



CREATING FOSTER CARE CAPACITY FOR ABUSED AND NEGLECTED CHILDREN

When the state takes an abused or neglected child from their parent, a court names the Texas Department of Family and Protective Services (DFPS) the legal custodian of the child—essentially making the state the parent of the child. The state must then do for the child what any parent must—provide food, clothing, and shelter.¹ Since January 2007, however, the state has had to keep over 500 abused and neglected children for at least one night, some for more, in a state office or a hotel room. Every region in the state has had to use offices or hotels, though some more than others. This is only one manifestation of a growing problem—the state does not have enough foster homes. This policy page examines this problem and makes recommendations for capacity building.

Overview

A Perfect Storm

Our state's capacity problem isn't new, but the growth in the problem is alarming. Texas is in a perfect storm. Each year the Child Protective Services (CPS) division of DFPS brings a larger number of children into care. Some say that the children coming into the system are increasingly dysfunctional; others say that the system is making children more dysfunctional. Both strain capacity. In addition, CPS has been uncertain about whether the legislature wants it to build capacity or wants it to outsource all foster home development. This uncertainty stalled capacity building. At the same time, the Child Care Licensing (CCL) division of DFPS, which regulates and monitors all residential child care, has increased inspections and raised standards, affecting capacity. Finally, CPS has been the victim of its own success: As CPS has focused on increasing adoptions, many foster parents have adopted, reducing foster care capacity. Like a tornado, the centrifugal force of this perfect storm has increased its intensity: diminishing capacity increases the pressure on existing capacity, further diminishing capacity.

Churning Children

Merely increasing the number of homes, though, won't solve the capacity problem; the state needs enough of the right mix of placements. Children have different needs; placements have different strengths. If a placement isn't equipped to meet the needs of a particular child, it is far more likely that the placement will experience problems and request that the child be moved. Research shows that repeated placement changes hurt children. Each change means new routines, new housemates, and usually a new school or even a new town. Placement breakdowns are also hard on foster parents. Frequent placement failures can cause foster parents to quit. Thus, a strong foster care system includes a complete array of placements in sufficient quantity and quality to meet the needs of a constantly changing population.

To encourage states to develop appropriate homes that provide stable living situations, the federal government requires states to report the number of placements for each child. Periodically, the federal government reviews how states are performing. This review is called the Child and Family Service Review (CFSR). If a state's performance is not adequate, the federal government requires a corrective action plan and may impose financial penalties.² The

federal government reviewed Texas in 2002 and will review the state again in 2008. The stability of children in their living situations will be an important factor in how Texas scores.

Our Public and Private Partnership

Texas has a public and private system of foster placements. The state uses a combination of emergency shelters, foster family homes, foster group homes, and residential care facilities. Child Protective Services (CPS) has Foster and Adoption Units that recruit, train, and supervise individuals who open their homes and serve as foster parents. These foster parents are not state employees, but private individuals. Private Child Placing Agencies (CPAs) also recruit, train, and supervise foster homes. Typically, CPAs are nonprofit organizations whose mission is to provide foster care. Private providers operate almost all emergency shelters and residential care facilities.

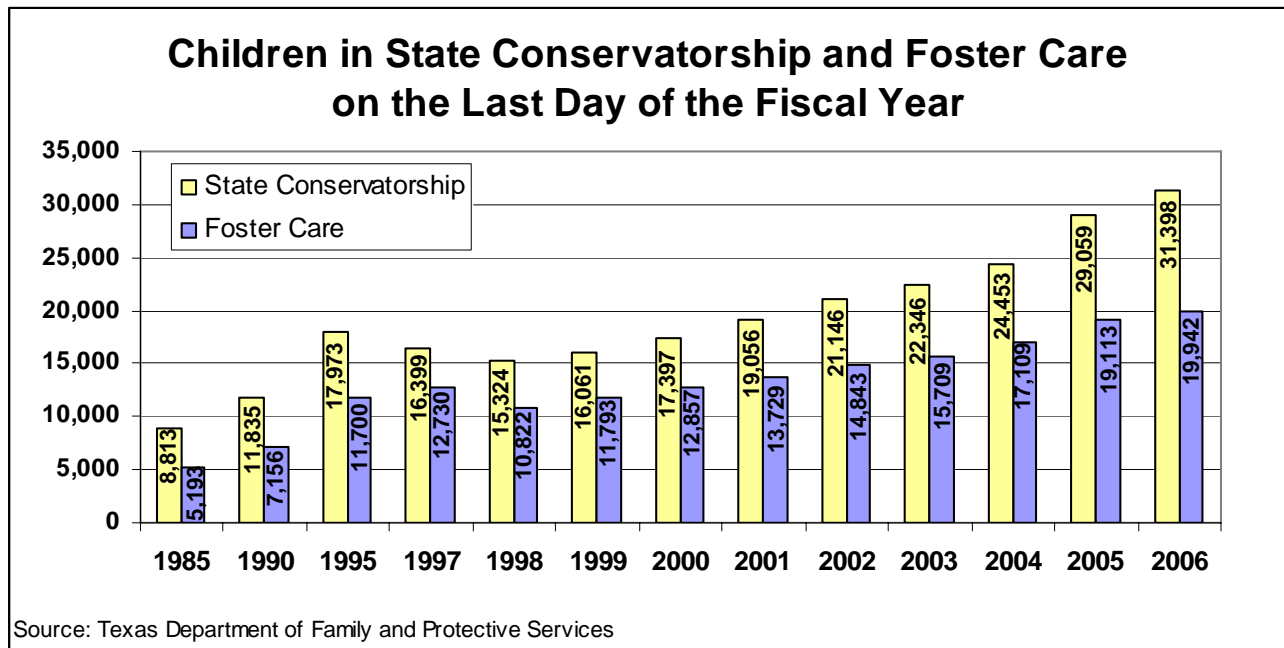
In 2005 and again in 2007 the legislature considered whether CPS should outsource all foster home

development. The very uncertainty of state policy slowed foster home development, contributing to the capacity crisis. Whether foster home development should be outsourced is the subject of a forthcoming policy brief.³ The analysis and recommendations in this paper apply regardless whether Texas continues with its present system or outsources all foster home development.

The Problem

Foster Care Growing Faster Than Capacity

In 2006, DFPS had legal responsibility (conservatorship) for over 31,000 children. Almost 20,000 of these children, ranging in age from birth to 21, resided in one of the foster care settings discussed above.⁴ As the chart at the bottom of the page shows, the number of children in foster care has grown each year since 1998. But as the table at the top of the next page shows, the growth in foster homes has not kept pace. From 2001 to 2006, the number of children entering foster care increased by 45.3%. During the same time period, the number of foster homes—both CPS and CPAs—grew only 26.4%.⁵



Growth in Number of Children in Care and Growth of Placements

	Foster Children	% Growth Since 2001	CPS Homes	CPS Homes % Growth since 2001	CPA Homes	CPA Homes % Growth since 2001	Total Homes	Total Homes % Growth since 2001
2001	13,729		3,987		3,792		7,779	
2002	14,843	8.1%	4,053	1.7%	4,390	15.8%	8,443	8.5%
2003	15,709	14.4%	3,905	-2.1%	4,670	23.2%	8,575	10.2%
2004	17,109	24.6%	3,824	-4.1%	5,181	36.6%	9,005	15.8%
2005	19,113	39.2%	3,867	-3.0%	5,803	53.0%	9,670	24.3%
2006	19,942	45.3%	3,426	-14.1%	6,406	68.9%	9,832	26.4%

Source: CPPP Calculations of DFPS Data

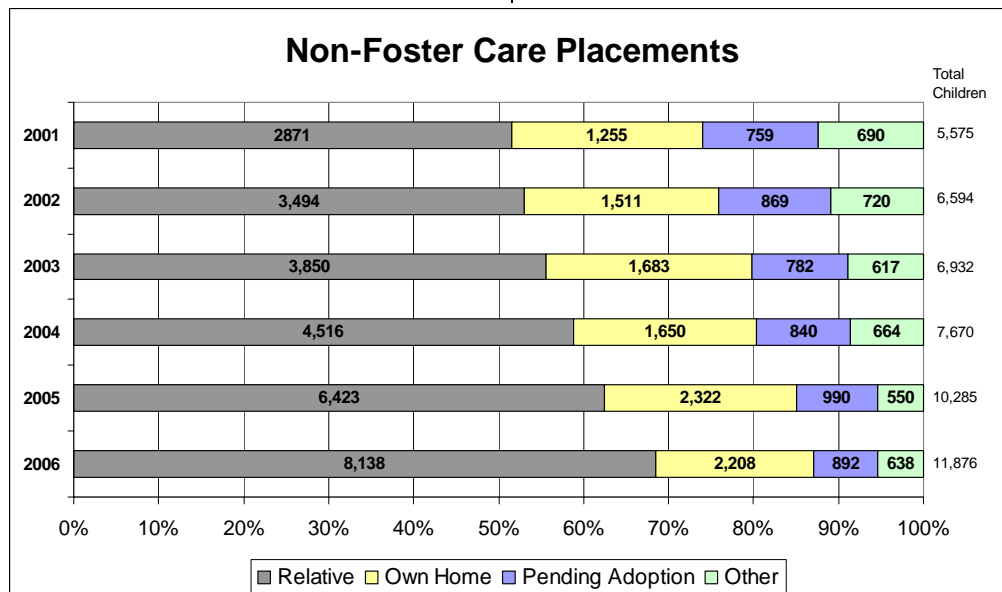
Diversion Strategies Alone Are Inadequate

The stronger a state's policies and programs designed to keep children in their own homes (family preservation), the fewer children go into foster care.⁶ The stronger a state's policies and programs to place children with relatives (kinship care), the fewer children go into foster care. The quicker a state moves children to permanency, whether by reuniting them with families or finding them adoptive homes, the fewer children are left in foster care.

Even using these diversion strategies to the greatest extent possible, however, Texas will still need to increase its foster care capacity. We have a steadily growing total child population (about 2% a year since 1990), which is at significant risk for abuse and neglect. About 23% of Texas children live in poverty and 10% live in extreme poverty (meaning in families with incomes below 50% of the federal poverty level).

Furthermore, Texas already pursues these alternative policies. More than one-third of the abused and neglected children for whom Texas is responsible are already diverted (10,000 of 31,000). This third lives in the temporary care of a relative, or with a parent under the watch of CPS, or in an adoptive home waiting for the adoption to be completed, or in some other alternative placement.

Most live with a relative. In the last several years, Texas has aggressively sought to increase kinship care. From 2001 through 2006, Texas increased the proportion of kinship placements from about 1 out of every 7 placements to 1 out of every 4 placements. Of course, the state should continue to aggressively pursue alternatives to foster care, but no set of alternatives is going to eliminate the need to increase foster care capacity.



Source: CPPP Calculations of DFPS Data

Solutions

The State's Response

As news about children sleeping in offices and hotels hit the headlines early in 2007, DFPS responded by creating an action plan to increase capacity “so that all children are quickly matched with placements that meet their individual needs.” Highlights of this action plan include:⁷

- Increasing rates for foster care payments;
- Implementing retroactive service level authorization to allow providers to be retroactively compensated under certain conditions;
- Pursuing emergency purchases for residential facilities in regions 1 and 3;
- Working with providers to examine possibilities for expanding capacity;
- Continuing the work of the Building Capacity Workgroups (comprised of staff and providers), to collect and analyze data and provide strategies to address this issue;
- Conducting 24-hour turnaround on any requests to amend or increase a facility's licensed capacity;
- Licensing staff reviewing waiver/variance requests where appropriate;
- Providing means for special purchases, daytime services, and security as well as de-escalation training for staff providing overnight care of children awaiting placement;
- Working with communities around the state to recruit foster and adoptive parents;
- Posting the profiles of children who need placements on the external website available only to providers (Extranet);
- Providing regional statistical information packets beginning in June 2007 to identify placement needs and capacity by each region;

- Authorizing a process for field staff to expedite service level changes for children;
- Working with an interagency panel, led by Health and Human Services Commission, to explore placement options with facilities operated by other state agencies⁸; and
- Adding more information regarding Child Care Licensing minimum standards on the DFPS website to educate stakeholders, providers, and the general public.

While these steps are a good start,⁹ the state still needs a long-term strategy to build capacity.

Casey Family Programs Recommendations

In one of its signature Breakthrough Series Collaboratives (BSC), Casey Family Programs studied innovative ways to increase capacity over the long term. The collaborative found that the components of a strong recruitment and retention system for resource families (foster homes) include:¹⁰

- Messaging – Public awareness must be raised about the needs of children in the public child welfare system, both in general and in specific ways;
- Engaging Resource Families During the Recruitment Process – The likelihood must be increased that families who express interest in becoming resource families will follow through with the process;
- Supporting Families and Children Through the Process and Preparing Them for Placement;
- Licensing – Qualified resource families must be licensed in a timely and supportive way;
- Providing Services and Supports for Resource Families – Resource families must have the services and supports they need to provide appropriate care for children and their families;
- Developing Relationships and Supporting Involvement with the Agency – Resource families,

youth, and birth families must be true partners with the agency;

- Involving the Community – The community must be an active partner in recruiting and supporting resource families, youth in care, and their families; and
- Staffing – Appropriate and well-trained staff throughout the agency who can recruit, support, and engage resource families, children in care, and the children’s families must be recruited and retained.

These are the critical components for any system to successfully increase the number of foster care homes.

CPPP’s Recommendations

1. Examine Whether Foster Care Rates Are Adequate

A former Texas governor often talked of our state’s “eleemosynary institutions.” Many Texans considered providing foster care to be such a charitable undertaking. Texans tend to think that money paid to foster parents for caring for children should be no more than reimbursement for costs rather than compensation for a job. A frequently expressed concern is that foster parents shouldn’t be “in it for the money.”

Texans need to reexamine this attitude. Modern life with both mom and dad working and rearing children in an urban setting is a complex enterprise. To ask families to take in abused and neglected children who have their own complex needs for cost reimbursement only is unrealistic. Texas needs to re-envision fostering as a profession that requires adequate compensation. Defining fostering as a profession doesn’t mean employing foster parents who are “in it for the money.” Rather, like teachers, foster parents should be called to work in a helping profession, but with adequate compensation.

Does Texas pay adequate compensation? The free market answer to the question is simple: Texas isn’t attracting the number of foster parents it needs; therefore, Texas isn’t

paying enough. After this observation, the analysis grows more complex.

A recent national study examined the way that states compensate foster placements and recommended a minimum adequate rate for children (MARC). Using a methodology that studied rates for particular age groups, the study found that the daily rates *for basic level children* in Texas were adequate for younger children but not for children age 13 through 18.¹¹ The study, however, considered rates only for children with basic needs and not therapeutic or habilitative needs.

In addition, the study went on to note that daily rates often fail to take into account additional costs born by foster parents, including child care expenses and transportation expenses to court or to visits with biological family members. DFPS has limited funding to pay for child care expenses, which are especially expensive for placements caring for children younger than school age.¹² Additionally, DFPS does not reimburse all child-related transportation expenses.

Effective September 1, 2007, the legislature increased rates for foster care.¹³ The state increased the rates for foster family placements by 4.3%. The state increased the rate for residential facilities by 7% and emergency shelters by 10%.¹⁴ Whether these rates will prove adequate to build capacity is an open question. We recommend further study of the adequacy of rates and whether reimbursing child care and transportation would aid in recruiting and retaining foster placements.

2. Examine Whether the Service Level System is Affecting Capacity

DFPS uses levels of service (formerly levels of care) to determine where a child should be placed. DFPS contracts with Youth for Tomorrow¹⁵ to assign each child a “level of care” based upon the child’s age, behaviors, physical and mental health, education, and home environment, among other things. Levels are designed so that children with similar needs are categorized uniformly. DFPS pays for a child’s care at a daily rate based upon the child’s level.

Daily Rate Change with Move to Service Levels

Pre-2004 Levels of Care ¹⁶	Daily Payment Rate for Level of Care in FY 2003 ¹⁷	Change When Service Level System Implemented ¹⁸	Daily Payment Rate for Service Level in FY 2004 ¹⁹
Level 1	\$20.70	Basic Service Level	\$28.39
Level 2	\$50.24	Basic Service Level	\$28.39
Level 3	\$67.59	Moderate Service Level	\$66.23
Level 4	\$87.72	Moderate Service Level (for lower LOC 4); Specialized Service Level for higher LOC 4	\$66.23/\$98.28
Level 5	\$121.55	Specialized Service Level	\$98.28
Level 6	\$209.18	Intense Service Level ²⁰	\$204.03

At present, the levels are basic, moderate, specialized, and intense. Placements are designed to provide a particular level of service. For example, some foster homes care for only basic children. Other facilities care only for children who need an intense level of service.

In 2004, DFPS collapsed the number of levels from six to four. Consequently, some children at higher levels went to lower levels. For example, level 1 and 2 children were re-categorized as Basic Service Level. For level 1 children, the reclassification resulted in a small increase in daily rates, from \$20.70 to \$28.39, but for children at level 2, it resulted in a significant decrease, from \$50.24 to \$28.39. Some providers believe that this move was primarily for cost savings. According to some providers, it leads to many children with significant needs being placed into basic homes. These needs are more than the homes can meet, which leads to multiple placement changes as the placements fail.

On its face, though, DFPS data regarding the average number of placements does not support this assertion. Since the six levels of care were compressed into four levels of service, the average number of placements for children achieving permanency has decreased. This average may be misleading, however. A separate policy change may be masking the effect of collapsing the levels.

About the same time that DFPS collapsed the levels in 2004, it also implemented a preference to move children straight to foster care rather than through an emergency shelter. DFPS took this step because a stay in an emergency shelter counts as a placement for purposes of

the federal CFSR. In 2001, the average number of placements per child in substitute care for all children who achieved permanency was 3.3 placements, one of which was frequently an emergency shelter. In 2006, the average number of placements per child in substitute care for all children who achieved permanency was 3.0 placements, but one was less likely a shelter. Without the shift in policy regarding shelter stays, the average number of placements per child would be higher, perhaps supporting the impressions of some that collapsing the levels have increased placement changes. We recommend studying whether the compression of six levels of care into four levels of service is contributing to placement disruptions and negatively affecting capacity.

3. Consider a No-Reject/No-Eject Clause in Contracts with Private Providers

No foster home or residential treatment center is obligated to take a child or to keep a child, even if it has space for them. Although an individual provider may have a valid reason for refusing to care for a child, if all providers refuse, CPS is left with no option other than keeping the child in an office or a hotel as it searches for some provider some place to take the child. In fact, the children residing in offices and hotels have not been a random group of children who happened to come into care at a moment the system was out of capacity; rather, these children were mostly teenagers with troubles such as a history of running away, juvenile delinquency, or mental health problems.

Providers turn away or turn out children for whom care would be or has become too difficult and thus too

expensive. Providers aren't under financial pressure to take any one child because demand for placements is so high that if they turn down a particular child, they will quickly have an opportunity to take another child.

As long as DFPS negotiates for care child by child, the providers will be able to refuse individual children. Instead, CPPP recommends that DFPS use its purchasing power to negotiate for a no-reject/no-eject contract provision. As part of its short-term capacity building plan, DFPS is already including a no-reject/no-eject requirement in its Request for Proposal (RFP) for emergency purchases for residential care. This effort should be carefully studied.

A no-reject/no-eject requirement should not be draconian, forcing providers to take children for whom they can't safely care. Instead, the cost of caring for difficult children, and the financial risk entailed, should be fairly spread among providers. DFPS could require that each provider must take a certain number of difficult-to-place children over a certain number of months, as long as that child's service level correlates to the service levels for which the placement is licensed. The number of children would be determined by the provider's size with larger providers taking more children. Very small providers could be exempted. Before seeking placement under the no-reject/no-eject provision, DFPS should be required to have sought placement with and been turned down by some number of other providers.

At best, however, a no-reject/no-eject provision only spreads financial risk among providers in a fair way. If that risk is so great that it overwhelms the provider network, then Texas would have no providers at all. In other words, the overarching question is whether the cost of caring for difficult children exceeds the compensation Texas is paying, leaving the state without an adequate number of providers. This question needs to be considered along with the issues of rates and levels. Texas has already recognized that it had not been compensating adequately in the case of children coming out of psychiatric care. The Legislature created a new level of service to "step down" these children from a psychiatric setting into a foster home.²¹

4. Consider More Funding for Foster/Adoptive Parent Training

The availability of foster placement training affects capacity. A recent national study found that low levels of spending on foster and adoptive parent training may cause states to lose the foster parents that they do recruit. The study also found that states spend, on average, 1.2% to 1.3% of available federal funding on foster and adoptive parent recruitment and training.²² Another national study found that approximately one-quarter of foster parents quit every year and up to half quit within one year of their first placement.²³ According to the study, DFPS spends approximately .08% to .09% percent of the available federal dollars for recruitment and retention efforts. DFPS should examine whether it should allocate more funding to foster and adoptive parent training to improve recruitment and retention. The goal of better training would be to better prepare foster parents to understand and cope with the challenges of children dealing with the aftermath of abuse and neglect.

5. Consider Whether Licensing Standards and Enforcement Are Reasonable

Child Care Licensing (CCL) is a separate and independent division of DFPS from Child Protective Services. CCL regulates and monitors foster homes. Beginning in 2005 with the passage of Senate Bill 6, the Texas Legislature mandated that CCL monitor foster homes more closely. After a spate of child deaths in foster placements over a 16-month period in 2005 and 2006, the Legislature again mandated increased monitoring in 2007.

CCL has been doing more inspections and meeting with providers more frequently. In fact, CCL has closed a number of placements in the last several years. In other cases, CCL has required a corrective action plan, meaning that children cannot be placed in those homes or facilities, even if there is space, until the corrective action has been implemented.

CCL has also promulgated new minimum standards for residential treatment centers, child-placing agencies, and emergency shelters for the first time in nearly two decades.

The standards went into effect in January 2007. Enforcement began in July 2007. The new minimum standards have been met with less than enthusiasm.

For some, the increased monitoring and new standards are too much change in too short a period. Some foster parents have chosen or are planning to leave fostering rather than change standards of operations. Other foster parents can't afford the increased costs of complying with the standards, particularly standards dealing with the minimum number of approved adults required in the home.²⁴ Some child placing agencies also report becoming pinched by the additional costs of compliance.

For example, the new standards affect the ability of child placing agencies to place habilitative children, who are children with special medical or other needs, in foster home settings. The new rules require that a home with more than two habilitative children have a 1 to 4 caregiver to child ratio (including sleeping hours). Consequently, the homes can care for fewer children. If DFPS does not recruit more habilitative homes, there will be fewer choices for children in need of habilitative care and potentially an insufficient number of placements.

Enforcement policy also affects capacity. Although CCL management reports that it has changed its policy from “see it, cite it” to “see the overall picture (STOP),” this policy change may not have trickled down to all CCL workers. Providers report that good homes are cited or closed for minor violations. Providers also report that the fear of being cited for violations after taking difficult children is part of the reason providers have been refusing placements, forcing CPS to place children in offices or hotels, which of course are totally out of compliance with standards.

On the one hand, CCL needs to be an honest regulator, promulgating appropriate standards and enforcing them

evenhandedly to protect children. On the other hand, if new standards and tougher enforcement contribute to a spiral of fewer and fewer homes, the danger to children may be increased. Further study is necessary to determine if CCL is striking the right balance.

6. Consider a Third-Party Evaluator

Given that DFPS and the providers each have a different perspective and access to different information, an independent third-party evaluation with the cooperation and participation of both DFPS and providers might be helpful.

Conclusion

To fulfill its legal responsibilities to the abused and neglected children in its care, Texas must do significantly more to build foster care capacity. Increasing capacity will require a sustained, collaborative effort of both the public and private sectors. We hope that the recommendations in this policy page are helpful.



This policy brief is underwritten in part through funding by Casey Family Programs, whose mission is to provide and improve—and ultimately to prevent the need for—foster care. Established by UPS Founder Jim Casey in 1966, the foundation provides direct services and promotes advances in child welfare practice and policy. To learn more, visit www.casey.org. The opinions expressed in this policy brief, however, are those of the Center for Public Policy Priorities and do not necessarily reflect the views of Casey Family Programs.

¹ Texas Family Code Section 153.132(1) gives a parent appointed as sole managing conservator of a child the right to designate the primary residence of the child. Once DFPS is appointed temporary managing conservator of a child by a court, DFPS has the right to designate the residence of the child.

² For information about the 2008 CFSR, see www.dfps.state.tx.us/About/State_Plan/2008_State_Plan/default.asp.

³ To see our analysis to date, review *Privatization of Foster Care and Adoption Services: An Idea Whose Time Has Come or a Disaster in the Making* (CPPP April 2007) at <http://www.cppp.org/research.php?aid=649&cid=4>.

⁴ DFPS 2006 Data Book, p. 64.

⁵ These numbers are just for foster homes and foster group homes; they do not include the much smaller number of emergency shelters and residential treatment centers.

⁶ Senate Bill 6, passed by the 79th Legislature, mandated that DFPS hire more investigative caseworkers and use measures to improve the quality of investigations. As a result of improved investigations, more children entered the foster care system during fiscal year (FY) 2006. Early reports from DFPS indicate that the number of children entering foster care in FY 2007 dipped slightly, perhaps due to the use of family group decision-making conferences, which have led to an increased number of relative placements.

⁷ See DFPS Memos *Placement/Capacity Issues*, August 13, 2007, and September 7, 2007.

⁸ These are facilities that can accept foster children and which DFPS does not regulate.

⁹ The number of children sleeping in offices or hotel rooms hit a high in May 2007, but has decreased in the following months. See DFPS Memo, *Placement/Capacity Issues*, September 7, 2007.

¹⁰ See Casey Family Programs website at <http://www.casey.org/Resources/Projects/BSC/FosterFamilies/>.

¹¹ See *Hitting the M.A.R.C. – Establishing Foster Care Minimum Adequate Rates for Children*, a joint report issued by Children’s Rights, the National Foster Parent Association, and the University of Maryland School of Social Work, October 2007.

¹² To see the cost of child care across the state, see CPPP’s Family Budget Estimator at <http://www.cppp.org/fbe/>.

¹³ For more information about how Texas uses federal funds to pay for its foster care system, including foster care payments, please see *Federal Funds for Texas CPS* at <http://www.cppp.org/files/4/Fed%20Funding%2007.pdf>.

¹⁴ See http://www.dfps.state.tx.us/about/financial_and_budget_information/rates_childcare_reimbursement.asp.

¹⁵ For more information about Youth for Tomorrow and how it works, go to www.yft.org.

¹⁶ This level of care system was in effect until September 1, 2003. Emergency care, such as in shelters, was not considered a level in the LOC Service System. Any child, at any level of care, could require emergency care at any time.

¹⁷ DFPS 2003 Data Book, p. 71.

¹⁸ See Youth for Tomorrow website at http://www.yft.org/loc_def.htm.

¹⁹ DFPS 2004 Data Book, p. 71.

²⁰ This chart does not include the new step-down placements for children who are discharged from a psychiatric hospital setting but who are temporarily unable to adequately cope in a less restrictive setting. These step-down placements will operate as an “intermediate” placement between a psychiatric and an intense or specialized level placement. Although the step-down rate went into effect on September 1, 2007, at this time there are no licensed step-down facilities.

²¹ See endnote 20.

²² *Parent Recruitment and Training: A Crucial, Neglected Child Welfare Strategy*, *ADOPTION ADVOCATE* (National Council for Adoption, No. 006, Sept. 2007).

²³ Gibbs, *Understanding foster parenting: Using administrative data to explore retention*, (for U.S. HHS) as cited in *ADOPTION ADVOCATE* (National Council for Adoption, No. 006, Sept. 2007).

²⁴ CCL recently revised the way it counts caregivers in a home. For foster family homes, all caregivers are counted in the ratio unless one of the caregivers or foster parents is routinely absent from the home for extended periods of time. Unfortunately for foster homes, the daily payment rate does not include funds for additional caregivers, so the foster parents often use their own resources to meet the required ratio.

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