

The state of Foster Care in Texas after *M.D. v. Abbott* and the 85th Legislative Session

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ABOUT CHILDREN AT RISK

CHILDREN AT RISK is a non-partisan research and advocacy organization dedicated to improving the quality of life for Texas' children through strategic research, public policy analysis, innovation, legal action, community education, and collaboration. The organization began in 1989 when a group of child advocates met to discuss the lack of data on the status of children and the absence of strong public policy support for Houston's children. Through its biennial publication, *Growing Up in Houston: Assessing the Quality of Life of Our Children*, CHILDREN AT RISK tracks over 140 indicators measuring the quality of life of kids in our community.

CHILDREN AT RISK has evolved from an organization researching the multitude of obstacles our children face into one that also drives macro-level change the better the future for Texas' children. Through its Public Policy & Law Center, CHILDREN AT RISK uses policy and legal expertise as a powerful tool to drive change for kids. In recent years, CHILDREN AT RISK has grown exponentially in its capacity to speak out and drive change for children and has become the premier resource on children's issues among major media outlets, public officials, and the non-profit sector.

EXECUTIVE SUMMARY

On March 29, 2011 Children's Rights, an independent nonprofit organization that defends the rights of abused and neglected children, with co-council Haynes & Boone, Yetter Coleman, and Canales & Simonson¹ filed suit on behalf of nine Texas foster care youth and those similarly situated, against the Governor of Texas², the Executive Commissioner of Health and Human Services Commission OF Texas (HHSC), and the Commissioner of the DFPS.³ Plaintiffs claimed that Texas violated their First, Ninth, and Fourteenth Amendment to the United States Constitution and sought injunctive relief to stop further harm.

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."⁴

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 state on November 4th, 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) and 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.⁵

Scope of the Foster Care System in Texas

The Texas Foster Care system has approximately 30,000 children in its care.⁶ It employed 11,688 caseworkers in 2016,⁷ which represented an increase of 2,218 employees since 2011.⁸ The entire DFPS budget was \$1,762,33,507 in 2016.⁹ This amount was increased by \$250 million during the 85th Legislative Session.¹⁰

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 forty-four 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 eighty-eight bills that relate to the reform of the foster care system in the state of Texas, and passed twenty-one 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 and 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 (“SSCC”) 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 serve 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. Yet, while providing a victory in improved aging out programs, the State failed to resolve some of the most critical issues—for instance, there was no mention of child-on-child sexual abuse.

THE FOSTER CARE SYSTEM IN TEXAS PRIOR TO REFORM

At the time the case was filed and notwithstanding any implementation of subsequent policy changes, which are discussed later in detail, the process for a child entering foster care functioned as follows: A child enters the foster care system¹¹ when Child Protective Services ("CPS") determines that it is unsafe for that child to remain with his or her legal guardian due to abuse or neglect.¹² CPS can either remove the child in an emergency removal, or by court order.¹³ Alternatively, the perpetrator may be removed if CPS determines there is an appropriate, safe caretaker for the child. CPS workers will come check on the child. This is called family-based safety services (FBSS), and is often preferable when available, because it minimizes disruption. When CPS takes the child from the unsafe situation, it has 24 hours to petition the court to obtain Temporary Managing Conservatorship ("TMC") over the child.¹⁴

If TMC is granted, CPS places the child in a temporary living arrangement. Once the child is in TMC, CPS is tasked with finding a permanent living situation for the child. TMC lasts up to one

Plaintiff Spotlight

D.I. entered the foster care system at 8, when he was placed with a relative, after he left his mother who was neglectful and had a substance addiction. Within a year, it became clear that his behavior was beyond the capabilities of his relative. He moved to a foster group home, and within the first month of being there, was abused by two boys, ages 16 and 17. The sole caregiver was asleep downstairs while the abuse took place. One of the boys had been sexually abused by his father, and had a history of abusing other young boys, but he was not removed from the group facility. The other boy was HIV positive. CPS noted that testing would be done on the boys, but there was no note of HIV testing in D.I.'s case file. At school, D.I. spilled ketchup, and joked, "this is what happens to my but," and still no inquiry was made.

One of the older boys confessed to the abuse, but still, DFPS made no internal changes, and the only action they recommended was "internal monitoring." D.I. was removed to another group home. His record did not reflect his history of sexual abuse. He became suicidal. He admitted that he wanted to hurt himself, and was afraid of his own thoughts. He was adopted after three years of living in group homes, and initiated sexually inappropriate behavior with his adoptive mother's biological 5-year-old granddaughter. His experience is a common one.

year typically, but can be extended for an additional six months. If the child is not in a permanent living situation, the child moves from TMC to Permanent Managing Conservatorship ("PMC").¹⁵ **Designating a child in the permanent custody of the foster care system is unique to Texas.** DFPS receiving PMC of a child can satisfy the goal of permanency according to DFPS, although the child may go through multiple placements, and change schools several times.¹⁶

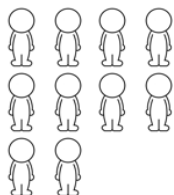
When a child enters PMC, there is less of an impetus to seek stable permanent family based housing.¹⁷ In TMC, caseworkers review the child's service plan four times a year.¹⁸ In PMC, caseworkers only review the child's service plan

twice per year.¹⁹ Additionally, while in TMC, a child has permanency hearings every four months, while a child in PMC has permanency hearings only every six months.²⁰ Texas also requires at least two permanency planning meetings and a status hearing for children in TMC, and has no such requirements for children in PMC.²¹

A child in TMC has an attorney *ad litem*, and often may have a Court Appointed Special Advocate ("CASA"). A child's CASA typically knows his or her case and situation better than anyone else in the system.²² **The children in PMC are still in the custody of the State, and at the**

complete mercy of the State, but once a child enters PMC, the State’s attention on these children diminishes drastically.²³ CPS can be granted PMC over a child whether or not the parental rights had been terminated.²⁴ Children in PMC have the same permanency options and needs as children in TMC, but the State often maintains them in foster care until they age out²⁵ at 18.²⁶ Although the State provides services to prepare foster youth for adult living, **when a foster child ages out, he or she typically has received little or no training to enter the world,**²⁷ **(i.e. has few “life skills”) has few community connections,**²⁸ **and lacks the requisite social**²⁹ **and professional skills to succeed.**³⁰ Additionally, children who undergo multiple placements lose 4 to 6 months of academic progress with each new placement, so can lose years of progress quickly. Many children are moved as many as twelve times during their experience in PMC. It is typical for a child to enter the system with mild or no learning disabilities, and leave with learning disabilities that require medication.³¹

TMC



PMC



*Visual representation of the advocacy and meetings per year typical for children in TMC and PMC.

TYPES OF PLACEMENTS

Children in the foster care system are categorized into basic, moderate, specialized, or intense service based on a child’s physical and psychological needs, with higher levels receiving more funding.³² When available, DFPS tries to place children in residential type settings, which

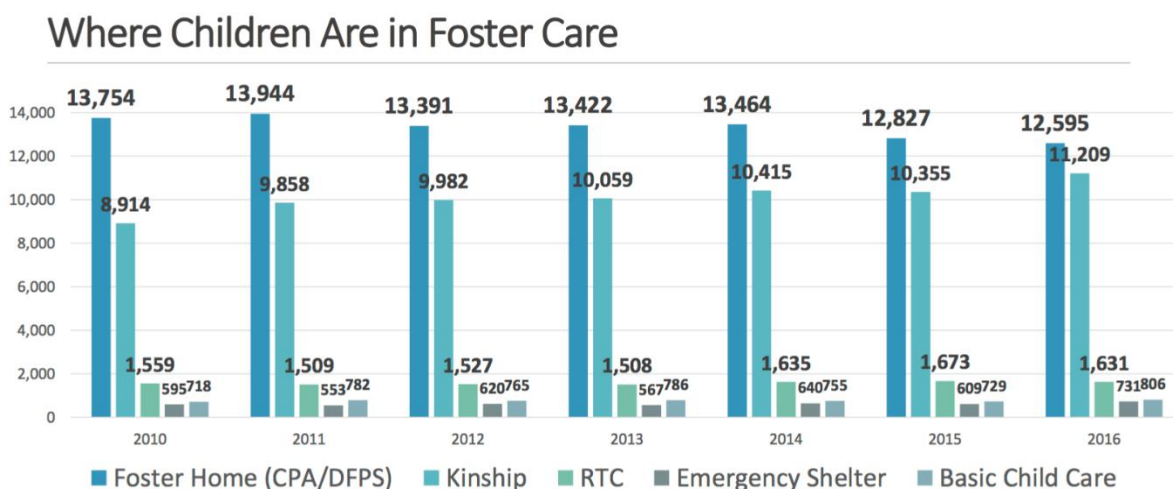
are typically managed by private child-placing agencies that contract with the state.³³ The Residential Childcare Licensing Division (“RCCL”) of DFPS is responsible for inspecting, investigating, and licensing placements.³⁴

Foster family homes serve one to six children.³⁵ The State is responsible for verifying these foster group homes and training and funding the caregivers.³⁶ **Foster group homes contain between seven and twelve children, but are otherwise similar to foster family homes, and are unique to Texas.**³⁷ Although they are regulated and receive financial support, unlike other larger facilities they are not required to provide **awake-night supervision**.³⁸ Awake-night supervision is a professional standard and can prevent a significant amount of harm.³⁹ Texas allows children that require different service levels to live together in the same placement—even in the same room. This is a problem unique to Texas, and DFPS conceded that no “other state in the country . . . has what is called a foster group home between seven children and 12 children.”⁴⁰

Foster family and foster group homes are considered “therapeutic” when the caregivers undergo more training in order to serve children who require higher levels of care.⁴¹ General residential operations (“GRO”) contain over 13 children, and have no stated capacity limit;⁴² **For example, a GRO in North Texas had government approval to house 437 children.**⁴³ Residential treatment centers (“RTC”) are another type of GRO; their purpose is to provide therapeutic treatment for children of higher service levels, and having extreme emotional issues.⁴⁴ Texas’s RTCs are disproportionately situated around the state. Many are located around Houston, but there are none south of San Antonio.⁴⁵ Foster family homes have the least restrictions and regulations placed upon them, while GROs and RTCs have increasingly more.⁴⁶

Alternatively, DFPS can place children in kinship placements, where a child is placed with a

relative or someone with a longstanding and meaningful relationship with the child or the child's family.⁴⁷ DFPS must approve kinship placements and perform a home assessment.⁴⁸ They go through the same verification process as any other placement in DFPS. If verified, the kinship placement fulfills the same licensing requirements as a foster family home.⁴⁹ The caregivers receive the same training requirements as foster parents, and the homes receive the same financial assistance as foster homes.⁵⁰ If unverified, the kinship placement is eligible for less monetary assistance than verified kinship placements, and the caregivers are not required to complete the training provided for foster parents.⁵¹

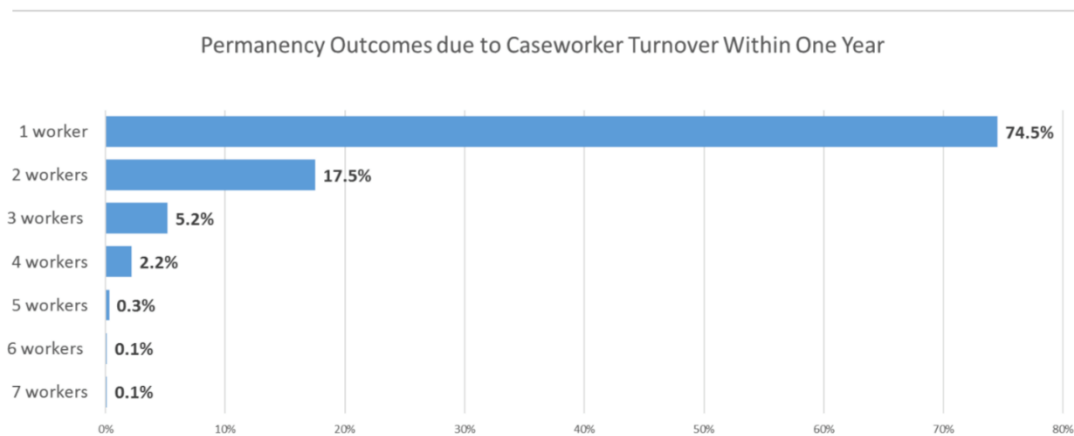


Above chart is from TEXAS CASA CHILD WELFARE PRIMER⁵²

CASEWORKERS

Once in a placement, caseworkers are supposed to visit the children regularly, and if the child is at a separate placement from their sibling, allow for the children to set up visits with each other.⁵³ Caseworkers are generally overburdened, and case turnover, where a case is given to a new caseworker, occurs far too often. **It takes a caseworker around 30 hours to read a standard, complete casefile, and that rarely happens.**⁵⁴ 43% of DFPS caseworkers have over 20

caseloads.⁵⁵ Professional standards limit caseloads to below 20 caseloads and experts believe that caseloads over 20 create an unreasonable risk of harm to children.⁵⁶ Of the 43% of caseworkers that have caseloads that cause an unreasonable risk of harm to the children, around 6% have 30 cases or more.⁵⁷ High caseloads can result in children being overlooked, not getting to see their siblings, being overmedicated, or having improper medication, and inappropriate care.⁵⁸



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To supplement caseworkers, DFPS has “I See You” workers that visit the children in between caseworker visits.⁶⁰ Each I See You is responsible for between 60 and 70 visits to PMC children each month, in addition to any TMC children they must visit.⁶¹ Caseworkers rely on the notes taken by I See You workers to create permanency plans and goals for the children.⁶² However, the documentation of I See You workers visits can often be vague or inconsistent.

Summary of M.D., et al. v. Abbott, et al

Class Certification & Claims

Suit was filed in the U.S. District Court Southern District of Texas and brought before U.S. District Judge Janis Jack. Although Plaintiffs brought suit in March 2011, class action certification was not granted until August 2013. The Court certified a General Class, and two subclasses:

- (a) General Class: all children now, or in the future, in the PMC of the State of Texas;
- (b) Licensed Foster Care Subclass (LFC Subclass): all members of the general class who are now or will be in a licensed or verified foster care placement, excluding verified kinship placements; and
- (c) Foster Group Home Subclass (FGH Subclass): all members of the General Class who are now or will be in a foster group home.⁶³

Plaintiffs, on behalf of the General Class, claim that the state does not employ a sufficient number of caseworkers, causing excessive workloads, lack of supervision, and high case turnover, and those practices jointly cause Plaintiffs to be subject to an unreasonable risk of harm.⁶⁴ Plaintiffs further allege that these policies substantially depart from professional judgment, and that the State is aware of these risks, yet refuses to assess or address them.⁶⁵

On behalf of the LFC Subclass, Plaintiffs claim that the State's lack of oversight over placements, their practice of regularly placing children in situations both inappropriate to their needs and far away from their home communities, and their complete failure to track child-on-child abuse, substantially depart from professional judgment.⁶⁶ Plaintiffs further allege that the State is aware of the risks the subclass members face, yet declines to evaluate or tackle them.⁶⁷

Plaintiffs claim, on behalf of the FGH Subclass, that the State's Foster Group Homes are deficient because the caregivers are often poorly trained, and unqualified, the homes lack sufficient professional staff, and do not require 24-hour awake-night supervision, as is the

professional standard, and the State mixes unrelated children of different genders, ages, and service levels in the same group home. Plaintiffs claim that these policies put the Subclass members at an unreasonable risk of harm, and depart substantially from professional judgment. Plaintiffs further claim that the State is aware of these risks, and refuses to assess or address them.⁶⁸

Duty of Care

State custody of a child is one of the special relationships between a state and an individual that triggers an affirmative duty of care.⁶⁹ The Fifth Circuit recognized a duty to children to provide constitutionally adequate care since 1990 in *Griffith v. Johnston*. In 2004, the Fifth Circuit recognized a Fourteenth Amendment based duty of the State to ensure that its foster children have personal security and reasonably safe living conditions.⁷⁰ The circuits nearly unanimously recognize that the state has a special duty of care to its foster children, specifically, the duty to keep children in its custody free from an unreasonable risk of harm.⁷¹ This protection extends to both physical and psychological harm.⁷² It is important to note that the protection is against an unreasonable *risk* of harm, so no actual harm must occur before a foster child can obtain relief on this claim.⁷³

To succeed on their Fourteenth Amendment substantive due process claim, Plaintiffs do not need to claim that each class member suffered actual harm.⁷⁴ They must prove that the state acted in such a way that it breached the duty it must keep its foster children free from an unreasonable risk of harm with the requisite culpability.⁷⁵

Plaintiffs allege that DFPS's policies and practices breach the children in PMC's Fourteenth Amendment right to be free from an unreasonable risk of harm while in State custody.⁷⁶ The

Court interpreted Plaintiffs' claim to mean that the policies and practices combined, rather than each individual policy, constituted an unreasonable risk of harm to children in PMC.⁷⁷ The Court found that the amalgam of policies is sufficient to make a constitutional breach, if Plaintiffs can meet the requisite standard of "shocking to the conscience."⁷⁸

The standard of "shocks the conscience" can be broken down into two sub-standards—deliberate indifference and a substantial departure from professional judgment.⁷⁹ The Fifth Circuit has relied more heavily on the deliberate indifference test, and has emphasized that it is a difficult burden to overcome.⁸⁰ The Court held that Texas meets both standards.⁸¹

The Court looked at the combined evidence of the experience of the named Plaintiffs, testimony from expert witnesses, and witnesses involved in the foster care process.⁸² The evidence conclusively showed that children in the system were experiencing abuse, and the practices and policies of DFPS violated the rights of those children.⁸³ Defendants acknowledge that foster children have a constitutional right to personal security and reasonably safe living conditions, but deny that right is "unlimited."⁸⁴ Texas argues that the right does not extend to protecting them against "an unreasonable risk of harm."⁸⁵ The Court did not accept this distinction, and found that children do have an unlimited right to be free from an unreasonable risk of harm.⁸⁶ The Court did see a distinction between the Plaintiffs' request for the most appropriate care, treatment, and services, and constitutionally adequate care, treatment, and services. The scope of this case is restricted to the constitutional standards as applied to the foster care system.⁸⁷

As it stands, DFPS substantially departs from any known standards to the point the Court noted that it "would like to consider DFPS's own standards, but DFPS does not have any."⁸⁸ The

Court found that DFPS's policies and practices amount to structural deficiencies that cause an unreasonable risk of harm to all subclass members and that Plaintiffs suffered irreparable damage.⁸⁹ When monetary damages are an inadequate compensation for the injury to the entire class of all current and future foster children, injunctive relief is appropriate, and courts often favors injunctive relief over money damages.⁹⁰ When the issue is one of the State infringing on the constitutional rights of its citizens, the balance generally tilts in favor of the constitution over monetary concerns.⁹¹ Finally, while deciding whether to grant the injunction, the Court held that public policy would not only not be harmed by granting injunctive relief, but injunctive relief would likely benefit public policy.⁹²

As a remedy, the Court held that the State shall establish and implement policies and procedures toward the end of not putting PMC foster children at an unreasonable risk of harm.⁹³ The Court required DFPS to immediately stop placing PMC foster children in unsafe placements, including those that do not have adequate nightly supervision. The Court also called for the appointment of a Special Master or Special Masters to help craft reforms and oversee the implementation.⁹⁴ The Court specified how a Special Master would be appointed, and in what capacity the Special Master(s) would operate. This Court set a timetable to bring foster care up to a constitutional standard, where the children in the system are free only from an *unreasonable risk* of harm.⁹⁵ The changing system is still leaves a significant amount of room for public policy growth.

Initial Verdict

In its December 2015 Memorandum of Opinion and Verdict of the Court, the Court specified goals for DPFS to work toward in its reform.⁹⁶ The most prominent orders within the

injunction were the appointment of a Special Master(s) and the immediate abatement of placing children in unsafe placements.⁹⁷ Regarding the goals that DFPS was ordered to pursue, the Court recommended numerous provisions in the interest of protecting the system's children. When DFPS staff visit or call a foster child, the foster caregiver must ensure that the child and staff member are able to speak privately.⁹⁸ To increase efficiency, DFPS must improve its systems for paperwork and electronic filing and ensure that each child has an easily accessible case file that includes all relevant records.⁹⁹ In each case file, an updated photograph should be provided for each child.¹⁰⁰ DFPS must create and maintain a twenty four hour hotline system, intended to receive reports of abuse and neglect.¹⁰¹ There must also be improvement in DFPS' outreach programs for children who will soon age out of foster care in order to ensure they are adequately prepared for life after their time in the foster care system.¹⁰² All PMC children are entitled to an attorney *ad litem*, as well as a CASA volunteer and any other representative appointed to TMC children that the Special Master(s) deem necessary.¹⁰³

For caseworkers, the Court mandated numerous provisions. To start, the organization must track primary caseloads using a child-only basis.¹⁰⁴ The State can continue to use stages as a mechanism for tracking children's caseloads, but not instead of the child-only basis method.¹⁰⁵ The Court ordered a Workload Study to be completed to determine how much time is required for caseworkers to reasonably complete their tasks.¹⁰⁶ The appointed Special Master(s) shall recommend the number of caseloads that an average caseworker can reasonably manage—and the Court further defines a “manageable caseload” as “the level at which children are free from an unreasonable risk of harm.”¹⁰⁷ DFPS must hire enough primary caseworkers to make caseloads more manageable, and the caseworker turnover rate must be

decreased.¹⁰⁸ The Special Master(s) is ordered to review secondary workers, including I See You workers, and then recommend whether its program should be maintained.¹⁰⁹

For CCL investigations, the Court ordered DFPS to conduct a Workload Study to determine the time required for investigators to adequately perform their tasks.¹¹⁰ The Special Master(s) will recommend the amount of caseloads that are manageable for investigators and inspectors.¹¹¹ Moreover, the Special Master(s) must solve RCCL's hesitancy to institute corrective actions against violating facilities.¹¹² And, arguably most importantly, the State must track child-on-child abuse and categorize it.¹¹³ This designation must be easy to retrieve within DFPS' filing system.¹¹⁴

To address the organization's inadequate placement array, the Court mandated that DFPS cannot place children that are more than one service level apart in the same room.¹¹⁵ The Special Master(s) will recommend the age ranges that are appropriate for unrelated children to be placed in the same room.¹¹⁶ The new placement array must track single-child homes, as well as how many foster children need those types of residences.¹¹⁷ The State is ordered to conduct a statewide needs assessment to determine an adequate placement array.¹¹⁸ The number of children in each residential facility must be tracked, including both adopted and biological children.¹¹⁹ The Special Master(s) will recommend steps to solve the issue of children being removed from placements when they are "succeeding", as well as conduct an evaluation of Foster Care Redesign.¹²⁰ Further, the Special Master(s) shall evaluate Foster Group Homes and recommend if they should continue to operate.¹²¹ If Foster Group Homes remain, there must be awake-night supervision.¹²²

Foster care Redesign During Court Proceedings

The State's response to the court's decision has instituted a variety of changes since the lawsuit initiated, including increased funding, revised policies and practices and continued movement towards a model of community-based care.¹²³

The Current State of Texas Foster Care

After the 2015 decision, DFPS hired more caseworkers, required more supervision, and started to phase out Foster Group Homes. The 2015 decision required Special Masters to make recommendations to bring the foster care system up to constitutional standards. In response, the Texas Legislature has continued to redesign the foster care system into a community-based care model.¹²⁴

Region	2010	2016
Lubbock	256	291
Abilene	145	188
Arlington	1018	1463
Tyler	253	309
Beaumont	147	183
Houston	942	1076
Austin	522	645
San Antonio	646	794
Midland	145	173
El Paso	123	155
Edinburg	479	567
Total	4794	5844

Chart indicates number of caseworkers working in Texas during 2010 and 2016.

DFPS's guiding principles for redesign, stress their goal to keep children safe from abuse and neglect in their foster care. Other goals include keeping children placed in their home communities, reducing placement changes, placing children in the least restrictive, appropriate, environment, ensuring that connections important to the child are maintained, attempt to place children near their siblings, and to respect the child's culture. DFPS also emphasizes their goal of equipping children with life skills that will allow

them to succeed after foster care.¹²⁵

The State of Texas is aware that the Texas FCS is deficient.¹²⁶ A 2009 Committee assembled by the Governor concluded that, “there is increasing evidence to show that our foster care system is sometimes doing more harm to our children than good.”¹²⁷

Appointment Order

The Court ordered for the appointment of a Special Master(s) to help navigate DFPS’ reform and oversee their implementation, reasoning that it would be a more effective and flexible option compared to the Court overseeing each change.¹²⁸ Within the decision, the Court ordered the Special Master(s) to provide an implementation plan within 180 days of their selection. The Special Master will be granted access to all relevant information, as well as the authority to require additional reports that are needed.¹²⁹ The Court granted both parties to be involved with the development of the plan, but emphasized that the Special Master(s) must ultimately be guided by the provided goals.¹³⁰ The implementation plan was required to include dates, steps, processes, and tasks.¹³¹ The Special Master(s) were to be appointed within 30 days of the opinion.¹³²

On March 21, 2016, the Court issued an appointment order naming Francis McGovern and Kevin Ryan as Special Masters, pursuant to Procedure 53 of the Federal Rules of Civil Procedure.¹³³ In the appointment order, the Court again stated that the Special Masters were to create an implementation plan and would have have access to all relevant information that they require.¹³⁴ After the implementation plan is presented, the provisions will be treated as recommendations, and any area that is lacking will require additional provisions submitted by the Special Masters at a later date.¹³⁵ Notably, the Court specifically said that the Special Masters are entitled to unlimited communications with the parties and their staff and can

submit any “recommendation the Special Masters deem is necessary to effectuate the Order of the Court” in addition to those already set out in the *Abbott* decision, indicating a significant degree of deference toward the Special Masters.¹³⁶ After reiterating many of the same requirements established in *Abbott*, the Court mandated that the Special Masters submit a progress report every 180 days following the implementation hearing.¹³⁷ The Court also emphasized that the Special Masters are “agents of the Court” as opposed to the involved parties.¹³⁸

Limits to the Special Masters’ freedom includes the Court’s prohibition on their communication to media without application and approval from the Court—they cannot make any public comments regarding the merits of the present action¹³⁹ Additionally, the Special Masters should seek Court approval before communicating with any legislative or investigative body.¹⁴⁰ The Special Masters cannot impose sanctions—if they think a sanction is appropriate, they must petition the Court and await its approval.¹⁴¹ The Special Masters must maintain records documenting their actions.¹⁴² As for compensation, the State must pay the Special Masters \$345.00 an hour on a monthly basis.¹⁴³ The Court provides the Special Masters an indefinite service term, mandating that they will serve until no longer necessary.¹⁴⁴ Finally, the Court reserved the right to revise this order *sua sponte* (on its own accord).¹⁴⁵

Kevin Ryan

Kevin Ryan is currently the Chief Executive Officer of Covenant House, an organization that protects the rights of youth and serves as their advocate, particularly those that are homeless.¹⁴⁶ He has served on the President’s Advisory Council on Faith Based and

Neighborhood Partnerships after being appointed by Former President Barack Obama.¹⁴⁷ From 2003-2006, Ryan served as New Jersey’s first Child Advocate.¹⁴⁸ Later in his career, he served as the Commissioner of the New Jersey Department of Children and Families, a position he held from 2006-2008.¹⁴⁹ As commissioner, Ryan helped lead New Jersey through foster care reform.¹⁵⁰ In his 2006 report *Focusing on the Fundamentals*, Ryan detailed many of the issues the state was facing, such as excessive caseloads, a lack of fundamental training, inadequate placements, and insufficient healthcare services—all issues Texas currently face.¹⁵¹

Francis McGovern

Francis McGovern is currently a professor at Duke University School of Law.¹⁵² McGovern was one of the first people in the United States to write about and apply alternative dispute resolution.¹⁵³ He is considered a complex litigation specialist, particularly with dispute resolution.¹⁵⁴ He has served on the United Nations Compensation Commission, which was created to ensure that Iraq compensates citizens and businesses for losses suffered in the Persian Gulf War.¹⁵⁵ Due to his expertise in complex litigation, McGovern has been referred to as the “master of all special masters” and has served in more than seventy special master roles.¹⁵⁶ None of these roles have been related to foster care reform.

Special Masters’ Recommendations & the Interim Order

On November 4th 2016, the Special Masters issued an Implementation Plan that included recommendations, complying with the Court’s decision. On January 9, 2017, the Court issued an Interim Order on the Masters’ recommendations.¹⁵⁷ The Court stated that it was not ready to issue a final order on the matter, citing a need for continued gathering of information—at that moment, it felt as if much of the information was “preliminary in

nature.”¹⁵⁸ Initially, the Court addressed the public’s concern regarding the lack of attention for TMC children.¹⁵⁹ Here, the Court expressed sympathy for TMC children, be reemphasized that the order only applied to PMC children.¹⁶⁰ The Court also took “judicial notice” of certain good faith efforts made by the State, outlined in the order.¹⁶¹ However, the Court expressed frustration at the State’s objections; objections were filed to every recommendation.¹⁶²

A recurring theme from the objections were the fact many of the recommendations were in place already as policies.¹⁶³ The Court rebuked this objection, reasoning that the policies are practiced insufficiently and, if left alone, the State would be free to return to its old ways.¹⁶⁴

The Court’s Interim Order affirms the recommendation and, in a few instances, adds additional provisions.¹⁶⁵ The provisions added by the Court appear in bold below. Applying only to PMC children, the Masters recommended and the Court affirmed:

- That DFPS institute a policy requiring that the caseworkers’ visits include quality time with the child, and that those visits be in private—even excluding the caregiver. This policy should be included in the training program. ¹⁶⁶
- That the private visits be conducted monthly.¹⁶⁷
- That DFPS’s filing and paperwork system become more efficient, to ensure that all DFPS staff and contractors who are involved with PMC children have the necessary access to any information needed to serve children—and this information should be in one, centralized place.¹⁶⁸
 - **Interim Order: The Court specified what should be included in the new central databank. It should include: medical records, dental records, mental health records, school records, court records, caseworker notes, and placement valuations.**¹⁶⁹
- That the centralized database contain a frequently updated photograph of the child.¹⁷⁰

- That DFPS operate a statewide reporting system to deal with allegations of child abuse and neglect, similar to the current Texas Abuse Hotline administered by Statewide Intake.¹⁷¹
 - **Interim Order: The Court specified that the hotline must be continuously operated. The Court also ordered the masters to work with DFPS to create plans to screen and investigate the calls.**¹⁷²
- That children be enabled to use the hotline anonymously and privately and without fear of punishment and interference.¹⁷³ Each CPA residential provider must possess a landline phone that connects directly to the hotline.¹⁷⁴
 - **Interim Order: The Court added that children should be instructed on the use and location of the phone within two hours of facility placement.**¹⁷⁵
- That DFPS develop a policy that requires all staff and foster parents to report all allegations of abuse and neglect to the hotline and then train individuals on the policy.¹⁷⁶
- That DFPS provide “services, programs, and benefits through an individualized case management model to prepare youth” to leave the system, starting at age fourteen.¹⁷⁷
- **Interim Order: The Court reiterated the need for the children to be represented, a goal originally expressed its decision. The Court emphasized the children’s constitutional right to counsel at each stage of their legal proceedings, calling it the “most egregious loss of liberty” when children are placed without representation. The Court also suggested the possibility of DFPS reimbursing attorney’s fees.**¹⁷⁸
- That every child have their birth certificate uploaded to their case record within six months of entering PMC. Additionally, emancipating youth must be assisted by the agency in the creation of a personal email account for receiving personal documents and records.¹⁷⁹
- That a healthcare plan be developed and implemented. This plan should be developed by consulting *Fostering Health: Healthcare for Children and Adolescents in Foster Care* produced by the American Academy of Pediatrics.¹⁸⁰
 - **Interim Order: The Court further ordered the Masters to ensure that DFPS exerts maximum effort to make the child’s medical records available within one day of entering the organization’s custody.**¹⁸¹
- That DFPS, generally, propose a plan to address PMC children’s exposure to abuse, neglect, and other similar traumatic events.¹⁸²

- That DFPS create a policy implementing an average caseload range of 14 to 17 cases per worker. The Masters did not recommend a fixed cap at 17, however. A plan and timeframe should be developed by DFPS to reach this margin.¹⁸³
- That DFPS implement a system of graduated caseloads in order to combat caseworker turnover for newly hired and qualified caseworkers through the first nine months of their training.¹⁸⁴
- That a mentorship program pairing new hires with more experienced staff be established.¹⁸⁵
- That caseworker training appropriately balance field-based experiential learning with learning in the classroom.¹⁸⁶
- That a policy implementing a range of five to six caseworkers assigned to one supervisor be established.¹⁸⁷
- That DFPS conduct a Work Study assessing secondary caseworkers, such as I See You workers.¹⁸⁸
 - **Interim Order: The Court ordered the masters to retain an expert to assist in the creation of the Work Study.**¹⁸⁹
- That, in the interim, a caseload range of 22-25 be implemented for I See Your workers.¹⁹⁰
- That a contact guide be developed to guide secondary workers' meetings with children.¹⁹¹
 - **Interim Order: The Court specifies that the contact guide be completed with five months. The Masters should ensure that all I See You workers use the old guide until the new one is complete.**¹⁹²
- That, if a child has a secondary worker, the primary worker is not permitted to stop visiting the child—they should visit at least quarterly, either in person or via technology.¹⁹³
- That DFPS conduct a workload study of investigators and inspectors within the RCCL division to determine the caseload ranges for these workers. Part of the motivation behind this recommendation was that RCCL's workload will likely increase significantly after the establishment of the abuse hotline.¹⁹⁴
- That DFPS, because the investigation of child abuse and neglect is a top priority, establish a "discrete cohort of staff" to be exclusively assigned to handling maltreatment investigations and report to the Court regularly.¹⁹⁵

- That, to increase transparency and accountability, DFPS make public the completed licensing inspections done by RCCL and its successive entities, while redacting identifying information of the children. This should include corrective action plans.¹⁹⁶
- That, to address DFPS's issues tracking child-on-child abuse, all CPAs, foster caregivers, and other relevant staff to report and document instances of sexual abuse by children against other children.¹⁹⁷
 - **Interim Order: The Court emphasizes the need for immediate reporting by all caregivers, CPAs, GROs, and RTCs.**¹⁹⁸
- That DFPS provide a plan to the Court, with timeframes, moving toward the documentation of tracking "single child homes" and matching those homes with PMC children who need them.¹⁹⁹
- That when an allegation of sexual abuse by a child is made DFPS investigate of neglect, at least, by the caregivers charged with supervising the child.²⁰⁰
- That children with sexual abuse history should be identified in their record as having "sexually aggressive" behavior—the designation should be easy to search in the case record. Caseworkers should be properly trained on how to find and make this designation.²⁰¹
- That sexually aggressive children not be placed with other PMC children unless an assessment is conducted.²⁰²
- That an individualized needs assessment be performed for every PMC child who has been sexually abused.²⁰³
- That DFPS publicly report the number of allegations of child maltreatment each month on its website.²⁰⁴
- That DFPS propose a plan, based on extensive data, to reduce maltreatment of PMC children and strengthen the monitoring and oversight of PMC children's placements.²⁰⁵
- That, regarding the organizations' inadequate placement array, placements of children that are assigned different service levels should only occur after deemed appropriate through a documented assessment.²⁰⁶
- That DFPS adhere to the following benchmarks:

That children:

- Under the age of two be placed in family-like settings within six months following the Court's order;
 - Under the age of six be placed in family-like settings within twelve months following the order;
 - Under the age of 13 be placed in family-like settings within two years of the order;
 - Aged 13 or older not be placed in a shelter unless a family-like setting is unavailable to meet their needs.²⁰⁷
- That the efforts to secure a family-like setting be properly recorded in the child's case record.²⁰⁸
 - That DFPS not allow unrelated children whose age difference is more than three years apart be placed in the same room unless a thorough, recorded assessment is done.²⁰⁹
 - That a statewide Placement Needs Assessment be conducted, based on the year 2016. This assessment should be submitted in January 2017.²¹⁰
 - That following the needs assessment, a Placement Plan, including performance targets to be updated annually, should be made and provided to the Court.²¹¹
 - That DFPS halt placing PMC children in offices overnight, as well as any other locations that are not regulated.²¹²
 - That DFPS publish frequently updated information on its website until the in-development Placement Portal is finished.²¹³
 - That DFPS's plan, Foster Care Redesign, be re-submitted after taking into consideration the 2016 needs assessment. This should include provisions such as a greater compensation to providers and the better matching of children to placements meeting their individualized needs.²¹⁴
 - **Interim Order: The Court orders the documentation of each placement move.**²¹⁵
 - That DFPS institute placement reform to combat the frequent occurrence of children being removed from successful placements.²¹⁶
 - That DFPS report PMC children's placement moves semi-annually.²¹⁷
 - That DFPS end the presence of Foster Group Homes. This involves:
 - The reverification of Foster Group Homes as either Foster Homes or Group Homes within 18 months of the Court's order.

- Effective six months following the Court’s order, that no more than eight children may live in a Foster Group Home
- Within nine months of the Court’s order, that DFPS should only exceed six children placed together to grouping siblings.
- That DFPS ensure that all foster group homes have 24-hour awake night supervision until they are eliminated
 - **Interim Order: The Court orders this to be verified by the masters within two months.**²¹⁸

85TH LEGISLATIVE SESSION

Introduction to the Evaluation of Foster Care Legislation

During the 85th Session, the Texas Legislature was under immense pressure to address the “broken” foster care system. Seeking to assuage the public and 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 aimed at overhauling the foster care system and facilitating faster placements of children in safe environments. Two of the bills alter how and by whom services related to foster care are provided and the other seeks to help kinship caregivers financially, thereby increasing the number of successful placements. SB11, or

Community-Based Foster Care, outsources 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 serve 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 various services provided to children while under the state’s conservatorship.

The goal of the Texas Legislature was to improve the foster care system and make large systemic changes to DFPS that would result in better outcomes for children in conservatorship. The twenty-one bills passed by the legislature cover every aspect of the child welfare process including prevention and early intervention services, investigations into claims of child abuse, the rights of biological, foster, and adoptive parents, the licensing and oversight of foster care facilities, the way a child’s case is handled by the state, the necessary increase in foster care capacity, and the education, healthcare, and career development resources available to foster youth.

The following chart summarizes the legislative action of the 21 bills relating to foster care that were passed during the Regular 85th Legislative Session in 2017. The attached appendix contains a summary of legislative action for the other sixty-seven bills about foster care that were introduced and not enacted by the legislature.

Bill	Author	Original Chamber Committee			Original Chamber Vote			Opposing Chamber Committee			Opposing Chamber Vote			Governor's Action	
HB 4	Burkett	Human Services	Passed	20-Feb	Passed	2-Mar	143-0	Health & Human Services	Passed	17-May	Passed	22-May	30-0	Signed	31-May
HB 5	Frank	Human Services	Passed	20-Feb	Passed	2-Mar	143-0	Health & Human Services	Passed	15-May	Passed	22-May	30-1	Signed	31-May
HB 7	Wu	Human Services	Passed	25-Apr	Passed	9-May	145-1	Health & Human Services	Passed	23-May	Passed	24-May	31-0	Signed	31-May
HB 88	Martinez	Business & Industry	Passed	13-Mar	Passed	13-Apr	136-2	Business & Commerce	Passed	9-May	Passed	12-May	31-0	Signed	26-May
HB 932	Johnson	Juvenile Justice & Family Issues	Passed	27-Apr	Passed	20-Apr	144-2	Criminal Justice	Passed	11-May	Passed	17-May	30-0	Signed	29-May
HB 1410	Ortega	Juvenile Justice & Family Issues	Passed	5-Apr	Passed	4-May	145-0	State Affairs	Passed	15-May	Passed	19-May	31-0	Signed	1-Jun
SB 11	Schwertner	Health & Human Services	Passed	22-Feb	Passed	1-Mar	31-0	Human Services	Passed	6-May	Passed	19-May	109-34	Signed	31-May
SB 256	Taylor, IV	Criminal Justice	Passed	23-Mar	Passed	29-Mar	31-0	Criminal Jurisprudence	Passed	28-Apr	Passed	6-May	142-0	Signed	19-May
SB 1220	Miles	Education	Passed	18-Apr	Passed	4-May	31-0	Human Services	Passed	11-May	Passed	20-May	137-0	Signed	1-Jun
HB 249	Hernandez	Human Services	Passed	29-Mar	Passed	28-Apr	136-0	Health & Human Services	Passed	22-May	Passed	24-May	31-0	Signed	15-Jun
HB 1542	Price	Human Services	Passed	18-Apr	Passed	8-May	134-11	Health & Human Services	Passed	19-May	Passed	23-May	28-3	Signed	15-Jun
HB 1549	Burkett	Human Services	Passed	13-Apr	Passed	6-May	142-1	Health & Human Services	Passed	22-May	Passed	23-May	31-0	Signed	15-Jun
HB 1556	Gonzalez	Public Education	Passed	12-Apr	Passed	8-May	144-1	Health & Human Services	Passed	22-May	Passed	23-May	31-0	Signed	15-Jun
HB 1608	Minjarez	Human Services	Passed	27-Apr	Passed	5-Apr	145-0	Health & Human Services	Passed	19-May	Passed	22-May	31-0	Signed	15-Jun
HB 3338	White	Human Services	Passed	17-Apr	Passed	27-Apr	147-0	Health & Human Services	Passed	17-May	Passed	24-May	31-0	Signed	15-Jun
HB 3859	Frank	State Affairs	Passed	12-Apr	Passed	10-Apr	93-49	Health & Human Services	Passed	17-May	Passed	22-May	21-10	Signed	15-Jun
HB 4094	Klick	Human Services	Passed	1-May	Passed	9-May	147-0	Health & Human Services	Passed	19-May	Passed	24-May	31-0	Signed	15-Jun
SB 999	West	Health & Human Services	Passed	24-Apr	Passed	1-May	31-0	Health & Human Services	Passed	10-May	Passed	18-May	146-0	Signed	15-Jun
SB 1123	Zaffirini	Higher Education	Passed	12-Apr	Passed	26-Apr	31-0	Higher Education	Passed	17-May	Passed	24-May	147-0	Signed	12-Jun
SB 1758	Zaffirini	Health & Human Services	Passed	24-Apr	Passed	1-May	31-0	Human Services	Passed	9-May	Passed	18-May	138-8	Signed	15-Jun

Special Master's Recommendations and Corresponding Legislation

Following the Court's verdict and memorandum, the Special Masters made more than forty-four distinct recommendations regarding how the state should improve the child welfare system. These recommendations were then ordered by the Court in the federal judge's Interim Order.

Out of the 44 recommendations made by the Special Masters and the court, the state legislature directly addressed six of the recommendations. The bills passed by the legislature also attempted to address 11 of the topics and indirectly addressed 12 of the topics. There were also 14 recommendations made by the Special Masters not mentioned in the enacted bills from the 2017 regular legislative session.

While providing a victory in improved aging out programs, the State failed to resolve some of the most critical issues—for instance, there was no mention of child-on-child sexual abuse, no new policies regarding the abuse hotline, nor any reforms impacting the I See You workers. Some of these changes could be made by internal policy reforms within DFPS instead of by the state legislature, but that information is not made available and cannot be evaluated in this report. It is important to note that the Court's opinion and the recommendations of the Special Masters are not aimed at fixing all the problems of the Texas foster care system. The Court's decision and the following recommendations are simply aimed at raising the minimum standard of care received by children in conservatorship so that the state is no longer violating the constitutional rights of the children they are responsible for protecting.

The chart below summarizes the recommendations of the 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, sometimes with changes, 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-colored rows are those recommendations which the Legislature directly addressed, 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.

Key:		
	Legislation	Directly addressed the topic
	Legislation	addressed the topic, but issues remain
	Legislation	indirectly addressed the topic
	Legislation	did not address the topic

	Special Masters Recommendations	Court's Interim Order	Legislation
1	Implementing 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
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 6 years or older has a birth certificate or Social Security card (SB11/SB1758); Youth aging out are required to have a driver's license or ID card and they would have to have either their birth certificate or Social
3	Each child must be appointed an attorney ad litem and any other necessary representation.	Propose a procedure on 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 or 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.	SSCs must verify if 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
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
7	DFPS's filing system should ensure that all DFPS staff and contractors have access to all the case information (case records) they need	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 incur financial penalties); MCO must notify
9	DFPS to implement a caseload standard in range of 14-17 PMC cases for CVS caseworkers (not a hard cap).	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
10	A Workload Study for CCL 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
12	That DFPS make public on the agency's website all of the completed licensing	Agreed.	Information should be published by February 1st of each year in the department's annual

	Special Masters Recommendations	Court's Interim Order	Legislation
13	That DFPS propose a plan that strengthens its monitoring and oversight of FMC 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 item for children for duration of state custody; and access granted to child's placement for guardian ad item (HB7); collect and review
14	That all FMC 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 placement with suitable relative or kinship caregiver, the least restrictive setting is foster home or general residential operation operating in cottage home
15	That children thirteen years and older ONLY be placed in shelter or family-like setting if unavailable to meet their needs and there is documentation that ongoing efforts are made to secure family-like placement.	Agreed.	A child should be placed in the least restrictive or most family-like setting. Other than placement with suitable relative or kinship caregiver, the least restrictive setting is foster home or general residential operation operating in cottage home
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	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
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 FMC 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
22	DFPS to propose and implement a plan to the Court with specific time frames 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
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, CPs, GROS, and RTCS.	The definition of child neglect will now include negligent act or omission by an employee, volunteer, or other individual working under the auspices of 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

	Special Masters Recommendations	Court's Interim Order	Legislation
26	That DFPS investigate all reported incidents of child-on-child abuse or, at least, neglect by the caregivers.	Agreed.	The definition of child neglect will now include the negligent act or omission by an employee, volunteer, or other individual working under the auspices of the 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.
27	DFPS should propose a plan to decrease the incidence of maltreatment of MC 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.
28	That an individualized needs assessment be conducted for children who have been sexually abused.	Agreed.	SSCs 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.
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	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	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 SSCs, CPAs, GROs, RTCs to report all allegations of	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 SY to complete monthly visits.	Ensure that all SY workers use contact guide within three months, and the new guide be completed within five months.	
35	Even if SY worker is visiting the child, the primary CVS worker must still visit with child (face-to-face or via technology) at least	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	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. If training on these designations should be developed and	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	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 thorough and documented assessment is	Agreed.	
43	That DFPS not allow unrelated children more than three years apart to be placed in the same room unless an assessment says it's safe.	Agreed.	

Major Takeaways from 85th Legislative Session's Response to the Special Master's Recommendations

Improvements to Foster Care System:

(1) Foster Group Homes

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

(2) Aging Out Resources for Foster Youth

The legislature made many improvements to the resources available to youth aging out of foster care, including: 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

Analysis of Legislative Action Regarding Child Welfare

The Texas Legislature was under immense pressure to make substantive changes to the foster care system in response to the Court's decision and interim order, but they did not stop there. In addition to the bills that specifically addressed some of the recommendations made by the Masters, the legislature made hundreds of other statutory changes that affect the way the child welfare system operates in the state of Texas.

The state made significant progress in some areas of concern for foster youth, but seems to have fallen short of ensuring a better future for children under the conservatorship of the state. The following sections will evaluate the relevant changes made to the foster care system during the 85th Legislative Session. This report analyzes the six major areas of change for the Texas foster care system: (1) the expansion of Community-Based Care, (2) the systemic changes to DFPS, (3) the facility oversight and child protection duties of the state, (4) changes to case management services, (5) caregiver rights and assistance, and (6) resources available for foster youth. Additionally, a complete analysis of the 21 foster care bills that were passed is included in the appendix of this report.

Expansion of Community-Based Care

Strategic Plan for Community-Based Care

Community Based Care: The future of the Texas Foster Care system is based on the concept of outsourcing previously introduced with Foster Care Redesign, now renamed Community-Based Care (CBC).²¹⁹ CBC transfers case management services from DFPS to a Single Source Continuum Contractors (SSCC) that provides community-based foster care within a geographic region labeled a "catchment area."²²⁰ The hope is that the outsourcing of these

services will allow for SSCCs to engage with and recruit more foster parents and placement organizations to help increase the state's capacity.

A catchment area is defined as one of 18 geographic areas in the state that was identified as part of the community-based foster care redesign to provide child protective services.²²¹ While DFPS will maintain temporary or permanent custody of a child, an SSCC will oversee the case management services of children within a catchment area.²²² Case management services will include: caseworker visits; family and caregiver visits; permanency planning meetings; development and revision of child and family plans of service, including a permanency plan and goals for a child; coordination and monitoring of services required by the child and the child's family; court-related duties, including ensuring the child was progressing toward the goal of permanency within state and federally mandated guidelines; and other services DFPS deemed necessary for a single source continuum contractor to assume responsibility of case management.²²³

By December 31, 2019, DFPS will have to: identify a maximum of eight catchment areas best suited to implement community-based foster care and up to two that could be identified as best suited to implement the transfer of case management services to an SSCC; create an implementation plan for those catchment areas, including a timeline for implementation; following the readiness review process and subject to the availability of funds, implement community-based foster care in those catchment areas; and following the implementation of community-based foster care services, evaluate the implementation process and SSCC performance in each catchment area.²²⁴ S.B. 11 will allow DFPS to change the geographic boundaries of catchment areas to align with specific communities. DFPS will have to ensure the

continuity of services for children and families during the transition of community-based foster care in a catchment area.²²⁵

Single Source Continuum Contractors

To qualify as an SSCC, an entity will have to be a nonprofit or governmental entity that is licensed as a service provider by DFPS, has an organizational mission and demonstrated experience in the delivery of services to children and families, and which can provide all services and perform all duties as outlined in **S.B. 11**.²²⁶ DFPS will be required to develop a readiness review process to determine the ability of an SSCC to provide foster care services in a catchment area.²²⁷

S.B. 11 requires a contract with an SSCC to: specify performance outcomes and financial incentives for exceeding any performance outcomes; establish conditions for the SSCC's access to relevant DFPS data and require the SSCC to participate in the data access and standards governance council created under the bill. Contracts must also require the SSCC to create one process for the training and use of alternative caregivers for all child-placing agencies in the catchment area to facilitate reciprocity of licenses for alternative caregivers between agencies, including respite and overnight care providers, as defined by DFPS rule; and require the SSCC to maintain a diverse network of service providers to accommodate children from different cultural backgrounds.²²⁸

DFPS will review, approve, or disapprove a contractor's decision about a child's permanency goal.²²⁹ S.B. 11 will require DFPS to form an internal dispute resolution process to resolve disagreements between an SSCC and DFPS. In addition, a SSCC and any subcontractor will have to maintain minimum insurance coverage.²³⁰

S.B. 11 will require DFPS to create the foster care services contract compliance, oversight, and quality assurance division.²³¹ The division will oversee contract compliance and achievement of performance-based outcomes by any vendor that provided community-based foster care, assess the fiscal and qualitative performance of vendors, and administer a dispute resolution process between SSCCs and subcontractors.²³²

S.B. 11 will allow an SSCC to end its contract early by providing notice to DFPS at least 90 days before the termination.²³³ DFPS could end a contract with an SSCC by giving notice at least 30 days before termination. DFPS will have to create a contingency plan in every catchment area to ensure the continuation of foster care services if a contract was terminated early.²³⁴

²³⁵*Increasing Capacity for Non-SSCC Regions*

Foster Care Capacity Needs Plan: Under **H.B. 1549**, DFPS must use all the available data to assess the foster care capacity needs and availability of each type of foster care and kinships placement in geographic regions where Community Based Care has not been implemented.²³⁶ DFPS must also create a plan to address the necessary substitute care services and identify both short-term and long-term goals and strategies for addressing the needs of the region.²³⁷

Plan for Capacity Needs: In regions of the state where CBC has not been implemented, DFPS management personnel and local stakeholders are required by **S.B. 11** to create and submit to the DFPS commissioner an annual plan that addresses foster care capacity needs.²³⁸ DFPS is also required to collaborate with a child-placing agency to develop and implement the single child plan of service model for each child in foster care in these regions by September 1, 2017.²³⁹

Young Parent Recruitment Program: **S.B. 11** will require DFPS to conduct a study on recruiting foster parents who are ages 21-36 years old specifically to serve as foster parents for children who are 14 years old or older.²⁴⁰ The department shall complete the study no later than December 31, 2018.²⁴¹

Protecting Freedom of Conscience: **H.B. 3859** adds a new chapter to the Human Resources Code entitled Protection of Rights of Conscience for Child Welfare Services Providers.²⁴² The legislative intent of the bill is to maintain a diverse network of service providers that offer a range of foster capacity options and that accommodate children from various cultural backgrounds. The intent is that decisions regarding the placement of children would continue to be made in the best interest of the child and which person would be able to provide for the child's physical, psychological, and emotional needs and development.

The bill prohibits a governmental entity or any person that contracts with the state or operates under governmental authority to refer or place children for child welfare services from discriminating or taking any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider: has declined or would decline to provide, facilitate, or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs; provides or intends to provide children under the control, care, guardianship, or direction of the provider with a religious education, including placing the children in a private or parochial school; has declined or would decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that were potentially abortion-inducing; or refused to enter into a contract that was

inconsistent with or would in any way interfere with or force a provider to surrender the rights created by the new chapter.²⁴³

Systemic Changes to DFPS

DFPS Organization

Separation of Department and Duties: The efficiency of DFPS with respect to decision-making and organizational flexibility was cause for concern, particularly with respect to investigations of abuse and neglect as well as service delivery and workforce. **H.B.5** amends certain provisions and transfers certain powers and duties from the Health and Human Services Commission (HHSC) to DFPS.²⁴⁴ DFPS will now operate as an entity separate from HHSC and the DFPS Commissioner will report directly to the governor. This reorganization is intended to allow DFPS to operate more autonomously and efficiently.²⁴⁵

H.B. 5 will require that DFPS establish at least the following five divisions within the department: Investigations, Consolidated Data, Legal, Operations, and Finance.²⁴⁶ The Investigations Division will handle the investigations of child abuse and neglect.²⁴⁷ The Consolidated Data Division will be responsible for collecting and analyzing all data related to DFPS.²⁴⁸ The Legal Division will oversee all open records, privacy and confidentiality issues, contract compliance, litigation, and any legal matters that related to the Department's workforce.²⁴⁹

An additional organizational improvement made to DFPS is increasing their ability and requirement to collaborate with relevant agencies.²⁵⁰ DFPS is required to work with HHSC, as well as health care and child welfare professionals, to design the described medical services delivery model and ensure that the child's health passport is available to all of the interested

parties.²⁵¹ DFPS is also required to collaborate with the Texas Education Agency (TEA) to develop policies and procedures to make sure that the needs of foster children are met in school districts.²⁵² **H.B. 7 and H.B. 5** amend the Family code to require DFPS and TJJD to work together to share information that will enhance the rehabilitation of youth and prevent the duplication of services.²⁵³ **H.B. 932** also requires that JJD notate whether the child is or has been in foster care at the time they are admitted. It also requires DFPS to respond to inquiries from JJD within 14 days.²⁵⁴

Data Collection and Evaluation

Performance Metrics and Evaluation: **S.B. 11** requires DFPS to collect and monitor data on recurring reports of abuse or neglect by the same alleged perpetrator or involving the same child, including reports of abuse or neglect of the child made while the child resided in other households and reports of abuse or neglect of the child by different alleged perpetrators made while the child resided in the same household.²⁵⁵ When DFPS determines case priority or conducted service or safety planning for the child or child's family, the bill will require DFPS to consider any reports of abuse and neglect.²⁵⁶

As soon as practicable after the S.B. 11's effective date, the bill also requires DFPS to create an office of data analytics to monitor and report on certain information about the agency's staff, such as employee retention and performance.²⁵⁷ DFPS will establish a data access and standards governance council to develop protocols for allowing SSCCs to access DFPS data to perform case management functions.²⁵⁸ HHSC and DFPS will have to develop performance quality metrics for family-based safety services and post-adoption support

services providers by September 1, 2018. The metrics would be included in each contract with those providers.²⁵⁹

Data Analytics: With the passage of **H.B. 1549**, DFPS will publish a report containing the following information: the reports of abuse and neglect made to the department hotline, the types of abuse report, the priority level of each investigation, the investigation response times, and results of the investigations.²⁶⁰ The Department must also collect data regarding the families referred to family preservation services, the children placed in substitute care, the children placed out of the child's original county or region, the children receiving each level of service, the children under conservatorship who are pregnant or have children who are also under conservatorship, the recurrence of child abuse in households that have been investigated previously, and the workforce turnover data for CPS employees, including the average caseworker tenure and salary.²⁶¹

Facility Oversight and Child Safety

Facility Licensing and Oversight

Foster Group Homes: **H.B.7** eliminates the types of foster care placements that were previously known as "foster group homes."²⁶² The bill designates General Residential Operations (GROs) as facilities that have more than seven children at one time, instead of the previous twelve.²⁶³ There will now be Cottage Homes, which are family residential settings with no more than six children and with at least one houseparent who lives at the home while the children are in care.²⁶⁴

Child Abuse Investigations

Child-Care Facility Investigations: **S.B. 11** specifies that the investigations of alleged abuse, neglect, or exploitation occurring at child-care facilities will remain under the purview of DFPS.²⁶⁵ DFPS must create standardized policies to use during investigations and implement the standardized definitions and policies by December 1, 2017.²⁶⁶ The DFPS commissioner is required to establish specialized units within CPS to investigate allegations of child abuse, neglect, and exploitation at child-care facilities and could require investigators to receive ongoing training on minimum licensing standards.²⁶⁷

Abuse Investigations in CPS: **H.B. 249** requires DFPS to transfer the responsibility of conducting investigations of alleged abuse, neglect, or exploitation occurring at certain child-care facilities to its Child Protective Services (CPS) division.²⁶⁸ The bill directs DFPS to investigate a report of alleged abuse, neglect, or exploitation occurring at a facility operated, licensed, certified, or registered by a state agency, including certain facilities regulated by DFPS.²⁶⁹

As also seen in S.B. 11, DFPS is to standardized policies to use during investigations and also implement the same by December 1, 2017.²⁷⁰ The DFPS commissioner may 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.²⁷¹

After-Hours Investigations: **H.B. 1549** requires DFPS to employ investigators and responders specifically for after-hours reports of child abuse and neglect in geographic areas, “with a demonstrated need”.²⁷²

Child Fatality Investigations: With the passage of **H.B. 1549**, the child fatality review team committee that investigates child fatalities in the state will also include individuals that represent that speaker of the house of representatives, the lieutenant governor, and the governor.²⁷³ The bill also requires DFPS to create a training program for justices of the peace and medical examiners to further educate them about child fatalities and how to evaluate the causes of death in children.²⁷⁴ It also requires the department to evaluate data regarding child fatalities to create public health strategies for the prevention of child fatalities and near-fatalities.²⁷⁵

DFPS will also increase data collection regarding child fatalities and near-fatalities including information regarding the child's and family's history with child protective services, and the circumstances surrounding the child's death.²⁷⁶ The review team will also analyze the data to identify any demographic trends by specific population groups or geographic areas.²⁷⁷

The bill requires more stringent standards for conducting inquests into the death of a child and requires that the justices of the peace or medical examiner to report a child fatality to the review team by the 120th day after the date the death is reported.²⁷⁸

Miscellaneous Safety Measures

Employee Background Check: With the passage of **H.B. 4094**, DFPS will now be required to obtain the criminal history information for the following people: all applicants, employees, and volunteers, regardless of position or duties, with DFPS, or any entity that contracts with DFPS to provide services to foster care children.²⁷⁹ Criminal background checks will also be required for any person, including children and other caregivers, that will be in the same home as a child and have unsupervised access to the child.²⁸⁰

Caregivers as Protectors: **H.B. 1549** will also require that when a child is removed from a home, the department shall expedite the evaluation of a potential caregiver to make sure that a child is placed with someone who can protect them from the alleged abuser.²⁸¹

Address Confidentiality for Victims: **S.B. 256** specifies that the home address of any person eligible for a protective order for family violence, sexual assault, trafficking, or stalking must be classified as confidential within the tax appraisal and voter registration records.²⁸² The bill states that a person who is participating in the Address Confidentiality Program (ACP) administered by the Texas Attorney General's office is also eligible to have their address kept confidential within these records.²⁸³

Case Management

The Organization of the Case Management System and Optimization of Case Files

Caseload Management: **H.B. 1549** 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.²⁸⁴

Child Advocates: with the passage of **H.B. 7**, every child will have a guardian ad litem who interviews interested parties, including caseworkers and teachers.²⁸⁵ The guardian ad litem will also be consulting on decisions regarding the child's placement, have access to the child while in placement, and evaluate whether child welfare service providers are protecting the child's interests.²⁸⁶ Every child in managing conservatorship of the state will have an attorney

ad litem appointed to review the child's safety and well-being and take appropriate action including requesting a hearing to address to the issue.²⁸⁷

Records and Documentation: **S.B. 11** and **S.B. 1758** require that the guardian ad litem and the attorney ad litem appointed to children 16 years of age and older and in PMC ascertain whether the child has received a copy of their birth certificate, their social security card, a driver's license, and any other appropriate personal documents.²⁸⁸

Reduce CPS Caseworker Turnover

Secondary Trauma Support: **H.B. 1549** requires DFPS to create and provide a support program for caseworkers who have experienced secondary trauma during their employment.²⁸⁹ The department cannot require that a caseworker participate in the program. The program will include incident stress debriefing for the caseworkers.²⁹⁰

Prevention and Early Intervention Services

Services for Families: **H.B. 1549** requires the department to create a strategic plan to increase the number of families that receive prevention and early intervention services each year.²⁹¹ This also requires that department identify geographic areas having a high need for prevention and early intervention services.²⁹² These strategies are to be aimed at improving the early recognition of child abuse or neglect, improve the reporting of abuse and neglect, and reduce child fatalities.²⁹³

Prevention Task Force: DFPS must establish a Prevention Task Force to make recommendations to the department for changes to law, policy, and practices regarding the prevention of child abuse and neglect.²⁹⁴

Best Placements for Children

Best Interest Considerations: **H.B. 1542** requires that DFPS take an additional four factors into account when determining the best placement for a child that is taken into PMC.²⁹⁵ If the child cannot be placed with a suitable relative or designated caregiver, then the child's placement is to be determined by what is in their best interest. DFPS is to consider whether the placement is the least restrictive setting for a child, the geographic proximity to the child's home, whether the placement is able to meet the identified needs of the child, and any expressed interests of the child regarding their placement.²⁹⁶

Least Restrictive Placement: **H.B. 1542** defines that least restrictive placement for a child as being the most family-like setting.²⁹⁷ The bill goes on to explain 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.²⁹⁸

Court Review Placement at Hearings: At every placement hearing for a child in TMC or PMC, the court must include a statement that discusses whether there is a viable kinship placement for the child.²⁹⁹

Caregivers

Foster and Adoptive Parent

Financial Assistance for Kinship Caregivers: While kinship caregivers have previously been provided a one-time payment of up to \$1,000 per child taken in, H.B. 4 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, meaning they could receive up to approximately \$350 per month.³⁰⁰ This amount would be paid for up to 18 months.³⁰¹ In addition, if the placement becomes permanent, kinship caregivers can be reimbursed up to \$500 per year for other expenses for a limited period.³⁰² The bill also makes fraudulently accepting payments a criminal offense, punishable with jail time and/or a civil penalty.³⁰³ The department will also be required to publish an annual report with all of the data from the preceding year. The first report will be due on September 1, 2018. **(H.B. 4).**

Day Care Reimbursement for Foster Parents: **S.B. 11** will require DFPS to provide monetary assistance to a foster parent for full-time or part-time day care services for a foster child if DFPS received the required verification from a foster parent or the child needed an emergency placement.³⁰⁴ If the foster parent was employed full-time or part-time, the bill would prohibit DFPS from denying monetary assistance to the foster parent.³⁰⁵

Employee Leave for Foster Parents: The first section of **H.B. 88** amends Chapter 21 of the Labor Code making it illegal for an employer to discriminate against adoptive or foster children in their employee leave policies.³⁰⁶ The bill states that if an employer allows an individual to take personal leave to care for one's sick child, the policy must extend to an employee's adoptive and/or foster children as well as biological children.³⁰⁷

Adoption Process: **H.B. 5** amends the necessary qualifications to conduct an adoption evaluation.³⁰⁸ The qualification list now includes being under contract with a domestic relations office.³⁰⁹ Other provisions are: possess a degree in a human services field from an accredited

college or university as well as a license to practice in the state as a social worker, professional counselor, marriage/family therapist, or psychologist; and either having a year of full-time experience working at a child-placing agency performing related activities or be working directly under the supervision of a person that meets the requirements of this section to conduct adoption evaluations; and be qualified as a child custody evaluator under Section 107.104.³¹⁰ Additionally, a provision specified that this amended bill only applies prospectively. Meaning, it applies to adoption evaluations performed on or after the effective date of this Act.³¹¹

The bill adds a provision requiring DFPS to inform those seeking to adopt a child about the right of a child's sibling to file a suit for access to the child. It also authorizes DFPS to provide such information on any form or application provided to prospective adoptive parents.³¹²

Ability to Intervene in Suit: A grandparent or relative may be granted leave to intervene in a suit affecting the parent-child relationship if there is evidence that the child's physical or emotional health would be significantly impaired by placing them with the parent. Now, with the passage of **H.B. 1410**, a foster parent can also be granted leave to intervene in these circumstances, but only if the child has been living with the foster parent for at least twelve months.³¹³ The bill takes effect on September 1, 2017.³¹⁴

Rights of Biological Parents

Reasons for Terminating Parental Rights/Removing Child: **H.B. 7** states that the state may not remove a child from a home or terminate parental rights for the following reasons: the parents have chosen to homeschool, the parents have engaged in reasonable discipline, the

parents are economically disadvantaged, the parents have refused vaccinations, or the parents have administered medical cannabis or low-THC treatments.³¹⁵ The bill allows parents to request small extensions from a court in order to obtain legal counsel or complete the requirements in a service plan.³¹⁶

Petition After Emergency Removal: In addition to the existing procedures, **S.B. 999** requires that the government entity that removed a child without a court order to submit an affidavit stating: the reason for removal; that continuation of the child in the home would have been contrary to the child's welfare; that there was no time for a full adversary hearing prior to removal; and that reasonable efforts were made to prevent or eliminate the need for removal of the child.³¹⁷

Full Adversary Hearing: S.B. 999 requires that a full adversary hearing be held within 30 days prior after a petition is filed requesting the removal of a child.³¹⁸ At the conclusion of the hearing, the court will have to issue a temporary order if it finds there was a continuing danger to the physical health or safety of a child caused by the person entitled to possession of a child and that the continuation of the child in the home would be contrary to the child's welfare.³¹⁹ The court also will have to find that reasonable efforts were made to prevent or eliminate the need for removal of the child.³²⁰ During the full adversary hearing held after emergency removal of a child, a court can consider if a person in the household has abused or neglected another child when determining whether there was a continuing danger to a child in a home.³²¹

Continuance: **S.B. 999** will extend an existing, maximum seven-day continuance of an adversarial hearing that is currently available to indigent persons to non-indigent persons for good cause shown.³²² The continuance will allow time for the individual to hire an attorney or

for the individual's attorney to file a response to the removal petition and prepare for the hearing.³²³

Dismissal: Under **S.B. 11 and H.B. 7**, a court's jurisdiction over a case affecting the parent-child relationship will be terminated if the court did not begin a trial on the merits or grant an extension within one year. The case would be automatically dismissed without a court order.³²⁴

Resources for Foster Youth

Improved Education Resources for Children in Foster Care

Educational Continuity: **S.B. 1220** aims to achieve greater educational continuity for students by requiring schools who receive new students who are homeless or in transitional care to rely on the decisions made by the student's previous school and place the student in comparable courses or programs.³²⁵ This goes into effect for the 2017-2018 school year.³²⁶

Intellectual Disability Assessment: **H.B. 1549** requires that all children placed in managing conservatorship be assessed for an intellectual disability as soon and possible.³²⁷ If the assessment indicates that a child may have an intellectual disability, the department must make a referral to a provider before the child's 16th birthday (if practicable); if the child is placed in the PMC after the child's 16th birthday, the determination must be conducted as soon as possible.³²⁸

Foster Children with Special Needs: With the passage of **H.B. 1556**, a foster parent can act as the child's parent and make special education decisions on the child's behalf if the parent agrees to do so and completes a training program.³²⁹ When a foster child with a disability is

enrolled in a school, DFPS has five days to inform the school district if the foster parents will not be serving as the parent and education decision-maker for the child.³³⁰

If a child with a disability is under the conservatorship of DFPS, they must have a designated special-education decision maker.³³¹ For children who have foster parents, the parent can fulfill this role. If the child does not have a foster parent or if the foster parent is unable to fulfill this role, then the school district where the child is enrolled must appoint a surrogate parent for the child.³³²

The surrogate parent must agree to serve in that capacity and complete a training program.³³³ The surrogate parent must exercise independent judgment regarding the child's interest and ensure that the child's due process rights are not violated. The bill also requires that the surrogate parent review the child's educational records, visit the child and the school where the child is enrolled, consult with the child's teachers, caseworkers, caregivers, and other involved parties, and attend meetings regarding the child's education.³³⁴

The bill states that the surrogate parents cannot be an employee of the state, the school district, or any other agency involved with the education or care of the child. The district may appoint the child's previously appointed guardian ad-litem or the court-certified volunteer advocate as the child's surrogate parent.³³⁵

Healthcare Services for Children in Foster Care

Health Screenings: **S.B. 11** requires children who were in DFPS custody for more than three business days who have been physically or sexually abused to 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 was in a rural area.³³⁶ A SSCC will have to verify a child to

whom it was providing therapeutic foster care services was screened for trauma at least once every 90 days.³³⁷ A child-placing agency or general residential operation is required to ensure children in DFPS conservatorship received a complete early and periodic screening, diagnosis, and treatment checkup as specified in their contracts with HHSC.³³⁸ The bill also requires managed care organizations under the STAR Health program to ensure that their enrollees received these screenings and checkups.³³⁹ Contracts must include that an entity's noncompliance with administering the required screening, diagnosis, and checkup to children in DFPS conservatorship would result in progressive monetary penalties.³⁴⁰ The bill also will require DFPS and an SSCC to notify within 24 hours the managed care organization under Medicaid's STAR Health program of any changes in a child's placement.³⁴¹

Inpatient Mental Health Facilities: With the passage of **H.B. 7**, DFPS may request the admission of a child to an inpatient health facility if the child is under the state's conservatorship if the physician if the child presents a risk of serious harm to themselves or others.³⁴²

Assistance for Foster Youth Aging Out of Conservatorship

Higher Education Tax Exemption: **S.B. 1123** amends the Education Code relating to conditions on the receipt of tuition and fee exemptions at public institutions of higher education for adopted students formerly in foster or other residential care.³⁴³ S.B. 1123 makes it so that a former foster care youth that was adopted and receives tuition and waiver exemptions for public higher education institutions in Texas will not be subjected to the Satisfactory Academic Progress (SAP) requirements that apply to other students who receive those waivers.³⁴⁴

Career Development and Education Program: **S.B. 1220** requires DFPS to create a career development and education program by collaborating with local workforce development boards, foster care transition centers, community and technical colleges, schools, and other workforce industry resources.³⁴⁵ The program will assist foster care youth and former foster care youth by helping them achieve a high school diploma, equivalency certificate, and industry certifications.³⁴⁶ The program will also provide career guidance and inform youth about the available tuition and fee waivers for higher education.³⁴⁷ DFPS and TEA will produce a report on the program by September 1, 2018.³⁴⁸

Summer Internship Pilot Program: **H.B. 1608** creates a summer internship pilot program run by DFPS.³⁴⁹ Each year, DFPS will select foster youth or former foster youth to participate in the program.³⁵⁰ The program will provide youth with the opportunity to develop marketable job skills and obtain professional work experience through working with a business, nonprofit organization, or governmental entity.³⁵¹ The internships can be unpaid or paid. DFPS will submit a report each year with updates on program.³⁵² DFPS must establish the pilot program by January 1, 2018.³⁵³

Transition Plan for Foster Youth: **S.B. 1758** requires that at each permanency hearing for a child whose permanency goal is another planned permanent living arrangement, the court shall review the permanency progress report to verify that the department has addressed the child's transition plan.³⁵⁴ The court will verify whether an independent living skills assessment and determine whether DFPS has addressed the goals in the child's permanency plan, including the child's housing plan and the results of their independent living skills assessment.³⁵⁵ The

court will also determine whether the child has received their appropriate personal documents.³⁵⁶

Preparation for Adult Living Program: With the passage of **S.B. 1758**, DFPS will conduct an independent living skills assessment on foster youth under PMC ages 14-16 years old and all youth in PMC or TMC ages 16 years old or older.³⁵⁷ Youth will be assessed each year to determine the skills they have learned over the last year.³⁵⁸ The bill also requires that DFPS work with stakeholders to develop a curriculum for the Preparation for Adult Living Program that provides youth with relevant and age-appropriate information. DFPS must submit a report with the plan no later than December 1, 2018.³⁵⁹

Identification Documentation: **H.B. 3338** requires DFPS to develop procedures to ensure that foster children obtains a driver's licenses or personal identification cards before leaving the state's conservatorship.³⁶⁰ The section mandates the cooperation of DFPS with volunteer advocates from charitable organizations to achieve this goal.³⁶¹

Community Based Care: A Promising Innovation in Foster Care Privatization

In the 85th Legislative Session, the Texas legislature passed two bills to expand foster care redesign, Senate Bill 11, and House Bill 6.³⁶² Prior to this expansion, community based care was piloted in two regions in Texas, with drastically different levels of success. Somewhat similar reforms have also been implemented in several states with mixed outcomes. Prior to looking at what other states have employed and analyzing what factors lead to the relative success of those models, we must first define CBC and outline its benefits, and briefly outline its roll-out in Texas and other states.

Community Based Care Utilizes Contractors Operating within Their Local Community to Serve Foster Children.

CBC is a model of foster care under which certain child welfare services, including the responsibility of case management, are delegated to nonprofit organizations referred to as Single Source Continuum Contractors (SSCC's) which operate within the communities that they serve.³⁶³ The lead SSCC's oversee subcontractors; the Texas Department of Family and Protective Services (DFPS) remains responsible for monitoring and oversight of the SSCCs.³⁶⁴

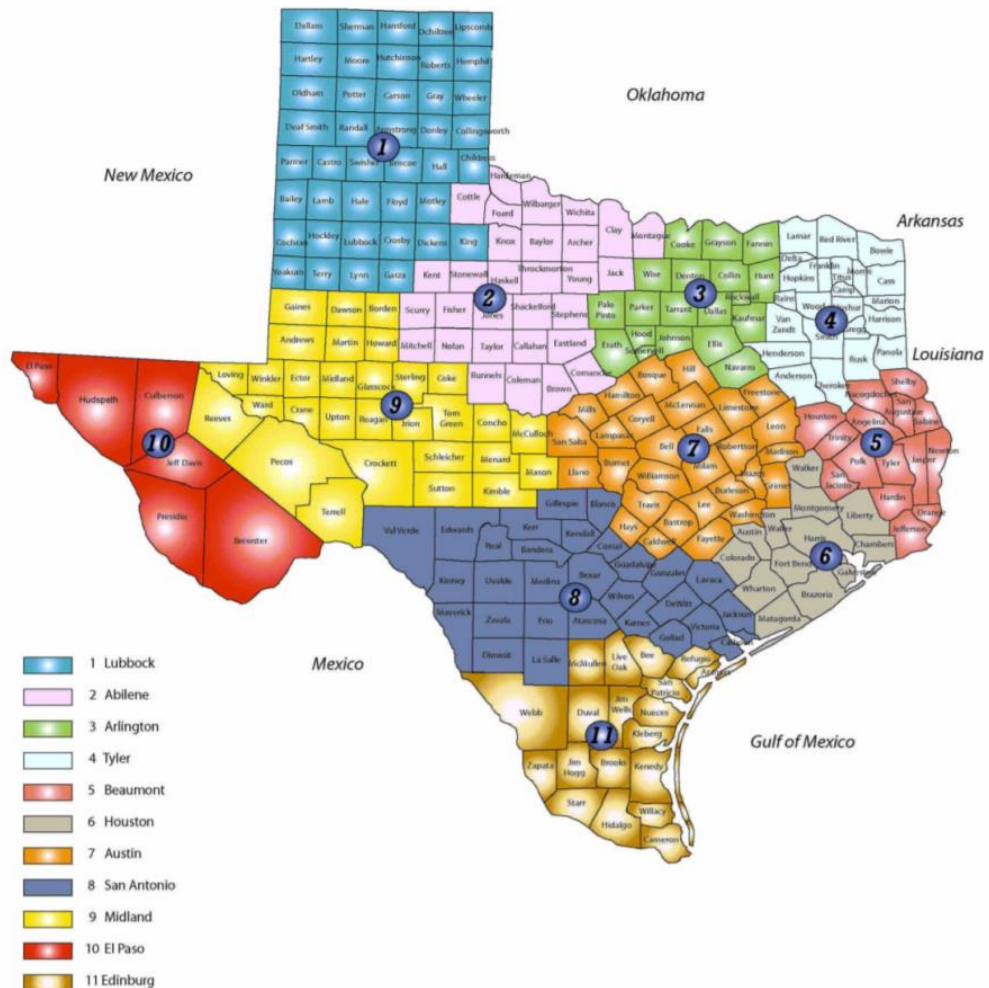
Community Based Care Benefits Children because It Allows Them to Stay within their Communities, and Servicers Can Address Community-Specific Needs.

CBC allows for a more specialized approach to children's needs. The localized structure of CBC increases the likelihood that children will remain closer to their home areas. Moving creates stress on a child; for example, when a child changes schools, they are estimated to lose four to six months of academic progress.³⁶⁵ Children in foster care often undergo multiple placements,³⁶⁶ and if they change schools with each placement, they can lose years of progress.³⁶⁷ If a child remains in his or her home community, they are more likely to be placed closer to siblings and maintain important relationships. They also are better able to preserve bonds with friends and school personnel, which also fosters healthy development.³⁶⁸ In addition to the benefits to the children served, community based models have the potential to run more efficiently.³⁶⁹ Because they are smaller and more locally run, the specific issues that children within those communities face can be better addressed by staff and volunteers, and the children's networks can grow at a higher rate and remain more stable.

Community Based Care Has Experienced Mixed Success in Texas So Far.

The current trend towards CBC in foster care redesign began in 2011 with Senate Bill 218.³⁷⁰ This bill gave DFPS the authority to implement redesign in two “catchment areas.” DFPS chose a region (2 and 9, see map below) comprised of 60 counties that form west-central Texas.³⁷¹ In January 2013, Providence Service Corporation (“Providence”) was awarded the SSCC contract for those catchment areas. Within the first year, Providence exercised their contractual option to opt out of continuing service due to funding issues.³⁷² DFPS has also awarded a contract to ACH Child and Family Services to manage seven counties near the Dallas/Fort Worth Area, including Tarrant County.³⁷³ ACH began placing children in September 2014.³⁷⁴ Though the original contract gave ACH \$650,000, its’ startup costs ended up at \$3.6 million.³⁷⁵

Texas Department of Family and Protective Services Regions



As of August 2016, ACH was responsible for 1354 children, or 97% of foster children in their region. Their Foster Care Service is called “Our Community Our Kids” (“OCOK”).³⁷⁶ OCOK is founded upon deep collaboration with the community.³⁷⁷ OCOK’s strategies for their region include a rural recruitment initiative, a development of therapeutic care for foster children, a high quality parenting initiative, recruitment for specific subgroups of children, including LGBTQ youth, or teen mothers, and community engagement.³⁷⁸ Under this model, turnover is

significantly down,³⁷⁹ efficiency has increased,³⁸⁰ and the results are benefitting the children.³⁸¹

HB 7 and SB 11 have jointly served to change aspects of foster care by providing more services for children when they age out.³⁸² They gave different names and regulations to available types of placements, among other changes.³⁸³

Other States have Implemented Somewhat Similar Programs with Differing Results.

Kansas, Florida, and Nebraska have privatized foster care. Kansas was moderately successful, while Florida and Nebraska were less so. Capacity, speed of transition, stakeholders, contract terms, and payment structure have been important determinative factors in the success or failure of these programs.

Kansas and Nebraska Have Encountered Similar Problems with Privatizing, and Enjoyed Similar Benefits.

Kansas Privatized Their Foster Care System through Legislation in Response to Litigation that Revealed Gross Deficiencies; The State Believed Privatization Would Be More Efficient and Increase Accountability.

In the early 1990's the Kansas Department of Social and Rehabilitation Service (SRS) was the primary provider of child welfare in Kansas. They were deficient in their duties and in 1993 they settled a case with the American Civil Liberties Union (ACLU). The ACLU sued because SRS had excessive caseloads and inadequate monitoring.³⁸⁴ This settlement set annual reviews and standards for them to meet by certain deadlines. By 1995, they had not met any of the standards and that year's legislative "House appropriations committee recommended that SRS move towards privatization."³⁸⁵

They redesigned the welfare system with several goals in mind: revamping the delivery of services to children and families, making foster care and reunification a primary goal, and improving of adoption services. SRS would share case management responsibilities with contractors and investigations was the only facet not privatized.³⁸⁶ A Regional Lead Agency model and Performance-Based Measurements were implemented to ensure contractors were doing their respective task in the child welfare process, reflecting an increase in accountability.³⁸⁷

Kansas divided the state into four regions: The West Region, the Wichita Region, the East region, and the Kansas City Region. Each region is managed by a different contractor and services between 1,400 and 2,100 children. The contractor then subcontracts placement agencies. (table 3) These subcontractors continue monitoring well into aftercare.³⁸⁸ Currently there are two contractors: KVC Behavioral Healthcare and Saint Francis Community Services. They recommend placements, develop case plans, and monitor progress toward case plan goals.³⁸⁹ When they cannot reintegrate, the contractors facilitate pursuit of a different case plan, such as adoption.

Kansas Had Problems with Capacity, Stakeholder Roles, Payment Structure, Funding, Coordination of Services, and Performance Measurement and Accountability.

Kansas Initially Experienced Capacity issues, but the Solution to Capacity Issues Was a Regional Agency Model.

The largest issue Kansas faced was due in large part to timing. Because they waited until they had almost failed all of their benchmarks, there was very little time to make improvements. When legislators decided to privatize, they proceeded under the erroneous belief that all the employees currently working in the child welfare system would continue

working in the field and move on to contracting companies.³⁹⁰ However, privatization in Kansas was preceded by an 18-month period of indecision, and during that period most of the workers chose to move to another agency within the state or to retire. The uncertainty of the contracts further exacerbated retainment issues, because employees were not sure if they would have a job in four years.

Privatization also posed new challenges and changes in work culture for long terms government employees. The lack of transferees forced these new contractors to hire new people.³⁹¹ With new employees come training costs and other expenses. Also, the staff turnover rate for the first two years was around 50%.³⁹² This created in turn created instability for the children in the system.³⁹³ The key issues of concern for the new workers were: inadequate pay, lack of career advancement opportunities, burnout and job security.³⁹⁴ To add salt to the wound, the number of staff needed tripled.³⁹⁵ Further, the number children entering the system increased by 20%, “since investigators were no longer managing cases, they had more time for investigations and less incentive to ‘screen out.’”³⁹⁶

These issues were in part resolved by an increase in funding and the customization of the staff. The legislature assigned another \$100 million dollars to the fund, which allowed more staff to be hired. Over time, the employees began to believe in the stability of the system, and this belief leveled out the turnover rate. The spike in cases slowly went down, further reducing turnover.

The main solution to Kansas’ capacity issue has been the regional agency model. When this top-down management framework began to take effect, case worker’s roles, duties and responsibilities became better understood, and this understanding resulted in better defined

roles and responsibilities.³⁹⁷ Currently 6% of case managers handle more than 30 cases simultaneously, in contrast to 30 cases per manager as an average.³⁹⁸ It is a stark change from where they started, however it is still a higher number of cases than is ideal. Furthermore, the maximum caseload in all four regions crossed the recommended maximum caseload at least twice every year due to worker turnover.³⁹⁹

Court Systems Must Have a Stake in the Foster Care Service Reform.

Whether the system is privatized or left to the public domain, the court system plays a key role as the mediator and major decision maker for the children. It was likewise imperative for courts to play a key role in the transition period. However, Kansas failed to involve stakeholders and created a massive disconnect between all community partners.

When initially transitioning over to the privatized system, the state requested input from the court system regarding the development of the new procurement process.⁴⁰⁰ After this initial request, however, they were left out of further decision making. This lack of collaboration led to confusion and set the stage for future adversarial difficulties. Judges found were misinformed about how the contracts worked and who was ultimately accountable, and because of this, an already existing wedge was driven further between the judicial branch and the contractors.

Kansas has been able to slowly mend this divide over time by increasing transparency between the courts and the contractors,⁴⁰¹ and the contracts eventually included the courts in major decision making. There are still issues regarding communication, but transparency and frequent communication and inclusion have helped.

Kansas Has Benefitted from the Privatization of Foster Care.

The outcomes show that in the long term, the child welfare system of Kansas benefitted from privatization. However, it is difficult to know how much of the improvement can be attributed to privatization and how much resulted from the increase of \$161,686,082 (table 5) that the state allocated to the child welfare system.⁴⁰² The positive outcomes included a 2% decrease in abused children, an 8% increase in permanency within one year, a decrease of 643 children in residential placement, an increase of 460 children being adopted per year, the average length of stay in community care down by 7 months.⁴⁰³ Furthermore, the number of adoptions doubled, and the average length of stay in foster care has gone from 23 to 16 months.⁴⁰⁴ The amount of funding has increased, and the rate of repeat maltreatment has fallen since privatization.⁴⁰⁵ Kansas has increased their rate of data collection, leading to greater accountability and focus on the program's goals to improve safety, reduce time to permanency, increase stability and grow capacity for children. There have also been some less-positive results from Kansas' system; re-entry into foster care, for example, has increased, and sibling placement has gone down 4%.

Kansas' Contract Forms Have Relatively Short Terms, Requiring Renewals Roughly Every Two-Years.

One of the primary purposes of moving to a privatized child welfare system is to reduce costs. Kansas expected to lower costs through contracts under which providers agreed to service a specific area. The types of contracts available to the public are family preservation services and reintegration, foster care, and adoption services contracts. The contracts are four years with the ability to enter into two-year renewal periods. Every two years, costs are renegotiated.⁴⁰⁶ During the child's stay, there are six reasons why payments to a contractor can

cease: (1) the child is reintegrated into their family; (2) the child achieves finalization of adoptive placement; (3) the child is placed in permanent custodianship; (4) the child is transferred to Department of Corrections; (5) The child is transferred to tribal custody; (6) the child is released from DCF custody for other reasons not specified above.⁴⁰⁷

Kansas Should Use Monthly Per Child Payments Due to a Lack of Information about Costs.

SRS chose to use a capitated rate system for payment. This meant the state would provide contractors a specific amount to cover services for the entire case.⁴⁰⁸ Because SRS had not previously tracked the costs per child, they grossly underestimated the costs, which was “on average 65% above what they received total for the first four years.”⁴⁰⁹ SRS also failed to include start-up costs. The start-up costs were necessary as cash flow was slow in the beginning. They malapportioned their money, and one study showed that “10% of the children required 90% of the financial resources.”⁴¹⁰ To combat this lack of financial forecasting and information, Kansas switched back to a monthly per child payment during the second round of contractual bidding. Fortunately, the shorter contract terms allowed for restructuring after two years.

Kansas Had to Increase Funding.

The state did not expect to pay the amount of money that was ultimately required. In the years of 2000-2004, they had to increase the budget by an additional \$100 million. In 2016, Kansas spent \$220 million on prevention and protection services, and \$154 million to foster care contractors in order to provide placements.⁴¹¹

The State Had to Improve the Coordination of Services.

The lines between where the contractors began and the state ended were not made clear at inception, creating a tense environment which did not foster the collaborative environment necessary.⁴¹² The research consulting firm James Bell Associates externally evaluated the Kansas child welfare system in a year-end report. They found that different providers were responsible for different phases of care and service, and apportionment of responsibilities were not clearly delegated.⁴¹³ Eventually, the state allowed the contractors to have control over the entire case management process. The regional based agency model helped in this transition. Because the higher agency could coordinate the process completely in their region, the process was streamlined, communications were improved, and efficiency increased.⁴¹⁴

Performance Measures Were Important for Revising and Adjusting.

Little data was available to the contractors, and they went into the process relatively blind as to how much each phase of the process cost per child. At first, Kansas set performance measurements too high and eventually had to scale them back. The short-term contracts were again useful because they could revise their goals and measurements. The state changed to a performance based measurement that was realistic and optimistic. These measurements showed what could be improved, what worked, and what did not work. For example, they found that permanency with respect to placements could not be easily controlled by the contractors.⁴¹⁵ The value of these standards were “not in the standards themselves but in their use to reward performance and improve quality.”⁴¹⁶ In the contract, it states that failure to meet these measurements will result in contract termination, but no terminations have been

carried out, probably due to a lack of competition. Therefore, the measurements are treated much more like goals as opposed to performance standards.⁴¹⁷

Privatization Did Not Drive Market Competition.

Another anticipated cost savings was expected from the creation of a competitive market, which would theoretically drive costs down. In Kansas this failed to happen; the proof is that competition was non-existent during the bidding process. Only one company bid for statewide adoption contracts, and three bids for the foster care contracts.⁴¹⁸ This defeated the purpose of privatization and created a monopoly for the contractor. This lack of competition could be due to a lack of long term contracts, promises of revenue incoming and a fear of reverting to the old system if privatization did fail.

Privatization Allowed Kansas to Collect More Data and Have More Control Over the Foster Care System. Contractors Collected Data that Can Be Used to Ensure Accountability.

One of the biggest benefits Kansas received from its shift to a privatized system was improved data collection, and the performance-based measures played a crucial role in this regard. They encouraged all the contracting companies to maintain good practices in data measurement for performance evaluation purposes. This led to a cornucopia of data for other states that are contemplating going into a privatized system.

This accountability is the crux on which the entire system rests. Kansas has chosen to track: permanency, indicators of good practice, family connections, educational needs, and timeliness of permanency hearings.⁴¹⁹ When removed, foster children are referred to the contractor for their region. The state of Kansas originally paid a fixed amount per child to cover costs for 12 months. Later, SRS modified the contract so foster care contractors receive base

administrative rate with variable rate per child per month. Permanency has slowly risen in part because of Kansas has been able to tackle health issues children have. Nearly 80% of kids with issues are being given medical assistance.⁴²⁰ This is often an issue of permanency with 35% of children in foster care having intellectual or physical disabilities.⁴²¹

Nebraska Privatized their Child Welfare System after it Failed to Meet Standards

Prior to Privatization, Nebraska Was Not Performing Up to Child and Family Services Standards.

In 2002, the U.S. Department of Health and Human Services produced a Child and Family Services Review (CFSR), assessing Nebraska's performance in seven child welfare outcome areas such as safety, permanency, and well-being and in seven systematic factors. While Nebraska's child welfare system did have some strengths, the CFSR found that it was not in "substantial conformity" with *any* of the seven child welfare outcomes. Additionally, the state was not in substantial compliance with four out of the seven systematic factors. For that reason, the State began to reform its childcare.⁴²²

Nebraska Attempted to Privatize in Response to the Federal Report, but the Process Has Been Slow and Inconsistent.

After the federal CFSR report came out, Nebraska began to reform its Child Welfare system – a process that ultimately resulted both in Nebraska's attempt and failure to fully privatize its foster care system. In the years since 2002, Nebraska's reforms have fallen into four overall phases.⁴²³ From 2002 to 2007, Nebraska began its initial efforts of reform in response to the federal report. Nebraska then spent two years moving towards privatization, increasing the number of services and the roles NGO providers played in providing those services. In 2009 and 2010, the state then contracted with "lead agencies" to provide parts of these expanded services.

Lead agencies could bring on subcontractors to help with this expansion, and case management was eventually added to private contractors' workload. This quick transition to privatization did not meet all of the aspirational performance measurements that were set, and, in 2012, only the Eastern region of the state remains privatized.⁴²⁴

In the end, only two regions could complete the first phase of privatization—services management and provision—and begin the second phase of privatization—case management. One of these regions, the Southeast Service Area, only had privatized case management for 14 months before its lead agency, KVC, ended its contract and ceded its cases in the Southeast Service Area back to DHHS.⁴²⁵ In the end, only the Eastern region, made up of two counties on the border between Nebraska and Iowa, experienced privatized case management for a significant period. It should be noted, however, that even though the Eastern region covers a geographically small region, its area is heavily populated and can represent 40 to 42 percent of the child welfare caseload.⁴²⁶

[The Main Problems with Privatization were the Loss of Workers, Contractor Unpredictability, Interruptions and Losses in Service and Stability, and Issues with Monitoring and Accountability.](#)

In 2012, Nebraska Legislative Session was deemed the “year of the children.”⁴²⁷ During this session, several child welfare reform laws were passed, including LB 961, in which the Nebraska Legislature made the following findings (among others) about the state’s privatized child welfare system:⁴²⁸ Across the board, lawmakers, foster parents and child advocates have said that Nebraska’s attempt at privatization failed because it was “ill-conceived, rushed, and inadequately funded.”⁴²⁹ Subsequent reports have confirmed these sentiments; their findings can be categorized and understood as follows.

Nebraska Transitioned Too Quickly and without an Adequate Plan or Strategy.

In 2009, the state of Nebraska began to transition the provision of child welfare services from the Department of Human Health and Services (DHHS) to lead agencies in five regions across the state.⁴³⁰ Unlike other privatized states that used pilot programs to phase in regions gradually, Nebraska created a plan to transition service coordination in all regions simultaneously. Thus, in 2009-2010, the five contracted lead agencies received \$7 million to begin coordinating and providing services (but not case management) to all children in Nebraska's child welfare system.⁴³¹ The lead agencies were to subcontract with other private providers to for the services that they could not provide themselves.⁴³² This transfer of provision of services was the first phase of the transition and would last only one year until the lead agencies began to also provide full-blown case management in Phase II.

The speed and broad scope of this transition left little opportunity for DHHS, lead agencies, or the legislature to react to issues that occurred in the first months and years of the privatized system. Unfortunately, this reaction time was sorely needed when the newly-created system faced significant problems in funding and capacity. Ultimately, the lack of a strategic transition blueprint caused the privatization effort to begin crumbling almost as soon as it began.

Nebraska's Payment Structure Lacked Flexibility and Simplicity.

When the state initially contracted with lead agencies to provide services in Phase I, it replaced the fee-for-service method of payment (agency is paid for services it provides) with a risk-based payment system, where the contractor received a flat monthly fee regardless of the amount or value of the services provided.⁴³³ This was a large problem because the state

underestimated the number of children who needed services and the level of services they would need, as well as whether or not court-ordered treatments would be covered by Medicaid.⁴³⁴ As a result, lead agencies were paralyzed by lack of funds. One lead agency withdrew from its contract within days of its service initiation deadline. Another lead agency filed for bankruptcy a week later.⁴³⁵ Because the agencies didn't have decision making authority until early 2011, the remaining agencies were left paying for services that they had no input in. This was exacerbated by contractual "no reject, no eject" provisions, meaning that the agencies had to serve anyone that DHHS sent their way, regardless of whether or not they had the money to do so.⁴³⁶ By the time the lead agencies did get decision-making authority in 2011, only two remained.

Another huge problem with the payment system was that it hinged on the receipt of federal Title IV-E reimbursement funds.⁴³⁷ To get the reimbursements, costs incurred must be linked to specific children. Because the contractors were paid with a flat fee that was not attached to a specific child, the federal government demanded Nebraska repay, in total, \$22M in Title IV-E funds when they could not produce the proper documentation.⁴³⁸ This blow came at a time when DHHS was already scrambling to repay the contractors who had to withdraw for financial reasons.

After these initial setbacks, the payment system was eventually changed to include a fixed monthly payment and variable payments based on the number of children served and whether the case was to be court supervised.⁴³⁹

Privatization Occurred Very Quickly which Negatively Affected Capacity

Because the privatization transition happened quickly and simultaneously across all regions, contractors had a limited opportunity to build services capacity through subcontractors. These problems were only exacerbated by the “great turmoil and confusion” about the roles and responsibilities of the state agency and the private contractors. Therefore, although privatization was designed to create more services for children and family’s services, the rural parts of the state suffered losses in service.⁴⁴⁰ Additionally, the caseworkers hired by the lead agencies “had caseloads that were too heavy and in many cases, did not have enough training or experience to deal the complexities of the welfare system.”⁴⁴¹

Contracts Did Not Account for the Changes or Improvements They Demanded.

The main causes of Nebraska’s difficulties are reflected in the contracts themselves. Essentially, the contracts shifted the burden of child welfare to the lead agency, requiring it to produce the different outcomes with the same amount of money as the public agency. One Lincoln attorney who has served as a guardian ad litem explained the situation as follows: “We have to figure out a different way of doing the same thing . . . I think it’s ridiculous to call it reform when we’re doing the exact same thing with just different people. That’s not a reform; it’s just a burden shift.”⁴⁴²

Nebraska Is Now Split into Two Areas, One of Which Has Switched back to Public-Funded Foster Care and One of Which Is Still Privately Managed.

In LB 961, the same bill that enumerated the perils of its privatization attempt, the Nebraska Legislature found that “The State of Nebraska has the legal responsibility for children in its custody and accordingly should maintain the decision-making authority inherent in direct

case management of child welfare services.”⁴⁴³ Accordingly, it mandated that all case management services be given back to state employees.⁴⁴⁴ It also provided other standards that foster care must meet, including caseload numbers, oversight, funds for additional staff, and a changed payment structure. These changes would have ended the privatized child welfare system in Nebraska if it were not for the exception made for the Eastern service area, which created the opportunity for the region to have a “model pilot program.”⁴⁴⁵

As it stands today, Nebraska’s state agency manages cases for every county in Nebraska except the two in the Eastern region, which are still managed by a private organization, Nebraska Families Collaborative. Although small in size, these two counties have historically held up to 42% of the child welfare population,⁴⁴⁶ meaning that Nebraska’s child welfare management is split essentially in half, with services and case management coming both from the state and from a conglomerate of private agencies under one lead contractor.

Benefits of Privatization in Nebraska

Overall, the child welfare system has improved greatly since the 2002 federal report and is even meeting the same federal standards that it fell short of in 2002.⁴⁴⁷ The public and private entities (DHHS and NFC) that are responsible for child welfare in the state have established new programming and improved processes to correct issues with foster parent reimbursements, use of shelter care, decision making, and caseloads.⁴⁴⁸ Increased Title IV-E and state funds have made the improvements possible. The real question, then, is not whether the system has improved, but whether that positive change was in thanks to or in spite of the privatization effort.

“Thus, it is not that no progress has been made. Rather, the progress has been made without regard to the issue of privatized case management”⁴⁴⁹

The 2014 Hornby Zeller report was commissioned by DHHS to determine the effectiveness of the pilot program in the Eastern service region. The report found that there was no “measurable benefit” of the privatized system of care over the public system.⁴⁵⁰ Among other findings, the report showed that outcomes for children and families were no better through the private contractor than state agency, but that the state agency had more thorough plans. For example, NFC workers were more likely to copy and paste parts of a case from one document to another without makes updates. Additionally, DHHS visitation plans had more detail and they were more likely to make a holistic assessment on the family and children. Indeed, the two systems meet standards of adoptions, children in care, reunification, stability, and well-being equally. The proportion of children in foster care has remained steady in the last five years.⁴⁵¹

As far as family engagement is concerned, the results for the two agencies were about the same. The only real difference is that the NFC family meetings tended to have more service providers, not more family meetings. More importantly, the privatized system created confusion for family members who had to deal with many different NFC workers.⁴⁵²

The report also did not find any cost savings from switching to a privatized system. Although the total dollar amount of services decreased, these apparent savings were largely the result of cost shifting to clients and Medicaid.⁴⁵³ The largest costs, however, are the federal Title IV-E funds that are lost due to the structure of the contracts.

Florida’s Privatization of CPS

i. Summary

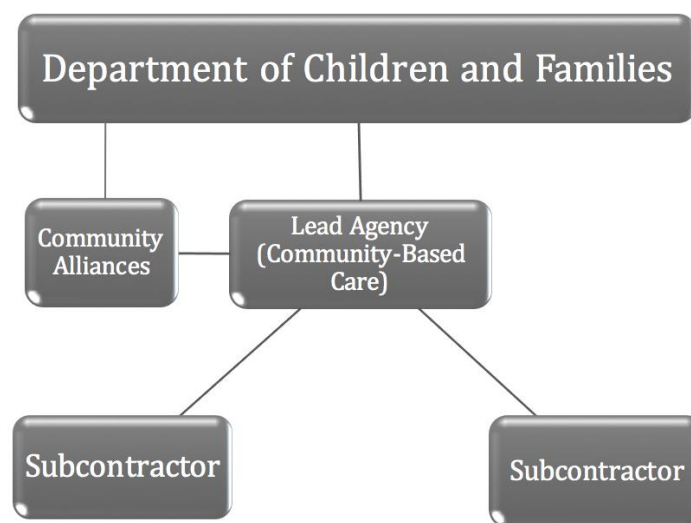
Approximately two decades ago, Florida's Child Protective Services went through a controversial and troubled time resulting in a complete overhaul of the system. Like several other states, Florida's problems included children sleeping in CPS offices, low adoption rates, case backlog, and high profile child deaths.⁴⁵⁴ Aside from systematic problems within CPS, Florida saw immense political pressure to downsize state government and this also, under then-Governor Jeb Bush's leadership, led to privatization.⁴⁵⁵ After experimenting with several pilot programs, Florida legislated to privatize CPS in 1998.⁴⁵⁶ This section addresses the problems, solutions, and results seen in Florida. The biggest lessons learned from Florida are related to transition speed, payment structure, and structure of contracts.

[The Move Towards Privatization: Community-Based Care Model](#)

In 1996, and after several high profile child deaths that attracted national attention, Florida's Department of Child and Families (DCF) established five pilot programs aimed at privatizing CPS.⁴⁵⁷ The five pilot programs were set up in different counties with different models with the goal of determining which model was most effective. After spending \$27.5 million on these pilot programs, only one, Sarasota County's, was considered a success.⁴⁵⁸ The four pilot programs that failed were halted.⁴⁵⁹ A challenge in measuring the success or failure of these pilots was that DCF did not collect baseline data about CPS before implementing them.⁴⁶⁰

Under Florida's version of CBC, the state contracts all CPS functions to an agency for a specific amount, usually similar to what the state-operated district previously received to run CPS.⁴⁶¹ The only function retained by the state is investigations.⁴⁶² The idea behind choosing a preexisting agency from the community was to promote competition by basing contracts on performance measures, hence improving services provided to children.⁴⁶³

However, due to its unique qualities, Sarasota County may have been a poor predictor of the model's overall success.⁴⁶⁴ On average, Sarasota County is wealthier than other counties in Florida and has fewer children than other counties.⁴⁶⁵ Furthermore, Sarasota County relied on fundraising for more than \$500,000 in its pilot phase to hire and maintain 270 extra personnel. County officials admitted that such a feat was not possible every year.⁴⁶⁶ The pilot also maintained 70% more personnel than DCF did in that area.⁴⁶⁷ Replicating Sarasota County's success in other counties under the CBC model poses continuing difficulties because of the lack of comparative resources and capacity.



Above is a chart that demonstrates the basic structure through which CPS services are provided. DCF enters into a contract with a lead agency to perform CPS services, while identifying community alliances that provide advice to the lead agencies regarding its functions and choosing appropriate sub-contractors who provide direct services to children.

Transition Phase – Problems & Solutions

After implementing the pilot programs in 1996, Florida's legislature in 1998 mandated that the entire state transition to a privatized system between 2000 and 2002.⁴⁶⁸ During this

time, DCF had to identify the appropriate lead agencies that would provide all services, save investigations, related to CPS.⁴⁶⁹

Transition Speed

Including the pilot phase, legislative phase, and state-wide transition phase, Florida took approximately nine years to completely privatize their CPS. The pilot phase lasted from 1996 to 1998. The legislation and planning began in 1998, and implementation of statewide privatization began in 2000.⁴⁷⁰ Even though transition was supposed to be completed by 2002, House Bill 3217 from 1998 left room for flexibility if a district or portion of CPS was not able to be privatized within the given time period.⁴⁷¹ Because of this flexibility, DCF did not complete privatization until 2005.⁴⁷² The length of time and flexibility to increase the time if necessary made the transition process less hectic. There was sufficient time to react to arising problems and implement new ideas where needed.

Payment Structure

After the success of Sarasota County, Florida adopted a global budget transfer payment structure to fund lead agencies that are to provide CPS services.⁴⁷³ Under this structure, lead agencies are allocated an amount of money for a fixed period and are responsible for providing all CPS services for the geographic region except for investigations.⁴⁷⁴ This system is contrary to the model in the failed pilot programs. For example, Pilot III in District 13 received \$15,264 per child instead of receiving a specific amount for the contract length.⁴⁷⁵ By the third year of contract with the lead agency in this district, the caseload quadrupled.⁴⁷⁶ In order to alleviate financial pressure from DCF, the agency reduced the amount it was charging per child.⁴⁷⁷ However, this put the agency in the risk of being underfunded so it requested additional

funding from DCF.⁴⁷⁸ DCF was not able to provide the additional funding, and the contract with the agency was not renewed.⁴⁷⁹

The payment per child structure is risky as demand may suddenly increase and funding from DCF may be insufficient. However, the global budget transfer payment structure shifts the risk of increased demand on the lead agency. This can make the recruitment of agencies to lead a district or county difficult. For example, Devereux, an agency with services in several states, refused to become a lead agency in Florida because of the method of funding.⁴⁸⁰ Agencies seeking profits are wary of contracting under terms that put them at risk of being underfunded. A positive aspect of the global budget transfer payment structure is that lead agencies can decide where to inject the most money as need arises.

Structure of Contracts – Accountability & Oversight

An ongoing problem beginning in the transition phase under Florida's CBC model is accountability.⁴⁸¹ A gap existed in accountability between lead agencies and DCF, and also between lead agencies and their subcontractors. Because of the lack of accountability between the three levels (DCF, lead agency, and subcontractor), it is often difficult for DCF to be directly connected and aware of what services are being provided or not provided to children through the subcontractors.

With respect to the lack of accountability between DCF and the lead agencies,⁴⁸² DCF did not create a monitoring plan for the lead agencies until 2004, and once created the plan did not have a specific deadline for implementation.⁴⁸³ Even after creating such a plan, DCF did not have experienced staff to monitor contracts throughout the state.⁴⁸⁴ A 2005 report shows that DCF lost 35% of the experienced contract monitoring staff because of transfers and restructuring.⁴⁸⁵ The connection between DCF and lead agencies is further weakened because

evaluations were not completed and released on time.⁴⁸⁶ Failing to evaluate how lead agencies are performing results in falling behind on improving the system.

Next, is a lack of accountability between the lead agencies and their subcontractors.⁴⁸⁷ Data from 2004-05 suggest that twelve of eighteen lead agencies did not monitor subcontractors adequately.⁴⁸⁸ More than 400 subcontractors were working with Florida's children at the time this data was collected.⁴⁸⁹ The variety of subcontractors across the state made it difficult for DCF to ensure that children were receiving services that met state and federal standards, and also made it difficult to ensure that funds were being used adequately at the micro level. This endangered DCF itself because ultimately the state is responsible for the wellbeing of at-risk children.

Outcomes

Since the implementation of the CBC, Florida has improved in many ways yet performed worse in others.⁴⁹⁰ The number of children reunited with their families has increased, caseloads and staff vacancies have decreased, and most promising of all, number of adoptions have increased dramatically.⁴⁹¹ However, the agencies that reduced the average length of a child's stay in CPS care also faced much higher rates of re-entry.⁴⁹² This shows that the transfer of responsibilities can help in certain aspects, but more guidance is needed to address persisting problems that lead agencies may not be expecting.

Studies after the transition period show that lead agencies identified a paradigm shift in Florida towards family-centered, permanency-driven practice being essential to the improvements in outcomes.⁴⁹³ In other words, the number one priority was to keep the family together in order to ensure that kids are raised in the familiar environment of their homes. However, almost a decade after the transition period, this priority for some turned out to be

fatal as a 2014 Miami Herald study showed that almost 500 children lost their lives over the course of five years because they remained in abusive homes. Some of these children were in DCF's radar as at-risk.⁴⁹⁴

As a response to this study, the state passed legislation that clearly stated that child protection is prioritized over keeping families together, and that the state would be hiring 270 additional investigators to achieve safety goals.⁴⁹⁵ This decision was criticized by some due to the mistrust towards DCF, but legislators expect it will change outcomes in increasing safety and decreasing fatalities.⁴⁹⁶

Overall, Florida's transition towards privatization has improved lives in many ways, but the lack of experience for some lead agencies posed a threat to certain safety aspects. However, Florida's legislation was flexible enough for changes when and where needed. Changes are still expected to come as Florida is coping with a high number of recent child deaths.

Comparing the Lessons Learned in Kansas, Nebraska, and Florida.

Time of Transition, Community Involvement, Communication and Payment Structure Played a Role in the Success or Failure of Nearly All of the Attempts at Privatization.

The move towards privatization brought different results for the states that applied it, based on the methods they used. While Florida and Kansas insist on privatization, Nebraska stepped away from privatization and was very critical of it after its failure.⁴⁹⁷ Some factors that Texas should consider from the success and failure of these states are transition time, community partnerships, oversight, consequences for contractors, payment systems, and funding.

The first factor that sets Florida apart from Kansas and Nebraska is **the time it took to transition CPS into a privatized system**. Florida used several pilot programs that were structured in different ways to determine the ideal model, and then transitioned each region separately.⁴⁹⁸ The total time to transition including the pilot programs took approximately seven years.⁴⁹⁹ On the other hand, Kansas and Nebraska transitioned the entire state simultaneously in a very short time.⁵⁰⁰ The biggest problem with rapid transition is that there is not enough time to react to problems that arise in the process. Kansas dealt with its problem by injecting more money into the system⁵⁰¹, while Nebraska's new system started to fall apart almost as soon as it started.⁵⁰² Based on current Texas statutes it seems that it is following Florida's footsteps into a slow transition. Texas already had a couple of pilot programs in place, and the statutes do not restrict transitioning to a specific deadline, but are focused on achieving one goal at a time.

Building strong community relationships may also help privatization efforts become successful. In its initial stages, Florida saw problems with the board of lead agencies, which were comprised of local private provider executives, handing subcontracts to their own child welfare agencies.⁵⁰³ To avoid this and promote a fairer ground of competition for subcontractors, Florida established a group called Community Alliance which included people from the community to serve as advisors to lead agencies.⁵⁰⁴ The group promoted communication and awareness outside of CPS and the lead agencies. On the other hand, Kansas saw problems where courts were unaware of changes happening in the system, which had a detrimental effect on the children in the state's care as courts play a major role in determining their future.⁵⁰⁵ There was a gap in communication from the department to the community

beyond that caused some confusion initially.⁵⁰⁶ Texas should avoid such a problem by keeping the process transparent so every key player in the process is aware of the procedures and how to best approach the new system.

Communication gaps between the state departments and the community was not the only problem during transition in some of the states, but communication gap in the foster care system also played a part in weakening the privatized model of the system. Under the systems adopted by Florida, Kansas, and Nebraska, lead agencies had much flexibility to find subcontractors who would provide the actual services to children under the state's care. A reoccurring problem with this system was the lack of oversight and accountability of the subcontractors. The state often had no actual connection with the subcontractors or a way to determine if state or federal standards are being met.⁵⁰⁷

The disconnect caused confusion and insecurity on whether children are receiving better services. In Kansas, there were blurry lines regarding the roles of the state and the contractors.⁵⁰⁸ Texas should avoid such confusion and blurry lines as experienced by other states by articulating the roles of each entity and laying out procedures that adequately supervise the actions of subcontractors.

Payments are one of the most important factors in a privatized system. Payments can determine the risks, costs, and advantages to all sides involved in the lead agency model. Several types of payment systems were used the states examined. First, the global budget transfer payment in Florida, under which "each lead agency is given a percentage of the state's annual operating budget and expected to provide all services regardless of how many children and families they serve in their geographic area, less the amount for investigation costs."⁵⁰⁹

Kansas began with a system that paid lead agencies a set amount to administer a case regardless of the actual costs, then later switched to a monthly per child payment to better suit the costs of cases as they arise.⁵¹⁰ Nebraska set a monthly payment system that grossly underestimated the costs associated with administering services.⁵¹¹

Overall, payment structures are set up in three different ways: (1) a fixed amount for the entire contract period; (2) a fixed amount paid monthly based on the number of children or cases administered; or (3) a monthly per child payment. A reoccurring problem with all of the fixed payment structures was the underestimation of the costs associated with administering services.⁵¹² Furthermore, setting a fixed amount regardless of the amount of cases handled puts the risk of increased needs on the shoulders of the lead agencies and can make contractors wary of taking on cases. On the other hand, paying an amount per child can also be risky for the state as seen in a Florida pilot program where the caseload quadrupled unexpectedly and the state did not have enough money to pay the contractor.⁵¹³

Ultimately, payment structures come down to a process of shifting risks from one side to another. So far, Kansas has experienced a smoother process after switching to a monthly per child payment as they have time to react to any changes that may occur unexpectedly.⁵¹⁴ Texas should adopt a similar approach that will ensure that children's needs are met even though the state is at a risk of having to pay more than they anticipated. Contractors have and often are free to pull out if they see that their budgetary needs are not being met, and that is a situation that Texas should avoid at all costs for the safety of the children.

Texas Should Move to a Community Based Care Model.

Foster Care Redesign Produced a Community-Driven, Not Profit-Driven, Model of Foster Care.

The Community-Based Care Model is a product of Foster Care Redesign, passed in 2007⁵¹⁵. Part of the Foster Care Redesign effort included the creation of the Public Private Partnership (PPP), a group of stakeholder and representatives including foster youth, court-appointed special advocates (CASA), judges, children's commissions, and nonprofits, among others.

The Redesign reviewed Texas data and the practices of other states to come up with a new model that would improve the well-being of children and families receiving services from DFPS. The PPP ultimately came up with a model that would mimic privatization projects from other states like Kansas, Nebraska, and Florida. The PPP, however, emphasized that Texas' pilot project would differ in a key way: it was meant first and foremost to be a community project, not a privatization project⁵¹⁶. The PPP envisioned a model that was primarily community-driven rather than profit-driven⁵¹⁷.

The result of the PPP and DFPS's evaluations is a redesign model that centers on geographic regions or catchment areas. Each one of these catchment areas is led by a Single Source Continuum Contractor (SSCC) that is responsible for providing holistic services to children in foster care.⁵¹⁸ DFPS and the PPP decided on a staged rollout of this new model, beginning with two pilot projects. The first began in July 2014 and the second in September 2014.⁵¹⁹ Ultimately, three regions were chosen in which to implement two pilot projects: Regions 2/9 and Region 3.

Providence Service Corporation Failed Mostly Due to a Lack of Funding.

The first SSCC hired by the state to manage foster care services subcontractors was Providence Service Corporation⁵²⁰. This for-profit organization headed Regions 2 and 9, which together cover 60 counties in West Texas⁵²¹. The contract, signed in 2013, outlined a 5-year, \$30 million deal that included overseeing services for 1,100 children within the regions⁵²². Unfortunately, 18 months into the contract, Providence had to use the opt-out clause in the contract to terminate its role as an SSCC when it could not meet “performance targets on key goals.”⁵²³ The organization also struggled to develop staff and a network of providers to care for children, leaving children in foster care without the “full array of services” necessary.⁵²⁴

Child advocates and Mike Fidgeon, Providence’s CEO, linked Providence’s early departure to a lack of funding.⁵²⁵ Mr. Fidgeon explained that the amount that Providence was given was calculated from the amount that CPS used for the same functions.⁵²⁶ The problem implicit in those calculations, however, is that CPS was grossly underfunded,⁵²⁷ and Providence was expected to have better outcomes from the same insufficient funding. Additionally, Providence faced related, unexpected costs.⁵²⁸ The state has yet to find an SSCC to replace Providence, although it is currently searching for one to head a similar pilot project in region 2.⁵²⁹

ACH Child and Family Services Was Significantly More Successful, in Part Due to Increased Funding.

Shortly after contracting with Providence, the state also contracted with ACH Child and Family Services to provide and manage services for foster children in the 3b region,⁵³⁰ which covers seven counties in the Fort Worth area, including Tarrant County.⁵³¹ To perform its new SSCC function, ACH created a new division named “Our Community, Our Kids” (OCOK). OCOK manages all the services for children in the region and the subcontractors that provide them. In

practice, this means that OCOK has oversight over the many Child Placement Agencies (CPA's) and other services providers across the counties in the 3b region. It does not yet perform any case management in individual children's cases or make decisions about the child's ultimate outcome.

Like Providence, OCOK has the same budget as the state for providing services. This is calculated using a blended rate for every child in care, consisting of a predetermined "rate of care" and a yearly operations cost per child.⁵³² However, unlike Providence, ACH has been able to meet performance measures and provide the needed continuum of services for foster children. This disparate outcome has been accomplished only through a large investment by ACH and its supporters, as ACH faced similar funding difficulties to those faced by Providence.⁵³³ ACH was also able to reinvest funds from CPS into other projects/areas as their processes grew more efficient.⁵³⁴

Overall, ACH and OCOK have seen improved results for children in the 3b region since they began managing services. Notably, they've seen more stability in placements and more kids placed closer to their home communities.

Primary Performance Measures

Children are safer after the redesign, with 99.9 percent of children categorized as free from abuse (up from 99.6%).⁵³⁵ Stability and Proximity have improved by a more significant margin, 5% and 12% respectively in the first year with the results for the second year still pending.⁵³⁶ Five percent more children were placed in a family setting after the redesign in both year one and two, however the percentage of siblings placed together was less stable. In the first year after the redesign, the percentage of siblings placed together on the last day of the performance period increased eight percentage points from 64% to 72% (of new admissions).⁵³⁷

However, the program was not as successful in the second year of the redesign; they placed 65% of new admissions together with their siblings, and while this number is still an improvement, it is only one percentage point higher than before the redesign. Nevertheless, the redesign did result in improvements on every primary performance measurement.⁵³⁸

Secondary Performance Measures

OCOK measured a number of other factors, deemed secondary performance measures.

This data mostly examines connection and engagement in the community and preparedness for independence and includes: maintaining sibling connections, maintaining connections with others, participation in service planning, participation in court (youth 10+ attend hearings for their care) preparation for adulthood (completed Preparation for Adult Living training), employment, and obtaining a driver's license.⁵³⁹ These secondary measures also show an almost universal increase post-redesign. These secondary measures offer further evidence that support success in achieving the goals of the program, some of which may not be captured by the primary measures. For instance, although not all siblings are placed together, 88% of children were able to have at least monthly contact with their siblings by the second year of the redesign, compared to 84% before the redesign.⁵⁴⁰

Children were also able to connect with other approved individuals within their community at a rate that increased from 82% to 93% by the second year of the redesign. The percentage of children who completed their adult preparedness similarly increased significantly.⁵⁴¹ The percentage of children sixteen or older who obtained driver's licenses actually decreased in the second year of the redesign from the first year, but there is no data from before the redesign, so it is difficult to determine a directional shift.⁵⁴²

OCOK attributes much of this success to the community-based approach that ACH and its board and leadership took when it entered into the SSCC contract.⁵⁴³ OCOK sees its current role as being the common voice for children and child welfare stakeholders in the community.⁵⁴⁴ It also seeks to raise awareness and alleviate confusion in the community about how to interact with the foster care system.⁵⁴⁵

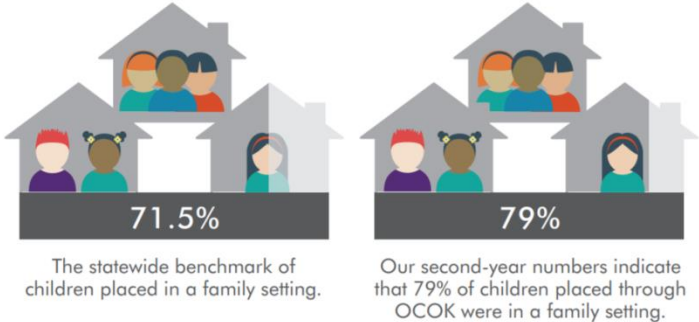
Because ACH has been in the community for 102 years, it has strong ties to different community members such as the mayor, the court system, the non-profit community, medical facilities, businesses, the political system, nontraditional partnerships, and foundations.⁵⁴⁶ Some of these community ties are especially unique because, in its official role, CPS would not be allowed to utilize ties with certain entities. In that sense, OCOK has more flexibility than CPS. For example, when OCOK heard that foster parents were having trouble getting their foster children medical services, they talked with Cook Children's Hospital, which agreed to set aside more appointment times exclusively for foster children.⁵⁴⁷ Because of the pre-existing relationship, this change happened within 60 days of OCOK's discussion with Cook Children's.⁵⁴⁸

ACH also emphasizes the importance of data in implementing successful programs.⁵⁴⁹ When ACH took over the SSCC contract they were able to access data from the IMPACT system that no one outside of DFPS had seen before.⁵⁵⁰ For the first time, data about their clientele and gaps in services was available and could ACH begin to create an informed plan of how to address those gaps.

ACH used its own resources for virtually all of these innovations and hopes that other SSCC's will use the technology systems and other innovations that they have rolled out in other

regions.⁵⁵¹ It hopes to act as a partner with other SSCC's across the state to help them create a C-BC model in their own region.⁵⁵²

Key Innovations:

Technology	<p style="text-align: center;">Placing Children in Family Settings</p>  <p style="text-align: center;">(Courtesy of ACH's July 2016 Progress Report on its OCOK Pilot Project)</p>
Every Child A Priority (ECAP) Software⁵⁵³	<p>This software keeps track of open foster care beds and matches a child to a potential foster care placement through a ranked list of placements. It uses contract outcomes like proximity to home community and placing sibling together to create the list.</p>
myEvolv⁵⁵⁴	<p>myEvolve is a clinical management system that stores electronic records and translates service events into financial transactions.</p>
Family Finding Project⁵⁵⁵	<p>This technology actively searches for relatives when a new child comes in, so that if there is a relative placement available, it can be found as soon as possible.⁵⁵⁶</p>
Interoperability with Providers⁵⁵⁷	<p>The Provider Information Exchange (PIX) system allows automated data exchange between providers and an SSCC using a set of common data elements.</p>
Interoperability with IMPACT⁵⁵⁸	<p>Pending the expiration of a federal rule, SSCC's would be able to use their software for reporting and would be able to stop re-entering data into the IMPACT system.</p>

Capacity	<div><div>FOSTER PARENT Rural Recruitment Initiative <small>As of 9/30/16</small></div><div><table><tr><th>2014</th><th colspan="2">2016</th></tr><tr><td>Licensed foster homes</td><td>Licensed foster homes</td><td>License-ready foster homes</td></tr><tr><td>3</td><td>11</td><td>+ 22 = 33</td></tr></table></div></div> <div>(Courtesy of ACH’s July 2016 Progress Report on its OCOK Pilot Project)⁵⁵⁹</div>	2014	2016		Licensed foster homes	Licensed foster homes	License-ready foster homes	3	11	+ 22 = 33
2014	2016									
Licensed foster homes	Licensed foster homes	License-ready foster homes								
3	11	+ 22 = 33								
Rural Recruitment Initiative ⁵⁶⁰	Through a targeted campaign geared toward retention, recruitment, and support, OCOK could increase the number of licensed foster homes in rural Palo Pinto county from three to twenty. OCOK found a way to mobilize local media, faith communities and other community partners to recruit in this region. They also worked with the service providers to create a better support system in the rural community.									
Development of Therapeutic Care ⁵⁶¹	This includes both training and licensing more therapeutic foster homes and opening an RTC in the region, both of which will keep higher needs children in their community.									
Targeted capacity growth ⁵⁶²	QPI (Quality Parenting Initiative) is a framework utilized by other states that focuses on engaging foster parents and stakeholders to improve the foster care system and to improve retention of good foster parents. The framework also used to increase different types of beds, including those for sibling groups, children with medical needs, LGBT children, pregnant youth, and those willing to try co-parenting with bio families.									

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Texas Has Faced Many Similar Challenges to those Previously Outlined, such as Capacity, Accountability, Service Organization, and Transition Costs.

OCOK has struggled with capacity.

OCOK, along with providers in other regions, have encountered serious capacity issues.⁵⁶⁸ This issue is amplified for higher-needs children. Starting in early 2016, the CPS system as a whole has experienced huge spikes in higher-needs children in care.⁵⁶⁹ Because foster care is an entitlement service, OCOK and other foster care providers have a “no eject/no reject” policy for children in their care and cannot turn children away.⁵⁷⁰ OCOK’s contract did not anticipate this huge spike and, as a result, both the state and OCOK have struggled to provide care for the increased number of higher needs children.⁵⁷¹ OCOK has especially struggled with these placements since there is no RTC in the region.⁵⁷² Therefore, if there is not a therapeutic foster home available, OCOK must send the child out of the region for care in an RTC, removing the child from his or her home community.

Similarly, while having a local scope and focus is an advantage in many areas of services management, a limited geographic area can be a disadvantage when it comes to keeping sibling groups in one placement.⁵⁷³ A limited capacity of homes able to accommodate large sibling groups and closure of group homes have contributed to ACH’s decrease of sibling groups placed together from 64% to 59% after the first year.⁵⁷⁴

Accountability is a Challenge for Privatization and Redesign.

Perhaps the most challenging part of Foster Care Redesign and the Community-Based Care Model is the question of how CPS will keep SSCCs accountable to performance outcomes.

While DFPS has expressed that it will use incentive payments and performance based contracting, these have yet to be negotiated with any pilot project.⁵⁷⁵

So far, ACH has been working very closely with DFPS to establish the pilot project and therefore has shared all its data and performance outcomes with CPS.⁵⁷⁶ It is still uncertain, however, if CPS will be able to maintain this level of close accountability with future regions, especially if other SSCCs are less willing to be transparent. Such transparency is critical because protects all parties, not in the least the children in care.

Similarly, there is not an established model for how an SSCC can keep its providers accountable. This is partly by design, so that SSCC's can have the flexibility they need to meet the specific needs of their communities, but it still creates uncertainty going forward. So far, ACH says it has actually created greater accountability with its providers than CPS did.⁵⁷⁷ For example, if one of its CPAs wants to remove a child, CPS may have signed off on the placement change without much conversation, whereas OCOK will bring the provider in to explain why they made that decision.⁵⁷⁸ It has also mandated that its providers use third party risk assessments, standardized child (CANS) assessments, and that they report serious issues within 24 hours.⁵⁷⁹ These practices help keep children safe, but they also aim to train the providers on how to self-monitor their safety practices and wellness outcomes so that they can adjust their practices as necessary. Overall, OCOK says it strives to play a supportive role instead of a "blaming" role for providers.⁵⁸⁰

Some Providers Working across Multiple Areas Will Struggle with Interoperability and Complications of Dual Contracts.

Another challenge is the lack of consistency for providers who operate in different regions or catchment areas. For example, some CPAs operate in multiple offices throughout the

state, managing foster homes and services for children from different regions. Before, even if a provider stretched across different regions, it only contracted with CPS. Now, the same provider might have to contract both with an SSCC (or more than one SSCC) and CPS (at least until all regions contract with an SSCC).⁵⁸¹ For example, one foster care placement agency that has a North Texas office might license foster homes both in Dallas and Tarrant County. Now, instead of having one set of CPS guidelines to follow, the provider must comply with two different systems from two different contracts – ACH and CPS, which use different technology systems and have different accountability measures. This is not necessarily slated to change once the CBC model is expanded, as new SSCC's may or may not choose to use technology and practices compatible with other SSCC's.

One of the potential benefits of the CBC model is that it leaves room for flexibility and a tailored look at each community. However, the benefit of flexibility may also be the burden of having a fragmented approach to data recording and outcome requirements for providers across different regions.

The Transition Will Have Significant Startup Costs.

A major challenge ACH faced during its transition were the startup costs. ACH originally received \$250,000 in start-up seed money from DFPS plus a resource transfer of \$650,000 per year.⁵⁸² However, because a successful implementation required activities (like software development, etc.) in addition to those in the contract, their initial operating costs were \$3.6M a year.⁵⁸³ While ACH chose to use its own resources to supplement its needs, this approach is likely not sustainable for ACH or for any new SSCC's in the future.

Going forward, the state plans to give \$950,000 in seed money to each new SSCC.⁵⁸⁴

While this is a step in the right direction, it is uncertain whether this money will be enough for new SSCC's startup costs, especially if new SSCC's undertake start-up projects like those implemented by OCOK. Hopefully, the large-scale developments that ACH implemented can be transferred to new SSCC's for greater efficiency state-wide.

[An Organized Transition and Detailed Plans for the Future Will Be Important to the Success of the Redesign.](#)

While the goal of Community-Based Care is for SSCCs to take over the full responsibility of case management, there is a substantial transition that must occur before this is possible. OCOK's initial transition began with a six-month start-up period in early 2014.⁵⁸⁵ During this time, the organization hired professionals in care management, quality and contracts, finance, IT, and community relations.⁵⁸⁶ They also opened a new headquarters in Southwest Ft. Worth, wrote policies, procedures, and a joint operations manual with TDFPS, and developed a new IT infrastructure.⁵⁸⁷ After the startup period, OCOK entered Stage I of their transition, which includes finding placement and managing care for all new referrals of children removed from homes in region 3b.⁵⁸⁸ By April 2015, OCOK was managing all children in care in the 3b region. As of publication, OCOK is still in Stage I, but the state has set forward two further stages, which have yet to be negotiated. If all goes to plan, Stage II will include taking over responsibility for management of the system of services for biological families of children in foster care.⁵⁸⁹ This stage, however, may be compromised by SB 11.⁵⁹⁰ OCOK expects to begin negotiations with DFPS regarding this stage soon.⁵⁹¹

Those Seeking a Foster Care Redesign Based on a Community Care Model Should Focus on Issues Related to Capacity, Stakeholders, Contracts, Speed of Transition, and Payment Structure.

Foster Care Redesign has seen both successes and failures in its Region 2/9 and Region 3b pilot projects. A localized, community-based approach has led to successes in region 3b, while financial challenges brought region 2/9's project to an early end. Altogether, Texas and future SSCCs have much to learn from both pilot projects as they further expand the regions lead by an SSCC as mandated by SB 11. In implementing the Community-Based Care model state-wide, DFPS also has the challenge of creating a cohesive child welfare system of SSCC's that are both accountable to key child welfare outcomes and flexible enough to respond to the needs of their community.

Texas Should Allow a Generous Amount of Time for Transition in Order to Address Problems that Arise Such as Capacity.

A crucial factor in transitioning to the Community Based Care model is the speed of the transition. While Florida took almost nine years to transition to a privatized system, Kansas and Nebraska transitioned within a year or two.⁵⁹² Florida had time to react to arising problems, but Nebraska's system started to immediately fall apart. Kansas had similar problems with its speed but could sustain the system by injecting more money into it. It is important that Texas leaves enough flexibility in its implementation of CBC that it has time to delay and react to arising problems with the new system.

Capacity issues arise when transition times are too short and the loss of trained, skilled individuals will be inevitable.⁵⁹³ Florida allowed for nine years to decide agency roles and had no issues with capacity.⁵⁹⁴ Kansas, which transitioned within 18-months, forced child welfare workers to find new jobs, and lost a majority of their capacity.⁵⁹⁵ More hiring was necessary, yet

was hindered by a lack of funding.⁵⁹⁶ This problem was exacerbated by a 20% increase of children entering the system due to investigators having less incentive to screen out children.⁵⁹⁷ Capacity issues tends to be most prevalent in rural areas where more time is needed for transition.⁵⁹⁸

[Texas Should Be Sure to Include those Heavily Involved with the Foster Care System, Such As Judges, in the Process of Redesign.](#)

Texas' DFPS will need stakeholders to play a key role in the transition, to build relationships and to ensure they are informed. Kansas' Social and Rehabilitations services worked with their court system to have an on-the-ground input and to inform the courts of the new systems, who is accountable and the best course of action.⁵⁹⁹ Subcontractors need state oversight⁶⁰⁰ to ensure benchmarks are being met and there is accountability between the state, the lead contractor and all subcontractors.⁶⁰¹ Relationships between courts, subcontractors and the state must be created and carefully maintained.

[Contractor and Subcontractor Roles Must Be Clearly Defined with Some Measure of Accountability.](#)

Florida, Kansas, and Nebraska all contracted with multiple organizations to serve as "lead contractors" for geographic regions within their states. In this role, an agency is responsible for subcontracting with a series of providers to fill out the continuum of services needed for children in care. While the subcontractors provide the direct services to the children, the lead contractors provide a monitoring and management role.

This system has generally succeeded in getting services to children, but not without significant challenges to the lead contractor and subcontractor relationships, specifically (1) how to define roles between the two types of agencies and (2) how to ensure adequate

accountability between the state, the lead contractor, and the subcontractors. Undefined roles between the state agency and the lead contractor in their original contracts caused tension and turmoil in Kansas and Nebraska,⁶⁰² an issue that was not resolved until the case management role was fully given over to the contractors and more defined roles could be established.⁶⁰³ In Florida, a lack of experienced staff to monitor the lead contractors and inadequate monitoring of subcontractors by lead contractors put children in care at risk.⁶⁰⁴

Overall, the lead contractor/subcontractor system can be an effective way to provide services to children in care, but it must have quality contractors with well-defined roles and proper methods of accountability to be successful in protecting the children it serves.

[A Slower Speed of Transition Will Also Allow Time for Adjustments in Reaction to Arising Problems.](#)

A crucial factor in transitioning to the CBC model is the speed of its transition. The states that took longer to transition were better able to sustain themselves.⁶⁰⁵ It is important that Texas builds flexibility into its implementation of CBC as privatization was most effective when new issues could be identified during the transition process. Texas needs time to react and make changes in response to arising problems.

[Texas Should Adopt a Monthly Per Child Payment Structure.](#)

The type of payment structure Texas adopts can determine the risks, costs, and advantages to all sides involved in the CBC model. Some of the payment structures seen in other states include: (1) a fixed amount for the entire contract period; (2) a fixed amount to administer a case regardless of actual costs; and (3) a monthly per child payment. A reoccurring

problem with all the payment structures is the underestimation of costs associated with administering services.

Setting a fixed amount for the entire contract period also puts the lead agency at risk of being underfunded while paying per child puts the state at risk of not having sufficient budget. So far, Kansas has seen some success in a monthly per child payment as they have time to react to changes that may occur unexpectedly, such as an increase in needs.⁶⁰⁶ Texas should adopt a similar structure that does not greatly risk any of the sides involved in child welfare.

Conclusion

The State of Texas has plenty of reasons to be optimistic about a privatized, community-based model of care. Community-based care has the potential to be more efficient and provide the child with more of a stable community of family and support.

In order to assure success, Texas should plan to transition slowly in order to maintain capacity and manage issues that arise. The State should also involve stakeholders such as judges who rule on these cases in the negotiations and decision-making process. Roles must also be well-defined and negotiated within the contracts, and data should be collected in a way that keeps agencies and contractors accountable.

Finally, Texas should adopt a flexible, monthly per child form of payment. As was reiterated several times in other states, privatizing foster care will not likely result in a reduction in spending, at least not at first. Texas must be prepared to spend time, manpower, and funds on making privatization work.

¹ CLASS ACTIONS: TX- M.D. v. ABBOTT, http://www.childrensrights.org/class_action/texas/ (last visited Aug. 10, 2017).

² *Id.*; When this suit was first filed on March 29, 2011, Defendants were Rick Perry, in his official capacity as Governor of Texas; Thomas Sues, Executive Commissioner of the Texas Health and Human Services Commission; and Anne Heilgenstein, Commissioner of DFPS in her official capacity. Since the case was filed, they have all been replaced in their official capacities.

³ *M.D. v. Perry*, No. C-11-84 (S.D. Tex. June 2, 2015).

⁴ See generally *M.D. et al v. Abbott et al*, 152 F.Supp.3d 684 (Texas S.D.)

⁵ See generally Def. Obj. Sp. Masters' Rec., November 21, 2016.

⁶ *Id.*

⁷ https://www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/Foster_Care_Redesign/

⁸ *Id.*

⁹ https://www.dfps.state.tx.us/About_DFPS/Budget_and_Finance/Operating_Budgets/FY16-Operating_Budget_accessible.pdf

¹⁰ <https://www.texastribune.org/2017/06/30/hey-texplainer-what-did-texas-legislature-do-improve-child-protective-/>

¹¹ CPS can either remove the child, or remove the perpetrator, to promote the safety and well-being of the child. The perpetrator may be removed if they agree, and there is an appropriate, safe caretaker for the child. CPS workers will come check on the child. This is called family based services, and is often preferable, when available, because it allows the child to not have their life disrupted. April C. Wilson, Alaina E Flannigan, Sophie Phillips & Dimple Patel, *Understanding Texas' Child Protection Services System* at 10, TEXPROTECTS (Oct. 2014) https://texprotects.org/media/uploads/10_7_14_combined_cps_systems__flowchart_final.pdf.

¹² CPS caseworkers investigate allegations of abuse or neglect by interviewing family members, and others with knowledge to make a safety decision. Once the caseworker collects enough information, CPS makes a ruling called a disposition on the allegation. The four classes of rulings are "reason to believe," "ruled out," "unable to complete," "unable to determine," or "administrative closure." The caseworker also must make an assessment concerning the likelihood that the child is still at risk of abuse or neglect. CPS INVESTIGATIONS (last visited Aug. 10, 2017), https://www.dfps.state.tx.us/Child_Protection/Investigations/default.asp.

¹³ Wilson (2014) at 7.

¹⁴ *M.D.*, No. C-11-84. at 6.

¹⁵ *Id.* at 6-7.

¹⁶ *Id.* at 8, 79.

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See generally Wilson (2014).

²⁵ "Aging out" refers to the termination of a courts legal jurisdiction over a child in foster care.

²⁶ Aged out foster youth typically have significantly lower educational achievement than their peers and are more likely than their peers to be held back. Barely any PMC children are involved in extracurricular activities at school, or are trained for any vocation. *M.D.*, No. C-11 at 185.

²⁷ Foster children typically do not know how to answer a phone, take or leave a message, cook a meal for themselves, load a dishwasher, fill out a job application, or drive a car. *Id.*

²⁸ Casey Family Programs report that former foster youths suffer from PTSD at nearly five times the rate of the general population. *Id.*

²⁹ Foster children are four times as likely as a child in the general population to be in a special needs classroom. *Id.*

³⁰ Fewer than 2% of former foster children complete college. *Id.* at 185-186.

³¹ *See generally, Id.*

³² *Id.* at 8.

³³ *Id.* at 9.

³⁴ *Id.* at 200.

³⁵ *Id.* at 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 236.

⁴⁰ *Id.* at 13, 252, 239.

⁴¹ *Id.* at 9.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 10.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² TEXAS CASA CHILD WELFARE PRIMER (Feb. 15, 2017) at 13, http://35xs6u1zhs1u1p3cy926rkn4-wpengine.netdna-ssl.com/wp-content/uploads/2017/01/Texas-CASA-Primer_Overview-of-Texas-Child-Welfare.pdf.

⁵³ *M.D.*, No. C-11-84 (2015) at 8.

⁵⁴ *Id.* at 166.

⁵⁵ *Id.* at 164.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 222,226.

⁵⁹ TEXAS CASA CHILD WELFARE PRIMER (2017), at 18.

⁶⁰ *M.D.* at 65 (footnote).

⁶¹ *Id.* at 174 at 175.

⁶² *Id* at 175.

⁶³ *Id* at 5.

⁶⁴ *Id.* at 12.

⁶⁵ *Id.*

⁶⁶ *Id.* at 13.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id* at 14.

⁷⁰ *Id* at 15.

⁷¹ See *Tamas v. Department of Social and Health Services*, 620 F.3d at 844 (9th Cir. 2010), *James ex. rel James v. Friend*, 458 F.3d at 730 (8th Cir. 2006), *J.H. ex. rel Higgins v. Johnson*, 346 F.3d 788, 792 (7th Cir. 2003), *Nicini v. Morra*, 212 F.3d at 808 (3rd Cir. 2000), *Lintz v. Skipski*, 25 F.3d at 305 (6th Cir. 1994), *Taylor v. Ledbetter*, 818 F.2d at 795 (11th Cir. 1987), *Doe v. NYC Dept. of Soc. Serv.*, 647 F.2d at 144-45 (2d Cir. 1981).

⁷² *M.D.*, No. C-11-84 at 16.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id* at 16,18.

⁷⁶ *Id.* at 12.

⁷⁷ *Id* at 18.

⁷⁸ *Id* at 27.

⁷⁹ *Id* at 27, 28.

⁸⁰ *Id* at 20.

⁸¹ Deliberate indifference is determined by a subjective standard of recklessness. The 5th Circuit defines it that the offender “must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *M.D. et al v. Abbott et al* (citing *Smith v. Brenoettsy*, 158 F.3d 908, 912 (5th Cir. 1998)). Furthermore, the “State must have consciously disregarded a known and excessive risk to the victim’s health and safety.” *M.D.* at 18 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). In the context of the Fourteenth Amendment the Supreme Court used the more objective standard of “does the state substantially depart from professional judgment?” *Youngberg*, 437 U.S. at 321-322. This standard presumes that decisions made by professionals are valid and liability may be imposed when it is obvious that a practice is not based upon the known professional standards. *Id* at 18-20, 28.

⁸² *Id* at 19, 22.

⁸³ *Id* at 11, 19.

⁸⁴ *Id* at 17.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id* at 19, 20.

⁸⁸ *Id* at 163.

⁸⁹ *Id* at 163, 164.

⁹⁰ *Id* at 242, 245.

⁹¹ *Id* at 242, 243.

⁹² *Id* at 244.

⁹³ *Id* at 245.

⁹⁴ *Id* at 245, 246.

⁹⁵ *Id*.

⁹⁶ M.D. et al v. Abbott et al 152 F.Supp.3d 248-254 (S.D. Tex)

<https://cases.justia.com/federal/district-courts/texas/txsdce/2:2011cv00084/876792/368/0.pdf?ts=1450456518>.

⁹⁷ *Id*. at 248, 249.

⁹⁸ *Id*.

⁹⁹ *Id* at 249.

¹⁰⁰ *Id*.

¹⁰¹ *Id*.

¹⁰² *Id*.

¹⁰³ *Id* at 250.

¹⁰⁴ *Id*.

¹⁰⁵ *Id*.

¹⁰⁶ *Id*.

¹⁰⁷ *Id* at 250-251.

¹⁰⁸ *Id* at 251.

¹⁰⁹ *Id*.

¹¹⁰ *Id*.

¹¹¹ *Id*.

¹¹² *Id* at 252.

¹¹³ *Id*.

¹¹⁴ *Id*.

¹¹⁵ *Id*.

¹¹⁶ *Id*.

¹¹⁷ *Id* at 253.

¹¹⁸ *Id*.

¹¹⁹ *Id*.

¹²⁰ *Id* at 254.

¹²¹ *Id*.

¹²² *Id*.

¹²³ FOSTER CARE REDESIGN,

https://www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/Foster_Care_Redesign/ (last visited Aug. 10, 2017)

¹²⁴ Appt. Order, No. 2:11-CV-00084 (March 21, 2016); Fed. R. Civ. P. 53.

¹²⁵ *Id*.

¹²⁶ In 2009, Governor Perry formed a Committee to review the Texas foster care system. The Committee comprehensively researched foster care system standards and deficiencies, and drafted recommendations. The Committee then discovered that a similar committee, assembled by Governor George W. Bush made 11 out of 14 of the same general recommendations. M.D. v. Perry at 10, 11.

¹²⁷ *Id* at 11.

¹²⁸ *Id* at 245.
¹²⁹ *Id* at 246.
¹³⁰ *Id*.
¹³¹ *Id* at 247.
¹³² *Id* at 246.
¹³³ Appt. Order, No. 2:11-CV-00084 (March 21, 2016), 1; Fed. R. Civ. P. 53.
¹³⁴ *Id* at 1-3.
¹³⁵ *Id* at 3-4
¹³⁶ *Id* at 3, 5.
¹³⁷ *Id* at 4.
¹³⁸ *Id* at 2.
¹³⁹ *Id* at 5.
¹⁴⁰ *Id*.
¹⁴¹ *Id* at 7.
¹⁴² *Id* at 6.
¹⁴³ *Id*.
¹⁴⁴ *Id* at 8.
¹⁴⁵ *Id*
¹⁴⁶ Covenant House Board and Staff (last visited July 31, 2017),
<https://www.covenanthouse.org/kevin-ryan-president>.
¹⁴⁷ *Id*.
¹⁴⁸ Kevin Ryan, LinkedIn (last visited July 31, 2017), <https://www.linkedin.com/in/kevin-ryan-3a722011/>.
¹⁴⁹ *Id*.
¹⁵⁰ John Kelly, *Kevin Ryan Named First Lay President of Covenant House*, YOUTHtoday (January 21, 2009), <http://youthtoday.org/2009/01/kevin-ryan-named-first-lay-president-of-covenant-house/>.
¹⁵¹ See generally Kevin Ryan, *Focusing on the Fundamentals*, NJ (June 28, 2006),
http://www.state.nj.us/dcf/documents/home/NJ_CWR_Focusing_on_the_Fundamentals_June_28_2006.pdf (hereinafter *Focusing*).
¹⁵² Francis McGovern, Dukelaw (last visited July 31, 2017), <https://law.duke.edu/fac/mcgovern/>.
¹⁵³ *Id*.
¹⁵⁴ *Id*.
¹⁵⁵ *Id*.
¹⁵⁶ David B. Keller, *Court-Appointed Special Masters: Dispute-Resolvers?*, Mediate (last visited July 31, 2017), <http://www.mediate.com/articles/kellerC.cfm>.
¹⁵⁷ *Id* at 1.
¹⁵⁸ *Id* at 30.
¹⁵⁹ *Id* at 1.
¹⁶⁰ *Id*.
¹⁶¹ *Id* at 4-11; See generally *Objections*.
¹⁶² *Id*.
¹⁶³ *Id*. at 11.
¹⁶⁴ *Id*.

¹⁶⁵ *Special Master Recommendations to the Court*, TexProtects, at 4
http://texprotects.org/media/uploads/specialmastersrecommendationstojudgejack_texas_sm_work_plan.pdf (hereinafter *Recommendations*).

¹⁶⁶ *Id.* at 1.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Interim Order, NO. 2:11-CV-84 (January 9, 2017), 13 (hereinafter *Int. Order*).
<https://casetext.com/case/md-v-abbott-1>

¹⁷⁰ *Recommendations* at 1.

¹⁷¹ *Id.* at 2; See generally *Statewide Intake*, DFPS (last visited July 31, 2017),
https://www.dfps.state.tx.us/About_DFPS/Statewide_Intake/.

¹⁷² *Int. Order* at 14.

¹⁷³ *Recommendations* at 2; See generally *Child Care Minimum Standards*, DFPS (last visited July 31, 2017), https://www.dfps.state.tx.us/Child_Care/Child_Care_Standards_and_Regulations/.

¹⁷⁴ *Recommendations* at 2.

¹⁷⁵ *Int. Order* at 15.

¹⁷⁶ *Recommendations* at 3.

¹⁷⁷ *Id.*

¹⁷⁸ *Int. Order* at 15-16.

¹⁷⁹ *Recommendations* at 3.

¹⁸⁰ *Id.* at 4; American Academy of Pediatrics, *Fostering Health: Health Care for Children and Adolescents in Foster Care*, AAP (2005), <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Documents/FosteringHealthBook.pdf>.

¹⁸¹ *Int. Order* at 19.

¹⁸² *Recommendations* at 4.

¹⁸³ *Recommendations* at 5. This was founded on a Work Measurement Study that DFPS produced based on data from August 2015 through March 2016.

¹⁸⁴ *Recommendations* at 5.

¹⁸⁵ *Id.*; See generally *Child Protective Services Handbook*, DFPS (last visited July 31, 2017),
<https://www.dfps.state.tx.us/handbooks/CPS/>.

¹⁸⁶ *Recommendations* at 5; See generally *Child Protective Services Handbook*.

¹⁸⁷ *Recommendations* at 5.

¹⁸⁸ *Id.* at 6.

¹⁸⁹ *Int. Order* at 22.

¹⁹⁰ *Recommendations* at 6.

¹⁹¹ *Id.*

¹⁹² *Int. Order* at 22-23.

¹⁹³ *Recommendations* at 7.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 8.

¹⁹⁷ *Id.*; See generally *Child Protective Services Handbook*.

¹⁹⁸ *Int. Order* at 25.

¹⁹⁹ *Recommendations* at 8.

200 *Id* at 9.
201 *Id.*
202 *Id.*
203 *Id.*
204 *Id.*
205 *Id.*
206 *Id* at 10.
207 *Id.*
208 *Id.*
209 *Id.*
210 *Id* at 11; *See generally* Department of Family and Protective Services Foster Care Needs
Assessment, DFPS (January 2017),
[https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2017/](https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2017/2017-01-01_Foster_Care_Needs_Assessment_Report.pdf)
[2017-01-01 Foster Care Needs Assessment Report.pdf](https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/CPS/documents/2017/2017-01-01_Foster_Care_Needs_Assessment_Report.pdf) (hereinafter *Needs Assessment*).
211 *Recommendations* at 11; *See generally* *Needs Assessment*.
212 *Recommendations* at 11.
213 *Id.*
214 *Id* at 11-12.
215 *Int. Order* at 30.
216 *Recommendations* at 12.
217 *Id.*

218 *Int. Order* at 30.
219 *Id.*
220 *Id.*
221 *Id.*
222 *Id.*
223 *Id.*
224 *Id.*
225 *Id.*
226 *Id.*
227 *Id.*
228 *Id.*
229 *Id.*
230 *Id.*
231 *Id.*
232 *Id.*
233 *Id.*
234 *Id.*

236 H.B. 1549
237 *Id.*
238 S.B. 11

239 *Id.*
240 *Id.*
241 *Id.*
242 H.B. 3859
243 *Id.*
244 H.B. 5
245 *Id.*
246 *Id.*
247 *Id.*
248 *Id.*
249 *Id.*
250 *Id.*
251 *Id.*
252 *Id.*
253 H.B. 5; H.B. 7
254 H.B. 932
255 S.B. 11
256 *Id.*
257 *Id.*
258 *Id.*
259 *Id.*
260 H.B. 1549
261 *Id.*
262 H.B. 7
263 *Id.*
264 *Id.*
265 S.B. 11
266 *Id.*
267 *Id.*
268 H.B. 249
269 *Id.*
270 *Id.*
271 *Id.*
272 H.B. 1549
273 *Id.*
274 *Id.*
275 *Id.*
276 *Id.*
277 *Id.*
278 *Id.*
279 H.B. 4094
280 *Id.*
281 H.B. 1549
282 S.B. 256

283 *Id.*
284 H.B. 1549
285 H.B. 7
286 *Id.*
287 *Id.*
288 S.B. 11; S.B. 1758
289 H.B. 1549
290 *Id.*
291 H.B. 1549
292 *Id.*
293 *Id.*
294 *Id.*
295 H.B. 1542
296 *Id.*
297 *Id.*
298 *Id.*
299 H.B. 7
300 H.B. 4
301 *Id.*
302 *Id.*
303 *Id.*
304 S.B. 11
305 *Id.*
306 H.B. 88
307 *Id.*
308 H.B. 5
309 *Id.*
310 *Id.*
311 *Id.*
312 *Id.*
313 H.B. 1410
314 *Id.*
315 H.B. 7
316 *Id.*
317 S.B. 999
318 *Id.*; applies to suits filed under Tex. Fam. Code § 262.113.
319 *Id.*
320 *Id.*
321 *Id.*
322 *Id.*
323 *Id.*
324 S.B. 11; H.B. 7
325 S.B. 1220
326 *Id.*

327 H.B. 1549

328 H.B. 1549

329 *Id.*

330 *Id.*

331 *Id.*

332 *Id.*

333 *Id.*

334 *Id.*

335 *Id.*

336 S.B. 11

337 S.B. 11

338 *Id.*

339 *Id.*

340 *Id.*

341 *Id.*

342 H.B. 7

343 S.B. 1123

344 *Id.*

345 S.B. 1220

346 S.B. 1220

347 *Id.*

348 *Id.*

349 H.B. 1608

350 *Id.*

351 *Id.*

352 *Id.*

353 *Id.*

354 S.B. 1758

355 *Id.*

356 *Id.*

357 S.B. 1758

358 *Id.*

359 *Id.*

360 *Id.*

361 *Id.*

362 See *Supra* the legislative subsection publication for details on what these bills do specifically.

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=851&Bill=SB11>;

<http://www.legis.state.tx.us/BillLookup/History.aspx?LegSess=851&Bill=HB6>

363 Brandon Logan, *The Community Based Solution for Texas Children: Local Control and Community Ownership of Child Welfare Services*, TEXAS PUBLIC POLICY FOUNDATION 4 (March 2017). <https://www.texaspolicy.com/library/doclib/2017-03-PP08-CommunityBasedFosterCare-CFC-BrandonLogan.pdf>

364 FOSTER CARE REDESIGN IMPLEMENTATION PLAN (2015), at 26-28.

³⁶⁵ See generally Jessica Lahey, *Every Time Foster Kids Move, They Lose Months of Academic Progress*, THE ATLANTIC (Feb. 28, 2015), <https://www.theatlantic.com/education/archive/2014/02/every-time-foster-kids-move-they-lose-months-of-academic-progress/284134/>.

³⁶⁶ See generally M.D. No. C-11-84 (2015).

³⁶⁷ LEGAL CENTER FOR FOSTER CARE REFORM (last accessed Aug. 10, 2017)

https://www.americanbar.org/content/dam/aba/migrated/child/education/QA_2_Credits_FIN_AL.authcheckdam.pdf

³⁶⁸ Guiding Principles of Systems of Care: Community Based Care, *Child Welfare Information Gateway*, CHILDREN'S BUREAU (last accessed Aug. 10, 2017), <https://www.childwelfare.gov/topics/management/reform/soc/history/community/>.

³⁶⁹ Logan (2017) at 5.

³⁷⁰ *Id.* at 2.

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.* at 3.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ Our Community Our Kids: Provider Manual, Dec. 8, 2014; <http://www.ourcommunity-ourkids.org/sites/default/files/Provider%20Manual%20-%20Rev.%2012-08-14.pdf>.

³⁷⁸ *Id.*

³⁷⁹ Supra note 2 at 3.

³⁸⁰ *Id.* at 2.

³⁸¹ *Id.* at 3.

³⁸² See generally HB 7 (2017)

³⁸³ See generally SB 11 (2017)

³⁸⁴ Casey Family Programs, AN ANALYSIS OF THE KANSAS AND FLORIDA PRIVATIZATION INITIATIVES (April 2010) pg. 13, 17 (table 3 &4). <http://www.washingtongrp.com/wp-content/uploads/2013/04/Privatization-Review-of-Kansas-and-Florida-by-Casey-Family-Programs-2010.pdf>

Figure OV-2 Roles of Primary Entities and Individuals Involved in the Foster Care Removal, Placement, and Reintegration Processes	
Entity	Role
Department for Children and Families (DCF)	Recommend whether a child should be declared a child in need of care (CINC), who should have custody of the child, whether adequate progress is being made toward reintegration, whether adoption should be pursued, and whether parental rights should be terminated. DCF also licenses foster care contractors and child placing agencies, receives and investigates CINC complaints, and approves placements and case plans.
Foster Care Case Management Contractors (KVC and St. Francis)	Provide case management services for children in need of care, including directing clients to appropriate services (such as family preservation and mental health services). These contractors also monitor placements made by child placing agencies.
Child Placing Agencies (Subcontractors)	Match children in need of care with foster placements. They also sponsor foster families, assist them with licensing, and are charged with performing regular visits to foster families.
District Court	Determine whether a child should be declared a CINC, who should have custody of the child, whether adequate progress is being made toward reintegration, whether adoption should be pursued, whether parental rights should be terminated, and whether the child should be returned home.
Guardians Ad Litem (GAL)	Individuals appointed by the court to represent the best interests of the child.
Court Appointed Special Advocates (CASA)	Volunteers who investigate a child's situation, monitor their case, and act as their advocate.
Administration for Children and Families (ACF)	ACF is a division of the federal Department of Health and Human Services. It provides funding for state foster care services while children are placed in foster care because of maltreatment, lack of care, or lack of supervision. The state is responsible for complying with ACF's rules and meeting ACF's goals to access the federal funding.
Source: LPA review of Kansas child in need of care laws and DCF policies.	

<http://www.kslpa.org/assets/files/reports/r-17-006.pdf>

State Population 2,688,418			Public Programs for Children									
Child Population 712,993												
			University of Kansas	Child Abuse Victims	Foster Care	Juveniles in Residential Placement		Children on Welfare		State Child Population		
Child births	39,666		18,454	8,356	6,569	1,254						
White	30,181 76%	White	86%	6,209 74%	4,480 68%	52%	651 52%	549,005 77%				
Black	2,820 7%	Black	3%	1,228 15%	1,432 22%	34%	378 30%	49,197 7%				
Hispanic	4,761 12%	Hispanic	3%	226 3%	355 5%	11%	153 12%	74,151 10%				
		Asian	4%	42 1%	0%		18 1%	12,121 2%				
Unmarried births	11,497 29%											

<http://www.childwelfare.com/kansas.htm>

³⁸⁵ Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives, at 22; <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf>

386 *Id* at 22.

387 *Id*.

388 *Id* at 5.

389 PERFORMANCE AUDIT REPORT A Report to the Legislative Post Audit Committee By the Legislative Division of Post Audit State of Kansas R-17-006 April 2017 Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State's Foster Care and Adoption System, Part 3 at page 1; <http://www.kslpa.org/assets/files/reports/r-17-006.pdf>

390 Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 25, 26. <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf>

391 *Id*.

392 *Id* at 9, 14.

393 *Id* at 33.

394 *Id* at 26.

395 *Id* at 55.

396 Kansas Department of Social and Rehabilitative Services. August 5, 1998. Website: <http://www.srskansas.org/SRSPress/1998/8598.html> hip Initiative.

397 Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 50-57. <http://www.washingtongrp.com/wp-content/uploads/2013/04/Privatization-Review-of-Kansas-and-Florida-by-Casey-Family-Programs-2010.pdf>

398 PERFORMANCE AUDIT REPORT A Report to the Legislative Post Audit Committee By the Legislative Division of Post Audit State of Kansas R-17-006 April 2017 Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State's Foster Care and Adoption System, Part 3, at 14. <http://www.kslpa.org/assets/files/reports/r-17-006.pdf> (14)

399 *Id* at 14-15.

400 Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 27; <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf>

401 An Analysis of the Kansas and Florida Privatization Initiatives April 2010 at 8. <http://www.washingtongrp.com/wp-content/uploads/2013/04/Privatization-Review-of-Kansas-and-Florida-by-Casey-Family-Programs-2010.pdf>

402 pg. 19, table 5 <http://www.washingtongrp.com/wp-content/uploads/2013/04/Privatization-Review-of-Kansas-and-Florida-by-Casey-Family-Programs-2010.pdf>

403 *Id*.

404 *Id* at 17.

405 *Id*.

406 Kansas Family Preservation Services, CONTRACT FOR SERVICES BETWEEN KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES AND KVC BEHAVIORAL HEALTHCARE, INC. (2013).

407 Amendment Two to Contract for Services Between Kansas Department for Children and Families and KVC Behavioral Healthcare, INC. file:///C:/Users/croberts/Downloads/0000000000000000000000037679_ATTC_DA00BLE2015-10-02-10.30.51.945Amendment_2.pdf

408 Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 27; <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf> .

409 *Id*.

410 *Id*.

⁴¹¹ PERFORMANCE AUDIT REPORT A Report to the Legislative Post Audit Committee By the Legislative Division of Post Audit State of Kansas R-17-006 April 2017 Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State’s Foster Care and Adoption System, Part 3 at 6. <http://www.kslpa.org/assets/files/reports/r-17-006.pdf>

⁴¹²Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 28; <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf>

⁴¹³ James Bell Associates. (April 28, 2000). External Evaluation of the Kansas Child Welfare System Year End Report: January-December 1999. Pg. 157.

⁴¹⁴ Karl Ensign and Jaymee Metzenthin, “Achieving Desired Outcomes by Privatizing Child Welfare Service Delivery: Lessons Learned through the Kansas Experiment”, PROFESSIONAL DEVELOPMENT: THE INTERNATIONAL JOURNAL OF CONTINUING SOCIAL WORK EDUCATION Vol. 10 No. 2 (2007) at 12. <http://www.profdevjournal.org/articles/102007.pdf>

⁴¹⁵ Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Initiatives at 29. <https://www.openminds.com/wp-content/uploads/indres/060107cwsprivatization.pdf>

⁴¹⁶ *Id.*

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