

PARENTAL CHILD SAFETY PLACEMENTS

Supreme Court of Texas Children's Commission Round Table Report on
Parental Child Safety Placements (PCSPs), August 28, 2015

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Parental Child Safety Placements in Child Protective Services Cases

Introduction

Many child welfare advocates and stakeholders have expressed concerns about informal kinship placements triggered by Child Protective Services (CPS) investigations. Officially, the Department of Family and Protective Services (Department or DFPS) refers to this arrangement as a Parental Child Safety Placement, or PCSP. PCSPs are recognized and regulated under Texas Family Code Chapter 264, Subchapter L.¹ In fiscal year 2014, DFPS entered into approximately 34,000 PCSPs.²

In March 2015, Governor Greg Abbott sent a letter to DFPS Commissioner John Specia expressing his own concerns about PCSPs. The governor's directive outlined specific initiatives aimed at providing better care for children in the CPS system, including: 1) the development and implementation of a PCSP caregiver/home screening tool to thoroughly assess the appropriateness and ability of each potential PCSP caregiver; 2) the development and implementation of a policy to prohibit closing a PCSP investigation without wrap-around or follow-up services in place; and 3) conducting research and implementing new policies as needed to address recidivism related to the safety of children in PCSP placements.

In April, the Department published a new PCSP Resource Guide (Guide) to assist caseworkers and other agency personnel statewide in determining when and under what circumstances the Department should enter into a PCSP Agreement. The Guide also offers direction on the duration and closure of PCSPs. Along with the Guide, the Department developed and deployed statewide a structured decision-making tool that includes both safety and risk assessments. In July, DFPS developed a protocol to address recidivism by implementing specific procedures for PCSP closure and post-closure follow up.

DFPS also asked the Children's Commission to host a Round Table to discuss PCSPs. On August 28, 2015, the Children's Commission convened over 60 child welfare partners to discuss the recent Department improvements to the PCSP process, assessment, evaluation, training, and policy. The Round Table participants also discussed challenges the Department and others have yet to address, and what additional practice, policy or legislative changes might be in order to more specifically address the appropriate use of PCSPs, the options available to DFPS when it must close its case and exit the PCSP arrangement, and the services and supports available to families during and after a PCSP.

¹ Tex. Fam. Code Ann. § 264.001 *et seq.*

² Dept. Fam. & Prot. Serv., Data Book (2014) *available at* https://www.dfps.state.tx.us/About_DFPS/Data_Books_and_Annual_Reports/2014/pdf/Databook14All.pdf; Specific Data Report and PowerPoint prepared for August 28, 2015 Round Table *available at* <http://texaschildrenscommission.gov/media/42167/McCown-PCSP.pdf>

What is a PCSP?

When the Department initiates an investigation of a parent for abuse or neglect of a child and makes an initial determination that the child may not be safe with the parent, DFPS may allow the parent to place the child temporarily with a family member to help ensure the child's safety while the agency completes the investigation or provides necessary family-based safety services to help prevent or eliminate the need to legally remove the child from the parent. To formalize the agreement, DFPS will often enter into a Parental Child Safety Placement, or PCSP. If the child and a parent move into or remain in the same household, it is not a PCSP arrangement.

When Should the Department Enter into a PCSP?

PCSPs may be used at any stage of service, but are ordinarily used during the investigative stage when DFPS needs time to investigate whether a child is in danger or when there is an identified problem that can be fixed in a short timeframe. Some DFPS regions use PCSPs extensively during investigations; others use PCSPs as part of a Family Based Safety Services (FBSS) case.³ PCSPs work best when the parent is cooperative and supportive, the placement is cooperative and appropriate, and there is a written agreement.

Alternatives to PCSPs

When deciding if a PCSP is appropriate, DFPS considers less restrictive alternatives, such as whether: 1) DFPS can provide services to the family as part of a FBSS case without a PCSP; 2) there is an alleged perpetrator who should leave the home, including seeking a protective order or a kick-out order; 3) the protective parent can move to a safer environment with the child; or 4) there is a relative, friend or neighbor who can move into the home to monitor the family and provide a measure of safety. These situations generally require DFPS to provide services to help the family address the safety concerns. A more restrictive alternative may include a Court Ordered Services (COS) case where the child remains in the home or with a relative; this results in court involvement and oversight. The final and most restrictive alternative is for DFPS to file a Suit Affecting the Parent-Child Relationship (SAPCR) seeking removal of the child from the parent's home and custody. Removal may be the only option if the parent poses a danger to the child and there is not an appropriate caregiver or the problem cannot be resolved in the short-term. But, due to the strong presumption in favor of the child's parent as the conservator, DFPS must meet a relatively high legal burden to remove the child.

How Long Should a PCSP Last?

PCSPs are intended to be temporary and short in duration. In addition to ruling out less restrictive alternatives, DFPS must determine whether the issues that brought the family to its attention are likely to be resolved or ameliorated in less than 90 days, though 90 days is a target, not a fixed deadline.⁴ Ideally, within 60 days of the initiation of an investigation, a decision should be made about the direction of the case. Data analyzed by DFPS in developing its new PSCP policy indicated that issues affecting the stability of the PCSP placement usually appeared around the

³ *Id.* at slide 10.

⁴ Dept. Fam. & Prot. Serv., *Parental Child Safety Placement (PCSP) Resource Guide, Page 1*, http://www.dfps.state.tx.us/handbooks/CPS/Resource_Guides/PCSP_Resource_Guide.pdf (last visited December 11, 2015).

60-day mark.⁵ FY2014 data indicates that the statewide average time to closure of PCSPs during FY2014 was five months; the range was as low as three months and as high as seven months.⁶

The Good and Bad About PCSPs

PCSPs empower parents to make decisions about child safety before the state steps in to make the decision. PCSPs also do what they are intended to do – keep children safe. More than 99% of PCSP placements in FY2014 had no abuse or neglect by a caregiver.⁷ This is comparable to foster care and relative placements.⁸ Round Table participants offered additional reasons why PCSPs are good for children and families, including:

- o Keeping children with families, thereby inflicting less trauma
- o Helping parents feel more empowered
- o Allowing DFPS to easily monitor the child's safety
- o Making extended family aware of safety issues involving the child
- o Involving court and legal system only if necessary
- o Providing services more readily and more quickly
- o Avoiding additional strains on the foster care system
- o Avoiding or reducing legal costs and attorneys' fees paid by counties

Despite these advantages, until recently, PCSPs were often used in situations where there was no clear exit strategy and there was little consideration given to whether circumstances underlying the PCSP could be addressed in approximately 60 to 90 days. In some cases, PCSPs resulted in DFPS leaving children with caregivers without any legal documents in place to support custody of the child. Other negatives mentioned by Round Table participants included:

- o Giving parents an escape from parenting – does not grab parents' attention about the serious of the situation
- o Lack of support for the placement
- o Lack of meaningful and valid services to parents during the pendency of the PCSP
- o Coerciveness of the PCSP, meaning that the parent does not have a lawyer or understand the child welfare or legal system
- o PCSPs are not really voluntary when the alternative is removal of the child
- o A PCSP is often used to meet "reasonable efforts" when DFPS seeks removal without actually helping the parent with services
- o Can lead to lack of permanency for children; roles of the PCSP and parent may be unclear, which exacerbates the situation
- o Fewer eyes on the child as there is usually no CASA volunteer, attorney ad litem, or court involved
- o Child is eligible for fewer services than if in conservatorship or in parent's custody
- o Agency loses sense of urgency to resolve the case because the child is safe with the PCSP placement
- o PCSPs often hinder DFPS ability to legally remove the child because some courts see the child as safe with the PCSP; therefore, the situation may lack immediate danger often required to convince a court to intervene

⁵ Data Report *supra* note 2 at slide 25.

⁶ *Id.* at slide 11

⁷ *Id.* at slide 15

⁸ *Id.*

Round Table participants were also concerned about whether placements were being appropriately assessed, expressing worry about:

- o Lack of time to do a thorough assessment of the PCSP placement during the investigation stage
- o Criminal histories posing barriers to placement without regard to whether the history is a genuine safety risk
- o Lack of understanding of family dynamics
- o Little to no preparation of the placement about what is likely to occur with the child within the immediate and long-term future or discussion as to whether the placement is limited in duration or long-term
- o The caregiver may not have a significant relationship with the child or the parent
- o Lack of consideration of the child's voice regarding where the child wants to live

Improvements to PCSP Process since March 2015

There have been several improvements to the process, use, and closure of PCSPs since March of 2015.

The New PCSP Resource Guide. DFPS issued a new PCSP Guide in April 2015, which instructs caseworkers in, among many things, the definition, criteria, and goals of a PCSP. The Guide acknowledges that a PCSP is one step away from a removal to foster care and places a firm emphasis on using the PCSP correctly. The new Guide also makes clear that PCSPs are temporary, lasting about 90 days. Once DFPS decides a PCSP is appropriate, the caseworker has several more steps that must be completed *before* a child can be placed in a PCSP, including developing a safety plan detailing what is required to alleviate the issues that pose a danger to the child. Notably, the caseworker is instructed in at least three places in the Initial Assessment Section of the Guide about understanding the family, and completing criminal and CPS history checks on everyone 14 and older residing in the PCSP home, the caregiver's significant other, and anyone else who spends time in the home.⁹ If anyone in the home has lived out of state in the past three years, fingerprints and an FBI records check are required.¹⁰ Most importantly, the caseworker is instructed to convey to the caregiver that he or she has a duty to keep the child safe, as well as discuss things that will make the transition easier for the child, such as the child's favorite foods, daily and nightly routines, and comfort items.¹¹ The caseworker must confirm that there are working utilities, and discuss gun and water safety, safe sleep, and sleeping arrangements generally.¹²

The PCSP Caregiver Assessment and Agreement Tool. The new PCSP Caregiver Assessment and Agreement Tool, deployed statewide in October 2015, also serves as the PCSP Agreement.¹³ The tool requires the caseworker to walk the interested persons

⁹ PCSP Guide, *supra* note 4 at 3.

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

¹³ PCSP Guide, *supra* note 4 at Appendix 2.

through several issues prior to arriving at a decision regarding appropriateness of the arrangement, including whether:

- o Individuals in the household are appropriate
- o The home environment is safe
- o The home and caregiver can meet the child's needs
- o The situation is free from danger
- o Information on collateral individuals has been collected and vetted
- o Out of state abuse and neglect history has been appropriately checked

Like the new PCSP Guide, the Assessment and Agreement Tool focuses on whether the individuals in the PCSP home are appropriate, the home environment is safe, and the children's needs can be met, financially and otherwise. The last section of the Assessment and Agreement Tool embodies the Statement of Understanding and Agreement, which evidences the parent and PCSP caregiver's understanding and acknowledgement that the PCSP agreement and placement are temporary, as well as the alternatives that may be sought should reunification with the parent not be possible. The Statement of Understanding also guides the PCSP and parent through the issues of subsidized day care, sibling placement, and contact and visitation with siblings and parents. The parent is also required to identify any existing criminal or civil court orders or pending legal cases that may affect access to or possession of a child. The agreement contains language confirming that the child has been consulted and demonstrates the caregiver's understanding that a caseworker will conduct at least one announced or unannounced visit during the pendency of the PCSP agreement. Finally, the agreement provides an acknowledgement that the PCSP caregiver received, reviewed, and understands the Voluntary Caregiver Manual and identifies whether an Authorization Agreement for Non-Parent Relative has been executed under Chapter 34 of the Texas Family Code.¹⁴

Chapter 34 Agreements. In addition to the new tools deployed in April and October 2015, DFPS submitted a Plan to Reduce Risk in Parental Child Safety Placements to the Governor's office¹⁵, expressing a commitment to support parents and PCSP caregivers when they execute an Authorization Agreement for Nonparent Relative, as governed by Texas Family Code Chapter 34.¹⁶ At the Round Table, the Department also expressed a willingness to help families execute a Chapter 34 Agreement. This parental power of attorney allows a parent with a child under a PCSP to provide specific authorization to a grandparent, adult sibling, adult aunt, adult uncle or a person with whom the child is placed to perform certain parental responsibilities.¹⁷ A parent can enter into a Chapter 34 Agreement with a relative without DFPS involvement, but when a Chapter 34 Agreement is used along with a PCSP, DFPS can more easily exit the case while the Chapter 34 Agreement continues.

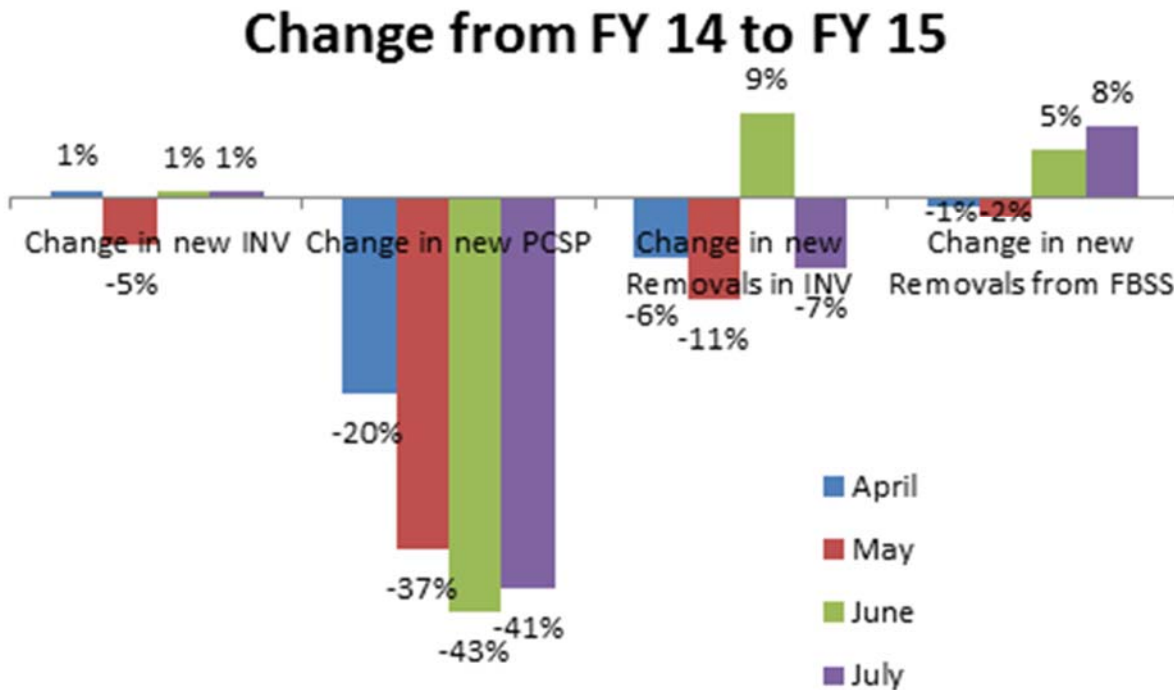
¹⁴ Dept. Fam. & Prot. Serv., *Voluntary Caregiver Manual*, available at https://www.dfps.state.tx.us/documents/Child_Protection/pdf/2015_03_31_Voluntary_Caregiver_Manual_ENG.pdf (last visited December 11, 2015)

¹⁵ Dept. Fam. & Prot. Serv., *Plan to Reduce Risk in Parental Child Safety Placements* available at <http://texaschildrenscommission.gov/media/42275/Reducing-Risk-in-Parental-Child-Safety-Placements.pdf> (last visited December 11, 2015).

¹⁶ Tex. Fam. Code Ann. § 34.001 *et seq.* (West 2014).

¹⁷ Tex. Fam. Code Ann. §§ 34.002(a); 34.0021

Enhanced Data Collection. DFPS began enhanced analysis of specific PCSP-related data in April 2015. In August, the agency published a comparison of four months in FY2014 with the same four months in FY2015.¹⁸ The Department examined the months of April, May, June and July, and four different elements related to each month, including the number of: 1) new investigations initiated; 2) new PCSP Agreements signed; 3) removals to foster care occurring from investigations; and 4) removals to foster care from FBSS.



Comparing FY2014 to FY2015, investigations were up by 1% in April 2015, down 5% in May 2015, up 1% in June 2015, and up 1% in July 2015. Changes in new PCSPs, however, took a plunge. PCSPs were down by 20% in April 2015, down by 37% in May 2015, down by 43% in June 2015, and down by 41% in July 2015.¹⁹

Removals to foster care from investigations were less each month under review from the prior year except for June, which saw a year over year increase of 9% and may be an indication that the new PCSP Guidelines are having an effect. It may also be too soon to tell. In July, the use of PCSP placements was down significantly from the previous fiscal year, as were removals to foster care from investigations, but not those from FBSS cases.

¹⁸ Data Report, *supra* note 2, at slide 19.

¹⁹ *Id.*

Support and Ongoing Assessment of PCSPs

Although there have been marked process, training, and data collection efforts and improvements since March 2015, Round Table participants engaged in a lengthy discussion about services still needed to help families in PCSP arrangements, as well as FBSS and Conservatorship cases. Although the discussion was robust, the issues were left generally unsettled and likely will require significant work on the Department's part to actually improve upon and deliver the services.

Supportive Services

Day Care. The participants noted that day care may be the most important service and represents the best use of the Department's limited resources. Although there are some limits to the funding available, the Department can provide day care services to a parent or a PCSP caregiver during the pendency of a FBSS case or a PCSP Agreement. According to the Department, an analysis of existing PCSP placements conducted prior to the August 28, 2015 Round Table revealed day care was requested in about 38% of the cases reviewed, and provided in 73% of those cases. To ensure the use of day care is discussed with potential PCSP caregivers, DFPS has expressly included day care as a discussion point in the Assessment and Agreement tool.

A problem discussed at the Round Table, however, is the Department's day care approval process, which has in the past caused significant delay in accessing the service. This can be challenging for PCSP families who generally cannot take off time from work or make other child care arrangements while waiting for approval of day care. Subsidized day care is provided by the Texas Workforce Commission (TWC) through its local Workforce Boards; referrals for day care are made through an automated process within DFPS. The DFPS approval process, which involves the case supervisor and a Regional Day Care Coordinator (RDCC), traditionally has entailed a minimum 5 to 10-day waiting period during which the Department verifies the caregiver's qualifications for the benefit. In some situations where a waiver of the rules is required, there are five levels of approval, possibly including all the way to the DFPS State Office, that must occur before the waiver benefit is allowed.

DFPS acknowledges that inadequate staffing to complete the verification process adds to the delay. However, in December 2015, DFPS will be streamlining the day care authorization process by eliminating the need for day care to be reauthorized every six months. This will not only eliminate disruptions in day care, it will free up RDCC time to focus on more quickly processing initial requests. An idea proposed at the Round Table is for DFPS to streamline its approval process so that caseworkers have the authority to make a direct referral for day care to local Workforce Boards without first seeking approval from a Department Supervisor.

In addition to the verification process confirming that the caregiver qualifies for the day care benefit, the selection process should be examined. In its Step by Step Guide, DFPS recommends that a caseworker identify two potential day care providers in case one is placed on Corrective Action, the thought being that it is not likely that both will be suspended or barred from accepting new clients. DFPS could possibly avoid some delay by providing caseworkers direct access to provider eligibility information in making the initial selection. This avoids waiting for the RDCC to research this issue only to turn around and let the caseworker know that a provider cannot or is not accepting new clients. Even

if it is rare that both day care providers selected are on Corrective Action, the caseworker would have avoided both choices rather than waiting some number of days to find out from the RDCC that two new providers must be selected.

Also, the IMPACT system may lack current or accurate information regarding day care availability. The caseworker can access more up-to-date information available through TWC, but the Step by Step Guide does not suggest this option. In late December, TWC will launch a parent portal called Texas Childcare Solutions that will include information about child care subsidies and direct access to the various Workforce Boards, which maintain lists of approved day care providers across the state. With one click, caseworkers, parents, and families will be able to access all Texas Workforce Board websites where all approved day care providers will be listed.

Housing. The Round Table participants noted that housing presents one of the biggest challenges for parents and often serves as a driving factor behind a PCSP. Waiting lists for affordable and safe housing are years-long. Certain factors elevate a parent's position on a waiting list, such as involvement in a CPS case where the Department has conservatorship of a child and reunification is the goal, but these factors do not apply in a PCSP situation. Also, once a parent places a child with a PCSP caregiver because of inadequate or unsafe housing, the child is safe, but the parent is still left to ameliorate the inadequacies and safety issues related to the house, which can prevent the child from returning home, especially as the parent may no longer qualify for housing.

Short Term Problems. Sometimes the issues affecting the safety of the home can be quickly addressed by the parent and an experienced caseworker, such as a dirty house or a sick child whose parents do not have transportation or fail to understand or appreciate the child's illness or medical problems. It was suggested that DFPS provide more services to the parent in the home, such as housekeeping or homemaker services, including small home repairs, rather than directing parents to seek out these services on their own.

Drug Use. The question was asked whether parental drug use can be addressed through PCSP arrangements. Although some participants were of the opinion that substance use and abuse differ, from the Department's view, drugs can certainly impact the child's safety. Contrast a parent who uses drugs and presents a safety concern to a child in their possession to a situation where a child lives with a relative, but has a close relationship with a parent who uses drugs and comes in and out of the home and child's life. Generally, parental drug use or abuse problems that endanger a child cannot be addressed in 60 to 90 days, in part because drug treatment services cannot or are not always accessed and completed that quickly. Thus, depending on the facts of the case, substance use or abuse situations may not be suitable for a PCSP Agreement.

Domestic Violence. At times, there is a great need to protect the family from domestic violence. There are remedies available to DFPS and parents under Section 262.1015 of the Texas Family Code, which allows the Department to file a petition for the removal of an alleged perpetrator from the residence of a child rather than remove the child.²⁰ DFPS may also file an application for a protective order under Texas Family Code Title 4 on behalf of the child instead of or in addition to obtaining a temporary restraining order

²⁰ Tex. Fam. Code Ann. § 262.1015(a).

under Section 262.1015.²¹ However, discussion at the Round Table of which entity is responsible for filing for the protective order or temporary restraining order revealed that local prosecutor offices rarely provide this service, and DFPS attorneys seldom seek this relief, even though Section 262.1015 says the Department “shall” file a petition.²² Many prosecutors and attorneys ad litem for children believe that frequently either perpetrators fail to move out or the mothers allow the perpetrators to move back in, rendering the orders ineffective. Another problem voiced by participants is that law enforcement in some counties question the authority of a Section 262.1015 order: if the man’s name is on the lease, how can he be forced out short of an eviction order? Caseworkers in Harris County rarely request that the County Attorney’s office file for removal of the perpetrator under Section 262.1015; they believe that even when a court issues such an order, parties often ignore the order and violations are not enforced. Caseworkers are also reluctant to request this type of protective order because it often leaves the mother without the ability to pay rent or utilities and buy food and necessities. Caseworkers are also aware that this type of intervention and separation of the mother, a victim herself, and the perpetrator places the mother in a dangerous situation that is seldom supported with appropriate psychological and other services. The participants also noted that this type of protective order lacks provisions regarding possession, child support and payment for utilities and other necessities. The failure to include these types of provisions are exacerbated by a lack of meaningful community services and supports for the mother and her children. These circumstances may lead to the mother feeling the need to contact the perpetrator for money or assistance.

PCSP Kinship Support. To stabilize and ensure the success of the PCSP, DFPS must have an open, honest and upfront dialogue with a caregiver about the safety concerns, the child’s needs and possible behavioral issues, protective abilities the relative is expected to possess, and how long the PCSP is expected to last. The Department’s new Guide and Assessment and Agreement Tool address many of these concerns. What may still present a problem, however, is that relatives who are required to enforce rules in addition to providing care may be confronted by the parent. The parent may seek to revoke the PCSP Agreement and place the child elsewhere. Thus relatives need to understand the PCSP process better and know who they can turn to for support. Round Table participants discussed the possibility of connecting PCSPs to kinship workers. However, under current law and administrative rules, benefits and services such as a kinship worker are only available to a family when DFPS has legal conservatorship of the child.

Travis County is engaged in a project that goes beyond the protections set out in the Texas Family Code: A PCSP Agreement with Court Ordered Services (COS). The court appoints attorneys for the parents involved, an attorney ad litem for the child, and in some cases, a CASA volunteer to act as the child’s guardian ad litem. The Department also assigns a FBSS caseworker to the COS case.

Even without a kinship or FBSS worker, everyone agreed that ongoing support and assessment includes face-to-face contact with the PCSP placement frequently within the

²¹ *Id.* at § 262.1015(a-1).

²² *Id.*

first several days of the placement. In the last legislative session, DFPS received funding to pilot specialized PCSP caseworkers, and starting in December 2015, the new workers will begin working with PCSP caregivers in DFPS Region 3 (Dallas / Fort Worth).

Assistance Connecting to Financial Benefits. DFPS should determine whether the relative is receiving any type of public benefit, and help the caregiver assess whether applying for Temporary Aid for Needy Families (TANF) or Medicaid is appropriate given the short-term nature of the PCSP. Although the new DFPS Voluntary Caregiver Manual provides some information about benefits and aid available, it might be updated to include more than a brief description of the supports and a website. DFPS should also explore whether delivering the information in this manner is effective. For example, the TANF website has a lengthy description about eligibility, work requirements, disqualifications, citizenship requirements, and family type, which may prove daunting to a relative struggling to provide care for multiple children. This may also be where a kinship-type worker could provide support.

Ongoing Assessments.

In addition to clarifying duties related to caseworker contact and support in the new Guide,²³ the Department also updated its CPS Handbook Policy related to caseworker contact with the child, the PCSP caregiver, and the parent.²⁴ The caseworker must make face-to-face contact with the child and the PCSP within the first 10 calendar days of placement, and at least once a month thereafter.²⁵ At each face-to-face contact, the caseworker must assess whether the placement remains safe and appropriate, confirm the caregiver's willingness to continue the placement, and determine if there are any changes to the household composition. The caseworker must contact all parents who are parties to the PCSP agreement every 10 calendar days to ensure the parent(s) remain engaged.²⁶ The new PCSP Guide further requires the caseworker throughout the duration of the PCSP to assess:

- o Any safety concerns to ensure the child's placement is safe, secure, and stable
- o Parental progress, ensuring referrals to services have been made
- o Lifestyle changes such as job or financial changes
- o Child's condition and needs such as day care, toilet training, child development, discipline, school, sleeping arrangements, and physical appearance

However, Round Table participants expressed concern that there is confusion about how or when children will transition back to the parent. The 60-day mark is reportedly a frequent breaking point for families involved in PCSPs. Round Table participants suggested that this is when behavioral issues start to appear, the caregiver may have exhausted available resources, the caregiver is uninformed about when the PCSP arrangement might end or next steps. DFPS will be implementing changes to IMPACT in March 2016 to document and track that, within 60 days after a child is initially placed in a PCSP, the caseworker has

²³ PCSP Guide, *supra* note 3, at 6

²⁴ Dept. Fam. & Prot. Serv., Child Protective Services Handbook, Section 3215 (June 2015) *available at* https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_3000.asp#CPS_3215_1 (last visited December 11, 2015)

²⁵ *Id.*

²⁶ *Id.*

a specific plan for exiting the PCSP. The Department also conducts an official re-assessment of the PCSP every 30 days. If a PCSP must change, the process of evaluating a new PCSP starts again, but the caseworker is also instructed to make sure the parent and caregiver appreciate the impact that changing caregivers has on the child involved before moving the child.²⁷

How Should DFPS Close a PCSP?

There are three primary avenues for DFPS to close a PCSP:

- o Return the child to the parent(s)
- o Obtain legal custody of the child
- o Leave the child with the PCSP

Although PCSPs are not considered removals from the parents as occurs when DFPS seeks legal conservatorship of children, DFPS data confirms that in FY2014, it closed 12,920 PCSP agreements by reuniting children with parents.²⁸ The new PCSP Guide spells out how to plan for the return and monitoring required for several weeks after the child's return.²⁹ In 4,000 of its FY2014 cases, instead of returning the child to a parent, DFPS filed a SAPCR and was granted conservatorship of the child by a court.³⁰ In 76% of those cases, the child's placement remained with the PCSP caregiver.³¹ In 2,400 cases, however, DFPS exited the case leaving the child with the PCSP caregiver without legal custody of the child and with limited ability to exercise duties and responsibilities ordinarily granted a person who is a child's legal conservator.³² Also, according to FY2014 data, children who remained in PCSPs at case closure without legal custody were later confirmed as victims of abuse or neglect in subsequent reports of abuse or neglect at a higher rate than children in other types of relative placements.³³

According to DFPS, in about 30 % of the cases where DFPS exits the case leaving the PCSP without legal custody, either the caregivers are in the process of obtaining legal custody of the children or the parents are still working to obtain services in the community, with the ultimate goal of reuniting with their children at the PCSP's discretion. A DFPS policy change from June 2015 now requires that in cases where the PCSP caregiver is seeking legal custody, the case will remain open until the caregiver has filed the lawsuit and obtained at least an initial court order granting conservatorship.³⁴ In those cases where a parent is still cooperating and accessing services, DFPS will remain involved until the parent has made sufficient progress that the risk to the child is controlled.³⁵

The remaining 70% of cases where DFPS exits the case leaving the PCSP without legal custody usually involve an uncooperative, incarcerated or missing parent. The Department cannot keep

²⁷ PCSP Guide, *supra* note 3, at 8.

²⁸ Data Report, *supra* note 2 at slide 8.

²⁹ PCSP Guide, *supra* note 3, at 8.

³⁰ Data Report, *supra* note 2 at slide 8.

³¹ *Id.* at slide 14.

³² Data Report, *supra* note 2 at slide 8. (Note: In 32% of the cases, DFPS was unable to confirm the outcome of the PCSP and this was attributed to miscoding of the data. DFPS is training staff to ensure accurate data on PCSPs are entered into IMPACT).

³³ Data Report, *supra* note 2 at slide 27.

³⁴ CPS Handbook, *supra* note 21.

³⁵ *Id.*

this type of case open forever, but its options are limited. The Department can either attempt to gain conservatorship of the child by filing a SAPCR, with the result being to remove the child from the parent's legal custody and from the PCSP caregiver's physical custody, or, if the child is safe with the PCSP and the caregiver is in a position to move into a long-term commitment, the Department can assist the PCSP caregiver in obtaining legal custody of the child. Both options require court intervention.

Filing a SAPCR for Removal

From a legal perspective, placement with a PCSP in lieu of removal to foster care may later affect DFPS' ability to establish the immediate danger required for emergency removal under Texas Family Code Sections 262.101 or 262.107.³⁶ This means it is important to use the PCSP option appropriately. In cases where the PCSP is uninterested or unable to continue caring for the child but it is not an emergency situation requiring immediate removal of the child, DFPS may opt to file a SAPCR under Texas Family Code Section 262.113 and schedule a hearing under Section 262.205.³⁷ Section 262.113 requires a sworn affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home and allowing the child to remain in the home would be contrary to the child's welfare.³⁸ In other words, immediate danger is not required.

Assisting the PCSP Caregiver with Obtaining Legal Custody

There are thousands of PCSP arrangements where the child is safe with the PCSP and DFPS does not wish to seek conservatorship of the child, but the PCSP is unable for financial reasons to initiate proceedings to establish legal custody. In order to assist caregivers in obtaining legal custody so that the Department can safely exit the case, DFPS is exploring partnerships with the Office of the Texas Attorney General (OAG) and Legal Aid providers to assist where possible. The OAG and DFPS will begin piloting a new process in DFPS Region 3 (Dallas/Fort Worth) in January 2016. The pilot will involve specialized PCSP staff to work directly with parents and caregivers to ensure that appropriate plans and services are in place as it prepares the case for closure. The OAG will provide assistance to families through its IV-D or child support legal division in cases where there is no disagreement about child custody and all issues of child safety and risk have been resolved. If child custody issues are not settled, or there is only partial agreement on some terms, the OAG and DFPS may seek assistance from a district court or the family may be referred to a Legal Aid provider. The Department may also direct the relative in seeking assistance from a private attorney and is exploring using a process similar to that in place currently where the Department pays attorneys to provide adoption services for children in the Department's care. Qualified attorneys who represent relatives in custody actions would be eligible to receive a set, lump sum payment for their services. Lastly, DFPS could keep the case open for further monitoring, or close the PCSP without legal custody to the PCSP.

Exiting Without Ensuring Legal Custody to the PCSP

A particularly complex problem arises when the child is safe with the PCSP caregiver, and would be at risk if returned to the parent, but the act of the caregiver seeking legal custody

³⁶ Tex. Fam. Code Ann. §§ 262.101; 262.107.

³⁷ Tex. Fam. Code Ann. §§ 262.205; 262.113.

³⁸ *Id.*

would prompt litigation that could destabilize the child's placement. In such a case, DFPS might encourage the caregiver and parent to execute a Chapter 34 Nonparent Authorization Agreement rather than engage in custody litigation, recognizing that whether to engage in custody litigation is a decision that remains with the relative and the parent. In all cases, DFPS will ensure that appropriate plans and services are in place and will provide the caregiver with the name, phone number and email address of the individual at DFPS who can be contacted after case closure to assist the caregiver with any needed services or changes in circumstances.

After Case Closure

For cases closed without legal custody to the PCSP caregiver, DFPS will be implementing the following levels of follow up, including a tool designed to capture data related to the circumstances and conditions noted in the agency's follow up. The information collected will be reviewed by the CPS Analytics and Evaluation Team and used to identify patterns and trends related to recidivism or to otherwise inform needed policy and practice changes.

Pilot Area

In Region 3, DFPS is training 18 PCSP workers who will be involved with the family prior to case closure, serve as a point of contact, and check in after the case closes. The specialized PCSP staff will do a face-to-face follow up with the PCSP caregiver within a specified time period to check that circumstances have not changed and the caregiver is still able to care for the child. During a "check in," the PCSP staff will determine whether any needs have arisen that could be met by referrals to available community services or whether circumstances have changed such that a new referral of child abuse or neglect should be made. The specialized PCSP staff will discuss this "check in" process with the PCSP caregiver prior to closing the case.

In all other areas of the State

DFPS has hired five new Quality Assurance staff to do follow up phone calls with the PCSP caregiver within a specified time period to check that circumstances have not changed and the caregiver is still able to care for the child. During a "check in," the staff will ask whether any needs have arisen that could be met by referrals to available community services or whether circumstances have changed such that a new referral of child abuse or neglect should be made. The assigned caseworker will discuss this "check in" process with the PCSP caregiver prior to closing the case.

Recommendations

The following recommendations should be considered by the Department and Texas child welfare partners.

DFPS Practice and Policy

Chapter 34 Agreements. DFPS should endeavor to supplement all PCSP Agreements with a Chapter 34 agreement at the beginning of the PCSP arrangement and it has already modified the Assessment and Agreement tool to include mention of this option. For current or open PCSPs that cannot be closed with legal custody to the PCSP caregiver, DFPS should assist the family in executing a Chapter 34 Agreement in order to provide some measure of stability for the child and provide decision-making authority to the caregiver.

Day Care. DFPS should consider overhauling its day care approval process. There are numerous steps and built-in delays associated with collecting information and paperwork to support approval of day care. Part of the examination should involve how often day care is not authorized, and consideration of whether it is possible to adopt a presumption that children and caregivers qualify for day care from day one and shift the verification process to the back end to confirm the need, the caregiver's qualifications, detect fraudulent claims, and then make any necessary adjustments to the benefit.

Financial Support. DFPS' new Voluntary Caregiver Manual provides some information about day care, but much of the information about benefits or aid available to the family includes only a brief description and a website. Rather than referring the caregiver to various websites, DFPS may want to consider whether it can dedicate staff to assist caregivers in determining eligibility and accessing the various benefits and community services that may be available to help support the placement. If the caseworker cannot serve in this role, perhaps eligibility staff can be the point of contact.

Parenting Supports. DFPS should explore whether the use of homemaking contracts can help alleviate minor or short-term problems that are safety hazards to children, such as a dirty house. DFPS should also explore the possibility of providing online tutorials or lessons for parents who need education about a medical condition, behavioral problems that are associated with a child's illness, or pain associated with an undiagnosed illness or injury.

Housing. DFPS should make efforts to open dialogue about housing needs for families, explore / map the housing process, and perhaps consider establishing a relationship with Habitat for Humanity for a pilot whereby Habitat for Humanity might agree to make minor repairs to a home that once fixed would resolve the Department's safety concern.

Domestic Violence. Senate Bill 434 from the 82nd Legislative Session recommended that DFPS provide more meaningful resources to victims of domestic violence including partnering with domestic violence organizations to work with victims on safety planning. These partnerships are currently operating through pilot projects and have not been implemented statewide.³⁹ DFPS should examine the effectiveness of the pilots and consider whether they should and can be replicated elsewhere. Also, DFPS must make a concerted effort to educate and apprise District and County Attorneys of all legal options available to parents, including the option of filing for appropriate, complete, and meaningful protective orders.

Training

Local prosecutors and attorneys representing DFPS may need additional training on the necessity and practicability of seeking and drafting meaningful and adequate protective orders.

³⁹ Task Force to Address the Relationship Between Domestic Violence and Child and Neglect, *Report available at http://www.vawnet.org/Assoc_Files_VAWnet/TXTaskForceReport.pdf* (last visited December 11, 2015)

Also, judges and attorneys may need additional training on the proper use and utility of Texas Family Code Sections 262.205 and 262.113, highlighting that while Section 262.113 requires a sworn affidavit stating facts sufficient to satisfy a person of ordinary prudence and caution that reasonable efforts have been made to prevent or eliminate the need to remove the child from the child's home and allowing the child to remain in the home would be contrary to the child's welfare, immediate danger to the child is not required.⁴⁰

Legislative Changes to Chapter 34

Since a Chapter 34 Agreement can be revoked by a parent at any time or expire on a date certain as set out in the agreement, the elaborate procedural protections set out in the Family Code are not really needed to protect parents and create an unnecessary barrier to the use of these agreements in PCSP arrangements. For example, Chapter 34 Agreements are difficult to execute as they require the services of a Notary. Parents wishing to execute a Chapter 34 Agreement with a relative must attempt to notify the other parent(s) at least twice: first by certified mail, and then by first class mail. A parent is also prohibited from executing a Chapter 34 Agreement if there is a SAPCR, a court order, or litigation pending that concerns custody, possession or placement of the child, access to, or visitation with the child.⁴¹ DFPS should explore an amendment to Chapter 34 to allow use of an unsworn affidavit, thereby eliminating the need for a Notary. Also, perhaps a change to notice by first class mail or email should be considered as a Chapter 34 Agreement does not actually bind another parent who appears in court and objects to the Agreement. The same is true with the prohibition related to use of a Chapter 34 Agreement when there is a court of continuing jurisdiction. Because the Agreement does not bind a non-willing parent, there is little need to also worry about a court of continuing jurisdiction.

Legislative Funding for Caseworkers

After an evaluation of the piloted PCSP workers in Region 3, DFPS should consider seeking funding for kinship-type caseworkers to work with PCSP caregivers or additional specialized PCSP staff to fulfill more of a caseworker-type role.

Conclusion

In just a short time, from March to November, 2015, DFPS made significant improvements to its approach, use, and closure of Parental Child Safety Placements. Important to Texas children and families is the full deployment of these new tools and processes, adequate data collection and analysis, and disclosure of the results. From that, DFPS will be able to refine its practice and policy, the judiciary can better respond to the legal needs PCSPs present, and legislation may be passed that will support the continued improvement and progress toward using PCSPs in a manner that

⁴⁰ Tex. Fam. Code Ann. § 262.113.

⁴¹ Tex. Fam. Code Ann. § 34.004.

achieves the intended goal of safety for the child for a short duration while his or her parent gains stability and steadiness that allows the child or children to reunite.

PCSP Round Table Attendees

Name	Organization	City	State
Billodeau, Allison	Rep. Cindy Burkett's Office	Austin	TX
Blackstone, Kristene	Office of Attorney General	Austin	TX
Bondurant, Alyce	Child Protection Court – North Texas	Wichita Falls	TX
Burstain, Jane	Dept. of Family & Protective Services	Austin	TX
Cannata, George	Dept. of Family & Protective Services	Austin	TX
Chamberlin, M. Lynn	Harris County Attorney's Office	Houston	TX
Chancellor, Veronica	Dept. of Family & Protective Services	Rockwall	TX
Christofferson, Sarah	Texas CASA, Travis County	Austin	TX
Coley, Gary	74th District Court, McLennan County	Waco	TX
Olson, Jon	Center for Elimination of Dispro and Disparity	Austin	TX
Crockett, Sarah	Texas CASA	Austin	TX
Freeman, Jacqueline	Dept. of Family & Protective Services	Dallas	TX
Garcia, Richard	Bexar County Children's Court	San Antonio	TX
Garza, Maricarmen	Texas Rio Grande Legal Aid	Austin	TX
Gibbons, Kim	Dept. of Family & Protective Services	Austin	TX
Gilliam, Camille	Dept. of Family & Protective Services	Austin	TX
Golliday, Joanna	Dept. of Family & Protective Services	Fort Worth	TX
Goodwin, Angela	Dept. of Family & Protective Services	Austin	TX
Green, Christina	CAC Texas	Austin	TX
Lam, Chelsea	Sen. Charles Schwertner's Office	Austin	TX
Lamb, Aaryn	Law Office of Aaryn Lamb	Colleyville	TX
Martinez, Veronica	Dept. of Family & Protective Services	Dallas	TX
McCormick, Jamie	Dept. of Family & Protective Services	Austin	TX
McCown, F. Scott	The University of Texas School of Law	Austin	TX
McFarland, Stephanie	Travis County District Attorney's Office	Austin	TX
Olse, Katie	Dept. of Family & Protective Services	Austin	TX
Patel, Dimple	TexProtects	Dallas	TX
Peterson, Joan	Travis County District Attorney's Office	Austin	TX
Powell, Judy	Parent Guidance Center	Austin	TX
Rasco, Sasha	Dept. of Family & Protective Services	Austin	TX
Rogers, Joel	Office of Attorney General	Austin	TX
Rollins, Tanya	Dept. of Family & Protective Services	Austin	TX
Rucker, Dean	Jurist in Residence	Midland	TX
Sage, Robin	Jurist in Residence	Longview	TX
Schnarr, Virginia	Child Protection Court – Northeast Texas	Daingerfield	TX
Schneider, Michael	315th Juvenile Court, Harris County	Houston	TX
Scot, Johana	Parent Guidance Center	Austin	TX
Specia, John	Dept. of Family & Protective Services	Austin	TX
Valdez, Mauro	Dept. of Family & Protective Services	San Antonio	TX
Woodruff, Trevor	Dept. of Family & Protective Services	Austin	TX

