based on TAC §700.511 and CPS Handbook §2224.4.
- 56 CPS Handbook §2141.4.
- 57 Unless otherwise noted, all information regarding standards for designating allegations is based on TAC §700.511 and CPS Handbook §2271 et. seq.
- 58 CPS Handbook §2224.3.
- 59 Texas Family Code §261.3022.
- 60 Texas Family Code §261.3023.
- 61 Texas Family Code §261.3024.
- 62 TAC §700.512 and CPS Handbook §2272.
- 63 Texas Family Code §261.315.
- 64 TAC §700.511 and CPS Handbook §2271.1.
- 65 Based on data provided by DFPS.
- 66 Unless otherwise noted, all information from this section is based on TAC §700.514 and CPS Handbook §2235 et seq.
- 67 CPS Handbook §2284.1. A child safety-specialist review is not required for cases that are administratively closed.
- 68 Texas Family Code §262.109.
- 69 CPS Handbook §3160 et seq., TAC §700.704 and the Texas Family Code §263.102.
- 70 Unless otherwise noted, information about the collaborative meeting process comes from DFPS databook and annual report.
- 71 Sedlak, A.J., Mettenburg, J., Basena, M., Petta, I., McPherson, K., Greene, A., and Li, S. (2010). *Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Report to Congress*. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families.
- 72 Based on CPPP analysis of data provided by DSHS for 2009.
- 73 DFPS 2012-13 Legislative Appropriations Request (LAR).
- 74 *Strengthening Families through Enhanced In-Home Support*. DFPS. December 2008.
- 75 Although the program to address a family's poverty issues continued through 2010, we did not include it as part of the 2010 budget as the program will not continue into 2011 or beyond. Included in Caseworkers, Program Support and Administration are line items B.1.1, B.1.2, B.1.10.5, B.1.10.6. Included in Foster Care and Adoption Payments and Services are line items B.1.3, B.1.6, B.1.7, B.1.11, B.1.12. Included in Services for Foster Care Kids are line items B.1.8, B.1.10.1, B.1.10.4. Included in Support for Relative Caregivers are line items B.1.4. Included in Services and Support for Families are line items B.1.5, B.1.9, B.1.10.2, B.1.10.3 (minus the \$5 million for the poverty program),
- 76 42 U.S.C. §§671 and 674.
- 77 42 U.S.C. §671(15)(B).
- 78 *Child Maltreatment 2008*. U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. 2009
- 79 Based on information provided by DFPS.
- 80 Unless otherwise noted, all information about PCSPs in this section is based on CPS Handbook §2234 et. seq.
- 81 Texas Family Code §264.203.
- 82 Texas Family Code §§ 107.0125 and 107.013.
- 83 CPS Handbook §3144.
- 84 TAC §700.705.
- 85 Defined as a subsequent confirmed allegation or a new in-home or substitute care case.

- 86 Based on the average number of children on in-home cases opened for services (2.75).
- 87 Based on data provided by DFPS.
- 88 Based on information provided by DFPS.
- 89 Based on the average number of children on cases opened in substitute care (2.58) plus 1 for the family or an average of 3.58 individuals per family. If there are an average of 28.2 individuals on a substitute care caseload, that means there are an estimated 7.88 families on each caseload (28.2/3.58). Assuming 2.58 children per family is an estimated 20 children per caseload.
- 90 42 U.S.C. §619(a)(19).
- 91 42 U.S.C. 671(a)(29).
- 92 Texas Family Code §264.751.
- 93 Texas Family Code §264.700 et. seq. If the relative becomes the child's legal caregiver, the payments stop after 3 years.
- 94 DFPS 2012-13 LAR.
- 95 Regional Statistical Information about Children in DFPS Care. Available at: [http://www.dfps.state.tx.us/PCS/regional\\_care.asp](http://www.dfps.state.tx.us/PCS/regional_care.asp). Accessed on November 16, 2010.
- 96 At the end of 2009, about 3 percent of the children in substitute care lived in one of these settings.
- 97 TAC §355.7103.
- 98 42 U.S.C. §671(15).
- 99 Texas Family Code §263.2015.
- 100 Texas Family Code §262.101, et seq.
- 101 Texas Family Code §262.101 and §262.106.
- 102 Texas Family Code §262.201.
- 103 *The Abuse and Neglect Case: A Practitioner's Guide*. The Texas Supreme Court Permanent Judicial Commission for Children, Youth & Families.
- 104 Texas Family Code §§ 107.0125.
- 105 Texas Family Code §107.013.
- 106 Texas Family Code §107.001.
- 107 Texas Family Code §107.0125.
- 108 Texas Family Code §264.601, et. seq.
- 109 Texas CASA Web site. Available at: [http://www.texascasa.org/new/About\\_Us/About\\_Us.asp](http://www.texascasa.org/new/About_Us/About_Us.asp). Accessed on September 17, 2010.
- 110 Texas Family Code §263.202.
- 111 Texas Family Code §263.304.
- 112 Texas Family Code §263.305.
- 113 Texas Family Code §263.301.
- 114 Texas Family Code §263.303.
- 115 Texas Family Code §263.306.
- 116 Texas Family Code §263.403.
- 117 Texas Family Code §153.0071.
- 118 Texas Family Code §161.001.
- 119 Texas Family Code §263.401.
- 120 Texas Family Code §§263.401 and 263.404.
- 121 Texas Family Code §263.404.
- 122 Texas Family Code §263.501.
- 123 Texas Family Code §263.502.
- 124 Texas Family Code §263.503.
- 125 Unless otherwise noted, all data on outcomes is based on CPPP analysis of DFPS data. A few children end up leaving substitute care through another way such as running away. These type of other exits are not common and represented less than 4 percent of all exits from substitute care in 2009.
- 126 *Improving Outcomes for Older Youth in Foster Care*. Casey Family Programs. 2008.
- 127 Another way to understand what is happening to children is to look at all children who came into substitute care during a certain time period, called an entry cohort, and then follow them over time. (Wulczyn, F., Kogan, J., Diltz, J. *The effect of population dynamics on performance measurement*. Social Service Review, 75 (2), 292-317. 2001.) Unfortunately, this type of data is not readily available. And since it can take years before the ultimate outcomes are known, the entry cohort is usually from several years earlier and so the results may not reflect how the system is currently operating.
- 128 In total, 4,423 children left substitute care and returned home in 2009. Of these, more than 90 percent, returned home during the reunification period.
- 129 Fostering Court Improvement data for October 1, 2008 through September 30, 2009.
- 130 Fostering Court Improvement data for October 1, 2008 through September 30, 2009.
- 131 No child who returned home, even if they did so after the reunification period, was included in this population.
- 132 Texas Family Code §162.304.
- 133 Texas Family Code §264.850 et. seq.
- 134 Defined as having all parental rights terminated.
- 135 Texas Family Code §263.502.
- 136 Texas Family Code §263.503(a)(7)(B).
- 137 Texas Family Code §263.3026.
- 138 CPS Handbook §6565 et. seq.
- 139 CPS Handbook §6565 et. seq.
- 140 Texas Family Code §263.602.





## MISSION

The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. The center pursues its mission through independent research, policy analysis and development, public education, advocacy, coalition building, and technical assistance. We pursue this mission to achieve a BETTER TEXAS™.

## VISION

We envision a prosperous Texas where economic and social opportunity is available in fair measure to all.



# Report of the Adoption Review Committee

To the Governor, Lieutenant  
Governor, Speaker of the House of  
Representatives, House Committee on  
Human Services, and Senate Committee  
on Health and Human Services

*December, 2010*



# CHAIRMAN'S LETTER

In 2009, the Texas legislature and Governor asked our committee to take a hard look at the Texas foster care system and to uncover barriers to adoption that exist for Texas' most vulnerable children. We have taken your charge to heart, and we have worked diligently to gather information, discuss and debate the issues, and develop a series of **strong recommendations** for your serious consideration.

**Finding permanent, safe, healing families for Texas' abused and neglected children** is largely unique among other public policy challenges facing this state. There exist few similar issues for which there is such *widespread agreement*. And these critical issues, when not addressed correctly, have *widespread ripple effects* throughout society, including into the criminal justice system, the education system, and the strongest strands of our state's very social fabric: the healthy, well-functioning family.

There is no question that those empowered to care for these children (judges, case workers, attorneys, volunteers, etc.) are in most cases well-intentioned, hard-working individuals who have some of the most difficult and complicated jobs. And at the same time, the system in which they are operating is unable to effectively handle the volume and deeply complex natures of children brought into state care. In fact, there is increasing evidence to show that our foster care system is sometimes *doing more harm* to our children than good.

A permanent, healing, well-supported, well-trained family is the best environment for any child. Texas must place a significantly higher focus on and make significant investments in the **advancement of adoption for children in the foster care system**.

We find ourselves living in unique times during which **adoption interest and adoption consummations are at an all-time high**. Unfortunately, too many families are choosing to adopt children from overseas rather than from the foster care system, largely because the foster care system itself is seen as being abusive and too difficult to navigate.

Our recommendations include several **bold steps** that will be required to fundamentally change the culture and practices in Texas toward adoption as not just a viable solution but as an increasingly favored answer for children in foster care. Many of our recommendations are, sadly, ones that have been made in prior years, including in a report by the similarly-charged 1996 *Governor's Committee to Promote Adoption*. Our deepest hope is that the legislature, DFPS, the court system, and the community at large will take action to find creative solutions and work in collaboration to solve one of the most profound, heart-wrenching, and wide-reaching social problems of our time.

*Matt Kouri, Chairman*

On behalf of the Texas Adoption Review Committee

# ADOPTION REVIEW COMMITTEE REPORT

The Adoption Review Committee was created in 2009 with legislative passage and gubernatorial signature of HB 2225. The legislation was authored by Representatives Parker, Hughes, Rose, Legler, and Lucio. HB 2225 created a 9-person committee charged to work with the Department of Family and Protective Service to conduct:

*“...an extensive review of the foster care system to identify obstacles that impede the department’s ability to find a permanent placement for foster children, including placement by adoption; and to develop ways to improve the foster care system by reducing the time a child is in the conservatorship of the department before being permanently placed; reducing the number of children in the conservatorship of the department who are placed outside of their home county; and enhancing the procedures for adopting foster children.”*

The committee was also charged with creating, along with the Department of Family and Protective Services, a written report (embodied in this document) of the results of the review to be delivered by December 1, 2010 to the governor, the lieutenant governor, the speaker of the house of representatives, the House Committee on Human Services, and the Senate Committee on Health and Human Services.



# COMMITTEE MEMBERSHIP

**“If our American way of life fails the child,  
it fails us all.”**

*Pearl S. Buck 1964*

Five committee members were appointed by Governor Rick Perry, including:

- **Ann Bradford** of Midland, Executive Director of Centers for Children and Families Inc.
- **Penny Tower Cook** of Dallas, Director of the Heart Gallery of North Texas, and Co-founder and Director of the Faith Connection
- **Heidi Bruegel Cox** of Fort Worth, Executive Vice President and General Counsel of the Gladney Center for Adoption
- **Matthew Kouri** of Austin, Executive Director of Greenlights for NonProfit Success and founder of Bridges of Grace Orphan and Adoption Ministry
- **Russell Rogers** of Terrell, founding and Senior Pastor of Trinity Life Baptist Church in Garland, and Executive Director of SALT Family Ministries

Three committee members served by appointment from Executive Commissioner of the Health and Human Services Commission, including:

- **Sandra Dush** of Austin, Newsletter Editor, Texas Council on Adoptable Children, PRIDE trainer, and adoptive parent of 15
- **Gail Gonzalez** of Austin, Director of Placement, Department of Family and Protective Services
- **DeJuana Jernigan** of Houston, Director of Child Welfare Services, DePelchin Children’s Center

Matthew Kouri was subsequently elected to chair the committee, and Gail Gonzalez was elected as vice-chair.

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# INTRODUCTION

**“Children are apt to live up to what you believe of them.”**

*Lady Bird Johnson*

In 2009, more than 12,000 children entered foster care in the state of Texas. During this same year, 4,859 children were adopted from the foster care system. They spent an average of 29.8 months in foster care before their adoption was consummated. That’s an average of almost three years in foster care. As an adult, this may not seem like a long time, but in the life of a 5 year-old, that’s more than half of the child’s life. Is this the best that our child welfare system in Texas can do for children? This report takes a critical look at the barriers that prevent children from moving through the foster care system into adoption more quickly.

In 1997, the Adoption and Safe families Act (Public Law 105-89) was enacted, as a response to the call to reduce the growing number of children in foster care nationwide. The intent of this legislation was to speed up the time it took to move children toward permanency by imposing more stringent timelines for states to pursue termination of parental rights of children in foster care. This legislation also provided for a federally funded adoption incentive program that provided incentives for states to increase the number of adoptions.

Texas has increased its adoptions each year since 2005, and has been the recipient of federally funded adoption incentive money as a result; however, statistics indicate that there are still too many children

awaiting adoption in the state’s child welfare system and that they remain in care too long before moving to permanency. While Texas has made significant strides in its efforts to place children into adoption, the average amount of time it takes for a child to achieve permanency through adoption has steadily increased over the last 5 years and is much too long.

The findings of the Adoption Review Committee on the obstacles to permanency for foster children are numerous and complex. Each case is as unique as the children who are involved. This report will focus on the issues that impact the greatest number of children. Understanding the complexity of a multi-faceted system, the Adoption Review Committee categorized the findings and recommendations into two broad areas:

- The Child Welfare System
- Recruitment/Training/Support

However, the overarching theme of this report is that Texas must act boldly to prioritize the best interests of each child in its child welfare system and must implement comprehensive systemic changes to promote and expedite adoptions, both for the sake of the children and as a means to reduce the current workload burdens on CPS and the courts.

In 1996, Governor George W. Bush created the Governor’s Committee to Promote Adoption to study



the problems in the foster care system that created delays. The Adoption Review Committee uncovered a copy of this 1996 report at our final meeting, after having drafted our recommendations. Sadly, fourteen years later, the Adoption Review Committee's findings indicate that many of the same problems identified in 1996 still exist in the current child welfare system in Texas. Many similarities exist between our recommendations and those made in 1996. Notations have been made to indicate which recommendations were also made by the 1996 committee. At the time of that report, there were 1400 children legally free for adoption and waiting for a permanent home. Today, we have approximately 6000 children who are legally free for adoption and, of that number, over 3400 are in placements which are not intended to be permanent. The number of waiting children has more than doubled in the last 14 years. Without strong and swift action, the number of waiting children will continue to increase.

***“Our children are the faces of our future. And the childhood we give them today will determine the society they give us tomorrow.”***

This quote by Gov. Bush in 1996 holds true. The great state of Texas will remain great only if we care for our children—our future.

At the end of this report, the Adoption Review Committee has included an action plan, outlining the recommendations of this Committee in correlation to the party required to take action (i.e. the Legislature, The Department of Family and Protective Services (CPS), the judiciary, child placing agencies, and/or the community broadly). These recommendations are deemed highest priority. Other suggestions and long-term goals have also been included as the Adoption Review Committee recognizes that there is much more work to be done to move toward better outcomes for our children in the foster care system.

# THE COMMITTEE'S REVIEW PROCESS

From January through October 2010, the committee met in person monthly at the State Capitol in Austin to hear testimony and conduct its review. The committee heard invited expert testimony from various subject matter experts including specialists from 10 different areas of the Department of Family and Protective Services. Appendix A includes a list of the subject matter experts who testified.

The committee also held one day of open public testimony at the Capitol and received both written and verbal testimony from adoption and foster care advocates, policy analysts, foster and adoptive parents, child placing agencies, CASA, and faith-based ministry leaders. Their names appear in Appendix A.

The committee spent many hours in dialog and deliberation, identifying barriers to adoption and developing recommendations to reduce and/or remove those barriers.

**“I don’t care if my new family is black or white; I just want a nice family who will be nice to me.”**

*9 year old boy in foster care*

The committee would like to thank Jessica Lutrell from Representative Tan Parker’s office for her logistical and other support of the committee, Audrey Jackson for her expert support of the committee’s discussions, and Katy Bourgeois for facilitating one of the committee’s meetings.

Special thanks to Jennifer Brower of A Different Perspective for the design and layout of this report and to Bill Cohn of Minute Man Press Dallas for donating the printing of this report.



# SUMMARY OF FINDINGS AND RECOMMENDATIONS

Below you will find a summary of the findings and recommendations of the committee. A more detailed account is contained in the priority action plan that follows.

## **Child Welfare System –CPS, CPAs, Courts, and the Community**

The current system focuses on safety, but not on permanency. As a result we continue to manage an ever expanding system that does not provide healing and permanency for children. It's time to stop managing the problem and start fixing the problem.

### **Findings**

- CPS caseworkers carry extremely high caseloads, often twice what is deemed best practice. This contributes to high turnover rates and reduces positive outcomes for children. Children have a better chance of achieving permanency quickly if they have only one caseworker during their stay in foster care.
- Existing financial structures in the foster care and adoption system (foster care reimbursement/adoption subsidy) create disincentives to adopt and to help children heal.
- Foster families are often reluctant to adopt for fear of losing needed medical, therapeutic and support services.
- While the number of children adopted through the child welfare system in Texas has risen since 2005, Post Adoption funding to support these adoptions has remained flat, creating a gap in service provision to a very vulnerable population of children and families. Parents of children in need of residential treatment services often have to relinquish custody to the state because there is not enough Post Adoption funding to pay the cost of care.
- Outdated/underused technology, primarily at CPS, slows progress on a child's path to permanency. It can lead to gaps in a child's background information and delays in completion of necessary paperwork. It is not adequately being used in matching children with prospective families.
- Inappropriate placement decisions, including a child's initial placement into foster care and decisions regarding sibling placements hinder and delay a child's path to permanency.
- The court system often tolerates delays and ineffective performance among those who should be working toward permanency for the child.

**“It would mean the world for me to have a family that loves and cares for me.”**

*12 year old girl in foster care*

## **Recommendations**

- Reduce CPS caseloads and establish an innovative management system to measure and improve outcomes.\*
- Re-evaluate the current foster care reimbursement and adoption subsidy system to reduce or eliminate disincentives to adoption.\*



- Improve pre-and post-adoption services to children and adoptive families through the managed Medicare system. \*

- Upgrade the technology available to CPS to take advantage of new/improved methods for collecting, storing and reporting information on each child. \*
- Continue to update and enhance CPS’s capabilities using available technology for matching children with prospective families. \*
- Evaluate the needs of each child and make placement decisions to achieve best outcomes for each individual child including decisions regarding placement with fictive kin who are strangers to the child or separation of siblings.
- Increase accountability of CPS, attorneys and courts by mandating frequent post-termination reviews of every case.\*
- Engage/empower foster and adoptive families in the decision-making process, including granting standing to intervene in the court process after having a child in their home 6 months. \*
- Pursue prompt termination of the potential rights of a putative father who has not been involved in the child’s life. \*

*\* Also recommended by the GCPA 1996 Report.*

# RECRUITMENT, TRAINING AND SUPPORT- PARENTS AND PROFESSIONALS

There is a lack of understanding of Trauma Informed Care among the CPS staff, judiciary, attorneys, schools, counseling professionals, and other professionals from whom children in foster care receive services, which creates lack of stability for the children and reduces the availability of social support systems and understanding from the community for the families.

## Findings

- Historically, children have better outcomes when placed with relatives if reunification is not possible. The Fostering Connections program has excellent potential but it has created an additional burden on CPS staff. CPS will not be able to adequately serve these families and continue to recruit community families with current resources.
- Systemically there has been an emphasis on foster care and a lack of focus on adoption. Foster care has become a “cottage industry” for some foster parents without a goal of true permanency for children.

- Many parties, whose actions/decisions will have life-changing effects on these children, receive inadequate training to understand the extent of the trauma most foster children have endured. Insufficient training of foster parents can lead to disrupted placements and multiple, damaging moves for children.
- The engagement of the community at large has often been overlooked, neglected or under-utilized.
- Recruitment, training and mentoring of CPS staff has often been inadequate and un-inspiring, contributing to the high burn-out/turnover rate in the Department.



**“What is done to children, they will do to society.”**

*Karl A. Menninger*



## **Recommendations**

- In order for CPS to adequately focus on removals and on the federally mandated Fostering Connections Kinship placements, all other recruitment, training, licensing and support for foster and adoptive parents should be turned over to private CPAs. (GCPA 1996 recommended focus on kin/kinship placements)
- Gradual phase-out of foster-only contracts with CPA's so that by 2013 every agency is focused on permanency, not foster care. (GCPA 1996 recommended dual licensing of foster homes). State leadership needs to promote, across the state, a cultural shift away from foster care to one of quick reunification or expedient move toward adoption. \*

- Require that every person whose actions will have an impact on a foster child have trauma informed training so that every person has a knowledge base that can support their work with the child. \*
- Recruit families more aggressively from within the child's community by reaching out to schools, churches and other community organizations. \*
- State and community leaders must take the lead to promote efforts within each community to take an active role in achieving permanency for children in the foster care system. It is incumbent on all of us to take responsibility for the children of our state.
- TDFPS Staff recruitment, training and mentoring must be a priority to retain better quality staff, prevent burn-out and achieve better outcomes for children. \*

*\* Recommended by GCPA 1996*

# PRIORITY ACTION PLAN

**“No problem can be solved from the same consciousness that created it. We must learn to see the world anew.”**

*Einstein*

Below is a more detailed action plan which will be crucial to accomplishing the recommendations of the committee. This action plan also outlines the recommendations of this Committee in correlation to the party required to take action (i.e. the Legislature (Leg), The Department of Family and Protective Services(CPS), the judiciary (Jud), child placing agencies (CPA), or the community (Com).

**Key to Matrix symbols in the Action Plan: \$- Requires financial investment**

**√-Requires Action**

THE SYSTEM-INTERNAL AND EXTERNAL						
Obstacles that Impede Permanency/Adoption	Recommended change for improvement	Leg	CPS	Jud	CPA	Com
CPS conservatorship caseload is reportedly 30-35cases/worker in FY2009	Reduce caseload to 15-17/worker in compliance with national standard	\$	\$ √			
Caseworker burnout/turnover impedes getting to permanency	Evaluate recruitment, training, mentoring and supervision of caseworkers to improve staff retention, productivity, professionalism and satisfaction		√			
	As a long-term goal, CPS must begin to conduct outside surveys to assess the needs and satisfaction of staff in order to evaluate management and improve outcomes		√			
Subsidy system encourages foster and discourages adoption	Re-evaluate current subsidy system to incentivize adoption	√	√		√	
Agencies that are licensed/contracted to provide only foster services, discourages permanent placements, adds delays when adoption becomes an option and increases paperwork and staff time transferring families to other agencies for adoption.	By 2013, require all CPS contracts with CPAs to include adoption in addition to foster. No longer allow a foster-only contract with the CPA		√		√	

THE SYSTEM-INTERNAL AND EXTERNAL						
Obstacles that Impede Permanency/Adoption	Suggested change for improvement	Leg	CPS	Jud	CPA	Com
Multiple moves, breaking bonding and placement with strangers all damage the child and his ability to establish a bonded parent-child relationship	No preference should be given to moving the child from a placement intended to be permanent to kin/fictive kin unless the child has a prior significant relationship with them	√	√	√		
Poor response by CPS discourages families from pursuing adoption from CPS	CPS must provide a response to all CPA inquires through TARE about a child within 3-5 business days		√		√	
	CPS must read/evaluate/respond to home studies submitted by CPAs for an individual child within 30 days		√		√	
Multiple staffings and uncertain permanency planning have resulted after CPS discontinued their legal risk placement policy	Reinstitute legal risk placement agreements in all regions		√		√	
Judicial review every 6 months is too long to ensure accountability of all parties.	Statutory change to require court reviews at least every 90 days following TPR	√	√	√	√	
Current law requiring foster family to have the child for 12 months before having standing discourages permanency planning by foster family, keeps judges from receiving valuable information, and allows CPS to remove a child who is well-bonded to the family who would adopt the child without court review	Give Foster/Adoptive families standing to intervene in SAPCR after having the child for 6 months	√		√		
Lack of sufficient post adoption services funding to support children and families, especially children with emotional needs that require residential treatment.	Increase funding for the Post Adoption Program and develop an allocation model that allows all adopted children to have equal access to services regardless of where they live in the state.	\$ √	\$ √			

THE SYSTEM-INTERNAL AND EXTERNAL						
Obstacles that Impede Permanency/Adoption	Suggested change for improvement	Leg	CPS	Jud	CPA	Com
Multiple removals are harmful to children, foster/adopt parents have not had a voice in decisions made about the children in their care, and children are not adequately prepared to leave the foster home	Increase accountability and court oversight by requiring notice to foster/adoptive family with opportunity to be heard or consent signed if CPS plans to remove the child unless the removal is an emergency action to protect the child	√	√	√		
	Recommend that the foster/adoptive parents Bill of Rights include that the foster/adoptive parents be given at least 48 hours notice before a child is being moved from their home unless the foster/adoptive parents agree to an earlier removal or the move is due to an investigation of their home				√	
Tracking down and trying to create a parent from a disinterested possible (unwed to mother, unacknowledged) father adds cost, uncertainty, and delays permanency.	Legislation is required as a clean-up to prior enactment which removed notice to a putative father who has not stepped forward to take financial and emotional responsibility for a child. Delete Family Code Section 107.013(a)(3), regarding appointment of an ad litem for a putative father whose identity or location is unknown and who has not registered his interest in the child on the paternity registry	√				

THE SYSTEM-TECHNOLOGY						
Obstacles that Impede Permanency/Adoption	Suggested change for improvement	Leg	CPS	Jud	CPA	Com
Underused or outdated technology	Improve system capability to automatically populate the HSEGH with relevant information on the child prior to placement and to automatically redact the child's record		\$ √			
	Provide electronic access for foster parents to update child's CPS record through their CPA		√		√	
	All available children must be broadcast to CPS and CPAs within 30 days of TPR and registered on TARE within 45 days		√			
	TARE should be modified to provide an automated response to inquiries: -“If you are outside Texas, contact your local/state office” -“If you are not a licensed adoptive family, contact an agency with a state contract” (include a pull-down list on TARE website) -“If you are licensed with a Texas agency, contact your agency with child's TARE number”		√			
	Create an interactive web-based system to assist in matching waiting children and potential families (Initiative is included in TARE Phase II Redesign)		\$ √			

RECRUITMENT, TRAINING AND SUPPORT						
Obstacles that Impede Permanency/Adoption	Suggested change for improvement	Leg	CPS	Jud	CPA	Com
TDFPS regulates the agencies which provide foster/adopt services. CPS (a department within TDFPS) also provides similar services as the CPAs. The federally mandated Fostering Connections initiative will require CPS to provide even greater services to kin and fictive kin, which will add to an already overburdened staff/system.	CPS should focus all efforts on the success of Fostering Connections and transfer the recruitment, training and support of foster and adoptive families to the private CPAs		√		√	
Children are not prepared for successful placements due to Inadequate therapeutic services	Therapeutic service providers must be credentialed with IMHS and IMHS must require trauma informed training		√		√	
Foster and adoptive families are sometimes unqualified and oftentimes unprepared for many of the issues facing the children, creating multiple moves	Require all CPA's, foster and adoptive families to obtain trauma informed training as part of the contracts with agencies		√		√	
	Recommend that all foster/adoptive parents be assessed using an attachment inventory to better determine ability of the potential foster/adoptive parent to attach to a child		√		√	
Children are too often removed from their home community (losing friends, education and other important connections)	Recruit families from in and around the communities with higher removal rates in order to locate local families, targeting schools, churches and other community organizations		√		√	√
There are not enough foster/adoptive families to adequately serve the number of children needing healing homes.	Encourage and assist foster/adoptive families to identify other potential families for foster/adopt or respite care within the families' communities. This will be especially important when trying to place separated siblings within close proximity to each other		√		√	√

<b>RECRUITMENT, TRAINING AND SUPPORT</b>						
<b>Obstacles that Impede Permanency/Adoption</b>	<b>Suggested change for improvement</b>	<b>Leg</b>	<b>CPS</b>	<b>Jud</b>	<b>CPA</b>	<b>Com</b>
Unnecessary/ unreasonable delays are caused by lack of attorneys understanding that they have more than one option when representing their birth parent clients.	Attorney ad litem training should include training on all options, including voluntary relinquishment to CPS or a private agency			√		
Families need to have easy access to foster/adoptive service providers and training when the families are interested and ready to consider helping children in foster care.	Recommend that CPS publish the training schedules and locations for all CPAs with CPS foster/adoption contracts in order to assist families in selecting an agency that meets their needs (geographic location, calendar, etc)		√		√	
Children are powerless and often do not receive the best interest representation they deserve.	Attorney ad litem for the child must meet the child, engage the child and give the child his/her voice. Although current law requires this, judges must take responsibility for enforcing this requirement and getting rid of inadequate attorneys ad litem			√		

# LONG-RANGE RECOMMENDATIONS

“We are what we repeatedly do.”

*Aristotle*

The Committee’s priority action plan outlines objectives for immediate action. The recommendations below are also essential for improved outcomes, and require long-range planning and action.

Obstacles that Impede Permanency/Adoption	Suggested change for improvement	Leg	CPS	Jud	CPA	Com
Caseworker burnout/turnover impedes getting to permanency	Survey all staff regularly with an outside consultant to identify problem areas		√			
Many foster and adoptive families have become discouraged and frustrated, and are leaving the system. Their negative experiences also discourage others from becoming foster/adoptive families	As a long-term goal, CPS must begin to conduct outside surveys to assess the needs and satisfaction of foster/adoptive families in order to evaluate CPS and CPAs and improve outcomes for children		√			
Judges, attorneys and others involved with the court proceedings are not sufficiently educated about the trauma these children continue to face with multiple moves, inadequate foster homes and delays in permanency	All professionals and volunteers working with CPS children should receive some form of trauma informed training, including judges, attorneys and CASA.		√	√	√	√
There is not an emphasis on adoption as a permanency solution for older children.	Consider requiring all foster families to be dually licensed for foster and adoption in order to encourage the idea that every placement is a potential adoptive placement		√		√	
Foster/Adoptive homes experience burn-out, and may leave the system. Further, every CPA has a different set of requirements for families to provide relief/respite care to other foster families	Foster/adoptive homes should be encouraged to utilize relief/respite care to avoid burn-out. CPAs must work collaboratively and should develop a universal set of standards for screening and training relief/respite homes.		√		√	

# ADOPTION REVIEW COMMITTEE- 2011 AND BEYOND

The work of the committee is by no means complete. In order to affect true far-reaching reform, a task force must be assigned to continue reviewing and evaluating the implementation and expansion of the recommendations contained in this report. The local communities must become part of the long-term solution. This committee recommends that the end of the current term of this committee, the Adoption Review Committee be re-established into a state-wide task force with members representing each area of the state.

The goal of the task force would be to engage communities in the effort to improve outcomes for our children. To accomplish this goal, the task force should be charged with bringing together community leaders and resources to find local solutions for serving the foster children in their communities.

By the end of 2011, the Adoption Review Committee will issue an outline of proposed task force initiatives for future implementation.

In addition, the Adoption Review Committee proposes to spend 2011 in the following endeavors:

- Consider ideas for engaging various communities and volunteers
- Work to change the image of what it means to be in foster care and to be a foster/adoptive parent
- Work with the legislature to ensure priority attention is given to the issues surrounding children in the foster care system
- Be available as a resource to the Sunset Advisory Commission as they evaluate HHSC's sunset review process

# GLOSSARY

**“In the last analysis civilization itself is measured by the way in which children live and what chance they will have in the world.”**

*Mary Heaton Vorse, 1935*

**ARC-** Adoption Review Committee. The committee writing this report.

**CPA-** A child-placing agency is a person, including an organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, agency foster group home, or adoptive home (Texas Human Resource Code §42.002(12)). CPA activities include recruiting, training, and verifying/approving, monitoring, and admitting children for placement in foster and adoptive homes. The DFPS Child Care Licensing Division is responsible for issuing permits to and regulating the activities of all child-placing agencies in Texas (public and private). Private CPAs may or may not have a contract with DFPS to provide foster care and/or adoption services to children in DFPS conservatorship.

**CPS-** Child Protective Services.

**Fictive Kin-** A person who has a longstanding and significant relationship with a child in CPS custody or with the child’s family.

**Foster/Adopt Home-** A home that is dually licensed to provide foster care and to adopt. The home may choose to only foster, only adopt, or both foster and adopt.

**Foster Parent-** A person who provides foster care services in a foster home (Texas Administrative Code §749.43(26)). Some Texas foster homes are licensed by the DFPS Child Care Licensing Division as “independent foster homes”; however, the majority of Texas foster homes are verified and monitored by private child-placing agencies.

**Fostering Connections-** Fostering Connections is a DFPS initiative to implement the federally required elements of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893/PL 110-351) and the supporting Texas legislation that was passed in the 81st legislative session. The initiative includes several components including, but not limited to:

- Increased focus on relative and sibling placements.
- Extension of adoption assistance to age 21 for eligible youth.
- Establishment of the Permanency Care Assistance program (PCA). PCA allows children to reach permanency through the courts awarding permanent managing conservatorship to a kinship caregiver. The caregiver will receive monthly financial assistance at a rate consistent with the adoption assistance rates, and payments can be extended to age 21 for eligible youth. To be eligible for PCA, the permanency goals of family reunification and adoption must be ruled out by DFPS.

- Additional options for youth to voluntarily remain in foster care until age 21.
- For youth aging out of care, development of a Transition Plan within 90 days of turning 18 or the date leaving CPS extended foster care.
- Stronger focus on reducing changes in schools at removal and in subsequent placements.

**GCPA 1996-** Report issued in 1996 by Governor's Committee to Promote Adoption, formed by Governor George Bush.

**HSEGH-** Health, Social, Educational and Genetic History. This report must be completed before a child can be placed for adoption unless the adoption is by a grandparent, aunt or uncle, or stepparent.

**IMHS-** Integrated Mental Health Services is the behavioral health provider for STAR Health (formerly known as MMHR). Provides assistance with STAR Health services such as assistance with finding a counselor or doctor (psychologist or psychiatrist), making an appointment, and finding treatment for drug, alcohol or other mental health issues.

**Kinship Caregiver-** A relative or fictive kin who provides care to a child.

**Medicaid** -Healthcare coverage for medical, dental, and mental health services funded by the U.S. federal and state governments for eligible individuals with low incomes and resources.

**Putative Father-** Potential father; not married to the mother and has not taken legal steps to establish a parent-child relationship.

**Relative-** Related to a child by blood, adoption or marriage.

**SAPCR-** Suit Affecting Parent Child Relationship- The legal process to address conservatorship, possession of, or access to a child, including the termination of parental rights.

**STAR Health-** The comprehensive Medicaid managed care organization that provides medical, behavioral health, dental and vision care for children in foster care. It also covers 18 year olds in DFPS placements and young adults who turn eighteen, leave DFPS care, and receive Transitional Medicaid.

**Subsidy-** A term that is commonly used by the general public to refer to DFPS monthly financial assistance provided to eligible adopted children.

**TARE-** Texas Adoption Resource Exchange. Used as a recruitment tool, this website is maintained by CPS and contains photographs and profiles of children in foster care who are legally free for adoption. Potential adoptive families are able to search this website for a child/children that they believe would be a good match for their family.

**TPR-** Termination of parental rights. The legal rights of the parents are ended by the courts.

# APPENDIX A

“Perhaps we cannot prevent this from being a world in which children suffer, but we can lessen the number of suffering children.”

*Albert Camus*

## Subject Matter Experts and Testimony

Partial List of Invited Subject Matter Experts who presented information to the Committee:

- Andrea Powell, DFPS Region 3 caseworker
- Audrey Deckinga, DFPS Assistant Commissioner for Child Protective Services
- Audrey Jackson, DFPS CPS Adoption Program Specialist
- Bob Hartman, DePelchin Children’s Center
- Cindy Cannon, DFPS Operations Support
- Cory Jones, DFPS CPS Kinship Program Specialist
- David Whiteside, DFPS CPS Director of Purchased Client Services
- Debby Wattman, DFPS Director of Information Resource Management
- Donald Baumann, Ph.D., DFPS CPS CAPTA Evaluation Team Lead
- Dr. Karyn Purvis, Director of the Institute of Child Development at Texas Christian University and adoption developmental psychologist
- Heather Bradford, DFPS Legislative Affairs
- Ingrid Vogel, Casey Family Programs
- Jessica and Dejuana- young women in the foster care system
- Marianne Vogt, DFPS CPS Investigations Program Specialist
- Michele Carter, DFPS CPS Information Technology Project Manager
- Nancy Holman, Texas Alliance of Child and Family Services
- Rebecca Lightsey, Texas Appleseed
- Region 8/Bexar County Model CVS and Adoption unit workers
- Scott Silverthorne, DFPS Information Technology
- Stacy Lake, DFPS CPS Division Administrator for Family Focus
- Susan Etheridge, CASA Collin County
- T.J. Wasden, DFPS Records Management
- Terri Ware, DFPS Chief Operating Officer
- The Honorable Judge Jean Boyd , 323rd Family District Court, Fort Worth

Partial list of interested foster parents, potential adoptive parents, church ministries, CPS workers and other stakeholders who provided written or live testimony:

- Agnes Zarcaro, Spaulding for Children
- Angela Marie Lenow, foster parent
- Bruce and Denise Kendrick, foster/adopt parents, Embrace Ministry Outreach Directors
- Cathy See, speaking on behalf of daughter Stormy who is potential adoptive parent
- Cindy Coffman, Founder and Executive Director Embrace Foster/Adopt Ministry,
- Curtis Norman, licensed therapeutic foster home
- Evy Kay Ritzen, Director TRAC-Transition Resource Action Center
- Jamie Mendoza, “Legal Risk” family
- Jane Burstain, Center for Public Policy Priorities
- Leslie Barros, foster/adopt mother
- Michael Monroe, Founder Tapestry Foster/Adopt Ministry
- Rick and Cindy Darnell, licensed foster/adoptive parents
- Robin Laforge, Post-Adoption Services
- Tanya Houk, Transitional Care/New Beginnings- Gladney
- Tina Mayhan, Ad Litem
- Todd and Rene Treat, foster/adopt parents
- Valerie Koogle and April Moore, partners who take “Legal Risk” placements
- Caroline Hymrick, Lutheran Social Services



# APPENDIX B

**“We are not orphaned by choices of our own but by the choices of others.”**  
*Author unknown*

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# APPENDIX C

“Home is where there’s someone to love us.”

*Charles Swain*

Statistical data comparing foster care youth against the general population.

*National Comparison of Conviction Rates of Youth Who Aged Out of Foster Care and the General Population*

	<b>Midwest Evaluation – Age 23/24 (Study of Foster Care Alumni)</b>	<b>Adolescent Health Study – Age 23/24 (Nationally Representative Sample)</b>
Ever Convicted of a Crime	42.43%	6.05%
Convicted Since Age 18	29.75%	5.25%

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*Parenting Teens: Youth who Aged Out of Foster Care and the General Population*

<b>Biological parent of at least one child</b>	<b>Midwest Evaluation (Age 19) (Study of Youth who Aged Out) (Females Only)</b>	<b>Adolescent Health Study (Ages 19) (Nationally Representative Study) (Females Only)</b>
	<b>31.6%</b>	<b>12.2%</b>

Courtney, Mark E. et al. “Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19”. Pg. 56. <[http://www.chapinhall.org/sites/default/files/ChapinHallDocument\\_4.pdf](http://www.chapinhall.org/sites/default/files/ChapinHallDocument_4.pdf)>.

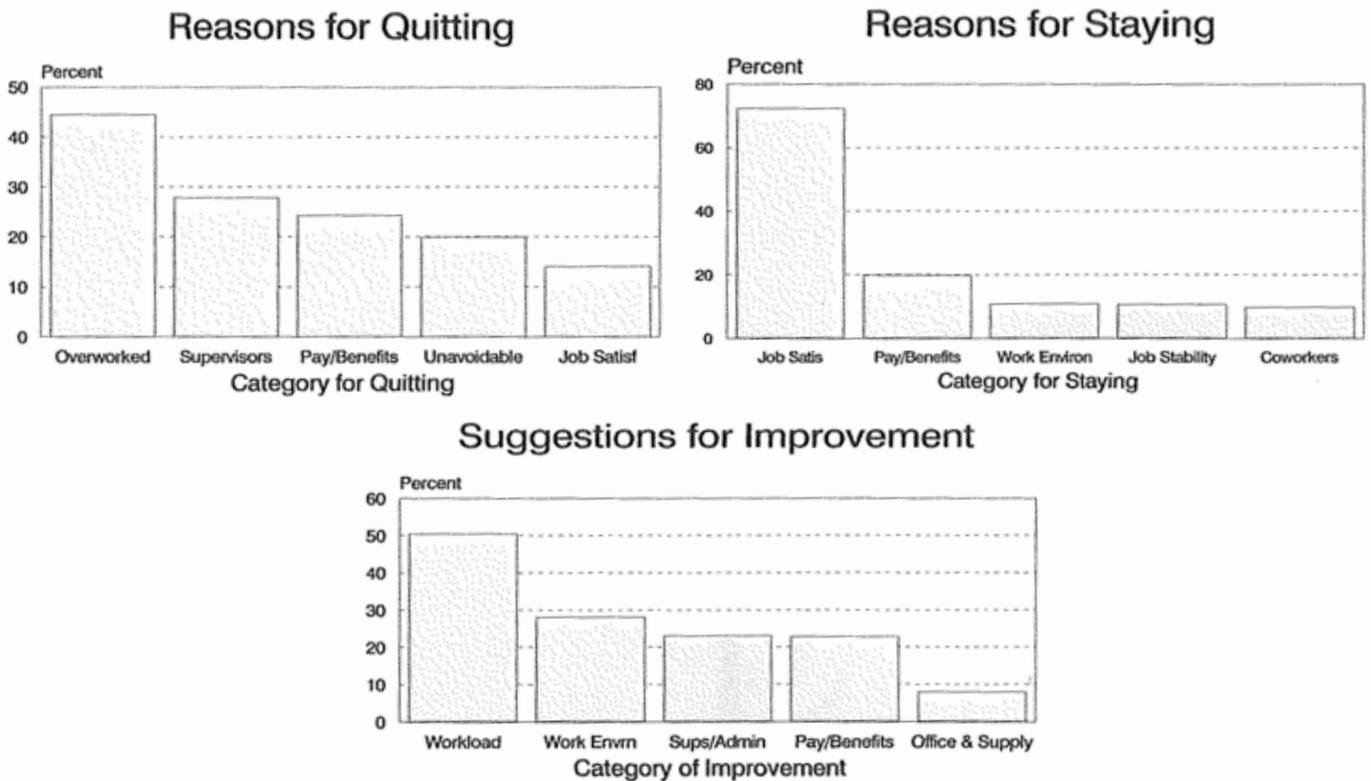
# APPENDIX D

“Be the change that you want to see in this world.”

*Mohandas Gandhi*

CPS data demonstrating reasons for staff turn-over.

## Reasons for Quitting, Staying, & Suggested Improvements



*CPS Survey*



*The children pictured in this report are currently in foster care, waiting for a permanent family. Their photographs have been used with their permission as a reminder that behind every statistic there is a child. It is their hope that the recommendations in this report will help them and thousands like them achieve a permanent, loving home.*

# Hogg Foundation for Mental Health

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## Bestselling Author Discusses Criminalization of Mental Illness Through Personal Lens

December 16, 2010

By *Brandon Curl*

Nationally acclaimed investigative journalist, bestselling author and Pulitzer Prize finalist Pete Earley spoke to policy makers and advocates at events hosted by the Hogg Foundation at the Texas capitol on September 21.

Earley, a former reporter for The Washington Post and an author of several novels, wrote "Crazy: A Father's Search Through America's Mental Health Madness." The book investigates the criminalization of people with mental illness and was inspired by his own son's experiences.

Speaking to legislative staff at a luncheon and to more than 150 people at an afternoon public forum, Earley interwove stories of his son's experience, his observations of the Miami criminal justice system's treatment of people with mental illness, and his policy prescriptions for Texas and the nation.

He also rattled off statistics that encapsulate the problem. "Right now, as we're talking, you've got 365,000 people with bipolar disorder, schizophrenia, major depression in jails and prison," noted Earley. "You've got a half-million on probation, you've got a million going through the criminal justice system every year, and the largest public mental facility is not a hospital; it's the Los Angeles County Jail."

Earley was eager to talk to policy aides and the public in a state that is 49th in the country in per capita spending on treating mental illness.

"I was thrilled to be invited to the Texas capitol because it gave me an opportunity to talk to legislative aides about the importance of keeping mental health funding in place," said Earley. "We all know there is a recession going on and no new money for programs, which is why it is important for us to spend the money that already is allocated more wisely."

"Rather than wasting it on keeping persons with mental disorders in prisons and jails, which are expensive and don't help people get better, we can spend it on mental health courts and jail diversion programs that get ill persons into treatment," he added.



Earley signed books and met with attendees after his talks.

Earley spoke about how his own son eventually found help at a treatment center where a case manager helped him find a psychiatrist and get on medication and into a group home. Earley's son now works as a peer support specialist after completing training to assist others with mental illness.

Introducing Earley at the event was Dr. Octavio N. Martinez, Jr., executive director for the Hogg Foundation, an organization Earley lauded for its efforts on behalf of people with mental illness. "I am so glad that I came to Austin and that the Hogg Foundation was able to not only draw legislative aides, but also reach the community through well-attended events, spots on local television, and newspaper interviews."

Colleen Horton, program officer for the Hogg Foundation, was pleased with the event's effectiveness. "Mr. Earley's visit to Texas was a success in that he was able to make real for the audiences the challenges faced by people experiencing mental illness and the consequences of inadequate mental health funding," said Horton.

After the talk, Earley took questions from the audience and spoke candidly with attendees. "Being able to speak later to folks from the community really gave me a double opportunity to not only talk about reforms that I've seen elsewhere but to learn about significant programs being implemented in Texas," said Earley. "Programs such as crisis intervention training, jail diversion, drop-off centers, mental health courts and other creative ideas are helping persons who are ill get meaningful treatment rather than wasting away in jails and prisons."



Earley talks about how jails and prisons have become the nation's new asylums.

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Earley expressed thanks for the unique opportunity to advocate for those with mental illness. "All of us who have family members with mental disorders want reforms, but few of us get to talk to legislative aides in a group like I did," said Earley. "It was a real opportunity to put a face on mental health and to talk about how we can spend our tax dollars more wisely."

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*Texas Tribune* reporter Brandi Grissom interviewed Pete Earley during his visit to Austin. Listen to the interview and read her in-depth story on criminal justice and mental health online. Go to [www.texastribune.org](http://www.texastribune.org) and search the archives for "Pete Earley."



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## Let's keep our mentally ill youth out of detention

Dec. 11, 2010, 4:14PM

In just three years, Harris County has made vast improvements in the county's juvenile justice system. The catalyst for many of these changes is an initiative launched in 2007 and funded by the Annie E. Casey Foundation to develop alternatives to juvenile detention in Harris County.

The initiative is showing promising results. Between 2007 and 2009, referrals of youth to the county's juvenile probation department dropped 14 percent. The number of youth placed in residential centers after adjudication fell 42 percent. Commitments to the state's juvenile corrections system dropped 62 percent. Meanwhile, juvenile crime has dropped significantly in Harris County.

Local agencies, courts and community groups have worked together to achieve these positive results.

The Harris County District Attorney's Office now defers prosecution of juveniles who commit a nonviolent misdemeanor offense for the first time. Since February 2009, more than 2,300 youth have been placed in a community-supervision program instead of going to court or detention. The program has a 90 percent success rate and has saved an estimated \$1.5 million.

Juvenile courts are allowing more youth offenders to live at home while getting supervision, services and treatment in the community when appropriate and safe for the public.

A special court docket created in 2009 for juveniles with mental illness offers rehabilitation programs that link youth and their families to services and treatment in the community. As of November, 32 of 41 youth in the program had successfully completed it, at an estimated savings to the county of \$240 a day per youth, based on the cost of detention.

Agencies and nonprofits are providing programs for high-needs youth in the juvenile justice system and their families, such as daily after-school supervision, mental health treatment for youth, and family therapy to address underlying issues that contribute to the youth's behavioral issues. MHMRA of Harris County, for example, provides assessment, individual therapy, family counseling and medication management to as many as 600 youth in homes, detention centers and alternative schools each month.

Yet even with all these improvements, the system has too many young people in it. Nearly 20,000 youth were referred to the Harris County Juvenile Probation Department in 2009. Referrals through October this year have reached 15,076.

It's time to set our sights on lowering the number of youth entering the juvenile justice system, and mental health is a critical factor that cannot be ignored. Nationally, a large proportion of youth in the juvenile justice system — between 50 percent and 75 percent - have at least one mental health condition. In Harris County, the estimate is 52 percent.

Why is mental health a factor? When left undiagnosed and untreated, a mental illness or emotional disturbance can cause symptoms and behaviors that get adolescents in trouble in school, at home or in the community. Parents, teachers and other adults who work with kids may not realize that negative or delinquent behavior can be a sign of mental illness. Even if they suspect mental illness, many families don't have the insurance, money or eligibility to get help.

Zero-tolerance policies in schools often criminalize adolescent behavior tied to mental illness. A report, to be released soon by law center Texas Appleseed, says minor infractions such as cursing, disrupting class and truancy used to be handled by the school principal but are now treated as misdemeanors or worse. Earlier reports from Appleseed revealed that a disproportionate share of minority and special education

students are being suspended and expelled from Texas public schools for noncriminal, nonviolent offenses.

Severe responses such as ticketing, suspension and expulsion inappropriately punish and alienate youth, especially those with untreated mental illness, and increase their chances of dropping out or becoming involved in the juvenile justice system.

Instead, what many of these young people need is services, such as assessment, diagnosis and treatment, at home, in school or in the community. Studies show this approach leads to better outcomes for the child, the family and the community. It's also less expensive than putting youth in the juvenile justice system.

Providing these services in schools makes sense because that's often where symptoms of mental illness or emotional disturbance begin to emerge. However, the Houston Chronicle reported Nov. 29 that only a handful of schools in the Houston area offer mental health services, due in large part to lack of funding for mental health professionals and services.

Fortunately, there are other options. Foundations and nonprofits are providing mental health services for kids and their families in schools and in the community. For example, in 2009 the Hogg Foundation for Mental Health awarded eight grants totaling \$7.8 million to local nonprofits to provide mental health services in high-need areas of Houston and Harris County. Over three years, an estimated 10,000 kids and their families will receive mental health services in schools, day care centers, homeless shelters and other community sites.

MHMRA of Harris County is partnering with several school districts to provide mental health services to youth and their families at school. This enables them to get the services they need, when they need them.

Finally, many schools are adopting programs to reinforce social and emotional wellness instead of relying on punitive policies that don't work. Ideally, these programs begin with kids at a very young age and focus on setting standards, teaching expectations and modeling positive behaviors. One model, called Positive Behavioral Interventions and Supports, is proving especially effective in helping administrators and teachers address challenging behaviors of students in a positive way. Region 4 Education Service Center in Houston is leading a statewide network to expand the use of this model in Texas schools.

The bottom line is, we can help many young people with mental health conditions avoid the juvenile justice system. The key is to identify and diagnose mental illness as early as possible and provide youth and their families with resources, services and support at home, in school and in the community. Let's work together to build on our successes by reducing reliance on the juvenile justice system and finding ways to do more of what we know works.

*This article was submitted by former Texas Supreme Court Justice Harriet O'Neill, Harris County Judge Ed Emmett, Harris County Juvenile Probation Department Executive Director Tom Brooks and Dr. Lynda Frost with the Hogg Foundation for Mental Health.*

## **It's time to invest in mental health**

**By ED EMMETT, STEVEN B. SCHNEE and OCTAVIO N. MARTINEZ JR.  
HOUSTON CHRONICLE**

**Sept. 11, 2010, 3:32PM**

More than one million children call Harris County home. The U.S. Center for Mental Health Services says one in five children and adolescents has some type of behavioral, emotional or mental condition.

Think about that for a moment. On any given day, this could be as many as 224,000 kids in our community. That's enough children to fill every seat in Reliant Stadium more than three times over. They outnumber the residents in 233 of the state's 254 counties.

Now consider that Texas falls to the bottom of the list in per capita spending on public mental health services for adults and kids. In Harris County, 18,600 children need public mental health services. According to the Mental Health Needs Council's 2009 report, 14,100 of them did not receive treatment.

So what happens to youth struggling with a mental illness that can cause behavioral issues at school and at home? They may not do well in school, have difficulty getting along with family and friends, or attempt to self-medicate through illegal drug use. Tragically, some may become suicidal if they don't get the help they need.

Without changes on the horizon at the state level, the community must explore alternative solutions for meeting the mental health needs of our children — or continue to suffer the consequences. Several troubling trends paint a bleak picture for the future:

The Mental Health and Mental Retardation Authority of Harris County receives state funding to provide mental health and intellectual and developmental disability services to children and adults who qualify. Each month, MHMRA sees on average 45 percent more children than it is contracted by the state to serve. The proposed \$134 million in budget cuts to mental health programs statewide would devastate the overburdened county system and the people it serves.

Harris County Child Protective Services removed 1,866 children from their homes and placed more than 6,000 in the care of someone other than a parent in 2009, according to its annual report. Removing children from homes that pose a danger to their health and safety is essential. They need stability and the opportunity to form strong relationships with caregivers in a supportive, loving environment to ensure healthy development. While this applies to all children, it is especially important for infants and toddlers who are just beginning to form connections.

Untreated mental illness can disrupt a child's ability to learn, participate and succeed in a structured school environment, from day care and kindergarten through high school. This likely is a major contributing factor to dropout rates around the state. Studies indicate that children who drop out of high school have a lower median income, aren't as healthy and may be more likely to commit crimes than peers who received a high school diploma or GED.

In the county juvenile justice system, about half of the youth who have been screened have symptoms of a mental health condition, according to the Harris County Juvenile Probation Department. The criminalization of mental illness is affecting younger and younger children, with more youth with a mental health condition entering the juvenile justice system. This troubling trend can splinter family support, yank children from familiar surroundings and negatively impact the lives of youngsters who don't belong there in the first place.

Children with mental illness may grow up to be adults with debilitating diagnoses if left untreated - and the costs to society are enormous. The National Institute of Mental Health estimates that, at any given time, about one in four adults suffer from a diagnosable mental illness. This population has a higher rate of homelessness and substance use. Many cycle through the criminal justice system. The Harris County Jail is often referred to as the largest psychiatric facility in Texas, considering 2,500 inmates on any given day are on prescribed psychiatric medications.

These problems are just a sampling of why early intervention is critical. Given today's fiscal climate, addressing these issues will require community-wide collaboration, creative solutions and a different way of thinking. The good news is many organizations at every level are moving forward on this path.

In the coming months, local and state mental health advocates will partner with the **Houston Chronicle** to offer ideas and solutions that can improve outcomes for area children with mental illness. Many of these key leaders have implemented programs or have launched pilot projects with promising results.

Mental illness, if left untreated, can have devastating effects on a child. Looking at the bigger picture, the future Texas work force depends on today's investment in the physical and mental health of its youth. Addressing these issues now is critical to ensuring stronger families and communities for tomorrow.

*Emmett is Harris County judge; Schnee is the executive director of MHMRA of Harris County; and Martinez is executive director of the Hogg Foundation for Mental Health and a clinical professor in the School of Social Work at The University of Texas at Austin.*