

ROUND TABLE SERIES

Children in the Permanent Managing Conservatorship of the Texas Department of Family and Protective Services

Executive Summary from the February 18, 2010, Round Table

I. What Does Data Tell Us?

Traditionally, the judiciary has not had the ability to use Texas Department of Family and Protective Services (DFPS) data in a meaningful way to assess how its decisions affect outcomes for families and children involved in CPS cases. However, the federal government, DFPS, and the state legislature routinely rely on DFPS data to evaluate the state's policies and performance in CPS cases. Because courts are critical decision-makers in the child welfare system, judges should become conversant with certain data to effectively participate in policy discussions and, in some cases, to respond to critiques about judicial performance. Data can help courts identify specific problem areas on which courts can or should focus their efforts. It also gives courts an information tool to initiate a conversation with the child welfare agency, attorneys, advocates and other stakeholders about possible systemic problems and ways to collaborate to improve child permanency, well-being and safety.

Data will never tell a court how to rule in a specific case or identify which jurisdictions are doing things “right” or “wrong.” It can only identify areas where a jurisdiction may be significantly different from national practices or standards or the rest of the state, raising issues for study.

Background

In March 2008, Texas underwent its second Child and Family Services Review (CFSR), which evaluated Texas' Child Protective Services (CPS) system, including the state's case review system, judicial processes, and child safety, permanency and well-being outcomes. The federal government noted that Texas had far too many children in Permanent Managing Conservatorship (PMC) and that child protection and judicial practices were creating barriers to permanency for this population. DFPS data shows that as of August 2009, 1 in every 4 children in state custody had been in care for three or more years. These children are essentially “stuck” and only a small number of them will ever achieve true permanency. Many eventually will age out once they turn 18.

Under the federal CFSR goal regarding aging out, no more than 37.5 percent of children who age out of foster care should have been in care more than three years, meaning that children who ultimately age out should be 15 or older when they enter care. Based on

fiscal year (FY) 2009 DFPS data, however, about 66 percent of children who aged out had been in care for 3 or more years, which means that 2 of every 3 of these children entered care at age 14 or younger.

Another CFSR measure of permanency is the percentage of children with termination of parental rights (TPR) exiting foster care to a permanent home, which is defined as reunification, PMC to a relative, or adoption. The federal standard is for 98 percent of children who exit with TPR to leave to a permanent home. In FY 2009, there were 15,369 Texas children in care with parental rights terminated. Of that number, only 90 percent (5,698 children) exited care to a permanent home. The 10 percent who aged out with TPR totaled 588 youth. Many of the 10,259 youth who remained in care during the fiscal year had been in PMC for several years.

As a result of Texas' performance on these and other permanency measures, the federal government determined that Texas needs to make significant changes to its policies and practices to achieve permanency for children and youth who are currently in the State's PMC, and to prevent the rebuilding of that population. In an effort to involve the judicial system in addressing this issue, DFPS requested assistance from the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (the Commission) in engaging Texas judges and other stakeholders in a collective "round table" discussion. For the round table discussion, DFPS provided data to the Center for Public Policy Priorities (CPPP). CPPP analyzed the data for the state overall as well as for several different geographic areas of the state. CPPP then presented its analysis to the round table participants using the aggregate data to identify possible barriers to permanency and to facilitate discussion of possible solutions to improve permanency outcomes.¹

The presentation was split into two main areas: (1) permanency from Temporary Managing Conservatorship (TMC) and (2) permanency from Permanent Managing Conservatorship (PMC). The following summarizes the data discussion from the presentation. It also suggests ways in which a court may use data to improve permanency outcomes in its jurisdiction.

A. Achieving Permanency from Temporary Managing Conservatorship

The judiciary has a significant amount of influence over how and when a child exits from TMC. Courts determine the time frame in which to issue the final order and make the determination on whether to extend a case for extraordinary circumstances or return a child home. However, courts can only terminate parental rights or appoint a relative as a child's PMC if these issues have been properly presented and are supported by evidence. The following section discusses DFPS data on specific permanency measures that illustrate Texas' standing compared to federal standards and also highlight the wide range of outcomes around the state.

¹ A list of round table participants is included in Exhibit A and a copy of CPPP's round table presentation is included as Exhibit B.

1. Timeliness and Reunification

Under both federal and state law, the first permanency goal should be reunification. If families achieve reunification, children do not enter PMC and avoid being stuck in care. State law requires that a final order be issued within one year, but allows for an extension of up to 180 days in “extraordinary circumstances.”²

There is significant variation in reunification rates in Texas. For the state overall in 2009,³ 29 percent of children who exited TMC were reunified, but the rates among the counties reviewed as part of this round table data analysis ranged from a low of only 20 percent of children to almost 50 percent who were reunified.

Under the legal standard set out under Texas Family Code Section 263.401, a minority of cases should receive an extension past the one-year deadline.⁴ In 2009, on average, 40 percent of the cases with a final order received an extension, although there was a range among courts varying from about 1 percent to over 50 percent.

It is a popularly held belief that extending the case gives parents more time to engage in services or resolve underlying problems which in turn increases chances for reunification. The data reviewed as part of the Round Table, however, does not support that view. For example, in one jurisdiction reviewed, more than 50 percent of cases were extended beyond the 12-month deadline, but the extensions did not result in more reunifications. That jurisdiction had one of the lowest reunification rates in the state, at about 20 percent or only 1 in 5 children, exiting TMC to reunification.

Conversely, another court reviewed had one of the lowest rates of final order extensions and a high rate of reunification. In this court, only about 1 percent of its final orders were rendered after more than 1 year and the court’s reunification rate was 40 percent.

Courts may want to examine the number of final orders rendered within the one year deadline and the number of cases given extensions. If courts are granting extensions to allow parents more time to engage in services or to allow DFPS more time to provide services to increase chances of reunification, courts could look at their reunification numbers to confirm whether this is occurring.

However, if extensions are being granted because of a lack of community or judicial resources or to allow DFPS more time to establish reasonable efforts, courts may want to consider *whether this presents extraordinary circumstances that justify keeping a child in care*. The lack of resources or reasonable efforts may indicate a systemic problem that could be addressed by the child welfare and judicial community so that children in foster care do not bear the burden of system inadequacies. Staying in care longer only to achieve the same result that would have been achieved at the original deadline may only serve to

² Texas Family Code §263.401.

³ Unless otherwise noted, all references to a year refer to the state fiscal year which runs from September 1 to August 31.

⁴ See Exhibit B, CPPP Presentation Slides 17-18, Page 18.

exacerbate problems that tend to develop with lengthy stays in foster care, all of which make achieving permanency more difficult.

2. Other Types of Exits: Adoption and Relative PMC

For children who do not return home, the most frequent form of exit from foster care is adoption. In 2009 for the state overall, 48 percent of children who exited to something other than reunification were adopted, often by relatives.

Both federal and state law favor adoption and states may receive additional IV-E funding for increasing adoptions year to year. Also, families who adopt are eligible to receive post adoption services. The Texas Administrative Code specifies that relative adoption must be considered before relative PMC.⁵

Exits from TMC to reunification or to relative PMC are considered good outcomes that all jurisdictions should strive for. Those courts with a high rate of children exiting to good outcomes from TMC will likely have a low rate of TPR, either because the child is reunified or a relative took PMC, negating the need for or possibility of TPR. Jurisdictions with a high rate of TPR may want to take a corresponding look at the number of adoptions consummated and the timeliness of consummations to ensure systemic barriers to adoption, such as the inability to get home-studies approved or the lack of adoption subsidies and post adoption services, do not exist.⁶ If a jurisdiction has a low rate of TPR, consider whether relative PMC is frequently the option chosen because it is perceived as a quicker route to permanency.

While adoption is preferred, the 2008 federal Fostering Connections to Success and Increasing Adoptions Act (FCA) was enacted to address the plight of thousands of young people who exit foster care without the stability of a safe, permanent family. Relatives can now receive ongoing financial assistance similar to an adoption subsidy through DFPS' new Permanency Care Assistance (PCA) Program. To qualify, the relative must become a verified foster placement, and DFPS must find that adoption is not appropriate.⁷ However, PCA is not intended to replace adoption as the preferred permanency plan for a child or youth in care, which is why adoption must be ruled out before a family can qualify for assistance.

B. Achieving Permanency from Permanent Managing Conservatorship

Historically, once the state has become a child's PMC, DFPS and courts have accepted the PMC status as "permanent." In fact, there is no legal prohibition to modifying a court order granting PMC to DFPS to achieve reunification or termination. And, there are still active measures a court can take to expedite and facilitate permanency through the placement review hearing process.

⁵ Texas Administrative Code §700.1203.

⁶ See Exhibit B, CPPP Presentation Slides 21-23, Pages 20-21, and Slides 26-27, Pages 22-23.

⁷ 42 U.S.C. §673(d).

1. Children in PMC with TPR

For the state overall, 10 percent or 1 in 10 children who started the year in PMC with TPR left care without a permanent home in 2009. As discussed above, the federal goal is 2 percent. None of the jurisdictions reviewed as part of this round table came close to this standard.

The judiciary can assist in ensuring that DFPS is doing everything possible to find an adoptive home for children with TPR. A recommended first step is to ensure the adoptive process is timely initiated by setting the initial placement review hearing within 90 days of the final order as required by a new amendment to the Texas Family Code.⁸ DFPS recently agreed to clarify its policy regarding Texas Family Code Section 102.006 to ensure caseworkers understand that the 90-day period is intended to apply to a delay in consummation only and not to finding and recruiting adoptive families or preparing a case for adoption during this time.⁹ Following the 90-day period, the court can monitor whether DFPS continues efforts to look for an adoptive home for the child at each subsequent placement review hearing.¹⁰ The placement review report should describe the specific actions DFPS has taken to find the child an adoptive home.¹¹

Recent data shows that, for the state overall, at least 50 percent of all adoptions were completed just over one year after the final order terminating parental rights.¹² *If a child has been in PMC with TPR for more than 2 years and still is not in an adoptive home, the adoption plan has failed and should be revisited.* DFPS should explore the use of enhanced adoption assistance payments for specialized or intense level of care children and document such efforts in each placement review report. Enhanced adoption assistance payments allow DFPS to pay an amount that is equal to the foster care payment the child would receive if certain eligibility criteria are met.¹³ For children who have been in PMC with TPR for more than 2 years, if the enhanced adoption assistance payment is not an option, the court should explore whether adoption is still an appropriate permanency goal. *Even if adoption is appropriate as the primary goal, DFPS should concurrently work on an alternative by looking for relatives who may be willing to take PMC or explore whether a parent's circumstances have changed such that they may be able to safely care for the child.*

2. Children in PMC without TPR

In 2009, 24 percent of Texas children who entered PMC did so without TPR. However, there is wide variation around the state of the percentage of cases entering PMC without TPR,¹⁴ which ranges from 100 percent of cases in some jurisdictions to only 5 percent in others. Also, in FY 2009, 30 percent of children entering PMC without TPR were under the

⁸ Texas Family Code §263.501(b) revised by the 81st Texas Legislature in 2009.

⁹ Child Protective Services Handbook, §6831.1.

¹⁰ Texas Family Code §263.503(a)(5).

¹¹ Texas Family Code §263.502(c)(6).

¹² See Exhibit B, CPPP Presentation Slides 31-32, Page 25.

¹³ Texas Family Code §162.304(g) and Texas Administrative Code §700.807.

¹⁴ See Exhibit B, CPPP Presentation Slides 22-23, Pages 20-21.

age of 5. Around the state, the range between jurisdictions of the percentage of children under the age of 5 entering PMC without TPR was a low of 0 percent to a high of 38 percent.

In some instances, the higher rate of young children entering PMC without TPR may be the result of giving parents additional time for reunification. If so, entering PMC without TPR may not ultimately be a barrier to permanency as long as there is a timely subsequent reunification or TPR if the child cannot be returned home. One jurisdiction that had the highest rate of young children entering PMC without TPR also had a high rate of subsequent TPRs for children already in PMC. Courts may want to examine how long it takes after PMC to DFPS is rendered before reunification or TPR is reached. Additionally, courts may want to examine how often PMC to DFPS without TPR is occurring in those cases where the court is granting extensions for extraordinary circumstances.

If the system is operating properly, children who are in PMC without TPR would be limited mostly to those children who could not go home during TMC, for whom termination of parental rights is not appropriate or supported by the evidence, and for whom there is no relative available to take PMC. Even though these children may have many challenges, DFPS must continue to seek permanency for them. As stated previously, according to FY 2009 data, 1 in 4 children in PMC has been there for 3 or more years for a total of 6,400 children.¹⁵ Of all children who aged out in FY 2009, 6 of 10 were in care more than 3 years.¹⁶

3. Children Who Will Age Out of Care

As noted above, there are some children for whom reunification, adoption or relative PMC are not viable options. For these children, the only permanency option legally available is Another Planned Permanent Living Arrangement (APPLA). In 2009, the Texas Legislature added Texas Family Code Section 263.3026, which requires DFPS to document that there is a compelling reason why the other permanency goals (reunification, TPR, or PMC to an individual other than DFPS), are not in the child's best interest prior to designating APPLA as the child's permanency goal. DFPS has clarified in its policy that caseworkers must justify selecting a permanency goal that involves DFPS continuing as the managing conservator. DFPS is in the process of renaming permanency goals, including using the term APPLA, which will more appropriately target youth who are 15 and older or who have substantial medical or other disabilities.

Although an APPLA anticipates that the child will remain in state custody until age 18, it is not simply long-term foster care. Like the other options, it must involve an adult making a permanent commitment to the child, but in a slightly different context than when PMC is granted to the adult.¹⁷ A permanent commitment in the APPLA context means the child will remain in state custody until age 18 and the adult will maintain an ongoing relationship with the child even after the child turns 18. Thus, even if a child's only

¹⁵ See Exhibit B, CPPP Presentation Slides 11-12, Page 15.

¹⁶ See Exhibit B, CPPP Presentation Slides 13-14, Page 16.

¹⁷ Texas Family Code §263.503(7) (B).

permanency option is an APPLA, DFPS is still obligated to continue trying to identify a family or adult who will make a permanent commitment to the child, and at every placement review hearing, courts must evaluate DFPS' efforts in this regard.

In Closing

Achieving permanency for children in foster care presents many challenging issues. What works for one jurisdiction may not work in another. This paper is intended to continue the dialogue we hope Texas engages in as it strives to find true, safe permanency for all children, youth and families involved. This paper does not represent everything discussed at the Round Table. Barriers and possible solutions were also discussed and those issues will be more thoroughly considered in Part II of this Round Table series.