

Children's Commission Meeting
February 27, 2015

Court Improvement Program Report to ACF
Legislative Update

CIP Report to ACF, submitted 12/31/14

- ▶ **Data projects and activities using data collected by child welfare agency**
 - ▶ DFPS/TEA Data Sharing MOU that produces data which allows each agency to examine educational outcomes of foster students, including looking outcomes based on type of placement, race and ethnicity, and legal status.
- ▶ **Projects that examine or improve hearing quality**
 - ▶ court observation project examined hearing quality, sharing this information encouraged process improvements, checklist pilot
 - ▶ CPS judges bench book;
 - ▶ support for specialty courts and projects aimed at improving legal determinations and court orders.
- ▶ **Projects intended to improve timeliness of hearings and/or permanency outcomes.**
 - ▶ Hearing timeliness review, which looks at the median time to first and then all subsequent permanency review hearings.
- ▶ **Projects or activities intended to examine or improve the quality of legal representation.**
 - ▶ Trial Skills Training
 - ▶ SBOT Online CPS Library
 - ▶ Annual support of attorney training events such as ABA, NACC, AFL One-Day, and KITS
 - ▶ McLennan County Parent Representation
- ▶ **Projects or activities intended to examine or improve notice, engagement, and participation of parties in court proceedings**
 - ▶ Worked on legislation related to Notice of removals, hearings, placement changes, significant medical conditions, medications, and education-related events
 - ▶ CPCMS Project to help engage all parties connected to a case
- ▶ **Projects or activities intended to examine or improve child well-being outcomes**
 - ▶ Education,
 - ▶ Psychotropic Medication
 - ▶ Racial disproportionality
 - ▶ Trauma
 - ▶ Immigration and Unaccompanied Minors
 - ▶ On the horizon: LGBTQ youth

CIP Report to ACF

- ▶ **Projects or activities intended to examine or improve compliance with the Indian Child Welfare Act (ICWA)**
 - ▶ Added a tribal peacemaker to the Children's Commission
 - ▶ Training at annual child welfare conference for past 4 years
 - ▶ Training at Advanced Family Law One-Day for the past three years
 - ▶ Alabama-Coushatta signed a IV-E agreement with DFPS two years ago
 - ▶ Improved tribal collaboration with three federally recognized tribes
 - ▶ Conducted a Roundtable focusing on ICWA
 - ▶ Included question about Native American Heritage on our bench cards and Section devoted to ICWA in the CPS judges bench book
 - ▶ Provided technical assistance to Representative Giddings on HB825

- ▶ **CIP participation in Round 3 CFSR**
 - ▶ 11/14/14 – sponsored a stakeholder meeting on Case Review System, hired facilitator, 46 attendees
 - ▶ 12/19/14 – sponsored a stakeholder meeting on Service Array and Agency Response to Community, hired facilitator, 53 attendees
 - ▶ 01/23/15 – sponsored a stakeholder meeting on Foster / Adopt Recruitment, Retention, and Training, hired facilitator, 37 attendees
 - ▶ Title IV-E Audit Exit Conference

- ▶ **Assess how the CIP is progressing with CQI overall, and specifically with regard to CQI, capacity building and technical assistance**
 - ▶ Well-developed CQI projects include Trial Skills Training, Bench Book Checklist Pilot, Attorney Scholarship Process, CC Operations, including Commission meetings, Texas Blueprint Task Force, and Judicial Training.
 - ▶ Less developed CQI includes legal representation, disproportionality, and tribal.
 - ▶ Challenge: CIP staff lacks technical expertise in collecting and analyzing data, esp large amounts of data
 - ▶ Struggle: Linking CIP initiatives to intermediate and long-term child safety, permanency, and well-being outcomes.



Legislative Update: Background from DFPS

- ▶ **Overview: Sunset Advisory Commission review**
- ▶ **Sunset staff report on DFPS, first issued May 2014:**
 - ▶ <https://www.sunset.texas.gov/public/uploads/files/reports/DFPS%20Staff%20Report.pdf>
- ▶ **Recommendation 2.2**
 - ▶ **Direct DFPS to report to the Sunset Commission in October 2014 on changes it plans to implement in response to the CPS operational assessment currently in progress and any statutory barriers that may impede needed changes.**



Recommendation 2.2 Cont'd

....As part of this report, DFPS should **specifically identify any statutory barriers that complicate or prevent implementation of needed changes** in response to recommendations made through the ongoing CPS operational assessment. DFPS should recommend statutory modifications or repeal as needed. This assessment process and resulting report to the Sunset Commission would provide a mechanism for the Legislature to monitor DFPS' implementation of changes to CPS, as well as provide an opportunity for the agency to bring forward any needed statutory changes for consideration by the Legislature through the Sunset process.



Response to Sunset Directive

- ▶ https://www.dfps.state.tx.us/documents/about/News/other_news/CPS_Transformation.pdf
 - ▶ Then worked with key stakeholders like Commission to improve language and substance
 - ▶ December 2014, Sen. Charles Schwertner Modification:
 - ▶ https://www.sunset.texas.gov/public/uploads/files/reports/DFPS%20Transformation%20Report%20Modification_January.pdf
 - ▶ Modification approved by Sunset Commission January 2015
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Statutory Changes

- ▶ 262.115 – Visitation
 - ▶ Changes the time within which Dept must ensure opportunity to visit with child from three days to five.
 - ▶ 263.301 – Notice of Permanency Hearing – REPEALED, and re-codified at 263.0021
 - ▶ 263.0021 – Notice of Hearing
 - ▶ Notice of any hearing held under Chapter 263 shall be given to all persons entitled. The following persons are entitled to at least 10 days notice, and are entitled to present evidence and be heard at the hearing:
 - ▶ Dept, foster parent, pre-adoptive, relative caregiver, director or designee of Group Home or GRO where child resides, each parent, a managing conservator or guardian, AAL, GAL or Volunteer Advocate appointed under Ch 107, if not dismissed in a final order, the child if 10 years or older or if the court determines it is appropriate for the child to receive notice, and any other person or agency named by the court to have interest in child's welfare.
 - ▶ Notice may be given in the following manner:
 - ▶ As provided by Texas Rules of Civil Procedure 21a
 - ▶ In a temporary order following a full adversary hearing
 - ▶ In an order following a hearing under this Chapter
 - ▶ In open court
 - ▶ In any manner that would provide actual notice to a person entitled to notice
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Perm Report & Hearings Prior to Final Order

- ▶ Section 263.303 – Permanency Progress Report
 - ▶ (b)(2)(A)-(G) repealed and replaced with:
 - ▶ Due not later than the 10th day before the hearing, and provided to each party, the AAL and GAL unless the court orders a different period for providing the report.
 - ▶ The report must contain information necessary for the court to conduct the hearing and make findings pursuant to Section 263.306 (amended), as well as information on significant events as defined in new Section 264.117, and any additional information the Dept determines is appropriate or that is requested by court and relevant to findings and determinations pursuant to Section 263.306 (amended).
 - ▶ Retains subsection (c) which allows a parent, the parent's attorney, the AAL or GAL to file a response to the Dept's court report, must be filed not later than the third day before the hearing.
 - ▶ Section 263.306 – Permanency Hearings
 - ▶ Amended section will include everything that was in 263.303 and current 263.306, with some rewording.
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Perm Hearings After Final Order

- ▶ **263.501 – Permanency Hearings After Final Order (title amended)**
 - ▶ Court must conduct Permanency hearings after the final order is rendered within 90 days for children whose parental rights have been terminated, and within 180 days for children whose parental rights have not been terminated. The court must conduct a Permanency Hearing After Final Order every six months until the Dept is no longer the child’s managing conservator (new language)
 - ▶ Notice must be provided per new Section 263.0021.
 - ▶ Each child shall attend the hearing in accordance with amended Section 263.302.
 - ▶ Prohibition against dismissing case while the child is committed to the Texas Juvenile Justice Department remains in place.
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Perm Report and Review Hearing Following the Final Hearing

- ▶ **263.502 – Permanency Progress Report After Final Order (“Placement” eliminated)**
 - ▶ Due not later than the 10th day before the hearing, and provided to each person entitled to notice under new Section 263.0021.
 - ▶ The report must contain information necessary for the court to conduct the hearing and make findings pursuant to Section 263.503 (amended), as well as information on significant events as defined in new Section 264.117, and any additional information the Dept determines is appropriate or that is requested by court and relevant to findings and determinations pursuant to Section 263.503 (amended).
 - ▶ Subsection (c) allows the court to order a different time for filing the report or may order that a report is not required for a specific hearing.
 - ▶ **263.503 Permanency Review Hearing After Final Order**
 - ▶ Will include everything that was in 263.502 and current 263.503, with some rewording.
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Section 263.401 – Dismissal

- ▶ (b-1) If, after commencement of the initial trial on the merits, the court grants a motion for new trial or a mistrial or the case is remanded by an appellate court, the trial court shall retain the suit on the docket and render an order which (b-1)(1) schedules a new dismissal date, which must be a date not later than the 180th day after the date the motion for new trial or mistrial is granted or the appellate court remanded the case.
 - ▶ (b-1)(2) The court must also make further temporary orders for the safety and welfare of the children as necessary to avoid further delay in resolving the suit and must set a new trial on the merits for a date not later than the date specified under new subdivision (b-1)(1)
 - ▶ Subsection (c) requires the court to dismiss the suit if the court grants an extension under current subsection (b) or new subsection (b-1) but does not commence the trial on the merits before the new dismissal date.
 - ▶ The court cannot grant an additional extension that extends the suit beyond the required date for dismissal under current subsection (b) or new subsection (b-1)
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HB825 Related to Identifying Native American Heritage in certain SAPCRs - Filed

- ▶ CC has been involved with DFPS and at a national level in an effort to bring awareness and training to courts re how to determine when or if a case involved an Indian child or a child eligible for membership in an Indian Tribe.
 - ▶ Surveys conducted by the CC in summers of 2012, 2013 and 2014 revealed that about half of all respondents (attys and judges) did not really understand ICWA or know exactly when it applied.
 - ▶ The Hearing Observation Study conducted in the summer of 2013 revealed that judges inquired about ICWA in only 4% of the 164 hearings observed, and that notes in the court files were suspect, if there were notes at all.
 - ▶ That survey also revealed that ICWA determinations were sometimes being made based on the physical appearance of the child, and no actual inquiry of the family was taking place.
 - ▶ The CC has since offered several training sessions on ICWA to judges, and the SBOT has offered sessions through its one-day track at Advanced Family Law.
 - ▶ Nationally, the CC has been asked to collaborate and comment on a Model ICWA Judicial Curriculum that includes a chapter on the leadership role of the Judge suggesting that inquiry about Native American heritage should be made at the initial hearing and at every subsequent hearing.
 - ▶ Asking early and often will lead to more on-the-bench leadership by ensuring everyone is aware the court needs this information.
 - ▶ At every subsequent hearing the court should ask the questions and create the expectation that this information is important and needed and that the court intends to hold Dept accountable for finding out this information, providing the proper notice and making the required efforts.
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OPR/OCR/MAC – Not filed

- ▶ Texas Family Code Sections to allow for the creation and oversight of county or regional offices of child or parent representation in CPS cases.
 - ▶ Counties can create and use public funds for county or regional offices of representation for children, indigent parents, and alleged fathers in a suit seeking conservatorship of a child or termination of parental rights.
 - ▶ Provides guidance related to county oversight of said offices.
 - ▶ Also, counties would have authority to use public funds to contract with a nonprofit entity, governmental entity or bar association to manage the assignment of and compensation under a managed assigned counsel program for legal representation.
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Case Transfers: Chapters 155 and 262 – Not filed

- ▶ To place tighter controls on the process used when child protection cases transfer from one county to another to help ensure state mandated deadlines and party appointments are not missed.
 - ▶ Section 155.207 would require that the sending clerk transfer to the receiving clerk within ten (10) days the pleadings, any other documents specified by a party, certified copies of the minutes, a certified copy of each final order, and a certified copy of the transfer order signed by the transferring court.
 - ▶ Section 262.203 would require that the court order signed by the sending judge include the date of any future hearings which have been scheduled by the transferring court, any date of dismissal scheduled by the transferring court pursuant to Section 263.401, and the names and contact information of attorneys and guardians ad litem.
 - ▶ It would also allow the receiving court to retain any attorney or guardian ad litem appointed by the transferring court, but that if the receiving court determines that the appointment of a substitute attorney and/or guardian is appropriate, the court must appoint the substitute attorney and/or guardian within ten days of receiving the order of transfer from transferring court or by the time of the first scheduled hearing in the receiving court, whichever occurs first.
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Limited Purpose Parent Appointment Section 107.041 – Not filed

- ▶ Discretion to appoint attorney to represent parent for limited duration at beginning of the case before indigence is determined.
 - ▶ Mandates that attorneys appointed under this section have the powers and duties of an attorney as set forth in Section 107.131.
 - ▶ At would assist in locating parent; inform the parent of their right to be represented by an attorney, if the parent is indigent and opposed to the state's suit; assist the parent with establishing a claim of indigence; assist preparing for the full adversary hearing.
 - ▶ Judge would conduct indigence determination before commencing the Adversary Hearing (amending 262.201)
 - ▶ Authorizes court to appoint the attorney to continue the attorney's representation.
 - ▶ If the court determines that the parent is not indigent, the court must dismiss the attorney from the case.
 - ▶ If the attorney cannot locate the parent, the attorney must submit a written summary of the attorney's efforts to identify and locate the parent and the court must then dismiss the attorney from the case.
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Human Trafficking - HB10, Filed

- ▶ Amends Govt Code Section 22.010 and 22.011: Judicial Instruction Related to Family Violence, Sexual Assault, Trafficking of Persons, and Child Abuse (does not increase the # of hours required)
 - ▶ Adds the Children's Commission to the list of entities to the Human Trafficking Prevention Task Force established by the OAG.
 - ▶ Establishes a Child Sex Trafficking Prevention Unit out of the Governor's Criminal Justice Division.
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Notice of Significant Event – Not filed

- ▶ Significant change in medical condition
 - ▶ injury or illness that is life threatening or potentially serious long-term health consequences, including hospitalization for surgery or other procedures except minor emergency care
 - ▶ Significant Event
 - ▶ Placement change, including inability to locate an appropriate placement for one or more nights
 - ▶ Significant change in medical condition
 - ▶ Initial prescription of psych med or change in dosage of psych med
 - ▶ Major change in school performance or serious disciplinary events
 - ▶ Any other event determined to be of significance as provided in DFPS rules
 - ▶ Notify – Dept language: to take reasonable measures to provide notice to the person required to be notified. CC suggested language that mirrors new 263.0021: to give notice in a manner that provides actual notice to a person entitled to notice of the event.
 - ▶ Notice requirements of new 264.117 are in addition to other notice requirements provided in law, including Sections 263.0021 (Notice of Hearings), 264.107(g)(Must notify court when cannot find appropriate placement for a child by next business day); and 263.123 (Must notify persons that child is missing within 24 hours [LE, Court, AAL, GAL, Parent])
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