



Improving services for vulnerable Texans

In December, after weeks of trial and nearly a year of deliberation, Senior US District Judge Janis Graham Jack issued a 250 page decision that has brought systemic failures in DFPS to the forefront. Judge Jack found that DFPS violated the 14th amendment right of children in care to be kept from an unreasonable risk of harm by the State. The ruling states that the agency was deliberately indifferent to the needs of foster children, ignored decades of reports and recommendations to correct problems, and departed from professional judgement in implementing policies and procedures.

THIS RULING FOCUSES ON 4 KEY AREAS:

1. Unmanageable caseloads
2. Licensing and investigations of foster care homes and facilities
3. Inadequate placement options for foster children
4. Foster group home placements

Testimony at the trial came from 28 fact witnesses, and 12 expert witnesses. Evidence included 20 case files, totaling 358,102 pages, 400 exhibits, and 6 reports on DFPS from The Casey Family Program, Texas Adoption Review Committee, Texas Appleseed, the Texas Comptroller, the Sunset Advisory Committee, and the Stephen Group.

Addressing the fundamental problems in DFPS and improving the quality of services provided to vulnerable Texans needs to be a priority for lawmakers. There are no shortcuts to improving services and outcomes. High caseloads create wider gaps for Texans to fall through in every part of DFPS, and all the Texans we serve deserve better. While the lawsuit and ruling are specific to foster children, the mountain of evidence supporting the need for lower caseloads is not unique to only one CPS program. Recent internal reforms and changes made from the FPS Sunset Bill (SB 206) do not address the issues central to Judge Jack's ruling.

The ruling by Judge Jack is clear:

“The reality is that DFPS has ignored 20 years of reports, outlining problems and recommending solutions. DFPS has also ignored professional standards... The Court has no assurance that anything has changed”

“It is clear to the Court that a main reason DFPS has not improved in the face of decades’ of reports outlining deficiencies and recommending solutions is that there is no institutional memory... {DFPS Officials} Black and Morris never read critical reports about the departments they are charged with overseeing. It is no surprise then that Texas commissions full-scale audits of its foster care system every five to ten years, always reaching the same conclusions, but never producing improvement.”

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1. We urge you to support legislation to create caseload standards in FPS, and the funding to make these standards a reality.
 2. Support the ruling and urge Commissioner Specia and Attorney General Paxton to drop the appeal of Judge Jack's ruling;
 3. Support meaningful reform and provide the funding necessary to expand placement options and improve the quality of care in Texas' foster care system.
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The Court has issued the following Injunction:

*The State shall establish and implement policies and procedures to ensure that Texas's PMC foster children are free from an unreasonable risk of harm. To effect this injunction, the Court will appoint a *Special Master to help the State implement the Goals outlined below. Further, the State shall immediately stop placing PMC foster children in unsafe placements, which include foster group homes that lack 24-hour awake-night supervision. Foster group homes that immediately require 24-hour awake-night supervision may continue to operate while the Special Master and the State craft and enforce the Implementation Plan.*

GOALS OF THE IMPLEMENTATION PLAN:

- **GENERAL** - Ensure children in care can meet privately with caseworkers; Improve IMPACT and CLASS; include updated photos of children in care; improve programming for foster children aging out of care; assign all children in PMC an attorney ad litem and CASA volunteer.
- **CVS** - Track cases based on children instead of stages; workload study to determine a reasonable caseload; recommend caseload level; DFPS must hire staff to ensure recommended level is met in each county; DFPS must lower staff turnover rate; Evaluate whether to maintain CPU and I See You Programs.
- **CCL** - Workload study to determine a reasonable caseload for Investigators and Inspectors; recommend caseload level; address unwillingness to place facilities on corrective actions; track and categorize child-on-child abuse.
- **PLACEMENTS** - Establish standards controlling the varying ages and service levels of unrelated children sleeping in the same room; conduct a statewide needs assessment for foster care system; track all children in residential facilities; only continue Foster Care Redesign if it meets criteria of statewide needs assessment; address disruption of placements when service levels improve.

The Ruling relates to a General Class along with two Subclasses as plaintiffs in the Lawsuit

General Class:

Defined as all children now, or in the future, in the Permanent Managing Conservatorship of the State of Texas.

THE RULING ESTABLISHES THESE FACTS FOR THE GENERAL CLASS:

1. DFPS is deliberately indifferent toward caseload levels
2. DFPS substantially departs from professional judgment toward CVS Caseworkers

Licensed Foster Care Subclass:

Defined as all members of the General Class who are now or will be in a licensed or verified foster care placement, excluding verified kinship placements;

THE RULING ESTABLISHES THESE FACTS FOR THIS SUBCLASS:

1. Insufficient oversight
 - a. DFPS is deliberately indifferent toward RCCL operations
 - b. DFPS substantially departs from professional judgment toward RCCL operations
2. The State maintains an inadequate placement array
 - a. DFPS is deliberately indifferent toward its placement array
 - b. DFPS substantially departs from professional judgment its placement array

Foster Group Home Subclass:

Defined as all members of the General Class who are now or will be in a foster group home.

THE RULING ESTABLISHES THESE FACTS FOR THIS SUBCLASS:

1. DFPS is deliberately indifferent toward foster group homes
2. DFPS substantially departs from professional judgment toward foster group homes

*Selection of Special Master

The Court will hold a hearing on March 21 to select a Special Master. At the hearing, the parties will present the Court with an agreed-on Special Master. If the parties cannot agree on a Special Master, each party will present the court with two candidates and their CVs. The Court will choose one Special Master out of the four options.

The Implementation Plan will be presented to the court by the Special Master 180 days following their appointment. Both the agency and plaintiff will have the opportunity to consult and assist in the development of the Implementation Plan.

UNMANAGEABLE CASELOADS

excerpts from the 250 page decision by Judge Jack

FROM THE RULING: ***“Thus, national professional organizations, heads of other state’s child welfare systems, both parties, and this Court agree that excessive caseloads cause an unreasonable risk of harm to foster children.”***

Ruling acknowledges the role of DFPS staff - cites the indifference toward the issue by the agency.

CVS caseworkers “provide or coordinate services to families in which children have been removed from their homes and placed in the State’s custody because of significant risks to their safety.” They are “the frontline workers of the child welfare system.” ...CVS caseworkers are foster children’s “lifeline,” their “connection to everything.” They are the principal DFPS employees tasked with ensuring the safety, permanency, and well-being of foster children. **CVS caseworkers have been described as “the backbone of the State’s effort to protect children” who “make life-and-death decisions every day,” (Page 161)**

Ruling quotes experts, former workers and current administrators - all agree when caseload levels are low, the client receives best services.

Unlike other child welfare systems, DFPS “puts no limits on the caseload size that a conservatorship worker can carry. One of DFPS’s Regional Directors agreed that “an overloaded case worker is bad for the children they are supposed to protect.” Commissioner Specia admits that high caseloads “put a burden on the worker” and “can have a number of negative consequences.” DFPS also agrees that caseloads must be manageable in order to protect foster children. Before working for DFPS, Burstain said, “With caseloads at a manageable level, caseworkers could visit with children and families more often and ensure that children were safe and families were getting needed services.” Likewise, “Lower caseloads reduce the paperwork load and allow [conservatorship] workers to spend more time helping families and children.” Yet DFPS has not capped its caseloads. Most shocking, McCall, the DFPS officer in charge of making sure that caseworkers have manageable workloads, has “no idea what size child caseload [her] conservatorship workers should have in order to do their jobs properly.” Regardless, McCall agreed that overburdened CVS caseworkers create an unreasonable risk of harm for foster children. **Thus, national professional organizations, heads of other state’s child welfare systems, both parties, and this Court agree that excessive caseloads cause an unreasonable risk of harm to foster children.” (Page 163)**

Eleven weeks to read 20 cases.

To gain a perspective on what is a manageable caseload, the Court calculated how many hours it took to simply review the 20 foster children’s case files that are in the record, including Named Plaintiffs’. **Bearing in mind that a 20-child caseload is below what many DFPS primary caseworkers carry, it took the Court 462 hours just to read the 358,102 pages of case files in DX 120.** Admittedly, the Court is not (or was not) well trained at reading case files. That said, any added time it took the Court to read the case files was offset by their incomplete nature: the records contained no CPA investigation files, and there were no IMPACT or RCCL files for multiple children. In short, reading case files, a necessary step for caseworkers to understand the needs of their foster children, takes around **eleven uninterrupted workweeks.** Considering the frequent turnover among caseworkers, this onerous task is duplicated many times for each child. It is no surprise, then, that caseworkers “just don’t have enough hours in their day” to focus on their children. As a result, the needs and safety of Texas’s PMC children are being overlooked **(Page 166)**

“In short, CVS caseworkers are crucial to the safety and well-being of all foster children, including PMC children. They are responsible for ensuring that PMC children are reasonably safe while in the State’s custody. **DFPS has known for decades that its primary CVS caseworkers are overburdened to the point where they cannot perform their required duties, namely protecting their foster children from an unreasonable risk of harm.** The Court does not find that DFPS has “responded reasonably” to the substantial risk of serious harm posed by overburdened caseworkers. DFPS is therefore deliberately indifferent toward excessive caseworker caseloads.” **(Page 198)**

“The Court also finds that DFPS is deliberately indifferent toward the substantial risk posed by an inadequate RCCL workforce. In 2010, RCCL staff reported that caseworker and supervisory responsibilities were “too large” and workloads too “intense” to “effectively monitor operations.” Since that time, **RCCL’s workforce has shrunk by over 30% while total cases remain the same.** RCCL knows that manageable workloads “would help reduce risk to children placed in residential operations and promote staff retention.” Yet DFPS has not conducted a workload study of RCCL workers, established caseload ranges for RCCL workers, or determined what a manageable caseload would be.” **(page 214)**

Recommended caseload levels

- Dr. Miller, who ran the DFPS equivalents in Tennessee and Kentucky, established a primary caseworker caseload range of 14 to 17 children in Tennessee, with a maximum of 20. When caseloads exceed 20 children, Dr. Miller explained, the caseworkers' "work really begins to suffer and the children for whom that work is being done begin to suffer." Moreover, Dr. Miller said, setting reasonable caseload caps allows a child welfare agency to better handle caseworker turnover. Dr. Miller's 14 to 17 child caseload range provided that when a worker resigned or went on leave, their work could be distributed without causing caseloads to exceed 20, assuring that "none of those kids fell through the cracks."

Program	Caseload Advisory Committee	National Organizations
CPS Investigations	15	12 - Child Welfare League of America (CWLA)
CPS Family Based Safety Services	10	17 - CWLA
CPS Conservatorship	20	12 to 15 - CWLA
CPS Foster / Adoption Development	20	15 - CWLA
APS In Home	22	25 - National Assoc. of APS Administrators
CCL Monitoring	64	50 - National Assoc. for the Education of Young Children
CCL- Investigations	8-17	

- The Council on Accreditation advocates caseloads of 8 to 15 children.

Legislature mandated limits: they were never implemented

- In 1997 the Legislature passed SB 359, the re-authorization of the Department of Protective and Regulatory Services under sunset requirements. The department was renamed the Department of Family and Protective Services under HB 2292 of the 78th Legislature. SB 359 mandates the establishment of "caseload standards" for DPRS programs. A committee appointed by the HHSC Commissioner recommended caseload limits in its 1998 report: these limits have never been implemented.

The following bills to establish caseload standards have been filed previously

- 2015, 84th HB 993, Walle
- 2013, 83rd HB 304, Walle; SB 1748, Uresti
- 2011, 82nd HB 1342 and HB 712, Walle
- 2009, 81st. HB 4159, Patrick Rose
- 2007, 80th. HB 3108, Bolton
- 1997, 75th HB 1945, Naishtat SB 359, Brown
- 1995, 74th HB 894, Naishtat
- 1993, 73rd HB 1981, Naishtat

"DFPS's Deception": Caseload numbers manipulated to appear lower

"...the Court notes that caseworker caseloads are still something of an open question despite years of litigation and weeks of trial. The problem is that Texas calculates caseloads in terms of "stages," each of which represents an aspect of the work that needs to be done with a child or her family, rather than by individual children. DFPS stages could include Intake, Investigation, Family Preservation, Child Substitute Care (relating to children removed from the home), Family Substitute Care (a stage created for families when a child has been removed from the home), Foster and Adoptive Home Development, Kinship, and Adoption. (DX 167). One child, then, could represent several stages simultaneously. She could be in the Child Substitute Care and Adoption stages while her family was in the Family Substitute Care one. DFPS's way of counting caseloads is unique to Texas. (D.E. 302 at 50; D.E. 303 at 4-5). Defendants' and Plaintiffs' experts could barely understand the stage-counting approach, let alone explain it to the Court. (Page 162)

Beyond its nebulous stage-counting approach, DFPS "counts [as caseworkers] people that are not there," such as workers on maternity or medical leave. Moreover, secondary I See You workers and Centralized Placement Unit workers "are categorized in [the DFPS] computer system as conservatorship caseworkers" even though neither workforce has close to the responsibility of a primary caseworker. DFPS also counts caseworkers that only keep track of one child, part-time caseworkers, and fictive workers who are "created out of all the overtime," which "are not actually even people." DFPS's data already shows excessive caseloads. The Court can only imagine the actual figures if make-believe people are no longer counted. (Page 164)

TURNOVER

In a vicious cycle, high turnover rates drive up caseloads:

“Besides harming foster children in and of itself, DFPS admits, “High caseloads lead to high worker turnover, further exacerbating high caseloads.” ...[Commissioner] Specia admits that the “appropriate workload spread out among the workers . . . will help me keep workers.” It is no surprise then that “DFPS has an extraordinary amount of turnover.”

The Stephen Group reported that yearly CVS caseworker turnover is 26.7%, and “a major organizational burden.” To compare, turnover for workers comparable to Texas’s CVS caseworkers was 14% to 15% in Kentucky and 10% to 12% in Tennessee. The Stephen Group also noted that turnover is especially high for new CPS workers, with approximately 28% leaving within the first year, and approximately 43% within the first two years. Likewise, Black testified that turnover is approximately 38% for first-year caseworkers. The Sunset Commission reported, “One out of every six new caseworkers leaves CPS within six months.”

Unmanageable caseloads are the main reason that CVS caseworkers leave. In a survey, 70% of the caseworkers that left listed “Workload” as the first or second reason. (Page 176)

Lack of experienced workers for foster children

This high turnover rate means that one out of every 11 CVS caseworker positions is vacant. Even when those vacancies are filled, it takes “two years” for a caseworker “to fully be up to speed.” During their first three months, caseworkers are in training and do not have any cases. Consequently, while CPS has 1980 primary caseworkers, it needs to hire more than 500 primary caseworkers per year to retain an experienced workforce of only about 1000 who actually close most of the cases. **This puts a tremendous strain on the 1000 veteran CVS caseworkers, who are the front line workers for over 29,000 foster children, which is not captured in DFPS’s figures.** (Page 177)

Caseworker turnover has many negative impacts beyond higher caseloads. [Assistant Commissioner] Black admitted that turnover causes delayed investigations, a lack of continuity in providing services to families and children, a lack of consistent timely visits by caseworkers to children in State custody, and significant costs to the State in terms of recruiting, training, and lost productivity. Caseworker turnover also “delays or disrupts services and the case plan” of foster children, and hinders permanency planning. Moreover, as the Stephen Group explained, “workplace turnover is endemic and institutional knowledge is stripped from across the agency.” The high level of turnover at CPS “represents an extraordinary organizational challenge to replace these workers and maintain a consistent level of performance.” As one audit of DFPS explained, **“Numerous transitions in caseworker assignments disrupt momentum toward permanency by forcing children/youth and their families to ‘start over’ repeatedly with new caseworkers.”** Specia admitted that foster children are “absolutely” harmed when they do not achieve permanence. (Page 178)

Dr. Miller explained that foster children “have already been damaged” before entering the State’s care. According to Carter, subjecting these “already fragile” children to **a rotation of overburdened caseworkers only causes “despair,” “isolation,” and “helplessness”**. Instead of becoming a stable influence in a child’s life, foster children “don’t want to have a relationship with [caseworkers] . . . they lose confidence, they lose trust,” and see caseworkers as just a “number.” (Page 178)

Further, besides turnover harming the children who lose their caseworker, it also hurts children whose caseworkers remain and take over the departing workers’ cases. This situation all but assures that every PMC child is assigned an overburdened caseworker. Specia also acknowledged that the “longer children stay in the custody of the state the harder it is for them to achieve a permanent home.” **Thus, another consequence of rotating overburdened caseworkers, which disrupts permanency planning, is that 1300-1400 foster children age out of the system each year.** It is widely recognized that foster youths who age out generally experience poorer life outcomes. These youths leave the system with few life skills and little, if any, support (Page 184).

Projected Annual Turnover Rate based on 1st Quarter FY 2016

region:	1	2	3	4	5	6	7	8	9	10	11	12	total
APS In-home	0.0%	0.0%	25.5%	0.0%	14.3%	14.8%	14.3%	12.3%	0.0%	0.0%	22.6%	na	13.6%
APS total	9.8%	16.7%	22.0%	0.0%	12.1%	16.4%	9.8%	10.3%	30.8%	0.0%	18.8%	na	15.0%
Conservatorship	21.4%	20.7%	21.3%	17.9%	13.8%	32.4%	25.1%	16.4%	36.9%	0.0%	7.8%	0.0%	21.5%
Family Based Services	28.1%	29.3%	24.4%	22.9%	26.7%	20.3%	27.6%	6.1%	0.0%	0.0%	14.1%	0.0%	18.2%
Investigations	43.6%	28.6%	46.6%	37.9%	30.8%	31.1%	15.2%	30.3%	6.8%	6.5%	24.3%	41.4%	31.9%
Foster adoption development	22.2%	0.0%	13.3%	0.0%	0.0%	0.0%	16.7%	13.8%	0.0%	0.0%	36.4%	0.0%	10.5%
Kinship	0.0%	0.0%	10.5%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.0%
TOTAL	27.8%	24.9%	32.6%	23.5%	19.6%	26.5%	19.3%	18.0%	17.2%	2.6%	15.9%	32.4%	23.6%

\$54,000:

The amount DFPS spends on Training a worker, according to Commissioner Specia’s testimony to the House Appropriations Committee S/C on Article II, 2/17/2015

FOSTER CARE SYSTEM

Foster care system “Broken”

“Texas’s foster care system is broken, and it has been that way for decades. It is broken for all stakeholders, including DFPS employees who are tasked with impossible workloads. Most importantly, though, it is broken for Texas’s PMC children, who almost uniformly leave State custody more damaged than when they entered.” (Page 254)

Systemic failure to monitor and investigate facilities

“A typical investigation error rate for a child welfare system is 2% or 3%. RCCL’s is 75%. This is staggering, and it means that many abused children—for whom a preponderance of evidence indicated that they were physically abused, sexually abused, or neglected—go untreated and could be left in abusive placements. Even if by some unrelated event a child found reprieve from these facilities, the adult perpetrators can still accept new foster children with nothing in their record indicating a risk. Even with correct dispositions, however, DFPS places LFC children at an unreasonable risk of harm. After the reviews just discussed were completed, “No licenses were suspended . . . None were revoked . . . No penalties were established on any of these facilities . . . [and] the State didn’t move any of the children.” In short, little changed as a result of finding out that children were abused and neglected. The Court is convinced that RCCL “simply doesn’t work. It’s broken.” (Page 202)

Few appropriate placements available for foster children

It is beyond question that DFPS’s placement array is inadequate. First, “there is an imbalance in geographic distribution of services.” . . . As a result of Texas’s inadequate array, 39% of children are placed out of region and 60% are placed out of county. (Page 218)

Second, DFPS’s inadequate array results in “children and youth not placed with their siblings due to unavailability of appropriate placement resources.” . . . Yet Texas’s foster children “are separated from their siblings at an alarming rate.” . . . As of June 2014, only 64.7% of siblings groups were placed together. For comparison, Tennessee places 84% of sibling groups together. (Page 219)

Third, foster children are placed in inappropriate facilities. Specifically, DFPS relies too heavily on congregate care facilities, which “are not conducive to supporting youth in engaging activities that help them ‘practice’ for adulthood, or to helping young people build social capital.” As of September 2012, 13.2% of children who were age 12 or younger, and who had been in care for at least 18 months (i.e., PMC), were placed in either group homes or institutions. The nationwide average is 4.9%. Texas ranks second worst, and the State is increasing its reliance on group care settings. (Page 219)

Fourth, sexually aggressive children are not placed in single-child homes, the safe and appropriate placement. (Page 220)

Improvements Missing with Foster Care Redesign

DFPS points to Foster Care Redesign as its reasonable response. Launched in January 2010, Foster Care Redesign is DFPS’s solution to its inadequate array. Under DFPS’s old system or “legacy system,” the agency contracts with around 300 private CPAs for 90% of foster placements. DFPS directly provides the remaining 10%. The legacy system uses an “open enrollment” process to procure residential childcare services, but it does not ensure that providers locate in places where services are needed, which creates the geographic imbalance in services that forces children out of their home communities. . . . The legacy system also creates perverse incentives by paying providers more money for children with higher service levels. It is therefore in a provider’s financial interest for children to not improve. (Page 229)

Foster Care Redesign does away with “open enrollment.” Instead of contracting with private providers to run operations wherever they choose, Foster Care Redesign contracts with “Single Source Continuum Contractors (SSCC) that provide a full continuum of paid foster care services designed to meet the needs of all children who enter care in the designated [geographic] area” that DFPS chooses. . . . Foster Care Redesign also does away with the payment incentive structure. (Page 230)

In the five years of Foster Care Redesign, DFPS has entered only two SSCC contracts— one was an abject failure, and there is no data on the other. The first SSCC, Providence Service Corporation, was hired by Specia in spite of recommendations not to hire them “based on Inconsistencies and Areas of Risk.” . . . Only 57.9% of children under Providence’s management were placed in foster family homes, compared to 70.3% of children statewide, and 70.8% of children in the regions where Providence operated. Children still slept in CPS offices because Providence “wasn’t finding placements for them.” Moreover, Providence failed to place children close to their homes—the central aim of Foster Care Design. In fact, Providence only placed 29% of children within 50 miles of their home—7% below their contract baseline, and worse than the legacy system’s figures. Despite Providence’s abysmal performance, DFPS did not end the contract in part out of fear that Providence would sue them. Providence quit after a year and a half because they lost \$2 million and could not make the contract work.

DFPS has only contracted with one other SSCC, but performance data is not yet available. That said, DFPS almost contracted with Lutheran Social Services of the South before the Providence contract. DFPS tentatively awarded an SSCC contract to Lutheran, but backed out at the last moment because of an adverse licensing action against them. Defendants could not tell the Court the reason for the adverse licensing action, though Reinhardt, the Director of Foster Care Redesign, agreed that it “could have been” related to the deaths of children in Lutheran’s care around that time. (Page 231)