

Improving the Lives of Children in Long-Term Foster Care:

The Role of Texas' Courts & Legal System



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TEXAS APPLESEED

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for Children, Youth and Families

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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 facing the most vulnerable—including the State's foster children.

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INTRODUCTION

No child enters or leaves foster care without a court order. A judge decides where the child will live, with whom, and for how long. Every day, Texas courts decide whether a child goes home or to a relative, visits a sibling, or becomes legally free for adoption.¹

This report summarizes the findings and recommendations of Texas Appleseed as to Texas children in long-term foster care, or Permanent Managing Conservatorship (PMC) of the State. With the support of the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Commission), Texas Appleseed researched and analyzed how long-term life outcomes for children growing up in foster care in Texas can be improved by the courts and legal system.

The Commission deliberately requested that the study focus on the role of the judicial and legal system. The safety, health and well-being of the child, the adequacy of the placement, and the *degree of urgency* attached to moving these children from foster care into permanent homes is directly impacted by the judicial system's role in foster care cases. Yet, until now, there has been no in-depth examination of how the court and legal system in Texas is managing these cases—and how improvements in court oversight can, in turn, improve the lives of these children while in foster care and after they leave the foster care system.

Regrettably, research shows that children who spend three or more years in long-term foster care are much more likely to “age out” of the foster care system at 18 unprepared for independent adult living. Children aging out of long-term foster care face difficult challenges, including:

- Low educational attainment
- Substance abuse

1 Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, created under the leadership of former Justice Harriet O’Neill, available at <http://www.supreme.courts.state.tx.us/children.asp>.

- Bouts of poverty, unemployment, and homelessness as adults
- A high incidence of serious, and in some cases disabling, physical and mental health care issues
- Increased likelihood of justice system involvement
- High rates of early pregnancy
- Manifestations of post-traumatic stress disorder induced, not only by parental abuse and neglect, but also by the upheavals and “losses” associated with the traumas and frequent moves and transitions experienced in foster care

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These children did not come to foster care from ideal childhoods, and most have experienced severe trauma from abuse, neglect and separation from their families. Instead of providing these vulnerable children with a fresh start in a safe, “fostering” environment, the foster care system offers added instability and uncertainty. The child’s own sense of “being thrown away,” a history of poor foster care placements, a woefully underfunded foster care system, inadequate case management (compounded by high caseloads and turnover within Child Protective Services), frequent moves, and other administrative and resource shortage issues contribute to the already daunting challenges facing too many of Texas’ foster children.

The entire foster care system in Texas is under-resourced, including the judicial system. While additional resources are necessary for some changes proposed in this report, *the challenge is to require and encourage more attention, substance and meaning to placement review hearings and court processes necessary to advance children to true permanence, which ideally means to move them safely and permanently out of state custody.*

A SNAPSHOT IN TIME: FOSTER CARE IN TEXAS

Except where otherwise footnoted, the statistics provided below are drawn from the 2009 Annual Report and Data Book published by the Texas Department of Family and Protective Services and reflect foster care data for only one day—August 31, 2009, the last day in the State of Texas' FY 2009 budget year.² Texas Appleseed's findings and recommendations, however, are based on an analysis of data for a larger population of children in foster care over the course of one fiscal year (FY 2008). The charts and graphs in this report reflect FY 2008 data except where otherwise specifically noted.

6,510,210 children / Texas' population (birth to age 17)

26,360 children / Number of children in the managing conservatorship of the Department of Family and Protective Services (DFPS)*

12,843 children (49%) / Number in Temporary Managing Conservatorship (TMC)

13,517 children (51%) / Number in Permanent Managing Conservatorship (PMC)

*This is more children than the number enrolled in Austin Independent School District's 10 high schools for the 2009-2010 school year.³ This number is also roughly equal to the entire population of Uvalde or Shelby County.⁴

Race/Ethnicity and foster care: African American children in Texas are 2 to 3 times more likely to be removed from home and placed in foster care.⁵

14,497 children / Number of children exiting the State's (DFPS) legal responsibility in FY 2009

33.5% Adopted, after spending an average of 29.8 months in TMC and/or PMC;

30.5% Reunited with one or both parents, after spending an average of 14.6 months in TMC and/or PMC;

22.2% Placed permanently with a relative, after spending an average of 14.2 months in TMC and/or PMC; and

10% Aged out of foster care at 18, after spending an average of 63.3 months in TMC and/or PMC.⁶

42.1 months⁷ = Average amount of time that children in Permanent Managing Conservatorship spend in foster care before leaving the State's care

2 Annual Report and Data Book 2009, Texas Department of Family and Protective Services, at 53 [hereinafter 2009 DFPS Data Book].

3 *Student Enrollment Reports*, Texas Education Agency (data for Region 13, Travis County, Austin ISD, All Campuses, 2009-10), available at <http://ritter.tea.state.tx.us/adhocrpt/adste.html> (last visited July 22, 2010).

4 *Tex. County Population Estimates*, Tex. State Library and Archives Comm'n (2007), available at <http://www.tsl.state.tx.us/ref/abouttx/popcnty42007.html> (last visited Sept. 8, 2010).

5 Robert B. Hill, *An Analysis of Racial/Ethnic Disproportionality and Disparity at the National, State, and County Levels*, Casey-CSSP Alliance for Racial Equity in Child Welfare, at 1, 23 (2007).

6 2009 DFPS Data Book, *supra* note 2, at 62.

7 *Id.* at 61.

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EXECUTIVE SUMMARY

For more than 26,000 children in Texas, the State is acting as their parent.⁸ More than half have been in the system for more than a year and have become long-term wards of the State.⁹ These are the children in long-term foster care, or Permanent Managing Conservatorship (PMC).

In 2009 alone, the State removed more than 12,000 abused or neglected children from their homes.¹⁰ Once a child has been removed, the State has a year, with a possible six-month extension, to resolve the case either by reuniting the family, placing the child permanently with a relative, or adoption before the Department of Family and Protective Services assumes PMC of the child. If none of these options is achieved, the child enters PMC.¹¹ In August 2009, 13,517 children were “permanently” in the State’s care.¹² However, this is not “true permanence” in the sense of the child’s having a single safe and stable family for the duration of his or her childhood and adolescence. As the findings we summarize below demonstrate, true permanence must be the goal for all of our children in foster care.

The number of children in long-term foster care is likely to grow. Though the number of children removed from their families had been decreasing over the last three years,¹³ today the Texas Department of Family and Protective Services (DFPS or Department) is seeing an increase in removals. This increase is driven by the economic crisis, coupled with the State’s population growth.

8 2009 DFPS Data Book, *supra* note 2, at 53.

9 *Id.* at 63.

10 *Id.* at 49.

11 *See* TEX. FAM. CODE § 263.401. Within 12-18 months’ time from the point that the Department is named the temporary conservator, the court must determine whether it will dismiss the case brought by the Department or place the child in permanent care of the Department. *See id.*

12 2009 DFPS Data Book, *supra* note 2, at 53.

13 *Id.*

THE IMPACT ON CHILDREN

By all accounts, too many children get “stuck” in the foster care system—spending over three years in long-term foster care without a permanent home.¹⁴

A full 10 percent of these youth never find a family; instead, they turn 18 and “age out” of foster care.¹⁵ Studies show that young people who “age out” of long-term foster care are more likely to become homeless and addicted to drugs or alcohol and have mental and physical disabilities. They drop out of school in record numbers and live below the poverty line. They are often perpetrators—as well as victims—of crimes. Many become teen parents, only to have their own children removed by Child Protective Services (CPS) and put in foster care.¹⁶ It is not surprising that Casey Family Programs, a national leader in child welfare issues, has concluded that teens in foster care (ages 15-19) are among the “most disconnected youth” in America.¹⁷

As one judge put it, “These are the children that even God has forgotten.”

WHAT THE STATE CAN DO

These children are our future and cannot be forgotten. Texas recognizes that the State is a poor parent and that far too many children are in long-term foster care. DFPS, the Texas Legislature, and the federal government’s Child and Family Services Review (CFSR) have all cited the need for improvement. Many studies, reports and recommendations focus on how DFPS, and its CPS division, should be improved and changed.

The Department and CPS are only part of the equation. The judicial system also plays a critical role in these children’s lives. As Texas Supreme Court Justice Harriett O’Neill (retired) noted, the courts are the “gatekeepers for families in crisis.”¹⁸ Every child has an active court case before a judge; most also have an attorney. The courts regularly oversee these children’s cases and are required to hold hearings at least every six months. Although they must meet minimum statutory requirements, Texas courts have broad discretion in how they manage these cases and how extensively they oversee them. The decisions made at these court hearings affect the children in the system each day they remain in foster care. Few reports before this one have examined the effectiveness of the legal system in managing these cases or have considered the ways in which it can help improve the life outcomes of children in long-term foster care.

When the State initially files a petition to remove a child from his or her home, the Family Code requires a number of safeguards and resources to protect the child’s rights and well-being. Before the State becomes the “Temporary Managing Conservator” of

14 *Id.* at 61.

15 *Id.*

16 Richard Wertheimer, *Youth Who “Age Out” of Foster Care: Troubled Lives, Troubling Prospects*, Washington DC: Child Trends, at 3, 5 (2002).

17 Richard Wertheimer & Astrid Atienza, *Vulnerable Youth: Recent Trends* (Working Paper). Washington, DC: Child Trends, at 3 (2006). The three other categories were: (1) youth involved in the juvenile justice system; (2) teens who have children of their own; and (3) youth who never finished high school. *Id.*

18 Texas Supreme Court Advisory, Statement by Justice Harriet O’Neill (2007), available at <http://www.supreme.courts.state.tx.us/children.asp>.

the child, a court must hold a hearing and issue a written order.¹⁹ The child is appointed an Attorney Ad Litem and a Guardian Ad Litem. Indigent parents are entitled to their own appointed attorney if the State is seeking to terminate their parental rights. Many children will have a volunteer Court Appointed Special Advocate (CASA) who works with them. There is intense, regular oversight of the child’s case.

However, if the child is not reunited with a parent or placed with a relative within a year to 18 months after the date of removal, the court enters an order appointing DFPS as “Permanent Managing Conservator,” and the level of scrutiny paid to individual cases significantly decreases—regardless of whether parental rights to the child were terminated at that point. Though the State’s responsibility for the child’s life and well-being does not change—and arguably increases—the attention paid to the child’s cases diminishes drastically. There is often a sense that the “clock stops ticking” when the child enters Permanent Managing Conservatorship (PMC).

Texas Appleseed, under the direction of the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, has thoroughly researched how the courts and the legal system can better help children in PMC.

The Commission’s request for this study recognized the flaws in the existing system:

These children in long-term foster care often receive less intervention from the courts than children in Temporary Managing Conservatorship at a time when more supervision is needed. It is common practice for courts to dismiss both the attorney ad litem and CASA once DFPS takes permanent legal custody of a child. At the same time, court oversight lessens as the Texas Family Code requires courts to hold hearings less frequently after Permanent Managing Conservatorship is granted.

*Despite shrinking oversight, however, courts are still responsible for outcomes of safety, permanency and well-being for all children on their dockets. As courts are arbiters of what happens to children in foster care, Texas needs to use best practices in its legal system to improve the outcomes of these youth.*²⁰

*Study: To examine how long-term life outcomes for PMC children growing up in foster care can be improved, this study will identify common problems of PMC children, the needs of these children, services available to them, and barriers to successful outcomes for PMC children. It will also identify best practices within the legal system and how using those best practices may improve these outcomes.*²¹

The commissioning of this study underscores the commitment of the State’s highest court to finding ways to improve the lives of Texas children in long-term foster care.

19 TEX. FAM. CODE. § 262.201.

20 *Charge to Appleseed Subcommittee of the Basic Projects Committee*, Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families.

21 *Id.*

MAJOR FINDINGS

From our extensive interviews, it appears that almost every court jurisdiction believes it is doing a “good” or “very good” job of monitoring foster care cases in general. The vast majority of stakeholders are concerned for and committed to the children they serve. In most jurisdictions, the stakeholders have respect for one another, the judges who oversee foster care cases, and the well-intended, if overworked, Child Protective Services staff.

There also is widespread acknowledgement that the entire foster care system is under-resourced. In many areas, DFPS and its caseworkers, as well as judges and Attorneys Ad Litem, are overworked, underpaid, or both. In 2009, CPS caseworkers were routinely handling around 30 cases, even though the national standards call for between 15 and 17 cases per caseworker.²² In the larger urban jurisdictions, caseworkers are commonly assigned 40-plus cases at a time, and the “cases” often involve multiple children from the same family. Judges have seen the number of CPS cases on their dockets grow, and many judges only have 10 to 15 minutes to review one PMC case before moving on to the next one. CASA can only represent about half of the children who need their services, and when children enter PMC, CASA is able to represent an even smaller percentage of those children. Attorneys often are paid little to meet with their clients; in at least one jurisdiction, the rate is \$20 an hour.

A few jurisdictions in Texas are serving their children in PMC well. Most are not. And resources alone, while desperately needed and clearly deserved, cannot fix this broken system. Our research documented a system plagued with problems. In the majority of jurisdictions there is:

- a lack of urgency to find permanent homes for these children,
- a lack of accountability and preparedness for these children’s well-being,
- a lack of clear roles for the legal participants,
- a sense that the children themselves do not need to be heard or that their presence in the courtroom would be harmful to them,
- a void in the courtroom of individuals who really know the child, and
- a lack of communication and coordination among the stakeholders, and in some cases, a systemic discord between two or more of them.

Moreover, there is a sense among those outside the foster care system that these cases are “bottom of the barrel,” given that they are often assigned to inexperienced prosecutors and newly licensed attorneys (appointed as Attorneys Ad Litem) and to associate judges who lack the ability to garner the resources they need. Unfortunately, in far too many jurisdictions, these cases are not a high priority.

22 2009 DFPS Data Book, *supra* note 2, at 32; *Recommended Caseload Standards*, Child Welfare League of America, available at <http://www.cwla.org/newsevents/news030304cwlacase-load.htm> (last visited June 21, 2010).

Among these issues, the lack of urgency to achieve true permanency for the child is the most pressing problem. Too often absent from the court process is the impetus to act expeditiously to fulfill a foster child's dream to be in a family, or just to be in a safe permanent home. The entire tenor of the case changes once children enter PMC. It is as if "the clock stops ticking" and "the pressure is off," since the child is no longer in "temporary" custody of the State. Because the most pressing legal issue—whether a child will be returned home—has been determined, there is a sense that the child has achieved some "permanency." Even the name of the child's status implies stability; the child is now in "Permanent Managing Conservatorship." Nothing is farther from reality.

This lack of immediacy is compounded by many judges' perceptions of their role in these cases. Most see themselves as arbiters of disputed issues, rather than in a quasi-fiduciary role to protect the best interests of the child. Texas law recognizes these children are wards of the State, and as such, affords the court broad discretion to take action to ensure the children's well-being. However, many courts do not appear to exercise these strong oversight powers. As a result, the six-month hearings are often empty of any meaningful conversation about the needs of the child.

Far too many judges reported that the CPS caseworkers, prosecutors and Attorneys Ad Litem were unprepared for PMC hearings, failed to send their reports timely, and typically had done nothing on the case until a few days before the six-month PMC placement review hearing. As a result, unless there was an urgent issue to be addressed, the stakeholders simply "get through the hearing," and then nothing is done for another six months until right before the next hearing. The result is that months and even years go by in a PMC case without any real progress on finding the child a safe and permanent home. Six months is a very long time in the life of a child.

Additionally, there is no one person or group of people who takes responsibility and is held accountable for how the child is faring. Ideally, the child's caseworker would truly know and have responsibility for the child's well-being, as well as his health and safety. The reality is that CPS' crushing workload and the high level of burnout and turnover makes it impossible for the caseworkers to fulfill that role. They work hard to make sure the child is in a safe "placement" and try to get the child adopted, but few caseworkers have time to really know these children. If a child has a CASA, the CASA usually is the only person who truly knows the child and knows how the child is really doing. However, most children in PMC do not have CASA volunteers. As a result, the critical needs of a child often fall through the cracks in the system. If a child is not doing well in her foster home, whose responsibility is it to help her? If she is falling behind at school, what does she need to do to catch up? Is she receiving sufficient services, like counseling and special education? Are the providers appropriate and adequate? These are the kinds of issues that courts should be monitoring constantly in PMC cases. If these fundamental needs are not being met, the court's job is to induce the stakeholders to address them and impose consequences for failure to do so.

Progress is further hampered by a lack of clear roles for those who are involved in the court process during the PMC phase. When a child is first removed from his or her home, the case usually follows the traditional adversarial process. Attorneys represent all parties. Cases go to trial. Judges act as arbiters of disputed issues. The law sets out very strict timetables under which the issues of removal and permanent placement must be resolved. However, as noted, the role of the court and the legal system significantly

changes when a child enters PMC. PMC cases require more collaboration and multi-disciplined approaches to assure the child's well-being and best interests are considered. These cases also call for more communication and coordination between all the parties than is required in other types of cases. The adversarial process does not appear to serve a real function in the PMC phase. The majority of Texas courts, however, continue to operate under the traditional adversarial framework. If the judge is not presented with a dispute to resolve between the parties, he or she does not see a reason to probe deeper into the case. The same holds true for the prosecutors and Attorneys Ad Litem. As a result, hearings are literally conducted where the only question asked is whether anything has changed. These cases are not the typical conflict cases most lawyers and judges see; they demand a different type of advocacy. In most jurisdictions, the parties do not fully recognize and adapt to these differences.

Even though the Texas Family Code requires the child to attend each review hearing, in most courthouses in Texas, the children are not encouraged or even invited to participate. Rarely do they have an opportunity to speak freely with the judge. As a result, the court does not learn first hand from the child, and the child—the most important person in the process—is not heard. More importantly, the child feels completely shut out of the judicial process. We heard reports that many PMC children feel that a nameless, faceless judicial machine is deciding the course of their lives, and often they never receive a report of what happened in the hearing—presumably because there is not much to tell. To say that these children feel powerless is an understatement.

Those closest to the child, and who know the child best, are often not heard. Foster families, relatives, child placement agencies and others who are required to receive notice of the hearings do not regularly receive those notices and so rarely attend the court hearings. Consequently, their valuable insights are not available to the court. We also learned of circumstances where stakeholders did not communicate important information to one another because of a lack of trust or disagreement over what was in the best interests of the child.

All of these factors combine to create a system that is failing our children in far too many jurisdictions across the state. It does not have to remain this way.

STRENGTHS OF THE SYSTEM

Despite the significant challenges Texas' foster care system faces in reshaping its court and legal process for children in PMC, Texas is fortunate to have a strong statutory framework and two key best practices that will facilitate the needed changes.

The Texas statute governing the court process for children in PMC is robust.²³ It requires many of the practices identified by the National Council of Juvenile and Family Court Judges (NCJFCJ), Casey Family Programs, the American Bar Association, and others as critical components of PMC oversight. The statute requires regular reviews of a comprehensive list of issues every six months. Children are required to be present in court, unless specifically excused. Volunteer advocates, Attorneys Ad Litem, foster families, and

23 See TEX. FAM. CODE § 263.501. *et seq.*

others are allowed to be present and entitled to be heard at the hearings. A solid legal framework is already in place for children in PMC.

Both the NCJFCJ and Casey Family Programs highlight strong judicial leadership as one of the most important practices needed to bring about systemic changes in court practices. Texas has such leadership. The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, through its court improvement project work, has shown the will and the ability to help improve judicial oversight of child welfare cases. And at the local level, there are many dedicated judges, including a considerable number who specialize in CPS cases, who will be supportive of change to better the life outcomes of these children.

Casey Family Programs and the NCJFCJ also note that interdisciplinary teams, consisting of the judiciary, the state's child welfare department, CASA and other stakeholders, are essential to bring about systemic reform.²⁴ Again, Texas has this interdisciplinary working relationship. Through the Commission, high level judges, the DFPS Commissioner, Associate Commissioner for CPS, court administration leadership, state leaders from CASA, children's rights organizations, and many other stakeholder groups are working collaboratively to improve Texas' foster care system.

With strong judicial leadership and active, engaged collaboration between all the stakeholder groups, Texas has the key elements to see dramatic improvements to the court and legal system for PMC.

POLICY RECOMMENDATIONS

To develop a strong, practical set of policy recommendations, Texas Appleseed invited some of the state's leading legal experts in foster care to meet, vet, and collectively develop the policy recommendations found in this report. These experts included district and associate judges, state agency heads, foundation leaders and advocacy organization leaders. This group studied the *Promising Court Practices* identified by Casey Family Programs²⁵ and the quantitative and qualitative data collected by Texas Appleseed, and they brought to the discussions their own depth of experience in foster care. Together, this group spent countless hours discussing appropriate recommendations.

The findings in this report are those of Texas Appleseed alone, derived from our field research, interviews and data analysis. The policy recommendations presented here are the collaboration of some of the finest legal thinkers on foster care in Texas. (See *Acknowledgements* for a listing of the members of the Policy Development Team.) The following recommendations are aimed at requiring and encouraging more attention, substance and meaning to the hearings and processes necessary to improve the current circumstances and ultimate life outcomes of Texas children in foster care and to transition them safely and permanently out of state custody. One recommendation includes a new pilot project, a few require changes in the Texas Family Code, and others will require more resources. While increased resources are necessary for some changes, most of the recommendations are in the form of best practices to help the stakeholders in

24 See also <http://pewfostercare.org/docs/index.php?DocID=47>.

25 See Appendix, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Casey Family Programs (2009).

court jurisdictions gain a better understanding of their critical roles and adhere more closely to existing state laws to protect the rights of vulnerable foster children.

BENCHMARK PERMANENCY HEARING PILOT

Overview

Nearly 70% of children who enter PMC leave foster care within two years. But the majority of children who stay in foster care for more than two years will “age out,” and leave at 18 with no permanent home and, in most cases, no real support network.

Every child who enters PMC has a “permanency plan,” setting out a goal intended to ensure that the child has a safe, permanent home when exiting care. The permanency plan is supposed to be realistic and achievable and assumes all parties and persons involved in the case will work together to reach the plan’s stated goal. Once the plan is prepared and agreed to, the Texas Family Code requires a review once every six months by a judge to see if it continues to be achievable or if there are other, better options for the child to find a permanent home.

We agree that a principal focus of the PMC hearing is to achieve true permanence. To keep the focus on finding a truly permanent home for children in PMC, the intensity of court oversight and the structure used must be changed significantly to ensure that permanency is achieved more effectively and efficiently. The framework of the proposed change requires that the submitted permanency plan be carefully reviewed and modified—not just rubber-stamped—when the child enters PMC. It would also require the court to conduct a full, complete review of the child’s case and permanency plan if he or she reaches a two-year anniversary in PMC, and the permanency outcome identified in the child’s plan has not been achieved.

Texas Appleseed recommends that the Commission design, implement, and evaluate a pilot program to determine if the changes in the scope, frequency, and nature of the hearings described below will result in more children achieving true permanency or, if that is not possible, a more successful experience as they age out of care. The Commission will need to determine the number of courts in the pilot based on available resources. We recommend eight courts (four test and four control courts) to become a part of a two-year pilot project. These courts should be selected to provide geographic and demographic representation of Texas. The test courts will implement the new hearing structure, and their results and outcomes will be observed, measured, reviewed and compared with those of the control courts.

Pilot Goals and Objectives:

1. To ensure that finding a true permanent home for the child is the focus of the PMC stage.
2. To develop a timeline for placement review hearings that will seek to ensure all stakeholders are deeply involved and working toward permanency for the child constantly and consistently throughout the child’s duration in foster care.

3. To utilize review criteria already established for placement review hearings to ensure that all stakeholders are accountable for their respective parts in moving the child through the processes required to establish permanency for the child in an efficient and effective manner.
4. To place more emphasis on the permanency plan established when a child first enters PMC so that the plan is realistic and achievable and not just used as a default.
5. To monitor closely the permanency plan and to pursue change in the permanency plan when it becomes evident that the previously established plan is not viable.
6. To clarify the roles of the stakeholders in the PMC stage of foster care and to change the perceptions of the process, goals and requirements for meeting those goals.

Pilot Description:

The test courts participating in the Pilot Program should follow the recommendations below. The hearing process set out below is designed to assure that the permanency plan is achieved and the child finds a permanent home or, if that is not possible, is prepared and supported for a successful transition to independent, adult living.

Timeline and Requirements:

Beginning with the final order naming DFPS the Permanent Managing Conservator of the child, the following schedule governs the PMC process:

45 DAYS/SCHEDULING ORDER HEARING

- At the hearing, the judge must issue a scheduling order that includes the 90-day permanency implementation assessment hearing, subsequent assessment reviews every four months, and notes the two-year benchmark for the case.
- Amendments to the scheduling order shall be made if good cause is shown.

90 DAYS/PERMANENCY IMPLEMENTATION HEARING

- Identify and establish a means to resolve any outstanding legal issues that may prevent the child from achieving the goals of the permanency plan, including but not limited to, revisiting whether to terminate parental rights and address pending juvenile citations, appeals, emancipation, educational and health concerns, and immigration status.

- In accordance with the current provisions of the Texas Family Code, review the established permanency plan to ensure that it continues to be appropriate and achievable.
- Establish each stakeholder’s specific duties and tasks with regard to the child’s permanency that must be completed prior to the next permanency hearing.
- Require the Department to prepare a different permanency plan if the existing one is no longer appropriate or achievable.
- Establish a time by which a new plan must be submitted.
- Determine whether the child’s current placement is safe and appropriate for meeting the child’s needs, including consideration of in-state and out-of-state placement options.
- Confirm the child is living in the least restrictive environment consistent with the best interests and special needs of the child—especially when children are placed in institutional care.
- Determine whether services that are needed to meet the child’s special needs or circumstances are being provided to the child.

AS OFTEN AS NECESSARY, BUT AT LEAST EVERY FOUR MONTHS FROM THE PERMANENCY IMPLEMENTATION HEARING/**PERMANENCY PROGRESS HEARINGS**.²⁶ *These hearings would follow, generally, the current requirements for Placement Review Hearings with the following required features:*

- The Department and other stakeholders must prepare detailed statement(s) describing all efforts they have made on the child’s behalf in moving towards permanency since the last hearing and since the child has been in PMC.
- Judge must issue an order determining whether:
 - All persons or parties required to be given notice are present at the hearing;
 - The CPS worker and other stakeholders have accomplished their required tasks identified at the previous hearing or the permanency implementation hearing, and if not, establish the reason the task was not completed and what progress has been made;
 - The Department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child;

26 Note name change from “Placement Review Hearing” to “Permanency Progress Hearings.”

- The child’s current placement is necessary, safe, and appropriate for meeting the child’s needs, including considerations of in-state and out-of-state placement options;
- The child believes that the placement is meeting her needs and that she is receiving the services and support she needs;
- The foster parent or caregiver confirms that the placement is able to meet the child’s needs and that the child is receiving appropriate and necessary services and support;
- Efforts have been made to ensure the child is living in the least restrictive environment consistent with the best interests and special needs of the child, especially if the child is placed in institutional care;
- The services that are needed to assist a youth who is at least 15 years of age in making the transition from substitute care to independent living are available in the community and that the youth has been made aware of them;
- Other services that are needed to meet the child’s special needs or circumstances, as identified in the permanency plan or during the course of the Progress Review Hearings, are being provided to the child, and if not, the reason why; and
- If the child is committed to the Texas Youth Commission (TYC) or released under supervision of the TYC, the child’s needs for treatment, rehabilitation, and education are being met, and the TYC caseworker’s treatment plan is in the court’s file.

AT THE END OF TWO YEARS IN PMC/BENCHMARK REVIEW HEARING

- All stakeholders must prepare for the court a report detailing every step each has taken to obtain permanency in accordance with the child’s permanency plan.
- The judge shall issue an order similar to the one entered at the conclusion of a Permanency Progress Hearing and, in addition, the order shall include a determination establishing whether:
 - The child’s permanency plan continues to be appropriate, is designed to meet the present needs of the child, and is being implemented as required, in which case the order shall include a date by which the permanency plan will be achieved; OR
 - The child’s permanency plan is no longer viable, in which case the Department, with input from the other stakeholders, must develop another per-

manency plan that ensures the child will have a permanent and safe home and includes a timeframe for achieving the plan. The court's order shall include any terms, conditions, or timeframes that the court deems necessary or appropriate to achieve a timely and viable plan, including a deadline for the Department to submit the new permanency plan.

FROM THIS POINT, THERE SHALL BE A PERMANENCY PROGRESS HEARING EVERY FOUR MONTHS, AND EVERY THIRD PERMANENCY PROGRESS HEARING SHALL BE REPLACED BY A **BENCHMARK HEARING**.

- At the Benchmark Hearing that is on or within three months of the foster youth's 15th birthday, the court shall hold a **Transitional Planning Benchmark Hearing**, at which time the youth, stakeholders, and the court shall additionally consider and evaluate the plan for transition to independent adult living. The youth and all stakeholders must prepare a report for the court identifying alternative plans for transitioning into adulthood, unless it is virtually certain that the youth will be exiting the foster care system via reunification, adoption, or PMC to a relative or close family friend (frequently referred to in this process as "fictive kin") before his or her 18th birthday.
- The youth must state whether he or she intends to return to his or her biological home upon emancipation, and if that is the case, the youth and the stakeholders should identify what actions have been or will be taken to contact the biological family and prepare for that eventuality.
- DFPS' report must contain a transition plan for the child that identifies services and specific tasks that are needed to assist the child in making a transition from substitute care to adult living and describe the services that are being provided through the Transitional Living Services Program.

RECOMMENDATIONS FOR ALL JURISDICTIONS

Placement Review Hearing

1. Judges must recognize their critical role in the PMC process.

The duty and responsibility of the court is to protect the best interests of the child, require adherence to the law, and hold individual stakeholders accountable. In PMC cases, judges have a responsibility to play an active oversight role in reviewing and enforcing the appropriate delivery of services for children, including services that support the child's education; mental, emotional, and physical needs; involvement in the legal process; and transition to adulthood.

The primary consideration of the court should always be the best interests of the child, and the judge should consider revising or overturning agency decisions concerning services, case plans, and child placement when the court determines those decisions are not in the child's best interest. This oversight role requires that the judge be more than an arbiter who merely decides issues upon the basis of what may

be presented. Instead, the judge is the ultimate authority who must ask searching questions and insist on all necessary information to make an informed decision about the best interests of the child—even when the stakeholders have not brought forward sufficient information to the court or taken appropriate action with respect to the case.

As one judge explained, a judge should model dignity and respect, expressing compassion and encouragement for the children and youth in these cases. When necessary, the judge must demand accountability and even impose sanctions to insist on completion of a proposed plan or disposition. Judges may make appropriate use of any and all judicial power and authority to advance and protect the best interests of the child.

2. The judicial leadership within each jurisdiction must ensure, to the extent possible, that there is one judge assigned to a youth throughout the youth’s entire duration in PMC.

Court jurisdiction is usually the one stability in a child’s case. CPS workers change, and children are moved from location to location and county to county as various placements fluctuate and levels of care change. A judge who consistently hears the legal case may often be the one constant in a foster child’s life. Stable judicial oversight can also ensure continuity and consistency from the other stakeholders involved in the case.

Several of the stakeholders interviewed expressed the view that there should be one judge from the time that the child enters TMC until she achieves permanency so that the judge has a comprehensive understanding of the child’s case; others believe a new judge at the beginning of the PMC process provides all stakeholders with the sense of a fresh start and a renewal of efforts to find the child a stable, permanent home. After careful consideration of both approaches, we conclude that the judicial split between TMC and PMC should be left up to the leadership of each jurisdiction; however, each jurisdiction should remain consistent in how it uses its judges in the foster care system. This means that the leadership within each jurisdiction must make a conscious, informed decision on how judges’ dockets will be allocated regarding TMC and PMC cases to guarantee that a child remains with the same judge at least from the point that she enters the PMC phase of the legal case.

3. Children and youth must be in court.

Section 263.501(f) of the Texas Family Code requires youth attendance in court at all Placement Review Hearings. Casey Family Programs has identified youth participation as a best practice. There is an exception to the rule, allowing judges to *specifically* excuse the child’s attendance. This exception should be used only rarely in extreme cases where it would harm the child to be in court. The judge may speak to the child in chambers or in open court, as deemed appropriate.

Having the child in court serves both the judge and the child. It allows the judge to actually see the child and ensure she is not being harmed by her current placement. The judge may also gain valuable information from the child about her placement,

her plans, and other information that could lead to better outcomes. It also allows the child to express her opinion on what should happen in her life. Additionally, it empowers a child to feel and know that she is taking part in planning her life. Moreover, it gives the child a sense of control and stability and makes the process seem real. Lastly, it also allows her to know and understand that people care about her and are working to provide her with a permanent home.

4. Placement Review Hearings should take place as often as necessary, but at a minimum should occur every four months.

Currently, § 263.501 of the Texas Family Code requires placement review hearings to occur every six months. Although six months pass rapidly for an adult, it is a significant portion of a child or youth's life. The infrequency of these hearings dulls any sense of urgency for the parties involved in the PMC process, at a time when youth in care may need the most attention. When hearings are held six months apart, stakeholders tend to put off completing steps that secure the child's permanency until shortly before the next six-month placement hearing. To ensure each stakeholder is pushing forward in the next steps to get the child to permanency, placement review hearings should be held as often as necessary, but at least as frequently as every four months.

Casey Family Programs and other national organizations have recognized every four months as the maximum time a court should wait to have a hearing concerning the progress of a child's permanency plan. This time period helps the case move forward and keeps a close focus on finding permanency for the child.

5. In every PMC case there should be an advocate for the youth. The advocate can be a CASA volunteer who is appointed as the Guardian Ad Litem (GAL) or as a volunteer advocate, or another Guardian Ad Litem.

A Guardian Ad Litem's role is to ensure that the child's best interests are served, and although lawyers are needed at times in the PMC process, lawyers are not social workers. Much of the PMC process, even the parts of the process that occur in the courtroom, requires more of a social work focus. In some cases, a Guardian Ad Litem who is more focused on the social work aspect of the PMC process may be more crucial than an Attorney Ad Litem (AAL). **[Requires a statutory change]**

6. When children do not already have an Attorney Ad Litem, one must be appointed or retained when adversarial legal issues arise or there is a conflict among stakeholders.

That is where the skills of an attorney are best applied in the PMC process.

7. Every child should have a volunteer Court Appointed Special Advocate (CASA)

CASA volunteers have been lauded across the state for their active, involved, knowledgeable participation in the lives of their foster children. They generally provide the courts with the most current, well-informed assessment of the child and her needs. CASA volunteers receive required training that enables them to serve the child's best interests. This training more closely resembles that of a social worker, which enables a CASA volunteer to serve the child's best interest efficiently and ef-

fectively. As such, in the PMC process, a CASA volunteer should be appointed for every child.

8. Regardless of whether a CASA volunteer is appointed as the Guardian Ad Litem, the CASA must be allowed to present his or her report to the court and have the ability to request a hearing.

As noted, the most consistently positive stakeholder involved in the foster care system and in the child's life is typically the CASA volunteer. In many cases, a CASA volunteer has the most comprehensive report on the child to present to the court. In fact, in many cases, it is the CASA's report that is the basis of the caseworker or Attorney Ad Litem's report.

Unbeknownst to many, CASAs, whether serving as the Guardian Ad Litem or "volunteer advocate," have the ability to *request* a hearing by submitting a letter to the court that has been approved by a CASA supervisor *and* copied to all parties in the case in accordance with § 263.501 of the Texas Family Code. Additionally, CASA has the ability to request the court to appoint an AAL for the child.

The CASA must be encouraged by the judge to present his findings to the court and to request hearings. Judges must consider the CASA's reports and respect the CASA's requests for hearings.

9. Notice of placement review hearings must be provided in accordance with §263.501 of the Texas Family Code and as required by Texas Rule of Civil Procedure 21.

It is common across the State to find that important stakeholders, such as the child's foster parents, relatives, or child placement agency, were not in court though their participation is encouraged by statute for placement review hearings. The overwhelming reason given for the stakeholders' absence from the courtroom is that the stakeholder never received notice of the hearing. Section 263.501(d) of the Texas Family Code requires that DFPS, foster parents, pre-adoptive parents, relatives providing care, directors of group homes or institutions, each parent of the child, each possessory conservator or guardian, an AAL, volunteer advocates (usually CASAs), and any other person or agency named by the court as having an interest in the child's welfare must be notified 10 days prior to the placement review hearing. In many jurisdictions, notification of all pertinent parties is not happening.

Notice must be provided in accordance with Texas Rule of Civil Procedure 21, almost exclusively by DFPS or the attorneys representing the agency in the child's case, so that all pertinent stakeholders can appear in court and gain a more comprehensive view of the child's well-being in order to determine whether permanency, as identified in the permanency plan, is realistic and achievable. Solutions to the failure to provide and receive notice should be examined by the Commission and DFPS.

10. Judges must issue a written order with fact-specific findings for each of the determinations required by § 263.503.

Many PMC hearings are viewed as less important than most other civil hearings in Texas courts. Typically, hearings are conducted in 10-15 minutes, children are not in court, the child's well-being is not considered, and progression toward achieving the child's permanency plan goes undocumented. The Texas Family Code sets out issues that should be discussed and resolved at each hearing, but it is evident from the length and depth of hearings as they stand now that these factors are not being gathered or determined by the judge. By requiring that a specific judicial order is issued, a vital court record of the hearing will be created. Additionally, it will serve as a common reference point for every stakeholder, informing each of the status of a child's case and will help each individual involved understand what steps he or she must take before the next hearing.

Required Findings:²⁷

1. Whether "the child's current placement is necessary, safe, and appropriate for meeting the child's needs, including with respect to a child placed outside of the State, whether the placement continues to be appropriate and in the best interest of the child," and the reasons why are documented in the Department's court report.
2. Whether "efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interests and special needs of the child, if the child is placed in institutional care," and those efforts are documented in the Department's court report.
3. Whether "the services that are needed to assist a child who is at least 15 years of age in making the transition from substitute care to independent living are available in the community" and are stated in the Department's court report.
4. Whether "other plans or services are needed to meet the child's special needs or circumstances" and are stated in the Department's court report.
5. Whether "the Department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption," and evidence of that due diligence has been documented in the Department's court report.
6. Whether "for a child for whom the Department has been named managing conservator in a final order that does not include termination of parental rights, a permanent placement, including appointing a relative as permanent managing conservator or returning the child to a parent, is appropriate for the child," and the reasons why those options are not appropriate are documented in the Department's court report.

²⁷ All required findings are from § 263.503 of the Texas Family Code except the findings listed in *italics*.

7. Whether “for a child whose permanency goal is another planned, permanent living arrangement, the [D]epartment has:”

a. “documented a compelling reason why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent is not in the child’s best interest;” and

b. “identified a family or other caring adult who has made a permanent commitment to the child.”

8. Whether “the Department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child,” and what those reasonable efforts are.

9. *That the child attended the placement hearing and if not in attendance, why.*

10. *Whether there is a legal issue that requires an AAL, if one is not already appointed.*

11. Docket schedules must be composed efficiently so that children and stakeholders can attend.

It is not uncommon for a large number of placement review hearings to be scheduled for a certain day, without great specificity as to the time of each hearing. Many individuals involved in these hearings could sit in court for hours, or all day, waiting for their hearing. Caregivers and other stakeholders must miss a full day of work, children must miss school, travel plans are not able to be estimated, and CPS workers cannot be out visiting other children whom they also serve due to these docket inefficiencies.

To address docketing schedule issues, judges should consider scheduling placement review hearings in a way that allows stakeholders to receive approximately a two-hour window in which their respective case will most likely be heard. For instance, judges could schedule their hearings so that easier cases occur earlier in the day, leaving the difficult and more complex cases for the afternoon. Or judges might set aside a specific day and time to hold only placement review hearings. Courts should also consider holding hearings late in the day or perhaps into the evening so that the youth can attend and not miss school or important extracurricular activities.

Doing so will ensure better planning on the part of all stakeholders, will make for more effective and efficient hearings, and will help ensure all pertinent individuals are available and in court.

12. “Placement Review Hearings” should be called “Permanency Progress Hearings” to change stakeholder mindset.

Words are powerful. It is important for stakeholders to remember that the goal of a placement review hearing is to get the child to permanency in a safe, healthy en-

vironment that fosters the child's well-being and continues well after the child has reached majority age. **[Requires a statutory change]**

JUDICIAL TOOLS

13. Judicial training is essential.

Foster care cases are significantly different than many other types of cases. These cases are often complex, involve sensitive subjects, and require nuanced decision making and fact finding. But what truly makes these cases unique is the fact that a child's stability and her present and future relationships in life hang in the balance. With all that resides in their hands, judges must partake of all education and knowledge they can when it comes to these cases.

Thankfully, Texas judges have a wide variety of training programs available to them through several trusted organizations including but not limited to the NCJFCJ, the Texas Center for the Judiciary, the Texas Office of Court Administration (OCA), and other entities. It is essential that judges take advantage of these programs and training opportunities whenever possible, no matter how experienced the judge.

We recommend several specific types of judicial training, including using non-traditional training formats such as video instruction, covering such topics as:

- Best practices in holding PMC hearings
- Implicit Bias and Undoing Racism education classes
- Trauma-based care, including an understanding of how children respond to trauma and/or neglect, to better understand the conduct and reactions of the children before them, as well as how judicial officers should communicate with children who have been through trauma or neglect
- Disabilities and children with disabilities, including training on appointing medical or other specialists and ordering other available resources for special needs children
- Knowledge of federal and state programs available to certain children and youth to better assist them in receiving services that are needed and available, including a discussion of the pros and cons of each program or resource
- Intersection of juvenile justice and foster care
- Transitional planning to independent adult living
- Continuing education on legislative updates, new federal mandates, appellate decisions, policies and procedures of the Department, automation, and procedural changes required by new statutes and/or rules

Additionally, we would recommend increasing the number of judicial training hours required for child abuse and neglect judges. There is a wide variety of training currently available, but many judges do not take advantage of the vital information provided through these conferences and trainings.

14. Judges need to use Benchbooks or Bench Cards as soon as they become available in this area of law.

The use of benchbooks can provide key information and resources to assist judges in conducting placement review hearings. They can provide questions to ask at the hearings, checklists of issues to be considered, and important information about the cases and the process.

The Permanent Judicial Commission for Children, Youth and Families is developing a benchbook for foster care cases, which should be available by the end of 2010. Once available, all judges who hear PMC cases should make use of this new and important resource.

15. Quantitative data should be used to help judges gauge their improvement in getting children into permanent and safe homes as quickly as possible.

Most stakeholders who were interviewed thought they were doing a fairly good job getting children out of the foster care system. However, despite the best of intentions, when one looks at the data, a significantly different story is told. It is important for stakeholders, especially judges who have the oversight power, to be able to review the data for their jurisdiction and to compare the data to other areas of the state so they can gauge whether their jurisdiction is operating as efficiently and effectively as possible for the children whom they are meant to provide for and protect. The Commission also provides technical assistance to judges who are interested in understanding how permanency data affects the youth and children on their docket and can help identify system inadequacies that are contributing to longer stays in care.

OTHER ISSUES

16. Judges should not be bound to accept a mediated settlement agreement if the agreement is not in the best interest of the child.

Mediated settlement agreements are intended to provide a mechanism to involve all decision-makers and other interested parties to help the child achieve a stable life and environment in the most efficient and effective manner possible.

There has been a question as to whether judges have the authority to reject a mediated settlement agreement when they determine that it is not in the best interests of the child. Judges must reject these types of agreements if the agreement is not going to serve the best interest of the child. These agreements should however only be rejected or accepted in their entirety; judicial authority should not be granted to afford a “line item veto” for the court to revise the settlement terms. **[Requires a statutory clarification]**

17. As a youth approaches aging out of foster care, stakeholders should prepare for the possibility that the youth will return to his or her biological parent(s) or other family members when he or she leaves care. Stakeholders should work with the child—and if appropriate, the child’s biological parents—to ensure that the process of reuniting with family is done as safely and successfully as possible.

Many of the stakeholders that Texas Appleseed interviewed indicated that youth often want to find their parents and return “home” when they age out. For too long, the foster care system has ignored this reality to the disadvantage of the youth leaving care. Stakeholders should candidly discuss this possibility with youth as they approach majority to determine whether reunification is a priority for the youth. If it is, stakeholders should assist the youth in making contact with the biological parents and might consider arranging meeting(s) between the foster child and biological family members and providing counseling services to both. Section 263.503(b) of the Texas Family Code allows parents to be given six months of services to help a child transition home. This resource will not only give the foster child some support through this process, but it may also provide stakeholders with the opportunity to steer the youth toward more appropriate plans if reunification appears to be a poor choice.

18. Judges and stakeholders should encourage youth to extend foster care beyond age 18 to provide a youth who ages out with additional support when necessary.

Effective October 1, 2010, youth may now remain in extended foster care until their 21st birthday provided they are completing a secondary education, attending college or a vocational program, working at least 80 hours per month, attending a job training program, or are unable to participate in any of these activities due to a documented medical condition. Youth continuing to complete a high school diploma or GED may stay in extended foster care until their 22nd birthday. This extended care option requires court oversight, judicial approval of the youth’s permanency plan, and placement review hearings at least once every 12 months.



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interviews conducted in Texas' six largest urban areas, one rural county, and eight Child Protection Courts provided a more complete picture of foster care court proceedings in 15 selected jurisdictions across the state.

METHODOLOGY

With a team of the state’s leading foster care experts and major pro bono support led by Fulbright & Jaworski L.L.P. with McGinnis, Lochridge and Kilgore, L.L.P and with the expert analytical assistance of RPC Consulting and the full cooperation of DFPS, Texas Appleseed conducted detailed qualitative and quantitative data analysis of all children in PMC in Texas for a single fiscal year.

The Department provided Appleseed with the raw data on all children in PMC from 2005 through 2008.²⁸ RPC Consulting and Texas Appleseed analyzed the data to examine a wide variety of issues affecting PMC children, including the length of time these children had been in the State’s custody, the number of different homes or “placements,” the number of caseworkers overseeing their cases, and the manner in which the children exited PMC. Appleseed examined more than 30 different data elements—many of which had never before been analyzed—alone and in combination.

In this report, Texas Appleseed’s data on children in PMC differs from the Department of Family and Protective Services Data Book. The Appleseed data examined the foster care population *over an entire fiscal year* (FY 2008). In contrast, the DFPS Data Book is based on the number of children in PMC *on a single day*—August 31st, the last day of the State of Texas’ budget year. Analyzing an entire fiscal year’s worth of data provides an enhanced understanding of Texas’s foster care population. For example, 21,044 children were in PMC at some point during FY 2008, compared to a much smaller number—13,984 children—in PMC on August 31, 2008.

Statistics only tell part of the story. To “get behind the numbers,” Texas Appleseed and its pro bono partners also completed a thorough, cross-sectional qualitative analysis of PMC experiences in 15 selected jurisdictions by conducting approximately 150 interviews of a variety of stakeholders in Bexar, Dallas, El Paso, Harris, Tarrant, Taylor and Travis counties, as well as the following specialized Child Protections Courts: Brazos River Valley, Centex, Central Texas, Northern Panhandle, Northeast Texas, Permian Basin, Rio Grande Valley and Southeast Texas (study jurisdictions).

28 2008 was the most recent year that the full data set was available when the study began.

These 15 study jurisdictions include the six largest urban areas, one rural county, and eight Child Protection Courts—representing diverse geographical and demographic areas of the state and accounting for 65% of the children in PMC in 2008. The stakeholders interviewed in a confidential and comprehensive process included judges, CASA staff and volunteers, Attorneys Ad Litem, prosecutors, CPS caseworkers, DFPS officials and attorneys, Guardians Ad Litem, foster parents, child placement agencies, residential treatment centers, and most importantly, foster children and young people who had aged out of the system. The interviews uncovered significant variations in philosophies, practices, policies and procedures in each jurisdiction, but there was also a surprising amount of consistency.

As further support for this project, Appleseed requested Casey Family Programs, a national leader in foster care initiatives, to undertake an extensive review of best practices found nationwide for legal and court strategies that have been successful in achieving genuine and timely permanence for foster children.²⁹ Casey Family Programs reviewed the relevant literature and conversed with key advisors from 10 states and one county that it identified as having promising practices (Promising Practices) to help Texas explore the ways in which our court system can reduce the time children and youth spend in foster care.³⁰ Their findings are consistent with the best practices identified by the National Council of Juvenile and Family Court Judges (NCJFCJ), a national judicial organization whose mission is to improve the court and system practices in juvenile and family cases.³¹ Texas Appleseed thoroughly considered, studied and vetted these practices, as well as Texas-specific best practices for this report.

Developing Policy Recommendations & Best Practices

Texas Appleseed invited leaders on foster care in Texas—including district and associate judges, state agency heads, foundation leaders and advocacy organization leaders—to participate in reviewing the quantitative and qualitative information, developing policy recommendations, and discussing best practices. These experts collectively devoted hundreds of hours to reviewing reports and data, meeting with Texas Appleseed, and providing their valuable insights and ideas. In addition to a number of individual and small group meetings, Texas Appleseed hosted three all-day meetings with these experts to fully vet the issues and concerns, as well as the policy recommendations and best practices for improving life outcomes of our children in long-term foster care. (See *Acknowledgements* for a listing of the members of the Policy Development Team.)

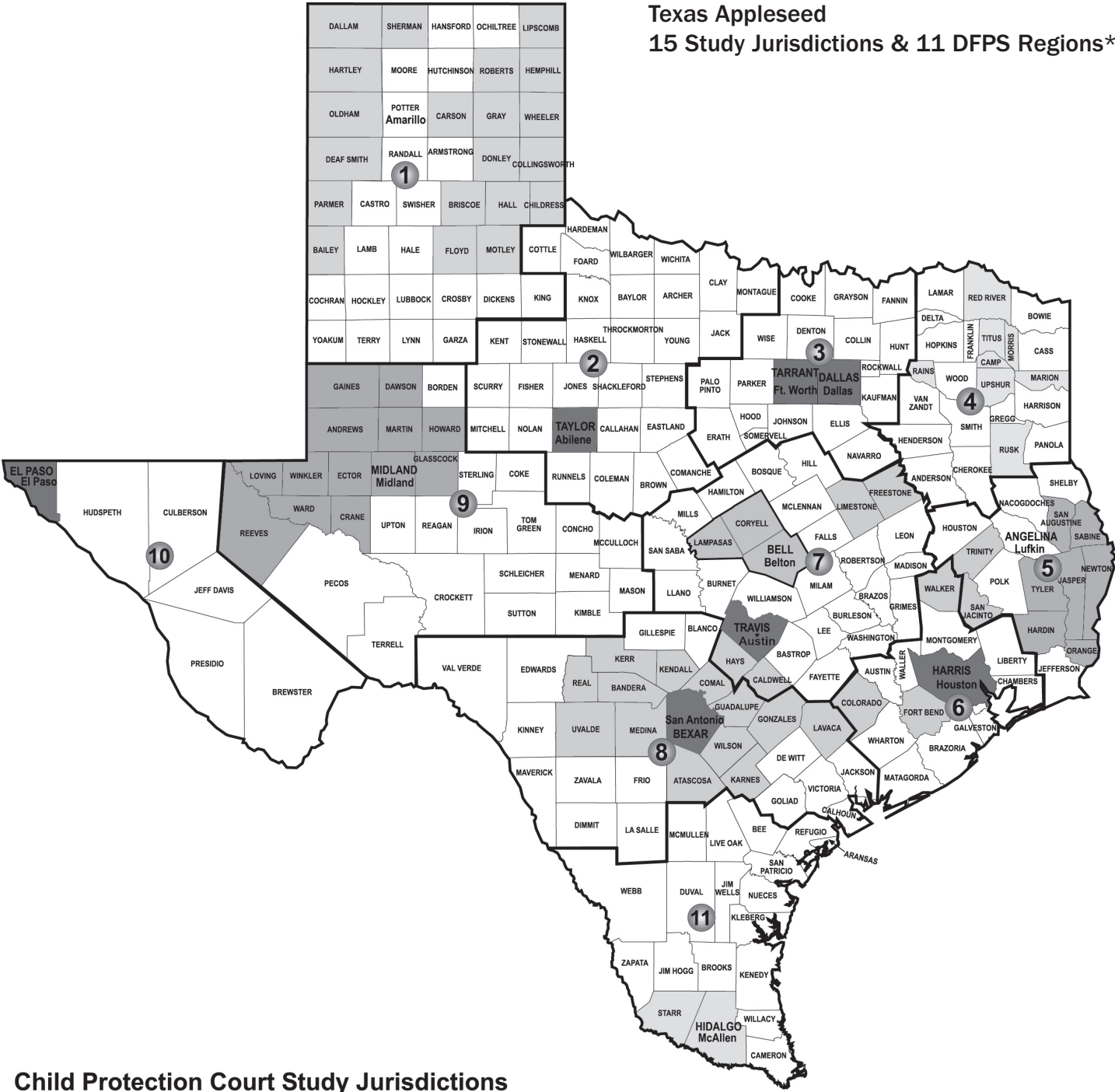
The policy recommendations presented in this report are the collaboration of some of the finest legal thinkers on foster care in Texas. The findings in this report are those of Texas Appleseed, derived from our field research, interviews and data analysis.

29 See Appendix, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Casey Family Programs, at 2 (2009).

30 *Id.*

31 See National Council of Juvenile and Family Court Judges (NCJFCJ), *Technical Assistance Brief, Model Court Protocol: Leadership, Innovation and Accountability*, available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/mcprotocolewbfinal.pdf>. Texas has one certified NCJFCJ Model Court in Travis County.

Texas Applesseed 15 Study Jurisdictions & 11 DFPS Regions*



Child Protection Court Study Jurisdictions

- Brazos River Valley Cluster Court** - Judge Sam Bournias, Region 2
(Counties: Freestone, Limestone, San Jacinto, & Trinity)
 Judge Eric Andell, Region 2 *(Counties: Fort Bend & Walker)*
- Centex Child Protection Court** - Judge Charley Van Orden, Region 3
(Counties: Bell, Coryell, & Lampasas)
- Child Protection Court of Central Texas** - Judge Karin Bonicoro, Region 3
(Counties: Atascosa, Bandera, Caldwell, Colorado, Comal, Gonzales, Guadalupe, Hays, Karnes, Kendall, Kerr, Lavaca, Medina, Real, Uvalde & Wilson)
- Child Protection Court of the Permian Basin** - Judge Sylvia Chavez, Region 7
(Counties: Andrews, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Reeves, Ward, & Winkler)
- Child Protection Court of Rio Grande Valley West** - Judge Ricardo Flores, Region 5
(Counties: Hidalgo & Starr)
- Northeast Texas Foster Care Docket** - Judge William Martin, Region 1
(Counties: Camp, Rains & Red River)
 Judge Oswin Chrisman, Region 1 *(Counties: Marion, Morris, Rusk, Titus, & Upshur)*
- Northern Panhandle Child Protection Court** - Judge Phil Vanderpool, Region 9
(Counties: Bailey, Briscoe, Carson, Childress, Dallam, Deaf Smith, Donley, Floyd, Gray, Hall, Hartley, Hemphill, Lipscomb, Motley, Oldham, Parmer, Roberts, Sherman, & Wheeler)
- Southeast Texas Cluster Chapter** - Judge David Dunn, Region 2
(Counties: Hardin, Jasper, Newton, Orange, Sabine, San Augustine, & Tyler)

County Study Jurisdictions

- Bexar, Dallas, El Paso, Harris, Tarrant, Taylor & Travis**

*The DFPS regions are numbered on this map.

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IN Fiscal Year 2009, the State of Texas assumed the role of “parent” (temporary or permanent) for more children than the number enrolled in Austin Independent School District’s 10 high schools for the 2009-2010 school year. This number is also roughly equal to the entire population of Uvalde or Shelby County.*

AN OVERVIEW OF TEXAS' FOSTER CARE SYSTEM

The Gateway to Long-term Foster Care: Removal to Temporary Managing Conservatorship

31

Texas has charged the Department of Family and Protective Services (DFPS) with a heavy responsibility—to protect the children of this state from abuse and neglect. Last year, its hotline received nearly 700,000 calls reporting suspected abuse or neglect of children and adults.³² These calls came from school personnel, law enforcement, doctors, concerned family members, and anonymous callers. Sometimes parents themselves have called the hotline, asking the Department to take care of a child who they, for whatever reason, can no longer care for. *A call to DFPS is the portal through which most Texas children enter the foster care system.*³³

From these calls, DFPS makes an initial determination of whether there has been abuse or neglect.³⁴ *In 2009, 36.6% of reports contained descriptions of matters that met the statutory definitions of either child abuse or neglect.*³⁵ Reports of child abuse or neglect are assigned to Child Protective Services (CPS), a division of DFPS. An investigator immediately begins an investigation, and within 30 days must determine if the allegations are accurate, if the child needs to be immediately removed from the home, whether the family needs services to address the problem, and whether to open a case for Family Based Safety Services or file a petition to initiate a civil court action.³⁶

When the investigator recommends court action, the investigator, along with her supervisor and program director, also determines whether the child should be removed from the family. If the investigator determines it is not safe for the child to remain at home, the investigator looks for a place where the child can live while CPS provides services to the family. The investigator will try to find a home or “placement” with relatives or

32 2009 DFPS Data Book, *supra* note 2, at viii.

33 *Id.* (“Statewide Intake serves as the ‘front door to the front line’ for all DFPS programs.”)

34 The Texas Family Code provides 11 definitions of abuse and 7 different forms of neglect and includes both affirmative actions and acts of omission. *See* TEX. FAM. CODE § 261.001 (1) & (4).

35 *See* 2009 DFPS Data Book, *supra*, note 2, at 3.

36 FBSS is an arm of DFPS that attempts to keep the child in his or her biological home and provide services for the family as an alternative to removal.

family friends who are willing and able to care for the child, but if none can be found, the child will go to foster care.³⁷

Within the foster care system, this process is described as finding a “placement” for the child—as opposed to finding a “home,” a “residence,” or a “dwelling.” The Department considers several factors in placing a child including, but not limited to: his or her age, mental health needs, physical needs, original home location, behavioral problems, care needs, available housing options, and willingness of placement options to accept the child.³⁸

WHEN THE COURTS BECOME INVOLVED

Chapter 262 of the Texas Family Code sets out the legal procedures for DFPS to protect the health and safety of the child. The Department may take possession of a child by way of an emergency ex parte order if the child is in immediate danger or has been a victim of sexual abuse.³⁹

On or before the first working day after the child is removed from the family, DFPS must seek court approval of removal.⁴⁰ If the judge finds that there is enough risk to the child to justify removal, he or she will grant DFPS **Temporary Managing Conservatorship (TMC)** of the child. *When DFPS becomes the child’s temporary managing conservator, it steps into the role of the child’s legal “parent.”* As a result, the Department assumes the duties of care, control, protection and reasonable discipline, and must provide the child with clothing, food, shelter, education and adequate medical care.⁴¹ The Department also gains many of the same rights as a parent, including the right to have physical possession of the child, to direct the moral and religious training of the child, consent to medical care, to make legal decisions, and to represent the child in legal actions.⁴²

In most cases, DFPS will begin trying to work with the family, in hopes that the child can eventually return home. The Texas Family Code requires that a child can remain in TMC for no longer than 12 months—with a possible six-month extension if the court finds extraordinary circumstances.⁴³ If the child cannot safely be returned to the family within this time period, the court grants DFPS **Permanent Managing Conservatorship (PMC)** of the child. A court will typically grant PMC when it determines that parents have not sufficiently mitigated the risks that the child would face if he or she returned home. Usually the court will also terminate parental rights at this time, freeing the child for adoption. However, when DFPS lacks sufficient grounds for termination of parental rights, or if the judge deems it is not in the best interests of the child, the court will award PMC to the Department without terminating parental rights.⁴⁴ In this situation,

37 See Appendix, *Types of Foster Care Placements & Initiatives to Find Permanent Homes*.

38 http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6300.jsp, http://www.dfps.state.tx.us/Child_Protection/Foster_Care/redesign.asp; See, *Types of Foster Care Placements and Initiatives to Find Permanent Homes*, for a more detailed discussion of placement options.

39 TEX. FAM. CODE § 262.104.

40 See *id.* § 262.106.

41 *Id.* § 153.371.

42 *Id.*

43 *Id.* § 263.401. There is an extension allowed of six months in “extraordinary” circumstances. *Id.* § 263.401(b).

44 *Id.* § 263.404.

a child is not legally free to be adopted and will stay in the custody of the State until he or she turns 18 or until the child's family situation improves and the child can return home or to a relative.

TYPES OF COURTS HEARING FOSTER CARE CASES

Foster care suits are handled in various types of courts across the State, with associate judges hearing the majority of cases. These suits fall under the general rubric "suits affecting the parent child relationship," or "SAPCRs." Child protection cases are considered SAPCRs because the court is asked to appoint a person other than the parent as the conservator of a child with the right to make decisions about the child's health, safety and welfare.⁴⁵

Suits affecting the parent child relationship usually fall under the jurisdiction of district courts, which are the trial courts of general jurisdiction in Texas.⁴⁶ These suits must be filed in a court serving the county where the child resides.⁴⁷ The court that handles the initial suit assumes permanent, continuing jurisdiction over the child, and all subsequent court proceedings concerning custody issues for this child must be heard in this court, even if the child moves to another county or a different judicial district, unless jurisdiction is transferred pursuant to court order.⁴⁸ The court continues its oversight until the child leaves the foster care system. *This statutory requirement that the case remain in the child's home county is one of the few constants for children in the foster care system.*

TEMPORARY MANAGING CONSERVATORSHIP

As noted, when DFPS removes a child from his or her home in an emergency, the court must hold a hearing on the next working day and issue orders as necessary to protect the physical health and safety of the child.⁴⁹ At the hearing, the court must order the child be returned home unless the court finds that doing so would pose a continuing danger to the child.⁵⁰

If the child is not returned to her parents, the court must hold a full adversary hearing within 14 days from the day the child was removed.⁵¹ Again, the child must be returned home unless the court finds sufficient evidence that the parent has created a situation threatening the child's physical health or safety and that, despite reasonable efforts to enable the child to return home, such a return involves a substantial risk of

45 See TEX. FAM. CODE § 101.032. This section does not attempt to describe other court systems that affect the interests of minors, such as the juvenile justice system or specialty courts that handle paternity, child support, and drug-related issues. For more information on those court systems, see generally TEX. FAM. CODE Chapter 201, Subchapter B (Associate Judges For Title IV-D Cases).

46 TEX. CONST. art. 5, § 8 (Jurisdiction of District Courts), *But see id.* art. 5, § 16 (Jurisdiction of County Courts). Child custody issues may also be heard by County Courts in some areas of the state, though the jurisdiction of the County Courts varies significantly by county. Additionally, for a broad overview of the types of courts in Texas and the jurisdiction of each, see The Guide To Texas Courts, available at <http://www.courtreference.com/Texas-Courts.htm> (last visited June 27, 2010).

47 TEX. FAM. CODE § 103.001(a).

48 See *id.* § 155.001.

49 TEX. FAM. CODE § 262.106.

50 *Id.* § 262.107.

51 *Id.* § 262.201.

continuing danger.⁵² If the court makes this finding, it issues a temporary order and must inform the parents they could lose their parental rights unless they are able to provide a safe environment for their child.⁵³

Within 45 days after the Department is appointed as temporary managing conservator, DFPS must file a service plan.⁵⁴ Among other things, the plan must state the Department's goal for the child—*i.e.*, whether the child is returning to the parents, remaining in foster care, or being placed for adoption.⁵⁵ DFPS must also lay out the necessary steps to achieve that goal, which must include an explanation of what the parent(s) must do to regain possession of the child and how the Department will assist the parent(s) in fulfilling those expectations.⁵⁶ Within 60 days, the court must hold a status hearing where it reviews the service plan and issues orders to implement or require compliance with the service plan.⁵⁷ This 60-day status hearing is limited to matters related to the service plan.⁵⁸ At the status hearing, the court must make findings as to whether the plan ensures that reasonable efforts are made to place the child in a safe environment, either at home or in foster care. The court must also determine that the parents understand the consequences of their failure to provide a safe environment for the child.⁵⁹

Permanency Hearings

Within 180 days of appointing the Department temporary managing conservator, the court must hold a “permanency hearing.”⁶⁰ At the hearing, the judge reviews the *permanency plan* developed by the Department. This plan is a critical plan for the child; it sets out the long-term goal for how the child will find a permanent home. The plan must include “concurrent permanency goals consisting of a primary permanency goal and at least one alternative permanency goal.”⁶¹ A permanency plan remains in effect until changed by the court. Permissible permanency plans include: reunification with parents, termination of parental rights and adoption, awarding of permanent managing conservatorship to a relative or other suitable individual, or another planned permanent living arrangement. If the Department's goal is “another planned, permanent living arrangement,” it must document a compelling reason why the goal for the child is not reunification, adoption or permanent placement with a relative.⁶²

Before the hearing, the Department files a *permanency progress report* with the court recommending that the suit be dismissed or continued.⁶³ If the Department seeks a continuance, the report must (among other things) evaluate the parties' compliance with court orders and the service plan, evaluate whether the child's placement in substitute care meets the child's needs, recommend other plans or services if needed, and, for

52 *See id.*

53 *Id.* § 262.201(c).

54 *Id.* § 263.101.

55 TEX. FAM. CODE § 263.102(a)(5).

56 *Id.* § 263.102(a)(6)-(11).

57 *Id.* § 263.105, 263.106.

58 *Id.* § 263.202(b).

59 *Id.* § 263.202(b)(2).

60 *Id.* § 263.304.

61 *Id.* § 263.3025.

62 *Id.* § 263.3026.

63 *Id.* § 263.303.

youth 16 and older, identify services needed to assist the child in his or her transition to adult life.

At the permanency hearing the court is required to review the plan and schedule a final hearing to render a final order that precedes the date for dismissal of the suit. *The child is required to attend each permanency hearing, unless the court specifically excuses the child's attendance*, and the court must consult with the child in a developmentally appropriate manner regarding the child's permanency plan.⁶⁴

The court must decide if the child can be safely returned to her parents and if a return is in the child's best interests.⁶⁵ If the child cannot be returned home, the statute requires that the court evaluate DFPS' efforts to explore kinship placements, the parties' compliance with court orders and the service plan, whether the child's placement is meeting the child's needs, and whether the Department has made reasonable efforts to finalize that placement. *The court must also project a date by which the child may be returned home, placed for adoption, or placed in the permanent managing conservatorship of the Department.* The law specifically lays out factors for determining the best interest of a child that the court and DFPS must consider when determining whether the child's parents are willing and able to provide the child with a safe environment.⁶⁶

Statutory Timeline for Completion of TMC—Court Practice in Texas & Conflicting Views

Unless the court has commenced the trial on the merits or granted an extension on the basis of “extraordinary circumstances,” it must dismiss the Department's suit on the first Monday after the first anniversary of the date the court rendered a temporary order appointing DFPS as managing conservator.⁶⁷ The court may extend the case for 180 additional days if it finds that “extraordinary circumstances” necessitate the child remaining in the Temporary Managing Conservatorship (TMC) of the Department and that continuing such appointment is in the best interest of the child.⁶⁸ *After this 180-day period, no further extension is permitted.*⁶⁹

In Texas, the courts hold varying views on the one-year deadline to achieve permanency. *Although the issue arises in the context of TMC, it has important implications for Permanent Managing Conservatorship (PMC) since some foster care experts believe the deadline results in more children in PMC.* A few judges view this deadline as arbitrary and too short—especially in substance abuse cases where the parents are likely to relapse at least once during the process. Given the limited availability of intensive treatment rehabilitation facilities and the typical trajectory of recovering addicts, parents with substance abuse issues are likely to remain in a crisis situation at the 12-month marker. This means that the decision to reunite or permanently separate the child from the family must be made when the parent is most at risk of relapse or failure. Several judges indicated that they would prefer to see the deadline to reach a decision on permanency moved to 18 months, with a six-month extension option in “extraordinary circumstances.”

64 *Id.* § 263.302.

65 *Id.* § 263.306.

66 *Id.* § 263.307.

67 *Id.* § 263.401(b).

68 *Id.*

69 *Id.* § 263.401(c).

Most judges report that they do not regularly grant extensions under the “extraordinary circumstances” exception. In particular, the study found that judges who practiced or were on the bench before the introduction of this statute hold to the 12-month permanency deadline because they do not want the children to “languish” in TMC without a permanency plan. Other judges reported that they grant extensions in a small percentage of their cases, so long as the caseworkers and ad litem are doing their jobs. However, in the state’s five largest jurisdictions, courts grant extensions beyond the 12-month permanency deadline 50 percent of the time.⁷⁰

Final Order of Temporary Managing Conservatorship

A final order dismissing the suit requires that the child be returned to the child’s parents, names a relative or fictive kin (friends of the child and/or the family with a close, kin-like relationship to the child) as the child’s permanent managing conservator, appoints DFPS as permanent managing conservator of the child without terminating the parent-child relationship, or terminates the parent-child relationship and appoints a relative or the Department as permanent managing conservator of the child.⁷¹

REUNIFICATION/FAMILY PLACEMENT

When the court dismisses the Department’s case against a child’s parent(s), the child must be reunited with her parent(s) and returned to a safer, healthier home environment.⁷² In most jurisdictions, judges are more likely to favor reunification or relative placement because of the strong biological and familial ties to the child. At least one child protection court judge indicated that PMC was a “dead end” for children. Another judge indicated that she required her foster parents to mentor the biological parents to attempt reunification and, if unsuccessful, the foster parents would then adopt. She also required contact with the biological parents after termination of their rights—even if it were only minimal, such as sending a photo and note every year.

Another child protection court judge indicated that extended families have historically been able to solve their own family problems, and the judicial system needs to facilitate, rather than hamper, that process: the court need not “re-engineer families.” Several judges reported that relative placement families regularly attend the review hearings, while non-relative foster parents tend not to come. Their experiences led them to conclude that children tend to do better when placed with family or at least fictive kin (a close family friend), and that all such options should be thoroughly explored and encouraged wherever possible.

If reunification or family placement is possible before a child enters PMC, this option must be promoted by the judge and pursued diligently by all actors responsible for the well-being of the child, including the Department, the Attorney and Guardian Ad Litem, the CASA volunteer, and others. With proper support services, some families can remain intact, children can be kept out of foster care, and safer and healthier environments for children are created. Moreover, additional focus on placing children with

70 Data provided by the Children’s Commission, from an analysis by the Center for Public Policy Priorities, based on DFPS data.

71 TEX. FAM. CODE § 263.306, 263.404.

72 *Id.* § 263.401.

relatives while in TMC can prevent them from entering PMC altogether, where they tend to get “stuck” in care.

TERMINATION OF PARENTAL RIGHTS

If the court appoints the Department as permanent managing conservator, it can do so with or without termination of parental rights. If it appoints the Department permanent managing conservator without terminating parental rights, the child is not free to be adopted. Specific court findings are required for a child entering PMC without the parents’ rights being terminated. The court must find that: (1) appointment of the parent as the managing conservator would not be in the best interest of the child because the appointment would significantly impair the child’s physical health or emotional well-being; and (2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.⁷³ In making this determination, the court must consider the child’s age, needs and wishes.⁷⁴

If the Department is named as a child’s permanent managing conservator in a final order that *does* terminate parental rights, the Department gains full parental rights, including the right to consent to adoption of the child and to make “any other decision concerning the child that a parent could make.”⁷⁵

The vast majority of children enter PMC with their parental rights terminated. In FY 2008, 68% of children entered PMC with parental rights terminated; 32% entered with parental rights intact. There is diversity of thought, however, as to whether it is advisable to terminate parental rights in PMC cases. In 2008, nearly 7,000 children in PMC had parents whose rights had not been terminated. Some judges have a philosophical preference for termination—especially in cases involving young children—in order to make them available for adoption.

Other judges, however, expressed concern that terminating parental rights added no real benefit to the child’s PMC experience. Several said that they would not terminate unless the child had a ready, adoptive parent. These judges felt that terminating the rights of the only parents the child would ever have was an unnecessary disservice to the child because it contributed to his or her sense of not belonging to anyone—“a greater feeling of being lost.”

Some judges indicated that there is no real benefit to terminating parental rights in cases involving older children because, in most instances, they return to the homes from which they were removed as soon as they age out of foster care, and so the substantial resources used for a termination proceeding serve no real purpose. The data reflects this judicial philosophy.

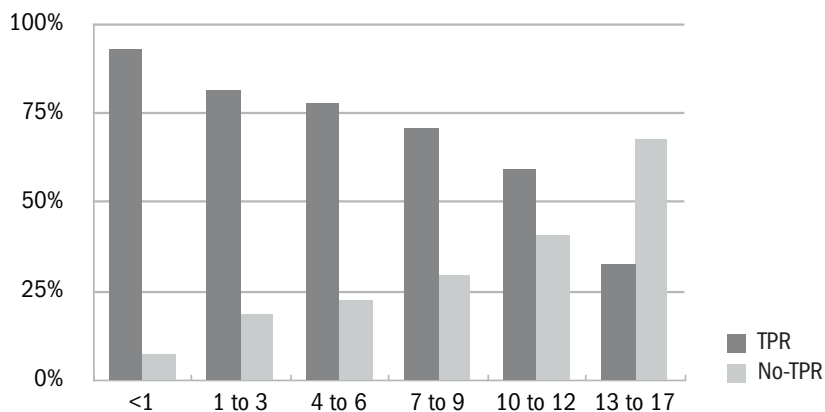
As the chart on the next page illustrates, compared to younger children, a much larger percentage of youth entering PMC between the ages of 13 and 17 do so with parental rights still intact.

73 TEX. FAM. CODE § 263.404.

74 *Id.*

75 See TEX. FAM. CODE § 153.371.

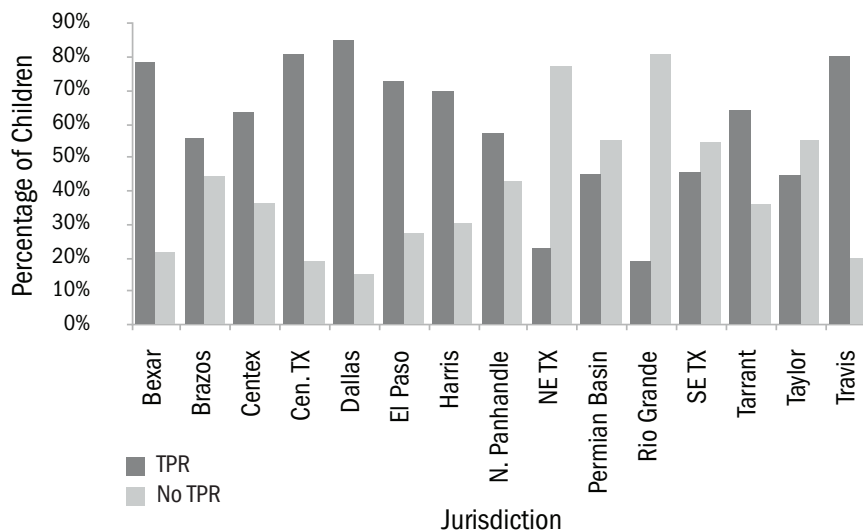
PERCENTAGE OF CHILDREN IN PMC DURING FY 2008 WITH PARENTAL RIGHTS TERMINATED, BY AGE OF ENTRY*



Further there is a judicial perception that children with emotional difficulties are less likely to be adopted, while children with mental retardation are more likely to be placed in adoptive homes, which weighs heavily in decisions regarding termination of parental rights in these cases. Also, the interviews indicated that most children do not want their parents' rights to be terminated even if they are comfortable with their foster care placements.

Overall, there is a close correlation between judicial philosophies and the parental rights termination status of children in PMC in the 15 Texas court jurisdictions studied. In four of the 15 study jurisdictions, significantly more children entered PMC with termination of parental rights than the statewide average. Conversely, five jurisdictions had a majority of children entering PMC without termination of parental rights.

TERMINATION OF PARENTAL RIGHTS STATUS OF CHILDREN ENTERING PMC IN FY 2008, BY STUDY JURISDICTION



There is no universal right or wrong when determining whether a child should enter PMC with or without terminating the parent’s rights. It is important that the court consider, on balance, the likelihood that the child will be reunited with his or her parents, the child’s wishes, and the likelihood that the child will be adopted or permanently placed with a relative when making these difficult decisions. All parties must seriously consider the implications of terminating parental rights, or not, on the child’s path in PMC.

The Role of the Courts & Legal System in Permanent Managing Conservatorship

Once the final order is entered in the TMC phase, those children who cannot be reunited with their family and cannot be placed with a relative or family friend are transitioned to Permanent Managing Conservatorship (PMC). DFPS is awarded PMC of the child, and the Department becomes the child’s “permanent” legal guardian and assumes all corresponding responsibilities. DFPS is responsible for monitoring the child’s placement, providing all medical care and psychological services, monitoring educational progress, visiting the child at least once a month, and reporting to the court on the child’s well-being.⁷⁶

Once a child is in PMC, the placement review hearing is the regular meeting of stakeholders to review the circumstances of the child and confirm that the child’s placement continues to be safe and appropriate. Currently, placement review hearings must be held every six months until the child is adopted or becomes an adult (ages out at 18).⁷⁷

Each child who enters PMC is required to have a *permanency plan*, which is a plan developed by CPS for finding the child a safe, permanent home.⁷⁸ Permanency plans are developed in the TMC stage, implemented throughout the child’s duration in foster care, and can be amended to reflect the child’s changing circumstances. Permanency plan goals may include: 1) reunification with the parent(s), 2) adoption, 3) care by a relative (with DFPS retaining PMC), 4) an alternative placement, or 5) independent living when the child turns 18, if the child is older and adoption does not appear likely.⁷⁹

DUTIES & RESPONSIBILITIES OF THE COURT IN PMC CASES

The responsibility of the court in PMC cases is to protect the best interests of the child, require adherence to the law, and hold individual stakeholders accountable. Texas law

76 See generally TEX. FAM. CODE § 264, Subchapter B.

77 *Id.* § 263.501(a).

78 See *id.* § 263.3025.

79 *Id.* § 263.3026.

has long recognized that minors are “wards of the court,” entitled to special protection.⁸⁰ The court has a judicial responsibility of a quasi-fiduciary nature to protect the best interests of the child, and *judges are granted broad discretion to ensure that the social, physical, developmental and emotional best interests and well-being of the child are evaluated, considered, and advanced.*⁸¹

The judge’s role is to safeguard the best interests of the child throughout all phases of the court case, although the process changes between TMC and PMC. In the TMC context, the judge’s task is to move the case through an adversarial process within statutory time frames, resulting in the child’s reunification with the family, placement with a relative or “fictive kin,” or transfer to PMC. Once the child is in PMC, *the judge oversees those charged with finding a permanent home for the child and keeps a close watch on the child’s education, health, development, and placement.* Such oversight requires a thorough placement review hearing.⁸²

Placement Review Hearings

At least 10 days notice of the placement review hearings must be provided, in accordance with Texas Rule of Civil Procedure 21a, to the Department, the foster parent, pre-adoptive parent, a relative who is providing care, or the group home or institution where the child is living, each parent of the child, the child’s guardian or possessory conservator, the Attorney Ad Litem and volunteer advocate,⁸³ anyone else named by the court to have an interest in the child’s welfare, and the child placement agency responsible for the child.⁸⁴ *The child is expected to attend each placement review hearing unless the child is specifically excused by the court.*⁸⁵

DFPS must also file a report with the court at least 10 days before each hearing.⁸⁶ The report must:

- Identify the Department’s permanency goal for the child;
- Evaluate whether the child’s current placement is appropriate for meeting the child’s needs;

80 See, e.g., *Peters v. Allen*, 296 S.W. 929, 932 (TEX. CIV. APP.—SAN ANTONIO 1927, no writ) (“It must be remembered that *the doctrine that minors are wards of the court, whose interests the courts shall protect, is as ancient as the common law, where the memory of man runneth not to the contrary.*”) (emphasis added); *Eckert v. Stewart*, 207 S.W. 317, 323 (TEX. CIV. APP.—AMARILLO 1918, writ ref’d) (“*The minors are not appealing, and have not cross-assigned on this appeal; but they are by law wards of the court, and it is the duty of the court, as we conceive it, to see that their interests are protected.*”) (emphasis added); *Ex Parte Taylor*, 322 S.W.2d 309, 312 (TEX. CIV. APP.—EL PASO 1959, no writ) (“It is settled doctrine that minors are *wards of the court* and entitled to its protection, and, in order to meet this *responsibility*, the *courts of Texas* have been endowed with wide powers in respect to all questions relating to the welfare of minors.”) (emphasis added); *In re Dudley’s Estate*, 88 S.W. 2d 616, 620 (TEX. CIV. APP.—SAN ANTONIO 1935, writ dismissed w.o.j.) (“*It is the prerogative, as well as the duty, of all courts to regard and protect, within lawful bounds, the rights of infants,...*”) (emphasis added).

81 See 40 Tex. Jur. 3d *Family Law* § 1397 (2010).

82 See TEX. FAM. CODE § 263.502.

83 The volunteer advocate is usually a CASA volunteer.

84 TEX. FAM. CODE § 263.501(c)-(e).

85 TEX. FAM. CODE § 263.501(f). A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by video conference.

86 *Id.* § 263.502.

- Evaluate efforts that have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and needs of the child, if the child is placed in institutional care;
- Contain a transition plan for a child who is at least 16 years of age that identifies services and specific tasks that are needed to assist the child in making a transition from substitute care to adult living and describes the services that are being provided through the Transitional Living Services Program;
- Evaluate whether the child’s current educational placement is appropriate;
- Identify other plans or services that are needed;
- Describe the Department’s efforts to place the child for adoption if parental rights have been terminated and the child is eligible for adoption; and
- Describe DFPS’ efforts to find a permanent placement for the child in cases where the Department has been named managing conservator in a final order that does not terminate parental rights.⁸⁷

The DFPS report must be provided to all entitled to present evidence at the hearing. At each hearing, the court “shall determine” whether:

- The child’s current living arrangement or “placement” is safe and meets the child’s needs;
- The child is in the least restrictive environment (if placed in an institution);
- The child is being provided the services and planning to meet special needs;
- The Department has exercised “due diligence” in finding an adoptive home for children who are eligible and is making reasonable efforts to finalize a plan for a permanent home for the child; and
- Services are needed to help children age 16 and older transition from foster care to independent living.⁸⁸

Children’s Attendance in Court

The Texas Family Code requires children’s attendance and participation at their placement review hearings. It states:

The child shall attend each placement review hearing unless the court specifically excuses the child’s attendance. A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child’s permanency or transition plan, if the child is four years of age

87 *Id.*

88 *Id.* § 263.503.

*or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.*⁸⁹

On its face, it is evident that legislature intended children to attend their hearings unless the judge specifically excused a child from a particular hearing. The statute contemplates that *the child will be in court even before the child enters PMC*. It provides that children should be in court for certain hearings during the TMC stage, even though these hearings have a much greater potential to be more contentious than many PMC hearings and, depending on the child's situation, the alleged perpetrator may be present. Nonetheless, the law assumes the child will attend their permanency hearings.⁹⁰

The statute goes so far as to specify that a child committed to a Texas Youth Commission facility may attend the hearing. It indicates that children four years old and older will appear before the judge. The law instructs judges to use their discretion as to exactly how the child will participate by specifying it will be in a "*developmentally appropriate manner*" and in the "*best interest of the child*."⁹¹ Accordingly, children who do not wish to participate or who would find the proceedings traumatic are not forced into the courtroom.⁹² The statutory language makes it clear that children's participation in their permanency and placement review hearings should be the norm, not the exception, in Texas.

Exiting PMC

Most children exit PMC in one of four ways: adoption, aging out, reunification with a parent, or placement with a relative. The "other" forms of exit, grouped together in DFPS statistics, include: emancipation (pursuant to Texas Family Code, Chapter 31), court-ordered or independent living placements, running away ("absent without permission"), and "children for whom conservatorship was never obtained."

As a child in PMC becomes a teenager and the chances of finding a permanent home diminish, the Department must prepare the child for "aging out" and living on his or her own as an adult with no family. DFPS provides Transitional Living Services, which include Preparation for Adult Living (PAL) classes on money management, housing and transportation, health and planning, job skills, and personal and interpersonal skills.⁹³ A youth transitioning out of PMC also may receive funding for housing, education, vocational training, and Medicaid until his or her 21st birthday. Though foster children are legally discharged from PMC upon turning 18, they may stay in or, in certain circumstances, return to the Department's care. The State is currently expanding opportunities for youth to access services beyond their 18th birthday.⁹⁴

Unfortunately, far too many of Texas' foster children "age out" at 18 with no family, no support, and no plan for the future. As discussed in the following chapter, this population is particularly vulnerable to unfavorable life outcomes.

89 *Id.* § 263.501(f).

90 *Id.* § 263.302.

91 *Id.*

92 *See id.*

93 DFPS, Preparation for Adult Living (PAL) Program, http://www.dfps.state.tx.us/child_protection/preparation_for_adult_living/ (last visited Sept. 27, 2010).

94 *See, e.g.*, 40 TAC § 700.346 (setting out when former foster youth may return to foster care).

//////
1,000+

youth age out of foster care in Texas every year. Studies show they are at high risk for low educational attainment, poverty, unemployment, early pregnancy, mental illness, and incarceration.

WHAT WE LEARNED

Hurdles Faced by Children in Permanent Managing Conservatorship

45

Once a child reaches PMC, the focus is to look toward the child's future, and not the past, with the ultimate goal being that the child will exit foster care as quickly as possible and enter a safe, permanent home. The goal for every child entering PMC is to begin a better, happier, safer life—whether it is through an adoption, a kinship placement, or a rare return to an improved living situation at home with a biological parent. Unfortunately, children who reach the PMC stage of foster care too often end up in a transitory environment with little or no stability or support.

To frame the discussion, it is important to understand the formidable challenges facing children who “grow up” in long-term foster care. Of all the difficulties that foster children experience, low academic achievement may have the most detrimental consequences for their future.⁹⁵

FOSTER CHILDREN AND EDUCATION

In one Texas court jurisdiction included in this study, stakeholders reported that the judge never asked how the children were doing in school. Another Texas judge remarked that *not one of the foster care children under his court's supervision was on grade level*. Because children in foster care change schools far more frequently than their counterparts—often several times in a single year, it is exceedingly difficult for these children to make progress in their school work.⁹⁶ As a result, foster care students frequently lag

95 See generally Marni Finkelstein et al., *What Keeps Children in Foster Care From Succeeding in School? Views of Early Adolescents and the Adults in Their Lives*, Vera Institute of Justice, at 1 (2002), available at <http://www.aecf.org/upload/publicationfiles/what%20keeps%20children.pdf>.

96 See Dylan Conger & Alison Rebek, *How Children's Foster Care Experiences Affect Their Education*, Vera Institute of Justice, at 9 (2001), available at <http://www.inpathways.net/how%20childrens%20foster%20care%20experiences%20affect%20their%20education.pdf>.

in academics and experience more learning difficulties as compared to their non-foster peers.⁹⁷ One study's findings indicate that "when students change schools, they lose an average of four to six months of educational progress."⁹⁸

Until the 2009-10 school year, foster children were not identified in the (Texas) Public Education Information Management System (PEIMS). As a result, Texas school districts have historically had very little information regarding their foster populations and are ill-positioned to address their needs.

IN THEIR WORDS

According to a child placement agency:

"The foster kids usually lack good education from the beginning and when put into foster care, they usually are behind their peers in school. Due to their behavioral issues from childhood trauma, they tend to be aggressive in class and usually are put into special education programs only to contain them, which gives them little chance of formal education."

Highly mobile foster youth often are absent for large parts of the school year, lose academic credits due to mid-semester moves, and often have incomplete school records due to missing transcripts, omission of assessment and attendance information, and failure to update special education records.⁹⁹ High mobility rates also affect social instability and isolation, which in turn contribute to emotional and behavioral problems.¹⁰⁰ Credits are lost due to incomplete educational records, frequently causing a student to repeat a course or even an entire grade.¹⁰¹

According to a Casey Family Program Study, foster youth are much more likely to be held back than their peers. Another study found that being retained a grade has an even more negative impact on education and employment outcomes than poor academic performance.¹⁰² One study linked a high rate of grade retention among some foster youth to a low rate of employment after high school, and suggested that high rates of grade retention among foster youth could hinder the successful transition to adulthood.¹⁰³

97 Andrea G. Zetlin & Lois A. Weinberg, *Understanding the Plight of Foster Youth and Improving Their Educational Opportunities*, 28(9) CHILD ABUSE & NEGLECT 917, 918 (2004); Mason Burley & Mina Halpern, *Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care*, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, at 1 (2001).

98 Calvin, E., *Make a Difference in a Child's Life: A Manual for Helping Children and Youth Get What They Need in School*, at 1 (TeamChild and Casey Family Programs, January, 2008), available at <http://www.teamchild.org/manual/Entire%20Manual%202008.pdf>.

99 Burley & Halpern, *supra* note 97, at 9.

100 Zetlin & Weinberg, *supra* note 97, at 920.

101 *Id.*

102 Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth Conditions of Youth Preparing to Leave State Care*, Chapin Hall at the University of Chicago, at 41 (2004), available at http://www.chapinhall.org/sites/default/files/CS_97.pdf.

103 Thomas E. Keller et al., *Approaching the Transition to Adulthood: Distinctive Profiles of Adolescents Aging Out of the Child Welfare System*, 81(3) SOC. SERV. REV. 453, 456(2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2802332/>.

Special Education

There are conflicting views on the disproportionate number of foster children enrolled in special education programs. One set of researchers found that 48% of the foster youth in their study received special education services;¹⁰⁴ other studies corroborate this figure.¹⁰⁵ The national average ranges from 11% to 13%.¹⁰⁶ On the other hand, numerous researchers contend that because of difficulties in evaluating foster youth related to their high residential mobility, the numbers are more likely to underestimate the actual number of foster children in need of special education services.¹⁰⁷

For foster children in special education, changing schools means delays in receiving school records. As a result, the foster child's Individual Education Plan (IEP) is not implemented until the new school does its own assessment and holds its own special education Admission, Review, and Dismissal (ARD) meeting, a multi-disciplinary hearing that includes teachers, administrators, special education personnel, the child's legal guardian, and frequently, a licensed school psychologist.¹⁰⁸ It is not uncommon for foster youth to be transferred out of a particular school before they can even be assessed or the school can start implementing their IEPs to address significant academic and/or behavioral problems.¹⁰⁹

Behavioral problems

A substantial body of research shows that abused and neglected children commonly struggle with social interactions.¹¹⁰ They are much more likely than their peers to misinterpret neutral situations as threatening, have poor impulse control, and engage in aggressive behavior with adults and other children.¹¹¹ The Center for Public Policy Priorities finds that while only 17% of "the general student population" in Texas received at least one disciplinary action, 31% of all foster care students experienced disciplinary actions at school.¹¹² Abused foster children in particular are much more likely to be socially alienated, have higher levels of delinquent behavior, substance abuse problems, and higher rates of expulsion and incarceration.¹¹³ These behaviors present public schools with difficult challenges.¹¹⁴

104 Courtney, *supra* note 102, at 40.

105 Bonnie T. Zima *et al.*, *Behavior Problems, Academic Skill Delays and School Failure Among School-Aged Children in Foster Care: Their Relationship to Placement Characteristics*, 9 J. CHILD & FAM. STUD. 87, 88 (2000).

106 Pricilla Pardini (2002), "The History of Special Education," *Rethinking Schools* 16(3) http://www.rethinkingschools.org/restrict.asp?path+archive/16_03/Hist163.shtml.

107 Zetlin & Weinberg, *supra* note 97, at 921.

108 *Id.*

109 Lois Weinberg & Nancy Shea, *Advocacy's Role in Identifying Dysfunctions in Agencies Serving Abused and Neglected Children*, 2(3) CHILD MALTREATMENT 212, 220-221 (1997).

110 Jane Burstain, *The Texas School Disciplinary System and Foster Care Children*, Center for Public Policy Priorities, Policy Page No. 09-392, at 1(2009), available at http://www.cppp.org/files/4/392_education.pdf.

111 *Id.*

112 *Id.* at 3.

113 Keller, *supra* note 103, at 455.

114 Burstain, *supra* note 110, at 1.

YOUTH “AGING OUT” OF FOSTER CARE

In Texas, over 1,000 youth age out of foster care every year.¹¹⁵ These children now face a plethora of hardships that the general population of young people their age will never know. One study found that 54.4% of former foster youth had one or more mental health disorders (20% of those youth were diagnosed with major depression); 65% experienced seven or more school changes; only 84.8% completed high school; only 1.8% completed a bachelor’s degree; 33.2% had household incomes below the poverty line; and 33% had no health insurance.¹¹⁶ Furthermore, older youth—who are the most likely to age out of the system—usually live in group homes or institutions, which are the “least ‘family-like’ settings.”¹¹⁷ In this particular form of placement, it becomes even harder for the youth to find mentors who can guide their transition from foster care into adulthood, as the attention provided to each young person tends to be diluted.¹¹⁸ With these findings, it is easy to see why foster youth who age out are far more disadvantaged than other young people their age.

Although the majority of children in PMC find homes before they become adults, 20% never do. According to Casey Family Programs, *teens (ages 15-19) in foster care are among the “most disconnected youth” in America.*¹¹⁹

CASE STUDY



One foster teen, six days from her 18th birthday, is not sure what will happen once she leaves foster care. She entered foster care as an 11- or 12-year-old. She cannot remember how many placements she has had, but knows she has lived in Corpus Christi, San Antonio, San Marcos, Canyon Lake, Victoria and in the Valley. She lived with some foster families who treated her like family. Others, she said, “didn’t treat me like they did their own children. It was like a job and they were in it for the money.” Almost every year she had a different caseworker. She has only been to her placement reviews hearings once or twice. She had wanted to go to her last one. “Who wouldn’t want to go?” she said, but her caseworker did not pick her up, and so she was not able to attend. Although she is aging out of foster care in six days, she has no idea what she is going to do. Her caseworker has not told her anything about aging out. All she knows is that “she is getting picked up on Wednesday.” She does not feel prepared.

115 In 2009, 1,453 youth aged out or were otherwise emancipated from the DFPS care. 2009 DFPS Data Book, *supra* note 2, at p.62.

116 Peter J. Pecora, et al., *Improving Family Foster Care: Findings From Northwest Foster Care Alumni Study*, Casey Family Programs, at 1, 2, 35 (2005), available at <http://www.nxtbook.com/nxtbooks/casey/alumnistudies/>.

117 Mark E. Courtney, *The Transition to Adulthood for Youth “Aging Out” of the Foster Care System*, in ON YOUR OWN WITHOUT A NET: TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS (D.W. Osgood et al. eds., University of Chicago Press 2005).

118 *Id.*

119 Richard Wertheimer & Astrid Atienza, *Vulnerable Youth: Recent Trends*, Child Trends (Working Paper), at 3 (2006), available at http://www.childtrends.org/Files/Child_Trends-2006_04_01_OP_VulnYouth.pdf. The three other categories were: (1) youth involved in the juvenile justice system; (2) teens who have children of their own; and (3) youth who never finished high school. This paper looked into recent trends with youth in these categories.

Housing and Homelessness

Former foster youth also have much more difficulty finding housing and often experience homelessness at least once after leaving foster care. In a 2005 study of former foster youth in the Pacific Northwest, 22.2% of the foster youth interviewed were homeless for one or more days.¹²⁰ A survey of former foster youth conducted two years later (2007) in the Midwest produced similar findings, with 18% of the youth being homeless at least once by age 21.¹²¹ Over half of these surveyed youth were homeless more than once.¹²²

IN THEIR WORDS

One Texas youth specialist noted:

“The majority of the former foster children I see are homeless. They are couch surfing, with no good options for finding a home. In fact, the situation is so severe that the community is in the process of building a new homeless shelter for young adults.”

Even if they are not dealing with homelessness, former foster children must frequently struggle to establish stable, long-term housing. The 2007 Midwest study found that one-third of former foster youth lived in at least three different places by the age 21, with 20% living in four or more places.¹²³ These studies indicate that the lack of a stable home in foster care continues to plague those who age out of care—and disrupts their lives long after they leave a state’s foster care system.

Mental and Physical Disabilities

According to the Pacific Northwest study (2005), 54.4% of foster youth who age out experience mental health problems compared to only 22.1% percent of the general population.¹²⁴ Another study conducted the same year, found that a third of surveyed former foster youth reported having mental health issues at the age of 19.¹²⁵ The most prevalent health problems were alcohol and other substance abuse, major depression, and Post Traumatic Stress Disorder (“PTSD”).¹²⁶ In fact, according to one study, adults who were formerly in foster care suffer from PTSD at nearly five times the rate of the general population and exceeded the rate of U.S. combat veterans, with over 25% of former foster youth still dealing with the often disabling condition.¹²⁷

120 Pecora (2005), *supra* note 116, at 2.

121 Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, Chapin Hall at the University of Chicago, at 15 (2007), available at http://www.chapinhall.org/sites/default/files/ChapinHallDocument_2.pdf.

122 *Id.* at 16.

123 Courtney (2007), *supra* note 121, at 15.

124 Pecora (2005), *supra* note 116, at 32.

125 Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*, Chapin Hall at the University of Chicago, at 41 (2005), available at http://www.chapinhall.org/sites/default/files/ChapinHallDocument_4.pdf.

126 *Id.*

127 Assessing the Effects of Foster Care: Mental Health Outcomes from the Casey National Alumni Study—available at www.casey.org/Resources/Publications/pdf/CaseyNationalAlumniStudy_MentalHealth.pdf

Poverty & Unemployment

Youth aging out of foster care have much more difficulty holding jobs that pay them decent wages when compared to the general population. At the time of the Midwest study (2005), only 40% of participating youth were employed at the age of 19.¹²⁸ These percentages did not improve over the next two years, with only 49.6% of men and 57.1% of women being employed by the age 21.¹²⁹ A separate 2005 study conducted in Alaska found that 58.5% of foster alumni were working at the time they were interviewed.¹³⁰ These low employment rates seem to have remained steady over the years. An older study conducted in Texas reported 60% of the former foster youth having a history of unemployment and financial instability, mostly due to lack of job skills.¹³¹ These youth also reported taking any job they could find, which required frequent moves.¹³²

The lack of steady employment results in low and sporadic income. More than 80% of foster youth are unable to support themselves even four years after leaving care, and 33.2% lived below the poverty line.¹³³ Even when former foster youth are able to find employment, their income is extremely low. In the Midwest study, the mean hourly wage for former foster youth was \$7.54/hour, with 75% earning less than \$5,000 and 90% earning less than \$10,000 the previous year.¹³⁴

Educational Deficits

Casey Family Programs has documented staggering educational deficits among foster youth. Compared to the general population, foster youth are: 1) more than twice as likely as non-foster youth (37% v. 16%) to drop out of high school; 2) less likely to be enrolled in college preparatory classes (15% v. 32%); 3) significantly under-represented in post-secondary programs; 4) often at least one grade level behind their peers; and 5) much more likely to be in special education classes than their peers.¹³⁵

Recent studies have confirmed these dismal statistics. The Midwest study found that more than one-third of former foster youth had neither a high school diploma nor GED by age 19.¹³⁶ By the time these youths turned 21, around 25% still had not received a diploma or GED.¹³⁷ The Pacific Northwest study found a much higher rate of high school completion at 84.8%.¹³⁸ However, it also found that 28.5% of the time, foster children exited high school with a GED, which is six times the rate of the general population.¹³⁹ As for post-secondary education, very few foster youth who aged out of the system attend college or vocational school. Roughly, between 30% and 40% receive some educa-

128 Courtney (2005), *supra* note 125, at 23.

129 Courtney (2007), *supra* note 121, at 79-80.

130 Jason Williams et al., *Alaska Foster Care Alumni Study*, University of Alaska Anchorage, at 41 (2005), available at http://www.uaa.alaska.edu/swep/upload/ak_foster_care_alumni_study.pdf.

131 Texas Foster Care Transitions Projects ("TFCTP"), *All Grown Up, Nowhere to Go: Texas Teens in Foster Care Transition*, Center for Public Policy Priorities, at 2, 12-13 (2001).

132 *Id.*

133 Pecora (2005), *supra* note 116, at 37.

134 Courtney (2005), *supra* note 125, at 25-26.

135 Peter J. Pecora et al., *Assessing the Effects of Foster Care: Early Results From the Casey National Alumni Study*, Casey Family Programs, at 46 (2003), available at http://www.inpathways.net/casey_alumni_studies_report.pdf.

136 Courtney (2005), *supra* note 125, at 20-21.

137 Courtney (2007), *supra* note 121, at 77.

138 Pecora (2005), *supra* note 116, at 2.

139 *Id.*

tion beyond high school.¹⁴⁰ However, only 16.1% receive vocational/technical degrees, and less than 2% receive bachelor's degrees.¹⁴¹ A lack of education is a major contributing factor to foster youths' below average employment and income levels.

Incarceration

Former foster youth are also more likely to be arrested and incarcerated. According to the Texas Foster Care Transitions Project study, 5% of the study sample had been or were currently incarcerated in state prison.¹⁴² At the time of the study (2001), the number of foster youth incarcerated nearly doubled that of the general population.¹⁴³ In the 2005 Midwest study, 38.8% of the 19-year-old males had been arrested, and 30% had been incarcerated since they were last interviewed before exiting care.¹⁴⁴ When they were interviewed at age 21, 26.6% had been arrested again and 35.8% had been incarcerated.¹⁴⁵

IN THEIR WORDS

One Attorney Ad Litem explained it this way:

“Most children at one point are considered the victim. Then they encounter the juvenile or criminal justice system because they act out and don’t have any guidance. All of a sudden they are no longer the victim but are considered the criminal or deviant or perpetrator. Most of these children end up being dealt with through the prison’s punitive system after aging out.... The more small offenses they have on their record, the less their chance of ever breaking out of the cycle and ending up anywhere but in jail.”

Teen Pregnancy

The prevalence of teen pregnancies among youth aging out of foster care is very high. One study found that 42% of foster females who aged out became pregnant only a few years after exiting.¹⁴⁶ In the Midwest study, over one third of the young women reported becoming pregnant a year after their initial interview, which was at age 17 or 18, and 18% of those had already been pregnant more than once.¹⁴⁷ By the age 19, half of the girls had been pregnant at least once.¹⁴⁸ When these same girls were interviewed again two years later, 71% reported a previous pregnancy and half became pregnant since their last interview.¹⁴⁹ Teen pregnancies also correlate with a reliance on government benefits.

140 *Id.* at 37 (42%); Courtney (2007), *supra* note 121, at 26 (30%).

141 Pecora (2005), *supra* note 116, at 36.

142 TFCTP, *supra* note 131, at 1. This number may even be higher if city and county jails were included.

143 *Id.* Foster youth were at 21.4 per 1,000, while the general population 19-29 years of age was only 12.7 per 1,000.

144 Courtney (2005), *supra* note 125, at 62.

145 Courtney (2007), *supra* note 121, at 82-83.

146 Casey, *supra* note 127, at 1.

147 Courtney (2005), *supra* note 125, at 52.

148 *Id.* at 54.

149 Courtney (2007), *supra* note 121, at 50.

One study found that almost all former foster females with one child reported needing government benefits at some point after leaving foster care.¹⁵⁰

IN THEIR WORDS

One foster parent, whose foster children continue to visit her after aging out, describes it this way:

“These youth do not become productive adults. They have a hard time holding down a job. They cannot stay in a long-term relationship. They have children themselves but make very poor parents.”

A SNAPSHOT: CHALLENGES FACING FORMER FOSTER YOUTH

To better understand the challenges that former foster youth face as adults, the Chapin Hall research center at the University of Chicago conducted one of the largest longitudinal studies of youth aging out of foster care and transitioning to adulthood in the past decade. The following statistics are from the Chapin Hall Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24 (2010). This report is the fourth in a series reflecting follow-up interviews conducted over time with the same cohort initially interviewed as foster youth at age 17 or 18. These findings document the many challenges former foster youth face as adults. To access this study, see: <http://www.chapinhall.org/research/report/midwest-evaluation-adult-functioning-former-foster-youth>.

EDUCATION

- 24.4%** Lack a high school diploma or GED
- 5.7%** Completed higher education
- 25.6%** Completed one year of college, but no degree

EMPLOYMENT AND INCOME

- 48%** Employed
- 56.4%** Of those employed, percentage who worked 40 hours or more
- 44.3%** Of those employed, percentage who earned \$10 or more per hour
- 55.8%** Of those employed, percentage earning less than \$10,000 per year

HEALTH

- 25%** Multiple diagnosis of substance abuse, Post Traumatic Stress Disorder, or depression
- 12.5%** Health condition or disability limiting daily activities
- 43%** No medical insurance
- 56%** No dental insurance
- 11.8%** Receiving medication for emotional problems

CRIME

- 81.2%** Males/arrested
- 57.2%** Females/arrested
- 58.8%** Males/convicted
- 28.2%** Females/convicted

LIVING ARRANGEMENTS

- 66%** Lived in three or more places
- 30%** Lived in five or more places
- 24%** Homeless at least once (of those, 50% percentage homeless more than once)

PUBLIC ASSISTANCE

Receiving Food Stamps in past 12 months:

- 26.8%** Males
- 67.7%** Females

Receiving Rental Assistance/Public Housing in past 12 months:

- 3.4%** Males
- 12.2%** Females

- 58.2%** Females receiving WIC in past 12 months

PREGNANCY

- 77%** Females pregnant at least once
- 65.6%** Females pregnant since leaving foster care
- 21.1%** Females pregnant three or more times since leaving foster care

*What We
Learned*

FOSTER CARE BY THE NUMBERS

The following charts and analysis provide a compelling portrait of what children in long-term foster care experience. Some 7,000 children were in PMC in Texas for all or part of 2008. Before their transfer to PMC, these children had already spent up to 18 months in foster care (TMC). For these children, reunification with their families or placement with a relative was not possible; instead, the State became their “parent.” As the data shows, parental rights are terminated for a high percentage of children in PMC (71%). The younger a child is at the time he or she enters PMC, the greater likelihood that child has of being adopted. A majority of children entering foster care at an older age remain in foster care for long periods of time before aging out. For children in long-term foster care, frequent placements and changes in caseworkers are common.

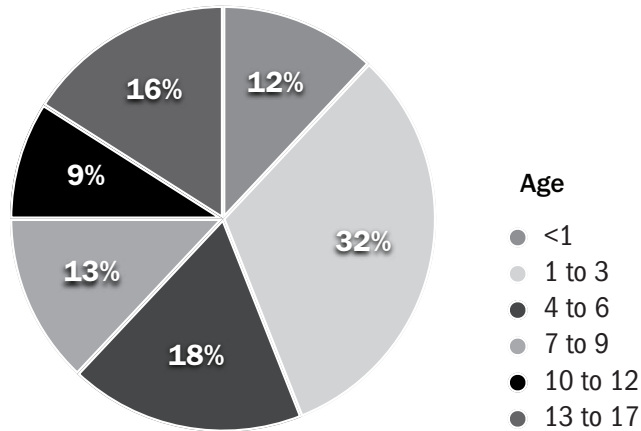
*What We
Learned*

Children and Youth Entering & Exiting PMC

Just over 6,000 children, from birth to age 17, entered PMC in FY 2008. Most children enter between the ages of one and three.

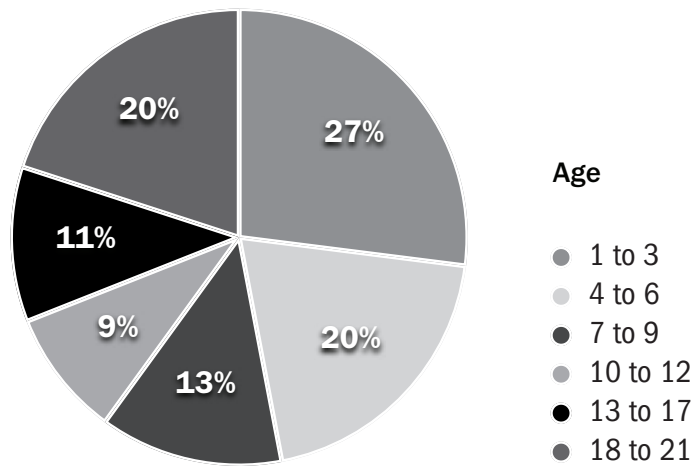
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PERCENTAGE OF CHILDREN ENTERING PMC IN FY 2008, BY AGE



As noted earlier, approximately 7,000 children were in PMC for some or all of 2008. The chart below shows the ages of children leaving PMC in 2008.

PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008,
BY AGE AT END OF YEAR

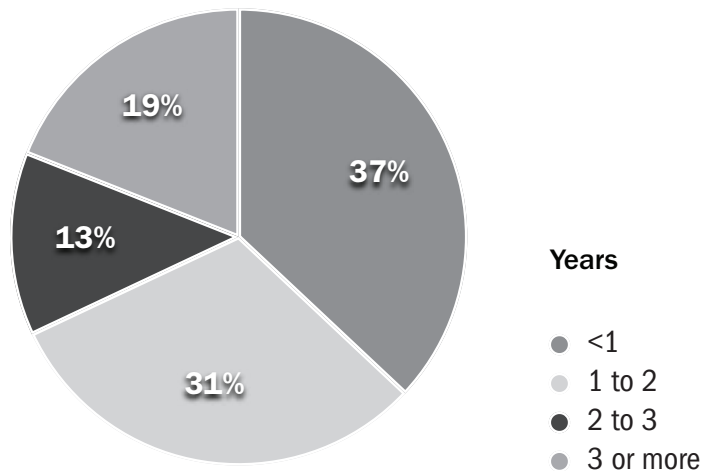


*What We
Learned*

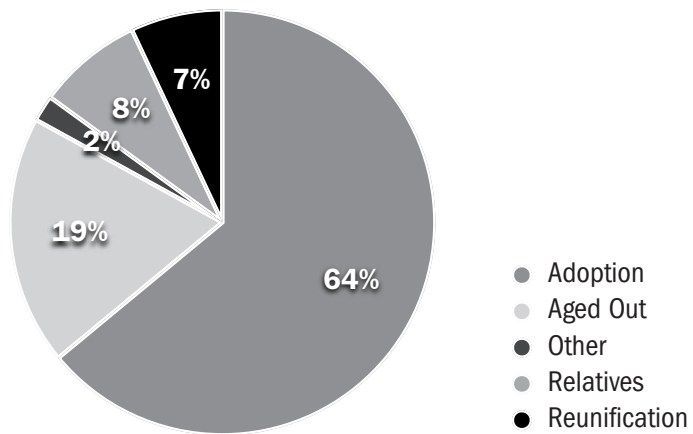
As can be seen from the chart above, most of the children who exited from the PMC system were in the youngest or oldest age ranges. As will be discussed later in this report, these numbers are not surprising because the younger a child is, the more likely a child is to be adopted, and the older a youth is, the more likely the youth will age out of PMC. Children younger than one are an exception to this pattern because they simply have not been in PMC long enough to complete the exit process.

The chart below shows the length of time it took for children to exit PMC.

PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008,
BY LENGTH OF TIME TO EXIT

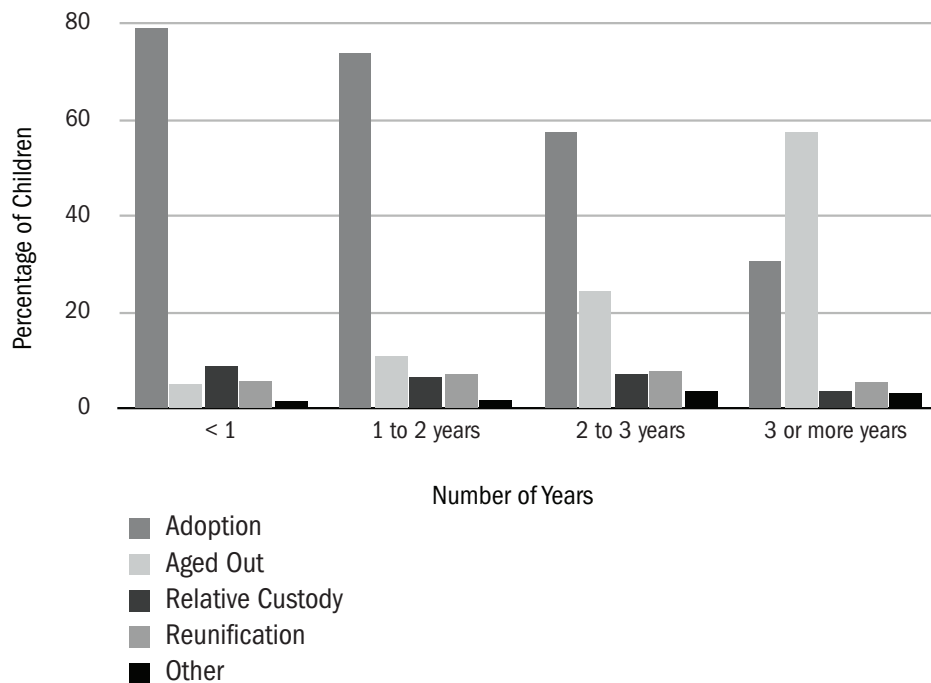


PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008, BY OUTCOME

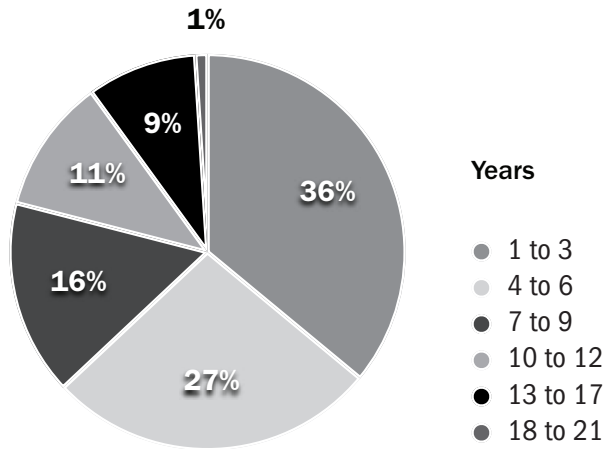


NOTE: The “Other” category includes emancipations per Chapter 31 of the Texas Family Code; court-ordered or independent living arrangements; running away; or incarceration in the Texas Youth Commission.

OVERALL LENGTH OF TIME IN PMC FOR CHILDREN EXITING PMC IN FY 2008, BY OUTCOME



PERCENTAGE OF CHILDREN EXITING PMC THROUGH ADOPTION IN FY 2008,
BY AGE AT ADOPTION

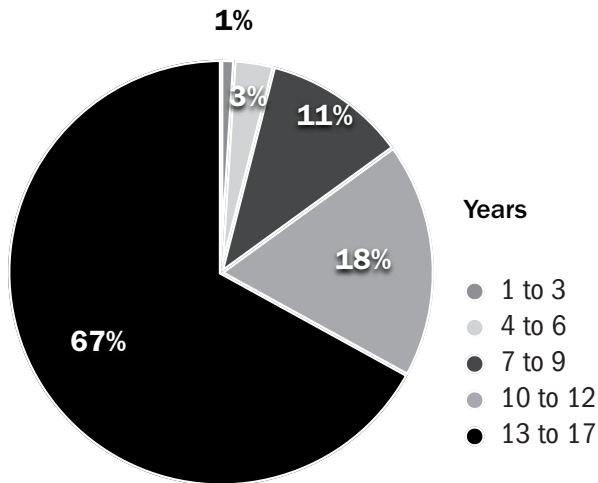


*What We
Learned*

57

An alarming two-thirds of children entering long-term foster care as teenagers exited PMC by aging out at 18.

PERCENTAGE OF CHILDREN AGING OUT OF PMC IN FY 2008,
BY AGE OF ENTRY IN PMC



These statistics reveal that the older a child is upon entering foster care, the less likely he or she will exit state care before aging out at 18. One explanation for these numbers is that children who are older when they enter the system are more likely to have been exposed to longstanding parental abuse or neglect, making behavioral and mental prob-

lems more likely. Further, in many cases, they have developed deeper connections with their biological family members. Both of these factors make adoption comparatively more difficult. Conversely, younger children are less likely to be adamant about returning to family and so are more likely to be adopted.

Of the children exiting PMC in less than one year in 2008, over 79% of them exited through adoption; only 5% of them aged out. In contrast, of the children who spent three or more years in PMC before exiting in FY 2008, over 57% of them aged out and only 30% were adopted.

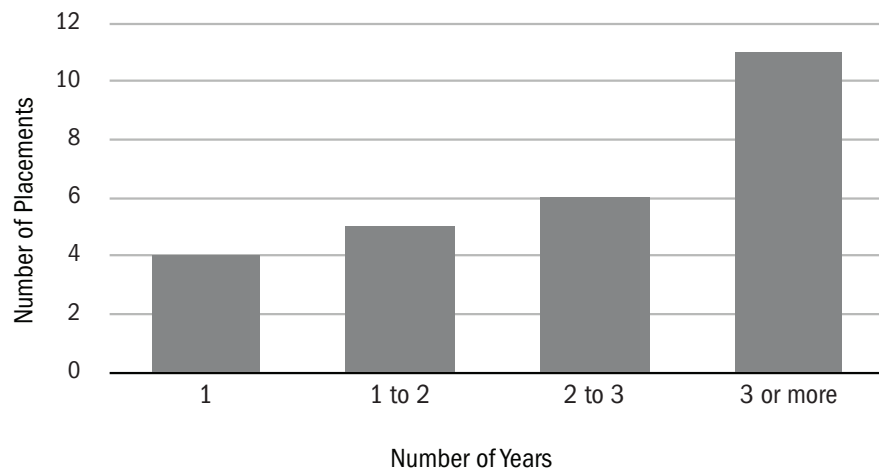
Multiple Placements in PMC

Our quantitative and qualitative research showed that the one constant in a PMC child's life is change. Foster children are continually being moved from one placement to another, often far from their original communities. These moves are constant disruptions in the child's life, and each time a child moves, he or she falls behind in school, must meet an entirely new group of people, and must establish new relationships with a new set of adults who exert control over their lives.

While the child is moving from place to place, the ultimate goal is still to ensure each child exits foster care to a safe, permanent home. For the vast majority of these children, returning home is not an option. Nearly 70% of the children in PMC have had their biological parents' rights terminated; only 32% enter PMC without termination of parental rights. The data show that of all children in PMC, only 7% are reunited while in foster care.

The longer a child remains in foster care, the more placements the child is likely to have. For example, in 2008, children who had been in care for less than a year had an average of four placements. Children who had been in care for more than three years by the end of 2008 had an average of 11 placements.

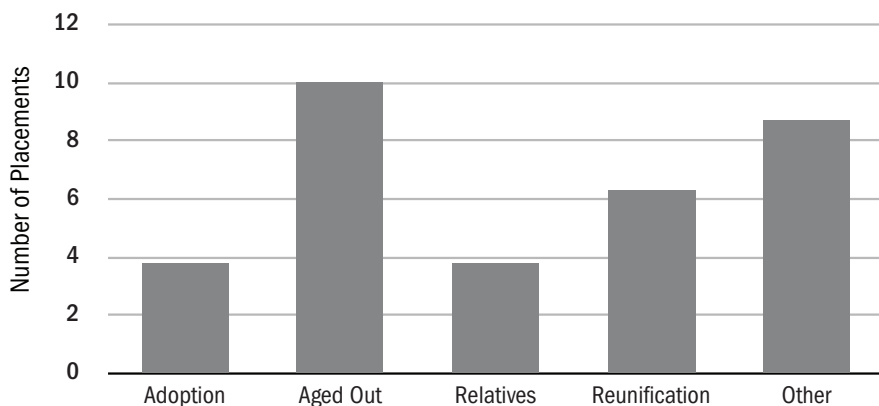
**AVERAGE NUMBER OF PLACEMENTS FOR CHILDREN EXITING PMC
IN FY 2008, BY LENGTH OF TIME IN PMC**



Of particular interest is an apparent correlation between how a child exits foster care and the number of times a child is moved within the foster care system. Children who

are adopted or placed with a relative had an average of 3.8 placements during their time in care, compared to an average of 10 placements for youth who aged out of the system at age 18. This may be because children who are adopted or are placed with a relative remain in care for a shorter period of time, while youth who age out tend to remain in care for a longer period of time. This trend is consistent in every surveyed jurisdiction included in this study.

AVERAGE NUMBER OF FOSTER CARE PLACEMENTS FOR CHILDREN EXITING PMC IN FY 2008, BY EXIT TYPE



Compared to the average of 3.8 placements for children ultimately adopted out of foster care, children placed at least once in an emergency shelter had an average number of 8.7 placements over their stay in DFPS care. This is most likely due to the fact that an emergency shelter is a temporary placement, while adoption is almost always a permanent placement.¹⁵¹ Additionally, children in specialized placements tend to have the most troublesome behavioral and mental health issues, limiting their placement options and often requiring transfers to and from higher levels of therapeutic care. These factors tend to increase the overall number of placements.¹⁵²

The average number of placements for all children exiting foster care in 2008 was 5.29 placements.

The longer these children stay in the system, the more they completely lose their sense of any one place feeling like “home.” To paraphrase one youth specialist, the only successful children in state care are those who receive permanent placements; children cannot expect to have happy, healthy lives if they are moving every few months.

Multiple Caseworkers

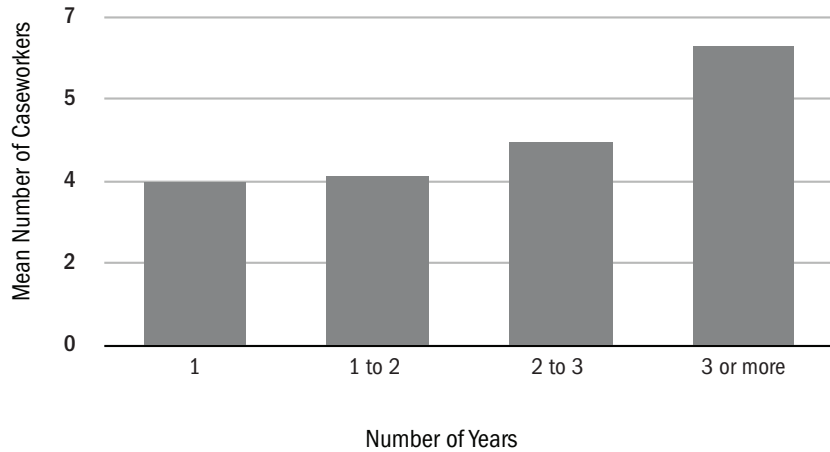
Due to frequent moves between placements, children in PMC often change caseworkers multiple times. This contributes to the child’s difficulties in establishing trust and, as a result, he or she is often reluctant to “tell their story” one more time to another adult who may, or may not, remain in his or her life for a significant period of time. “Revolv-

¹⁵¹ Sometimes children tragically re-enter care after a failed adoption. Fortunately, failed adoptions were found to be a rare occurrence.

¹⁵² See Appendix, *Types of Foster Care Placements and Initiatives to Find Permanent Homes*.

ing caseworkers” make it easy for the child’s needs to go overlooked and for essential services and support for the child to “fall through the cracks.” Children who enter foster care at an older age tend to remain in PMC for longer periods, are less likely to be adopted, and more likely to “age out” of care at 18. They also are more likely to experience a greater number of changes in caseworkers.

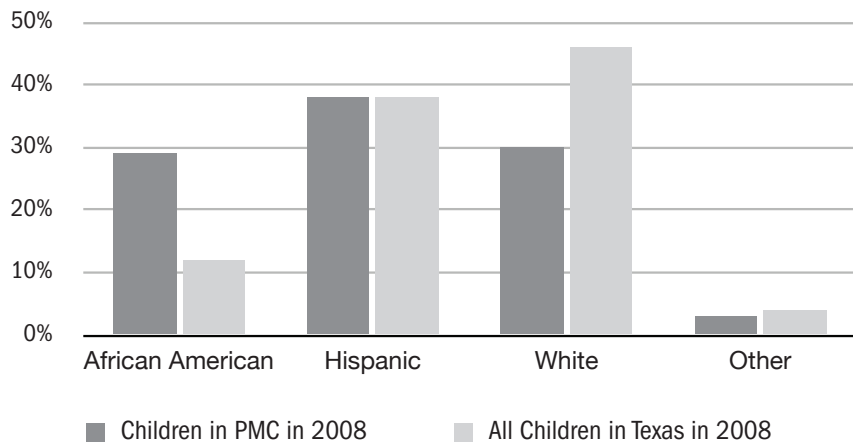
AVERAGE NUMBER OF CASEWORKERS FOR CHILDREN EXITING PMC IN FY 2008, BASED ON LENGTH OF TIME IN PMC



Race/Ethnicity

Race influences both who is likely to enter the foster care system and who is likely to remain there. Although the numbers vary depending on the makeup of the population involved, minority children, particularly African American children, are disproportionately represented in the foster care system in Texas and throughout the nation.¹⁵³

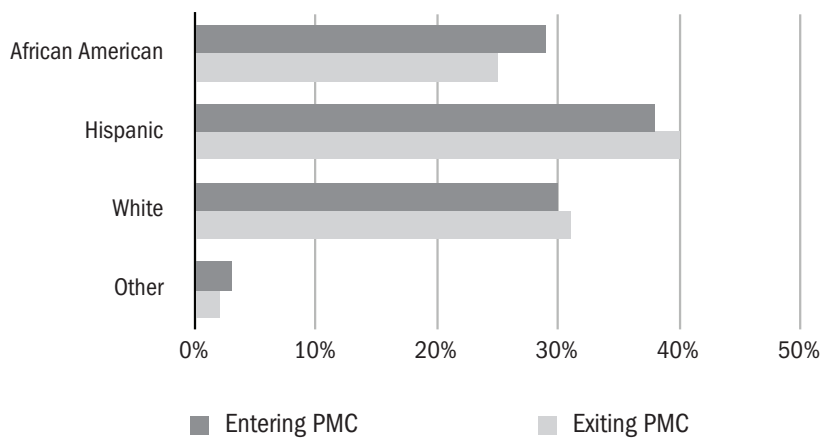
ETHNICITY OF CHILDREN IN PMC IN FY 2008, COMPARED TO ETHNICITY OF TEXAS’ TOTAL CHILD POPULATION



153 Robert B. Hill, *An Analysis of Racial/Ethnic Disproportionality and Disparity at the National, State, and County Levels*, Casey-CSSP Alliance for Racial Equity in Child Welfare, at 1, 23 (2007) available at <http://www.nxtbook.com/nxtbooks/casey/analysisofdisproportionality/#/0>. In Texas, Hispanic children are underrepresented in the foster care system. In a study conducted in 2003, where 44% of the children in Texas were Hispanic, only 36% of the foster care child population was Hispanic. *Id.* at 25. Additionally, it should be noted that Native American children were the only race more overrepresented in the foster care system than African Americans throughout the nation. However, that has not been the experience in Texas, as Texas’s Native American child population is near 0% of the entire child population in the state. *Id.*

*In Texas, African American children are at least twice as likely to be removed from their home and placed in foster care as white children.*¹⁵⁴ African American children’s representation in foster care is more than double (2.42 times) their percentage of representation in the general population of Texas children. Compared to white children, African American children are 2.9 times more likely to be placed in care.¹⁵⁵ However, *once in the foster care system*, the percentages of children by race remain stable and there is minimal fluctuation in how children move through the system—meaning *the overrepresentation of minorities in the system remains a constant*.

PERCENTAGE OF CHILDREN ENTERING AND EXITING PMC
IN FY 2008, BY ETHNICITY



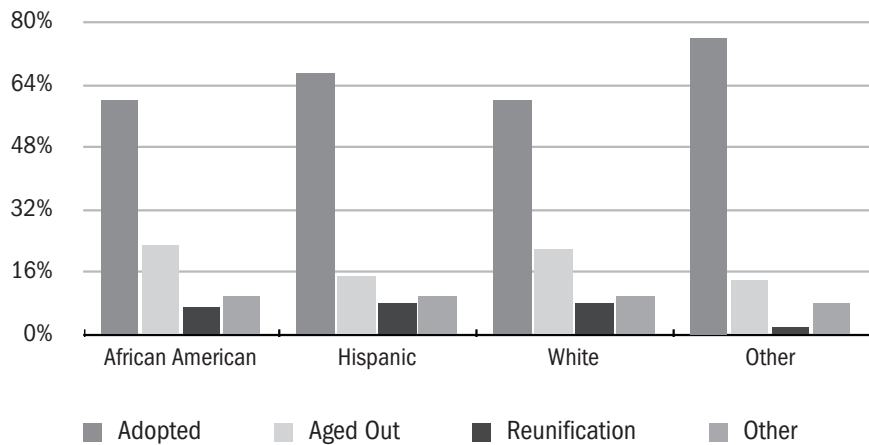
As can be seen from the preceding graph, children of all races and ethnicities in Texas tend to exit PMC at about the same rate that they enter. However, it should be noted that more African American children entered PMC than exited in FY 2008; in contrast, more white and Hispanic children exited PMC than entered that year. Further, as reflected in the next chart, African American children and white children tend to be adopted at about the same rate, using their respective populations in foster care as a base.¹⁵⁶ White children tend to be reunified with their parents more often, while African American children tend to age out of the system more often compared to other ethnic groups.

154 *Id.* at 23.

155 *Id.*

156 “Other” as an exit type encompasses kinship placement, emancipation, adult living placement, runaways, and all other exit types not encompassed by reunification, aging out, or adoption.

PERCENTAGE OF CHILDREN EXITING FOSTER CARE IN FY 2008,
BY ETHNICITY AND EXIT TYPE

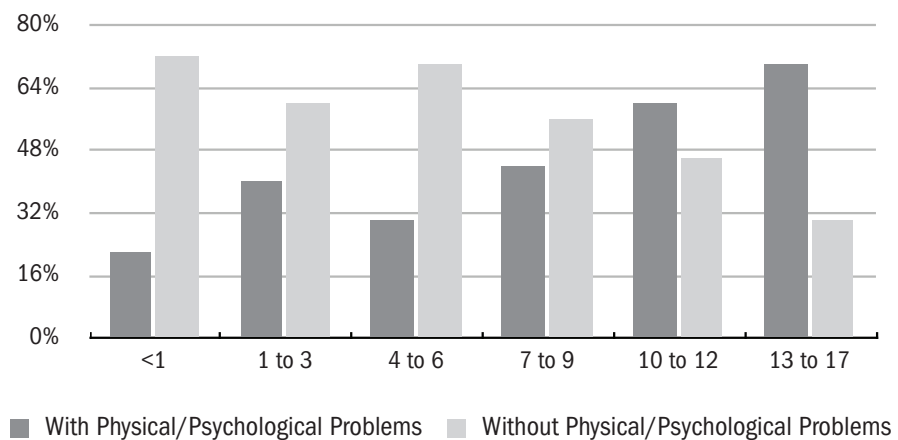


This is a significant issue that warrants further study and further analysis, and we will continue to work with the various governmental bodies, policymakers, and interest groups who are focusing on the disparities to develop further policy and recommendations.

Physical and Mental Disabilities

Many Texas foster children have medical issues, both physical and psychological. Some of these conditions were caused by the abuse and neglect that led to their removal, and some led their parents or caregivers to relinquish care to the State.

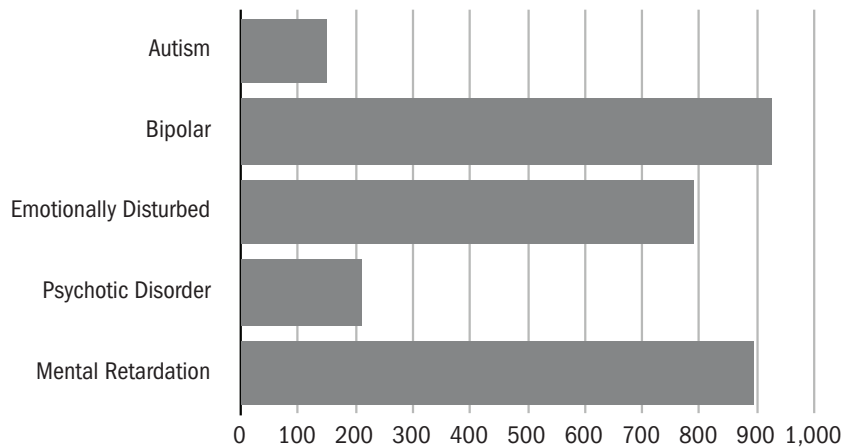
PERCENTAGE OF CHILDREN IN PMC IDENTIFIED AS HAVING A PHYSICAL
OR PSYCHOLOGICAL PROBLEM IN FY 2008, BY AGE



For example, in 2008 about 17% (3,585) of children and youth in PMC were listed as having some category of developmental health issue.¹⁵⁷ Slightly more than 130 of these children had severe hearing impairment issues, and nearly twice that many were severely visually impaired. About 1,000 children who were in PMC in 2008 were identified as medically complex or medically fragile.¹⁵⁸

Psychotropic drugs are prescribed for a large percentage of Texas foster children. A relatively high rate of psychological treatment is to be expected, as many foster children are dealing with the trauma of both difficult family situations and being removed from their homes. For example, children in foster care suffer from Post-Traumatic Stress Disorder at twice the rate of U.S. combat veterans.¹⁵⁹ Additionally, approximately 3,000 children and youth had *at least* one of five mental impairments identified in the chart below.

**SIGNIFICANT MENTAL IMPAIRMENTS OF CHILDREN
IN PMC IN FY 2008, BY TYPE**



157 “Developmental delay” here is “any significant lag in a child’s physical, cognitive, behavioral, emotional, or social development, in comparison with norms.” Encyclopedia of Children’s Health, <http://www.healthofchildren.com/> (last visited Sept. 28, 2010). “Developmental disability” here is a life-long disability attributable to mental and/or physical impairments, manifested prior to age 18. Dorland’s Medical Dictionary, available at http://www.mercksource.com/pp/us/cns/cns_hl_dorlands_split.jsp?pg=/ppdocs/us/common/dorlands/dorland/misc/dmd-a-b-000.htm (last visited Sept. 28, 2010). A child is described as having “mental retardation” when the child’s intellectual functioning level—as measured by standard tests for intelligence quotient—is well below average and the child has significant limitations in daily living skills. Encyclopedia of Children’s Health, <http://www.healthofchildren.com/> (last visited Sept. 28, 2010).

158 See generally Mary Law & Peter Rosenbaum, *Service Coordination for Children and Youth with Complex Needs*, CanChild Centre for Childhood Disability Research, at 3 (2004), available at <http://www.bluewires.com/canchildintranet/download/Servicecoordinationreport.pdf> (stating that children with complex needs are understood conceptually as those children whose problems are multiple in terms of health and developmental needs, services, sectors of care, and locations of care); Texas Association for Medically Fragile Children, *The Children*, <http://medicallyfragilechildren.org/children.html> (last visited Sept. 28, 2010) (child who is medically fragile has a “medical condition that is both life threatening and requires skilled nursing care”).

159 Casey, *supra* note 127, at 1. “Post-Traumatic Stress Disorder” is “a diagnosis based on symptoms of fear, terror, helplessness, avoidance of stimuli associated with past trauma, emotional numbing, sleep problems, irritability, hypervigilance, depression, anxiety, and poor concentration.” Charles E. Gentry & U.S. Department of Health & Human Services, *Crisis Intervention in Child Abuse and Neglect*, at iv (Glossary of Terms) (1994), available at <http://www.childwelfare.gov/pubs/usermanuals/crisis/crisis.pdf>.

COURT PRACTICES IN TEXAS: HOW THE PMC PROCESS IS WORKING

The interview process revealed a surprising level of consistency throughout the State as to oversight hearings, called *placement review hearings*, for children in PMC. Typically, placement review hearings are occurring every six months (as statutorily required), lasting 10 to 15 minutes, and accomplishing very little. *Most judges interviewed for this study expressed frustration with the lack of preparedness of the participants and reported that no one seemed to take full responsibility for these children.* They reported observing frequent communication breakdowns and having difficulty in determining where the impasse lies. It also appears that placement review hearings are *too often acting only as a status update on the child as opposed to a means of ensuring that all necessary steps are being taken to move the child into a safe, permanent home.*

Although the statute is relatively clear as to what must transpire at the placement review hearing, there are vast differences in local conduct of these hearings—which is largely attributable to the different perceptions of PMC held by the actors involved in these hearings, the ways in which individual courts are structured, and the differences in individual judge’s philosophies. Different views, court practices, and judicial philosophies around key PMC issues—such as reunification and family placement, termination of parental rights, the role of placement review hearings, what “permanency” really means, and the judicial role—are discussed below.

Currently, in the foster care system, there is a definite switch in the focus from TMC to PMC—but a switch in focus that, itself, needs to change. When acting in the best interest of the child in TMC, stakeholders are focused on “damage control.” CPS judges, Guardians Ad Litem, Attorneys Ad Litem, and other stakeholders focus on stopping any harm that has occurred or is occurring to the child due to abuse or neglect in the home and determining whether reunification with the family is possible. So many resources are spent on getting the child to safety during the TMC phase that once the child has the last of his or her TMC permanency hearings, the stakeholders feel relieved of some of the pressure to get the child out of foster care. All too often, the move to PMC is viewed as a signal that the child is out of danger, damage control has been successful, the State has become the child’s parent, and the child is “in a good situation.” In some cases, adoptions are in progress at the time of the permanency hearing; but for too many children, *PMC becomes a “permanent” placeholder.* The view that the child is “out of the woods” once in PMC is misguided: *the child still needs a permanent home.*

In many jurisdictions, the Guardian Ad Litem and/or CASA are released at the PMC stage—usually due to resources—leaving the prosecutor, Attorney Ad Litem, and the current CPS caseworker as the only participants in PMC hearings. *As a result, often no one at the placement review hearing truly knows the child.* As long as there is no contentious legal issue to resolve, the reports—when provided—are approved without much discussion.

These children essentially continue on with their day-to-day lives, receiving an increased level of attention right before the six-month placement review hearing and then back to the status quo. The judges report that these children typically bide their time until they can age out and go back home to their biological families, often harboring unrealistic but persistent hopes that “all will be fine” once they return. As one judge put it, “They’re just like an inmate serving time until they’ve reached 18.”

Texas Applesseed interviews also revealed that, *in most jurisdictions, there is no sense of immediacy to revisit the permanency issue during the PMC phase.* In fact, the statistics show that children who have been in foster care for more than two years are substantially less likely to be adopted or reunified with family. Judicial interviews confirmed that it is rare that a child ends up with a better permanency solution after having been in PMC for a period of time. This is especially true for children who enter PMC as preteens or teens. Without a permanent home, these children age out of the system at 18 with *no sense of belonging, no one to seek out for guidance, and no place to call home.*

This is important because *virtually every judge interviewed expressed dissatisfaction with the resources and services available to help youth age out of foster care, and most felt that the PMC youth were ill-prepared for adulthood.* The judges who tracked life outcomes of their former foster youth reported that the vast majority go back home, enter the criminal justice system and/or become parents of children who themselves end up in the CPS system. The judges proposed a variety of suggestions to better prepare the aging out youth for adulthood, including: 1) better transitional counseling programs; 2) minimum healthcare during the transition; 3) programs to foster reconnecting with family; 4) assistance in finding a job/vocational training and/or finishing school; 5) mentoring programs to pair foster youth with a successful adult who had formerly been in foster care; 6) boarding school-type campuses where youth could live while learning a trade; and 7) college tours to enable foster youth to envision themselves pursuing higher education. One judge requires that the youth obtain drivers' licenses while still in care.

But focusing on a youth's future, once she or he is about to age out of care, is too late. *PMC must be viewed by all involved as a process to move children into a safe and permanent home*—not simply as a means of checking up on them every six months, as is currently the case. Ensuring that PMC becomes a process that seeks to get children in safe, permanent homes requires changing perceptions of the purpose of a placement review hearing—and how those hearings are carried out.

Perceptions of the Purpose of Placement Review Hearings

Placement review hearings are meant to serve two purposes: 1) to monitor the well-being of the child; and 2) to ensure that all actors are doing everything required to get the child into a safe, permanent home.¹⁶⁰ The state statute specifies what DFPS must report to the court and what the court must determine at each hearing. Both the DFPS report and the findings of the court require a review of the child's current placement, status, and future plans for the child's well-being and advancement.¹⁶¹

The judges interviewed had divergent views of the purpose of the placement review hearings. *Currently, the prevailing view is that these hearings are to ensure that the child is safe and healthy and that the placement is appropriate—a "status quo" hearing of sorts.* Some judges go further and question the stakeholders as to the child's educational progress and emotional well-being. One of our pro bono partners reported attending a PMC docket that is held twice a year in that jurisdiction. She stated that in dozens of cases, the county attorney would ask a series of quick questions, with the caseworkers typically responding that "everything is great." Fortunately, the judge was prepared and asked a lot of probing questions about each child's current status.

¹⁶⁰ See generally TEX. FAM. CODE § 263.503.

¹⁶¹ *Id.* § 263.502, .503.

A few judges see the placement review hearing as a continuing conversation about permanency. They use these hearings in part to make sure that CPS is doing everything possible to achieve true permanency for the child. As one judge characterized it, PMC is a “way-station; it is not the ultimate goal for a child.”

Many judges expressed frustration with the lack of preparedness of participants at the placement review hearing. One judge remarked that PMC hearings often do not seem to be a priority for the participants and that he would be “shocked” if the attorneys did any preparation in advance. Another noted that the caseworker reports are typically a rehash of the basis for removal and only occasionally contain information as to present circumstances. A large number of judges said that they looked to the CASA advocate, when one is involved, for current information regarding the child. A few indicated that if they could have a CASA in every case, many of their CPS problems would be solved. Almost invariably, they acknowledged that the high turnover of CPS caseworkers means that the CPS representative in court at a given hearing is rarely sufficiently knowledgeable about the child to conduct a productive hearing. These judges attributed the high CPS turnover to case overloads, low pay, and too much bureaucracy and paperwork, leading to frequent burnout and frustration in not being able to do meaningful social work.

As noted, there can be no confusion that the dual purpose of placement review hearings is to assess the well-being of the child and reassess the plans for permanency. The Texas statute tracks many nationally identified “best practices.” *There is to be regular judicial oversight. The child is required to be heard by the judge. The hearings take a comprehensive look at how the child is doing. The plan for finding a permanent home for the child is re-examined to make sure it is appropriate and achievable. And, the judge can actively monitor the child, including scheduling follow-up hearings as frequently as needed.* All of these requirements indicate that the placement review hearing should be more than just a status quo hearing. All involved in this process—including the court and legal system—must appreciate and fulfill their respective obligations in the PMC process to ensure that these children find safe, permanent homes efficiently and effectively.

Different Perceptions of the Judicial Role

Many judges indicated that in-depth placement review hearings are not necessary to fulfill their duties. Most of the contentious legal issues are resolved during the TMC phase, except for the major overriding concern in achieving a permanent home for the child. Some judges do not see a reason to have in-depth hearings unless the parties—through the adversary process—bring up specific legal issues for them to decide. They see their role as arbiters or decision-makers, rather than in a more expansive oversight role that asks probing questions, requests relevant and timely reporting, ensures timely actions in the child’s best interests, and keeps the focus on moving the child from foster care to a permanent, safe home as quickly as possible. Still, a few judges have concluded that they must hold the parties accountable to move cases forward to better permanency solutions, including holding hearings more often than every six months. But many confessed that they lacked the resources to do so in all the cases where such pressure is needed.

IN THEIR OWN WORDS

One judge described the urgency in keeping the focus on finding permanent homes for children in PMC:

“You have children who have been victimized in their family of origin and then we’re going to take them and put them under care. We owe them. We are responsible for them. And we have a responsibility to make sure that they’re not victimized again.”

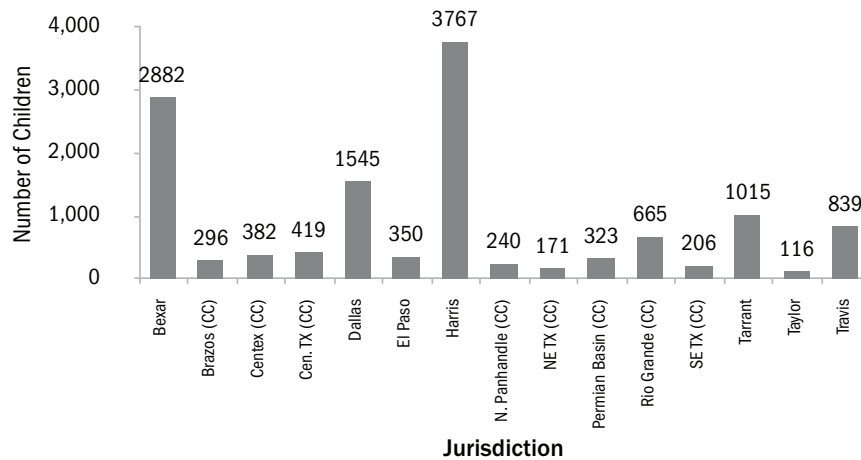
One judge reported feeling “helpless to help the kids who are [in PMC] for a long time.” In another jurisdiction, a child advocate noted “the judge doesn’t seem to want to tell people what to do.” However, there are multiple sources that provide guidance as to the role of judges in these cases.

VARIATIONS IN OUTCOMES: FOSTER CHILDREN IN 15 STUDY JURISDICTIONS

The jurisdictional data demonstrates that there is great diversity in outcomes for children in different jurisdictions. These variations are attributable to a wide range of variables, including availability and utilization of resources, judicial philosophy, judicial experience, judicial leadership, demographics and regional values. This data provides a starting point for evaluating changes that can improve the entire system and identifying what counties can learn from one another in their efforts to get children out of foster care and into safe, permanent homes.

As anticipated, an analysis of DFPS data for the 15 counties and child protection court jurisdictions included in this study found substantial variation. We hypothesize that the kinds of variations observed in this study are likely found throughout the state and that one or more of the following may account for differences in foster care outcomes by jurisdiction: 1) local resources, 2) number and types of courts exercising jurisdiction over PMC cases, 3) available funding for the courts, 4) the number of available social workers and psychologists and other support services, 5) the number of CASA volunteers, 6) the number and variety of in-jurisdiction placement options, 7) court practices (docket management, whether children routinely appear in court, use of Attorneys Ad Litem and Guardians Ad Litem), and 8) community expectations and preferences for conservatorship and adoption versus reunification or placement with a relative. Of the 21,044 children in PMC in Texas for any part of 2008, 13,216 or 65 percent were located in the 15 court jurisdictions reviewed for this report.

NUMBER OF CHILDREN IN PMC IN FY 2008, BY STUDY JURISDICTION



It comes as no surprise that Harris County, with the largest population in the state, has the most children in PMC. While Dallas, Tarrant and Bexar counties are respectively Texas' second, third and fourth most populous counties,¹⁶² Bexar County has substantially more children in PMC than do Dallas and Tarrant counties.

Exiting PMC in the Study Jurisdictions

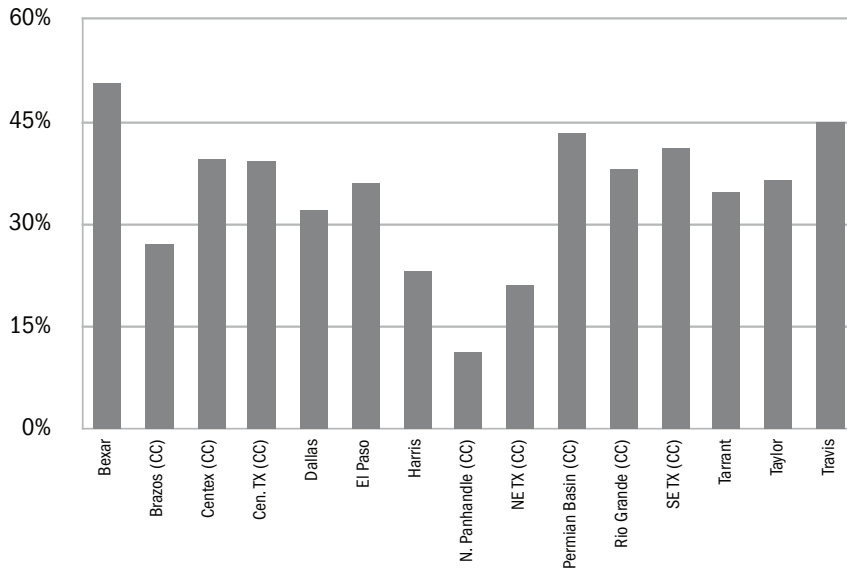
Among the 15 jurisdictions, Bexar and Travis Counties consistently compare favorably to the statewide percentages and averages, helping a larger percentage of their children exit foster care more quickly. El Paso County showed the next most favorable outcomes among county court jurisdictions included in this study. Each of the child protection courts had better percentages on at least one of the dimensions discussed below, but one child protection court, Central Texas, stands out for the number of dimensions on which its percentages and averages compare favorably to the statewide picture. Although unique characteristics of these jurisdictions may not be replicated elsewhere, undoubtedly they share some features with other jurisdictions that fare well at moving children through the foster care system. They may be good proving grounds for the practices that improve outcomes for children in PMC.

Time to Exit

As noted above, of children exiting PMC in FY 2008, 37% statewide exited PMC in less than a year. Among the Study Jurisdictions, Bexar and Travis Counties and five of the eight cluster court jurisdictions—Centex, Central Texas, Permian Basin, Rio Grande and Southeast Texas—had higher percentages of children who exited PMC in less than one year compared to the statewide average. On the other hand, among the Study Jurisdictions, the two jurisdictions with the lowest percentages of children exiting in under one year—North Panhandle and Northeast Texas—were child protection courts—*i.e.*, courts focused on child welfare issues.

162 We consulted the National Association of Counties (NACO) for 2005 population estimates to rank counties by size. NACO's data can be viewed at its website, http://www.naco.org/Template.cfm?Section=Find_a_County&Template=/cffiles/counties/pop_state.cfm&Selected_State=TX.

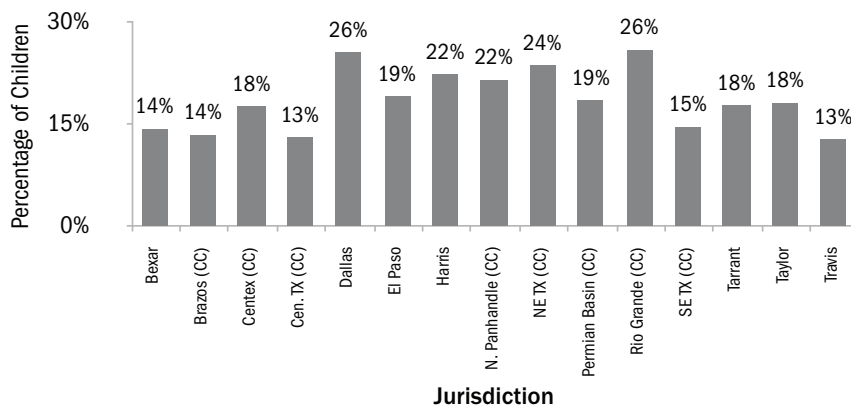
**PERCENTAGE OF CHILDREN WHO EXITED PMC IN FY 2008
IN LESS THAN ONE YEAR, BY STUDY JURISDICTION**



*What We
Learned*

At the other end of the spectrum, 19% of the children exiting PMCA statewide in FY 2008 had been in PMCA for three or more years. Among the Study Jurisdictions, five counties (Bexar, Travis, El Paso, Tarrant and Taylor) and five child protection courts (Brazos, Centex, Central Texas, Permian Basin and Southeast Texas) equaled or improved on that percentage (meaning that children exiting those jurisdictions had spent less time on average in PMCA).

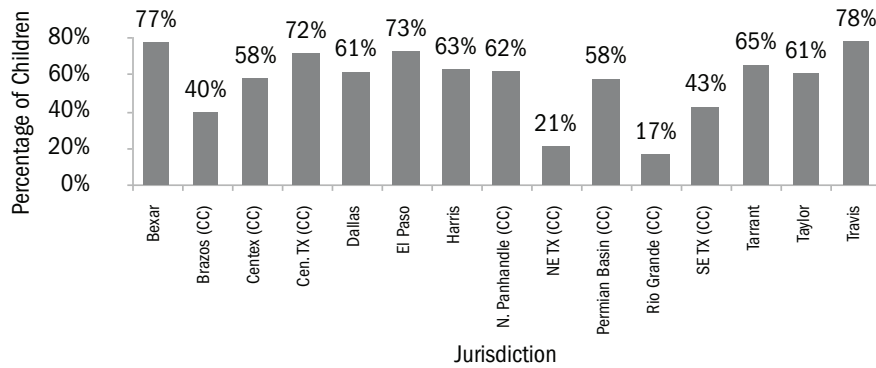
**PERCENTAGE OF CHILDREN EXITING PMCA IN FY 2008 AFTER MORE THAN
THREE YEARS IN PMCA, BY STUDY JURISDICTION**



Exit by Adoption

Sixty-five percent of children exiting PMC statewide in 2008 exited through adoption. Among the Study Jurisdictions, Bexar, El Paso and Travis Counties and one child protection court—Central Texas—had higher percentages of children who exited through adoption than the statewide percentage. The lowest percentages of exit through adoption among the Study Jurisdictions were connected to two of the child protection courts—Northeast Texas and Rio Grande.

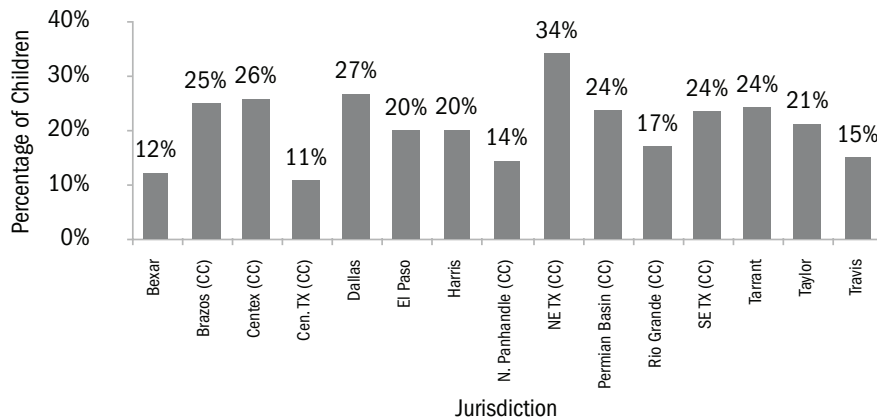
PERCENTAGE OF CHILDREN EXITING PMC IN FY 2008 THROUGH ADOPTION, BY STUDY JURISDICTION



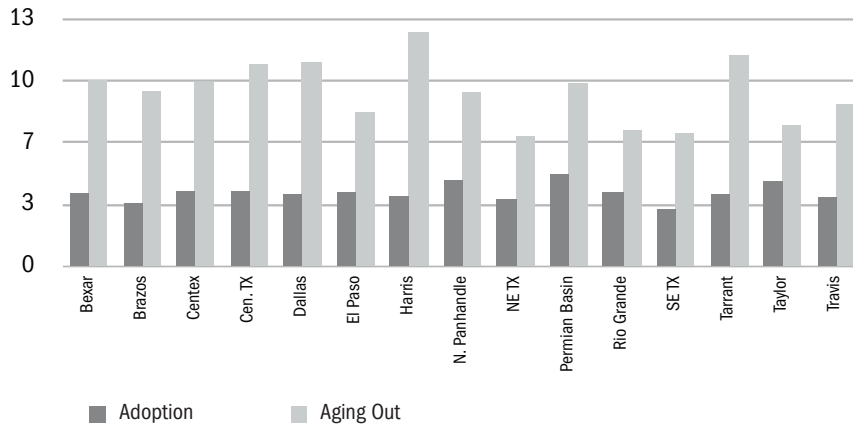
Exit by Aging Out

Statewide, 19% of children exited PMC in FY 2008 by “aging out” at 18. Among the Study Jurisdictions, Bexar and Travis counties and three child protection courts—Central Texas, North Panhandle and Rio Grande—had lower percentages of children who aged out of PMC.

PERCENTAGE OF CHILDREN AGING OUT OF PMC IN FY 2008, BY STUDY JURISDICTION



**AVERAGE NUMBER OF PLACEMENTS FOR CHILDREN IN FY 2008,
BY EXIT TYPE AND JURISDICTION**



Summation

Statewide foster care statistics and the foster care data collected from 15 individual court jurisdictions tell essentially the same story. The younger the child enters foster care, the greater likelihood that he or she will be adopted or permanently placed with a relative or family friend. Older children entering the system are more likely to “age out” at 18. Foster children who are ultimately adopted or placed with a relative move on average between four different placements before exiting foster care, but for youth aging out of the system at 18, the moves are more frequent—an average of 10—and ultimately more damaging. The numbers reflect a high percentage of cases where parental rights have been terminated (71% in PMC cases).



TEXAS

has the strong judicial leadership and the robust statutory framework needed to improve how the courts and legal process work on behalf of children in long-term foster care.

FINDING A BETTER WAY

Changing the Face and Focus of PMC

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Our findings all lead to the same conclusion: PMC hearings need more leadership, attention, accountability and substance in order to accomplish both of their intended results: 1) to ensure safe, adequate and appropriate placement, including level of care and services, to meet the children's needs; and 2) to continue and facilitate the child's progression toward a safe, permanent home. As previously noted, the Texas statutory scheme contains most of the features that are necessary to achieve these goals. Still, there is a fundamental disconnect between the law and reality with respect to the placement review hearings that are the sole mechanism for accomplishing these objectives.

BEST PRACTICES FOR PLACEMENT REVIEW HEARINGS

- Child must be present in court.
- All close to the child must be provided notice and be present.
- One (and the same) judge for the duration the child is in PMC provides much needed continuity in these cases.
- Judge is fully authorized to exercise broad discretion to protect the child's best interest.
- Hearings should occur as frequently as necessary, and at least every three months.
- Hearings must be full and thorough, encompassing discussion of the child's placement, well-being, and progress towards the completion of the permanency plan.
- The court must thoroughly review any party agreements.¹⁶³

163 See Appendix, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Casey Family Programs, at 2-3 (2009).

GUIDANCE TO JUDGES: THE NEED FOR STRONG OVERSIGHT IN PMC CASES

As reported above, our interviews revealed a wide variety of philosophies and practices relating to the role of judges in the PMC phase—ranging from mere oversight of the adversary process to active judicial management of each case. If the system is to operate to protect the best interests of the foster child, the latter view—which is consistent with the legislature’s design—must prevail. In PMC cases, judges must actively oversee the appropriate delivery of services for children, including services that support the child’s education, mental, emotional, and physical needs; involvement in the legal process; and the appropriate attention given to their transition to adulthood.

Foster care cases need leadership and accountability. Although a careful organization of checks and balances is inherent in the statute, it is simply not working. The judges have both the duty and authority to fill in the void. The oversight of Texas’ child protective court judges requires that they take an active role in reviewing the decisions and recommendations of the stakeholders and not merely rely upon the adversarial process to define and develop the issues for a decision. These are not ordinary two-party cases in which competent attorneys present competing views of the law and facts. They are complex management decisions impacting human lives, and a collaborative process is needed to develop the best plan for each child. But collaboration does not mean that any stakeholder—including the judge—can or should defer to others to ferret out the real issues in a PMC case. The judge must ask probing questions and insist on all necessary information to make an informed decision about the best interests of the child even when the stakeholders have not brought forward sufficient information to the court or taken appropriate action with respect to the case. When necessary, the judge must demand accountability and exercise authority to require completion of a proposed plan or disposition for permanency for each child in his court.

The NCJFCJ encourages judges to:

Exercise their authority by statute or rule to review, order, and enforce the delivery of specific services and treatment of children at risk.

[and]

Exercise a leadership role in convening, developing, and maintaining programs of interagency cooperation and coordination among the court and the various public agencies that serve at-risk children and their families.¹⁶⁴

In Texas, a trial judge has several powerful tools at his or her disposal including, but not limited to, the full range of contempt and sanction powers, the ability to replace underperforming Attorneys Ad Litem, referral to disciplinary authorities, appointment of special masters, and scheduling of hearings.

¹⁶⁴ National Council of Juvenile and Family Court Judges, “Resolution No. 6: Resolution Regarding Judicial Leadership in the Juvenile and Family Courts” (adopted July 19, 2006, NCJFCJ 69th Annual Conference), available at <http://www.ncjfcj.org/images/stories/dept/publications/resolution%20on%20judicial%20leadership.pdf>.

The NCJFCJ also notes that, “*The court must ensure that the child does not languish without permanence while the court or child welfare agency turns their attention to other crises.*”¹⁶⁵ This oversight role requires that the judge be more than a passive observer who decides issues upon the basis of what may be presented. Instead, the judge is the ultimate authority who must ask searching questions and insist on all necessary information to make an informed decision about the best interest of the child, even when the stakeholders have not brought forward sufficient information or performed as they should. *In that sense, the judge is an active overseer, who must use the full range of judicial powers to obtain necessary information and force stakeholders to do their jobs when they have otherwise failed to do so.* This judicial role is not only appropriate, but is *encouraged* in the context of child protection cases, as mentioned above.¹⁶⁶

Some judges interviewed by Texas Appleseed expressed concern about taking on such a leadership role because of perceived conflicts with judicial ethics.¹⁶⁷ The Code generally states that judges must uphold the integrity and independence of the judiciary, avoid impropriety or the appearance of impropriety, perform judicial duties impartially and diligently, and avoid conflicts between judicial and extra-judicial activities. *Nothing in the Texas Code of Judicial Conduct prohibits the role described above.*

One Judge, One Child: The One “Constant” in PMC

As both Casey Family Programs and the NCJFCJ recommend, each child should have one judge who oversees his or her foster care case. Texas law requires that suits affecting parent-child relationships be filed in the county where the child lives and remain in that county. This is one of the few constants in the life of a foster child. Children move from place to place. They move from school to school. They have three or four or more case-workers while they are in care. Usually, however, they remain in the same court jurisdiction. Even when they move, or are “placed,” out of their county, their court case stays in their original county. This gives foster children the continuity of judicial oversight that they need and deserve.

Summation

Texas’ statute follows best practices in requiring regular placement review hearings, specifying the kinds of important issues a court must consider to make an informed placement decision that will ensure the child’s safety and well-being, while maintaining a priority on moving the child out of foster care and into a permanent, safe home. However, in practice, for too many children, PMC becomes more of a “permanent placeholder”

165 National Council of Juvenile and Family Court Judges, *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, at 52 (2000), available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/aandpguidelinesbookcompact.pdf>.

166 See National Council of Juvenile and Family Court Judges, *supra* note 164.

167 In 2005, the State Commission on Judicial Conduct issued a public statement urging judges to be “cautious” about serving on the boards of directors of organizations like Texas CASA, which the Commission views as advocating a “particular legal philosophy or position.” In light of this statement, the Center for Public Policy Priorities (CPPP) prepared a list of judicial leadership activities that are likely permissible, including “establishing standards of practice for court, court staff, and attorneys” and “ensuring competent and adequately trained representation by attorneys.” CPPP, *Judicial Leadership and Child Protection*, Policy Brief, at 3 (2007), available at <http://www.cppp.org/files/4/Judicial%20Leadership%20Policy%20Brief%20-%20Final.pdf>. Nothing in the Commission’s public statement suggests that judges should discourage CASA’s participation in PMC hearings or shy away from exercising the full range of their judicial powers in the courtroom. Advisory opinions issued by the Texas Committee on Judicial Ethics indicate that it is appropriate for justices of the peace to serve as CASA volunteers (Opinion No. 208 (1997)), and to serve on host committees for fundraisers benefitting the non-profit Guardian Ad Litem Task Force (Opinion No. 252 (1999)). The opinions are available on Texas Courts Online’s website, <http://www.courts.state.tx.us/judethics/ethicsop.asp>.

than a process expediting their transfer from foster care to a permanent home outside of the State's care. Texas judges hold conflicting views of their roles in PMC cases—and as a result, placement review hearings are often less than productive and become little more than “status quo” reports. Some judges see the placement review hearing as a continuing conversation about a permanent home for the child, but many do not. However, the NCJFCJ encourages judges to exercise strong oversight and leadership in these proceedings to assure “interagency cooperation and coordination” and to hold all involved in the foster care process “accountable” for expediting the search for a permanent home for the child and for not allowing the child to “languish” in long-term foster care.

An important part of the judge's responsibility in foster care cases is to ensure that all participants in the child's placement review hearing are fulfilling their roles, that the child's safety and well-being is paramount, and that meaningful progress is made to transfer the child out of foster care and into a safe, permanent home. Having a single judge throughout the course of the child's experience in foster care—or at the very least in PMC—makes a significant impact on the court's credibility with the child, knowledge of the circumstances, and ability to effect a positive outcome.

THE NECESSITY OF FOSTER CHILDREN ATTENDING COURT

Many children in PMC come to perceive the court system as a “faceless” machine making decisions in their lives over which they have no influence or control. This perception is exacerbated when they are prevented or discouraged from attending their own placement review hearings. The Texas Family Code provides the best practice—requiring the child to be present unless he or she is excused in rare circumstances. Both our research and our working group of experts confirmed that it is critical that the judge see and speak to the foster child. Further, the logistical challenges to having children in the courtroom have been and can be addressed in creative ways to permit their participation. Having the child present benefits the judge—who has the ability to obtain first-hand feedback about the child that is virtually absent from the paper record—as well as the child, who is empowered by the opportunity to understand and participate in the process that affects virtually every aspect of his or her life.

Texas' Statute Reflects Best Practice

Texas' statute recognizes that children benefit from meaningful participation in permanency hearings. Casey Family Programs and national legal organizations such as the American Bar Association, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the National Association of Counsel for Children have endorsed children's participation in dependency proceedings.¹⁶⁸ Several states report achieving permanency faster by increasing minors' participation in hearings and case planning. The federal Chafee Foster Care Independence Act encourages minors to be actively involved in making permanency recommendations and other case decisions.¹⁶⁹

168 See Andrea Khoury, *Seen And Heard: Involving Children in Dependency Court*, 25 A.B.A. CHILD LAW PRAC. Vol. 10 (2006), available at <http://www.abanet.org/child/empowerment/seenandheard.pdf> (listing organizations supporting increased participation of children in dependency proceedings).

169 See 42 U.S.C. § 677.

Children’s voluntary participation in permanency hearings is beneficial in several respects:

1. Children who voluntarily participate in hearings report feeling less helpless and more informed about their situation, compared to children who are not allowed to participate.

Foster children often exhibit feelings of fatalism and insecurity that are not surprising given the lack of control and continuity these children experience in their daily lives.¹⁷⁰ When they are excluded from the court proceedings that determine such fundamental issues as where they will live, who will take care of them, and whether they will have access to siblings, favorite teachers, and other important relationships, it is no wonder that many children perceive the legal system to be unfair and arbitrary—merely a continuation of the chaotic forces in the child’s life.¹⁷¹

Excluding children from the decision making process that is so important to them only exacerbates their already entrenched feelings of helplessness.¹⁷² In contrast, involving youth in their permanency hearings gives each child an opportunity to express their wants and needs, which can be very empowering, whether or not the judge is able to accommodate the child’s wishes.¹⁷³ This sense of being heard encourages a child to become “engaged in the proceedings, thus becoming more responsible for the course his or her life takes.”¹⁷⁴

Additionally, children who participate in their court hearings feel more informed about their situation and have more trust in information they have received directly from the court.¹⁷⁵ As one 15-year-old stated, going to court is helpful because “if I hear things from other people, they might not be the truth.”¹⁷⁶ Receiving significant information first-hand can be particularly important when the information is difficult to hear. “Sometimes, all that is needed for a youth to understand that going home is not an option is to hear it from the judge’s lips. Sometimes it is seeing his or her parent show up drunk, or high, or not at all.”¹⁷⁷

Though it is never easy for children to accept a parent’s severe shortcomings, “hearing difficult information in an appropriate setting, with support available and the opportunity to express their own views about their life’s course, enables them to come to terms with and work through the abuse and neglect they have suffered.”¹⁷⁸ Distancing children from the proceedings can actually make it more difficult for them to let go of the past.¹⁷⁹

170 Jaclyn Jean Jenkins, *Listen to Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings*, 46 Fam. Court Rev. 163, 168 (2008) (describing the concept of “therapeutic justice”).

171 *Id.*; see also Victoria Weisz, Twila Wingrove & April Faith-Slaker, *Children and Procedural Justice*, 44 Court Rev., no 1/2, 2007-08, at 38 (noting that children who did not attend their dependency hearings tend to feel that “no one tells the judge what they think.”).

172 Jenkins, *supra* note 170, at 168.

173 *Id.* at 168-169.

174 *Id.* at 169.

175 Weisz et al., *supra* note 171, at 38.

176 *Id.*

177 Jenkins, *supra* note 170, at 169.

178 *Id.* (quoting Miriam Krinsky and Jennifer Rodriguez, *Giving a Voice to the Voiceless—Enhancing Youth Participation in Court Proceedings*, 6 Nev. L.J. 1302, 1307 (2006)).

179 *Id.*

2. Children who voluntarily participate in hearings perceive the court system to be more fair than children who are not allowed to participate.

Children who are not encouraged or allowed to participate in their court hearings report doubting that anyone has bothered to tell the judge what they want or think.¹⁸⁰ In contrast, children who are invited to participate in their court cases report feeling that “they were given a chance to tell their side of things, the judge listened to them when they talked, they were treated fairly during the hearings, and their Attorney and/or Guardian Ad Litem and their case worker did a good job telling the judge about their situation.”¹⁸¹

This perception of fairness may yield benefits down the road, as studies suggest children’s assessment of the fairness and legitimacy of the legal system are correlated with levels of juvenile delinquency: the more a child perceives legal authority as legitimate, the less likely he or she is to engage in illegal behavior.¹⁸² More immediately, the more a child perceives the process of foster placement as fair and thorough, the more likely the child is to be invested in the placement plan, and the more likely that the placement will be successful for the child.¹⁸³

3. Children who participate in hearings can provide the court with valuable information that can lead to better outcomes.

From the court’s perspective, children are an important source of information about their own cases.¹⁸⁴ Even children who are not able to verbally inform the court about their situation can provide information through their appearance, demeanor, and interactions with others.¹⁸⁵ Children who are able and willing to discuss their case with the court can provide details about how their current placement is working that are simply unavailable from other sources.¹⁸⁶

Additionally, children may be valuable sources of information about relatives and fictive kin who could become permanent caregivers.¹⁸⁷ Simple questions such as “Who do you spend most of your time with?” or “Over the holidays, where do you eat dinner?” can help identify adults who care about the child and who might want to step in on his or her behalf.¹⁸⁸

BARRIERS TO CHILDREN’S PARTICIPATION IN COURT

Though including children in their permanency hearings is beneficial on many levels, there are significant barriers to meaningful participation. Courts have experienced diffi-

180 Weisz, et al., *supra* note 171, at 38.

181 *Id.*

182 *Id.* at 42.

183 Jenkins, *supra* note 170, at 169.

184 Andrea Khoury, *With Me, Not Without Me: How to Involve Children in Court*, 26 ABA Child Law Practice no. 9, 2007, at 135-37.

185 *Id.* at 134.

186 *Id.*; see also ASKING THE RIGHT QUESTIONS II: JUDICIAL CHECKLISTS TO MEET THE EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN FOSTER CARE, 13-19 (2008), available at <http://www.casey.org/resources/publications/AskingQuestions.htm>.

187 Khoury, *With Me, Not Without Me*, *supra* note 184, at 137.

188 *Id.*; see also Fernando Clara and Kamalii Yeh Garcia, PROMISING COURT PRACTICES: STRATEGIES TO ACHIEVE TIMELY PERMANENCE, 25 (2009), available at <http://oregonfostercare.files.wordpress.com/2009/12/promising-court-practices.pdf> (describing the Model Court in Pima Arizona’s success with identifying permanent placements by asking juveniles directly).

culty in adapting their procedures to accommodate children's unique needs,¹⁸⁹ and some judges express concerns about re-victimizing children through the hearing process.¹⁹⁰ Though each requires careful thought, none of these barriers is insurmountable. In particular, the expansion and improvement of adult representation of children through CASA and Guardian Ad Litem programs can help ensure meaningful participation by children.¹⁹¹

Logistical Challenges

There are several logistical barriers to including children in their permanency hearings. First, just getting the child to the courthouse can be difficult. Scheduling the hearing can be problematic as well. A critical question is whether the child should miss another day of school to come to the hearing, particularly when many foster children are already experiencing significant disruption in their school schedules due to placement changes.¹⁹² Moreover, small children find it difficult to concentrate for the long periods of time it may take the court to conduct its business.¹⁹³

The judge presiding over permanency hearings has significant power to ameliorate these problems. Simply requiring that the child attend the hearing or that his absence be explained provides a strong incentive to the adult parties to work out the transportation and scheduling issues.¹⁹⁴ If necessary, the court can order a specific person to bring the child to a hearing.¹⁹⁵ Further, the court has control over its docket. It may be advisable to set aside a specific time for these hearings at the end of the day, both in order to minimize disruptions in the school day and to lessen the time children spend waiting for the court's other business to conclude.¹⁹⁶

Addressing the Cognitive Gap

Just getting the child to his or her court hearing is not enough. *Unless the child is actively engaged in the hearing and understands his role in it, the overall quality of the process will not be improved.*¹⁹⁷

"Children tend to be more accurate and complete in providing information when they are familiar with the questioner, their surroundings, and the purpose for being present."¹⁹⁸ For this reason, "[t]raining is needed [on how] to appropriately prepare youth before court, what to do with them once they are at court, and how to debrief them after the hearing."¹⁹⁹

Though many children report positive feelings about participating in their court proceedings, children under the age of 13 appear to have a limited understanding of the

189 Weisz *et al*, *supra* note 171, at 41.

190 Jenkins, *supra* note 170, at 171.

191 PEW COMMISSION ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE, AND WELL-BEING FOR CHILDREN IN FOSTER CARE, 41-44 (2006), available at <http://pewfostercare.org/research/docs/FinalReport.pdf>.

192 Jenkins, *supra* note 170, at 174.

193 Khoury, *With Me, Not Without Me*, *supra* note 184, at 134.

194 *Id.* at 130.

195 *Id.*

196 Jenkins, *supra* note 170, at 174.

197 Clara and Garcia, *supra* note 188, at 13.

198 Khoury, *With Me, Not Without Me*, *supra* note 184, at 134.

199 Clara and Garcia, *supra* note 188, at 13.

process.²⁰⁰ Nonetheless, even young children who are unable to comprehend the full procedural context of their court participation report feeling better about the legal process when they are given some general legal knowledge before the hearing.²⁰¹ For example, the American Bar Association's Child Law Practice has published some *Sample Legal Definitions for Children* that identify the key players and terms used in child protection courts in language that is accessible to children.²⁰² It is important for a trusted adult, such as an Attorney Ad Litem, a Guardian Ad Litem, or a caseworker to go over these terms and help prepare a child for the hearing.²⁰³

Similarly, it is important for the judge conducting the hearing to be aware that children at different developmental stages do not communicate like adults.²⁰⁴ *"Until children have fully developed linguistic skills, the responsibility for getting at what children know rests squarely on the adult, and in particular, on the language of the question, and not the language of the answer."*²⁰⁵ To help judges frame developmentally appropriate questions, the American Bar Association's Center on Children and the Law has developed bench cards, checklists, and benchbooks containing tips and examples of helpful techniques to engage children in the court process.²⁰⁶ In general, judges should try to minimize the use of unfamiliar procedural terms in hearings involving children and should make efforts to explain what is going on to the children who are present.²⁰⁷

Protecting Children from Re-Victimization in Court

A reason often cited for excluding children from court proceedings in abuse or neglect cases is that it would be traumatic for the child to relive painful experiences or to hear the court question his or her parents about these incidents.²⁰⁸ This risk appears to be much less likely in the PMC stage where the biological parents are rarely present. More fundamentally, while this is a fair concern, many foster children report they feel empowered, not victimized, by participating in the court hearings.²⁰⁹ As one commentator notes:

*The important thing to remember is that the youth has already been traumatized. What furthers their trauma is not inclusion in their hearings, but the rearrangement of their lives without any notice or the chance to speak their minds.*²¹⁰

There are also steps the court can take to protect children from further trauma while allowing them the benefits of courtroom participation.²¹¹ For example, if the child is uncomfortable discussing personal details in open court, the judge can allow the child to speak to her in chambers, with only the judge present, in order to give the child a

200 Weisz *et al.*, *supra* note 171, at 41.

201 *Id.*

202 Khoury, *supra* note 184, at 135 (internal citations omitted).

203 Khoury, *Seen and Heard*, *supra* note 168, at 153.

204 Khoury, *With Me, Not Without Me*, *supra* note 184, at 135.

205 *Id.*, quoting ANNE GRAFFAM WALKER HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE 24 (2d. Ed. 1999).

206 See Clara and Garcia, *supra* note 188, at 19 (describing resources).

207 Jenkins, *supra* note 170, at 174.

208 *Id.* at 171.

209 *Id.*

210 *Id.* at 172.

211 Khoury, *Seen and Heard*, *supra* note 168, at 152.

sense of privacy.²¹² The court can provide a separate waiting area for the child that would not be accessible to other witnesses.²¹³ The court can allow the child to attend and participate in the hearing, but can exclude the child from the hearing during specific testimony that the court, the child, or the child’s representative feel might be harmful to the child.²¹⁴ These measures protect the child from further victimization without rendering the placement review hearings opaque.

CHILDREN IN COURT: JUDICIAL OPINION & ACTUAL PRACTICE IN TEXAS

Texas Appleseed’s interviews reveal a wide range of opinions as to whether children should attend PMC proceedings. A few judges ensure that the children are at placement review hearings in virtually 100% of their PMC cases. On the other end of the spectrum are judges for whom it is quite rare to have the children in these proceedings. The remainder of judges appeared to concentrate toward the lower end of the spectrum, having children in the courtroom for between 10 and 30% of their PMC hearings.

Best Practice: Allowing Children in Court

Generally, the judges who required children to attend the placement review hearings believe that the children need to have an understanding of the court proceedings and a role in making the decisions affecting their lives. Having the children present is seen as important to facilitating collaboration, developing common goals, and keeping everyone accountable. The children were either in open court or in chambers, depending on what the judge deemed best for the individual child. Rarely, however, did a hearing take place without the child’s input. Of significance is the fact that these judges thoughtfully weighed the input and desires of the child when making their decisions, and the children were aware of this fact.

The judges also indicated that it was important for them personally to connect with the children, which is difficult on a paper record. One such judge stated that she had invited the children to share their special talents, such as perform music or recite poetry, in the courtroom, which made them feel special—and the children responded well. A few judges reported that they needed to see the children in person to determine whether they were overmedicated or exhibiting problematic behavioral conduct. Another, who has the children present in about 95% of court hearings, said that it is important to be able to observe their body language, their interactions with parents (if present) and with other stakeholders: *“Do they run to them or stay away? How can you learn about the kid if they don’t come to court?”* Several judges indicated that it is necessary for the children to be present so that they can talk to the judge directly—in chambers, with their Attorneys Ad Litem if necessary—to hear their concerns and answer their questions.

These judges usually work with the stakeholders to make it possible for the children to attend with the least amount of disruption to their lives. One judge in a large county jurisdiction held most placement review hearings for school-aged children after 4:00 p.m. and had standing orders to facilitate children’s attendance, such as requiring that:

212 *Id.*

213 *Id.*

214 *Id.*

- 1) all hearings be scheduled around the child's school and extracurricular activities,
- 2) no child be removed from school or dedicated extracurricular activities for a hearing or counseling, and
- 3) no child's placement be changed without a court order.

Another judge holds hearings on Saturdays and more frequently in the summer because he believes it is so important to have direct conversations with PMC children. One judge held hearings at some of the local special education schools, which was reported to be a big success, as both the teachers and children appreciated the opportunity to participate.

Judges Who Do Not Believe Children Should Be in Court

Leading the other school of thought are the judges who feel that children should not be in the courtroom except in exceptional circumstances—contrary to the statute. Their reasons include: 1) security concerns in courthouses that also house criminal offender trials; 2) disruption of the children's lives and schooling; 3) the risk that the perpetrator may be present or the children will hear troublesome information about themselves and their families; 4) the children may be placed out of the region or at a significant distance; and 5) the potential for intimidation by the formal, judicial process. One such judge suggested that judges be permitted to go to the children. A few judges did not know that the statute requires the children to be at the PMC hearings.

A number of judges were open to videoconferences when the children are out of the jurisdiction or otherwise unable to be physically present, although most courts do not have adequate teleconferencing capabilities. Telephone conferences were not favored by many of the judges because of a concern that hearing "official voices" on the other end of the line could be intimidating to the child and would not offer much value in return, especially if the child could not see or hear what was going on in the courtroom.

Judges with Children in Court Some of the Time

Some judges felt that courtroom participation may be appropriate for older children—especially those who are in the process of aging out—but not for younger ones. One judge requires PMC teens to attend all of the six-month review hearings if they live within 100 miles, and at least one per year if they are outside the geographic area. Of the jurists with this perspective, most agreed that ages 13-18 would be most appropriate for attending court hearings. Virtually every judge interviewed stated that the child should be permitted to come whenever he or she indicated a desire to be there, although at least one judge believed that some of those children tend to use court appearances as an excuse to skip school.

Summation

Texas' PMC statute requires that children be in court for their own placement review hearings. If a judge believes a child should not attend a specific hearing, he or she must *specifically* determine that an exception should be granted. Standing orders that indicate children do not need to attend their own placement review hearings contravene the letter and intent of the statute. In order to facilitate the statute's goal of increasing children's participation in PMC hearings, judges should require that the children be present and encourage their participation in placement review hearings, as the law requires, and only excuse their appearance in rare circumstances. Courts should engage in creative docketing and scheduling practices to enable and encourage children to be in court.

IMPROVING CHILD REPRESENTATION IN FOSTER CARE PROCEEDINGS

Children need an advocate in legal proceedings, especially foster care hearings, where they are not technically a party to the proceeding even though their lives are dependent on the outcome. Texas law establishes a structure under which the child's representatives operate. The Attorney Ad Litem (AAL) represents the child's "wants," the Guardian Ad Litem represents the child's "needs," and the DFPS acts as the child's parent. The statute entitles these advocates, as well as volunteer advocates, to receive notice of the hearing, present evidence, and be heard at the hearing.²¹⁵

The one part of the PMC's legal system that stakeholders agree is consistently working well across the state is the Court Appointed Special Advocates or CASA program, which serves in the role of Guardian Ad Litem or volunteer advocate. In nearly every Texas court jurisdiction with a CASA organization, CASA was uniformly praised by judges, caseworkers, foster families and the children themselves as being the stakeholder most knowledgeable about the child and best able to advocate on his or her behalf. Conversely, representation by the Attorney Ad Litem was often described as "poor," "disconnected," or "entirely ineffective." In virtually every jurisdiction, representatives of the child's interests were overburdened with cases and lack of resources.

*Finding A
Better Way*

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Competent Representation for Children

In order to successfully navigate the barriers to children's participation in court, it is crucial that the child have support not only from the judge, but also from a competent adult advocate.²¹⁶ A Guardian Ad Litem and/or a CASA volunteer advocate can be instrumental in preparing a child for his or her day in court, both by educating the child about what to expect and by asking the child questions that will help the child present his or her own point of view to the court.²¹⁷

Several states, including Minnesota and Georgia, have reported better outcomes in permanency proceedings as a result of children's participation in hearings supported by competent counsel or CASA representatives.²¹⁸ The Pew Commission on Children in Foster Care specifically recommends that CASA and Guardian Ad Litem programs be expanded and given increased financial and educational support, finding "it is critical that... children of all ages and capabilities have a skilled and knowledgeable legal advocate in all legal proceedings."²¹⁹

Attorney Ad Litem (AAL)

When CPS removes a child, the child is appointed an AAL. In most jurisdictions, the child continues to be represented by the same AAL when the child enters PMC. In nearly all of the 15 jurisdictions studied, AALs were retained for all or most of the children in PMC. The quality of that legal representation, however, varied significantly across the state.

215 TEX FAM. CODE § 263.501(d).

216 PEW COMMISSION ON CHILDREN IN FOSTER CARE, *supra* note 191, at 41-44.

217 *Id.*

218 Clara and Garcia, *supra* note 188, at 11, 19.

219 PEW COMMISSION ON CHILDREN IN FOSTER CARE, *supra* note 191, at 42.

The role of an AAL is unambiguous: the Attorney Ad Litem provides legal services to the child and “owes to the [child] the duties of undivided loyalty, confidentiality and competent representation.”²²⁰ The law lays out specific responsibilities, including interviewing the child after the attorney has been appointed, investigating the facts of the case, obtaining and reviewing records, and attending all legal proceedings.²²¹ It also requires AALs to be familiar with the American Bar Association’s standards for representing children and have at least three hours of continuing legal education on child advocacy.²²²

In foster care cases, the statute goes a step further and specifically requires the AAL to meet with the child or the child’s caretaker, depending on the child’s age. The statute states that, except when it is not feasible or in the child’s best interest, an AAL appointed for the child in a foster care proceeding shall *meet before each court hearing* with the child (if at least four years old) or the individual with whom the child ordinarily resides (if the child is younger than four).²²³

In each jurisdiction, we found excellent AALs who are concerned, committed and conscientious about their work and their clients. They were working hard to represent their children. They visited their clients before each hearing. They presented their own findings to the court. They helped resolve legal issues. In one jurisdiction, for example, the AAL discovered that her clients were being rushed through an adoption process and felt that they were not prepared for the change. The AAL acted quickly to stop the crisis created by the precipitous adoption and obtained an order for a proper case study that ultimately led to a different outcome for the children.

Unfortunately, these examples are the exception and not the rule. Texas Appleseed’s field research found that, far too often, AALs were not fulfilling their statutorily mandated roles. Often, children did not know who their attorneys were, foster parents had never seen any of their children’s AALs, and caseworkers complained about AALs who simply adopted the CPS progress report or called the CASA for an update on the child. Most telling were the reactions of foster youth when asked about their AALs; one judge reported routinely asking the children in her court who their attorney was, and most could not answer—even when the attorney was standing next to them.

Another example of the poor quality of some AALs was pointed out in an interview with staff at a residential treatment center (RTC). Children often stayed at the residential treatment center for up to a year. During their stay at the RTC they would have had at least one, if not two, placement review hearings. When asked how often AALs visited, the staff (after giving the interviewer a blank look) reported they had never had an AAL visit a child at the residential treatment center. They reported they had only talked to an attorney once or twice over the last several years. Clearly, very few of the children sent to an RTC were being personally monitored by their own attorneys.

220 TEX. FAM. CODE. § 107.001(2).

221 *Id.* at § 107.003.

222 *Id.* at § 107.004.

223 *Id.*

A PAL (Preparation for Adult Living) specialist reported asking a group of foster teens in her youth council meeting to write down the name of their attorney, how often they visited or talked to them, and what the youth thought the Attorney Ad Litem's job was regarding their case. She said that all of the youth responded that they did not have an AAL, didn't know who their AAL was, or simply didn't know whether they had an AAL or not.



In fact, most children interviewed for this study or discussed by other stakeholders in this study did not know who their AALs were. Very few foster children or foster alumni said they would contact their AAL if they had a problem. A few children reported they talked to their attorney occasionally, but most had very little interaction with their lawyers.

CASA volunteers and CPS caseworkers also reported on the poor quality of AALs. Obviously, part of the AAL's responsibility is to check in with the child. Frequently, these stakeholders reported that AALs would call them a day or two before a hearing to ask how the child was doing. *The AALs had not visited the child, did not talk to the child themselves, and did not do any independent investigation into how their client was doing.*

*Finding A
Better Way*

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Reasons for Ineffective Counsel

Several reasons were cited for the ineffectiveness of the AALs. Among these are poor compensation and a lack of clarity regarding their role.

Compensation

AALs are paid by the counties, and the counties each set their own compensation rates. Across the state, these rates are low; in some counties, they are extremely low. According to a survey of selected counties, for out-of-court work, the compensation paid AALs ranged from a low of \$20 an hour to a high of \$150 an hour. Most counties were in the range of \$50 to \$75 an hour for out-of-court time.²²⁴ For court appearances, the AALs were paid somewhat better: a range of \$60 to \$225. Most counties paid \$75 or \$100 for in-court appearances.

One judge noted that the attorneys are not paid enough to be well-prepared. Yet, another noted that in the current slow economy, many more lawyers are seeking to be appointed as AALs. It is interesting to note that the AALs interviewed for this study did not typically complain about the low pay. Many of them had chosen this type of work as a "life calling."

Unclear Role

When a child enters the foster care system, the attorney's responsibilities are to advocate for the child in an adversarial process. Parents may challenge the Department's attempt to obtain TMC. There may be a dispute as to the best placement for a child. The role of the AAL is clear in these situations.

²²⁴ Data provided by the Children's Commission, from information gathered through its Legal Representation Study.

As noted above, when the child enters into PMC, many or most of the contentious legal issues have been resolved. The role of the attorney becomes much less clear. Many of the issues that arise when a child is in PMC require social work rather than legal skills.

One prosecutor explained that the AALs do not understand their roles. An AAL he worked with was frustrated by being on the case, saying, “Why am I here past TMC? There are not really any more legal issues. I am not a social worker.” The prosecutor believes that the children need a voice in the courtroom, and that the AALs should be that voice. But when AALs do not really know the children, they cannot be that voice. Sometimes, he reported, the AALs do not understand what they can do, so they just don’t do anything. As one judge put it, he avoids appointing lawyers in most PMC cases because he “doesn’t need another layer of lawyers in there.”

Guardians Ad Litem

Guardians Ad Litem (GALs) are important advocates for foster children. Judges must appoint someone who will act in the best interests of the child, while avoiding conflicts of interest and ensuring the appointee has the tools necessary to carry out his or her duties as laid out in the Texas Family Code.²²⁵ The statute describes a Guardian Ad Litem as “a professional, other than an attorney, who holds a relevant professional license and whose training relates to the determination of a child’s best interests; an adult having the competence, training, and expertise determined by the court to be sufficient to represent the best interests of the child; or an Attorney Ad Litem appointed to serve in the dual role.”²²⁶ A CASA volunteer can serve as a GAL.

Section 107.002 of the Texas Family Code lays out the duties of the Guardian Ad Litem, stating that the GAL is not a party to the suit but must “conduct an investigation to the extent that the Guardian Ad Litem considers necessary to determine the best interests of the child and obtain and review copies of the child’s relevant medical, psychological and school records.” Additionally, this section of the Family Code *requires the court to ensure that a GAL has an opportunity to testify* and is allowed to submit a report with recommendations regarding the child’s best interest.²²⁷

In many jurisdictions, judges dually appoint the Attorney Ad Litem as the child’s Guardian Ad Litem. Unfortunately, this means that many of the “poor quality” issues surrounding AALs impact the GAL role as well. In jurisdictions where judges appoint a CASA volunteer as the GAL, anecdotal evidence suggests children are receiving better outcomes in court proceedings.

Court Appointed Special Advocates (CASA)

CASA is one of the bright spots of the entire PMC process. It is consistently lauded by the courts and other stakeholders. Foster families and child placement agencies also praise the CASA volunteers. Most importantly, the children report they know and can rely on their CASA volunteers.

Texas CASA is part of a national volunteer movement that began over 25 years ago, when a judge in Seattle decided he needed to know more about the children whose

225 TEX FAM. CODE § 107.001 (West 2010).

226 *Id.*

227 *Id.* at § 107.002.

*lives were in his hands. He pioneered using community volunteers as a “voice in court” for abused and neglected children. These Court Appointed Special Advocates™ (CASA) provided him with the detailed information he needed to safeguard the children’s best interests and ensure that they were placed in safe, permanent homes as quickly as possible. The program was so successful that it was copied around the nation.*²²⁸

The Texas CASA program defines a CASA volunteer’s role as focused “on the child, giving hope and help in guiding the child to a safe, permanent home.”²²⁹ As one CASA supervisor explained the volunteers’ role, “they do not have any agenda. They are only looking at the best interest for the child.”

The law also gives CASA a defined statutory role. The law sets out that, in a lawsuit filed by DFPS to terminate parental rights or to take conservatorship of a child, the court may appoint a “charitable organization composed of volunteer advocates” whose charter is to provide services to abused and neglected children. The organization can be appointed to the case as a volunteer advocate or as a Guardian Ad Litem.²³⁰

A 2006 Office of Inspector General audit of CASA by the United States Department of Justice’s Office of the Inspector General (OIG) documents the effectiveness of the organization.²³¹ It found that “CASA is effective in identifying the needs of children and parents.”²³² It also found that children with a CASA volunteer are substantially less likely to spend time in long-term foster care (defined as more than three years in care).²³³ Although this study did not examine the CASA’s effectiveness as a stand-alone issue, evidence of CASA’s success and influence abounds in field interviews conducted in different parts of Texas.

228 Texas CASA, *The History of CASA*, TEXAS CASA.ORG, http://www.texascasa.org/new/About_Us/About_Us.asp (last visited Oct. 8, 2010).

229 *Id.*

230 TEX. FAM. CODE § 107.031 (West 2010).

231 OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF JUSTICE, AUDIT REPORT NO. 07-04, NATIONAL COURT-APPOINTED SPECIAL ADVOCATE PROGRAM (2006), *available at* <http://www.justice.gov/oig/reports/OJP/a0704/final.pdf>.

232 *Id.* at 27.

233 *Id.*; *see also* CASA FOR CHILDREN, EVIDENCE OF EFFECTIVENESS, CASAFORCHILDREN.ORG, http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5332511/k.7D2A/Evidence_of_Effectiveness.htm (last visited Oct. 10, 2010).



These are some examples of how CASA volunteers make a difference in a child's life:

- A child had a brother in CPS care, but CPS could not locate the brother. CASA located the brother, and now the siblings are reunited.
- A youth was scheduled to be adopted, but he desperately did not want to be adopted because his foster family lived close to his brother and, if adopted, he would lose contact with his sibling. The judge did not want to talk to the boy, arguing he was too young. CASA insisted that the boy be allowed to come to court. After the judge heard from the boy directly, he allowed the boy to stay in his placement.
- One CASA volunteer explained that she visits with or talks to her assigned foster child every week. This 15-year-old girl has been in foster care for three years, without termination of parental rights. She had serious emotional and behavioral issues when she entered care and no stability in her life. She had been in and out of *16 different placements*, bouncing from a residential treatment center, to an emergency shelter, to a psychiatric hospital. The girl had five or six different caseworkers over a three-year period and two Attorneys Ad Litem. The only constant in her life was the CASA volunteer who had been with her since she entered foster care, and it was the CASA who went to court and gave the judge insights into the child's life that he might not otherwise have had.

There are 69 CASA organizations in Texas, covering 204 counties. More than 5,000 volunteers serve nearly 20,000 children. *CASA estimates that it serves about half of all the children in need of a CASA volunteer advocate.*²³⁴

In the vast majority of counties with a CASA program, CASA volunteers are appointed as Guardians Ad Litem in child protection cases. In only 11 of the 69 CASA programs, CASA volunteers are not routinely appointed as GALs. In these 11 programs, CASA is still involved in the case, but as a "volunteer advocate." In the 15 jurisdictions examined in the study, only one did not have a CASA program. In 12 of the 14 jurisdictions with CASA, CASA received widespread praise from virtually every stakeholder group interviewed.

Judges regularly rely on the CASAs for the best and most current information on the child. *A few judges indicated that if they could have a CASA volunteer in every case, many of their CPS problems would be solved.* Judges also noted that the CPS caseworkers have too many cases to really assist the children, but CASA volunteers were great because they truly knew their children. AALs and caseworkers also gave CASA high marks, commenting that they wished CASA would stay on the case in PMC. Foster families also commented on how "great" CASA was and how involved in their children's lives the CASA volunteers were.

CASA volunteers spoke with compassion and understanding about their children, but also about the limitations of the CPS caseworkers. One CASA volunteer noted that her child's caseworker did not even know the child's parental rights had been terminated. Another noted that CPS workers have far too many cases, and with a once-a-month visits, it was "truly impossible to do the type of creative work and exploration that was needed" for these children.

Limitations of CASA

Lack of Resources to Represent All Children in PMC

Unfortunately, CASA only has the capacity to represent a limited number of children in PMC at this time. Initially, CASA focused on TMC cases, and it was not uncommon for them to be released from these cases once a child entered PMC. Now the practice is to retain the CASA volunteer for the child as she enters PMC whenever possible. Nevertheless, because of a lack of resources, many children in PMC do not have a CASA advocate.

In nearly all jurisdictions, judges expressed the desire to have CASA stay on in the case during the PMC stage. One urban judge noted that CASA is a great asset for the foster care system because the CASA volunteer really becomes involved in the child's life. In another urban county, the judge estimated that CASA was involved in only about 10% of the PMC cases.

Although CASA receives some state funds, they rely most heavily on volunteers and private donations. The funds and volunteers are always limited. As a result, they must prioritize their caseloads. They have deemed it most important to be with children when they are first removed from the families and to help these children in the TMC process. It is a choice that the CASA organizations wish they did not have to make—to choose between helping children going through the trauma of being removed from their families and put into the foster care system or being able to stay with the children after TMC until they find a permanent home.

Need for a Stronger Voice in the Court Process

CASA programs also report that, in some court jurisdictions, their input is not always sought or appreciated by the judges and other stakeholders. Although the law is clear that CASA's volunteer advocates have the right to appear at every hearing and to present their findings, some judges are not recognizing this statutory right. Given CASA volunteers' knowledge of their assigned foster children, CASA advocates' input is a valuable resource for judges in these cases.

Conservatorship (CVS) Caseworkers

In 2009, there were 1,527 conservatorship (CVS) caseworkers at Child Protective Services.²³⁵ CVS caseworkers are charged with evaluating and assessing the child's placement, developing a service plan to identify the child's needs, and establishing plans to address those needs.²³⁶ While the child is in TMC status, the CVS caseworker assesses risk and safety issues related to abuse and neglect, establishes a family services plan to address those issues, works with the family to address the issues, and monitors the

235 2009 DFPS Data Book, *supra* note 2, at 27.

236 TEXAS DEPT. FAM. & PROT. SERVS., *What is a Conservator?* TEXAS DFPS.COM, <http://www.dfps.state.tx.us/ComeWorkForUs/cvs.asp> (last visited June 21, 2010).



There were many accounts of overworked CVS caseworkers and the devastating impact this can have on children.

- One district attorney recounted incidents in which children aging out of care did not know who their caseworkers were.
- A CASA from central Texas described having to figure out why a child had run away because the caseworker did not have the time to do so.
- Another CASA had to inform a caseworker that the child assigned to her had his parental rights terminated.
- A child who was going to turn 18 in six days at the time of the interview told Texas Applesseed that her caseworker had not even met with her to tell her what would happen when she aged out of care.

With caseworkers too overburdened to perform even the minimum required for their jobs, there is no opportunity to do the case-mining, relationship-building, and creative thinking necessary to achieve timely, positive outcomes for foster children.

family's progress.²³⁷ By statute, the CVS caseworker is required to evaluate extended family and fictive kin to identify possible kinship providers.²³⁸ The CVS caseworker must also attend court hearings related to the child and family and provide a report to the court addressing the family's progress in implementing the service plan and court orders, the child's progress in care, and the Department's efforts to identify and achieve permanency goals for the child.²³⁹ Children may be assigned one caseworker for TMC and a different one for PMC, or a child may have the same caseworker through both TMC and PMC, depending upon the jurisdiction.

Undoubtedly, one of the most important jobs of a CVS caseworker is visiting with the child.²⁴⁰ Federal law requires states to have standards for the content and frequency of caseworker visits.²⁴¹ At a minimum, these standards must ensure children are visited on a monthly basis, that the majority of the visits occur in the child's placement, and that the caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency and well-being of the child.²⁴²

237 *Id.*

238 TEX. FAM. CODE § 262.114.

239 What is a Conservator? *supra* note 236.

240 U.S. Dept. of Health & Human Servs., *Findings From the Initial 2001-2004 Child and Family Services Reviews*, ADMINISTRATION FOR CHILDREN & FAMILIES. Available at <http://www.acf.hhs.gov/programs/cb/cwmonitoring/results/index.htm> (last visited Oct. 10, 2010) (finding more frequent and higher-quality caseworker visits helped agencies do a better job of assessing risk of harm, assessing the need for alternative permanency options, identifying and providing needed services, and engaging children and parents in planning for their futures).

241 The Child and Family Services Improvement Act of 2006 (CFSIA), P.L. 109-288 §7(a)-(b); 42 U.S.C. 622(b)(17) (2010).

242 42 U.S.C. § 622(b)(17).

If eligible for adoption, the child may be transferred to an adoption worker. Adoption workers recruit, train, assess and approve adoptive parents.²⁴³ Upon placement with an adoptive family, the adoption worker meets with the child and family to assess their adjustment and attachment to each other, develops and oversees progress of the adoption case plan, and helps the family consummate the adoption.²⁴⁴

CVS Caseload

As of June 30, 2010, the Child Protective Services *daily caseload average for CVS caseworkers throughout the state was 29 children per caseworker.*²⁴⁵ This was down from 37.2 in 2008 and 43.3 in 2007.²⁴⁶ This means that caseworker caseload has been significantly reduced in the last three years. However, the *recommended caseload per CVS caseworker is no more than 15 to 17 children.*²⁴⁷ These averages do not reflect spikes in caseloads that can occur when a co-worker goes on extended leave or quits. One caseworker told Texas Appleseed that she had, at one time, a caseload of over 100 children.

Almost every stakeholder in the foster care system interviewed for this study expressed the belief that CVS workers are overworked to the point of not being able to do their jobs properly.²⁴⁸ One child protection court judge made a point of telling new CVS workers that their job is akin to asking someone to “get on a congested interstate during rush hour and try to go the speed limit.” Another said that caseworkers do well just to put out fires.

Specific complaints about overworked caseworkers addressed every facet of their job. For example, several interviewees stated that CPS workers failed to file court reports on time (or at all) because they did not have the time to do so.²⁴⁹ Others told stories of swamped caseworkers causing delayed adoptions or terminations of parental rights. Caseworkers, foster parents, and children alike all said that caseworkers do not have enough time to do more than cursory monthly home visits.²⁵⁰ This lack of substantive contact, as a practical matter, limits the depth of any relationship and understanding caseworkers may develop with their foster children.

Number of Caseworkers per Child

According to Texas Appleseed’s data analysis, a child exiting foster care in 2008 had an average of 3.87 caseworkers. This number increases with the number of years a child spends in foster care and in PMC. *In 2008, a child exiting foster care after two to three*

243 TEXAS DEPT. FAM. & PROT. SERVS., DFPS HANDBOOK APPENDIX 7410-B: ROLES AND RESPONSIBILITIES OF AN ADOPTION WORKER, TEXAS DFPS.COM, http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pt_7410b.jsp (last visited Oct. 10, 2010).

244 *Id.*

245 DFPS 2009 Data Book, *supra* note 2, at 32.

246 DFPS 2009 Data Book, *supra* note 2, at 33; TEXAS DEPT. FAM & PROT. SERVS. 2008 DATA BOOK at 32 (2008).

247 Child Welfare League of America, Recommended Caseload Standards, Cwla.Org, <http://www.cwla.org/newsevents/news030304cwlacaseoad.htm> (last visited June 21, 2010); Gail Tittle, Caseload Size in Best Practice Literature Review, (Nov. 2002) (unpublished Ph.D. thesis, Univ. Ill. Children and Family Research Center, available at <http://www.cfr.illinois.edu/LRpdfs/CaseloadSize.LR.pdf>).

248 Indeed, the only people who disagreed were caseworkers who thought their current caseloads in the 30s were much more manageable than in years past when they had 40 or 50 cases.

249 This is in addition to the caseworkers that manage to file their reports on time only because they lack needed substance and specificity.

250 One foster parent of seven years stated that caseworkers typically spent five minutes visiting each child in her home and the longest time a caseworker spent there was 30 minutes.

years in PMC averaged 4.34 caseworkers, compared to an average of 6.39 caseworkers for children exiting after more than three years in PMC.²⁵¹

Changes in caseworkers limit the child's ability to establish and maintain this important connection. When the person who is acting as the parent changes constantly or fails to make regular contact with the child, the child's feelings of rejection are compounded and lead to feelings of distrust between the child and the "system." This lack of trust makes it all the more difficult to elicit critical information needed to ensure appropriate care. Children often don't want to "tell their story" to another person who is going to leave them.

Changes in caseworkers also affect the relationship that DFPS is able to establish with the family or fictive kin. Distrust within these relationships can create roadblocks to the child's reunification with family or result in missed opportunities for kinship placement.

Moreover, changes in caseworkers can cause miscommunication and mistakes in case-work, resulting in loss of crucial information about the child and the family that can impact efforts to find a safe, successful and permanent placement for the child. *Studies have shown that increases in the number of caseworkers correlate to a reduced likelihood of a child's being placed in a safe, permanent home.*²⁵²

Caseworker Turnover

Caseworker turnover is high and directly impacts caseload. In 2009, DFPS reported the caseworker turnover rate to be 23.6%.²⁵³ This is down from the 30.5% reported in 2008, 34.1% reported in 2007, and 29.8% reported in 2006.²⁵⁴ Though this decline in turnover might appear to be a promising trend, it is likely attributable to the Texas economy.²⁵⁵ Unless steps are taken to improve caseworker retention, when the economy recovers, it is likely that the caseworker turnover rate will return to even higher pre-recession rates.

Texas Appleseed's interviews and other studies provide numerous explanations for the high rate of turnover at DFPS. Many stakeholders attributed it to the high caseloads of CVS workers, while others cite the high emotional toll of the work, long hours, and inadequate training and support. Yet another factor is the low wages caseworkers earn. The starting salary of a CPS caseworker in 2008 was \$31,640, compared to an average

251 See graph entitled "Average Number of Caseworkers for Children Exiting PMC in FY 2008."

252 GOVERNMENT ACCOUNTABILITY OFFICE CHILD WELFARE: HHS COULD PLAY A GREATER ROLE IN HELPING CHILD WELFARE AGENCIES RECRUIT AND RETAIN STAFF, at 3-4, (2003), available at www.gao.gov/new.items/d03357.pdf.

253 2009 DFPS Data Book, *supra* note 2, at 27.

254 2008 DFPS Data Book, 2007 DFPS Data Book, 2006 DFPS Data Book, TEXAS DEPT. FAM. & PROT. SERVS. These DFPS figures do not, however, include lateral transfers or promotions within DFPS, which also affect workforce stability. To quote a 2009 study, "After all, the child or family does not care why the worker changed, only that they now must establish a relationship with someone new, which often delays or disrupts services and the case plan." If one includes transfers, the Texas CPS turnover rates rise to 39% in 2008, 45% in 2006, and 47% in 2006. Jane Burstain, *A Better Understanding of Caseworker Turnover Within Child Protective Services*, Center for Public Policy Priorities Policy Page, February 4, 2009, at 21, available at www.cppp.org/files/4/364%20DFPS%20workforce.pdf.

255 JOHN KEEL, TEXAS STATE AUDITOR'S OFFICE, SAO REPORT No. 10-702 AN ANNUAL REPORT ON CLASSIFIED EMPLOYEE TURNOVER FOR FISCAL YEAR 2009 I (2009), available at <http://www.sao.state.tx.us/reports/main/10-702.html>. Initiatives taken by DFPS since 2006 to improve recruitment and better identify well suited candidates may have also played a role. Burstain, *supra* note 254, at 3-4.

of \$34,252 for new teachers, and \$35,202 for CPS investigators.²⁵⁶ A 2009 report by the Center for Public Policy Priorities hypothesized that low salary is probably not the primary reason most people leave CPS, as social work is not a field one enters for the money. However, the fact that almost 5% of CVS workers and almost 5% of Family Based Services workers transferred into better-paying jobs in investigations in 2008, along with anecdotal evidence from our interviews, suggests that pay really does impact caseworker turnover.²⁵⁷

Whatever the reasons, stakeholders in the foster care system in Texas are united in their frustration with the high rate of caseworker turnover. New caseworkers spend about six months in training before they take on a full caseload, and considering that CVS caseworkers stay in that position for such a short amount of time, it is not surprising that they often have little or no personal knowledge of the children in their care. Judges especially saw the inexperience of the CVS workers and the frequent changes in Department representation as a “big problem” or even the “biggest” CPS problem, “one that makes everyone else’s job harder.” Several commented that CVS workers did not have the training, life experience, or job experience to effectively manage their cases.

Caseworker turnover also causes a significant economic stress on the system as a whole.²⁵⁸ The time and money spent hiring and training new workers is just the tip of the iceberg. With the average cost to support a foster child at about \$40 a day, the delays in permanent placement caused by the loss of institutional knowledge, notes about progress in cases, and simple life experience due to turnover quickly add up to a considerable, if incalculable, cost to the state.

IN THEIR WORDS

As one CASA volunteer put it:

“I was getting cases that had really been disrupted and messed up.... because people had to leave immediately or something else would happen with the CPS workers. So I saw the problem within the system, but how do you fix that if you’re not retaining quality folks that just really want to do social work?”

The Court’s Responsibility to Hold Caseworkers Accountable

The State is supposed to serve as the child’s parent, and CVS caseworkers are the State’s means of providing “parent-like” oversight to each individual child. When caseworkers step into court, they need to be prepared to represent the child’s needs and report to the court on the child’s well-being. However, the combination of overloaded casework-

256 *Id.*, see also, Teacher Salary Report Released, Texasisd.Com (January 9, 2009), <http://www.texasisd.com/artman/exec/view.cgi?archive=30&num=80055>

257 *Id.*

258 GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 252 (high turnover rates economically burden the agency with training costs and impact caseworkers who remain in the agency).

ers and caseworker turnover means that caseworkers very rarely are well-versed on the children they serve.

DFPS is in the process of doing as much as possible to make sure that caseworkers are not overburdened and can give more attention to their children. Ideally, caseworker caseload will be reduced to about 15 children per caseworker, and caseworker turnover will cease to be a problem. In the meantime, the court is one entity that *can hold caseworkers accountable for their responsibilities, even if the caseworker is new, when they appear before the judge*. The court must consider DFPS accountability when the CVS caseworker has not completed the steps necessary to take care of a child's needs or actively move the child into a safe, permanent home, even if the caseworker has a high caseload. The Attorney Ad Litem should also be prepared to use the legal tools available to challenge the Department's lack of action in these cases.

Summation

Children need well-informed advocates in the PMC process. Although CASA can and should serve a vital role in advocating for the child, the caseworker must fulfill the role of acting parent, as the entire statutory scheme depends on each stakeholder doing his or her part to ensure the child has a safe, permanent home. Only if each is held accountable will the system truly work to ensure the best interests of the child.

JUDICIAL MANAGEMENT OF PMC DOCKETS

Timely progress and the successful placement of foster care children in permanent homes is affected by a number of critical administrative issues including: 1) adequate notice of proceedings; 2) length and frequency of hearings; 3) scheduling of hearings; and 4) collection of sufficient data—appropriately shared and properly interpreted—to provide the best possible understanding of the child's case.

Texas Appleseed's research documented problems arising in each of these administrative areas, as well as the adverse impact they have on Texas' foster children.

Lack of Adequate Notice for Placement

Review Hearings

Even though the statute clearly sets out the individuals and entities who must receive notice and who have a right to attend a hearing, *provision of adequate notice is not happening in a majority of Texas jurisdictions studied*. Not having the participation and input of the persons most involved in the child's life creates additional roadblocks to achieving the best possible outcomes for children from placement review hearings. *The notice problem can and must be remedied*; complying with the statute should not prove a difficult burden, and the impact of doing so should be significant.

Section 263.501(d) of the Texas Family Code requires notice of a placement review hearing be provided in accordance with Texas Rule of Civil Procedure 21(a), to all pertinent parties, at least 10 days before the hearing takes place. Those who should receive notice include: DFPS, foster parents, pre-adoptive parents, relatives of the child providing care,

the director of the group home or institution in which the child is residing, each parent whose rights have not been terminated, each possessory conservator or guardian of the child, the child's Attorney Ad Litem, volunteer advocate, and any other person or agency named by the court as having an interest in the child's welfare.

As Child Protective Services is more often than not the filing party, it is the responsibility of CPS or its attorney (the prosecutor) to give notice of the hearings.²⁵⁹ In some jurisdictions, CPS directly assumes that responsibility and in others the prosecutor (either the district or county attorney) assumes that responsibility. In many jurisdictions that responsibility is not being met.

In some Texas jurisdictions, only two people are present before the judge—the DFPS caseworker and the prosecutor. In jurisdictions where the child in PMC has a CASA volunteer, the volunteer and a CASA supervisor also attend. If the child has an Attorney Ad Litem, the attorney is at the hearing. Very rarely do the children attend, even though Section 263.501(f) explicitly states this is to be the exception, not the rule, in foster care cases.²⁶⁰

Foster families frequently told Texas Appleseed that they were not informed of the court hearings. They reported that they would have willingly attended the hearings, if they had known about them. In fact, several foster families expressed frustration that they did not have an opportunity to talk to the judge, since they know the most about the child and how the child is faring. *Many of the foster families interviewed did not even know that they have the right to receive notice of the hearing “and are entitled to present evidence and be heard.”*²⁶¹ Child placement agencies, residential treatment centers, group homes, and other placement providers reported the same experience with lack of notice. Several mentioned they would welcome the opportunity to discuss a foster child's needs with the judge, but they were not told of the court hearing. As one provider put it, the “court misses true and honest input from (the provider)...what the kids really want never shows up in court.” Like foster parents, many placement agencies, residential treatment centers, and group homes did not know they had a right to receive notice and to attend the hearing.

It is essential to have all individuals knowledgeable about the status, wants, needs, and well-being of the child in attendance at all placement review hearings. Failing to provide timely and adequate notice to all interested parties, as required by the statute, compromises efforts to move children out of foster care and into safe, permanent homes as effectively and efficiently as possible. Judges should remedy this issue by requiring compliance with the law.

Timing and Length of Hearings

Although the statute does not speak to the length of placement review hearings, the statute requires that the elements critical to a child's well-being and to finding a permanent home are reviewed every six months. This requirement clearly signals that the hearings should be of some depth and length. The statute also clearly contemplates that the child be present, either in open court or in chambers, and that there be active involvement of

259 See TEX. R. CIV. P. 21. If there is another party that files for the hearing, the filing party must provide notice to all listed in § 263.501(d) of the Texas Family Code.

260 See TEX. FAM. CODE § 263.501(f).

261 See *id.* § 263.501(d) (emphasis added).

everyone who is close to the child. This participation cannot be carried out in a hearing conducted for 10 to 15 minutes, twice a year, with 30 to 40 other similar cases in a day, as is the current practice in many jurisdictions.

Expanded Hearings—A Best Practice

In order to both evaluate the child's well-being and ensure that the department, the AAL, the GAL, and all other stakeholders are doing all they can to get a child in a safe, permanent home, placement review hearings usually should last at least 20 to 30 minutes.²⁶²

Currently, unless there are issues that the court needs to address as to health, safety, or potential adoption, the placement review hearings are very short, averaging around 10 minutes. Many judges who hold 10-minute PMC hearings indicated that a lack of resources prevented them from being able to spend more time, although a few said that the time was sufficient for placement review hearings.

It is the norm, rather than the exception, for the judge at a placement review hearing to simply ask the Department if there was anything to report and for the Department to provide a very brief and superficial report on the child. Typically, there are standard questions by the prosecutor to the caseworker: "Does the child have special needs? Are those needs being met? What are the long-term goals for the child?" Generally, the caseworkers would respond that "everything is great in this case." In five or 10 minutes, the hearing is over.

Unfortunately, even when everything is not in fact "great," a child's placement review hearing is commonly addressed the same as "easy" cases. For instance, a caseworker may report that the child had difficulty with her placement and had been transferred to a Residential Treatment Center, but was now stabilized. There would be little follow-up questioning to ascertain whether placement in the RTC was truly the best alternative for the child or ascertain the plans for continuing therapeutic treatment. Even in those jurisdictions with CASA volunteers for children in PMC, who are known to provide more comprehensive reviews of the child's well-being and progress towards true permanency, the hearings are usually quick, rote proceedings.

Frequency of Hearings

Not only are the hearings very perfunctory and short, but in most jurisdictions, follow-up hearings are not scheduled for unresolved or pending issues. For instance, at one observed hearing, a child was waiting to be adopted. Six months earlier, at the previous placement hearing, the CPS representative had informed the court that CPS was conducting the pre-adoption home screening. At the hearing, the judge asked about the status of the screening. CPS reported it had not yet been completed. The judge ordered CPS to do the screening. Yet, he did not set a follow-up hearing. As a result, the next opportunity for the adoption to be approved would not be for at least another six months—at the next placement review hearing. Assuming the adoption would be approved at the next hearing, the child would end up spending an extra year without a permanent family simply because CPS was not required to follow up in a timely fashion. And if the home screening revealed problems, the child's progress towards permanency

262 See Appendix, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Casey Family Programs, (2009).

would be even further delayed. A clear “best practice” is to set follow-up hearings wherever there are issues to be resolved quickly.

Section 263.501(a) of the Texas Family Code requires placement review hearings to take place every six months once the child enters PMC to check on the child’s well-being and to ensure that the department, the AAL, the GAL, and all other stakeholders are doing all they can to get a child in a safe, permanent home effectively and efficiently. These automatic, widely spaced hearings only help perpetuate the idea that these hearings are just for the court to make sure the child’s status has not changed since he or she entered PMC. However, the statute also allows for hearings to be held as frequently as necessary to get children out of care and into safe, permanent homes.²⁶³ Most judges are not taking advantage of this authority, as discussed above.

Six months is a very long time in the life of a child. Judges observed that it is not atypical for a child to go through two or three homes and schools during that period. Child contact with their attorneys, CPS caseworkers, and the judge is already limited, and the problems caused by the lack of access and current information are only exacerbated by the lengthy time intervals between hearings. Many judges who found six month hearings to be too long of a time gap stated that they believed three- to four-month intervals were better, but most lacked the resources to conduct hearings on shorter intervals except on a case-by-case basis where special attention was needed to facilitate an adoption, address a pressing issue with the child, or ensure that a stakeholder was timely in completing an assigned task.

One judge indicated that he holds PMC hearings every four months and, in some cases, every two months. He would prefer to have them every three months, but he found there was simply not enough docket time and system availability to do so.

Travis County holds PMC hearings every four months and, as can be seen from the data, it has better outcomes for the majority of children in its jurisdiction.²⁶⁴ Travis County’s thoughtful and creative docketing practices for these cases and careful allocation of resources, discussed in more detail below, enable its judges to hold productive hearings every four months. Judges from other jurisdictions reported attempting to hold hearings every four months, but having to go back to six-month intervals in most cases due to lack of resources.

Docketing

One important change judges could make to ensure that they have more time for placement review hearings is to schedule hearings more efficiently. Several Texas counties have local court rules to encourage the docketing of their cases “sensibly, efficiently, and fairly.”²⁶⁵ For foster care cases, “sensibly, efficiently, and fairly” implies that every child’s hearing is allotted the necessary length of time to ensure that all pertinent issues to a particular child’s case are discussed, including the child’s well-being and all efforts being

263 TEX. FAM. CODE § 263.501(a) (“the court shall conduct a placement review hearing *at least* once every six months until the child becomes an adult”) (emphasis added).

264 See graphs entitled “Percentage of Children Who Exited PMC in FY08 Through Adoption by Jurisdiction,” “Percentage of Children Who Exited PMC in FY08 Through Aging Out by Jurisdiction,” and “Percentage of Children Who Exited PMC in FY08 in Less Than One Year by Jurisdiction.”

265 Local Rules of the District Courts of Montgomery County, Texas, available at <http://www.co.montgomery.tx.us/dcourts/lorules.htm> (last visited Oct. 2, 2010); see also Local Rules of the District Courts for Galveston County, Texas, available at http://www.co.galveston.tx.us/306th/Docs/Form_1.pdf.

Model Court—Travis County

“The Model Courts Project provides judges, attorneys, and numerous other professionals who work in the courts and child welfare agencies, with practical, concrete, and effective tools for improving court performance in the handling of child abuse and neglect cases.”¹

-NCJFCJ, Model Courts

Texas Model Court: Austin, Texas

Lead Judge: The Honorable Darlene Byrne

Since the Travis County Model Court is relatively new (2008), data documenting the impact of this model is still being collected. However, longitudinal data for model courts in other parts of the country show that these courts succeed in reducing the numbers of children in foster care. Three of the largest court jurisdictions in the nation (Chicago, Los Angeles, and New York) have reduced the number of foster children in their state’s care by 50% since becoming Model Courts.

A Model Court, and in turn its leading judge, is expected to carry out a number of tasks including, but not limited to:

- Implementing RESOURCE GUIDELINES,² which promote best practices
- Establishing a multidisciplinary collaborative structure of stakeholders
- Assessing current practice
- Establishing court improvement goals and outcome measures
- Engaging in strategic planning
- Participating in national-level Model Court projects and activities
- Assessing training and technical assistance needs
- Scheduling site visits, cross-site visits, and training
- Sharing information about best practices and NCJFCJ initiatives with local court officials, state-wide courts, other Model Courts, at national functions, and collaborating with the Model Court’s State Court Improvement Project
- Collaborating and participating in state Court Improvement Project initiatives and programs
- Participating in national-level Model Court projects and activities
- Being an NCJFCJ member and promoting judicial and associate memberships

As can be seen from the tasks of a model court, a judge is given great authority over the intersection between the foster care and court systems and must use that authority to help ensure the well-being of PMC children and facilitate their movement into safe, permanent homes.³

1 National Council of Juvenile and Family Court Judges (NCJFCJ), *Model Courts: Improving Outcomes for Abused & Neglected Children and Their Families*, at 1 (2008), available at <http://www.ncjfcj.org/images/stories/dept/ppcd/newmodel%20court%20brochurefinal.pdf>.

2 See generally NCJFCJ, *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases* (1995), available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/resguide.pdf>.

3 See generally NCJFCJ, *National Council Model Court Protocol: Permanency Planning for Children Department*, available at <http://www.ncjfcj.org/images/stories/dept/ppcd/pdf/model%20courts%20protocol.pdf>.

made to meet the child's needs and ensure the child has a safe, permanent home. These terms also imply that hearings should be held as often as necessary to achieve that goal.²⁶⁶

The scheduling of placement review hearings did not surface as a significant issue in this study until our field interviews. Foster parents and other participants in these hearings complained of scheduling problems and other logistical barriers to participation. In some instances, the timing of placement review hearings prevents children from attending, and foster parents and other non-attorney stakeholders are not able to schedule time to leave work to go to court. As noted, these challenges are compounded by the lack of advance notice. In many instances, too many hearings are scheduled in a single day to review each child's case properly. Careful and predictable scheduling of placement review hearings, including having set windows of time for each case, should increase the productivity of those hearings by affording the stakeholders a realistic opportunity to participate.

For example, one reason some judges cite for not having children at placement review hearings is their reluctance to pull the child out of school for an entire day. This concern can be addressed through careful scheduling and planning. As discussed in the prior chapter, it is critically important that the child be in court to give the judge insights into how the placement is faring and what additional support is needed. Another concern expressed by judges and stakeholders was that the placement review hearings are typically so short and uneventful that it is not worth the effort to make the elaborate plans necessary to bring the child. However, if judges allot more time for these hearings and schedule them at times that afford the children and other interested parties an opportunity to be present, there will be more meaningful participation by informed participants, leading to better outcomes for the children.

Travis County is one jurisdiction meeting and often exceeding the statutory and best practice requirements for length and frequency of placement review hearings. In scheduling the PMC docket, each child's upcoming placement review hearing is classified as basic, complex, or simple adoption. Most cases fall under the "basic" category. Each of these basic cases receives 20 minutes on the morning the court regularly schedules for placement review hearings. PMC cases are classified as "complex" depending on several factors, including but not limited to legal issues that need to be resolved, complex placement concerns, and the number of children involved. Complex cases are scheduled in the afternoons and receive 30 to 60 minutes each. This docketing scheme prevents the court from rushing over important issues in a placement review hearing due to a lack of time, yet allows the court to hear as many cases as possible. A number of "simple adoptions" can be scheduled in an hour, allowing the adoptions to be consummated before the children's next placement review hearing.

Proper scheduling of placement review hearings is a necessary part of improving the outcomes of these hearings. Judges and their clerks must work together to devise a system that enables them to allot a reasonable amount of time to each child's hearing and to hold hearings more frequently.

266 See Appendix, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Casey Family Programs, (2009).

JUDICIAL EDUCATION

Judges can benefit from education and training about best practices for PMC hearings, how to interact with children, what services and educational opportunities are needed by and available to children with certain needs and disabilities, how to recognize and respond to the disproportionate representation of minority children in the foster care system, and the options for and importance of early transition planning. With these types of training, judges will be able to navigate children into better and more permanent placements and services as part of placement review hearings, and children will be less likely to remain in foster care for long periods of time.

Continuing Education & Training

Overall, the judges interviewed for this study believe that there is sufficient continuing education available to them as to these types of cases, yet most are open to additional training—especially on current developments in CPS policies and procedures, which a judge may not become aware of until a problem surfaces within a specific case. Training is currently available through NCJFCJ, the Texas Center for the Judiciary, the Texas Office of Court Administration, and other entities.

For example, one type of training that is extremely relevant and increasingly available for judges is training specific to the disproportionate representation of minorities in foster care and how to recognize bias in decisions made at every level of the foster care process—from the decision to remove a child from the home, to terminating parental rights, or reviewing the appropriateness of a placement for the child. As discussed earlier, minority children, particularly African American children, are overrepresented in the foster care system as compared to the total population of children in Texas. They tend to exit foster care at lower rates than children of other ethnicities and, when they do exit, they are more likely to do so by “aging out” than are foster children of other races or ethnicities. With the proper training, judges can help to limit the disproportionate representation of minority children in foster care by making themselves more aware of implicit biases and the relevant issues to consider when they and other stakeholders are acting to remove, approve a placement, or in any way evaluate the lives of minority children in foster care.²⁶⁷

Though most judges acknowledge that there is adequate judicial training available to them, our interviews revealed that many judges do not take advantage of training opportunities. Some stated that they do not see a benefit in further training because they have been hearing these cases for so long. Others reported not having the time or resources to dedicate to further judicial training in this area. Texas Appleseed recommends extensive publication and promotion of the many valuable educational and training resources available to give judges ready access to the most up-to-date information and recommended best practices in handling PMC cases.

267 “Implicit bias” is a “preference (positive or negative) for a social category that operates outside of awareness.” Shawn C. Marsh, *The Lens of Implicit Bias*, *Juvenile and Family Justice Today*, at 17 (2009), available at <http://www.jdaihelpdesk.org/Docs/Documents/lensofimplicitbias.pdf>. Earlier this year, some Texas judges attended a first-of-its-kind training on “Implicit Bias in Judicial Decision-Making” and reported finding the course to be extremely helpful. See Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, *August 30, 2010 Meeting Notebook*, at 9, available at <http://www.supreme.courts.state.tx.us/children/board/files//042010MeetingNotebook.pdf>.

Benchbooks on Legal Procedure in Foster Care Cases

The Commission has developed a benchbook for the child protection courts that, once it is widely available in late 2010, will be an important resource for judges with PMC dockets. A benchbook provides an overview of the legal procedures and guidelines for judges.²⁶⁸ Judges can access the benchbooks online to serve as the most up-to-date guides for handling these cases. They can be helpful to both experienced and inexperienced judges alike.

Summation

Specialized judicial education and training are vital tools to help judges with their role in safeguarding a child's best interests in PMC cases. The Commission has also sponsored the development of innovative and valuable tools for judges to facilitate efficiency, consistency, and knowledge sharing to assist them in their important role of managing PMC cases. Use of these resources should be encouraged and rewarded, as Texas Appleseed believes they will enhance judicial service to our most vulnerable children.

*Finding A
Better Way*

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CRITICAL ADMINISTRATIVE ISSUES AFFECTING FOSTER CHILDREN

Data is essential to good decision-making and meaningful improvement. It provides individuals and groups with evidence of whether certain methods and processes are having a desired effect. Without data, system creators and administrators seeking to improve a system are seeking improvement blindly. Without data, one may never know that there is need for change. Data helps to illuminate successes and unearth existing problems in a given system and may even help demonstrate what solutions may remedy the existing problems. As such, well-documented, accessible, understandable data is essential for child protection courts and all courts hearing PMC cases.

Tracking & Measuring Outcomes of Children

The U.S. Department of Justice (DOJ), National Center for State Courts (NCSC), American Bar Association Center on Children and the Law, and the NCJFCJ are in accord: "Developing objective and qualitative measurements of practice is essential to a court's capacity to improve the effectiveness and efficiency of its operations and to sustain those improvements."²⁶⁹ In conjunction, these four authorities in the area of child abuse and neglect have developed 30 performance measures that help courts evaluate how they are faring concerning their ability to get children out of foster care and into safe homes as quickly and efficiently as possible.²⁷⁰ There are two measures centered on safety, seeking to establish that the court is successfully protecting children from abuse and neglect while under its jurisdiction.²⁷¹ Five performance measures focus on perma-

268 The legal procedures covered in current Texas county judge benchbooks are criminal procedure, guardianship proceedings, juvenile proceedings, mental health-mental retardation, probate, civil proceedings, clerk of court, contempt, evidence, family protective orders, ethics, mandamus, and parental notification. Texas Association of Counties, Quick Reference Law Library, County Judge's Benchbook, http://www.county-laws.org/_hitsver55.blp?data=a_criminal&site=TAC&stype=P&stern=HAVE&smode=AND&sexact=ON&pgno=1&par=1&dlevel=0&home=BENCHBOOK (last visited Oct. 2, 2010).

269 See Sophia I. Gatowski & Lisa Portone, *Court Performance Measures in Child Abuse and Neglect Cases: Implementation Guide*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, at Preface, v (2008), available at <http://www.ncjrs.gov/pdffiles1/ojdp/223568.pdf>.

270 See *id.* at v.

271 *Id.*

nency, helping the court to evaluate whether it is ensuring that “children have permanency and stability in their living situations.”²⁷² There are 10 performance measures that help the court assess whether it is deciding cases “impartially and thoroughly” based on all available evidence.²⁷³ The last 13 measures are aimed at helping the court determine whether it is minimizing “the time from the filing of the petition or emergency removal order to permanency.”²⁷⁴ In order to truly improve and better serve our children, the courts must be able to evaluate themselves against these kinds of objective measures.

How Texas Currently Measures Up

Judges, Attorneys and Guardians Ad Litem, caseworkers, and other stakeholders involved in the foster care system throughout the state need to see means to better evaluate and measure the successes and failures of these proceedings to ensure that they are getting children into a permanent home as quickly and safely as possible.

Ideally, every court hearing PMC cases in Texas would be able to track their respective information and view statewide information in the same way, by the same means, through the same system. However, because each court system operates differently and with varying local budgetary needs and resources, such consistency and coordination is not likely. Currently, the Child Protection Courts, run by the OCA, all use one reporting and tracking system while the rest of the courts in the state keep track of their specific data using a number of different and often incompatible systems as provided by their respective counties. For some counties, it may be possible for their courts hearing child protection cases to benefit from the same case management system used by the Child Protection Courts.

The Child Protection Case Management System (CPCMS) was originally released in September 2009 and keeps track of a wide range of data categories, including adoption petition date, case closed date, case type, child attorney assigned date, child CASA assigned date, child GAL assigned date, filing date, final order rendered date, hearing date, hearing type, placement begin date, placement change reason, present at hearing, re-entry into child protection system, TMC date, and TPR (termination of parental rights) date.²⁷⁵ CPCMS incorporates 19 of the 31 performance measures developed by the DOJ, the NCSC, and the NCJFCJ, including both of the safety measures, three permanency measures, six due process measures, and nine timeliness measures.²⁷⁶ OCA is able to use CPCMS to generate a variety of reports. Currently, these reports are generated only for internal use and reporting to the Legislative Budget Board, but they could also be used for the reporting and tracking purposes recommended in this report.

All child protection court judges are required to use the system; however, they are not required to input data into every field or utilize all of the program’s features.²⁷⁷ All of these judges and their staff receive training on how to use the system. A significant cur-

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.* Again, “permanency” here does not mean the child has entered PMC, but the child has reached a permanent living situation that she can call home.

²⁷⁵ Texas Office of Court Administration, Child Protection Case Management System User Guide, created September 2009, updated June 2010. This list is not exhaustive.

²⁷⁶ Texas Court Improvement Program (CIP) Data Collection and Analysis Grant Application, The Supreme Court of Texas, Permanent Judicial Commission for Children Youth and Families, Court Improvement Program at 9, August 20, 2009, *available at* <http://www.supreme.courts.state.tx.us/children/pdf/Data-Grant2010.pdf> (last visited August 2, 2010).

²⁷⁷ This means 121 counties in Texas already use CPCMS.

rent limitation on the system is the lack of comparative function at the user level: Judges can use CPCMS to run reports on their own data, but they cannot access data from other judges or other courts. Judges can request reports from the Office of Court Administration if they are interested in seeing statewide information or county-to-county comparisons. Because the system is so new, comparisons over time are not yet useful, but will certainly be in the future.

OCA is able to provide CPCMS to other courts, besides the child protection courts, free of charge. However, there are other costs associated with the system, including purchasing servers, installing the system, migrating data from the older systems, and technical support. Additionally, CPCMS is a web-based system that requires internet access.

Data for Courts and Counties

An indispensable step to positive systemic change is the ability to diagnose what aspects of the judicial system relative to PMC cases need improvement and determine how to make improvements, track meaningful information about these cases, and identify, document, and replicate positive results.²⁷⁸ As noted, access to data is an important part of the process to help our Texas children navigate through the judicial system and achieve permanency. Courts and counties must make their best efforts to invest in usable and compatible data tracking systems. The data tracking systems should focus on the performance measures established by the DOJ, as it has provided a vital framework for viewing child welfare measures in foster care. Not only must the data be collected, but it must be viewed periodically to identify what court practices are effective and where improvements may be needed in any given community. Additionally, courts need to be able to compare their data to make the data more meaningful and provide more context for what each individual court's and county's numbers mean. Finally, courts and counties need to recognize that there are available data tracking programs out there, one of which (CPCMS) could ideally be implemented statewide, and strive to allocate resources to fund future installation and operation of one of the available data collection programs.

278 Gatowski & Portone, *supra* note 269.

Conclusion

Despite working within a body of law incorporating many nationally identified best practices aimed at maximizing positive outcomes for foster children, few court jurisdictions in Texas are serving their children well once they reach Permanent Managing Conservatorship.

Texas Appleseed's research documented: 1) a *lack of urgency* to find permanent homes for these children, 2) a *lack of accountability* for these children's well-being, 3) a *lack of clear roles* for the legal participants, particularly in the PMC process, 4) a *failure to encourage the child's court participation* in some jurisdictions, 5) a *need for more well-informed advocacy for children* in PMC hearings, and 6) a *lack of communication and coordination* among the stakeholders in the foster care process. PMC hearings are often rushed, and the participants ill-prepared. The appointment of inexperienced prosecutors and Attorneys Ad Litem contributes to the perception that PMC cases are not that important and adds confusion as to what "permanency" really means in the life of the child. Does it mean "permanent limbo" in PMC, or a permanent home outside of foster care?

Too many Texas foster children languish for years in the State's care, experiencing frequent moves and changes in caseworkers that contribute to problems in school and low educational attainment, development of mental health issues, and a growing sense of hopelessness and being "thrown away."

Multiple research studies conducted in the past 10 years in different parts of the country have shown that youth who age out of foster care after years in the system historically experience huge challenges—including greater rates of poverty, homelessness, bouts of unemployment, lack of physical and mental health care, and early involvement in the criminal justice system.

Fortunately, the framework exists for positive systemic change in Texas' foster care system. The challenge is to change attitudes, approaches and training within the court and legal system. The Policy Recommendations in this report (see page 11) will ensure that the child's voice and desire for a permanent home is heard.

APPENDIX



Promising Court Practices:

Strategies to Achieve Timely Permanency

November 2009

INTRODUCTION

This report was prepared in response to a request from Carolyn Rodriguez, Casey Family Programs Senior Director for Strategic Consulting, for information to assist the state of Texas in exploring the ways in which the court system can improve outcomes for youth in long-term foster care. Specifically, The Texas Supreme Court's Permanent Judicial Commission for Children, Youth and Families is interested in improving outcomes for youth by reducing the time that they spend in foster care and by increasing permanency.

At the request of the Permanent Judicial Commission, Texas Appleseed, a non-profit, public interest law center, is conducting a study to examine the challenges and barriers faced by youth in long-term care. Casey Family Programs has partnered with Texas Appleseed to document court-driven initiatives from across the country working to move youth to permanency.

Following a review of the literature, as well as conversations with key advisers, ten states and one county were chosen as examples of court jurisdictions that have promising practices: California; Connecticut; Georgia; Idaho; Michigan; Minnesota; Missouri; Pennsylvania; Pima County, Arizona; South Dakota; and Vermont. Interviews were conducted with key leaders in each jurisdiction, and a summary of the work taking place in each jurisdiction is listed below, along with contact information. These summaries are not exhaustive and are provided as a sample of the reform efforts taking place in these jurisdictions and across the country.

KEY FINDINGS

Across the interviews, common themes emerged regarding efforts to increase timely permanency for children in care. These themes included common strategies used, implementation challenges, and key elements of success.

Types of Strategies

- **Inter-disciplinary teams:** the majority of states identified at least one inter-disciplinary team that was working towards systemic reforms that would improve permanency outcomes for children in care. Teams are often led by a judge, and other members typically include representatives from the child welfare agency and behavioral health agency, attorneys, Court Appointed Special Advocates (CASA), and Guardian ad Litem (GAL), as well as other key stakeholders. Missouri's Fostering Court Improvement team is composed of staff from the Missouri Office of State Courts Administrator, the Missouri Children's Division of the Department of Social Services, the University of Missouri School of Social Work, and the Fostering Results project of the University of Illinois at Urbana-Champaign School of Social Work.
- **Youth participation in hearings:** there is a growing trend to ensure that children, especially older youth, attend and participate in their dependency court hearing. Several of the states interviewed discussed special efforts and initiatives related to improving youths' access to court, preparation for court, and optimum experience participating in court. Arizona recently amended one of their juvenile court rules, Juvenile Rule 41, to give foster children the right to attend and speak to the judge at every hearing.

- **Frequency of hearings:** some jurisdictions are holding review hearings more frequently, which provides judges with increased oversight and holds parties accountable to accomplishing tasks on a shorter timeline. As part of their Permanency Planning Initiative, participating counties in Pennsylvania have modified their court structure to hold review hearings every three months rather than every six months.
- **Data reporting and use:** providing data reports regularly to judges is a concrete reminder of how children are doing in their courtroom. Data reports often include information such as the number of children in care, the length of stay in care, and their permanent plan. Courts and agency partners are engaging in specific efforts to ensure that the data is used in real-time to inform decision-making and practice improvements. The Judicial Branch in Connecticut provides their data to the child welfare agency, which then uses the data to populate parts of their Statewide Automated Child Welfare Information System. Reports are then provided to the Chief Judge, child welfare agency attorneys, and local court managers, who disseminate them to the local judges.
- **Permanency Roundtables/Case reads:** a growing practice to improve permanency for youth who have extensive lengths of stay in care is to hold a team meeting to review the case history with an eye towards permanence. These meetings are designed as intentional opportunities for creative, “outside the box” thinking in order to help youth achieve permanency. Casey Family Programs is supporting this practice through Permanency Roundtables in various jurisdictions, such as Georgia.
- **Bench cards/Checklists/Professional guides:** these tools can help make dependency court proceedings more meaningful, for example, by providing judges with key permanency-oriented questions to ask at each hearing, which helps to ensure that cases are moving towards permanence. Minnesota developed a bench book, which is a compilation of information ranging from child development to the various types of hearings that take place in juvenile court. The bench book has also been converted into a checklist for different groups of professionals, such as judges, attorneys, and GALs.
- **Cross and Joint training:** cross-training between key stakeholders builds understanding of each party’s role and responsibilities, and joint ensures that all parties are being trained to the same practice. In Idaho, all judges, lawyers, child welfare staff, and CASAs in one county will be trained together on the county’s new practice model. Training of judicial and legal staff is particularly important in jurisdictions where judges rotate on the bench, or jurisdictions where parent/child attorneys may have a primary practice in a different field. South Dakota is developing a training video for child attorneys, and will require pre- and post-competency tests as part of the training process.
- **Revision of state statutes/judicial rules/agency policies:** in some jurisdictions, implementation of a new strategy or reform effort requires changing an existing statute/judicial rule/agency policy to move forward; in other jurisdictions, it is the statute/rule/policy itself that is a barrier to timely permanency. Michigan’s Permanency Actions workgroup meets regularly to critically examine current statutes and to propose statutory amendments designed to improve outcomes for foster children. The Permanency Committee in Los Angeles County, California, examines agency policies with a similar lens.

Elements of Success

- **Collaboration:** a primary way in which the judiciary often leads by example is through collaborative relationships with the leadership of the child welfare agency and other key stakeholder groups. These collaborative relationships are most effective when they take place at the state level, the local level, and between the state and local levels. Regularly scheduled meetings are a practical way to maintain those relationships. Many jurisdictions reported that the reform efforts in their states would not have been possible without collaboration. Vermont's Justice for Children Task Force meets quarterly and includes team members from the courts, the Department for Children and Families, the Department of Mental Health, the Defender General's Office, the State's Attorneys Association, the Department of Health's Alcohol and Drug Abuse Program, and the state legislature.
- **Judicial leadership:** one of the hallmarks of successful reform efforts is leadership from the judiciary branch, from the Supreme Court level to the local level. In Michigan, Justice Maura Corrigan serves as a liaison between the judicial branch and the child welfare system.
- **Data:** data is essential in order to determine whether reform efforts have a positive impact on outcomes. While this is an ongoing effort, as described above, many jurisdictions are providing regular data reports to their judges. When provided in a user-friendly format, this can be an effective way of holding judges accountable to the cases under their supervision. Pennsylvania has developed uniform templates for the various court hearings so that the forms are consistent across the state. The information from these forms is used to populate the new child dependency data system created by the Supreme Court of Pennsylvania, which tracks outcomes for children in care.

All of the jurisdictions interviewed below expressed their concern about the number of children that are lingering in care, and reported that they are working on implementing a variety of strategies to expedite permanency. Some of these strategies are specific to youth who have been in care for extended periods of time, while others are systems-change efforts designed to improve overall outcomes for all children in care. While most of these practices are new and therefore have not been evaluated, early results and anecdotal information suggest that they are helping children to achieve timely permanency.

California¹

California's permanency initiatives have been primarily spearheaded by California's Blue Ribbon Commission on Children in Foster Care. The Commission was started by Chief Justice Ronald M. George who appointed a high level, state wide panel in March of 2006 to make recommendations to the Judicial Council, the policy body for the California court system. The purpose of the Commission was to make recommendations focused on outcomes related to safety, permanency, well-being, and fairness for children and families. The commission is composed of judges, attorneys, legislators, child welfare directors, community leaders, tribal

¹ Information provided to Casey Family Programs on November 3, 2009, by Leah Wilson and Don Will, Managers at the Center for Families, Children and Courts, and on November 6, 2009, by Honorable Michael Nash, Presiding Judge, Los Angeles Juvenile Court.

leaders, foster youth, and caregivers. In 2008, the Commission made their recommendations, which focused on four areas of interest: efforts to prevent removal and achieve permanency, court reforms, collaboration among courts and their partners, and resources and funding. According to Leah Wilson and Don Will, Managers at the Center for Families, Children and Courts, four initiatives that started due to the Commission's recommendations are: increasing permanency for children in care, family finding and engagement, providing data and information to the local jurisdictions, and establishing local commissions.

Local Commissions

Thanks to the Blue Ribbon Commission's recommendations, every county now has a local Blue Ribbon Commission consisting of court staff and child welfare staff that focuses on identifying and resolving local concerns. As a result of the local commissions, every county has the autonomy to focus on what they believe is a concern. In one county, cases of legally free children were being reviewed to determine if reunification was appropriate with the biological parent. In two other counties, Santa Clara and Los Angeles, specialized court calendars were established for children who have been in out-of-home care for an extended period of time. In those cases, the dependency court would set up frequent review hearings, similar to that of drug courts, meaning that the cases were reviewed every two weeks and all parties were required to attend and report back on what they had accomplished prior to the hearing.

Many counties have also implemented Family Finding and Engagement (FFE), an intensive search method to identify, locate, and engage paternal and maternal relatives of children who had been in out-of-home care for an extended length of time. While some counties have hired a full time FFE employee, many counties do not have the financial resources; in those situations, many counties have been creative and have sought assistance from CASAs or other volunteers, such as retired social workers. Ms. Wilson and Mr. Will explained that, while data is not currently being collected in order to measure the effectiveness of these initiatives, many counties have reported that their efforts have been successful, particularly in finding relatives for children. The jurisdictions that reported having the most success were those that had strong judicial leadership.

User Friendly Data

Mr. Will stated that there are efforts underway to improve data tracking and collection on a statewide level in California; currently, UC-Berkley collects the state's child welfare data and provides it to the Center for Families, Children and Courts (CFCC), but it is not provided in a "reader-friendly" manner. CFCC is currently in the process of attempting to distribute the information to local counties in a more user-friendly manner so that they can view their data in real time. The CFCC is also planning on adding outcome measures for the court and providing it to local judges so that the judges can see how the children under their supervision are doing.

The Permanency Committee

In Los Angeles County, the Department of Children and Family Services (DCFS) and the Juvenile Court developed policies to reduce the likelihood that children would stay in long term foster care. Led by Honorable Michael Nash, Presiding Judge for the Los Angeles Juvenile Court, LA County established the Permanency Committee (PC). The PC started five years ago after Judge Nash observed that a large number of children entering the courtroom had long term foster care identified as their permanent plan. The PC is composed of DCFS staff and juvenile court judges, as well as other key stakeholders. The purpose of the PC is to establish policies both within DCFS and the Juvenile Court to reduce the likelihood that children will stay in long term care.

One of the major policies established by the PC was that DCFS could no longer identify long term foster care as a permanent plan. Judges are also discouraged from allowing long term foster care as a permanent plan; if it is allowed, they are encouraged to continue to make efforts to establish a more adequate permanent plan for the child. While there is no data to track the outcomes of the PC's policies, anecdotal information suggests that fewer children have long term foster care identified as their permanent plan. Another effort that LA County is working on is to avoid termination of parental rights unless the child has an adequate permanent plan identified and has a high likelihood of being adopted. Judge Nash credits the strong relationship between the Juvenile Court and DCFS as the main factor in establishing all of the PC's policies. He also reported that he is currently working on compiling a list of all children in care age 10 and older that have long term foster care identified as their permanent plan. The purpose of the list would be twofold: first, to identify the children; and second, to notify the judge presiding over the case so that he/she could encourage DCFS to establish a more adequate plan and ensure that permanency is achieved.

Permanency Partners Program

Judge Nash also credited DCFS for their efforts in achieving permanency for children who have been in out-of-home care for an extended period of time. He described DCFS' Permanency Partners Program (P3), which began in 2004. The goal of the program is to establish permanency for the child through adoption, guardianship, or a mentoring relationship. In the first step of P3, the P3 worker, usually a retired social worker or a part-time worker, mines the child's case file to identify any relationships that the child might have had in the past. Working together with the youth, the primary social worker, and other important people in the child's life, the P3 worker explores options like reunification with the biological parent, adoption, and guardianship, in order to establish a permanent plan for the child. Judge Nash stated that while he did not know the exact number of children who had achieved permanency through P3, he did know that over the past several years, LA County DCFS has been able to significantly reduce the total number of children who have been in out-of-home care for an extended period of time.

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CONNECTICUT²

Connecticut has a number of strategies that were developed to expedite permanency for children in foster care. One of these strategies, Connecticut's Case Management Protocol (CMP), is currently being evaluated as part of the National Evaluation of the Court Improvement Program.

² Information provided to Casey Family Programs on November 6, 2009, by Marilou Giovannucci, Manager, Connecticut Judicial Branch.

Case Management Conferences

One of the key components of the CMP is the use of Case Management Conferences, which are facilitated meetings that take place within 7-10 days of the court-ordered removal. The Case Management Conference is facilitated by court staff and includes the parents' attorneys, the child's attorney, the child welfare social worker, and the child welfare agency attorney. The immediate goals of the Case Management Conference are to: gain an understanding of the issues that led to the child's removal from the home; examine ways in which those issues can be resolved; begin to craft a plan towards reunification; and develop a concurrent plan if continued out of home care is necessary, such as relative placement. The long-term goal of the Case Management Conference is that issues such as service needs, relative placements, and parent-child visitation will be addressed quickly, and that collaborative decision-making will lead to fewer contested hearings, which will then lead to timely permanency.

C-CORE Initiative

According to Marilou Giovannucci, Manager at the Connecticut Judicial Branch, the Connecticut Judicial Branch and the Department of Children and Families (DCF) often collaborate together on permanency initiatives, understanding that they will be more successful if they work together. One of the permanency strategies that DCF is launching in response to their negative Child and Family Service Review (CFSR) results is their C-CORE initiative, and they have invited Ms. Giovannucci's office to participate. C-CORE is designed to be like a mini-CFSR, with focus groups, file reviews, interviews, etc. The goal is to encourage early concurrent planning, thereby leading to earlier achievement of permanency.

Recovery Specialist Voluntary Program

Another new collaborative effort in Connecticut is the Recovery Specialist Voluntary Program (RSVP), which Ms. Giovannucci described as a "hybrid design of dependency drug court." Although Connecticut does not have a drug court, the hope is that the RSVP will be almost or as effective as a drug court program. The RSVP was designed in response to an identified issue: that permanency for children whose parents have substance abuse issues is often delayed. The RSVP's aim is to support parents through their recovery so that safe reunification can take place more quickly. The program starts with early identification of substance abuse issues, and involves a structure for ongoing communication between the child welfare agency, the substance abuse provider, and the attorneys for all parties. The key component is a coaching/mentoring model, through which the parent receives recovery coaching and support through a private agency. The RSVP is currently operating in three pilot sites and is funded through a Technical Assistance grant, in addition to re-allocation of existing dollars from the child welfare and mental health agencies. Early outcomes have been promising, and a process evaluation will begin shortly.

Accountability through Data Sharing

Connecticut feels strongly that collecting and tracking data is a key strategy for improvement, and as part of their Court Improvement Program, they have a standing committee on data sharing. Currently, the judicial data system provides their data to the child welfare agency, which then uses that data to populate parts of their Statewide Automated Child Welfare Information System (SACWIS). The child welfare agency is currently conducting a proof of concept to ensure that this form of data sharing will be effective; the goal is to eventually implement electronic data sharing. New "fillable" forms have recently been developed, with the goal of implementing electronic filing, which will contribute to the data sharing system.

The Connecticut Judicial Branch is using data to provide exit outcome reports to the Chief Judge, child welfare agency attorneys, and local court managers, who disseminate them to the local judges. The report includes the number of children that have exited care, how long they were in care, and how they exited care, including those who aged out without permanency. Ms. Giovannucci reported that they have seen the number of youth aging out of care decrease since they started producing the exit outcome reports two years ago. Accountability through data will be increasing, as the docket will be going online soon, and will include the number of days that a case has been pending. Furthermore, the Judicial Branch has started to collect – and will soon disseminate – data on nine key nationally accepted performance measures, documenting certain key decision points and the percentage of cases that reach those decision points. Ms. Giovannucci credits their ability to disseminate data in a meaningful way to a case flow management specialist that is skilled at crafting data reports that are user-friendly and easy to understand.

Technology in the Courtroom

Another strategy that the courts are using involves expansion of technology in the courtrooms. Currently, all of the courtrooms are equipped for teleconferencing, and videoconferencing will be implemented in all of the courtrooms over the next few years. One of the expected outcomes of these technologies is that out-of-state relatives will be able to participate in hearings by phone or videoconference, if they have it available, leading to increased and expedited relative placements. In addition, one of the barriers that currently increases the length of a case is the continuance of hearings due to lack of transportation for incarcerated parents. The goal of the new technology is that incarcerated parents will still be able to participate in hearings, even if transportation is not available, so that the case can stay on track without unnecessary delays. Another technology available in the courtroom is audio recording of all the proceedings, so that judges do not have to wait for the court transcript before writing their notes. This has been particularly important in expediting termination proceedings, where judges are required to write notes about their decision.

Statutory Reviews

Ms. Giovannucci emphasized the importance of looking at statutes and how they can be used to streamline the permanency planning process. In Connecticut, state statute includes non-custodial parents as parties to the case; if the non-custodial parent is not identified, there is a statutory process in place to identify and locate the parent. Children are also allowed to come to court, although they rarely do so. However, the courts do have a protocol for ensuring that the child's social worker and/or attorney have spoken to the child to invite them to their hearing and to report to the court on the child's desired outcome. One recent statutory change that passed last year requires the child welfare agency to identify relatives that might be appropriate relative placements.

To ensure that parents are aware of statutes, particularly the timeline to permanency provided for by the Adoption and Safe Families Act (ASFA), judges are provided with a "canvas" for use at the removal hearing. The canvas guides judges through the process of advising parents of their rights and includes an explanation about the ASFA timeline. Judges are now consistently addressing parents at the beginning of a case to emphasize the importance of actively participating in their case, because there is a time limit. The bench book, covering all of the court proceedings, was also recently revised in order to guide judges through subsequent hearings and to provide them with appropriate questions to ask at each hearing. A new checklist specific to older youth in care will also be developed to address their unique needs.

Training

In addition, Connecticut provides legal and judicial staff with considerable training regarding dependency proceedings. For example, attorneys receive training on how to prepare for dependency cases, how to engage children, and how to litigate dependency proceedings, among other topics. Ms. Giovannucci highlighted the need to provide ongoing learning as well; she cited one example of two very experienced juvenile judges that recently attended the Child Abuse and Neglect Institute. Despite their experience and knowledge, they reported afterwards that the Institute had reminded them of best practices which they had “forgotten to do” in their courtrooms, and which they were newly committed to practicing. Given the role of the judiciary, it is vital that they have an understanding of the importance of permanency and best practices that can contribute to timely permanency.

Identify Post-Termination Permanency Barriers

Some of the permanency challenges in Connecticut are specific to delays that take place between termination and adoption, and there are efforts underway to address those delays. One of those challenges was a child welfare agency policy that required a wait period of six to twelve months after termination, before an adoption could be filed. This policy has now been revised. Another barrier is the appeals process; currently it can take up to two years before an appeal is heard, and another year before it is decided. While the case is pending, a child’s adoption cannot be completed. Ms. Giovannucci reported that one of the judges is working to change the appellate rules so that the process is timely. A further challenge is that adoptions are currently processed by the probate court, not the juvenile court, even though the probate court is not an expert in juvenile matters. Connecticut’s Program Improvement Plan (PIP) includes a proposal to move adoptions from the purview of the probate court to the juvenile court, but that will require a legislative change. In the meantime, the probate court has created a special docket for children’s issues, including adoptions.

Judicial Leadership and Collaboration

It is particularly important that the top-level leaders, such as the Chief Justice and the Chief Court Administrator, are familiar with child welfare practice, as judicial leadership is key to the success of reform initiatives. Equally important is that reform initiatives need to be collaborative. Ms. Giovannucci credits the successes in Connecticut to the collaborative efforts of the judicial branch, the bar, and the child welfare agency; they have learned from past failures that they are most successful when they work together rather than individually. Ms. Giovannucci also stated that improving permanency outcomes for children cannot depend on one solution alone, but rather, requires a “multitude” of efforts to achieve this goal.

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Georgia³

Ms. Barclay, Assistant Director of the Administrative Office of the Courts, stated that Georgia’s catalyst for change occurred after Georgia failed to pass Permanency Composite 3, achieving

³ Information provided to Casey Family Programs on November 4, 2009, by Honorable Michael Key, Judge, Troup County Juvenile Court, and on November 5, 2009, by Michelle Barclay, Assistant Director, Administrative Office of the Courts.

permanency for children in foster care for long periods of time, of the Child and Family Services Review. After Georgia failed to pass, concern was raised regarding the number of children who had been in long term care for an extensive amount of time. Georgia decided to tackle this issue state-wide through two strategies: Permanency Round Tables (PRT) and the Cold Case Project.

Permanency Roundtables

Georgia has partnered with Casey Family Programs to conduct PRTs for all children who have been in care for an extended amount of time. PRTs are structured professional case consultations designed to expedite permanency for youth in care through innovative thinking, the application of best practices, and the “busting” of systemic barriers. A PRT team consists of the following members: a facilitator; the caseworker; the supervisor; a master practitioner; and permanency consultants. Legal experts are often also available to the team, either in the room, on-site, or by phone. Other potential team members can include: former CPS caseworkers; a service provider; agency administrators; constituent advocates; cultural guides; and mental health, substance abuse, and domestic violence providers. Georgia is currently still in the process of conducting PRTs, but for those children who have already had PRTs, Ms. Barclay relayed that anecdotal information suggests that those children are achieving permanency. The results of the PRTs are provided to judges for their review. In addition, Georgia trained judges on the PRT process so that their practice would align with that of the child welfare agency.

Cold Case Project

Another effort to reduce the number of children in care is the Cold Case Project (CCP). The CCP started prior to PRTs under the Administrative Office of the Courts, with funding from the Court Improvement Project (CIP). The CCP uses a predictive model, similar to the model used in the health care industry, to identify children who have been in out-of-home care for an extended period of time. Using seven factors (eligibility for federal funding, number of months in care, termination of parental rights for both parents, year of birth of the caregiver, current institutional setting, the child’s age, and the number of placements), the CCP identified 500 children. Attorneys were then contracted to review the cases and identify any shortfalls or things that social workers might have overlooked. Once a case is reviewed by a lawyer, Ms. Barclay, the current social worker, and the social worker’s supervisor meet to brainstorm new ideas for permanency for the child in care. The social worker is then asked to explore the new options with the child. The idea of the CCP is similar to PRTs in that it is intended to provide a new set of “eyes” on a case that has been in the system for a long time. The CCP has reviewed 100 cases to date and a plan is in place to review more cases during the coming year. Data is being collected and the CCP will be evaluated by the end of the year to determine its impact. Anecdotal information suggests that the program has been effective. Ms. Barclay reported that one of the benefits of the CCP is that Georgia is beginning to see themes in the cases that have been lingering in the system. To date, the CCP has identified a number of factors that significantly determine whether or not a case will be in the system for a long time. These are generally cases in which relative searches are not diligently conducted, children are not consulted regarding their permanency, services are not being adequately provided to the child, children are not participating in court hearings, and relatives are identified but not contacted. Ms. Barclay indicated that Georgia is learning from these reviews and, because of the themes identified, they are now emphasizing the importance of including these practices in each case.

Operation Home Team

Troup County, Georgia is engaging in many positive efforts locally, such as the Operation Home Team (OHT) program. OHT is an upfront program designed to prevent the removal of children from their home. The program began under the guidance of Judge Michael Key of the Troup County Juvenile Court, who developed OHT's protocols in collaboration with the county's social service director, the local social service administrator, the supervisor of all the child welfare units, court staff, CASAs and attorneys. The team is built around the family, with the parents as the primary participants. When a social worker files a dependency petition, Troup County's judicial guidelines require that a hearing be held within 72 hours. Prior to the hearing, the OH team discusses the issues of concern and determines the level of risk. The team can include, but is not limited to, the parents, the parents' attorneys, the child's attorney, any service providers, the social worker, court staff, and the CASA. Other team members can include law enforcement, if they are involved with the family, and education staff, such as teachers or school counselors. Judge Key relayed that in some cases where substance abuse had been the key issue identified in the petition, the team was able to arrange for a preliminary substance abuse evaluation to be completed prior to the 72-hour hearing. He indicated that having all parties involved at the team meeting prior to the hearing allows everyone to better understand the issues of concern and helps everyone to evaluate the level of risk present. At the 72-hour shelter care hearing, the services needed by the family are identified and everyone involved works to get these services in place as soon as possible. Judge Key stated that in some cases, even though risk was present, the safety of the child was not necessarily compromised and thus removal was not required. He indicated that this assessment would not have been possible without the OHT meeting, and that the OHT was preventing the need for placement in some cases.

Another important feature of the OHT is that it provides legal representation for all parties as early as possible, including children. Judge Key stated that all parties have legal representation by the 72-hour hearing, and all parties are also required to attend the first hearing, even children. Even though children are not required to attend all hearings in Troup County, he does require children six years and older to attend the first hearing so that he can confer with them personally. After the 72-hour hearing, he does not require children to attend hearings, but he always ensures that children understand that he has an open door policy and that they can always provide their input in person or via a letter at any time.

OHT also requires that a Family Team Meeting (FTM) be held within 9 days of the 72-hour hearing. At the FTM, services are reviewed and relative searches are expected to be conducted. At the 30-day hearing, OHT protocol requires that all assessments be completed, such as substance abuse and mental health evaluations. Judge Key indicated that in cases where this is not possible, at least the recommendations from the evaluations should be ready for the hearing, even if the full written evaluation is not completed. After the dispositional hearing, OHT moves the review hearing, which is usually held six months after the dispositional hearing, to within 45-60 days of the dispositional hearing. At that time, the team reviews the case and identifies needed services. They also review the relative search and ensure that relatives are being located or, if relatives have not been located, they identify the existing barriers. The team also develops what they call milestones, which are goals that are set and, when met, lead to increased visitation. Judge Key reported that as a result of holding the first review hearing sooner, Troup County was actually reviewing cases three and sometimes four times during the first year of the case instead of only twice, which helped to move the case along more quickly.

Heartbeat List and Situation Room

With regards to children who had been in out-of-home care for a significant amount of time, Judge Key relayed that Troup County's efforts began two years ago at an annual meeting of the thirteen counties with the largest number of children in out-of-home care. At that meeting, the state provided each county with the number of children in their jurisdiction that had been in out-of-home care for more than 18 months. Judge Key described Troup County's numbers as "horrible." He stated that after that meeting, Tanya Brooke, the Director of Child Welfare in Troup County, went back to Troup County and started the "Heartbeat" list and the "situation room." On the Heartbeat list are the names of all the children who have been in out-of-home care for more than 18 months, and in the situation room are the names and the pictures of these children. Once every month, Ms. Brooke personally meets with the supervisor of the social worker in charge of each child in order to identify the barriers to achieving permanency for that child. Judge Key indicated that he sometimes participates in these meetings, but they are primarily led by Ms. Brooke. Through this strategy, Troup County has been able to significantly reduce the number of children in out-of-home care. Judge Key relayed that although this effort initially began with only children who had been in out-of-home care for more than 18 months, it was later expanded to include all children in care. Judge Key explained that the reason they call the list the Heartbeat list is to remind everyone involved that each child is not just a number or a case, but a "little heart that [is] suffering being in care without a permanent plan."

Troup County's Permanency Roundtables

For those cases that have still not been able to achieve permanency, Judge Key stated that he and Ms. Brooke decided that the cases need a new set of eyes. They were in the process of attempting to set up a review process when they heard of Casey Family Programs' Permanency Roundtables. Judge Key relayed that having Permanency Roundtables in Troup County was beneficial because it began to make Troup County think "outside of the box." Anecdotal information suggests that the PRTs were successful in helping move cases towards permanency. Judge Key gave examples of cases in which the child welfare department had not placed children with relatives when they were young because the relatives had prior CPS history, but through the Roundtable process, the relatives were once again revisited as placement options, since the children were now older and the risk was not as significant. In other cases, staff often knew if a youth, who was about to turn 18 within a year, had a connection with their biological parents and was going to go home to their parents once they turned 18. As a result of the PRTs, the department provided a transition plan and transition services for some of these youth instead of just allowing them to age out of care, so that the youth could return home safely and with supports in place.

Judge Key could not credit one specific effort with reducing the total number of children in care in Troup County; rather, he thought that they were all beneficial. Judge Key reported that in 2004, there were 223 children in care; in 2005, 197; in 2008, 150; in October, 2009 there were 62 children in care; and by January 2010 Troup County is projected to have just 50 children in care. Judge Key emphasized the fact that the reduction could not have happened without collaboration between the child welfare agency and the court. He also indicated that he believes that strong judicial leadership is needed if court improvement is to be successful.

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IDAHO⁴

From the outset, Ms. Debra Alsaker-Burke, Child Protection Program Manager for the Idaho Supreme Court, and Shirley Alexander, Child Welfare Program Manager for the Idaho Department of Health and Welfare (DHW), emphasized that systems change efforts in Idaho are the result of a partnership between the Department and the courts. The courts create the venue and the opportunity, and the Department provides the data and the feedback. Without the sharing of data and of strategies, progress towards improved permanency outcomes would not be possible.

Juvenile Rule 40

One of the primary initiatives for permanency in Idaho was an amendment of Idaho Juvenile Rule (IJR) 40, which was the result of the work of the Child Protection Committee, Idaho's Court Improvement Program. The amended Rule 40 requires that after the adjudicatory hearing, notice of any further hearings must be provided to the caregivers and to any child age 8 or over. Rule 40 also gives caregivers and children age 8 and over the right to be heard, either in person or in writing, at any future hearings, but does not require their attendance. The Child Protection Committee advocated for the amendment to Rule 40 following conversations with young foster care alumni, who reported unanimously that they would have liked the opportunity to attend and to be heard. Anecdotal evidence indicated that at least some of the foster care alumni might have been able to achieve permanency earlier if they would have had the opportunity to speak with the judge about their permanent plan.

A pilot program in five counties is examining the impact of Rule 40; anecdotal evidence suggests that amending Rule 40 has had a positive impact on permanency for some youth. Interviews and focus groups conducted with youth, foster parents, and key stakeholders found that while youth are indeed receiving notice, the number of youth that actually attend their hearings is highest in counties where social workers and attorneys believe that the effort of getting youth to the hearing is worthwhile. Although no one has expressed outright opposition to Rule 40, there has been some resistance from various individuals who are conflicted about the appropriateness and/or usefulness of bringing youth to court. The focus groups and interviews revealed that some counties will need to shift their paradigm and therefore their practice in order to make the spirit of Rule 40 meaningful for youth.

When youth do attend their court hearings, they are not always being actively engaged and therefore the quality of the hearing is not necessarily improved. Due to the fact that Rule 40 is an unfunded mandate, training has been limited to a brochure and video that were distributed in local regions, as well as some preliminary training about the purpose of getting children to court. Training is needed to appropriately prepare youth before court, what to do with them once they are at court, and how to debrief them after the hearing. A workgroup will be established in 2010 to develop a training curriculum that will address those topics in greater detail; the plan is to pilot the curriculum in one or two counties before expanding it to the rest of the state. A further goal is to teach youth advocacy skills, perhaps through a Youth Academy model that empowers

⁴ Information provided to Casey Family Programs on November 3, 2009, by Debra Alsaker-Burke, Child Protection Program Manager, Idaho Supreme Court, and Shirley Alexander, Child Welfare Program Manager, Idaho Department of Health and Welfare.

youth to advocate for themselves in court. Future plans for Rule 40 include the provision of resources and training in the pilot counties, followed by continued evaluations.

Legal Representation Workgroup

Another effort that had an unexpected but successful outcome was the result of an inter-agency Legal Representation workgroup that was formed to address the challenge of legal representation for the Department. Idaho statute is not clear about whether or not the Department is a party in child protection cases, which has led to inconsistency in representation by prosecutors. The workgroup is made up of representatives from the courts, DHW, the Attorney General's Office, and the chairperson of the Child Protection Committee. As part of this workgroup's efforts, it was discovered that a county had a significant backlog of cases. The Department subsequently asked each county to create a matrix of their cases and to identify the barriers in cases that were backlogged. In situations where these backlogs were the result of court barriers, such as a need for additional permanency review hearings, the workgroup was able to work collaboratively to develop solutions. Over 6-8 months the courts provided additional judges, the Attorney General's Office provided additional prosecutors, and DHW hired additional staff to address the backlog.

This experience has emphasized the importance of having data available in order to identify issues, and the creation of the Legal Representation workgroup has provided a forum for problem-solving these issues. Currently the workgroup is addressing issues on a county-by-county basis, but the goal is to eventually tackle statewide issues. One strategy for increasing the data available is the development of uniform court reports, which will provide the data that the courts need to populate their data system more effectively, as well as the information that a judge needs to make decisions about a case. At this time, court reports are narratives that may or may not have all of the pertinent information that a judge needs. A subcommittee made up of members of the Child Protection Committee and of DHW social workers is currently developing a template for court reports. The goal is to help standardize practice and clarify how decisions are made by the Department, as well as provide key data elements that the courts can collect and then track. The template is being developed, and the goal is to roll out a joint training on the template in March 2010.

Training and Collaboration

Additional efforts to improve permanency for children include training that brings prosecutors to the social worker academy training in order to teach new social workers how to partner effectively with the court. A similar training is planned for prosecutors who are new to the child welfare system. Another upcoming training will be provided to all judges, lawyers, Department staff, and CASAs in one pilot county on a new practice model called Staged Case Planning. In Staged Case Planning, both safety issues and risk issues are identified up front, and once the safety issues have been addressed, the child can return home. The risk issues will be addressed in the home, with the overall goal of safely increasing timely reunifications. The goal of the joint training is that everyone will be trained to the same definitions of safety and risk so that all parties have a shared understanding of the new practice model.

Ms. Alexander and Ms. Alsaker-Burke credit the momentum of the above initiatives to the strong collaboration that is already in place, but they recognize that there is still room for improvement in their collaborative process. Their goal is to establish an effective infrastructure for multi-agency systems change at the state level. They have learned that collaboration needs to be multi-dimensional: at the state level, at the local level, and between the local and state levels. Collaboration also needs to include a more formalized system for data sharing, which is still

needed in Idaho. Ms. Alexander and Ms. Alsaker-Burke acknowledged that sometimes working collaboratively with multiple agencies to identify and address common goals can be a slow process, but they also agreed that their persistence has resulted in significant achievements.

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MICHIGAN⁵

Currently in Michigan there are several significant court-driven programs with the specific aim of achieving timely permanency for children in foster care: the Permanency Actions workgroup, the Permanency Forum (formerly known as the Adoption Forum), the Parent Representation Project, and Baby Court. As the Justice that serves as the liaison between the judicial system and the child welfare system, Justice Maura Corrigan has spearheaded many of these programs, together with Dan Wright, Director of Child Welfare Services for the State Court Administrative Offices.

Permanency Actions Workgroup

The Permanency Actions workgroup was started by Justice Corrigan in 2006 as the result of amendments in Michigan state statutes that shifted the burden of proof in termination of parental rights hearings away from the state and onto parents. Justice Corrigan observed that this statutory shift led to an increase in the number of termination petitions that were on file and pending, to the point that petitions had doubled by 2003-2004. To address this increase, Justice Corrigan convened a workgroup of judges and staff from the child welfare and judicial agencies to take a critical look at current statutes and to propose statutory amendments. The Permanency Actions workgroup meets on a quarterly basis and to date every amendment that the workgroup has proposed has passed unanimously through the legislature with bipartisan support. These amendments have put the burden of proof back on the state, and have also mandated practices such as concurrent planning and continuation of parent-child visitation even if a termination petition has been filed. One recent effort led to the establishment of subsidized juvenile guardianships, which will allow children to achieve permanency while maintaining oversight by the judge assigned to the case. Currently, the Permanency Actions workgroup is drafting a new statute that would allow parental rights to be restored in cases where this would be appropriate, particularly for older youth who have a connection to their parents and who would likely return home on their own after they turn 18.

Permanency Forum

In 2008, Justice Corrigan and the Department of Human Services Director, Ismael Ahmed, began the Permanency Forum with the formation of cross-disciplinary, public-private teams in 13 counties. The exact composition of the teams varies by county, but all of the teams are led by judges who then chose team members that they thought would be effective at cutting through

⁵ Information provided to Casey Family Programs on November 2, 2009, by Honorable Maura Denise Corrigan, Justice, Supreme Court of Michigan, and Dan Wright, Director of Child Welfare Services, Michigan State Court Administrative Offices.

delays and barriers. In general, teams are made up of key stakeholders such as CASAs, lawyer GALs, parents' attorneys, county DHS directors/supervisors/social workers, and private agency supervisors/social workers. Some teams also include foster parents and one includes a former foster youth. The teams were tasked with examining court practices with a primary focus on four performance measures related to the Child and Family Services Review: timeliness, due process, permanency, and safety. Initially called the Adoption Forum, the project first targeted children who had been waiting over a year for their adoptions to be finalized, even though adoptive parents had already been identified. In addition, they were asked to identify the barriers that were preventing these adoptions from being finalized and to draft recommendations both for recruitment of adoptive families as well as for changes at the state level. In 2008, the number of adoptions in the original 13 counties had increased by 14 percent and the Permanency Forum has now grown to 23 of Michigan's largest child welfare jurisdictions.

Parent Representation Project

The Parent Representation Project, which also began in 2008, is an effort to improve the quality of legal representation that parents receive in child protection proceedings. Michigan partnered with the American Bar Association's (ABA) Center on Children and the Law to assess current practices for representation of parents. One of the key findings was that although many parents' attorneys had adequate skills, they were not meeting with or counseling parents outside of the courtroom, leading to the absence of a relationship of trust. Subsequently, many parents had been going through the motions of the child protection process without a clear understanding of the proceedings. In response to this finding, a symposium was recently held in October 2009 that brought a national expert to present to judges, legislators, child welfare advocates, attorneys, and child welfare agency staff on the topic of improving parent legislation. An advanced training is scheduled for December 2009, and then a pilot project will be held to develop different ideas for organizing parents' counsel so that they can get the training and support that they need. Based on the experience of other states, Michigan believes that when parents are adequately represented by counsel, out of home placements will decrease and reunifications will increase, leading to improved permanency outcomes for all children.

Baby Court

Another recent initiative is Baby Court, adopted from the Baby Court program developed by Judge Cindy Lederman, Presiding Judge of the Juvenile Court in Miami-Dade County, and Dr. Joy Osofsky, Professor of Pediatrics and Psychiatry at Louisiana State University. There are currently two Baby Courts in Michigan, one in Midland County and one in Genesee County; in addition, Michigan's largest county, Wayne County, is currently in the process of establishing its own Baby Court. Like Drug Courts, the Baby Courts are specialty courts that screen participants in order to ensure that they will be a good match for the program and therefore have a higher likelihood of success. The goal of Baby Courts is to help parents improve their parenting by providing them with an infant mental health therapist that provides intensive, hands-on dyadic therapy between the parent and child. In order to be selected for Baby Court, the child is assessed for cognitive or other delays as soon as the dependency petition is filed, and then the Baby Court team determines whether or not the case would be appropriate for the program. If the parent agrees to participate, the judge speaks directly to the parent at the outset in order to communicate that the team is there to help the parent succeed, but that the parent is responsible for participating and doing the work. Although the program is too new to have any substantial outcome data, Midland County and Genesee County have already graduated their first cohort of parents that were successfully reunified with their children.

A more general strategy that is being used by many judges throughout Michigan is to hold more frequent hearings in order to ensure that progress is being made on cases. In Michigan court rule requires review hearings every 91 days, but after a training last year on the benefits of more frequent hearings, many judges are holding hearings more often. Judges have also made an effort to clarify expectations for the next hearing, so that each individual knows what they will need to get done in the interim, and what they will need to bring to the next hearing in order to make it effective and meaningful.

Using Data as a Tool

For those children who have not yet achieved permanency, data is being used as a tool to ensure that the children are not forgotten. Every month, judges are provided with a list of the names of children and the date at which they will have been in care for one year. Children who remain in care after parental rights have been terminated are also included in the list. According to Justice Corrigan, before this data was tracked, cases would be overlooked and significant time would go by without those children achieving permanency. Now that the data is being shared and disseminated, there is greater accountability to help ensure timely permanence for children in care.

Data sharing was cited by both Justice Corrigan and Mr. Wright as an element that has been critical to the success of their permanency initiatives; given the fact that the judicial system and the child welfare system maintain two separate data systems, sharing the data has required significant collaboration. Each agency has now identified staff to share data stage-by-stage, which has been one of the key outcomes of the agencies' efforts to more effectively collaborate.

Training

In addition, the agencies have increased cross-training in order for staff from each agency to understand each other's roles. However, total joint training between the judicial agency and the child welfare agency is an area that was identified as one that could use improvement; for example, the judicial staff has received training on concurrent planning but only two county child welfare agencies have begun to roll out their concurrent planning training. This is leading to a "silo effect," whereas joint training would enable both agencies to learn the same information at the same time, which could lead to faster results. Similarly, use of the new juvenile guardianships that were created by the Permanency Actions workgroup has been slow, in large part because the local child welfare agencies are not familiar with the process, which was created at the state level. A system-wide joint training program would help to address these issues.

Judicial Leadership

Underlying the success of all of these efforts is the common theme of judicial leadership; Justice Corrigan believes that while judicial leadership should begin at the Supreme Court level, local judges need to be empowered to take on the challenges they face at the local level. With strong judicial leadership and strong inter-agency collaboration, local teams have the knowledge and the expertise to resolve the barriers to permanency faced by the foster children in their communities.

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MINNESOTA⁶

In Minnesota, the Children's Justice Initiative (CJI) is a driving force from both the Minnesota Judicial Branch and the Minnesota Department of Human Services to reform the child welfare system and improve outcomes for abused and neglected children. The CJI is part of Minnesota's Court Improvement Program, and CJI teams are located in each of Minnesota's 87 counties; they are led by judges and include the director of the county agency. Other team members include tribal representatives, GALs, attorneys, and other key stakeholders. Teams meet regularly to identify and implement strategies to improve the lives of youth in foster care.

Identifying Areas of Concern

Each year, the CJI holds either a statewide conference or a regional meeting in each of Minnesota's 10 judicial districts; during the 2008 regional meetings, permanency data from the second Child and Family Services Review (CFSR) was shared with the attendees. State and county data were presented, indicating whether the jurisdiction was: in substantial compliance; not in compliance but reasonably close; or out of compliance with significant progress to make. One of the identified areas of concern was that of re-entries, and teams discussed the reasons behind Minnesota's extremely high rate of re-entries into care. Judges indicated that early judicial training was very focused on the importance of the twelve-month timeline and why it is not beneficial for children to linger in care. While that was important information, judges indicated a need for additional training. For example, training on how judges can evaluate safety in the home before reunification takes place, in order to avoid re-entries into care. It was also suggested that the quality of hearings would be enhanced, and permanency would increase, if parents attended court hearings on a routine basis and heard directly from judges.

Permanency for Older Youth

CJI teams also focused on issues of older youth in long-term foster care. In August 2009, state legislation, consistent with the federal Fostering Connections to Success Act, was passed that requires social workers to have more specific contact with youth regarding their long-term plans. From the perspective of the court, this is a conversation that is not taking place between the judges and the youth because youth generally do not attend court hearings. At this time, there is no mandate or policy requiring a child's attendance at court. CJI teams are being tasked with developing strategies at their local county level that ensure that every child, and especially older youth, attend their court hearing. A goal for the 2010 CJI regional meetings is to share data about youth fourteen years old and older whose parents' rights have been terminated but who have not yet achieved permanency. The plan is that the goals set for the following year will be to find a permanent home for each of these youth. Possible strategies might include relative searches, or reinstatement of parental rights where appropriate, which is allowed by state statute in Minnesota. A proposed change in statute would also allow for parental rights to be suspended rather than terminated, with the hope that this may lead to increased permanency for some youth.

⁶ Information provided to Casey Family Programs on October 30, 2009, by Judith C. Nord, Staff Attorney / Children's Justice Initiative Manager, Court Services Division, Minnesota State Court Administrator's Office.

Resource Information

As the CJI Manager, Ms. Judith Nord supports the work of the teams by providing resource information, such as bench cards prepared by the American Bar Association's Center on Children and the Law. These bench cards provide tips on how to engage a child at different ages/developmental stages. Further, a checklist is being developed to help guide judges as they ask questions about a youth's preparation for becoming an adult; this checklist will be included in the judge's bench book. The bench book, the result of an earlier permanency initiative, is a compilation of approximately 25 chapters with information ranging from child development to the various types of hearings that take place in juvenile court. To help guide their work, the information in the bench book is being converted into a checklist of questions for different groups of professionals, such as judges, attorneys, and GALs. In addition to these initiatives, the CJI's advisory committee is developing a list identifying action items that both courts and social workers can take to improve outcomes for older youth in care.

Currently, Minnesota's data comes from a variety of sources (the CFSTRs, case management reviews, focus groups, and anecdotal information), and it is difficult to identify the outcomes of these permanency initiatives. However, the statewide court information system is beginning to track performance measures and the hope is that the first group of data will be available in the spring of 2010.

Effective Legal Representation

Anecdotal information suggests that one program that has had a positive impact on permanency outcomes for children is the statewide Guardian ad Litem program; their mandatory pre-service training is credited with its success. Conversely, a significant challenge in Minnesota is that of appropriate legal representation for parents, who are only appointed an attorney if they qualify financially and if a judge decides that it is appropriate. Due to the fact that attorneys for parents are not mandated by state statute, the Public Defenders' Office ceased providing representation as of July 1, 2008 due to budget constraints. Since then, counties have been seeking attorneys to work with parents, but often these attorneys lack experience with cases of child abuse and neglect. Therefore, training for this group has become a critical issue. Anecdotal information suggests that lack of appropriate parent representation is having a negative impact on permanency outcomes for children; for instance, attorneys who are trained in the adversarial process have advised parents to refuse services, consequently slowing down the process of reunification.

Collaboration

One key to the continuing efforts of the CJI teams is that each team has a succession plan, ensuring a smooth transition when there is turnover. Similarly, each team has put in place a "leavening process" in which team members share the policies and practices that they develop with their counterparts throughout the county. Ms. Nord identified judicial leadership and collaboration amongst the team members as the two key elements for making the work successful. In Minnesota, teams are encouraged to build relationships and respect, rather than to talk about the challenges within their county. In 2001, teams were brought together for a statewide conference to develop strengths around building a team, working together, and developing agendas together. The idea behind collaboratively developing agendas for each meeting is that each person is more likely to contribute and participate, and therefore is more likely to take action to solve problems.

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MISSOURI⁷

Missouri has a number of court-driven efforts underway to address permanency, most notably their Fostering Court Improvement (FCI) project, which is currently the largest court program in the state. Missouri's FCI was started in 2005 as a collaboration between the Missouri Office of State Courts Administrator, the Missouri Children's Division of the Department of Social Services, the University of Missouri School of Social Work, and the Fostering Results project of the University of Illinois at Urbana-Champaign School of Social Work. The hallmark of Missouri's FCI is that it is led by the judiciary and driven by the data.

FCI Project Implementation

In Missouri, FCI began with four judicial circuits and has phased in additional circuits; currently, ten of Missouri's forty-five circuits have volunteered to participate in this program. Circuits are provided with data regarding youth in their jurisdiction, and develop their reform priorities and strategies based on that data. FCI plans to expand the program to another 3-5 circuits every year or every other year, as capacity and resources allow. As expansion continues, the initial sites are being utilized as models/mentors for the newer sites. One of the key criteria for identifying the readiness of a circuit for the FCI project is the willingness of the judicial, legal, and child welfare agency representatives to work together and make changes; otherwise, experience has shown that the circuit will not be successful in enacting change. As a first step in this collaborative process, it is recommended that teams attend a three-day collaboration training to ensure that they will be able to work together effectively.

Key features of successful FCI teams include:

- they are led by the judiciary;
- they are represented by community stakeholders, such as schools, treatment facilities, drug court, private agencies, CASA, defense attorneys, and the juvenile justice agency;
- each team includes a court clerk and a quality assurance specialist from the Children's Division;
- the courts administer and oversee the program, and serve as a clearinghouse for information regarding both what is working well and challenges.

Performance Measures

The Office of State Courts Administration, in collaboration with the Children's Division, collects and disseminates data on fifteen FCI court performance measures in the categories of permanency, due process, timeliness, safety, and stability. One of the "lessons learned" in the beginning stages of developing the FCI project was the importance of choosing appropriate performance measures and determining how to collect the needed data. Now the courts provide data on nine of the fifteen measures and the child welfare agency provides the remainder of the data. Each FCI team is provided with the outcomes of the performance measures regarding the

⁷ Information provided to Casey Family Programs on October 26, 2009, by Norma Rahm, Court Program Manager, Andrea Cleeton, Family Preservation Program Specialist, and Kimberly Abbott, Family Court Specialist, of the Missouri Office of State Courts Administration.

foster youth within their circuit, and the team then determines the issues to address based on the data and the needs of their local community.

Strategies towards Permanency

When the city of St. Louis joined the FCI project, they determined that older youth, particularly African-American youth, were staying in care for long periods of time. They identified this group as their target population and implemented strategies to move them towards permanency. They conducted case readings and staffings with the youth and their social workers in order to get the youths' perspectives. This work has led to the expansion of family search and engagement to find connections for these youth. Springfield, which is a quasi-urban area, and Jefferson County, which is a rural but large county south of St. Louis, are also adopting these strategies to address permanency for youth in long-term foster care.

Other circuits have implemented strategies, such as improving engagement with fathers and increasing use of relative care, while others are increasing the number of guardianships to establish permanency for youth. There is also an overall effort to engage families earlier in the dependency process and to achieve permanency for youth more quickly.

According to Ms. Norma Rahm, Court Program Manager for the Missouri Office of State Courts Administration, some of the sites that have been most successful have strong judicial leadership and an expectation that every member of the team is coming prepared to work. Regular monthly meetings with clearly defined tasks to complete between meetings also help to move the work of the team forward. The collaboration has brought permanency to the forefront of the conversation and has improved working relationships among the agencies. This has led to cross-training and a greater understanding of each professional's role in achieving permanency. For example, trainings have been provided to the judges on topics such as services and resources available under the Chaffee legislation and other opportunities available to older youth, as well as the importance of having youth participate in their own court hearings.

Data Accountability

The importance of data has also been a training topic; for example, the clerks who are responsible for entering data from court hearings were trained to understand the relevance of having accurate data and how it would be used. Missouri has used data to move children through the dependency system by tracking mandatory time frames for cases. Every time a case is not heard on time, the court must report to the Missouri State Supreme Court regarding the reason for the delay; that information is then used to develop plans for addressing the barriers to timely hearings. Now, approximately 95 to 97 percent of all case hearings are being held on time.

Outcome data related to the above practices and strategies has been difficult to capture; for example, even though the majority of all hearings are now being heard on time, it is not clear whether this one improvement has led to better outcomes. As Ms. Rahm expressed, it is difficult to directly correlate positive outcomes to just one strategy. There is an effort to collect data and outcomes related to new strategies, but the challenge is determining how to capture that data so that it can be used to drive further court reform.

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PENNSYLVANIA⁸

Pennsylvania has made significant strides in the last three years to improve outcomes for foster children through statewide systems reform. Throughout most of the state's history, the 67 counties and 60 judicial districts were individualized and worked independently of one another. However, a unique structural change, designed to build collaboration between the judicial system and the child welfare agency, has led to significant reform efforts in a relatively short period of time. This structure, known as Roundtables, is a three-tiered system at the county, regional, and state levels. The Roundtables provide a forum and a structure for identifying barriers faced by children in foster care, and for developing solutions to those barriers.

First Level: Local Children's Roundtables

These roundtables are convened in each county by a dependency judge and are co-facilitated by the judge and a children's administrator. Participants include representatives at the local level who affects dependency for children, including attorneys, solicitors, GALs, and representatives from the mental health, drug and alcohol, and foster parent agencies. Children's Roundtables meet regularly, although the frequency of the meetings is decided locally based on each county's need.

Second Level: Leadership Roundtables

There are eight leadership roundtables in the state. The 67 counties are assigned to a Roundtable based on the size of the county, so that like-sized counties, which presumably have similar challenges and resources, meet together at the same Roundtable. Each Children's Roundtable is represented at the Leadership Roundtable by their local judge, children's administrator, and one additional representative of their choosing. The co-chairs of the Leadership Roundtables are a judge from one county and an administrator from another county. The Leadership Roundtables meet twice a year, in the fall and in the spring.

Third Level: State Roundtable

This Roundtable meets once a year in the summer and is attended by the co-chairs from each Leadership Roundtable, in addition to the children's administrator and judge from Philadelphia and Allegheny County. Since these are the jurisdictions with the largest number of children in care, they have "standing seats" at the State Roundtable, in addition to the representatives from their Leadership Roundtable. The State Roundtable is co-chaired by: Justice Baer of the Supreme Court of Pennsylvania; Richard Gold, Deputy Secretary for the Office of Children, Youth, and Families (OCYF); and Sandra Moore, Administrator for the Office of Children and Families in the Courts.

⁸ Information provided to Casey Family Programs on November 5, 2009, by Sandra Moore, Administrator, Pennsylvania Office of Children and Families in the Courts.

The structure of the Roundtables has been very successful in large part because the issues that are addressed at the State level are those that have been brought from the local level up to the Leadership level, and then to the State level. Staff from the Office of Children and Families in the Courts attend the Leadership Roundtables in the spring to capture themes from across the Roundtables, and these themes are used to set the agenda for the State Roundtable in the summer. The solutions developed at the State Roundtable are then brought back to the Leadership Roundtables in the fall, and from there they are taken back to the local Children's Roundtables. Thus, the Roundtables are a mechanism for effectively moving issues from the local county level up to the state level, and then to bring solutions back down to the county level, rather than having a strictly state-level structure that makes decisions that are imposed upon the counties. The information sharing and problem-solving is based on the principles of the Family Group Decision-Making model, which is solution-focused and invites those who will be impacted by the decision to be part of the decision-making process.

A new Children's Roundtable Summit will be held this year for the first time, with participation from teams from 52 counties. The focus of the Summit will be to develop action plans to move youth to permanency. In preparation for the Summit, a subcommittee of the State Roundtable was formed to develop a mission statement, value and belief statements, and guiding principles for the Roundtables. "Families for Children" is the title of this document, with family as the key element upon which the document is based. Another subcommittee is developing a dependency bench book which details what should happen at every hearing and what judges should ask to make the hearings more effective and meaningful. This subcommittee is the only one represented solely by judges, an intentional decision to ensure that the bench book would be written for judges, by judges.

Permanency Practice Initiative

A significant effort that resulted from the State Roundtables was the Permanency Practice Initiative (PPI), a combination of four innovative practices: Family Group Decision-Making (FGDM), Family Finding, Family Development Credentialing, and the 3-5-7 Model, which is a grief and loss model that can be used to help prepare children for permanency. A multi-disciplinary oversight team was formed to develop the phased roll-out plan for the PPI. Counties were invited to volunteer for Phase 1 of the roll-out, and they were required to demonstrate their commitment by providing a letter of interest signed by four key stakeholders: the dependency judge, the president judge (if different from the dependency judge), the children's administrator, and the county commissioner. Counties also had to agree that their dependency judge and children's administrator would engage in training on the above practices. Fifteen counties were chosen in September 2008; these counties were provided with training, resources, and support, and were given six months to prepare before launching their programs in March 2009. Fourteen of the fifteen counties successfully met the timeline.

As part of the PPI, counties were required to implement all three family practices, as well as the 3-5-7 Model, but they were allowed to choose their own parameters for the cohort that would receive these services, i.e., older youth, children age 0-5, etc. However, counties were required to modify their court structure by holding review hearings every three months instead of every six months. One of the incentives for counties, which was also a key factor in the program's success, was that the state OCYF committed to funding these initiatives at 95 percent, which was significantly higher than the funding provided for most programs. Further, the OCYF guaranteed that counties could save and reinvest any state money that they saved by lowering the number of children in out-of-home care.

Preliminary data indicates that the PPI has had positive outcomes; for example, Dauphin County, which chose to focus on children age 0-5, started in September 2008 with a cohort of 125 children. By May 1, 2009, they had 102 children in the cohort, despite an increase of 32 new children age 0-5 who came into care. Because Dauphin County was able to reinvest their savings, they have now expanded the cohort to children age 0-10, and the expectation is that eventually all counties will expand these services to all children, thanks to the reinvestment of their savings.

Furthermore, when Phase 2 of the PPI began, there was a very large response from counties wishing to join this program, which indicates that they had heard positive feedback from their Phase 1 colleagues. Phase 2 counties are being connected with like-size Phase 1 counties, so that they can utilize the lessons learned during the first phase of the initiative. There are now 27 counties actively involved in the PPI, accounting for 71 percent of children in care. Philadelphia, which has the largest number of children in care in the state, is not currently a part of the initiative, but they have started to launch some of these practices on their own, including FGDM and Family Finding, as well as a pilot of the three-month reviews.

NGA Participation and Accountability

In addition to the work of the Roundtables and the PPI, Pennsylvania is part of the NGA Policy Academy on Safely Reducing the Number of Children in Foster Care. As such, sixteen counties from across the state are participating in a leadership team, with the specific goal of reducing the number of children in out of home care. Since April 2008, the sixteen counties have seen a ten percent reduction; about half of those counties are also involved in the PPI. As a result of the work of the NGA leadership group and the PPI, about 35 counties, with approximately 82 percent of all children in out of home care, are involved in efforts to strengthen families and expedite safe permanency for children.

As part of the work of the NGA leadership team, the Deputy Secretary for the OCYF, along with his Regional Director team, has taken a personal approach to hold counties accountable to expediting timely permanency for children in care. The Deputy Secretary and each of the Regional Directors are personally engaged in case staffings with social workers in each of the counties, to look at practice, as well as policy and systems barriers. Another strategy for accountability was to look at the data, which was initially a challenge due to the various data systems across the state. One of the first steps taken to address this barrier was to develop templates for the various court hearings so that the forms would be consistent across the state. In this way, data could be gathered in a consistent fashion, which was then entered into a new child dependency data system created by the Supreme Court of Pennsylvania. In less than a year, the new data system has been rolled out to 65 of the 67 counties in the state. The initiative to develop a new data system has been successful in part because of the judicial leadership from the Supreme Court, in addition to the collaborative consensus from the State Roundtables that collecting the data was essential to effectively track outcomes.

Leadership and Collaboration

In addition to the importance of having judicial leadership, Ms. Sandra Moore, Administrator, Pennsylvania Office of Children and Families in the Courts, shared that it is important to have leadership at the top levels that is visible and vocal. The leaders also need to be willing to model the changes that they want to see in others; for example, one of the challenges in Pennsylvania was how to begin the dialogue and collaboration between the judicial branch and the child welfare agency, and the decision was made that the effort needed to begin at the top. Justice Baer, Deputy Secretary Gold, and Ms. Moore collectively agreed that they would not ask the

counties to do anything that they would not do themselves, so they began to role model the collaborative relationship that they wanted to see in the counties. Courts and child welfare agencies had expressed some concern about developing relationships as they were concerned about issues of confidentiality, conflict of interest, etc., but Justice Baer, Deputy Secretary Gold, and Ms. Moore helped them to understand that collaborative communication on an administrative level is acceptable and even encouraged. The effort towards collaborative communication was further modeled at a 2007 statewide conference on FGDM, where multi-disciplinary teams from 45 counties were brought together to focus on a specific practice. The shared learning and shared focus on solutions provided a concrete way to help develop collaborative relationships that could then continue on into the other practices taking place in each county.

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PIMA COUNTY, ARIZONA⁹

As a nationally recognized Model Court, the Pima County Juvenile Court has undertaken a number of strategies to improve outcomes for children in care, many of which have been adopted statewide. One example is a protocol instituted by the Model Court that required that foster children receive notice of their court hearings. Notice was to be given by the judge directly to the child, if age 12 or older, at the preliminary protective hearing, along with an explanation of the child's right to be present and to be heard at every hearing. If the child was not present at the preliminary protective hearing, notice was given to the child's attorney with clear instructions to provide notice to the child. When the child did attend their first hearing, the judge would ensure that the child understood how to participate in the court proceedings; for example, how the child could access their attorney, when the next hearing would be held, and how the child could get to court. Despite some initial barriers faced by the child welfare agency, the judicial leadership of the Model Court ensured that there was follow through with the protocol through ongoing dialogue with the agency. As a result, Judge Stephen Rubin of Pima County Juvenile Court reported that children started attending court hearings more frequently.

Although the impact of youth attendance at hearings is unclear, Judge Rubin indicated that there was some anecdotal evidence that this practice led to permanency for some youth. Having the youth at court provided the judge with the opportunity to ask the child directly where the child wanted to live, and some children were indeed able to identify homes that resulted in permanent placements. Furthermore, Judge Rubin felt that having children present in the courtroom was a good way of holding everyone accountable, by reinforcing the importance of the proceedings taking place. As a result of this initiative by the Model Courts, the Arizona legislature recently revised Juvenile Court Rule 41, giving children the right to be present and to be heard at every hearing.

Identifying Barriers for Older Youth

A similar initiative has been implemented to help support older youth as they age out of care. The final closure hearing that is held when a youth turns 18 was traditionally a non-appearance

⁹ Information provided to Casey Family Programs on November 5, 2009, by Honorable Stephen M. Rubin, Judge, Pima County Juvenile Court.

hearing, but youth are now encouraged to attend their closure hearing, unless permanency has already been established. Although aging out of care is never a preferred plan, when it does happen, the court wants to acknowledge this milestone in the youth's life and to ensure that the youth has the resources needed. To better prepare older youth, Pima County is in the process of becoming a Passport to Adulthood site, to address the specific needs of youth in care that are age 12 and older. The Passport to Adulthood tool ensures that efforts regarding a youth's health, housing, education, employment, permanency resources, life skills, immigration status, and Indian Child Welfare Act compliance are documented, and provides key questions that judges can ask to hold social workers accountable to these efforts.

An earlier initiative of the Model Court was to focus on permanency for youth who had been in care longer than two years. A Permanency Committee was established, with subcommittees to look at various approaches to permanency. One of the subcommittees, tasked with identifying the barriers to permanency, created a survey that was sent electronically to key stakeholders, including judges, child welfare administrators/supervisors/staff, attorneys, foster care licensing agencies, and behavioral health networks. One of the surprising outcomes of the study was that the average age of the children was ten, although the subcommittee had assumed that the children would be older adolescents. The survey also revealed that the most significant barrier identified was a lack of permanent homes for sibling groups, which was the highest rated barrier across almost all of the groups surveyed. The second largest barrier identified was a lack of appropriate and permanent relative or fictive kin placements.

As part of this process, the Permanency Committee realized that a significant part of their effort would need to be data-driven, so a data report was compiled that provided key information about the number of children that had been in care longer than two years, including their age, length of time in care, assigned judge, permanency goal, current placement, and whether they are part of a sibling group. This data was not available from one single source, so collecting the data required a collaborative endeavor between the court, the child welfare agency, and the Foster Care Review Board (FCRB).

Using the data report, a file review of each case was conducted by the judge assigned to the case. The file review revealed that even though some children had a permanent plan of APPLA (Another Planned Permanent Living Arrangement), they were in homes that were committed to caring for them permanently, but could not legalize that commitment for financial or other reasons. Judge Rubin acknowledged that it required a philosophical shift in order to acknowledge that sometimes it was in the best interest of the child to leave the child in their current placement, even if it was not a legally permanent one, in order to preserve the permanent connections that had been made. This was a difficult decision and was only done in cases where both the caregivers and the child were clear in their desire that the child should remain in the home, and that the relationship was indeed a permanent one. These cases highlighted some of the barriers to achieving legal permanency, some of which have since been addressed by the Fostering Connections to Success and Increasing Adoptions Act.

Permanency Collaborative Review

Through the case file reviews, a cohort of 27 children was selected based on the following criteria: over two years' length of stay in care; legally free; permanent plan of APPLA; and currently not in a permanent placement. This cohort was chosen as the pilot group for a new Permanency Collaborative Review (PCRVR) hearing, which was held to focus solely on expediting permanency for each child. To minimize the workload impact, the child welfare agency and the judges agreed that social workers would not need to provide a written court

report for the PCRV hearing and that judges would not make any reasonable efforts finding or orders. An already-existing structure for Child and Family Team (CFT) meetings was also used to minimize workload impact. The CFTs were incorporated into the PCRV structure by holding the CFT at the courthouse before the hearing. The CFT, in conjunction with the PCRV, provided an opportunity for the judge to lead the team, including the child, in developing an action plan that would move the case forward towards permanency. The pilot was successful in securing legal permanence for 46 percent of the children in the cohort; however, the child welfare agency felt that they did not have the resources to commit to an ongoing implementation of the PCRV hearings, so the pilot was not implemented on a larger scale..

Using Data as a Tool

As a result of this experience, the court has realized the importance of using data to move cases towards timely permanency. Judges now receive a monthly report that provides a general dependency data snapshot, as well as a detailed report that provides information about the foster children under their supervision, such as the length of time that the case has been open and the identified permanent plan. As with the Permanency Committee endeavor, the data for these reports is collected from three systems: the judicial system, the child welfare agency, and the FCRB. A Model Court data subcommittee has been formed to examine the data every quarter to identify trends, in addition to developing mechanisms for improved data sharing. Some of the challenges include confidentiality and funding, as well as technical issues such as the lack of a common identifier.

Judge Rubin credits the progress that has been made in Pima County to the collaborative relationships between the key stakeholders, which has been the result of over ten years of working together on the Model Court initiative. Although it can be a challenge to get all of the stakeholders together, it needs to be a priority in order to keep everyone focused on permanency.

For further information, please contact:

- Honorable Stephen M. Rubin, Judge, Pima County Juvenile Court
 - stephen.rubin@pcjcc.pima.gov

SOUTH DAKOTA¹⁰

South Dakota's Court Improvement Program (CIP) workgroup, a statewide, cross-disciplinary team, is the state's primary advocate of court reform in the child welfare system. The CIP workgroup, which consists of two judges, a tribal representative, a CASA representative, a state's attorney, a child's attorney, a court administrator, the Director of Child Services and two regional managers, and the CIP Coordinator, has developed various strategies to address permanency for youth in long-term care.

Resources

One of the earlier accomplishments of the workgroup was to develop the South Dakota Guidelines for Child Abuse and Neglect, which is a manual that details the dependency process, including a child's options for permanency. The workgroup has plans to update the Guidelines in

¹⁰ Information provided to Casey Family Programs on October 30, 2009, by Sara Kelly, Court Improvement Program Coordinator, South Dakota Unified Judicial System, and Virgena Wiesler, Director of Child Protection Services, South Dakota Department of Social Services.

2010, and revisions will include further information about the importance of permanency for youth. A similar effort is underway to develop a “professional reference guide” for judges, as well as for law enforcement, attorneys, and both public and private child welfare agencies. A goal of the professional reference guide for judges is to make the permanency review hearings more meaningful by ensuring that judges are asking the right questions and holding staff accountable to achieving permanency.

Addressing Barriers/Judicial Champions

Members of the CIP workgroup recently attended the Third National Judicial Leadership Summit, and part of the action plan they developed there is to identify all children that have Another Planned Permanent Living Arrangement (APPLA) as their permanent plan and to address the barriers to achieving permanency for those youth. Currently, the workgroup is identifying the relevant children in each circuit; once they have been identified, a team meeting will be held for each child. In addition to the child, other team members will include the professionals involved in the child’s case, and the intent is that the team will include a judicial representative. The desired outcome is to achieve permanency for each child, and the CIP workgroup believes that this is an achievable and measurable outcome.

The CIP workgroup feels strongly that it is important to have judicial champions, and this is one area identified as needing improvement. South Dakota does not have a family court, so as judges rotate on the bench they have varying levels of experience and expertise with abuse and neglect (A&N) cases. Training for the judges was provided for the first time in 2007, and the next training is scheduled for 2010. At this time, a monthly data report is sent to the presiding judge of each of South Dakota’s seven judicial circuits, and the presiding judge then shares the data with the A&N judges in their circuit. The report lists all of the children in custody in a given jurisdiction and includes key data such as how long they have been in care, the date of the last hearing, and who is assigned to the case. Anecdotal information indicates that the judges are looking at the cases under their purview and are following up on the status of these cases. Future plans stemming from the action plan developed at the Judicial Leadership Summit include sharing data from all of the circuits with each other, so that judges can see what is happening in other circuits as well as their own.

Developing Attorney Training

Another initiative currently underway is aimed at improving representation for children by providing a video training for children’s attorneys. Although all children involved in Abuse and Neglect cases in South Dakota are appointed an attorney by state statute, there currently is no training curriculum for these attorneys. Therefore, the quality of representation can vary significantly, which is believed to have an impact on outcomes. The Unified Judicial System recently contracted with a marketing company to develop a video that will train attorneys on laws such as the A&N statutes of South Dakota and the Indian Child Welfare Act, and on other topics such as permanency. Any attorney assigned to represent abused or neglected children in South Dakota will be required to complete the video training, as well as pre- and post-competency tests in order to measure their subject knowledge. At this time, there is no state statute requiring legal representation for parents and there is no formal training for their attorneys.

Leadership

One of the key successes of the CIP workgroup was to acquire a position for a CIP Coordinator, Ms. Sara Kelly; prior to the creation of this position two years ago, there was no one person responsible for coordinating the CIP work taking place in the state. Although this position began

as a contract position, it is now a permanent position funded by South Dakota's Unified Judicial System. Ms. Virgena Wiesler, Director of Child Protection Services in South Dakota's Department of Social Services, credits this position and Ms. Kelly in particular with moving forward the court reform initiatives of the CIP workgroup.

Other elements of success identified by Ms. Wiesler and Ms. Kelly include support from the Chief Justice as well as having an effective working relationship between the judicial system and the child welfare system. Although much of the work of the CIP workgroup is relatively new and many efforts are still underway, these two elements have been critical to the successes to date.

For further information, please contact:

- Sara Kelly, Court Improvement Program Coordinator, South Dakota Unified Judicial System
 - sara.kelly@ujis.state.sd.us

VERMONT¹¹

In January 2009, Vermont's new juvenile statute governing child protection and delinquency cases went into effect, the result of an 18-month collaborative effort by key child welfare stakeholders. The new statute included revisions to incorporate best practices as well as a reorganization of the previous statute in order to make it more user-friendly. A committee chaired by Administrative Judge Amy Davenport met regularly over the re-writing period to make revisions to the statute; the final proposed legislation only included revisions that had consensus from every team member.

Statutory Review

Many of the key revisions were written with the goal of achieving timely permanency for children in care. Examples include: setting concrete timeframes for getting to certain court milestones; a provision to identify and locate non-custodial parents; a provision requiring consideration of non-custodial parents and kin as placement options; and a provision requiring that parent-child visitation be addressed at every stage of the court process. The revised statute also includes an assumption that children age 10 and older will be at the initial removal hearing unless their attorney feels that attendance is not in their best interest. To support youth attendance at court, a workshop on effective youth participation was provided at a recent statewide child welfare conference, and ABA bench cards on effective age-appropriate youth engagement strategies were distributed. A report on effective youth participation is forthcoming.

The new statute also created a new hearing called the "post-disposition review," which is to be held 60 days after the dispositional hearing. The intent of this hearing is to decrease time in between court appearances, as many months can go by between the dispositional hearing and the first permanency review hearing. Anecdotal evidence suggests that in most cases the post-disposition review has been useful in keeping parties focused on case planning and permanency.

¹¹ Information provided to Casey Family Programs on November 4, 2009, by Shari Young, Juvenile Court Improvement Manager, Vermont Office of the Court Administrator.

Justice for Children Task Force

One of the driving forces for improving outcomes for children in foster care in Vermont is the Justice for Children (JFC) Task Force, which is chaired by the Chief Justice of the Vermont Supreme Court. The JFC Task Force is an interdisciplinary collaboration of decision-makers in those agencies that have a direct impact on children in foster care, such as the Courts, the Department for Children and Families, the Department of Mental Health, the Defender General's Office, the State's Attorneys Association, the Department of Health's Alcohol and Drug Abuse Program, and the state legislature. The JFC Task Force is charged with identifying systemic barriers, developing solutions, measuring the effectiveness of changes once implemented, and reporting back to the Supreme Court with recommendations. The Task Force meets four times a year and has three subcommittees that are tasked with looking at issues that have been identified as priorities. Improving legal representation of parents and improving access to mental health and substance abuse treatments are two topics of interest at this time.

Inventory of Practices

Another initiative led by the JFC Task Force was a strategy borrowed from Minnesota and designed to promote best practices at the local level. A list of best practices at each stage of the dependency process was sent to each region and stakeholders were asked to rate the extent to which they engaged in those practices. The results were collected and presented as an "inventory of practices" statewide and for each local region. The JFC Task Force then developed activities meant to address the issues at a statewide level, and asked each region to choose two outcomes that they wanted to change as a result of the inventory.

Increasing Communication and Collaboration

Also at the local level, judges are encouraged to hold bench bar meetings, which are led by the judge and attended by court staff, social workers, attorneys, and GALs. The opportunity to meet outside the court room increases trust among parties and allows them to address issues in real time. Although bench bar meetings are not occurring consistently across the state, those judges that are holding meetings regularly have reported that they are an effective way of collaborating to come up with solutions.

One simple yet effective way of increasing communication among parties was the creation of a contact sheet, which the court staff provides to all parties at the beginning of a dependency case. The contact sheet lists the names and phone numbers for all parties, and is intended to facilitate communication outside the court room. Another effort to increase communication and collaboration are court scheduling meetings, which are being used in two counties. The purpose of these meetings is to determine which dependency hearings might be contested and therefore need protracted time on the calendar. As a result of these meetings, attorneys are talking about cases before the hearing, and court time can be used more effectively for those cases that are ready to move forward.

Using Data as a Tool

Vermont is also striving to improve its use of data; it will soon become a Fostering Court Improvement state, although there are some glitches to be worked out before the public site can be launched. At this time, judges and court staff receive weekly reports showing case pending disposition and cases pending TPR decisions. The JFC Task Force is also using data from the courts and the child welfare system to monitor twenty different performance measures. Although there is currently no mechanism for data exchanges between the judicial and the child welfare systems, there is a goal to eventually have a system that will allow for ease of data sharing. Steps towards this goal have begun; for example, one of the challenges was a lack of a

common identifier for cases, so the child welfare agency now enters the court docket numbers into their system so that those numbers can be used as a common identifier in both data systems.

In all of the above efforts, clear leadership, at the top level, as well as the local level, from both the judiciary and the child welfare agency were critical in achieving change. Communication between the two agencies was also key, as well as the funding provided by the Court Improvement Program, which made most of these changes possible.

For further information, please contact:

- Shari Young, Juvenile Court Improvement Manager, Vermont Office of the Court Administrator
 - Shari.Young@state.vt.us

ADDITIONAL RESOURCES

Interested parties may find the following items useful. Although some of them are not available in electronic form, they may be requested from the contacts indicated below.

Resource Title	Content	Source	Contact
"Getting from Here to There" Booklet	Youth's guide to the dependency process	Children's Action Alliance	http://www.azchildren.org/MyFiles/PDF/GuidetoDependency.pdf
"Fostering the Future: Strengthening Courts for Children in Foster Care" DVD & Booklet	Court recommendations from the Pew Commission	The Pew Commission on Children in Foster Care	www.pewfostercare.org
"Project Reunification: A Family Guide for Success" Booklet & DVD	Dependency Guidebook for parents	Missouri 25 th Judicial Circuit	Linda.Wagoner@courts.mo.gov
"Implementation Guide" for the Children's Justice Initiative in Minnesota	Describes the implementation of court reform in all counties in Minnesota	Minnesota Supreme Court & Minnesota Dept. of Human Services	judy.nord@courts.state.mn.us
<ul style="list-style-type: none"> Judge's Benchbook Judge Checklist Court Administration Checklist Guardian ad Litem Checklist 	Guidance for specified parties involved in dependency hearings	Minnesota Supreme Court & Minnesota Dept. of Human Services	http://www.mncourts.gov/?page=178 judy.nord@courts.state.mn.us
Judicial Bench Cards	Bench cards for engaging youth at different ages	American Bar Association Center on Children and the Law	Young Children Toddlers School Age Children Adolescents Older Youth
<u>In Press:</u> Research report on children's participation in review hearings. ¹²	Empirical research findings from Dr. Victoria Weisz, Ms. Sarah Beal, and Ms. Twila Wingrove	University of Nebraska-Lincoln	vweiszl@unl.edu

¹² The preliminary findings indicate: no evidence of harm to the children who attended their hearings; the child's age was not related to stress or other negative feelings; hearings with children in attendance were shorter than hearings without children; hearings with children were less substantive; encouragement and questions from the judge were related to greater comfort and more positive feelings in the children. A Power Point presentation is currently available.

Types of Foster Care Placements & Initiatives to Find Permanent Homes

The Texas Department of Family and Protective Services uses more than 100 different codes and classifications to define and characterize potential placements for foster children. For the purposes of this report, Texas Appleseed examined foster placements in a macro-form, grouping the department's classifications. Unless they have physical or mental disabilities requiring different levels of specialized care, most children will experience one or more of the following general placements during their time in foster care:

GENERAL PLACEMENTS

An **adoptive home** is a private home that has been studied and approved to adopt children in the managing conservatorship of DFPS where parental rights have been terminated.¹ An adoptive family makes a permanent lifelong commitment to the child who is placed in the home.

A **kinship, kinship care, or relative home** placement is one where the child lives with a noncustodial parent, relative or "fictive kin" (usually a close family friend) of the child.² This type of placement is a premium or priority placement when a child first enters into care. In order to be a viable placement for the child, a CPS or contract worker must complete an assessment for the court of the caregiver's ability to care for the child, including the criminal and abuse or neglect history of every member of the household over the age of 14. Kinship caregivers may also be trained and verified as foster caregivers, in which case they must meet the same requirements as other foster parents.

A **foster home** is a private home where the family has been trained and appropriately licensed or verified to provide foster care for as many as six children at a time, including the family's own children. Foster family-homes are appropriate for children of all ages who can take part in family life and live in the community without danger to themselves or others. A foster family must be trained and verified by the Office of Protective Services for Families and Children (PSFC), independently licensed by the Office of Child-Care Licensing (CCL), or trained and verified by a CCL-licensed child-placing agency.³

A **group home** is a residential care facility whose staff have been trained and appropriately licensed or verified to provide foster care for seven to 12 children at a time.⁴ A home must not care for more than 12 children, including the children of the foster family and children for whom the family provides regular part-time day care. These homes can provide care for children at all levels of care. Foster group-homes are appropriate for children and adolescents who need experience living with groups; who share a need for major services that group-living will help support; who have physical, mental, or emotional disabilities requiring specialized services within the capabilities of a group-home; or who need to make the transition from an institutional or therapeutic setting to a setting in which they can begin learning to live more self-sufficiently. To qualify as a placement, a foster group-home must be trained and verified by PSFC, independently licensed

1 If the home is dually licensed as a foster and adoptive home, the child may be placed there before parental rights have been terminated. See http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6830.jsp#CPS_6830.

2 See TEX. FAM. CODE § 264.751.

3 40 TEX. ADMIN. CODE § 700.1321(a).

4 *Id.* § 700.1321(b).

by CCL, or trained and verified by a CCL-licensed child-placing agency.

Foster Homes

The goal is to always to place foster children in the least restrictive, most family-like setting possible. Foster homes, where families take in foster children, often meet that criterion when kinship care is not possible. On August 31, 2009, there were 12,908 children in foster homes in Texas.⁵ Only 1,886 of those children were living in foster homes that had been recruited, the families trained, and the homes managed by DFPS.⁶ The other 11,022 children were in Child Placing Agency (CPA) foster homes.⁷ Child Placing Agencies are individuals, agencies or organizations contracting with the State to place children in foster, adoptive or foster group homes. They independently find, train, support and monitor all of their verified foster homes. While most of the DFPS foster homes provide only basic services, the majority of CPA homes provide therapeutic foster care services.⁸

Regardless of whether the State or a CPA is supervising the foster home, the foster parents have the same responsibilities: to provide for the daily needs of the child and arrange for any medical, dental or therapeutic care a child might need. They are also supposed to be positive role models for both the child and the birth family and to work towards their reunification.⁹ Foster parents providing basic care must attend 20 hours of training every year, but those offering more specialized care may attend as many as 50 hours of training and perform 40 hours of supervised child care duties.¹⁰

Unfortunately, a 2008 study by the Annie E. Casey Foundation using the 2000 U.S. Census found that, at least nationally, foster homes tend to suffer from a variety of disadvantages.¹¹ For example, 24% of foster homes have a head of household or spouse with a disability, compared to 14% of homes in the general population. Fewer heads of households and spouses in foster homes have college or high school degrees. Foster families also are more likely to live on incomes 200% below the poverty line. The mean income for surveyed homes with foster children was one-third less than the incomes for all households with children, and foster households were more likely to have 30% or more of their income spent on housing. While demographics are not destiny, it is troubling that many foster children leave one socioeconomically underprivileged situation only to find themselves in another.

Lower income in foster homes may shed light on the primary complaint stakeholders interviewed by Texas Appleseed had about some foster parents: that they are “in it for the money.” To be sure, many stakeholders had great experiences with the foster parents they encountered; one judge went so far as to say that a foster family can be a child’s “best asset” because children in foster homes get more attention and form a better bond with their caregivers than children in group homes or RTCs. However, the theme that came up in interview after interview was that some foster parents treat foster care as a “business of flesh.” One caseworker even said that the biggest barrier to kids achieving positive outcomes is foster parents who just want a check in the mailbox. Another estimated that 25-30% of foster parents she knew were not good at their jobs.

5 Annual Report and Data Book 2009, Texas Department of Family and Protective Services, at 50. The vast majority of DFPS foster homes are actually dual-verified as foster/adoptive homes. See DFPS 2009 Annual Report and Data Book, at 97.

6 *Id.* at 50.

7 *Id.*

8 *Id.*

9 https://www.dfps.state.tx.us/Adoption_and_Foster_Care/Get_Started/requirements.asp.

10 http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_px_6340b.jsp#6340b_Train.

11 O'Hare, W. *Data on Children in Foster Care from the Census Bureau*, Annie E. Casey Foundation (June 2008), available at <http://www.aecf.org/~media/PublicationFiles/FosterChildrenJuly2508.pdf>.

Compounding the problem, placement agencies and DFPS are constantly desperate to recruit more foster families. Many stakeholders mentioned that there are not enough good foster families within their counties. DFPS is attempting to address these issues now through a collaborative study with Chapin Hall of the University of Chicago and American Humane.¹²

Kinship Placements

The Department has found that there are significant benefits to a child when extended families provide their care, and give them stability when they cannot live with their birth parents. According to § 262.201 of the Texas Family Code, when a child is removed from care, the court must place the child with a noncustodial parent or relative, “unless placement with the noncustodial parent or a relative is not in the best interest of the child.” Additionally, § 264.753 of the Texas Family Code instructs that the Department “shall expedite the completion of the background and criminal history check, the home study, and any other administrative procedure to ensure that the child is placed with a qualified relative or caregiver as soon as possible after the date the caregiver is identified.”

Kinship caregivers are usually relatives of the child, but can also include close family friends or others who have a long-standing relationship with the child, sometimes called “fictive kin.” A child who has been removed by DFPS after suffering abuse or neglect may be placed in kinship care, either temporarily or on a more permanent basis. Kinship placement may even be court ordered, usually after DFPS completes a home assessment.

DFPS has noted that children in kinship foster care have fewer placement changes than children placed with non-kin foster parents do, both because fewer kinship caregivers request changes and fewer children staying with kin attempt to run away.¹³ As the Center for Law and Social Policy found, there are many benefits to kinship care.¹⁴ Fewer children in kinship care change schools (63%) than children in non-relative foster care (80%) or those in group care (93%). Furthermore, children in kinship care are less likely to face continued abuse or neglect while in state care than children in non-kin placements. Additionally, children in foster care consistently express the desire to be with their siblings, and multiple studies indicate the value of placing siblings together, when safe and appropriate. Children in foster care are more likely to live with their siblings if they are placed with kin. Perhaps most importantly, 95% of children that have been in at least one kinship placement ultimately have positive outcomes (i.e. return home, custody to a relative, or adoption).¹⁵

Texas has established the Kinship Program through DFPS.¹⁶ It provides kinship caregivers with training and support groups, case management services while DFPS has legal responsibility for the child, counseling services, child care for eligible children, referral to and assistance in applying for public benefits, and some limited financial assistance. A kinship caregiver must commit to provide a safe and nurturing home, attend and complete kinship caregiver training offered by DFPS, and work closely with DFPS to reach a permanent living arrangement. DFPS’s Kinship Development Workers assist some families in the Kinship Program by visiting homes monthly, attending school meetings and court hearings, as well as providing ongoing support to the kinship caregiver.

12 See Foster Care Redesign project at http://www.dfps.state.tx.us/Child_Protection/Foster_Care/redesign.asp.

13 DFPS, *Overview and Preliminary Evaluation of Relative Caregiver Assistance Program*, Sept. 2008, available at http://www.dfps.state.tx.us/documents/Child_Protection/pdf/2008-09-22_Kinship-Evaluation.pdf.

14 *See Is Kinship Care Good for Kids?*, Center for Law and Social Policy (March 2, 2007), available at <http://www.clasp.org/admin/site/publications/files/0347.pdf>.

15 DFPS, *supra* note 13.

16 See DFPS kinship care information at http://www.dfps.state.tx.us/child_protection/kinship_care/.

As a result of recently passed federal legislation, the department will be able to provide kinship stipends beginning in fall 2010 to qualifying families. It is hoped that, by easing the financial burden of caring for a child, more relatives will open their homes to foster children.

OTHER PLACEMENTS

An **emergency shelter** is a residential group-care facility that acts as temporary housing for a child while CPS locates relatives or arranges for a more permanent place for the child to live.¹⁷ The shelter must be licensed by Child Care Licensing (CCL) for emergency shelter for children. Emergency shelters are appropriate for a child who needs an emergency placement or needs to be removed from her home as soon as possible, but for whom the Department does not have a permanent place to reside. Shelters that function as assessment centers are particularly appropriate for children with special needs.

There are also facilities where a child is placed when the child requires **specialized care** or something in the child's life goes awry. For example:

A **residential treatment center (RTC)** is a facility that is licensed to provide foster care for 13 or more children at a time, including children who need the highest levels of care.¹⁸

A **psychiatric hospital** is a health care facility providing inpatient and outpatient therapeutic services to clients with acute or chronic mental, behavioral or emotional illnesses. Children are typically placed in psychiatric care facilities when they have very severe impairment(s), disability(s), or need(s).

A foster child is housed in a **juvenile justice facility** when he or she has violated the law and is serving time in a youth correctional facility.

During the course of our study, we were asked on several occasions about data on emergency shelters. Questions also arose frequently about the use of residential treatment centers. To answer these questions, Appleseed analyzed these types of placements more closely.

Emergency Shelters

An emergency shelter is a temporary, short-term placement for children and youth in the state's care, providing an immediate safe environment while decisions are being made about where a child will live.¹⁹ The maximum length of time any child is to stay in an emergency shelter is 15 days. However, a child may stay there for up to 30 to 90 days if the child is under the age of five and in the shelter with a sibling, if the child has a parent under the age of 18, or if an appropriate reason for the continuation of care is documented in the child's record at the emergency shelter.

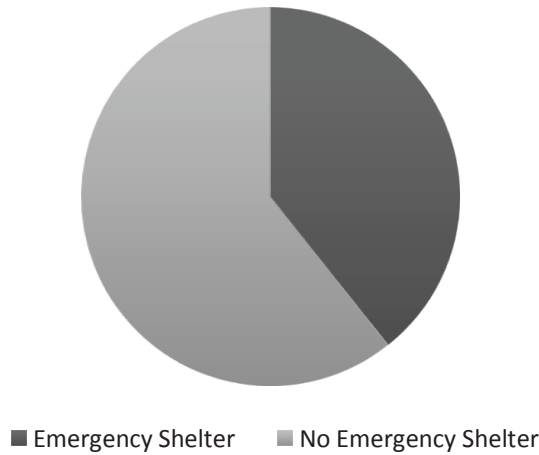
Of the 21,314 children in foster care at any time in FY 2008, 8,386 children, or just under 40%, were placed in an emergency shelter at least once while in state care.

17 40 TEX. ADMIN. CODE § 700.1321(d); *see also* http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6323.jsp.

18 40 TEX. ADMIN. CODE § 700.1321(c); *see also* http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6323.jsp.

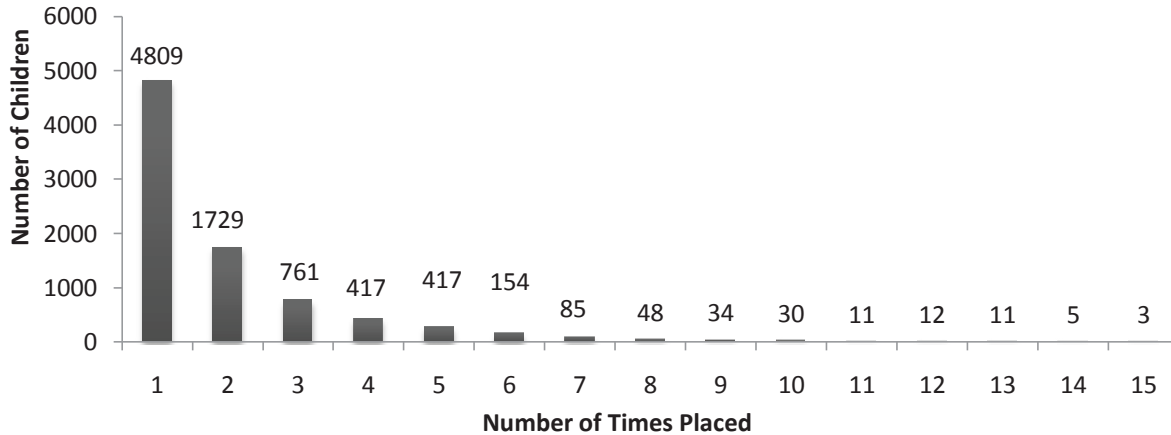
19 *See* DFPS Rules, 40 TEX. ADMIN. CODE § 720.912 ("An emergency shelter may provide shelter services only during an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring.").

**PERCENTAGE OF CHILDREN IN PMC IN FY 2008
WHO SPENT TIME IN AN EMERGENCY SHELTER WHILE IN FOSTER CARE**



Unfortunately, as the next graph illustrates, many children return to an emergency shelter after experiencing what is meant to be a more permanent placement. Of the 8,386 children in PMC in FY 2008 who had been placed in an emergency shelter, about 42.7% of them had been in an emergency shelter more than once while in foster care. One unfortunate child had been *placed in an emergency shelter 32 different times* during the child's stay in foster care.

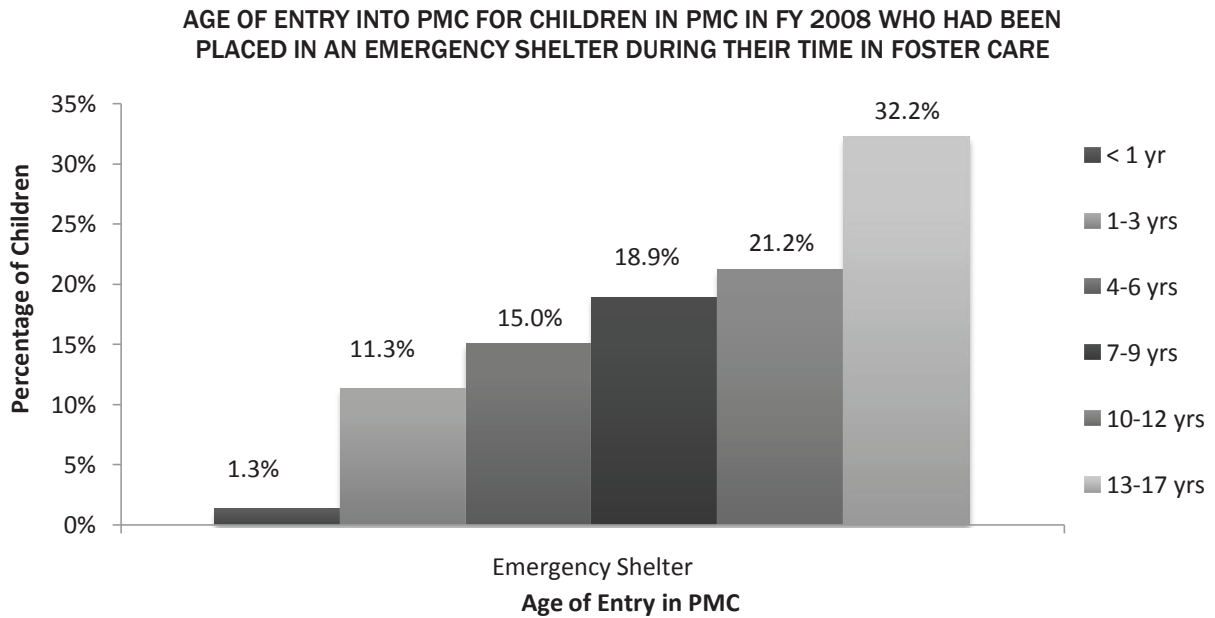
**NUMBER OF TIMES CHILDEN IN PMC IN FY 2008 WERE PLACED
IN AN EMERGENCY SHELTER DURING THEIR TIME IN DFPS CONSERVATORSHIP**



NOTE: This reflects the experience of children in PMC in FY 2008. Four of these children were placed in an emergency shelter 17 times; two children, 18 times; and one child each, 22, 26, 31 and 32 times.

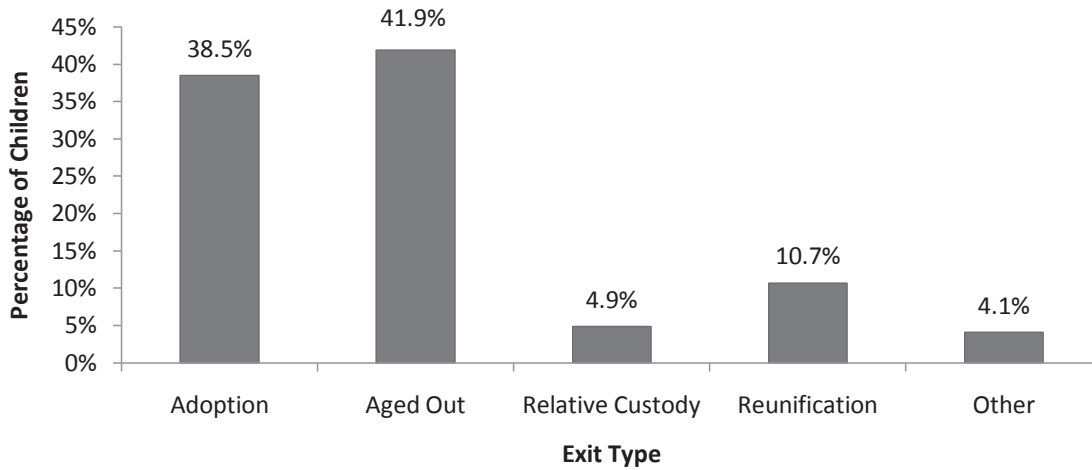
A third (32.2%) of the 21,314 children in PMC in FY 2008, who were placed at least once in an emergency shelter during their time in the state's custody, entered PMC between the ages of 13 and 17. Additionally,

53.4% of the children who were placed at least once in an emergency shelter entered PMC at age 10 or older. In comparison, 80.8% of the children who were never placed in an emergency shelter entered PMC under the age of 10, and 32.8% of them were three and younger. Thus, it appears that older children are much more likely to be placed in an emergency shelter during their stay in foster care. The graph below very clearly shows that the older a child is at the age of entry into care, the more likely the child will be placed in an emergency shelter at some time during the child's stay in care.



Of the children in PMC in FY 2008 who had been placed in an emergency shelter at least once, 41.9% aged out and only 38.5% of these children were adopted. In comparison, 78% of children who were never placed in an emergency shelter exited through adoption. In summary, children placed in emergency shelters appear much more likely to be older, stay in state care longer, and are more likely to eventually age out.

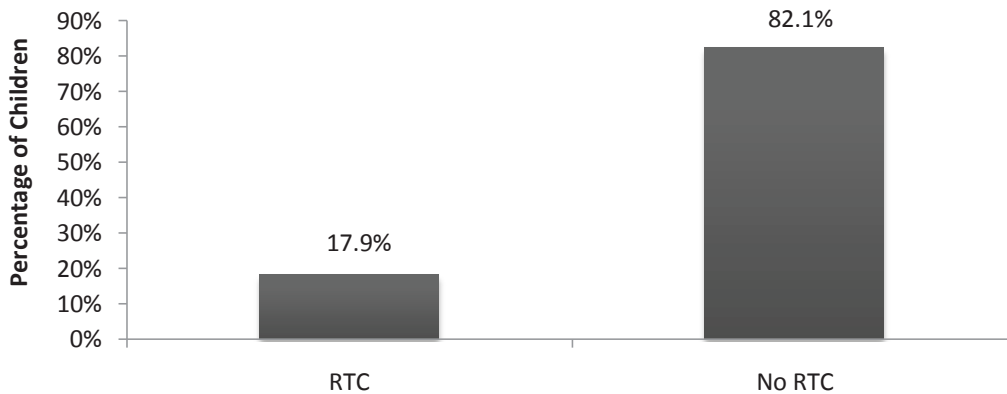
**TYPE OF EXIT FROM FOSTER CARE FOR CHILDREN IN PMC IN FY 2008
WHO WERE PLACED IN AN EMERGENCY SHELTER AT LEAST ONCE**



Residential Treatment Centers

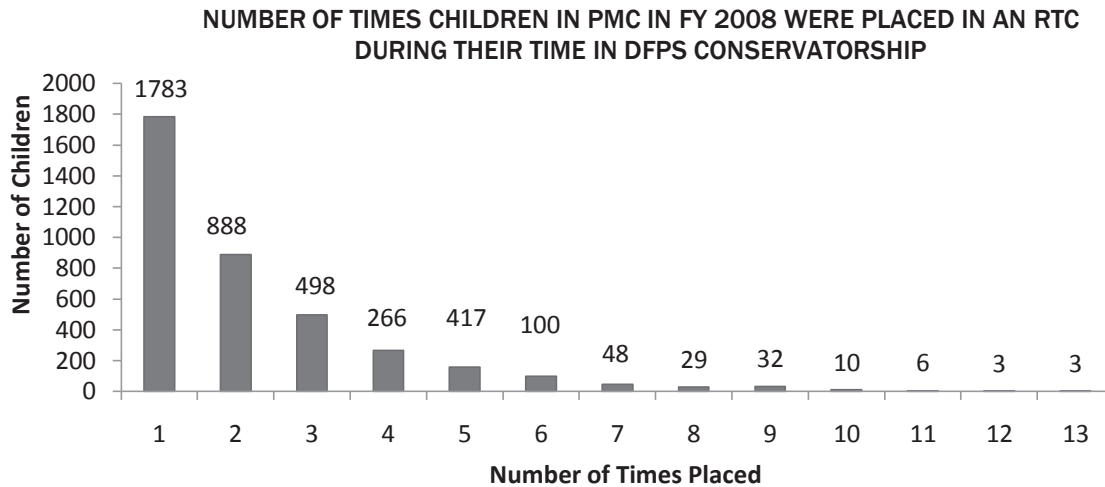
Residential treatment centers (RTCs) provide 24-hour care for foster children. They are a group care facilities that care for 13 or more children at a time. Group care facilities are considered much more restrictive than foster family homes or group homes where there are fewer children.²⁰ Most RTCs care for children needing the highest levels of care. Of the 21,314 children in foster care in FY 2008, approximately 18% were placed in an RTC at least once.

**PERCENTAGE OF CHILDREN IN PMC IN FY 2008 WHO WERE PLACED IN AN RTC
DURING THEIR TIME IN DFPS CONSERVATORSHIP**



Of the 3,832 children placed in an RTC in FY 2008, over half (approximately 53.5%) had been sent to an RTC more than once. At present, when a child's level of care improves he or she must leave the RTC for a less restrictive setting. Many stakeholders told stories about children sent to RTCs whose behavior improved

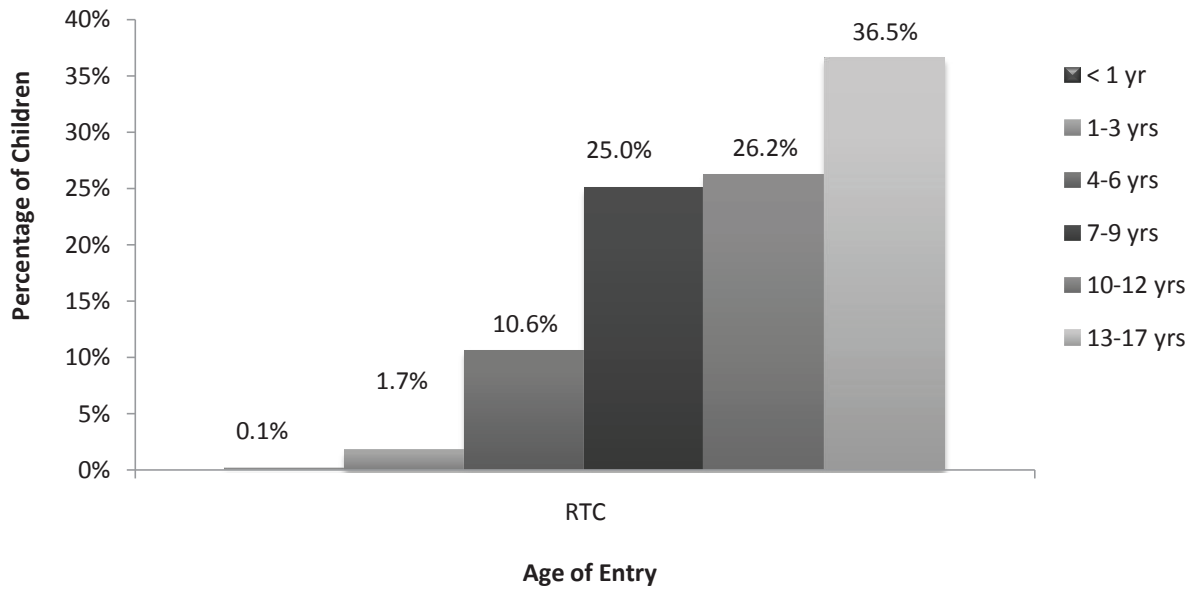
to the point that their level of care designation was upgraded; however, the move to a less restrictive setting amounted to one more life disruption, undoing the progress made in the original RTC placement and necessitating their eventual return to an RTC. DFPS is currently re-evaluating this system to address this problem.



Children living in rural areas, who require more intensive levels of care, face even greater challenges. In interviews, many stakeholders from rural communities deplored the fact that there are few if any RTCs nearby to care for their local children. This means that children requiring care in an RTC may be moved hundreds of miles away from friends, siblings and their local schools. Those children are assigned an “I See You” worker who literally looks in on the child periodically and reports back to the child’s caseworker in the home county about how the child is faring. As one rural east Texas judge said of RTCs, “For emotional security, it is the worst system possible.”

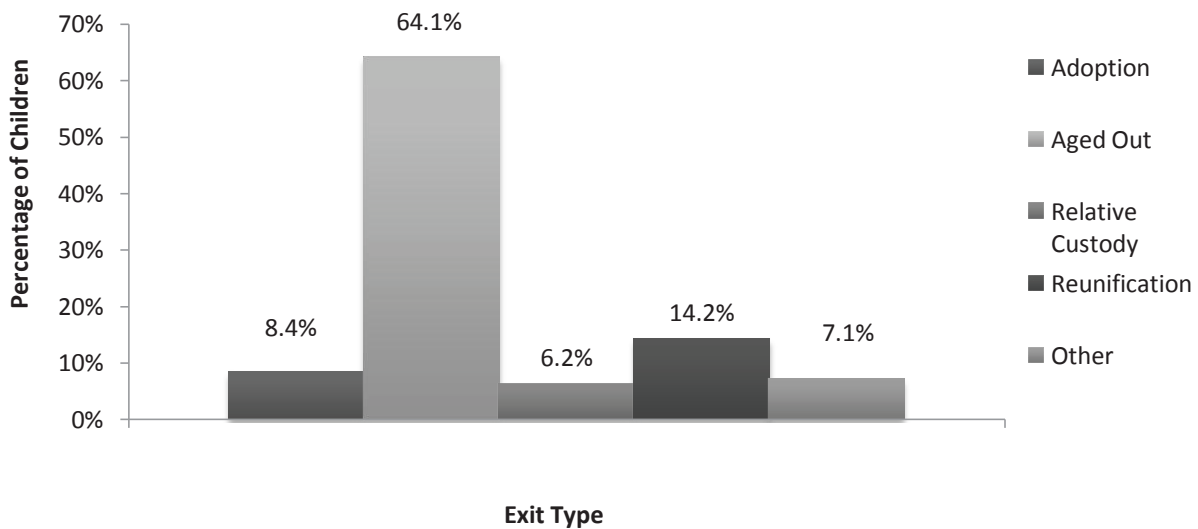
Of the 3,823 children placed in an RTC in FY 2008, 36.5% of the children entered PMC between the ages of 13-17 years old. Additionally, 62.7% of the children who were placed at least once in an RTC entered PMC at age 10 or older. In contrast, 73.8% of the children who were not placed in an RTC entered PMC under the age of 10. Moreover, 29.3% of the children who were not placed in an RTC entered PMC between the ages of 1-3 years old. In other words, older children are much more likely to be placed in an RTC.

**AGE OF ENTRY INTO PMC FOR CHILDREN IN PMC IN FY 2008
WHO WERE PLACED IN AN RTC DURING THEIR TIME IN DFPS CONSERVATORSHIP**



Of the approximately 7,000 children who exited PMC in FY08, 64.1% of children placed in an RTC at least once aged out of PMC, while 72.2% of children who never placed in an RTC exited through adoption.

**TYPE OF EXIT FROM PMC IN FY 2008 FOR CHILDREN WHO WERE PLACED IN AN RTC
DURING THEIR TIME IN DFPS CONSERVATORSHIP**



In sum, children placed in RTCs and emergency shelters are much more likely to have negative outcomes such as staying in care for longer periods of time, changing placements often, or even remaining in foster care until they age out.

INITIATIVES TO FIND PERMANENT HOMES

The assumption that some children, particularly older children, are not adoptable must be challenged. Several important initiatives, if actively pursued, could lead to finding permanent homes for many of these children. These initiatives cost money in the short run but, in the long run, can yield huge payoffs in terms of stability for these children and reducing the rolls of the foster children in Texas.

Case Mining

Because many children in foster care lose touch with family and adults who are important to them, finding prospective family placements through “case mining” is an important strategy for achieving permanency in placement options. As a starting point, youth and parents are asked about the important people in the children’s lives now and in the past to reconstruct their relationships. This includes relatives and “fictive kin” — individuals who are unrelated by birth, adoption or marriage, but who have an emotionally significant relationship with the child. (Examples include coaches, teachers or neighbors.) These individuals may provide valuable assistance in assessing permanency options and may offer to become caregivers themselves. As a promising practice, social workers carefully review case files to identify overlooked family members and other significant adults. Through “case mining,” social workers can collect names, social security numbers, birthdates, and any other identifying information to help locate the youth’s family and extended family. Texas has developed case review procedures to gather information about possible birth family or kin resources.²¹ Relatives who have tried to contact the youth’s social worker in the past and relatives with whom the youth desires contact are given priority for continued contact. As social workers locate family members, they can ask for information about other relatives.²²

Despite the acknowledged benefits of case mining, a lack of resources has hampered this process. Large caseloads prevent many caseworkers from conducting diligent searches through children’s files, due to a limited amount of time.

Father Initiative

Though child welfare agencies historically made little effort to engage with non-resident fathers of foster children, in the past decade there has been a growing focus on identifying, finding and involving fathers. These endeavors are important, not only because of the benefits of maintaining a parental relationship, but because children profit from having more placement options among paternal kin and access to resources.²³

In Texas, DFPS has taken a number of steps to try to increase the fathers’ involvement. The Department has hired a Fatherhood Program specialist and begun a number of projects aimed at increasing fathers’ involvement.²⁴ These include the formation of a Parent Collaboration Group to solicit feedback about CPS

21 See http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_px_5261b.jsp.

22 Casey Family Programs, *Connections Count*, Aug. 2007.

23 Little research has been done to date about whether engaging fathers leads to better outcomes or well-being for foster children. However, to not even explore the option cuts caseworkers off from a potentially very helpful source of support for children.

24 These include a grant-funded pilot project in Tarrant County and consultation with the Parent Collaboration Group. See “The State of Texas Child and Family Services Plan Final: Fiscal Years 2005-2009 and Child and Family Services Plan: Fiscal Years 2010-2014, VI. Description of Services” at 68-69 and “XII. Evaluation and Technical Assistance,” at 12.

from parents, as well as a pilot project in Tarrant County to promote the involvement of non-residential fathers.²⁵

Special Legal Resources for Youth in PMC

Representation of Foster Children in TYC or SSLC Facilities

Under a special program, judges can appoint lawyers with Advocacy, Inc. as Attorneys Ad Litem for foster children who are placed in Texas Youth Commission facilities or State Supported Living Centers (formerly state hospitals) without any cost to the court. The Advocacy, Inc. attorneys providing representation in this project have experience with youth with disabilities and the multiple systems they encounter. The attorneys meet with their clients frequently and attend meetings with schools, doctors, treatment teams and others to improve information given to courts. When possible, project attorneys coordinate the use of video conferencing to allow youth to participate in their court hearings about their well being.

Contact Advocacy, Inc. at <http://www.advocacyinc.org/index.cfm>.

Texas Foster Youth Justice Project

Texas RioGrande Legal Aid's Foster Youth Justice Project helps youth in the Texas foster care system and those who have recently left. It teaches the youth about their legal rights and helps them enforce those rights. These include getting money for college, job training, obtaining identification documents, advocating for medical or housing needs, maintaining contact with siblings, or changing their legal names. The project provides free, confidential legal services to the youth they serve. Their *Guide for Those "Aging Out" of Foster Care* is a resource for young adults leaving the foster care system and transitioning to living on their own. Texas RioGrande Legal Aid also conducts "know your rights" workshops with foster youth and social service organizations.

Contact the Foster Youth Justice Project at <http://www.texasfosteryouth.org>.

A Special Thank You...

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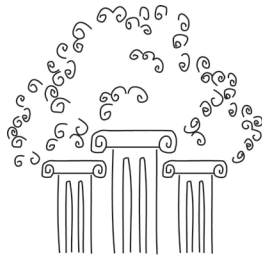
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