

Takeaways from 85th Legislative Session Regarding Foster Care

Improvements to Foster Care System

1. Foster Group Homes

The state legislature eliminated the designation of "foster group homes" and created "cottage family homes" that cannot have more than six children and must have at least one house parent that lives in the home

2. Aging Out Resources for Foster Youth

The legislature improved resources available to youth aging out of foster care: higher education tax exemptions, a career development and education program, a summer internship pilot program, a required living skills assessment, transition plans for foster youth, a preparation for adult living program, identification documentation for youth aging out, and education vouchers

3. Financial Assistance for Kinship Caregivers

New legislation provides for monthly monetary assistance of up to 50 percent of the basic daily foster care rate for kinship caregivers with incomes less than or equal to 300 percent of the federal poverty line

Controversial Measures

1. Protection of Rights of Conscience

One of the bills passed during this session prohibits the government or any entity that contracts with the government from refusing to work with a child welfare services provider based on their sincerely held religious beliefs or opinions about contraceptives and abortions. The intent of the bill is to maintain a diverse network of service providers, but is controversial because it may result in providers being able to discriminate against eligible foster parents

2. No Vaccinations for Foster Youth

New legislation will require children who have been the victim of physical or sexual abuse to receive a medical examination and mental health screening by the end of the third business day that they are in the state's custody, but the children cannot receive vaccinations or immunizations during this health screening, except in case where an emergency tetanus shot needs to be administered

Issues the Legislature Failed to Address

1. Child Abuse Hotline

No legislation addressed the need for improvements to the hotline used to report child abuse or a child's ability to access and use it anonymously

2. Child-on-Child Abuse Tracking

The state did not pass any measures that addressed child-on-child abuse, which the court found to be a serious issue affecting a child's safety and well-being

3. Case Management

No adequate legislation was passed that would improve the caseload management system or streamline the use of I See You workers within DFPS

EXECUTIVE SUMMARY

THE LEGISLATIVE RESPONSE TO *M.D., et al v. ABBOTT, et al*

On December 17, 2015, the District Court of the Southern District of Texas declared that Texas's foster system "is broken, and it has been that way for decades." The Court ruled that Texas had violated foster children's Fourteenth Amendment substantive due process rights because children have the right "to be free from an unreasonable risk of harm caused by the State."¹

The Court found systematic problems in its examination of the Department of Family Protective Services (DFPS), including the failure to document child-on-child abuse, a system that heavily overburdened caseworkers, and an inadequate number of child placements. The Court further appointed Special Masters to oversee the necessary steps and timeframe for system reform.

The Special Masters submitted an implementation plan to direct the system's reform in November 2016. This plan requires changes ranging from required monthly private visits with every child and lowering caseloads and turnover rates for workers to the abatement of housing children in unregulated facilities overnight, tracking and documentation of all sexual abuse history (with an emphasis on child-on-child abuse), eliminating foster group homes, and much more. The State objected to the Masters' recommendations in their entirety and pointed out that many of the recommendations are already addressed in DFPS policies. The Court rebuked the objections and ordered Texas to implement the recommendations.² The state has argued that Jack's ruling ignores significant positive transformations made to the foster care system since 2014 when the Stephen Group, a New Hampshire-based business and government consulting agency Stephen Group, conducted an extensive review of CPS.

The Texas Foster Care system has approximately 30,000 children in its care.³ It employed 11,688 caseworkers in 2016,⁴ which represented an increase of 2,218 employees since 2011.⁵ The entire DFPS budget was \$1,762,336,507.00 in 2016.⁶ This amount was increased by \$250 million during the 85th Legislative Session.⁷

¹ See generally *M.D. et al v. Abbott et al*, 152 F.Supp.3d 684 (Texas S.D.)

² See generally Def. Obj. Sp. Masters' Rec., November 21, 2016.

³ *Id.*

⁴ https://www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/Foster_Care_Redesign/

⁵ *Id.*

⁶ https://www.dfps.state.tx.us/About_DFPS/Budget_and_Finance/Operating_Budgets/FY16-Operating_Budget_accessible.pdf

⁷ <https://www.texastribune.org/2017/06/30/hey-explainer-what-did-texas-legislature-do-improve-child-protective-/>

Evaluating the Legislature's Response

During the 85th Session, the Texas Legislature was under immense pressure to address this "broken system." The Special Masters made 44 distinct recommendations on how the state should improve the child welfare system, which were then ordered by the Court. Seeking to assuage the Court's concerns, the legislature introduced 88 bills that relate to the reform of the foster care system in the state of Texas, and passed 21 of those bills. There were over 271 changes made to the language of Texas statutes, primarily to the Family Code, Government Code, and Human Resources Code. The Texas Legislature passed three major bills that aim to overhaul the foster care system and facilitate faster placements of children in safe environments. Two of the bills alter how and by whom services related to foster care are provided; the other seeks to help kinship caregivers financially and therefore increase the number of successful placements. SB11, or Community-Based Foster Care, will outsource the case management services currently handled by DFPS to Single Source Continuum Contractors across the state.

Community-Based Foster Care divides the state into 18 different geographic regions, or "catchment areas," each of which will have a nonprofit or local government entity that serves as the SSCC and provide the community with essential foster care services. The hope is that these SSCCs will be more in tune with the needs of their community and able to assist children and families more easily through their connections with other organizations and groups in the community. In addition to the three major bills, the legislature also passed reforms aimed to improve the services provided to children while under the state's conservatorship.

While providing a victory in improved aging out programs, the State failed to resolve many of the most critical issues. For example, there was little reform regarding the ineffectiveness of "I See You" workers, who are intended to provide an additional level of care and monitoring for children in permanent managing conservatorship. Also, while DFPS has internal policies around empowering the children in their care to easily and anonymously report abuse, these policies have not been effectively implemented, and the legislature failed to make abuse reporting a legislative priority.

The chart below summarizes the recommendations of the special masters and the extent to which the 85th Legislature addressed them. In the chart, the first column contains the specific recommendations made by the Special Masters. The second column has the corresponding order by the Court mandating, with changes in some instances, the given recommendation. The third column shows the bills that addressed, in whole or in part, the recommendation in question. Rows which are colored green contain recommendations comprehensively addressed by enacted legislation. Blue rows are those recommendations directly addressed by the Legislature, but for which some issues remain outstanding. Yellow indicates that the recommendation was indirectly addressed. Rows colored red contain recommendations to which there was no legislative response.⁸

Because the scope of this summary encompasses only the recommendations, order, and legislative response, it does not include any internal policy changes adopted by DFPS after the Stephen Group's review of CPS, or sunset recommendations. However, these issues will be addressed in the final report to be released by CHILDREN AT RISK in the fall of 2017.

⁸ For some of the red-colored provisions, internal DFPS policies may have been changed without legislation.

SPECIAL MASTER'S RECOMMENDATION & CORRESPONDING LEGISLATION

Key:	Abbreviations:
Legislation directly addressed the topic	PMC=Permanent Managing Conservatorship
Legislation addressed the topic, but issues remain	DFPS=Department of Family & Protective Services
Legislation indirectly addressed the topic	CPS = Child Protective Services
Legislation did not address the topic	SM= Special Masters
	RCCL = Residential Child Care Licensing Standards

	Special Masters Recommendations	Court's Interim Order	Legislation
1	Implement aging out programs, beginning at age 14.	Plan must be submitted in five months.	Higher Education Tax Exemption (SB1123); Career Development and Education Program (SB1220); Summer Internship Pilot Program (HB1608); Living Skills Assessment (HB7); Transition Plan for Foster Youth (SB1758); Preparation for Adult Living Program (SB1758); Identification Documentation (HB3338); Education Vouchers (HB928/HB2537)
2	Within 6 months of a child entering PMC, DFPS should ensure that the child's birth certificate is secure and placed in case record.	Plan must be submitted in five months.	Guardian ad litem and attorney ad litem are required to figure out whether a child 16 years or older has his or her birth certificate or social security card (SB11/SB1758); Youth aging out are required to have a driver's license or a ID card and they would have to have either their birth certificate or social security card to get that (HB3338)
3	Each child must be appointed an attorney ad litem and any other necessary representation.	Propose a procedure for the appointment of an attorney per each child within three months. Also, suggested that DFPS could perhaps reimburse attorneys' fees.	A court can appoint an attorney ad litem for a child in PMC for as long as the child is in the state's custody (HB7)
4	Propose to the Court a plan to identify and address children's exposure to traumatic events.	Agreed.	SSCCs must verify a child to whom it is providing therapeutic foster care services was screened for trauma at least once every 90 days, but it does not apply to areas without SSCCs (SB11)
5	That DFPS conduct a Placement Needs Assessment (this was done).	Done.	Foster Care Capacity Needs Plan (HB1549)
6	Within eighteen months, foster group homes should be eliminated and re-verified as either group homes or foster homes.	Agreed.	The state legislature eliminated the designation of "foster group homes" all together and created "cottage family homes" that cannot have more than six children and must have at least one house parent that lives in the home (HB7)
7	DFPS's filing system should ensure that all DFPS staff and contractors have access to all the case information (case records) they need in one, centralized place.	SM to report on progress within three months and work with DFPS to develop monitoring plan.	Data Access and Standards Governance Council (SB11)
8	DFPS should develop and implement a healthcare plan with timeframes subject to the Court's approval.	SM and DFPS should work together to develop a healthcare plan based on "Fostering Health." Additionally, DFPS should make every effort to ensure children's medical records are available online with 24 hours of entering DFPS. This also applies to TMC children. Submitted within six months.	Children who are in DFPS custody for more than three business days will receive a medical examination and mental health screening by the end of the third business day or by the end of the fifth business day if the child is located in a rural area. During these medical screenings, the child cannot be given vaccines other than an emergency tetanus vaccine. Managed care organizations and child placing agencies must ensure children receive a comprehensive health exam (or can incur financial penalties); MCO must notify medical specialists treating the child of placement change and coordinate transfer of care (SB11)
9	DFPS to implement a caseload standard in range of 14-17 PMC cases for CVS caseworkers (not a hardcap).	Methodology submitted within six months. Also qualifies that if a caseworker is handling both TMC and PMC children, the amount of PMC cases should be reduced accordingly.	Legislation requires DFPS to create a caseload management system for CPS that distributes the workload equally based on case complexity, available caseworkers, and high risk geographic areas (HB1549)
10	A Workload Study of RCCL Investigators and Inspectors should be conducted.	Agreed, to be submitted within eight months.	DFPS must create standardized policies to use during investigations and collect data on the workloads and investigations (HB1549)
11	DFPS should identify a discrete cohort of staff and assign them exclusively to maltreatment investigations.	Agreed.	DFPS must create standardized policies to use during investigations. The DFPS commissioner can also establish specialized units within CPS to investigate allegations of child abuse, neglect, and exploitation at child-care facilities and can require that investigators receive ongoing training on minimum licensing standards (SB11; HB249)
12	That DFPS make public on the agency's website all of the completed licensing inspections conducted by RCCL.	Agreed.	Information should be published by February 1st of each year in the department's annual report (HB1549)

	Special Masters Recommendations	Court's Interim Order	Legislation
13	That DFPS propose a plan that strengthens its monitoring and oversight of PMC children's placements.	Agreed—six months.	Background checks for employees and volunteers (HB4094); least restrictive placements and best interest considerations (HB1549); court to review placement hearings (HB7); appointment of attorney ad litem for children for duration of state custody; and access granted to child's placement for guardian ad litem (HB7); collect and review data for annual report (HB1549)
14	That all PMC children under the age of 2 be placed in family-like settings within six months; 6 within twelve, 13 within twenty-four. (Some exceptions to family like settings provided)	Agreed.	A child should be placed in the least restrictive or most family-like setting. Other than a placement with a suitable relative or kinship caregiver, the least restrictive setting is a foster home or a general residential operation operating as a cottage home (HB1542)
15	That children thirteen years and older ONLY be placed in a shelter if a family-like setting is unavailable to meet their needs and there is documentation that ongoing efforts are made to secure a family-like placement.	Agreed.	A child should be placed in the least restrictive or most family-like setting. Other than a placement with a suitable relative or kinship caregiver, the least restrictive setting is a foster home or a general residential operation operating as a cottage home (HB1542)
16	That DFPS publish and update information regarding the amount of children in residential facility as well as each facility's licensed capacity. This information shall be easy to retrieve (until Placement Portal is up and running).	Agreed.	Information should be published by February 1st of each year in the department's annual report (HB1549)
17	That DFPS report to the Court semi-annually on children's placement moves.	Agreed. Each placement must be documented.	Information should be published by February 1st of each year in the department's annual report (HB1549)
18	DFPS policy must require that caseworkers' visits with children include private, quality time with the child	This methods and policies are to be developed by the SM in conjunction with DFPS. Submitted to the Court within three months of interim order.	The outsourcing of case management services though CBC may allow for the caseworkers to spend more time with the children (SB11)
19	DFPS must provide adequate training on visitation policies to all caseworkers responsible for visiting PMC children	This methods and policies are to be developed by the SM in conjunction with DFPS. Submitted to the Court within three months of interim order.	The outsourcing of case management services though CBC may allow for the caseworkers to spend more time with the children (SB11)
20	DFPS should ensure that the visits happen monthly. DFPS must report on this to the Court semi-annually	This methods and policies are to be developed by the SM in conjunction with DFPS. Submitted to the Court within three months of interim order.	The outsourcing of case management services though CBC may allow for the caseworkers to spend more time with the children (SB11)
21	DFPS policy must require the agency to assist aging out youth in creating e-mail accounts (to receive encrypted copies of important personal documents/records.)	Plan must be submitted in five months.	Possibly included in the Living Skills Assessment (HB7), Transition Plan and Preparation for Adult Living Program (SB1758), or the Career Development and Higher Education Program (SB1120)
22	DFPS to propose and implement a plan to the Court with specific timeframes to reduce caseworker turnover.	Agreed.	Secondary trauma support for caseworkers may reduce turnover (HB1549); state will collect data on caseworker turnover (HB1549)
23	Decrease significant number of child placements out of children's home regions and catchment areas.	Agreed.	The outsourcing of case management services may increase the number of homes available for children (SB11)
24	PMU should conduct case readings and report results to the Court semi-annually.	Agreed.	DFPS must create standardized policies to use during investigations. The DFPS commissioner can also establish specialized units within CPS to investigate allegations of child abuse, neglect, and exploitation at child-care facilities and can require investigators to receive ongoing training on minimum licensing standards (SB11; HB249)
25	That DFPS require all CPAs to report and document to DFPS all allegations of child-on-child sexual abuse.	Agreed. Must immediately require all incidents of child-on-child abuse to be reported by all foster caregivers, CPSs, GROS, and RTCs.	The definition of child neglect will now include a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, 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 or program as further described by rule or policy (HB249; SB11)
26	That DFPS investigate all reported incidents of child-on-child abuse for, at least, neglect by the caregivers.	Agreed.	The definition of child neglect will now include a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, 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 or program as further described by rule or policy (HB249; SB11)

	Special Masters Recommendations	Court's Interim Order	Legislation
27	DFPS should propose a plan to decrease the incidence of maltreatment to PMC children.	Agreed.	Background checks for employees and volunteers (HB4094); after-hours investigators available (HB1549); protective orders for children (HB7); least restrictive placements and best interest considerations (HB1549); court to review placement hearings (HB7)
28	That an individualized needs assessment be conducted for children who have been sexually abused.	Agreed.	SSCCs will have to verify a child to whom it is providing therapeutic foster care services was screened for trauma at least once every 90 days (SB11)
29	That DFPS stop placing children in offices/unregulated facilities overnight.	Agreed.	The outsourcing of case management services may increase the number of homes available for children (SB11)
30	DFPS operate a statewide, 24 hour reporting system (hotline) for allegations of child abuse and neglect. Access must be anonymous and private.	Court agrees, and adds that children must be instructed on the use and location within two hours of placement.	
31	Ensure that children can report without fear of punishment, interference, etc.	Court agrees, and adds that children must be instructed on the use and location within two hours of placement.	
32	Maintain a landline phone in each facility where children are housed that is connected to the hotline	Court agrees, and adds that children must be instructed on the use and location within two hours of placement.	
33	That DFPS develop, publish, and train affected individuals on policy that requires all staff, foster parents, and staff of SSCCs, CPAs, GROs, RTCs to report all allegations of abuse/neglect to the hotline.	Court agrees, and adds that children must be instructed on the use and location within two hours of placement.	
34	DFPS develop a contact guide for ISY to complete monthly visits.	Ensure that all ISY workers use contact guide within three months, and the new guide be completed within five months.	
35	Even if ISY worker is visiting a child, the primary CVS worker must still visit with child (face to face or via technology) at least quarterly.	Agreed.	
36	That DFPS develop a plan with specific timeframes to expand the array of enforcement actions available to DFPS. Ability to suspend and close foster homes directly.	Agreed. Within three months.	
37	That DFPS provide the Court with specific timeframes outlining how it will track "single child homes."	Agreed.	
38	All child-on-child abuse should be immediately reported by foster caregivers, CPAs, and GROs to the 24-hour hotline.	Agreed. SM must work with DFPS to develop a plan with time-frames to be submitted in three months.	
39	That child's case record identify the youth as having "sexually aggressive" behavior or has been "sexually abused" if appropriate. The terms should be easily searchable. Training on these designations should be developed and implemented.	Agreed.	*There was no legislation passed to this effect, but internal policies have been changed to reach this goal
40	That DFPS not place any child classified as "sexually aggressive" or at high risk for perpetrating violence be placed with other foster children (unless assessment is conducted).	Agreed.	
41	That DFPS publicly report the number of maltreatment allegations for each month.	Agreed.	
42	That unrelated children with different service levels only be placed in the same room after a thorough and documented assessment is conducted deeming it safe.	Agreed.	
43	That DFPS not allow unrelated children more than three years apart to be placed in the same room unless an assessment says its safe.	Agreed.	