



HOUSE BILL 2040, AN ACT RELATING TO ESTABLISHING A KINSHIP GUARDIAN ASSISTANCE PROGRAM

We appreciate Representative Turner authoring this important legislation to establish a kinship guardian assistance program. Relative caregivers are usually the best option for children who cannot remain with their parents. Subsidizing kinship care is one way to increase and strengthen relative placements. Last year, Congress passed and President Bush signed the Fostering Connections to Success Act, which provides new federal matching funds to support relatives who take permanent custody under certain circumstances. (Under the federal law, permanent custody is referred to as guardianship and under Texas law as conservatorship.) Representative Turner has designed House Bill 2040 to take advantage of these new federal funds. The Department of Family and Protective Services (DFPS) has included an exceptional item in its budget seeking state general revenue to fund the required state share of the costs.

Today, however, we are testifying “on” the bill rather than “for” the bill. We recommend that you study this issue over the upcoming interim. We support further study because whether and how we should take advantage of these new federal matching funds is complicated. The federal government has not yet issued regulations for the Fostering Connections to Success Act, and DFPS has not yet prepared a plan for how this program would be implemented. Adopting legislation without federal regulations and a state plan increases the chances of undesirable, unintended consequences. More important, given what we already know, subsidizing relatives raises serious policy questions that have not yet been adequately considered.

Subsidizing Relatives—How the Federal Legislation Works

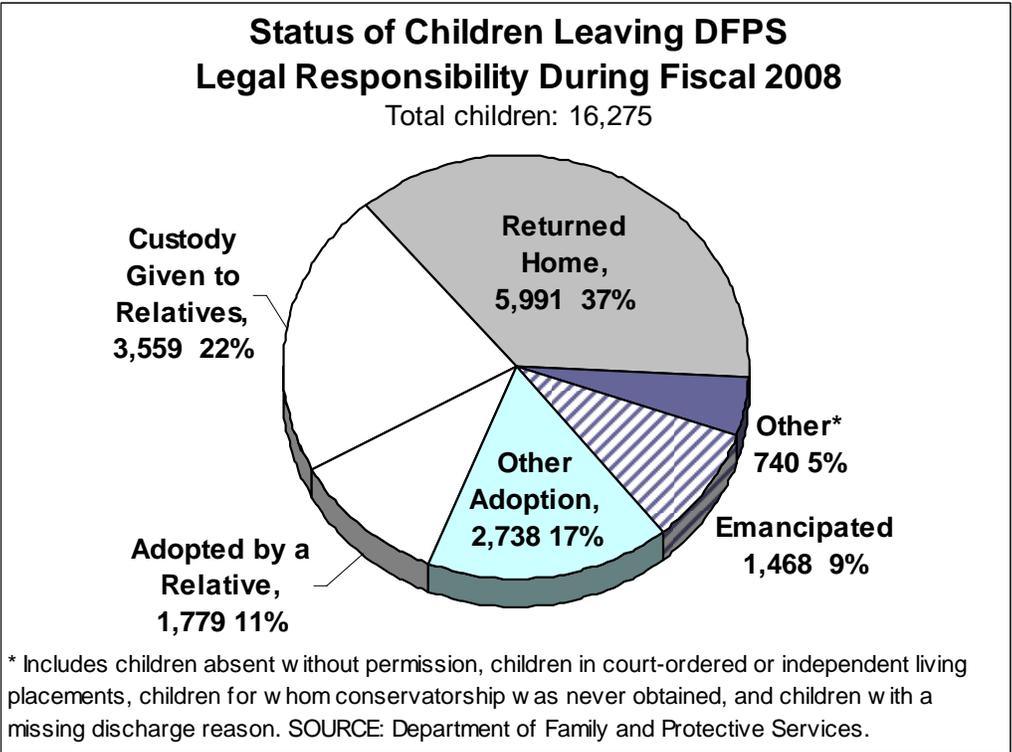
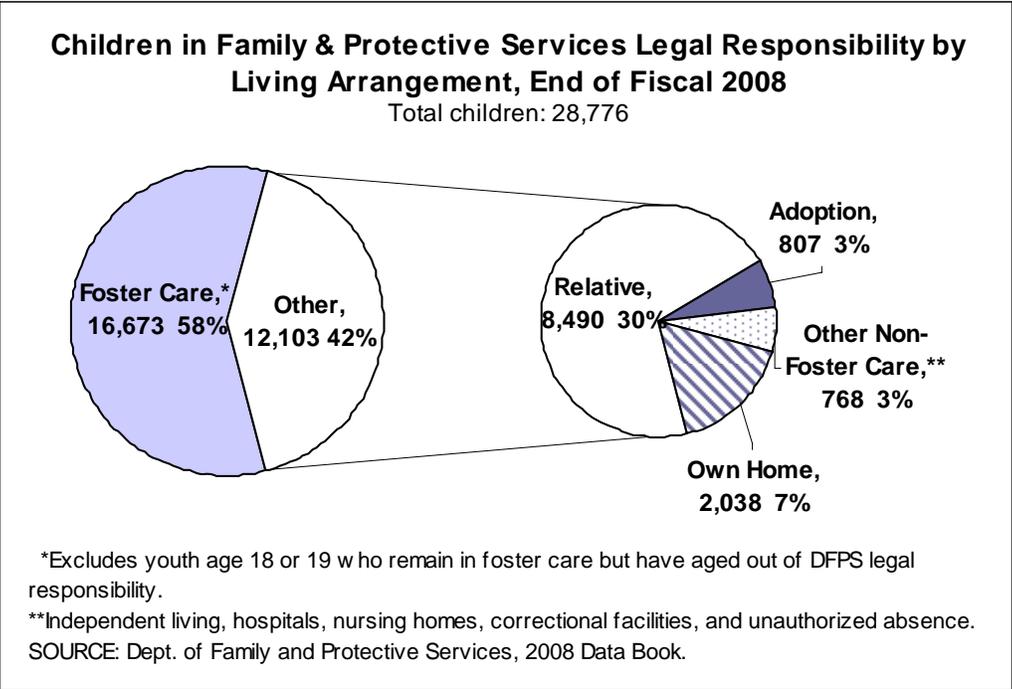
If Texas adopts a program to provide payments to relatives who become the permanent managing conservator (PMC) of children in foster care, the federal government will pay the larger share of the cost (60 percent federal and 40 percent state). The child also remains eligible for Medicaid. In cases where the child is 16 years or older at the time of the PMC, the payments can be extended until the child is up to 21 years old, and the child can still receive independent living services. To be eligible for the federal reimbursement for kinship payments, however, the relative must first be licensed as a foster parent. To make it possible for more relatives to provide licensed foster care, the state can waive non-safety licensing requirements case by case. The child must also have resided with the relative for at least 6 months prior to the PMC and during that time the child must be eligible for foster care payments. Payment to the relative cannot exceed the foster care rate. The state must also enter into a written, binding kinship agreement with the relative.

Subsidizing Relatives—Present Practice

Under federal law, relatives have always had the right to provide licensed foster care and to receive state payment for that care. In Texas, however, virtually no relatives do so for four reasons. First, many relatives do not meet licensing standards. Second, many do not want to be entangled with the state in the way you must be when you are a licensed foster home. Third, the state does not recruit relatives as foster parents, so many do not know of this opportunity. And, finally, the state does not make it easy for anybody to become a foster parent, much less relatives.

Even without being paid as a foster parent, though, many relatives care for children. In fiscal 2008, 30 percent of children in the managing conservatorship of the state lived with relatives, up from 18 percent in fiscal 2004, and 33 percent of the

children who exited care went to live permanently with relatives either through adoption or a conservatorship. Some relatives who adopt children are eligible for adoption subsidies that help pay for the children's long-term care, but others are not. Relatives who care for children while the state has temporary managing conservatorship or who commit to raising children as permanent managing conservator receive little financial support, only a one-time \$1,000 payment per sibling group, and for those under 300 percent of the federal poverty level, reimbursement of up to \$500 for three years for approved expenses.



How Texas is Different from Other States

Many states aggressively license relatives to provide foster care. This is costly for them because the relatives often end up providing foster care permanently until the child is 18. To reduce the cost, some of these states developed the kinship subsidy program paid for by state dollars. A subsidy is cheaper because the rate is less than the foster care rate and because there are no ongoing case management costs. States with state kinship programs were big backers of the new federal kinship subsidy because it brings them federal dollars to underwrite kinship subsidies.

As explained above, Texas has never had many relatives serve as licensed foster parents, even though they have a legal right to do so. We have explained some of the reasons why, but there is another significant reason: Our state has not wanted to pay the cost. With the new federal kinship subsidy, a relative foster care program becomes more affordable for Texas. Nevertheless, while Texas could better provide for abused and neglected children with a strong program of paid relative foster care and kinship subsidy, the cost is substantial.

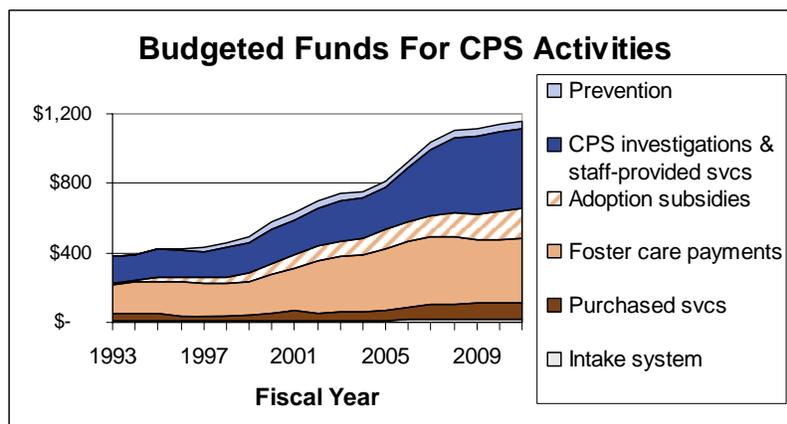
Weighing the Pros and Cons of Kinship Subsidies

There are many reasons to support kinship subsidies, including: 1) increasing the number of relatives who are able to care for children; 2) reducing the number of relative placements that break down for financial reasons; and 3) increasing the quality of relative placements. While we can't quantify these advantages today, in our judgment they are all likely outcomes. To this list, DFPS adds a fourth advantage: 4) decreasing costs.

We strongly disagree with DFPS on this critical point. In our judgment, kinship subsidies will increase costs. While this may be money well spent, it may not be the best way to spend limited state dollars. We worry that future legislatures will have less money available for prevention or investigations or family reunification because of the ever increasing cost of subsidized kinship care.

At the end of fiscal 2008, 16,673 children were in paid foster care (7,162 were in TMC and 9,511 in PMC). The state could save money if it could shift more of these children into unpaid relative care, but the state cannot save money by shifting these children into paid relative care for two reasons.

First, Texas would have to offer the subsidy to all unpaid relatives currently caring for children who are able and willing to first become foster parents. At the end of fiscal 2008, Texas had 8,450 children placed with unpaid relatives, and during fiscal 2008 another 3,559 children left the system permanently with an unpaid relative. Thus the potential pool for the subsidy is all those currently in paid foster care and all unpaid relative who could become foster parents. Second, the subsidy continues until a child turns 18 or in some cases 21. Thus, the cost of the program grows exponentially. You can see how this happens by looking at the state's adoption subsidy in the chart below. The cost was small in the beginning but has grown substantially.



How Kinship Subsidies are Different from Adoption Subsidies

But CPPP has long said that adoption subsidies save money, so why is CPPP now saying that kinship subsidies don't? First, most children who are adopted with adoption subsidies come out of paid foster care. Second, adoption subsidies are available only for hard-to-place special needs children. In contrast, kinship subsidies would mostly be in lieu of unpaid relative care instead of paid foster care, and under federal law, kinship subsidies must be available to all children, not just targeted children. On top of which, the potential kinship subsidy pool is far larger than the potential adoption subsidy pool, and kinship subsidies must begin as foster care while adoption subsidies don't. Both these factors make the cost a much bigger issue.

Why DFPS and CPPP Disagree About Cost Savings

DFPS says that provisions in the new federal law will result in many more relatives taking advantage of their legal right to become paid foster parents, and therefore any kinship subsidy would not be in lieu of unpaid relative care but in lieu of paid foster care. DFPS points to provisions in the Fostering Connections to Success Act that require the state to give written notice to relatives of their opportunity to become foster parents and to provisions that authorize DFPS to waive certain licensing standards so that more relatives can become licensed.

In our judgment, DFPS is not being realistic. Merely providing written notice to relatives of their right to become a foster parent is not going to dramatically increase the number of licensed relatives. Even with waivers, many relatives will still not meet licensing standards. Many will still not want to be entangled with the state. And finally, without aggressive outreach and streamlined processes to turn relatives into foster parents, it won't happen.

Of course, if DFPS is right, then this bill will save money, and if CPPP is right, then this bill won't cost much. So why not pass the bill? Because passing or not passing the bill will itself largely determine whether DFPS is right or CPPP is right. In other words, if you pass the bill you will have lots of relatives who become licensed foster parents. But if you don't pass the bill, you won't. By passing the bill, you create an incentive for relatives to become licensed foster parents that they don't now have. In addition, to a great extent, DFPS is in control of whether relatives become licensed through how aggressively it recruits and waives standards. If you pass the bill, you give DFPS a green light to do just that. In summary, this bill saves money only if the state aggressively and successfully turns relatives into foster parents. In our judgment, that is a policy choice, not a factual inevitability.

What is the Best Way to Spend our Next Dollar?

Our concern is that as the cost of any relative subsidy grows it will require a larger proportion of the total child protection budget, taking money perhaps better spent on other needs of children and families. If Texas had a larger revenue stream, for example, one supported by a state personal income tax, then we would excitedly recommend kinship subsidies. But given our state's structural revenue deficit, we are hesitant to recommend this program. While it may be money well spent, it may not be the best way to spend our very next dollar.

One should ask how this new program is different from the other new or expanded programs that CPPP does support, such as expansions for the Children's Health Insurance Program (CHIP). The difference is that Texas already has unpaid relative care and while paid relative care may increase the number or quality of relative placements, our child protection system may have other more important unfunded needs. CPPP remains committed to finding ways to better support relative caregivers. As set forth in our recent testimony before House Appropriations, one of our top priorities is to adequately fund the current relative caregiver payment program and to adequately fund subsidized day care for relatives. Our written testimony is available online at: <http://cphp.org/files/4/burstainCPS.pdf>. While the new federal money available under Fostering Connections represents an important opportunity for Texas, we recommend further study.

Technical Issues

If you do move this bill forward, then to strengthen the bill, we recommend that a committee substitute:

1. Redefine relative as a person within the third degree of consanguinity or affinity with the child. The definition of relative in the current bill is too broad in some respects and too narrow in others. On the one hand, you don't want to exclude important individuals who may not be related by blood. As the bill currently defines relative, for example, it excludes a child's aunt by marriage. And in many instances, there will be multiple fathers so that the paternal relative of one child won't be eligible for a subsidy if they take custody of that child's half-sibling by another father. On the other hand, you don't want to make the definition of relative so broad that anybody qualifies. Given Adam and Eve, anyone would qualify under the present definition. We also do not agree with DFPS that the bill should include what DFPS calls "fictive kin," which means exactly what it implies, non-relatives who DFPS fictionally calls kin.

2. Require the subsidy to be less than the adoption subsidy. Adoption is legally the most permanent plan for a child (besides returning home) and you want to make sure that you are not encouraging relatives who would otherwise adopt the child to now take PMC. Creating a kinship subsidy that is less than an adoption subsidy ensures that there is no disincentive to adopt.

3. Federal law uses the term "licensed" as foster parents. Texas law uses the term "verified" as foster parents. They are "verified" by either a "licensed" Child Placing Agency (a CPA, which is a private agency) or by Child Protective Services (CPS, which is a public agency and therefore called a "certified" CPA instead of a "licensed" CPA). We recommend that you refer to "licensed" foster parents but define licensed as licensed or verified under state law and regulations.

4. Take out "Section 3" relating to a waiver for implementation. No waiver is necessary and waivers are not currently available.

Respectfully submitted,

F. Scott McCown
Executive Director