



Department of Family and Protective Services

Legislative Update
July 2011

- The Texas Legislature filed almost 6,000 bills in the regular and special sessions
- DFPS tracked 560 of those bills
- 129 of the bills tracked by DFPS passed into law

Key Legislation Impacting DFPS

SB 78 Sen. Nelson/Laubenberg

- Requires the HHS agencies that regulate certain facilities to maintain records for a period of ten years and provide monthly reports with that information to be shared with the other HHS agencies. Allows all HHS agencies to deny the issuance of a license to any person who was a controlling person of an entity whose license was denied or revoked by another HHS agency for cause.

SB 321 Sen. Hegar/Sen. Birdwell/Rep. Kleinschmidt

- Prohibits employers from restricting employees who are concealed handgun licensees from keeping firearms in their vehicles while on employer's premises. Also provides immunity from civil liability for employers for damages except in cases of gross negligence.

Key Legislation Impacting Adult Protective Services

SB 221 Sen. Nelson/Rep. Gonzalez

- An omnibus Adult Protective Services bill that:
- Clarifies that a financial institution may provide otherwise confidential records when requested by a governmental agency investigating alleged abuse, neglect, or exploitation.
- Allows DFPS to warn an adult victim that a co-resident alleged perpetrator had a criminal history. Expands the categories of persons for whom an FBI check may be sought to ensure client safety whenever an out-of-state criminal history is suspected.
- Adds "emergency medical services provider" to the already listed health care professionals who are granted immunity when assisting DFPS in carrying out an emergency order for protective services.
- Eliminates the need to report back to the law enforcement agency that initially reported ANE to DFPS.
- Provides legal authority for APS to compel access to records necessary for an investigation.

SB 221 cont'd

- Amends the statutory definition of exploitation and grants DFPS rulemaking authority to further amend abuse, neglect, and exploitation definitions to provide more flexibility in dealing with the most pressing issues of clients in the community, including those receiving services from a Home and Community Support Services Agency (HCSSA).
- Allows DFPS to provide protective services to a caretaker or family member of an APS client in order to benefit the client.
- Clarifies that an investigation of abuse, neglect, or exploitation is a separate and mandatory function of DFPS rather than a "protective service" which a client may refuse.
- Makes changes to the Emergency Order for Protective Services process to make this emergency action easier to use, including adding to the list of professionals APS staff can consult for their expertise, extending the length of time an emergency order is valid.

HB 2609 Rep. Guillen/Sen. Uresti

- Adds "obstruction or retaliation" to the list of offenses that bar for life a person from employment at facilities (including nursing homes, state supported living centers, state hospitals) licensed, regulated, or contracted with by the Department of Aging and Disability Services (DADS) and the Department of State Health Services (DSHS).

SB 41 Sen. Zaffirini/Rep. John Davis

- Requires the HHSC to adopt rules to ensure that mechanical and physical restraints (least restrictive) are administered only when necessary to prevent imminent physical injury and must end immediately once there is no risk of imminent physical injury.

Key Legislation Impacting Child Care Licensing

SB 1178 Sen. Nelson/Rep. Raymond

- This is an omnibus child care licensing bill that:
- Expands the "controlling person" concept currently applied to residential child care providers to all regulated child care facilities and prohibits a person whose license or permit is revoked from applying for a new license or permit for any child care facility or home for five years.
- Allows for the expansion by rule of criminal offenses that may bar a person from serving as a child care administrator.
- Provides for the automatic suspension of a license or other permit of a child care facility or listed or registered family home that fails to pay its required annual fees or to submit required information for background checks, and to automatically revoke the operations permit if such failure continues for at least six months following the suspension.
- Authorizes CCL to investigate a listed home when DFPS receives a complaint alleging immediate risk of danger to the health or safety of a child in care and authorizes use of administrative penalties against listed homes.

SB 1178 cont'd

- Requires background checks for substitute child care providers before they may provide care to a child.
- Clarifies that before- and after-school programs and school-age programs must comply with the same fingerprint-based criminal history checks that are required of other day care providers.
- Replaces the current licensing requirements for domestic violence shelters and homeless shelters that provide day care for the children of shelter residents with a more streamlined permitting process similar to that used for employer-based day care operations.
- Enables a recreational program operated by a municipality to maintain exemption from regulation without holding annual public hearings to review the programs standards.
- Repeals DFPS regulation of maternity homes, but requires any home that provides residential care to a minor to become licensed as a residential child care facility.

HB 1615 Rep. Brown/Sen. Ogden

- Concerns the administration of medication by day care providers, including centers and licensed, registered, or listed homes. The bill requires written authorization from a parent before a medication may be administered, other than in cases of an emergency to prevent serious injury or death. Non-prescription topical ointments are excluded from the definition of a medication. Persons who administer medication in violation of this new provision commit a criminal offense punishable as a Class A misdemeanor.

HB 2560 Rep. Sheffield/Sen. Estes

- Amends Section 42.042, Human Resources Code, to prohibit DFPS from banning a foster parent who is licensed to carry a concealed handgun from having a handgun in a vehicle used to transport his or her foster child, provided the hand gun is in the "possession and control" of the foster parent.

SB 76 Sen. Nelson/Rep. Morrison

- Creates Chapter 313 of the Labor Code entitled, "Requirements for Providers of Relative Child Care", which relates to providers of subsidized child care who are related to the child for whom care is provided.
- Of specific interest to DFPS, providers of subsidized relative child care are required to become listed family homes subject to DFPS regulation, including background checks. Previous to this legislation, persons who provided subsidized child care exclusively for relatives were exempt from DFPS regulation.
- DFPS and TWC must enter into an MOU relating to the administration of this new chapter no later than 10/1/2011. Relative providers who care for the child in the child's home are exempt from having to pay application fees and other fees applicable to listed family homes.

SB 260 Sen. West/Rep. Raymond

- Increases the number of hours of initial training from 8 to 24 hours for employees of all day care facilities and homes, other than listed family homes, who have no previous training or less than 2 years of employment in a child care facility, to be completed within 90 days of employment. Eight hours of the initial training must be completed prior to a person being given responsibility for a group of children. Annual training for employees of day care centers and licensed child care homes is increased from 15 to 24 hours for employees of such facilities, and from 20 to 30 hours for directors and operators. Orientation must be completed within the first week of employment.
- DFPS is prohibited from requiring training in excess of the statutorily required levels. The new requirements for initial training do not apply to anyone whose employment began before the effective date of the bill; while the annual training applies to everyone regardless of when first employed.

SB 265 Sen. Zaffirini/Rep. Carter

- Amends Human Resources Code 42.0421, relating to minimum training standards, primarily applicable to daycare providers. Requires all training under the section to be conducted by people with certain specified training or experience. It also specifies that training required by section 42.0421 must be appropriately targeted and relevant to the age of the children who will be cared for by the trainee.

SB 471 Sen. West/Rep. Parker

- This bill requires schools, child placing agencies and daycare centers to develop policies and provide training that facilitates the prevention of, and the recognition of symptoms of, sexual abuse and other "maltreatment." DFPS must develop rules relating to such training for regulated providers. Child care facility policies must address how to guide parents in steps they should take to obtain assistance for a child who is a victim of abuse or neglect.

Key Legislation Impacting Child Protective Services

SB 218 Sen. Nelson/Rep. Dukes

- This omnibus Child Protective Services bill makes numerous changes to strengthen the CPS system.
- Authorizes a "foster care redesign" project, which will replace the current methods for contracting with and reimbursing foster care providers with new methods that provide incentives for achieving optimal outcomes.
- The goals of the redesigned foster care system are to keep children in their home communities and place children with siblings whenever possible; ensure educational stability; and to improve services to children and families that will minimize placement disruptions, improve functioning and expedite permanency.

SB 218 cont'd

- Mandates certain investigatory procedures in cases in which a child younger than 11 tests positive for a sexually transmitted disease, including:
 - Requiring appointment of a special investigator to the case
 - Mandating certain actions that must be taken before DFPS can determine that removal of the child from the home is not necessary
- Prohibits "case closure" agreements except:
 - Following removal of a child if the agreement is subject to the approval of a court with continuing jurisdiction over the child
 - As the result of a family group conference
 - As part of a formal case closure plan for an ongoing parental child safety placement

SB 218 cont'd

- Clarifies that protective orders may be used in lieu of a removal of the perpetrator order as an alternative to removal in appropriate cases and requires training on protective orders
- Amends the services planning process to place greater emphasis on joint planning between DFPS and parents and to require the court to incorporate the approved plan into the court's orders;
- Replaces the current random survey process for foster youth ages 14 and older with the data collection and reporting process under the National Youth in Transition Database
- Authorizes criminal history background checks on Supervised Independent Living service providers
- Waives drivers license fees for foster youth

HB 79 Rep. Lewis/Rep. Jim Jackson/Sen. Duncan

SB 1 Sen. Duncan/Sen. Shapiro/Rep. Pitts

- Provide changes to maximize the availability of federal funding under Title IV-E of the Social Security Act for youth who remain in, or return to, extended foster care between their 18th and 21st birthdays.
- Requires the extension of court jurisdiction for young adults who choose to remain in extended foster care. The court must hold hearings every 6 months to review the appropriateness of the placement and to ensure DFPS has taken certain actions.
- Creates a trial independence period of 6-12 months during which time a youth may leave and then return to extended foster care without losing eligibility for Title IV-E funding.
- Continues to allow the courts to extend jurisdiction while a young adult is being referred to the Department of Aging and Disability Services for possible guardianship and allows young adults who are not in Extended Foster Care, but who are receiving transitional living services from the department, to continue to request extended jurisdiction of the court at their option.

SB 993 Sen. Uresti/Rep. Rodriquez

- Makes changes to the Family Code relating to parental child safety placements (PCSPs) made by a parent and approved by DFPS as part of a safety plan during a CPS investigation or when CPS services are being provided to a family.
- Prior to making a PCSP placement, DFPS must conduct background checks on the proposed PCSP caregiver and assess the caregiver's home environment and ability to care for the child.
- When a PCSP is made, there must be a written agreement signed by both the parent making the placement and the PCSP caregiver outlining the terms and conditions of the placement, including whether and under what circumstances parental visitation may occur. The agreement must also clarify the respective duties of the parents, the PCSP caregiver and DFPS, particularly with respect to obtaining medical treatment and ensuring school attendance.
- Before closing a case in which a PCSP placement was made, DFPS must develop a plan for the safe return of the child to the home of origin.

SB 993 cont'd

- It also places certain restrictions on when a child can remain in a PCSP placement after case closure. Finally, if a child is removed into DFPS conservatorship while a PCSP is in place, DFPS must give the PCSP caregiver priority consideration as a continued placement for the child if such placement is safe and appropriate.
- In addition, the bill contains provisions concerning notification to relatives of the removal of a child, the service planning process, and status hearings. Requires DFPS to exercise due diligence to provide notice within 30 days of removal to all adults related to the child within the third degree of consanguinity, and to other relatives or fictive kin as appropriate. Notice must include the setting for the status hearing, if known at the time notice is provided. The court is to review DFPS' due diligence at the status hearing and appoint counsel for any parent entitled to appointed counsel, but for whom counsel has not previously been appointed. In addition, the service planning process is amended to provide that court may modify the plan at any time.

SB 1026 Sen. Harris/Rep. Naishtat

- Establishes mandatory and discretionary duties for an attorney ad litem appointed to represent a parent or alleged father in a CPS case. Though most of the duties would already be required of any attorney representing any client under the Texas Disciplinary Rules of Professional Conduct, some duties that might not otherwise be required are made mandatory, including the duties to:
 - obtain and review copies of all court files;
 - meet with the client in person prior to each scheduled hearing unless excused for good cause; become familiar with the ABA standards for representation of parents in child abuse and neglect cases; and
 - complete at least three hours of continuing legal education on child protection laws as soon as practicable following appointment unless the AAL is already experienced in this area of practice.
- Attorneys who fail to comply with these provisions are subject to disciplinary action.

HB 253 Rep. Hilderbran/Sen. Nelson

- Strengthens protection of children by clarifying certain provisions in the Family Code relating to the removal of perpetrators from the home, enhances penalties under bigamy laws, and increasing penalties for violating requirements relating to reporting the birth of a child. Of specific interest to DFPS, the removal of perpetrator statute at § 262.1015, Family Code is amended to require that before a court may issue an order removing the perpetrator from the home as an alternative to removal of the child, the court must be satisfied that the parent or other adult with whom the child would continue to reside would make a reasonable effort to monitor the residence and report to the department and law enforcement if the alleged perpetrator attempts to return to the residence.

SB 482 Sen. Harris/Rep. Jackson

- Amends Chapter 34, Family Code, which currently permits a parent to enter into an "authorization agreement", similar to a power of attorney, conferring certain authorities on a non-parent with respect to a child. Chapter 34 is amended to (1) add a definition of the term "parent" (which excludes alleged fathers); (2) provide that only one authorization agreement may be in effect for a child at any time; (3) require that a copy of the authorization agreement be mailed to a non-signing parent by certified mail, return receipt requested (subject to certain exceptions); and (4) waive the duty to mail a copy of the authorization agreement to a non-signing parent who has previously committed an act of violence or sexual assault against the other parent, the child, or a sibling of the child unless the non-signing parent has court-ordered rights of possession or access to the child.

HB 848 Rep. Guillen/Sen.Zaffirini

- Amends Chapter 34, Family Code, which allows parents to enter into an "authorization agreement", similar to a power of attorney, that grants non-parents the ability to engage in certain actions on behalf of a child, such as enrolling the child in school, obtaining medical treatment, and applying for benefits or insurance on behalf of the child. Currently parents may only enter into such agreements with certain specified relatives of the child. HB 848 amends Chapter 34 to allow a parent to enter into an authorization agreement with any person with whom a child is placed under an approved parental child safety placement agreement while DFPS is conducting an investigation or providing services to the family. Amendments also specify that an authorization agreement may not confer the right to authorize the performance of an abortion or administration of contraception.

HB 943 Rep. Dukes/Sen. Nelson

- Mandates actions DFPS must take with respect to a missing child in the managing conservatorship of DFPS. Upon discovering that a child is missing, DFPS must notify within 24 hours or "as soon as possible," law enforcement, the court, the child's attorney ad litem, and the child's parents. The same provisions apply when the child is found.
- DFPS must make continued efforts to locate the child, including monthly contacts with law enforcement, relatives and others, and the conduct of quarterly reviews of all cases in which a missing child is 15 years-old or younger to ensure sufficient steps are being taken.
- Upon the return of a missing child, DFPS must interview the child to ascertain where the child was while missing and whether the child may have been a victim of criminal conduct, in which event DFPS must report the suspected crime to law enforcement.
- Requires that a missing child/person with dementia be added to state and federal missing person clearinghouses within 2 hours of notification to law enforcement.

HB 3833 Rep. Phillips/Sen. Harris

- Adds a new Title 1-A, and Chapter 15 to the Family Code adopting the uniform Collaborative Family Law (CFL) Act. CFL is a process designed to facilitate the resolution of family law issues, including child protection matters, outside of the litigation process. While most issues discussed among the parties during a CFL process are confidential and may not be disclosed to anyone, including the court, an exception is made for a report of child abuse or neglect allegations that may surface during the CFL process. CFL is already used in a limited number of CPS cases in some jurisdictions under existing Section 153.0072, Family Code; however, that section is repealed by this bill and replaced with new Chapter 15, which contains more detailed procedural requirements for CFL.

SB 219 Sen. Nelson/Rep. Gonzalez

- The goal of this bill is to improve mental health and "trauma-informed" services for children in foster or kinship care.
- Expands trauma-informed training to DFPS caseworker supervisors and requires an annual refresher course for caseworkers and supervisors.
- To the extent resources are available, requires DFPS to assist CASA volunteers, child advocacy center staff, therapists at DADS mental health centers, and domestic violence shelter staff in developing training in trauma-informed care, and in locating money or resources to assist the entities in providing it.
- Requires DFPS to annually evaluate the effectiveness of the trauma-informed training given to foster parents, adoptive parents, kinship caregivers, department caseworkers, and department caseworker supervisors.

SB 219 cont'd

- In addition, requires the following of HHSC:
- to explore opportunities to increase the use of telemedicine medical services by STAR Health providers.
- to include in the contract for STAR Health services that each physician or provider under the plan be offered training in trauma-informed care, post-traumatic stress disorder and attention-deficit/hyperactivity disorder.
- to encourage each managed care organization to ensure that the network providers comply with the regimen of care prescribed by the Health Steps program, including the requirement to provide a mental health screening during each of the child's medical exams.

SB 24 Sen. Van de Putte/Rep. Thompson

- Amends the Penal Code to subdivide the offense of Trafficking of a Person into multiple sub-offenses, including the sub-offenses of child labor trafficking and child sex trafficking, and strengthens penalties and other tools relating to the prosecution of trafficking.
- The crimes of child sex trafficking and compelling prostitution are added to the list of offenses in the Family Code that can serve as grounds for termination of parental rights. The Family Code, is amended to include within the definition of sexual abuse, compelling or encouraging a child to engage in sex trafficking, prostitution or compelling prostitution, and adds to the definition of abuse to knowingly cause, permit, encourage, engage in, or allow a child to be trafficked for either forced labor or forced sexual services. Finally, the Family Code is amended to add the commission of child sex trafficking or compelling prostitution to the definition of aggravated circumstances that can warrant expedited termination of parental rights in a CPS suit.

SB 1490 Sen. Uresti/Rep. Hunter

- Requires that a record be made of all proceedings relating to a child custody determination made in a foreign country or the return of a child under the Hague Convention. It further amends the process relating to issuance of a warrant for physical custody of a child who is the subject of a petition for enforcement of a child custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act, if a child is "imminently likely to suffer serious physical harm or removal from this state." Among other things, the warrant must provide for the "safe interim placement of the child" pending further order of the court. The child may temporarily be placed with a parent or other family member only if such person has "significant ties to the jurisdiction of the court". In the absence of a parent or other family member with such significant ties, the child is to be delivered to DFPS in the same manner as a missing child under the Family Code.

SB 1106 Sen. Harris/Rep. Madden

- Mandates the sharing of certain information among "juvenile services providers" (JSPs), a term that is defined to include all state and local governmental entities that serve children. The bill concerns two distinct categories of records, which can be shared for different purposes, as follows:
 - Educational records of students involved in the juvenile justice system for the purposes of verifying the identity of the student and providing "delinquency or treatment prevention services" to the student
 - Health service or other governmental service records provided to a "multi-system youth" (defined as any youth who has received services from 2 or more JSPs) for the purposes of:
 - Identifying multi-system youth
 - Coordinating and monitoring care for a multi-system youth
 - Improving the quality of "juvenile services" provided to multi-system youth

HB 3234 Rep. Hernandez Luna/Sen. Davis

- Amends the Family Code to require that the department by rule establish guidelines to prioritize requests to release child protective services case records, including requests made by an adult previously in the department's managing conservatorship. However, the bill provides that DFPS is not required to release records except as required by law and DFPS rule.

HB 753 Rep. Raymond/Sen. Zaffirini

- Amends Chapter 40, Human Resources Code, to require that DFPS (1) use "special assessment tools" in screening applicants for CPS employment and (2) study caseworker salaries to determine the role salaries play in recruitment & retention.

SB 1154 Sen. Uresti/Rep. McClendon

- Extends the "task force for the development of a strategy to reduce child abuse and neglect and improve child welfare," which was originally created by SB 2080 during the 81st Session. The task force is to develop a strategic plan by December 2012 that may include proposals for specific statutory changes, the creation of new programs, and methods to foster cooperation among state agencies and between the state and local governments.

HB 3531 Rep. Strama/Sen. Nelson

- Requires HHSC to implement a system to use Medicaid prescription drug data to monitor the prescribing of psychotropic drugs for children in DFPS conservatorship and enrolled in STAR Health. Requires the monitoring system to include a medical review of a psychotropic medication prescription "when that review is appropriate". The bill in effect codifies the current process used to monitor the prescription of psychotropic medications to foster children.

SB 434 Sen. Nelson/Rep. Raymond

- Establishes a task force to address the relationship between domestic violence and child abuse and neglect. The task force is charged with developing policy recommendations and comprehensive statewide best practices guidelines for both child protective services and family violence shelter centers.

SB 501 Sen. West/Rep. Dukes

- Establishes the Interagency Council for Addressing Disproportionality, the charge of which is to examine and make recommendations to reduce the involvement of children who are members of a racial or ethnic minority group in the juvenile justice, child welfare, and mental health systems; to improve the children's success in the education system; and to assist HHSC in eliminating health and health access disparities in Texas. The Council is further tasked with monitoring and advising the HHS agencies on the implementation of disproportionality initiatives.

HB 452 Rep. Lucio III/Sen. Lucio

- Requires higher education institutions to assist enrolled students that age out of the foster care system in locating available housing between academic terms. The bill further authorizes, but does not require, such institutions to provide housing stipends to former foster care youth who demonstrate financial need. For a student to be eligible they must have been in DFPS conservatorship on the day before their 18th birthday, enrolled full time during regular academic terms, and lack other housing options.

Budget Overview

	FY 2010-2011		FY 2012-2013 Conference Committee HB1		Difference	
	GR / GRD	All Funds	GR / GRD	All Funds	GR / GRD	All Funds
Funds (\$ in millions)	\$1,080.4	\$2,740.3	\$1,291.0	\$2,741.0	\$210.6	\$0.7
			Percent Change		19.5%	0.03%

A portion of baseline federal TANF funds was replaced with GR which accounts for the 19.5% increase in GR with only a 0.03% increase in All Funds.

	FY 10	FY 11	FY 12	FY 13	Difference From FY 11	
FTEs	10,831.7	11,497.6	11,188.3	11,188.3	-309.3	-309.3
			Percent Change		-2.7%	-2.7%

The Appropriations Bill as initially filed in the 82nd Legislative Session, contained substantial reductions from the FY 2010-11 appropriation to DFPS. However the final bill approved by the Legislature restored many of those cuts.

- Total additional GR provided for exceptional items was \$179.5 million.
- Reductions for one-time ARRA funds and rates were fully restored and caseload growth was fully funded for *Foster Care and Adoption Subsidies* (\$82.6 million GR).
- *CPS FTEs*: 513.3 of the 749.5 FTE reduction was restored (\$44.2 million GR). Remaining FTE reduction for CPS is 236.2 FTEs.
- Reduction to *APS* emergency client services was fully restored and 1.0 of the 22.0 APS FTE reduction was restored (\$2.1 million GR).

- Reductions to the *Relative Caregiver program*, including monetary assistance, day care, and home assessments, were fully restored (\$29.9 million GR).
- Reduction to *Protective day care* was fully restored (\$8.4 million GR).
- Funds were added for contracted legal staff to *reduce the backlog of due process hearings* concerning employees in child care settings and in MH and MR state facilities and community centers (\$2.0 million GR).
- Reductions to *prevention programs* were partially restored (\$10.3 million GR). Remaining reduction from base funding is: 11% for STAR; 32% for CYD; 31% for Texas Families; and 74% for Other At-Risk Prevention Programs.