

**Texas Foster Care:
Current Issues, Reform Efforts and Remaining Problems**



Texas
APPLESEED

September 2007

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Acknowledgements

Texas Appleseed is deeply grateful to pro bono partner LeBoeuf, Lamb, Greene & MacRae LLP and to attorney Stephen M. Ryan for their work in documenting the status of foster care reforms in Texas. Their efforts made it possible for Texas Appleseed to identify those critical areas that must be addressed to provide a foster care system that protects the rights of children.

TEXAS APPLESEED MISSION

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems. Our prior work to protect the rights of juveniles in the justice system alerted us to the need to analyze how the state protects the rights of the foster children in its care.

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Part I: Overview of Texas Foster Care

A. Introduction

This report provides a review of major issues in the Texas foster care system, summarizes recent legislative efforts to improve and reform the system, outlines major problems which have been identified, and briefly discusses status of state efforts to resolve those problems.

B. Overview of the Texas Foster Care System

Texas made its first effort to assume responsibility for child welfare and protection in 1931, with the creation of the Child Protection Program.¹ By 1974, the Texas Department of Public Welfare was responsible for providing services to abused, neglected, truant and runaway children; that responsibility transferred to the Texas Department of Protective and Regulatory Services ("DPRS") in 1992.² In 2003, the legislature consolidated several state health and human services agencies and merged their administrative and support functions under the Health and Human Services Commission ("HHSC").³ As part of this initiative, DPRS was renamed the Department of Family and Protective Services ("DFPS").⁴

DFPS is charged with protecting children, the elderly and persons with disabilities from abuse, neglect and exploitation. It has over 9000 employees, and it received \$2.1 billion in appropriations from all funds for the 2006-07 biennium.⁵ Child Protective Services ("CPS") is the division of DFPS responsible for promoting the integrity and stability of Texas families, investigating reports of child abuse and neglect, and providing homes and various services for children who cannot safely remain with their own families.⁶ CPS is the largest program in DFPS; it accounted for more than 85 percent of the appropriations to DFPS, or more than \$1.5 billion.⁷

When CPS determines that a child is abused or neglected, or when a child does not have an appropriate custodial parent or other relative to care for the child, the child will be placed in

foster care, which may consist of a foster family home, a group home, or a facility under the authority of another state agency. DFPS licenses and contracts directly with foster parents, residential care facilities and private child placement agencies for foster care.⁸ Foster care is intended to be a temporary living arrangement for a child until a permanent living arrangement for the child can be found, but it often becomes the permanent placement for the child, either as an adoptive home, as a home that has taken managing conservatorship of the child, or as a long term foster care placement.

As of 2006, according to the most recent data published by DFPS, there are 6.3 million children in Texas.⁹ Of those, 347,396 have been the subject of child abuse or neglect investigations, and 97,995 of those were confirmed to have been abused or neglected.¹⁰ As of the end of fiscal year 2006, there were 59,427 children receiving services from DFPS, and nearly 32,000 of those children were under the legal responsibility of DFPS in foster care or other living arrangements.¹¹ Between 2003 and 2006, the number of children under the legal responsibility of DFPS increased 36.2 percent.¹² However, since 2004 it has become increasingly apparent that there are a number of flaws in Texas' foster care system, and that as a result, children in the system are at risk of significant harm.

Part II: Efforts At Reform

A. 2005 Reform Efforts

In April 2004, after a year-long investigation, then-Texas Comptroller Carole Keeton Strayhorn released *Forgotten Children*, a report on the Texas foster care system. *Forgotten Children* exposed a number of serious problems and deficiencies in the Texas foster care system and made specific recommendations for reform.¹³ In July 2004, in response to *Forgotten Children* and media attention surrounding several cases involving the death or serious abuse of

children who had previously been involved with the state's protection programs, Governor Rick Perry issued an executive order directing the HHSC to review and reform CPS.¹⁴

Forgotten Children reported, among other things, that DFPS: frequently moved children from one caregiver to another; had heavy caseloads and high caseworker turnover that prevented the agency from performing required visits with foster children; mixed potentially dangerous children, such as sexual offenders and those with violent criminal records, with others; failed to adequately serve children with special needs, such as the medically fragile and children with mental retardation; failed to address the educational needs of foster children; and had an insufficient plan for preparing foster children for adulthood, or for even tracking what happened to them when they left the foster care system.¹⁵ The findings and recommendations of *Forgotten Children*, along with the HHSC review directed by Governor Perry, provided a starting point for reform efforts.

In May 2005, the 79th Legislature's efforts at reform culminated in the passage of Senate Bill 6 ("SB 6"), which was intended to be a comprehensive reform of the DFPS.¹⁶ Among other things, it provided CPS with \$250 million in new state funds, reorganized CPS, and required the privatization of some CPS functions.

The primary CPS deficiency targeted for reform in SB 6 was the problem of large, unmanageable investigative caseloads.¹⁷ These high caseloads and limited resources resulted in poor quality investigations, the circumvention of procedures, and excessive investigative caseworker burnout and turnover rates.¹⁸ And because of high caseloads, CPS could only focus on crisis management, rather than on outcomes and results.¹⁹ CPS reform, therefore, focused on improved quality of investigations and improved investigative casework and training.²⁰

After the passage of SB 6, CPS hired more than 3,200 new investigative caseworkers, supervisors and clerical workers and strengthened investigations by improving CPS caseworker training and fostering cooperation with law enforcement agencies.²¹ However, the resulting improvement in the quality and number of investigations and interventions resulted in more children being removed from their homes, which has placed an increased the strain on the foster care portion of the system.²² In fact, as a result of the investigative improvements, the number of children removed from their homes increased from 13,431 in 2004 to 17,547 in 2006.²³ There are simply not enough foster families or facilities available to handle this massive increase in the number of children entering the system.

In January 2007, after CPS officials admitted to the Senate Human Services Committee that children often have to sleep in state CPS offices due to the shortage of foster care facilities, CPS began tracking the number of children sleeping in agency offices.²⁴ The statistics are shocking: since January 2007, nearly 500 children have spent at least one night in a state office building,²⁵ and in May 2007 alone, 160 children spent at least one night in a state office building.²⁶ 30 percent of those children stayed for two or more nights, and in Tarrant County, one 17-year old girl stayed in a state office for 20 nights.²⁷ In June, all Travis County District Court judges jointly issued a standing order that, among other things, prohibited DFPS from placing any child involved in a Travis County CPS case in a state office overnight. The order provided an exception for emergency situations related to the initial removal of a child from a home as a result of an immediate danger to the physical health and safety of the child.²⁸ Since the entry of that order, the number of children sleeping in state offices has decreased significantly.

The reason for the increased strain on the foster care system is now obvious: most of the additional \$250 million approved for CPS in 2005 was designated for investigations, and none of

it was designated for the foster care portion of the system.²⁹ Instead of providing additional funding for foster care, SB 6 directed CPS to privatize all its foster care placement services, which was seen as a zero-cost solution to the problems of the foster care system.³⁰ Prior to SB 6, private companies handled 80 percent of foster care placements, and SB 6 mandated the privatization of the remaining 20 percent.³¹

SB 6 also required privatization of all the oversight work that was currently handled by CPS conservatorship caseworkers. Under SB 6, private providers would represent children in every part of foster care, even in state court, although CPS would retain legal responsibility for children who were completely in the care of private companies.³² CPS planned a pilot privatization project in the San Antonio area before implementing privatization statewide.³³ But in the fall of 2006, just after the agency put out a request for private bidders in Bexar County, the privatization pilot project was indefinitely delayed.³⁴

The push for privatization of all oversight functions was further called into question following the shocking abuse and deaths of three foster children in North Texas over a four-month period in the fall of 2006.³⁵ Mesa Family Services, a private recruiting and placement service which oversaw approximately 125 foster homes, was responsible for recruiting and placing the children in the foster homes where abuse and deaths occurred.³⁶ It seemed apparent that Mesa had failed to properly screen and monitor the foster families it had recruited; Mesa relinquished its state license following the deaths.³⁷

B. 2007 Reform Efforts

In early 2007, in the wake of the Mesa scandal, the Senate voted to scale back a significant part of the foster care privatization plan. Senator Nelson, R-Lewisville, the original sponsor of SB 6, sponsored SB 758, which reduced the privatization effort to a small pilot

program, and kept state caseworkers involved in decisions about foster care placements and service plans instead of turning those functions over to private companies.³⁸

Although SB 758 altered the foster care privatization plan, none of the legislative budget was identified to fund the privatization pilot program. In addition, although identified as a goal of the legislation, SB 758 did not prioritize the reduction of conservatorship caseworker caseloads.³⁹

In summary, while SB 758 did not address or fund all of the goals of foster care reform, it:⁴⁰

- Eliminated SB 6's mandate to privatize case management;
- Provided for a case management privatization pilot project involving five percent of cases statewide by September 1, 2008;
- Required an increase in foster care placement capacity;
- Required a study of ways to improve CPS employee recruiting, such as education reimbursement incentives;
- Increased the monitoring and oversight of placements;
- Required the creation of a foster parent database;
- Required DFPS to develop a CPS Improvement Plan to address areas where improvement is needed;
- Enhanced in-home support programs for neglect cases where poverty is a significant factor;
- Required creation of a new committee on licensing standards; and
- Strengthened the oversight of foster homes.

Part III: Unresolved Problems

Texas' 2005 and 2007 efforts to reform its child welfare system resulted in some improvements, most notably child abuse investigations, but failed to adequately address very

serious systemic problems. The most significant of those are inadequate funding and overwhelming conservatorship caseworker caseloads.

A. Inadequate Funding

Increasing funding must be considered an essential part of reforming Texas foster care. Texas ranks 47th nationally in per child funding for child welfare.⁴¹ According to the Center for Public Policy Priorities, Texas spent about \$837 million on child protection (prevention, services, and foster care), or an average of \$134 per child, which is 58 percent lower than the national average of \$319 per child.⁴² If Texas were to increase funding to meet the 2004 national average, it would have to spend an additional 1.2 billion in state and federal funds.⁴³ CPPP also points out that Texas would have to spend another \$451 million per year just to match the southern states' average spending of \$206 per child.⁴⁴

Spending on child welfare activities is tied to a multitude of state and federal requirements.⁴⁵ State spending on child welfare is driven by state laws defining abuse and neglect and establishing responsive actions and services.⁴⁶ States must also meet federal requirements in order to receive federal money for certain programs.⁴⁷

Texas foster care funding relies primarily on three roughly equal revenue sources: the federal Social Security Title IV-E program, federal Temporary Assistance for Needy Families (“TANF”) block grants and state general revenue.⁴⁸ Title IV-E is a matching program that pays room and board for children in foster care; the federal government provides 60 cents of every dollar spent for services, with the state supplying the remainder.⁴⁹ DFPS administers Title IV-E in Texas. TANF, the current vehicle for federal welfare funding, provides assistance to needy families and support programs designed to strengthen families and promote job preparation, work and marriage.⁵⁰ In addition, all children in foster care are eligible for Medicaid services.

Specialized DFPS staff review cases and qualify children for Medicaid, Title IV-E funding and Supplemental Security Income (SSI), which provides cash assistance for the aged and disabled.⁵¹

According to the Urban Institute, the states spend approximately twenty-three billion dollars each year on child welfare activities.⁵² Slightly less than half of state spending on child welfare services comes from federal programs, primarily TANF and Title IV-E.⁵³ Urban Institute surveys have found that state child welfare agencies divert federal funds such as Medicaid and TANF to child welfare services in order to service their caseloads, and Texas is no exception.⁵⁴ These surveys also found that states were spending relatively little on prevention of child abuse and neglect.⁵⁵

The Texas legislature increased CPS funding by approximately \$250 million in 2006-2007 as part of CPS reform,⁵⁶ but as noted above, most of that increase went to strengthening investigations, not foster care.⁵⁷ For the 2008-2009 biennium, the legislature increased funding by 21 percent, including approximately \$100 million in supplemental appropriations for exceptional items in addition to DFPS's base budget.⁵⁸ This additional funding, while much needed, falls far short of the amount needed to bring Texas's per child spending in line with other states. This slight increase in funding is simply insufficient to fix the glaring problems of high conservatorship caseworker caseloads and the lack of capacity to handle the increased numbers of children entering the system.

B. Increasing Caseloads and Inadequate Staffing

Without a well-trained, experienced, and adequately staffed workforce, the foster care system cannot perform its basic functions. In the foster care system, caseworkers are the means by which foster children access critical services. When those caseworkers are inadequately trained, inexperienced, or over-burdened, the system breaks down and children in the system are harmed.

In Texas, there are several types of CPS caseworkers: investigative caseworkers, who primarily investigate claims of abuse or neglect; specialized caseworkers for adoption, family preservation, preparation of adult living, sexual or substance abuse cases; "generic" caseworkers who perform provide multiple functions, most commonly in rural areas; and conservatorship caseworkers, who are responsible for ensuring that foster children receive needed services.⁵⁹

DFPS policy requires conservatorship caseworkers to visit the children in their care at least once a month, and to visit them at their places of residence at least every three months.⁶⁰ These caseworkers are responsible for ensuring that each child receives all treatment services deemed necessary by his or her case plan.⁶¹ Conservatorship caseworkers often are recent college graduates who find themselves in a very stressful environment with high caseloads.⁶² According to *Forgotten Children*, high workloads, along with the emotionally intense nature of the position and low salaries, often lead to "burnout," and many caseworkers do not stay with the job for long.⁶³

Ironically, the 2005 reforms seem to have exacerbated this problem. CPS hired large numbers of new investigative caseworkers and improved investigative caseworker training, which resulted in significant reductions in investigative caseloads and greatly improved the quality of CPS investigations. As a result of increased and improved investigations, the number of children removed from their homes increased dramatically, increasing the caseload for the conservatorship caseworkers; the total number of children under DFPS's legal responsibility steadily rose from 35,000 at the end of fiscal year 2003, to 41,305 at the end of fiscal year 2006, and over 46,000 thus far in 2007.⁶⁴ Yet SB 6 did nothing to improve or reform CPS's foster care function, and failed to anticipate the sudden increase in the number of children in foster care and the corresponding increase in conservatorship caseloads.

Because of the increase in children entering the system, the average daily caseloads of workers who place children in foster care grew from 40 in fiscal 2005 year to 45 in 2006.⁶⁵ Generally accepted professional caseload standards issued by the Child Welfare League of America (“CWLA”) provide for between 12 and 15 children per worker for foster care services.⁶⁶ In addition, caseworker turn over is high. Between September 2006 and February 2007, 28 percent of conservatorship caseworkers left their jobs.⁶⁷ As of the end of the third quarter of 2007, DFPS reported that the annualized caseworker turnover rate was 31.2 percent.⁶⁸ Obviously, this turnover greatly exacerbates the problem; when caseworkers leave, the remaining caseworkers have to take on their responsibilities, leading to more overwork and even more caseworkers deciding to leave.

Even though conservatorship caseload reduction was identified as a goal of SB 758, the legislature did not make it a priority. The additional funding provided is only estimated to reduce caseloads from 46 cases per caseworker to 41 over the next two years, and that estimate somewhat unrealistically assumes that the number of children in the foster care system will remain steady at current levels.⁶⁹ This is far from the national average of 24 and the widely accepted ideal number of 12-15 cases per caseworker.⁷⁰

In addition, Texas is supposed to receive \$3.9 million in federal funds from the Promoting Safe and Stable Families Program to support monthly visits to children in DFPS conservatorship.⁷¹ While this funding cannot be used to hire additional permanent caseworker staff, it can be used in areas that will assist CPS conservatorship caseworkers, such as supervisors and support staff. CPS has identified three categories for the use of these funds: (1) incentive pay for conservatorship caseworkers and supervisors; (2) overtime pay for case aides

and administrative assistants; and (3) temporary staff, tools, and staff development. CPS has allocated a portion of these funds to each of its 11 regions in the state.⁷²

However, the modest increase in the number of caseworkers and the slight boost in federal funding is not likely to do more than simply slow the rate of increase in caseworker caseloads as the number of children in the foster care system continues to grow. More must be done in order to alleviate this problem before it completely overwhelms the system.

Part IV. Problems Being Addressed

Forgotten Children and the 2004 HHSC review identified other major problems with the Texas foster care system. This section briefly describes some of those problems and the efforts being made to address those problems. While problems identified are being addressed through legislative efforts and DFPS's own initiatives, it remains to be seen whether these reforms and solutions will resolve the problems described. More time is needed to evaluate the final effects of these reforms, and to determine whether any unintended adverse effects result from these reforms.

A. Disproportionality

Disproportionality is the over-representation of a particular race or cultural group in a particular program or system.⁷³ This is a nationwide phenomenon that has been documented for decades in different programs, including child protective services, special education services, juvenile justice, and the criminal justice system.⁷⁴ African-Americans are represented in those systems at higher rates than their percentage of the general population, in Texas and nationwide.⁷⁵ DFPS data shows that, relative to other racial or ethnic groups, a higher percentage of African-American children are removed from their homes, a lower percentage are successfully reunited with their families, and a higher percentage age out of foster care without an adoptive

family or other permanent placement.⁷⁶ 2005 DFPS data shows that African-American children in Texas were almost twice as likely to be reported as victims of child abuse or neglect as were Anglo or Hispanic children. In addition, the number of African-American children who were removed from their families and became the subjects of substantiated allegations of abuse was disproportionately high, even when the higher number of reports was taken into account.⁷⁷ The data showed that even when other factors are taken into account, such as income, African American children in Texas spend significantly more time in foster care or other substitute care, are less likely to be reunified with their families, and wait longer for adoption than Anglo or Hispanic children.⁷⁸ However, as HHSC and DFPS noted in their first disproportionality report to the legislature in January 2006, poverty turned out to be a strong predictor of whether a child would be removed from the home, with more than 60 percent of child removals occurring in families with annual incomes of \$10,000 or less.⁷⁹ In addition, DFPS reported in 2006 that its data showed no "significant association" between African-American race and a CPS decision to remove a child from a home when controlling for factors such as income, age, type of abuse, source of report, and region of the state.⁸⁰

Even though consensus is lacking on the cause of disproportionality or how best to alleviate it, SB 6 required DFPS to take steps to mitigate disproportionality.⁸¹ SB 6 required DFPS to provide cultural competency training to all service delivery staff, increase targeted recruitment for foster and adoptive families, target hiring recruitment efforts to ensure diversity among DFPS staff, and develop partnerships with community groups to provide culturally competent services to children and families.⁸² In addition, SB 6 also required HHSC and DFPS to analyze removal rates and other enforcement actions to determine whether disproportionality

exists, taking into account other factors, such as poverty, single-parent families, and young-parent families, and to report the results to the legislature.⁸³

In October 2006, CPS implemented a pilot program in Austin to reduce disproportionality through preventive, community-based services and improved child-welfare services.⁸⁴ On November 8, 2006, Houston CPS staff and the Houston Disproportionality Committee held a townhall meeting and focus group designed to build awareness of disproportionality and determine community needs.⁸⁵

In March 2007, CPS reported that it had provided enhanced training for service delivery staff and management, developed collaborative relationships with community partners, increased staff diversity, and improved targeted recruitment efforts for foster and adoptive families.⁸⁶ In addition, CPS reported that Texas is one of 13 states participating in a "Breakthrough Series Collaborative on Disproportionality" sponsored by Casey Family Programs and the Annie E. Casey Foundation.⁸⁷ The goal of this initiative is to identify practices, policies, and assumptions that contribute to disproportionality in the child welfare system, and engage agency staff, community partners and leaders in eliminating those problems.⁸⁸ In addition, CPS has developed partnerships with community organizations to address disproportionality in Houston, Arlington, Fort Worth, and Beaumont/Port Arthur, creating community advisory committees comprised of local stakeholders and leaders.⁸⁹ CPS has also hired a state level disproportionality director and disproportionality specialists in Houston, Arlington, Fort Worth and Beaumont/Port Arthur to support the community's work on disproportionality and to serve as resources to CPS staff.⁹⁰

In September 2007, CPS reported that CPS leadership, including administrators down to the Program Administrator level statewide and Program Directors, supervisors and workers in the pilot sites, have gone through "Undoing Racism" training. In addition, DFPS has mandated

that data include ethnic breakdown wherever possible so that disproportionality can be better understood and addressed.⁹¹

However, there at least some indication that CPS's efforts to reduce disproportionality might have unintended consequences. In a February 19, 2007 report from Houston's Channel 11 News (KHOU), some alleged that the efforts to address disproportionality have caused CPS caseworkers to attempt to "keep the numbers down" by leaving African-American children in dangerous homes instead of removing them to state custody.⁹² These allegations require investigation, but there has been little additional information reported since the initial news report.

In summary, disproportionality is a statistical fact, but its causes and the solution to it remain unclear. The state's efforts to study disproportionality and attempts to alleviate it are necessary, but care must be taken to avoid allowing the sort of bureaucratic environment in which the reduction of disproportionality statistics could be prioritized over the safety and well-being of children found in dangerous homes.

B. Lack of Transition Preparation (Aging Out)

Foster children who "age out" of the system often lack a formal support system. Statistically, they are at extreme risk of poverty and homelessness, victimization and criminal involvement, illness, early childbearing, and low educational attainment. In addition, many have emotional problems, fractured emotional and social attachments, and dysfunctional relationships as a result of past experiences.⁹³

The state provides Preparation for Adult Living (PAL) Services to foster children ages 16 through 20. PAL services consist of independent living skills training, support services, limited financial assistance, and waiver of college tuition and fees. In addition, SB 758 requires that the child be given an information booklet describing the benefits available to the child.

Prior to 2005, many former foster children had not received PAL services, according to a study by the Center for Public Policy Priorities.⁹⁴ Many young people left care before these services were provided or refused to participate in the PAL program. Several youth reported that they would have participated in PAL, but either did not know about the program or lived in rural areas where the program was not available.⁹⁵ While some young people who had participated in PAL found it helpful, several said that the PAL program did not adequately prepare them for the many challenges they faced living on their own.⁹⁶

SB 6 required DFPS to improve discharge planning, increase the availability of transitional family group decision-making, and enter into agreements with the Texas Workforce Commission to benefit foster care youth.⁹⁷ CPS has now developed and provided training for caseworkers on transition planning, resources, and services for youth leaving foster care, and increased support services for foster youth, including employment services through local Texas Workforce development boards and extended independent living services.⁹⁸

Many emancipating foster youth also reported physical and mental health problems, which they tended to ignore because they had no access to health care services.⁹⁹ Forty percent of the youth interviewed in the 2001 CPPP study had health problems but fifty percent had no health insurance.¹⁰⁰ However this lack of access to health services should be alleviated by SB 6's mandate that transitioning foster children receive Medicaid coverage until age 21 without the need for periodically reapplying for that coverage. CPS reported in March 2007 that this coverage had been fully implemented.¹⁰¹

Transitioning foster youth lack a supportive family and are usually not properly prepared for adulthood, but they are nevertheless expected to cope with adult situations as soon as they reach 18. These transitioning youths are typically treated more like teens than adults. Without

adequate preparation for living on their own as adults, and without the assistance of adult mentors, it is very difficult for transitioning youth to find jobs that pay a living wage or provide health insurance. It is even more difficult for such youth to get credit, or even find a place to live, because many apartment complexes will not lease an apartment to young applicants who have no established work history and no one to cosign the lease.¹⁰²

To address this problem, CPS has instituted its Transitional Living Services Initiative as a systematic approach to improving services for youth who age out of the state's foster care system.¹⁰³ The goals are to expand and improve services and outcomes for youth by preparing them for adult living while they are in foster care, and to expand and improve their supportive services during their young adult years. As part of the initiative, CPS is using Chafee Foster Care Independence Program federal matching funds to expand the PAL program and create a consistent baseline of services for youth transitioning out of foster care.¹⁰⁴ CPS has expanded its transitional family group decision-making conferences program (called "Circles of Support") to reach all Texas youth age 16 and older who are in DFPS permanent managing conservatorship.¹⁰⁵ CPS will also incorporate a consistent format for transition planning into each foster youth's plan of service. CPS intends to extend paid foster care to age 21 for certain youth, and allow re-entry into foster care after age 18 for certain youth to achieve educational, training, employment, or other life goals.¹⁰⁶

CPS has established transition centers in Dallas, Houston, San Antonio and Austin, where youth can go to one location to complete a GED certification, receive Preparation for Adult Living services, take a community college prep course, talk to the onsite apartment locator service, and receive employment training and placement services. Transition centers also provide an opportunity for youth to develop personal and community connections, another important step

in transitioning to adulthood.¹⁰⁷ CPS has stated that it intends to expand these one-stop transition centers to all regions of the state and incorporate emergency housing as a service of the centers.¹⁰⁸ As of September 2007, however, no additional centers have been established.¹⁰⁹

Another CPS initiative allows youth exiting foster care to identify a caring adult to provide social and emotional support in adulthood, and assist youth with biological family reconnections before leaving foster care.¹¹⁰

In September 2006, HHSC implemented rule changes extending paid foster care to age 22 for youth enrolled in and regularly attending high school.¹¹¹ In addition, youth who are enrolled in a vocational or technical program may remain in paid foster care until age 21, instead of age 19.¹¹² CPS is also working to finalize its "independent study" PAL manual and instructions for rural youth.¹¹³

CPS has also created a Texas Youth Connection web site at www.texasyouthconnection.org, which provides links and information on the Texas foster care system, including, among other things, the PAL program, the Chafee Foster Care Independence Program, education and training vouchers, Services to At-Risk Youth (STAR), the Texas Runaway Hotline, and the Texas Youth Hotline. The website also has useful information and links for education, finances, job links, healthy eating, medical care, housing, books, and how foster children can get information about their cases from CPS.¹¹⁴

In summary, it appears that the most of problem of lack of transition preparation is being addressed, but the full breadth of the problem may not have been addressed. As DFPS noted in its most recent 180-day SB 6 status report, transitioning youth surveyed are generally satisfied with the quality of services received – they just need more of them, and more time and attention from their caseworkers.¹¹⁵

C. Inadequate Health Care

Forgotten Children reported that children in the foster care system may not receive optimal healthcare due to a variety of factors, including the frequent movement of children from one foster care setting to another. Even though foster children are eligible for Medicaid benefits, they are easily disconnected from their medical and educational histories because of multiple foster care placements, making it difficult to track their health care.¹¹⁶

SB 6 directed HHSC to develop a comprehensive, cost-effective medical services delivery model to meet the medical and behavioral needs of foster children. To implement this requirement, HHSC intends to contract with a single managed care organization ("MCO") to provide and coordinate services statewide, which HHSC believes will ensure better accountability for outcomes and better track children's care.¹¹⁷ This contract, awarded to Superior HealthPlan Network in March, is not expected to be implemented until the spring of 2008.¹¹⁸ HHSC's goals for medical services include expedited enrollment for immediate access to Medicaid benefits, health care coordinated through single point of contact, and enhanced access to services.¹¹⁹ The ultimate goal is for foster children to receive coordinated medical and behavioral health care services quickly, and have those services available to foster children no matter where they are or how often they move.¹²⁰ Once this plan is implemented, foster children will have a "medical home" through a primary care provider ("PCP") or PCP team, which will promote coordination of physical and behavioral health and promote preventive care.¹²¹ Children will have improved access through a defined network of providers, and improved access to health history and medical records through an electronic "Health Passport." In addition, the program will provide a nurse hotline and behavioral health hotline for caregivers and caseworkers. Children will have access to physical and behavioral healthcare, dental services, optical services, attendant care (long-term service), and disease management.¹²²

The healthcare initiatives described above have not yet been fully implemented. Furthermore, it will take more time and monitoring of results to determine if the initiatives described above, when fully implemented, will fix the identified problems.

D. Overprescription of Psychotropic Medications

Foster children in Texas are commonly prescribed psychotropic drugs for depression, schizophrenia, attention deficit hyperactivity disorder (ADHD), seizures and a variety of other conditions. Many observers, including physicians, children's advocates and foster parents, have expressed concern over the types and amounts of psychotropic medications prescribed to foster children.¹²³

Many foster children have psychological problems and are being treated with an array of medications to manage their symptoms. But even fundamentally normal children who have been taken from their homes and families can become aggressive and "emotionally reactive" due to a lost sense of trust, and their conditions are only worsened by multiple placements and frequent caseworker turnover.¹²⁴ As their feelings of instability increase, their emotions may erupt, and their caretakers then are, in the words of one child psychiatrist, "just chasing an untreatable problem with more medication."¹²⁵

After the State Comptroller's 2004 *Forgotten Children* report raised concerns about the overprescription of psychotropic medications for Texas foster children, HHSC, the Department of State Health Services ("DSHS"), and DFPS attempted to make a more detailed assessment of the problem and determine how to assist providers in utilizing psychotropic medication appropriately. In February 2005, DSHS released best practice guidelines for healthcare providers, *Psychotropic Medication Utilization Parameters for Foster Children*.¹²⁶ The guidelines were developed by a panel of child and adolescent psychiatrists, psychologists, guideline development specialists, and other mental health experts for use in the treatment of

foster children who receive services through Texas Medicaid.¹²⁷ The guidelines, updated in January, 2007, provide parameters for the appropriate use of psychotropic medication in foster children and also alert medical practitioners to eight situations which indicate a need for further review of a patient's case prior to prescribing psychotropic medications.¹²⁸ Since releasing the guidelines, DSHS has worked with individual providers for patients whose medication requirements fall outside the guidelines.¹²⁹

In June 2006, DSHS released a study of the use of psychotropic medication on foster children.¹³⁰ The study found that out of 37,052 foster children ages 0-17 who were eligible for Texas Medicaid at some point during FY 2005, 34.7 percent received a psychotropic medication, and 26.3 percent received a psychotropic medication for at least 60 consecutive days.¹³¹ The study also found that the use of psychotropic medication increased with the age of the child, from less than 1 percent of foster children under age 3 to 51.8 percent of foster children ages 13-17.¹³² In addition, the study found that 1.1 percent received five or more medications concurrently for a period of 60 days or longer in FY 2005.¹³³ Of the children receiving five or more drugs at the same time, 217 were ages 13-17 and 174 were ages 6-12.¹³⁴

Prescribing of psychotropic medication to foster children is much more common than prescribing to other Medicaid children, which is probably due to the fact that many of these children are dealing with the trauma of difficult family situations and being removed from their families.¹³⁵ However, it appears that those factors alone are not the sole reason for the increased prescriptions of psychotropic medication for foster children, because the HHSC report also noted that in the 5 months following the release of the guidelines for psychotropic medications for children in foster care, the percentage of children in foster care who were prescribed a

psychotropic medication fell 7 percent. There was also a 29 percent decrease in the percentage of children taking 2 or more psychotropic medications.¹³⁶

While the new medication guidelines and standards were a much-needed improvement, they do not solve the problem: HHSC not only lacks the authority to monitor or hold contractors accountable for not following the guidelines, but the guidelines themselves state that there are no penalties for ignoring the guidelines.¹³⁷ Therefore, it appears that more work should be done to ensure that psychotropic medications are not over-prescribed to foster children.

E. Lack of Resources and Support for Medically Fragile Children

"Medically fragile children" are children who have a serious, ongoing illness or chronic condition for at least a year, require prolonged hospitalization and ongoing medical treatments and monitoring, or require the use of devices to compensate for the loss of bodily function.¹³⁸ According to the *Forgotten Children* report, in fiscal 2003, DFPS reported that it had conservatorship of 680 children who were medically fragile and an additional 109 who were both medically fragile and mentally retarded.¹³⁹ The Comptroller's report found that DFPS data underestimated the numbers of medically fragile children in its care by more than 40 percent.¹⁴⁰ The *Forgotten Children* report suggested that at least 1,127 Texas children in foster care, or more than four percent, were medically fragile. Of these children, 45 percent of these children were below the age of five and 29 percent are from six to twelve years old.¹⁴¹ Foster families care for almost 86 percent of the state's medically fragile foster children.¹⁴² And even though medically fragile children may die if not treated properly, the Comptroller's report found that DFPS places most of them in foster care at the basic service level.¹⁴³

DFPS has made efforts to address the problems identified by the Comptroller's report. DFPS now attempts to link CPS caseworkers with subject matter experts ("SMEs") for special healthcare needs, and developmental disability ("DD") specialists and nurse consultants serve as

SMEs for children with disabilities and special healthcare needs.¹⁴⁴ DD Specialists serve as regional subject matter experts for children with developmental disabilities and participate in child service planning activities and identifying needed wrap-around services.¹⁴⁵ They also facilitate the transition of children out of institutions and advocate for Medicaid waiver slots for children with developmental disabilities and placement on appropriate Medicaid waiver lists.¹⁴⁶ DD specialists assist CPS staff in making a Determination of Mental Retardation ("DMR") for children with suspected mental retardation, and they are the liaison with the local Mental Retardation Authorities.¹⁴⁷

DD specialists facilitate placement of children into home and community based services, intermediate care facility MR programs, state schools, and nursing homes. DD specialists also provide training to staff and foster parents and assist in referrals of children transitioning from DFPS conservatorship to the Department of Aging and Disability Services ("DADS") guardianship program.¹⁴⁸

DFPS Nurse Consultants serve as regional subject matter experts for children with special healthcare needs and other health-related issues, and they help identify medical and physical indicators of abuse and neglect during the investigation of cases and help make decisions concerning child safety.¹⁴⁹ Nurse consultants are available to staff to provide nursing consultation on health-related issues and medications and to review and summarize medical records. Nurse consultants also provide nursing assessments and participate in child service planning activities. They provide training on health-related subjects, help CPS staff make informed decisions on the healthcare of children, and serve as point of contact for medical consent policy.¹⁵⁰

The efforts described above show that DFPS is aware of the problems faced by medically fragile children and has taken steps to solve those problems, but there has been legislative response to these issues. Furthermore, there does not appear to be any publicly available DFPS data on the effect of these initiatives, and without such data, the effectiveness of DFPS's initiatives to address the problems of medically fragile children cannot be determined.

F. Failure to Address Educational Needs

Forgotten Children reported that foster children experience frequent interruptions in their schooling due to changes in placement or care arrangements. Some are transferred repeatedly to different homes or facilities, finding themselves in a new classroom each time.¹⁵¹ They also must cope with frequent court appearances, counseling and medical appointments. In addition, foster children are more likely to attend special education classes, are less likely to participate in college preparatory programs, and are more likely to end up in the juvenile justice system.¹⁵² They often have emotional and behavioral problems that affect their classroom, related to their separation from their birth families and earlier abuse and neglect.¹⁵³ The Comptroller's report concluded that many foster children leave the system with inadequate education and job skills; a Texas study cited in *Forgotten Children* reported that almost half of 513 former foster children had no high school diploma and nearly 40 percent were receiving welfare assistance.¹⁵⁴

The Comptroller's report recommended that the Texas Education Agency ("TEA") include information on the education of Texas children in foster care in its state dropout plan, annual reports to the Legislature, and to DFPS.¹⁵⁵ The Comptroller's report also recommended that DFPS caseworkers consider foster children's educational needs and the education services available from each foster care facility when making placement decisions, and that TEA and the Texas Higher Education Coordinating Board develop outreach programs for foster children to ensure that they are aware of the availability of state funding for their college expenses.¹⁵⁶

In response to these problems, the 2005 legislation required that an "education passport" be created for each child in DFPS conservatorship, which would become part of DFPS records and remain with the child while in the care of DFPS.¹⁵⁷ The education passport is intended to enhance the education of foster children by ensuring that school records follow the child whenever there is a placement change, and ensure that children are placed in the correct grade and receive all of the educational services to which they are entitled.¹⁵⁸

To implement this requirement, DFPS worked with representatives from TEA, Advocacy Inc., and Casey Family Programs to develop new educational policies. By June 2006, DFPS had developed what it called the "Education Portfolio" for every school-aged child in foster care, and delivered these portfolios to its regional offices.¹⁵⁹ CPS caseworkers were given training on the Education Portfolio and in methods for gathering and maintaining the information in the portfolio. CPS conducted presentations and training on the Educational Portfolio with Court Appointed Special Advocates (CASA), various school districts throughout the state, the National Foster Parent Association, and CPS staff.¹⁶⁰ As of May 2007, 83.8 percent of foster children have Education Portfolios.¹⁶¹

In August 2006, CPS began distributing Education Portfolios to all school-aged children in their care and began tracking appropriate ongoing use in its automated case management system ("IMPACT"). In October 2006, CPS, along with the Texas Education Agency and Casey Family Programs, held statewide video conference training at 20 Education Service Centers and 78 remote sites across the state to raise awareness on the educational needs of youth in out-of-home care.¹⁶²

CPS has included the responsibility of creating, updating, and maintaining the Education Portfolio in residential child care contracts. Modifications to IMPACT were developed that

should enable CPS to better track special education, graduation rates, child specific language issues and other educational needs; these modifications were rolled out in May 2007.¹⁶³

The most significant problem with this plan is that it assigns responsibility for data entry and updating to the caseworker assigned to the child. As discussed above, the number of conservatorship caseworkers is inadequate and conservatorship caseworkers are already overburdened. Imposing additional duties on these caseworkers will likely exacerbate the problems of turnover and result in even higher caseloads. While DFPS appears to have implemented an acceptable plan to track and improve the educational outcomes for foster children, until the high caseload and caseworker turnover problems are relieved through funding and hiring additional conservatorship caseworkers, it will be difficult to ensure that this program is effective.

G. Abuse of Children in the System

The *Forgotten Children* report identified abuse and neglect of children in foster care as a significant problem, and noted that the abuse was at the hands of other children as well as adults.¹⁶⁴ In 2004, DFPS did not require that children with histories of sexual abuse, sexual predation or violent criminal records be separated from other children, and *Forgotten Children* reported horrific examples of cases of child-on-child abuse gathered from survey responses and reviews of DFPS records.¹⁶⁵ The report noted that children at DFPS facilities had been exposed to sexual behavior, if not in their own homes, then by others they encountered in the foster care system, including other children, and that DFPS mixed children with histories of sexual abuse or sexual predation with other children, sometimes deliberately.¹⁶⁶ The report found that from January 2002 to January 2004, DFPS investigative reports for ten facilities, including child placing agencies that operate foster homes, residential treatment facilities and therapeutic camps, included complaints of child-on-child sexual abuse.¹⁶⁷ At the time of the Comptroller's report,

DFPS did not track or report on the extent of child-on-child abuse in foster care.¹⁶⁸ The Comptroller's report also found that adult abuse of children was a problem in some foster homes and facilities, and that DFPS investigation of allegations of abuse and neglect at foster homes and facilities was lacking.¹⁶⁹

Forgotten Children also identified problems with background checks and screening of foster care workers. DFPS rules only required an FBI criminal history check of records in other states if the individual currently lived outside of Texas or if there was reason to believe other criminal history existed. Furthermore, DFPS did not check abuse and neglect central registries in other states.¹⁷⁰ Even though DFPS rules required completed background checks before child placing agencies and other private foster homes could have access to foster children, residential treatment centers or other facilities did not have to wait until a background check was completed before hiring staff and giving them access to children.¹⁷¹

The Comptroller's report made a number of recommendations to remedy the problem of abuse in foster care, including, among other things, prohibiting the placement of sex offenders, sexual predators and children with violent criminal histories with other children; keeping sexually abused children separate from other children; tracking and reporting the number of reports it receives concerning child-on-child physical and sexual abuse by facility; thoroughly investigating all complaints, allegations or reports and making the results public; and improving background checks and licensing procedures for all foster care workers and facilities.¹⁷²

SB 6 addressed some of these recommendations. It changed the minimum qualifications for licensed child care administrators and added the requirement for each child-placing agency to have a licensed child-placing administrator.¹⁷³ Previously, only administrators of residential child care operations were required to be licensed. SB 6 also required administrators of child-placing

agencies to be licensed, ensuring consistency of licensure requirements across all types of 24-hour out-of-home care facilities.¹⁷⁴ DFPS began accepting applications for licensed child-placing administrators on September 1, 2005.¹⁷⁵ The required exam for licensed child-placing administrators was developed in partnership with university-based experts and testing began in January 2006. As of June 2007, a total of 318 people have taken the Licensed Child Placement Administrator exam with an 82 percent pass rate.¹⁷⁶

SB 6 required the reporting of certain serious incidents involving children in care by residential child care operations to DFPS, including a critical injury to a child; an illness that requires hospitalization of a child; and arrest, abuse, neglect, exploitation, runaway, suicide attempt, or death of a child. SB 6 also required the reporting of child-on-child abuse.¹⁷⁷

The minimum standards for residential child care operations and child-placing agencies require the reporting of serious incidents involving children in placement to the child care licensing division. SB 6 added this requirement to Chapter 42 of the Human Resources Code and defined what is meant by a serious incident as “a suspected or actual incident” that threatens the health, safety, or well-being of a child. Revising these standards was designed to strengthen safety outcomes for children in these placements by ensuring all types of abuse and serious incidents are appropriately reported.¹⁷⁸

DFPS developed rules to implement these requirements as a part of the revised Minimum Standards for Residential Child Care Operations and Residential Treatment Centers and Minimum Standards for Child-Placing Agencies. DFPS's child care licensing automated system (CLASS) has been modified to accept and track reports of abuse and serious incidents. Child care licensing management staff and residential child care licensing staff were trained on the automated system (CLASS) enhancements and the new rules in 2006.¹⁷⁹ In FY 2006, the total

number of abuse/neglect complaints investigated was 1647.¹⁸⁰ Of these, 250 were deemed “valid.”¹⁸¹

SB 6 required that background checks in residential child care operations be made on all employees, including future employees, who will provide direct care or have direct access to a child in care. SB 6 also required that background checks be submitted before a person provides direct care or has direct access to a child in a residential child care operation. SB 6 further required that the background checks be completed and sent to the residential child care operation within two days or the residential child care operation can do its own background check. Chapter 42 of the Human Resources Code ("HRC") requires that staff of residential child care operations undergo background checks regarding criminal and child abuse history.¹⁸² Staff with a history of committing certain offenses or a record of child abuse or neglect may not be employed in a residential child care operation.¹⁸³ The previous requirement was that background checks be completed on an employee once the person was hired. SB 6 also clarified that the checks must be done prior to employment and completed within a two-day timeframe.¹⁸⁴

DFPS adopted new rules for conducting background checks in residential child care operations on December 1, 2005. The residential child care licensing program has now implemented a background check unit to handle the requests and facilitate the reporting of results. In order to provide more timely feedback to residential child care operators, technology changes were implemented that allow background checks to be run against the Department of Public Safety database daily instead of weekly. In addition, the child care licensing automated system ("CLASS") was connected to Identix (a commercial fingerprint identification service) in December 2006. This allows DFPS to provide a list of authorized applicants needing FBI checks

in a quick and efficient manner. Further system updates are planned to include an automated process to update the CLASS system with Department of Public Safety and FBI results.¹⁸⁵

As of October 2006, the Adam Walsh Child Protection and Safety Act requires fingerprint-based criminal history checks for new foster and adoptive applicants, and out of state registry checks for applicants or other adults in the home who have lived out of state in the prior five years.¹⁸⁶

SB 6 also requires a residential child care operation to have a drug testing policy for new and existing employees, and to inform DFPS within 24 hours after becoming aware that a person who directly cares for or has access to a child in the operation has abused drugs. Previously, there were no requirements in minimum standards for drug testing of employees of residential child care operations.¹⁸⁷ DFPS also adopted rules for drug testing in residential child care operations on December 1, 2005. Residential child care licensing staff provided technical assistance to operations to implement these rules and began citing for non-compliance in March 2006.¹⁸⁸

SB 6 required periodic inspection of a randomly selected sample of agency foster homes and agency foster group homes to address the gap in the ability of DFPS to inspect foster homes outside of a report of abuse or neglect. This also allows resources to be directed to these inspections to ensure the foster homes selected are meeting standards and that children are safe. To implement this requirement, DFPS hired additional residential child care licensing monitoring specialists and trained staff on conducting random inspections. The stated DFPS goal is to randomly sample and monitor 30 percent of all foster homes annually, which would be approximately 2800 homes. Between September 2006 and June 2007, approximately 1701 foster homes were inspected.¹⁸⁹

SB 6 provided that DFPS may deny an application for a residential child care operation if there was a revocation of a license in another state or if an applicant was barred from operating a residential child care operation in another state. SB 6 prohibited a residential child care operation from employing, in any capacity, someone who is ineligible to receive a license or someone who has been denied a license because of out-of-state history.¹⁹⁰

SB 6 prohibited DFPS from issuing a permit to a person for five years after DFPS revokes the person's permit to operate a residential operation or denies the person a permit to operate a residential operation. SB 6 also prohibited a person from applying for a permit for two years after DFPS has denied or revoked a permit to operate a non-residential operation, such as a day care center or registered family home. SB 6 allowed DFPS to deny any license or certification to a person who operated or was a controlling person of a residential operation whose license has been revoked or who voluntarily closed before the license was revoked. SB 6 also extended emergency suspensions of residential child care operations from 10 to 30 days.¹⁹¹

It appears that DFPS and the legislature have made a serious effort to comprehensively address the problem of abuse and neglect within the foster care system, and the related problem of licensing and oversight of foster care homes and facilities. However, it will take time to determine whether these reforms are ultimately successful, and the issue should continue to be monitored.

H. Unintended Adverse Effects of Permanency Statutes

Congress passed the Adoption and Safe Families Act of 1997 ("AFSA") with the goal of making the safety and health of the child the paramount concern. This was a change from most child welfare systems emphasis on family reunification. AFSA tied federal funds to a requirement that each state submit a foster care plan to the federal government for approval.¹⁹²

One of AFSA's biggest changes was the requirement that a permanency hearing be held within 12 months of a child entering into foster care.¹⁹³ The permanency hearing is to determine whether the child will be returned home, placed in kinship care, or whether the state will seek termination of parental rights. And if the child has been in the system for 15 of the previous 22 months, AFSA requires that the state must seek to terminate the parental rights of the child's parents.¹⁹⁴

Just prior to the passage of AFSA in 1997, Texas passed its own permanency statute, which requires state courts to render a final order for children in the agency's custody within 12 months of their removal from their home, allowing a one-time, six-month extension for special circumstances.¹⁹⁵ One apparent effect of the permanency statute was to increase the numbers of children available for adoption and thus increase the need for adoptive parents.¹⁹⁶ The number of children needing adoption exceeds the number of available adoptive parent candidates. In addition, when foster families adopt their foster children, more foster families must be found, but it remains difficult to recruit and retain foster homes for sibling groups, minority children, and children with special needs.¹⁹⁷

Some criticize the strict deadlines because they do not take special cases into account; some children are more easily adopted than others; other children take longer because of their complex needs. Terminating parental rights too quickly in order to comply with statutory deadlines can also present problems later, such as: legal decisions being overturned; distrust by families believing that the child welfare system did not give them a fair chance or the resources to get their children back; or distrust by minority groups that believe the state is just trying to take their children away to help some majority family with adoption interests.¹⁹⁸ In addition, the

strict 12-month deadlines and increased documentation and reporting requirements may contribute to caseworker burnout and the resulting high turnover among caseworkers.¹⁹⁹

However, despite these unintended effects, the permanency statute's focus on the safety and health of the child above all else is widely perceived as a positive change for child welfare. Therefore, instead of changing the permanency statute itself, the solution to the unintended consequences of the statute should focus on finding ways to improve the efficiency of the courts in child welfare cases.

A good example of initiatives to improve court efficiency is the "Cluster Court" system. In 1999, in part to facilitate compliance with the permanency statute, Texas established a system of child protection "Cluster Courts." These courts consolidate cases from several counties into one child welfare court presided over by a judge with specialized training in child abuse and neglect cases.²⁰⁰ Judges and the court staff travel daily to hear cases in different cities. A Cluster Court improves efficiency by scheduling all dependency cases in that court on one day in the same courtroom, which eliminates scheduling conflicts. For example, an attorney handling two child welfare cases in that Cluster Court will not be scheduled for appearances in different counties covered by the Cluster Court on the same day. Thus far, sixteen Cluster Courts have been established and are operational.²⁰¹

Another initiative underway should also result in improved court efficiency in child welfare cases: the Judicial Commission on Children, Youth, and Families. In March 2006, the Texas Supreme Court appointed a task force for Child Protection Case Management and Reporting to develop a statewide case-flow management and tracking system to improve court practice in child-protection cases.²⁰² Among its recommendations was the creation of a statewide commission on children and families that would serve as an umbrella organization for all efforts

to expand access to justice in civil matters.²⁰³ On December 18, 2006, the Texas Supreme Court ordered the creation of the Foster Care Consultative Group to research models of effective statewide commissions, recommend an organizational structure for a proposed statewide Commission for Children, Youth and Families, develop membership criteria for the proposed Commission, and develop a timeline for launching the proposed Commission.²⁰⁴

The goals established for the Commission by the Foster Care Consultative Group included improving court performance and accountability in achieving child welfare outcomes of safety, permanency, well-being, and fairness; improved collaboration between courts, child welfare agencies and others; increased awareness of the role of the courts in the foster care system and the need for adequate and flexible funding; and broadening public support for meeting the needs of children and families in foster care.²⁰⁵ The Court is considering launching a Commission for Children and Families in September 2007.²⁰⁶ This Commission should be an effective way to keep the problems of foster care in the forefront, help address any unintended adverse effects of the permanency statute, and make reunification or adoption faster and more efficient.

Part V. Conclusion

Although many of the problems with the Texas foster care system in 2004 have been improved, serious problems remain. In particular, the problem of increasing conservatorship caseloads and inadequate conservator caseworker staffing, which are closely related to the problem of inadequate funding, are simply getting worse, and the 80th Legislature's efforts to address the caseworker and caseload issues were inadequate. Without a continued and much more significant effort by the state to address these problems, the children in Texas' foster care system will suffer.

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