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STRENGTHENING THE VOICES OF CASA STATEWIDE

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# Ensure the Foster Care System Meets Each Child's Needs in the Most Family-Like Setting

Support SB 1575 by Chair Kolkhorst/HB 4476 by Chair Oliverson

SB 1575/HB 4476 will improve foster care placements for kids with high needs. The primary goal of this bill is to strengthen advocacy for children in foster care with behavioral challenges. The bill requires caseworkers, other child advocates, and the courts to thoroughly evaluate children's treatment needs and monitor whether the treatment a child is receiving is effectively meeting their needs. This goal is consistent with new requirements passed as part of the 2018 Family First Prevention Services Act (FFPSA).

FFPSA aims to increase the quality of foster care across the country, especially for children with significant mental health challenges or other special needs. FFPSA requires the whole system to do a better job for kids. It raises the standards for foster care providers that the federal government will continue to reimburse. It also requires child protection agencies and courts to evaluate each child's needs better. This bill will help Texas serve children better by bringing Texas in compliance with the agency and court requirements of FFPSA.

Under FFPSA, the agency and court evaluation requirements only apply to children placed in Qualified Residential Treatment Programs (QRTPs) that serve children with significant behavioral health challenges. Texas has zero QRTPs. Children with behavior challenges receive treatment through our state's Residential Treatment Centers (RTCs). SB 1575/HB 4476 expands the agency and court evaluation requirements to children in RTCs, so all children with mental health challenges may benefit from the extra care and attention required by the FFPSA.

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Texans Care for Children is a statewide, non-profit, non-partisan, multi-issue children's policy organization. We drive policy change to improve the lives of Texas children today for a stronger Texas tomorrow. We envision a Texas in which all children grow up to be healthy, safe, successful, and on a path to fulfill their promise.

## **This bill reduces unnecessary placement in RTCs and helps children get to more family-like placements sooner**

SB 1575/HB 4476 requires courts to examine new evidence relevant to whether placement in an RTC will be effective, appropriate, and, ultimately, in each child's best interest. These changes should encourage caseworkers and child advocates to take extra care to only place children in an RTC when necessary and to put extra energy toward ensuring each child has their needs met in the least restrictive setting that will help them heal, thrive, and have the best chance of finding a stable, permanent home.

According to research from the Annie E Casey Foundation:

Congregate care placements cost child welfare systems three to five times the amount of family-based placements – and they are not nearly as effective at helping youths to find permanent homes before aging out. Reducing reliance on congregate care has benefits for children and families, but reforming congregate care can have tertiary benefits that provoke an agency to change their approach entirely.<sup>1</sup>

This bill would require the agency to present evidence that placement in an RTC is necessary to meet the child's needs and address their treatment goals. Although the newly required assessment and review would take place after placement in an RTC, these changes will likely reduce the number of placements in RTCs unless the child cannot achieve healing outside of an RTC environment. They will also ensure that the goal of placement at an RTC is to help address challenging behaviors caused by trauma so the child can be successful in a family-like setting, rather than just placing a child in an RTC because there is not another placement available. If caseworkers anticipate having to present evidence of the need for placement in an RTC in court, they are more likely to thoroughly evaluate the need for placement in an RTC before moving the child into the RTC in the first place.

The bill will help assure that children in foster care will not languish in RTCs, which are meant to be short-term placements that offer intensive treatment. The ongoing review and increased focus on this population will help child advocates and judges better evaluate if an RTC is meeting the needs of an individual child and could help ensure that children and youth are stepping down into a more family-like setting sooner, once their treatment needs are sufficiently addressed.

## **This bill removes barriers to FFPSA compliance**

SB 1575/HB 4476 brings the state into compliance with the agency and court requirements for FFPSA implementation. The FFPSA restructures how the federal government finances state child welfare systems by prioritizing prevention services and higher-quality foster care providers. When the FFPSA takes effect in October

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<sup>1</sup> Annie E. Casey Foundation, *Rightsizing Congregate Care*, available at <https://www.aecf.org/resources/rightsizing-congregate-care/> (Jan. 1, 2009).

2021, Texas is projected to lose substantial federal funding for foster care – \$47 million per biennium – for two main reasons:

- None of the state’s RTCs meet FFPSA’s heightened federal quality standards to become QRTPs, and
- The FFPSA requires ongoing court review and approval of a child’s placement in facilities that meet the new standards; however, Texas does not currently have a mechanism for the assessment and review process for QRTPs as outlined in the FFPSA.

The FFPSA envisions a statewide network of QRTPs, but the required changes are not limited to providers’ practices and services. Under the new law, Texas would also need to change how it conducts casework, child advocacy, and judicial practices to ensure that only the children who truly need to be in residential treatment are placed there.

This bill does *not* require providers to become QRTPs. Over time, we hope that RTCs will become QRTPs, which will make them eligible for federal reimbursement and will improve the quality of treatment available for children in foster care in Texas. However, even if every RTC provider chooses to become a QRTP if the agency and courts are not completing the federally-required assessments and reviews outlined in this bill, Texas will not be able to draw down federal funding for QRTP placements. Mitigating some of the anticipated loss of federal funding is a secondary benefit of this legislation.

Additionally, some CBC regions are planning to develop and prioritize contracting with providers that meet QRTP standards. These regions would have to convince every judge in their catchment area to adopt local rules or standing orders to continue drawing down funding for their placements and ensure consistent review and court process for every child in their region.

## **This bill avoids creating a two-tiered system where children with the same needs are treated differently by courts**

SB 1575/HB 4476 eliminates a potential equal protection challenge that could arise under the U.S. Constitution.<sup>2</sup> Children with the same needs should not be treated differently under the law. This bill aims to ensure that children in foster care with significant behavioral health concerns receive equal protection under the law. Under FFPSA, only QRTPs are subject to the new agency assessment and court review requirements. Expanding the required assessment and ongoing judicial review required for QRTPs to all cases involving children placed in RTCs will help Texas avoid the risk of creating a two-tiered system where some children with significant behavioral health concerns have enhanced judicial oversight while others do not.

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<sup>2</sup> *Nordlinger v. Holm*, 505 U.S. 1, 10, 112 S. Ct. 2326, 2331 (1992).

## Changes under the bill:

- **NEW assessment:** within 30 days of a child's placement at an RTC, a qualified individual must conduct an assessment of the child's strengths and needs, short- and long-term goals, and the most family-like setting to meet those needs.
- **NEW court review:** within 60 days of a child's placement at an RTC, a court must review the assessment and consider whether the child's needs can be met with a family and, if not, whether the RTC will provide the most effective level of care in the least restrictive environment consistent with the child's short- and long-term goals.
- **NEW court findings at EXISTING Status or Permanency hearings:** The court must **determine** the following at the child's existing Status or Permanency hearings:
  - Whether the child's needs still cannot be met through placement in a foster family;
  - Whether the RTC is still providing the most effective level of care for the child in the least restrictive environment;
  - Whether the placement is still consistent with the short- and long-term goals for the child as specified in the permanency plan;
  - The specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and
  - The efforts made by the state agency to prepare the child to return home or to be placed with a parent, family member, or foster family home.
- **NEW DFPS commissioner review of placement:** after 12 consecutive months in an RTC or 18 non-consecutive months in an RTC, the DFPS Commissioner must review and approve a child's placement in the RTC.

**Support  
SB 1575 /  
HB 4476  
to improve  
foster care  
placement**

Strengthen  
advocacy for  
children in  
foster care who  
have behavior  
challenges

Remove  
barriers to 2018  
Family First Act  
compliance

Treat children  
with identical  
needs the same  
in the judicial  
system