



Review of
**CHILD
PROTECTION
POLICY**
and the 2017
Legislative Session



An excerpt
from our report
***Texas Children
and the 2017
Legislative Session***

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REVIEW OF CHILD PROTECTION POLICY AND THE 2017 LEGISLATIVE SESSION

Starting last year and continuing through the legislative session, state leaders broadly agreed that strengthening Child Protective Services (CPS) was a top priority for this Legislature. In many ways, legislators came through, although much more work remains. The most important step the Legislature took was increasing CPS funding by over \$500 million to address several needs, including stabilizing the workforce and boosting reimbursement rates for foster care providers. Legislators also filed a slew of bills, keeping our staff busy analyzing the proposals and working with lawmakers to address problematic provisions and make other improvements to the legislation. The good news is some helpful legislation passed. On the other hand, a number of bills that drew substantial opposition either passed or got close to the finish line even though they were not in the best interest of Texas kids.

The Legislature took a significant step forward in **stabilizing the CPS workforce** and protecting children by adding \$293 million (in "All Funds") to maintain 829 new caseworker positions and a salary increase of \$12,000 per year for caseworkers that went into effect in December 2016. During the legislative session, another \$88 million was added to support 598 additional caseworker positions by fiscal year 2019. The latest statistics show that the investment is already paying off for kids. With caseworker turnover and caseloads declining, endangered kids aren't waiting as long for caseworkers to check on them.

A provision of SB 11 aims to support a stable, effective workforce by creating an office of data analytics to monitor, analyze, and evaluate

workforce trends. Legislators further addressed concerns about the workforce by passing HB 1549, which included secondary trauma support for caseworkers and directives to improve caseload management.

HB 1549 also included several reforms to help the state strategically expand **Prevention and Early Intervention** (PEI) services and reduce child fatalities. Additionally, the Legislature increased funding for PEI by nearly \$9 million, including \$5 million for Nurse Family Partnership.

These were the main ways that the Legislature worked to improve prevention and investigation of reported neglect and abuse. Most other efforts were focused on what happens after CPS concludes that a child is at risk.

In passing HB 7, legislators sought to improve the process for handling **CPS cases when they go to court**. The bill requires the state to determine the most appropriate jury instructions to use in CPS cases and the process for a new trial and appeal in these cases. It expands the role of the court in finding kinship homes and in the family reunification process. HB 7 also expands the roles of attorneys ad litem and guardians ad litem throughout a given case.

Legislators passed HB 4, giving children a better chance of moving in with a grandparent or other relative rather than going into the foster care system if they are removed from their parents. The bill increases **support for kinship providers** who are at or below 300 percent of the Federal Poverty Level (FPL). Prior to this legislation, those kinship providers received a one-time, upfront

payment of \$1000 for the first child they took in and \$495 for each subsequent child. After a year, the caregiver could be reimbursed up to \$500 per child. Now kinship caregivers will receive 50 percent of the foster care "basic daily rate" per child, which is about \$350 per month per child. The bill limits reimbursement to one year with a discretionary extension up to 18 months. The Legislature invested \$32.5 million in All Funds to support this change.

This bill also creates a new crime of caregiver assistance fraud. This crime targets poor family members trying to provide a home for children in foster care. A mistake in reporting income could lead to arrest. Because many of the caregivers receiving this assistance have low incomes, they will be less likely to make bail or post bond. As a result, an arrest would likely disrupt a child's placement. We worked with the Legislature to improve this provision, adding an income verification process on the front end in order to prevent arrests that result from clerical errors.

We also worked to adjust the criminal penalty so that caregivers will not face overly punitive sentences. This change should help reduce the likelihood that this new crime will deter potential caregivers from taking in a young relative in need of a safe home.

For those children who do enter foster care, lawmakers made progress on addressing the **shortage of foster care homes and services**, often referred to as the foster care "capacity" challenge. The Legislature invested \$95 million in All Funds (including \$28 million in state General Revenue) to increase payments to agencies that provide homes and treatment services for children in foster care, a key step towards ending the shortage. The added funding is for community-based foster care regions as well as regions served by the "legacy" or traditional foster care system run by the state.

To further address the capacity challenge, the budget and SB 11 support the **expansion of**



community-based foster care. Formerly known as "Foster Care Redesign," the model has been successfully piloted in the Fort Worth region using a private non-profit "super contractor" to provide placement services. The budget calls for extending this model into three new regions while SB 11 sets forth the policy guidelines for the expansion and adds case management to the responsibilities of the non-profit super contractors. We successfully worked with legislators to require DFPS to give preference to local community organizations when selecting the super contractor for a given region.

SB 11 included other reforms to increase the availability of homes and services in the foster care system across the state. For example, it directs CPS to conduct a young adult caregiver recruitment study and develop a plan for addressing the placement and support needs of foster youth in regions still managed by CPS in the legacy system.

Legislators also worked to address the **health needs of children in foster care**, passing similar provisions in SB 11 and HB 7. The Department of Family and Protective Services (DFPS, the parent agency to CPS) is now required to notify the STAR Health Managed Care Organization (MCO) if a foster child's placement changes, and the MCO must notify the child's primary care physician and any specialists working with the child. Following a placement change, physicians are required to coordinate the transition of care.

Under SB 11, Texas will now assess penalties against Child Placing Agencies (CPA) and MCOs if children in foster care do not receive health screenings in a timely fashion. In community-based foster care regions, the Child and Adolescent Needs and Strengths (CANS) assessment will be conducted every 90 days for children with higher levels of need to ensure the care they are receiving leads to better outcomes.



However, not all the health care changes were positive. According to the American Academy of Pediatrics (AAP), each child who enters care should be screened by a physician within 72 hours and receive a comprehensive evaluation within 30 days after the screening. This 72-hour screening allows physicians to determine whether a child has a complex medical need or mental illness when medical records may not be available. One iteration of SB 11 required a screening within three business days, but unfortunately legislators later amended the bill to instead direct caseworkers – who do not have medical training – to triage medical needs of children and determine whether a child needs a screening by a medical professional within the three-day window. Further, although immunizations are an important health protection for children, legislators amended the bill to prohibit children from receiving vaccines – other than for tetanus or with parental consent – during that initial medical visit.

We also worked with legislators to successfully pass two bills to address **youth involved with both the juvenile justice and child welfare systems**. HB 1521 will enhance coordination and information sharing between the two systems to improve services for youth. HB 932 begins data collection and reporting of how many youth are affected by both systems. If CPS caseworkers and juvenile probation officials don't realize they are both trying to support the same youth, they can end up connecting the youth with duplicative or conflicting services. For example, providing a youth with two different, uncoordinated trauma counseling services is not only wasteful but it also could undermine services designed to help the youth. Improving coordination and data sharing will give youth involved in both the CPS and juvenile justice systems a better chance of succeeding and eliminate wasteful inefficiencies.

For youth who **age out of foster care**, the Legislature passed HB 1758, which will help youth obtain government-issued identification and other critical personal documents at age 18. The bill also starts Preparation for Adult Living (PAL) classes at the earlier age of 14 and directs CPS to work with stakeholders to improve the PAL curriculum so youth aging out of foster care are more prepared to succeed on their own. The Legislature invested an additional \$1 million in General Revenue to further improve the PAL program. Additionally, the Legislature passed SB 1220 to provide current and former foster youth the educational support they need to change schools; access job training and career resources from the Texas Workforce Commission; and learn about higher education opportunities, including tuition and fee waivers available to current and former foster youth.

The Legislature made significant **administrative changes to DFPS**. SB 11, HB 249, and HB 5 improve oversight of homes serving children in foster care. HB 5 makes DFPS a stand-alone agency detached from the Health and Human Services Commission (HHSC).

Legislators filed a number of child welfare **bills that raised concerns**. Some of them were aimed at addressing the shortage of foster care homes and services but could ultimately interfere with the best interests of children. Two of them passed. HB 3859 allows faith-based foster care providers receiving state funds to turn away prospective foster families based on religious preferences and deny needed services to children. HB 1542 may steer more young foster children to group "cottage homes" rather than foster families. Cottage homes are a collection of housing units on a single campus. Each holds about 8 to 15 children with rotating "house parents."

Other bills would have made it harder to **remove children from dangerous homes** even though Texas is already better than most states at keeping children with their parents when it can be done safely. The main bills on this subject failed to pass.

The Legislature did make a few small benign changes to removals. HB 7 makes slight adjustments to the standard for non-emergency removals. It also confirms that a child cannot be removed simply because the parents homeschool the child, are economically disadvantaged, are charged with a non-violent misdemeanor, provide the child with medically prescribed marijuana, or choose to not immunize the child.

Although the Legislature accomplished a great deal, there is still **much more work to do**. Some of the next steps will become more clear when the federal court finishes reviewing years of evidence and testimony and issues its final ruling in the lawsuit against the state foster care system.

In many cases, the Legislature failed to pass bills that were filed to address concerns raised by the federal court. For example, the Legislature did not pass any bills aimed at finding emergency placements for children who are stuck sleeping in CPS offices. Some of the efforts this session will ultimately lead to better placement options for these children, but not for several years. Legislators tried to require children to have legal representation for the duration of their time in care, but the measure came up short this session. Lawmakers also attempted to ensure that health care for foster kids is consistent with the guidelines from the AAP, but the bill did not pass.

Similarly, the big funding hike provided by the Legislature only covered about half of the increase that CPS said was necessary to keep

kids safe. In fact, because past Legislatures underfunded CPS so severely, the additional appropriation this session still leaves the state far below the national average for per capita child welfare funding.

With so much on the Legislature's plate this session, other needed improvements recommended by the federal court didn't even make it onto the agenda. Examples include improving the CPS data system and ensuring children in foster care get to meet with their main advocates — caseworkers — at least once each month.

The Legislature deserves credit for making significant progress this session, but the state's troubled foster care system will not get fixed overnight. There will be more work to do in the interim and during the next legislative session to ensure more kids can stay safely at home with their families and ensure that children who do enter the CPS system receive the attention and support they need to succeed. ■



OUTCOMES OF KEY CHILD PROTECTION LEGISLATION

PASSED

Support Children

HB 4 by Rep. Burkett	The bill provides better support to kinship caregivers.
HB 7 by Rep. Wu	The bill improves the process and procedures for handling CPS court cases.
HB 249 by Rep. Hernandez	The bill consolidates investigations of abuse and neglect in licensed child care facilities into CPS.
HB 932 by Rep. J. Johnson Similar bill: SB 796 Sen. West	The bill requires improved data collection and information sharing for youth involved in both the juvenile justice and child welfare systems and directs TJJD and DFPS to develop reports on youth involved in both systems.
HB 1521 by Rep. White Similar bill: SB 1857 by Sen. Whitmire	The bill requires improved information sharing between DFPS and juvenile probation in order to better serve youth in both systems and improve efficiency in both systems.
HB 1549 by Rep. Burkett	The bill takes steps toward the prevention of child abuse and child fatality, the preservation of families, and improvements to the CPS workforce.
HB 1556 by Rep. González Similar bill: SB 1881 by Sen. Menéndez	The bill allows foster parents to be involved in special education decisions earlier in the process.
HB 2361 by Rep. Frank Passed as amendment to HB 7	The bill requires a study regarding the appointment and use of attorneys ad litem in CPS cases.
HB 3561 by Rep. Klick Passed as amendment to SB 11 Passed as amendment to SB 1758	The bill makes it easier for foster children, homeless children, and unaccompanied children to obtain government-issued identification and other critical personal documents.
SB 11 by Sen. Schwertner Similar bill: HB 6 by Rep. Frank	The bill expands community-based foster care in a deliberate way and takes other steps to improve child protection.

Support Children (continued)

SB 203 by Sen. West

Similar bill: HB 511 by Rep. S. Davis

The bill repeals the sunset provision for permanency care agreements, allowing kinship providers to continue receiving support after they agree to provide a permanent home to children who cannot be reunited with their parents.

SB 1220 by Sen. Miles

Similar bill: HB 1640 by Rep. Vo

The bill improves continuity of education and access to higher education, career information, and skills certification for current or former foster youth.

SB 1758 by Sen. Zaffirini

Similar bill: HB 4168 by Rep. Turner

The bill provides better support for youth who age out of foster care.

Impact Children

HB 5 by Rep. Frank

The bill makes DPFS a standalone agency, divorced from the HHSC enterprise.

SB 1208 by Sen. Schwertner

Passed as amendment to HB 7

The bill creates more flexibility in child care licensing.

Raise Concerns

HB 1542 by Rep. Price

Similar bill: SB 907 by Sen. Birdwell

The bill steers more children to cottage homes instead of foster families.

HB 3859 by Rep. Frank

Similar bill: SB 892 by Sen. Perry

The bill puts the religious rights of foster care providers ahead of protecting the best interest of children.

DID NOT PASS

Support Children

HB 2330 by Rep. Dukes

The bill would have provided better support for foster children who are pregnant or minor parents.

HB 2335 by Rep. Miller

The bill would have required trauma training for certain attorneys, court-appointed volunteer advocates, child-care workers, and CPS employees.

Impact Children

HB 39 by Rep. Wu

The bill would have closed service gaps in child welfare, increased resources to those involved in the system, and made case management more efficient.

HB 634 by Rep. González SB 429 by Sen. Rodríguez

The bills would have raised minimum education requirements for CPS caseworkers.

Raise Concerns

HB 205 by Rep. Keough

The bill would have made it harder for a court to order services that could help preserve a family.

HB 1620 by Rep. Sanford

The bill would have allowed unpaid, untrained volunteers to temporarily house youth with high needs in "fostels."

HB 1899 by Rep. Sanford SB 816 by Sen. Campbell

The bills would have directed courts to give deference to the expressed wishes of the parent instead of considering the best interest of a child in CPS and other family law cases.

HB 2205 by Rep. Keumpel

The bill would have required all CPS calls made by school employees to also be made to law enforcement.

HB 3297 by Rep. Burrows

The bill would have increased the burden of proof for removals to clear and convincing evidence.

SB 1018 by Sen. Hughes HB 2225 by Rep. Raney

The bills would have carved out exceptions to the Family Code to allow DFPS to license immigrant family detention centers operated by ICE.