



## STRENGTHENING CHILD PROTECTIVE SERVICES

### Comparing SB 758, HB 2140, and HB 3916 with HB 1361

In 2005, the 79<sup>th</sup> Texas Legislature considered whether to privatize any or all of the child protective responsibilities of the Texas Department of Family and Protective Services (DFPS). At that time, a push to privatize resulted in a mandate to completely privatize case management and substitute care services throughout the state by 2011, with the first region to be privatized by the end of 2007. After contract difficulties, however, implementation of this mandate was put on hold. This legislative session, privatization is under reconsideration. This policy page examines privatization and whether it is the best approach to improving Texas' child welfare system.

#### What Does Privatization Mean?

In Texas, child welfare privatization means turning over both day-to-day and long-term decision-making regarding children and their families, traditionally a governmental function, to private entities. In other words, a private entity would determine where a child would live after the child enters the child welfare system, both in the present and in the future. A private entity would speak for the state on whether 1) a child should be placed with relative; 2) a child should be returned to a parent; or 3) the parents' parental rights should be terminated. Outsourcing in this context means turning over decisionmaking about the lives of children and parents to private companies.

#### Don't Private Companies Already do Eighty Percent of the Cases?

No. This myth has caused a great deal of confusion. Right now, Child Protective Services does 100 percent of the decisionmaking, which goes under the name "case management." Private companies

provide foster care for about eighty percent of the children, which goes under the name "substitute care services." These are related but very different functions.

#### What is the Difference Between Substitute Care Services and Case Management?

Both case management and substitute care services involve responsibilities that arise after a family is investigated due to a report of child abuse and neglect and a child enters out-of-home care and the legal custody of DFPS.

Case management services, as defined in Family Code Section 264.106 (a) (1), means the provision of case management services to a child for whom the department has been appointed temporary or permanent managing conservator, including caseworker-child visits, the convening of family group conferences, the development and revision of the case plan, the coordination and monitoring of services needed by the child and family, and the assumption of court-related duties, including preparing court reports, attending judicial hearings, and permanency hearings, and

ensuring that the child is progressing toward permanency within state and federal mandates.

HB 1361 authorizes DFPS to contract for the provision of all necessary case management services, with the exception of court-related duties. DFPS files a lawsuit every time it requests legal custody of a child, triggering court involvement and monitoring for the duration of the case. In fact, a court must approve any short- and long-term plans for the child. As legal custodian of the child, DFPS must be responsible for any court-related duties, as it will be the entity preparing for and testifying in court about the child and making sure the child is moving toward living in a safe and permanent home.

Substitute care services, as defined in Family Code Section 264.106 (a)5), means services provided to or for children in substitute care and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family preservation, independent living, emergency shelter, residential group care, foster care, therapeutic foster care, and post-placement supervision, including relative placement, but not including the regulation of facilities.

### **Removing the Mandate to Privatize and Allowing DFPS to Use Performance-Based Contracting for Services as is Cost Effective is the Better Approach**

Of the four new pieces of legislation introduced this session, HB 1361 offers the more prudent approach and one that is far less disruptive to children and families.<sup>1</sup>

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<sup>1</sup> To read a full analysis of SB 758 and a discussion of substitute care and case management responsibilities, see *Strengthening Child Protective Services: An Analysis of DFPS's LAR and Senate Bill 758* (CPPP March 2007).

Unlike the other bills, HB 1361 stops mandatory privatization, but authorizes DFPS to enter into competitively procured contracts for case management and substitute care and tasks that agency with creating a system improvement plan.

Privatization of child welfare services is not a smart step for Texas. First, privatization is not a cure-all for problems in the child welfare system. States that have privatized part or all of their child welfare responsibilities have seen mixed results, and no state has completely or even substantially eradicated problems within their system. Caseworker turnover and high caseloads remain an issue, as do lack of services for families.

Second, DFPS may enter into performance-based contracts, awarded through competitive bids, for case management and substitute care services when appropriate and contractually sound without a mandate to privatize. Forcing DFPS to enter into contracts destroys its ability to effectively negotiate, resulting in reduced market competition and costlier contracts.

Third, few private agencies have the financial and staff capacity to effectively carry out additional responsibilities incurred by privatization. As shown by the Mesa Family Services tragedy in North Texas—where a foster child died in a placement with a private entity—not all child-placing agencies are worthy candidates for taking on more child welfare work.

Fourth, turning over DFPS responsibilities to private entities will not streamline child welfare activities. In Texas' current system, one state agency handles all aspects of the case, including contracting out to service providers for things such as services for families and child placements. The state has legal custody and it manages the case. In a privatized system, several private entities may be involved with one family, leading to

numerous conflicts of interest and blurring the chain of responsibility.

Fifth, privatization will be more costly. Across the country, child welfare privatization efforts have not resulted in child welfare casework being done less expensively – a few are cost-neutral, but most are more expensive, and, in the case of Florida, almost doubly so. Despite the increase in costs, most privatized systems still cite “underfunding” as a continuing problem. Texas cannot afford to do less for more.

Finally, Texas has not fared well in its recent attempt to privatize its public benefits system. That attempt resulted in unintended costs – primarily major disruptions in the enrollment and distribution of benefits, including a dramatic drop in the number of children receiving health care through the state’s children’s health insurance program. Concerns about that system – the lack of public input, the lack of focus on clients, the focus on the financial bottom line, the loss of accountability, and the lack of any testing of the project – mirror those voiced about privatization of DFPS responsibilities.

### **Give DFPS Time to Implement Initiatives Started with SB6 and Task DFPS with Creating a System Improvement Plan**

In 2005, the Legislature looked at improving investigations by passing Senate Bill 6, which increased funding for investigators, provided training and additional resources, and strengthened links to law enforcement. As a result, CPS has made progress in investigations. Caseloads are down and CPS is doing a better job addressing the immediate problems of children and families.

Now, the Legislature needs to turn its attention to the problems of children in out-of-home care. HB 1361 tasks DFPS with improving its own system by lowering caseloads, decreasing caseworker turnover,

increasing kinship placements and family group conferencing, improving the quality of services for families (including family preservation services), expanding the number and quality of substitute care providers, and reducing the length of time children are in state care.

DFPS needs time to implement this plan and push for changes within the system. If the state moves too quickly to privatize as a method of reform, DFPS will get out of the business of providing services and subsequently will lose one of its most valuable resources—knowledgeable employees. Turning back and rebuilding DFPS would be difficult and expensive.

### **Summary**

No one has ever adequately explained why Texas should privatize. The state’s public system does as well as or better on outcomes related to case management as the systems in states that have privatized case management.<sup>2</sup> Admittedly, some areas of the system need improvement, and that should be the focus.

HB 1361 is a wise approach for reforming the child welfare system. It stops mandatory privatization, yet it allows DFPS freedom to contract for innovative approaches to handling child welfare cases. At the same time, it tasks DFPS to make needed improvements to Texas’ child welfare system.

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<sup>2</sup> To learn more about these outcomes, see *CPS: Is the Legislature Going to Make Things Worse for Texas Children and Families* (CPPP April 2005).

DEGREE OF PRIVATIZATION REQUIRED BY CURRENT BILLS<sup>3</sup>

BILL	CASE MANAGEMENT SERVICES	SUBSTITUTE CARE SERVICES
<b>HB 1361</b>	None. Removes mandate to privatize — DFPS authorized to enter into performance-based contracts with private entities for case management services, but DFPS must retain all legal related services	None. Removes mandate to privatize — DFPS authorized to enter into performance-based contracts with private entities for substitute care services.
<b>SB 758/HB 2140</b>	At least 10 percent of cases by September 2009.	All substitute care services by September 2009.
<b>HB 3916</b>	All case management services state-wide by September 2012, with the first region privatized by May 2008.	All substitute care services state-wide by September 2012, with the first region privatized by May 2008.

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<sup>3</sup> To read a further comparison of HB 1361 and SB 758, see *Side by Side Comparison of Child Protective Services Reform Bills* (Texans Care for Children March 2007).