

Texas Budget Priorities that Will Keep Kids Safe and Families Together

Testimony to the Legislative Budget Board and Office of the Governor on the Department of Family and Protective Services 2022-2023 Legislative Appropriations Request

For Texas kids, the state budget will arguably be the most important bill that lawmakers work on during the upcoming Texas legislative session. **State leaders will need to make the right call on the million-dollar decisions about individual programs — and the billion-dollar decisions about their approach to the budgeting process in the midst of global pandemic and the state's revenue shortfall.** Given the challenges Texas already faced before COVID-19 struck — and the fact that the pandemic has exacerbated the uninsured rate, mental health challenges, child abuse risks, stress on parents and teachers, and families' economic hardship — it is critical that state leaders and advocates go into the next session aiming to fully fund state services for children and families.

We appreciate that DFPS' budget request includes a placeholder for critical funding to prepare for implementation of the 2018 Family First Prevention Services Act. We are glad to see requests for increased funding so Texas can effectively respond to federal court orders; and increased funding for Prevention and Early Intervention (PEI) programs -- a much-needed investment to prevent child abuse risks and help Texas parents during the pandemic.

The 2018 Family First Prevention Services Act (FFPSA)

Recommendation: We appreciate that DFPS' budget request includes a placeholder for needed funding to prepare for implementation of the 2018 Family First Prevention Services Act. Below are budget considerations as the Legislature works with DFPS to determine how much funding is needed to implement FFPSA effectively.

The agency defers to the Legislature for direction on how to address what is arguably the biggest child protection issue facing the state next year. The FFPSA restructured how the federal government finances state child welfare systems by prioritizing prevention and higher-quality foster care providers. The FFPSA, which takes effect on

October 1 2021, must be a priority for the Texas Legislature during the upcoming session. *The following includes background on FFPSA and budget considerations for legislators.*

Background on Prevention

One of the primary goals of the FFPSA is to reduce the number of children entering foster care by creating new federal funding opportunities to help states address unmet mental health and substance use disorder treatment needs of children and their caregivers.

Many parents do not receive mental health or substance use services in Texas that could prevent the need for CPS involvement. In fact, [parental substance use contributes to most removals](#) in Texas. And some Black and Hispanic moms in Texas [fear seeking treatment for mental health or substance use disorders](#) because they want to avoid CPS involvement. Similarly, each year, [over 550,000 Texas children and adolescents experience severe mental health needs](#), but many do not receive mental health services until they enter foster care, and some children enter foster care for reasons related to unmet behavioral health needs.

The FFPSA could potentially help Texas expand access to these services and keep more children safe with their families instead of being removed and placed in foster care. Eligibility for FFPSA-funded prevention is tied to the state's definition of "foster care candidacy." The new [DFPS Strategic Plan](#) for the FFPSA recommends a slight expansion of the existing candidacy definition, but the state's proposed definition requires a family to be or have been actively involved with CPS to receive FFPSA-funded prevention services. Keeping the definition narrow cuts off Texas' ability to use FFPSA funding to provide mental health and substance use services to certain populations who would clearly benefit. DFPS mentions in their recently released Strategic Plan that they meet with HHSC monthly "to discuss Behavioral Health Services needs and capacity," but they do not discuss any specific strategies for using new FFPSA funding to increase behavioral health service capacity or address the unmet needs of Texans.

DFPS's FFPSA plan is a great start, but we believe it is important to build on the plan and address areas that need additional attention, such as further expanding the candidacy definitions or finding other strategies to increase behavioral health service capacity. Notably, however, if Texas expands the definition of children who are "candidates for foster care" to provide more families with FFPSA prevention services, it will be important to ensure that the policy does not unintentionally draw more Black children deeper into the CPS system. Research has shown that at different stages of the Texas CPS system, caseworkers, judges, and other decision-makers appeared to accept higher levels of risk for White children compared to Black children in the same income bracket when making decisions, such as whether to remove a child from their home or offer family preservation services.

Background on High Quality Foster Care

When the FFPSA takes effect, Texas is projected to lose substantial federal funding – \$52 million per biennium – for foster care for two main reasons: (1) none of the state’s foster care providers meet the heightened federal quality standards for facilities that care for children with significant mental health needs, and (2) the FFPSA requires ongoing court review and approval of placement in facilities that meet the new standards, which Texas would not currently comply with. Historically, all types of foster care providers could be eligible for federal reimbursement. Under FFPSA, states will only receive federal reimbursement for foster care facilities that meet a heightened set of standards and are subject to additional oversight (with a few other exceptions for highly specialized placements).

Improving standards and oversight for foster care facilities would not only help avoid the loss of federal funding, but would take an important step towards ensuring the children are safe when they are placed in congregate care foster care facilities.

Budget Considerations

To prevent children from entering foster care by keeping them safely with their families, legislators should ask DFPS and other state agencies for a more thorough analysis of whether to include the following populations or programs in the state’s definition of foster care candidacy or for alternative strategies to meet the needs of these populations:

- **Soon-to-be first-time mothers with substance use disorders.** Although substance use treatment services during pregnancy would benefit mother and baby (and prevent adverse health effects), the state’s current and proposed definition of foster care candidacy cuts off this new source of federal funding that could be used for substance use and other prevention services for this population. These women would only be eligible to receive FFPSA-funded substance use services after their child is born and a referral to CPS is made. Instead, foster care candidacy criteria could include pregnant women with substance use disorders so they may be eligible for FFPSA-funded prevention services.
- **New parents with maternal mental health challenges.** Maternal mental health challenges, which may arise during pregnancy and the postpartum year, can have devastating effects on women and children if untreated. Parents [may be less likely to implement injury prevention measures](#), such as putting their baby on her back to sleep. Children of mothers with untreated maternal mental health challenges and related conditions are at [increased risk of child abuse or neglect](#).
- **Youth in the juvenile justice system.** [Seventy percent of youth in the juvenile justice system have serious mental health disorders](#). Many children in the juvenile justice system also enter the foster care system

because their parents refuse to accept parental responsibility once the child becomes justice-involved. Utah, Nebraska, Maryland, and Washington have an approved FFPSA plan that [includes youth in the juvenile justice system in their foster care candidacy definition](#). Kansas, Virginia, Ohio, and Colorado plan to use FFPSA funding for some services provided to youth and families in their juvenile justice systems. If the existing narrow definition remains in place in Texas, these children would have to be designated as a foster care candidate through CPS for them to receive services funded through the FFPSA.

- **Children and youth in the Children's Mental Health Residential Treatment Center Relinquishment Avoidance Project.** This project at the Texas Health and Human Services Commission (HHSC) was intended to prevent children from being legally removed from their families to receive needed mental health services, which is exactly aligned with the goals of the FFPSA. Families are often referred to this project when parents or caregivers cannot access needed mental health services on their own. FFPSA could help fund mental health services for these children. However, this program is not offered through CPS, and these children are not included in the proposed foster care candidacy definition.
- **All families eligible for Helping through Intervention and Prevention (HIP), including:**
 - **Pregnant and parenting young adults who were formerly in foster care** (youth and young adults currently in foster care are included in DFPS' proposed expanded candidacy definition);
 - **Parents who have a new child and previously had their rights terminated for another child; and**
 - **Parents who have a new child after having a child die of maltreatment.**
- **Children of incarcerated parents.** Nationwide, eleven percent of children of incarcerated parents are in foster care. A [2019 study of the Harris County Jail](#) highlighted the need for expanded access to mental health, substance use, and parenting services to better serve children whose parents are incarcerated.

To mitigate the projected loss of \$52 million in federal funding for foster care and better serve children with complex needs, the Legislature should take the following actions:

- **Extend Eligibility for Treatment Foster Family Care.** CPS began the Treatment Foster Family Care program to increase capacity in the foster care system and reduce the number of children under the age of 10 in Residential Treatment Centers (RTCs), a type of congregate care that serves children with significant behavioral health needs. Expanding eligibility for this program to kids of all ages would support DFPS' primary FFPSA strategy of reducing reliance on congregate care altogether.
- **Allow providers to offer post discharge planning and after care services.** The state needs clear long-term strategies to elevate the quality of care provided in RTCs. Although no providers in Texas currently meet all the FFPSA standards, some RTCs are very close and have indicated that they would meet all the new federal requirements if they were allowed to offer discharge planning and after care services (a function

currently performed by CPS). This was not discussed in the DFPS report, but making this change could help protect some federal funding.

- **Strengthen court oversight for all kids who enter congregate care.** To draw down federal funding for foster care under the FFPSA, not only must congregate care providers meet heightened quality standards, but the courts must review and approve placements in foster care facilities that meet the new standards – an added layer of oversight intended to assure that children in congregate care are only there if they need to be and they are receiving the type of care they need to heal and thrive. Although the FFPSA only requires this additional oversight for higher quality providers, the Legislature should amend the Texas Family Code so all children in congregate care settings can benefit from heightened court oversight. As shown in the recent hearings in the federal lawsuit, many safety concerns go unaddressed in congregate care settings, especially for children in long-term foster care who have less frequent court oversight of their placement. Enhanced court oversight would not only remove barriers to receiving federal funding for foster care, but – most importantly – may keep children in foster care safer. The DFPS Strategic Plan indicated that there may be a cost associated with these changes because it could add to the workload for caseworkers. However, reducing any inappropriate or concerning use of congregate care through better oversight may lessen costs over time as family-based settings are often more affordable for the state and better for kids.

Other Important Budget Issues for Child Protection

Recommendation: Support DFPS' request for funds to effectively respond to federal court orders

To stop child fatalities and abuse within the foster care system and respond to federal court orders, the **DFPS LAR** seeks a small funding boost and the **HHSC LAR** includes an Exceptional Item request for additional funding at Child Care Licensing (CCL). We support those requests, but additional funding and policy changes will be needed to fully address the challenges in the state's foster care system.

Recommendation: Support DFPS' funding request to support evidence-based programs that prevent child abuse/neglect

We are pleased to see the **DFPS LAR** includes an additional \$10 million to prevent child abuse and neglect. Preventing abuse and neglect in the first place can reduce the burden on the child protection system and further the important goal of keeping more children safe with their families.