

Child Welfare Case Primer: Statutory Hearings and Current Issues

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Presentation Overview

Fundamental best practices for judges and attorneys in child welfare cases

- Engage family and youth voice
- Aim for positive permanency
- Use a trauma-informed approach

Nuts and bolts of a CPS case

Things to remember: dual status youth, education issues, Community Based Care, Residential Treatment Centers (RTCs) etc.

Helpful Resources



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Common Terms & Acronyms

CPS	Child Protective Services
COS	Court Ordered Services
DFPS	Department of Family & Protective Services
TFC	Texas Family Code
TMC/PMC	Temporary or Permanent Managing Conservatorship



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The Fundamentals

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Starting the Child Welfare Case with the End in Mind

In child welfare cases, it's important to keep these things in mind from start to finish:

- Understand your role and responsibilities
- Engage family and youth in their case
- Understand the urgency of positive permanency for children and youth
- Use a trauma-informed approach



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Understand Your Role and Responsibilities

Judicial leadership and expectations set the tone

Attorneys' powers and duties are set out in Texas Family Code Chapter 107

When the judge sets the tone in the courtroom, attorneys act according to their roles and responsibilities and come to court fully prepared

- Parent attorneys prepare their clients to appear in court
- Attorneys ad litem are ready to speak on behalf of their child clients and have prepared their clients to appear in court
- Attorneys and parties are ready to present creative placement options that could lead to positive permanency

Judges and attorneys should address whether reasonable efforts were made



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Family & Youth Engagement

Why engage families and youth?

- Families and youth are the experts on their lives and are the first line of inquiry about what is needed to stabilize the home to make it safe, as well as what possible placements exist
- Parents need to understand the severity of what's at stake in a termination proceeding
- Parent “buy-in” can be critical to positive permanency



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What is Positive Permanency?

Positive permanency means that the child exits DFPS care into a permanent setting that includes a legal relationship to a family

-DFPS Permanency Planning Resource Guide

Positive permanency examples:

- Reunification
- Adoption
- Permanent Managing Conservatorship (PMC) to a relative or other individual

Keeping positive permanency in mind throughout the entire child welfare case can facilitate identifying best outcomes for the child at every stage



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Importance of Positive Permanency

Every child deserves a family

Every child benefits from positive, healthy, and stable relationships

Focus on urgency instead of letting the clock run out on the case

Children's Bureau Information Memorandum (IM) 1/5/21:

- “[We] urge all state, local and tribal child welfare agencies and the courts to ensure that all children in foster care achieve timely and appropriate permanency in their lives. We encourage particular attention to permanency for those older youth at risk of leaving foster care without the stability and belongingness that a family and critical lifelong connections can provide.”



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What is a Trauma-Informed Approach?

In a trauma-informed system, there is a focus on treating and healing the experiences of each parent and child

A trauma-informed system is researched-based and requires participation and support from all parties involved

The goals of a trauma-informed approach are to produce better outcomes for children and families and to reduce recidivism and the number of families in the system

Throughout the life of the case, courts can seek to identify trauma suffered by the children and/or their parents and address this through their approach (i.e., courtroom environment, court orders, etc.).

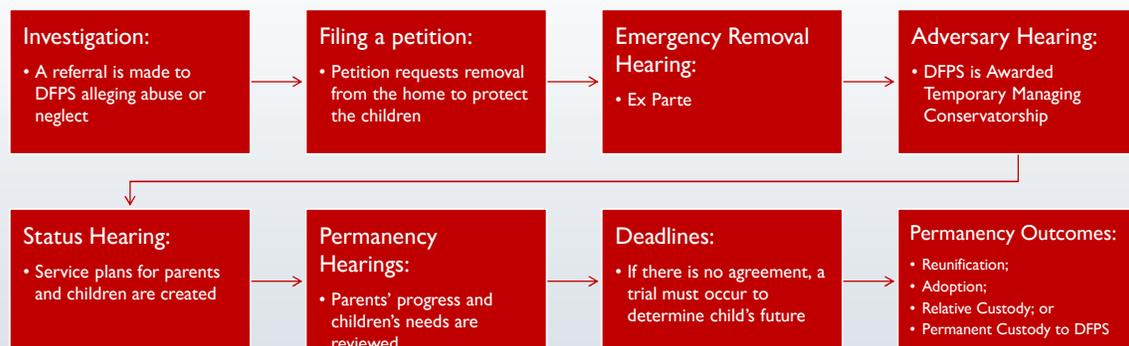


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Overview of a Child Welfare Case

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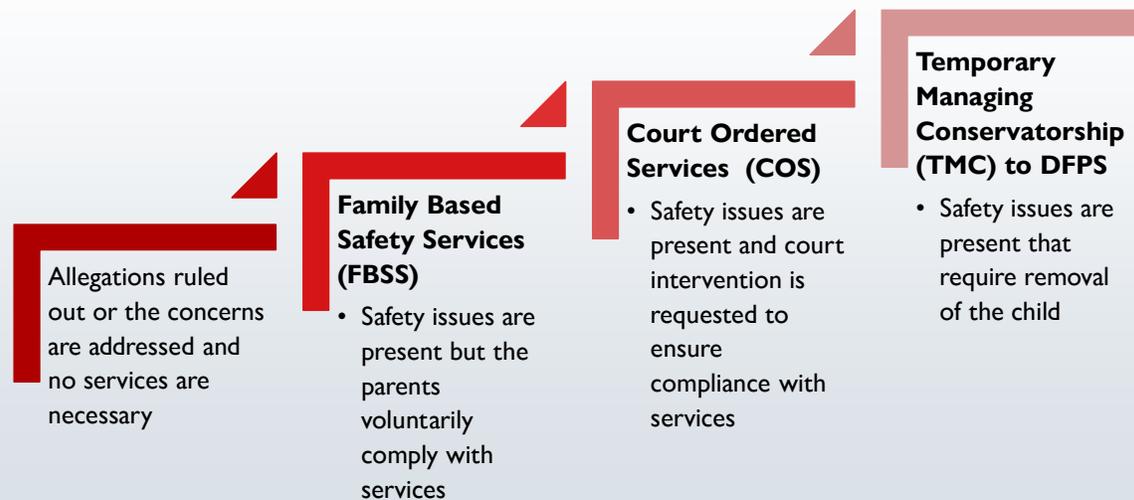
Legal Stages of a Child Welfare Case



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Legal Options at the End of the Investigation



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Court Ordered Services Tex. Fam. Code § 264.203

DFPS can file a Court Ordered Services suit; appointments of attorneys ad litem for parents and children are required when the petition is filed

The court must deny the petition unless it makes findings under the ordinary prudence and caution standard that abuse and neglect has occurred, or that there is substantial risk of abuse or neglect or continuing danger and that services are necessary to ensure the physical health or safety of the child



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Adversary Hearing

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Adversary Hearing Tex. Fam. Code §§ 262.101, 262.105

Two types of suits require an adversary hearing: Tex. Fam. Code § 262.101 (filing petition before taking possession of child) or Tex. Fam. Code § 262.105 (filing petition after taking possession of child in emergency)

Tex. Fam. Code § 262.201: unless the child has already been returned, full adversary hearing must be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension

Before hearing, court must confirm CCEJ; that all parties have been served; and that AAL for child has been appointed

Parents have the right to appointed counsel if indigent and in opposition to the suit and have the right to reset hearing to consult with counsel



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At the Adversary Hearing

Court findings and orders at the conclusion of the adversary hearing

- Sufficient evidence to grant TMC to DFPS?
- Reasonable efforts made?
- Court informs parents that their rights may be further restricted or terminated
- Court determines if aggravated circumstances, if alleged, exist
- Court issues protective orders, if necessary
- Child placed with noncustodial parent or relative unless not in child's best interest
- Court issues order and schedules status hearing date



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What Are Reasonable Efforts?

Statutorily mandated efforts that DFPS must make to preserve or reunify families and achieve permanency for children

Pursuant to Tex. Fam. Code § 262.001(b), in determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a 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 are the paramount concerns

A finding of "no reasonable efforts" results in a loss of federal funding to the state agency



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How Can Judges and Attorneys Engage Families and Youth?

Providing procedural justice sets the stage for parental “buy-in”

- First steps:
 - Judges and attorneys can address parents by their names
 - Judges and attorneys can ask children and youth what they need and listen to their answers

Silver linings of Zoom hearings

- Increased parental attendance and communication
- Much easier to involve children and youth in their hearings

Attorney-Client relationship

- Building trust and communication with the client facilitates identification of services, service planning, building their case, supports, and possible placements



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The Whirlwind of Out-of-Home Care

Removed from home/parents/siblings

- May not have had chance to say goodbye
- Parents/siblings: Where are they? Are they ok?

Living with strangers

- In strange house/room/bed
- Different customs/routine
- Other children in home

Few or none of their possessions

- Little or no time to gather possessions during removal
- Often arrive with just a trash bag of belongings

Uncertainty about future

- Where will I live?
- Will I return home?
- Where will I go to school?



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Status Hearing

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Status Hearing Tex. Fam. Code §§ 263.201- 263.203

60 days after the
Adversary Hearing

Focus: the child's
status and the
parents' service plan

Parents given
warning: if don't
comply, face
termination of
parental rights

Advise the parties of
their right to
appointment of
counsel

DFPS provides
information about
child's health to court

Court also reviews
the visitation plan



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Permanency Hearing Before Final Order

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Permanency Hearings Before a Final Order is Entered Tex. Fam. Code §§ 263.302- 263.307

Occur every 3
months after the
Status Hearing

Service plan and
orders can be
reviewed and
modified

Children must attend
the hearing unless
specifically excused

Court looks at status
of the children and
whether parents are
engaging in services

Permanency goal for
child established and
child's placement is
reviewed

Trial settings are
announced if
necessary



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What are Permanency Goals for Children and Youth?

Positive Permanency Goals:

- Family Reunification
- Alternative Family
 - Relative Kinship Adoption
 - Relative Kinship Conservatorship
- Unrelated Adoption
- Unrelated Conservatorship

Other Permanency Goals:

- Another Planned Permanent Living Arrangement (APPLA)
- Foster Family DFPS Conservatorship
- Other Family DFPS Conservatorship
- Independent Living



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Statutory Deadlines

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Critical Deadlines Tex. Fam. Code § 263.401

The initial deadline is 12 months after TMC is granted to DFPS. If the court does not commence a trial on the merits prior to the deadline, the case is automatically dismissed

Upon a finding of extraordinary circumstances, the deadline can be extended

- One time only
- Up to 6 months past the initial deadline but no longer

Purpose: to achieve permanency for children in a timely manner and prevent children from languishing in the foster care system



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Monitored Return of Child to Parent Tex. Fam. Code § 263.401

The court may retain jurisdiction for up to an additional six months and not dismiss the suit or render a final order as required by Tex. Fam. Code § 263.401 if the court renders a temporary order that:

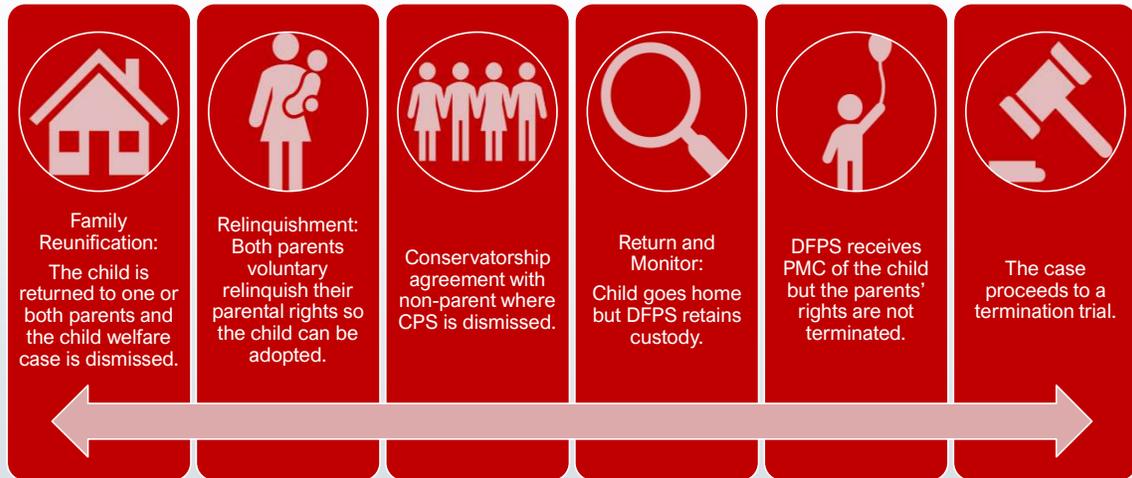
- Finds that retaining jurisdiction is in the best interest of the child;
- Orders DFPS to return the child to the child's parent or transition the child from substitute care to the parent while the parent completes the remaining requirements imposed under a service plan and specified in the temporary order that are necessary for the child's return;
- Orders DFPS to continue to serve as temporary managing conservator of the child; and
- Orders DFPS to monitor the child's placement to ensure that the child is in a safe environment.



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Possible Outcomes Before the Deadline



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Final Hearing

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Final Hearing | Termination Trial Tex. Fam. Code § 161.001

Must begin before the current deadline or the lawsuit will be dismissed by operation of law

Can be before a jury or a judge but there is constitutional right to have the trial before a jury

CPS must prove by clear and convincing evidence that:

- There is at least one ground that can be met under the Family Code for terminating the parents' rights
- AND
- It is in the best interests of the child that the parents' rights be terminated



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Termination of Parental Rights Tex. Fam. Code Chapter 161

- Severs legal relationship between parent and child
- Legally frees child for adoption by another person, including relative
- Both termination ground AND best interest must be proved
- Higher burden of proof required; in an ICWA case the burden of proof is beyond a reasonable doubt

This is the type of child welfare case most likely to be appealed following judgment



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Finding Positive Permanency after Termination

After a parent's rights are terminated, is it too late to find positive permanency for the child or youth?

- No – courts can continue to maintain a judicial expectation of urgency to find positive permanency instead of allowing a child or youth to age out, and attorneys can remain focused on finding possible solutions
- One option: CASA's Collaborative Family Engagement



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Permanency Hearing – After Final Order

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Positive Permanency After the Final Order

Alternative Family

- Relative Kinship Adoption
- Relative Kinship Conservatorship
- Unrelated Adoption
- Unrelated Conservatorship

What if these positive permanency options are not immediately available?

- Still not too late
- Ongoing judicial expectation of urgency
- Ongoing engagement of family and youth
- Maintaining urgency in pursuit of positive permanency
- Reinstatement of parental rights an option per Tex. Fam. Code § 161.302-304



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Permanency Review After Final Order Tex. Fam. Code § 263.501

Hearing at least once every 6 months if the parental rights are not terminated. If parental rights are terminated, hearing within 90 days

Court continues to review the case every 6 months

At permanency hearings, the court will review the child's education needs and goals and participation in age-appropriate activities, among other factors

Continues until child's permanency goal is achieved or child leaves care at age 18



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Extended Foster Care Tex. Fam. Code § 263.602

Voluntary to remain in care after age 18, up to age 21 if the young adult:

- Attends high school or a program leading to a high school diploma or a high school equivalency certificate (GED);
- Attends college or other institutions of higher learning;
- Participates in a program or activity that promotes or removes barriers to employment;
- Is employed for at least 80 hours a month; or
- Is incapable of doing any of the above activities due to a documented medical condition.



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Supervised Independent Living Tex. Admin. Code § 700.347

Supervised Independent Living (SIL) is a type of voluntary extended foster care placement where young adults can live on their own, while still getting casework and support services to help them become independent and self-sufficient

Placements:

- Apartments
- Non-College Dorms
- College Dorms
- Shared Housing
- Host Homes

DFPS website:

https://www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Transitional_Living/Extended_Foster_Care/supervised_independent_living.asp



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Permanency for Older Youth

Can positive permanency still be achieved at this late stage?

- Yes, options are always available until the child turns 18
- Continue to set judicial expectations
- Continue to engage family and youth in their case
- Understand the urgency of positive permanency for children and youth
- Reinstatement of parental rights



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Dual Status Youth

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Definitions

Tex. Fam. Code § 51.02

"Dual status child" means a child who has been referred to the juvenile justice system and is:

- o in the TMC or PMC of DFPS;
- o the subject of a case for which family-based safety services have been offered or provided by DFPS;
- o an alleged victim of abuse or neglect in an open child protective investigation; or
- o a victim in a case in which, after an investigation, DFPS concluded there was reason to believe the child was abused or neglected.



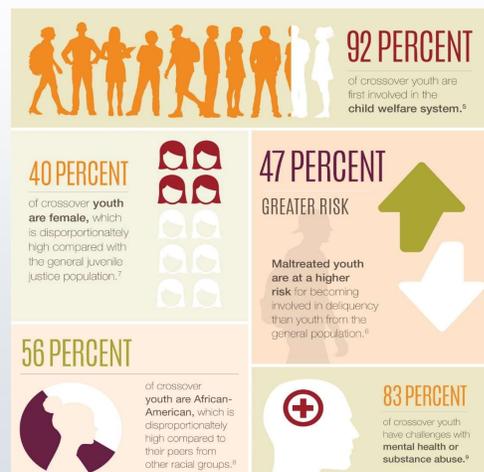
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A Look at the Data

Casey Family Programs (2018)

Is there an effective practice model for serving crossover youth?

<https://www.casey.org/crossover-youth-resource-list/>



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Dual Status - Systems Comparison

CHILD WELFARE

Civil
Confidential
Permanency focus
Right to Counsel, limited
Various burdens of proof
Miranda does not apply

JUVENILE

Civil
Confidential
Rehabilitation focus
Right to Counsel
Beyond a Reasonable Doubt
Miranda + additional protections apply



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Dual Status Considerations

Identification
One Family, One Judge
Attorney Roles and Responsibilities
Agency Coordination



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Education Issues

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National Data

Educational Experience or Outcome	Findings
% of youth in foster care who change schools when first entering care	31% - 75% ²
% of 17- to 18-year-olds who experienced 5 or more school changes	34.2% ³
Likelihood of being absent from school	About twice that of other students ⁴
Likelihood of 17- to 18-year-old youth in foster care having out-of-school suspension	About twice that of other students ⁵ (In one study the rate was 24% vs. national general population rate of 7%) ⁶
Likelihood of 17- to 18-year-old youth in foster care being expelled	About 3 times that of other students ⁷
Reading level of 17- to 18-year-olds in foster care	Average level 7 th grade 44% at high school level or higher ⁸
% of youth in foster care receiving special education services	35.6% ⁹ - 47.3% ¹⁰
% of 17- to 18-year-old youth in foster care who want to go to college	70% ¹¹ - 84% ¹²
% of youth in foster care who complete high school by age 18 (via a diploma or GED)	Colorado: 41.8% ¹³ Midwest Study (age 19): 63% ¹⁴
% of youth in foster care who complete high school by age 21	65% by age 21 ¹⁵ (National data) (Compared with 86% among all youth ages 18-24 ¹⁶) 31.8% ¹⁷ - 45.3% ¹⁸
% of youth in foster care who graduated from high school who enrolled in college at some level	(Compared with national college enrollment rate of 69.2% in 2015, which is slightly below national record high of 70.2% in 2009) ¹⁹
% of foster care alumni who attain a bachelor's degree	3 - 10.8% ²⁰ (Compared with national college completion rate of a BA or higher of 32.5%) ²¹

National Working Group on Foster Care and Education <http://www.fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx>

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Educational Challenges for Children in Care

School stability

Peer and adult connections

Positive school climate

School disciplinary interventions

Residential Treatment or Hospital settings



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Top Five Things You Need to Know About Foster Care & Education

Encourage school stability

Identify decision-makers

Support students with disabilities

Courts can enforce statutory duties and attorneys can advocate for children and youth's educational rights under federal and state law

Prepare for transitions



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Additional Foster Care & Education Resources

Children's Commission Website, Resources & Reports, Foster Care & Education

- <http://texaschildrenscommission.gov/reports-and-resources/>

Texas Department of Family & Protective Services, Education

- https://www.dfps.state.tx.us/Child_Protection/State_Care/education.asp

Texas Education Agency (TEA)

- https://tea.texas.gov/Academics/Special_Student_Populations/Foster_Care_and_Student_Success/Foster_Care_Student_Success

Education Reach for Texans

- <http://www.educationreachfortexans.org/>



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Community Based Care

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What is Community Based Care?

Private agencies provide care and case management for children in the care of the agency

Services for children, youth, and families are provided in the child's community

A single contractor (Single Source Continuum Contractor or "SSCC") is responsible for:

- Finding placements (foster homes, other living arrangements) and
- Providing a full spectrum of services to children and families in the agency's care



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CBC Data and Metrics

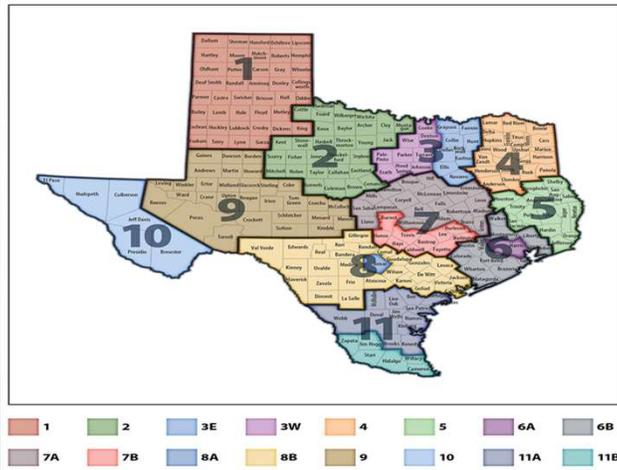
SSCCs are held to performance measures and DFPS reports on these metrics to the Legislature. The measures include:

- Safety,
- Placement stability,
- Least restrictive setting,
- Placement within 50 miles,
- Siblings placed together, and
- Completion of Preparation for Adult Living (PAL)



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CBC Catchment Areas



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Residential Treatment Centers

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Residential Treatment Centers

Therapeutic need
Short-term intervention
Family engagement
Transition planning
Heightened Monitoring
Qualified Residential Treatment Programs



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Resources

Children's Commission

- Website - <http://texaschildrenscommission.gov>
- Bench Book: <http://texaschildrenscommission.gov/for-judges/bench-book/>

Texas Foster Youth Justice Project

- Website - <http://texasfosteryouth.org/>
- A Guide for Those “Aging Out” of Foster Care in Texas - <http://texasfosteryouth.org/download/1431/>

Texas CASA's Collaborative Family Engagement

- <https://texascasa.org/what-we-do/collaborative-family-engagement>



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