REFORMING THE HIDDEN FOSTER CARE SYSTEM

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Executive Summary

In Texas, and many other states, child protective services often use so-called voluntary agreements with families to either temporarily place children outside the home or require families to submit to other types of supervision and services. These arrangements have become known as "hidden foster care" because they are not tracked in official data reports, occur without judicial oversight, and lack key due process protections for families. Drawing on limited publicly available data, it is believed that the hidden foster care system is at least equivalent in size to, if not larger than, the traditional foster care system. This paper will describe the hidden foster care system, highlight growing concerns with the practice as well as recent legal challenges to it brought by impacted families, and propose reforms that will facilitate the prevention of foster care entry while safeguarding the fundamental rights of children and families.

Key Points

- Hidden foster care is intended to prevent foster care entry, but it has come under scrutiny because it lacks basic procedural guardrails and independent judicial oversight.
- Critics of hidden foster care argue that CPS investigators frequently use coercive practices to induce families to agree to "voluntary" placement of their children outside the home.
- It is estimated that hidden foster care is at least equivalent in size to traditional foster care, but a lack of public data makes it difficult to ascertain its true scope.
- Recent high-profile lawsuits have highlighted abuses associated with hidden foster care and its potential to undermine the constitutional rights of families.

Introduction

The majority of Americans have a basic familiarity with the foster care system. When children have been abused or neglected, the state often steps in to protect the child by removing them from their home and, ostensibly, placing them in a safer environment. But the underbelly of the foster care system, known as hidden foster care (Gupta-Kagan, 2020, p. 844), is less well-known.

In traditional foster care, the state child protection agency investigates reports of child abuse or neglect. If the investigation substantiates an allegation and reveals that the child is in danger, the agency obtains a court order to remove the child from the home and thereby takes temporary custody of the child, placing them in a foster home. While the child is in the care of the state, their parents will often work through a service plan designed to help them address the safety issues that led to the removal of the child and so facilitate their return. Throughout this process, regular court hearings are held so that the judge overseeing the case can monitor the work of the child protection agency, receive regular updates on the family's progress, and ensure that the child is receiving the care and support they need. Both the child and their parents are commonly represented by attorneys during the case. After a set period of time—12 months from the date of removal in Texas—the court holds a final hearing on the case to determine whether the child is able to return home or, alternatively, if the rights of the child's parents are to be terminated and the child made available for adoption (Brown, 2020, pp. 6–10). It is a relatively clear and predictable process that provides critical due process protections to all parties involved.

Hidden foster care, by contrast, does away with the basic procedural guardrails and independent judicial oversight that are present in traditional foster care cases. According to Professor Josh Gupta-Kagan, hidden foster care is "a legally undomesticated process through which state agencies effectuate a change of custody for thousands of children with little, if any, meaningful due process" (Gupta-Kagan, 2020, p. 844). To put it simply, hidden foster care is a method by which child protective services is able to temporarily separate children from their families and require parents

to undergo services without court oversight. Although originally intended to serve as a less traumatic alternative to formal involvement with the child welfare system, the arrangements that have come to be known as hidden foster care are coming under increasing scrutiny due to concerns over their use as a way to circumvent critical legal protections for children and families. This paper will explain the operation of the hidden foster care system, detail concerns with how it is used, highlight recent legal challenges, and propose legislative reforms.

How Hidden Foster Care Works

Specific hidden foster care practices and procedures vary from state to state. However, they share many important commonalities. One key aspect is the use of "safety plans." Safety plans are written agreements between Child Protective Services (CPS) and the family under investigation. These agreements describe the alleged danger to the child that requires intervention and the steps that the family must take, such as the completion of services, to mitigate that danger (Presser, 2021). Safety plans often result in the child being placed outside of the home or, if they are allowed to remain within the home, require that both parent and child submit to 24/7 supervision.

Safety plans generally come into play when a CPS caseworker has concerns for the safety of the child but does not have enough evidence to support a removal and/or believes it is possible for the child to remain safely in the home with certain safeguards. Both federal and state law require child protection agencies to make reasonable efforts to preserve families and prevent the removal of children from their homes (42 U.S.C. § 671(a)(15); Texas Family Code Sec. 262.101). Safety plans, which are intended to be narrowly tailored, short-term solutions to "address specific concerns about child safety in a home," are one tool agencies use to prevent removal and comply with the reasonable efforts requirement (DFPS, 2018a, pp. 2–3). Since safety plans operate outside of the traditional foster care system, they are presented to families as a less invasive, "voluntary" alternative to more restrictive formal involvement with the child protection system, which carries the threat of termination of parental rights. For families who elect to enter into a safety plan, doing so often seems as the lesser of two evils and a strategy for getting CPS out of their lives as quickly as possible. Ideally, the use of a safety plan allows a family to obtain services to remedy safety concerns in their home relatively quickly while bypassing many of the most burdensome and traumatic impacts of the formal foster care system (Schwartz & Krebs, 2020). When implemented as intended, CPS involvement with a family should be relatively short and either allow the child to remain in the home or be temporarily placed with other family or friends. Unfortunately, this system often does not operate as intended, which has led to increasing scrutiny and criticism.

Concerns With Hidden Foster Care

A number of concerns are associated with the practice of hidden foster care. Some of the most frequently cited are its coercive nature, its failure to provide important legal protections for families and caregivers, and its lack of transparency. This section will examine each of these concerns in detail.

Hidden Foster Care Is Inherently Coercive

Child protection agencies frequently frame hidden foster care as a "voluntary" and less intrusive alternative to traditional foster care that gives families the opportunity to receive help from their pre-existing support network while avoiding court involvement (DFPS, 2018a, p. 3; DFPS, 2019; DFPS, 2021, Form 2604). However, the truth of these claims frequently fails to hold up under scrutiny.

In its handbook for CPS attorneys, the Texas Department of Family and Protective Services asserts that "a safety plan is a voluntary agreement and is *not* legally binding" (DFPS, 2018a, p. 3). However, just a few lines later, the handbook discusses some of the consequences of a family's failure to comply with the terms of a safety plan. These consequences include such failure being used as evidence to support removal of the child into foster care and even termination of parental rights (p. 4). Both CPS policy and the safety plan itself reiterate that a family who does not agree to the agency's offer of a safety plan is at increased risk of having their child removed. When faced with a family who is unwilling to participate in a safety plan, DFPS caseworkers are instructed to determine "if a removal is necessary" (DFPS, 2019). The current safety plan form[1] used by DFPS includes several "statements of understanding and agreement" that the child's parent is required to initial before signing the plan. These statements include the following admonition: "If you are unable to carry out this plan successfully, or your child is considered to be in an unsafe situation, DFPS may refer you for further services or may ask the court to order you to complete services or place the child in foster care"

1 The safety plan referenced is designated by the Department of Family and Protective Services as Form 2604 and may be downloaded in Microsoft Word format from the department's "Find a Form" website: https://www.dfps.state.tx.us/site_map/forms.asp.

(DFPS, 2021, Form 2604). Other states are more direct in their language. South Carolina, for example, warns the family that if they refuse to sign the safety plan, the law requires the department or law enforcement to pursue an out-of-home placement for the child. (Gupta-Kagan, 2020, p. 849). Similarly, the Illinois safety plan requires the family to acknowledge that they understand that "failure to agree to the plan or to carry out the plan may result in a reassessment of our home and possible protective custody and/or referral to the State Attorney's Office for a court order to remove my children from my home" (Illinois Department of Children and Family Services, 2019a, p. 3). Critics of hidden foster care point out that these policies and statements are direct threats to take more severe action against families who do not comply with the agency's demands, thus making safety plans inherently coercive.

This issue of voluntariness has led to several lawsuits. Two of the most notable—*Croft v. Westmoreland County Children and Youth Services* (1997) and *Dupuy v. Samuels* (2006)—find that safety plans can be coercive but come to very different conclusions as to what actions taken by the state in connection with the safety plan constitute coercion.

Croft v. Westmoreland involved the investigation of a family over "a six-fold hearsay report by an anonymous informant" that Dr. Henry L. Croft was sexually abusing his four-year-old daughter (*Croft v. Westmoreland County Children and Youth Services*, 1997, p. 1126). Despite the fact that the family was able to explain the situation that led to the report and the CPS investigator's own admission that she did not have enough evidence to form an opinion as to whether sexual abuse had occurred, the investigator gave Dr. Croft an ultimatum: either leave the home voluntarily while the investigation unfolded or have his daughter immediately placed in foster care (pp. 1124, 1127). Dr. Croft complied with the ultimatum and left the home that night. The Crofts then filed a complaint against Westmoreland County Children and Youth Services, which ended up before the United States Court of Appeals for the Third Circuit. In ruling for the Crofts, the Third Circuit found that the CPS investigator exceeded her authority by compelling Dr. Croft to leave the home while lacking sufficient evidence to support a reasonable suspicion that the alleged abuse had actually occurred (p. 1126). A key factor in the Third Circuit's decision was the ultimatum the investigator gave to Dr. Croft. Finding that the investigator "lacked objectively reasonable grounds to believe the child had been sexually abused or was in imminent danger of sexual abuse," the court held that the investigator's actions amounted to an arbitrary exercise of government power that violated the Crofts' Fourteenth Amendment rights (pp. 1125–1127). Examining the ultimatum in greater detail, the Third Circuit flatly rejected the government's characterization of Dr. Croft's decision to leave the house as voluntary, finding that "the threat that unless Dr. Croft left his home, the state would take his four-year-old daughter and place her in foster care was blatantly coercive" (p. 1125). Thus, the Third Circuit's ruling in *Croft v. Westmoreland* suggests that threats of removal by CPS to compel a parent to agree to an alternative arrangement are inherently coercive and render any agreement on the part of the parent involuntary.

The debate over voluntariness in hidden foster care was further complicated nearly nine years later by a case known as *Dupuy v. Samuels* (2006). *Dupuy*, which was decided by the United States Court of Appeals for the Seventh Circuit, involved a class action suit by a group of families challenging several practices of the Illinois Department of Children and Family Services (DCFS), including the department's use of safety plans. At issue before the Seventh Circuit was an injunction issued by the district court ordering DCFS to revise its policies and procedures regarding the use of safety plans because the district court found that the plans "effect a constitutional deprivation when combined with an express or implied threat of protective custody that is more than brief or temporary" (*Dupuy v. Samuels*, 2005, p. 893). Although the district court recognized that "there is clearly an element of choice to the safety plan process in that Plaintiffs at all times remain free to reject a plan," it was troubled by evidence showing the practice of DCFS went beyond merely informing families of their options in connection with the investigation and instead involved affirmative threats "to take away Plaintiffs' children unless they agreed to a safety plan" (pp.892–893). As a result, the district court gave DCFS 60 days to "develop constitutionally adequate procedures" governing the use of safety plans. The Plaintiffs appealed to the Seventh Circuit arguing that a temporary injunction that would allow DCFS to continue using safety plans under new procedures was legally insufficient.

In complex and often-criticized reasoning, the Seventh Circuit rejected the Plaintiffs' appeal finding that safety plans are merely an "offer" of an alternative to removal that the state gives the parents, which they have the option of accepting or rejecting (*Dupuy v. Samuels*, 2006, p. 761). The court's reasoning compared the safety plan to a settlement agreement in a criminal case, the acceptance of which by the parents "no more impairs [parental] rights

The rights of parents come with the high duty to nurture and care for their children "during the imperfect state of childhood" and prepare them for the obligations of adulthood.

than a prosecutor's offer to accept a guilty plea impairs the defendant's right to trial by jury" (p. 761). The key, for the Seventh Circuit, was whether the state's threat of removal was grounded in proper legal authority. Distinguishing the facts in *Dupuy* from those in *Croft*, the Seventh Circuit found that the threat of removal made in *Croft* amounted to coercion because the investigator "did not have adequate grounds for removing the child from the parents' custody even temporarily" (p. 763). Focusing solely on the language of the safety plan's consent form, the court held that, unlike the investigator's threat in *Croft*, the Illinois safety plan merely informs parents that possibility of removal exists under certain conditions.

The Seventh Circuit's deviation from the district court's analysis and downplaying of the circumstances and consequences associated with safety plans has drawn considerable criticism in the years since *Dupuy* was decided. According to Ryan Shellady, hinging the voluntariness of the decision solely on whether or not the government has the legal authority to follow through on the threat is akin to suggesting that "parents looking down the barrel of the state's gun ought to know whether its chamber is loaded" (Shellady, 2019, p. 1629). Similarly, in analyzing the Seventh Circuit's comparison of a safety plan to a criminal plea bargain, Professor Gupta-Kagan points out that there is a significant imbalance in bargaining power between CPS and the parents as well as the fact that a criminal defendant enjoys considerably greater procedural protections during plea negotiations, including the right to counsel and judicial oversight, than a parent facing the "offer" of a safety plan (Gupta-Kagan, 2020, pp. 863–864). Despite these criticisms, the Seventh Circuit's reasoning in *Dupuy* continues to influence court decisions and complicate the legal debate over the proper use of safety plans.

Hidden Foster Care Lacks Key Due Process Protections

The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving "any person of life, liberty, or property, without due process of law," and the U.S. Supreme Court has long held that the clause "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children" (U.S. Const. amend. XIV, §1; *Troxel v. Granville*, 2000, p. 66). This right, while fundamental, is not absolute. Indeed, the rights of parents come with the high duty to nurture and care for their children "during the imperfect state of childhood" and prepare them for the obligations of adulthood (Locke, 1823, p. 128; *Pierce v. Society of Sisters*, 1925, p. 535). The child, therefore, is the ultimate beneficiary of these rights and duties. When parents violate their duties to their children by abusing them or placing them in imminent danger of harm, the government is justified in the limited and purposeful exercise of its police power to protect children from harm (Logan, 2018, p. 2). Any exercise of this power by government, however, amounts to a deprivation of a fundamental right that is subject to the Due Process Clause.

Generally speaking, the application of the Due Process Clause to an action taken by government against a citizen involves a three-part analysis:

> First, is there a deprivation? Only if there is a deprivation does the court need to go any further in its procedural due process analysis. Second, is there a deprivation of life, liberty, or property? Only if a person is deprived of life, liberty or property does the court need to proceed with a procedural due process analysis. Third, what procedures are required? Only if the procedures of the government are inadequate is there a deprivation of due process. (Chemerinsky, 2016, p. 871)

In the case of hidden foster care, the first two questions are clearly answered in the affirmative as there is a deprivation (through government-imposed separation or other regulation) that significantly, and possibly permanently, impacts the fundamental liberty "interest of parents in the care, custody, and control of their children" (*Troxell v. Granville*, 2000, p. 65). The only question that remains, then, is whether the procedural safeguards governing the use of hidden foster care are constitutionally adequate.

The leading U.S. Supreme Court case on assessing the adequacy of procedural safeguards is *Matthews v. Eldridge* (1976). Under the three-part test established in *Matthews*, the court considers (a) the importance of the private interest at issue; (b) the risk that current procedures used will result in an "erroneous deprivation" of the interest and whether "additional or substitute procedures" will better

safeguard the interest; and (c) the government's interest, including any administrative costs of requiring additional procedures (p. 335).

The application of the *Eldridge* test by the district court in *Dupuy* provides a particularly instructive analysis of the due process problems associated with hidden foster care practice. In applying the *Eldridge* test, the district court easily disposed of the first two questions by recognizing that it is "undisputed that Plaintiffs have a 'fundamental' liberty interest in familial relations" and the government, similarly, has an important interest in ensuring child safety (*Dupuy v. Samuels*, 2005, p. 894). Thus, the district court's analysis turned on whether Illinois' safety plan procedures were adequate to safeguard the Plaintiffs' fundamental liberty interest against the risk of erroneous deprivation. "On this issue," the district court said, "the balance weighs decidedly in Plaintiffs' favor" due to the complete lack of procedures allowing families to contest safety plans (p. 894). Although the district court noted that procedures equivalent to or greater than those applied when removing a child into foster care are not required since "safety plans serve as less intrusive alternatives to protective custody," it nevertheless emphasized that "the liberty interest in familial relations is so great that even the small risk of erroneous deprivation" via the imposition of a safety plan necessitates some procedural safeguards (p. 894). Notably, the district court declined to dictate what safeguards would be sufficient to safeguard the rights of families, instead directing DCFS to propose revised policies consistent with its opinion (pp. 894, 897). However, the district court did provide some loose guidance suggesting, for example, that the procedures need not include a hearing requirement as suggested by the Plaintiffs, but should include a process for allowing families to review the proposed restrictions placed on them by a safety plan as well as afford families the right to "immediate notice of the basis on which the investigator has determined such a plan is necessary" and the expected duration of the plan (p. 896).

As a result of the district court's order, Illinois updated their safety plan policies and outlined families' rights and responsibilities in the situations. These policies and rights (Illinois Department of Children and Family Services, 2019b) include:

- A prohibition on the use of safety plans unless the department has "legally sufficient grounds for protective custody" (p. 1).
- A review of the safety plan every five days to assess whether there is a continuing need for the plan.
- The right to written notification of the department's basis for requesting a safety plan.
- The right to consult with legal counsel prior to agreeing to the safety plan.
- The right to know how long the safety plan will be in place.
- The right to request modification of the safety plan.
- The right to terminate the safety plan at any time, but with the caveat that if DCFS does not agree to the termination it will make a determination regarding whether grounds for taking protective custody of the child exist (Illinois Department of Children and Family Services, 2019b).

Although these policies and rights represent an improvement on the regime that existed prior to the lawsuit, they do not go far enough. Notably, there is no firm time limit on the duration of the safety plan nor an enforcement mechanism to ensure that the department holds up its end of the deal. Additionally, there is no right to request a hearing or otherwise obtain court oversight of the arrangement outside of escalating to protective custody. Thus, the updated Illinois procedures retain a marked imbalance of power between the department, which at any time can move to permanently sever the legal ties between parent and child, and the family.

The lack of due process protections in hidden foster care are not limited to Illinois and Pennsylvania even though these states have produced the leading cases discussing the constitutional deficiencies of the practice. Professor Gupta-Kagan's research has identified hidden foster care occurring in the majority of states and using strikingly similar practices (Gupta-Kagan, 2020, p. 855). It has been estimated, using available data, that the number of children in hidden foster care is roughly equivalent to the number in the formal foster care system (pp. 855–860). It should be noted, however, that this conclusion is only an educated guess due to a lack of consistent, publicly available data on hidden foster care arrangements.

Lack of Data on Scope of Hidden Foster Care

The majority of publicly available data on the child welfare system comes from annual reports individual states

provide to the federal government. Federal data collection is governed by the main sources of federal funds to state child welfare systems—Titles IV-B and IV-E of the Social Security Act, the Child Abuse Prevention and Treatment Act (CAPTA), and the Adoption and Safe Families Act (ASFA). The reporting requirements contained in each of these federal statutes, while thorough, only apply to children who enter the formal foster care system or who are the subject of maltreatment reports and are virtually silent on the use of informal placements or service plans that occur outside of the traditional foster care system (Gupta-Kagan, 2020, pp. 855–856). Although CAPTA includes a requirement that states report on "the number of families that received preventative services, including the use of differential response, from the State during the year" and the Family First Prevention Services Act requires states to disclose the type of prevention services provided, these provisions are not targeted enough to shed much-needed light on the scope of hidden foster care (Children's Bureau, 2022a, p. 117; Children's Bureau, 2022b, pp. 8-12).

In Texas, the data reported by the Department of Family and Protective Services are similarly opaque. According to the DFPS Data Book, more than 64,000 unique children received Family Preservation Services during FY 2021 (DFPS, n.d.). This figure, however, encompasses all family preservation services provided by the department and, like federal data, does not distinguish those services that fall within the definition of hidden foster care from those that fall within the definition of formal foster care. The clearest picture we have to date comes from a 2015 roundtable on the use of Parental Child Safety Placements hosted by the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families. Parental Child Safety Placements (PCSP) are short-term, temporary placements of children outside the home made by a parent "when DFPS staff determine that the child cannot safely stay with a parent" (DFPS, 2018b, p. 1). Since these arrangements are framed as voluntary on the part of the parent and designed to avoid the removal of the child into foster care, they fall squarely within the definition of hidden foster care as discussed herein (McCown & Burstain, 2015, slide 5). According to the 2015 report, the Department of Family and Protective Services facilitated 34,260 such placements during FY 2014 (slide 13). The data from this presentation appear to come from internal DFPS sources, as the authors were unable to locate a public dataset outside of the presentation that included the information, nor does it appear that data from subsequent years have been published. Nevertheless, the 34,260 PCSP arrangements occurring in FY 2014 lends credence to the hypothesis that the hidden foster care system is roughly equivalent in size and scope to the traditional foster care system. Until states begin publishing data on hidden foster care arrangements, however, the public will remain in the dark concerning the practice.

Hogan v. Cherokee County and Subsequent Lawsuits

As awareness of hidden foster care has increased, so too have efforts to challenge and reform the practice. One of the most significant blows to the hidden foster care system came in May 2021 when a federal jury awarded a North Carolina family $4.6 million for what the jury found was an illegal separation by the Cherokee County Department of Social Services (Martin, 2021a). In the spring of 2016, the mother of the child at issue in the case developed a severe heart problem requiring hospitalization. The child's father, Brian Hogan, arranged for her to stay with neighbors while he traveled to Ashville to help care for her mother (*Hogan v. Cherokee Cnty.*, 2022, p. 4). While staying with the neighbors, a report was made with the Cherokee County Department of Social Services (DSS) by the child's school expressing concern about the care she was receiving. The DSS investigator assigned to the case contacted Mr. Hogan in November 2016 informing him of the complaints and demanding that he make alternative arrangements for the child to stay with family. During the call, the investigator told Mr. Hogan that if he did not comply, DSS would "give her to the state and [he would] probably never see [his] daughter again" (pp. 4–5). Mr. Hogan reluctantly agreed to place his daughter with his estranged father and was sent a "Custody and Visitation Agreement" to sign. He signed the agreement despite not being able to read well and not having the opportunity to consult with an attorney or other person able to explain its contents and ramifications to him. Based on his conversations with the investigator, Mr. Hogan was led to believe that the agreement was a temporary transfer of custody that could be revoked once he was able to care for his daughter (pp. 5–6). In reality, the agreement permanently transferred custody of the girl to Mr. Hogan's father until she reached the age of majority. Throughout the 13 months that Mr. Hogan's daughter resided with her paternal grandfather, Mr. Hogan repeatedly tried to regain custody of her but was told by DSS that he would have to go to court in order to achieve reunification (p. 8). In December 2017, Mr. Hogan hired an attorney who filed suit against the Department of Social Services in the District Court of Cherokee County. On December 13, 2017, the district court judge granted Mr. Hogan's motion to regain custody of his daughter finding that the agreement he was induced to sign "was invalid and not enforceable or binding" (p. 9).

At trial, evidence was presented showing that both Mr. Hogan and his daughter suffered significant trauma as a result of the separation wrongfully imposed by DSS (*Hogan v. Cherokee Cnty*., 2022, pp. 11–12). In addition, evidence showed that DSS regularly used agreements of the kind that Mr. Hogan signed to manage so-called stuck cases where investigators had concerns, but did not believe they had sufficient evidence to get a court order for removal of the child into foster care (p. 13). Ultimately, the jury ruled that the Cherokee County Department of Social Services violated Mr. Hogan's and his daughter's constitutional rights and its actions were the cause of the trauma and emotional distress the Hogans endured from the separation (p. 1). As a result, the jury awarded Mr. Hogan $1.5 million and his daughter $3.1 million in compensatory damages.

In the wake of the *Hogan v. Cherokee County* verdict, multiple DSS staff involved with the department's long practice of utilizing custody and visitation agreements to effectuate extrajudicial custody transfers were criminally indicted for their role in the scheme (Martin, 2021b). Similar lawsuits on behalf of dozens of families who were impacted by the practice are currently pending.

Conclusion and Recommendations

The ability to separate children from their families, sometimes permanently, is one of the most significant and devastating actions a state can take against its citizens. For more than a century, courts have recognized that the relationship between a parent and a child is one of constitutional dimensions and rightfully established guardrails to ensure that the state carries out its responsibility to protect abused or neglected children in a restrained and limited manner. Hidden foster care circumvents these legal limitations and undermines the fundamental rights of families. Accordingly, the state of Texas should enact legislation to curtail the practice of hidden foster care by setting clear limitations on the ability of CPS to separate families outside of judicial oversight and promote greater transparency by requiring the collection and public reporting of data on the practice.

We point to House Bill 2680 (2021) filed during the 87th Legislature as one example of how to begin reforming the practice of hidden foster care. HB 2680 would have established time limits for Parental Child Safety Placements, required data collection and reporting on the use of PCSPs, and provided for legal representation for parents in certain cases involving PCSPs. The legislation passed the House but did not receive a Senate hearing before the end of the legislative session. In addition to the provisions contained in HB 2680, any legislation filed should, at a minimum:

1. Require CPS to inform parents or caregivers of the specific allegations or areas of concern in writing at first contact.

2. Provide parents or caregivers with the opportunity to consult with an attorney before agreeing to enter into a safety plan.

3. Prohibit CPS from utilizing threats or other coercive methods to induce parents or caregivers to agree to a safety plan.

4. Set concrete time limits for safety plans. Ideally, no more than 30 days.

5. Require that safety plans clearly state the specific actions families must take to achieve reunification. Required services must be narrowly tailored to address the allegations or areas of concern.

6. Allow parents to seek court review of safety plans without risking the formal removal of their children into foster care or the filing of an abuse or neglect case against them.

7. Require the collection and public reporting of data on the number of safety plans used by CPS, the average length of time families remain under safety plans, and outcomes following the termination of the safety plan.

As child welfare practice increasingly recognizes the harm caused by family separation and endeavors to prioritize prevention and family preservation, it is critical that the Texas Legislature provide strong protections for the fundamental rights of families. Alternative methods of responding to concerns about child safety that avoid the removal of children into foster care are much needed. These methods must be transparent, time limited, coercion-free, and subject to meaningful oversight by the judiciary. And they must, of course, include robust due process protections for impacted families.

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