



Risks of Premature Mental Health Assessment and Treatment

Written Testimony to the House Public Health Committee

by Brandon Logan, J.D., CWLS

My name is Brandon Logan, and I am the director of the [Center for Families and Children at the Texas Public Policy Foundation](#), a non-profit, non-partisan think tank based here in Austin. Although concern for the mental health of foster children is warranted, we oppose HB 2866 because it would require assessment before a child's placement is stabilized and may result in overmedication of children.

Prior to my current position, I was an attorney and guardian ad litem for children under the care of the Texas Department of Family and Protective Services (DFPS) for over a dozen years. I also represented biological parents, foster parents, and relatives in CPS cases throughout the state. I handled the full continuum of CPS cases from pre-removal through jury trial and appeal. I am certified as a Child Welfare Law Specialist by the [National Association of Counsel for Children](#).

In the 14 days between the involuntary removal of a child and the Adversary Hearing, the emergency order for protection in effect provides certain legal rights and duties to DFPS, including the right to consent to medical and psychological treatment (see [Tex. Fam. Code §153.371](#)). However, medical and psychological intervention during this time should be limited to emergency or stabilizing treatment only. Information available to clinicians will be limited and recent traumatic events may mimic acute physical, mental, and emotional conditions.

The majority of children seen within 14 days of removal will be experiencing acute traumatic stress either as a result of the incident bringing them into care or as a consequence of removal and separation from family. Traumatized children are likely to present in an acute state of hyper-arousal, hypervigilance, wariness, and agitation. Some will externalize those conditions and will be prone to act out in ways that pose challenges for any clinician. Others will exhibit internalizing behaviors that may cause them to remain distant, suspicious, and unresponsive.

Even a routine physical exam for such children will need to be conducted in a very sensitive manner and some procedures may need to be altered or delayed to accommodate what the child is able to tolerate without being re-traumatized. However, while meaningful medical evaluations may be possible within some limits, this is not fertile ground for psychological evaluations. Psychological measures administered under such conditions may be highly inaccurate. Many children will simply say nothing, or will be too fearful and understandably suspicious of the evaluative process to provide complete or accurate data.

In addition to trauma, many of these children may have acute medical needs that serve as mental health stressors, including poorly managed chronic health conditions, malnutrition, exposure to toxic substances, sleep deprivation, and abuse-related injuries. An accurate assessment of a child's developmental and mental health needs cannot reasonably occur until these issues have been resolved.

Unless specifically indicated, mental health evaluation and treatment may risk pathologizing normal stress response to removal and temporary instability. Approximately one third of foster children are prescribed psychotropic medication while in the care of the state—a fact of which the federal judge in *M.D. vs. Abbott* was particularly critical. Premature mental health assessment and treatment may unnecessarily increase unnecessary treatment and overmedicating of children. ★



Brandon Logan, J.D., CWLS, is the Director of the Center for Families and Children at the Texas Public Policy Foundation. Before joining the Foundation, Brandon represented hundreds of children as attorney and guardian ad litem in child welfare courts throughout Texas. He is certified as a Child Welfare Law Specialist by the National Association of Counsel for Children. Brandon has also represented parents, grandparents, and foster families in custody and adoption cases across the state.

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