HOUSE COMMITTEE ON CHILD WELFARE AND FOSTER CARE, SELECT
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INTERIM REPORT 2004

A REPORT TO THE
HOUSE OF REPRESENTATIVES
79TH TEXAS LEGISLATURE

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Committee On
Child Welfare and Foster Care, Select

November 8, 2004

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P.O. Box 2910
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The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Select Committee on Child Welfare and Foster Care of the Seventy-Eighth Legislature hereby submits its interim report including recommendations for legislation to be considered by the Seventy-ninth Legislature.

Respectfully submitted,

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INTRODUCTION and BACKGROUND

On November 4, 2003, House Speaker Tom Craddick announced the creation of the Select Committee on Child Welfare and Foster Care and issued three interim charges to the committee. Over the past year, the members of the Committee on Child Welfare and Foster Care have worked diligently to learn the innermost workings and oftentimes tragic shortcomings of the Department of Family and Protective Services (DFPS). The DFPS has been charged with protecting the children in the State's care from abuse and neglect. The agency's responsibility is tremendously crucial, and in our research we have found that the DFPS is frequently failing its mission. Although there are many positive aspects within the DFPS, including caring caseworkers and administrators that want to protect children, there are also major systemic concerns that must be addressed.

We, the members of the Committee on Child Welfare and Foster Care, believe that the following report and recommendations provide an excellent foundation from which the DFPS can be further improved. We can think of no better purpose for our service here in the legislature than to enhance the quality of life for children in the State's conservatorship. Because of our steadfast desire to continue to provide our children with a better existence and experience within the foster care system, we pledge to work tirelessly to achieve the committee's goals and recommendations. This report outlines the committee's examination of these issues, presents the facts and data learned by the committee, summarizes the findings, and makes recommendations to the legislature with respect to the information gathered while researching the interim charges.

Background

Because this committee is focused on child welfare and foster care, background will only be provided on the aspects of the Texas Department of Family and Protective Services that are germane to this committee's jurisdiction.

The Committee on Child Welfare and Foster Care was created to examine how to better direct the Texas Department of Family and Protective Services (DFPS) to accomplish its mission of protecting children from abuse, neglect, and exploitation. The DFPS was created with the passage of House Bill 2292 by the 78th Texas Legislature, Regular Session. Previously known as the Texas Department of Protective and Regulatory Services, DFPS is charged with protecting children, adults who are elderly or have disabilities living at home or in state facilities, and licensing group day-care homes, day-care centers, and registered family homes. The agency is also charged with managing community-based programs that prevent delinquency, abuse, neglect, and exploitation of Texas children, elderly, and disabled adults.[1]

DFPS is charged with an extremely difficult, yet utterly important task; to protect the unprotected. Much is asked of the DFPS and its employees, and in every instance, the only option is success, measured by the safety and well being of children in the State's care. Success often proves difficult to achieve however, given the many roadblocks that appear to slow forward progress. The number of children in the Texas foster care system is growing each year. The pressures of a growing system, as well as the demanding and

emotionally grueling nature of the work have made it difficult for the agency to retain experienced caseworkers, and to ensure that each foster child receives regular caseworker visits. Caseworkers are burdened with skyrocketing numbers of cases to handle and investigate, and are often unable to fulfill their tasks. Foster children are regularly moved from one placement to another, particularly those who remain in foster care for extended periods. The average foster child who remains in the system for ten or more years can expect to move about once a year. Some are moved even more frequently, and oftentimes, these placements are in a region far away from their birth homes.

The state foster care system is indeed in need of reform. These issues and several more have prompted the Legislature of the State of Texas to take a hard look at the policies in practice at the DFPS. While it is true that no state agency can operate without making mistakes, those that are made at DFPS are much more severe because the "goods" that this agency handles are children's lives. Every dream, hope, and desire to succeed that lies innate in all children can be erased in seconds if the State makes a mistake in foster care. To achieve a greater understanding of the aspects of the DFPS that the Committee on Child Welfare and Foster Care has been charged with examining, it is important to review some pertinent background information on the make-up of the DFPS.

Child Protective Services

The child protection system in Texas is a multifaceted federal/state partnership administered by the Child Protective Services Division (CPS) and overseen by its federal partner, the Department of Health and Human Services, Administration for Children and Families. CPS investigates reports of abuse and neglect of children. It also provides services to children and families in their own homes; contracts with other agencies to provide clients with specialized services; places children in foster care; provides services to help youth in foster care make the transition to adulthood; and places children in adoptive homes.[2]

The mission of CPS is to work in partnership with families and parents to protect children and to act in the best interest of the child. The main objectives of CPS are: to prevent further harm to children who are victims of abuse and/or neglect; to provide temporary substitute care for children who can not safely remain at home; to provide permanence for a child in substitute care by resolving family dysfunction and returning the child to the family, or recommending permanent placement of the child with another family member or a foster parent.[3]

There are three main principles which guide CPS through its mission to promote safe living environments for children. First, CPS believes that children should be protected from abuse and neglect and that they should be safely maintained in their homes whenever possible and appropriate. Second, CPS believes that children need permanency and stability in their living situations. Finally, CPS believes that families should have an enhanced capacity to provide for their children's needs and that children should receive appropriate services to meet their educational, physical, and mental health needs.[4]

To establish just how critical CPS is to the DFPS, it is important to understand the legal basis and some budgetary figures relating to its main functions. CPS makes up 86% of the total budget for DFPS. In fiscal year 2004, the DFPS is projected to expend $740 million for CPS programs, of which 67% is federal funding derived from Medicaid funds, TANF, and a series of federal "state grant" programs designed specifically for DFPS.[5] The major federal grant programs that create the foundation for the state CPS program are created by the following:

- Child Abuse Prevention and Treatment Act (CAPTA)
- Title IV-B, subpart 1, Child Welfare Services program
- Title IV-B, subpart 2, Promoting Safe and Stable Families (PSSF)
- Title IV-E, Foster Care program
- Title IV-E, Adoption Assistance program
- John H. Chafee Foster Care Independence Program (CFCIP)
- Grants for the Prevention of Child Abuse and Neglect

Federal mandates dictate what the State must comply with in order to remain eligible for federal funding. However, while each federal grant program contains its own unique eligibility requirements, there is also considerable overlap and interdependency among these grants and between these grants and other federal assistance programs.[6] (For a more detailed look at the various federal laws that affect the creation of the state CPS program, refer to Appendix 1, Overview of Federal Child Welfare Legislation.)

State lawmakers set the federal guidelines as the foundation for the State's vision of the child welfare system, and used state law to make the system more effective and efficient for Texas. Most of the state law relating to the CPS program in Texas is found in two locations: Chapter 40 of the Texas Human Resources Code and Title V of the Texas Family Code.[7] Chapter 40 of the Human Resources Code (see Appendix 2) is the enabling legislation for the DFPS and designates it as the agency with the responsibility to operate the State child welfare program. Chapter 40 also requires the DFPS to cooperate fully with federal mandates to ensure continued receipt and maximization of federal funds.[8]

Title V of the Texas Family Code (see Appendix 3, a chapter by chapter summary of the highlights of Title V relating to CPS, provided by the Texas Department of Family and Protective Services, Austin, Texas, January 23, 2004) lays out the most detailed provisions relating to the functioning of the CPS program in the state. In addition to Title V, there are many other chapters within the Family Code containing provisions that apply to any lawsuit filed that affects the parent child relationship, including foster care cases.[9] CPS services include: intake, investigation, in-home safety services, out-of-home, care permanency planning, reunification safety services, preparation for adult living, and adoption.

Intake

The statewide intake system serves as the "front door to the front line" for all DFPS programs. The CPS intake staff operates a toll-free, statewide telephone reporting system to assist individuals in reporting abuse and neglect. When the information received in these calls meet the statutory definition of abuse or neglect, they are assigned a priority based on the level of risk and severity of harm.[10] (Risk levels and priorities are defined in the Texas Family Code, Chapter 261, Subchapter D). Priority I calls are investigated within 24 hours and are primarily based on allegations of imminent and immediate danger to a child. Priority II calls include all other allegations of abuse or neglect and are investigated within 10 days. (See Appendix 4, the Statewide Intake Overview for more information).

Investigations

In fiscal year 2003, there were 162,044 reports of child abuse/neglect assigned to CPS for investigation, of which CPS caseworkers completed 131,130.[11] Caseworkers conduct their investigations in several different ways. They are trained to interview the child and parents, and witnesses and other professionals who have knowledge of the family. CPS caseworkers also visit the child's home, school, or child care center as appropriate. Investigations are used to determine whether actual child abuse or neglect has occurred and to asses the future risk of an abusive incident.

Investigations carry with them several important tasks that CPS caseworkers perform to determine the reality and/or extent of alleged abuse or neglect. Because caseworkers are human and every individual is different, investigations of abuse and neglect often prove to be major points of contention between the public and CPS. Caseworkers are charged with: determining the nature, extent, and cause of any abuse or neglect to a child; assessing the condition of the children in the home; evaluating the parents or persons responsible for the care of the child; coordinating with law enforcement (if they are conducting a criminal investigation); and determining the appropriate action to ensure the safety of the child.[12]

Outcomes of a CPS investigation include: reason to believe abuse/neglect has occurred; abuse/neglect ruled out; family is unreachable (they have moved and no forwarding address has been provided); unable to determine abuse neglect. When an investigation rules out abuse or neglect, caseworkers may refer families to various community services such as family therapy, parenting classes, or programs offering financial assistance for utilities/rent and childcare.[13]

In-Home Safety Services

In-home safety services are provided to families by CPS staff to reduce the risk of future abuse or neglect while the child remains in the care of their biological parents. CPS caseworkers conduct assessments and develop safety plans to promote the best interests of the child before implementing any in-home services. Caseworkers also remain available to the family on a 24 hour a day basis, making these safety services uniquely intensive. In-home services typically last for 3-9 months and are focused on a specific goal, namely: family counseling, crisis intervention, parenting classes, substance abuse treatment, and childcare.[14] In-home safety services are not appropriate for all families, and when

necessary, CPS caseworkers will petition the court to remove children from their home if their safety can not be guaranteed.[15]

Out-of-Home Care

When it is no longer safe to leave children in their homes and CPS petitions the court to have them removed, children may be placed in relative homes, foster homes, and/or residential facilities. While children are living outside of their homes, CPS caseworkers help the family design and develop a service plan that allows them to resolve the barriers to the child's safety. Also during this time, CPS is required to arrange all medical, dental, and therapeutic services needed by the child, as well as basic needs such as clothing and childcare.[16] In fiscal year 2003, CPS caseworkers conducted 12,050 removals of children, and on January 31, 2004, 22,691 children were in the temporary or permanent care of DFPS.[17]

Permanency Planning

Legislation passed in the 75th session directs courts to issue a final order on a child's permanency plan within 12 months with a 6 month extension available in special circumstances.[18] The final order issued by the court will take one of the following forms: it may return the child to the biological parents; name a relative of the child or another person as the managing conservator; appoint the DFPS as the managing conservator; or terminate the parent-child relationship and place the child in an adoptive home.[19] By the end of fiscal year 2003, of the 12,050 children removed from their homes, 4579 were returned home (38%); 3013 were placed with a relative (25%); 2772 were adopted (23%); 1085 were emancipated (9%); and 603 were classified as other (5%).[20]

Reunification Safety Services

CPS provides services to families whose children are returning home at the end of court ordered placements in substitute care to reduce the risk of repeat abuse/neglect, and to enable the family to function effectively without the assistance of CPS in the future.[21] The purpose of the reunification services that CPS provides is to support the family and the child during the child's transition from living in substitute care to living at home.

Preparation for Adult Living

CPS works to prepare adolescents in substitute care for their departure from DFPS into adulthood and living on their own. Free from the care and support of DFPS, these young men and women oftentimes find themselves in dire need of guidance in order to function in society on their own. The Preparation for Adult Living (PAL) program is a joint effort of services provided by DFPS staff as well as contract providers. PAL services include providing knowledge and skills necessary for basic living, money management and vocational education.[22] The PAL program served 4,921 youth in fiscal year 2003 and 639 former foster children took advantage of the free tuition waiver provided by the DFPS.[23] As part of the PAL program, DFPS has also formed a Youth Leadership Committee, composed of one youth from each region which meets quarterly to review policy and practice related to children in foster care.[24]

Adoption

One of the main goals in any foster care system is to provide a safe, permanent home for children removed from their parents. DFPS has created and launched several statewide initiatives to promote permanency for children in foster care, including: the Texas Adoption Resource Exchange (TARE) website which highlights children awaiting adoption; the implementation of statewide dual licensing; the development of the CPS Judges' website; community recruitment efforts and piloted mediation projects in various counties; and collaborations with private and non-profit agencies.[25] In fiscal year 2003, there were 2444 consummated adoptions by DFPS, and at the end of the same fiscal year, there were 3786 children who were legally free for adoption (parental rights had been terminated and the permanency plan was adoption).[26]

New Initiatives at CPS

Along with the other projects that CPS has in place to serve the children of Texas, several new initiatives have been designed to better provide service and care to children and families. Texas UNITES, a unified network of integrated, targeted, effective services will be initiated in Lubbock, San Antonio, Port Arthur, Cleburne, and Angleton. The goal of Texas UNITES is to assure that the government services offered during the period of time that a child is removed from the home are coordinated to meet a particular family's needs, and are targeted towards maximizing the probability of success.[27] Texas UNITES is a Health and Human Services Commission (HHSC) led initiative. Services provided by Texas UNITES are intended to assist the family in overcoming matters that lead to the child's removal in hopes that the family will be reunited as soon as possible and will rely less on these services as time progresses.

Another new initiative is the expansion of Kinship Care. Kinship Care is an invaluable tool that keeps a child from experiencing complete family break-up when they are removed from home.[28] DFPS realizes that kinship caregivers should be provided with supportive services so that the family will not depend heavily on the child welfare system. The DFPS Kinship Care initiative will begin in South Texas as a method of providing supports to family members who accept placement of related children that are in the care of the State.[29] Highlights of the program include: a one-time integration payment of $1,000 to a qualified caregiver upon placement to be used to purchase necessary supplies; and it will offer supportive services such as training and case management, family counseling not covered by Medicaid, day care services to qualified children and kinship care-giving families, reimbursement for flexible expenses incurred by the kinship family of up to $500 per year, and additional assistance provided by HHSC.[30] CPS is also in the process of implementing a foster home recruitment program involving the faith-based community to bolster the number of available foster homes for children in the system. The goals of the faith-based foster home recruitment plan are spelled out in the CPS Statewide Recruitment and Retention Plan and are as follows: to recruit and verify two families per congregation who can provide foster care services; and to develop supportive services from within the congregation for the verified families (i.e. respite care, tuition for daycare, transportation, and celebrations for special occasions).[31] The project sites for the Faith Based Foster Home Recruitment plan are Houston, Brownwood, Bryan, Arlington, Victoria, and Uvalde.

DFPS is in the planning stage of initiating Family Group Decision Making, a concept that involves the belief that families, communities, and the government must partner to ensure the safety and well-being of a child, all across the state. Family Group Decision Making will involve convening a conference of the family, extended family, and trusted friends along with CPS to construct a plan to ensure safety, permanency and well-being for the child while maintaining family placement or support.[32]

Child Care Licensing

The language that provides the DFPS with the authority to regulate child-placing agencies is in Chapter 42 of the Texas Human Resources Code. The Child Care Licensing (CCL) Division of DFPS is responsible for regulating residential child-care and child-placing agencies. The CCL determines whether a contractor meets minimum standards and is qualified to provide services to foster children in Texas. Licensing authority requires the DFPS to: develop minimum standards that promote the health, safety and well-being of children in out-of-home care; issue licenses to facilities meeting minimum standards; conduct inspections of facilities to ensure they maintain compliance with the minimum standards.[33]

Fiscal Year 2003 Residential Facilities

Residential Child Care Facilities	**Number**	**Capacity**
Child Placing Agency	249	29,681
Independent Foster Homes	107	585
Residential Treatment Center	97	4217
Emergency Shelter	77	1961
Basic Care Facility	67	4497
Maternity Home	15	148
Therapeutic Camp	8	404
Institution serving Children w/ Mental Retardation	4	138
Total	**624**	**41,631**

The Licensing Division of DFPS must perform one unannounced inspection of licensees at least once annually, and must also: investigate complaints and ensure that corrective or adverse action is taken as the situation deems necessary; educate parents and other consumers on choosing child-care and child-placing services as well as providing the public with the regulatory history of these programs; and provide technical assistance on meeting and maintaining minimum standards to encourage the continual improvement of child-care programs.[34]

Licensing staff also conduct nearly 350,000 background checks each year. They perform criminal background checks and DFPS central registry checks on all child care staff, foster parents, adoptive parents, licensed administrators, home care providers, and anyone 14 years or older who will regularly or frequently be present at an operation while children are in care.[35]

Child Care Licensing has a set of minimum health and safety standards that regulate various residential child-care facility types as well as child-placing agencies. Both facilities and agencies are monitored through routine inspections, and investigations of all complaints, including abuse and neglect.[36] All DFPS child care facilities and agencies are assigned to one of three monitoring plans. CCL staff can increase their monitoring of a facility or agency based on its performance and the level of risk to the safety, health, and well being of the children placed there.[37] The facilities assigned to the high risk monitoring plan are inspected at least three times per year. Please see Appendix #5, Differential Monitoring Plan, for a more thorough examination of the policies which guide CCL staff in monitoring DFPS child care facilities and agencies.[38]

Increasing the quality of life for foster children is an ongoing and continuously changing process. CCL has been in the process of drafting revisions to the minimum standards for residential child care facilities and child placing agencies, and plans to have them all implemented by September 2005.[39] By increasing the minimum standards on DFPS facilities and agencies, children in foster care will be better served by the State.

The goals that CCL would like to accomplish by September 2005 include: improving the protection of children in foster care by setting clear, concise rules, written in plain language format, to enable consistent enforcement and compliance of minimum standards; consolidating all licensed facility types into three sets of standards (down from 8); encouraging a continuum of services to be offered within each license type by addressing the different service needs of children within the minimum standards; and consolidating oversight functions of CCL, Youth-for-Tomorrow, and CPS into a seamless monitoring system.[40]

Residential Child Care - Contracts

According to the Texas Administrative Code §745.35, residential child care is defined as the care, custody, supervision, assessment, training, education, or treatment of an unrelated child or children up to the age of 18 years for 24 hours a day that occurs in a place other than the child's own home.[41] Residential child care also includes maternity homes and child-placing agencies. The Texas Administrative Code §745.35 also states that contracting for residential child care by the DFPS is handled through contracts with licensed residential child-care providers that provide substitute care to children in the managing conservatorship of the DFPS.

The Contract Management Division at DFPS develops and manages statewide contracts for the agency. The purpose of a DFPS residential child-care contract is to:

- Establish the qualifications, standards, and terms of delivering specified services to children in contracted care

- To set the terms and conditions of operations and payment
- To specify the method of ensuring delivery of contracted services in the manner specified
- To protect the well-being of the child
- To enhance the child's functional abilities in a 24 hour substitute care setting
- To prepare the child for his/her permanency planning goal, by providing the following services as appropriate:
    - Routine child care which ensures the health and safety of the child;
    - Appropriate educational, recreational, and vocational activities; and
    - Behavior management, diagnostic services, and medically necessary health care services[42]

DFPS uses Youth for Tomorrow (YFT), a private, non-profit organization that contracts with the agency to provide services for children in 24 hour care as a third party evaluator to:

- Accurately assess the needs of children requiring 24 hour residential care
- Make clinical determination of the Service Level System necessary to meet the child's treatment and service needs
- Match each child's needs with an appropriate Service Level
- Authorize a Service Level consistent with identified treatment and service needs
- Authorize and reauthorize services within these 24 hour residential care settings
- Conduct quality assurance monitoring of the 24 hour residential care
- Monitor the 24 hour residential care provided in an objective, professional and reliable manner[43]

Legislation enacted by the 2003 Texas Legislature requires HHSC to absorb all health and human services contract functions into the Health and Human Services Commission.[44] Child Protective Services' contracts fall into two major categories: residential services contracts and purchase of services (POS) contracts.

Residential services contracts require private caregivers to provide DFPS-referred children with an array of services including daily childcare, appropriate educational, recreational and vocational activities, behavior management and diagnostic services, and medical care. The Contract Management Division managed 295 residential contracts across the state worth a budgeted $285 million in fiscal year 2003.[45] POS contracts are used to obtain services for DFPS staff, such as training for staff and foster parents, YFT evaluations, and services

such as psychological counseling and psychiatric care for children under the agency's direct care. DFPS received $93 million in appropriations for POS contracts for 2004-05.[46]

The procurement method for contracts is open enrollment. In practical terms, this means that any individual or facility that meets minimum DFPS licensing requirements, and receives a DFPS license can seek contracts to provide residential care without undergoing a bidding process.

DFPS, like all agencies under the administrative guidance of the Health and Human Services Commission, is exempted from most general state purchasing requirements. Since the September 1, 2003 reorganization of health and human services, agencies under the HHSC "umbrella" must follow the commission's guidelines, which require agencies to document that their purchasing decisions consider a number of factors including costs, quality, reliability, value and probable vendor performance.[47]

Contract monitoring by the DFPS is implemented through the Risk Assessment Instrument (RAI) which is developed by the Contract Policy Division (CPD) to capture levels of risk.[48] DFPS policy states that on an annual basis, every residential child-care contract is to be examined using the residential child-care assessment/targeted monitoring tool to determine the appropriateness of renewing the contract. In addition to this visit, their contract renewal decisions depend heavily on Child Care Licensing (CCL) inspections and investigations. Contract managers consult a computer database to review each facility's licensing status and violation history to check compliance with minimum standards, the Service Level System, and the terms of the contract.[49]

CCL workers may notify contract managers informally through email or telephone correspondence when serious licensing violations, such as incidents of child abuse, occur in a contract facility. CCL staff may place providers on probation when considering whether to revoke their licenses, but caseworkers do not always stop placing children there, depending upon whether they consider the children's health or safety to be at risk.[50]

Advancing Residential Childcare Project (ARC)

The DFPS has many ongoing projects which serve the purpose of evaluating and improving the quality of care and service that foster children receive from the State. The ARC project is one of those initiatives. ARC is a joint venture of the Health and Human Services Commission (HHSC) and the DFPS dedicated to: implementing an integrated philosophy and approach to residential childcare centered on individual child needs; improving and streamlining the monitoring of residential childcare services; promoting the development of best practices in residential childcare services; and using outcome data to improve the system of care in Texas.[51]

There are many sources of input being considered in the development of the ARC project. DFPS has dedicated full-time professional staff; HHSC is providing direction and support; and DFPS is actively seeking input from childcare professionals in the public and private sectors, other state agencies, advocacy groups for children and families, and consumers and others interested in the safety and well-being of the children of Texas.[52] The goals of the DFPS are clearly stated in the ARC project. The safety and well-being of the children is

paramount, and all decisions affecting them should be based on their best interests. DFPS believes that residential childcare services should focus on the need to protect children and keep them safe, as well as to improve their well being and performance.

The ARC project is designed to increase the DFPS commitment to protect and serve foster children. DFPS has developed several goals designed to achieve the mission of the ARC project, including: accurately assessing the needs of children; recognizing and building on the strengths of children and their families; encouraging family involvement; teaching age appropriate life skills; preparing children for the future through educational/vocational opportunities; moving children toward their permanency goals; creating a system of care that is culturally competent; promoting placement stability by bringing services to the child; measuring and utilizing outcome data to improve the system; and fostering a system that values the contributions of both public and private agencies.[53]

The first objective of the ARC project was to review and revise the level of care system which was being used by DFPS. In September of 2003, DFPS converted the six levels of care to four service levels as required by Rider 21 of House Bill 1, 78th Session (See Appendix 6 for a comparison of Levels of Care vs. Service Levels). This conversion improved service to foster children by: shifting the focus of the system from a child's behaviors to a child's needs; adding permanency as a key concept; expanding the definitions to include all children; and laying the groundwork to expand services to children in home-based care.[54]

Another objective of the ARC project is the development of residential childcare standards that better address the needs of children, including the consolidation of license types and the incorporation of the new service levels. Revised standards are being developed at implemented throughout the year with the help of the DFPS Licensing Division and other stakeholders in the foster care system. Furthermore, the ARC project is developing a quality assurance system to evaluate outcomes of individual children placed by DFPS in out of home care. DFPS will evaluate these six outcomes in 2004 to measure the success of the State's system of care:

- The child is safe in care, measured by the percentage of children in placement with no validated abuse or neglect by caregivers.
- The child moves toward permanency, measured by the percentage of moves that a child makes to a less restrictive or permanent placement.
- The child is cared for in his or her own community, measured by the percentage of children cared for in the region of conservatorship.
- The child is placed with siblings when appropriate, measured by the percentage of sibling groups in non-restrictive care in the same foster home or facility.
- The child maintains/improves in adaptive functioning, measured by the percentage of children at the Basic Service Level or moving to a lower service level.

- The child maintains behavior without the use of psychotropic drugs, restraints, or seclusions, measured by the percentage of children maintaining behavior without use of these interventions.[55]

Along with monitoring the six desired child outcomes, the ARC project has developed a prototype for a quarterly report that will aggregate the data on each outcome at the individual provider, region, and statewide levels. The ARC project is also working with CPS Division staff to develop a placement tool that will assist CPS in selecting the best placement option available for each child removed from the home and placed in out of home care.[56] (For more information on the ARC project, which will continue on through September 2005, visit www.e-provider.org.)

COMMITTEE JURISDICTION AND GUIDELINES

The Committee was given the jurisdiction to examine the current child welfare and foster care system in Texas, with an emphasis on the following:

- Determine barriers to adoption, specific to minority children in foster care. Determine activities that will increase the recruitment and retention of racial and ethnic minority families as foster care providers.

- Evaluate means by which the State may promote substitute care with relatives of a child who is removed from the home by Child Protective Services.

- Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps, and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies within the Texas child welfare system.

The issues that the committee was charged with addressing remain prominent. Throughout the interim, these issues have received much media attention, and have been widely discussed in legislatures across the nation. As the committee began studying, and in some cases re-examining these topics, other less widely reported, yet just as important issues began to surface. The committee quickly realized that it was crucial to set up a list of goals and rules in order to ensure that the three interim charges were thoroughly examined.

The following points are the expectations, acknowledged limitations, and foundational rules that the committee laid out to begin studying child welfare and foster care issues:

- The committee will conduct 1-2 meetings per interim charge. Members will include concerns and suggestions raised based on constituent contacts, and meetings with advocacy groups, foster parents, and other interested parties.

- By the beginning of the 79th legislative session, the committee will have the resources necessary to make desired changes. The goal here is twofold: to educate the entire legislature on the important and often problematic issues facing the foster care system in Texas; and to make recommendations to the legislature regarding legislation that could be introduced and passed that would provide the necessary means to correct some of the issues relating to child welfare and foster care.

- The committee realizes that in one year it will not feasibly be able to solve all of the problems within the foster care system in Texas. In fact, the

committee realizes that it won't even have the time to hear, nor have they been charged with examining the full scope of all of the child welfare and foster care issues in this State. However, the committee feels strongly that the issues that it has been charged with examining are an excellent starting point for addressing current problems within the system. The committee's main goal is to thoroughly examine the interim charges and hear every side to all of these issues.

- The committee cannot and will not study individual cases. Testimony on policy changes and concerns with policy will be the focus of the committee's efforts to make changes to the current child welfare and foster care system.

With the foundation set and the procedural rules in place, the committee began to hear testimony from several experts in the fields of child welfare and foster care. At the same time, each committee member continued to receive information regarding the peripheral issues that directly affected the interim charges (i.e. individual constituent cases regarding Child Protective Services). All of this information has contributed to making the recommendations in this interim report.

In the following pages, this report will outline the background to each interim charge. It will also provide a summary of testimony, including concerns, criticisms, feedback, opinions, observations, and recommendations to alleviate the problematic issues of each charge. The report will conclude with recommendations for legislation to address these issues in law.

HOUSE COMMITTEE ON CHILD WELFARE AND FOSTER CARE, SELECT

INTERIM STUDY CHARGES

I. Determine barriers to adoption, specific to minority children, in foster care. Determine activities that will increase the recruitment and retention of racial and ethnic minority families as foster care providers.

II. Evaluate means by which the State may promote substitute care with relatives of a child who is removed from the home by Child Protective Services.

III. Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies within the Texas child welfare system.

Charge Number One

Determine barriers to adoption, specific to minority children, in foster care. Determine activities that will increase the recruitment and retention of racial and ethnic minority families as foster care providers.

Background

Achieving permanency and safety in a child's life are the ultimate goals for everyone working in the child welfare and foster care field. However, statistics have shown that the number of children in the Texas foster care system waiting for a safe adoptive home continues to far out-pace the number of consummated adoptions.[57] In fact, in 2003, there were 3,766 children who were legally free for adoption, meaning that parental rights have been terminated on all parents and the permanency plan for the child was adoption, yet only 2,444 of them were adopted.[58]

Although The Federal Adoption and Safe Families Act requires the State to locate adoptive homes for foster children, the success in accelerating these efforts to match the growth in foster care continues to fall behind what is needed. Texas has dramatically shortened the time in which children wait in foster care to become legally freed for adoption since the inception of permanency legislation in 1998. However, the time it takes for a child who is freed for adoption to be secure in an adoptive home is getting longer, and the child typically experiences over three different moves before getting to a permanent home.[59]

The Committee on Child Welfare and Foster Care is presenting this issue to the legislature because we believe strongly that Texas can and must do a better job of getting foster children adopted. Not only would this benefit the children by providing them a loving, safe, secure and permanent environment from which they can realize their dreams, but it would also produce cost savings for the State.

Summary of Testimony

Testimony was taken on the first interim charge on March 24, 2004. Invited testimony was provided by the DFPS; One Church, One Child; Texas Alliance of Child and Family Services; Adopt2000; Spaulding for Children; Lutheran Social Services of the South; and Advocacy, Inc. The Committee also heard testimony from several members of the public and other experts on the issues outlined within the first charge. Much of the testimony provided to the Committee listed common barriers to adoption, including: lack of funding and incentives, lack of a true symbiotic partnership between the public and private sectors, lack of information and resources being disseminated to interested adoptive families, and an inefficient system with a backlog of paperwork that often turns once eager families away from adoption. The following pages will outline important pieces of information including background, initiatives, opinions and recommendations that will not only shed light on the problems, but also offer some remedies to remove the numerous barriers to adoption in the Texas child welfare system.

DFPS Adoption Overview

DFPS provided the Committee with background on the initiatives and accomplishments relating to adoptions in the State of Texas.[60] Because 63% of foster parents eventually adopt the children that they care for, the DFPS believes that the best opportunity to have a child placed in a permanent home is to recruit new foster parents. In their presentation, the Commissioner and Deputy Commissioner of the DFPS, Thomas Chapmond and Karen Eells respectively, outlined the steps that a family must take in order to become adoptive parents. Those steps include:

- Family inquires about adoption
- Family attends pre-service training
- Home study completed
- Family approved to adopt

DFPS staff also noted that the agency does not charge fees for adoptions and that legal fees associated with finalizing the adoption (court petition and filing fees for example) are paid for by the adopting family. The Committee was also provided data on children who are legally free for adoption (parental rights have been terminated on all parents and the permanency plan is adoption), and on the adoptions that were consummated. The adoption recruitment report as of August 31, 2003 includes the following information on the 3,766 children who were eligible to be adopted:

SERVICE LEVEL	
Basic	1,442
Moderate	1,512
Specialized	451
Intense	33
Not Leveled	328

SEX	
Female	1,678
Male	2,088

ETHNICITY	
Anglo	1,086
African American	1,317
Hispanic	1,306
Other	57

AGE	
under 1 year	90
1 year	330
2 years	241
3 years	216
4 years	209
5 years	220
6 years	195
7 years	202
8 years	229
9 years	242
10 years	257
11 years	304
12 years	278
13 years	271
14 years	207
15 years	159
16 years	91
17 years	25

Statistics provided by the DFPS show that since 1999, the number of consummated adoptions have been steadily increasing, and as previously mentioned, in fiscal year 2003 there were 2444 consummated adoptions. Following are some important characteristics of the consummated adoptions in 2003:

LEVEL OF CARE (now Service Levels)

- LOC 1 1,656 Basic (LOC 1 and 2) 1,861
- LOC 2 205
- LOC 3 292 Moderate (LOC 3 and 4) 350 approximately
- LOC 4 115 Specialized (LOC 4and 5) 66 approximately
- LOC 5 9
- LOC 6 0 Intense (LOC 6) 0
- Unleveled 167 Unleveled 167

CHARACTERISTICS

1,413 children may have one or more of the following characteristics: Emotionally Disturbed (DSM Diagnosed), HIV Positive/AIDS Diagnosed, Infant Alcohol Addiction, Infant Drug Addiction, Medically Fragile - Diagnosed, Mental Retardation - Diagnosed, or Physical Retardation - Diagnosed.

1,767 children are part of a Sibling Group (2 or more children from the same family)

The DFPS also provided to the Committee information on the disruption and dissolution rate for adoptions. Disruptions occur prior to consummation of adoption, and dissolutions occur after the adoption is consummated.

Year of Initial Adoptive Placement	Total Adoptive Placements	Cumulative Disruptions Through 2/03	Cumulative Disruption Rate through 2/03	Cumulative Dissolutions through 2/03	Cumulative Dissolution Rate through 2/03	Intact Adoptive Placements through 2/03	Intact Adoptive Placement Rate through 2/03
1997	1,330	89	6.69%	25	1.88%	1,216	91.43%
1998	1,742	95	5.45%	51	2.93%	1,596	91.62%
1999	2,227	100	4.49%	45	2.02%	2,082	93.49%
2000	2,046	114	5.57%	15	.73%	1,917	93.70%
2001	2,268	115	5.07%	11	.49%	2,142	94.44%
2002	2,402	96	4.00%	2	.08%	2,304	95.92%

All families that adopt DFPS children are eligible to receive post adoption services that

include but are not limited to: parent training, respite care and residential treatment. For those children who are over 2 years old and are a minority; over 6 years old and Anglo; part of a sibling group; or have been diagnosed with a medical or emotional disability, the DFPS provides other benefits to parents willing to adopt. These other benefits include an adoption subsidy, Medicaid, and a tuition waiver if they attend an in-state college or university.

The adoption subsidy is intended to reduce barriers to adoption of children with special needs, and they consist of three components:

- Reimbursement of up to $1,500 of non-recurring adoption expenses (court costs, attorney fees, travel expenses, etc.)
- Medicaid coverage for the child, and
- Monthly financial assistance when needed.
    - The average payment amount for the month of December 2003 was approximately $485.
    - 16,293 children received adoption subsidies in December 2003.
    - Adoption subsidy agreements are in effect until the month of the child's 18th birthday.[61]
- The average adoption subsidy paid per child in fiscal year 2002-2003 was $461.46, and in that same fiscal year, 285 children were adopted that the State did not pay an adoption subsidy for.
- The total amount (in dollars) of adoption subsidies paid in fiscal year 2002-2003 is as follows:

Adoption Subsidy Payments	89,884,402
Adoption Subsidy Non-Recurring Costs	2,174,284
Total	92,058,686

Recruitment efforts by DFPS to locate families for children are critical in accomplishing the State's goals of permanency and safety. Every child in Texas who is legally free for adoption should have an equal opportunity to be placed in a permanent home. But for children with special needs, the wait for loving families who can provide them with the extra patience and support they need is unfortunately long. The DFPS recognized this as disturbing, and thus established the Texas Adoption Resource Exchange (TARE) (www.adoptchildren.org). Through TARE, children with special needs and families who are willing to adopt them are brought together in a user-friendly and time-efficient manner.[62]

Texas has been a leader nationally in developing this web-based forum for posting pictures and short biographies of special needs children awaiting adoptions. TARE allows families across Texas and throughout the United States with current and approved home studies to submit interest forms on children listed on the website.[63] TARE matches prospective adoptive families with children who are legally free for adoption (children in the managing conservatorship of the DFPS). Children are registered in TARE by DFPS staff, who first attempt to match children and parents statewide and, if necessary, out of state. Recruiting qualified adoptive parents is not an easy task. DFPS staff would rather have waiting families than waiting children. Staff would also like to have at least three adoptive families to choose from for each child or sibling group waiting in foster care. Through TARE, children with special needs spend less time in temporary foster care.[64]

TARE Services include:

- promotes the statewide exchange of adoption information;
- uses a toll-free Foster Care and Adoption Inquiry Line (1-800-233-3405);
- obtains and compiles demographic information about children listed in the exchange;
- places photo and profile of all TARE children in the DFPS web site;
- places photo and profile of all TARE children in the NAE's "Faces of Adoption" internet site and the adoption.com internet site if the child can be placed out of state;
- provide specialized recruitment activities;
- coordinates the TARE Family Network (TFN);
- participates in the Maury Povich Adoption Show annually; and
- participates in the annual NACAC poster for Adoption Awareness Month in November

Children Awaiting Adoption According to TARE as of October 15, 2003

Total number of children:	665
Number of children with disabilities:	602
Percentage of children who have disabilities:	92%
Percentage of children who have more than one disability:	70%

Along with the information provided on TARE, DFPS also outlined the initiatives that they have instigated to remove barriers to adoption:

- Faith Based Recruiting - the concept of recruiting and verifying two families per congregation who are interested in adopting
    - ❖ Develop support services for these families within the congregation

(transportation to school and other events, day care, respite care for the parents, and parent counseling for example.)
    - ❖ Expand community-based partnerships
- Targeted Recruitment
    - ❖ child specific recruitment efforts
    - ❖ efforts are focused on reaching out to families with similar demographics of children waiting to be adopted
    - ❖ highlight older children, children with disabilities and siblings to stress their need for permanency
- Participate in the national recruitment efforts of AdoptUSKids
    - ❖ receive and respond to inquiries from prospective foster and adoptive families
    - ❖ potential to increase families interested in fostering or adopting children from Texas

One Church, One Child

One Church, One Child, Inc. (OCOC of Texas) is the State umbrella organization under which all One Church, One Child entities in Texas are united. OCOC was founded over 24 years ago in Illinois, prompted by an increasing number of homeless, abused and neglected children. The founder of OCOC, Father George Clements, recognized that many societal ills were taking a toll on children and families in the African American communities in Chicago:

- children were being court ordered into the child welfare system due to the abuse and/or neglect by their primary caregivers;
- there was a growing number of single parent families who were struggling to adequately provide for their children; and
- there was a wide-spread and infectious problem of substance abuse and addiction in many inner-city neighborhoods

Out of these troubling conditions grew the concept of One Church, One Child. Father Clements observed that there were over 700 African American churches in Chicago, IL and approximately 500 African American children in need of a permanent home. He noted that if one family from each church would adopt one child, the problem would be eliminated. The OCOC concept soon began to catch on, and Clergy from many different faiths began to deliver the adoption message. The OCOC concept worked. At its inception in 1980, there were a staggering 1000 children awaiting adoption, and by 1987, there were 150.

The Illinois OCOC model was introduced to Texas in 1994, and continues to operate as a non-profit organization today. OCOC believes that their method of specialized recruitment and training, along with their 26 years of combined experience in successfully supporting and retaining minority families for the foster and/or adoption of minority children will continue to grow and flourish in Texas. Since 1995, OCOC Texas has recruited and trained over 500 families and has been directly responsible for placing over 300 children in permanent adoptive homes. The overriding recruitment strategy that OCOC employs is based on the premise that minorities (particularly African Americans) have historically taken care of their own through informal adoption arrangements. By understanding the sociological and ideological reasoning behind this behavior, OCOC has been able to utilize this concept to help prospective families step forward to do what they have always done, but now through a formal process.[65]

Testimony provided by OCOC (OCOC was represented by Rev. Carl Lewis, Father George Clements, Rev. John Bowie, Martha Roane, Jeanette Willis, Annette Greene, and Virginia Crook) references a report produced by the W.K. Kellogg Foundation (based on structured dialogue groups consisting of African Americans, Latinos/Hispanics and Native American Indian professionals from a variety of fields) in the mid 1990's that lists the main barrier to the adoption of minority children as the child welfare system's lack of culturally competent workers at every level of service. OCOC believes that it is imperative that individuals of like culture be hired to work within the child welfare system among these populations. OCOC also testified that the stringent requirements for family, especially grandparents, to adopt their kin need to be eased. OCOC pointed out that with the easing

of the State requirements, more families would be able to consummate adoptions and that the major paperwork backlog would be alleviated. OCOC noted that there are plenty of families that are ready and willing to adopt, but they have been prevented from doing so by the unreasonable and complex paperwork that the DFPS requires.

OCOC presented to the Committee their goals and strategies for the continued success of their program:

- target areas across Texas where minority children in foster care are in the highest numbers and/or where there are high percentages of potential foster/adoptive minority families
- focus on strengthening the current network of faith-based congregations and minority communities and on expanding the network to adequately address the negative issues that affect the children today
- expand the base of recruitment venues:
    - ❖ utilize "in-house" volunteers within faith-based congregations as child advocates
    - ❖ partner with other minority community organizations
    - ❖ maintain close working relationships with other minority advocacy and adoption groups
    - ❖ recruit prominent community leaders, politicians and volunteers to help educate the general public about the need for adoption
    - ❖ nurture relationships with various local television and radio personalities and stations as well as newspaper columnists to help keep the community informed about adoption

Referring to a National Adoption Attitudes Survey published by the Dave Thomas Foundation for Adoption, OCOC noted that of the 800 survey participants that have considered adoption, 48% of them thought of their place of worship as a key source for information and advice about adopting children. The Dave Thomas Survey also reported that while a large percentage of Americans have considered adopting, a significantly smaller percentage of them actually adopt. This reality may be a reflection of the following concerns and wishes that adoptive parents had about adopting children out of foster care (based on answers provided by the Dave Thomas Survey participants as reported by OCOC):

- 77% wanted health insurance coverage for the child's pre-existing conditions
- 69% said access to a variety of educational and informational materials would be critical
- 57% requested support groups for the child
- 50% said counseling services for adoptive parents and support groups for parents were needed

OCOC also noted that Americans have other concerns about adoption that must be addressed in order to increase the number of those who would consider adopting (these are also based on the Dave Thomas Foundation for Adoption Survey):

- four out of five Americans (82%) would be concerned that the birth parents would take the child back (though extremely rare after the adoption has been finalized)

- 50% of Americans said the cost of adoption was a major concern
- 49% listed having the financial resources needed to raise a child as a major concern
- 37% were concerned about the amount of time the child spent in foster care

OCOC stressed the need to quickly put these concerns to rest or significantly minimize them by providing factual information to alleviate the concerns of prospective adoptive families. However, OCOC concluded their testimony with the following list of concerns that they feel act as barriers to fully implementing and/or reaching their goals:

- In August 2003, all OCOC affiliates in Texas (except Dallas/Ft. Worth) lost their DFPS funding and are currently operating solely on the contributions and donations of supporters. Of those that lost DFPS funding, none have adequate resources to properly carry out the OCOC mission.
- Almost daily, families call with an interest in adopting and/or fostering but OCOC does not have adequate staff to process them.
- In some areas that OCOC services, they have recruited numerous families, but have left them empty-nested because the average time it takes CPS to complete their mandatory home study is more than one year.
- In other instances, families have been left empty-nested and have been told that the reason was because there were no available children in their area to place in their homes.
- Families often become disillusioned and distrustful because of long waiting periods and drop out of the process. This has a negative impact on OCOC because they invested a lot of time and resources in recruiting and training the families, but are unable to carry the process any further.
- Since most OCOC ministries in Texas have insufficient funding, those operating them are doing so voluntarily and cannot devote the amount of time necessary to run the ministry adequately or to accelerate the process of becoming a child placing agency.
- Because they have not yet become a child placing agency, they continue to lose families and credibility.

Texas Alliance of Child and Family Services

The Texas Alliance of Child and Family Services (the Alliance) is a 28-year old non-profit membership organization representing organizations that provide direct services to children and families in Texas. Their member agencies are primarily focused on serving children and families who are in the Texas child welfare system, or are at-risk of entering the system. Program services cover the full array of care including: adoption, foster care, residential treatment, emergency care, and prevention services. The mission of the Alliance is to improve the quality of service to children and families through quality care and advocacy. The Alliance offers extensive training programs as well as public policy research and education.

Nancy Holman (Executive Director of the Texas Alliance of Child and Family Services) represented the Alliance and provided the following facts and testimony on their behalf.[66] She noted that private non-profit child placing agencies began to play a larger role in finding adoptive homes for foster children in 1998, with the onset of the new permanency laws. Fees were established to pay agencies to find adoptive homes and finalize adoptions approved by the State. Public / private collaborations were established, such as Adopt2000 in Houston in an effort to increase the adoption of waiting children, but efforts were strictly controlled by dollars. While private agencies dramatically increased their role moving children to adoption, placement of children in private adoptive homes was controlled by funding availability and a system that gave preference to public agency homes.

The many roles that the private adoption agencies play in the public/private partnership are crucial. Adoption agencies raise private dollars to defray part of the cost of each adoption and to help underpin the recruitment and awareness campaigns that are so critical to a successful adoption program. In addition to bringing pro bono community involvement to the table, agencies seek out and receive grants to develop innovative programs that break down the barriers to adoption. Mobilization of the community behind the adoption movement is best exemplified by the Adopt2000 initiative which raised $1.4 million in addition to countless hours of pro bono services.

All of these resources and partnerships are currently in jeopardy of falling away unless a financial commitment to stabilize private sector adoption programs is made, so they can continue to expand the capacity of adoptive homes and more importantly move children into those homes. The success achieved over the past several years requires a consistent presence in the community and an expectation that families coming forward to adopt can reasonably expect to receive a child. However, The Alliance believes that the current environment does not support these efforts.

The Alliance also referred to the Dave Thomas Foundation for Adoption study that was previously discussed in the testimony provided by OCOC as what they feel are barriers to adoption:

The Alliance testified that Texas has not fully maximized the federal resources that would allow the State to knock down several of the barriers to adoption. The federal government initiated a new grant program in 1997 to encourage states to move eligible children quickly from the public child welfare system to adoptive homes. The Adoption Incentive Payments Program, created as part of the 1997 Adoption and Safe Families Act (ASFA), awarded bonus grants to states based on the increased number of children adopted over the previous best performance year, with an additional bonus awarded for adoption of children with special needs. The legislative authority for the existing program expired at the end of Fiscal Year 2003; however, Congressional support for the program was so strong it was reauthorized as the Adoption Promotion Act of 2003. The Adoption Promotion Act of 2003 reauthorized the existing program for five years, through FY 2008, and a new targeted bonus was added to promote the adoption of children over age nine. The program authorizes $43 million for FY 2004.

The specific bonus awards available to states that outperform their best year since the FY 2002 "baseline" adoptions in each category are as follows:

• A bonus payment of $4000 for each child adopted over the previous best year since FY 2002 total number of adoptions.
• An additional bonus of $4000 for each child age nine or older, which exceeds the number of older child adoptions.
• An additional bonus of $2000 for each child with special needs under age nine that exceeds those adoptions.

Texas has received a grant award each year from the federal government but the amounts have dwindled since the onset of the program. The largest grants received in 1998 and 1999 were the result of state efforts to move a backlog of children out of the system as mandated by Texas permanency legislation enacted in 1998. Historically, adoption bonus grants were used to pay private agencies for their contracted adoption work and this provided the seed capital needed to build the valuable public/private partnership that exists today. However, dwindling awards in the last few years have not been enough to cover the cost of the growing private sector role in adoptions, and have led to the tight fiscal environment that contributes to the growing number of children waiting for adoptive homes.

The Alliance provided the Committee with several recommendations that they feel will help to alleviate the adoption problems in Texas. As previously mentioned, adoption will not only provide children with a permanent home, but it will also save the State as much as $7600 each year (per child) when a child with basic needs moves from the foster care system to an adoptive home. The Alliance stressed the need for investment in private agency adoptions, and noted that the money will be reimbursed to Texas by the federal government if Texas sets adoption goals and engages its private agency partners to achieve those goals.

The private sector has proven to be a solid capacity builder for Texas in both foster care and adoption. In FY 2004 the payment structure for contracted adoption services was revised to increase efficient use of funds. Under the new payment program, the fee for a child adopted by his foster parent aligns perfectly with the per child federal adoption grant of $4000. Thus the cost of engaging private agencies is an equitable approach for the State, and the cost of expanding contracted adoptions can be reimbursed through federal grants if specific performance goals are met.

The Alliance also stresses the need to use private funds as a federal match. Private non-profit agencies raise private funds to offset the cost of providing adoption services. In addition, agencies receive foundation grants to assist with special projects and outreach efforts. The State should certify these funds through private contracts to use as a general revenue match for additional federal funds. The Alliance noted that DFPS retains all authority to match and approve adoption placements. Private agencies recruit families but have no control over moving children quickly to these families, and many available and interested families never receive a child. This was also a complaint of OCOC. Financial constraints drive the public process to delay placements with agency homes, often leaving children longer in the foster care system, or forcing them to move from an appropriate private foster/adopt home to one in the public sector.

The Alliance also believes that the State needs to eliminate the 90 day wait period, thus decreasing a child's time in foster care. Currently, the Texas Family Code directs DFPS to seek private agencies' adoption services specifically for children who have been available for permanent placement for more than 90 days. The Alliance testified that by amending the Family Code to direct DFPS to seek these services when adoption becomes the permanency plan and/or at the point of termination, it would accelerate the process and move children more quickly to adoptive homes, shortening their time in foster care.

(This chart was provided by The Texas Alliance of Child and Family Services on March 24, 2004.)

Adopt2000

Adopt2000 is a public/private collaborative, created in 2000, for the purpose of increasing adoptions of waiting DFPS children in the Houston District foster system. Adopt2000 is a sponsor project of the Greater Houston Community Foundation, a non-profit 501 (c)(3) public charity through which individuals, families, organizations, and corporations support the well-being of the community.[67] The partner agencies of Adopt2000 include:

- Catholic Charities
- DePelchin Children's Center
- Homes of St. Mark
- Houston Achievement Place
- Lutheran Social Services of the South
- Spaulding for Children
- Child Protective Services – Houston District

Laurie Glaze, the Managing Director of Adopt2000 provided testimony to the Committee on behalf of her organization. She noted that while it is true that adoptions continue to grow in number, adoption activity is not keeping pace with foster care growth. As previously mentioned, from fiscal year 1999 to 2003, foster care experienced a 45% increase in the number of children in foster care. During this same time period, children legally free and available for adoption increased by 64% while adoptions experienced a 9% increase in the number of children placed. Adopt2000 feels that if successful permanency in a timely manner for waiting children is to remain a valued outcome, adoptions must be a high priority, and DFPS must recognize the importance of private child placement agencies. Adequate and consistent funding must be available that would enable child placement agencies to increase their expertise, develop and implement high quality marketing/recruitment and service delivery programs, and develop long-term community collaborations.

Through the Adopt 2000 collaborative, the following results have been achieved:

- Between 2000-2003, approximately 2,000 children in DFPS Region 6 were placed with adoptive families;
- Between 2000-2002, placements by DFPS and child placement agencies increased by 23%;
- In 2003, in spite of no pay period from May through August, child placement agencies' placements still increased by 5% over previous year;
- Between 2000-2003, 69% of children placed by child placement agencies were minority and 32% were between the ages of 6-17;
- Between 2000-2003, the average number of days from initial placement to adoption consummation decreased from 1,181 to 1,021 (13%);
- Program activities among Adopt 2000 partner agencies include joint pre-service training and support groups for foster and adoptive parents, joint recruitment activities, and joint professional training for staff and foster and adoptive families.

Despite their many achievements in facilitating a growing number of adoptions in Texas, Adopt2000 feels that under the current payment system, child placement agencies are not receiving adequate reimbursement to cover program costs or to enable them to build capacity in their adoption programs. Additionally, under the current DFPS mandate that private child placement agencies' families are considered only after a 90-day internal identification process, agencies are not able to match many appropriate families with waiting children. Through a sampling of seven child placement agencies that are providing adoption services to DFPS children, it was determined that there are approximately 251 families approved and waiting to adopt, either through the foster/adopt or straight adoption model. Adopt2000 pointed out that if only 75% of these families adopt 1.5 children, placement with these families would result in permanence for 282 waiting children.

Communities, through child placement agencies and public/private collaboratives, contribute millions of dollars in an effort to ensure that waiting children have adoption opportunities. To ensure that adequate funding is available for adoption services, DFPS must recognize the impact of these dollars and the importance of child placement agencies to the success of any adoption program. Public/private collaboratives have the ability to: increase the number of children achieving permanency through adoption; maximize federal funding and community dollars; and develop and implement long-term community partnerships and awareness campaigns.

Adopt2000 concluded that adequate funding for contracted adoption services is mandatory if Texas is to continue the progress made in finding adoptive families for children who have been abused, neglected, or abandoned. Adopt2000 provided the following recommendations to the Committee:

Design the Public/Private partnerships to:

- increase the number of children achieving permanency through adoption;
    - Treat the foster/adopt model as a best practice model - with priority given to foster parents who seek to adopt;
    - Move waiting children to permanent placement in a timely manner;
    - Designate single source entities that provide continuum of care and permanency;
    - Recognize that private child placement agencies have very stable professional workforce and are mission driven as opposed to DFPS, which must respond to the immediate needs/issues of the community. The stability of the private sector ensures that there will be a continued high priority given to adoption needs.
- Maximize federal funding and community dollars.
    - Provide stable funding sources to child placement agencies.
    - Provide incentives to child placement agencies for placement of highest at risk children, reducing days in care, etc.;
- Develop and implement long-term community partnerships and awareness campaigns;

- Child placement agencies have the ability to establish long-term community partnerships for needed funding and for purposes of marketing/community awareness/recruitment and service delivery programs. These are relationships and funds that are simply not going to be available to DFPS.
- Design culturally sensitive recruitment initiatives aimed at increasing adoption opportunities for minority children;
- Use all resources - keep a high level of community visibility that is on-going, including television, radio, outdoor boards, internet, newspapers, community activities, recruitment/information activities, churches;
- Ensure that child specific recruitment information can be easily accessed and utilized.

Spaulding for Children

Spaulding for Children is a private child welfare agency that is dedicated solely to providing permanency for children in the foster care system. Spaulding has placed over 1,200 foster children in adoptive homes in the agency's 26 year history. Spaulding recruits, trains, and prepares willing families who wish to adopt children from the foster care system, and then provides support for those families throughout the entire adoption process. Prospective families are recruited in Houston (Spaulding's main office) and South Texas (in Corpus Christi) and matched with children throughout Texas, and in a limited number of cases, throughout the United States. DFPS reimburses Spaulding approximately 75% of the cost of each adoption, and the remainder is funded through private sources.[68]

Todd Landry, the President and CEO of Spaulding for Children represented the agency before the Committee. He provided the following statistics on the children that Spaulding has placed into permanent adoptive homes in 2003:

- Of the nearly 100 children placed in 2003, the average age was 7
- In 2003, 75% of the children were minority or bi-racial
- Over 40% were Hispanic or Hispanic bi-racial in 2003

Spaulding has done an excellent job in placing minority children in adoptive homes. Part of their success stems from the fact that 1/3 of Spaulding for Children staff is bilingual (Spanish/English). Spaulding has also been a partner in two federal Adoption Opportunity Grants over the past four years focusing on the recruitment of Hispanic/Latino families for waiting children. Of the aforementioned 3,766 children waiting for an adoption placement in Texas, 38% of them are Hispanic (1,356), with the heaviest concentrations in South Texas, Houston and El Paso. Spaulding listed the following barriers to adoption in the Hispanic/Latino community:[69]

- Many eligible Hispanic families are unaware of the adoption needs of waiting children
- Strong familial roots and the practice of *compadrazgo* (god-parenting) lead to eligible families not coming forward to adopt
- Historical and current lack of a system designed to reach the Hispanic population, including language and cultural barriers
- Experiences in country of origin and in US keep many from seeking contact with government agencies
- Status of parents in the Hispanic community also needs to be addressed - how many potential parents must be legal citizens?

Spaulding listed several solutions and results that they feel will remove some barriers to the adoptions of minority children. Spaulding would like to see an increase in the usage of the private sector in recruitment efforts targeting the Hispanic population. Landry cited the *Familias Para Ninos Project* in Houston which led to over 1,000 interested families and the placement of 126 Hispanic waiting children over a three year period as a specific example of a successful private sector recruitment tool. Spaulding would also like to see the faith

based community more actively engaged in working with the private sector in placing children in adoptive homes. Landry cited a 1999 study by Bausch & Serpe which revealed that 79% of respondents believed that a religious leader would be very or somewhat influential in informing Mexican Americans about adoption.[70]

Spaulding for Children also noted that providing culturally sensitive adoption specialists with a similar ethnic background and language drastically increases the recruitment capabilities of that worker. Spaulding also testified that it is important to provide prospective families with culturally sensitive support groups, both formal and informal, to buffer stress by providing information, concrete assistance, and emotional support to interested families.

As Laurie Glaze with Adpot2000 mentioned, keeping the media involved is a crucial aspect to providing the general public with information on the need for adoptions. In this light, Spaulding has partnered with Univision (Ch. 45 Houston) to air weekly children's profiles that are eligible for adoption. These profiles yielded over 200 inquiries in the first two months of 2004.

Many of the solutions that Spaulding has identified can only be achieved through an increase in the private sector capacity to provide for an abundance of families who are ready and eligible to adopt. In 1998, Spaulding for Children embarked on a plan to increase private sector adoption capacity with its *Texas CAN!* program (Texas Collaborative Adoption Network).

This program was designed to allow traditional foster care agencies to subcontract with Spaulding for Children. This in turn enabled foster care agencies to immediately offer adoption as an option for its foster families, as well as contributing to the foster agencies' adoption abilities allowing them to work towards creating their own adoption contract with DFPS. From 1998 to 2003, the *Texas CAN!* program generated the following results:

- 16 foster agencies partnered with Spaulding for Children through the program
- 214 adoptive placements of children by their foster families
- 9 agencies developed the necessary expertise to apply for and receive a DFPS Adoption Contract

DFPS discontinued the subcontract ability in April of 2003 due to funding constraints, thus halting the progress of seven agencies to build adoption expertise. Spaulding noted that this in turn has resulted in fewer adoptions by current foster families and an unnecessary constraint on the private sector.

Spaulding listed the following recommendations to the Committee:

- Increase the private sector capacity by providing additional training and support to private foster care agencies that are interested and willing to expand their focus to adoption. Also, ensure that any substantive increases in adoption placements are accompanied by an increased capacity in the private sector.
- Direct DFPS to remove the subcontract restriction in order to increase adoptions by foster families; this too would increase private sector capacity.
- Take advantage of national efforts:
    - ❖ Increase recruitment nationwide of adoptive parents with the AdoptUSKids Collaborative (Spaulding and DFPS are partners)
    - ❖ Use the already established private agency collaboratives including Adopt2000 and the San Antonio, Austin, and South Texas Collaborative Adoption Network

In summary, Spaulding feels that unless Texas develops and nurtures a strong public/private partnership in adoption, the State will run an ever increasing risk of failing to adequately move children out of the foster care system. It is their contention that it is cost-effective in both the long and short term to use the private sector to increase adoptive placements. Spaulding noted that it is essential that the State prioritize the movement of children out of the system at least as high as the movement of the children into the system.

Lutheran Social Services of the South, Inc.

Karalyn Heimlich, the Executive Director of Domestic Adoption, and Irene Clements, the Associate Vice President for Family Services provided testimony for Lutheran Social Services of the South, Inc. (LSS).[71] LSS is a non-profit child placing agency that has been facilitating adoptions since the early 1940s. During that time, it has facilitated over 5,400 adoptions of domestic and international children of all ages and ethnic backgrounds.

Between 1994 and 2002, Lutheran Social Services and Marywood Children and Family Services joined forces to form the African American Adoption Program with the sole purpose of recruiting African American families to adopt. During this time, LSS collaborated with the Marketing Department of the University of Texas at Austin to develop a marketing plan. A part of the development of this plan involved contacting successful African American Adoption programs in other states. Based upon this research and issues raised in focus groups, LSS found that the following barriers surfaced on a regular basis:

Barriers

- Misconceptions regarding who can adopt, what a prospective parent must own to be approved and the cost of adoption
- Slow response time once the family makes the first call
- Excessive paperwork and rigid pre-placement training requirements
- Lack of knowledge about the support services that are available to families who adopt children with special needs such as on-going adoption assistance, the non-recurring adoption subsidy, Medicaid, post adoption services, tax credits and college tuition benefits
- Fear of the difficulties and challenges that older children being adopted are perceived to have
- Funding

As previously mentioned in testimony provided by The Alliance, with the initiation of the Adoption and Safe Families Act and the federal government's incentive program, the public and private sector began collaborating in an effort to increase the number of adoptive placements. The partnership between the public and private sector created a greater opportunity to emphasize the recruiting of foster/adopt families so that children would not have to move from one home to another.

These partnerships have helped to address many of the barriers to minority adoption that LSS has identified. LSS saw an increase in placements from 55 in 2000/2001 to 113 in 2002/2003. Placements of African American children increased from 27% to 29%, Hispanic children from 27% to 34% and children aged 6-12 from 16% to 25%. LSS believes that these increases are a direct result of public/private coalitions, expanded capacity in private agency foster homes and the promotion of foster/adopt placements. According to LSS, some of the most significant benefits coming out of the collaboration are:

- Grant funding – Adopt2000 has raised over a million dollars for adoption promotion and service coordination, the Adoption Coalition of Texas has raised $62,300 in

seed money to replicate the Adopt2000 model in Austin and the San Antonio coalition has done likewise. Some of this money is targeted specifically for outreach in predominantly minority areas.

- Shared labor – increased the amount of PR that can be done without staff burn-out
- Greater staff expertise - the private sector does not have the turnover rate that CPS does, and, therefore brings added expertise to the program
- A regular, consistent, on-going public awareness campaign using a variety of techniques that reach out to minorities
- Frequent and flexible training schedules
- Quicker response time – callers are distributed evenly among the coalition members so that no agency is so overwhelmed that its response time is impaired and prospective families are lost

LSS believes that private child placing agencies are doing a good job of finding families for young minority children; and believes that they need to continue this since every young child that gains permanency is a child that will not grow up in the system. There is however, much work to be done in placing school-age children and teenagers. A number of agencies in other states have been successful in finding families for these children through child-specific recruitment. This is a slow and costly process (Canyon Acres Children Center in California estimates that it costs $10,000 per child to recruit the family) and requires a significant commitment of time and effort on the part of the adoption staff. This, however, may be the key to finding permanency for children who will not otherwise be adopted. LSS believes that this model can be replicated in Texas but will require additional funding.

Most of the public/private coalitions have been in existence for four years or less. The increases in minority placements are significant and will continue to rise if the coalitions keep growing stronger. LSS would like to see that the following problems are addressed so that the coalitions can grow stronger and increase the number of minority adoptions:

- Provide stable state funding for placement and post-placements services that comes reasonably close to meeting the cost of providing the service – private agencies must be assured that they will be reimbursed for the services provided to families. Grantors will fund public awareness activities, advertising, etc. if, and only if, there is a stable source of income that will sustain the program.
- Create an even playing field - private sector families must be considered along with CPS families for any waiting child regardless of age. A successful recruitment campaign is not only based upon the number of people that can be brought in the door but on the agency's ability to respond. DFPS, as a cost saving measure, has mandated that its own families must be considered first. If private agencies must start selecting the families that they can serve based upon what families CPS has available, it will undermine the very basis on which a coalition is built. A coalition cannot succeed if all members are not on equal footing.

Advocacy, Inc.

Richard LaVallo, an attorney with Advocacy, Incorporated provided testimony on the Committee's charge regarding removing the barriers to minority adoptions.[72] Advocacy, Incorporated is an advocacy group that promotes fair and equal treatment for Texans with disabilities, and relating to this charge, Advocacy, Incorporated is committed to finding permanent homes for children with disabilities who are in the foster care system.

Richard LaVallo's testimony focused on adoption subsidies for foster children with disabilities. He noted that in section 162.302 (c) of the Texas Family Code, the Legislature has stated that the intended benefit of the adoption assistance program is to provide foster children with the stability and security of permanent homes and to reduce the costs paid for foster care. The DFPS Board has adopted a payment ceiling or cap for adoption assistance subsidies. If a child is served at a basic foster care level, the ceiling is $400/month or $13.33/day. If a child is served at a Moderate level or higher, the payment ceiling is $545/month or $18.16/day. This amount is lower than the $20/day that is paid to foster families under the basic foster care rate.

Advocacy, Incorporated is concerned about the foster children who need a higher level of care, and are currently being served at the moderate and specialized foster care rates. Because of their disabilities, it is Advocacy, Incorporated's contention that foster children with disabilities require higher adoption subsidies in order to be placed with adoptive families.

Foster children with special needs are listed on the Texas Adoption Resource Exchange ("TARE"). TARE is a referral and photo-listing service operated by DFPS designed to recruit adoptive homes for special needs children. As previously mentioned, these are children who are considered "hard-to-place" because of their ethnic background, age, membership in a minority or sibling group, medical conditions or physical, medical, or emotional disabilities. Based on Advocacy, Incorporated's analysis of the children listed on TARE, (See the chart below, "Children Waiting for Adoption According to Texas Adoption Resource Exchange.") as of October 15, 2003, there were 665 special needs children listed as being eligible for adoption; 602 of which have disabilities. Advocacy, Incorporated is concerned that a significant number of these 602 foster children with disabilities will not be adopted because the adoption subsidy is too low to help their prospective adoptive parents meet their needs.

Richard LaVallo pointed out that Federal law 42 U.S.C. § 673(a)(3) provides that the adoption assistance payment may be up to the amount that the child would have received in foster care. This is reflected in the U.S. Department of Health and Human Services Children's Bureau Child Welfare Policy Manual which provides that, "The amount of the adoption subsidy cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the State or local Title IV-E agency. …The IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the adoption assistance payment is determined through the discussion and

negotiation process between the adoptive parents and a representative of the state agency based upon the needs of the child and the circumstances of the family."

Advocacy, Incorporated recommends that adoptive parents for special needs children with disabilities who require a moderate or specialized level of care be given adoption subsidies up to the amount that their foster parents would have received in foster care payments. Advocacy, Incorporated provided the chart below titled "Recommendation for Adoption Subsidy" to illustrate their recommendations to remove the barriers to minority adoptions in Texas. Advocacy, Incorporated noted that their recommendation on adoption subsidies is consistent with section 162.302(c)'s intended benefit of the adoption assistance program of providing the stability and security of permanent homes to foster children with disabilities and reducing the cost of foster care.

CHILDREN WAITING FOR ADOPTION ACCORDING TO TEXAS ADOPTION RESOURCE EXCHANGE*

TOTAL NUMBER OF CHILDREN:	665
NUMBER OF CHILDREN WITH DISABILITIES:	602
PERCENTAGE OF CHILDREN WHO HAVE DISABILITIES:	92%
PERCENTAGE OF CHILDREN WHO HAVE MORE THAN 1 (ONE) DISABILITY:	70%

*Based on children as of October 15, 2003

RECOMMENDATION FOR ADOPTION SUBSIDY

	Payment to Child Placing Agency	Payment to Foster Parent	Payment to Same Family who Adopts	Savings to State
Moderate Level				
Per Day	65.00	35.00	35.00	30.00
Per Month*	1,950.00	1,050.00	1,050.00	900.00
Specialized Level				
Per Day	85.00	45.00	45.00	40.00
Per Month*	2,550.00	1,350.00	1,350.00	1,200.00

*30 days per month

These charts were provided by Advocacy, Incorporated for the purpose of illustrating their recommendations on removing barriers to adoption, specific to minority children.

Summary of Public Testimony

Several concerned child welfare advocates, stakeholders and other interested members of the public also testified before the Committee in regards to interim charge number one. Recommendations from the public include:

1. DFPS must ensure that each child entering the child welfare system is adequately and thoroughly assessed within the first 30 days of initial contact and before initial placement. Adequate testing includes psychological, medical and daily functioning assessment.

    a. This would reduce placement breakdown and unnecessary and costly multiple placements.
    b. This would also increase foster/adopt home retention and satisfaction. To recruit and retain adoptive African American families, policies and procedures must be sensitive to their needs and cultural context.

2. DFPS should make use of what research tells us about the types of families most likely to adopt children with special needs.

3. Encourage DFPS to modify their procedures to screen in, rather than screen out, prospective adoptive families. DFPS should respond quickly to all inquiries and adjust office hours, group meeting times and procedures for child-specific recruitment.

4. DFPS should seek out the community leaders and partner with them to gain access to minority communities. This type of community outreach will help spread the word about the need for adoption. [73]

5. DFPS and the Department of Public Safety (DPS) should partner and work together on expediting criminal background checks on prospective adoptive parents. Because DFPS is not currently online with DPS, the background checks are too long and may discourage some people from adopting.

6. The State should work on trying to eliminate poverty, as poverty elevates the risk of being subjected to abuse or neglect.

7. Children are coming in the front door faster than they are getting out the back door. The child welfare and foster care system is experiencing a huge backlog that must be fixed. DFPS should use the adoption subsidy aggressively to lower the costs of foster care.

8. Increase the amount of money in the adoption subsidy each year, this will save foster care dollars and increase the speed of permanency for children waiting for adoption.

9. The State should add funding to the DFPS Prevention and Early Intervention programs, as this will in turn lower foster care costs.

10. The State should improve the representation of parents in the court system. By providing good lawyers for parents, the State will be doing a huge service to the children.

11. DFPS should recruit caseworkers who are fluent in Spanish, and train current caseworkers in Spanish as well.[74]

12. The State should not receive an extra financial incentive for adopting out every "special needs" child. This may result in the targeting of ethnic minority children, and may also lead to more and more children being diagnosed and treated for mental disabilities simply as a way to collect more money in the form of special needs adoption bonuses.[75]

13. DFPS should address the low conversion rate from the prospective parent's first contact with the agency to actual licensure, and to understand why their licensure is decreasing while the private agency licensure is rising significantly.

14. DFPS should clarify their messaging to attract families who are most likely to be successful adoptive placements and to better reflect the care needs in the agency population.

15. Bridge the gap between the time it takes for a child to enter care (22days) and the time it takes to license a potential foster family (one year).[76]

16. The State cannot afford to allow the "red tape" that exists between DFPS and faith based child foster/adopt organizations to continue to stifle their efforts to place foster children in loving, permanent homes.[77]

17. DFPS should focus on working with the families and providing better in-home safety services, parenting classes, and prevention programs as opposed to removing children and placing them into the foster care system. The State could save a substantial amount of money by focusing more on family services and less on removal.[78]

18. DFPS should closely monitor and reduce the amount and dosages of psychotropic medications that foster/adopt children are placed on.[79]

COMMITTEE RECOMMENDATIONS

Determine barriers to adoption, specific to minority children, in foster care. Determine activities that will increase the recruitment and retention of racial and ethnic minority families as foster care providers.

1) The Committee recommends that DFPS eliminate the 90-day waiting period for adoptions. By removing this barrier, a child's time in foster care would decrease, and the opportunity to provide permanency would be accelerated. The Committee directs DFPS to maximize using private CPAs to complete adoption of children in DFPS managing conservatorship immediately when adoption becomes a child's permanency goal. Currently, the Texas Family Code directs DFPS to seek private agencies' adoption services specifically for children who have been available for permanent placement for more than 90 days. By amending the Family Code to direct DFPS to seek these services when adoption becomes the permanency plan and/or at the point of termination of parental rights, it would quicken the process and move children more quickly to adoptive homes, shortening their time in foster care. DFPS should also set adoption targets to maximize Federal Funds available under the Federal Adoption Promotion Act. DFPS is directed to reinstate the expansion of open enrollment adoption contracts and develop jointly with private CPAs target goals for the number of adoptions completed annually. When private agencies are responsible for at least 50 percent of all adoptions; DFPS shall begin transitioning out of adoption services, with complete transition at the end of three years. DFPS should also qualify individuals as adoptive parents prior to providing adoptive training. This will reduce cost by not training individuals to become adoptive parents who are not qualified to become adoptive parents.

2) HHSC, which currently controls rate-setting, should review adoption subsidies for special needs children with disabilities to ensure that there is a fair and adequate rate for potential parents of these children. According to the Texas Adoption Resource Exchange (TARE) website, as of October 15, 2003, there were 665 special needs children listed as being eligible for adoption; 602 of which have disabilities. Although these numbers will fluctuate throughout the years, historically, it has been safe to assume that a high percentage of special needs children awaiting adoption will also have one or more disabilities. The Committee's concern is that a significant number of these foster children with disabilities will not be adopted because the adoption subsidy is too low to help their prospective adoptive parents meet their needs. It is recommended that HHSC also consider providing adoptive families with access to paid respite services for the first year after consummation of adoption, and explore the funding of public education on adoption incentives, services and resources. Lack of knowledge about the support services that are available to families who adopt children with special needs (such as on-going adoption assistance, the non-recurring adoption subsidy, Medicaid, post adoption services, tax credits and college tuition benefits) have long stood as a barrier to many families that are considering adoption.

3) DFPS should continue to strengthen its commitment to true public/private partnerships. The Committee recommends that DFPS help increase private sector capacity by providing additional training and support to private foster care agencies that are interested and willing to expand their focus to adoption. The Committee recommends that DFPS treat the foster/adopt model as a best practice model - with priority given to foster parents who seek to adopt. DFPS should also help develop and implement long-term community partnerships and awareness campaigns in the private sector. Private placement agencies have the ability to establish long-term community partnerships for needed funding and for the purposes of marketing, community awareness, recruitment, and service delivery programs. Together, the public/private partnerships should design culturally sensitive recruitment initiatives aimed at increasing adoption opportunities for minority children, and use all necessary and available resources to ensure their success - keep a high level of community visibility that is on-going, including television, radio, billboards, internet, newspapers, community activities, recruitment/information activities, and faith-based organizations and groups.

4) The Committee recommends that only for families who receive state funded adoption subsidies, DFPS should require caseworkers to perform an on-site unannounced visit/check-up of the adopted child(ren) once a year until the child(ren) reaches the age 18.

5) DFPS is directed to review the average amount of time spent on a home study conducted by private providers. The agency should explore methods to reduce the amount of time it takes to conduct a home study, and expedite all future home studies. It is also recommended that DFPS develop and implement uniform home study standards, and HHSC should determine an adequate amount of financial payment to reimburse private providers for conducting home studies.

6) DFPS should improve the TARE website by requiring appropriate timeframes for posting an adoptive child (30 days) and removing a child from the website upon adoption (7 days). Adoptive families must be contacted within 48 hours of contacting the website with interest in adopting a child. DFPS should also add privacy protection to the children portrayed on the TARE website by eliminating all individual medical diagnoses and any personally identifiable medical information. This information should be treated as confidential and should only be provided privately to parents who are interested in adopting that child.

Charge Number Two

Evaluate means by which the State may promote substitute care with relatives of a child who is removed from the home by Child Protective Services.

Background

Title IV-E of the Social Security Act provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards. Under state law, the court is required to place a child removed from the child's custodial parent with the child's non-custodial parent or with a relative of the child unless placement with the non-custodial parent or a relative is not in the best interest of the child.[80]

Although the fundamental belief that the State should act in the best interest of the child upon removal from their biological home remains constant, there are differing opinions on where the child should be placed upon removal by CPS. Again, permanency and safety are the ultimate goals in child welfare. Substitute care is an extremely delicate issue with one side holding firm to the belief that the State should uphold parental rights in every case, and give parents the benefit of the doubt while they are being investigated for abuse/neglect. This side believes that the parent should have direction on where the child should be placed if their parental rights are to be terminated. It is their contention that family provides the best option for placement because the child will be familiar and comfortable with their relatives. The shock of being removed from their parents will be easier to bear and the child will be better suited to adapt and flourish with their own family.

The other side believes that the child should be removed and placed in a foster home or facility away from the reach of the alleged abusers and their family. This side feels that by allowing the alleged perpetrators to choose where the child will be placed, they will further increase the risk of abuse by choosing a relative who will either allow the perpetrator back into the child's life or will further abuse the child themselves. This side holds strong to the theory that the apple doesn't fall too far from the tree. If the parents abuse the child, they learned that abuse from their parents and so forth. They believe that the child will only be safe and achieve permanency away from their biological family.

However, as with most incidents in life, there is no one-size-fits-all formula that can be used each and every time, in every removal situation. Both sides hold valid arguments, but again, in these cases it is crucial that the DFPS, the Judges and all stakeholders treat every case individually. All sides must acknowledge the many pieces of the child's life and try to keep the puzzle whole while providing the highest level of protection and stability. This issue is complicated and requires careful consideration. Mistakes made here, on the front end of the child protection system, can lead to a lifetime of heartache and pain for the children and families that the State is charged to protect. We present this issue to the legislature for careful review, as the children of this state are the future of this state, and Texas cannot afford to raise a generation of unloved and forgotten children.

Summary of Testimony

Testimony was taken on the second interim charge on June 2, 2004. Invited testimony was provided by the DFPS; Texas Center for Family Rights; Judge John Specia; Texas Kin-Care Task Force; Casey Family Programs; AARP; TexProtects, TX Association for the Protection of Children; Texas Foster Family Association; Texas CASA; Justice for Children; Reverend Jerome Milton; and Scott McCown, Center for Public Policy Priorities. The Committee also heard testimony from several members of the public and other experts on the issues outlined within the second charge. Much of the testimony provided to the Committee listed concerns with CPS not following the law and placing children with relatives after they have been removed from their home, poor placement decisions by CPS, the legal limits of caseworkers, and the safety and best interests of the child upon entry into the foster care system.

The following pages will outline important pieces of information including background, initiatives, opinions and recommendations that will not only shed light on the problems, but also offer some remedies to help promote substitute care with relatives of a child who is removed from the home by CPS.

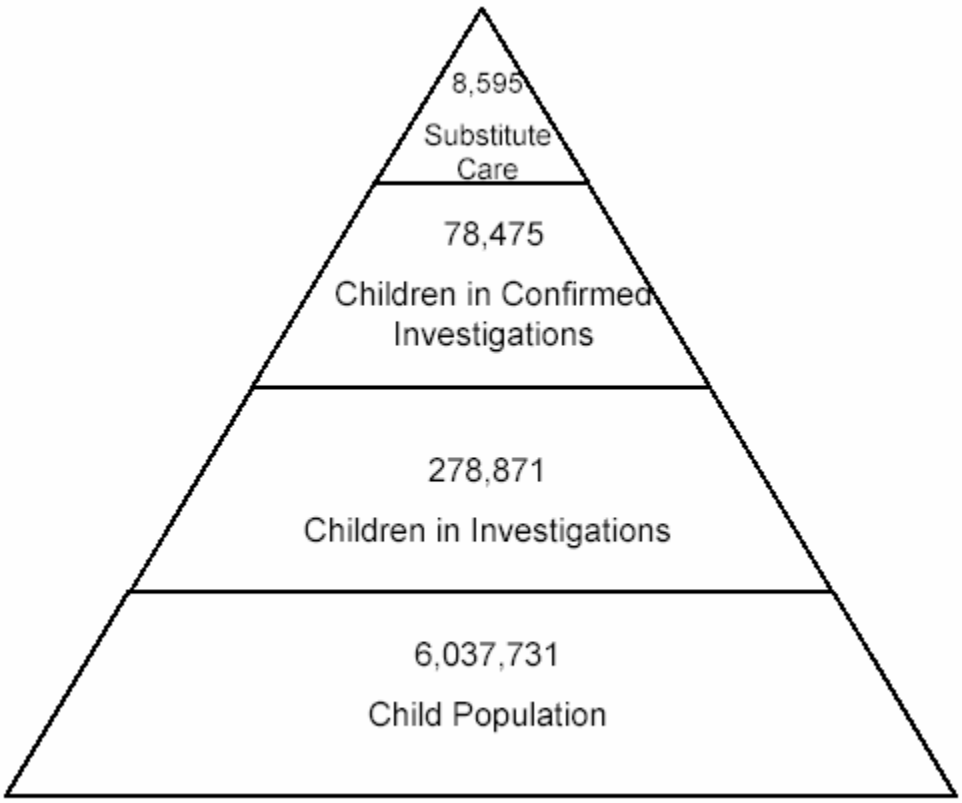
DFPS Stages of Service

DFPS has many policies in place regarding the removal of children from their homes that are designed to protect the children from further harm and distress. At every step in the removal process, DFPS is required to work with the families to help make the situation easier for the children as well as the parents. CPS policy dictates the following points:

- If children need to be temporarily away from their home for safety during the investigation, CPS may ask parents to voluntarily place their child in safe kinship care of the parents' choice.
- During the CPS investigation, CPS is to identify potential kinship placement resources and;
    - ❖ Complete background checks including criminal history and abuse/neglect history
    - ❖ Perform abbreviated risk assessment of potential family placements

Thomas Chapmond and Karen Eells, the Commissioner and Deputy Commissioner of DFPS respectively, represented the agency before the Committee.[81] They noted that 96.9% of children involved in CPS investigations remain in their home, and that CPS works with families to use kinship care voluntarily during an investigation. During an investigation, alleged perpetrators can voluntarily leave the home in order to avoid removal of the child. DFPS provides Family Based Safety Services to families and children in their own homes to protect the children from abuse and neglect; help the family reduce the risk of abuse or neglect; and either avert the removal of the children from their home or make it possible for the children to return home.

During initial staffing for Family Based Safety Services, relatives are identified for possible placement in the event risk of harm increases to the children and removal is unavoidable. According to DFPS records, 32,664 children received services in their own homes during FY 2003. Of the 32,664 children that received DFPS services, the chart below shows that 8,595 children ended up in substitute care.



Fiscal Year 2003

When a child is placed in substitute care, CPS policy requires DFPS to identify and locate relatives and to assess willingness and suitability to care for the child. CPS policy also outlines the issues to consider in all placement decisions, including:

- preferential placement with non-custodial parents or kinship caregivers
- the child's best interest
- the child's permanency plan
- the caregivers ability to meet the child's needs
- the setting best suited to meet the child's needs
- the child's or youth's preference
- the least restrictive, most family-like setting available
- close proximity to the child's home
- placement with siblings

The kinship assessment process entails several crucial steps. CPS staff members first identify potential kinship placement resources and complete background checks as well as criminal history and abuse/neglect history of the potential kin caregiver. The assessment process continues when CPS completes reference checks and the kinship home-study. After the assessment is complete, CPS makes a recommendation on the placement of the child. DFPS statistics show that in FY 2003, 1,389 children that were removed from their homes were initially placed with relatives. In that same fiscal year, 5,561 children were placed from foster care to a kinship placement, and as of February 29, 2004, 5,470 (24.1%) of children in DFPS conservatorship were living at home or with a relative.

There are both federal and state Laws that direct the DFPS in how to handle kinship placements as well as permanency placements of children in general. Title IV-E of the Social Security Act requires the agency to document the steps that they are taking to find an adoptive family or other permanent living arrangement, which includes a fit and willing relative, for children in foster care. When the child's permanency plan is termination of parental rights and adoption, State law directs DFPS to begin the search for qualified persons to adopt the child and report to the Court the agency's efforts to find qualified persons (TFC §264.206). State law also establishes that when possible, DFPS should place siblings in the same adoptive home (TFC §162.302). The Court is prohibited from naming DFPS as permanent managing conservator for the child unless the court first finds that appointment of a parent, a relative, or another person would not be in the child's best interest (TFC §263.404). DFPS is to develop Swift Adoption Teams, that attempt to place for adoption a child with an appropriate relative (TFC §264.205). Following award of Permanent Managing Conservatorship (PMC) to the DFPS, the court conducts placement review hearings every 6 months to review appropriateness of placement, additional plans or services needed to meet the child's needs, and DFPS efforts to finalize the permanency plan (TFC §263. 501 and §263.503).

Given the parameters of both the federal and state laws, DFPS has several permanency planning options to choose from in order to place a child in permanent care. Those options include:

- Family Reunification
- Alternative Family Placement
    - Adoption by a relative
    - Permanent Managing Conservatorship by a relative
    - Adoption by an unrelated family
    - Permanent Managing Conservatorship by an unrelated family
    - Care by a foster family with DFPS having PMC
    - Care in another family arrangement with DFPS having PMC
- Another Planned Living Arrangement
    - Independent living
    - Long Term Placement

There are several key issues in making a permanent placement. CPS policy states that the agency must search for potential relative placements but to always keep the best interest of the child in mind. If there are no relatives who are willing and able to adopt, or if the child

would be in danger of being harmed, DFPS will not place a child with a relative. Placement also depends upon the child's permanency plan, the potential caregiver's ability to meet the child's needs, and the child's or youth's preferences. DFPS tries to place the child in the least restrictive, most family like setting possible. If the child is part of a sibling group, DFPS tries to place the family members together. Barring any unforeseen circumstances, when these rules and considerations are put into practice, children have a higher probability of remaining in a permanent and safe setting.

DFPS provided the Committee with the following statistics:

- 10,410 children left DFPS care in FY 2003.
  - Of these children, 3,899 (37.5%) were reunified with their family.
  - 3,235 (31.1%) children had a permanent placement with relatives.
    - 621 through adoption
    - 2,614 through Permanent Managing Conservatorship

DFPS also testified about the State's programs that promote substitute care with relatives. The One-Time Grandparents Supplemental Benefits Program, administered by the Health and Human Services Commission (previously administered by Dept. of Human Services) allows a grandparent, age 45 or older, with an income at or below 200% of the federal poverty limit, to receive a one-time supplemental grant of $1,000. This $1,000 figure does not change, regardless of the number of children that are placed with the grandparents. In FY 2003, 1,587 grandparents caring for 2,833 children received these grants.

Another program that DFPS uses to promote substitute care with relatives is Family Group Decision Making (FGDM). FGDM is currently being used in 21 counties across Texas. The program entails including the child's family, DFPS staff, CASA, neighbors and other interested parties in the child's life participating together in a facilitated conference. The goal of FGDM is to assure safety, permanency and wellbeing for the child while maintaining family placement and/or support. FGDM also includes providing community-based resources that support families, as well as case management, training, and support services for families. FGDM sites by county include: Bexar, Blanco, Brazoria, Burnet, Chambers, Collin, Comal, Dallas, Hays, Jefferson, Johnson, Liberty, Llano, Lubbock, Montgomery, Nueces, Potter, Randall, Smith, Tarrant, and Walker. Some statistics on FGDM include:

- 101 family group conferences have been held for children who have been removed from their home:
  - 20 children (10.7%) decision was for the children to return home
  - 130 children (69.8%) decision was for placement with relatives
  - 36 children (19.3%), decision was for the children to remain in foster care

DFPS is also testing a Kinship Care pilot (authority given by HB 1, Rider 7 (c)) in Cameron, Hidalgo, Nueces, and Webb counties. The Kinship Care pilot provides a one-time payment of $1,000 to a qualified caregiver to be used to purchase beds, bedding, furniture, clothing, etc. The pilot also offers supportive services such as: training and case management services, family counseling services, day care services, and reimbursement of up to $500 per year for eligible expenses.

Texas Center for Family Rights

Gary Gates, Tom Sanders and Peter Johnston, the President of Texas Center for Family Rights (TCFR), as well as Keith Bower, the Pastor of Grace Community Bible Church provided testimony to the Committee on behalf of TCFR. TCFR's main concern with CPS in regards to substitute care is that they feel that while current law and policy allow parents to designate a substitute caregiver, in practice, CPS fails to aggressively apply this principle. As a result, TCFR feels that the State has failed to truly act in the best interests of children. TCFR testimony revolved around the following points:

Reasons for failure to promote care with a family member or friend:

- Assumption of guilt of parents causes distrust of family members to provide for safety of children
- Feeling of power and control over child when in CPS custody
- Feeling of power and control over family when child in CPS custody
- Financial incentives to have child in foster care

Reasons for need to promote care with a family member or friend:

- Children need strong stable ties to familiar surroundings, especially in a crisis
- Removal of children from families always causes trauma to the child
- Children are NOT safer in foster care
- Foster care is stranger care
- CPS has failed to act in the best interest of children in its oversight of foster care both in the State of Texas and nationally
- Perverse financial incentives with regard to federal guidelines color decisions regarding the best interests of the child
- Judicial independence has been compromised especially with unethical cluster court set-up
- Avoid class action law suit on behalf of children in Texas

Recommendations for Reform:

- Upon determination by CPS that removal is necessary, a parent or parents may designate another person to care for the child as an alternative to being cast into the strange world of foster care.
- The right to direct placement is retained by parent until the court terminates the parental rights.
- CPS provides a written safety plan to that designated person to properly care for and protect the child.
- Law enforcement agency assisting in an investigation may conduct a criminal background check on designated person and any other person in the designated person's household. Evidence of past sexual abuse, physical abuse or a serious felony would disqualify that person from caring for the child.

TCFR quoted the Texas Comptroller's Report of April 2004 which reviewed the many aspects of the DFPS and the Texas foster care system as a whole. The report notes that "Federal and state oversight agencies have reported on DFPS' troubles repeatedly, yet the problems remain. And simple patches will not fix them....The Comptrollers' review team found that the foster care system is failing too many children, from their placement, care and monitoring to the business processes that support them. The system reflects a legacy of weak leadership; an atmosphere of helpless acquiescence to the status quo; a reluctance to look too closely into dark corners; and a culture of self-protection and buck-passing."[82] It is TCFR's contention that DFPS' many problems outlined in this report have caused further harm to children in the foster care system.

TCFR referenced the Supreme Court decision *Pierce v. Society of Sisters,* 1925 which states that "the child is not the mere creature of the state" in order to set the foundation for their recommendations on providing parents with a true decision on directing CPS where to place their children upon removal. According to the Texas Family Code § 153.001, the public policy of this State is to: assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child; and to provide a safe, stable, and nonviolent environment for the child. TCFR listed several other legal precedents to provide the Committee with a background on the consistency with their stance on parental directives and public policy, including:[83]

- Texas Family Code § 153.003 states that a state agency may not adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent's child.
- U.S. Supreme Court, Wisconsin v. Yoder, 1972, states that the history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.
- U.S. Supreme Court, Troxel v. Granville states that the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made.
- Except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families (42 U.S.C.A. 671(a)(15)(B)).
- Texas Family Code § 153.002 states that the best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.

TCFR's basis for portraying the laws and public policy relating to substitute care with relatives is to note that CPS has not always followed the letter of the law. Their testimony progressed with the dangers of placing children in the homes of unrelated foster caregivers. TCFR cited a report by Richard Wexler, an authority in the field of child welfare, which stated that national data on child abuse fatalities show that a child is more than twice as likely to die of abuse in foster care as in the general population.[84] In the same report, Wexler also states that in reviewing other states' child protection agencies, the studies that detail abuse in foster care deal only with reported maltreatment. The actual amount of

abuse in foster care, according to Wexler, is likely to be far higher, due to the fact that agencies have a special incentive not to investigate such reports, since they are in effect investigating themselves.[85]

TCFR portrayed their concerns about removing children from their families, and provided the Committee with an abundant amount of research and legal decisions that documented the strain and stress that removal puts on children. They noted that children's own families are the single most powerful agent for ensuring their healthy development. Removing children from their families for any but the most compelling reasons breaks the critical bond that children need to develop their basic personal and societal identities TCFR further noted that children need close relationships with caring adults, however foster children rarely have the opportunity to form and sustain these close ties.[86] Citing information from the National Commission on Children, TCFR noted that placement with relatives is often a desirable arrangement for children who have been removed from their parents. Placement with relatives enables children to retain links to their families and may be less stressful than placement with unfamiliar adults and children.[87]

Based on the aforementioned testimony and research, TCFR listed the following recommendations for reform in directing CPS to follow parental directive and uphold parental rights upon allegations of abuse and removal of children:

- Upon determination by CPS that removal is necessary, a parent or parents may designate another person to care for the child as an alternative to being cast into foster care.
- The right to direct placement is retained by the parent(s) until the court terminates the parental rights.

TCFR also listed safeguards to the State:

- CPS provides a written safety plan to that designated person to properly care for and protect the child.
- Law enforcement agency assisting in an investigation may conduct a criminal background check on designated person and any other person in the designated person's household.
    - Evidence of past sexual abuse, physical abuse or a serious felony would disqualify that person from caring for the child

TCFR believes that if the State follows their recommendations, the following outcomes will be accomplished:

- For the child: there will be less trauma, the recommendations will prevent foster care abuse, ensure greater safety, and provide stability with familiar surroundings.
- For the parents and their parental rights: there will be confidence about their children's placements, confidence in the foster care system, less resulting job stress, and less long-term devastation.
- For CPS: TCFR recommendations will keep CPS abiding by the spirit of the law, help them overcome perverse financial incentives and have a reduced case load, and provide them with the ability to concentrate on true abuse cases.

Judge John Specia, 225th District Court

John Specia is the Judge of the 225th District Court in Bexar County as well as the Chairman of the Texas Supreme Court Taskforce on Foster Care. Judge Specia testified before the Committee regarding the various programs that he has been directly involved with in Bexar County that are showing dramatic improvement and success in child welfare.[88] Judge Specia testified that he is completely supportive of kinship care, and that he believes in assisting DFPS in placing children in removal situations with relatives because it is the least disruptive and least traumatic move by the State. He also noted that kinship placements avoid splitting sibling groups which often occurs in foster care placements due to limited space in licensed foster homes and facilities, and that oftentimes relative placements allow the child to stay in their community and maintain the cultural ties, schools and friends that they are accustomed to.

Judge Specia outlined the CREST (Comprehensive Relative Educational Support and Training) program that has been providing Bexar County with classroom instruction, training on parenting skills, support groups for parents raising foster children with special needs and a network of collaborating stakeholders in kinship care. There are six CREST workers performing these various services in 170 facilities. These facilities are not licensed DFPS homes, but are homes in which children have been placed with relatives who are serving as their caregivers. The CREST workers expedite the placement of children in kinship care by immediately performing a home study on the family and moving the process along as soon as a willing and able relative is identified. The CREST program currently serves 200 children in a relative placement setting. The many classes and services that are offered through the CREST program are not mandatory, and are individualized to the needs of specific families. Judge Specia testified that the CREST program is a direct cost savings to the State because it diverts children away from the foster care system and into the home of a relative, thus leaving foster homes open for children that may not be able to be placed with a relative. Judge Specia offered the following recommendations:

- Formalize placement with relatives legally. The State needs to create a mechanism for formal conservatorship to help relatives provide the best care for their kin.
- The DFPS must expedite the home study process for potential kinship caregivers.
- Family Group Conferencing, which takes the placement decision-making away from DFPS and places it in the hands of the family, should be funded statewide.
- The State needs to provide a pre-removal program for families, and to spend money to help families in crisis before removal is necessary to keep children out of foster care.
- In the most serious situations regarding the safety and wellbeing of a child before removal, CPS caseworkers should be in contact with the judge or law enforcement before executing the removal.
- Provide families with information on community resources prior to removal - this will provide families with more protections and knowledge that can prevent removal entirely.
- The DFPS needs to address the high turnover rates in CPS caseworkers, as well as their insufficient amount of training.

Reverend Jerome Milton, One Church, One Child of East Texas

Rev. Jerome Milton is a former foster child from San Diego County who spent 18 years in the foster care system.[89] He testified to the Committee that he was placed in 14 different foster homes and 2 reform schools where he endured mental, physical and sexual abuse. Kinship care was not an option when Rev. Milton was in the foster care system, and now he is doing his part to ensure that it becomes a staple of the system. Rev. Milton learned at a young age to never let his abuse be his excuse to not better the system that had failed him, and due to that philosophy, the Reverend has adopted 6 children and has placed several more in the homes of their relatives.

Like many of the other witnesses who testified before the Committee, Rev. Milton believes that if placing children in foster care can be avoided it should be, foster care needs to be the last resort. Rev. Milton also agrees that the home study process for relatives is too long and must be expedited. He noted that he is a believer in the solution revolution, that ideas and discussions should lead to the correct actions to help the children of this State. Rev. Milton believes that more training is needed for the caseworkers and foster parents as well as for the prospective kinship care providers. Adopting parents need training on issues such as the rules regarding adoption subsidies as well as on other supports that are offered to help with parenting classes and respite care.

Rev. Milton believes that the hopeless, voiceless and helpless children in foster care will continue to be failed by the system that is intended to protect them until the State says enough is enough and acts accordingly. He suggested that the DFPS should create a "most frequently asked questions" brochure to provide to prospective relative caregivers to ensure that they know the rules and laws as well as their rights in regards to providing care to their relatives. In conclusion, Rev. Milton noted that the laws and policies in place are good, they may need slight adjustment, but that the true problem is a lack of leadership, passion and caring within the State child welfare and foster care system.

Texas Kincare Taskforce

The Texas Kincare Taskforce (TKT) is made possible by funding to the Texas Department on Aging from the Brookdale Foundation, Relatives as Parents Program (RAPP). The RAPP is designed to encourage and promote the creation and expansion of services for grandparents and other relatives who have taken on the responsibility of surrogate parenting. Bruce Bower provided testimony on behalf of the TKT before the Committee. The TKT convened in 2002 with a major focus on improving the circumstances of minor children in Texas being raised by relatives other than their biological parents. Among other points, Bower noted that Texas has nearly 500,000 children living in households headed by grandparents or other relatives acting as the primary caregivers for the children. This number includes children who are not under any formal placement, children subject to guardianship or child custody orders, and children placed with relatives by the DFPS.

One of the primary goals of the TKT is to ensure that relatives are informed of the many helpful resources that are available to them after they have made the decision to take on caring for their kin. The TKT publishes two brochures in English and Spanish (*Kincare Choices in Texas,* and *Consent to Medical Treatment by a Non-Parent*) which relay useful information to potential kincare providers such as important definitions that establish the difference between various types of child custody as well as legal considerations for each type of custody. This information is critical in assisting potential relative caregivers in understanding the laws that will affect them, and as other witnesses had testified to, providing this information bridges a serious gap that can make a vast difference in the ability to care for a child. The Texas Cooperative Extension Service based at Texas A&M University, as a partner under the Brookdale Foundation grant, has also established several new kincare support groups and has developed the website "Grandparents Raising Grandkids" to assist the TKT in disseminating helpful information for kincare relatives and those that assist them.[90]

As previously mentioned, much testimony has revolved around the importance of the distribution and circulation of resources that can help to ease the burden on foster and kin caregivers. The valuable information provided on the TKT brochure *Kincare Choices in Texas* includes:

Kincare choices in Texas

- Managing Conservatorship (also known as child custody) - the legal action for managing conservatorship in Texas is called a "Suit Affecting the Parent-Child Relationship" (SAPCR). A court SAPCR can allocate custody, visitation rights, and child support.
    - ❖ Who can apply for a SAPCR - a person with actual care, control, and possession of the child for at least 6 months in Texas; a relative within the 3rd degree, if both parents are deceased.
    - ❖ Grandparents can also file a SAPCR if - the grandparent's child has been incarcerated and is found incompetent, or is no longer living; if the child has been abused or neglected by a parent; the child is delinquent, or has court ordered supervision; the grandparent requesting access to the child is the parent of a person whose parent-child relationship has been terminated; the

child has lived with the grandparents for 6 months within the past 2 years; or the parents of the minor child are divorced or have lived apart.

- Guardianship is a legal process designed to protect vulnerable persons from abuse, neglect, and exploitation.
- Parents are able to sign a consent to guardianship form, which simplifies the guardianship process.
    - ❖ If one parent of the child is still living: unless the surviving parent's rights have been terminated, the parent has been found unfit or incapacitated, the surviving parent is considered the guardian.
    - ❖ If the minor child is an orphan: if the surviving parent did not appoint a guardian, then the nearest relative in direct line is entitled to guardianship; if more than one relative exists, then the court shall appoint one of them, according to the best interests of the child; if the minor has no direct relative, the nearest kin shall be appointed, according to the best interests of the child.

Legal Considerations

- In a Conservatorship: Courts that hear family law matters are used to considering petitions for managing conservatorship (custody). Judges are used to routinely entering orders for visitation (possessory conservatorship), and child support. However, unless CPS is in the case, the court might not appoint an attorney to represent the child.
- In a Guardianship: Courts that hear guardianship cases can enter orders for managing conservatorship, visitation, and child support. However, some guardianship courts do not routinely handle these issues. In guardianship cases, the court must appoint an attorney ad litem to represent the proposed ward (minor).[91]

The TKT concluded that it is important to have kincare relatives and professionals learning and working together to: develop kincare support groups; build community partners; share emotional, financial, legal, and medical challenges facing children in kincare and the relatives providing that care; address issues facing kincare adults in the situation of providing care for minor children as well as elderly parents; address the differing concerns of older relatives as kincare providers versus younger kincare relatives; address the disability issues and educational issues in kincare; and to provide information on guardianship, conservatorship, and informal custody arrangements of kincare as well as the Texas aging network's services for kincare relatives.

Bruce Bower noted that much can be done to lighten the burden of kincare through providing information and through simplifying complex procedures. Texas Kincare Taskforce recommendations include:

- The State should continuously update and constantly provide better information to kincare relatives about currently available services and procedures
- The State should consider the material concerns of grandparents and other relatives who may need added benefits to provide a greater quality of care for the children in their care

- ❖ The Legislature should carefully consider tailored tax relief for children in kincare. TKT noted a possible sales tax relief for kin caregivers for items to be purchased for the child for up to one year.
- ❖ The Legislature should also consider a limited, one-time financial support to all kincare relatives of modest means as well as child care and assistance in setting up a kincare household and respite care for the caregivers.

- The Legislature should reconsider legislation such as HB 2059, 78th Legislature (by Villarreal) relating to providing supplemental financial assistance to certain primary caretakers of a child receiving financial assistance.[92]

Casey Family Programs

Casey Family Programs' (CFP) mission is to provide and improve, and ultimately to prevent, the need for foster care. Established by United Parcel Service founder Jim Casey, CFP is a Seattle-based national operating foundation that has served children, youth, and families in the child welfare system since 1966. CFP operates in two ways: they provide direct services, and promote advances in child-welfare practice and policy. CFP collaborates with foster, kinship, and adoptive parents to provide safe, loving homes for youth in foster care.[93]

Five goals shape the work of Casey Family Programs, and five values guide their actions.[94] The goals include:

- Permanence: CFP creates security for children and youth by finding them safe, loving homes and by encouraging lasting connections to their family, friends, and community.
- Transition: CFP prepares youth to successfully make the transition from foster care to independent living.
- Prevention: CFP works with parents to strengthen families and prevent the need for foster care.
- Disproportion of minorities: CFP promotes parity in opportunities and outcomes for minority children who enter the child welfare system in disproportionately high numbers, receive fewer services, and leave less prepared for adulthood.
- Indian child welfare: CFP supports American Indian and Alaska Native tribes working to develop and improve their own sustainable child-welfare systems.

The Casey Family Program values include:

- Diversity and anti-racism: CFP honors differences and confronts racism and discrimination.
- Innovation: CFP values agility and embraces thoughtful change. CFP staff continuously learns from experience, each other, and the community.
- Relationships: CFP strives to be good partners to develop, support, and preserve permanent family and community relationships for children and youth.
- Stewardship: CFP creates an environment of trust and accountability. They make strategic and fiscally responsible decisions for sustainable and lasting contributions.

David Davies, the acting director of the Austin field office of Casey Family Programs provided testimony to the Committee on behalf of CFP kinship care initiatives. He noted that CFP made a decision to move outside of only providing direct care to foster children and decided to address the broader needs of the community as well. In 2001, CFP began to offer case management and social services to families in need. This assistance includes:

- help paying for child care and vocational services
- tutoring and assessment for the children as well as child enrichment activities
- psychiatric evaluations of the children

- assistance in filling out important documents including Medicaid forms
- providing a monthly subsidy for kin acting as guardians or conservators to their relatives. Casey offers $250 a month for 1 child plus an additional $100 a month for each additional child in their care.

CFP typically engages families in community resources and offers their services to families for 6-18 months. Prior to closing a case, CFP ensures that the family has other resources and community assistance to maintain stability and provide for the best interests of the child(ren) in their care.

In July of 2002, CFP and the DFPS formed the Texas State Strategy collaboration, headed by the Strategy Leadership Team, which is comprised of leaders and staff from both organizations. The strategy team is focused on drawing upon the expertise of public and private agency staff, foster care alumni, kinship caregivers, community members, foster parents and others who understand both current needs and those services which will lead to better outcomes for children in foster care. The strategy team formed two subcommittees, and selected pilot programs in kinship care and transition to be selectively tested throughout the state in 2004.

The first of the kinship pilot programs is Project Serape, which is being implemented at four sites in South Texas. Various supports, resource connections, and caregiver training are the underlying hallmarks of Project Serape. A related case planning approach, Family Group Decision Making, is underway in selected sites in all DFPS districts. As previously mentioned, the Family Group Decision Making approach integrates structured case planning with involvement by birth families, youth, extended families and the community. CFP believes that they will be successful when the Texas child welfare system changes to better meet the needs of kinship families and youth in transition. CFP will measure their success by observing improved outcomes for youth and families rather than by simply noting changes in the systems themselves.[95]

AARP

Cruz Cantu, an AARP volunteer testified on behalf of AARP before the Committee regarding the grandparent's prospective on kinship care. According to AARP, more than six million children, approximately 1 in 12, are living in households headed by grandparents (4.5 million children) or other relatives (1.5 million children) across the United States. U.S. Census data from 2000 illustrated that 2.4 million grandparents are taking on primary responsibility for their grandchildren's basic needs. Many of these grandparents have assumed this responsibility without the parent of the child being in the home.

As previously mentioned, these grandparent and other relative caregivers often lack information about the range of support services, benefits and policies that they need in order to fulfill their care-giving role. In an effort to remedy this situation, a group of child and aging advocacy and research organizations have prepared *State Fact Sheets*, which provide helpful state-specific data and information relating to kinship care. Through the national partnership of AARP, the Children's Defense Fund, Casey Family Programs, National Center for Resource Family Support, The Brookdale Foundation, the Child Welfare League of America, Generations United, The Urban Institute, and Johnson & Hedgpeth Consultants, the following information has been compiled and released:[96]

- Census data on the number of grandparent caregivers and the children they are raising
- A comprehensive list of local programs, resources and services
- State foster care policies for kinship (grandparent and other relative) caregivers
- Information about key public benefit programs
- Important state laws
- National organizations that may be of assistance in kinship care

More than 2.4 million grandparents from all walks of life across the U.S. are currently providing kinship care to their relatives. These grandparents have put their own plans on hold, and have decided to take care of their grandchildren when the parents of those children could not. According to AARP, the majority of kin-caregivers are below the age of 60, and most think they are the only ones raising their grandchildren. Sadly, most don't even know where to get the help they need to provide the quality of care that the children deserve. Due to the lack of the sharing of information, AARP decided to create a centralized database, the AARP website, to provide potential grandparent kin-caregivers a list of concerns and recommendations.

One of the goals of AARP in disseminating these points of information is to ensure that grandparents can make a smooth transition into parenting again. The list includes very practical and useful information that will not only aid the grandparent kin-caregiver, but will also provide a strong foundation of resources to promote the healthy development of the child, including healthcare, education, and finances.

Recommendations and information from AARP include the following:[97]

- Legal Status - Some grandparents ask the courts to make them legal guardians for the grandchild they are raising. This allows them to make important decisions for the child including enrolling the child in school and giving permission for a doctor to treat the child. They can sometimes even get help to pay the bills. AARP advises prospective grandparent caregivers to ask an attorney to help them decide what legal status is best for their grandchild and themselves.
    - Potential Concerns - It costs money to change one's legal status. A son or daughter may object to the change, thus leading to a situation in which a judge may not allow it.
    - AARP has noted that many grandparents strongly believe that there is a possibility that their child will straighten up and be able to regain custody of the grandchildren, so they are very unlikely to push hard to change their legal status.
    - AARP suggests to the legislature that they consider providing a power of attorney to grandparents in order to delegate them with the responsibility to make educational and health related decisions regarding the kin in their guardianship care. AARP would like this power of attorney to be revocable in the event the parent becomes ready to care for the child again.

- Finances - AARP warns grandparents to not use their retirement savings to pay the extra bills that they now will be paying. Instead, AARP suggests finding out if it is possible to get assistance from a few government programs that are there to help people in their situation.
    - Social Security: the grandchild may be able to get a Social Security check each month. This may be possible if a parent has died or if the grandchild has a disability.
    - TANF: AARP also recommends that grandparent kin-caregivers look into getting help through the State's Temporary Assistance for Needy Families (TANF) program. If a grandparent receives TANF money for themselves, TANF rules state that one must get a job or do service work. Some states will waive the rules if you are near retirement age. One might also be able to get a waiver if their grandchild is very young, or if he or she has a special medical problem. Some states will waive the rules if you cannot find childcare for a child under 6 years old. A grandparent can avoid TANF's work rules by applying for a "child-only" grant which is easier to obtain. The State does not look at your income when it decides if a child can receive TANF funds. Instead, it only looks at the child's income, but the amount of the check is less.
    - Food Programs: The Food Stamp program provides coupons or a debit card that can be used to buy food. The Special Supplemental Food Program for Women, Infants and Children or WIC - is another federal program that provides money to buy food for young children. Also, AARP noted that if the grandchild is in school, the child may be eligible for a free breakfast or lunch.

- Earned Income Tax Credit from the IRS: A grandparent can receive the Earned Income Tax Credit if they have a job. A taxpayer with one child must earn less than $29,666 to get the credit, and with more than one child can't earn more than $33,692. A kin-care giving grandparent can also receive the Child Tax Credit. This credit lets them subtract $600 from their Federal tax for each child in their care. They must claim the child as a dependent, the child must be younger than 17, and must be a U.S. citizen.

- The Grandchild's Education - grandparent kin-caregivers are recommended by AARP to check with their local school to find out how to enroll their grandchild.
  - Get to know your grandchild's teacher. Tell the teacher about your grandchild's living situation, and ask the teacher to let you know how the child is doing in school.
  - Speak up if you think your grandchild needs special services to help him or her do better in school. Ask the school to evaluate the child. Work with the school to come up with a special education plan.

- The Grandchild's Health - Some kids have more medical needs than others, and all health services cost money. AARP suggests that grandparents use the following resources to help pay for their grandchild's health needs:
  - Medicaid is a program that pays heath care expenses for people with low incomes. Your grandchild may qualify to receive benefits from this program. If not, he or she may be able to get benefits from the Children's Health Insurance Program (CHIP). These programs pay for doctor visits, hospital stays, shots, and medicines. Most programs don't look at a grandparent's income when they decide if the child should get help.

- The Grandparent's Health - AARP notes that now that an elderly grandparent is raising their grandchildren, they must take extra steps to protect their own health.
  - AARP recommends that grandparents take time each day to relax; ask for help from friends and relatives; find a day care provider so they can get a break from care-giving; get regular checkups and take their prescribed medicines.
  - Most important, AARP reminds grandparent kin-caregivers to enjoy their grandchildren.

AARP believes strongly that the more knowledge that can be shared with potential grandparent kin-caregivers, as far as assistance with healthcare, education, and financesgoes, the more likely they will be able to provide outstanding care to their grandchildren.

Texas Foster Family Association

The Texas Foster Family Association (TFFA) is a 30 year old volunteer organization guided by these three principles: a belief in the value of children, the strength and importance of family, and the ability of foster/adoptive parents to help break the cycle of abuse and neglect. The mission of TFFA is to educate, motivate, and support foster/foster-adoptive parents and to be a united voice advocating issues which affect these families.[98] TFFA has made a positive impact on the quality of life for foster children. Their purpose to educate, motivate and support foster and foster/adoptive parents is strengthened by TFFA's goals, which include:[99]

- To improve the well-being of children and their families, especially foster children.
- To work in cooperation with public and private child welfare agencies to improve the foster care system of Texas.
- To encourage the training and education of personnel for work in the field of family foster care.
- To encourage the recruitment and the retention of foster parents.
- To advocate for viable reforms through the legislative process and public education.

- To promote understanding, coordination, and communication between those who care for children and the general public in order to enlighten society as to the problems of family foster care.
- To promote, whenever possible, the use of foster care in lieu of institutional care.
- To work to permit the foster family to function in a natural manner while endeavoring to care for children by the removal of artificial barriers.

Terri Zelasko, the 2nd Vice President of TFFA, provided testimony to the Committee regarding her organization's recommendations to improving kinship care in Texas. She noted four critical points that TFFA believes the State must address in order to provide for the safety and welfare of children in foster care or kinship care. TFFA's first recommendation to the State is to strengthen the relative search process. Terri Zelasko testified that there is an abundance of research that supports the positive impact of stability and consistency in the life of a child. If a child has a positive bond with a relative and happens to be removed from their home, it would be far less traumatic to place that child with the relative than in the care of a stranger. TFFA recommends that the State continues to use and improve Family Group Decision Making, as well as to identify additional opportunities to speed up the recruitment of kin-caregivers and the placement process as a whole.

TFFA noted that the current length of time it takes to locate and verify kinship placements leads to the following problems:

- The child in care is traumatized. The emotional impact and disruption of removal as well as the time it often takes to locate a relative to care for the child negatively impacts the child's well being.
- The relatives and family of the child who is removed and placed in foster care is also traumatized by the length of time it takes DFPS to locate and approve of a relative to

care for the child.

- Foster families are also negatively affected by the time it takes DFPS to locate a relative for kinship care. In this time of "limbo," it is difficult for a foster family to settle a child into a routine and to provide consistency and stability. An equally troubling impact of the time occurs in situations in which a relative suddenly appears months into the case and wants to adopt a child who they have no bonding with.

TFFA's second recommendation to the State is to ensure the safety and stability of the child's placement. Terri Zelasko noted that while relatives must be identified quickly to minimize trauma to a child coming into care, trauma may not be minimized if there is no assessment of the relative's ability and commitment to provide a safe and supportive environment for the child. She has had first hand experience working with children who were further scarred emotionally and psychologically by being returned to CPS from grandparents who can no longer handle the "burden" of caring for their children's children. TFFA believes that when the relative placement is not safe and stable, the initial tragedies of abuse and neglect in the lives of children are compounded by repeated perceptions that no one cares, and that there is nowhere they can turn to find permanence and safety. TFFA recommends that the DFPS finds a way to quickly identify, assess, and place children with stable committed relatives.

TFFA's third recommendation to the State is to provide support to relative caregivers. Terri Zelasko testified that unlike non-kin foster parents, kinship caregivers usually receive little if any advance preparation for their role. These kin-caregivers do not receive the minimum 30 hours of pre-certification training that helps future foster parents understand the needs of abused or neglected children. As AARP noted, many of the grandparent kin-caregivers are not even made aware of the services that the State and federal government have in place to provide a smooth transition into their new role. TFFA suggests that the State provide access to the on-going training offered to foster parents to kin-caregivers as well.

The fourth recommendation by TFFA is to ensure that the State provides continued oversight of kinship care activities. Due to the fact that kinship caregivers generally receive less support, services and training than non-kin caregivers, yet face many of the same challenges, on-going oversight of their activities would provide an excellent resource for them to provide quality care to the children. TFFA noted that while contact with birth families is seen as an advantage of kinship care, much of it is unsupervised, which raises the concern that birth parents may be granted inappropriate access to children they have abused or neglected. The safety, permanency, and well-being of children who have been abused or neglected or who are at risk of abuse or neglect must be established and protected. TFFA is dedicated to ensuring that decisions regarding relative's roles in children's lives are in fact based on the child's best interests.

TexProtects, the Texas Association for the Protection of Children

TexProtects, the Texas Association for the Protection of Children (TexProtects) is the advocacy division of Prevent Child Abuse Texas. Madeline McClure, the Director of TexProtects noted several recommendations to the Committee regarding enhancing kinship care in Texas. The three major issues that TexProtects feels the State should focus on in order to provide better care for the children in foster or kinship care are:

- DFPS must accurately and thoroughly assess children before they are placed in a foster facility or a relative's home
- DFPS needs to provide support and informational resources for kinship care providers
- DFPS should invest in proven child abuse prevention programs

Madeline McClure testified that assessing a child before placement can better ensure the best placement fit initially, thus reducing the number of destructive, temporary multi-placements and breakdowns. Specifically, she noted that: [100]

- Maltreated children lack the positive, consistent care-giving of non-abused children and often have a myriad of behavioral, emotional, psychological and medical problems.
- Neurological science research has shown that maltreated children are more likely than non-abused children to have physiological impairments that compromise their ability to focus, learn and demonstrate self-control, among other problems.
- Attachment research shows that almost all abused children have difficulty developing bonds with and trusting others.
- Neglected children exhibit difficulties in cognition, language development, academic delays, poor peer relations, anxiety, depression, aggression, impulsivity and other behavior problems.
- Physically abused, sexually abused children and witnesses to domestic violence exhibit a host of similar behavioral problems with the addition of post-traumatic stress symptoms or full-blown post-traumatic stress disorder (PTSD).[101] The symptoms of PTSD mimic some of the same symptoms of children diagnosed with ADD (attention deficit disorder) and ADHD (attention-deficit hyperactivity disorder).

TexProtects offered the following recommendations to the Committee to help alleviate the concerns listed above:

- In making a decision as to where to place a child, whether kinship care, foster care or other, each child needs an adequate physical, psychological, developmental and educational assessment in order for that child to be placed with the most appropriate, prepared and capable caregivers.
    - Resiliency research shows that there are three main control or environmental areas that determine whether abused children will overcome the odds, or reach appropriate developmental milestones and become successful and productive at life-adjustment stages.
    - The 3 main control areas that contribute to resiliency are as follows:
        - A safe, warm parental bond and home environment

- An engaging, positive school environment
- An outside supportive environment, such as a religious community or mentor.

- The implications of the resiliency research on child placement underscore the need to look at each child's placement on a case-by-case basis. For example, a child victimized in the home environment that has a strong school and/or religious environment may be better placed in his current community, with kin or foster home, whoever is the safest caregiver. A child without either outside or school support may be best placed with loving and supportive kinship caregivers regardless of their location.
- DFPS needs adequate funding in order to thoroughly assess a child's environmental supports within 30 days of removal before temporary and permanent placements are made.

As several previous organizations have also noted, TexProtects believes that DFPS must provide support for kinship caregivers. Ongoing research on child welfare and foster care, published quarterly under "The Future of Children" from the Packard Foundation provides key data on kinship care. The Packard Foundation stated that "while kinship providers are expected to provide the same nurturance and support for children in their care as non-kin foster parents provide, they often have fewer resources, greater stressors and limited preparation."[102]

To illustrate the high level of concern, Madeline McClure provided the Committee with the following chart:

39% kinship providers live below the poverty level	vs.	13% non-kin providers
32% kinship providers have less than a HS education	vs.	9% non-kin
18% kinship providers are over age 60	vs.	9% non-kin
55% kinship providers are single	vs.	29% non-kin

- TexProtects noted that the implications of this research suggests that kinship providers should be provided with as much if not more support than non-kin providers to ensure the healthy development of relative children in care.
- The recommended areas of support include:

  -Kinship parent training, parent support services and other benefits associated with inclusion in the Texas Foster Family Association.

  -Expansion of the kinship stipend program implemented from SB 58, 78th Legislature, to all qualifying kin.

  -CPS caseworker support of kinship parents equal to the support provided to foster parents via an increase in well-trained, supportive caseworkers.

Preventing child abuse is an extremely difficult task to accomplish with a perfect record. There are many parents who abuse their children for years, mentally, physically, and/or sexually without anyone taking notice of the damage being done to the child. However, TexProtects believes that there are many useful prevention programs that can help the State stave off the majority of abuse cases. This is precisely why TexProtects recommends that DFPS invest in proven abuse prevention programs. Madeline McClure testified that in order to reduce the need for kinship, foster care or any placement, the legislature must take steps to prevent children from entering the child welfare system. The goal should be to shrink the need for a Child Protective Service System by investing in the family and their children with proven and cost-effective prevention programs before maltreatment is an issue. It is far better and much less costly to prevent harm than to repair the damage.

TexProtects provided the following information on child abuse statistics:

- Prevent Child Abuse America estimates that child abuse and neglect costs our nation approximately $94 billion per year in direct and indirect costs.[103] Using the lower number of 900 thousand confirmed victims nationally translates into a cost of approximately $105,000 per victim per year. Using the more realistic higher estimate of 2.7 million victims translates into a cost of $34,815 per child.
- Using the lower estimate of costs per child of $34,815 calculates into an estimated range of $1.6 Billion to $5 billion per year price tag for Texans. These costs are based on the 47 thousand confirmed victims or the more likely 142 thousand victims. We pay the price of child abuse whether the victims are reported or not.
- In comparison, we spend one dollar paying for child abuse/neglect while spending only 1 penny trying to prevent the abuse or neglect from occurring in the first place.[104] In contrast to the cost of over $34,000 per child, a proven prevention program, Healthy Families, estimated that the *annual average cost is only $3,000 per family* to prevent child abuse and neglect.[105] If Texas spent 7-9 cents on prevention services for every dollar spent on treating victims, we would save millions in dealing with the aftereffects of abuse and save lives and futures of children at risk.[106]

TexProtects recommends that the legislature reinstate and expand the most proven and effective early prevention programs with adequate funding, monitoring and evaluation. It is their belief that if the State allocates money to fully fund these prevention programs, the following disturbing statistics can be reversed:

- Texas ranks 47th nationally in per capita funding on the public child welfare system in 2000, at $24.22 per capita, 66% less than the $71.06 per capita national average.[107]
- In 2001, Texas ranked 43rd in prevention services provided to at-risk families. That number has subsequently been reduced dramatically, as 12 out of an inadequate 17 prevention programs were cut from state funding during the 78th legislative session.
- This 24% decrease in funding equates to an estimated 4,654 families and 13,860 at-risk youth lost state funded prevention services.[108] These drops in cases are in addition to the annual estimate of 120,000 Texas hi-risk families of newborns that

qualify but don't receive proven prevention services such as voluntarily offered in-home visitation programs.

- According to TexProtects, some of the most effective prevention programs that intervene earliest in an at-risk child's life that were cut from state funding include:[109]
    - Healthy Families
    - Second Chance
    - Parents as Teachers
    - Family Outreach
    - HIPPY (Home instruction for parents of preschool youth).

Center for Public Policy Priorities

The Center for Public Policy Priorities (CPPP) is a non-partisan, non-profit policy research organization committed to improving public policies and private practices that influence the economic and social prospects and conditions of individuals, families, and communities.[110] F. Scott McCown, the Executive Director of CPPP provided testimony to the Committee regarding kinship care in Texas. In a policy brief prepared by the CPPP, Scott McCown noted that when the State removes a child from a parent for the child's protection, the child is often best served by placement with a relative. When a judge makes a placement decision, however, the judge must determine the best interest of a particular child, which is an extraordinarily complex determination. In certain cases, kinship care is just not a feasible option.

As noted by the DFPS, Texas has a small system of child protection. The CPPP stated that the DFPS brings children into care in very small numbers, and in only terrible circumstances. In fiscal year 2003, DFPS removed 8,595 children from their homes out of a total population of six million children. Scott McCown pointed out that this is less than one-quarter of one percent of all Texas children.[111] Texas had only 16,267 children in foster care on any given day, which is less than one-half of one percent of the total population of children in the State.[112] The CPPP noted that Texas ranks forty-seventh among the states in the number of children in foster care for every thousand children in the State.[113] If Texas merely had the average number of children in care per one thousand, our foster care population would be 53,114.[114] According to the CPPP, because the State has a relatively high percentage of families living in poverty and anemic child abuse prevention programs, there is no reason to think that Texas has fewer abused and neglected children than other states. The CPPP believes that Texas simply intervenes far less frequently than other states.

The CPPP used the following statistics to illustrate their points on the size of the child protection system in Texas in 2003:[115]

- 6 million children in Texas
- 1.3 million children in poverty
- 453,000 calls to intake
- 278,871 children in investigations
- 78,475 children in confirmed investigations
- 8,595 removed from home

Scott McCown (a former Judge) testified that the legislature has balanced the rights of children, parents, and relatives in the Family Code with due regard for the constitutional rights of each.[116] Under the U.S. and State constitutions, the legislature can give CPS authority, in an emergency, to remove a child from the control of a parent when necessary to protect the child. After a judge reviews the case, if the affidavit proof supports the removal, the judge can issue an emergency order regarding placement until a prompt contested hearing. After the hearing, if the evidence supports that the parent is unfit to make decisions about the child, the judge can make a temporary order regarding placement until a final hearing. At each of these points, the child's right to safety outweighs

a parent's right to control the child. This is well-settled constitutional law and the way every jurisdiction in the country protects children.

If a child must be removed from a parent, however, the legislature has made foster care the placement of last resort. Section 262.201(f) of the Texas Family Code provides:

> (f) The court shall place a child removed from the child's custodial parent with the child's non-custodial parent or with a relative of the child if placement with the non-custodial parent is inappropriate, unless placement with the non-custodial parent or a relative is not in the best interest of the child.

Scott McCown pointed out that the legislature carefully worded this provision to create a presumption that a child must go first with a non-abusing parent, unless the State shows it is not in the child's best interest; and second with a relative, unless the State shows it is not in the child's best interest; and only then with a foster parent. Judges must make this decision case-by-case in the best interest of the child.

Texas Family Code § 263.202(a)(2) also requires judges at the first status hearing to make sure that CPS has gotten all available information to locate relatives. Texas Family Code § 263.306(a)(6) requires judges at each permanency hearing to evaluate CPS efforts to identify relatives with whom a child can be placed.

It is clearly stated in DFPS policies and procedures in the Child Protective Services Handbook § 6322:

Placement with Non-custodial Parents and Kinship Caregivers, DFPS responsibility:

> DFPS must seek to identify and locate the non-custodial parent, or kinship caregivers (relatives, or significant, long-standing, close family friends) to assess their willingness and suitability to care for the child. Since the court is directed to make the placements noted in the law, it is important that DFPS collect what information it can about the non-custodial parent and kinship care providers to assist in making those decisions.

CPPP believes that the case for kinship care is strong for many reasons. The child generally is already familiar with their non-custodial parents and kin and may have an ongoing relationship with them. These people may already have a personal interest in the child's care, and are usually already familiar with the child's family situation and understand the issues and limitations that are present. Their ongoing relationship with the child's parents makes it easier to work towards the permanency goal selected.

Regarding temporary and permanent placements made by DFPS, Scott McCown testified that temporary placements with relatives while trying to reunite a child with a parent, and permanent placements with relatives to raise the child bring up separate issues even with the same child and the same relative. For example, for a temporary placement, moving a child out of town to be with a relative may be inappropriate, while for a permanent

placement, it may be appropriate. Of course, temporary placements may become permanent placements, but at each stage, the issues are different.

The first issue in any placement decision must be child safety. Child protection policy has long balanced two old adages: On the one hand, blood is said to be thicker than water; therefore, kinship care can be better for children. On the other hand, the fruit is said not to fall from the tree; therefore, child abuse and neglect can be intergenerational. Even where intergenerational dysfunction is not a concern, relative placements raise issues such as:

1) the risk of the relative enabling further abuse of the child by the perpetrator
2) the risk of the relative forcing the child to recant an outcry about abuse
3) the risk of the relative enabling child abduction.

Scott McCown noted that a judge cannot simply rely upon a court order that prohibits access by the perpetrator, or discussion of the case, or fleeing the jurisdiction. Even with the best of relatives, court orders are frequently violated. Moreover, many relatives have no emotional or physical ability to protect a child if the perpetrator arrives at their door. A judge generally assumes any court order might be violated and places the child with a relative only when they are supportive of and reasonably able to protect the child.

At the beginning of a case, a relative may be inappropriate, but as the case progresses, things may change. As the evidence emerges, the relative may become convinced about the abuse and thus protective. Or, the perpetrator may be sent to prison, making it possible for the child to be placed with a relative who could not have otherwise physically protected the child. In any event, safety is always the primary concern.

Another issue that may potentially affect relative placements and muddy the waters quite extensively is the possibility of competing family placements. Scott McCown provided the following examples:

- A mother and father may be living together with equal parental rights, and both may be implicated in the abuse or neglect of their child. Each, however, may argue for a different relative placement.
- The mother and father do not live together, but neither is an appropriate placement and each argues for a different relative.
- It may also be possible that the maternal relatives and the paternal relatives each want the children, or perhaps on the maternal side there are competing aunts, while on the paternal side there are multiple fathers.
- Children may themselves have strong feelings about particular relatives. An older daughter may want to go with a maternal aunt, while a younger son may want to go with a paternal grandmother.

The variations on the facts and situations are endless, thus making the task of relative placements extremely sensitive and difficult.

Sibling considerations are also taken into account before placements are made with kin or foster parents. As previously mentioned, it is generally, though not always, the best practice to keep siblings together while making placement decisions. Research suggests

that sibling relationships are far more important and powerful than we have understood. Sometimes relative placements help keep siblings together, but sometimes they are a barrier. A relative may not be able to take all the children due to lack of money, space, or ability; and compounding the issue is that the relative may be related to only some of the children. According to Scott McCown, about 79% of all children live with siblings and about 11% of all children live with half-siblings.[117] Depending on the circumstance, a judge might place siblings in foster care rather than split them between many relatives. Particularly at the temporary stage where the judge hopes that the children will be reunited with their parent, the judge might not want to split siblings.

Another issue that CPPP believes is important to address relating to relative placements is the treatment needs of the child. At the outset, CPS must have the child assessed medically, psychologically, and educationally. CPS then must develop a treatment plan to address the problems caused by the abuse or neglect. Scott McCown noted that none of this can be accomplished if the child is in an inappropriate placement.

Jeopardizing long-term relative placements is also a concern of CPPP in regards to kinship care. Too quickly naming relatives as the placement can actually jeopardize successful long-term placements with the relatives. When abused or neglected children are placed with well-meaning but unprepared relatives, it can quickly cause a breakdown in the placement, and a closed door thereafter. This has been a recurring concern conveyed by many individuals that have testified before the Committee. Information must be provided by the DFPS to the potential caregiver in a clear, concise and efficient manner. If time is taken to get a child necessary treatment, and to allow the relatives to prepare for the child, the likelihood of a successful placement may be increased.

Much has been said from proponents and opponents on a parent's role in determining the initial placement of their child. Many valid concerns have been raised by both sides. Scott McCown pointed out that in practice, from the very beginning, parents are asked to name relatives, and every relative is asked to name additional relatives. From all the relatives, the judge must sort out the best placement for the child. As previously mentioned, the parent's view of the best placement is part of the evidence, but can be unreliable. The bottom line according to Scott McCown: after hearing all the evidence, a judge must make a decision based on the best interest of a real child in the real world. There is no way to write laws or policies that can turn what must be a case-by-case decision into anything else.

CPPP provided the Committee with the following recommendations to enhance relative placements:

- Speed the process of criminal background checks between CPS and DPS. A major barrier to quick relative placements is the time it takes to get a criminal background check. Ideally, CPS should be able to access criminal records on line from the Department of Public Safety. There may be legal or policy barriers, and there are financial barriers to on-line access. Eliminating these barriers would be an inexpensive and highly productive step.

- Increase CPS capacity to conduct diligent searches and home studies. Locating relatives can be a challenge. CPS does not have sufficient diligent search staff with access to state of the art tools. Once a relative is located, CPS Handbook § 6322 requires a caseworker to obtain an assessment of the relative before recommending placement, commonly called a home study. Such an assessment is an important step in ensuring the safety of the child. A key barrier to earlier consideration of relatives is the lack of caseworkers. Whether the State adds caseworkers or contract funds, it needs to increase the capacity to conduct diligent searches and home studies.

- Improve legal representation for parents. The Pew Commission on Children in Foster Care has recommended securing effective representation for parents as a key to improving outcomes for children. An example of improving outcomes for children is the role lawyers for parents play in advocating for kinship care. When a parent is represented by a lawyer from the start of a case, the parent is more likely to name possible relatives and make a case for placement with a relative. A parent's lawyer also often serves as an informal resource for relatives seeking placement.

  - First, attorneys for parents should be appointed in more cases. Texas Family Code § 107.013 requires a court to appoint an attorney ad litem to represent the interest of an indigent parent only in a case in which the State seeks to terminate a parent's parental rights. In contrast, Texas Family Code § 107.012 requires the court to appoint an attorney ad litem for the child whenever the State seeks termination or to be named conservator of the child (meaning to have legal custody). The code should be amended so that any time the State seeks to be named conservator, the court must appoint an attorney for any indigent parent in opposition to the State's request.

  - Second, attorneys for parents should be appointed at the very beginning of a case. The Texas Family Code has been interpreted to mean that a judge need not appoint an attorney for the parent any sooner than necessary for the parent to be ready for the final trial. Such an appointment may be months after the removal. While this may comport with due process, it does not help a parent make a case for a relative placement.

  - Third, the State should appropriate funds to adequately compensate attorneys for parents. Texas Family Code § 107.015(c) places the duty to pay attorneys fees for indigent parents on the general fund of the county in which the suit is filed. Because counties must pay the fees, judges put off making appointments until the last possible moment consistent with due process. In addition, judges have set low fees. Certainly this affects the quality of representation. If the Family Code were amended to require judges to appoint attorneys earlier, the cost to counties would increase, as would the cost if the Family Code required judges to set fees higher. Counties would

naturally resist any such unfunded mandates. The State, however, could appropriate funds to compensate attorneys. To ensure that the counties did not inappropriately shift costs to the state, the State could require the counties to maintain effort in other words, to spend as much from the general fund per attorney as historically before drawing state dollars. State dollars would then be available to pay for earlier appointments and higher fees.

- ❖ Fourth, the State should appropriate funds to some group such as the State Bar's Committee on Child Abuse and Neglect to provide continuing legal education for lawyers who represent parents. Federal and state money trains prosecutors, attorneys for children, and volunteer child advocates, but there is little money to train lawyers for parents. A small amount of training money could have a significant impact.

- Provide financial assistance to relatives. A lack of family resources is a major barrier to kinship care. While relatives can become foster parents, many cannot meet the licensing standards and others do not wish to become part of the system. The State took a small step toward providing short-term support when the 78th Legislature authorized a pilot project in Article II, Protective and Regulatory Services, Rider 7c in the 2004-05 General Appropriations Act: The department may utilize up to $250,000 from funds appropriated above in Strategy A.1.5, Foster Care Payments, to develop and implement a relative placement reimbursement pilot program in one region of the state. The department shall conduct an evaluation of the pilot. DFPS launched a pilot project in four South Texas counties to provide a $1,000 one-time payment plus day care, counseling, and other support services to relatives. In addition, families can request an additional $500 a year for exceptional expenses. The program now serves twenty-six families caring for seventy children. The State should expand this promising program.

- The State could also enhance its long-term assistance to relatives caring for children. If a child comes from a family so poor as to qualify for cash assistance from Temporary Assistance for Needy Families, and if the relative caregiver is related to the child by blood, marriage, or adoption, then the relative may obtain Medicaid for the child and a small monthly payment of about $64 per child under the "Child Only Grant" of the TANF program. If the relative is a grandparent (or great-grandparent), at least forty-five years of age with an income less than 200% of the federal poverty limit ($18,620), and with resources less than or equal to the TANF resource limit of $1,000, then the relative may also receive a one time payment of up to $1,000 to help transition the first child placed into their home. CPPP recommends raising the resource limit higher than $1,000 to increase the number of eligible grandparents. Under the present test, any grandparent with a decent car does not qualify.

- Another possibility is conservatorship assistance. The State should consider offering conservatorship subsidies, much like adoption subsidies. More than thirty states provide these types of subsidies without any federal financial participation.

However, federal financial participation would make conservatorship assistance more affordable. The Pew Commission on Children in Foster Care has recommended to Congress that the federal government offer to match state money used to provide conservatorship assistance just like the federal government matches state money used for foster care and adoption assistance. The commission has recommended that the program be limited to children who the State has been forced to remove from their home and place in foster care; who have been in care for a given period of time; for whom there is no feasible plan of reunification or adoption; and for whom a strong bond exists with a potential guardian who is committed to carrying for the child permanently.

- Texas should participate in the on-going national debate about federal financial participation in kinship care. At this point, Texas is not advocating such a program. If federal funds become available, however, the State needs to carefully evaluate whether its next best dollar for child protection would be in a conservatorship subsidy program. Like adoption assistance, conservatorship assistance can help meet the needs of children and reduce the cost to the State if children who would otherwise be in foster care are instead in less expensive care.

Texas CASA

Texas Court Appointed Special Advocates (CASA) is a nonprofit partnership that trains and supports thousands of volunteers to work with children who are removed from their homes by CPS. The mission and purpose of CASA is to provide training, funding, program and technical assistance to all existing CASA programs each year, and to work tirelessly to bring CASA services to more of Texas' 254 counties. CASA is funded through many sources, however the majority of its funds are provided yearly in a $3 million dollar grant from the Crime Victims Compensation Fund. CASA also receives money from the Court Improvement Project, the PEW Commission, private contributors, and many other charitable sources.[118]

CASA provides public and governmental awareness about community issues concerning abused and neglected children. CASA volunteers are appointed by judges to help the courts deal with the overwhelmingly difficult and costly increase in child abuse cases. The CASA volunteer is frequently the most consistent person in a child's life and provides their only independent voice during their involvement with the court.[119]

In fiscal year 2003 in Texas, 3,918 CASA volunteers advocated for the best interests of 15,195 abused and neglected children in the state who were involved in the court system. Currently, there are 60 local CASA programs serving 175 counties in Texas.[120] This network of community volunteers provides advocacy and support services for some of the most vulnerable residents of the state. Megan Ferland, the Chief Executive Officer of Texas CASA provided testimony to the Committee on behalf of her organization. She noted that CASA volunteers provide an invaluable source of information for judges who are unable to learn the minute details of every case. Because in almost every instance one CASA volunteer is handling just one case for a minimum of one year, the volunteer is able to provide the court with a plethora of knowledge relating to the child's best interests.

The concerns that CASA have regarding relative placements echo many of the other concerns that have been expanded upon previously. Specifically, CASA is concerned with simply placing children with kin who may not have the ability to protect the children from their abusive parents. CASA is also concerned with the relative's ability to overcome and handle the child's negative behavior. Megan Ferland noted several examples of CASA volunteers working with kinship placements that were failing simply due to the fact that the relatives were unprepared and untrained to handle the difficulties stemming from mental, physical and sexual abuse.[121]

Recommendations from CASA on issues that the legislature should consider include providing help to ease the financial burden placed on relatives who take on the role of caregiver to their kin as well as easing the space requirements on these families. CASA contends that if relatives are ready and willing to take on their kin, but have a small room, or perhaps can only provide a situation in which the child may need to share sleeping quarters with a relative, that it is a far better placement decision than foster care in most cases.

Justice for Children

Justice for Children (JFC) is a national non-profit organization dedicated to helping criminally abused or neglected children. JFC's mission is to raise the consciousness of our society about the failure of our governmental agencies to protect victims of child abuse, to provide legal advocacy for abused children and to develop and implement, on a collaborative basis where possible, a full range of solutions that enhance the quality of life for these children. JFC was founded because of system failures in the realm of legal and social services designed to protect children, and due to the need for their services, JFC believes that the system is failing the state's children.[122]

Jim Shields and Thomas Burton provided testimony on behalf of Justice for Children to the Committee. JFC noted that it is a sad fact of life that children are abused and neglected in Texas on a daily basis. All too often, abuse goes unreported or is inconclusively investigated. Allegations of abuse are often found unsubstantiated or are undocumented by caseworkers or other advocates, and children do not even receive services to prevent future abuse once they are returned home. According to JFC, 40-50% of all children who die from abuse and neglect in the United States had previous referrals to agencies mandated by law to protect them, such as the DFPS.

Regarding kinship care, JFC believes that because many child abusers were themselves abused as children, the assumption that a child is safer if placed with a family member rather than in foster care must be challenged. It is JFC's contention that kinship care-givers should be subject to the same scrutiny as any other placement for a child removed from their home. They believe that the issue of the child's safety is paramount, and that it should not be subverted or ignored in the interest of reunification or maintaining familial ties.

Quoting Dr. Richard Gelles, Ph.D., of the University of Rhode Island, JFC testified that there is a distinct lack of any evidence or studies which show that family unity prevents child abuse. JFC noted that according to Dr. Gelles, family preservation and family reunification should not be the sole or even main means of treating and preventing child maltreatment.[123] JFC's main concern is summed up well by Dr. Gelles' statement that the all-encompassing family reunification model needs to be abandoned as an official and unofficial child welfare policy. It is their contention that family unity should not be used to override the placement of a child in an alternative, safe and nurturing environment. Like Dr. Gelles, JFC believes that child protection and child advocacy need to replace family reunification as the guiding policy behind child welfare programs.

JFC's recommendations to the Committee include:

- Eliminate any and all funding incentives or rewards for CPS/DFPS to place a child in a kinship home (as opposed to a foster home). JFC is concerned that such incentives will cloud the judgment of the caseworkers and bias their placement decisions.

- While JFC advocates for the placement of all children in a loving and nurturing

environment, they believe that the State should not assume that the family home is the best environment for the child.

- Current law requires that CPS use reasonable efforts to reunite the child with their family. JFC believes that this requirement in many cases leads to the home environment being chosen over a more appropriate placement and puts children at risk of further harm. JFC would like to see their proposed legislation (HB 1908 by Farrar, 78th legislature) which exempts certain cases from the reasonable efforts requirement to reunify the child with the family be passed by the legislature.[124]

Summary of Public Testimony

Several concerned child welfare advocates, stakeholders and other interested members of the public also testified before the Committee in regards to interim charge number two. Recommendations from the public include:

1. Kinship placements are not often a priority for CPS because of perverse financial incentives. The biennial budget for DFPS includes an estimate of the number of children that CPS caseworkers will take into State conservatorship. This number sets the baseline number of children that the State will place in foster care. By setting a quota, the DFPS is prioritizing foster care as the primary means of servicing children as opposed to kinship care or providing in-home safety services. The distinction is that the funding for the CPS biennial budget is based in part upon receiving federal money for each child in foster care, and because foster care placement in terms of budget is a revenue source, both in-home safety services and kinship care appear to be cost centers. The DFPS should correct this potential conflict of interest which may lead to the improper removal of children from their homes.

2. In a situation classified by CPS as an emergency removal, CPS should wait for a court order, and for law enforcement to be present prior to removing the child from their home.

3. Parents need an organized, focused and forceful cross examination of CPS and a well prepared presentation of their case at the adversary hearings which decide where the child will be placed. The State should provide competent legal counsel to parents who have their children removed by CPS.

4. CPS should review the cases resulting in family reunification to determine what incidents, threats or dangers led to the removal, the length of time the child remained in foster care, and determine whether or not the immediate danger could not have been mitigated with in-home safety services.[125]

5. Kinship care-givers should be provided with the following supports:[126]
   a) reimbursement equal to that received by non-relative foster parents
   b) initial emergency start-up funds to meet licensing and certification requirements or to provide concrete resources for the care of the children
   c) subsidies for guardianship or adoption
   d) access to legal resources and representation for helping to obtain permanence
   e) support groups and training
   f) kinship resource lines to provide support, information and counseling
   g) treatment resources to meet the special needs of children
   h) caseworkers trained in the unique aspects of kinship care to provide additional support services to the family as well as the child

6. To ensure that the aforementioned supports are properly executed, the following changes to DFPS operations should be addressed:[127]
   a) Foster care and adoption agencies must be administered and staffed by professionally educated social workers
   b) Child welfare agencies should actively recruit graduates from BSW and MSW programs
   c) Partnerships need to be developed and strengthened between schools of social work and child welfare agencies in working to promote BSW and MSW education for child welfare employees
   d) Child welfare agencies should provide ongoing professional training in cultural competence, changes in laws, policies, and new developments to uphold best practices that are based in research
   e) Child Welfare agencies should provide competitive salary levels and professional opportunities in order to recruit and retain social workers
   f) Child welfare agencies should provide a healthy environment, competent supervision, and case consultation to the families affected by CPS

7. As previously stated, there are a multitude of reasons why kinship care may not be in the best interests of the child. Child abuse and neglect are often multi-generational issues that require more in-depth study to determine whether or not the child would actually be in a better situation if placed with relatives. The State should not change the laws currently regulating placement with relatives.

8. Kinship caregivers should be given the same supports as non-related foster parents in regards to the needs of the children in their care, including the financial support given to non-relative foster parents.[128]

9. The enormous caseloads, excessive amounts of paperwork and lack of resources severely hamper the ability of CPS caseworkers to fulfill their obligations. The stress and pressure cause professional and personal burnout that results in a high turnover rate for caseworkers. Caseworkers need relief so that they can provide the quality of care that children and families deserve.[129]

10. Children returned to their homes by CPS should receive a state paid monthly medical check by the family's physician of choice for some required period of time. The cost would be minimal compared to foster care, and the children would have the opportunity to receive excellent medical care.[130]

11. CPS should not be in the business of working with families who are experiencing life stresses. The job of the CPS caseworker should be specifically to remove children from harmful situations and find care for them until permanent placements are made. By removing the requirement that CPS provide in-home services to families and placing that responsibility with community agencies, the children will be better served.[131]

12. The DFPS needs to do a better job of making prospective families aware of services available to them should they take on the task of caring for their kin. According to Adoptions.com, child welfare experts believe that more families would take in their relatives' children if they were aware of services available to them, whether or not they are working with a social service agency.[132]

13. CPS should be completely out of the business of removing children from their homes. This task should be handled by law enforcement as abuse and neglect should be categorized as criminal matters not civil matters.

14. Parent directive placements are in the child's best interests unless allegations of abuse and neglect against parents and family are proven true. Presuming family and friends are unfit to take in children because the parent may have been abusive is not sound CPS policy because only a small number of people actually abuse their kids.

15. Families must be given all the information on children before they adopt. CPS must provide entire medical history, psychiatric evaluations and behavior reports to prospective adoptive families so that they can make informed decisions prior to adopting.

16. The CPS policy that deems friends and family unfit to care for children directed by alleged abusers to care for their children must be reversed. CPS will refuse to place children under parental directive if the friend or relative will not state that they believe the allegations against the parent. These are just allegations, and until proven true, CPS should not automatically disqualify the friend or relative from serving as caregiver for the child.

17. CPS caseworkers need to be trained differently in regards to handling relatives who do not wish to partake in their services. CPS sees any sign of resistance to their training as a guilty plea by the parents. This is simply not the case, and every parent certainly has the right to refuse services and not be deemed guilty.

18. The State should require that an attorney be provided to families who have their children removed by CPS.[133]

19. When parents are found guilty of abuse, they should lose parental directive and should not be allowed to decide where to place their children.

20. Because the cycle of abuse is oftentimes multigenerational, the State should invest in abuse prevention programs prior to investing more in kinship care. The State should work to break the cycle of abuse first, and save the children the trauma of entering the system in the first place.[134]

COMMITTEE RECOMMENDATIONS

Evaluate means by which the state may promote substitute care with relatives of a child who is removed from the home by CPS.

1) The Committee recommends expanding upon the pilot project in Senate Bill 58, 78th Regular Session, by Senator Zaffirini, and House sponsor, Representative Wohlgemuth. The relative caregiver placement pilot program designed for certain children for whom the DFPS is appointed managing conservator should be funded statewide. This program calls for the state to provide a limited, one-time financial support to all kincare relatives of modest means, as well as child care and assistance in setting up a kincare household, and respite care for the caregivers.

2) To promote early identification of relative caregivers, the Committee recommends that DFPS requires caseworkers to provide parents with a "proposed child placement resources form" that identifies potential kinship caregivers upon removal of any children from the home. CPS is required to conduct immediate DPS background checks on the identified potential kinship caregivers, and complete a home study, or contract out to have one completed, on the potential kinship caregivers prior to the 14 day full adversary hearing. The Committee also recommends that caseworkers utilize the CPS Handbook, Section 6322, which authorizes expedited placement of children with relatives without a complete home study – after proper training and guidelines are established and enforced by the DFPS. Caseworkers would still be required to conduct a risk assessment and provide a written assessment of the suitability of the placement, and must also interview prospective relative caregivers, the child, at least two references and a collateral, as well as perform a visit to the proposed home. If a kinship caregiver is identified and approved by DFPS, the case would then be turned over to a private placement agency for complete case management. DFPS will maintain oversight of the case, but will not provide direct case management.

3) DFPS and HHSC need to be more pro-active in locating federal funding for kinship placements. Specifically, HHSC should apply for a Title IV-E waiver to develop a program that would allow for kinship or guardianship payments for kinship placements.

4) DFPS should expand the Family Group Conferencing pilot program statewide, and move towards contracting out for all Kinship and Family Group Conferencing type services. The transition of DFPS out of all Kinship and Family Group Conferencing Services that are funded by the Texas Legislature should occur within 3 years. The Committee recommends that the State Auditor then perform an audit at the end of the three years to ensure that the transition has in fact occurred. The Request for Proposal will develop a regional system of delivery that can be absorbed within the full child welfare restructuring as it rolls out across Texas. The Committee also recommends expanding the Texas Integrated Funding Initiative statewide to ensure that children and families receive wraparound services, and to ensure the most efficient use of funding across all agencies that provide child welfare services.

5) The Committee recommends the establishment of a pre-removal program for families needing services and or support from the DFPS to prevent the need for removal. In some cases, it is better for a child to remain in their home and for experts to work with families to improve the overall situation as opposed to removing the children. DFPS, HHSC, other state agencies that provide services for children, and private child placement agencies should develop a plan for family preservation services, collaborate on efforts to strengthen family building and provide wraparound family connection services in an attempt to prevent children unnecessarily entering the system. The Committee recommends that DFPS be mandated to participate in the aforementioned partnerships, and that the parties shall work together to use state and federal dollars to pay for proven prevention programs and practices. Listed below are examples of prevention programs that have proven effective in other areas. The Committee suggests that the State carefully consider the costs and practicality of each of these programs, as well as any others that have the potential to prevent child abuse and neglect. The following programs are suggestions that the Committee feels the State can work towards achieving over a period of time, or perhaps use certain aspects of each of them in pilot programs to judge their utility and costs. Example programs that the State may consider implementing (should funding become available and the outcomes are proven) include:[135]

Intensive Family Preservation Services

- **Program Description**: Intensive Family Preservation Services (IFPS) are short-term, intensive, in-home crisis intervention services that teach skills and provide supports to families who have children at risk of placement into state-funded care. Because the program's primary goal is to serve as an alternative to out-of-home placement, only those families whose children are at imminent risk of placement should receive services. Thus screening for imminent placement is a key component of the program. Recent literature notes that adhering to established program standards is critical to the success of IFPS. These standards include the following:
  - Staff are available 24 hours a day, 7 days a week;
  - Staff have small caseloads (2-4 families at a time);
  - An IFPS worker sees a family within 24 hours of referral;
  - IFPS services are generally delivered in the family's home and community;
  - Intensive services (5-20 hours per week) are provided, including evenings and weekends; and
  - Services are time limited to 4-8 weeks.

  The IFPS worker should engage the family in an ongoing collaborative process to assess its strengths and problems, and develop specific goals that can help family members to manage their lives more effectively. Workers provide services such as parent training, family communication building, behavior management training, marital counseling, life skills training, self-management of moods and behavior, school interventions, safety planning, relapse prevention, and referral to ongoing services.

Outcomes: If states adhere to program standards, IFPS helps them save money by preventing out-of-home placements. Although 1990s research on the effectiveness of IFPS was ambiguous, more recent studies indicate that if IFPS programs closely follow standards similar to those specified by the Homebuilders model (the oldest and best-documented IFPS program), and do not dilute the model by offering less intensive or less timely services, they are capable of preventing out-of-home placement among high-risk families.

Evaluation of Michigan's Families First Program (2002): High-risk families were randomly assigned to either IFPS or traditional child welfare services. After six months, 88% of children in the IFPS group were living at home (compared to 17% of non-IFPS). After one year, 93% of children in the IFPS group were living at home (compared to 43% of non-IFPS).

Evaluation of North Carolina's IFPS Program (2001): Results of a retrospective study indicate that IFPS is effective in preventing or delaying out-of-home placement among the target population of high-risk families when compared to the same types of families receiving traditional child welfare services. Results also indicate that the higher the risk evident in families, the larger the difference is between IFPS and traditional services.

Both Michigan and North Carolina concluded that IFPS saved their states money by reducing the need for costly foster care services. Researchers estimate that IFPS programs are cost effective at placement prevention rates of 20% to 25%. Thus, because most IFPS programs nationwide have a placement prevention rate of 70% to 90%, they are generally very cost effective. For every dollar spent providing IFPS, states save approximately $2.00 on placement services.

Nurse-Family Partnership

- **Program Description**: The Nurse-Family Partnership (NFP) provides first-time, low-income mothers with home visitation services designed to (1) improve mothers' health behaviors, (2) improve child health and development, and (3) help families become economically self-sufficient. Visits address personal health, environmental health, parents' life-course development, maternal roles, social support, and health and human services. Registered nurses begin to visit women during pregnancy in order to address behaviors that can affect prenatal health and delivery. After delivery the nurses help parents develop strong care-giving skills in an effort to prevent childhood injuries and child maltreatment. The program also focuses on preventing unintended subsequent pregnancies, school drop out, failure to find work, and welfare dependence, noting that these risk factors increase the likelihood that families will remain in poverty and provide sub-optimal care to their children. Since program participation is voluntary, it is important that nurses strive to develop respectful and trusting relationships with the families they serve. Research suggests that the following program elements are critical to success:

  - The program focuses on low-income, first-time mothers;
  - Services are provided by registered nurses;

- Nurses follow program guidelines that focus on the mother's personal health, quality of care-giving for the child, and parents' own life-course development;
- Nurses begin making visits during pregnancy, and continue to do so until the child turns two;
- The visit schedule follows the developmental stages of pregnancy and early childhood;
- Nurses work with a family's existing support system and connect the family with services;
- Each nurse's caseload does not exceed 25 families;
- For every four nurses providing services, the organization employs a half-time nursing supervisor;
- The program is run by an organization that is known for providing quality services; and
- The Clinical Information System designed for the model is used to track all information.

Outcomes: Scientifically controlled studies indicate that NFP yields positive outcomes for the children and families it serves. Results suggest that the program can increase the protective factors, and decrease the risk factors, associated with child abuse and neglect. NFP produced consistent benefits for low-income mothers and their children through the child's fourth year of life in terms of (1) women's prenatal health, (2) injuries to children, (3) rates of subsequent pregnancy, and (4) use of welfare. Some of the reported findings relate specifically to the prevention of abuse and neglect:

Evaluation in Elmira, NY: Through age four, children who received visits from nurses had fewer trips to the emergency room. Families who received home visits by nurses also had a significantly lower rate of state-verified reports of child abuse and neglect. This finding remained consistent throughout the 15-year period following the program – reports indicate that the program reduced child abuse and neglect by 79%.

Evaluation in Memphis, TN: Women who received nurse visits had fewer beliefs about rearing their children that are associated with abuse and neglect, and their children had fewer health care encounters in which injuries were detected.

The National Center for Children, Families and Communities estimates that the program costs $3000 per family, per year. Economic evaluations indicate that the cost of the program is recovered by the time children are four-years-old. Furthermore, if the program is properly targeted to low-income families, costs are returned four times over by the time children reach adolescence.

Family Connections

- **Program Description**: Family Connections (FC) is a family-centered, community-based program intended to help families meet their basic needs and reduce the risk of child abuse and neglect. It targets families who are at significant risk of neglect but are not yet being served by Child Protective Services (CPS), in hopes of decreasing the likelihood of neglect and the need for subsequent CPS intervention. The program's design reflects literature indicating that (1) *efforts to target single risk factors are not likely to be as effective in preventing neglect as are programs based on an ecological-development model*, (2) *intervention and prevention programs must be individualized and offer multiple services*, and (3) *services should be based on strength-based principles that empower families*. FC's components include:
  - Providing emergency assistance to meet families' immediate needs;
  - Conducting comprehensive family assessments to guide the service delivery process;
  - Developing outcome-driven service plans geared to decreasing risk and increasing protective factors associated with child maltreatment;
  - Delivering tailored, direct and home-based therapeutic services to help clients reduce risks, maximize protective factors, and achieve service outcomes and goals;
  - Coordinating service delivery through case management;
  - Advocating on behalf of clients in the community; and
  - Empowering family members to identify their strengths and be their own problem-solvers.

  Outcomes: In a 2003 report on "Emerging Practices in the Prevention of Child Abuse and Neglect," Family Connections was the only program characterized as "demonstrated effective" in showing positive outcomes in the prevention of child abuse and neglect. Findings suggest that the program can:
  - Increase the protective factors for child neglect;
  - Decrease the risk factors for child neglect;
  - Reduce the incidence of child abuse and neglect; and
  - Increase child safety and well-being.

  Specific outcomes include:
  - Increases in appropriate parenting attitudes;
  - Increases in satisfaction with parenting and social support;
  - Decreases in depressive symptoms;
  - Decreases in caregiver drug use;
  - Decreases in caregiver stress; and
  - Decreases in child behavior problems.

  The program is currently being replicated in eight communities throughout the United States with funding from the Children's Bureau, U.S. Department of Health and Human Services. Two of these sites are located in Texas:
  - DePelchin Children's Center, Houston, TX; and
  - Respite Care of San Antonio, Inc., San Antonio, TX.

6) DFPS should develop an educational manual to distribute to biological parents as well as kinship caregivers. This manual is to be provided to the family at the point of initial contact or CPS involvement, and is to be provided to the potential kinship caregivers upon CPS receipt of the "proposed child placement resources form" from the family. This manual should include information in both English and Spanish, and should cover such topics as the legal rights of birth parents and kinship caregivers, services, phone numbers and other valuable resource information. The Committee also recommends that this information on available resources, rights, and services be printed in the CPS handbook. DFPS should also partner with the Texas Kincare Taskforce to further develop and distribute the Taskforce's brochure "Kincare Choices in Texas," which has a wealth of information in both English and Spanish that may also be useful language for the Committee's proposed educational manual to be provided to potential kinship caregivers.

7) The Committee recommends improving legal representation for parents. Securing effective representation for parents is a key to improving outcomes for children. For example, the role lawyers for parents play in advocating for kinship care can directly affect the outcome of placement for children. Attorneys for parents should be appointed in more cases and should be appointed at the very beginning of a case. Texas Family Code § 107.013 requires a court to appoint an attorney ad litem to represent the interest of an indigent parent only in a case in which the state seeks to terminate a parent's parental rights. In contrast, Texas Family Code § 107.012 requires the court to appoint an attorney ad litem for the child whenever the state seeks termination or to be named conservator of the child. The code should be amended so that any time the state seeks to be named the conservator of a child the court must appoint an attorney for any indigent parent in opposition to the state's request. The Texas Family Code has been interpreted to mean that a judge need not appoint an attorney for the parent any sooner than necessary for the parent to be ready for the final trial. Such an appointment may be months after the removal. While this may comport with due process, it does not help a parent make a case for a relative placement.

8) The Committee recommends that DFPS ease the space requirements on a case by case basis for relative caregivers who are ready and willing to foster or provide kinship care to a child in need. Current minimum standards are:
   - For individual foster homes: each child must have 40 sq. ft., but the smallest a room can be is 8' x 10'. One child - 8' x 10'; two children can share a room that is 8' x 10'; three children can share a room that is 10' x 12', etc.
   - A group foster home which has 6 - 12 children must have 50 sq. ft. per child.
   - Children 6 years of age and older can share a room only with the same sex child. Under 6 years of age, children of different sexes can share a room.

   These current standards are sometimes a barrier to kinship placements and the Committee recognizes the importance of minimum standards for space requirements of foster homes, but when it comes to relative placements, caseworkers should evaluate each situation individually.

Charge Number Three

Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies within the Texas child welfare system.

Background

Removing children from their homes is always traumatic. Some removals definitely provide children with a better chance at living in a safe and permanent environment, one free from the abuses of their parents. Other removals are tragic in the sense that children are wrongfully removed from their parents and are placed in a foster system that fails to protect them. When the State is forced to intervene and remove children, all of the roles that a traditional parent performs are transferred to the DFPS. First and foremost, the safety of the child is paramount, and it is up to the State to ensure that its licensed foster facilities are performing at a level that is acceptable to provide the best quality of life for children.

The licensure requirements for and the performance of all types of foster care facilities is essentially the safety net that children removed from their homes depend on for their well-being. The strength or weakness of the foster facilities will mean the difference between a child who is safe in care, and one that is further abused, or even killed. The safety net must be strong and durable, and the DFPS has the responsibility to maintain its strength through proper licensing of its facilities. It is absolutely critical that DFPS operates and regulates all foster facilities in a manner suitable to guarantee the safety of children. The licensing process must be rigorous, fair and predictable.

Oftentimes however, licensing standards are inconsistently interpreted and applied across the state. The main issues that laws and statutes are designed to implement and regulate are lost upon the workers in the field due to the individual interpretation of their parameters. This inconsistency is a direct result of the lack of training that DFPS staff receives, and it places children in dangerous situations. Conflicting messages, lack of adequate communication, poorly defined policies, an over abundance of paperwork, and an incredulous list of tasks cloud the judgment of many DFPS staffers in the field. This overload is not beneficial for the children of this State, and it leads to a high turnover rate and low job satisfaction among caseworkers.

The State can do a better job of holding foster facilities to a higher standard in regards to the protection and well-being of children. DFPS is currently working on improving the services that are in place across Texas. However, in order to ensure that no stone is left unturned, it is necessary to broaden the scope by identifying program efficiencies in other states. Child protection agencies all around the U.S. have been working on issues similar to those in Texas for many years. Several of the programs are functioning quite well, and children are safer in foster care, or are returned home more quickly with no added abuse

while in care or upon being returned home. These best practices and program models can greatly benefit the DFPS and help the State constantly improve upon the care that they provide to children.

Summary of Testimony

Testimony was taken on the third interim charge over the period of two days. The first half of the third charge regarding licensing and performance of foster facilities was heard on August 4, 2004, and the second half of the charge regarding best practices and program efficiencies was heard on August 5, 2004. Invited testimony was provided by the Department of Family and Protective Services, the Office of the Comptroller, Citizens Commission on Human Rights, Texas Alliance of Child and Family Services, Advocacy, Inc., Judge Carole Clark of the 321st Judicial District Court, Charlotte McCullough, Richard Klarberg from the Council on Accreditation, and TexProtects, the Texas Association for the Protection of Children.

The Committee also heard testimony from several members of the public and other experts in the field of child welfare on the issues outlined within the third charge. Many great ideas and crucial information germane to improving the child welfare and foster care system in Texas were shared over the course of the two days dedicated to the third charge. The following pages will outline important pieces of information including background, initiatives, opinions and recommendations that will not only shed light on the problems, but also offer some remedies to improve the system overall. The summary of testimony will be divided up in the same way that the interim charge was presented to the committee. The first half of the testimony will cover licensing issues, and the second half will cover best practices. The committee recommendations for both will be combined at the end of the section.

Department of Family and Protective Services

Diana Spiser, Assistant Commissioner of the DFPS provided testimony to the Committee regarding DFPS licensing. The DFPS Child-Care Licensing Division is responsible for protecting the health, safety, and well being of children who attend or reside in regulated child-care facilities and homes. Through a process mandated by Chapter 42 of the Human Resources Code, the Division develops minimum standards for regulated facilities and homes as well as policies and procedures for enforcing those minimum standards. The Division has the additional role of providing consultation, technical assistance, and training for child-care providers and educating the public in the selection and improvement of child-care services.

All types of licensed facilities have published standards that they are required to follow and are routinely monitored and inspected. The application process requires that a provider receive orientation and that background checks are conducted. A license is issued after licensing staff complete on-site inspection(s) to insure minimum standards are met. Facilities are inspected every 5-12 months and are also inspected if a report is received related to child abuse/neglect or standards violations.
Licensed Facilities include day care and 24 hour care:

Day Care

- Licensed Child-Care Homes provide care for less than 24 hours per day for 7-12 children under 14 years old.
- Day Care Centers are any facility which cares for 13 or more children under 14 years old for less than 24 hours. Within this category there are standards for day-care centers, drop-in care centers, kindergarten and nursery schools, and schools-kindergarten and above.

24 Hour Care

- Foster Family Homes provide 24 hour care for 6 or fewer children under 18 years old.
- Foster Group Homes provide 24 hour care for 7 to 12 children under 18 years old.
- Child Care Institutions provide 24 hour care for 13 or more children under 18 years old and include standards for emergency shelter, basic, residential treatment, halfway house, maternity homes, and therapeutic camp care, as well as care for the mentally fragile.
- Child Placing Agencies are persons or organizations other than a child's natural parent or guardian who plan for placement of a child or place a child in a child care facility, foster home or adoptive home.

The Division also regulates child care administrators working in residential facilities. Licensing staff conduct inspections to home- and center-based and licensed facilities to determine if they meet minimum standards and licensing laws. Every licensed facility must be inspected at least once every 12 months, and at a minimum one inspection per year must be unannounced. Other inspections may be announced or unannounced. Every home-based facility must be inspected once every 3 years. At least one inspection every 3 years must be unannounced.

Facilities are placed on a monitoring plan when they are issued a non-expiring license or certificate. The monitoring plan sets the intervals for the inspections by licensing representatives. The plan is based on an assessment of the facility or homes compliance history and other pertinent factors. Monitoring plan inspections schedules are as follows:

<u>Plan 1 (more frequent plan) inspections are made</u>:
a. At least every 3 to 5 months for all licensed facilities, and
b. At least every 10 to 12 months for registered homes.

<u>Plan 2 (basic plan) inspections are made</u>:
a. At least every 6 to 9 months for all licensed facilities, and
b. At least every 22 to 24 months for registered homes.

<u>Plan 3 (less frequent plan) inspections are made</u>:
a. At least every 10 to 12 months for all licensed facilities, and
b. At least every 34 to 36 months for all registered homes.

Risk-based criteria is assessed before selecting a monitoring plan. Some of the considerations are as follows:

- The number and kinds of non-compliances,
- Whether or not non-compliances are repeated and, if so, why,
- Whether or not corrections are made within time frames,
- Type of training staff, registrant, director, or administrator receive,
- The interaction between caregivers and children and the level of supervision provided,
- The education and experience level of the director, staff or registrant,
- The level of communication between the director or registrant and parents, staff, licensing, and
- For 24 hour care only, treatment and programming for children.

Licensing staff complete a compliance letter or compliance evaluation form when an inspection is conducted. The most recent letter or form is posted (if required for two months in view of the public), or available at the facility for your review. During the process of monitoring, when a facility fails to correct compliances in a timely manner, action against the facility can result in evaluation, probation, suspension, administrative penalties, or revocation of the license or registration certificate.[136]

Residential Child Care Facilities	**Number**	**Capacity**
Child Placing Agencies	249	29,681
Independent Foster Homes	107	585
Residential Treatment Centers	97	4,217
Emergency Shelters	77	1,961
Basic Care Facility	67	4,497
Maternity Home	15	148
Therapeutic Camp	8	404
Mental Retardation institutions	4	138
Total	**624**	**41,631**

There are 37 full time employees in the Division of Child-Care Licensing. Caseloads for RCCL staff are quite large. In fact, in fiscal year 2004, each monitoring staff member had an average of 354 cases, while investigators had an average of 767 cases.

Diana Spiser testified that licensing staff have initiated a new philosophy which will allow them to provide consistent and fair enforcement of the licensing laws and rules on each licensed facility. This philosophy is S.T.O.P, or Seeing The Overall Picture. The basic principle of S.T.O.P. is to assess risk each time RCCL staff are present at a child-care facility. RCCL staff have been trained to not just focus on the individual complaint that they may have been called to investigate, but instead to notice every aspect of the entire facility. If necessary, the staff will provide technical assistance to help the provider develop the knowledge needed to maintain compliance with licensing standards.[137]

Testimony on CPS contracts was provided to the Committee by Henry Darrington, Director of the Contracts Management Division of the DFPS. CPS contracts with licensed

residential child-care providers to care for children in CPS managing conservatorship.[138] Henry Darrington provided the following statistics from fiscal year 2004:[139]

Child Placing Agencies	89
Residential Treatment Centers	63
Emergency Shelters	56
Basic Care Facilities	39
Independent Foster Homes	27
Therapeutic Camps	4
Mental Retardation Institutions	2
Total number of contracts	**280**

There are 12 full time employees on the residential contract staff with an average caseload of 23 cases per staff member.

All contracts are voluntary, and are procured through open enrollment. The current contracting method begins when DFPS posts a notice on the market-place which is then answered by any interested parties. Next, a third party evaluator (Youth for Tomorrow) conducts a review of the provider's policies and program operations to ensure that they are able to meet the needs of CPS children. DFPS then performs an on-site assessment of the provider's facilities, discusses any deficiencies and non-compliances with them and gives them the opportunity to make corrections while providing technical assistance along the way. Finally, the process is completed when the provider is given notification from the Contracts Management Division.

Every residential child-care contract is monitored annually, which includes:

- a review of the provider's compliance with minimum licensing standards
- a review of the provider's compliance with the Service Level System
- a review of the provider's compliance with the contract terms

Results of the monitoring visits are used to determine the appropriateness of renewing the provider's contract for another year.

Office of the Comptroller

In April of 2004, Comptroller Carole Keeton Strayhorn and her staff released a report on the Texas foster care system entitled Forgotten Children. In her scathing review of the DFPS, the Comptroller called for a massive overhaul of the foster care system. Comptroller Strayhorn insists in her report that the State must raise the bar on quality of care, hold the foster care system more accountable, ensure the health and safety of all foster children, and ultimately provide children in the state's conservatorship with a brighter future.[140] Among the report's findings:

- many children have been neglected and abused in foster care, some by their caregivers and some by other children
- many children spend their time in foster care being shuttled among many all-too-temporary homes and facilities
- many children with special needs, such as the medically fragile and those with mental retardation, do not receive the services they need
- some therapeutic camps offer deplorable conditions and are not held to the same standards as other facilities
- many foster children receive disturbing amounts of mind-altering psychotropic drugs with little or no accountability
- some facilities routinely mix potentially dangerous children, such as sexual offenders and those with violent criminal records, with foster children who may become new victims[141]

In their review of many foster care facilities in Texas, the Comptroller and her staff found that the quality of care from one provider to another often varies greatly, regardless of the amount of money they are receiving from DFPS to care for children. This disparity in the quality of care, according to the Comptroller is due to a serious lack of adequate oversight by DFPS which has allowed some caregivers to abuse the system and use federal and state tax dollars to purchase services from allied companies they themselves own.[142] These providers are more interested in making a profit than caring for fragile children in their care.

In the report, the Comptroller suggests 87 recommendations for improving the Texas foster care system. The Comptroller's recommendations cover a wide range of topics, many of which are outside of the scope of this report, but will be touched upon in legislation in the upcoming 79th legislative session. The focus of testimony provided by the Comptroller's staff on August 4, 2004 was related to the first half of the Committee's third interim charge. Ruth Ford, Will Counihan, Diane Thomas, Vicki Anderson and Laurie McLaughlin provided testimony on behalf of the Office of the Comptroller to the Committee on Child Welfare and Foster Care. For the purposes of this committee hearing, the Comptroller's staff was asked to provide their findings and recommendations on DFPS licensing standards, the performance of all types of foster facilities, and on DFPS contracting policies as well.

The Comptroller's office testified that there is an alarming lack of accountability at DFPS, and that due to the weak licensing standards and inadequate methods of contracting, children are no better off in the State's care than in the hands of abusive parents.[143]

Because the DFPS tolerates a vast disparity of quality of care, the Comptroller's office believes that licensing standards need to be updated and more rigorously enforced. The strength of DFPS' facility licensing standards and the integrity of their enforcement are critical to ensure that the basic health, safety and well-being of foster children are being met.[144] The Comptroller's concerns regarding DFPS licensing include:

- The dual system of care. This system creates a situation in which the DFPS is effectively regulating and providing oversight of itself and is not holding itself accountable.
- DFPS licensing standards do not ensure adequate oversight of residential facilities, and are lax on boards of directors made entirely of related parties,
- Although state law and DFPS rules require annual inspections, the agency policy handbook interprets the law and rules to mean that a partial inspection - one that examines compliance with only a portion of DFPS' standards - must be made annually, and that facilities must be inspected for compliance with all standards at least once every two years.[145]
- The DFPS licensing procedures allow staff to administratively close investigations without truly conducting a meaningful investigation of the alleged abuse or wrongdoing.
- Facilities that are repeat violators are not held accountable, and can still take children into their care even with serious and repeat violations pending against them. Also, if DFPS revokes a facility's license, the facility may not reapply for two years; however, facilities can voluntarily close their operation and re-open after fixing the problem.
- Therapeutic camps are not all held to the same level of regulation and standards.

Based on the aforementioned concerns, the Comptroller's office has come up with the following recommendations to make the foster care system more accountable:[146]

- RCCL should apply current licensing standards for “Permanent Therapeutic Camps” to all therapeutic camps and their associated campsites and should immediately move children from camps that do not meet the standards. All areas of therapeutic camps, including associated campsites, should have a thorough health inspection by local health inspectors. Licensing standards should specify that any wilderness camping excursion last no more than six weeks.
- DFPS should upgrade the standards applied to therapeutic camps for personnel responsible for the overall treatment program and admissions assessments to make them comparable to those for residential treatment centers. DFPS should upgrade educational standards for administrators of assessment programs and residential child care administrators.
- TDH and its local affiliates should assume responsibility for complete health inspections of all foster care residential facilities. DFPS should be required to begin revocation proceedings against facilities with health or safety deficiencies and to immediately revoke a license and close a facility on the recommendation of TDH or a local health department.

- DFPS should develop rules and standards such that facilities with repeated violations would trigger full inspections and lead to license revocation. DFPS should collect and review data concerning provider violations to allow it to revise the standards effectively. The standards should establish numbers, types and patterns of violations that will automatically place a facility on probation and lead to revocation unless the underlying issues were resolved quickly.
- DFPS should revoke the licenses of facilities that have ongoing problems affecting the health, safety and well-being of children. The elimination of repeated violators would free RCCL staff to inspect other facilities more frequently and investigate and resolve complaints more quickly, as well as to do both more thoroughly.
- DFPS should permanently bar any board members, officers and lead administrators of a facility that has lost its license, or that voluntarily closes after an adverse action, from holding a license or operating a foster care facility in Texas. This measure would ensure that facilities did not simply change their names and begin operating again under essentially the same management.
- RCCL should complete at least one thorough inspection of each residential facility annually and make more frequent inspections, as required, according to their monitoring plans. This recommendation would bring the program into compliance with state law and agency policy.
- DFPS should promote quality care in foster care facilities by maintaining a best practices database for foster care facilities and caregivers.
- DFPS should provide training on licensing standards to all staff who visit facilities.

In July of 2004, the Comptroller's office issued the *Progress Report* on the various recommendations from Forgotten Children. According to the *Progress Report,* of the ten recommendations to address the issues that the Comptroller has with DFPS licensing, five have "somewhat" been acted upon, four have received no response, and one has been substantively acted on.[147]

The Comptroller's office also listed several concerns with DFPS' Contracts Management Division. The Comptroller believes that DFPS should rely on performance based contracts instead of per diem contracts to ensure better quality of care for the children. Other concerns regarding contracts include:

- DFPS allows providers to negotiate their own terms of the contract that they will have with the State. This is a general weakness of DFPS contracting, and places foster children, and state and federal funding at risk of abuse. In giving vendors this control, the Comptroller believes that DFPS has crippled its ability to enforce performance standards and other key contractual obligations.[148]
- Contractors can refuse admission to any child they choose. The Comptroller would like to see DFPS initiate a "no-reject, no-eject" clause into their contracts, she believes it is essential for the DFPS to have such a clause in order to completely outsource foster care.
- DFPS needs to move away from open enrollment because it may not objectively be the best method for the State to procure the most qualified and efficient contractors.

- DFPS does not perform comprehensive background checks on corporate principals, thus preventing it from ensuring that it does not contract with poor or fraudulent providers who may doing business under a new name.
- All DFPS residential childcare providers abide by the same contractual terms and receive the same per-diem payment for the services they offer, yet DFPS makes no effort either to evaluate disparities in the services they provide or to provide incentives to those offering superior services.
- DFPS does not examine conflicts of interest closely enough. DFPS does not audit or investigate related-party transactions.

The Comptroller's office listed the following recommendations to address the concerns that they found in DFPS contracting:[149]

- HHSC should immediately amend the DFPS care provider contracts to add a conflict-of-interest disclosure provision and strengthen financial accountability provisions. HHSC should, at a minimum, adopt conflict-of-interest provisions already contained in its uniform contract for inclusion in foster care provider contracts. All contracts for residential services should be amended to require full contractor disclosure of business and personal relationships between themselves and their principals and any employees, affiliates or subcontractors. Failure to disclose such relationships should be clearly established as a cause for contract termination. HHSC should also develop rules that would allow it to evaluate alleged conflicts of interest on a case-by-case basis. HHSC should also eliminate permissive language, such as “the contractor should refrain from...”, and replace it with more definite statements, such as “the contractor shall...” or “the contractor shall not...” It also should eliminate any provisions that are obsolete or do not promote financial accountability. Contractors unable to meet these new terms should be given a grace period to restructure their financial or corporate agreements, but in no case should that grace period extend past August 31, 2004.
- HHSC should require DFPS to discontinue its practice of allowing providers to dictate contract terms. Contracts should include provisions that require contractors to meet outcomes and financial accountability standards that protect the safety and well being of foster children.
- HHSC should amend DFPS foster care provider contracts to eliminate clauses allowing providers to reject or eject foster children by fiscal 2008. HHSC, in consultation with foster care providers, other stakeholders and state contracting experts, should undertake a financial review of the impact of no-reject, no-eject clauses in foster care contracts. HHSC should construct a no-reject, no-eject clause that mitigates the financial consequences to providers of caring for more children with high-end needs. The clause should also allow providers to negotiate with DFPS to modify placements that are not in the best interests of children. The no-reject, no-eject clause should be included in all provider contracts by fiscal 2008 as Texas transitions to an outsourced foster care system.
- The executive director of DFPS should revoke signatory approval previously delegated to CPS district directors for contracts with an anticipated value over $25,000 in one year. This would help DPRS better manage its expenditures and provide greater oversight and accountability.

- HHSC should direct DFPS to establish effective risk assessment procedures. HHSC is responsible by law for developing a statewide risk analysis procedure for health and human service agencies. HHSC should advise DFPS on how to identify critical risk factors to be included in DFPS' risk assessment instrument (RAI). The RAI should identify and evaluate the following risk factors to ensure that in-depth monitoring visits are conducted when needed:
    - the quality of services provided, as assessed by objective outcome measures;
    - any history of noncompliance with licensing standards, particularly if a child has been seriously injured in the contractor's care; and
    - the contractor's overall financial condition, as identified by cost reports.
- DFPS should direct its contract monitors to make periodic unannounced visits to contractor facilities. This recommendation would help ensure that the monitors receive an accurate impression of the environment and the care children experience daily.
- DFPS should ensure that all contractor files are complete and accurately reflect their performance on an ongoing basis.
- HHSC and DFPS should fully use charitable no-pay caregivers to aid Texas foster children. DFPS should establish and maintain an active database of placements offered by charitable providers under no-pay contracts, and attempt to place children with appropriate charitable providers before seeking placements with similar, for-pay providers.
- SAO should conduct a management review of HHSC and DFPS to improve contract administration and management systems. The SAO review should identify best practices and specific staff requirements and skill sets required to implement effective monitoring and contract administration practices. The SAO review should also identify rigorous and fair contract implementation strategies for DFPS, and should establish effective financial accountability provisions and processes to ensure effective and efficient expenditures of funds. SAO's review should identify options for HHSC and DFPS to account more effectively for contractor expenditures, and to verify that services are in fact delivered. The review should analyze rules and procedures established by TBPC in developing technical support services for its contract managers, other contract administration and management staff and the agency's contractors. The review should ensure that HHSC's contract management handbook required by law includes best practices from other states and other state agencies in its purchasing and contract responsibilities, such as requiring annual independent financial audits of its contractors and their subcontractors.
- HHSC, in coordination with SAO, should perform complete, on-site financial audits of selected providers. The DFPS Residential Care contract includes a statement that any acceptance of funds by a contractor is also acceptance of the SAO's authority to audit or investigate the expenditure of funds, including under any subcontract. These audits should verify that state funds are spent appropriately and that children are receiving all of the services and care for which the state is paying.

- SAO in coordination with the Comptroller of Public Accounts should review DFPS payments to contractors to ensure that the agency is paying contractors in a timely

manner.

- DFPS should consider enabling providers to go online to view their reimbursement accounts or provide detailed data so that providers can reconcile their accounts. This would enable providers to identify and correct problems quickly.

Again, referring to the *Progress Report* on Forgotten Children, the Comptroller's office testified that of the twelve recommendations on improving contracts at DFPS, five have had some action taken, and seven have received no response from the agency.[150]

Citizens Commission on Human Rights

The Citizens Commission on Human Rights of Texas (CCHR) is a non-profit, public benefit organization dedicated to investigating and exposing psychiatric violations of human rights. Texans contact CCHR via a toll free hotline which is published throughout the State. One of the primary missions of CCHR is to ensure that criminal acts within the psychiatric industry are reported to the proper authorities and are acted upon.[151] As an advocacy group for families, CCHR has also taken on the role of assisting people who feel that their children have been abused in foster care. Requests to investigate fraud and abuse in the foster care system have been pouring into CCHR with increasing frequency over the past year from parents, legislators, government agencies, lawyers and members of the media. The influx of cases have led CCHR staff to perform over 4000 hours of case work including: reviewing thousands of pages of medical and other case records; and interviewing families, CASA workers, former CPS workers, lawyers, psychologists and social workers involved with the foster children in Texas

In their research, CCHR has identified several areas of concern about the foster care and residential treatment systems. Those germane to this interim charge include:[152]

- Foster Care System
    - The Comptroller found many Texas children living in squalid conditions in foster care, similar to CCHR's own investigations
    - Police reports indicate large numbers of children in foster care may be running away
    - There are financial incentives to give foster children subjective psychiatric diagnoses, including increased per day foster payment rates
    - Many Texas foster children are currently on psychiatric drugs, most of which have not been tested or approved for use in their age group. CCHR's investigations have found children on up to 13 psychiatric drugs at a time
    - Children are pulled out of homes due to neglect, and are sometimes placed in even worse conditions in the State's care
- Residential Treatment Centers (RTC's)
    - RTC's provide in-patient psychiatric treatment to a growing number of Texas foster children each year
    - RTC's are subject to few regulations compared to other types of healthcare facilities in the State
    - CCHR's medical staff has reviewed a number of cases in which children were overmedicated at RTC's. CCHR has also reviewed several cases where children were restrained as a facility's response to their side effects to these drugs
    - A number of deaths by restraint of children in RTC's have occurred
    - DFPS appears to be working in partnership with the RTC industry as opposed to acting as a tough regulator
    - DFPS has continued to place children in abusive RTC's even when local law enforcement refuses to use the same facilities for juvenile offenders due to abuse of clients

- Emergency Removals
    - Are usually carried out without a proper warrant
    - Sometimes are based on results of psychological "Risk Assessment Tools" which according to CCHR are controversial, subjective assessments of family life without established scientific validity
    - When based on evidence or strong suspicion of real physical and/or sexual abuse of a child, CCHR believes that emergency removals should always involve law enforcement. Law enforcement should be involved on all priority one cases from the outset
    - CCHR has found that the primary source of trauma to the child and the family has been generated by the emergency removals

Along with the aforementioned concerns, Andy Prough, Lee Spiller, Jerry Boswell, Lauren DeWitt and Bill Atwood from CCHR provided testimony to the Committee on their concerns with DFPS licensing, contracts and the potential for fraud in each division.[153]

Regarding contracts, CCHR believes that DFPS should regulate and provide strict oversight of their contractors and not partner with them. The current "partner" type relationship provides for inconsistent licensing enforcement and ultimately places children in harms way. This concern is partially derived from the fact that while in the care of the State, children are not advancing educationally, and are oftentimes returned home uneducated. If the State more rigorously investigated and provided a clear oversight of its licensed facilities, educational standards as well as safety standards could be better enforced.

CCHR also testified that DFPS needs more regulatory teeth. Currently, the maximum civil penalty that DFPS can leverage against a foster facility is $100 per incident per day. CCHR pointed out that the current level of penalties are so low that it would actually cost more to assess a penalty than the agency would recover. DFPS also rarely takes adverse actions against a foster facility. CCHR testified that this is a concern because repeat violators are continuously contracted with by DFPS and are not held accountable for their violations. DFPS needs to have the ability to impose strict fines on foster facilities that fail licensing standards. This structured system of penalties, according to CCHR, would provide the agency with another tool to regulate foster facilities instead of slapping them on the wrist or simply closing the whole operation down.

Another area of concern according to CCHR is that CPS caseworkers are set up for failure. Caseworkers receive very little training which is often inadequate and does not prepare them for the stresses and tough decisions that they will be forced to make while in the field. CCHR believes that the "Risk Assessment Instrument" (RAI) that caseworkers rely heavily on to predict the future dangerousness of a parent is flawed and lacks scientific reliability. By relying so heavily on the RAI, CCHR believes that caseworkers have steered away from using good observation and collection of physical evidence to justify removing children from their parents. Unfortunately, according to CCHR, caseworkers have moved towards attempting to predict a future risk of harm, which is an impossible task to accomplish.

CCHR is also concerned with the lack of communication between DFPS and other state agencies that place children within the foster care system, as well as their lack of communication with foster families, the public and other advocacy groups. CCHR testified that it has been their experience that information does not flow as freely from DFPS as it should, or even as the law requires. Andy Prough noted that DFPS has often not abided by the requirements in the Public Information Act as far as releasing information in a timely matter. These experiences have led CCHR to question if the data is simply not being collected by DFPS or if there is a policy of secrecy at the agency. It has been testified to by prior witnesses, so it seems to be a recurring theme that information should be, but in practice is not, flowing freely from the DFPS to its consumers.

CCHR also offered recommendations to the Committee to help DFPS protect children against unscrupulous foster care providers. CCHR's recommendations include:

- CPS must formulate clear policies to communicate with licensing boards about the investigative and disciplinary status of their licensees and other professionals who have contact with foster children.
- Criminal background checks must be done on all providers who contract with DFPS to provide direct care to children.
- DFPS needs a clear policy on the use of psychotropic medications, and on restraint as therapy.
- DFPS foster facilities should undergo a "utilization review" similar to those carried out on nursing homes to ensure quality of service and efficiency of dollars spent.

In their review of DFPS contracts, CCHR became concerned that the potential for fraud was rampant in the agency. Bill Atwood, MBA, CFE of CCHR provided a detailed list of the potential for fraudulent activities within DFPS contracts. Specifically, he noted that:[154]

- DFPS routinely allows recurring unallowable costs to be paid to contractors
- The unallowable costs are not recovered from the contractors because the costs are set in the rate structure
- Many items in the cost report are non-reconcilable
- Medicaid optional funding allows the contractor to use their own medical care or non-Medicaid medical care. This increases the additional funding to the contractor and becomes an additional allowable cost which flows through to the rate setting process

In his testimony, Bill Atwood provided the Committee with several red flags of fraud that he noted in an audit of foster facilities by the Comptroller's office, including, among other things, DFPS' allowance of related party transactions and improper record-keeping at the agency. Bill Atwood offered several suggestions to reduce the potential for fraud in DFPS contracts. Among his recommendations were the following points of information:

- DFPS should review internal controls (separation of duties, related parties, related party transaction validation, etc.)
- Any changes to contracts must be approved in writing by DFPS
    - The contractor must provide objective data justification for changes
    - Upon approval, the contractor must apply changes to accounting application

and related linkages. The changed document should be linked to every account that is affected.

- DFPS needs to have an objective measure of performance for each child that falls under the contract period
- DFPS should set up reporting to generate the cost report, line item by line item, directly from the General Ledger accounts and related documents where required
- Cost Report to DFPS by minimally hard copy and optimally by hard copy and/or CD. (use common software such as word, excel or other)

Texas Alliance of Child and Family Services

Nancy Holman, Executive Director of The Texas Alliance of Child and Family Services (the Alliance) provided testimony to the Committee regarding the Alliance's recommendations on improving DFPS licensing.[155] As previously stated, the Alliance is a 28-year old membership association representing nonprofit organizations that provide both foster care and adoption services to children and families throughout the State of Texas. While many member agencies contract with the DFPS to care for children in state custody; others provide these services, free of charge, as a safety net in their communities. The Alliance's diverse membership over all facility types, range of services, and degrees of partnering with the State, provides them with an understanding of:

- How current licensing standards are working for different care settings
- How the different forms of oversight at DFPS function in total to protect and serve children;
- How to balance regulation to accomplish its intended goal; while not thwarting the ability of agencies to cost-effectively deliver the results Texas wants for its children;
- How DFPS can better evaluate the effectiveness of standards.

According to the Alliance, current licensing standards are quite comprehensive for residential child care facilities covering nine license types. While comprehensive in size, the effectiveness of standards has always been challenged by how different licensing representatives interpret each standard. These variances exist within regions and across regions as well. As other groups have also testified, the Alliance feels that consistency of enforcement is an issue. In addition, the multitude of licensing standards covers a range of safety issues, each with varying degrees of risk associated with a child's well-being. The Alliance's concern is that there is no differentiation between levels of risk when citing standard violations or analyzing violations as indicators of a provider's safety. For example, Nancy Holman testified that a violation for not caulking around a tub is given the same weight as leaving poisonous chemicals within a child's reach. It is the Alliance's contention that DFPS needs to provide better risk assessment in interpreting violations so as to improve the effectiveness of licensing, thus ensuring safety for children.

Nancy Holman also testified that minimum licensing standards could be more direct in specifying protocols of what DFPS wants for its children, rather than focusing so much on process. For example, licensing still does not specify how comprehensive an assessment must be for a child, leaving some agencies to invest substantial resources in the process, while others do not. In the area of psychotropic medications, a problem that has apparently concerned DFPS for a while, there is very little direct reference to how DFPS wants medications monitored in current standards. The Alliance views the lack of clarity from DFPS in addressing concerns as a problem.

Regarding the different forms of oversight at DFPS and how they can function more effectively, the Alliance testified that DFPS has three oversight entities for residential child care facilities, yet has never clearly defined roles and responsibilities for each entity. Consequently, there has been duplication and conflicts between each entity, causing a drain on resources and a confusion of intent. DFPS needs to be concise in defining the

roles of their oversight entities. The Alliance feels that by doing this, the DFPS would have the ability to prevent harm by requiring a minimum set of standards that keep children safe. It is not about measuring performance in delivering services, or judging the quality of services delivered. Those evaluations are and should be assessed by other oversight bodies that have the training and expertise to evaluate those functions.

The Alliance feels that current efforts by DFPS through the Advancing Residential Childcare Initiative (ARC), are blurring those lines through efforts to move level of care service packages into licensing standards. Texas should not jeopardize the safety net of the free services many facilities provide in their communities by elevating minimum safety standards into treatment models that these facilities cannot, or choose not to provide through their missions. Clearly defining and clarifying oversight roles is another DFPS problem according to the Alliance. In addition, the Alliance testified that there continues to be problems in achieving the same level of accountability for all parties; including for the State when it provides services, or is required to participate in, or approve of certain program activities. Equity in demanding accountability for all parties has been a problem for the system.

Another concern of the Alliance is in figuring out how the State can balance regulation with the need for innovative and effective program delivery. The role of the State to effectively monitor safety and ensure compliance in delivering services to children is clearly one of its most important responsibilities. The mutual goal of both the public and private sector is to keep children safe and help their families regain a home environment that provides that safety. To accomplish this, best practice models indicate the most effective regulatory process is one that combines monitoring with technical assistance. The goal is to make the system of care work better. To that end, providing technical assistance does not diminish the effectiveness of regulation, but rather enhances it by better equipping the provider to make needed changes. The Alliance recommends that DFPS make technical assistance a formal part of its licensing process.

To be effective in the role of providing technical assistance, DFPS should enhance qualifications for licensing staff in addition to standardizing training. The higher the clinical skill level of licensing staff, the more effective technical assistance they can provide. Input from stakeholders is key to developing standards that effectively protect children; without impeding flexibility and innovation in service delivery. The Alliance feels that DFPS needs broader, more comprehensive methods to get input from providers when revising standards.

The Alliance also provided the Committee with information on how DFPS can evaluate the effectiveness of licensing standards. The need to collect and evaluate data is critical for licensing to evaluate the consistency of enforcement and the effectiveness of standards in keeping children safe. Adequate, open data collection and analysis will enable DFPS to identify trends in violations and areas where more technical assistance and training are needed. Sharing this information with the public sector through a public/private feedback system would be very instrumental in improving the safety of facilities, not just documenting conditions.

In conclusion, the Alliance offered the following recommendations:

- Improve Consistency: DFPS needs standardized instruments for licensing workers to use when evaluating an agency. DFPS needs to collect data from the field to determine which standards are subject to interpretation and which are clearly defined. They can then evaluate the consistency of interpretation for those standards.
- Improve Risk Assessment of Violations: DFPS needs to use more efficient, up-to-date methodologies that will help focus on risk to children. Two examples are moving to a weighted standards system that classifies standards according to degrees or risk; or a Licensing Indicator System that statistically predicts compliance.
- Provide Technical Assistance with Oversight: DFPS should make technical assistance a formal and required part of the licensing process.
- Raise Requirements for Licensing Staff: DFPS should assess the need to raise requirements for education and experience and training for licensing workers.
- Strengthen Provider Input: DFPS needs broader, more comprehensive and varied methods to get input from stakeholders during formal licensing revisions.
- Establish a Public/Private Feedback System: DFPS should establish a public/private body that evaluates licensing data annually to recommend areas of inconsistency and trends in violations.
- Reopen Licensing Standards Revisions: DFPS should re-open and evaluate the work on revising licensing standards in light of the restructuring of the child welfare system being considered.

Nanci Gibbons, a member of the Alliance, and the Executive Vice President, Chief Operating Officer for Baptist Child & Family Services in San Antonio also provided testimony to the Committee on recommendations to improve the licensing standards at DFPS.[156] Baptist Child & Family Services holds a number of contracts with the Department of Family and Protective Services including two for emergency shelter care, one for basic care and one for foster care. Prior to assuming her current position, Nanci Gibbons worked for what is now the DFPS for 25 years, the last 14 of which, she served as the Administrator of Residential Child Care Licensing.

Nanci Gibbons testified that there are fundamental changes that must occur in DFPS licensing in order to accomplish positive change in the Texas licensing program, practices and requirements. She stated that to begin addressing the concerns about licensing by asking, “How do we fix it” without clearly knowing what we are trying to fix is unproductive at best, and could be dangerous. In the same way, saying that we need to change licensing requirements in order for licensing to be more effective implies that there are clear and consistent answers to such questions as “what do we want the licensing program to accomplish?” and “what assumptions do we want licensing to make about providers?” The problem with this approach, according to Nanci Gibbons as well as the Alliance, is that at this point there are no clear and consistent answers to these kinds of questions.

When Nanci Gibbons went to work for Licensing in 1973, Texas was in the midst of a national scandal related to childcare licensing requirements, policies and practices. During

the next several years she testified that she saw what happens when a state takes decisive and consistent action related to issues that are fundamental to an effective licensing program. The decisions that were made then ultimately resulted in Texas being recognized as a national leader in the field of childcare regulation during the 1980's and early 1990's. Nanci Gibbons testified that in many ways the situation that we find ourselves in today is similar to the one in the early 1970's, and as a consequence there are some valuable lessons we can learn from that experience.

Nanci Gibbons noted that she does not believe that there is just one right way to address the protection of vulnerable children in foster care. She stated that there are clearly a lot of ways to do it wrong, and according to Nanci, many appear to be occurring in Texas today. However, she believes that it is possible to craft a premiere licensing program that is both built on solid regulatory principles while still reflecting the unique needs and concerns of Texans for children in foster care.

Nanci Gibbons believes that there are three fundamental issues that must be addressed, and resolved in order for the Texas child care licensing program to be successful:

- First, the legislature must send a clear and unmistakable message regarding the State's commitment to protecting children in foster care, and the message sent must be consistent in order for the licensing program to know what its job is, and how to do it effectively.
    - How do you do that - first, the legislature must adopt licensing statues that are clear, consistent and legally supportable with regard to Child Care Licensing's roles and responsibilities. These statutes must also include the extent to which you expect and require the DFPS Child Protective Services program to meet the same licensing requirements as private providers.
    - Secondly, the legislature must be willing to support licensing decisions that are consistent with the statues that lawmakers adopt even when these decisions negatively affect some of their constituents.
    - Thirdly, the legislature must appropriate the dollars necessary to operate an efficient and effective licensing program. This may or may not mean that you need to appropriate more dollars to Licensing - lawmakers must decide what they want the Texas childcare licensing program in Texas to achieve.

That is the role that the legislature must take to ensure that Texas has a healthy childcare licensing program.

- The second thing that must happen for the licensing program to function effectively is that there must be a fundamental shift in the DFPS view of providers – from one of general mistrust and suspicion, to one of trust with provider accountability and respect.

Having been both a DFPS employee and a provider, Nanci Gibbons can argue either side's position on who is to blame for this lack of mutual respect and trust. But when the relationship between DFPS and the providers is viewed from a neutral position, she feels

that the truth about the matter is that DFPS has the upper hand. DFPS can continue doing its job with or without a particular provider – but in most cases an individual provider cannot continue to operate without DFPS. Because of this unavoidable imbalance of power, it is especially unfortunate that DFPS is frequently perceived by providers as heavy handed and inflexible when there does not appear to be any reason for this. In addition, DFPS is often critical when providers who they have asked to give input on an issue respond in a way that does not line up with the agency's already determined position on that issue.

Nanci Gibbons testified that this cycle of mistrust must end, and by asking for this change, she is not suggesting that providers should have the last word or that providers should not be held accountable for their actions. According to Nanci Gibbons, most providers welcome the opportunity to be held accountable, so long as the standards they are being measured against are justifiable, fair and applied equitably.

- Lastly and also very importantly, Nanci Gibbons testified that if the licensing program is to be as effective as it can be, there must be an understanding of and appreciation for the critical differences between the regulatory function and the child protective function of DFPS. Ensuring that both CPS and Licensing co-exist within DFPS is critical to the safety and well being of children in out of home care.

Licensing is a regulatory program, and as such should be concerned with the ongoing health, safety and well being of all children in foster care. Licensing's emphasis is on prevention. Although licensing includes an investigatory component, that component is secondary to the goal of preventing bad things from happening to children – all children in foster care whether they have gone through the CPS system or not. It is important to remember that not every child in licensed care is placed there by CPS or even another state agency.

In contrast to Licensing, CPS is largely an intervention program, and as such, conducting investigations is a critical component. While Licensing is concerned with the overall welfare of all children in foster care, the CPS program is concerned with individual children. CPS is responsible for ensuring that individual children are protected and safe whether they are in their own home, the home of a relative, or in licensed care.

Although the Licensing and CPS programs should complement one another, they should remain as separate and distinct programs in order to ensure that each fulfills its essential role in keeping children safe. Over the past 10 years, however, Nanci Gibbons testified that the lines between Licensing and CPS' responsibilities have been deliberately blurred.[157] This has been done with the best of intentions but has had a disastrous effect on both programs. CPS has used Licensing to deal with providers they did not feel were doing a good job when CPS should have handled their dissatisfaction by moving a child or pulling the CPS contract.

At the same time, Licensing has moved in the direction of reacting to single incidents involving individual providers by layering on more and more requirements for all providers instead of dealing with the specific non-compliant provider appropriately. This has diluted

the effectiveness of both the licensing and the CPS programs.

In summary, Nanci Gibbons noted that if the State is seeking to make genuine efforts to improve the lives of Texas children in foster care, it will take more than tinkering with the details of either the CPS or Licensing programs, or even appropriating more dollars. She believes that the legislature must revisit the question of what the people of Texas want for children in out of home care, and then adopt laws that reflect those views. The in-fighting among the principal players who license and provide foster care must stop, and the State must ensure that Licensing is actually accomplishing the outcome that a regulatory program is designed to produce – that of preventing bad things from happening to children.

Advocacy, Inc.

Monica Thyssen of Advocacy, Inc. provided testimony to the Committee regarding her organization's recommendations for improving DFPS licensing standards and facility performance.[158] One of Advocacy, Inc.'s main concerns revolves around the question: "why does Texas spend so much money on residential treatment when best practices and research from other states proves that residential treatment centers are not the best form of placement for children?" Advocacy, Inc. believes that DFPS should instead develop a continuum of care and work closely with the children, the birth families and foster families to help the children remain in a family type setting. Their contention is that residential treatment centers do not serve a child's best interest.

Monica Thyssen testified that due to the increased caseloads of CPS caseworkers, children are oftentimes left at RTC's because caseworkers do not have adequate time to find a foster family home to place the children in. Again, Advocacy, Inc. believes that this practice is not in the best interests of children because research has shown that children cope better and actually improve in a family type setting as opposed to residential treatment.

Another concern of Advocacy, Inc. was also touched upon by Nanci Gibbons and the Alliance, that being that the roles of CPS and Residential Child Care Licensing should be clearly defined and separated. Advocacy, Inc. also feels strongly that DFPS needs to have strong oversight of the facilities that they license and that the best method for procuring the strength in oversight is to eliminate the dual system.

Other recommendations from Advocacy, Inc. include:

- Local Departments of Health should have a strong collaboration with DFPS and inspect all foster facilities in their region.
- If the State chooses to become accredited, the DFPS must ensure that a monitoring system is in place to ensure that all standards are being met and that children are safe in care.
- Due to a lack of funding, DFPS is currently not providing an adequate level of technical assistance to providers. The legislature should allocating more dollars for this so that providers are better prepared to provide quality care to children and to stay abreast of all state laws and DFPS policies.
- RCCL investigators for DFPS should increase the frequency of inspections which monitor the minimum standards on foster care facilities to bi-annual inspections.
- RCCL investigators should receive advanced training in law enforcement type investigation techniques.
- DFPS should adopt a weighted system of licensing standards violations. For example, if a facility has 5-10 major violations, it should be closed down and never licensed again, yet a facility with 5-10 minor violations should be fined according to the severity. Regarding the fines, DFPS needs to have the authority to levy fines that will serve as a deterrent to violating licensing standards.

- Regarding psychotropic medications, when a child reaches a certain age, they should be given the opportunity to appear before a judge to testify to the court how the drugs are affecting them.
- The time it takes to revoke the license of a facility with consistent major problems as well as the appeal process for such a facility should be expedited so that children who remain in the care of the facility, while under the scrutiny of RCCL, are quickly removed from a harmful situation if the facility is deemed unfit for children.
- The 6 outcomes, (from the Advancing Residential Care program at DFPS - have been selected to evaluate the progress of individual children) are good for children in the State's care, but they should not be imposed on providers who have no control over some of them. Listed below are the 6 outcomes:
  - The child is safe in care
  - The child is placed with siblings when appropriate
  - The child moves toward permanency
  - The child improves in functioning
  - The child is placed in the region of conservatorship
  - The child maintains behavior without psychotropic medications, restraints or seclusions
- Advocacy, Inc.'s main concern with these outcomes is that providers will consistently be shown as not meeting the criteria for keeping children safe, or for not making the system better based on outcomes that they have no control over.

Summary of Public Testimony (from Aug. 4th)

Several concerned child welfare advocates, stakeholders and other interested members of the public also testified before the Committee in regards to enhancing the performance of all types of foster facilities as well as the licensing standards that regulate those facilities. Recommendations from the public include:

1. Therapeutic Wilderness Camping should not be lost in Texas. There is no science or data driving the push to close down primitive camping. Therapeutic camping serves the hardest to serve children who have been in failed placement after failed placement, and most overwhelming find a niche in this type of setting. Therapeutic camping is not the right fit for every child, but with the focus on social group work, therapy and natural consequences for one's actions, there should not be a push to eliminate this form of wilderness camping from foster care.

2. Psychotropic medication should not be used as a means for behavior control unless it is absolutely necessary, and only if a doctor and therapist approves of the use of the medications.[159]

3. DFPS must ensure that children in their care receive fair and reasonable diagnoses before they are placed on any psychotropic medication. To that end, the State should keep track of which doctor or psychiatrist is prescribing multiple medications.

4. Medicaid cards need to be provided to foster children in an expedited fashion. The current wait is often too long and is hurting children who desperately need medical care.

5. DFPS should provide all background information to the foster facility, including the child's complete and accurate medical history. Doctors rely heavily on this background information, and would be better able to treat children in the State's care if the agency provided a complete history of the child at the time of placement.

6. DFPS needs to provide better training to foster families and prepare them for the tough cases that may arrive at their doorstep. The current training is not enough, especially in dealing with medically fragile children.[160]

7. The State should closely monitor therapeutic camps. Specifically, the State should be concerned with:
    a. poor food quality, unsanitary cooking conditions, unplanned menus
    b. inadequate water and septic systems
    c. the lack of dependable lighting in all areas of the camps
    d. state funds not being used wisely, and perhaps not being audited
    e. some therapeutic camps are managed by the same organization or group that operate a residential treatment center. This relationship may serve as a money-making operation as opposed to a true therapeutic one[161]

8. DFPS should use objective data sources and assessment measures such as research-

based risk evaluation and objective tests as well as structured interviews by trained raters in order to decrease bias from ethnic, cultural, economic, educational and other factors to further protect children from abuse. Using the most objective data sources possible would also improve the accuracy of decision-making and reduce the cost of CPS operations.

9. A research-based risk evaluation system should also be used by DFPS to improve the accuracy of decisions about risk to children at all stages of the intervention process.

10. DFPS should use a combination of assessment methods and tools in order to decrease oversight of potential risks to children in their homes and in foster care placements as well.[162]

11. One of the six outcomes that DFPS will soon be holding providers accountable to requires improvement in adaptive functioning. This is measured by reductions in levels of care, and is an inappropriate measure for foster families and providers who care for medically fragile children who will often need a constant high level of care simply to remain stable. Under this performance measure, CPA's that specialize in serving children with special health care needs will likely be penalized because the levels of care for their children are not likely to drop, and this performance measure will not be met. DFPS should revise their performance measures to outcomes that are within the control/influence of the providers being measured.[163]

12. Divorce Licensing/Regulation monitoring and development from Contracting. Move Regulation directly under HHSC or DHS. Require DFPS to clearly define the roles of Licensing, CPS, and Contracting, and develop their rules and regulations within the scope of those roles. Of every standard it should be asked; Does this relate to the health, safety, and well being of children? Or, Is this a service that should be contracted and paid for separately? Reorganize the Minimum Standards under the 7 topics listed in Chapter 42 of the Human Resource Code. This will focus the Standards and the Licensing Staff on those areas mandated by law and discourage focusing on specific treatment services that should be purchased separately. Require DFPS to clearly define the treatment services the are be purchased through its contract, and then ensure that there is an effective system for following the money used to confirm DFPS is getting what they are paying for.

13. Licensing must attract and retain qualified, experienced regulatory staff. There has been an exodus of experienced and qualified Licensing staff over the last 5-7 years to the point that there is little, “institutional” memory or experience left. Many of the most experienced and qualified Regulatory field employees have moved on. This exodus corresponds to the conflicted role and wayward direction of Licensing. Raise Pay Grades for Licensing Staff.

14. Increase the number of Licensing Representatives monitoring DFPS run foster homes.

Currently, there are 25 Regulatory/Licensing Representative positions across Texas monitoring approximately 12,000 children placed in private facilities (Private Foster Homes, and Residential Treatment Centers).

15. Compile a Statewide Standard Deficiency database for regular analysis of trends and weaknesses in the system: as of this time, Licensing does not know how many times 'Inappropriate Discipline' was cited for any time period, or at any type of facility across the State. They do not know how many treatment plans were incomplete, how many physical restraints were not documented correctly, how many foster families were verified without a proper screening, or how many serious incidents were reported late. They have all this information, but have never compiled it into a central database for analysis. Deficiencies cited and then organized by type, size of facility, and location would reveal a wealth of information to be used to decrease risk and improve quality of services for dollars all ready being spent. For example, a database like this would: show deficiencies cited most frequently for any type of Service/Contract; immediately identify risks, and training needs to reduce that risk; problems in interpreting the meaning of the standard; standards that are not monitoring what they were intended to monitor; and reveal inconsistency between Licensing representatives, and/or Licensing representatives that are not monitoring appropriately according to policy.

16. DFPS should publish serious investigation reports. Whenever there is a death or serious injury in a facility, DFPS should publish part of the report that describes the circumstances surrounding the incident for other providers to see. The intent is the same as the FAA would do when they discover what caused a particular plane crash, not to assign blame, but identify circumstances/causes that everyone should immediately be aware of. These types of Investigations should have two parts, Privileged and Non Privileged, with one part confidential, and the other part published. The sole intent of the published part is to make other contractors aware of potential hazards or circumstances.

17. DFPS Licensing should have standardized training for internal investigations. Approximately 10 years ago Licensing began requesting that CPA's conduct their own internal investigations when certain types of allegations were reported. Training was never provided to the private agencies on how to conduct these internal investigations. The only information provided was a report format to follow. DFPS Licensing and private providers should develop a curriculum for private contractors regarding how to conduct and report on these types of investigations. Private agencies must designate employees to take this course, and only they can conduct internal investigations.

18. Allow licensing of branch offices: Licensing needs the ability to take corrective action again a single branch office of an agency when appropriate. Many Child Placing Agencies may have 2-10 offices located across Texas. Some of these offices function very well, while others may be struggling. Licensing is often hesitant to take Corrective Action because DFPS current policy only allows them to apply the action against the entire agency, not a single office.
19. Mandate that a Minimum Standards Review Committee consisting of Public/Private

members meet for 1-2 months every year to review current standards. This would include issues such as interpretation, application, monitoring, and effectiveness.

20. Weighted Standards - Under the current system, forgetting to write down the date of birth for a child on a form and using inappropriate discipline carry the some weight and penalty. There is no system to distinguish the difference in importance between the two. It is recommended that minimum standards be reorganized within the original 7 mandated parameters, with each section having weighted/prioritized standards; promote the health, safety and welfare of children attending a facility, promote safe, comfortable, and healthy physical facilities, ensure adequate supervision of children by capable, qualified, and healthy personnel, ensure adequate and health food service where it is offered, prohibit racial discrimination, require procedures to involve parents and guardians in formulation of plans, and prevent the breakdown of foster care and adoptive placement.

21. DFPS should classify deficiencies cited in reports on foster facilities and homes. Licensing should classify their deficiencies in the following categories:
    a) *Systems Problems*: This would include deficiencies caused by breakdowns in policies, process, and/or structure. Response may include changes in communication channels, changes in organizational structures and processes, review of forms, adjustments in staffing.
    b) *Knowledge Problems*: This would include areas where mistakes were made because of lack of training, knowledge. Responses would include Training, Continuing Education.
    c) *Behavioral/Supervision Problems*: This includes deficiencies where employees/supervisors knew the expectation and standard, but did not follow through. Corrective Action could include: Informal or formal counseling, changes in assignments, disciplinary action.

    Corrective Action Plans to fix the deficiency should then be related to how it was classified (Either a Systems change, Knowledge/Training, and/or Employee Discipline/Supervision). This would reduce the subjectivity of the Corrective Action Plan, make it more focused, and assist Licensing in better targeting the problems of an agency.

22. Substituting Accreditation for Regulatory inspections is not an even trade off. The Accreditation process of COA relies primarily on self-reporting, self-monitoring, self-assessment, and volunteer peer reviews, all managed outside of Texas. Accreditation can mean not having an outside observer in the facility for 2-3 years at a time. The most effective way to 'promote health, safety, and well being of children in out of home care is to have a DFPS employee in that facility checking the health, safety, and well-being of the children.[164]

Judge Carole Clark, 321st District Court

Judge Clark began her career as a CPS caseworker at the age of 22. From there, she became an investigator and court services worker, and then practiced family law for 20 years prior to being elected to serve as Judge of the 321st District Court. This line of experience has allowed Judge Clark to view CPS cases from all sides, and has also provided her with a unique opportunity to provide recommendations on improving DFPS policies and procedures.

Judge Clark provided the Committee with her insight into the DFPS and its problem solving capabilities. Her observations are as follows:[165]

- The DFPS is so large that navigating the chain of command is impossible for anyone who doesn't have apparent authority to receive the requisite attention. As the agency becomes larger, so does the chain of command as well as the gap between the top administrators and the front line workers.

- The DFPS legal staff believes that management of this agency has a vested property right interest in their jobs. If ineffective management can only be shifted to other jobs, the problems are never solved.

- The DFPS represents a situation in which accountability has run amuck. There is so much pressure placed on the front line staff to make the numbers, that cases are closed which should not be closed. DFPS is dealing with cases that are made of human lives, not inanimate products. Every case and every number represents a child at risk. Grading employees based solely on their achievement of number goals invites many of the agency's problems.

Judge Clark sees the overall picture as one in which the front line is fully aware of the problems based on their huge caseloads and backlog, but that the information is not being received by the top levels of the agency. Based on her observations in dealing with the DFPS, and on research she has performed, Judge Clark provided the Committee with recommendations on making the agency more efficient and accountable to its customers.

- The chain of command must become very short. Regional offices with a minimum of contiguous counties can solve their own problems. What works in East Texas doesn't necessarily work in West Texas. The DFPS must shift away from such large centralization.

- DFPS needs to shift away from an emphasis on accountability based solely on numbers.

Charlotte McCullough

Charlotte McCullough provided testimony to the Committee regarding best practices and program models that have been effective in transforming child welfare and foster care systems across the nation.[166] Charlotte McCullough's background and knowledge in this field is extensive. She began the first 15 years of her professional life in behavioral health, working with adults with mental health or substance abuse problems. For seven years she worked in Houston area hospitals, child guidance centers, and private practice. In the 1980's, Charlotte relocated to the Washington, D.C. area and has been focused on child welfare policy, practice, and research since that time. For 14 years she was a senior staff member of the Child Welfare League of America (CWLA), the oldest and largest association of public and private child welfare agencies in the country.

For the past four years, Charlotte has been a principal with a research and consulting firm that she founded. Her firm specializes in management, finance, and contracting issues in child welfare; and some of her clients have included state and county public agencies, private child-serving agencies, universities, and advocacy organizations. In her testimony to the Committee, Charlotte McCullough shared research findings and first-hand knowledge of current finance, management, and service delivery trends in child welfare and highlighted some of the promising approaches and lessons learned by other states.

According to Charlotte McCullough, in recent years there has been a sustained effort in many states to proactively identify and remedy problems in the child welfare system. Part of this non-crisis driven planning is attributable to the passage of the Adoption and Safe Families Act in 1997 (ASFA)—a driving force for fiscal, programmatic and procurement restructuring. ASFA mandates greater accountability for safety, permanency, and well-being for children. It also, for the first time, defined outcomes and performance expectations that would be consistently tracked and monitored across all fifty states and the District of Columbia. In 2001, a process called the Child and Family Services Review (CFSR) was started to ensure that states were in compliance with ASFA child and family outcomes as well as system performance measures.
The CFSR process requires states to first study, from top to bottom, how their child welfare systems are working. Then there is an onsite review where a team conducts a thorough assessment of a random sample of cases to determine whether practices met standards. At the end of the process, if states fail to meet standards they must submit Program Improvement Plans specifying how they will improve performance. States failing to submit plans and make needed changes may be subject to future financial penalties.

With the passage of ASFA and the subsequent reviews, there is ample evidence that the nation's child welfare system is seriously in need of repair. No state has passed the review process. The reviews have shown that children in the care and custody of the State are not safe; they are left for too long in unstable and often unsuitable foster care settings waiting for a permanent and loving family; and too often their health, mental health and education needs are not identified or addressed while they are in our care. Charlotte McCullough testified to the fact that the Texas CFSR onsite review was conducted in February 2002. The results were dismal. Texas was in compliance with only one of the seven required

outcomes.

While the results of all state reviews have been troubling, the process of self-evaluation and the specification of standards of practice and outcomes have been quite beneficial, according to Charlotte McCullough. Now, when states need to make changes, they can be made in the context of an overall plan to achieve and sustain improvements. Change is no longer a knee-jerk reaction to the crisis of the moment or the headline in the news. The reviews have also highlighted some fundamental problems that seem consistent across states. Charlotte McCullough noted that one of the key findings of most states' reviews has been that the system has relied on a limited number of programs and services that did not take into account the individual needs of children or their families.

Faced with the new federal mandates, a decade of escalating costs, and clear evidence of failure to meet basic standards, state and local policymakers and administrators in many states have re-examined and significantly changed their practices. Charlotte McCullough noted that some states have made changes in how they manage the "front-door" to the child welfare system—Child Protective Services—by adding more tools to their arsenal. For example, instead of treating all reports of abuse or neglect alike, with an adversarial investigation, some states have created differential responses when they receive reports of possible abuse or neglect. They are diverting low-risk families from the formal system and providing services to reduce the risk of harm to the child while allowing the family to retain the care and custody of their children. Some states have contracted with community agencies to provide these assessments and services in place of a formal public agency investigation (Maine and Arizona, for example).

Many other states have developed program improvement plans that call for significantly reducing caseloads for public caseworkers, improving training, enhancing supervision, and even embarking on national accreditation to ensure consistent quality, while also increasing the standards for family contact and engagement and shortening the timeframes for critical decisions. Others have embraced family conferencing, similar to the DFPS' family group decision making program which joins professionals and family members from the outset in planning for the child's safety, permanency and well-being.

According to Charlotte McCullough, over half of the states have changed in very significant ways the manner in which they manage and pay for services in order to stimulate new delivery systems and practices. Through the years, these reforms have been called a variety of names: "managed care" in child welfare, "privatization" or "community-based" care, or "results- or performance-based" contracting. Regardless of the term used, most of these initiatives have placed an increased emphasis on outcomes, or value for money spent, with an implicit goal of getting improved results for the same or less money.

Based on her extensive research and knowledge of national trends in child welfare, Charlotte McCullough provided the Committee with a summary of promising approaches. She testified that with increased flexibility in funding, including:

- a greater focus on family engagement,
- family team conferencing for all cases,

- frequent visitation with workers and children and families,
- expansion of kinship care programs,
- access to a broader array of services and the use of informal, non-traditional supports,
- and the introduction of evidence-based practice models and decision support tools,

Texas has plenty of opportunity to make desired changes to its foster care and child welfare system. Based on the knowledge of successes and failures of other programs, Charlotte McCullough provided the Committee with the following lessons that have been consistently reported in different research efforts from across the nation:

- Leadership and interpersonal relationships are essential for success
- A shared vision created through an inclusive planning process is a critical first step
    - Design the reform in a systematic manner and realistically assess current capacity. Effective systems work because they are designed and priced right. Ideally, in the planning phase:
        - The needs and service utilization patterns of the "target population" are fully understood;
        - Program goals and desired outcomes are carefully established based on baseline data and performance targets;
        - Current and projected utilization is estimated;
        - A full array of services is available so children and families can access the services they need in the amount they need without encountering wait lists or other barriers;
        - Costs are determined for all the services that make up the array;
        - Funding sources are identified and linkages with other child serving systems are established (such as mental health, substance abuse and Medicaid); and
        - Risk arrangements and rates are established with sound actuarial data and risk modeling skills. The methodology selected is supportive of the overarching goals.
- Clearly define the roles and responsibilities of the public and private agencies.
- Align fiscal goals with quality and outcome expectations. In short, there should be a balance between expectations regarding performance and funds (sources and amounts) to ensure success.
- Establish a limited number of realistic, meaningful, and measurable outcomes and performance targets, and eliminate barriers to flexibility and creativity.
- Find an effective approach to contract monitoring and oversight.
- Build a strong infrastructure and introduce new tools and technologies.
- Provide adequate funding and periodically assess the methodology and the sufficiency of the rates.

Because the information from other child protection agencies across the nation could prove to be helpful to Texas in this time of reorganization, Charlotte McCullough provided the Committee with the following information and statistics on other successful child welfare programs:

- Michigan Foster Care Permanency Initiative

This pilot project began in 1997 in Wayne County (Detroit). The goals were to reduce the length of stay in foster care and increase the numbers of children who achieved permanency within the specified timeframes. The contracts are funded entirely with child welfare dollars and are cost neutral. The principal design is a reduced per diem rate and a reallocation of the resulting savings into three lump sum incentive payments tied to performance goals. There are few strings attached to the lump sum payments, allowing providers to purchase or provide whatever services or supports are needed to achieve the results.

Lump sums are paid at designated milestones of each case, an initial referral payment, a performance payment, and a sustainment payment. The daily rates and the incentive amounts have changed multiple times since the project was first launched. Most recently, the state reports: 1) initial lump sum of $2,210; 2) payment of $1,900 when a child is reunited or placed with relative within 315 days of placement, or a court terminates parental rights within specified timeframes; and 3) a sustainment payment of $1,200-$1,600—the lower amount is paid if post placement is stable at 6 months, the higher amount if stable at 12 months. The per diem, a blended foster care rate, is currently $13.20.

- Wraparound Milwaukee

Wraparound Milwaukee is a publicly operated managed care entity that has been in existence since 1995. Wraparound Milwaukee currently serves about 1000 children who have serious emotional disorders and who are identified by the child welfare or juvenile justice system as being at risk for residential placement; children with behavioral health problems who are referred by child protective services who have not yet been removed from home; and, a population of mothers (and their children) who are involved with the substance abuse, welfare-to-work and child welfare systems.

A combination of federal, state, and county funds is used to finance the system. A pooled fund is managed by Wraparound Milwaukee, housed within the Milwaukee County Mental Health Division, which acts as a public care management entity. Wraparound Milwaukee utilizes managed care technologies, including a management information system designed specifically for Wraparound Milwaukee, capitation and case rate financing, service authorization mechanisms, provider network development and utilization management, in addition to coordinated care management.

The child welfare agency currently pays Wraparound Milwaukee a monthly case rate of $3,300 per child for each child enrolled, for the duration of the child's court-ordered placement. Juvenile Justice now allocates a percent of its budget for 300 juvenile justice referrals. Children with dual delinquency and child welfare mandates receive a 50% monthly split in funding between child welfare and delinquency funds. Various mental health funds are also contributed. Wraparound Milwaukee also receives a monthly capitated payment of $ 1,557 for each Medicaid-eligible child (about 85% of enrollees).

In 2001, the average cost of care in Wraparound Milwaukee was $4,100 per month, compared to $6,700 per child for the cost of residential treatment. The overall annual reduction in expenditures from 1996 to 2000 has resulted in $8.3 million in savings.

- Episode of Care Case Rates in Cuyahoga County, OH

The Cuyahoga County, Ohio child welfare agency uses an episode of care case rate in a pilot that was launched in 2000. The initiative targets a portion of the 2,600 children, from birth to age 14, who are in specialized foster care or higher levels of care. Only children who have behavioral or health care needs (Levels 2 and 3) and their siblings are in the pilot. The case rate amount was established through an RFP process. The department offered a range based on current costs for a cohort of similar children and the bidders specified the rate. The case rate is designed to cover the period of custody to permanency, plus 9 months (12 months for children who are adopted) and assumes that at least 50% of children achieve permanency within 12 months.

The payment schedule for contractors calls for 18 equal monthly payments for each child/family. The payments are made whether the child remains in care the entire 18 months or longer or achieves permanency sooner. If the child achieves permanency and remains stable for nine months, the financial obligation of the contractor ends. If the child reenters care within nine months of permanency, the contractor must take responsibility for the child's care and services within the original case rate.

Overall, Charlotte McCullough noted that there are several national trends in regards to the re-development of individual child welfare systems that are essential to discuss based on their potential to benefit the reorganization in Texas.[167] In the mid-1990s, CWLA conducted a survey of all states to determine what changes, if any, they were making in how they managed, financed, or contracted for child welfare and foster care services. Specifically, CWLA was looking for initiatives that introduced some element of financial incentive to achieve greater results; or those that passed some financial risk from the public agency to a private provider; or those that shifted a public agency management responsibility to a private agency. Charlotte McCullough conducted and published the results of surveys in 1997, 1998, and 2000-2001—the last published survey was released in 2002.

Forty-five states and the District of Columbia responded to the 2001 survey. Of those states, 25 had one or more initiatives for a total of 39 initiatives. All respondents described overarching goals that related to legal mandates of safety, permanency, and well-being. Many also cited goals related to increasing accountability or purchasing results. More initiatives were also focused on moving decisions down to the community level and increasing child and family involvement in decision-making. A range of factors motivated the initiatives. State legislation and federal court orders, for example, were the impetus for a growing number of new initiatives. Florida, Kansas, Iowa and Colorado for example, had mandates from their state legislators. Others were a natural outgrowth of the findings from the Child and Family Service Reviews and were part of the state's Program Improvement Plans. Still others were made possible by the Title IV-E waiver program that allowed states more flexibility in how they spent federal funds.

There is great variability in the initiatives in terms of the "target population." In the beginning, many states focused attention on children at the deep-end of the service continuum in the hopes that the reform effort would better serve those children and that cost savings could then be reinvested into prevention and community-based care alternatives. Over time, states have looked at broadening the scope to prevent initial entry. The Arizona Family Builders model, for example, is designed to divert children from the formal child welfare system and prevent unnecessary placement. Still other initiatives are designed to better manage services "in the middle," ensuring that children get the services they need, when they need them, no more and no less, with an overall goal of shortening length of stay and achieving timely permanency and a focus on creating effective management structures and decision support tools.

There is also variability in the scope of the 39 initiatives. There were more statewide initiatives reported in 2001 than in 1998 but 38% are still limited to a particular region of the state. An initiative may be implemented in a small, defined area or the entire state. It may serve a subgroup of the child welfare population, such as children in residential or therapeutic levels of care only, or the entire child welfare population. Some initiatives are small, contained projects that either stayed small or eventually expanded, other projects from the onset covered most or all of the statewide child welfare caseload. Florida and Kansas being the two best-known examples of the latter.

In Kansas the entire state underwent a transformation to a privatized system in the late 1990s. In Florida, the statewide reform is being implemented district by district, so it currently covers only part of the state but will target the entire child welfare caseload when fully implemented by early 2005. County-administered states such as Ohio, Colorado, Minnesota, and Pennsylvania had county-designed and county-implemented projects that varied considerably in terms of populations and services covered. Some initiatives were designed for urban areas with large proportions of the states' child welfare caseloads and specific system characteristics or needs (Baltimore, Detroit, Milwaukee, New York City). Nationwide between 15-20% of the children and families served by child welfare are currently served by these risk-or results-based or privatized models. In 2001, the combined number of children served by the initiatives was reported to be over 125,000. The combined budget of the reported initiatives is more than $1.3 billion. When fully implemented, the budget total for these initiatives is projected to be more than $1.8 billion.

At the time of the 2001 survey, Texas had one initiative described in the CWLA report—Permanency Achieved Through Coordinated Efforts (Project PACE). Like many other initiatives, the stated goals of PACE were to achieve better outcomes for children while spending the same amount or less, create a state/private agency partnership, and develop local resources. The project included children with therapeutic needs and their siblings who entered the foster care system from counties that surround Fort Worth. During the year of the survey, the provider served an average of 532 children per month. The budget for FY 2000 was $13,978,532, and the projected budget for 2001 was $14,421,041, with the daily rate for the provider established by the state in the procurement process. PACE has since been discontinued. There appear to be many reasons why some initiatives succeeded and

were later expanded and others failed to achieve fiscal and programmatic goals and were dismantled. Most often when plans failed it was because they had design flaws from the outset or because there was not a balance between expectations, authority for decisions, and resources.

Charlotte McCullough also provided the Committee with background on the changes in management style and agency policy that facilitated the overhaul of the various national child welfare systems. The types of management and practice changes that are occurring nationally and the ways that public agencies have changed their contracting and payment structures to support those changes is important to understand. While service delivery in the child welfare system has been, to a great extent, privatized in this country for many decades, the public agency has until recently retained management and policy control over the types, amount, and duration of services that were delivered by the private sector. Under the traditional child welfare per diem or fee-for-service contracting model, the private agency simply agreed to serve a certain number of children in return for payment based on a pre-determined daily or fee-for-service rate. The contractor was paid to deliver units of service and rarely was reimbursement linked to any measures of effectiveness of the services provided. Such a payment approach offered few incentives for service providers to control costs, to build a more suitable array of services as an alternative to placement, or to more quickly return children to their families. In fact, these contracts provided incentives to continue delivering more of the same service whether it was needed or not.

In addition, while the public agency often bought services for the child from private agencies, public agency caseworkers often retained responsibility for case management and work with families. Those with first-hand knowledge of the child were often not at the table when decisions were made about reunification or other permanency options. Public caseworkers made the decisions about what services the child and the family needed and retained control over decisions about when the services would end. By treating the child apart from the family we created systems that were fragmented, duplicative, and not supportive of a family-centered approach that would result in timely reunification—something nearly 70% of the children ultimately achieve.

In recent years, some public agencies have moved away from these traditional arrangements to a variety of risk or performance-based contracting options, often resulting in the contractor being given greater flexibility and autonomy in determining how funds will be used to meet the needs of individual children and families. The new approaches are varied, but in most instances we find that:

- Public and private agency roles changed.
- States began purchasing results rather than services.
- Financing mechanisms linked fiscal incentives to performance.
- Services were organized differently at the community-level to better meet the needs of children and their families.
- Contracts stimulated the introduction of “evidence-based practices” including those that reflect system of care principles.

One of the most significant changes in some child welfare initiatives according to Charlotte McCullough, was the transfer of core functions previously held by public child welfare

agencies to a private contractor. For example, many private agencies have assumed some or all of the basic case management functions; they may be responsible for working with families to develop and implement the case plan, setting permanency goals, managing court related processes, making placement and discharge decisions, and recruiting, training and supporting, and licensing foster and adoptive families. The degree of public agency involvement and ultimate authority in these areas has varied from one initiative to another.

There is no one "business model" or structural design that has been proven to be superior to another. The models of the various initiatives varied substantially regarding how many functions were retained by the public agency versus contracted out. In all the initiatives, the initial intake and child protective services (CPS) investigations were retained by the public child welfare agency (or in some locales by law enforcement). Beyond those initial functions, however, management and service delivery structures could be categorized into lead agency models, performance- or results-based contracting models with single agencies, public agency-managed care models, or hybrid combinations of shared responsibility and accountability.

However, as in previous years, CWLA reported the majority of initiatives are using a lead agency model (51%) supported by a provider network or other collaborative service delivery arrangement. The lead agency model is what is being used under Florida's Community-Based Care plan and the Kansas privatization model. Some lead agencies provide most if not all services with few or no subcontracts. Others may procure most services through the network and directly provide case management and/or limited services. Some contracts impose a cap on the amount of services that the lead agency can deliver.

Some lead agencies are single agencies that have long histories as child welfare service providers, others are new corporations that were created by several nonprofit or for-profit agencies for the sole purpose of responding to the contract opportunity. In all of its various forms, the lead agency model has been the most common arrangement since the first CWLA survey in 1996.

Performance-based contract arrangements between the public agency and a single provider are found in nearly a quarter of the initiatives. In this model, either payment amounts or schedules are linked in new ways to performance or achievement of certain case milestones, or the providers are given case rates for certain populations. In the CWLA report, these are referred to as *single agency performance-based contracting* models. Under these models, the public agency may retain responsibility for many key decisions while providing risk-based or incentive payments to individual providers. Illinois was among the first states to implement performance-based contracts for kinship and foster care providers.

In both lead agency and single provider contracting arrangements, public purchasers rely upon private, nonprofit contractors to manage and deliver child welfare services and share in financial risks and rewards. Fewer than 10% of initiatives report sharing risks or management responsibilities with for-profit entities. In these models, to varying degrees, the public agency relinquishes responsibility for providing direct services—from case

management to foster and adoptive home recruitment, licensing and support—for a role of system monitor. The public agency is setting the standards, defining the outcomes and performance expectations, and then monitoring through quality assurance and improvement activities.

Not all initiatives rely upon a privatized model. Increasingly, the public child welfare agency has incorporated new management practices, such as more rigorous gate-keeping and utilization management procedures—and functions as a managed care entity (MCE). The public entity at the local level may also bear risk through a capped allocation. These are described as *public agency MCE models*. If the risk is not pushed down to the provider level, contracting and payment methods to service providers might not change and the traditional public and private roles might remain intact. Select Colorado and Ohio county child welfare agencies operate as managed care entities, but they have also introduced risk into their contracts with service providers and have placed case management and service decisions in the private sector, while retaining oversight and overall "system" management. Wraparound Milwaukee is an example of one of the more widely recognized integrated system of care initiatives in the country managed by a public agency.

Regardless of the structural model, public agencies are focused on improving quality, with all initiatives including multiple methods to collect and manage utilization, quality, outcomes, and fiscal data. Many plans appear to rely heavily on reports generated from an automated MIS to support their QA/QI activities. Perhaps the most important change in the area of quality assurance relates to what gets monitored. In many traditional child welfare programs, monitoring mechanisms focused on process issues, i.e., were certain tasks performed (evaluations, number of visits and therapy sessions, etc.)? The new initiatives are part of a broader trend that seeks to follow client outcomes instead of process.

Most initiatives specify performance standards, improved functioning indicators, and client satisfaction requirements in their RFPs and/or contracts. Specific outcome measures vary according to the target population served by the initiative but initiatives are most likely to include indicators related to child safety (88.2%), recidivism/reentry (79.4%), and achievement of permanency within the timeframes required by the Adoption and Safe Families Act (ASFA) (70.6%). The two most prominent features of contract monitoring that have emerged are collaborative reviews (public and private agency staff) that resemble the CFSR process and the integration of management information systems—allowing the provider and the public agency to share access to real-time data.

Perhaps the greatest practice change has been in the area of case management. There is growing recognition that a single case manager needs to work with both the child and family from entry to exit from the system. The case manager (or in some places, the case management team) is at the heart of many of the new models and is the single, continuing facilitator of change, helping the family identify and access the services needed to reduce risks, and promote permanency through reunification or other permanency option while coordinating the case plans and services for the child.

Wraparound approaches, a process through which communities, their service systems,

health and mental health organizations, schools, courts, faith communities, businesses, and families can come together to "take care of their own," is another exciting and promising approach to providing better care to children in the state's conservatorship. Wraparound happens in a team-based planning process that gives the family and child decision-making power. All team members put their resources on the table to design and implement the most effective plan for the child and family. Typically, funds from multiple categorical streams are blended to provide the flexibility needed to support highly individualized services.

Charlotte McCullough also noted several promising changes in finance and contracting that are occurring around the country that may be useful for transformation in Texas. In 2000-2001, the Child Welfare League of America conducted a survey which found that the most common risk-based financing model in child welfare is a case rate. Under this arrangement, the contractor is paid a predetermined amount for each child referred. The contractor is not at risk for the number of children who will use services but is at risk for the amount or level of services used. In child welfare contracts, the case rate could be *episodic or annual*. An *episodic rate* means the contractor must provide all the services from initial entry into the plan until the episode ends. The point at which payments stop and risk ends varies from one initiative to another. However, it is common for the contractor to bear some risk until specified goals are achieved, whether it takes days, weeks, or years. For example, a typical case rate contract for foster care services might extend financial risks for up to 12 months after a child leaves the foster care system. If a child reenters care during that time, the contractor may be responsible for a portion (or all) of the cost of placement services.

Under an *annual case rate*, the provider receives the case rate amount each year the child is in the child welfare system and the contract is in effect. In both annual and episodic case rate arrangements, the payment schedule could be a monthly per child amount or it could be divided into lump sum payments that could be linked to attainment of various outcomes. An episode of care case rate is far riskier for the contractor than an annual case rate due to the many factors outside of the contractor's control that may extend the time it takes for the episode to end. However, it is far more effective than an annual case rate in incentivizing the contractor to achieve timely, safe and stable permanent living arrangements for children. For that reason, it is a more attractive option for public purchasers wishing to "buy results."

According to Charlotte McCullough, of the 39 initiatives described in the CWLA survey report, 41% are currently using case rates. Most are episode of care contracts with nonprofit agencies. Some rates are intended to cover all services under the contract, whereas others assume other funds will be available outside the rate.

- Bonus and/or penalty provisions were included in 25 % of initiatives in the 2002 CWLA report. Initiatives differ widely in the selection of performance measures and in the incentives that are provided. In some initiatives, only bonuses are included, in others only penalties, and others include both bonuses and penalties.

- Contracts are increasingly linking payment amounts or schedules to the attainment of specified performance standards, case status, or child and family functional outcomes. Performance-based contracts are used in 23% of the initiatives.
- Child welfare initiatives have varied in their approaches to pricing the overall system changes, establishing rates for contractors, timing the introduction of financial risk, and adjusting rates over time. Some child welfare initiatives introduced financial risk during the initial implementation. Others phased in risk after some period of time, often after the first year of cost and utilization data collection and analysis. In some initiatives, the public agency allowed the competitive bidding process to set the price and establish the rates. In other initiatives the rate was specified in the RFP. In most instances the overall budget for the initiative is initially based upon estimates of what similar services cost under the traditional system. The risk-based rates are also calculated on the basis of rates paid under per diem and fee-for-service arrangements.

Many respondents to the CWLA surveys have reported difficulty in accessing accurate historic data to guide them in pricing the system or establishing the rates. For example, partly because of fragmentation in the current system, few child welfare agencies have had the ability to estimate with confidence the costs of serving a child from entry to exit from the system as a foundation for developing an episode of care case rate. As a result of the initial guesswork, it has not been uncommon for states to err in pricing the overall initiative or in setting rates, at times this has resulted in mid-course corrections.

- Many contracts that include risk-sharing also include mechanisms to ensure that contractors remain solvent and stable. 85% of the initiatives that report sharing risk with a provider agency indicate that some mechanisms are in place to limit risks, with risk-reward corridors being the most common.
- Various funding sources are used to support the initiatives with the core funding coming from child welfare. For example, of the 36 initiatives tracked by CWLA, 72% reported using funding from outside the child welfare system. Consistent with findings in 1998, Medicaid and mental health funds are the most likely to be used in combination with child welfare funds. The use of Temporary Assistance for Needy Families (TANF) funds appears to be on the increase. In 1998, less than 17% of the initiatives that reported funding sources included TANF funds as compared with 30.6% in 2000.
- There is not a direct correlation between assumptions about overall costs of the reforms and actual fiscal performance. Only three states expected the initiative to cost more than the previous system, but data indicate that 10 initiatives cost more. On the other hand, several states expected their initiatives to be cost neutral and instead, they have saved money.
- Some initiatives are designed from the outset to gain flexibility over diverse funding streams in order to implement interagency collaborative initiatives to serve children across “public sector” systems—combining education, child welfare, mental health, juvenile justice funds to create an integrated delivery system. These initiatives emphasized collaborations and community-based approaches as well as maximizing the use of other resources and enhancing federal reimbursements. They tend to

embrace system of care principles and target children who have emotional or behavioral problems.

Based on the promising approaches, Charlotte McCullough provided the Committee with her insight on what initiatives may work best. She noted that for most of the initiatives, it is too soon to determine long term results for the children and families served, or to assess which of the various models holds the most promise for child welfare. Despite the lack of definitive data, most of the initiatives report some degree of success. State administrators frequently cite the following benefits:

1) True public/private partnerships are created where the safety and well-being of children and the stability of families is a shared responsibility.
2) The whole system becomes more accountable and outcome-driven.
3) Creativity and innovation at the local level and community ownership are stimulated.
4) New services and non-traditional resources are added to the service array.
5) Financial incentives are aligned for the first time with programmatic goals.

There is little in the way of comparative analysis of risk-based initiatives with different structural designs to indicate that a lead agency model is superior to results-based contracts with individual service providers. Likewise, because initiatives have varied in so many ways, it is not possible to state that case rates are better or worse than lower risk performance-based contracts in meeting fiscal and programmatic objectives.

It is important, however, that the state fully understands the pros and cons of each type of risk-based option and the potential opportunities afforded by different structural designs before making decisions. Some of the issues that must be considered are fairly straightforward; others require a full appreciation of how all the design pieces need to fit together to achieve results. It is also important to recognize that the ultimate success of an initiative may relate to many factors separate from the structural model and the risk option chosen.

Despite the potential of these new methods of contracting for services, all of the national tracking efforts have also identified many challenges for both public agencies and their new private partners. According to Charlotte McCullough, it is crucial that the state of Texas is aware of the potential pitfalls to implementing any of the new national initiatives. By studying the barriers, she feels that Texas will be better suited to make positive changes without making the following errors:

1. Gathering inadequate amounts of data and having poor analysis capability. Nationally, both public purchasers and private contractors are having difficulty building information technology (IT) capable of supporting data collection needs. Most states simply do not have the capacity to track the services used, the outcomes, and the costs to serve an individual child and family over an episode of care. Many states cannot even track and report accurate aggregate costs that are linked to utilization and outcomes. In order to effectively develop, adjust, and monitor at-risk contracts, track service use, and monitor

fiscal performance and child and family outcomes, public and private agencies must have access to real-time client-level data.

2. Avoid the lack of role clarity. When public purchasers begin sharing risks with private contractors, there are fundamental shifts in the roles and responsibilities each of the parties assumes. The greater the risk, the more responsibility the private contractor must be given for day-to-day case management and decisions about the allocation of resources. Because public child welfare agencies do not relinquish legal responsibilities for children when they enter into new contracting arrangements, it is difficult to find the right balance in designing the reform and defining monitoring and oversight roles. It may take time to develop the skills and tools to monitor performance and hold contractors accountable without prescribing rigid policies that stifle innovation. Ongoing cross-training and problem-solving mechanisms are essential to resolve role challenges.

3. Inadequate resources and increased expectations. In many states and communities, resources available for child welfare are far less than what is needed to deliver quality services to everyone in need. At the same time, when public agencies develop their plans and contract for services in new ways, the performance expectations are often higher than performance in the current system. It appears in child welfare that private contractors may be required to significantly subsidize the funding provided under the contract. It is not always clear in the contracts what will happen if they are not successful. It is critical to ensure that the public safety net is not dismantled when services or management functions are shifted to the private sector.

4. Always be aware of the unintended consequences**.** Some states have discovered that improving practice and creating a friendlier child and family service system may result in unanticipated increases in the demand for services and thus increased costs. As states transition to "community-based" or privatized service delivery systems they must be prepared for these unexpected consequences. For example many states, like Florida, are separating child protective service (CPS) intake and investigations from the rest of the service system re-design. Public agencies then focus their efforts on improving CPS, by lowering caseloads and improving assessments to better identify, protect and serve at-risk children and families. As a result, they have found far more children and families in need of services than in the previous system. During the investigation, once a child and family is identified as needing ongoing services, the case is often transferred to the private contractor to manage. This is a success scenario. Children and families are getting the services they need but didn't previously receive, however it may result in added costs to the state or the contractor depending on the risk-sharing arrangement.

   - Be prepared for the potential loss of federal revenue if initiatives succeed. Under the current system with the prohibitions against the use of federal Title IV-E funds for services other than out-of-home care, the state's liability for funding a greater share of any at-risk contracts increases. For example, if the contractor does succeed in reducing placement rates or shortening the length of stay in foster care through a host of new service interventions, the state's portion of the contract rate will increase as the federal share decreases. When this happens, the state may

realize savings in its out-of-home care costs; however, these savings may be more than offset by the state's obligation to pay for non-federally reimbursable services under the contract rate. There are current Congressional proposals that might increase funding flexibility, but the proposed approach is not without controversy and potentially fatal pitfalls. This problem has also been addressed by a number of states under a Title IV-E waiver, where the state is allowed to use funds traditionally limited to out-of-home care expenditures to pay for prevention, early intervention, wraparound, and aftercare services. They have also been allowed to retain and reinvest savings incurred.

- The state must know that privatization will not necessarily or immediately fix inadequate service capacity or uneven quality. An effective system assumes that there will be an array of services and supports available to meet the identified needs of the covered population. The goal is to accurately match services to needs, using flexible dollars to provide what is needed. Yet, in many communities, there will not be a full array of service options in place and quality may be uneven at the time the contracts are being negotiated. The contract agency will need to have the authority and resources to stimulate the development of these new service options if they are to succeed. This can be a daunting task. Privatization models or other fiscal re-structuring simply will not guarantee access to all the services needed by child welfare populations. The biggest gap in most states lies in the behavioral health area. To address this challenge, states need to be able to foster interagency and inter-system collaboration between other adult and child-serving systems to increase and enhance overall behavioral health capacity.

Richard Klarberg, Council on Accreditation

Richard Klarberg, the President and CEO of the Council on Accreditation (COA) provided testimony to the Committee based on the accreditation process and its potential to improve the child welfare and foster care system in Texas. Founded some 27 years ago, COA today accredits some 1600 organizations – public and private – throughout North America serving more than 7 million people each year. COA has accredited or is in the process of accrediting 10 state administered programs. Another 21 have made serious inquiry. In addition, 75 county administered programs are accredited with 23 in process and another 30 about to begin the process.[168]

COA is a non-profit organization with a mission to partner with organizations to help raise the bar with regard to the quality of services provided to the most vulnerable members of every community, children. COA is not a licensing agency or a regulatory agency. According to Richard Klarberg, their accreditation process doesn't seek to find fault, but rather to build on the strengths of an organization. In essence, COA seeks to work with organizations to help them use accreditation to become stronger so that they can better serve the children in their care.

Richard Klarberg testified that accreditation is a means of maintaining a consistent focus on safety, permanency and well-being as outcomes for children using nationally developed standards of appropriate best practice. He noted that it is not a system of one size fits all, but that instead it recognizes that there is a distinct difference between programs in a big city as compared to a program in a small town. What is not different, according to COA, is the importance of protecting children regardless of where they are. Richard Klarberg testified that accreditation is also a proven method for changing the culture of an organization and a proven method for evidencing an organization's commitment to excellence.

Accreditation, however is not a "silver bullet" according to Richard Klarberg. It will not protect every child in every situation, but it is a recognized methodology to build a system of care so that children are protected, and so that processes and policies are in place so that errors are not repeated again and again. Accreditation is also a recognized process for restoring credibility to the organizations that are charged with protecting children but that are all too often viewed as being uncaring and unprofessional.

Of equal importance, accreditation is a process for restoring pride in those who work in these organizations. The staffs of child protective agencies are committed to making a difference in the lives of these young people. They want to do the right thing. Unfortunately, according to COA, all too often they come to believe that their commitment is not shared, that their dedication is not respected. Richard Klarberg testified that COA accreditation helps to demonstrate that their determination to do the right thing is part of the culture of the organization in which they work.

Accreditation offers a valuable opportunity to carry out a serious and ongoing examination of how well Texas' public agencies are taking care of, and protecting its children. As in

previous testimony, COA also noted that the issues currently being discussed in Texas are not unique to this state. Tragically, problems in child welfare and foster care exist throughout the country. Richard Klarberg testified that some states and other child protection agencies are reluctant to embrace accreditation as a "change agent" due to concerns about the cost. COA feels that this is a misperception and that realistically, the accreditation fee is minimal. In Illinois for instance, the cost was $190,000 for four years. What can be significant, according to COA, is the cost of meeting the standards – the staff to client ratios, the improvements to physical facilities, the need to hire more graduate level supervisors and so on.

Richard Klarberg suggested that before the Texas legislature dismisses accreditation based on whether or not the cost is significant, the state should first perform an assessment of where Texas is in relation to COA standards. That would be the only way to determine the true significance of the costs of accreditation, assess where Texas is in relation to the standards and then determine whether to make the changes necessary to achieve accreditation. The cost to do this is the accreditation fee. COA will work with the State to complete the self-assessment. When it is completed, the State will at the very least know what it would take in terms – financially and in terms of staff commitment – to bring the program into compliance with the standards. In effect, this process would allow Texas to know where the State stands in relation to other states throughout the country.

Richard Klarberg also noted that accreditation has no set time limits. The State can take two years or five years to achieve COA standards. Richard Klarberg concluded that at whatever speed the State chooses to proceed, one thing is certain: there will be a steady improvement in program outcomes, a reduction in staff turnover and an increase in public confidence.

Texas Alliance of Child and Family Services

The Alliance (Nancy Holman, Executive Director and Ted Blevins testified) also provided the Committee with recommendations on restructuring the Texas child welfare system. The alliance believes that the legislature must create an overall vision and direction for restructuring the system which maximizes the strengths of the public (*protection*) as well as the private (*responsiveness, flexibility, community supports*) sectors.

- Texas should address the findings of the Federal Child and Family Services Review by implementing the following recommendations:[169]

  - Consolidate service delivery with the private sector and maintain investigations and oversight with the public sector. The current system fragments responsibility for services between the public and private sector which creates confusion, diffuses accountability, and hurts efforts to move children to permanent homes.

  - Promote quality by using relevant performance standards. The current system does not quantify differences in the quality of services purchased or manage the placement of children to maximize use of the best providers in the system.

  - Promote quality by using relevant performance standards. Client-centered outcomes should be developed for contracts that are well-defined, achievable, and accurately measure the activities vested with the contract agency. Performance standards should measure educational progress, positive discharges, social adaptation, as well as, placement breakdowns. Planning should be implemented to encourage providers and communities to develop the needed capacity in each region.

  - Reward quality by managing placements to maximize use of quality providers. A more effective placement system must be developed to match the initial placement made by the State to the most suitable quality provider. Currently hundreds of caseworkers make these decisions often based on anecdotal information. The new structure should be managed by a group of clinically qualified professionals. Matching should be data-driven and coupled with on-site knowledge of provider facilities and programs. Placement decisions should be triaged to focus attention on the harder to place children. Youth for Tomorrow (YFT) or another entity should provide feedback regarding the quality of placement decisions to ensure reliable and consistent results. The new system can be operated through a third party contractor or developed within DFPS. It should be linked to web-based “placement decision support software”.

  - Strengthen oversight through streamlined responsibilities, improved training and meaningful evaluations. Consolidation of caseworker responsibility with investigations and oversight will allow DFPS to train more effectively to core functions. Investigative caseworker responsibility ends when child is removed and referred to placement specialist. Improve professional training for this group of investigators. Establish HHSC Oversight Committee to review adequacy of

DFPS oversight activities. Establish a consolidated reporting point for all oversight bodies including contracts, YFT and licensing.

- Establish parameters and performance standards for new consolidated service delivery role recommended for private sector.
- Incorporate better risk assessment procedures as part of the contracting process and add well trained staff for oversight.
- Review related party transaction clause in cost reporting and prioritize most critical elements. Set terms and conditions regarding conflicts of interest in contracts.
- Develop contracts with rewards for achieving permanency goals (would require incorporating all consolidation recommendations).
- Establish weighted licensing standards to prioritize high-risk violations.
- Lower the number of children licensed per home to improve quality (there will be added costs related to increased case management and recruitment of families.)
- Improve educational requirements of licensing staff and require technical assistance as part of monitoring process.
- Extend state liability immunity to private agencies caring for DFPS children, or cap liability exposure.

➢ Ensure adequate service delivery for all children. Financing of the restructured system must incorporate payment for all services and administrative functions at levels that ensure quality services and support for the vision of the new system. YFT should periodically review all children in the system, including Basic level children, to ensure service needs are adequately met. As a result of blending rates, over 1,500 children with therapeutic needs were reclassified as Basic and were removed from YFT review for their therapeutic needs, including use of psychotropic medications. The State should ensure that no child in the system is underserved by analyzing current review criteria used by YFT which under-represents the service needs of non-aggressive children.

➢ Pilot new service delivery models to test new payment methods and incentives. Establish an independent commission or panel, with national expertise, to develop particulars of pilots for FY 2006 that:

- Pilot new service delivery models that increase flexibility and innovation, while creating incentives to expedite a child's attainment of permanency goals.
- Test new financial arrangements and payment processes that are consistent with the goals of the pilot.

The Alliance also proposed recommendations to make the current CPS placement system more efficient and accountable to the best interests of children in the State's care. In the Alliance's plan, the State would ensure that the best decision for the placement of children with a certain provider would meet the child's individual needs. A good decision means that a child is less traumatized, feels secure and safe, and remains connected to school, community and family. In contrast, a poor decision means that a child is alienated from

friends and family, does not receive proper treatment, and begins a cycle of disrupted placements. Despite the long-term ramifications of this decision, the current placement system operates in a fragmented and inconsistent manner, with CPS caseworkers dependent on informal systems of calling agencies to find the first available bed. The Alliance's recommended placement system would standardize this process to the greatest extent possible by:

- Using “real time” state-of-the-art technology to screen placement options;
- Vesting key decision-making in a small group of clinically qualified professionals with field knowledge of the provider network;
- Instituting a Quality Assurance system to ensure that placement decisions are consistent and reliable;
- Developing Public/Private Resource Development Committees throughout the state that plan for needed placement resources and assist in finding placements for hard to place children.

The guiding philosophy of the Alliance's proposed placement process is to find the most appropriate, helpful, and least restrictive, safe placement for the child as soon as possible after removal. The goal is to make the first placement the only placement whenever possible. To further ensure that correct placements are being made by CPS, the Alliance believes that the State should invest in technology to support placement decisions. The proposal recommends the use of existing web-based technology that would allow a Placement Coordinator to identify preferred providers with vacancies available that match the child’s services or placement needs.

- Each network provider would enter, through a secure site, current census information and capacity data on a daily basis, allowing the PC to see at-a-glance what service and placement options are available.
- This “real-time” Provider/Service Directory would be linked to provider profile information (organized from DFPS and Youth for Tomorrow’s MIS systems).
- Matches would be prioritized based on placement protocols and field-based information regarding facilities.

According to the Alliance's plan, these services would be provided 24-hours a day, 365 days a year, to cover emergency as well as other placement needs. The entity providing these placement services should have extensive and current experience providing placement and care to a range of children including seriously disturbed children. Other essential requirements in the Alliance's plan include:

- Ability to place staff strategically throughout the state to work with the Community Resource/Development Committees, to stay familiar with providers, and to ensure communication between regions.
- Resources to maintain and manage a statewide, web-based, real-time management system with established tracking systems, and quality assurance protocols.
- Proven record of cooperative work and good relationships with providers. Strong commitment to link with and support family services and initiatives such as Family Conferencing and Kinship services.

In the Alliance's plan, the Community Resource/Development Committees would be

comprised of public and private representatives including local network providers, clinicians, and DFPS and YFT representatives. Their primary charge would be to focus on making sure that placement resources are available for children when needed in close proximity to their home; and would include data analysis of placements and disruptions in the region, with quarterly reporting. The group will also be assigned to assist the Placement Coordinator with individual cases when a regional placement match is not found through the initial screening.

A goal of the project would be to link quality assurance activities to every point in the intake and placement process to ensure that the placement system is working as designed, and to measure the degree of success in meeting goals.

- Integral to the process are defined protocols and practices; ongoing collection and analysis of data to ensure reliability; and a process for complaint resolution.
- Data collected and examined at each critical point in the placement process will not only be used to determine how well the placement activities and processes are working, but also will clearly demonstrate whether goals and outcomes for children are being reached.
- YFT could play a crucial role in evaluating placement decisions and assessments.

In order to implement the aforementioned recommendations, the Alliance noted that there are several steps that should be taken to accomplish the consolidation of services in foster care, adoptions, kinship care, family services and case management into the private sector.

Regarding foster care, the Alliance recommends that the State transition the State operated foster home system to the private sector within a completion time of one to three years. Benefits include:

- Conflict of interest for DFPS to directly provide foster care and also regulate those services (same bias as found in APS) will be eliminated.
- Streamlining caseworker responsibilities will improve competency of investigations and oversight work.
- Private agencies already serve 75% of the children in care covering all service levels and settings; public sector limited to 25% of the children in home settings, primarily at the basic level.
- Private sector is responsible for all the capacity growth in the foster care system over past five years (66 percent increase in licensed foster care beds), and already operates an extensive faith-based recruitment program.
- Private agencies provide services at the same cost as the State (according to SAO), which makes the transition revenue neutral.
- Private agencies add private resources to the system which improve quality.

The Alliance's timeline to transition from the State operated foster care program to a private run foster program spans three years. An important point that the Alliance stated is critical to ensure the success of the plan is that all children transitioning from DFPS homes to the private sector must receive a complete assessment. A Youth for Tomorrow review would

follow if warranted. The recommended three year timeline from the Alliance is as follows:

FY 2005

- Stop all placements in DFPS Homes; capacity exists in the private sector to absorb all new placements.
- Identify areas in state where DFPS is the dominant provider and hold recruitment meetings with DFPS foster parents and private agencies, to determine which families can successfully transfer to the private sector.
- Identify any remaining capacity needed and solicit private agency expansion to meet the identified need (see incentive section of outcome recommendation)
- Allow one-year for agencies to fully establish in the region.

FY 2006

- Continue same process in remaining areas of the state.

FY 2007

- Allow third year of phase-in if necessary.

Regarding improvements to adoptions in Texas, the Alliance recommends that the State build capacity in private sector adoptions to expedite placements. The timeline on this recommendation is also from one to three years and includes the following necessary steps:

- Make all children awaiting adoption available to private agencies immediately, to speed moving the backlog of 3700 children to adoptive homes. (Eliminate 90-day wait before contacting private agencies about children available for adoption.)
- State should set targets for completing adoptions that engage the full capacity of the private sector and that trigger federal reimbursement of costs through the federal Adoption Promotion Act of 2003.
- When private agency adoptions are responsible for fifty percent of total adoptions, the State phases out of adoption business.

The Alliance's recommendations on kinship care center on the outsourcing of Kinship Care and Family Group Conferencing to the private sector with an initiation by FY 2006. The necessary steps to this recommendation include:

- Outsource the kinship support program to create a community-based delivery system that maximizes community resources, builds trust through a neutral party, and offers more flexibility to tailor supports to the particular family's needs. Pattern the outsourcing after the post-adoption services program, which provides family support services statewide through 11 contracts and has operated efficiently and effectively for 10 years.
- Outsource the family group conferencing program in the same manner for the same reasons as noted above. Both actions continue the streamlining of state caseworker responsibilities to the core set of defined functions surrounding oversight and investigations.

According to the Alliance, in order for the State to ensure that family services are correctly

transitioned to the private sector, the State should authorize agencies to provide services to both the child and families, and should complete this task within two to four years.

- Authorize the private sector to work with both the child and the family to expedite the child's move to permanency. Best practice models, as recommended by the Council on Accreditation, require the same entity work with the child and family; however, current practice in Texas prohibits the private sector, which provides services to the child, from working with the birth family.
- DFPS moves out of delivering services to families and eliminates conflict of interests inherent from acting as both removal and service delivery agent.

Finally, regarding case management, the Alliance recommends that the State consolidate case management with the private sector within two to four years.

- Consolidate case management with the private contract agency to eliminate duplicated efforts and vest agencies with the authority and accountability to improve safety and well-being for both the child and their family. Agencies would be authorized to move the child within its system of care subject to contract terms.
- Begin consolidation with children in permanent managing conservatorship and move to all children.

Department of Family and Protective Services

Diana Spiser, Assistant Commissioner of Child Care Licensing of the DFPS and Joyce James, Assistant Commissioner of Child Protective Services, testified before the Committee regarding program efficiencies and best practices in child welfare and foster care in Texas.[170] Many positive changes are currently underway at the DFPS, and the agency fully realizes that it has a long way to go before its administrators and the State in general will be satisfied with the results. Diana Spiser and Joyce James both testified that DFPS is open to working with state officials, child welfare and foster care stakeholders and the public in helping to guide the agency towards achieving its goals of permanency, safety, and well-being for the children in the State's care.

Joyce James testified that the DFPS is working diligently to address the needs of children in the State's conservatorship. The DFPS is committed to ensuring that children have the following needs met:

- Children need safe homes
- Even when their parents are unable to provide safety, children still need to be close to their families to facilitate visitation and to maintain connections with their home communities
- Children need to be with their brothers and sisters
- Children need stability in their living situations
- Children need to grow up in a family setting whenever possible

In order for the State to achieve its goals in addressing the many needs of foster children, the DFPS has begun to implement innovative approaches in developing foster care capacity, improving placement practices, strengthening quality assurance, revising minimum standards, and coordinating monitoring systems. By thoroughly revising and continuously developing approaches to provide for the best interests of children in State conservatorship, the DFPS will have the opportunity to constantly improve upon its services.

1. Developing foster care capacity - Currently, there are 31,000 foster homes in Texas, of which 3,000 are DFPS foster homes. The development of appropriate placement resources is a shared responsibility of DFPS and the provider community. DFPS has held meetings with contract providers to communicate current and projected areas of need across the state, and has worked to focus on underdeveloped areas to recruit foster families within faith communities as well. Joyce James testified that the current CPS placement system is not adequate enough. DFPS believes that it is crucial to form public/private partnerships in order to accomplish its goal of developing capacity, and by doing so, the need for children to be raised in their home communities will be accomplished. If children live close to home, family visits would be easier to facilitate, and there could be an increase in contact with siblings and caseworkers. Joyce James testified that as capacity is developed, DFPS will not just have a mass movement of children back to their home communities, but will instead work with providers to ensure a smooth transition, if at all possible, for the children back to their home areas.
2. Improving placement practices - The chart below puts current CPS placement practices

in perspective, and raises major concerns among DFPS and state officials:

Region	Children From Other Regions	Children To Other Regions
Lubbock	33	233
Abilene	213	104
Arlington	184	576
Tyler	254	203
Beaumont	188	80
Houston	441	185
Austin	562	481
San Antonio	467	443
Midland	69	128
El Paso	16	38
Harlingen	119	138
Statewide	**2546**	**2609**

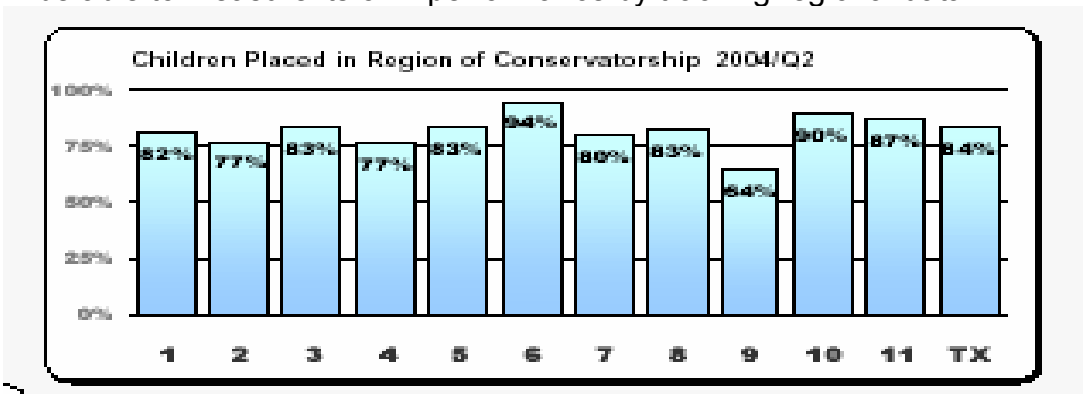
Among several other concerns, due to the disruption of placements, the high cost of caseworker travel from one area of the State to another in order to follow their placements, and the low frequency of family and caseworker visits, DFPS is altering placement practices to better meet the needs of children. Specifically, DFPS is altering its placement selection tool, offering improved home-based services, training a Statewide Placement Team, developing an Improving Connections Unit (ICU) within CPS staff, and strengthening ties with "no-pay" providers. The pilot ICU program will begin in October of 2004 and will consist of caseworkers being housed in the same community as a large number of children in foster care. This will improve the frequency of contact between caseworkers and children in foster care. The Statewide Placement Team is a specialized group of staff that are in charge of making decisions on the placement of children in Residential Treatment Centers. CPS fully realizes that in most cases, the ideal placement is in a family-type setting. Due to this belief, and in order to better streamline and accurately place children in out of home care, DFPS has significantly limited the number of caseworkers who can make placement decisions. Statewide Placement Team staff are also working more closely with Youth For Tomorrow to adequately assess and place only those children who need to be placed in an RTC, in such a facility.

3. Strengthening quality assurance - In order to focus more on achieving positive

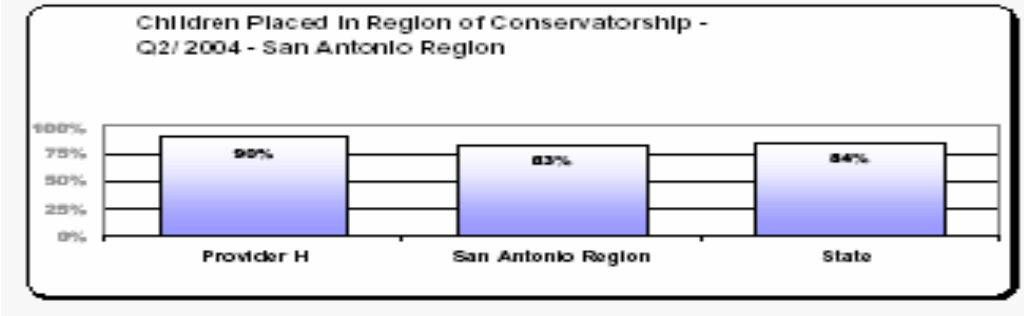
outcomes, CPS has implemented a quality assurance program which utilizes the Federal Child & Family Services Review Process including the following steps: interviews with stakeholders, surveys, focus groups, and structured case reading. The CPS quality assurance program also monitors outcomes of individual children for the system as a whole, individual contract providers, and DFPS regional foster care programs. This information will be used to create Child Outcome Reports, which will provide the DFPS and child care providers the opportunity to make corrections and adjustments to the delivery of service where needed. By sharing these Child Outcome Reports with providers, the DFPS will be better suited to show the private sector where capacity needs to be improved in order to serve the needs of children in care.

An example Child Outcome Report looks like this:

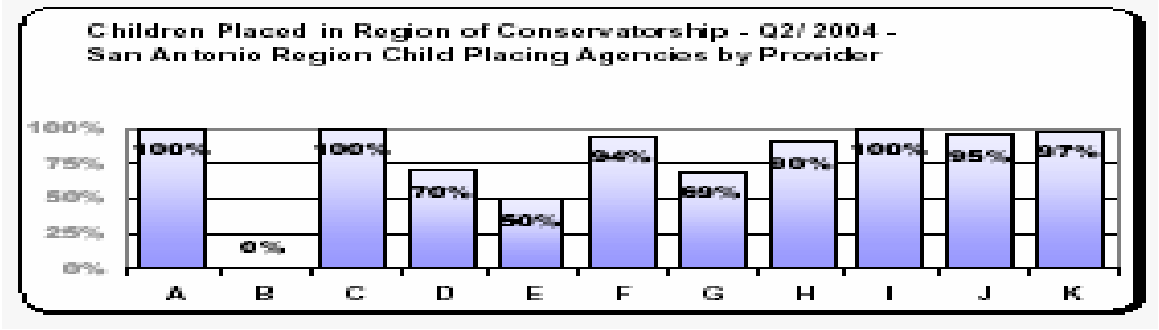
DFPS will be able to measure its own performance by tracking regional data.



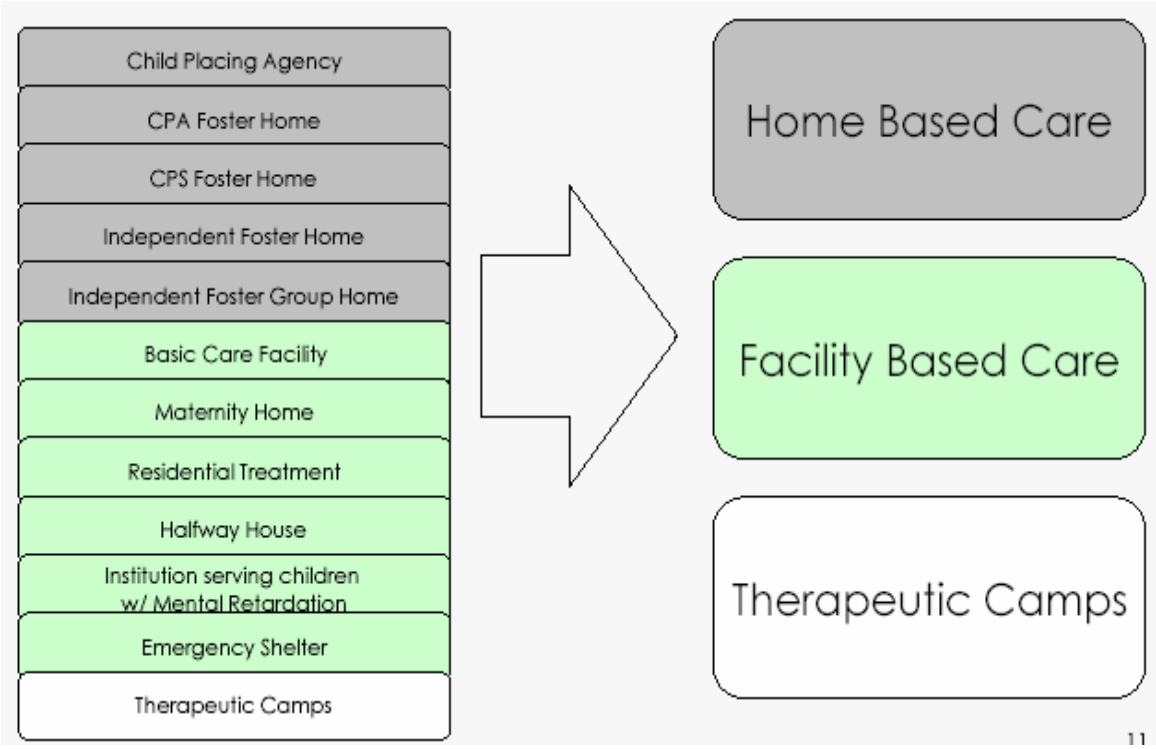
A provider can compare their individual performance with the region and state averages.



A provider can compare their performance with their peers in their particular region.



4. Revising minimum standards and the consolidation of minimum standards - DFPS is currently revising every minimum standard that Residential Child Care Licensing is in charge of regulating over licensed child care providers. The chart below provides an illustration of the minimum standards consolidation:



Diana Spiser testified that minimum standards for residential child care will be revised to: encourage a continuum of care to reduce the number of times a child must change placements; reflect a plain language format that enables consistent enforcement and compliance with minimum standards; and publish best-practices in print and on the DFPS public website. The end goals of the standards revisions process is to provide a question and answer format for providers who are concerned with meeting the requirements necessary to stay in compliance with state laws and DFPS policies. The best practices will be included alongside the questions and answers to serve as a tool for providers who are seeking an innovative and proven method to provide better service to foster children.

5. Coordinating monitoring systems - Diana Spiser testified that the Licensing Division at DFPS sets the minimum requirements that foster facilities must meet in order to remain in good standing with the agency and retain their child care license. The primary role of the minimum standards is to ensure the health, safety, and well being of children. Licensing's role is to provide a floor of protection (minimum standards) below which no facility can operate. The problem that often arises and leads to the vast disparity in the quality of care that providers impart upon children in their care, is that RCCL staff focus on health and safety issues rather than on quality issues, when investigating a facility. The quality issues, or how different facilities interpret the minimum standards, causes the dilemma and wide range of "good" and "bad" facilities. In order to resolve some of

the disparity in quality issues, the DFPS will work with residential child care stakeholders to develop an integrated system of monitoring that will consist of the following:

a. Monitor the services of all providers of out of home care.
b. Utilize the strengths of Youth for Tomorrow(YFT), CPS, Licensing and Contract staff.
c. Eliminate duplication in monitoring efforts of Youth for Tomorrow (YFT), CPS, Licensing and Contract staff.

In conclusion, DFPS provided the Committee with information on the comparison between the Texas child welfare system and other states' systems best practices, as well as an in-depth analysis of the services that other states' are providing for prevention and early intervention.[171]

To improve accountability and the quality of services being delivered by contractors, DFPS has increased the number of outcome measures in the 24-hour residential services contracts. The agency continues to consider other outcome measures to include in contracts as it moves towards a more performance based contracting (PBC) system.

PBC in Other States:
Several states use PBC to tie contract payments, incentives, and renewals to performance.

- Illinois uses variations of PBC for child placement services. For example, in Chicago, foster care caseloads for contractors increase a certain percentage above baseline on the first day of a contract, as planned. During the contract period, contractors must find placements for the above-baseline percentage of cases if caseloads are to return to baseline. If placements are achieved for additional cases, caseloads fall below baseline (a clear incentive to the contractor). Contractors who cannot achieve placements for the above-baseline percentage of cases must manage higher than average caseloads. Child permanency placements increased significantly after implementation of PBC.

- North Carolina uses PBC for adoption services. After computing an average placement cost, the State pays a contractor a specific percentage of that average cost when any of three outcomes (i.e., milestones) associated with an adoptive placement are achieved. For each child placed in an adoptive home the contractor receives, for example, 50 percent of the average placement cost. When the adoption is finalized, the contractor receives another 25 percent of the average placement cost. If the placement is not disrupted over a specified number of months, the contractor receives the final 25 percent of the placement cost. This method of PBC is completely outcome-based and the financial risk for contractors is extremely high.

- Kansas also uses a milestone approach, but the bulk – up to 75 percent – of payments to a contractor are made when relatively simple process milestones are met for individual cases. Those milestones relate to achievements in inputs,

processes, and outputs (e.g., accepting referrals, completing case documentation, providing services to a specified number of clients, etc.). The final 25 percent is paid when actual child outcomes are achieved (e.g., a child achieves permanency). Kansas adopted this particular milestone approach when the original PBC plan failed. The original plan focused entirely on the outcomes, and the financial risk to contractors was so high that most reported significant losses during the first year. Contractors accept the new modified milestone approach because 75 percent of their payments are process-based, and greater latitude is given to them to decide how services can be delivered.

- Maine and Florida use PBC to make decisions about renewing or extending existing contracts and establishing new contracts. In both states, contractors work with government to develop acceptable performance measures and standards. Once performance standards are established, contractors must meet those standards or risk having contracts terminated. In Maine, tying performance to contract renewals significantly increased output and outcome performance. In Florida, PBC appeared to decrease but not eliminate the need for monitoring certain kinds of service contracts.

DFPS provided the following information on abuse prevention efforts and programs in five key states - California, Arizona, New York, Illinois, and Florida - chosen for population, demographic, and/or geographic similarities with Texas:

California
Facts 9,452,391 – Child population (2002)
18,145 – Juveniles detained, incarcerated, or placed in residential facilities (2001)
132,181 – Substantiated victims of child abuse and neglect (2002)

The Office of Child Abuse Prevention (OCAP), housed within the California Department of Social Services, oversees federal and state funding streams dedicated to child abuse and neglect prevention. The state distributes the majority of prevention funding to local counties, which procure prevention services according to funding requirements and local needs. State offices provide information on best practices and effective programs and approve three-year prevention plans submitted by counties. OCAP also provides training and technical assistance through regional coordinators to local Child Abuse Prevention Councils. Prevention Councils promote prevention and support community-based services within counties.

Safe and Stable Families (Title IV-B Subpart 2) funding is distributed to counties based on child population, child poverty, and available funding. Counties do not have a match requirement. Funding has remained constant for the past few years and will continue at approximately $55 million for FY05. The state keeps 15 percent of funding for special projects.

Community-based Child Abuse Prevention (CBCAP) funds, totaling approximately $2 million, are distributed to counties based on a formula that takes into account the amount of

funds a county is able to collect for the state's Children's Trust fund. The formula helps to ensure that all counties have a minimum amount of prevention dollars. Remaining funds are then distributed equally, with a portion reserved for state initiatives. State income tax return donations, birth certificate fees, and automobile license plate sales fund the California State Children's Trust Fund. Funding from the trust fund is distributed among several state agencies, with OCAP overseeing approximately $6 million. In 1982, the California general assembly committed general revenue dollars to the Office of Child Abuse Prevention through the Child Abuse Prevention, Intervention and Treatment Program (CAPIT). The agency safeguards this funding source, which leverages matching federal dollars, and is maintained at $14 million. The state reserves $1 million in CAPIT funding for special state projects and 3% of the funding for training and technical assistance.

Child Abuse Prevention and Treatment Act (CAPTA) discretionary funding also provides more than $2 million for state level child abuse prevention initiatives. Examples of state initiatives, as opposed to county programs, include support for a fatherhood initiative, the AmeriCorps volunteer program, a parent leadership network, an initiative that builds small county capacity to increase a county's ability to compete for funding, and media campaigns to promote awareness and education.

The California Department of Justice supports two initiatives related to child abuse prevention and juvenile crime prevention. Safe from the Start is a statewide effort designed to reduce children's exposure to violence. The program sponsors statewide and local events to educate state and local leaders, policymakers and service providers on the impact of violence on children. The State Child Death Review Council supports county child death review teams in their efforts to prevent fatal child abuse and neglect.

The California Attorney General's Office hosts the Crime and Violence Prevention Center. Budgeted at nearly $6 million, the Center supports grant programs in the areas of school-community policing partnerships and other school-based safety strategies, publications, public service information and training and technical assistance on effective violence prevention strategies. Safe State, a website supported by the center, provides research, model program information and resources on issues including child abuse, community conflict, gangs and youth violence, hate crimes and school safety.

<u>Arizona</u>
Facts 1,476,856 – Child population (2002)
1, 884 – juveniles detained, incarcerated, or placed in residential facilities (2001)
5,099 – substantiated victims of child abuse and neglect (2002)

The Office of Prevention and Family support, one of several specialized offices of the Department of Economic Security Division of Children, Youth and Families, distributes federal and state funding for child abuse prevention in Arizona. These funds include the Arizona Prevention Fund (i.e., the state's Children's Trust Fund).

Since 1982, the Arizona Prevention Fund collected over $10 million through voluntary income tax contributions and donations that support 50 different locally managed programs

throughout the state. These programs include teen and adult parenting education, sexual abuse prevention, parent support groups, telephone reassurance for latchkey children, and an annual child abuse prevention conference. The Arizona Prevention Fund also supports regional prevention councils to promote prevention initiatives.

Healthy Families Arizona, funded in part through the Prevention Fund, serves 75 communities throughout the state. Six percent of families of eligible newborns receive Healthy Families services at its current funding level. The Arizona Office of Prevention and Family support has contracted with various community-based agencies since June 1995 to develop a continuum of family support and preservation services using Safe and Stable Families (Title IV-B Subpart 2) funding. These programs serve over 7,500 families each year.

The Family Builders program, which began in January 1998, is an early intervention program through which CPS workers refer low risk or potential risk families to a network of community based providers in four counties. The Department contracts with 9 providers that complete family assessments and assist families in obtaining needed services within 48-hours of the referral. The program served 2,000 families in 2003.

The Governor's Office for Children, Youth and Families administers the Arizona juvenile delinquency prevention and youth development programs grants for a variety of juvenile justice and delinquency prevention programs. The Division also distributes Title V community prevention grant funds that support collaborative, community-based development of local juvenile crime prevention strategies using the Communities That Care prevention model. The Division for Community and Youth Development provides support and funding for service-learning programs, volunteerism, positive youth development, and youth workforce development. A 40-member Governor's Youth Commission advises the governor's office on youth issues in Arizona communities.

Illinois

Facts 3,254,523 – Child population (2002)
3,560 – juveniles detained, incarcerated, or placed in residential facilities (2001)
28,160 – substantiated victims of child abuse and neglect (2002)

The Illinois Department of Children and Family Services combines family preservation and family support funding into a single system of service delivery called Family Centered Services. The Family Centered Services Initiative began in 1995 as an effort to reduce incidence of child abuse and neglect by introducing community-based systems of care for children and families. Local Area Networks (LAN) create service systems that provide a full range of services and resources to support at-risk families. The 62 LANs statewide coordinate existing services and secure funding for services needed in the community.

The Illinois Department of Children and Family Services will receive $18 million in Safe and Stable Families (Title IV-B Subpart 2) funds in FY05. Previously designated for the LANs, this funding has been redistributed among agency programs in recent years. Only $5 million of this fund was available to the LANs in FY03 and FY04. The Department of

Children and Family Services distributes the Illinois Child Abuse Prevention Fund (i.e., the state's Children's Trust Fund) to support various prevention programs. Voluntary income tax donations and birth certificate fees maintain this fund. Programs supported by the Child Abuse Prevention Fund also rely on legislative appropriations. In FY04, these programs experienced a 50% reduction in funding due to a decrease in legislative appropriation and a redistribution of prevention funding within the agency.

Within the state's Department of Human Services, the Division of Community Health and Prevention supports 40 prevention programs that focus on maternal child health, family support, early childhood development, youth development, juvenile justice, and substance abuse prevention. Regionally based staff promotes agency and community collaboration, provides training and technical assistance, and monitors community-based programs that receive funding.

Healthy Initiatives within the Division of Community Health and Prevention includes the Healthy Families program and other programs for pregnant and parenting teens. Other prevention strategies address substance use, violence, teen pregnancy and school failure. One program worth noting is Teen REACH. This program provides meaningful activities for at-risk 6-17 year old youth during out-of-school hours. The success of this program has attracted additional state funding.

The Illinois Bureau of Youth Services and Delinquency Prevention receives Juvenile Justice and Delinquency Act funding for programs that target high-risk youth. Program services are designed to develop skills and provide opportunities for behavioral changes. The Bureau uses a screening and assessment instrument to identify the youth who are selected for services.

New York

Facts 4,613,251 – Child population (2002)
4,593 – juveniles detained, incarcerated, or placed in residential facilities (2001)
79,049 – substantiated victims of child abuse and neglect (2002)

The rising costs of child welfare services have led the state of New York to turn its attention to prevention services. The Office of Children and Family Services offers a 65 percent reimbursement for local community-based prevention services that avert placement of children in foster care or juvenile facilities, and for local programs that support adoption services. The budget for these reimbursements stands at $347.3 million for 2004-2005. A $364.5 million foster care block grant is also being used to encourage local governments to support child abuse prevention efforts. Counties can use state child welfare services money to fund child abuse prevention programs.

Savings created by effective programs that prevent child maltreatment and foster care placements can be used to support other local prevention initiatives. The impact that these incentive programs have is yet to be determined. The New York Children's Trust Fund relies solely on legislative appropriation for funding. Appropriations for the fund have decreased in recent years; the current appropriation is approximately $1 million. Programs

and projects supported by the Children's Trust Fund include an annual Child Abuse Prevention Conference, a school-based domestic violence prevention program, elder abuse prevention and intervention services, and a variety of school-community partnerships. The fund also supports Shaken Baby awareness and prevention.

New York uses TANF dollars to fund its Healthy Families program. New York has not met Safe and Stable Families (Title IV-B Subpart 2) funding eligibility in the past, but is working to draw down that funding in the future. The state receives Community-based Child Abuse Prevention (CBCAP) program funding, which is distributed to local private and public entities through a procurement process.

The New York Office of Child and Family Services will distribute $38 million of the state's General Fund to counties for community-based youth development and delinquency prevention programs. Regional youth development offices provide funding information and promote the use of youth development strategies. Programs and services supported by dedicated youth development funds include Youth Development/Delinquency Prevention (YDDP), the Special Delinquency Prevention Program (SDPP), the Runaway and Homeless Youth Act (RHYA), and the Advantage After School program. The Youth Leadership and Service Council, as well as the Conference on Youth are supported with youth development funds.

Florida

Facts 3,882,271 – Child population (2002)
6,776 – juveniles detained, incarcerated, or placed in residential facilities (2001)
47,998 – substantiated victims of child abuse and neglect (2002)

The Florida Department of Children and Families contracts with statewide community-based organizations to provide family support services, which include child abuse prevention services. Federal funding sources and state revenue are used to support these services. Florida receives and uses Child Abuse Prevention Treatment Act (CAPTA) funds for family support and prevention programs. About $1.7 million in CAPTA funds have been used to develop, strengthen, and support child abuse and neglect prevention, treatment, and research programs over the past several years.

Florida uses TANF dollars and its Tobacco Settlement Trust Fund to support the Healthy Families Florida program. In 2003, Healthy Families Florida had a budget of $25 million and there were services in 49 of 67 counties. In 2001 $15.3 million in state funds and $8.2 million in federal funds were used for the Healthy Families program. Safe and Stable Families (Title IV-B Subpart 2) funds, as well as other funds, are also used to support a Family Builders program and family reunification services. Each of the state's 14 districts/regions receive a proportion of these funds based on the number of protective investigation reports received by the district/region during a twelve-month period. Family Builders provides intensive in-home family preservation services to families whose children would otherwise be placed in emergency shelter due to abuse or neglect.

The program receives $21.6 million in state funding and nearly $4 million in federal funding

in 2002. Community-Based Child Abuse Prevention funds provide Florida with an additional $2.5 million in funding to develop, operate, expand and enhance a network of community-based, prevention focused, family resources and support programs. Home Visitors for High Risk Newborns is a program funded with general revenue that provides home visiting services for high-risk families who are expecting newborns or who have newborn infants. In 2002, this program received $800,000 in state dollars.

TexProtects, the Texas Association for the Protection of Children

Madeline McClure, the Director of TexProtects provided several recommendations to the Committee on how to increase efficiency at CPS and how to implement national best practices in Texas. Her testimony focused first on workforce investment, where she stated that high CPS worker caseloads and high staff turnover must be reversed. Casework loads determine the response time, service quality and efficiency of caseworkers working with children needing protection. CPS workers cannot serve children adequately when they have only two to six hours per month to devote to each child on their caseload at the current caseload ratio. Madeline McClure noted that The Council on Accreditation and The Child Welfare League of America recommend a maximum range in caseloads of twelve to eighteen cases per worker. Furthermore, she noted that caseworker turnover increases the likelihood that miscommunication and mistakes will be made as a child's case is "handed off" to a new caseworker. This results in a delay in the permanent placement of children.[172]

Madeline McClure also noted that high caseloads increase the risk of further abuse and neglect, decrease worker productivity and can cost children's lives. On the other hand, low caseloads increase worker accuracy in assessments in removal decisions, and allow caseworkers the necessary time to research and develop the best plans for families thereby reducing the likelihood of them re-entering the system. Low caseloads also decrease worker turnover, thus saving hiring and training costs, and also allows for a more experienced workforce which increases worker productivity and reliability. In sum Madeline McClure concluded that low caseloads not only reduce the incidence of future child abuse and neglect, but also can prove to be cost-effective for the state.

TexProtects' recommendations to lower caseloads and caseworker turnover include:

- Reduce Child Protective Service worker caseloads by hiring more workers. CPS should become accredited with the Council on Accreditation so that caseloads are reduced to 12-17 cases per worker over the next decade. For the next biennium, CPS caseworkers should be added in order to lower the caseload to 20 cases per worker. In 2002, DFPS reported that it would need 237 additional staff in FY 2004 and 196 additional staff in FY 2005 for a total of 433 staff over the biennium to bring caseloads down to 20 per worker. The total cost to add these additional staff over the biennium is $29,484,649 of which $20,305,561 would be funded from general revenue.[173]
- Reinstate and expand the successful Training Academy Pilot Project. DFPS District 3 (Dallas-Ft. Worth and seventeen outlying counties) showed a dramatic reduction in turnover compared to other regions after initiation of the pilot, which provided just-in-time replacements of caseworker vacancies by having trained workers ready for hire. This quick vacancy fill cut down on the caseloads remaining workers had to carry during the previously extended vacancy period. The $1.7 million cost of the pilot expanded to all five DFPS Districts amounts to $8.5 million for the biennium. However, the pilot is cost neutral, as CPS will save the lost training costs of these workers. Retaining trained workers shifts the cost of training losses of workers that leave to employment costs of those that stay.

- CPS needs to support key supervisor staff in order to build institutional memory and tenure of the workforce. The research notes that after manageable caseload levels, supervision "may be the next most important factor" in retaining workers.[174] Supervisors that are well trained and tenured are more capable of guiding new workers, willing to listen to work-related problems and help workers get their jobs done. CPS should offer supervisors a pay grade increase in order to give caseworkers incentives to become supervisors and retain the best-qualified supervisors. DFPS should measure and implement the most effective worker support, reward and retention systems by teaming with county experimental initiatives across the state.

Madeline McClure also provided testimony regarding the DFPS' low standards for the recruitment and inadequate training of CPS caseworkers. CPS hires workers with any bachelors degree instead of recruiting social workers, or those workers with backgrounds in related fields such as counseling, psychology or criminal justice. CPS workers receive six weeks of job training before they are assigned to cases, and many feel unprepared for the demands of horrific work conditions when they first enter the field. Ongoing training is often too expensive and difficult to attend, given the time constraints on workers due to job demands and high caseloads. Workers express frustration at not having the required knowledge to do their job more effectively and efficiently by keeping up with state-of-the-art breakthroughs in the field. Because of these less than desirable conditions, Madeline McClure offered the following recommendations to increase recruitment standards and improve training at CPS:

- Recruit CPS workers that possess the appropriate educational background, experience, skills and personality, and match them to the various caseworker positions. CPS should study the background, education and personality variables that contribute to the recruitment and retention of the highest quality caseworkers. Differing casework skills for investigation versus placement should be noted in determining appropriate educational backgrounds (i.e., criminal justice or journalism background for investigators versus social work background for family preservation). According to the research, workers with a minimum BSW and an internship with CPS prior to full-time employment had an 87% retention rate. CPS should encourage interns to shadow experienced workers in order for them to self-select for employment. Additionally, CPS needs to focus on recruiting bilingual workers to keep up with the booming growth of the Hispanic population.
- Increase caseworker knowledge through improved training. DFPS should have an independent group such as retired or former CPS workers and other stakeholders make recommended changes to the training academy curriculum, and study national best practice curriculums for the most effective training preparation. CPS workers should meet continuing education minimum criteria however, workers must be offered the time and opportunity to do so through lower caseloads. CPS should request funding for caseworkers to attend ongoing state-of-the art training such as the National Crimes against Children Conference, in order to keep abreast of new breakthroughs in the field, which will increase the quality of interventions and boost employee's effectiveness and efficiency while boosting worker morale.

Another major concern for TexProtects is that there are too many children entering the child welfare and foster care system. It is their contention that the State must do a better job at decreasing the number of children initially entering the CPS system. Madeline McClure testified that there are too many children being abused in Texas, and that there are too few programs which work to prevent children from entering the Child Protective Service System. Over 50,000 Texas children were confirmed abuse and neglect victims, and 184 Texas children died due to abuse and neglect in FY 2003 alone.[175]

Madeline McClure testified that the legislature's cost-saving goal should be to shrink the need for a Child Protective Service System by investing in the family and their children with proven and cost-effective prevention programs before maltreatment becomes an issue. In comparison to estimated direct costs of over $34,000 per abused child, a proven prevention program, Healthy Families, has an estimated annual average cost of only *$3,000 per family* to prevent child abuse and neglect.[176] For every dollar the State spends on treating victims, it could spend 7-9 cents to prevent victimization. This would save the state millions in dealing with the aftereffects of abuse and potentially save the lives of children at risk.[177]

Based on the research regarding the prevention of child abuse and its potential savings to the State, Madeline McClure recommended that the Texas legislature restore and invest in proven prevention programs. She stated that DFPS must be adequately funded to reinstate and expand the most proven and effective early prevention programs such as comprehensive in-home visitation services, parent education and support groups, and self-protection programs for children. Madeline McClure provided the Committee with information from other states to portray the effectiveness of her recommendation to invest in prevention programs. In each of the studies listed below, the analysts concluded that the positive outcomes of prevention programs, with even relatively small reductions in the rate of child maltreatment, demonstrate that prevention can be cost effective. Although much remains to be learned about the optimal levels of investment in prevention, these studies present a starting point for continued analysis and discussion:

- Elmira, New York
  - A 1990 report by David Olds and colleagues presents an economic analysis within a rigorous evaluation based on a randomized trial of a nurse home visitation program serving 400 pregnant women in Elmira, New York (Olds et al, 1993). The evaluation indicated that frequent home visits by nurses during pregnancy and the first 2 years of the child's life improved a wide range of maternal and child health outcomes among adolescent, unmarried, and low-income first-time mothers (Olds & Kitzman, 1993). The study found that in contrast to women assigned to the comparison group, nurse-visited women experienced: (1) improved health related behaviors (e.g., reduced cigarette use and improved diets) and use of prenatal services during pregnancy; (2) fewer emergency-room visits for children during the second year of life; (3) greater workforce participation; and (4) fewer subsequent pregnancies for low-income and unmarried women. In addition, among poor, unmarried teenage women, the study observed a 75 percent reduction in state-verified cases of child abuse and neglect during the first 2 years of a child's life. The economic analysis for the Elmira home visitation program concluded that government savings could offset

the program costs for low-income participants within 4 years (Olds et al, 1993). The analysis estimated an average cost of $3,133 per family (1980 dollars) for providing home visitation services to low-income participants, based on expenditures for nurses' salaries, benefits, supplies, and transportation. These costs were compared with reduced expenditures in other government programs affected by the positive outcomes of home visitation. The economic impact of improved maternal and child functioning was evaluated from a standpoint of four government programs-Aid to Families with Dependent Children, Medicaid, Food Stamps, and CPS-as well as increased tax revenues generated by subsequent employment. Within low-income families, for the 4-year period following the child's birth, the estimated per family government savings was $3,498 (Olds et al, 1993). The majority of estimated government savings (based on comparison group expenditures) was derived from reductions in AFDC and Food Stamp payments, which were associated with increased employment and reduced subsequent pregnancies among program clients.

- Michigan
  - A 1992 study for the Michigan Children's Trust Fund (Caldwell, 1992) concluded that providing either comprehensive parent education or home visitation service for every Michigan family expecting its first child would amount to only 5 percent of the estimated total State cost of maltreatment. Based on an estimated per-family cost of $712, statewide prevention services were projected at approximately $43 million. In comparison, analysts figured that child maltreatment and inadequate prenatal care cost the State approximately $823 million. Michigan's total estimated annual cost of child maltreatment and inadequate prenatal care included direct and indirect costs associated with the following:
    - Protective services ($38 million)
    - Foster care ($74 million)
    - Health costs of low birth weight babies ($256 million)
    - Medical treatment of injuries due to abuse ($5 million)
    - Special education costs ($6 million)
    - Psychological care for child maltreatment victims ($16 million)
    - Juvenile justice system and correction services ($207 million)
    - Adult criminality ($175 million)
    - Projected tax revenue lost from infant deaths ($46 million)

    In making these estimates, a series of extrapolations were used to account for the proportion of total spending that can be linked to maltreatment. For example, prior research (Loeber & Stouthamer-Loeber, 1987), suggests that approximately 20 percent of children from abusive homes commit delinquent acts as juveniles and 25 percent of these go on to commit crimes as adults. Based on these findings, the Michigan researchers predicted that of the 39,452 children identified as abused that year, 1,996 would become involved in the adult criminal justice system. With an average annual State adult prison cost of $25,000, and an average prison sentence of 3.5 years, total adult criminality associated with child abuse and neglect was estimated to cost $175 million (1,996 x $25,000 x 3.5).
- Colorado

- A similar 1995 analysis, commissioned by the Colorado Children's Trust Fund, examined the costs incurred in the State of Colorado by failing to prevent child abuse and neglect, and then compared these costs with the savings that would accrue from an investment in effective prevention services (Gould & O'Brien, 1995). The State estimated $190 million in annual direct costs for child maltreatment, including the costs of CPS investigations, child welfare services to children in their own homes, and out-of-home placements. In addition, annual indirect costs were calculated based on an assumption that $212 million (approximately 20 percent of the $1 billion total expenditure) in State social programs were associated with the long-term consequences to individuals maltreated as children (e.g., special education, AFDC assistance payments, job training programs, youth institutional and community programs, mental health programs for children and adults, substance and drug abuse programs, victim services, criminal justice programs, domestic violence shelters, and prisons). Indirect costs ($212 million) and direct costs ($190 million) combined for an estimated total of $402 million in annual expenditures related to abuse and neglect. The State costs of maltreatment were compared to the potential savings associated with an intensive home visitor prevention program targeted toward those families most at risk of abuse and neglect. Based on an estimated $2,000 per-family cost of a state-wide home visitation program for high risk families with children from birth to 3 years old, the Colorado analysis projected total costs of $32 million. At the time of the study, $8 million was being spent in the State on home visitation and family support, thus suggesting a need for $24 million in new money. The Colorado analysis concluded that if the program were able to reduce child maltreatment expenditure by only 6 percent (.06 x $402 million annual expenditure), the cost of the prevention investment would be offset.

- Allegheny County, Pennsylvania
  - In a recent study, Bruner (1996) used statistical modeling to estimate benefits or savings as the potential returns on investment from family centers for high-risk neighborhoods in Allegheny County, Pennsylvania. This study approaches the *cost-of-failure* by contrasting the level of spending on remediation, maintenance, and CPS for residents living in the highest-risk, distressed neighborhoods of the county with the level of spending in lower risk neighborhoods in the same county. This approach captures real-world comparisons for estimates of "what could be." (Bruner, 1996). The study first determined the potential "savings" obtainable by transforming the high-risk neighborhoods into neighborhoods similar to the rest of Allegheny County. This potential savings, or cost-of-failure, included expenditures across a number of public spending areas most associated with preventable maltreatment and health problems in childhood-AFDC and Medicaid, food stamps, children and youth social services, juvenile justice, jail and prison, and lost economic activity and tax revenue. The analysis concluded that the county would save approximately $565 million annually in public spending, or $416.3 million, if these costs were discounted over a 20-year timeframe. Costs were calculated for establishing family centers to serve populations within the high-risk neighborhoods. This analysis was grounded in the existing body of research on the various elements needed for children to succeed, the principles of effective frontline practice, and the potential

long-term effects of such strategies upon child outcomes. The study projected that to serve 45 percent to 60 percent of all families with very young children in Allegheny County high-risk neighborhoods would require an expansion of funding of $11.9 million, from $6.6 million (for existing centers with a capacity for 2,640 families) to $18.5 million (to serve up to 8,400 families). From a return-on-investment perspective, the $18.5 million expenditure can be compared with the $416.3 million estimated long-term preventable expenditures. An $18.5 million investment would have to contribute to reducing such preventable financial costs by only 5 percent for it to be considered cost-effective.

Madeline McClure concluded her testimony by providing the Committee with background information and recommendations on how the State can increase the number of children exiting the CPS system. She pointed out that the main issue is the lack of permanency for children removed from abusive homes. Children removed from abusive homes are inadequately assessed physically, mentally, psychologically, emotionally and educationally before being placed in substitute care. Little or no assessment leads to placement breakdowns, where children experience multi-placements and are shuttled from one foster home to the next. Multiple placements disrupt a child's ability to bond with caregivers, which leads to other emotional attachment difficulties later in life. Children need a safe predictable school, home, spiritual and recreational environment to ensure healthy development.

According to Madeline McClure, relatives are often the best choice of placement, yet may not have adequate resources, training and support to handle abused kin. Furthermore, the problem is compounded by the fact that there are too few foster homes, and foster home providers lose needed subsidies when they opt to adopt the children they foster.

Madeline McClure's recommendations to increase permanent placements include:

- Reduce placement breakdowns: DFPS needs adequate funding in order to thoroughly assess a child in assessment centers within 30 days of removal before temporary or permanent placements. Appropriate initial placements will save costs on multiple placements.
- Facilitate Kinship Care: DFPS needs funding to offer kinship caretakers support. Based on successful results to date, the State should expand the kinship one-time stipend program implemented from the proposed SB 58, 78th Legislative Session, to all qualifying kin. DFPS should offer kinship parent training, parent support services and other benefits associated with inclusion in the Texas Foster Family Association. Increase kinship CPS specialist caseworker/home-study workers to offer kinship parents the CPS worker support and facilitate quicker placement with kin. Investment in kin support could be cost saving or cost neutral compared to foster costs.

- Facilitate adoption of CPS children: DFPS should initiate a pilot project to study the outcomes of a subsidy increase for adoptive parents commensurate with foster

parent subsidies in order to remove barriers to foster parents adopting foster children.

- Create an alternative to paid foster care for prospective parents for potential cost savings. DFPS should study the feasibility of creating an alternative to parents that want to care for children temporarily without compensation. CPS could create a designation other than foster home for those that don't want to be associated with the term "foster parents". A sub-group could be added such as "Bridge Caretaker" for prospective non-paid parents, which also reflects the provider's true role. This new designation could be piloted along with an awareness campaign to measure the effectiveness of this option, which may result in significant cost savings to the agency.

Case Studies - Illinois and Kansas

- Illinois - the Illinois reorganization provided by Jess McDonald, former Director, Illinois Department of Children and Family Services

Child protection and child welfare are "emergency room" responses that must be ready to competently and immediately respond to a crisis. It is a system that must be prepared "24/7" to respond correctly or a child's life is in further danger. There is a general consensus in the public that this should be the case but there is no assurance that any State's child welfare system can meet this expectation. The recently completed federal Child and Family Service Reviews seemingly reinforce the widely held notion that child welfare systems in every state are failing to meet their responsibilities.[178]

The federal CFSR process is a good first step, but it is not the only or best way to understand a state child welfare system. Texas met the national challenge to double adoptions for children in foster care by achieving a 163% increase over the baseline established by HHS. On the other hand, Texas failed the CFSR adoption performance measure of having 32% of adoptions occur within 24 months of entering foster care. In many respects, the effort to double adoptions appropriately required states to focus on children waiting the longest in care which meant they would not be able to achieve the CFSR standard of 32% of adoptions being achieved within 24 months of foster care entry.

The achievement of doubling adoptions should be commended for it takes incredible work by private agencies, the public agency and the courts to address the long standing backlog in foster care that had characterized the nation's foster care system. It also is a reminder that this condition of children languishing in care must not be repeated and that the CFSR goal of quicker adoptions is appropriate and must be planned for strategically by every state on an on going basis.

Accountability for state child welfare systems requires aggressive and transparent systems of quality improvement. It is unfortunate that the call for accountability in the child welfare system almost exclusively happens in the wake of a tragedy. The challenge to public leaders is to shape a system that has the ability to identify problems at the earliest possible moment and quickly correct the condition. Such a system should be able to communicate clearly to the public how well it performs, obstacles to improvement and strategies to correct the conditions that contribute to less than desirable performance. It is critical that everyone in the system understand that "performance matters", an Illinois mantra, and that success for children and families is the basis for defining success of the system.

Every part of the organization has to be focused on achieving the mission of the organization and must be the first line of attack in the struggle for accountability. A state of the art quality improvement system is required. The ability to monitor all aspects of performance by all providers, private and public is absolutely essential. Every provider in the system, public or private, must meet the same high standards for quality. Clear expectations must exist for performance and be matched with appropriate rewards and sanctions.

The clearest strategy for establishing the aggressive quality improvement system necessary to keep children safe and achieve permanence for them and their families is to build a child welfare system that can meet and sustain compliance with the rigorous requirements of accreditation through the Council on Accreditation for Children and Family Services (COA). Illinois dramatically increased adoptions and improved safety of children served at home and in foster care primarily through a system wide implementation of COA accreditation. All agencies, including the public agency, were required to be accredited assuring that no double standard for care existed. Quality improvement and monitoring systems were improved to assure that fundamental casework activity was performed appropriately.

Quality services and systems are the key to good performance. The critical decisions of the child welfare system are in the hands of caseworkers throughout the system. The successes, failures, costs and tragedies are often laid at the feet of a young child welfare caseworker with excessive workloads and little training and support. In a climate where every mistake is scrutinized and caseworkers are singled out for blame it is not surprising that there will be explosions in foster care caseloads. Such was the case in Illinois in the early 1990's. The overall DCFS caseload almost doubled between 1991 and 1994 as tragedies, high caseworker turnover and general system failure led to a severe case of "foster care panic".

Children were rushed into care as caseworkers with excessive caseloads sought desperately to avoid a tragedy by placing children into foster care since little else, including time, was available to help. This "panic" cost Illinois taxpayers an estimated $500 million in unnecessary foster care expenditures. The real cost was to the children and families who were unnecessarily separated. This poorly staffed and poorly supported child welfare system was labeled as the "Calcutta of child welfare".

Change happened through a number of strategies, most important of which was to require that the Illinois child welfare system become accredited. Turnover rates of caseworkers dropped from over 50% in the early 1990's to less than 10% by 2001. The quality of caseworkers and case supervision improved as well as evidenced by the dramatic improvements in adoptions and safety related decisions.

Quality became the watchword of the field, not just a press release sound bite. The organizational culture dramatically improved as the field focused on serving families, the very reason they chose this difficult work in the first place. Public confidence improved as results and performance improved.

"Quality matters and performance matters" are a way of life in the Illinois child welfare system. Meeting the accreditation standards everyday of the week is a challenge Illinois has embraced. Accreditation represents the child welfare system's commitment to our communities that we will do this critical job right. Children and families in Illinois are the ones who have benefited the most from this effort. That is the right reason for accreditation.

A poorly supported child welfare system gets poor results. There is no doubt that resources play a critical role in achieving good outcomes for children in the child welfare system. Illinois demonstrated that failing to invest in the workforce with reasonable caseloads and supports results in bad and costly decisions. Simple mathematical calculations dictate that reasonable caseloads are necessary if children and families are to be seen by caseworkers at least monthly as required by most states. Every accreditation requirement is tied to necessary conditions in a child welfare agency necessary to achieve good results for children and families.

In Illinois, the agency was scoured for inefficiencies and hundreds of staff were reallocated from non-direct service positions to direct service. Illinois also invested strategically in the capacity of private agencies, allowing them to reduce caseloads, add adoption staff and expand services necessary to achieve permanencies. These investments were offset by predictable and expected performance that delivered the savings necessary to cover the cost of the front end investments. The investments have resulted in dramatic improvements in outcomes that have stabilized the once skyrocketing child welfare budget.

Accreditation is the foundation framework for a sound child welfare system and the investments necessary to achieve accreditation can be offset by improved performance on behalf of children and families.

Quality child welfare service systems are possible and critical. Three states have achieved accreditation; Illinois, Kentucky and Louisiana, and three other states are embarking on accreditation. Missouri recently approved a $9 million appropriation item for accreditation. Ohio, a county based system, is requiring all 88 Ohio counties to be accredited. Currently 62 county based child welfare agencies are accredited. All this activity takes place in a climate of tight fiscal conditions for state and local governments. This level of commitment to accreditation is really a commitment to the children and families that need the child welfare system. Accreditation is not a silver bullet, but it is the most important strategy in the child welfare arsenal.

- Kansas - A brief synopsis of the nation's first privatization of child welfare services, provided by Bob Hartman, currently serving with DePelchin, formerly served for 15 years as President / Chief Executive Officer of a similar not-for-profit, Kansas Children's Service League.

In 1996, Kansas Children's League became a major lead agency contractor in the state's privatization initiative, the first such system's change effort in the United States. Bob Hartman's recommendations from this testimony are based on that experience.[179]

- Transformational change provides the energy, creativity, and support needed to make significant improvements in a large, complex system. We can't just "tweak the edges" with incremental change.
- Take time to do it well. The stakes are too high for the children and families in the state's care to rush into a rapid transition without appropriate planning and the development of an adequate infra-structure.
- Leadership is essential. This is required at all levels, from the governor's office, the legislature, the DFPS, the private sector, and child advocates to foster parents, judges, law enforcement officials, etc.

It should be noted here that neither Mr. Hartman nor DePelchin Children's Center recommends the Kansas model of privatization for Texas, per se. We acknowledge the inherent problems in transferring one state's solutions to another. We do agree, however, with national child welfare consultant Charlotte McCullough's testimony before this committee. She indicated that there are key structural and programmatic elements, as well as lessons learned from other locations, that might help Texas improve the quality of services for children in its care.

Rationale for change:

- The state was under a court consent decree filed by the Children's Rights Project of the ACLU to improve its child welfare system.
- A new governor, secretary, and commissioner favored privatization.
- The Kansas Legislature had lost confidence in the state's system administered by the Department of Social and Rehabilitation Services (SRS).
- Critical issues included high caseloads and staff turn-over rates; media accounts of child abuse and neglect cases; disparate services in different parts of the state; increasing numbers of children coming into the system with longer lengths of stay.

Structure and Process:

- Kansas SRS combined its twelve area offices into five regions,.
- RFP's and contracts secured one accredited lead agency in each region to manage family preservation and foster care / reintegration services; one statewide contract was awarded to an accredited agency to manage all adoption services.
- The state agency retained child protective service investigations, monitoring of lead agency activities, and making recommendations to the courts regarding disposition

of the child. SRS eventually reduced its workforce by one-half through retirement, attrition, and reassignment.

- Outcome requirements were established (a first in child welfare).
- Financial incentives were developed to encourage movement of children to permanence. (A variety of creative financing mechanisms have been tried and revised, for example: a "capitated" case rate with staggered payments for achieved benchmarks; the introduction of risk corridors and "outlier" payments for children with serious emotional disturbances; monthly case rates, variable and fixed, to cover adjustments in case load size and allowable fixed costs; etc.)
- The State sought and received a Title IV-B federal waiver, to help create more flexibility in its child welfare financing.
- Kansas contracted for an independent, third-party evaluation with James Bell and Associates, Baltimore, MD.
- The State eventually engaged all state systems to adopt an integrated care approach to support child welfare outcomes (juvenile justice, education, mental health, courts, etc.)
- Adjustments were made along the way to assure service system success.

Results Achieved:

- A no-eject / no-reject, 24-hour service system was developed with the ability to track the status and location of every child in the system.
- Assured the safety of children while in care.
- Reduced caseloads to accredited standards, from over 50 to 20 clients per worker.
- Reduced intakes and recidivism; decreased lengths of stay in residential, hospitalization, and foster care.
- Increased adoptive and birth family / kinship placements.
- Placed more kids within their counties of origin; placed siblings together; assured assessments and treatment services for children who had experienced traumatic stress and their families.
- Developed a program for older youth aging out of the child welfare system.

Additional Lessons Learned:

- Communication: Involve all stakeholders. Initially, Kansas failed to involve judges, law enforcement officers, foster parents, and school systems in planning and development phase. This harmed results and trust in the new system.
- Case Management: To assure continuity of care , agencies who work with the child should be able to work with the families, also, and make case decisions.
- Capacity: Organizations need time and support to build the needed infrastructure and manage the transition to a seamless service system: related information systems, contracting and financial management, human resources, office leasing, etc. must be developed. (Agencies only had 100 days to triple or quadruple in size!)
- Consultation: Over 30 state child welfare systems are now currently experimenting with various forms of public / private system reform in the delivery of child welfare services, many with encouraging results. Addressing issues regarding financial

mechanisms, data management, policy revision, service outcomes, contracting and monitoring, etc. could benefit form other state's experiences.

- Incentives: Various contracting requirements and incentives are proving worthy throughout the country. (IL provides an excellent example of incentive-based contracting.)
- Liability: Expanding the numbers of children served and the complexity of service create additional liability risks for private agencies. As liability insurance is becoming increasingly more difficult to obtain, state immunity protections or caps on tort claims should be explored.
- Training: Child welfare is a complex system of service, financing, and policy involving multiple organizations. To advance the "learning curve", all levels of decision making, care, and support of our State's most vulnerable children will require training, esp. in a system reform process.
- Trauma-Sensitive Services: Children in the child welfare system have experienced traumatic stress in a series of life challenges, including witnessing or experiencing family violence, neglect, and abuse. They've seen the effects of alcohol / substance abuse and addictions. They have experienced the loss of family and friends, and have moved from familiar foster homes, residential care facilities, and school settings multiple times. Children need timely assessments, interdisciplinary treatment plans, family connections, when appropriate, and mental health services.

In its role and responsibility as conservator, the State of Texas has opened an exciting window of opportunity to improve the quality of care to these most vulnerable children. It is essential we engage the public and private sectors, as well as all our communities, in a true partnership to assure the success of our efforts.

Summary of Public Testimony (from Aug. 5th)

Several concerned child welfare advocates, experts in the field of child welfare, stakeholders and other interested members of the public also testified before the Committee in regards to program efficiencies and best practices in other states that could help reorganize and bolster the child protection and welfare system in Texas. Many people have testified that the child welfare system in Texas is plagued with a lack of accountability. The evidence is piled high against the current system, one only needs to reference the failing grade that the State received during the recent federal Child and Family Service Review (CSFR), press reports and high profile news stories of failures to protect children from harm and reports of inappropriate business practices, as well as poor program quality among some private sector contract providers. Effective oversight must be provided to ensure accountability. Recommendations and information from experts and other members of the public include:

1. DFPS should focus more attention on providing effective regulatory oversight and contract monitoring, and contractors should be held to the highest standards of business practice and service provision.

2. DFPS should not be the sole oversight authority over its own activities as a provider of service and as a regulator of other providers. Additional oversight should be provided by an outside accreditation organization such as the Council on Accreditation for Children and Family Services (COA).

3. Service standards and expectations have not been consistently applied to provider organizations which results in poor outcomes for children. DFPS administrators admit that they have not applied the same requirements to their own (State run) foster care program that they have applied to private contract agencies. Also there is a conflict of interest when a single agency functions as a service provider and regulator of services. Service provider organizations should be consistently held to high standards and expectations.
    a) DFPS should follow suit with other state health and human service agencies and cease operating direct service programs and instead focus on consistent regulation and contract monitoring of providers.
    b) Contracting preference should be given to organizations that have achieved recognition as meeting the highest standards for quality of care through national accreditation.
    c) Service provider organizations should be held accountable for producing positive outcomes for children.

4. The effects of recent rate cuts and changes in the level of care and service authorization processes have had a dramatic impact on providers of service that far exceeds cuts that were anticipated by the Legislature. While some providers have been able to off-set some of these cuts by increasing private contributions, the private not-for-profit sector does not have the capacity to absorb all of these reductions in funding.

Adequate funding should be provided to effective child welfare programs to produce positive outcomes for children.

a) Providers should be adequately compensated to provide quality services, and contracts should be canceled with providers of substandard services.
b) Savings brought about by changes in the level of care and service authorization process should be returned to providers of services that produce positive outcomes for children.[180]

5. DFPS should be evaluated by an independent consultant. Organizations become comfortable doing what they do that they often fail to review their operation with a critical eye. A third party is more likely to obtain honest feedback from employees and customers. An independent review would provide a fresh look at the people and processes.[181]

6. DFPS should develop a standardized checklist to be used at each visit by CPS caseworkers to foster homes and facilities to ensure that the child is getting his or her needs met. The checklist should include specific information on health care and school attendance, questions about referrals to prevention programs (as required by the federal Child Abuse Prevention and Treatment Act of 2003), and should be used on children of all ages in foster care or in DFPS family preservation services.

7. Medical passports should be created and continuously updated and follow children in the foster care system.

8. When recruiting foster parents to watch infants and toddlers, the DFPS should choose only those homes that have received adequate training on caring for these very young children.[182]

9. The inadequate funding of DFPS which lead to high caseloads, poor salaries, and inadequately trained caseworkers and supervisors must be addressed by the legislature. According to national research, the best outcomes for the child welfare system occur when the caseworkers have social work degrees. NASW recommends that child welfare administrators and supervisors have a master's degree in social work (MSW) and previous child welfare experience, and that direct service workers have at least a bachelor's degree in social work (BSW).

10. DFPS should strengthen partnerships with state universities and colleges to fully utilize the University-Agency Training Partnership money funded by Title IV-E. These partnership programs are designed to prepare social work students for careers in the child welfare profession, and to develop the skills of current workers. The programs require that students receiving stipends for the study of child welfare commit to employment with the state or county public child welfare agency for a specified period of time.

    a) In Texas, 6 universities offer both BSW and MSW stipends, 5 offer BSW stipends only, and 1 offers only MSW stipends.

b) Texas has more than 30 schools of social work in all geographic parts of the State. By using state dollars currently spent on training for non-social workers, in combination with federal dollars, stipends could be provided to encourage students to enter into BSW and MSW programs. The partnership will allow social work students to enter the workforce already trained instead of having to pay nearly $14,000 to train caseworkers without social work degrees.[183]

11. Child maltreatment is a community based problem and it needs community based solutions. Prevention is the best of all public health services, and prevention programs should be designed to include as many available state and community resources as possible. The DFPS needs to bring down the barriers between the state agency and community resources, and design collaborative programs that can provide efficient and timely help to children and families.

12. After prevention, the best public health policy is early intervention. Children and families that come to the attention of DFPS should be appropriately assessed. Quality assessment leads to effective interventions and treatment. Accurate assessments and early effective interventions can help families stay together. If Texas meets the needs of children when they need it the most, then the State will prevent more serious problems that require more lengthy and more expensive care. Children should not have to fail their way to the services they need.

13. DFPS should partner and train teachers in public schools so that they can act as an early barometer of families in crisis.

14. DFPS should purchase outcomes, not minimum standards. The State needs to measure things that really matter such as safety, permanency, education, quality of life, etc.

15. DFPS should do long-term studies on children that age out of foster care.[184]

COMMITTEE RECOMMENDATIONS

Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies within the Texas child welfare system.

1) The Committee recommends the complete restructure of the Texas Child Welfare System. The State should eliminate the dual system in which DFPS not only provides foster care and case management services, but also regulates and provides oversight of those services. The goals of the restructuring are to improve protection for children; reduce the number of children entering foster care; and improve achieving permanency for children who do enter the system, including reunification with their families, placement with a relative, or adoption. Another goal of the new system is to encourage community ownership and responsiveness. Monitoring will shift to evaluating outcome results rather than process. All foster homes certified by DFPS should be transferred to and operated by private child placing agencies (CPA). The Committee recommends the following major points in redesigning the Texas child welfare system:
   - The transition plan should begin immediately and be completed within 3 years.
   - The Committee recommends the development of a Joint Committee on Restructuring the Child Welfare System consisting of members of the legislature by October 1, 2005. The Joint Committee should meet monthly with the objectives of making recommendations to advance the implementation of the transition from the dual system, and providing feedback to all state officials on the progress of their work. The Joint Committee should submit a short report to the Legislature prior to 2007 on its findings and recommendations, and the Joint Committee on Restructuring the Child Welfare System shall be abolished by October 31, 2008.
   - The Committee recommends that HHSC develop a new structural model based on outcomes, to deliver foster care and adoption services. HHSC staff shall report to the Joint Committee, the Legislative Budget Board, Governor, Lieutenant Governor, Speaker and Legislature within 6 months, the details of the new structural model for delivering community-based child and family services. The new model should be developed and finalized through a joint effort of DFPS, HHSC, and private sector agencies, including representatives from their Boards of Directors, and should be entirely based on positive outcomes for the children in foster care.
   - The Committee recommends that if the State chooses a Lead Agency model in creating the new plan for Texas, DFPS shall serve as the lead agency in charge of all placement decisions. If DFPS does not serve as the lead agency, a major provision which must be included in the law is that no placement agency that also serves as a provider shall be eligible to serve as a regional lead agency. This provision will create a level playing field for all placement agencies, and will make the Texas Lead Agency design reflect both the scope of the restructuring and the results desired, including better protection, services, and most importantly, positive

outcomes for children and families. This provision will also prevent the State from creating a duplicate of the current dual system in the private sector. In the Texas Lead Agency contracting arrangement, DFPS will rely upon private, nonprofit contractors to manage and deliver child welfare services and share in financial risks and rewards. DFPS will relinquish responsibility for providing direct services—from case management to foster and adoptive home recruitment, licensing and support—for a role of system monitor. DFPS will be in charge of placement, setting the standards, defining the outcomes and performance expectations, and then monitoring them through quality assurance and improvement activities.

- During the transition of foster care from the state to the private sector, the Committee recommends that prior to placing any child from a public foster home into a private foster home, the child must be evaluated by Youth For Tomorrow to determine an appropriate placement level for the child. Also, regarding Youth For Tomorrow, the Committee recommends that the State continue to improve the contract with that organization to guarantee that medically fragile children are properly leveled throughout their tenure in the State's care. A medically fragile child's medical needs will seldom if ever change, and it is important that they continue to receive the services that they need in order to achieve the quality of life that they deserve.
- While transitioning foster homes to the public sector, the Joint Committee should make all reasonable efforts to obtain feedback from all stakeholders and develop a transition plan that is careful not to disrupt families and children. It is recommended that the Joint Committee be sensitive to children's issues such as high school graduation, and age out families that do not wish to transfer.
- The transition should also include contracting out for the delivery of services including parenting classes, and any services currently offered by CPS relating to family preservation or case management. The responsibility for delivering services to the families of children who enter foster care, or are at-risk of entering the foster care system should be delivered by licensed private agencies which have the capacity, experience and expertise to handle case management efficiently. The transition of delivery of family services shall begin in the first region of full child welfare restructuring and continue as an integral part of the restructuring as it rolls out across the state according to the transition plan.
- Along with the transitioning of the state out of providing the aforementioned services, there will need to be a restructuring of the appropriations request and downsizing in certain areas of the DFPS budget. The transfer of resources from the public to private sector will need to reflect new roles and responsibilities of both entities. Within the transition plan to be developed by HHSC, DFPS, and private CPA's, the Committee recommends that HHSC re-evaluate and re-configure rates to be paid to private providers due to their increased responsibility for services. Furthermore, DFPS shall downsize Strategy A.2.1, Child and Family Services, and transfer those resources (and in many instances personnel) to Strategy A.2.9, Foster Care Payments, to cover the transfer of responsibilities and functions to the private sector. It is critical to accurately calculate the cost of providing these services and responsibilities and require the specified downsizing of DFPS if the

new model is to succeed. Without resources, positive results are impossible. The State Auditor estimates it costs the same for DFPS to deliver foster care as the private sector. The additional transfer of adoption, family services, and case management functions must also be accurately calculated and specified.

- In the development of the transition plan, DFPS which will serve as the lead agency initially, must implement a new placement system that standardizes the placement decision process. This step would also make placement decisions more fair should the State choose to use private agencies as Lead Agencies. The standardization of placement decisions can be implemented by: using “real time” state of the art technology that screens placement options and matches a child’s needs to the most qualified provider vacancies; vests key-decision-making in a small number of clinically qualified professionals with field knowledge of the provider network in different regions of the state; institutes a Quality Assurance System to ensure that placement decisions are consistent and reliable; and develops public/private resource development committees throughout the state to plan for needed resources and to assist in hard to find placements. The placement system will initially be developed and instituted statewide; with the responsibilities divested to each regional system as they are phased-in across the state. The guiding philosophy of the placement process is to find the most appropriate, and safe placement for the child as soon as possible after removal. The search for a relative placement is initiated immediately by CPS (see recommendation #2 for Charge Number 2) and if the court orders that the child shall not be placed with any of the kinship placements identified in the "child placement resources form" and/or CPS' home studies have proven that no persons identified are fit to serve as placements, then the contract kinship provider must continue to search for relatives prior to placing the children in non-relative homes; and the child should be transferred to a relative placement as often as possible.
- While developing new rate setting methodologies, HHSC should research national models that have been proven to be effective in other states that are overhauling their child welfare systems. The main determination between which model to follow and which not to use will be made by taking into consideration the fairness of the rates to both the providers of services and the taxpayers. HHSC should develop an alternate financing arrangement and payment system that provides flexibility to promote innovation and efficiencies in service delivery; balances provider control over key decisions with the level of risk assumed through contracts; and provide for incentives to expedite achieving permanency goals for children. Details must be developed and included in the final plan which will provide for the transfer of resources from the public to private sector with consideration given to the new roles and responsibilities of both entities. Leveling and rates should not be based on the number of medications that a child is currently taking, but should instead be based on the total diagnoses of the child. HHSC should take into special consideration rates given for children who are medically fragile.
- The Committee recommends that the State of Texas cap liability to private agencies at a reasonable amount. The State shall cap liabilities at a reasonable

amount to private agencies acting as agents of the state while caring for children in state conservatorship to facilitate the transfer risk inherent in consolidation of case management decisions with private agencies. The capped liability exposure only applies if agencies act in good faith and within the scope of the person's authority.

- A very useful tool that the Committee recommends the Joint Committee utilize in their oversight and recommendations on the transition from the dual system to a privatized foster care system is the information provided by the Promising Practices Network (PPN). Information from PPN can be obtained through their website at www.promisingpractices.net/programlist.asp. The website contains detailed information on child and family welfare programs, including information on result areas, benchmarks, evidence level, program overview, program participants, evaluation methods, key evaluation findings, probable implementers, funding sources, implementation detail, issues to consider, example sites, contact information, available resources, and bibliography.

2) In order to address concerns regarding uniform licensing standards, weaknesses in penalties, and the lack of differentiation between major and minor licensing violations, the Committee recommends the following changes to the Child Care Licensing Statute in Chapter 42 of the Human Resources Code:
   - Create two separate Licensing Acts for Residential child-care and child day-care.
   - Sec. 42.002. Definitions - Add (18) the definition of "Controlling Person", which means a person who either acting alone or with others has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or polices of a facility. This gives Licensing greater ability to truly hold the person responsible for deficiencies or substandard care responsible.
   - Sec. 42.0021.2 - Add this section to the code – Inspector Qualifications, Training, and Required Examination – (a) The department shall hire qualified individuals with sufficient experience and specific expertise related to regulatory, licensure and human services functions. DFPS should require all licensing inspectors to hold an Advanced Degree (or equivalent of three years relevant experience) A higher level of clinical skills is required to provide agencies with the technical support needed for an effective regulatory system that enhances quality of services. Technical assistance is required by rule and should become a formal, required part of the licensing process. Training for licensing staff must be competency-based and evaluated annually for consistency of interpretation. (b)The department shall develop and implement a training program to provide specialized training to department employees who inspect facilities under this chapter. The training must be specific to the type of care the facility provides. (c) In developing and updating the training program required by this section, the department shall consult with operators of facilities and child advocates. (d) The department shall examine department employees who inspect facilities under this chapter. In developing facility-specific competency-based examinations, the department shall consult with operators of facilities or their representatives and child advocates. (e) A department employee may not inspect, survey, or take administrative action against any type of

facility unless the employee has passed the facility-specific, competency-based examination administered under Subsection (c).

- Sec. 42.022. State Advisory Committee – update Subsections (c), and (f) to include more specific and qualified stakeholders. The recommended changes are as such: (c) The advisory committee is composed of 16 members appointed by the board. The members must have the following qualifications: (1) two must be parents, guardians, or custodians of children who use the facilities; (2) two must be representatives of child advocacy groups; (3) two must be operators of nonprofit Child Placing Agencies that are licensed under this chapter; (4) two must be experts in various professional fields that are relevant to childcare and development; (5) two must be members of the general public; (6) two must be operators of child-care institutions that are licensed under this chapter; (7) one must be a board certified child and adolescent psychiatrist; (8) one must be a licensed psychologist with experience in working with children and adolescents; and (9) two must be representatives from facilities not otherwise represented. (f) The committee shall receive and review the annual report of the department as described in section 42.023.
- Sec. 42.042. Rules and Standards – Change Subsection (b) from its current language to state: (b) The department shall conduct a comprehensive review of all rules and standards at least every three years.
- Sec. 42.042.(d), (h), (j) Rules and Standards – Subsection (d) should be changed to state: The department shall provide standard forms for applications, inspection reports, and exit interviews. Subsection (h) should be changed to state: The department shall promulgate minimum standards for child-placing agencies. These standards shall be classified and weighted to differentiate between immediate health and safety issues, procedural issues, and administrative functions. DFPS shall complete a risk analysis of all licensing standards and assign weights to each standard that reflect the degree of risk relevant to a child's safety. The methodology used to assess risk should be tested for accuracy when applied to Texas standards and evaluated through a public/private joint committee. Weighted standards should be implemented no later than September 1, 2006. Subsection (j) should be changed to state: The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical and the health, safety and welfare of children is not jeopardized. These changes are necessary because currently there is no differentiation in the classification between minor standards violations that are not harmful to children, and those that are major and pose a true threat to a child's safety. Minimum Standards should be classified and weighted so that a missing date on a form does not carry the same significance as inappropriate discipline. It is recommended that Standards be reorganized within the original 7 mandated parameters with each section having weighted/prioritized standards:

    1. promote the health, safety and welfare of children attending a facility,
    2. promote safe, comfortable, and healthy physical facilities,
    3. ensure adequate supervision of children by capable, qualified, and healthy personnel,

4. ensure adequate and healthy food service where it is offered,
5. prohibit racial discrimination,
6. require procedures to involve parents and guardians in formulation of plans, and
7. prevent the breakdown of foster care and adoptive placement.

- Sec. 42.044. Inspections – During the transition period to contracting out for all services, DFPS should be required to conduct inspections of a randomly sampled group of foster homes to monitor and enforce Child Placing Agencies' compliance with minimum standards. The department shall use the inspection checklist in conducting inspections.
- Change Sec. 42.0441.(a)-(c) to be titled – Inspection Results and Exit Conference, and to include the following language: (a) At the conclusion of an inspection under Section 42.044, the inspector shall perform an exit conference to advise the facility of the findings resulting from the inspection and to provide the facility an opportunity for response. (b) At the exit conference the inspector shall provide a copy of the inspection checklist to the facility and list each violation discovered during the inspection, with specific references to the standard violated. (c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. This change, along with the changes to the Rules and Standards as well as Inspections requires licensing regulators to conduct a formal Exit Conference with a written checklist documenting deficiencies. This will allow deficiencies to be immediately addressed. Current practice consists of Licensing staff verbally informing facilities of citations then demanding the facility sign a piece of paper saying they have been informed of the citations even though they have nothing in writing. Subsequent written reports are often received 30 to 90 days later, usually with information that was never discussed, and without specific references to which record the deficiencies pertain.
- Add Sec. 42.04415. Informal Dispute Resolution - Currently there is no formal process. Licensing has been using untrained reviewers and appeals are currently backlogged for over a year. Sec. 42.04415. should include the following:
  a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to the results of an inspection/exit conference, proposed enforcement action, or related proceeding under this chapter. The informal dispute resolution process must require:
  (1) the facility to request informal dispute resolution not later than the 15th day after the date of notification by the department of the violation of a standard or standards;
  (2) the Health and Human Services Commission to complete the process not later than the 30th day after the date of receipt of a request from the facility for informal dispute resolution; and
  (3) any individual representing a facility in an informal dispute resolution process to register with the Health and Human Services Commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the facility the individual is representing before the Health and Human Services Commission; and

(C) the identity of other entities the individual represents or has represented before the Health and Human Services Commission during the preceding 24 months.

(b) The Health and Human Services Commission shall adopt rules to adjudicate claims in contested cases.

(c) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

- Sec. 42.0443. Inspection Information Database – make changes to establish guidelines for Licensing to collect and analyze deficiencies cited across the State. Require DFPS to collect data regarding licensing violations across the state and by region and provider type. The data will be used to identify trends in violations specific to region or provider type; identify standards subject to interpretation and test consistency of interpretation; and target training and resources to the areas of greatest concern regarding child safety. Currently, DFPS does not know how many deficiencies have been cited across Texas, per region, or per city. They do not know how many treatment plans were incomplete, how many physical restraints were not documented correctly, how many foster families were verified without a proper screening, or how many serious incidents were reported late. They have all this information, but have never compiled it into a central database for analysis. Deficiencies cited and then organized by type, size of facility, and location would reveal a wealth of information to be used to pinpoint training needs, decrease risk and improve quality of services for dollars already being spent. A database like this would show deficiencies cited most frequently for any type of Service/Contract. This information would immediately identify risks and training needs to reduce that risk; identify problems in interpreting the meaning of the standard; identify standards that are not monitoring what they were intended to monitor; and reveal Licensing Representatives that are not monitoring appropriately or reveal inconsistency between Licensing Representatives.
- Sec. 42.046. Application For License, Listing, or Registration – Add Subsection (c) The department shall require an applicant or license holder to provide any information relating to compliance by the applicant, license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated a child-care facility. By adding Subsection (c), License applicants would be required to provide a compliance history if they have provided or are providing services in another state. Currently, any operation that was closed in another state could still be licensed by DFPS. The Committee also recommends requiring DFPS to create a policy that would prevent those individuals affiliated with any facility that

has had their License revoked from holding another License or operating another foster facility under contract.

- Sec. 42.0461. Public Notice and Hearing in Certain Counties: Residential Child Care – Limit the number of residential child-care operations or the capacity of residential child-care operations per county based on the population of the county.
- Sec. 42.072. License, Listing, Or Registration Denial, Suspension, Or Revocation – Extend the prohibition to re-apply for a license following a revocation from two years to five years. Include denial of an application as a basis for the five year prohibition for re-application. Close the loophole on the prohibition by clarifying that owners, governing board members, and/or administrators cannot reapply, even if they present themselves in the form of a different entity or corporation.
- Sec. 42.073. Emergency Suspension and Closure of a Facility or Family Home – Allow the facility to suspend a license based on serious allegations that indicate a possible, immediate risk to the health and safety of children. Increase the length of the suspension to 30 days to allow for the protection of children through adequate investigation. The Committee also recommends changing the DFPS Licensing revocation process to provide the department inspectors the right to immediately revoke Child Care Licenses when the situation warrants such action, and to provide inspectors with the necessary process and support needed to immediately revoke a providers License when warranted. Also, add Subsection (d), The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.
- Sec. 42.077. Notice of Action Against a Facility or Family Home – In order to protect children from operations scheduled for revocation or suspension by the department, require facilities to notify parents whose parental rights have not been terminated, and managing conservators within five days of the department's intent to revoke rather that the effective date of the revocation which may occur months or years after the department determines there is sound basis for revocation or suspension.
- Sec. 42.078. Administrative Penalty – Add the following language to this section which would allow for an administrative penalty against a controlling person who violates a rule, knowingly makes a false statement, or refuses to allow Licensing to review a record or inspect the facility:

  (a) The department may impose an administrative penalty against a facility, controlling person, or family home licensed or registered under this chapter who:

  (1) violates this chapter or a rule or order adopted under this chapter.

  (2) Makes a false statement that the person knows or should know is false, of a material fact:

  (A) on an application for issuance or renewal of a license or in an attachment to the application; or

  (B) with respect to a matter under investigation by the department;

  (3) refuses to allow a representative of the department to inspect:

  (A) a book, record, or file required to be maintained by the facility, or

  (B) any portion of the premises of a facility or institution

  (4) willfully interferes with the work of a representative of the department

or the enforcement of this chapter;
(5) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final.
(b) Non-monetary, administrative penalties or remedies including but not limited to corrective action plans, probation, and evaluation periods shall be imposed when appropriate before monetary penalties.

- Also under Sec. 42.078. Administrative Penalty - Enable the department to use this effective tool to protect children by: raising the maximum penalty amounts from $20-$100 to $100-$500; basing the penalty on capacity rather than the number of children-in-care which fluctuates on a daily basis; and allowing the department, rather than requiring the executive director, to impose penalties.
- Add the following sections to the code: Sec. 42.079. Right to Correct - Allows providers to present proof of compliance within a designated timeframe thereby reducing inaccurate citations (i.e. if the licensing representative was not able to locate a medical exam and the provider was able to secure documentation and prove the services were provided within appropriate timeframes, the citation would be negated prior to penalty). Sec. 42.080. Report Recommending Administrative Penalty - Currently there is not a consistent report given to providers for violations cited and not corrected. This section provides a systematic method for Licensing and the provider subsequent to licensing review. Sec. 42.081. Hearing on Administrative Penalty - Administrative hearings are currently conducted by RCCL and not managed in a timely manner. This section would provide strict guidelines for the administrative hearing process, remove it out of RCCL, and recommends an objective mediator to oversee the appeal. (i.e. currently the administrative hearing process can range from 90 days up to 2 years.). Sec. 42.082. Notice and Payment of Administrative Penalty; Interest; Refund - Administrative penalties are not currently enforced. This would impose a financial penalty on providers who are not delivering quality services and continue to violate the minimum standards. Sec. 247.0457. Amelioration of Violation - Allows the option for financial penalties to be utilized to directly correct the violation in a systematic process. The new sections shall be drafted as such:

  - Sec. 42.079. Right to Correct
    (a) The department may not collect an administrative penalty from a facility under section 42.078 if, not later than the 45th day after the facility receives notice under section 42.078.2, or the facility corrects the violation.
    (b) Subsection (a) does not apply;
    (1) to a violation that the department determines results in serious harm or to death of a resident.
    (2) to a violation described by section 42.078 (2)-(5)
    (c) A facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess and collect a compounded administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The

department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

❖ Sec. 42.080. Report Recommending Administrative Penalty.

(a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 42.078 and the amount of the penalty.

(c) The department shall give written notice of the report to the controlling person or facility charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 42.0790 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person and/or facility charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the controlling person and/or facility charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 42.079, the facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 42.079, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under

Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

❖ Sec. 42.081. Hearing on Administrative Penalty.

(a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 42.078 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner or the commissioner's designee by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

❖ Sec. 42.082. Notice and Payment of Administrative Penalty; Interest; Refund.

(a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 42.081(d) to the person charged. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the

person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 42.083 is required in lieu of payment of all or part of the penalty; and

(5) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the commissioner or the commissioner's designee is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 42.083.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

❖ Sec. 247.0457. Amelioration of Violation.

(a) In lieu of demanding payment of an administrative penalty assessed

under Section 42.078, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 42.081.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 42.081 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) improve the overall quality of life for residents.

(g) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 42.080.

(h) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

3) The Committee recommends that DFPS increase their full time employees (FTE's) for licensed investigators to adequately oversee, monitor and regulate all foster homes, therapeutic camps, and foster facilities.

4) The Committee recommends that DFPS start making significant changes to move towards becoming accredited by the Council on Accreditation (COA). The Committee believes that with the transitioning out of the dual system there will be a significant drop in caseloads for caseworkers. Also, the Committee recommends that investigations be handled solely by licensed investigative caseworkers. The social work aspect of the caseworker's job, including case management, providing services, etc., will be handled by private agencies after the transition, but the investigations will remain the responsibility of DFPS caseworker staff. The Committee recommends that the DFPS work towards achieving a goal of 25 active cases per caseworker.

5) The DFPS should ensure that caseworkers and all agency resources are being fully utilized in the most efficient and effective manner. The Committee recommends (in other words the family)One caseworker needsofaware of

6) The Committee recommends the requirement that child care facilities that contract with DFPS use a certified behavior intervention program for children that need assistance in managing their conduct. This program must be taught by a certified instructor to staff who will be working with the children in their facility.

7) The Committee recommends requiring the DFPS to develop consistent reporting standards for child care facilities that contract with the state on the use of restraints and seclusion, and on serious injuries or deaths during or after the use of restraints or seclusion. DFPS should require all staff in child care facilities to receive training approved by the department on the risks of positional asphyxiation and other factors relating to the risks of restraints and seclusion, and the department should prohibit the use of "prone" restraints except for transitional purposes.

8) The Committee recommends that DFPS adopt a policy that requires all providers to immediately report by telephone, children who have been arrested, are missing, or are truant. Failure to report such activity should result in financial sanctions.

9) The Committee recommends that DFPS continue to assist and partner with the private sector in developing capacity for foster care homes, but to direct placing agencies to consider first to place children within the region/community of the home that the child was removed from in all cases, except where placement is not available. To promote capacity building, and avoid placing children outside of their region, the Committee recommends providing incentives for child placing agencies to place children within the child's county, or at least in the county's region.

10) The Committee recommends that in developing Licensing's minimum standards, DFPS should ensure through proper and thorough training, as well as clear and concise language that the agency creates a set of standards that are not open to individual interpretation. DFPS should use an agency-wide standardized checklist to monitor for a facilities' compliance with minimum standards. Data from the field must be used to

determine which standards are subject to interpretation and test data against citations for those standards to validate consistency of interpretation.

11) The Committee recommends that HHSC and DFPS continue to review and update minimum standards for wilderness and therapeutic camps. The safety of the children placed in these types of facilities is paramount, and the Committee recommends that both HHSC and DFPS structure guidelines around the following principles:
   - Children that have been victimized by sexual and/or physical abuse should not be housed with children who have been perpetrators of such abuses.
   - Local health departments should inspect food preparation areas as well as food storage practices at these facilities annually, unless a pattern of violations has occurred, which would require increased inspections. Open and ongoing lines of communication between local health authorities, the private providers, and the DFPS should be established to prevent a breakdown in services.

Final Hearing, October 4, 2004

The Committee held its final hearing on Monday, October 4, 2004 to discuss general recommendations for the restructuring of the child welfare system, foster children in the public education system, psychotropic medications in foster care, and to hear preliminary findings from the Office of Inspector General on their investigation of Child Protective Services. Invited testimony was provided by: David Reilly, Chief Juvenile Officer of Bexar County; Judge Alredo Chavez, 65th Judicial District Court in El Paso; Bobby Gilliam, Methodist Children's Home in Waco; Vickie Barron, K-STAR Emergency Shelter in Kerrville; the Texas State Employee's Union; Eva DeLuna Castro, Center for Public Policy Priorities; C.L. Hammond, Superintendent, Mullin I.S.D.; Moe Dozier, DFPS Psychotropic Medications Advisory Committee; Richard LaVallo, Advocacy, Inc.; Barbara Dean, HHSC Medicaid/CHIP Division; Texas Society of Psychiatric Physicians; Citizens Commission on Human Rights; John Breeding, Ph.D.; Dr. John Sargent; and Brian Flood, Inspector General.

Many valid points and recommendations were presented to the Committee related to the aforementioned topics. In the previous hearings, meetings with various groups and individuals, and in the Committee's research on the three interim charges, these issues and many more, which directly affect the Committees charges, were constant themes and areas of concern. The major recommendations made to the Committee included the following:

1. The legislature should immediately and aggressively address the issue of understaffing in Child Protective Services.
    a. Hiring practices in CPS should be revised to provide more flexibility.
    b. Re-creating administrative support positions within CPS, such as those eliminated in prior staff reductions, should be strongly considered if new funding becomes available.
2. Attorneys should be appointed for indigent parents for the initial removal.
3. The District Attorney's Office, in conjunction with CPS, should reinforce the principle that mere participation in services is not sufficient to justify reunification.
4. Attorney's ad litem should be held accountable for visiting children assigned to them.
5. CPS should re-state its values and its expectations for how the program is to perform. This is to address the culture of CPS being secretive, unresponsive, unwilling to share information, overly controlling, punitive, retaliatory, and not always acting in good faith.
    a. The value statements and expectations should be adequately and thoroughly discussed with current staff and made a part of the training curriculum for new employees.
    b. The tendency of some caseworkers to attempt to control all decisions and withhold information must be replaced by a culture of openness that invites opposing viewpoints, and is open to different perspectives.
6. CPS must take strong and definite steps to repair its damaged relationships in the community, including focusing on integration, community partnerships, and community responsiveness.
7. The issue of privatizing aspects of the CPS system should be re-visited, as well as

opportunities to collaborate with local children's services agencies. The State should examine the efficacy of contracting out the State's foster home development program and the State's adoption services.

   a. If privatization is pursued by the State, appropriate performance measures and outcome measurement should be the hallmark of the system.

8. DFPS Licensing Division should review the unintended consequences of the recently promulgated requirement that a child age five and under cannot remain in an emergency shelter for longer than 15 days. The unintended consequences of such a limitation are that very young children are moved from shelter to shelter and sibling groups of young children are spilt up.
9. CPS should address staff training and development.
10. Mid-management staff at CPS should devote more attention to interaction with front line staff, formally and informally, to better understand the issues they deal with everyday.[185]
11. Expand Family Drug Court Programs and Family Group Conferencing statewide, modeled after the 65th Family District Court in El Paso which has been established as the El Paso Model Court since 1996 by the National Council of Juvenile and Family Court Judges.
    a. The Family Drug Court Program is designed to assist parents who have had their children removed from the home by CPS, have significant drug and/or alcohol abuse issues, who commit to regaining custody of their children while attaining a drug-free lifestyle.
    b. Family Group Conferencing facilitates and brings a family and its support network together to actively participate in the decision-making and development of plans for the care, protection, and permanency of the children involved.
    c. CPS/Community Relations is another aspect of the model court program. This facet of the program strives to provide quality foster care by increasing the pool of foster parents, creating a parent resource center to educate and provide resources for foster parents.[186]
12. Caseload standards must be addressed regarding staffing, including support staff, as well as adequate funding for new positions and current employees at DFPS - from Child Care Licensing staff, to caseworkers in CPS, the work burden is nearly impossible to handle.[187]
13. Foster care as a "cottage industry" in rural towns across Texas must be addressed. Foster care becoming a business as opposed to being a safe haven for troubled youth is a serious concern. Children with very high service needs are being placed in large group homes and are not receiving the level of care and discipline that they need in order to function in the public school system.
14. Foster children should not just show up to a school without having any information provided to the school first. Students need to be enrolled in the same manner regardless of whether it’s a foster child or not - with the correct paperwork.[188]

15. Establish a statewide Clinical Advisory Council to select clinical guidelines and

protocols that can be applied to foster children, identify "red flag" indicators to select cases needing detailed review, establish competency requirements for caregivers and caseworkers, identify data to be collected for monitoring clinical activities, and recruit regional Clinical Review Teams. The Regional Clinical Review Teams will provide a detailed review of cases, periodic follow-up on cases reviewed, identify cases for referral to statewide Clinical Advisory Council and identify system problems and recommendations for changes.

16. Improve the training for caseworkers and caregivers by establishing a competency focused training system and expanding training topics to include: general information on medication management, specific information on use of psychotropic medications, when, how and who to notify of medication issues and concerns, and advocating for children with medical providers.
17. Address informed consent by developing clear provisions regarding the appropriate involvement of foster children and the child's parent(s) in the use of psychotropic medications.
18. DFPS should seek funding to conduct or commission a study to examine the current trends in prescribing psychotropic medications to the children and youth in its care.
19. Consider the use of a Medical Passport for children in the foster care system in order to improve continuity of medical care.[189]
20. Clearly defined informed consent procedures must be established by statute or rule to meet the unique needs of foster children. The child's parent, foster parent, caseworker or any other person designated by the court must have the authority to consent to psychotropic medications, and such persons must successfully complete an administration of psychotropic medication training program and attend in person or participate by phone in any appointments with the child's physician in which psychotropic medications are prescribed or reviewed.
21. Federal law (42 U.S.C. sec. 675 (1)(C) and (5)(D)) already requires that a child's medical records pertaining to the child's medications be reviewed and updated and provided to the child's foster parent or care provider at the time of each placement of the child. Before the foster parent, caseworker or other person authorized to consent to medication approves the use of psychotropic medications, a medical passport must be given to him or her.
22. To ensure better outcomes for foster children by utilizing evidence-based medication management, serious consideration must be given to requiring physicians who prescribe psychotropic medications to foster children to follow the children's medication algorithm being developed for the MHMR system in Texas.[190]
23. Each child's treatment should be based on a complete and accurate assessment of the child's needs. For children who have been removed from their home due to abuse and neglect, this assessment should include observation of the child in a safe, supportive care environment and time to see if the child will have a positive response to safe, appropriate parenting without the use of medication. In this case, if a child continues to display symptoms that do not respond to other interventions or therapy, psychotropic medication might be added as a part of the child's treatment.
24. When medication is used with children it should be part of a comprehensive,

individualized treatment plan, which is monitored closely and regularly by child-trained professionals, recognized under state licensing and certification requirements. The American Academy of Child and Adolescent Psychiatry suggests that medications are appropriate when there are clear target symptoms, and parents should be involved in decision making and be provided with complete information about side effects, benefits, and alternatives.[191]

25. DFPS should institute a tracking and reporting system to be very clear and specific about which children are placed on what drugs. Focus should be on patterns of variability by area and section, and by physician. Red flag any incidence of a child being placed on 3 or more psychotropic drugs, report it to the medical examining board, and investigate the case thoroughly.
26. The State should ban all psychotropic drugs for children in the State's care who are under age 6. Ban all SSRI antidepressant and neuroleptic drugs for children of any age in State care.[192]
27. The State must consider the elimination or reduction of off-label use of drugs on foster kids for psychotropic purposes. Many of the drugs used on children have not been tested in children and in fact may be dangerous.
28. The State should consider eliminating or reducing the prescription of anti-depressants for children in light of recent FDA warnings.
29. Background checks on psychiatrists and other physicians treating children in foster care settings should be mandatory.[193]
30. The State should create a Quality Management Team that would choose the qualifications of doctors who prescribe psychotropic medications, monitor cases, and provide direct observation of foster children on psychotropic medications.
31. Good informed consent processes are necessary and wanted by psychiatrists. Psychiatrists want medical passports to follow foster children, and want good data and good research to follow the use of psychotropic medications.[194]

COMMITTEE RECOMMENDATIONS

1) The Committee recommends improving the quality of representation of children in the child welfare system by court-appointed attorney's ad litem (AALs). There should be uniform standards of practice for AALs appointed to represent the interest of children or parents in actions brought on behalf of the State, and the State must appropriate the funds necessary to pay for the ad litem attorney's. These recommendations are not intended to apply to the duties of AALs in private custody cases.
    a. Prior to each court hearing, in cases involving a child four years of age or older, AALs should be required to communicate directly with the child prior to each court hearing. In cases involving a younger child, the AALs should communicate with the child's caregiver.
    b. AALs must meet with the child prior to the full adversary hearing, unless good cause is shown why doing so would not be in the child's best interest or is not feasible.[195]
    c. To ensure accountability of attorneys ad litem in CPS cases, require a "statement of contacts" to be filed by the attorney ad litem prior to the 14 day hearing. This would help to ensure the attorney ad litem actually interviews their client, and investigates if appropriate, before presenting facts or findings to the court.

2) The Committee has serious concerns about the quality of education that the children in foster care are receiving. While some children attend exemplary schools and are receiving a quality education, others are slipping through the educational cracks and are not receiving a proper education. It is important that when a child is initially placed in the foster care system, their educational needs are accurately and adequately assessed to ensure that they are afforded the opportunity to advance their learning possibilities. Foster children are oftentimes well behind their peers in educational performance, thus it is important that the State offer these children every opportunity to succeed and not be left behind.

3) For small school districts with a high concentration of foster children (above 15% of the student population), the Committee recommends that DFPS meet with representatives of child placing agencies that have placed children in the district, as well as school officials to discuss issues regarding the education of the foster students on a quarterly basis. If a child placing agency places a child from out of region into these high concentrated areas, a representative from their agency is required to attend these quarterly meetings.

4) Amend the Texas Education Code to require the Texas Education Agency (TEA) to publish an annual report to describe the educational performance of children in licensed foster care facilities, including their performance on all academic skills assessment instruments.

5) The Committee recommends that TEA and the Texas Higher Education Coordinating board develop outreach programs for students in foster care and residential care who are currently enrolled in high school to ensure that they are aware of the free college tuition options provided by the State.

6) The Committee recommends that the State, local child welfare boards, and private placement agencies partner with at-risk youth prevention programs such as Big Brothers, Big Sisters to provide mentoring services for foster children. Many of the children in foster care desperately need guidance from adult figures. This partnership would provide yet another check to ensure that children in the state's conservatorship are being cared for properly.

7) To protect both the children and the caseworker, the Committee recommends that all interviews with a child must be video or audio taped without exception. Currently, there is a provision in the code which calls for video and audio taping, but DFPS has allowed caseworkers to arbitrarily choose when such an occasion is appropriate. There should be no exemptions to this rule.

8) Currently, a judge can order child and medical support payments from the biological parents up until the parent's rights have been terminated. The Committee recommends extending the court's ability to order child and medical support payments even upon termination of parental rights, up until the time the child turns 18. Child support orders should be monitored from the day issued and the Office of Attorney General should expedite the filing of support enforcement actions any time that a child support payment falls 60 days late. Any time a child is removed from their home due to abuse and/or neglect, the financial costs of caring for that child should still remain the priority of the biological parents. The taxpayers of this state should not have to pay for the inability of parents to serve the best interests of their children.

9) Prior to the completion of the transition from public foster care to private foster care, the Committee recommends that DFPS caseworkers who have children placed out of region transfer the case and all necessary information to the region of placement, with a regional caseworker assuming the responsibilities of case management. Currently, there are thousands of foster children placed out of region who have a caseworker that is managing their case from an area far away from the child's actual placement. When a caseworker is required to visit that child placed out of region, they must travel at the state's expense to another region to fulfill their required tasks. It would be more fiscally responsible for DFPS to transfer the case management to a regional caseworker than to have the original caseworker travel to another city to follow the case.

10) The State is not currently providing enough support for children aging out of foster care. The Committee recommends that DFPS partner with the Texas Workforce Commission and the Texas Department of Housing and Community Affairs to develop programs that address such concerns as jobs and affordable housing. Statistics have consistently shown that a large percentage of foster children who age out of care end up spending several years homeless, and several other former foster children end up behind bars.

The State must do a better job at educating the foster care population and help to ensure a successful transition by providing them with the resources they need to obtain employment and live independently on their own.

11) By law, the DFPS cannot reveal the identity of an informant who calls in an allegation of abuse or neglect. However, the investigations of false complaints take up a great deal of time and resources that agency staff, and possibly law enforcement, could be using in a more critical area. Although it is a crime to make a false report to CPS, Section 261.107 of the Family Code provides that the penalty is a Class A misdemeanor, and that if the report is made before or during a suit affecting the parent child relationship, the court can restrict access to the children by a falsely reporting parent. Section 261.201 of the Family Code allows a judge to release the identity of an informant under certain circumstances, but it is not mandatory, and judges rarely if ever do it. The Committee recommends the following amendments be made to the Family Code to help deter people from falsely accusing others of abuse or neglect:
    - In Sec. 261.107, make a visitation penalty in which the violator will be forbidden to have visitation rights to their child, or enforce a monetary penalty upon the violator. Also, the court should order the violating party to pay attorneys fees enforceable by contempt, applicable before an action has begun, or at any time while litigation is pending, or thereafter if the children are subject to the jurisdiction of the court.
    - In Sec. 261.201, mandate the release of identity if the complaints are filed before an action has begun, or at any time while litigation is pending, or thereafter if the children are subject to the jurisdiction of the court. Also, mandate the release of identity if the complaint is made by a parent or conservator, family member of a parent or conservator, or a close associate of a parent or conservator.

12) The Committee recommends that the State explore the possibility of using Court Improvement Project funds, in addition to encouraging local matching dollars such as federal, local, and foundational funding as well as county grants to establish more family drug courts across the state. New family drug courts established at the county or regional levels should model themselves after the successful existing family drug court in El Paso, Texas.

13) The Committee recommends that DFPS partner with volunteer and advocacy organizations to establish and implement the Texas Foster Grandmas and Grandpas Program. By establishing such a program, the DFPS would be creating a positive environment for both the volunteer senior citizens who have cleared a mandatory state and national background check, and children in foster care. The Texas Foster Grandmas and Grandpas Program will serve several key purposes such as: bridging the generational gap between the state's senior citizens and children who desperately need guidance from caring adults; and providing an additional level of support and oversight for foster children by an independent, caring parental figure outside of the foster care system. The DFPS should work with non-profit and faith-based organizations to solicit contributions and volunteers for the Program.

14) The Committee has received viable concerns from law enforcement officials regarding their ability to properly staff a Priority One call with CPS staff. In a true emergency situation where a child's life is in imminent danger, if a call comes into CPS, it is crucial that the intake operator obtain the necessary information from the caller and immediately forward it on to 911. If a case is labeled Priority One and forwarded to CPS to handle, and a child's life is not in a state of clear and present danger, immediate action by law enforcement is not necessary. DFPS needs to work with law enforcement agencies to establish clear guidelines for when law enforcement should accompany CPS to a call regarding abuse and/or neglect. The Committee recommends that DFPS partner with law enforcement to adequately train statewide intake workers on properly screening emergency calls. 911 operators are currently trained with law enforcement on various screening techniques. These same principles should be used in training DFPS statewide intake staff.

15) The Committee recommends that the Office of Inspector General continue to investigate Medicaid fraud and abuse in the foster care system, including investigating "over-charting", or the act of a facility or home making children's needs appear more severe in order to collect a higher level of care payment from DFPS. HHSC and DFPS should expedite the delivery of foster children's Medicaid information to caregivers in order to help prevent contractors from failing to make timely claims for reimbursement or delay services. Additionally, HHSC and DFPS should provide foster care contractors with assistance and training to help them claim Medicaid reimbursement for foster care services.

16) The Committee feels that it is crucial that a child's accurate medical history follows them from placement to placement so that caregivers, physicians, therapists, and caseworkers are provided with the necessary information to provide for the child's medical needs. Adequate assessment of a foster child's health care needs, including mental health, consistent tracking of the child's needs, and appropriate treatment of the child's needs could improve the effectiveness and efficiency of the foster care system. Currently, foster children should be auto enrolled into the Department of State Health Services ImmTrac program. It is crucial that this information follow foster children from placement to placement so that it is easy to keep track of a child's immunizations, however, it is important that all medical history also follow foster children through the system. The Committee recommends that the HHSC committee that is to consider the issue of providing medical passports for children in foster care implement a comprehensive plan to provide this necessary information to the appropriate individuals immediately upon placement of a foster child in any given facility or home. Four state's have recently implemented laws that require the creation of a medical passport for foster children. HHSC should consider the legislation from California, Indiana, Kentucky, and Washington State (See Appendix 7 for the details of those laws) in creating the rules for Texas medical passports. Additionally, a foster child's medical passport shall include the child's complete medication, medical, and therapy history. Due to the private nature of this medical information, HHSC will be provided with the authority to include penalties for unauthorized release of these medical passports.

17) The Committee recommends that the LBB review all of its performance measures as the transition to privatized foster care is taking place. Initially, the committee recommends that LBB replace the language of its performance measure of "number of completed investigations per month" with "number of assigned investigations per month" to more accurately reflect CPS' workload and to remove the incentive to prematurely close cases.
   - The Legislative Budget Board has devised a myriad of performance measures in order to link funding to work completed. All of these should be reviewed.
   - While cases need to be investigated and finalized in a reasonable time frame, the "closed cases" measure tied to funding puts artificial pressure on the front line worker to work on closing cases more quickly without providing incentives to do thorough, quality casework.
   - Performance measures that include "assigned cases" as well as "cases investigated with all critical collaterals found and interviewed" would provide a much more accurate, appropriate and safe performance measure.

18) The Committee recommends that DFPS strengthen its partnerships with schools of social work to encourage students enrolled in Bachelor of Social Work (BSW) and Master of Social Work (MSW) programs to intern or work for the DFPS upon graduation. Child welfare agencies should step-up active recruitment of graduates from BSW and MSW programs. Currently, it costs the state nearly $14,000 to train a new caseworker who has little or no experience in social work. It would be more cost efficient to the State if DFPS worked with schools of social work to recruit students who are paying for the training already, and to provide students who agree to work for the agency upon graduation, incentives such as loan repayment or loan forgiveness in exchange for 2 years of service to the high needs regions of the state.

19) The Committee recommends that DFPS add conflict of interest disclosure provisions to all contracts related to foster care services. If a Lead Agency Model is adopted in Texas, this provision shall extend to the lead agency as well as all sub-contractors that contract with the lead agency. Information including actual or potential related party transactions, relationships, interests, business history, and any other actual or potential conflict of interest transactions and relationships under or related to any proposed contract with or administered by HHSC, DFPS, or any health and human services agency must be disclosed in the potential caregivers contract with the State. DFPS should permanently bar any board members, officers and lead administrators of a facility that has lost a license, or that voluntarily closers after an adverse action, from holding a license or operating a foster care facility in Texas. This would ensure that any facility that was closed due to inadequacy could not re-open under a different name with the same people managing the services. Such related party transactions and the loophole which currently allows managers of a foster facility to return their license voluntarily only to re-open under a different name creates an opportunity for fraud, waste, and abuse.

20) The Committee recommends that DFPS consider utilizing new technologies including wireless notebook devices that would enable CPS caseworkers to transfer data

including notes and photographs from the scene of an investigation or a case visit back to their DFPS regional office. Oftentimes, a caseworker will arrive at a family's home only to wait several hours for them to return so that the caseworker can establish the necessary contact and provide the services that the family needs. With this technology, the caseworker can be taking notes and working on other projects while they are waiting so that they will not have to handle all of their casework when they return to the office. The Committee recommends that DFPS management and staff encourage the proper use of this technology, and ensure compliance with state and DFPS policy regarding its use. Furthermore, in a situation in which a caseworker has to decide if a child must be removed, a device such as this would allow the caseworker to send back notes and pictures to be immediately viewed by the supervisor so that the best decision can be made regarding removal.

21) Currently, there are no DFPS regulations that require the systematic evaluation of the prescription and use of psychotropic drugs by children in the foster care system. However, Texas does have a utilization review process in the regulation of nursing facilities in the state. According to Title 40 of the Texas Administrative Code, Part 1, Chapter 19, Subchapter Y, Rule 19.2403, The Utilization Review Committee determines the need for nursing facility care by evaluating the recipient's medical and/or nursing needs based on facility documentation required by the Texas Department of Human Services (DHS). The medical necessity determination must be made before receiving vendor payment for service delivery, except under certain circumstances. The Committee recommends creating a similar utilization review by a team of experts of a foster child's health care needs and treatment, including the prescription and use of psychotropic drugs in the foster care system. The Committee also recommends amending the Family Code to add requirements for informed consent of administration of psychotropic medications for foster children as well as providing clear statutory authority of providing informed consent for the administration of psychotropic medications for foster children. The Committee recommends that DFPS require training on psychotropic medications to be completed prior to a foster parent, caseworker, or caseworker's supervisor consenting to, or approving, the administration of psychotropic medications. Additionally, the Committee recommends for the purposes of gathering information, if a physician issues an order to administer three or more concurrent psychoactive medications, or two or more psychoactive medications of the same class concurrently, to a patient younger than 18 years of age, the pharmacist dispensing the medications shall make a referral of the physician to the Texas State Board of Medical Examiners. This will provide HHSC and DFPS with the ability to investigate the appropriateness of certain prescriptions for psychotropic medications for children in foster care. The Committee also recommends that a Medicaid Review Committee also closely examine the administration, safety, and effectiveness of all psychotropic medications used on foster children.

CONCLUSION

One of the most difficult and challenging responsibilities of government is that of child protection and child welfare. Nothing less than perfect decisions and positive outcomes are expected of the child protection system by the public, and there is little if any room for error when the State intervenes in any family system on behalf of a child's safety. Over the past year, the Committee on Child Welfare and Foster Care has delved into these issues and has seen that systemic change is needed. Unfortunately, child abuse and neglect are societal ills that will continue to perpetuate. However, it us up to the Department of Family and Protective Services to keep the evil cycle of abuse and neglect at bay, and if at all possible to lower its incidence across the State.

The problems within the foster care system and at the DFPS have been spelled out across the state time and time again. The major issues and shortcomings of the DFPS are well documented. We know that there are major concerns with many of the policies and procedures of DFPS, and we also realize that the system as a whole has very serious issues that merit the State's attention. Based on our hearings and meetings, reports from other state agencies and the media, we all know and accept the facts that the system is broken, and that the system needs to be fixed.

With that being said, it is absolutely critical that we as a state move forward and start analyzing and implementing innovative solutions. Other issues will surely arise. There are certainly many related topics that have yet to be disclosed in full detail, but the need to start working on the answers is now, it is crucial that we make things right for the children and families of Texas. We have to get it right, the time has long passed, we should have seen these problems years ago - but that's behind us, we must deal with the consequences today, and we must make a positive difference now.

In order for the DFPS to achieve its mission of protecting the unprotected, it is necessary that the agency is provided with the tools and direction from the Legislature to succeed. The children of this state that are abused and neglected, and ultimately end up in the State's care need to be assured that they will be safe, provided with an education, and given the guidance to succeed upon leaving the foster care system. The foster care system must be held to a higher standard; the foster children in this state deserve to know that they are not forgotten, nor will they ever be.

The Committee Recommendations in this report were compiled based on information gathered over the past year in public hearings, meetings with the DFPS, child placing agencies, foster parents, advocacy groups and many other interested groups and individuals. Although some of the recommendations are general in nature, it is the goal of this Committee to work closely with HHSC and DFPS to resolve any issues that can be corrected in policy rather than in law; and to work with Legislative Counsel on drafting legislation to correct the issues that must be addressed in law.

Many of the recommendations in the report will require that appropriations be made or studied to fund the hiring of caseworkers, expand prevention services, etc. However, the

Committee feels strongly that priority for appropriations must be given to the aspects of the DFPS and child welfare and foster care system that protect the children who are currently in the State's care. The safety of these children is paramount. The Committee would like to fund many of the prevention programs mentioned in the report, but money must first be appropriated to the protection of children in the system. It is also important to remember that the recommendations in the report are a compilation of ideas that the Committee feels may address the many concerns that have been raised regarding the current child welfare and foster care system. Some of the recommendations should be implemented immediately, some should be phased in over a few months or years, and some need further study and consideration.

The recommendations do not stray too far from the Committee's three interim charges, and the Committee fully realizes that these recommendations do not cover every issue that needs to be addressed in order to alleviate many of the deficiencies at the DFPS. However, we believe that the foundation for change is well established in the Committee's recommendations. We plan to work diligently in the upcoming session to ensure that legislation is drafted and presented to the legislature which will make positive changes to the child welfare and foster care system in Texas.

Finally, the Committee would like to thank all of the people who have provided input and recommendations on how to improve the system. Your valuable insight has taught us all a great deal about the system and its potential for improvement. The Committee commends the good caseworkers and investigators, good foster parents, child advocates, and other stakeholders who are genuinely interested in protecting the welfare of the children in Texas. We have heard over the past year about many of the problems in foster care, and unfortunately have not provided the good caseworkers, supervisors, administrators, caregivers and advocates with enough thanks and praise for working day in and day out to achieve positive outcomes for children in foster care. Please know that on behalf of the Legislature of the State of Texas, we sincerely thank you. Your efforts are not going unnoticed and are surely not unappreciated.

Together, we will make a difference. We will rely on you to be the eyes and ears on the frontlines for the children. This session, we pledge to move forward and provide a positive future for the children in the State's foster care system.

APPENDICES

APPENDIX 1

OVERVIEW OF FEDERAL CHILD WELFARE LEGISLATION

Child Abuse Prevention and Treatment Act (CAPTA) -
42 U.S.C. §5101 et seq.

Background:

First enacted in 1974, CAPTA has been amended repeatedly, most recently by the *Keeping Children and Families Safe Act of 2003.*

Purpose:

To fund state grants for improvement of child protective services projects focused on prevention, assessment, investigation, prosecution and treatment.

Mandates:

- Minimum definition of child abuse
- Child abuse reporting procedures
- Policy and procedures to meet needs of infants with prenatal drug exposure
- Triage procedures for community referrals for children not at immediate risk of harm
- Procedures for immediate protection to children in danger of abuse or neglect
- Immunity for good faith reporters of child abuse or neglect
- Methods to preserve confidentiality or parties and reporter
- Procedures to prevent the public release of unsubstantiated and false reports
- Appointment of a guardian ad litem to represent a child's best interests
- Mechanisms for expedited termination of parental rights (TPR) for abandoned infants and for appeal of findings of abuse and neglect
- Provision for option of no reunification and for termination or parental rights for parents responsible for death or serious injury of child.
- Requirement for disclosure to parents of allegations at time of first contact
- Provision for caseworker training to include the legal rights of families
- No later than 2005, provision to require criminal background checks for foster and adoptive families and all adults in the home
- Procedures to address reporting of medical neglect, including legal remedies to prevent withholding of medically indicated treatment for disabled infants with life threatening conditions
- State's IV-B program compliance with CAPTA
- Citizen review panels; child fatality review team requirements
- Collection of child abuse and neglect data

Ancillary Legislation:

The Children's Justice Act, 42 U.S.C. §5106c

Background:

Children's Justice and Assistance Act of 1986, as amended, most recently by the Keeping Children and Families Safe Act of 2003.

Purpose:

To help States develop, establish, and operate programs designed to improve the investigation and prosecution of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, and to improve the handling of cases of suspected child abuse or neglect-related fatalities.

Mandates:

- State must be eligible for the CAPTA Basic State Grant
- State must maintain multidisciplinary Task Force on children's justice.

Adoption Opportunities, 42 U.S.C. §5111 et seq.

Background:

Established by the Child *Abuse Prevention and Treatment and Adoption Reform Act* of 1978, as amended most recently by the *Keeping Children and Families Safe Act of 2003.*

Purpose:

To eliminate barriers to adoption and find permanent families for children who would benefit by adoption, particularly children with special needs.

Mandates:

- Funding must be used to supplement, not supplant services for counseling, case management, training, assistance to adoptive parent organizations and support groups for adoptive families, day treatment and respite care.

Community-Based Grants for the Prevention of Child Abuse and Neglect, 42 U.S.C. §5116 et seq.

Background:

Previously the Community-Based Family Resource and Support Grants, provided under CAPTA and amended most recently by the Keeping Children and Families Safe Act of 2003.

Purpose:

To support community efforts to enhance child abuse and neglect prevention, resources to strengthen and support families, reduce the likelihood of abuse and neglect and foster knowledge of diverse populations to increase effective prevention and treatment of child abuse and neglect.

Mandates:

- State must designate lead entity that meets specified criteria to administer funds, including the ability to leverage federal, state and private funds, capacity to work with the state and community agencies, demonstrated commitment to involving parents, and capacity to provide financial and programmatic operational support.

Title IV-B Child and Family Services - Subpart 1, Child Welfare Services - 42 U.S.C. § 620 et seq.

Background:

Titles IV-B and IV-E of the Social Security Act, the primary source of federal funding for state and tribal child protection services and support, share a common background: The Adoption Assistance and Child Welfare Act of 1980, as amended, most significantly by the Adoption and Safe Families Act

of 1997, the Foster Care Independence Act of 1999 and the Promoting Safe and Stable Families Amendments of 2001.

Purpose:

To promote welfare of all children by addressing problems which lead to neglect, abuse, exploitation or delinquency, preventing unnecessary separation of families and children, providing services to children and families to aid reunification, placing children in suitable adoptive homes, assuring adequate out of home care for children who cannot be returned home or placed for adoption.

Mandates:

- State plan requires description of services offered statewide; coordination with Title XX (Block Grants) services, Title IV-A (TANF Block Grant) and Title IV-E (foster care and adoption assistance); training of staff; diligent recruitment of foster and adoptive families reflecting the ethnic and racial diversity of children awaiting placement; measures taken to comply with the Indian Child Welfare Act; services offered to children adopted abroad and collection of information on international adoptions.
- State assurances include maintaining inventory of children in care; a statewide information system for tracking cases (SACWIS); a case review system; a preventive services program; plans to facilitate placements across jurisdictions.

Ancillary Legislation:

Child Welfare Research and Demonstration Grants, 42 USC §426

Purpose:

To promote research and demonstration projects relating to child welfare.

Mandates:

- Project evaluation, coordination with local government, community education regarding inappropriate hospitalization of infants, the use of private, local state and federal sources for direct services.

Title IV-B Child and Family Services - Subpart 2, Promoting Safe and Stable Families - 42 U.S.C. § 629

Purpose:

To promote coordinated programs of community-based family support and family preservation services, time-limited family reunification services and adoption promotion and support services to prevent child maltreatment, assure child safety in the home and preserve families when possible, reunify children and families in a safe and stable manner and support adoptive families.

Mandates:

- Requires state plan with five year goals, with identified methods for measuring progress; coordination with other federal programs.
- Requires assurances that no more than 10 percent of expenditures will be used for administrative costs; that an annual report describing services provided be published; that funds provided won't be used to replace existing funding; that safety of the children shall be the paramount concern in administering the program.

Title IV-E Foster Care Program –
42 U.S.C. §§ 670, 672

Purpose:

To assist States with costs of foster care for children who would otherwise be eligible for assistance under Title IV-A (AFDC/TANF). This is an open-ended entitlement program. Federal financial participation in State expenditures for foster care maintenance is provided at the Medicaid match rate for medical assistance payments, which varies among States from 50 percent to 78 percent. Federal financial participation is made at an open-ended 50 percent match rate for State administrative expenditures and at an open-ended 75 percent for State training expenditures.

Mandates:

- Adoption of appropriate standards for foster care homes and child care institutions.
- Eligibility criteria for individual children tied to the AFDC eligibility criteria in effect in 1996.
- Judicial findings at removal that remaining in the home is contrary to the welfare of the child.
- Judicial finding that reasonable efforts were made to prevent removal from the home and to finalize the permanency plan in effect for each child.
- No reunification required for aggravated circumstances, based on parent's criminal conduct
- Case plan for each child.
- Compliance with restrictions on the use of race, color or national origin in placements (*See* MEPA-IEP, below)
- Health insurance provided for any adopted child with special needs for whom there is an adoption assistance agreement.
- No delay or denial of placement of child when approved family is available outside the jurisdiction with responsibility for the child; fair hearing required.
- Reasonable efforts must be made to prevent or eliminate the need for removal, except in the case of aggravated circumstances.
- Family reunification services limited to 12 or at most 15-months after child enters foster care.
- State must enact foster family home standards reasonably in accord with national standards for any placement receiving Title IV-E or IV-B funds.
- Unless a state opts out, criminal history checks must be done for any foster or adoptive parent if IV-E funded placement; specified offenses require denial of license, others require five year bar.

Ancillary Legislation:

John H. Chafee Foster Care Independence Program, 42 U.S.C. §677

Purpose:

To help foster care youths achieve self-sufficiency and support a successful transition to adulthood.

Mandates:

- State must provide services to former foster children who left care because of turning age 18 but are not yet age 21.
- Restrictions on use of fund for room and board or for children under age 18.
- Agency consultation with public and private organization about plan.

Title IV-E Adoption Assistance -
42 U.S.C. § 673

Purpose:

To facilitate the placement of hard-to-place children in permanent adoptive homes e.g., children who are older or handicapped. Provides funds for ongoing financial and medical assistance for adopted children with special needs as well as for administrative costs and training.

Mandates:

- Same state plan assurances as for Foster Care program, above
- State must enter into adoption assistance agreements for special needs children
- States must pay nonrecurring adoption expenses
- Detailed eligibility requirements for adoption assistance, linked to state AFDC eligibility criteria.

Ancillary Legislation:

Multiethnic Placement Act (MEPA) as amended by the Interethnic Adoption Provision of 1996 (IEP), 42 U.S.C. §§ 622(b)(9), 671 (a)(18)

Background:

Initially enacted in 1994 and significantly revised by Interethnic Adoption Provision of 1996; amended Titles IV-B and IV-E

Purpose :

To address adverse impact of discrimination on children in foster and adoptive placements and on families seeking to foster or adopt.

Mandates:

- Prohibition on using race, color, or national origin to delay or deny a child's placement or to deny applicants the opportunity to become foster parents or to adopt. With the exception of Indian children, as defined under the Indian Child Welfare Act, this law only permits the use of race, color or national origin as a factor in a placement decision in rare circumstances.
- Development of a plan to diligently recruit foster and adoptive families that reflect the ethnic and racial diversity of the pool of children waiting for placement

Indian Child Welfare Act (ICWA) –
25 U.S.C. §1901 et seq.

Background:

Enacted in 1978 and no subsequent amendments.

Purpose:

To protect best interest of Indian children and promote stability of Indian tribes and families.

Mandates:

- Specialized procedures for litigation involving an Indian child; mandates higher burden of proof, special notice to parents, tribe and Secretary of Interior if an Indian child is involved and provides for petition to invalidate orders entered in violation of key ICWA provisions.

APPENDIX 2

HUMAN RESOURCES CODE
SUBTITLE D. DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES
CHAPTER 40. DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. DEFINITIONS. In this subtitle:

(1) "Board" means the Board of Protective and Regulatory Services.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Council" means the Family and Protective Services Council.

(3) "Department" means the Department of Protective and Regulatory Services.

(4) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Family preservation" includes the protection of parents and their children from needless family disruption because of unfounded accusations of child abuse or neglect. It does not include the provision of state social services for the rehabilitation of parents convicted of abusing or neglecting their children.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.10, eff. Sept. 1, 2003.

Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; GENERAL DUTIES OF DEPARTMENT. (a) The Department of Family and Protective Services is composed of the council, the commissioner, an administrative staff, and other officers and employees necessary to efficiently carry out the purposes of this chapter.

(b) Notwithstanding any other law, the department shall:

(1) provide protective services for children and elderly and disabled persons, including investigations of alleged abuse, neglect, or exploitation in facilities of the Texas Department of Mental Health and Mental Retardation or its successor agency;

(2) provide family support and family preservation services that respect the fundamental right of parents to control the education and upbringing of their children;

(3) license, register, and enforce regulations applicable to child-care facilities and child-care administrators; and

(4) implement and manage programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); and

(2) other federal law for which the department has administrative responsibility.

(d) The department shall cooperate with the United States Department of Health and Human Services and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance

in the delivery of services.

(e) If the department determines that a provision of state law governing the department conflicts with a provision of federal law, the executive commissioner may adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

(f) The department may contract with the Texas Department of Transportation for the Texas Department of Transportation to assume all responsibilities of the department relating to the provision of transportation services for clients of eligible programs.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 489, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.11, 2.128, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.07, eff. Sept. 1, 2003.

Sec. 40.003. SUNSET PROVISION. The Department of Protective and Regulatory Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2009.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 3, eff. Sept. 1, 1997.

Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department. The commission shall make the information available to the public and appropriate state agencies.

(c) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(d) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.0041. COMPLAINT PROCESS. (a) The department shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the

right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(b) In addition to other appropriate methods, the department may provide the information specified by Subsection (a)(1):

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for service provided by a person regulated by the department.

(c) The department shall keep an information file about each complaint made against the department that the department has authority to resolve.

(d) The executive director shall develop a consistent, statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(e) The department shall develop and maintain a centralized tracking system to gather information concerning all complaints made against the department throughout the state. The department shall require its personnel to provide information regarding each complaint for inclusion in records maintained under the tracking system at the department's state headquarters, regardless of the location or level at which the complaint is initiated or resolved. The department shall require at least the following information to be maintained for each complaint:

(1) the date the complaint is received;

(2) the name of the person making the complaint;

(3) the subject matter of the complaint;

(4) a record of all persons contacted by the department in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for each complaint determined by the department to require no corrective action, an explanation of the reason that the complaint was closed without action.

(f) The department shall periodically prepare and deliver reports to the board and the executive director regarding the number, type, and resolution of complaints made in the state against the department.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997.

Sec. 40.005. CONFIDENTIALITY OF INFORMATION. (a) The department shall establish and enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The department shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and

department rules.

(c) Notwithstanding any other provision of law, the department by rule may prescribe a process by which an administrative law judge may disclose requested confidential information that the department possesses. The rules must provide that the information may be disclosed by the administrative law judge only if the administrative law judge:

(1) provides notice to the department and any interested party; and

(2) determines after an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual.

(d) Except as otherwise provided, a person who is authorized to receive confidential information shall maintain its confidentiality and shall prevent disclosure of the information to a person who is not authorized to receive the information.

(e) A person commits an offense if the person discloses without authorization confidential information contained in the department's records, papers, files, or communications. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.006. APPLICATION OF OTHER LAWS. The department is subject to Chapters 551, 2001, and 2002, Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.007. REPORTING REQUIREMENT; PROFESSIONAL FEES. (a) The department shall include in any report required by law concerning the department's expenditures information relating to fees for professional or consultative services provided for the general administration of the department.

(b) The report required under Subsection (a) may not include:

(1) professional fees paid for routine or special examinations to determine an individual's eligibility for a program administered by the department;

(2) professional fees for treatment, services, or care for individual recipients; or

(3) fees for providing for the special needs of individual recipients, including the provision of appliances.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.01(a), eff. Sept. 1, 1997.

Sec. 40.008. PROGRAM ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 40.021. FAMILY AND PROTECTIVE SERVICES COUNCIL. (a) The Family and Protective Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor with the advice and consent of the senate. To be eligible for appointment to the council, a person must have demonstrated an interest in and knowledge of problems and available services related to the functions of the department.

(c) The council shall study and make recommendations to the executive commissioner and the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department and the rights and duties of persons who are served or regulated by the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1. 2003.

Sec. 40.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.0226. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide information to the member regarding:

(1) the legislation that created the department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding:

(A) the division of authority and of responsibility between the commissioner and the executive commissioner; and

(B) the advisory responsibilities of the council;

(4) the rules of the executive commissioner applicable to the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) public information law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the executive commissioner or the Texas Ethics Commission.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 9, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.024. TERMS; VACANCY. (a) Members of the council serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

(c) The governor by appointment shall fill the unexpired term of a vacancy on the council.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.025. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.027. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner in accordance with Section 531.0056, Government Code. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves at the pleasure of the executive commissioner.

(c) Subject to the control of the executive commissioner, the commissioner shall act as the department's chief administrative officer and as a liaison between the department and commission.

(d) The commissioner shall administer this chapter and other laws relating to the department under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 2.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.028. GENERAL DUTIES OF BOARD; DELEGATION. (a) The board shall govern the department.

(b) The board shall:

(1) supervise the executive director's administration and enforcement of the laws of this state that impose duties on the department or board; and

(2) develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

(c) The board may delegate to the executive director, or to the person acting as executive director in the executive director's absence, any power or duty imposed on the board or department by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules. The delegation of a power or duty must be in writing.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 10, eff. Sept. 1, 1997.

Sec. 40.029. RULES. (a) The board shall propose and adopt rules to:

(1) ensure the department's compliance with state and federal law; and

(2) facilitate the implementation of departmental programs.

(b) The board shall propose and adopt rules that further the policy of family preservation.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 11, eff. Sept. 1, 1997.

Sec. 40.030. ADVISORY COMMITTEES. The board may appoint advisory committees in accordance with Article 6252-33, Revised Statutes.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.0305. STRATEGIC TECHNOLOGY STEERING COMMITTEE. (a) The department shall establish a strategic technology steering committee within the department to evaluate major information technology project proposals.

(b) The steering committee shall consist of the department's information resources manager and other department employees designated by the executive director from senior management, information technology staff, and employees who are primary users of information resources. The information resources manager shall serve as presiding officer of the committee.

(c) The steering committee shall prioritize the department's major information technology project proposals and provide oversight and coordination of the projects.

(d) In evaluating major information technology project proposals, the steering committee shall:

(1) assess the major information needs of the department;

(2) define standard criteria for setting priorities for the department's information needs;

(3) forecast the returns to the department on project investments;

(4) evaluate the department's available information resources; and

(5) review, approve, and evaluate the status of projected costs and benefits related to project proposals.

(e) The steering committee shall make recommendations to the executive director based on the committee's performance of its duties.
Added by Acts 1997, 75th Leg., ch. 1022, Sec. 12, eff. Sept. 1, 1997.

Sec. 40.031. DIVISIONS OF DEPARTMENT. (a) The board may establish divisions within the department as necessary for efficient administration and for the discharge of the department's functions.

(b) The board may allocate and reallocate functions, programs, and activities among the department's divisions.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.032. PERSONNEL. (a) The executive director may employ personnel necessary to administer the department's duties.

(b) The executive director or the executive director's designated representative shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require the intradepartmental posting of all positions concurrently with any public posting.

(c) The executive director or the executive director's designated representative shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The executive director or the executive director's designated representative shall provide to members of the board and to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or

employees.

(e) The executive director or the executive director's designated representative shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's workforce of all persons for whom federal or state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) cover an annual period;

(3) be updated at least annually; and

(4) be reviewed by the Commission on Human Rights for compliance with Subsection (e)(1).

(g) The governor's office shall develop and deliver a biennial report to the legislature based on the information submitted under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 13, eff. Sept. 1, 1997.

Sec. 40.0321. SALARY SUPPLEMENTATION BY COUNTY OR MUNICIPALITY. (a) A county or municipality may supplement, from its own funds, the salary of a department employee whose duties include providing services as part of, or relating to, the provision of child protective services and adult protective services by the department.

(b) A department employee who has worked in the same position for the department in a different region is not eligible for a salary supplement under Subsection (a) for a minimum of six months after assuming the position in the new region.

(c) Section 659.020, Government Code, does not apply to the supplement authorized by this section.

(d) The department shall not require a salary supplement as a condition for creating or maintaining a position in the region.

Added by Acts 2001, 77th Leg., ch. 606, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.033. MERIT SYSTEM. (a) The department may establish a merit system for its employees.

(b) The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.034. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly,

attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. GENERAL FUNCTIONS OF DEPARTMENT

Sec. 40.0505. POWERS AND DUTIES OF COMMISSIONER OF HEALTH AND HUMAN SERVICES. The commissioner of health and human services has the powers and duties relating to the board and executive director as provided by Section 531.0055, Government Code. To the extent a power or duty given to the board or executive director by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.
Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.05, eff. Sept. 1, 1999.

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on the goals and priorities stated in the commission's coordinated strategic plan for health and human services. The department shall also develop its plan based on furthering the policy of family preservation.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 14, eff. Sept. 1, 1997.

Sec. 40.052. DUTIES RELATING TO DELIVERY OF SERVICES. The department shall:

(1) propose and implement service delivery standards for departmental programs;

(2) provide training and technical assistance to regional and local service providers;

(3) provide joint training on the investigation of reports of child abuse or neglect to department personnel and law enforcement personnel in appropriate state and local law enforcement agencies;

(4) develop and implement systems for monitoring departmental program performance and service delivery;

(5) promote innovative service delivery at the local level; and

(6) cooperate and coordinate as appropriate with other governmental entities in the delivery of services.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 15, eff. Sept. 1, 1997.

Sec. 40.0521. RULES REGARDING DOMESTIC VIOLENCE. (a) The department shall adopt and implement rules that require an investigating employee to document indications of domestic violence, including elder, spousal, and child abuse. The department may develop forms to facilitate the documentation process.

(b) The department by rule shall require that written information, printed in English and Spanish, concerning community services that are available to victims of domestic violence be

distributed to those victims. The department may coordinate its efforts under this subsection with local law enforcement agencies already providing that information.

(c) The department shall include in its annual report statistical compilations of information regarding domestic abuse documented under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.02(a), eff. Sept. 1, 1997.

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997.

Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION PROGRAM. (a) The department and the Children's Trust Fund of Texas Council jointly shall develop and implement a statewide education program designed to prevent infant mortality. The department and the council shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of the department and the council under this section.

(b) In developing and implementing the program, the department and the Children's Trust Fund of Texas Council shall request the assistance of individuals, governmental entities, private organizations, and other entities with specific knowledge of infant mortality prevention.

(c) The board and the Children's Trust Fund of Texas Council shall adopt rules to implement this section.

Added by Acts 2001, 77th Leg., ch. 157, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.0524. MULTIDISCIPLINARY TEAMS. (a) To the extent possible, the department shall establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The department may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) The department shall establish a process by which members of a multidisciplinary team are involved in the department's development and implementation of procedures relating to coordination of the department's child abuse or neglect services with services provided by other public and private agencies.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997. Renumbered from V.T.C.A., Human Resources Code Sec. 40.0523 by Acts 2001, 77th Leg., ch. 157, Sec. 1.

Sec. 40.0525. SEPARATION OF INVESTIGATORY AND SERVICE DELIVERY FUNCTIONS. (a) To the extent feasible, the department shall separate the performance of investigations by department employees from the delivery of services to clients and their families. The department may take into consideration the needs and caseloads in the different programs and

regions of the state in developing policies for the separation of the department's investigatory and service delivery functions.

(b) The department shall develop policies and procedures for the exchange of information between employees who are responsible for performing investigations and employees who are responsible for the delivery of services to clients and families.

(c) This section does not require the department to establish separate departments for investigations and service delivery.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 17, eff. Sept. 1, 1997.

Sec. 40.053. DUTY TO PERFORM OTHER FUNCTIONS. The department shall perform other functions as required by law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.054. ACCESS TO CRIMINAL HISTORY. Subject to the availability of funds appropriated by the legislature, the department is entitled to obtain any criminal history information from records maintained by:

(1) the Department of Public Safety, as prescribed by Section 411.114, Government Code;

(2) another law enforcement agency in this state, subject to the same procedures and limitations prescribed by Section 411.114, Government Code, as applicable; or

(3) federal agencies, as provided by federal law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.055. LEGISLATIVE APPROPRIATION REQUEST. The department shall submit any legislative appropriation request to the commission for comment and for incorporation into the commission's consolidated health and human services budget recommendation. The legislative appropriation request must comply with state priorities and federal requirements.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.056. USE OF FUNDS. (a) Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the extension of scope is feasible and within the limits of appropriated funds.

(b) The department may accept, spend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may accept, spend, and transfer funds received from any source, including a county, municipality, or public or private agency.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.0561. COMMUNITY YOUTH DEVELOPMENT GRANTS. (a) Subject to available funding, the department shall award community youth development grants to communities identified by incidence of crime. The department shall give priority in awarding grants under this section to areas of the state in which there is a high incidence of juvenile crime.

(b) The purpose of a grant under this section is to assist a community in alleviating conditions in the family and community that lead to juvenile crime.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.03(a), eff. Sept. 1, 1997.

Sec. 40.0562. FEDERAL FUNDING FOR CERTAIN CHILDREN. (a) For purposes of Medicaid eligibility only, the department shall classify as a "child in substitute care" each child who is in the conservatorship of the state and placed in the home of a relative. A child classified as a "child in substitute care" under this subsection is not automatically eligible to receive foster care payments because of that classification.

(b) The department shall ensure that each time study used to allocate costs identifies all

costs incurred on behalf of a child if the child's case plan clearly indicates that substitute care is the planned arrangement for that child.

(c) The department shall claim federal financial participation under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), for all nonrecurring adoption expenses at the highest rate authorized by federal law. The department shall include all charges from state attorneys and state courts and any applicable overhead. The department may claim the expenses as either administrative or training expenses depending on which classification results in a higher federal match.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.04(a), eff. Sept. 1, 1997.

Sec. 40.0563. FEDERAL REIMBURSEMENT FOR FOSTER CARE COSTS. The department shall work with the Health and Human Services Commission to develop methods to maximize the amount of federal reimbursement funds received under:

(1) Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), for administering the foster care program and for providing child care in for-profit facilities through the foster care program; and

(2) Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.).

Added by Acts 1997, 75th Leg., ch. 484, Sec. 1, eff. Sept. 1, 1997.

Sec. 40.0564. DEPARTMENT FUNDS. All money paid to the department under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 18, eff. Sept. 1, 1997.

Sec. 40.0565. REPORT. The department shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must meet the reporting requirements, including reporting deadlines, applicable to financial reporting in the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 18, eff. Sept. 1, 1997.

Sec. 40.0566. COUNTY OUTREACH PROGRAM. (a) The department shall develop and implement a standard statewide outreach program under which the department:

(1) informs each county of the availability of federal funds to pay costs of providing child protective services within the county; and

(2) provides technical assistance on request to a county seeking federal funds.

(b) In implementing the program, the department shall:

(1) designate local department personnel responsible for performing the functions specified in Subsection (a);

(2) designate a statewide coordinator responsible for coordinating the activities of local department personnel and developing methods of providing information to counties; and

(3) develop a database that:

(A) identifies department and county personnel involved with the outreach program; and

(B) contains information regarding the date and type of assistance provided by the department to each county.

(c) The department, in consultation with the Legislative Budget Board, shall ensure that a record is maintained of the amount of funding for child protective services that each county receives directly from the federal government.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 18, eff. Sept. 1, 1997. Renumbered from Sec. 40.0563 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(79), eff. Sept. 1, 1999.

Sec. 40.057. GIFTS AND GRANTS. The department may accept a gift or grant from a public or private source to perform any of the department's powers or duties.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.058. CONTRACTS AND AGREEMENTS. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to perform any of the department's powers or duties.

(b) A contract for the purchase of program-related client services must include:

(1) clearly defined goals and outcomes that can be measured to determine whether the objectives of the program are being achieved;

(2) clearly defined sanctions or penalties for noncompliance with contract terms; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(c) The department shall monitor a contractor's performance under a contract for the purchase of program-related client services. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to ensure compliance with financial and performance requirements under the contract; and

(2) obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

(d) An agreement made under this section is not subject to Chapter 771 or 791, Government Code.

(e) This section does not prohibit the department from entering into a contract or agreement subject to Chapter 771 or 791, Government Code, for a purpose authorized in the applicable chapter.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 19, eff. Sept. 1, 1997.

Sec. 40.059. FEES. The department may set and charge appropriate fees in the administration and delivery of services.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children or elderly or disabled persons is criminally prosecuted for conduct involving the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of $10,000.
Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.061. IMMUNITY. (a) A department employee, a member of a multidisciplinary team established under Section 40.0524, or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(b) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person

incurs in rendering those services.

(c) This section does not provide immunity to a department employee who, in a suit affecting the parent-child relationship in which child abuse is alleged or that arises out of a child abuse investigation, in a criminal prosecution for an offense in which child abuse is an element, or in the preparation of the suit or prosecution:

(1) commits or attempts to commit perjury;

(2) fabricates or attempts to fabricate evidence;

(3) knowingly conceals or intentionally withholds information that would establish that a person alleged to have committed child abuse did not commit child abuse; or

(4) violates state or federal law in the investigation or prosecution of the suit.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 20, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 157, Sec. 2, eff. Sept. 1, 2001.

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 110.002, Family Code, or by Section 51.317, 51.318(b)(2), or 51.319, Government Code;

(2) transfer fee imposed by Section 110.002 or 110.005, Family Code;

(3) court reporter fee imposed by Section 51.601, Government Code;

(4) judicial fund fee imposed by Sections 51.701 and 51.702, Government Code;

(5) judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(6) cost or security fee imposed by Section 12 or 622, Probate Code; or

(7) fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 426, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 9.001(g), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 733, Sec. 1, eff. Sept. 1, 2003.

Sec. 40.063. EXCEPTIONS FROM CERTAIN PROVISIONS OF ADMINISTRATIVE PROCEDURE ACT. Section 2001.038 and Subchapters C through H, Chapter 2001, Government Code, do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under a service program of the department.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.064. INTERAGENCY COOPERATION AND EXCHANGE OF INFORMATION. (a) The department may execute a memorandum of understanding with another state agency to facilitate the implementation of a program or the delivery of a service that the department is required by law to implement or deliver.

(b) The department may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department or the agency or entity to properly execute its respective duties and responsibilities. An exchange of information does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.065. COMMUNICATIONS OFFICER; PLAN. (a) The department shall designate one or more department employees to be primarily responsible for communicating with the public regarding the department's powers and duties. Through the use of designated employees, the department shall ensure:

(1) effective communications between the department and persons seeking to report abuse or neglect or inquiring about the status of a case; and

(2) effective and timely response to questions from the public within the department's confidentiality guidelines.

(b) The department shall develop and implement a communication plan to ensure statewide public and government awareness of child abuse or neglect investigated by the department. The plan shall include information detailing the procedure followed by the department during the investigation and the responsibilities of the department in child abuse cases. In implementing the plan, the department shall establish a process for expediting the reporting of child abuse or neglect to the department. The department shall adopt rules to implement this subsection.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the executive director to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including giving of notice, that is required to be performed by the department or executive director.

(c) The administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall enter the final decision in the case after completion of the hearing.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) This section does not apply to a personnel grievance hearing involving a department employee.

(f) Unless otherwise agreed by all parties to a contested case, a hearing conducted by the State Office of Administrative Hearings on behalf of the department under this section must be held in the department's administrative region in which the conduct at issue in the case occurred.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. The department shall:

(1) study issues related to providing child and adult protective services in areas bordering the United Mexican States;

(2) develop a plan for providing those services in the most efficient manner; and

(3) pursue and enter into agreements for coordinated services, to the extent permissible under federal law, with the United Mexican States or any of its political subdivisions.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Sec. 40.068. LOCAL ACCOUNTS. (a) The department may establish and maintain local bank or savings accounts for a client of the department as necessary to administer funds

belonging to the client or received in trust for or on behalf of the client.

(b) Funds maintained in an account for the benefit of a child who is under the managing conservatorship of the department may be used by the department for the support of the child, including the payment of foster care expenses, or may be paid to a person providing care for the child.

(c) The department shall spend funds in a guardianship of a client's estate in compliance with Chapter XIII, Texas Probate Code.

(d) Except as provided by Subsection (c), funds maintained in an account for the benefit of a client of the department may be used to provide care, including medical care, for the client.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Sec. 40.069. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT. (a) An applicant for temporary or permanent employment with the department whose employment or potential employment with the department involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;
2. Pleaded guilty to (whether or not resulting in a conviction);
3. Pleaded nolo contendere or no contest to;
4. Admitted;
5. Had any judgment or order rendered against me (whether by default or otherwise);
6. Entered into any settlement of an action or claim of;
7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;
8. Been diagnosed as having or have been treated for any mental or emotional condition arising from;
9. Resigned under threat of termination of employment or volunteerism for;
10. Had a report of child abuse or neglect made and substantiated against me for; or
11. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;
2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;

13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;

14. Unfitness as a parent or custodian;

15. Removing children from a state or concealing children in violation of a court order;

16. Restrictions or limitations on contact or visitation with children or minors;

17. Any type of child abduction; or,

18. Similar or related conduct, matters, or things.

Except the following (list all incidents, location, description, and date) (if none, write NONE):

Signed_____

Date_____.

Subscribed and sworn to (or affirmed) before me this _____ day of

_____,_____.

Signature of notarial officer _____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Sec. 40.070. SUPPORT SERVICES FOR CERTAIN FAMILIES. (a) If the department places a child who is in the conservatorship of the state in the home of a grandparent of the child, the department shall:

(1) refer the grandparent to support services offered by the department; and

(2) inform the grandparent of the availability of financial assistance under Chapter 31, including supplemental financial assistance, if the eligibility requirements of that chapter are satisfied.

(b) The department shall maintain complete records and compile statistics regarding the number of children who are placed by the department in the home of a grandparent of the child.

Added by Acts 1999, 76th Leg., ch. 471, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER D. CHILD ABUSE AND NEGLECT PRIMARY PREVENTION PROGRAMS

Sec. 40.101. DEFINITIONS. In this subchapter:

(1) "Children's trust fund" means a child abuse and neglect primary prevention program.

(2) "Primary prevention" means services and activities available to the community at large or to families to prevent child abuse and neglect before it occurs.

(3) "Operating fund" means the Department of Protective and Regulatory Services child abuse and neglect prevention operating fund account.

(4) "State agency" means a board, commission, department, office, or other state agency that:

(A) is in the executive branch of the state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

(5) "Trust fund" means the child abuse and neglect prevention trust fund account.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.102. CHILD ABUSE AND NEGLECT PRIMARY PREVENTION PROGRAMS. (a) The department shall operate the children's trust fund to:

(1) set policy, offer resources for community primary prevention programs, and provide information and education on prevention of child abuse and neglect;

(2) develop a state plan for expending funds for child abuse and neglect primary prevention programs that includes an annual schedule of transfers of trust fund money to the operating fund;

(3) develop eligibility criteria for applicants requesting funding for child abuse and neglect primary prevention programs; and

(4) establish funding priorities for child abuse and neglect primary prevention programs.

(b) The children's trust fund shall accommodate the department's existing rules and policies in procuring, awarding, and monitoring contracts and grants.

(c) The department may:

(1) apply for and receive funds made available by the federal government or another public or private source for administering programs under this subchapter and for funding for child abuse and neglect primary prevention programs; and

(2) solicit donations for child abuse and neglect primary prevention programs.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.103. [BLANK].

Sec. 40.104. ADMINISTRATIVE AND OTHER COSTS. (a) Administrative costs under this subchapter during any fiscal year may not exceed an amount equal to 50 percent of the interest credited to the trust fund during the preceding fiscal year.

(b) Funds expended under a special project grant from a governmental source or a nongovernmental source for public education or public awareness may not be counted as administrative costs for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.105. CHILD ABUSE AND NEGLECT PREVENTION TRUST FUND ACCOUNT. (a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund.

(b) The department may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the department may not transfer more than the amount appropriated for the operating fund for that fiscal year. Money transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, may be used only for child abuse and neglect primary prevention programs.

(c) Interest earned on the trust fund shall be credited to the trust fund.

(d) The trust fund is exempt from the application of Section 403.095, Government Code.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.106. DEPARTMENT OPERATING FUND ACCOUNT. (a) The Department of Protective and Regulatory Services child abuse and neglect prevention operating fund account is an account in the general revenue fund.

(b) Administrative and other costs allowed in Section 40.104 shall be taken from the operating fund. The department may transfer funds contained in the operating fund to the trust fund at any time.

(c) The legislature may appropriate the money in the operating fund to carry out the provisions of this subchapter.

(d) The operating fund is exempt from the application of Section 403.095, Government Code.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Sec. 40.107. CONTRIBUTIONS. (a) The department may solicit contributions from any appropriate source.

(b) Any other contributions for child abuse and neglect primary prevention or other prevention and early intervention programs shall be deposited into a separate designated fund in the state treasury and shall be used for that designated purpose.

(c) A person may contribute funds to either the trust fund, the operating fund, or a fund designated by the department for a specific child abuse and neglect primary prevention or other prevention or early intervention purpose.

(d) If a person designates that a contribution is intended as a donation to a specific fund, the contribution shall be deposited in the designated fund.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

APPENDIX 3

Texas Family Code Chapter 261:

Chapter 261 contains the key provisions that determine when CPS will accept a report of alleged abuse or neglect for investigation and guide the Department in how to conduct that investigation. Key provisions in Ch. 261 include the following:

- defines abuse and neglect, as well as a "person responsible for a child's care custody and control;"
- creates the Central Registry, a database of individuals found to have committed abuse or neglect;
- mandates child abuse and neglect reporting; creating criminal penalties for failure to report and imposing a 48-hour deadline for reports by professionals;
- establishes immunities for good-faith reporting and criminal penalties for false reporting;
- provides for strict confidentiality of all abuse/neglect records as to the general public, while requiring some disclosures to parents and others;
- provides guidelines for conducting the investigation, including requirements to jointly investigate some investigations with local law enforcement;
- requires cooperation of others with an investigation and provides access to records needed to determine whether abuse or neglect has occurred;
- establishes citizens review teams to evaluate department casework and make recommendations for improvement;
- requires removal of certain information from department records when an investigation is unfounded;
- contains special investigation procedures for abuse, neglect and exploitation that occurs in various facilities and in schools.

Texas Family Code Chapter 262:

Chapter 262 contains the key provisions for legal intervention for the protection of the child, as follows:

- contains procedures for taking possession of a child by law enforcement or CPS when the child is found abandoned or is voluntarily surrendered (typically during the arrest of a parent);
- contains procedures for taking possession of a child by CPS, with or without a prior court order depending upon circumstances; requires notice to parent of removal and parents' rights;
- sets standard for an emergency removal as: (1) immediate danger to the physical heath or safety of the child, (2) child a victim of sexual abuse, or (3) use by the parent of controlled substance that creates immediate danger to health or safety of child;
- requires court hearing within 3 days of removal of child when no prior order was obtained - hearing may be *ex parte*;
- requires "full adversary hearing" within 14 days of removal;
- requires "reasonable efforts" to prevent removal, but also permits waiver of reasonable efforts if "aggravated circumstances" are present (including removals based on "serious" bodily injury, sexual abuse or abandonment);

- requires judicial finding in first court order sanctioning removal of the child that continuation in the home or return to the home is "contrary to the child's welfare;"
- creates process for removal of an alleged perpetrator from the home as an alternative to removal of the child;
- allows voluntary delivery of infants 60 days old or younger to "emergency infant care providers" without fear of criminal prosecution, requiring delivery of the abandoned child to CPS within 24 hours and filing of legal protection suit.

Texas Family Code Chapter 263:

Chapter 263 sets forth the provisions for how the legal suit will progress after a child is taken into state conservatorship. The goals of this chapter are to ensure the timely resolution of the legal case to prevent children from languishing in temporary foster care. Key provisions in Ch. 263 include:

- requires warning to parents that rights may be terminated if they cannot provide a safe environment;
- requires a court-approved service plan, outlining CPS plans for return of the child, if appropriate, as well as services to be provided and actions parents must undertake take to enable the safe return of the child to the home;
- requires "status hearing" by 60th day to review service plan and actions of the department and parents pursuant to that plan;
- requires "permanency hearings" by 180th day following removal and every 120 days thereafter until a final order is rendered - to review current permanency plans for the child and whether CPS has made "reasonable efforts" to achieve permanency plan;
- requires a final order within 12 months of child's removal, subject to one six-month extension at the discretion of the court;
- allows expedited appeal of final orders; and
- requires "placement hearings" every six months following final order to review agency efforts to finalize child's permanency.

Texas Family Code Chapter 264:

Chapter 264 contains miscellaneous provisions relating to child welfare services and the broader child welfare community outside CPS, including:

- the creation and role of child welfare boards; children's advocacy centers (CAC's); child fatality review teams, and court-appointed volunteer advocates (CASA);
- provisions regarding the payment of foster care; methods for procuring foster care contracts and other child welfare services; and standards for services;
- guidance for management of children's funds;
- prohibitions against the delay or denial of placements based on a child's or foster parent's race or ethnicity;
- creation of the Adoptive Parent Registry to promote adoptions;
- provisions for faith-based recruitment of foster parents;

- creation of "swift adoption teams;"
- provision for legal representation in CPS cases by county and district attorneys, the AG, or the Department; and
- services to at-risk youth (STAR).

Texas Family Code Chapter 265:

Chapter 265 provides for the creation of a division with the department to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy or dropping out of school.

Abuse and Neglect Definitions

Federal CAPTA provisions require a state to define child abuse and neglect to include, "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Implementing regulations found at 45 C.F.R. §1340.2 further refine the federal definition to include acts or omissions that cause actual or threatened harm to a child, defined as "a substantial risk of harm to the child's health or welfare."

The federal regulations neither prohibit nor require a state to treat a parent's failure to provide medical treatment on the basis of religious beliefs as maltreatment, but do require states to adopt laws that allow for intervention over the parent's objection for needed medical care. These regulations also set a standard states must recognize for differentiating between medical neglect and an appropriate medical decision to withhold treatment from a disabled infant with a life-threatening condition. 45 C.F.R. §1340.15.

While states must meet the above standards to qualify for CAPTA funding, individual states have latitude to build on the federal standards to reflect the priorities and parameters of the state's child abuse and neglect prevention and treatment program. The Texas Family Code, § 261.001 specifies eleven categories of abuse, including:

- causing or allowing a child to be in a situation that causes a mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development or psychological functioning;
- failure to prevent harm by another;
- specific forms of sexual conduct or failure to prevent sexual conduct harmful to the child;
- encouraging or permitting a child to use a controlled substance; and
- use of a controlled substance by a caretaker in a manner that results in physical, mental or emotional injury to a child.

Similarly, there are seven distinct categories of neglect including:

- leaving a child in a situation that exposes the child to a substantial risk of physical or mental harm without making appropriate arrangements for the care of the child;
- exposing a child to a substantial risk of harmful sexual conduct;
- failure to obtain medical care if that failure presents a substantial

risk of death, disfigurement or bodily injury or results in observable and material impairment to the growth, development or functioning of the child;

- failure to provide basic necessities for a child, unless the deprivation is caused by poverty; and
- failure to permit a child to return home or to make arrangements for child's care after the child has been absent from the home for any reason, including having been in residential treatment or having run away.

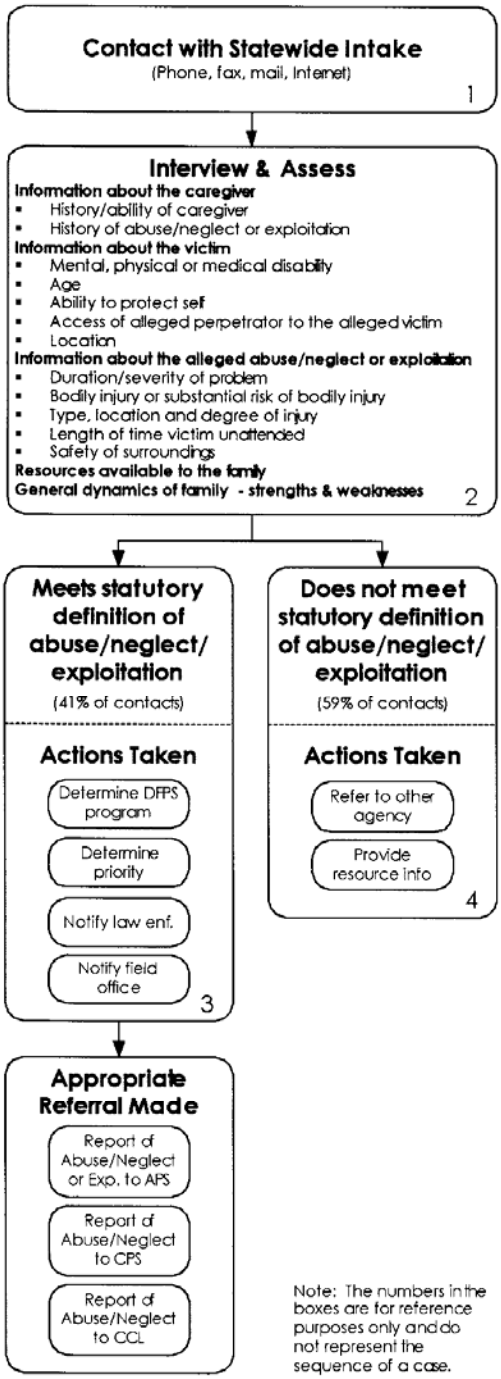
APPENDIX 4

SWI

Statewide Intake Overview

Statewide Intake serves as the "front door to the front line" for all DFPS programs. As the central point of contact for reports of abuse, neglect and exploitation of vulnerable Texans, SWI staff are available 24 hours a day, 7 days per week, 365 days per year.

Worker Demographics	
number of staff	216 FTEs
turnover rate	12.7%
average tenure	5.1 years
less than 3 years	34%
percent w/Bachelor's	100%
percent w/Master's	16.6%
average salary	$30,898
Supervisor Demographics	
number of staff	23 FTEs
turnover rate	0%
average tenure	9.6 years
less than 3 years	4%
percent w/Bachelor's	100%
percent w/Master's	13%
average salary	$39,297
Volume FY04 to date	
average monthly calls	65,998
average monthly e-reports	3,911
average monthly fax/mail	2,900



Note: The numbers in the boxes are for reference purposes only and do not represent the sequence of a case.

Allegations Investigated by CPS (Texas Family Code Chapter 261)
Physical Abuse - physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident, or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child; the current use by a person of a controlled substance…in a manner or the extent that the use results in physical … injury to a child; causing, expressly permitting or encouraging the child to use a controlled substance…

Sexual Abuse - sexual conduct harmful to a child's mental, emotional, or physical welfare; failure to make a reasonable effort to prevent sexual conduct harmful to a child; compelling or encouraging the child to engage in sexual conduct …; causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene …, or pornographic;

Emotional Abuse - mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning; causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; the current use by a person of a controlled…in a manner or to the extent that the use results in … mental or emotional injury to a child;

Physical Neglect - the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;

Medical Neglect - the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or function of the child;

Neglectful Supervision - placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or substantial risk of immediate harm to the child; placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child;

Abandonment - the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

Refusal to Assume Parental Responsibility - the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away;

Allegations Investigated by Child Care Licensing (Texas Family Code Chapter 261.001)
Abuse - an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.

Exploitation - The illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility as further described by rule or policy.

Neglect - A negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility as further described by rule or policy.

Allegations Investigated by Adult Protective Services In-Home (Human Resources Code, §48.002)
Abuse - The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain by a caretaker, family member, or other individual with whom the elderly or disabled person has an ongoing relationship.

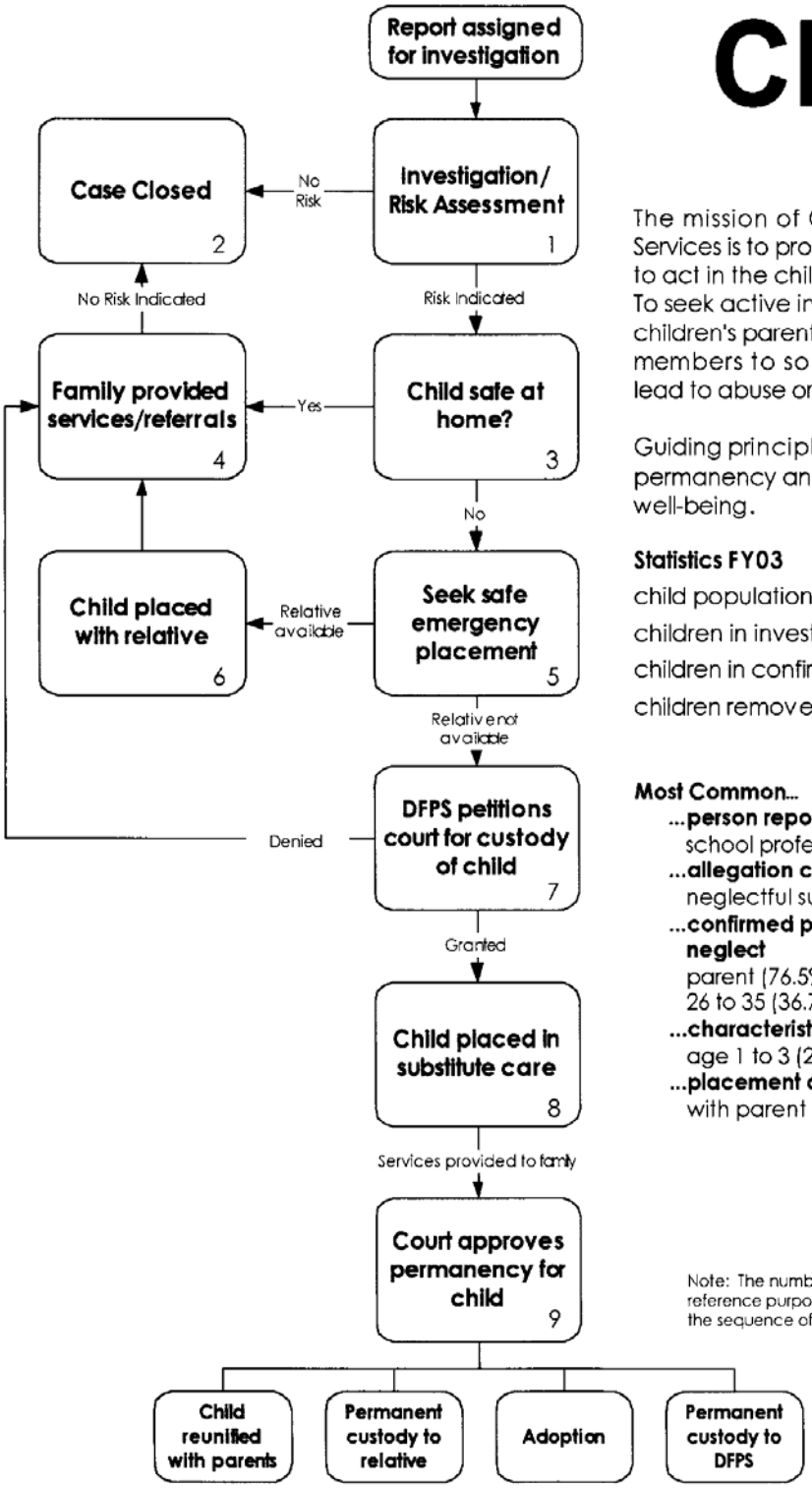
Neglect - The failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide the goods or services.

Exploitation - The illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly or disabled person using the resources of the elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

Allegations Investigated by Adult Protective Services Facility (Texas Administrative Code Chapter 711)
Abuse -any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served; any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served; any use of chemical or bodily restraints not in compliance with federal and state laws and regulations; sexual abuse; or any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

Neglect - A negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to a person served, placed a person served at risk of physical or emotional injury or death, and includes an act or omission such as: the failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, if such failure results in a specific incident or allegation involving a person served; the failure to provide adequate nutrition, clothing, or health care to a person served...; or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff, if such failure results in a specific incident or allegation involving a person served.

Exploitation - The illegal or improper act or process of using a person or the resources of a person served for monetary or personal benefit, profit, or gain.



CPS

Child Protective Services Overview

The mission of Child Protective Services is to protect children and to act in the children's best interest. To seek active involvement of the children's parents and other family members to solve problems that lead to abuse or neglect.

Guiding principles include safety, permanency and family and child well-being.

Statistics FY03

child population	6,037,731
children in investigations	278,871
children in confirmed inv.	78,475
children removed	8,595

Most Common...

...person reporting abuse/neglect
school professional (20.4%)

...allegation confirmed
neglectful supervision (52.5%)

...confirmed perpetrator of abuse/ neglect
parent (76.5%), female (56.6%), age 26 to 35 (36.7%) and married (35%)

...characteristic of confirmed victim
age 1 to 3 (22%) and female (53%)

...placement after foster care
with parent or relative (69%)

Note: The numbers in the boxes are for reference purposes only and do not represent the sequence of a case.

Worker Demographics	
number of staff	2,926 FTEs
turnover rate	22.1%
average tenure	4.2 years
less than 3 years	50%
percent with Bachelor's	100%
percent with Master's	11.8%
average salary	$32,681

Supervisor Demographics	
number of staff	522 FTEs
turnover rate	8.7%
average tenure	9.4 years
less than 3 years	4%
percent with Bachelor's	100%
percent with Master's	13.9%
average salary	$40,944

APPENDIX 5

Attachment 4: Excerpt from the Licensing Policy and Procedures Handbook

4500 Choosing a Monitoring Plan

LPPH September 2003

Policy

A. At the time a non-expiring permit is issued, a monitoring plan must be selected. For child-placing agencies, a monitoring plan is selected for each agency office. (See 4320, Special Considerations for Monitoring Child-Placing Agencies.) The monitoring plan sets the intervals for the inspections that determine continuing compliance with the minimum standard rules and law. The plan is based on an assessment of the operation's compliance history and other pertinent factors (see 4510, Risk-Based Enforcement Criteria for Choosing a Monitoring Plan).

B. Monitoring plan inspections are conducted at least as often as follows:

1. **PLAN 1 (more frequent plan)** involves making an inspection:
   a. at least every 3 to 5 months for all licensed operations, and
   b. at least every 10 to 12 month for registered child-care homes.
2. **PLAN 2 (basic plan)** involves making an inspection:
   a. at least every 6 to 9 months for all licensed operations, and
   b. at least every 22 to 24 months for registered child-care homes.
3. **PLAN 3 (Less frequent plan)** involves making an inspection:
   a. at least every 10 to 12 months for all licensed operations, and
   b. at least every 34 to 36 months for registered child-care homes.

Procedure

1. Use the chart in 4510, Risk-Based Enforcement Criteria for Choosing a Monitoring Plan, to select one of the monitoring plans outlined in policy.
2. Reevaluate and update the plan:
   a. at every inspection,
   b. each time a permit is issued or amended, or
   c. each time a significant change occurs at the operation that could affect its compliance history (for instance, serious violation, change of director, change of location, report, or serious occurrence).
3. Support the decision with documentation in CLASS.

4510 Risk-Based Enforcement Criteria for Choosing a Monitoring Plan

LPPH September 2003

Policy

Consider questions outlined in the following chart before selecting a monitoring plan:

Consider	Plan 1	Plan 2	Plan 3
The number and kind of deficiencies.	Deficiencies are numerous or serious, but do not place children at immediate risk.	Deficiencies are observed but are not usually serious and present some risk to children.	Compliance is consistent, deficiencies are few and present negligible risk to children.
Whether or not deficiencies are repeated and, if so, why.	Deficiencies are repeated, are not corrected, or corrected superficially. No systems in place to prevent deficiencies.	Occasionally repeats deficiencies. Needs to change the system set up to prevent. Attempts to correct so stays corrected.	Rarely repeats deficiencies and operation has a system in place to deal with situations as they arise, or to prevent.
Whether or not corrections are made within time frames.	Time limits are missed. Corrections are made superficially.	Corrections are usually made within time frames.	Corrections are made promptly, usually during the inspection.
Type of training staff, registrant, director, or administrator receive.	Registrant or staff and director or administrator do not meet annual training requirements; training is obtained from unreliable or questionable sources. Pre-service training and orientation is poor.	Registrant or staff and director or administrator receive annual training from the director or other sources, usually self-instructional materials are used, rarely attend training outside of the operation to interact with other caregivers. Pre-service training and orientation are average at best.	Registrant or staff and director or administrator receive training from reliable sources outside of the operation; interact with other operations and usually exceed required annual hours. Staff have pre-service orientation that is thorough and updated regularly.
The interaction between caregivers and children and the level of supervision provided.	Activities for children are unplanned, inappropriate, too few or nonexistent. Children are inadequately supervised.	Children are engaged in activities, but are easily distracted due to inappropriateness of the activities, or supervision of children is minimal.	Children actively engaged in appropriate and planned activities. Children are appropriately supervised.

For Child Day Care Only			
Consider	**Plan 1**	**Plan 2**	**Plan 3**

The education and experience level of the director, staff, or registrant.	Director, staff, or registrant is not qualified and has a variance for meeting the standard.	The director, staff, or registrant is qualified but often leaves someone that is not qualified in charge of the operation.	The director, staff, or registrant is qualified and is usually present during hours of operation to supervise staff.
The level of communication between the director or registrant and parents, staff, Licensing.	Director or registrant discourages or inhibits unannounced visits by parents or Licensing. Recurring valid or invalid reports. No written policies for staff or parents.	Director or registrant is often not available when parents, staff or Licensing need them; does not give the authority to the person left in charge to address situations or questions that arise.	Director or registrant creates an environment that enables communication between parents, staff, director, and Licensing on a regular basis.

For Residential Child Care Only			
Consider	**Plan 1**	**Plan 2**	**Plan 3**
Treatment and programming for children.	Major program changes or a new treatment program, or a history of poor implementation of treatment and programming.	Minor changes in program or treatment services, or a shorter history of questionable programming.	History of implementing good treatment and programming services.

4600 Continuing Assessment

LPPH September 2003

Policy

A. Licensing staff must continue to assess and plan for inspection for the duration of the permit.

Texas Human Resources Code §42.044

B. Assessments are based on:

1. the most recent inspection;
2. previous inspections;
3. the basis for the current monitoring plan;
4. previous reports of abuse or neglect or minimum standard rule deficiencies, especially those that resulted in a disposition of reason-to-believe or unable-to-determine, or serious minimum standard rules deficiencies;
5. previous deficiencies;
6. other strengths and needs of the operation; and
7. the risk to children.

C. If Licensing staff discover a threat of immediate danger to children in an operation staff must take action. See 7200, Handling Immediate Danger to Children.

Procedure

1. An assessment may indicate a need for a change to the monitoring plan, Provider Plan of Action, Corrective Action Plan, or adverse action.
2. If an operation is on Plan 1 for more than 12 months, consult the supervisor to decide the appropriate action to take.

   See also:

   4500 Choosing a Monitoring Plan

   Appendix 7000-1: Assessing the Need for Evaluation, Probation, and Adverse Actions
3. Consider the following in the ongoing assessment of the operation:
   a. Compliance history, number, and type of deficiencies: Are they related to supervision, the child/caregiver ratio, behavior interventions, or other high-risk standards?
   b. The operation's history of making corrections: Do they initiate them on their own or wait to be told?
   c. The current monitoring plan: Is it appropriate?
   d. Is the operation on, or has it ever been on, evaluation or probation?
   e. The number of reports received: Were deficiencies cited?
   f. Are the director, administrator, and/or professional staff qualified and present at the operation?
   g. Does the person in charge have the authority to make changes or corrections, and are they knowledgeable about the standards?
   h. Frequency of staff turnover: Is training and orientation adequate?
   i. Are the director or administrator and staff or caregiver aware of and knowledgeable regarding the minimum standard rules?
   j. The potential impact on the children if the deficiencies continue: Do staff and/or the caregiver(s) recognize the potential impact?
   k. The ages of the children involved in the deficiencies or questionable situation.
   l. The building or home conditions: Are repairs made promptly?
   m. Are fire and health inspections kept current and are corrections made promptly?
   n. Length of time licensed, certified, or registered: Is technical assistance applied?
   o. Were children in care at the last inspection?
   p. Are waivers or variances in effect: How many? Are conditions met?
   q. Have deficiencies been addressed?
   r. Would more inspections make a difference, or should other action be taken?
   s. Have minimum standard rules been evaluated for compliance within the required time frames?

APPENDIX 6

LOC Descriptions	Service Levels
LOC 1 – adequate functioning in all areas; transient difficulties, "every-day" worries & occasional misbehavior **LOC 2** –occasional problems in functioning in any area; some acting-out behavior in response to life stresses; minimally disturbing to others	**Basic Services** – supportive setting, preferably a family, with routine guidance & supervision; structured activities
LOC 3 – frequent or repetitive minor problems; may engage in non-violent antisocial acts; capable of meaningful interpersonal relationships **LOC 4** – substantial problems; may present moderate risk of causing harm to self or others	**Moderate Services** – structured supportive setting, preferably a family; structured daily routines and activities; structured therapeutic intervention; access to therapeutic or medical support
LOC 4 – frequent episodes of aggressive or other antisocial behavior **LOC 5** – Severe problems, may exhibit persistent or unpredictable aggression; markedly withdrawn; moderate to severe risk of causing harm to self or others	**Specialized Services** – treatment setting, preferably a family, in which caregivers have specialized training; continuous monitoring & limit setting; therapeutic activities; regularly scheduled professional therapeutic support
LOC 6 – Very severe impairments; consistently unable/unwilling to cooperate in own care; aggressive or self-destructive behavior; severe risk of causing serious harm to self or others.	**Intense Services** – highly structured treatment setting with limited outside access; frequent one to one supervision; constant attention and limit setting; professional therapeutic support including frequent intervention

APPENDIX 7

Examples of State Laws Relating to

Medical Passports for Foster Children

California:

Welfare and Institutions Code

16011. (a) Subject to the conditions prescribed by this section, Los Angeles County may pursue the development and evaluation of a pilot Internet-based health and education passport system. The system shall be known as the Passport System. The Passport System shall collect and maintain health and education records for foster children under the supervision of the county social services or probation department, as required by Section 16010. The Passport System shall initially be conducted as a limited pilot project in a subset of Los Angeles County, and upon successful evaluation, may be expanded statewide.

(1) Los Angeles County shall be responsible for the planning, development, and implementation of the Passport System. Los Angeles County is responsible for the development of the advance planning document (APD) as prescribed by federal regulations, requesting funding consistent with the child welfare services program. The APD shall include, but not be limited to, the design of an interface between the web-based Passport System and the Child Welfare Services/Case Management System (CWS/CMS) so that information entered into the Passport System shall automatically and permanently reside in the CWS/CMS. In addition, the APD shall include the scope of the

pilot project, the evaluation plan pursuant to subdivisions (b) and (d), and the county shall address a plan for compliance with pertinent provisions in state and federal law requiring that privacy of confidential information be maintained.

(2) The department shall review and, upon approval by the appropriate state agencies, shall transmit the APD to the federal Department of Health and Human Services. The department shall facilitate assistance as appropriate to gain federal approval of the APD. Implementation of the pilot system shall be contingent upon federal approval of the APD and of the request for federal funding consistent with the child welfare services program. It shall also be contingent upon assurance by the United States Secretary of Health and Human Services that the federal funding for the CWS/CMS shall not be adversely impacted by the development and implementation of the Passport System. If the department is unable to gain federal approval of the pilot project by January 1, 2004, authorization for the pilot project established by this section shall cease.

(3) The Passport System shall provide real-time access to health, mental health, and educational information by health and mental health care providers, educators, licensed or approved foster care givers, and local agency staff in order to improve the accuracy and reliability of information necessary to ensure receipt of appropriate services for children in foster care, to improve health and educational outcomes, and to reduce and eliminate the risk of inadequate treatment by service providers, multiple immunizations, other severe health and education problems, and death.

(4) The Passport System shall meet all the operational and administrative needs of local participating agencies; be scalable and flexible to interface with and integrate data from multiple Los Angeles County and other county departments and state agencies that provide

services to children, using data matching algorithms that provide a high level of confidence and reliability; maximize the use and availability of information in a secured and reliable environment; allow relevant county staff, health, mental health, education providers, and licensed or approved foster care givers to update or view appropriate data through a web-enabled application via the Internet; contain fire walls and safeguards to ensure that only authorized persons inquire and update only those cases which they have been authorized to access; and to ensure the integrity and confidentiality of the system.

(b) Prior to commencement of the pilot project, Los Angeles County, in consultation with the department, shall develop a pilot evaluation plan subject to approval by the department and the United States Secretary of Health and Human Services. The plan shall include, but is not limited to, identification of measurable objectives, and benefits that the pilot project is expected to achieve, the methodology, and plan criteria for evaluating the pilot project.

(c) The pilot plan shall include a strategy to incentivize health, mental health, and educational providers servicing foster children to utilize and update the Internet-based system.

(d) Implementation of the interface between the Internet-based Passport System and the CWS/CMS shall be contingent upon approval of federal reimbursement consistent with the child welfare services program. Funding shall be subject to the sharing ratios that apply to the administration of child welfare services programs. Any funds appropriated for this purpose not expended in the 2001-02 fiscal year shall be available for the purposes of this section as expenditure in subsequent years. After one year of operation of the pilot project, Los Angeles County shall complete a pilot evaluation as described in the pilot evaluation plan. The results of the evaluation shall be provided to the chairpersons of the fiscal and policy committees of

each house of the Legislature, the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance.

Indiana:

IC 12-17-11

Chapter 11. Medical Passport Program for Children Receiving Foster Care

IC 12-17-11-1

Application of chapter

Sec. 1. This chapter applies to children who receive foster care that is funded by the division or a county office.

IC 12-17-11-2

Medical passport program

Sec. 2. The division shall establish a medical passport program for children who receive foster care. Under the program, the division shall do the following:

(1) Maintain a record of medical care provided to a foster child.

(2) Facilitate a provider in providing appropriate care to a foster child.

(3) Allow foster parents to authorize routine and emergency medical care to a foster child.

(4) Provide forms for a provider to submit to the county office under IC 12-17-10.

IC 12-17-11-3

Issuance and maintenance of passport

Sec. 3. (a) The county office shall issue the medical passport to a foster child when the child is placed in foster care. The passport must remain with the child until the child is:

(1) returned to the natural parents;

(2) adopted; or

(3) placed in another permanent plan.

(b) When a child is placed under subsection (a)(1), (a)(2), or (a)(3), the medical passport shall be returned to the county office that issued the passport.

IC 12-17-11-4

Administrative rules

Sec. 4. The director of the division shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

Kentucky

605.160 Provision of information to those caring for committed children—Show cause hearing

(1) The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall provide information to the individuals and entities contracting with

the cabinet and the Department of Juvenile Justice to provide services and care to children committed to the cabinet or the Department of Juvenile Justice necessary to provide adequate care and services to the committed children they are serving. The cabinet, the Department of Juvenile Justice, and the Kentucky Department of Education shall develop a process that will result in the provision and transfer of information as required by KRS 158.137, 605.090, 605.110, 620.145, and this section in a timely and efficient manner, including:

(a) Medical passport or history;

(b) Educational passport;

(c) Treatment history; and

(d) Current case plan.

If action by a court is necessary to obtain or release information that the cabinet or the Department of Juvenile Justice deems necessary for the provision of care or services to a committed child, then the cabinet or Department of Juvenile Justice, as the case may be, shall promptly petition the court for permission to receive or release the necessary information.

(2) If the cabinet, the Department of Juvenile Justice, or a school or educational facility as defined in KRS 158.137 fails to provide necessary information within the time frames established in KRS 158.137, 605.090, 605.110, 620.145, and this section, the person, agency or entity providing care or services to a child may petition the court having jurisdiction over the child to hold a hearing, at which time the court, if the request for hearing is granted, shall require the cabinet, the Department of Juvenile Justice, or the

school or educational facility as defined in KRS 158.137 to show cause as to why is has not provided the necessary information in a timely manner.

Washington State:

RCW 74.13.285

Passports -- Information to be provided to foster parents.

(1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department.

APPENDIX 8 - LETTERS OF DISSENT

The State of Texas
House of Representatives
Austin

ELLIOTT NAISHTAT
STATE REPRESENTATIVE
DISTRICT 49

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0668

November 4, 2004

The Honorable Suzanna Gratia Hupp, Chairman
House Select Committee on Child Welfare and Foster Care
Capitol, Room E1.414

Dear ~~Chairman Hupp~~ Suzanna:

I would like to submit the following comments for inclusion in the Committee's interim report.

Charge 3: Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies within the Texas child welfare system.

As noted in the report, it is traumatic for children to be removed from their homes, and it is up to the state to ensure that children are placed in safe and nurturing environments. The state is responsible for the safety of these children, and there must be a strong and durable safety net. I agree that licensing requirements, contract monitoring and enforcement need to be strengthened. While I agree with the recommendation to eliminate the dual foster care system, keeping placement decisions with the Department of Family and Protective Services (DFPS), I am concerned about the recommendations to completely restructure the foster care system and move case management services to the private sector. I believe this would be detrimental to the very children who end up relying upon the state for their safety and well-being.

The proposal to transfer case management responsibilities to private agencies while limiting the role of DFPS to system monitoring is confusing and raises many questions. Currently, DFPS contracts with private sector organizations to provide many of the direct services that are offered to children and families. However, Child Protective Services (CPS) caseworkers provide case management services, which involves helping families access needed services, monitoring their progress, and making important decisions and recommendations relating to permanency determinations. If case management is just that--referrals and assistance in accessing services, monitoring the child and family's progress, and decision-making--it is unclear which specific responsibilities would be transferred to the private sector and which would remain responsibilities of DFPS.

COMMITTEES: HUMAN SERVICES, VICE CHAIR; PUBLIC HEALTH

It is important to be clear about what specifically would be provided by public employees and by private contractors. We must be particularly careful about this, especially in light of the proposal to cap liability for private providers. I am also concerned about contracting out case management services to for-profit providers, since there would be an inherent conflict of interest. It is too soon to make this broad recommendation to transfer responsibilities for case management to the private sector, without further study.

It is also unclear how transferring the responsibility for case management to the private sector would significantly reduce caseloads. The caseloads would still be there. Only the responsibilities for case management would be transferred. DFPS workers would still be responsible for monitoring a child and family's progress, and for making recommendations to the court. In order to make responsible and informed recommendations to courts, DFPS workers must be intimately involved with a child and his or her family, and be able to observe how the child and parents interact with each other and the family. Otherwise, we would be creating a system in which DFPS workers might make recommendations based solely on the private sector agencies' input or documentation.

I am also concerned about the recommendations relating to anonymous reports of abuse or neglect. I do not agree that we should authorize penalizing parents by denying them visitation with a child if the parent files a false report. This would only serve to punish the child for the actions of a parent.

I am also troubled by the proposed amendment to the Family Code, Sec. 261.201, which would mandate the release of the identity of the complaining party when complaints are filed before an action is taken, during litigation, or after a child is subject to the court's jurisdiction. This would essentially require the release of the identity of an individual who reported abuse or neglect at any time. I am concerned that individuals would be hesitant to report abuse or neglect if there is no assurance of anonymity, and that such a proposal would result in children being left in abusive or neglectful situations. I would prefer for the State to have to deal with false allegations than to implement policies that would discourage reporting.

In addition, the recommendation to prioritize the protection of children in the system, without restoring funding to prevention and early-intervention programs, is troubling. Children who are at-risk of entering the child welfare or juvenile justice systems could be helped earlier through the use of proven programs that serve both children and their families. This would help to strengthen families and keep children from ending up in foster care, in addition to helping to prevent abuse and neglect.

In summary, I cannot at this time support a recommendation to transfer the responsibilities for case management from public employees to private contractors. We must be clear about what is meant by case management and what is meant by monitoring. We must also make sure that there is adequate agency oversight, and that definite procedures are in place relating to decisions and

recommendations which would be made on behalf of children. Determining who would be responsible for making decisions about children's lives requires thoughtful consideration, and should not be taken lightly. We need to be clear about who would be responsible for making these decisions, how decisions would be determined, and the implications of those policy decisions. A change of this magnitude, prior to further study, would only work to dismantle the infrastructure of the child welfare system, eliminating any safety net for the protection of children.

To suggest that the safety and well-being of children would be better assured by shifting certain responsibilities, and funding, from the public sector to the private sector would be misguided. I believe it would be detrimental to the child welfare system to move forward with the broad recommendation of completely restructuring the foster care system, while at the same time 1) expanding the investigations and monitoring units at DFPS and 2) not providing adequate funding for DFPS to meet the needs of the children and families it serves.

Thank you for the opportunity to offer my comments.

Sincerely,

Elliott Naishtat
State Representative

cc: Members of the Select Committee

Office of State Representative
Toby Goodman
District 93

House Select Interim Committee on
Child Welfare and Foster Care
Final Committee Report

Letter of Dissenting Opinion

I would like to begin my letter of dissent by recognizing the dedication and hard work put forth by the Chairman of the House Select Interim Committee on Child Welfare and Foster Care, Representative Suzanna Gratia Hupp, the remaining members of this committee and their staffs, as well as all of those who testified before this committee. All of the people involved in this process have demonstrated exceptional commitment to the improvement of the child welfare and foster care system, which is administered by the Department of Family and Protective Services (DFPS). Many exciting and innovative solutions to further improve DFPS have been brought forward. However, considering the vast scope of ideas presented throughout the committee process, it is inevitable that the members of the legislature will be obliged to determine the best course of action necessary to redefine the child welfare and foster care system utilized in protecting and serving the State's abused and neglected children. It is due to the fact that I envision a different approach to restructuring the child welfare and foster care system, than that which is presented in the House Select Committee on Child Welfare and Foster Care Committee Report, that I must offer a letter of dissent, in addition to my signature to this report. Although, I envision a system of child welfare and foster care that incorporates many of the ideas put forth in the committee report, I have a number of concerns regard other recommendations put forth in the report. Although I will not be providing a line by line dissent, there are three primary areas of concern, which are the focus of my dissenting opinion with regard to this report.

I. The committee report contains a number of issues that I believe to be poor choice for legislative policy.

While I agree that many of the issues that we examined were creditable issues to explore during the committee process, I also believe that there were a number of issues researched throughout this process that would translate into flawed legislative policy. I will focus on two such examples, although I have serious concerns with a number of the recommendations.

The committee report makes the following suggestion: "The Committee recommends that only for families who receive state funded adoption subsidies, DFPS should require caseworkers to perform an on-site unannounced visit/check-up of the adopted child(ren) once a year until the child(ren) reaches the age 18." Once a child has been adopted, the State should not visit or check-up on the family. This recommendation would create a environment where parents and children involved in adoptions never felt free from the constant intrusiveness of the state. The state should only be involved in pre-adoption cases, or post adoption cases, where an allegation of abuse or neglect has been made.

The committee report also makes the following suggestion: "Additionally, the Committee recommends for the purposes of gathering information, if a physician issues an order to administer three or more concurrent psychoactive medications, or two or more psychoactive medications of the same class concurrently, to a patient younger than 18 years of age, the pharmacist dispensing the medications shall make a referral of the physician to the Texas State Board of Medical Examiners." I agree that this issue is a sensitive issue, but I do not agree that the Legislature has a duty or the reasonable amount of expertise necessary to make such a decision. HHSC has taken a number of steps targeted at looking into this issue and possible solutions to problems that may be identified. I believe it would be premature for the legislature make permanent changes in the law, regarding the medication of children.

II. The focus of the Committee Report exhibits a breadth of issues relating to the problem, rather than demonstrating an in depth examination of solutions necessary to rebuild the foundation of the system.

It is my contention that the focus of this Committee's recommendations should be to fully examine and remedy the problems inherent with the child welfare and foster care system through establishing and appropriately funding a revised structure. It is my impression that the scope of committee report is too broad to be particularly effective in improving the child welfare and foster care system. Unfortunately, the legislature is often forced to recognize that there is an finite amount of funding available to support the needs of all Texans. Considering the extent of the problems, it is necessary that we begin this process by focusing on the problems and solutions necessary to rebuild the basic foundation of the system.

The language and scope of the Committee Report demonstrate considerable breadth as it relates to the problems with the system and all outlying factors related to the system, while conversely demonstrating minimal depth regarding solutions to the foundations of the system. Extensive prevention services are recommended and discussed, while there is minimal in depth discussion as it relates to: the privatization of the system; the building a regional system that would allow for the placement of children within their region of removal; the reduction in caseloads for caseworkers; the increase of salaries for workers; as well as other in depth examinations of the system itself.

I am not attempting to put forth that prevention services, as well as other outlying services as they relate to child welfare and foster care are not important, but rather to recognize that there is a finite amount of funding that will be available and that funding might be better

utilized through solidly rebuilding and funding the foundation of the system of child welfare and foster care, as opposed to minimally increasing funding to a hodgepodge of issues that have some impact on the child welfare and foster care system.

III. While the plan that I have developed and will support, during the 79th Legislative Session, contains many of the same concerns outlined in this report, the committee report also includes some issues that directly conflict with the plan that I have developed and will support during the 79th Legislative Session.

Throughout the interim, I have had the opportunity to work with a number of stakeholders in developing a new system of child welfare and foster care. While, I continue to sort out all the details associated with the development of a possible new system, I recognize some areas of the report which might contradict with the ultimate version of the plan that I will support during the 79th Legislative Session.

For example, the plan that I anticipate putting forth during the 79th Legislative Session will include the privatization of foster care. As a part of this transfer of duties, I will be including the transfer of case management, along with the role of foster care. It is important that the agency responsible for the care of the child, also determine the management of the case. Under the current system, many Child Placing Agencies (CPAs) are responsible for outcome measures developed by DFPS, however these same CPAs have no control over the planning and management of the case. While it is of the utmost importance that we maintain strong outcome measures for children in the care of the State, it is also important that those entities ultimately responsible for the outcomes of a case also have the power to best guide the case toward a positive outcome.

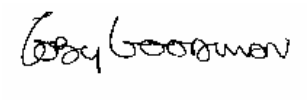
The language of the committee report suggests that we privatize the foster care system, but allows for DFPS to maintain oversight of individual cases. It is unclear as to what oversight includes. In the system that I anticipate putting forth, DFPS maintains some oversight of individual CPAs through Child Care Licensing (CCL) and Contracting, however DFPS does not maintain oversight of individual cases. It is my opinion that we would be tying the hands of providers if we were to confer all of the responsibilities of positive outcomes of foster care to private providers, without also giving them the powers to determine how best to guide cases toward the best possible outcomes. DFPS will still maintain oversight through CCL and contracts. If a providers maintains negative outcomes for children, then DFPS has the power to terminate the contract with a provider, or to revoke the providers license, when warranted.

I have worked with stakeholders in an attempt to develop a system that many believe will have a positive impact on the child welfare and foster care system. The example delineated above is one area where the committee report directly conflicts with the system that I anticipate supporting during the 79th Legislative Session. Conflicts such as the one above prevent me from signing the committee report.

Once again, I would like to acknowledge all of the hard work by all of those involved in this

process. My decision to write a letter of dissent to be added with my signature is not a reflection of discontent with the process. I sincerely believe that all parties involved in this process represented their own beliefs as to how best to improve the Texas child welfare and foster care system. Many innovative and creative ways to improve the system were presented and supported, and therefore it is my opinion that the Select Committee on Child Welfare and Foster Care was successful in meeting its charges. It is solely due to the fact that I maintain a different view of how best to rebuild the child welfare and foster care system that I must include a letter of dissent with my signature.

Sincerely,



Representative Toby Goodman
District 93

TEXAS HOUSE OF REPRESENTATIVES

Ruth Jones McClendon

STATE REPRESENTATIVE, DISTRICT 120

COMMITTEES:
Appropriations
Pensions and Investments
Chairman, Budget and Oversight
Redistricting

TEXAS LEGISLATIVE ORGANIZATIONS:
Mexican American Legislative Caucus
Texas Legislative Sportsman's Caucus
Texas Legislative Black Caucus
Legislative Study Group

November 5, 2004

The Honorable Suzanna Gratia Hupp, Chairman
House Select Committee on Child Welfare and Foster Care
Capitol, Room E1.414

Dear ~~Chairman Hupp~~ Suzanna:

I would like to submit the following comments for inclusion in the Committee's interim report.

Charge 3: Review the licensure requirements for and the performance of all types of foster care facilities, including residential treatment facilities, wilderness camps and emergency treatment centers. Assess the adequacy of communication and interaction between the licensing agency and other state agencies that place children within the foster care and Child Protective Care system. Explore other states' efforts that will promote "best practices" and identify program efficiencies with Texas child welfare system.

As noted in the report, it is traumatic for children to be removed from their homes, and it is up to the state to ensure that children are placed in safe and nurturing environments. While I agree with the majority of the recommendations, I am concerned with the proposal to transfer case management responsibilities to private agencies. Currently, Department of Family and Protective Services (DFPS) contracts with private sector organizations to provide many of the direct services that are offered to children and families. However, Child Protective Services (CPS) caseworkers provide case management services, which include helping families access needed services, monitoring their progress, and making important decisions and recommendations related to permanency determinations. I want to be clear that I am opposed, as are some of my colleagues, about contracting out case management services to for-profit providers. I

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believe that this broad recommendation to transfer responsibilities for case management to the private sector requires further study.

In conclusion, I cannot at this time support a recommendation to transfer the responsibilities for case management from public employees to private contractors. The state is responsible for the safety of these children, and therefore must provide a strong and durable safety net. A change of this magnitude requires thoughtful consideration and thus further study to ensure the protection, safety and well-being of not only Texas children, but their families as well.

Thank you for the opportunity to offer my comments.

Sincerely,

Ruth Jones McClendon
State Representative

cc: Members of the Select Committee

ENDNOTES

[1] TX Dept of Family and Protective Services website, "About DFPS, DFPS Mission," (http://www.tdprs.state.tx.us/About/About/default.asp).
[2] TX Dept of Family and Protective Services website, "About Child Protective Services," (http://www.tdprs.state.tx.us/Child_Protection/About_Child_Protective_Services/default.asp).
[3] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services - Mission and Objectives." Austin, TX, January 23, 2004.
[4] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 18 - February 4, 2004 (pdf - 1.4 Mb).*
[5] TX Dept of Family and Protective Services website, "Financial and Budget Information," (http://www.tdprs.state.tx.us/About/Financial_and_Budget_Information/default.asp).
[6] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Legal Foundation for Child Protective Services." Austin, TX, January 23, 2004.
[7] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Legal Foundation for Child Protective Services." Austin, TX, January 23, 2004.
[8] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 17 - February 4, 2004 (pdf - 1.4 Mb).*
[9] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Legal Foundation for Child Protective Services." Austin, TX, January 23, 2004.
[10] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 20 - February 4, 2004 (pdf - 1.4 Mb).*
[11] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 20-21 - February 4, 2004 (pdf - 1.4 Mb).*
[12] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Investigation." Austin, TX, January 23, 2004.
[13] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Investigation." Austin, TX, January 23, 2004.
[14] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, In-Home Safety Services." Austin, TX, January 23, 2004.
[15] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, In-Home Safety Services." Austin, TX, January 23, 2004.
[16] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 23 - February 4, 2004 (pdf - 1.4 Mb).*
[17] Info provided by the TX Dept of Family and Protective Services to answer the 70 questions posed by the members of the Committee on Child Welfare and Foster Care, March 10, 2004.
[18] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Permanency Planning." Austin, TX, January 23, 2004.
[19] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Permanency Planning." Austin, TX, January 23, 2004.
[20] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Permanency Planning." Austin, TX, January 23, 2004.
[21] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 25 - February 4, 2004 (pdf - 1.4 Mb).*
[22] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Preparation for Adult Living." Austin, TX, January 23, 2004.
[23] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 26 - February 4, 2004 (pdf - 1.4 Mb).* Also from testimony given by Commissioner of DFPS, Thomas Chapmond, to the Committee on Child Welfare and Foster Care, February 4, 2004.
[24] TX Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 26 - February 4, 2004 (pdf - 1.4 Mb).*
[25] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Protective Services, Preparation for Adult Living." Austin, TX, January 23, 2004. And, TX

Dept of Family and Protective Services website, "About DFPS," (http://www.tdprs.state.tx.us/About/About/default.asp#presentations). *House Select Committee on Child Welfare and Foster Care, pg. 27 - February 4, 2004 (pdf - 1.4 Mb).*

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[27] Info provided by TX Dept of Family and Protective Services, A New Day in CPS, "Texas UNITES," January 23, 2004.

[28] Info provided by TX Dept of Family and Protective Services, A New Day in CPS, "Kinship Care," January 23, 2004.

[29] Info provided by TX Dept of Family and Protective Services, A New Day in CPS, "Kinship Care," January 23, 2004.

[30] Info provided by TX Dept of Family and Protective Services, A New Day in CPS, "Kinship Care," January 23, 2004.

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[33] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Licensing Authority." Austin, TX, January 23, 2004.

[34] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Licensing Authority." Austin, TX, January 23, 2004.

[35] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Licensing Authority." Austin, TX, January 23, 2004.

[36] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Minimum Standards." Austin, TX, January 23, 2004.

[37] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Minimum Standards." Austin, TX, January 23, 2004.

[38] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Minimum Standards." Austin, TX, January 23, 2004.

[39] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Child Care Licensing, Minimum Standards." Austin, TX, January 23, 2004.

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[41] TX Administrative Code, Title 40 Social Services and Assistance, Part 19 TX Dept of Family and Protective Services, Chapter 745 Licensing, Subchapter B Child Care and Other Operations That We Regulate, Rule §745.35, What is residential child care?

[42] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Contracting for Residential Child Care." Austin, TX, January 23, 2004.

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[47] TX Government Code Ann. §2155.144. This Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.

[48] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Contracting for Residential Child Care." Austin, TX, January 23, 2004.

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[51] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Advancing Residential Childcare Project, An Overview." Austin, TX, January 23, 2004.

[52] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Advancing Residential Childcare Project, An Overview." Austin, TX, January 23, 2004.

[53] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Advancing Residential Childcare Project, An Overview." Austin, TX, January 23, 2004.

[54] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care Staff Briefing. "Advancing Residential Childcare Project, The First Year." Austin, TX, January 23, 2004.

[55] Info provided by TX Dept of Family and Protective Services, House Select Committee on Child Welfare and Foster Care

Staff Briefing. "Advancing Residential Childcare Project, The First Year." Austin, TX, January 23, 2004. And *A Special Report on the TX Foster Care System,* Forgotten Children, "Raise the Bar on Quality," pg. 32-33. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.

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[57] Info provided by the TX Alliance of Child and Family Services, Barriers To Adoption, TX Child Welfare System, pg. 1. March 24, 2004.

[58] Info provided by the Dept of Family and Protective Services, Adoption Overview, A presentation to the House Select Committee on Child Welfare and Foster Care, pg. 15-22. March 24, 2004.

[59] Info provided by the TX Alliance of Child and Family Services, Barriers To Adoption, TX Child Welfare System, pg. 1. March 24, 2004.

[60] This testimony was provided by the Dept of Family and Protective Services, Adoption Overview, A presentation to the House Select Committee on Child Welfare and Foster Care, pg. 23. March 24, 2004, and from information provided by the Dept of Family and Protective Services, Briefing to Legislative Staff of Select Committee on Child Welfare and Foster Care, pg. 4, February 26, 2004.

[61] Info provided by the Dept of Family and Protective Services, Responses to Additional Questions from the Select Committee on Child Welfare and Foster Care, pg. 2. February 4, 2004.

[62] TX Dept of Family and Protective Services website, "TX Foster Care and Adoption," (http://www.tdprs.state.tx.us/adoption_and_foster_care/FAQ/faqtare.asp). *Frequently Asked Questions About TARE.*

[63] Info provided by the Dept of Family and Protective Services, Adoption Overview, A presentation to the House Select Committee on Child Welfare and Foster Care, pg. 7. March 24, 2004.

[64] TX Dept of Family and Protective Services website, "TX Foster Care and Adoption," (http://www.tdprs.state.tx.us/adoption_and_foster_care/FAQ/faqtare.asp). *Frequently Asked Questions About TARE.*

[65] This information was provided in testimony to the Committee on Child Welfare and Foster Care by One Church, One Child of TX, Inc. OCOC of TX. "Our History." March 24, 2004.

[66] This testimony is from information provided by The Texas Alliance of Child and Family Services. Barriers to Adoption, TX Child Welfare System. Provided to the Committee on Child Welfare and Foster Care, March 24, 2004.

[67] This information is from testimony provided by Laurie Glaze, Adopt2000 to the Committee on Child Welfare and Foster Care, March 24, 2004.

[68] Info provided by Spaulding for Children. Testimony provided by Todd Landry, President and CEO. March 24, 2004.

[69] Info provided by Spaulding for Children. Testimony provided by Todd Landry, President and CEO. March 24, 2004. Mr. Landry based this list on studies by Quintanilla & Mroz, 2002, Baca Zinn, 1982, and Williams 1990.

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[71] This information was provided by Lutheran Social Services of the South, Inc. Public Testimony - March 24, 2004, Minority Adoption. Testimony taken from Karalyn Heimlich and Irene Clements. March 24, 2004.

[72] This testimony was provided by Richard LaVallo, Advocacy, Incorporated. March 24, 2004.

[73] Points 1-4 provided by Madeline McClure, Chair of Advocacy, Prevent Child Abuse TX. March 24. 2004. McClure is citing research from McRoy & Oglesby, 1997.

[74] Points 5-11 provided by Scott McCown, Director of the Center for Public Policy Priorities. March 24, 2004.

[75] Point 12 provided by Gary Bledsoe, NAACP of Texas; Ann del Llano, ACLU of Texas; Lee Spiller, CCHR Texas; Nelson Linder, Austin NAACP; Peter Johnston, TX Center for Family Rights. March 24, 2004.

[76] Points 13-15 provided by Evy Kay Ritzen, Planning Director for Dallas' Target: Kids in Court and Transition Resource Action Center. March 24, 2004.

[77] Point 16 provided in written testimony by Reverend Jerome Milton, President and Chairman of the Board of One Church, One Child of East Texas, Inc. March 24, 2004.

[78] Point 17 was a common theme in public testimony. Irene Mason, Shelly Barnes of CCHR, and Tracy Harting all mentioned this point. March 24, 2004.

[79] Point 18 provided by Lauren DeWitt, R.Ph., Citizens Commission on Human Rights. March 24, 2004.

[80] Texas Family Code §262.201(f).

[81] This testimony was provided by the Dept of Family and Protective Services. Presentation to the Committee on Child Welfare and Foster Care. pgs. 1-28. June 2, 2004.

[82] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston was quoting Texas Comptroller Carole Keeton Strayhorn, Forgotten Children, April 2004, pg. XI.) June 2, 2004.

[83] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston referenced several state laws in section 151 of the Texas Family Code as well as various Supreme Court decisions). June 2, 2004.

[84] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston was referring to a study by Richard Wexler, Take the Children and Run: Tales from the Age

of ASFA. New England Law Review, 2001). June 2, 2004.
[85] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston was referring to a study by Richard Wexler, Take the Children and Run: Tales from the Age of ASFA. New England Law Review, 2001). June 2, 2004.
[86] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston was referring to information provided by the National Commission on Children). June 2, 2004.
[87] Info provided by Peter Johnston, Texas Center for Family Rights. The Best Interests of The Child and Parental-Directed Placement. (Peter Johnston was referring to information provided by the National Commission on Children). June 2, 2004.
[88] Testimony provided by Judge John Specia, 225th Judicial District Court in Bexar County. Testimony before the Committee on Child Welfare and Foster Care. June 2, 2004
[89] Testimony provided by Reverend Jerome Milton, President and Chairman of the Board of One Church, One Child of East Texas, Inc. Testimony before the Committee on Child Welfare and Foster Care. June 2, 2004.
[90] Info provided by Bruce Bower of the Texas Kincare Taskforce (TKT). The website "Grandparents Raising Grandkids" can be viewed at http://grandparentsraisinggrandkids.tamu.edu June 2, 2004.
[91] Info provided by Bruce Bower of the Texas Kincare Taskforce (TKT). This is a copy of the information contained in the TKT's brochure *Kincare Choices in Texas.* June 2, 2004.
[92] See HB 2059, 78th Regular Session. http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=02059&VERSION=1&TYPE=B
[93] Casey Family Programs website, "About Casey Family Programs," http://www.casey.org/AboutCasey/
[94] These points are from the Casey Family Programs website, "About Casey Family Programs, Our Goals and Values," http://www.casey.org/AboutCasey/Goals.htm
[95] Info provided by David Davies, Casey Family Programs, Austin Field Office. This info is from testimony to the Committee on Child Welfare and Foster Care. June 2, 2004.
[96] Info from the AARP website "State Fact Sheets for Grandparents and Other Relatives Raising Children," http://research.aarp.org/general/kinship_care.html
[97] Info from the AARP website "State Fact Sheets for Grandparents and Other Relatives Raising Children - Texas," http://research.aarp.org/general/kinship_care_2003_tx.pdf
[98] Testimony provided by Terri Zelasko, Texas Foster Family Association. Testimony to the Select Interim Committee on Child Welfare and Foster Care. pgs. 1-4 June 2, 2004.
[99] Info from the TX Foster Family Assn website "What is TFFA?," http://www.tffa.org/articles.asp?lv=0&id=25
[100] Info provided by Madeline McClure, TexProtects. Testimony to the Select Committee on Child Welfare and Foster Care - Enhancing Kinship Care in Texas. June 2, 2004. Madeline is referring to *Protecting Children from Abuse and Neglect: A Synopsis,* The Future of Children, 1998. The David and Lucile Packard Foundation.
[101] Info provided by Madeline McClure, TexProtects. Testimony to the Select Committee on Child Welfare and Foster Care - Enhancing Kinship Care in Texas. June 2, 2004. Madeline is referring to a 1997 study by Adams, Kissner, Leafgreen, LeMay and McClure, *Intra-familial child sexual abuse: the personal and societal problem, afteraffects, policy, theory, treatment and prevention.* Interactive Seminar, U.T.A. School of Social Work.
[102] Info provided by Madeline McClure, TexProtects. Testimony to the Select Committee on Child Welfare and Foster Care - Enhancing Kinship Care in Texas. June 2, 2004. Madeline is referring to *Children, Families, and Foster Care: A Synopsis,* The Future of Children, 2004. The David and Lucile Packard Foundation.
[103] Info provided by Madeline McClure, TexProtects. Testimony to the Select Committee on Child Welfare and Foster Care - Enhancing Kinship Care in Texas. June 2, 2004. Total Annual Cost of Child Abuse and Neglect in the United States: 2001 Statistical Justification Data, Prevent Child Abuse America Research Division.
[104] Info provided by Madeline McClure, TexProtects. Testimony to the Select Committee on Child Welfare and Foster Care - Enhancing Kinship Care in Texas. June 2, 2004. Madeline is referencing 2001 *Child Abuse Prevention Coalition Data.,* Injury Prevention Center of Greater Dallas.
[105] Info provided by Madeline McClure, TexProtects, 2003 Prevent Child Abuse America Research Department. 1995 Maternal and Child Health Branch Administration. Healthy Start Program. Hawaii Department of Health. Family Health Services Division. Honolulu, HI. Testimony provided June 2, 2004.
[106] 2003 Cost analysis of Child Abuse and Neglect in Texas and Dallas County based on Prevent Child Abuse America research department. Provided by Madeline McClure, TexProtects. June 2, 2004.
[107] 2003 Texans Care for Children, Children's Campaign. Child Welfare Committee. Info provided by Madeline McClure, TexProtects. June 2, 2004.
[108] Data derived from: HB1-Article II; PRS 2004-2005 Summary of Request, House Appropriations and Senate Finance Hearings; TDPRS 2002 Data Book; Center for Public Policy Priorities. Provided by Madeline McClure, TexProtects. June 2, 2004.
[109] PRS Agency Update, 2003. This info was provided by Madeline McClure, TexProtects. June 2, 2004.
[110] Center for Public Policy Priorities website, "Who We Are," http://www.cppp.org/who/index.html

[111] Scott McCown, Center for Public Policy Priorities, referring to a letter sent by DFPS to the Committee June 2, 2004.
[112] Scott McCown, Center for Public Policy Priorities, is referencing the DFPS 2003 Data Book. June 2, 2004.
[113] Scott McCown, Center for Public Policy Priorities, is referencing the CQ State Fact Finder 2004. June 2, 2004.
[114] Scott McCown, Center for Public Policy Priorities, is referencing the CQ State Fact Finder 2004. June 2, 2004.
[115] Scott McCown, Center for Public Policy Priorities, is referencing the DFPS 2003 Data Book. The number of children in poverty is from 2002, the most recent data from the Census Bureau. The number of calls to intake is an extrapolation from the DFPS 2003 Data Book. June 2, 2004.
[116] Testimony provided by Scott McCown, Center for Public Policy Priorities, Kinship Care in Texas, Policy Brief. June 2, 2004
[117] Info provided by Scott McCown, June 2, 2004. McCown is referring to a study by Fields, *Living Arrangements of Children* - 1996, Current Population Reports, U.S. Census Bureau pg. 9. April 2001.
[118] Testimony provided by Megan Ferland, Texas CASA, to the Committee on Child Welfare and Foster Care. June 2, 2004.
[119] Texas CASA website, "About Texas CASA, Fact Sheet" http://www.texascasa.org/factsheet.asp
[120] Texas CASA website, "About Texas CASA, Fact Sheet" http://www.texascasa.org/factsheet.asp
[121] Testimony provided by Megan Ferland, Texas CASA, to the Committee on Child Welfare and Foster Care. June 2, 2004.
[122] Info provided by Thomas Burton & Jim Shields, Justice for Children. Position Statement of Justice for Children on Issue of Kinship Care, May 25, 2004. Presented to the Committee on Child Welfare & Foster Care June 2, 2004.
[123] Info provided by Thomas Burton & Jim Shields, Justice for Children. Position Statement of Justice for Children on Issue of Kinship Care, May 25, 2004. Presented to the Committee on Child Welfare & Foster Care June 2, 2004.
[124] House Bill 1908 by Farrar, 78th legislature, http://www.capitol.state.tx.us/cgi-bin/db2www/tlo/billhist/billhist.d2w/report?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=01908
[125] Points 1-4 provided by Russell Verney, Judicial Watch, Inc. in a letter to the Committee on Child Welfare and Foster Care, June 7, 2004.
[126] Point 5 and sub-points a-h provided by Vicki Hansen, Executive Director of the National Association of Social Workers, Texas Chapter. Letter to the Committee on Child Welfare and Foster Care, June 4, 2004.
[127] Point 6 and sub-points a-f provided by Vicki Hansen, Executive Director of the National Association of Social Workers, Texas Chapter. Letter to the Committee on Child Welfare and Foster Care, June 4, 2004.
[128] Points 7-8 provided by Ernesto Gomez, Ph.D., Chief Executive Officer, El Centro Del Barrio. Letter to the Committee on Child Welfare and Foster Care, June 8, 2004.
[129] Point 9 provided by Vicki Grant, LMSW, in a letter to the Committee on Child Welfare and Foster Care June 12, 2004.
[130] Point 10 provided by Lee Spiller, Citizens Commission on Human Rights. Letter to Chairman Suzanna Hupp, June 23, 2004.
[131] Point 11 provided by Leslie Baldwin. Letter to Chairman Suzanna Hupp, July 3, 2004.
[132] Point 12 provided by Adoptions.com. www.adoptions.com/aeckinship.html
[133] Points 13-18 provided by Chris Branson, President, Family Rights Foundation. Testimony to the Committee on Child Welfare and Foster Care, June 2, 2004.
[134] Points 19-20 provided by Michael Basile, Founder of Congregation Networks. Testimony to the Committee on Child Welfare and Foster Care, June 2, 2004.
[135] These programs and all details contained therein were provided to the Committee on Child Welfare and Foster Care by Susan Russell-Smith, Standards Associate, Council on Accreditation (COA). "Working Paper, Re: Research supporting development of standards related to family building, family preservation, and prevention." September 15, 2004.
[136] All of this background information comes directly from the DFPS website "About Child Care Licensing," http://www.tdprs.state.tx.us/Child_Care/About_Child_Care_Licensing/default.asp
[137] Info provided by Diana Spiser, Assistant Commissioner, Department of Family and Protective Services. Testimony to the Committee on Child Welfare and Foster Care. August 4, 2004.
[138] Texas Administrative Code §745.35
[139] Info provided by Henry Darrington, Director of the Contract Management Division, Department of Family and Protective Services. Testimony to the Committee on Child Welfare and Foster Care. August 4, 2004.
[140] Info provided by Carole Keeton Strayhorn, Comptroller of Public Accounts. *Fiscal Notes,* May 2004. Pg. 3.
[141] Info provided by Carole Keeton Strayhorn, Comptroller of Public Accounts. *Fiscal Notes,* May 2004. Pg. 5
[142] Info provided by Carole Keeton Strayhorn, Comptroller of Public Accounts. *Fiscal Notes,* May 2004. Pg. 5
[143] Info provided by Ruth Ford, Texas Comptroller's Office. Testimony to the Committee on Child Welfare and Foster Care. August 4, 2004.
[144] This Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Chapter 4, *Licensing*, pg. 151. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.
[145] Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Chapter 4, *Licensing*, pg. 157. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004. This info comes from the DFPS Licensing Policies and

Procedures Handbook, Section 4400(B).
[146] This Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Chapter 4, *Licensing*, pg. 157. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.
[147] See the *Progress Report* to Forgotten Children. pgs. 11-13. July 2004.
[148] This Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Chapter 4, Contracts, pg. 163. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.
[149] This Info provided by *A Special Report on the TX Foster Care System,* Forgotten Children, Chapter 4, Contracts, pgs. 178-180. Carole Keeton Strayhorn, TX Comptroller, Austin, TX, April 2004.
[150] See the *Progress Report* to Forgotten Children. pgs. 14-15. July 2004.
[151] Info from the Citizens Commission on Human Rights website "What is CCHR," http://www.cchr.org/what/index.htm
[152] Info provided by Andrew Prough, Executive Director, Citizens Commission on Human Rights of Texas, in a letter to the Committee on Child Welfare and Foster Care on July 30, 2004.
[153] Testimony provided to the Committee on Child Welfare and Foster Care by Citizens Commission on Human Rights, August 4, 2004.
[154] Testimony provided by Bill Atwood, MBA, CFE, of the Citizens Commission on Human Rights, to the Committee on Child Welfare and Foster Care, August 4, 2004.
[155] This testimony was provided by Nancy Holman, Executive Director, Texas Alliance of Child and Family Services. Testimony on Residential Child Care Licensing, August 4, 2004.
[156] This testimony was provided by Nanci Gibbons, Executive Vice President, Chief Operating Officer for Baptist Child & Family Services in San Antonio. Testimony before the Committee on Child Welfare and Foster Care, August 4, 2004.
[157] Info provided by Nanci Gibbons, Executive Vice President, Chief Operating Officer for Baptist Child & Family Services in San Antonio. Testimony before the Committee on Child Welfare and Foster Care, August 4, 2004.
[158] Testimony provided by Monica Thyssen, Advocacy, Inc. to the Committee on Child Welfare & Foster Care, August 4, 2004.
[159] Points 1-2 provided by Bebe Gains, Woodside Trails, Inc. Testimony to the Committee on Child Welfare and Foster Care, August 4, 2004.
[160] Points 3-6 provided by Dr. Saundra Gilfillan, Catholic Charities. Testimony to the Committee on Child Welfare and Foster Care, August 4, 2004.
[161] Point 7 and sub points a-e provided by Dr. Naomi Holman, former professor of Educational Administration, SWTSU, and a volunteer at a therapeutic camp. Testimony to the Committee on Child Welfare and Foster Care, August 4, 2004.
[162] Points 8-10 provided by Rev. Dr. Steven DeAlmeida, Director and Senior Minister of Caring Together. Written testimony provided to the Committee on Child Welfare and Foster Care, August 31, 2004.
[163] Point 11 provided by Colleen Horton, Texas Center for Disability Studies at the University of Texas at Austin. Written testimony to the Committee on Child Welfare and Foster Care, August 4, 2004.
[164] Points 12-22 and the sub-points contained therein were provided by Travis Pearson, Pathways Youth and Family Services in written recommendations to the Committee on Child Welfare and Foster Care, September 4, 2004.
[165] Info provided by Judge Carole Clark, 321st Judicial District, in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[166] This testimony regarding national best practices and trends in child welfare and foster care was provided by Charlotte McCullough to the Committee on Child Welfare and Foster Care, August 5, 2004.
[167] Info provided by Charlotte McCullough in Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Charlotte noted that there have been three national efforts to track and describe the various child welfare managed care or privatization initiatives across the county. The CWLA Tracking Project collected, analyzed, and reported national data from 1996-2001, describing various child welfare management, finance, and delivery changes. In 1998, the GAO completed a managed care in child welfare survey of state child welfare directors and 43 local directors and visited four sites. Georgetown University conducted the third study of child welfare managed care efforts as part of a broader 5-year Health Care Reform Tracking Project (HCRTP), funded by the Center for Mental Health Services (CMHS). The last HCRTP child welfare survey occurred in 2000. In addition, the Children's Rights Organization conducted a study of six sites, using different risk based arrangements. See Freundlich, M. and Gerstenzang, S. (2003). An Assessment of the Privatization of Child Welfare Services. Washington DC: CWLA Press can be ordered by email at books@cwla.org. This testimony also draws from a published CWLA monograph: McCullough, C. (2003). Financing & Contracting Practices in Child Welfare Initiatives & Medicaid Managed Care: Similarities and Differences. CWLA: Washington, DC. Funded by the Center for Health Care Strategies.
[168] Info provided by Richard Klarberg, President and CEO of the Council on Accreditation. Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[169] Info provided by Nancy Holman, Executive Director, Texas Alliance of Child and Family Services. Testimony on Recommendations on Restructuring the Texas Child Welfare System, August 5, 2004.
[170] This presentation was provided by Diana Spiser, Assistant Commissioner of Child Care Licensing, and Joyce James, Assistant Commissioner of Child Protective Services at DFPS. Best Practices & Innovations in Texas Residential Child Care. Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.

[171] This information was provided by the Dept of Family And Protective Services in response to questions posed by the Committee on Child Welfare and Foster Care on August 4, 2004. This information was provided to the Committee on September 27, 2004.
[172] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing a study titled *Turnover in Child Welfare, Children's Services Practice Notes*, North Carolina Division of Social Services, Jordan Institute for Families and School of Social Work at the University of North Carolina at Chapel Hill. June, 1999.
[173] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing testimony from (2002) Fields, Mary-Interim Deputy Director of Finance, TDPRS Data re: cost and staff projections.
[174] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing a study titled *Turnover in Child Welfare, Children's Services Practice Notes*, North Carolina Division of Social Services, Jordan Institute for Families and School of Social Work at the University of North Carolina at Chapel Hill. June, 1999.
[175] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing the DFPS 2003 Data Book. (2004) Child Fatality Review Team, Dallas Children's Advocacy Center.
[176] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing (2003) Prevent Child Abuse America Research Department: Per child calculation data extrapolation available upon request. (1997) Missouri Children's Trust Fund. The Economic Costs of Shaken Baby Syndrome Survivors in Missouri. Jefferson City, MO (1995). Maternal and Child Health Branch Administration. Healthy Start Program. Hawaii Department of Health. Family Health Services Division. Honolulu, HI. (2004) Prevent Child Abuse Texas Data on Healthy Families cost per family.
[177] Info provided by Madeline McClure, Director of TexProtects in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004. Madeline is referencing the (2003) Cost analysis of Child Abuse and Neglect in Texas and Dallas County based on Prevent Child Abuse America research department.
[178] Submitted by Jess McDonald, former Director, Illinois Department of Children and Family Services (DCFS) to the Committee on Child Welfare and Foster Care July 27, 2004.
[179] Submitted by Bob Hartman, Executive Vice President and Chief Operating Officer, DePelchin's Children Center in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[180] Points 1-4 and the sub-points contained therein were provided by Lutheran Social Services of the South, Inc. Written Testimony provided to the Committee on Child Welfare and Foster Care, August 5, 2004.
[181] Point 5 provided by David Reed, Customer Centered Consulting Group, Inc. Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[182] Points 6-8 provided by Susan Craven, Executive Director, Texans Care for Children in testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[183] Points 9-10 and the sub-points contained therein were provided by Vicki Hansen, LMSW-AP, Executive Director, National Association of Social Workers, Texas Chapter. Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[184] Points 11-15 provided by Mike Foster, Director of Development, Caring Family Network. Testimony to the Committee on Child Welfare and Foster Care, August 5, 2004.
[185] Points 1-10 provided by David Reilly, Chief Juvenile Probation Officer, Bexar County. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[186] Point 11 and sub-points a-c provided by Judge Alfredo Chavez, 65th Family District Court in El Paso. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[187] Point 12 provided by Christopher Boyle, Texas State Employee's Union. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[188] Points 13-14 provided by C.L. Hammond, Superintendent of Mullin I.S.D. These points came from concerned citizens in the Mullin School District. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[189] Points 15-19 provided by Moe Dozier and Sally Carmen, DFPS Psychotropic Medications Advisory Committee. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[190] Points 20-22 provided by Richard LaVallo, Advocacy, Incorporated. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[191] Points 23-24 provided by Nancy Holman, Texas Alliance of Child & Family Services, "Psychotropic Medication Fact Sheet." Provided to the Committee on Child Welfare and Foster Care, October 4, 2004.
[192] Points 25-26 provided by Dr. John Breeding, Texans For Safe Education. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[193] Points 27-29 provided by Lee Spiller and Andy Prough, Citizens Commission on Human Rights. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.

[194] Points 30-31 provided by Dr. Joe Burkett, Texas Society of Psychiatric Physicians. Testimony to the Committee on Child Welfare and Foster Care, October 4, 2004.
[195] Sub-points a-b provided by Bree Buchanan, President, Central Texas Association of Counsel for Children (CTACC). September 22, 2004.