



TEXAS LEGISLATIVE STUDY GROUP

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LSG Policy Report: The Price of Neglect Texas Children Suffer in State Foster Care System

May 2, 2022

LSG Colleagues and Supporters,

For almost 30 years the Legislative Study Group has worked to promote sound public policy solutions that benefit all Texans. All too often, those who lack money and influence have not been heard in the Capitol, and nowhere is that more evident than the state’s failure to provide safety and opportunity for foster children who have endured abuse and neglect.

LSG members have tried to provide much needed funding to DFPS and have proposed policy solutions to address the issues within our foster care system. Meanwhile, the state leadership’s failure to address the most critical issues in our foster care system has been the subject of federal court orders for eleven years.

To remedy the issues found by the court, we must seek long-term, comprehensive policy solutions, not quick fixes, inaction or denial. We may have an opportunity to do just that next session, based on recommendations made by an “Expert Panel” appointed by both the plaintiffs and the State defendants in the ongoing litigation. There is just one big if: will the parties work together for solutions, absent political interference?

At the conclusion of this report, please see a brief list of action items that could be considered as part of a solution to the foster care crisis.

As we prepare for next session, the LSG plans to produce additional policy reports on key issues. I look forward to working with you as we move forward.

Thank you,

Rep. Armando L. Walle, Chair
Texas Legislative Study Group

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Litigation Reveals a Badly Broken Texas Child Welfare System

In 2011, Children’s Rights, a national non-profit advocacy group representing nine children previously in Texas’ long-term foster care system, filed suit against the Governor of Texas, Texas Health and Human Services Commission (HHSC) and the Department of Family and Protective Services (DFPS). During the 11 years that Federal District Judge Janis Jack has overseen this lawsuit, it has become devastatingly clear that the system is broken and has been broken for a long time. Numerous efforts to improve and reform the

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system have failed to address the root causes of a systemic failure that endangers foster children in the state’s care.

For years, the state has appealed Judge Jack’s orders to the Fifth Circuit Court of Appeals, and the state fought every change she ordered. Subsequently, the Fifth Circuit limited the lawsuit to foster children under the state’s conservatorship but did uphold some of Judge Jack’s orders. Most importantly, the court’s appointed monitors have continued independent investigations that have proven to be the primary source of information related to state’s failure to provide safety and essential supports for foster children.

A detailed litigation timeline and court rulings can be found [here](#) and [here](#).

Children Are Still Dying While in State Care

After the 2017 legislative session, while signing legislation intended to reform the state foster care system, [Governor Abbott said](#) that “children dying while in the care of the state is intolerable, and these new laws are a needed step to ending such tragedies.” Certainly, children dying in foster care is intolerable, but that legislation has not ended these deaths.

In response to a March 21st House Human Services Committee hearing, a [report](#) from DFPS found that more than 100 children have died in Texas while under state care in just two years since 2020, including 44 in 2020, 38 in 2021, and 22 in the first three months of 2022. More information on these deaths can be found on page 19 in this linked [report](#).

Where Do Children Without Placement (CWOPs) Go?

Last fall, court monitors released a detailed [report](#) that found 501 children spent at least one night in a non-licensed state-operated placement during the first half of 2021. Some children spent more than 100 consecutive nights without a proper place to sleep, including caseworker’s offices, hotels, churches, and shelters.

Many of these children have the greatest need for supervision, mental health supports and caseworker monitoring, but such services are difficult to provide to children without placement. Far too often, absent an effective DFPS system to track CWOPs, these children may be in an environment where abuse and neglect are likely.

Judge Jack conducted a hearing in early January, just a day after the Expert Panel issued its report, regarding the danger kids faced in unlicensed facilities, including the shipment of Texas children to substandard group housing in other states. At one of those out-of-state facilities, a [residential treatment center in Michigan](#), the front door to the facility was missing and there had been no heat for 24 hours despite 28-degree weather, according to a new report by court monitors.

The DFPS report found that between January 2021 and October 2021, [an average of 38 children](#) were sent to facilities outside of Texas every month — compared to a monthly average of 21 for the year prior. In that period in 2021, the state spent \$2.9 million to send children out of state. The Court also heard testimony that Child Protective Services was placing children in substandard facilities in Dallas, Bexar County, Belton, and Houston.

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Did “Culture” Lead to Hiding Abuse at Bastrop Facility?

At a Senate hearing, DFPS Commissioner Jaime Masters told state senators that DFPS officials were kept in the dark about a foster care facility employee [who allegedly sold nude pictures of two girls](#) in their care due to the team culture created by a CPS manager.

The now shut down Bastrop County facility, the Refuge, was contracted by the state to care for sex trafficking victims. Masters said two managers failed to raise the issue with agency leaders, violating policy. The facility employee who was under investigation for selling nude pictures of two girls is also accused of dating a man who allegedly trafficked another child at the facility.

Department of Public Safety Director Steve McGraw led [a Texas Rangers investigation](#) that initially reported, via letter to the Governor, there were no sexual assaults or abuse at the facility. However, at the time this letter was released, local law enforcement had not even completed their investigation. Federal court monitors later found [“ample evidence”](#) that former sex trafficking victims were abused.

A Band Aid on a Crisis or Real Solutions?

As frustration mounts with the state’s failure to address the danger evident in a failing foster care system, the appointment of Expert Panel members by state and agency leaders brings with it hope that a serious effort might be made to develop long-term solutions. That said, even though the state agencies have pledged to work and collaborate with plaintiffs, the state has also made it clear that recommendations made by the Expert Panel are not binding.

After a decade of observation and study, the state must take [the panel’s recommendations](#) seriously and make a commitment to realizing meaningful progress toward ending the foster care crisis. In February 2022 agencies [committed to implementing](#) most of the Expert Panel recommendations but some will require additional funding and legislative support. A genuine solution will require state leaders and children’s advocates to develop a comprehensive state plan that addresses the needs that have been identified over the last decade. Federal funds would be available for improved high quality congregate care facilities, but a better goal would seek to place more, if not all, foster children with qualified families.

Two of the leading plaintiff’s lawyers in the long running foster care litigation have expressed concern that “the state has not responded with the sense of urgency required by this crisis.”

The lawyers and advocates for children are urging the state to [take emergency action now](#) on critical issues, like increasing funds for kinship care (grandparents, aunts, uncles, etc.) to allow children with safer alternatives and to stay with someone they know.

Texans Care for Children leaders are also urging the state leadership to provide immediate starter funding for a [set of priorities](#) instead of waiting for 2023, noting that the state could afford such funding in anticipation of a \$12 billion surplus and a \$12 billion balance in the state Economic Stabilization Fund (“Rainy Day” Fund) according to the State

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Comptroller’s computations. A precedent for providing CPS funds outside of a session was set in 2016 when the Governor and legislative leaders provided \$12,000 raises for 6,000 front line DFPS workers during a caseload crisis.

State Funding for DFPS

For an LBB review of DFPS funding, [click here](#). Note that exceptional items and supplemental funding can be found on page 7 of the LBB publication.

Paxton Opinion and Governor Abbott’s Order Regarding Trans Children

Further contributing to the foster care crisis is the Governor’s politically driven order to investigate loving parents of transgender children after the Attorney General issued a non-binding legal opinion. This stands in sharp contrast to the real need to provide investigators and caseworkers for foster children who are actually facing abuse or neglect. This is simply a political stunt to distract from the true crisis at DFPS and has caused even more fear and harm to transgender children and their families. Additionally, it has led to [the resignation of child welfare workers](#).

The ACLU and Lambda Legal filed a [lawsuit](#), on behalf of a DFPS employee with a transgender child and her family, asking for a temporary injunction on these investigations. The Third Court of Appeals granted the temporary injunction blocking DFPS from investigating parents for providing medically necessary lifesaving care to their children. The Attorney General has appealed this decision to the Texas Supreme Court, where it currently sits. Although no permanent decision has been made the injunction remains in place and provides temporary relief to these families.

Action Items – Foster Care Crisis

The following list includes just some of the items that warrant consideration when developing a solution that addresses the foster care crisis by keeping families together and placing more foster children with families instead of in substandard congregate care facilities that are often the site of abuse and neglect.

- Reduce the number of children entering foster care by fully implementing the [Family First Prevention Services Act](#) (FFPSA). Unfortunately, Texas has delayed full implementation of the FFPSA. Reasons for the delay can be found [here](#).
- Expand and Improve Access to Mental Health services for children and families. This will require a cooperative effort at both the state and community levels.
- Invest in additional Foster Parent supports and recruitment to address the number of Children Without Placement (CWOPs).
- Provide funding necessary to reduce caseloads for Caseworkers and Investigators.
- Expand and provide funding for Specialty Family Drug Courts that keep families together while parents are provided parenting classes, substance use treatment, and other services. As many as 2/3’s of CPS removal cases have involved substance abuse.

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