

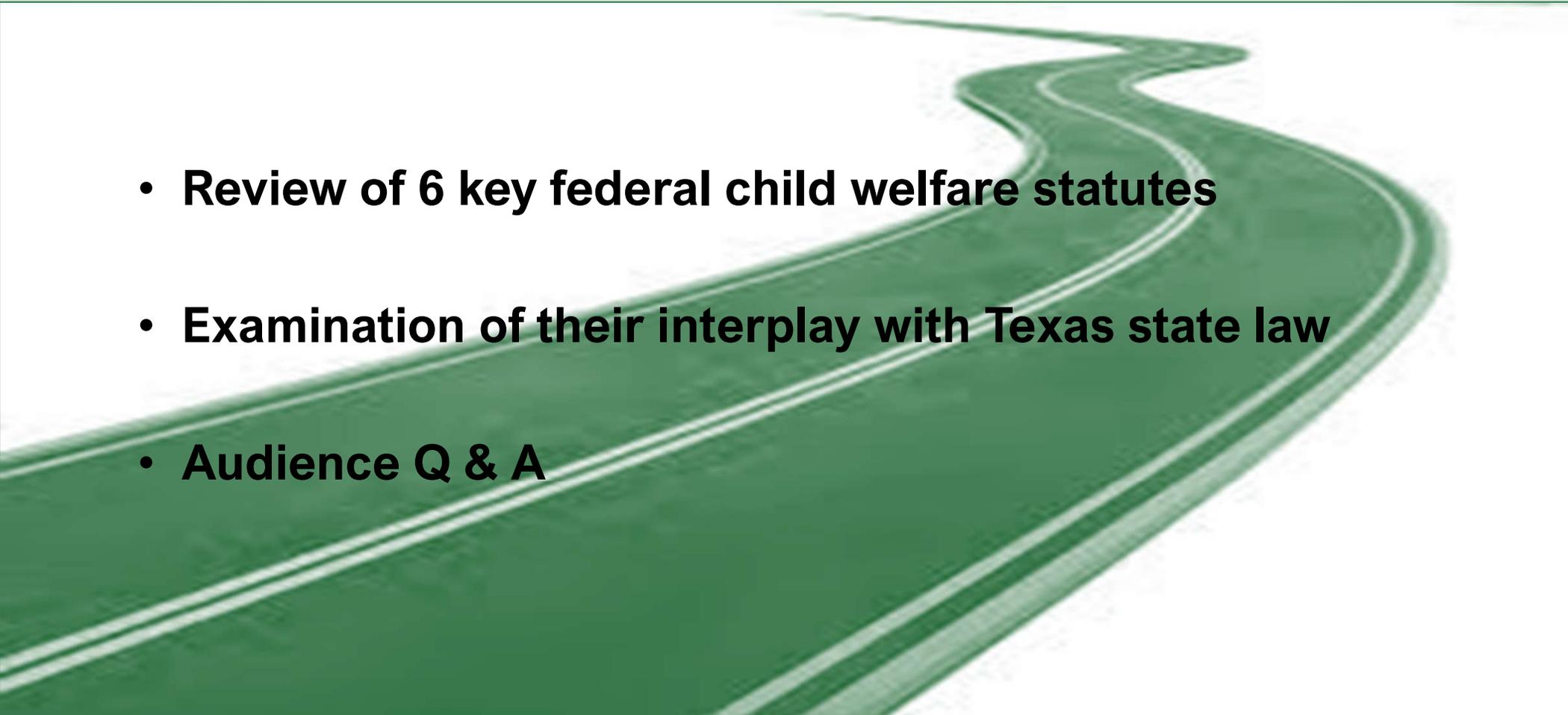
Understanding the Federal Intersection with Key Texas Child Welfare Laws

SUPREME COURT OF TEXAS CHILDREN'S COMMISSION

JULY 18, 2024



Roadmap for Today's Session

- **Review of 6 key federal child welfare statutes**
 - **Examination of their interplay with Texas state law**
 - **Audience Q & A**
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- A green road with white lane markings curving through a white background. The road starts from the bottom left and curves towards the top right, disappearing into the distance. The road has two white lines on each side, creating a central lane. The background is a light, hazy white.

Selected Federal Child Welfare Legislation



1. Child Abuse Prevention and Treatment Act (1974)
2. Adoption and Safe Families Act (1997)
3. The Foster Care Independence Act (1999)
4. Fostering Connections to Success and Increasing Adoptions Act (2008)
5. Preventing Sex Trafficking and Strengthening Families Act (2014)
6. Family First Prevention and Services Act (2018)





Child Abuse Prevention and Treatment Act (CAPTA) 1974

Child Abuse Prevention and Treatment Act (CAPTA)

1974

- First federal involvement in child welfare
- Mirrored growth in national interest in child abuse
- Sought to address lack of uniformity across state systems
- Concern that there were no meaningful case plans after removal
- Led to dramatic increase in foster care population



Child Abuse Prevention and Treatment Act (CAPTA)

1974



- Mandated reporting laws
- Community-based prevention (CBCAP)
- Procedures for substance-affected infants
- Appointment of trained GAL (doesn't have to be an attorney)
- Triage protocols (ex. differential response)
- Training for professionals



Child Abuse Prevention and Treatment Act (CAPTA)

1974



- Baseline definitions of child abuse and neglect
- Confidentiality of records
- Citizen review panels
- Criminal background checks for foster parents
- Procedures for identifying and assessing children known or suspected to be victims of sex trafficking
- “Representation” for children in foster care courts



CAPTA in Texas

Mandatory Reporting TFC 261.101

A person having reasonable cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report.

A professional must report within 48 hours.

- Requirement for professional to report cannot be delegated

No exceptions for privileged communications.

Identity of reporter is confidential.

Failure to report is a Class A misdemeanor, TFC 261.109



Appointment of GAL TFC 107.011

Court shall appoint GAL to represent the best interest of the child immediately after the petition is filed and before adversary hearing

GAL may be:

- Charitable organization with volunteer advocates
- Adult with competence, training, and expertise
- An attorney in the dual role
- An attorney in GAL role only



Definitions TFC 261.001

Abuse definitions generally include injury or genuine threat of injury to child based on an act or omission by a person

Physical injury resulting in substantial harm or threat of substantial harm

Emotional injury resulting in observable and material impairment

Sexual conduct harmful to a child's welfare

Compelling sexual conduct

Causing or permitting the child to be trafficked

Exploitation = improper use of child or their resources for monetary or personal benefit

Neglect an act or failure to act by parent/caregiver that results in harm or creates an immediate danger to the child's physical health or safety.



Adoption and Safe Families Act (ASFA) 1997

Adoption and Safe Families Act (ASFA)

1997



- Driven by concerns about prolonged foster care stays, placement instability
- Case plan requirements
- Least restrictive environment
- Permanency Hearings
- Concurrent planning permitted
- Foster parent right to notice & opportunity to be heard
- Adoption incentive awards to states



Adoption and Safe Families Act (ASFA)

1997



- Modified reasonable efforts requirement to say child's "health and safety" shall be "paramount"
- TPRs
 - Exceptions to 15/22 month requirement
 - States may define "aggravated circumstances"
- Reasonable efforts
 - Regulations published in 2000



ASFA in Texas

Paramount
Concern
TFC 262.001

(b) In determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove the child from the child's home or to make it possible to return a child to the child's home, the child's health and safety is the paramount concern.



Filing for TPR

TFC 262.001(a) A governmental entity with an interest in the child may file a suit affecting the parent-child relationship requesting an order or take possession of a child without a court order as provided by this chapter.

TFC 101.032(a) A SAPCR means a suit...in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is requested.

TFC 102.003(a) An original suit may be filed at any time by (6) the Department of Family and Protective Services.



Aggravated Circumstances TFC 262.2015

Waives the requirement of a service plan and reasonable efforts

Circumstances include:

- Certain types of abandonment
- Serious bodily injury or sexual abuse of child or another child of the parent
- Certain criminal conduct defined by penal code towards a child of the parent
- Certain convictions as defined by federal law

Accelerates final trial

DFPS must make reasonable efforts to finalize permanent placement of the child



Detailed Case Plan Requirements

TFC 263.102 governs the family plan of service

40 TAC 700.1321 governs the child's plan of service



Least Restrictive Environment TFC 263.001

“Least restrictive setting” means a placement for a child that, in comparison to all other available placements, is the most family-like setting.

- Age >6 = if no relative placement, then foster home or GRO operating as cottage home
- Age <6= if no relative placement, then foster home, or GRO operating as cottage home ONLY if DFPS determines such placement is in child’s best interest



Concurrent
Planning
TFC 263.102
263.3025

263.102 requires DFPS to concurrently provide family reunification services in the time period before a final order must be rendered and adoption promotion and support services.

263.3025 requires the child's permanency plan to include concurrent permanency goals, consisting of a primary permanency goal and at least one other alternate permanency goal.



Permanency Plans and APPLA TFC 263.3026

DFPS permanency plan may include the following goals:

- Reunification with either parent or person from whom child was removed
- Termination and adoption by a suitable individual
- Award of PMC to a relative or other suitable individual
- Another planned, permanent, living arrangement (APPLA) for the child

If APPLA, DFPS shall document a compelling reason why the other goals are not in the child's best interest (which must be revisited at each permanency hearing)



Foster Care Independence Act (Chafee Act) (1999)

Foster Care Independence Act (Chafee Act) (1999)



- Applies to youth 14 years old and over currently in foster care and youth 16 years old and over who left foster care for adoption/ guardianship.
- Creates the ETV program
 - \$5,000 per youth/ per year
 - Up to age 26



Foster Care Independence Act (Chafee Act) (1999)



- Established Independent Living Programs
 - Efforts to find a permanent placement continue concurrently with ILP
- Optional Medicaid coverage until age 21
 - ACA = 26 yrs.
- Funding for assistance with housing, employment, counseling



Chafee Act in Texas

Transitional Living Services

DFPS provides Chafee Foster Care Independence Program services through its Transitional Living Services Program

https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/default.asp

Transitional services are available to youth ages 14-23 and include:

- Circles of Support
- Preparation for Adult Living (PAL)
- Education and training vouchers
- College tuition and fee waivers
- Medicaid coverage until age 26



Fostering Connections to Success and Increasing Adoptions Act (2008)

Fostering Connections to Success and Increasing Adoptions Act

(2008)



- Introduced **well-being** as the third goal of the child welfare system
 - Educational success, stability, coordination
 - Healthcare oversight
 - Sibling connections (reasonable efforts)
- Permits states to expand foster care until age 21



Fostering Connections to Success and Increasing Adoptions Act (2008)



- Permits subsidized kinship guardianships
 - To mirror adoption subsidies
- Diligent search and notice to relatives within 30 days of removal
- Permits case-by-case waivers of some licensing rules (non-safety related) for relative placements
- State defines what is “non-safety related”



Fostering Connections in Texas

Extended Foster Care

TFC 263.601 Definition

TFC 263.602 Extended Jurisdiction



Permanency Care Assistance

TFC 264.851-264.856

- Kinship provider: relative of foster child or another adult with longstanding and significant relationship with a foster child before the child was placed with that person

40 TAC 700.1029

- Caregiver must have been eligible for the receipt of foster care reimbursements on behalf of the child for at least six months prior to the date of the permanency care assistance agreement



Notice to Relatives

TFC 262.1095

- Requires notification of removal to:
 - Relatives within the fourth degree of consanguinity
 - Adult relatives of alleged father if reason to believe he is bio father
 - Individuals listed as relatives or other designated caregivers on child care resource form

TFC 263.007

- Requires DFPS to file report regarding efforts to locate the relatives, the names of those contacted, and an explanation of what DFPS was unable to identify and locate the individuals;
- Report due 10 days prior to hearings under Ch. 263



Waivers of Licensing Rules for Kinship Caregivers

26 TAC 745.8301-8321 governs waivers and
variances of minimum standards for all providers



Reasonable Efforts to Keep Siblings Together

CPS Handbook 4114.2 Separating Siblings

- DFPS must make reasonable efforts to place siblings together unless DFPS documents that doing so is contrary to the safety or well-being of one of the siblings
- If not placed together, must provide frequent visitation or interaction, unless contrary to safety or well-being

Separation due to lack of placement availability requires program director approval

Must revisit placing siblings together prior to every court hearing

CPS must discuss strategies being used to address safety threats so siblings can be reunited



Preventing Sex Trafficking and Strengthening Families Act (2014)

Preventing Sex Trafficking and Strengthening Families Act (2014)



- Agency must develop policies for identifying youth who have been or are at risk of being trafficked;
- Children 14 and older must be involved in their transition planning. Youth can include 2 people who must be included in the team planning
- 14 years and older – youth must be given information re: their rights
- APPLA goal impermissible for youth under 16 years old
- “Normalcy” → established the “Reasonable & Prudent Parent Standard”



Strengthening Families in Texas

Policies to Identify Youth Who Have Been or Are at Risk of Being Trafficked

CPS Handbook 2380- Child Trafficking (Sex and Labor Trafficking) Investigations

- CPI and Special Investigations investigate allegations of trafficking of children when person traditionally responsible for care, custody and welfare causes, permits, encourages trafficking or fails to make reasonable effort to prevent child from being trafficked.

CPS Handbook 6462- Confirmed or Suspected Victims of Human Trafficking, requires:

- assessment and referral to services
- referral to law enforcement
- joint investigation with Special Investigators, using MDT protocols, when applicable
- CPS must document needs child may have because of victimization
- documentation of trafficking event in IMPACT



Foster Children's Bill of Rights

TFC 263.008

- It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to a list of things relevant to the child, including placement with child's siblings and contact with their attorney, etc.

CPS Handbook 6420 Rights of Children and Youth in Foster Care

- Requires DFPS to provide all children and youth in foster care with the Rights of Children in Foster care document
- Must review with child AND caregiver at certain points in case



Transition Planning

CPS Handbook 10120 Transition Planning for Older Youth

- The caseworker must ensure that transition planning services are offered **to all youth age 14 and older**. The caseworker must develop a transition plan for all youth age 14 and over and review the plan according to the time frames required by policy.



APPLA
restricted to age
16 and up

CPS Handbook 6234.4 Another Planned
Permanent Living Arrangement

- The permanency goal of APPLA indicates that:
 - the **youth is age 16 or above;**
 - CPS has explored and ruled out preferred permanency goals (family reunification, adoption, permanent managing conservatorship (PMC) to a relative or other individual);
 - there is a compelling reason why reunification, adoption, or a transfer of conservatorship are not appropriate permanency goals in the youth's best interest



Reasonable and Prudent Parent Standard

TFC 264.001(5)

"Standard of care of a reasonable and prudent parent" means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- (A) the overall health and safety of the child;
- (B) the child's age, maturity, and development level;
- (C) the best interest of the child based on the caregiver's knowledge of the child;
- (D) the appropriateness of a proposed activity and any potential risk factors;
- (E) the behavioral history of the child and the child's ability to safely participate in a proposed activity;
- (F) the importance of encouraging the child's social, emotional, and developmental growth; and
- (G) the importance of providing the child with the most family-like living experience possible.



Family First Prevention & Services Act (FFPSA) (2018)

Family First Prevention & Services Act (2018)



Invests in prevention services

- Mental health, substance abuse, parenting skills

New restrictions on residential treatment through QRTP accreditation and court review

Kinship navigator programs

Older youth, at the option of the State

- Extends Chafee to 23 y.o.
- Extends ETV to 26 y.o.

Requires agency to provide documentation to aging out youth



FFPSA in Texas

Court Review of QRTP Placements

TFC 263.00201

Requires court to review the assessment, determine whether child's needs can be met in a foster home, and approve or disapprove the placement



Provide Documents to Youth

TFC 263.306(l)(v), (vi) Permanency Hearings Before Final Order

TFC 263.5031(F)(v), (vi) Permanency Hearings After Final Order

Both require for youth with APPLA permanency goal to document whether child age 16 has been provided a copy and evidence that upon turning 18, youth was provided certified copy of:

- Birth certificate
- Social security card
- DL or personal identification certificate



Texas Family First Pilot

Launched October 2022 in regions 1, 2, 3W, and 8B

137 families have successfully completed; 126 families currently in program

Services are evidenced-based; typically provided in-home

Child remains in the same home as the parent(s)

Types of cases:

- Substance abuse
- Mental health
- Domestic violence
- Inappropriate physical discipline



Q & A



"Sir, I have a question that's lunch-related."

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Thank You!

Questions related to MCLE self reporting may be sent to:
cctraining@txcourts.gov

