

Drawing the Line between Public and
Private Responsibility in Child Welfare:
The Texas Debate



Center for Public Policy Priorities



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The Center for Public Policy Priorities is a 501(c)(3) nonpartisan, nonprofit research organization committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. We pursue our mission through independent research, policy analysis and development, public education, advocacy, coalition building, and technical assistance.

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Foreword

After the Texas Legislature adjourned in 2003 and before it convened in 2005, the Texas child welfare system went through a crisis. Throughout the state, communities were shocked by news reports of abused and neglected children, some in situations known to the state and others not. The circumstances of these children engendered three legislative reports, a report by the state comptroller, and a report by the Texas Health and Human Services Commission, ordered by the governor.

In response, in 2005, the Legislature increased funding for Child Protective Services and enacted Senate Bill 6, a major legislative change in direction. Senate Bill 6 mandated that all Child Protective Services after the investigation phase be outsourced to private providers by 2011. Between 2005 and 2007, however, implementation stalled, and in 2007, the Legislature again changed direction. Senate Bill 758 repealed the mandate to privatize, instead calling for a pilot of privatization with 5% of the cases.

The child welfare community in Texas is small, and child advocates and service providers have long worked together to improve services to children and families. The debate over privatization, however, has divided customary allies into opposing camps.

After the Legislature adjourned in 2007, CPPP decided to step back and give the question of privatization a fresh look based upon careful research and analysis. Casey Family Programs agreed to fund our study of the experiences in Kansas and Florida, the two states that have most completely privatized.

Protecting children and strengthening families is difficult, complicated work. Doing it well requires successfully engaging the entire community—both the public and private sectors. In this report, we explore the issues raised by how a state draws the line between public and private responsibility, and we make specific policy recommendations.

Regardless of the exact contours of the line between public and private, public officials, private providers, and child advocates must work together if we hope to meet the needs of Texas children and families. Our analysis and recommendations are offered in the hope of finding a way to move forward together.

F. Scott McCown
Executive Director



Executive Summary

Child Protective Services (CPS) works to keep vulnerable children safe and to strengthen at-risk families. It is a critical piece of our state's public infrastructure. A strong child protection system ensures that all children are protected from abuse and neglect, giving them the opportunity to thrive and grow into responsible and productive adults. By doing so, CPS fosters healthy families and communities, the building blocks of a vibrant society.

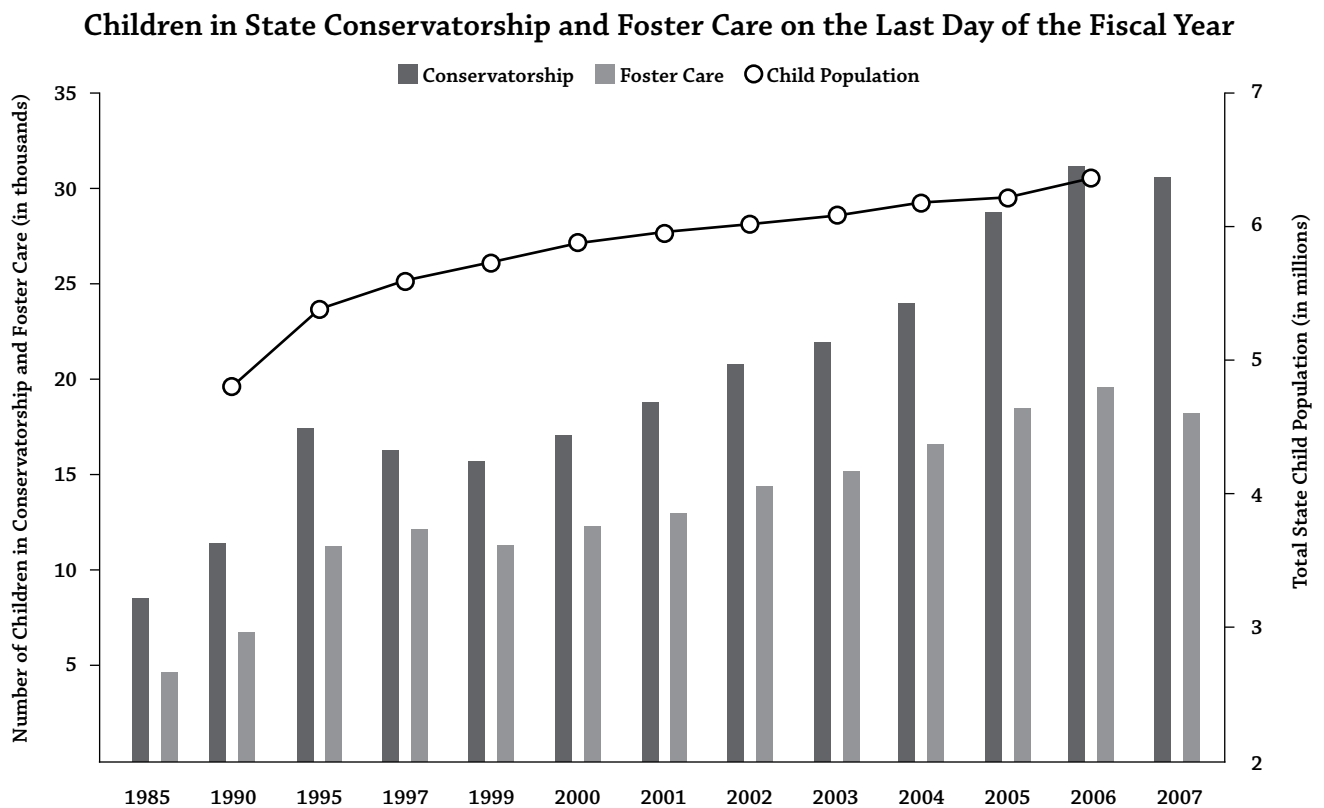
CPS can be thought of like a rescue boat patrolling the ocean for signs of families in distress. Its job is to find sinking boats and either help the family quickly plug the hole, or, if that is not possible, pull the children aboard the state's boat. The more rescue boats available to patrol the waters, the more families can be assisted and children protected.

Over the last decade, the Texas Legislature has expanded the CPS fleet. As a result, CPS has improved its investigations and made progress in achieving better outcomes for families and children. For example, in just the last two years, CPS has reduced the removal of children from their homes by 9.2%, and increased "kinship" placements—the placement of children with family members by 11.2%.¹ CPS has also worked aggressively to move more children into permanent adoptive homes; in 2006, the federal government honored Texas with the largest award among the states for increasing the number of children adopted from foster care.

Despite these successes, the challenges CPS faces appear unending. The total number of Texas children has grown rapidly over the last decade, with an increase in the number of children who are 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). This has resulted in a significant increase in the number of children coming into the state's care each year.

Even though funding for child protection has increased significantly over the last decade, CPS remains grossly underfunded. In 2004, the most recent year for which national comparisons are available, the state spent 58% less per child on child protection (prevention, services, and foster care) than the U.S. average—low enough to rank Texas 47th nationally.²

With inadequate funding, CPS struggles to both patrol the open water and tend to the children on the state's boat, juggling one crisis after another. These struggles have obscured the very good work that CPS has done over the last decade, such as increasing the use of kinship homes and speeding adoptions. These struggles have also contributed to negative public perception of the system and have undermined public confidence in the system's ability to protect vulnerable children.



Source: DFPS

Understandably, legislative frustration is high as well. Each session, the Legislature puts more money into CPS only to be told in the next session that it was not enough. In part, this is because the Legislature has taken a piecemeal approach to strengthening CPS.

Out of frustration and the desire to improve outcomes for children and families, the Legislature has searched for new models of service delivery. Leaning philosophically toward private sector solutions, and seeing experiments with the privatization of child protection in other states, the Legislature has considered outsourcing major child protection tasks to private providers. In 2005, the Legislature passed Senate Bill 6, mandating the privatization of case management and all state foster care and adoption services by 2011.

Private providers have always played a significant role in the delivery of child welfare services—both providing services to children in the state's care as well as delivering prevention services to families considered at risk. Undeniably, private providers have made important contributions to the child protection system in Texas.

Working locally, these organizations often develop relationships and coordinate community resources more effectively and rapidly than CPS.

However, the Legislature's decision to privatize so much, so fast, and to outsource the case management functions traditionally performed by public employees, caused much concern in the child welfare community. In 2007, responding to these concerns, the failed privatization efforts in other areas of Texas state government,³ and the cost of privatization, the Legislature passed Senate Bill 758, which converted the plan to privatize case management into a pilot program and dropped the plan to privatize all foster care and adoption services.

Despite these changes, privatization of child protection continues to generate significant interest and debate in Texas. Some observers argue that privatization will increase the quality and efficiency of child protective services, while others raise doubts. Still others contend that the primary question is not whether but how privatization should be accomplished. Unfortunately, much of this debate fails to

Case Management versus Care Coordination

Case management is a planning and decisionmaking function. A case manager develops a plan about how to proceed in compliance with the law and in the best interest of the children, and then pursues that plan, including prosecuting the legal case necessary to implement the plan. Subject to a judge's approval, a case manager has the final say in placement decisions, treatment decisions, and legal decisions. Case management is linked to but different from the *delivery of services* to children and families. While case management in Texas is done solely by public employees, CPS contracts with private providers to provide most services to children and families—for example, foster care for children or substance abuse treatment for parents. As part of caring for a child, a foster care network or residential treatment center will provide *care coordination* and may make care or treatment recommendations to a case manager: However, this function is distinct from *case management* in that the service provider does not have overall responsibility for planning and decisionmaking and does not prosecute the legal case.

distinguish between privatizing the primary function of government—to set policy and make decisions in applying that policy—and the secondary function of government—to provide services.

This paper focuses on this distinction. We analyze the different outcomes and risks associated with privatizing CPS case management, which is a primary function of government, and privatizing the delivery of services, a secondary function. In the latter, if done right, privatization has the potential to improve the quality of government services. In the former, however, privatization breaks the critical link between democracy and the most fundamental government decisions, putting the objective of child protection—to keep children out of harm's way—seriously at risk.

Our analysis looks particularly at the experiences of Kansas, Florida, and Texas. We recommend maintaining case management as a public function, limiting the role of private providers to the delivery of services to children and families, and exploring greater use of performance-based incentives when contracting for these services. While we support expanding the use of private providers in the provision of foster care and adoption services, we recommend that states move slowly, with adequate budgets, and always placing the needs of children and families first.

ISSUES AND RECOMMENDATIONS

Privatization is not a panacea for the problems facing our child protection system.

In states that have substantially privatized child protection, these efforts have produced mixed results, and no state has completely or even substantially eradicated problems within its system. First and foremost, privatization has failed to solve the main problems plaguing the child welfare system—high caseworker turnover, heavy case loads, and inadequate resources for services to families.

Texas' public system performs as well as or better on key child and family outcomes as privatized systems, despite spending less per child.

In 2007, we made site visits to Kansas and Florida, the two states that have privatized child protection to the greatest extent. We conducted interviews with lawyers, judges, service providers, community-based care agencies, state agency staff, and the guardians *ad litem* appointed to represent the best interests of the children in foster care. We analyzed the outcomes of these privatization efforts and found that Texas' public system continues to do as well as or better on important outcomes as the privatized systems. In Florida, although child welfare costs substantially increased, privatization did not show improvement across all outcomes for children, particularly children's safety outcomes.

Privatization makes it harder for states to set policy and respond effectively to changing needs.

States must retain enough control over the child protection "purse" to be able to shift course when needed and remain responsive to the Legislature. Above all, states should not outsource so much that they lose the expertise or flexibility to judge between policies (i.e., decide which services work

best for children and families) or to target limited public resources to the areas with the greatest need.

The claim that outsourcing creates a powerful lobby for child welfare funding should be treated with skepticism and caution.

Consider the case of Medicaid and the Children's Health Insurance Program (CHIP). Even though doctors and hospitals are powerful advocates for health care, their clout has not yielded adequate reimbursement rates in these public programs, and health advocates are involved in a perennial fight for funding. States with inadequate taxation and therefore revenue, like Texas, should be particularly wary of the claim that the more powerful the lobby, the better social services will compete against other budget priorities. When there is no money available to spend, even a powerful lobby can't produce adequate spending.

In a recent example, in April 2008, the Florida legislature asked child welfare administrators to cut tens of millions of dollars from safety-net programs for vulnerable children in response to the economic slowdown. Lawmakers are considering these cuts despite studies showing that child abuse and neglect rise during periods of economic hardship.⁴

Furthermore, to the extent that lobbying can affect budgeting, caution is warranted. Government contractors can easily become like a "military-industrial" complex that skews budget priorities in the wrong direction. Much like prisons compete with parole and probation for whatever dollars are available, foster care and adoption services compete with prevention and community services. A powerful lobby can undermine effective budgeting and the setting of appropriate policy priorities.

When expanding the use of private providers in the foster care and adoption process, states should proceed slowly, with adequate resources, always placing the needs of children and families first.

Private providers have a long history in the delivery of foster care and adoption services to children and families. They currently manage 81% of Texas foster and adoptive homes, and do 44% of adoptions, while CPS manages 18% of the foster and adoptive homes and does 56% of adoptions.⁵ To ensure that this fragile system is not damaged, adjustments in the role of the private sector must

What makes a public function inherently "governmental in nature"?

"Security contractors perform many vital functions, but in Iraq they are also undertaking roles of military significance outside the military chain of command. And that is asking for big trouble."

—*National Review Online* commenting on the Blackwater, U.S.A. investigation

Federal guidelines define "governmental in nature" as a function that is "so intimately related to the public interest as to mandate performance by government employees," and prohibit privatization of these functions because it would involve an "unacceptable transfer of official responsibility to government contractors." The use of private military contractors in Iraq offers a compelling lesson on the dangers of outsourcing an inherently governmental function.⁶

be done carefully. States must consider the capacity of private providers to expand, have a careful transition plan that limits disruptions in services to children already in the state's care, and be able to step in quickly in the event that private providers are unable to meet the terms of their contracts. States also must consider whether they have the resources to pay for privatization, which may improve the quality of services, but cost more.

A state should avoid completely dismantling its public foster care and adoption infrastructure, for several reasons. First, public units increase market competition. CPS foster and adoption services themselves compete with the cost and quality of private providers. Second, by retaining public units, the state avoids being at the mercy of private providers—if the state can't strike a deal with private providers, it can expand public capacity. Third, by being in the business of providing services, the state develops and maintains expertise that is useful in both contracting and regulating private providers.

Finally, states must also include stakeholders in the planning process both to benefit from their perspective as well as to win their support.

Case management involves the impartial application of public laws and policy to individual families and should be done by public employees supervised by public officials.

While a CPS investigator makes an initial determination of abuse or neglect, once a child comes into foster care, an ongoing case manager must continue to assess these issues, gather additional information, and prosecute the legal case to a final conclusion. As such, case management involves making decisions that affect people's rights—whether abuse has occurred, whether to take a child from a parent, and whether to place the child with a relative or in foster care. These are inherently governmental decisions that require the impartial application of public laws and policy to individual families. These decisions should be made by public employees who themselves are responsible to high-ranking public officials who are in turn accountable for their actions and legally obligated to protect the rights of citizens.

Case management functions should not be performed by private agencies with a financial conflict of interest.

Though private providers may be committed to making decisions that are in the best interest of children and families, the financial interests of private companies—whether for profit or not for profit—can and often do influence these decisions. Indeed, the very justification for privatization is that financial incentives influence behavior. Concern about the bottom line is troublesome in a system that makes fundamental decisions about families, including life and death decisions about children.

Performance-based contracting, if done right, may improve service delivery; however, it is less effective when used to improve case management.

Performance-based contracting has proven effective at improving child welfare outcomes under specific conditions: States must have the resources and expertise to craft contracts in a way that stimulates competition, be able to develop appropriate and measurable performance outcomes, and have the capacity to manage and enforce contracts.

Research has consistently shown that the most important predictor of success is the ability to articulate clear goals and outcomes. For this reason, using performance-

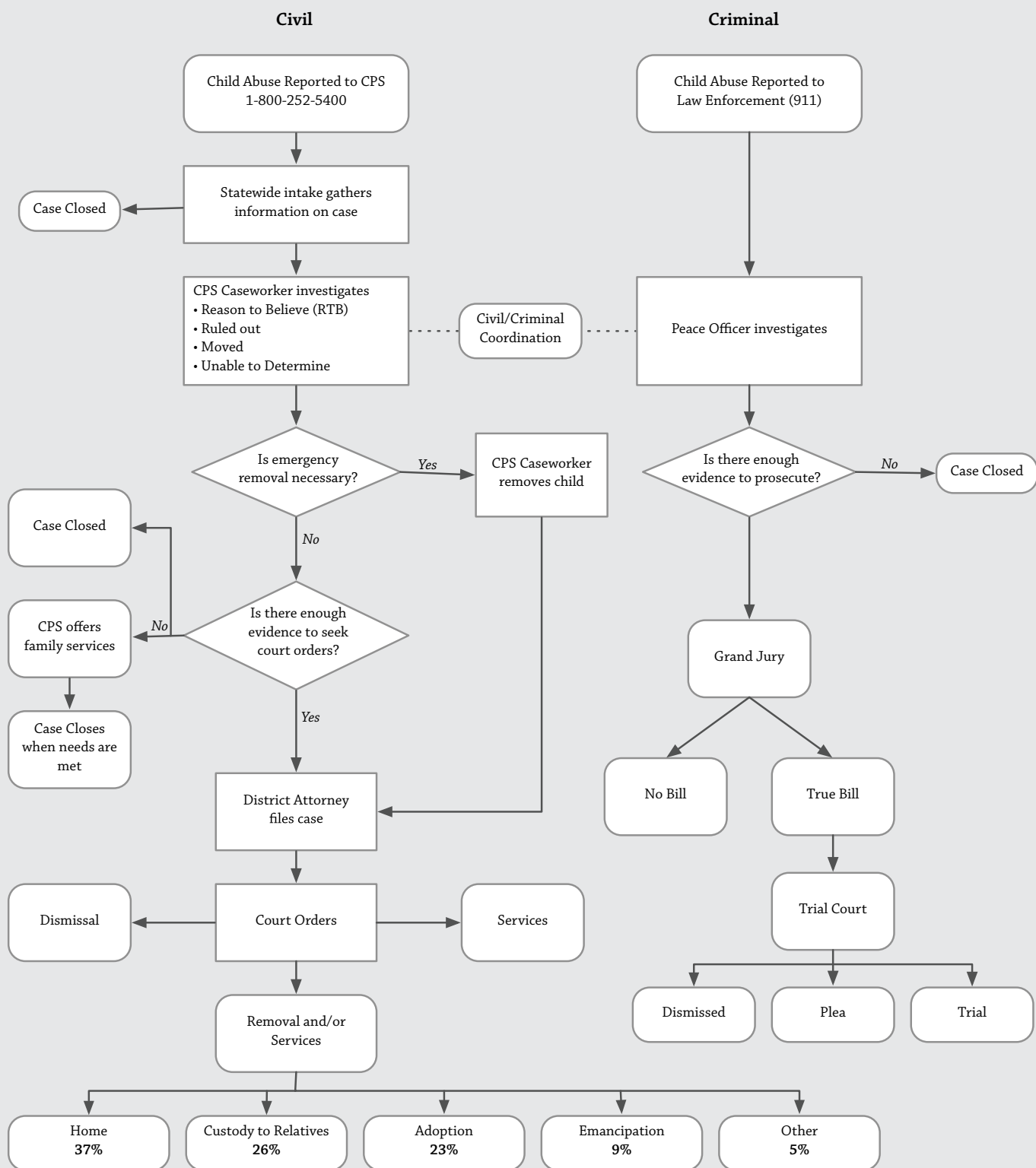
based incentives is not as effective or appropriate in case management. Case management requires workers to balance competing priorities—such as the safety of the children with the desire to keep families intact—that can result in conflicting outcome measures. If the goal is a singular good, such as increased high school graduation rates, then it can be stated and measured. If the goal requires balancing conflicting goals, then it is not easily measured. For example, asking a district attorney to have a high conviction rate is something that is easy to measure. However, it is not the same as asking a district attorney to convict the guilty and not the innocent, something that is virtually impossible to measure.

Privatization leads to the loss of Child Protective Services' greatest asset—its workforce—which undermines the long-term goal of improving CPS.

The difficulty of recruiting and training qualified staff is a major challenge facing CPS. In fiscal 2007, the average turnover rate for CPS caseworkers in Texas was 34%.⁷ High turnover affects staff performance, lowers employee morale, and reduces the quality of services to the children and families served by CPS. Given the importance of a trained and dedicated workforce, many of the recent CPS reforms have been directed at attracting and retaining high-quality staff.

Privatization will only undermine this effort. Contrary to the claims of private providers, CPS caseworkers are not likely to join the private provider workforce if their jobs are privatized. The Texas Department of Family and Protective Services (of which CPS is a division) attributes caseworker turnover to a variety of reasons, primarily the heavy workload and limited compensation. Neither of these circumstances is likely to improve in a privately run system, and could actually worsen. CPS faces trouble recruiting and retaining qualified staff now, even with the generous benefits and retirement package given to state employees: It is highly unlikely that private providers will do any better, given that they are likely to pay less and offer fewer benefits.

The Texas Child Protection System



NOTE: Data are for children who exited DFPS legal responsibility in fiscal 2006.

The Functions of the Child Welfare System

Understanding the issues raised by how the line is drawn between public and private responsibility for child welfare requires some basic familiarity with how child protection works.

Child Protective Services' (CPS) work can be divided broadly into four functions: 1) investigations; 2) case management, which includes decisionmaking, coordination, and legal casework; 3) services to children and families; and 4) foster care and adoptive home recruitment, training, and management. On the opposite page is a decision tree outlining the process CPS follows as it investigates and responds to an allegation of child maltreatment. It is easier to explain the functions by discussing them in reverse order.

Foster care and adoption services (also called substitute care services): Foster care services is recruiting, training, and supervising foster homes for children. Adoption services is recruiting and training adoptive parents, plus providing assistance to the home during the waiting period before the adoption is completed. Texas has a public and private system of foster placements, using a combination of emergency shelters, foster family homes, foster group homes, and residential care facilities. These services are often called substitute care services as they are the services provided to children when state care has been substituted for parental care.

Services to children and families: CPS uses private providers for most services to children and families, such as substance abuse treatment, parenting classes, and therapy. CPS will either ask parents to voluntarily pursue help through community resources, or CPS will seek a court order requiring parents to participate in services. If the parent cannot afford the services and no free

community services are available, CPS will offer services through private providers with whom it contracts.

Case management: Case management means the provision of case management services to a child for whom the state has been appointed temporary or permanent managing conservator. It includes placement decisions, treatment decisions, reunification decisions, and the legal court work leading to permanency for a child, including pursuing a case for termination of parental rights.

Investigations: Most commonly, someone who suspects child abuse or neglect calls the state hotline and makes a report. CPS must respond to reports of immediate danger within 24 hours and other reports within three days. A CPS investigator talks to the child, family, and others to determine if child maltreatment has occurred. The CPS investigator must also determine how to respond: 1) refer the family to community resources; 2) seek a court order for the family to participate in services; or 3) remove the child for placement with a relative or in foster care. CPS investigators make complex decisions about families, including whether children should be removed to ensure their safety. CPS investigators coordinate legal cases with the prosecutor and represent the state in court.

Research suggests that the characteristics associated with successful privatization initiatives are easier to achieve when privatizing the delivery of services and harder to do when privatizing case management, which involves making and applying policy. In the following sections, we explore this distinction between privatizing case management, which involves primary government decisionmaking, and privatizing the delivery of foster care and adoption services, a secondary function of government.



The National Context

THE ORIGINS OF CHILD WELFARE PRIVATIZATION

Nonprofit agencies have always played a role in the delivery of child welfare services. The first significant growth in government contracting for the delivery of child welfare and other social services occurred in the 1960s as a result of changes to the Social Security Act that allowed federal funding to be used to fund social services by private, nonprofit agencies. This development was part of the Great Society's War on Poverty—the federal government wanted to increase spending on mental health, health care, and social services and purchased services from nonprofits as one way to achieve that public policy goal. By the mid-1970s, what is now known as privatization had become common practice in the delivery of child and family welfare services. The enactment of the Adoption Assistance and Child Welfare Act of 1980 unleashed a second wave of privately provided child welfare services, as additional federal funding became available.⁸

During the Reagan Administration, a philosophical shift occurred at the federal level away from the public commitment to anti-poverty efforts that characterized the Great Society programs and toward individual and private sector solutions. This shift, combined with cuts in federal funding for social services, set the stage for a third wave of growth in child welfare privatization. In contrast to the growth in privatization that occurred in the 1960s and 70s, this

growth wave was motivated by the goals of government downsizing, deregulation, and cost containment.⁹

These fiscal and regulatory concerns continue to be factors in today's privatization initiatives. However, since the mid-1990s the privatization of child welfare has been increasingly focused on the purported ability of private providers to improve the quality of services and outcomes for children and families, achieve greater flexibility and opportunities for innovation, and improve the efficiency of service delivery.¹⁰

The privatization of social services in general, and of child welfare services in particular, has sparked great debate. Proponents and critics argue over the degree to which privatization can produce better outcomes for children and families, the ability of the government to reap the benefits of competition, and the appropriate role for private providers in the delivery of child welfare services. Others take the position that the important question is not whether, but how to privatize child welfare services. In this section, we summarize these basic positions.

ARGUMENTS FOR AND AGAINST PRIVATIZATION OF CHILD WELFARE

Proponents of privatization argue that private providers have the capacity to deliver higher quality, more efficient

services at a lower cost. At the heart of this argument is the belief that expanding privatization and curtailing the government's role in social service delivery is the essence of open competition and greater efficiency. Greater efficiency, in turn, leads to better quality and cost savings.

Proponents cite numerous examples of the successful delivery of social services by private providers, including alcohol and drug abuse treatment, employment and training for welfare recipients, adoption services, and housing projects. They also argue that private providers are not bogged down by bureaucracy, thus giving them greater flexibility and allowing more innovation. They portray government as an "alienating megastructure" whose role should be limited to empowering community groups to "mediate" between government and individuals.¹¹ They portray private providers as better advocates for children and families because they are local, better at building relationships, and have the trust of the community.

One of the most commonly cited reasons for outsourcing is that it will increase competition, thereby improving quality and lowering cost. However, critics argue that the very nature of child welfare makes privatization risky and inappropriate. They contend that, in many cases, "no meaningful opportunity exists to create the competition that lies at the heart of a privatized approach."¹² These limits on competition undermine the state's ability to reap the benefits of competition and achieve any cost savings.

Critics point out that no competitive market exists for case management in the child welfare system. States that decide to outsource this function are essentially buying a service that no company now sells. States would have to recruit companies into the business. These companies would have to make a huge investment to enter the market, including hiring, training, and supervising staff; investing in technology; and many other steps, creating significant start-up costs. The few companies able to respond to a contract offer would in essence assume monopoly or oligopoly market power. This may account in part for the dramatic increase in costs in those states that have privatized.

Any competition effectively ends upon the signing of a contract. Because of the cost and disruption of awarding a contract and the significant start-up costs involved in

transferring responsibilities to the contractor, contracts are likely to run for many years, eliminating any competition for long periods of time.

Because bidders lack existing capacity to offer case management services, selecting a contractor requires the state to speculate. If awarding a contract is influenced by the amount of the bid, then bidders may underestimate the cost of providing the services in order to win the contract. Later, when it is clear that the bid was too low to do the job, the state faces a difficult decision: pay the contractor more or let services suffer. Because there isn't a market with many potential contractors, the state will have no other choices. The disruption, cost, and risk of moving to a new contractor, if one were available, or rebuilding the public system leaves the state with little practical choice but to stay with the original contractor even if the company has performed poorly or is demanding a higher price.

Those skeptical about the benefits of competition also argue that "efficiency," when it is achievable, often comes at the cost of quality. For example, the more time a social worker spends with a client, generally speaking, the better the results. Privatization forces a trade-off between efficiency and quality, with the desire for cost savings undermining the goal of improving quality and outcomes. In particular, critics raise the concern that the focus on costs inevitably leads to "creaming"—providing services to the clients who are easiest to serve, and leaving the more difficult cases to the government to serve or leaving them unserved—a risk shown to be greatest when clients are vulnerable or at a high risk.

Finally, some critics of child welfare privatization have raised concerns about the impact that the "blurring of the distinction between public and private" functions has on the rights and interests of the children and families in the system.¹³ A primary concern is whether the provider's commitment to high quality will persist when faced with the prospect of diminished financial returns. Critics also raise the important question of the extent to which private agencies have legal duties to their clients.¹⁴ Some critics even question whether privatizing an inherently governmental function like case management is constitutional, given that private agencies, unlike government, are neither politically accountable nor obligated to protect citizens' rights.¹⁵

The research on privatization suggests that the key factor in predicting success is whether there is “clear accountability for results, clear criteria for performance, and clear public objectives.”¹⁶ Debate over how rather than whether to privatize generally focuses on three principles: Can the contractor be easily replaced (or, is the government able to easily intervene when things go wrong), can the tasks be easily delineated and measured, and is the result more important than the process?¹⁷ Experts emphasize the need for the state to retain enough control over the system to be able to make policy, shift course, and allocate resources to the areas with the greatest need. They also emphasize the importance of contract monitoring, oversight, and enforcement, for even a well-designed privatization effort won’t yield positive outcomes if the government does not possess the skills or spend the resources needed to hold contractors accountable for their performance.¹⁸ Unsophisticated management information systems, limited auditing capacity, and a lack of skilled contract managers—all common challenges for public welfare agencies—also have the potential to undermine meaningful accountability in the contracting for child welfare services.

CONTRACTING FOR RESULTS

Child welfare agencies are increasingly exploring the use of performance-based contracts that focus on the quality of outcomes, rather than the quality of effort. These arrangements generally involve financing arrangements that align payment with outcomes and give private providers greater flexibility and autonomy in determining how funds are used, while at the same time shifting financial risk to private agencies.

In a performance-based contract, the daily rates for care and fixed fees for services are replaced with payments that are conditioned on a provider meeting specific performance goals; typically, penalties are imposed if a provider fails to meet these standards. A performance-based model shifts some risks to the private provider, such as if more children come into care than projected, or the cost of providing the services exceeds projections. The different financing models being used across the country include capitation, capped allocations, and case rates.¹⁹

“The ... very dynamics that support successful privatization of social services may be the most difficult to achieve.”

Freundlich and Gerstenzang (2003)

Regardless of which financing option it chooses, a state must structure its rates carefully. If they are too low, children and families won’t get the help they need. If the rates are structured wrong, incentives or disincentives can negatively affect services. For example, children may be “pushed through the system” to minimize costs or avoid penalties. This could result in a child being returned home, and subsequently reabused, because of how a state contract allocates financial risk.

Performance-based contracting has proven effective at improving child welfare outcomes under specific conditions: States must have the resources and expertise to craft contracts in a way that stimulates competition, be

Financing Models²⁰

Capitation pays a fixed rate for each child in a general population—for example, in a geographic area. The financial risk is shifted from the state to the service provider. For example, if more children were removed from their homes than forecast, the service provider might lose money.

Capped allocation also pays a fixed rate per child for each child, but for a more limited population instead of for a general service population—for example, all children removed from their homes by CPS in Harris County that come into state conservatorship. The financial risk is still shifted from the state to the service provider.

Case rates pay per child but regardless of the services offered. This too shifts the risk to the service provider. For example, if a drug-abuse epidemic hit a community, resulting in drug-exposed babies with very high medical needs, the provider would have to meet those needs on a case rate set before the epidemic.

able to develop appropriate and measurable performance outcomes, and have the capacity to manage and enforce contracts. Since payment is tied to predetermined outcomes, the government must be able to define these outcomes in a realistic and meaningful way.

Several studies of social services privatization have shown that this is very difficult to do in the area of child welfare. A 1997 study by the General Accounting Office (GAO)²¹ found that state agencies lack the experience needed to develop contracts that contain specific programs results, largely because the “complexity of tasks” makes it hard to specify the scope of work. GAO pointed out that it is particularly difficult to balance the

“Crafting money consequences to go with performance is tricky business. . . . We should not implement pay for performance (or other rewards or penalty policies) before we know what good performance is.”

Marc Friedman, The Finance Project

competing priorities associated with child welfare—such as the safety of the child with the desire to keep families intact—without unintended negative consequences.²² Researchers also urge caution when using performance-based incentives in child welfare contracting, because the product—the “changes in human conditions”—is so hard to measure.²³

Child welfare agencies also provide many different services to address many different problems—often with in-

consistent objectives. This can make it difficult for states to choose which results they want to specify in their contracts.²⁴ The Alliance for Redesigning Government’s analysis of performance measurement in child welfare found that focusing on one set of goals can have negative repercussions on others. For example, an emphasis on reduced admissions into foster care can increase a child’s length of stay in care, while an emphasis on reducing the length of stay can increase reentry rates.²⁵

Federal Findings on the Use of Performance-Based Incentives²⁶

In its report to Congress on the use of performance-based incentives in child welfare contracts, the U.S. Department of Health and Human Services’ Children’s Bureau identified three major areas of concern:

- In designing performance-based contracts, which services should be targeted? How can the contract design take into account distortions that occur when one part of the system is emphasized at the expense of the other?
- How can a performance-based system be designed to increase accountability and improve performance without unintentionally punishing children and families when contractors fail to perform well?
- It can take time to measure the impact of financing changes on children and families. States need to adopt a “thoughtful, staged process” that permits assessment of the impact on children, families, and service systems.

Comparing Texas to Kansas and Florida

The privatization of child welfare services, including case management, is on the rise, with over half the states experimenting with some form of privatization. In 2003, the Child Welfare League of America identified 39 privatization initiatives in 25 states.²⁷ By 2006, the number of states experimenting with privatization had increased to 29. Kansas and Florida are the only states that have totally privatized child welfare services, and several more states are considering statewide privatization. Some states have totally privatized their child welfare systems in specific regions of the state.²⁸

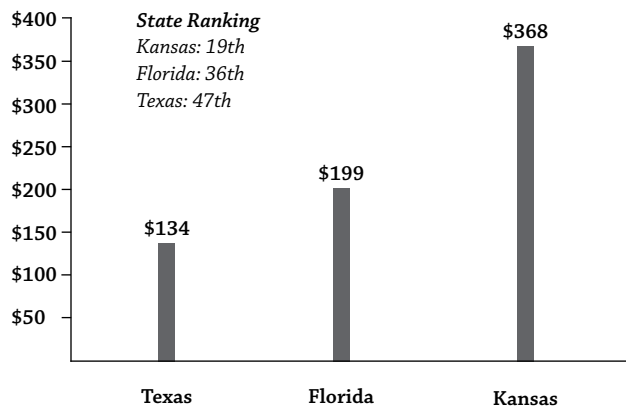
In states that have substantially privatized child protection, these efforts have produced mixed results, and no state has completely or even substantially eradicated problems within its system. First and foremost, privatization has failed to solve the main problem plaguing the child welfare system—high caseworker turnover, heavy caseloads, and inadequate resources for services to families.

According to a study by the National Quality Improvement Center on the Privatization of Child Welfare Services, 44 states are not currently privatizing case management functions or have made only limited privatization efforts. Of the 29 states that have experimented with some degree of privatization, nine states have cancelled their contracts, primarily because the private provider failed to produce the expected outcomes for children and families.²⁹

Privatization has failed to solve the main problems plaguing the child welfare system—high caseworker turnover, heavy caseloads, and inadequate resources for services to families. As a result, 9 of the 29 states that have experimented with some degree of privatization have cancelled their contracts and resumed responsibility for those functions.

In 2007, we made site visits to Florida and Kansas to evaluate their experiences with child welfare privatization. We conducted interviews with lawyers, judges, service providers, community-based care agencies, state agency staff, and the guardians *ad litem* appointed to represent the best interests of the children in foster care. We analyzed the outcomes of these privatization efforts and found that Texas' public system continues to do as well as or better on many outcomes as the privatized systems.

State Spending per Child on Child Welfare in the General Population, 2005



Source: Urban Institute's analysis of data provided by the U.S. Department of Health and Human Services.

In Florida, although child welfare costs substantially increased, outcomes for children varied across the state, particularly safety outcomes. Moreover, Texas spends significantly less per child than both states. In 2004, Texas spent 32% less per child in the general population than Florida. Kansas greatly outspent both states, spending over two and a half times more per child in the general population than Texas and 84% more than Florida.

KANSAS

Kansas' Decision to Privatize

Before privatizing, the Kansas Department of Social and Rehabilitation Services (SRS) was responsible for investigations, case management, family preservation services, and most substitute care services. The state had contracts with child placing agencies to verify foster homes, as well as some contracts to provide residential placements.

In 1989, a class action lawsuit brought by the American Civil Liberties Union (ACLU) Children's Rights Project on behalf of Kansas children initiated a push for child welfare reform.³⁰ The lawsuit claimed that the Kansas child welfare system lacked adequate placements for children entering foster care and violated Title IV-E of the Social Security Act, the federal Child Abuse Prevention and Treatment Act (CAPTA), the Federal Due Process Clause, the Kansas Code for Care of Children, and the

Summary of Kansas Findings

- A lack of data about the public system makes it difficult to compare outcomes before and after privatization.
- Privatization of Kansas' child welfare system happened too quickly with too little input from stakeholders, causing disruptions in services to children and families.
- Kansas' privatized system continues to struggle with many of the same problems that plagued its publicly run system.
- Kansas' child welfare costs have increased substantially since privatization, making it difficult to determine whether improvements in the system are attributable to privatization or simply the result of increased funding.
- Texas' public child welfare system compares favorably to Kansas' privatized system on several key outcomes, even though Texas spends significantly less overall and less per child.

Kansas Constitution. At the time, the Kansas system had several serious deficiencies, including the highest rate of recidivism in the country. Too often, children reunified with their parents after placement in foster care returned to the system.

The lawsuit was settled in 1993, mandating significant reforms, including increasing the number of foster placements. The settlement included a consent decree mandating annual reviews of SRS' performance, which the agency failed five years in a row.³¹ Frustrated, Kansas turned to privatization in the hopes that private providers could fix the problems plaguing its child welfare system and help the state comply with the lawsuit.³² The four guiding principles of Kansas' privatization effort were:

- Private providers should be required to meet clearly defined program goals,
- Quality and cost-effectiveness could be achieved through competition,
- A single case manager should oversee services to children, and
- Services should be equally available across the state.³³

The Kansas Privatization Model

Kansas privatized each component of its system incrementally over the course of three years. The state chose a lead agency model, selecting nonprofit providers to provide case management, family preservation services, adoption services, and foster care and group home care services. In 1996, family preservation services were contracted to five private agencies, and adoption services were contracted to a single statewide vendor, Lutheran Social Services. In 1997, foster care and group home care services were contracted to three agencies. As of 2007, post-investigation responsibilities have been privatized in almost all 105 counties in the state. Currently, six lead agencies have contracts covering five regions in Kansas.³⁴

Based on a managed care approach to child welfare, the three major features of the Kansas privatization model were:

- Designation of lead agencies on a regional basis for family preservation and foster care services and on a statewide basis for adoption services (later contracts amended this designation; contractors now handle the gamut of services);
- Performance-based contracting, under which private contractors would be held to certain specified performance measures; and
- Use of a case rate to cover the costs of all services needed by a child or family while being served through the family preservation, foster care, and adoption programs.³⁵

As it did before privatization, Kansas receives legal custody of the children who enter foster care, but now its only contact with children and families occurs when providing prevention services and during investigations of child abuse and neglect. Initially, the state maintained oversight of case management; however, in the most recent contracts this oversight role has been transferred to private providers. After the child abuse or neglect investigation is complete, private agencies take over. In sum, private agencies have assumed responsibility for both the delivery of services to, and the day-to-day decisions about, the children and families in their care.

Kansas made the mistake of privatizing too rapidly and without input from the key stakeholders in the child welfare system. As a result, the first round of contracts,

awarded beginning in 1996, created a chaotic environment for children, parents, service providers, and community advocates.

The state also underestimated the cost of privatization. In the first wave of contracts, Kansas established a set “capitated” fee, reimbursing its contractors between \$13,000 and \$15,000 per child receiving family preservation services, in foster care, or successfully adopted. Many experts voiced the concern that this reimbursement rate was insufficient. Kansas used “best-guess” data to structure the contracts, and guessed wrong. The providers could not afford to provide sufficient, quality services within that reimbursement rate, and one contractor, United Lutheran Youthville, was bankrupted.

Fortunately, the initial contracts were short in length, enabling Kansas to reprocure the services in 2000. At that time, the agency restructured the contracts to reimburse its vendors based on the number of children served each month. The state also revised its outcome measures and performance goals.

Analyzing the Impact of Privatization on Kansas’ Child Welfare System

Our ability to compare the outcomes achieved by Kansas’ private providers to the performance of its public system is limited, given that the state did not collect sufficient data on these measures before privatizing. (In fact, one of the commonly cited benefits of privatization in Kansas is that the state now collects better data.) Our analysis of performance in Kansas’ child welfare system over time is based on the outcome measures reviewed in the federal Child and Family Services Review (CFSR) and data collected by the state for fiscal years 2005 and 2006. We supplement these data with information gathered during a site visit in 2007, at which time we interviewed stakeholders such as lawyers, judges, service providers, community-based organizations, state agency staff, and the guardians *ad litem* appointed to represent the children in Kansas’ foster care system. Our comparison of the Kansas and Texas child welfare systems uses state agency-collected data from the most recent fiscal years available for both states.

Stakeholders’ Perspectives

The stakeholders we interviewed in Kansas expressed mixed feelings about the benefits of privatizing Kan-

sas' child welfare system. None felt that privatization had cured the major problems within the child welfare system, with more than one respondent warning that "privatization is not a panacea." Among those who voiced more concern than praise, many seemed resigned to having a privatized system, mostly because of the difficult transition and the fear that "going back" would be too disruptive. The opinions of the people we interviewed are summarized below.³⁶

The reported benefits of privatization

- **Kansas collects better data than before privatization.**
Kansas now collects data not only on safety and permanency outcomes, but also on other issues affecting children in its child welfare system, including outcomes relating to maintaining family connections, meeting educational needs, timeliness of permanency hearings, and developing appropriate permanency goals to meet the needs of children.
- **Performance-based contracting has the potential to improve outcomes.**
The use of performance-based contracting sets high standards for private contractors and provides a structure for holding providers accountable. According to one source, "benchmarks are common sense and expectations are clear." Also, contractors or outcomes may be changed or modified if the contractor does not meet performance goals.
- **Privatization has increased funding for child welfare.**
The Kansas Legislature appropriates significantly more funds for its child welfare system than before privatizing. Some attributed the increase to the influence of private providers, who can lobby for increased funding, something that state agencies are prohibited from doing.
- **Private providers work better with the community.**
Child welfare is community-based rather than state-run, which enables local providers to build stronger relationships with community partners.
- **Privatization has led to improvements in family preservation and adoptions.**
Private providers offer family preservation services 24 hours a day, seven days a week and have speeded up the pace of adoptions. Most children in out-of-home care live in family-like settings rather than residential treat-

ment centers or more restrictive placements. A high percent of stakeholders report that services under the privatized system have enhanced the ability of families to meet the needs of the children in their care.³⁷

Concerns about Kansas' privatized system

- **Caseworker turnover is high.**
Fewer SRS employees than anticipated went to work for private providers when the state privatized its child welfare system. One source reported that turnover among private provider staff is "concerning." Another stated that because they "can't keep up with the caseworker changeover, [they] don't even keep caseworker information in files anymore."
- **Services, especially in rural areas, are still inadequate.**
Privatization may have reduced the array of services because of the limited number of subcontractors. This problem is particularly acute in rural areas where the lack of providers in close proximity to families already poses serious barriers to meeting the needs of children and families in the child welfare system.
- **Pressure to reduce costs is threatening the quality of services.**
Several people expressed the concern that contractors' efforts to control costs have come at the expense of children. For example, certain providers of family services are paid the same rate by the state for all therapy services. Now, instead of using licensed therapists, the contractor uses social workers as therapists, which is insufficient to help severely abused children. Others questioned the notion that privatization had increased competition or improved quality, because so few organizations have the expertise needed to compete.
- **Privatization has added another layer to the child welfare bureaucracy, diverting money from services.**
The lead agencies have become a middle man that didn't exist in the public system. Before privatization, Kansas contracted with providers directly. Under the lead agency model, scarce dollars are diverted to pay the middle man's administrative costs.
- **The high turnover in contractors has been disruptive.**
The transitioning of contracts to new providers has caused disruptions or delays in services for children and families, who may lose therapists, counselors,

“With more major service providers competing for a limited workforce, continuity of service to the family is challenging. As a predominantly rural state, the needs for a diverse and skilled workforce must be addressed on a broader scale.”

–SRS Statewide Assessment Instrument
for Second Round CFSR

caseworkers, and foster parents in the process. In one region, at least three different providers had contracts over an 11-year period.

- **Contractors are territorial, which negatively affects services to children and families.**

When families move from one region of the state to another, they often switch contractors, which has led to disputes about payment for services between contractors. According to one source, competition among contractors hampers information-sharing about best practices that could improve child welfare services.

- **Some providers have demonstrated a lack of understanding of child welfare laws and the role of the courts.** Some sources complained that private providers often don’t understand all of the requirements of federal and state child welfare laws, in particular the standards for reasonable efforts and the importance of permanency planning.
- **Privatization has led to confusion about who is ultimately responsible for the children in the conservatorship of the state.**

Though the state retains legal custody of children in foster care, the private providers make decisions about

their care, including recommendations to the court regarding whether they should return home. The lack of clarity over who is responsible for these children has undermined outcomes for some children in the child welfare system.

The Cost of Privatization

Kansas spends significantly more on child welfare than it did before privatizing, yet has failed to achieve comparable gains in the overall performance of the system. From 1996 to 2004, the latest year for which data are available, Kansas’ overall child welfare spending increased 41% after adjusting for inflation.

Given the increase in spending, it is impossible to say whether the reported improvements in the areas of family preservation and adoptions are the result of private providers outperforming the public system in these areas, or whether the same gains could have been achieved by a better funded public system.

COMPARING TEXAS TO KANSAS USING STATE DATA

Texas and Kansas collect a wide range of data to assess the performance of their child welfare systems. We can only compare performance on those outcomes for which the same type of data are collected and measured in each state. Both states collect comparable permanency and safety outcome data for internal state evaluation purposes and because these data were required for the first round of the federal Child and Family Services Review (CFSR), authorized by Congress in 1994. In this section we compare the data gathered by Texas and Kansas in fiscal years 2005 and 2006. The data represent statewide averages for each outcome. Later, we use the results of the first-round CFSR and state data collected in preparation for the second-round CFSR to compare performance in Kansas, Florida, and Texas.

Kansas	1996	2004	Percent Increase
Total child welfare spending (in 2004 dollars)	\$182.1 million	\$257.8 million	41%
Spending per child in the general population	\$265	\$368	39%

Source: Urban Institute and U.S. Census Bureau.

The data show that Texas' public system performs as well as or better than Kansas' fully privatized system on key permanency and safety outcomes.

Permanency is defined as leaving substitute care through reunification, relative placement, or adoption—in essence, leaving the legal responsibility of the state.³⁸ One of child protection's core goals is to get children into placements that best meet their needs as quickly as possible to avoid moving them repeatedly, which is very disruptive for children. Permanency outcomes are measured by looking at the family reunification rate within 12 months of entry into foster care, the number of children with two or fewer placements who have been in care 12 months or less, and the adoption rate within 24 months of a child being removed from the home.

When comparing Texas' public system to Kansas' fully privatized system during fiscal 2005 and 2006, Texas does better than Kansas on all permanency outcomes.

Another goal of any child welfare system is preventing children from being further abused or neglected. Safety outcomes are measured by looking at the incidence of maltreatment of children in foster care, repeat maltreatment, and recidivism. Texas performed better than

Kansas in 2005 and almost as well as Kansas in 2006 on the first outcome, slightly worse on the second in 2006, and better on the third in 2005 and 2006.

FLORIDA

The Florida Privatization Model

In Florida, all post-investigation responsibilities have been privatized. The Department of Children and Family Services (DCF) retains legal custody of children who enter foster care, but its only contact with children and families occurs during investigations of child abuse and neglect and through contracting oversight of private agencies. After the child abuse or neglect investigation is complete, private agencies take over. Private agencies make all decisions regarding these children and their families and provide them with any necessary services. Florida uses the lead agency model. Eighteen lead agencies have 22 contracts covering all 67 counties in Florida.⁵⁹ Most of these lead agencies are private, community-based organizations; though two are local government agencies. Lead agencies are responsible for planning, administering, and delivering services in accordance with state and federal laws; and coordinat-

Permanency Outcome	Texas 2005	Kansas 2005	Texas 2006	Kansas 2006	Kansas Standard ³⁹
Percent of children with two or fewer placements who have been in care 12 months or less	76.2% ⁴⁰	70.4%	76.4% ⁴¹	72.5%	86.7% ⁴²
Percent of children reunified with family within 12 months of entry into foster care	63.5% ⁴³	45.1%	61.4% ⁴⁴	54%	76.2% ⁴⁵
Percent of children adopted within 24 months of removal	52.2% ⁴⁶	22.2%	53.5% ⁴⁷	29%	32% ⁴⁸

Safety Outcome	Texas 2005	Kansas 2005	Texas 2006	Kansas 2006	Kansas Standard
Percent of children in care who did not experience a confirmed incident of maltreatment while in foster care	99.4% ⁴⁹	98.2% ⁵⁰	99.2% ⁵¹	99.8%	99.4% ⁵²
Child victims with repeat maltreatment—a confirmed allegation of maltreatment within the prior six months	4.4% ⁵³	Data unavailable	4.4% ⁵⁴	3.8%	< 6.1% ⁵⁵
Percent of children reentering foster care within 12 months of discharge from a previous episode of foster care	2.1% ⁵⁶	3.5%	2.9% ⁵⁷	5.5	< 8.6% ⁵⁸

Summary of Florida Findings

- Privatization of Florida's child welfare system yielded mixed results, with improved outcomes in some areas, but deterioration in others.
- Overall, Florida's system still struggles with many of the same problems that led the state to seek privatization.
- Even though child welfare spending has increased substantially since privatization, outcomes have not substantially improved across the board.
- It is difficult to ascertain whether the limited improvements in the Florida system are attributable to privatization or simply the result of increased funding.
- The current state-run Texas child welfare system compares favorably to Florida's completely privatized system, even though Texas spends significantly less overall and less per child.

ing with other local public or private agencies that offer services for clients.⁶⁰

The objectives of Florida's privatization effort included:

- Improving the safety and well-being of children,
- Creating community ownership around child welfare issues,
- Shifting the responsibility for direct services in child welfare from DCF to newly created lead agencies,
- Creating a more integrated and comprehensive child protective service system, and
- Gaining the flexibility to manage available resources.⁶¹

DCF developed the following outcome measures to evaluate its contractors' performance: 1) Serving a greater number of children, 2) moving children to permanency more quickly, 3) ensuring greater stability in out-of-home placements, and 4) guaranteeing low occurrences of reabuse and reentry into the system.

A Word About the Data

Our analysis of Florida's system before and after privatization compares data from fiscal year 1999 with the

most recent fiscal year available.⁶² For comparison of the Florida and Texas child welfare systems, our analysis uses data from the most recent fiscal years available for both states. We note any discrepancies in the states' data in an accompanying reference note.

Performance on Key Outcome Measures Related to the Safety and Well-being of Children

Some of Florida's lead agencies have performed better on certain outcome measures than Florida's public system.⁶³ Overall, however, privatization has produced mixed results—both when assessing the state average for all lead agencies as well as when looking at individual lead agency performance. In fiscal 2006, no lead agency performed at or above the state average across all safety and permanency outcomes.⁶⁴ Half of the lead agencies performed at or above the state average across permanency indicators, and only 30% performed at or above the state average across safety indicators.⁶⁵

Permanency for Florida children has improved, but the rates of reentry and reabuse have increased.

The percentage of Florida children exiting foster care within 12 months has increased. In fiscal 1999, only 30% of those who entered foster care exited within twelve months. In comparison, 54% of Florida children who entered foster care during fiscal 2004 exited within a 12-month period.⁶⁶ Further, the percentage of children remaining in foster care longer than 12 months decreased from 76% in fiscal 1999 to 61% in fiscal 2005,⁶⁷

“The Sarasota YMCA runs the best-funded foster care program in the state and has been heralded as a pioneer in the state. But state records show the YMCA still struggles with some of the same problems that caused Florida to privatize its foster care in the first place.”

—“YMCA-run foster care struggling,”
Sarasota Herald-Tribune, June 25, 2006

and the number of children adopted from foster care increased from 4.72% to 8.75%.⁶⁸

The percentage of Florida children who were reunified with their families within 12 months of removal also increased, from 44% in fiscal 1999 to 70% in fiscal 2005. However, this was below the state goal of 76%.⁶⁹

Unfortunately, while children exited care more quickly, a higher percentage of children experienced reabuse and reentered foster care after family reunification.⁷⁰ During the transition to statewide privatization, there was a gradual increase in the percentage of children who experienced reabuse within six months of a previous abuse report. Since 2000, private providers have failed to reach the statewide goal that 7% or less of children experience reabuse; the percentage of children reabused reached 11% in fiscal 2005.⁷¹

Private providers also haven't met the statewide goal that no more than 9% of children reenter foster care. Only two of 16 lead agencies met the statewide goal of 9% in fiscal 2004.⁷² Of children reunified in fiscal 2004, 12% subsequently reentered foster care within a 12-month period.⁷³ In fiscal 2005, children in the case management of three lead agencies reentered foster care at rates of 16% and 17% in fiscal 2005.⁷⁴ In fiscal 2006, 12.4% of children, on average, reentered foster care within a 12-month period.⁷⁵

One study conducted over 2005-2006 found that children who were reunified were four times more likely to reenter foster care than children who were discharged from out-of-home care for other reasons, such as relative placement and adoption.⁷⁶ Some attribute this phenomenon to reuniting families too quickly. Another possibility is that families may not have received sufficient services to resolve the problems that led to foster care placement, in particular substance abuse problems.

Some evaluations of Florida's lead agencies identify other reasons. One study found a correlation between reentry and the number of counties served by the lead agency; the more counties in the lead agency's service area, the greater the likelihood that children reentered foster care.⁷⁷ The level of lead agency funding was also associated with outcomes for children—lower expenditures per child increased the likelihood of reentry and decreased

the chance that children receiving out-of-home services would leave out-of-home care.⁷⁸ A recent evaluation of lead agencies found that those that were more successful at reducing the length of stay in out-of-home care also had higher rates of reentry.⁷⁹

Foster care capacity has improved, but children still move around a lot.

Though the number of foster care "beds" has increased with privatization, and fewer foster homes are over capacity,⁸⁰ this may be the result of increased funding rather than an outcome of privatization (we discuss the funding variable in more detail below). At the same time, the stability of Florida foster care placements has declined since the transition to private providers. One of child protection's core goals is to have children in placements that best meet their needs as quickly as possible to avoid moving them repeatedly. Since 2000, the percentage of children with three or more placements within the first 12 months has more than doubled.⁸¹ In fiscal 2006, the average percentage of children statewide with three or more placements within the first 12 months was 18.8%.⁸²

Caseworker Turnover Remains High

Although the caseloads of child welfare workers in Florida are limited by the Legislature, caseworker salaries and workloads vary statewide. The lead agencies in Florida's privatized system offer lower caseworker starting salaries than other entry-level professional positions, and the benefits are not as comprehensive.⁸³ Depending on the lead agency, caseloads for fiscal 2005 ranged from 16 to 38, with a statewide average of 24 children per caseworker.⁸⁴

Turnover and vacancy rates for Florida caseworkers remain high. Although the statewide average for vacancy rates was 9% during fiscal 2005, some lead agencies had vacancy rates as high as 22%.⁸⁵ Most notably, the statewide average turnover rate in fiscal 2005 was 31%—with some lead agencies experiencing turnover rates as high as 63%.⁸⁶ In 2005, lead agency starting salaries for caseworkers were almost always lower than those of the state.⁸⁷

Contract Oversight is Inadequate

As Florida transitioned to a privatized child welfare system, DCF shifted its role from service provider to service purchaser. As a result, its oversight responsibilities increased. By December 2005, the 20 lead agencies under

Florida ⁹¹	1999	2006	Percent Increase
Total child welfare spending (in 2006 dollars)	\$536.0 million	\$1,009.7 million	88%
Number of children and youth served	45,150	46,833	3.7%

contract with DCF had 500 subcontracts, including 64 subcontracts with case management organizations.⁸⁸ The Florida child welfare system became highly decentralized, with each of the 20 lead agencies operating a “mini-agency” within its region.

Even though DCF no longer handles the cases, it still has legal responsibility for children in its foster care system. Because of this responsibility, it must oversee the handling of these cases. DCF has faced numerous challenges in monitoring contracts with private providers. According to one 2006 study, even seven years after the transition to a privately run system, the “department continues to lack sufficient processes and systems to effectively oversee the community-based system.”⁸⁹

Even more troubling, DCF continues to give *more* oversight responsibility to its lead agencies, despite having determined that many lead agencies have not adequately met their current monitoring responsibilities. The study warned that “transferring additional oversight duties to these entities will increase risks unless [DCF] ensures that the lead agencies have the capability and willingness to fully meet this responsibility.”⁹⁰

Improved Outcomes May be the Result of Increased Funding

Florida’s child welfare spending increased significantly during its transition to a privatized system. After adjusting for inflation, spending increased 88% between fiscal 1999 and fiscal 2006, although the number of children and youth served increased only 4%.

This raises the question of whether the improvements that have occurred in certain outcomes is the result of private providers outperforming the public system in these areas, or whether outcomes would have improved in a better funded public system. Given that Florida’s privatized system has not substantially improved its child welfare outcomes across the board, one thing is clear—privatization has cost Florida more to do very much the same thing as its public system was doing.

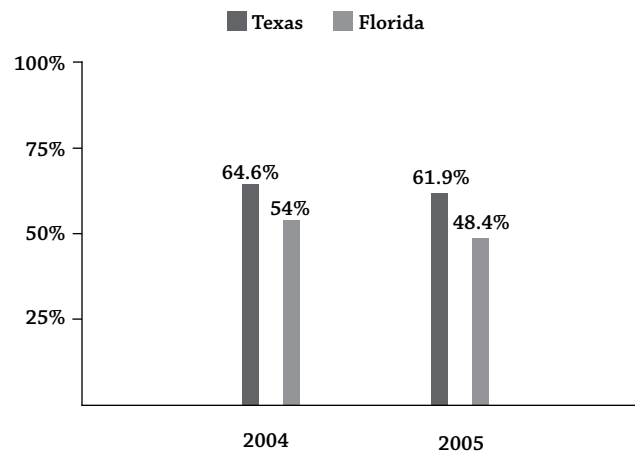
A COMPARISON OF TEXAS AND FLORIDA USING STATE DATA

Like Texas and Kansas, Florida collects a wide range of data to assess the performance of its child welfare system. We can only compare performance on those outcomes for which the same type of data are collected by the states. Both Florida and Texas collect comparable permanency and safety outcome data for internal state evaluation purposes and because these data were required for the first round of the federal Child and Family Services Review (CFSR). In this section we compare statewide data gathered by Texas and Florida in fiscal years 2004, 2005, 2006, and 2007. Later, we use the results of the first-round CFSR and state data collected in preparation for the second-round CFSR to compare performance in Kansas, Florida, and Texas.

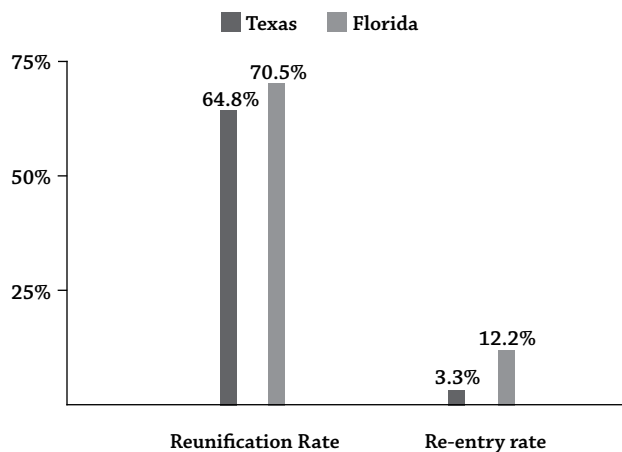
Texas’ public system performs better than Florida’s fully privatized system on several key permanency and placement outcomes.

When comparing Texas’s public system to Florida’s fully privatized system, Texas compares favorably to Florida in both permanency and placement outcomes. Permanency outcomes are measured by looking at the family reunification rate, the reabuse rate, and the adoption rate within 12 months of a child being removed from the

Percentage of Foster Children Exiting Care Within 12 Months



Reunification Rate and 12-Month Re-Entry Rate Post-Reunification, FY 2007



home. Placement outcomes are measured by looking at the number of placements in a 12-month period.⁹²

- Texas had a higher percentage of children exiting foster care⁹³ within 12 months than Florida in both fiscal 2004 and fiscal 2005.⁹⁴
- The percentage of Florida children remaining in foster care longer than 12 months was 61% in fiscal 2005, compared to 50.2% in Texas during the same period.⁹⁵
- Though Florida had a higher reunification rate, meaning the percentage of children who returned home within 12 months of removal, in both fiscal 2005 and 2006, Texas was more successful at reunifying families, meaning that Texas had a lower percentage of children returning to care within 12 months of reunification. In fiscal 2007, 70.5% of Florida children and 64.8% of Texas children who returned home were reunified with their families within 12 months.⁹⁶ Although a higher percentage of Florida children than Texas children who returned home did so within one year during fiscal 2007, Florida had a higher percentage of children who reentered care within 12 months of reunification—12.2% vs. Texas’ 3.3%.⁹⁷
- In fiscal 2005 and fiscal 2006, Texas had a lower percentage of children reabused within six months of a prior referral—4.4% compared to 11% in Florida⁹⁹ In fiscal 2007, this figure dropped to 4.0% in Texas.¹⁰⁰
- Texas also had a higher rate of adoption in fiscal 2004—13.1% compared to 8.8% in Florida.¹⁰¹

- The percentage of Texas children with no more than two placements within twelve months of removal was 76.2% in fiscal 2005 and 76.4% in fiscal 2006.¹⁰² In Florida, the percentage was 81.2% in both years.¹⁰³ In Texas, this rose to 77.3% during fiscal 2007;¹⁰⁴ it dropped to 80.3% in Florida.¹⁰⁵

THE CHILD AND FAMILY SERVICES REVIEW—HOW DO THE STATES COMPARE?

The Children’s Bureau of the U.S. Department of Health and Human Services developed the Child and Family Services Review (CFSR) to set standards for state child welfare agencies and to ensure that state practices conform to federal child welfare requirements. These standards include specific outcome measures in the areas of safety, permanency, and child well-being as well as the systemic factors (“critical systems”) that affect those outcomes.

The Children’s Bureau conducts the CFSR at regular intervals to assess the performance of state child welfare agencies, track outcomes for children and families in each state, and assist states in enhancing their capacity to improve outcomes for children and families in the child welfare system. The CFSR uses data from 1) an assessment conducted by the state’s child welfare agency, 2) the State Data Profile prepared by the Children’s Bureau, 3) reviews of a pre-determined number of cases from three counties in the state, and 4) interviews or focus groups with state and local stakeholders to evaluate processes and outcomes for children and families in the child welfare system.

Results from the First Child and Family Services Review

The Children’s Bureau conducted the first round of CFSR reviews in Kansas and Florida in 2001, after Kansas had completed its transition to a privatized system and midway through Florida’s privatization. Texas completed its first round in 2002. No state was in “substantial conformity” with all CFSR outcomes, which means that no state passed the first-round CFSR. Our comparison of the states’ performance during the first-round CFSR is based on the final reports prepared for each state by the Children’s Bureau.

Comparison of Critical Systems

During the first CFSR, the Children’s Bureau reviewed seven critical systems (both internal and external) that

CFSR National Indicators of Child Welfare Outcomes:**Systemic Factors—First-Round CFSR¹⁰⁶**

	Florida	Kansas	Texas
Statewide Information System	✓	✓	✓
Case Review System		✓	✓
Quality Assurance System	✓	✓	✓
Child Welfare Staff and Foster & Adoptive Parent Training	✓		✓
Array of Services		✓	✓
Agency Responsive to the Community	✓	✓	✓
Foster & Adoptive Parent Recruitment/ Retention	✓	✓	✓
Total	5	6	7

Note: A ✓ indicates that the system was rated as “substantially conforming” to federal requirements.

affect child welfare outcomes. Compared to Kansas and Florida, Texas better adhered to federal standards by having more critical systems in place.

Conformance with National Child Welfare Outcomes

The first round CFSR included seven outcome measures in the areas of safety, permanency, and child well-being. Texas and Kansas achieved substantial conformity with two of the outcomes, while Florida met one.¹⁰⁷

Results from the Second CFSR

The Children’s Bureau made numerous changes to the second-round CFSR based on lessons learned during the first round and in response to feedback from the child welfare community. As a result of these changes, a state’s performance in the second round of the CFSR is not directly comparable to its performance in the first round,

particularly with regard to comparisons of percentages.

At publication of this report, only 14 states had completed the second-round CFSR, and only eight had received a final report. Of the three states included in this report, Kansas is the only state to have completed its second-round review and received a final report. Therefore, it is impossible to compare performance across these states until the Children’s Bureau has issued the final reports for Florida and Texas. It is worth noting, however, that of the eight states that have received a final report, none had passed the CFSR. To pass the CFSR, a state must be in substantial conformity with all child welfare outcomes and systemic factors.

The final results from Kansas’ review are mixed. Kansas substantially conformed to four of the seven systemic

First-Round CFSR: State Conformance with National Child Welfare Outcomes

Outcome	Texas	Florida	Kansas
Safety 1: Children are, first and foremost, protected from abuse and neglect			
Safety 2: Children are safely maintained in their homes whenever possible and appropriate	✓		✓
Permanency 1: Children have permanency and stability in their living situations			
Permanency 2: The Continuity of Family Relationships and Connections is Preserved for Children	✓	✓	
Well-Being 1: Families Have Enhanced Capacity to Provide for their Children’s Needs			
Well-Being 2: Children Receive Appropriate Services to Meet their Educational Needs			✓
Well-Being 3: Children Received Adequate Services to Meet their Physical and Mental Health Needs			
Total Outcomes in Substantial Conformity	2	1	2

Note: A ✓ indicates that the state met the national standard for that outcome.

factors, but did not achieve substantial conformity with any of the seven child welfare outcomes. However, the Children's Bureau did commend the state for its performance in the following areas:

- The absence of maltreatment recurrence and the absence of maltreatment of children in foster care,
- Permanency for children in foster care for extended time periods,
- Children are first and foremost protected from abuse and neglect,
- Children receive services to meet their educational needs, and
- The continuity of family relationships and connections is preserved.

But, the CFSR also identified the following areas in which improvements are needed in Kansas to achieve better outcomes for children and families:

- Failure to consistently provide children with permanency and stability in their living situations,
- Poor timeliness and permanency of reunification,
- Poor timeliness of adoption, and
- A lack of placement stability.

These results suggest that, even years after privatization, Kansas is still coping with the problems facing all the states.

CONCLUSION

As our comparison of child welfare outcomes in Kansas and Florida with Texas demonstrates, privatization has not led to better overall performance or universally improved outcomes for children and families in Kansas' and Florida's child welfare systems. Privatization has also cost more money and created additional layers of bureaucracy. Though both Kansas and Florida have improved outcomes for children and families in certain areas, given the increased spending under privatization it is possible that a better funded public system might have made the same—or potentially greater—gains. The data simply do not support a case for child welfare privatization. Yet, in the legislative debates in Texas in 2005, the available data were given almost no attention. In the next section, we discuss the privatization debate in Texas in 2005 and 2007 and where Texas stands now.

Texas Context

TEXAS' CHILD WELFARE SYSTEM

Texas' child welfare system is almost a \$1 billion annual operation. In fiscal 2007, Texas' Child Protective Services (CPS) division employed 7,046 staff and served over 407,100 children, including almost 29,000 children in substitute care.¹⁰⁸

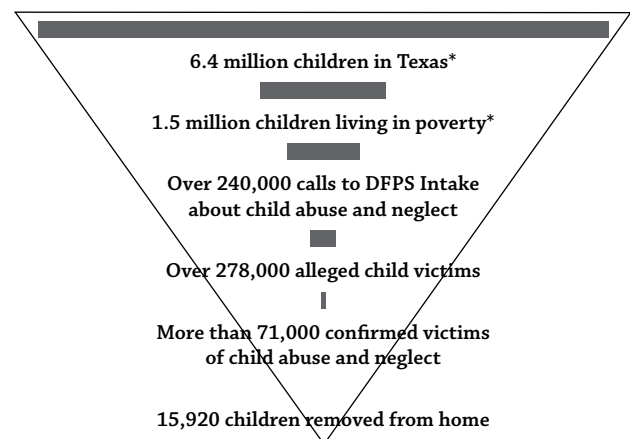
Despite having a model law and regulatory framework, Texas has always faced numerous challenges in its child protection system. Some of these challenges are inevitable. Throughout history, beliefs about the state's responsibility to protect children have bumped up against commonly held ideas about parental rights. Competing views on when the state has the right to intervene can make it difficult to achieve consensus or to strike the right balance in policy decisions. This also affects public perceptions about how well or poorly a state administers its child protection system: when a child is removed from the home, somebody will always cry foul; when a child is harmed by a parent, agency inaction is criticized.

External factors are also responsible for the difficulties states face in ensuring good outcomes for the children in their care. To a great extent, what happens to children and families in the system is not solely a function of CPS. Abused and neglected children generally require a wide range of services, such as mental health counseling,

which require extensive coordination across agencies and in communities to ensure good outcomes.

The lack of public resources for child protection is the greatest problem facing the system, undermining Texas' efforts to improve outcomes for children and families. The effects of underfunding are reflected throughout the child protection system. Workloads for front-end staff are still among the highest in the nation—in fact, more than twice the national average.¹⁰⁹ Caseworker turnover is high, foster homes and residential treatment centers are too few, and resources are inadequate to serve families.

Texas Child Protection System, 2007



*Estimated

Even though funding for child protection has increased significantly over the last decade, CPS remains grossly underfunded compared to other states. In 2004, the most recent year for which national comparisons are available, the state spent \$837 million on child protection (prevention, services, and foster care), for an average of \$134 per Texas child. This is 58% lower than the U.S. average of \$319 per child—low enough to rank Texas 47th nationally. In fiscal 2007, Texas spent \$978 million on child protection.¹¹⁰

CPS Staff Costs Fiscal 2007

CPS Staff Costs	\$376.5 million
Total Staff (Full-Time Equivalents)	7,046.2
Direct Delivery Total Staff	6,631.3
Caseworkers	
Investigation	1,664.4
Family-Based Safety Services	540.8
Conservatorship	1,173.5
Other Workers	355.7
Supervisors	754.0
Program Directors/Administrators	114.4
Clerical	801.7
Other Direct Delivery Staff	619.6

Fiscal 2007 Other Expenditures

Total:	\$601.8 million
Purchased Services	\$85.0 million
Counseling/Evaluation/Testing	
Homemaker Services	
Parent/Community Groups	
Post-Adoption Services Program	
Day Care Services	
Foster Care Payments	\$388.6 million
Adoption Subsidy Payments	\$125.6 million
Federally Funded Special Projects	\$2.6 million

RECENT STEPS TO STRENGTHEN CPS

In 2005, the Legislature responded to a sharp increase in child abuse-related deaths by adding roughly \$250 million over two years to CPS investigations. Senate Bill 6 mandated that the Texas Department of Family and Protective Services hire more investigative caseworkers and take steps to improve the quality of investigations,

CPS Adoption Award

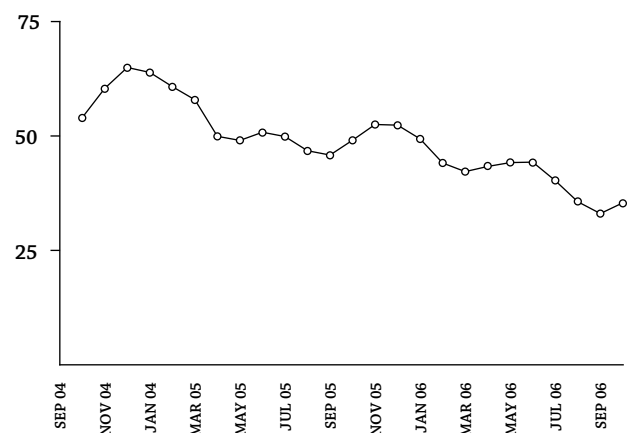
Last year, the U.S. Department of Health and Human Services awarded Texas \$4.1 million for increasing the number of children adopted from foster care. Texas earned a higher award than any other state.

provide training and additional resources to caseworkers, and strengthen links to law enforcement. Senate Bill 6 also included provisions related to improving medical care for foster children, expanding kinship care, services for youth transitioning out of foster care, and prevention and early intervention services. As a result, CPS improved its investigations, lowered the caseloads of investigators, and made progress towards better addressing the immediate problems of children and families.

A spate of child deaths in foster homes after the passage of Senate Bill 6 prompted the Legislature to enact reforms in 2007 designed to improve outcomes for children *after* they were removed from their homes. Again, the Legislature increased funding for CPS with a renewed emphasis on foster care.

Though these funding increases and reforms have helped, CPS still struggles. To truly make a difference in the lives of children, the state must better fund child

Texas CPS Average Daily Investigation Caseload September 2004 - September 2006



Source: DFPS

protection. Texas still ranks below the national average in spending per child for child protection, and our caseloads remain among the highest in the nation. For example, while the caseloads of investigators have dropped from the mid-70s to the mid-20s, national best-practice standards call for investigative caseloads between 12 and 15 per caseworker.

PRIVATIZING CHILD PROTECTION IN TEXAS

In 2005, Senate Bill 6 included a plan to privatize, directing the Texas Department of Family and Protective Services (DFPS) 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. Texas did not consider privatizing investigations, and private agencies have not asked to take over investigations.

Senate Bill 6 required an independent administrator rather than a lead agency. Most states that have privatized use a lead agency model. The essential difference between an independent administrator and a lead agency is that a lead agency both administers the contract and provides services, using subcontracts to provide those services the lead agency does not offer. An independent administrator, on the other hand, is like a general contractor who provides no services, but rather selects and works through subcontractors.

The state chose Region 8, which includes San Antonio, to begin privatization. DFPS released a Request for Proposals (RFP) for an independent administrator. Two proposals were submitted in response to the RFP. At that point, however, due to various difficulties, DFPS suspended the process to await further legislative guidance.

Between 2005 and 2007, Texas experienced one of the biggest privatization disasters in the state's history. In 2005, the Texas Health and Human Services Commission awarded an \$899 million contract to Accenture to take over development, operation, and partial

staffing of a new system for enrolling families in public benefits.¹¹¹ The new system was marked by technical difficulties, staffing problems, and backlogs in application processing. Tens of thousands of needy families were wrongly denied benefits in just the first four months of a two-county pilot. Despite the promise of more than half a billion dollars in savings, Texas didn't save a penny in administrative costs, and was forced to hire 1,000 state staff to prevent further disruptions in services to clients. In March 2007, the state cancelled the contract.

It was in the midst of this debacle that the Legislature revisited privatization of Child Protective Services. The decision in 2005 to privatize so much, so fast, and to outsource the case management functions traditionally performed by public employees had sparked much debate. Then, several child deaths and injuries in private foster care networks and the difficulties encountered in contracting for an Independent Administrator led to increased skepticism about the wisdom and affordability of privatization, prompting the Legislature in 2007 to pass Senate Bill 758, scaling back CPS privatization considerably.

Senate Bill 758 dropped the plan to privatize all substitute care services, instead directing DFPS to develop a CPS improvement plan focused on increasing foster care capacity, with a continued emphasis on kinship care; improving the monitoring of placements; and providing more services for youth in care and those transitioning out of foster care. Senate Bill 758 also mandated that DFPS test the concept of privatizing case management in a pilot involving 5% of the CPS conservatorship caseload statewide, either by focusing on certain geographical areas or certain child populations. This is a prudent approach that will give future Legislatures the opportunity to evaluate the pilot and decide whether privatizing case management is advantageous.

In the next section, we discuss the issues related to privatizing foster care and adoption services; then in the following section, we discuss the issues related to privatizing case management.



Privatizing Foster Care and Adoption Services

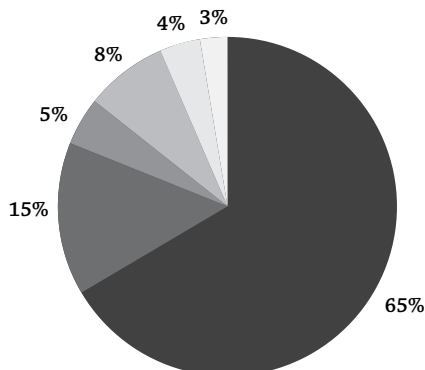
When a state outsources substitute care services, it contracts for recruiting, training, and monitoring foster and adoptive homes and completing adoptions. While we support the plan in Texas to evaluate expanding the involvement of private providers in the provision of foster care and adoption services, we recommend that states move slowly, with adequate budgets, and always placing the needs of children and families first. This section discusses the impact that rapid privatization of substitute care would have on children and families in the child protection system, the cost of privatization, and the importance of retaining a qualified state workforce.¹¹²

TEXAS' SUBSTITUTE CARE SYSTEM: A PUBLIC AND PRIVATE PARTNERSHIP

Texas has a public and private system of foster care placements, which includes a combination of emergency shelters, foster family homes, foster group homes, and residential care facilities. Child Protective Services (CPS) contracts with private agencies to care for roughly 80% of the children in foster care, including most emergency shelters and residential care facilities. CPS operates foster homes to care for the other 20% of the children. CPS has Foster and Adoption Units that recruit, train,

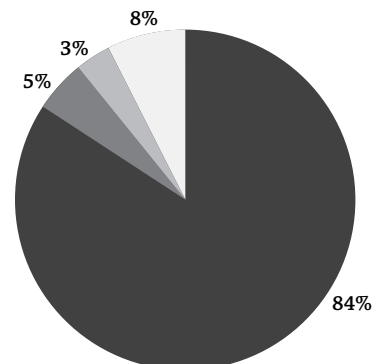
Children in State-Paid Foster Care

■ CPA Foster Homes ■ DFPS Foster Homes ■ Basic Child Care
■ Residential Treatment Centers ■ Emergency Shelters
■ Other Types of Foster Care



Children in Substitute Care

■ Kinship Care ■ CPA Adoptive Homes ■ DFPS Adoptive Homes
■ Other Substitute Care



Source: DFPS

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 that provide foster care. CPS also contracts with private agencies to provide adoption services, while maintaining CPS adoption units that also provide these services.

THE IMPACT OF RAPID PRIVATIZATION ON TEXAS' CAPACITY CRISIS

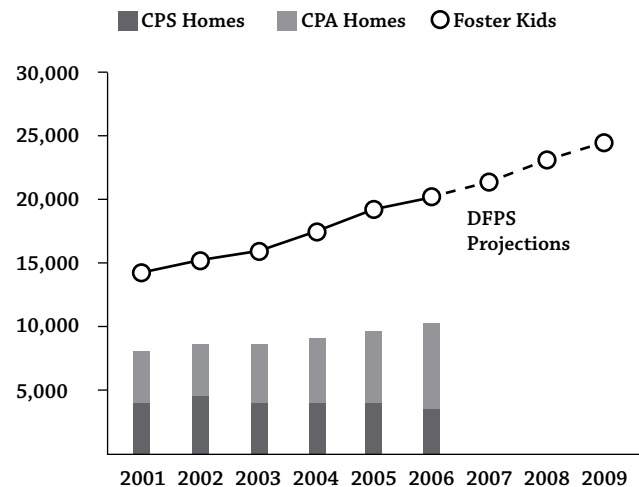
From 2001 to 2006, the number of children entering foster care increased by 45.3%. During the same time period, the number of foster homes grew only 26.4%, leading to crowded homes and inappropriate placements. Texas' capacity problem isn't new, but the growth in the problem is alarming. The very uncertainty about whether the Legislature wants CPS to build capacity or wants it to privatize foster care has stalled CPS' efforts to build capacity, exacerbating the crisis. An analysis of this crisis with recommendations for capacity building is the subject of another CPPP policy paper.¹¹³ In this paper, we only examine the impact that privatization would have on our capacity crisis.

Private providers cannot build needed capacity at the basic rate

CPA and CPS homes serve different populations. CPS homes tend to be "basic" foster family homes, which provide foster care for children who function at a relatively high level. In contrast, CPA homes tend to be specialized, providing therapeutic foster care to children who have greater medical and behavioral challenges. Historically, CPAs have been less willing to provide basic foster care because the rate does not cover costs.

Cost studies show that basic and moderate rates cover about 80% of a CPA's cost, while specialized and intense rates cover closer to 100% of a CPA's cost.¹¹⁴ If the state were successful in transitioning all its basic homes to CPAs, it would either be a massive cost shift to private providers, or the state would have to substantially increase rates. Even though private providers do provide some basic care now, it is unrealistic to think that private providers could or would sustain such a large cost shift.

Foster Capacity Crisis



Source: DFPS

Asking private providers to care for thousands of more children at 80% of cost may well result in private providers pushing children to higher levels of care. While some might express indignation at such a suggestion, ironically, the entire premise of privatization is that the state can structure financial incentives to improve performance. Conversely, of course, the state can structure financial incentives that diminish performance. Not only does this cost the state more, it hurts children, particularly by diminishing their prospects for adoption because they have been labeled more troubled.

Rapid privatization would make our adoption capacity crisis worse

Because of policy changes at the federal and state level, CPS has worked aggressively to move more children into permanent adoptive homes. One of its tactics has been to encourage foster parents to adopt. Consequently, even as CPS has added new homes, its total number of foster homes has dwindled as foster parents adopt and leave the system. This accounts in part for the declining number of CPS homes noted in the graph above.

Even with this effort, Texas has an adoption capacity crisis. In 2007, over 5,800 children were available for adoption, but had no adoptive placement.¹¹⁵ Children are not waiting for lack of effort. The number of adoptions has grown each year, but it has not kept pace with the growth in the number of children available for adoption. Just as with foster care, rapid privatization will exacer-

Service Level	Daily Rate to Child Placing Agency	Minimum to Foster Family
Basic	\$38.59	\$21.44
Moderate	\$70.22	\$37.52
Specialized	\$93.54	\$48.24
Intense	\$171.53	\$85.76

Source: DFPS 24-Hour Residential Child Care Rates, FY 2008-2009

bate this capacity crisis, as the state dismantles its public workforce. The impact will be very significant because CPS does far more adoptions than private providers do. In fiscal 2007, CPS did 56.4% of all adoptions (2,267), while private providers did only 43.6% (1,756).¹¹⁶

MITIGATING THE RISKS

CPS' core mission is safety and permanency for each child. Providing a strong network of foster and adoptive parents has always been a major CPS function. Any attempt to privatize these functions must be undertaken with care to avoid disruptions in care for children and the loss of valuable expertise for CPS.

Indeed, a major disadvantage to rapid privatization is that it would cause terrible disruptions to children. If a CPS foster home is unable or unwilling to transfer to a private provider, a child will lose his or her home. Even if foster parents are willing to move from CPS to private providers, private providers will have different managers, therapists, and doctors, disrupting the continuity of care to children. A mandate to privatize within a set period of time would have tragic consequences for children.

Privatization also disrupts the CPS workforce. During the transition to a privatized system, instead of recruiting and training new homes, the state workforce will be

looking and leaving for new jobs. The state experienced this same sort of disruption when it tried to privatize eligibility determination and enrollment for public benefits. There is even less margin for error in CPS where children's lives are at stake.

The state can mitigate these risks with careful planning, adequate funding, and realistic timelines. First and foremost, the state must consider the capacity of private providers to expand. The next step is to develop a staged transition plan that limits disruptions in services to children already in the state's care and preserves the state's ability to intervene in the event that private providers are unable to meet the terms of their contracts. A pilot approach also would enable the state to determine which financial incentives produce the best outcomes.

The state must also do a thorough cost-benefit analysis to determine whether privatization is worth it, and whether the Legislature will commit the resources to pay for it. Privatization may well improve the quality of services, but cost more. Regardless of whether privatization costs more or less, the Legislature must be willing to fund the surge in the workforce that will be necessary to build foster care capacity in preparation for privatization. Finally, states must also include stakeholders in the planning process—lack of support from the judiciary or other advocates involved in the child protection system will undermine the work done by the private providers.



Privatizing Case Management

The privatization of case management means turning over both the day-to-day and long-term decisionmaking regarding children and their families to private entities. For example, a private entity would speak for the state on whether 1) a child should be placed with a relative, 2) a child should be returned to a parent, 3) the parents' parental rights should be terminated, or 4) a child should remain in foster care until aging out of the child protection system. In other words, it involves outsourcing critical decisions about the lives of children and parents to private companies.

Outsourcing case management decisions is entirely different from outsourcing the delivery of services to children and families once they are in the system or even the coordination of those services. Take for example, the provision of family-based supportive services. Private providers in Texas do or have the potential to do this extremely well because they often work in and have ties to the community. Private providers also make decisions about the type of services being provided to a child or family, which is called "care coordination." However, providing this kind of service or making this kind of decision is very different from making a decision that affects a family's legal rights, such as whether to return a child home after abuse has occurred. When providing a service, if done right, privatization has the potential

to improve outcomes. With case management, however, privatization breaks the critical link between state responsibility and child protection.

HOW DOES CASE MANAGEMENT WORK NOW?

After a CPS investigator conducts an investigation, one of three things happens: CPS closes the case, works with the family informally, or takes the family to court. CPS takes the family to court: 1) If it determines that a court order is needed to ensure that the family participates in services; or 2) to obtain a court order to remove a child from the home to ensure safety. If the case moves beyond the investigation stage, a CPS caseworker takes over from the CPS investigator. This caseworker refers the family to community services or to CPS-contracted services. The caseworker monitors progress and makes decisions about the case. If CPS takes a case to court, this caseworker makes recommendations to the court pursuant to state policy.

WHAT DOES IT MEAN TO PRIVATIZE CASE MANAGEMENT?

In 2004, the Texas Health and Human Services Commission (HHSC) recommended that the state outsource some, but not all, case management services to the private sector. When CPS determines that it will work with

the family without removing the child (whether it does so informally or through a court order), HHSC recommended that CPS retain this work. Once a judge places a child in the legal conservatorship (custody) of the state, however, HHSC proposed that the state contract with a private entity to serve as an “independent administrator” (IA) to provide case management, including taking over the legal case, providing services to the family, and caring for the child. The IA would operate under a “performance-based contract,” meaning that the contract would have certain performance standards such as X% of children reunited with their families within Y days.

An independent administrator would have functioned just like CPS. The IA would have contracted with a subcontractor or several subcontractors to 1) place the child in a home, 2) provide services to the child, and 3) provide services to the family. The independent administrator would have made decisions regarding the future of the child, including whether to recommend to the court that the child be adopted or placed with relatives or returned to a parent. The IA would have had caseworkers (like CPS caseworkers) who would have used contracts (like CPS caseworkers use contracts) to obtain services from other private providers. Those private providers would also have had “case managers” who would have overseen whatever it was the private provider was to do, for example, placement services or family services. The IA would not have been allowed to provide services because of the conflict of interest between making decisions and making money from those decisions.

This plan raised a host of issues and concerns: 1) It required the state to abdicate its legal authority and control over placement decisions; 2) it was difficult, if not impossible, to measure performance, because there were no agreed-to norms *in the aggregate*; 3) it would have created conflicts of interest and strained limited resources; 4) it would have reduced the ability of the state to set policy priorities and target resources to the areas in greatest need; and 5) it would have led to the loss of Child Protective Services’ greatest asset—its workforce.

ABDICATING CONTROL

Senate Bill 6 prohibited the state from doing case management and assigned this authority to a private Child

Placing Agency (CPA) selected by an independent administrator (IA).¹¹⁷ At the same time, the state assured the public and the Legislature that the Department of Family and Protective Services (DFPS) would “continue to manage the overall service plan for the child and family and make recommendations to the court.” This apparent contradiction raised two questions. How would DFPS retain control over the decisions made by the private contractor regarding a child in the care of the state? Would private providers have a *voice* in decisionmaking, or would they be *assuming responsibility* for legal decisions?

Such questions are particularly troublesome in a system that makes fundamental decisions about families, including life and death decisions about children. The final decision to terminate a parent’s rights and place a child for adoption should be made by a public employee who is both politically accountable for his actions and legally obligated to protect the rights of citizens. Case management involves making decisions that affect people’s rights—whether abuse has occurred, whether to take a child from a parent, or whether to place the child with a relative or in foster care. These are inherently governmental decisions that require the impartial application of public laws and policy to individual families. These decisions should be made by public officials who are responsible to the public and subject to legislative and executive branch control.¹¹⁸

By its express terms, Senate Bill 6 preserved the state’s legal rights against third persons such as parents, but it gave contractors total control over the case management decisions affecting children and families. Though the state would be able to “indirectly” affect how case management was done through contract requirements and licensing regulations, it would relinquish its authority to make actual decisions in individual cases. In essence, private providers would be empowered by the state but not controlled by the state.

However, contracting and licensing controls offer inadequate protections in individual cases. For one, failing to do what is best for an individual child and family does not necessarily rise to the level of a contract violation. Moreover, Senate Bill 6 prohibited the state from doing case management in individual cases; thus, any assessment of contract performance would be in the aggregate, not on an individual child or family basis. Though the

Defining Case Management

In every case, to achieve a good outcome, there must be one person responsible for planning and processing the case to make sure that the case moves forward and that the outcome is in the best interest of the child(ren). This job goes under the name “case management,” but it is composed of many tasks, which broadly include:

- The development and revision of the case plan;
- Oversight of the coordination and monitoring of services needed by the child and family; and
- Prosecuting the legal case, including preparing court reports, attending judicial hearings and permanency hearings, testifying about the permanency plan for the child, and ensuring that the child is progressing toward permanency within state and federal mandates.

Case management is distinct from the care coordination role played by service providers, such as a residential treatment center, in which the provider coordinates and monitors the services being provided to a child or family but does not have any legal or decisionmaking authority over what ultimately happens to that child or family.

state might be able to increase its control over providers through licensing, licensing relates to violations of law and regulations, not to case management decisions about what is best for an individual child and family.

Senate Bill 6 also did not provide the resources for contract monitoring or licensing enforcement that were necessary for the state to oversee privatized case management. In a system where the case management function is public, there are two layers of administration (state and contractors/subcontractors). A privatized system, in contrast, has three (state, independent administrator, contractors/subcontractors). Even with privatization, the state must maintain oversight of each case and monitor contract performance and outcomes. Across the country, in those states that have privatized, public sector ad-

ministrative costs continue to grow for this very reason. Even if Texas had allocated enough additional funds for contract oversight and licensing (which it did not), this is not the best use of the limited pot of money available for child protection, especially when privatization has not consistently improved child and family outcomes.¹¹⁹ In other states that have privatized, private agencies struggle with the same issues that public agencies do such as obtaining adequate services, reducing caseloads, and reducing turnover. This raises the question of whether additional funding alone would be enough to produce better child welfare outcomes.

CONFLICT OF INTEREST

Privatizing case management creates a conflict of interest. Though private providers may be committed to making decisions that are in the best interest of children and families, the financial interests of private companies—whether for profit or not for profit—will inevitably conflict with what is best for an individual family, leading to decisions that a public entity would not have made.

Senate Bill 6 recognized this “conflict of interest” by proposing an independent administrator (IA) who could not provide direct services. While an independent administrator model might minimize the conflict, it does not resolve the conflict. The IA would have no caseworkers of its own. Indeed, under Senate Bill 6, the IA could not do

Children in the foster care system deserve an advocate who can look out for their interests without regard for the bottom line of their employer. As one teenage foster youth explained, “I feel like the people in charge of your house work for the [foster] parents, and CPS caseworkers work for us.”

Tonya, teenage foster youth, speaking at the CPPP Texas Youth and Alumni Leadership Summit, Austin, Texas, November 10-12, 2006

case management. Only the Child Placing Agency with care of the child could do case management.

Moreover, the IA model is not well thought out. It defeats one of the primary goals of privatization, which is supposedly to better coordinate case management. More important, such an approach invites disaster. For example, consider a hypothetical case with a mother and three children. The oldest child needs residential treatment. The middle child needs a basic foster home. The youngest child is a drug-addicted newborn who needs a habilitative home. Assume no one agency has all three homes, which is the most likely scenario. Consequently, three different agencies take the children. In addition, the mother needs drug treatment. Plus, a father about to get out of prison needs parenting classes and job training. Who does the case management for this family?

The independent administrator does not do the case management. It only selects the agency that will pick the actual placements. If all three agencies are going to do their own case management, then disagreement about the best course of action for the family will invariably result. One agency may argue that the children should go home; another agency may argue they should be united in the basic foster home; the third agency may advocate for adoption. Or, each agency could propose a different plan for each child. What about the mother and the father? Are the agencies with care of the children really the best able to determine the services needed by the mother and father, or assess whether the parents have made satisfactory progress for the children to go home?

Private providers have suggested that privatization of case management means that one agency with one caseworker who best knows the children will be in charge of making appropriate placements and moving the case to a rapid conclusion. In reality, as the hypothetical case above illustrates, no one person, indeed, no one agency will be providing all services. If case management is privatized, services will still be provided by multiple agencies employing multiple people. Inevitably, under either a public or private system, a single point person must coordinate services, process information, and make decisions.

However it works, private providers have an inherent conflict of interest when it comes to case management. They earn money under a payment system of incentives, disin-

centives, and risk-shifting that may lead them even unconsciously to make decisions that are not in the best interest of a particular child or family. They may also be guided by a mission that is in conflict with the best interest of a particular child or family, such as being philosophically opposed to residential treatment or family reunification. Nonprofits are no different. Setting aside the question of whether nonprofit providers have the capacity or access to capital to undertake case management privatization, nonprofits may also have a mission that conflicts with the goals established by the state.¹²⁰ Moreover, they are not immune from financial or program abuses, as the state has learned through its experience with charter schools.

MEASURING PERFORMANCE

Supporters of privatization in Texas claim that children would move through the system faster if providers operated under performance-based contracts awarded through competitive bids instead of open enrollment contracts. Of course, nothing prevents the state from using performance-based contracts or competitive bidding in a public case management system. These are not advantages that flow from outsourcing case management but from writing performance-based contracts and using competitive bidding. Further, as explained above, privatization may actually decrease accountability and performance if the state does not provide individual case oversight or adequately monitor contracts and subcontracts.

The more important question, however, is whether performance-based incentives are even appropriate in the area of case management. Under privatized case management, the state must define the performance standards that private providers have to meet. As noted above, states must be able to articulate clear goals and outcomes in order to evaluate success. However, this is both difficult and risky to do with case management decisions. For one, the goals are difficult to state and measure. Case management decisions require workers to balance competing priorities—such as the safety of the child with the desire to keep families intact—that can result in conflicting outcome measures, or the targeting of certain services or children at the expense of others. If the goal is a singular good, such as increased high school graduation rates, then it can be stated and measured. If the goal requires balancing conflicting goals, then it is difficult to state and

The focus on kinship care and CPS' success with family-group decisionmaking helped increase relative placements by 30% between 2005 and 2007.

measure. For example, asking a district attorney to have a high conviction rate is something that is easy to measure. However, it is not the same as asking a district attorney to convict the guilty and not the innocent, something that is virtually impossible to measure.

In case management, there are no agreed-to norms regarding what is best for children and families *in the aggregate*. To decide which goals are most desirable, the state would need to make an essentially arbitrary choice about which results are the “best” results and which services are more important than others. For example, what percentage of children should be returned to the home after being removed due to child abuse? Is relative care better than a foster home? While it is possible to make these judgments in an *individual* family's case, the state can't know what is *best* or *achievable* in the aggregate, because there are no existing outcomes measures or data to support this assessment.

Finally, it is very difficult to allocate risk in a manner that increases accountability and improves performance without unintentionally punishing children and families when contractors fail to perform well. For example, if a particular area of the state is hit with a methamphetamine epidemic, leading to a sudden rise in the number of high-need infants needing specialized foster care, then the contractor must respond by putting more of its resources into that area—or let those babies suffer. If the contractor does respond, and fails to meet performance targets as a result, the contractor loses money. At that point, all of the children needing services in the area suffer.

SETTING POLICY PRIORITIES
AND TARGETING RESOURCES

Proponents of privatization argue that private providers are more flexible, innovative, and responsive to local

needs. At the same time, privatization makes it harder for the states to judge different policies (i.e., decide which services work best for fragile children and families) or target limited public resources to the areas with the greatest need. Privatization also diminishes the state's responsiveness to the democratic process and the will of the Legislature. In part, this is because privatization ties up limited public funds in contracts, making it hard for the state to change course or reallocate its resources. It is also because the state loses expertise when it privatizes. For example, in 2005 the Legislature told DFPS to focus more of its efforts on family group decisionmaking. The state responded, increasing the number of kinship placements dramatically in a short period of time. This might not have been possible in a privatized system, if the terms of the contract dictated a different approach or the state did not have the expertise to make the change.

Privatization adds a “filter” between the democratic process and decisionmaking that impedes a state's ability to set policy priorities. Contractors are independent entities. They have missions, priorities, and interests outside of the goals established in their contracts. They are responsible to their boards of directors and—in the case of a for-profit corporation—their shareholders. Their own interests may conflict with the policies determined by the state to be the best way to produce good outcomes for clients.

For example, an effort to increase adoptions might be resisted by providers, because it could mean losing a foster home, which is an important business asset. Or, a private provider may push to keep a child in a foster home because the foster parents want to adopt and the private agency is paid for every adoption consummated, even though the biological parents have reduced the risk of abuse and neglect and it is in the child's best interest to be reunified with the parents. In a worst-case scenario, the contractor might use its influence to lobby not for those policies or services proven to be in the best interest of children, but for those that offer the greatest benefit to the company.

In sum, privatization leads to a loss of control over the details. States must retain enough control over the child protection “purse” to be able to shift course when needed and remain responsive to the democratic process and the Legislature.



Next Steps for Texas

CONTINUING DEBATE

Texas has long relied upon private providers for essential child welfare services and will continue to do so. In the future, the state will probably seek more performance-based contracts. As the state pushes to hold private providers more accountable for performance, private providers will in turn push for more authority. Some private providers seek an increased role in child welfare regardless of the nature of contracting. Undoubtedly, the state will continue to search for the optimal way to draw the line between public and private responsibility.

We know that privatization is more likely to succeed when:

- The state and providers are able to agree to clearly articulated goals and objectives;
- The state provides sufficient funding to achieve these goals;
- Contracts include specific, measurable outcomes and other performance criteria; and
- The state has the capacity to monitor progress toward meeting these goals.

We know that privatization is more likely to fail when:

- There are insufficient resources to achieve the expected outcomes;
- Financial models do not take into account actual costs;
- The state has limited capacity to monitor and evaluate contractor performance;

- There is confusion over the roles and responsibilities of public and private agencies;
- There is difficulty building new capacity;
- Outcomes are poorly defined or are simply the wrong ones;
- There is difficulty recruiting and training staff;
- There is a lack of understanding of legal issues; and
- There has been limited stakeholder involvement.¹²¹

Given what we know about privatization, where do we go from here?

FOSTER AND ADOPTION SERVICES

At the time Senate Bill 758 was adopted in 2007, it was clear that Texas needed more foster and adoptive homes and needed to complete adoptions more quickly. Since the end of the legislative session, the state's need for more homes has become even more urgent.¹²² The core work presently done by private providers is foster and adoption services, and private providers can play an important role in building capacity.

While Senate Bill 758 reverses the mandate to outsource all foster and adoption services, it does require the Department of Family and Protective Services (DFPS) to conduct a needs assessment and use private providers when doing so will improve services to children and

families. DFPS has contracted for a needs assessment that will be completed shortly.¹²³ Based upon that needs assessment, DFPS should ask private providers through a Request for Information how they would build capacity in a way that would improve services.

The major barrier to private providers building new capacity is financial. Currently through the state's open enrollment contracting system, private providers are reimbursed on a daily rate as capacity is used. This presents two problems. First, the state does not allow advance funding for private providers to increase their capacity. Second, the daily rate does not provide for private providers to recoup the investment required to build capacity. Once the state has determined its capacity needs, it should develop a plan to contract with providers to build specific capacity and to either provide some development funding or guarantee payment for utilization or both.

CASE MANAGEMENT

Senate Bill 758 tasks the Texas Department of Family and Protective Services (DFPS) with developing a pilot project for outsourcing case management in 5% of cases.¹²⁴ The legislation was designed to maximize the Legislature's control over the experiment, strengthen the state's bargaining position, and enable the state to maintain its public workforce while evaluating the effectiveness of privatized case management. This approach will allow the state to resolve the many difficult legal and practical questions discussed in this paper before deciding whether to proceed with statewide outsourcing of case management.¹²⁵

However, the Legislature did not appropriate any funds for the pilot. Consequently, DFPS has announced that it will use the time until the 2009 legislative session for planning. The first step is to seek suggestions from stakeholders and others about how to proceed. Then, DFPS plans to draft a proposal for contracting for case management. That proposal would be presented to the Legislature in January 2009.¹²⁶

As far as it goes, DFPS has laid out a good way to proceed. We recommend, however, that the process be more clearly divided into two parts. First, DFPS should release a general Request For Information that would allow

providers across the state to suggest plans for outsourcing 5% of the cases, including their rationale for serving either certain geographical areas or certain child populations. After evaluating the providers' ideas, DFPS should ask for specific Requests For Proposals (RFP) for its preferred approach.

This RFP should be based upon the services needed and the outcomes desired. The RFP that DFPS developed to begin outsourcing in Region 8 under Senate Bill 6 was highly prescriptive. In other words, the RFP required specific processes. The value of performance-based contracting, however, is that it focuses on outcomes, not processes, allowing for flexibility and innovation.

In any outsourcing project, what will be done by the public agency and what will be done by the private provider must be clear. Senate Bill 758 carefully delineates the role of each, defining case management, but distinguishing it from conservatorship services. DFPS will continue to provide conservatorship services, which includes "services provided directly by the department that the department considers necessary to ensure federal financial participation and compliance with state law requirements, including initial placement of a child and approval of all subsequent placements of a child, approval of the child and family case plan, and any other action the department considers necessary to ensure the safety and well-being of a child."¹²⁷

PLANNING, IMPLEMENTATION, AND EVALUATION

In addition to the specific approaches outlined above, we offer the following recommendations to the Department of Family and Protective Services (DFPS) for planning, implementing, and evaluating these initiatives.¹²⁸

DFPS should employ a broad-based planning process that actively engages all relevant stakeholders in an ongoing dialogue. In collaboration with these stakeholders, DFPS should strive to reach consensus on the vision, goals, and structure for the initiative; assess community and provider readiness; use sound data to develop the service model and fiscal approach; secure the commitment of the financial, technological, and human resources necessary to support implementation; and delineate the roles and responsibilities of the public and private agencies.

DFPS also should take steps to ensure that legislators' and the public's expectations for privatization are aligned with the goals established for each initiative.

The transition of cases from the public to the private sector should take into account the needs of children and families and the readiness of private agencies. DFPS should ensure ongoing consumer involvement throughout the implementation phase. The department should provide technical assistance and training to private agencies on their contractual and legal responsibilities, in the development and implementation of appropriate information systems, and in preparing private agency caseworkers to assume their new service responsibilities. DFPS should also provide ongoing technical assistance and training to its staff as they assume their new monitoring responsibilities.

DFPS must develop accountability systems with clear, meaningful performance standards that are focused on outcomes, and monitoring systems for ensuring these standards are being met. The department also must ensure that both public and private agencies have the information systems technology necessary to permit the timely exchange of service, outcome, and cost data, including the ability to share information across different government agencies.

Finally, as with any pilot project, DFPS should develop an evaluation instrument that will enable it to assess the overall success of privatization, identify what worked and what didn't, and make recommendations to future Legislatures for expanding, halting, or modifying these initiatives.



Summary of Recommendations

- Maintain case management as a public function and limit the role of private providers to the delivery of services to children and families.
- When appropriate, explore greater use of performance-based incentives when contracting for child welfare services.
- Before privatizing, conduct a thorough cost-benefit analysis to determine the cost of privatization and whether policymakers are willing to commit the resources to pay for it. A surge in the workforce will be necessary initially to build the capacity of private providers in preparation for privatization.
- Include stakeholders in the planning process—lack of support from the judiciary or other advocates involved in the child protection system will undermine the work done by the private providers.
- Avoid disruptions in services to children and families by moving slowly, with adequate budgets, and always placing the needs of children and families first. States should not impose a mandate to privatize within a set period of time, which could have tragic consequences for children.
- Conduct a pilot first before significantly expanding the role of private providers in the child welfare system. Pilots are beneficial because they allow states to determine which financial incentives produce the best outcomes; maximize state control over the experiment; strengthen states' bargaining positions; and enable states to maintain their public workforces while evaluating the effectiveness of privatization.
- Ensure that contracts include specific, measurable, and agreed to outcomes and performance measures and devote sufficient staffing and financial resources to monitor progress toward meeting these goals.



Endnotes

- ¹ Texas Department of Family and Protective Services, 2006 and 2007 Data Books.
- ² “The Cost of Protecting Vulnerable Children V: Understanding State Variation in Child Welfare Financing,” The Urban Institute, May 24, 2006.
- ³ In March 2007, the state terminated its \$899 million contract with Accenture to develop and administer the eligibility and enrollment system for public benefits.
- ⁴ “Hard times put kids at risk, as well as programs to serve them,” Carol Marbin Miller, *The Miami Herald*, April 17, 2008.
- ⁵ Texas Department of Family and Protective Services, 2007 Data Book, pages 47 and 54.
- ⁶ “Mercenaries vs. Counterinsurgency,” Mario Loyola, *National Review Online*, September 26, 2007; and Office of Federal Procurement Policy Letter 92-1, Inherently Governmental Functions, September 23, 1992.
- ⁷ Rider 13 report, Texas Department of Family and Protective Services.
- ⁸ Rosenthal (2000), in Freundlich, Madelyn, and Gerstenzang, Sarah. (2003). *An Assessment of the Privatization of Child Welfare Services*. Washington DC: Child Welfare League of America, Inc.
- ⁹ Ibid.
- ¹⁰ Freundlich & Gerstenzang. (2003).
- ¹¹ Berger and Neuhaus, p. 11 (1977), in Freundlich & Gerstenzang. (2003).
- ¹² Freundlich & Gerstenzang, p. 5.
- ¹³ Morgan & England (1988) in Freundlich & Gerstenzang. (2003).
- ¹⁴ Moe (1987) in Freundlich & Gerstenzang. (2003).
- ¹⁵ Sullivan (1987) in Freundlich & Gerstenzang. (2003).
- ¹⁶ Nightingale, Demetra Smith & Nancy M. Pindus, “Privatization of Public Social Services, A Background Paper,” Urban Institute, October 15, 1997.
- ¹⁷ Donahue (1989) in Freundlich & Gerstenzang. (2003).
- ¹⁸ Kettl (1993), in Freundlich & Gerstenzang. (2003).
- ¹⁹ We do not evaluate these different financing options in this paper, except to point out that no evidence has been found that any model (capitation, capped allocation, case rate, or the various forms of risk sharing) has resulted in cost savings. For a good review of the different financing models of child welfare privatization, see McCullough, C. (2005). *Child Welfare Privatization: Synthesis of Research and Framework for Decision-Makers*; Freundlich & Gerstenzang. (2003); and the National Quality Improvement Center on the Privatization of Child Welfare Services, 2006.
- ²⁰ Mark Friedman, “A Guide to Developing and Using Performance Measures in Results-based Budgeting,” Prepared for The Finance Project, May 1997.
- ²¹ The General Accounting Office was renamed the Government Accountability Office in 2004.

- ²² U.S. General Accounting Office (1997) in Freundlich & Gerstenzang. (2003).
- ²³ Friedman, May 1997.
- ²⁴ Alliance for Redesigning Government (1996) in Freundlich & Gerstenzang. (2003).
- ²⁵ Usher, C.L., Gibbs, D., Wildfire, J. (1999) in Freundlich & Gerstenzang. (2003).
- ²⁶ U.S. Department of Health and Human Services, Children's Bureau, *Report to Congress*, 1996.
- ²⁷ The 2003 study was the last such national survey conducted by the Child Welfare League of America.
- ²⁸ See the National Quality Improvement Center on the Privatization of Child Welfare Services at <http://www.uky.edu/SocialWork/qicpcw/>.
- ²⁹ "National Needs Assessment and Knowledge Gaps Analysis Findings," National Quality Improvement Center on the Privatization of Child Welfare Services, University of Kentucky College of Social Work, September 2006.
- ³⁰ See Sheila A. v. Finney, Sheila A. v. Haden, and J.D.B. v. Barton), 253 Kan. 793, 861 P.2d 120 (Kan. 1993); 259 Kan. 549, 913 P.2d 181 (Kan. 1996).
- ³¹ For further commentary, see the National Center for Youth Law at http://www.youthlaw.org/publications/fc_docket/alpha/sheilaavwhiteman/.
- ³² In 2002, the parties agreed to replace the settlement agreement with internal monitoring from SRS' Quality Assurance Unit.
- ³³ Freundlich & Gerstenzang, p. 40.
- ³⁴ Kansas Department of Social and Rehabilitation Services.
- ³⁵ Freundlich & Gerstenzang, p. 40.
- ³⁶ See Freundlich & Gerstenzang for further discussion of improvements to the Kansas child welfare system and lessons learned from its transition issues.
- ³⁷ Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan.
- ³⁸ Texas Department of Family and Protective Services, 2004 Data Book, p. 81.
- ³⁹ According to Freundlich and Gerstenzang, two permanency standards were also not met from 1998 to 2004: 1) children exiting foster care for reunification in less than 12 months; and 2) children in foster care less than 12 months will have less than two moves.
- ⁴⁰ Texas Department of Family and Protective Services, 2005 Data Book, p. 87.
- ⁴¹ Texas Department of Family and Protective Services, 2006 Data Book, p. 80.
- ⁴² Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan. Outcome entitled percent of children in out of home [care] less than 12 months will have two or fewer placements.
- ⁴³ Texas Department of Family and Protective Services 2005 Data Book, p. 87. In Texas, this is with DFPS legal custody terminated.
- ⁴⁴ Texas Department of Family and Protective Services 2006 Data Book, p. 80.
- ⁴⁵ Kansas Department of Social and Rehabilitation Services Outcomes for 2007 Business Plan. Outcome entitled percent of children released from custody for reasons of reunification will be released from custody within twelve months of removal into care.
- ⁴⁶ Texas Department of Family and Protective Services, 2005 Data Book, p. 87.
- ⁴⁷ Texas Department of Family and Protective Services, 2006 Data Book, p. 80.
- ⁴⁸ Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan. Outcome entitled percent of children released from custody for reasons of adoption will be released from custody within 24 months of removal into care.
- ⁴⁹ Texas Department of Family and Protective Services, 2005 Data Book, p. 87.
- ⁵⁰ Kansas Department of Social and Rehabilitation Services, Children and Family Services, Outcome Performance Across Time, October 18, 2005, p. 2.1. See <http://www.srskansas.org/CFS/datareports.html>.
- ⁵¹ Texas Department of Family and Protective Services, 2006 Data Book, p. 80.
- ⁵² Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan. Outcome is entitled percentage of children who remain safe in out-of-home placement.
- ⁵³ Texas Department of Family and Protective Services, 2005 Data Book, p. 87. The Texas data refer to children in any stage of care.
- ⁵⁴ Texas Department of Family and Protective Services, 2006 Data Book, p. 80. The Texas data refer to children in any stage of care.
- ⁵⁵ Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan. Outcome entitled percent of children who experienced a substantiated abuse or neglect incident do not experience recurrent maltreatment within six months of the previous incident. The threshold for this standard is set at 93.9% of children who experience a substantiated abuse or neglect incident do not experience recurrent maltreatment with six months of the previous incident. The 2006 % equaled 96.2%. For purposes of comparison, these numbers were inverted.
- ⁵⁶ Texas Department of Family and Protective Services, 2005 Data Book, p. 87.
- ⁵⁷ Texas Department of Family and Protective Services, 2006 Data Book, p. 80.
- ⁵⁸ Kansas Department of Social and Rehabilitation Services, Outcomes for 2007 Business Plan. Outcome entitled percent of children will not reenter custody. In Kansas performance-based contracts, the threshold is set at 91.4% of children will not reenter custody. In 2005 and 2006, 96.5% and 94.5%, respectively, of children exiting foster care did not reenter out of home placements.

These figures were inverted for comparison with Texas data.

⁵⁹ Community-Based Care Lead Agencies and Contract Managers Contacts, Florida Department of Children and Families, February 2008.

⁶⁰ "Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care," Office of Program Policy Analysis & Government Accountability, an office of the Florida Legislature (OPPAGA), Report No. 06-50, June 2006, p. 1.

⁶¹ "Evaluation of the Florida Department of Children and Families Community-Based Care Initiative in Manatee, Sarasota, Pinellas, and Pasco Counties," Final Report on Fiscal Year 2001-2002, University of South Florida, Louis de la Parte Florida Mental Health Institute, June 2002, p. ix.

⁶² Florida data often use the term fiscal year, followed by the calendar year during which the fiscal year commenced and the calendar year during which the fiscal period ended. For purposes of this analysis, the fiscal year noted is the calendar year during which the Florida fiscal year ended.

⁶³ "Ensuring the Long-Term Success of Florida's Community-Based Child Welfare System," Florida Tax Watch, March 2006, p. 3.

⁶⁴ Safety indicators included recurrence of maltreatment and reentry into out-of-home care. Permanency indicators included proportion of children exiting out-of-home care (within 12 months and within 12 months into permanency) and length of stay of out-of-home care.

⁶⁵ "Report to the Legislature: Evaluation of the Department of Children and Families Community-Based Care Initiative, Fiscal Year 2005-2006," University of South Florida, January 2007, p. vii.

⁶⁶ OPPAGA June 2006, p. 5.

⁶⁷ OPPAGA June 2006, p. 5 and Appendix D, Table D-2, p. 19.

⁶⁸ See National Data Analysis System, Child Welfare League of America at http://ndas.cwla.org/data_stats/data_trends.asp. The rate of adoption was calculated by dividing the number of adoptions consummated by the total number of children in out-of-home care during the fiscal year.

⁶⁹ OPPAGA June 2006, p. 5, and Appendix D, Table D-1, p.19, and Florida DCF Child Welfare Annual Statistical Data Tables Fiscal Year 2004-2005, DCF, October 2005, p. 214.

⁷⁰ OPPAGA June 2006, pp. 6-7.

⁷¹ Florida Department of Children and Families Child Welfare Annual Statistical Data Tables Fiscal Year 2004-2005, October 2005, p 82.

⁷² OPPAGA, June 2006, p. 7.

⁷³ Ibid.

⁷⁴ OPPAGA June 2006, p.8.

⁷⁵ Florida Department of Children and Families, Business Plan Fiscal Year 2006-07, November 30, 2006, p. 6.

⁷⁶ "Community-Based Care White Paper for State Fiscal Year 2005-2006," University of South Florida June 2006,, p. 80.

⁷⁷ OPPAGA June 2006, Appendix E, p. 21.

⁷⁸ "Community-Based Care White Paper for State Fiscal Year 2005-2006," University of South Florida June 2006, p. 80.

⁷⁹ USE, January 2007, p. 27.

⁸⁰ OPPAGA June 2006, p. 10.

⁸¹ OPPAGA June 2006, p. 8.

⁸² Florida Department of Children and Families, Business Plan Fiscal Year 2006-07, November 30, 2006, p. 6.

⁸³ OPPAGA June 2006, pp. 12-13.

⁸⁴ OPPAGA, June 2006, Appendix F, Table F-1, p. 22.

⁸⁵ Ibid.

⁸⁶ OPPAGA, June 2006, Appendix F, Table F-3, p. 23.

⁸⁷ Ibid.

⁸⁸ "Additional Improvements Are Needed as DCF Redesigns its Lead Agency Oversight Systems," OPPAGA, Report No. 06-05, January 2006, pp.1-2.

⁸⁹ OPPAGA, January 2006, p. 3.

⁹⁰ OPPAGA, January 2006, p. 12.

⁹¹ OPPAGA, June 2006, p. 3, Florida DCF Quick Facts, January 2008, pp. 19, 23.

⁹² Texas Department of Family and Protective Services 2004 Data Book, p. 81.

⁹³ This number may be misleading as the Texas Department of Family and Protective Services collects data regarding the number of children achieving permanency during a fiscal year. There may be some children who exited this system without achieving permanency that are not accounted for.

⁹⁴ OPPAGA June 2006, p. 5, "Report to the Legislature: Evaluation of the Department of Children and Families Community-Based Care Initiative, Fiscal Year 2005-2006," University of South Florida, p. 20, January 2007; and DFPS 2005 Data Book, p. 89.

⁹⁵ OPPAGA June 2006, p. 5 and Appendix D, Table D-2, p. 19; and Texas Department of Family and Protective Services.

⁹⁶ Texas Department of Family and Protective Services 2007 Data Book, p. 56; Florida Department of Children and Families Child

Protection and Permanency Performance Dashboard for state fiscal year to date based on data schedule July 1, 2006 through June 30, 2007.

⁹⁷ Texas Department of Family and Protective Services 2007 Data Book, p. 56. Florida Department of Children and Families Quick Facts, p. 4, January 29, 2008.

⁹⁸ Florida Department of Children and Families Child Welfare Annual Statistical Data Tables Fiscal Year 2004-2005, October 2005, p. 214; Texas Department of Family and Protective Services 2005 Data Book, p. 87; Florida DCF Quick Facts, Florida Department of Children and Families, January 2007, p. 4; Florida Department of Children and Families, Business Plan Fiscal Year 2006-07, November 30, 2006, p.6; and DFPS 2006 Data Book, p. 80.

⁹⁹ OPPAGA, p.7, June 2006; Texas Department of Family and Protective Services 2005 Data Book, p. 87; Florida Department of Children and Families Child Protection and Permanency Performance Dashboard for state fiscal year to date based on data schedule July 1, 2005 through June 30, 2006; and Texas Department of Family and Protective Services 2006 Data Book, p. 80.

¹⁰⁰ Texas Department of Family and Protective Services 2007 Data Book, p. 56. A comparable figure for Florida fiscal 2007 is not yet available through report.

¹⁰¹ See National Data Analysis System, Child Welfare League of America at http://ndas.cwla.org/data_stats/data_trends.asp. The rate of adoption was calculated by dividing the number of adoptions consummated by the total number of children in out-of-home care during the fiscal year.

¹⁰² DFPS 2005 Data Book, p. 87, and Texas Department of Family and Protective Services 2006 Data Book, p. 80.

¹⁰³ OPPAGA June 2006, Appendix D, Table D-4, p. 20, and Florida Department of Children and Families Quick Facts, January 2007, p. 4.

¹⁰⁴ Texas Department of Family and Protective Services 2007 Data Book, p. 56.

¹⁰⁵ Florida Department of Children and Families Quick Facts, January 29, 2008, p. 4.

¹⁰⁶ Children's Bureau CFSR Summary of Key Findings, Fiscal Years 2001 and 2002.

¹⁰⁷ Children's Bureau CFSR "Key Findings Report: Florida Department of Children and Families," April 23, 2002; Children's Bureau CFSR "Key Findings Report: Kansas Department of Social and Rehabilitative Services Child and Family Policy Division," September 17, 2001; and Children's Bureau "CFSR Key Findings Report: Texas Department of Protective and Regulatory Services," August 23, 2002.

¹⁰⁸ Texas Department of Family and Protective Services, 2007 Data Book, p. 25. The unique number of children served includes children in completed investigations, family based safety services, conservatorship, substitute care, and preparation for adult living services.

¹⁰⁹ "The Cost of Protecting Vulnerable Children V: Understanding State Variation in Child Welfare Financing," The Urban Institute, May 24, 2006.

¹¹⁰ Texas Department of Family and Protective Services, 2007 Data Book, pp. 25-6.

¹¹¹ "Updating and Outsourcing Enrollment in Public Benefits: The Texas Experience," CPPP, November 2006.

¹¹² "Privatization of State Foster Care and Adoption Services: An Idea Whose Time Has Come or a Disaster in the Making?" CPPP, April 3, 2007; and "Creating Foster Care Capacity for Abused and Neglected Children," CPPP, January 2008.

¹¹³ "Creating Foster Care Capacity for Abused and Neglected Children," CPPP, January 2008.

¹¹⁴ Texas Department of Family and Protective Services Cost Study Data provided to the Legislature in 2005.

¹¹⁵ Texas Department of Family and Protective Services Fiscal Year 2007 Data.

¹¹⁶ Texas Department of Family and Protective Services 2007 Data Book, p. 54.

¹¹⁷ Under Texas' plan the independent administrator would procure substitute care services (foster homes and residential treatment centers) and case management services from private agencies. When a child entered the care of the state, the independent administrator would assign the child to an agency, not a home; the agency would then manage the case from that point. The independent administrator would not do case management.

¹¹⁸ The plan to privatize case management raised constitutional questions as well. Under the Texas constitution, power is divided among the legislative, executive, and judicial departments. Privatizing case management violates the constitutional principle of separation of powers. Taking case management away from state executive officers and allocating it to private companies violates the separation of powers by interfering with the executive's exercising of its power. An analogy may be helpful here. Under the constitution, the attorney general has the power to issue advisory opinions on legal questions. Suppose that the Legislature thought that the attorney general was giving bad advice. Then suppose the Legislature decided to require the attorney general to hire private lawyers to answer all questions and prohibited the attorney general from answering any questions. The Legislature would not be exercising the attorney general's power, but it would nonetheless be violating the separation of powers because the Legislature would be interfering in the exercise of the executive branch's power. See generally *Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen*, 952 S.W.2d 454 (Tex. 1997) (discussing unconstitutional delegation of legislative power to private corporation).

¹¹⁹ Senate Bill 6 added only 184 additional staff for procurement, evaluation, monitoring, and other oversight activities and 63 new licensing staff. This addition was far short of what is needed, particularly given the increased outsourcing of all foster and adoption services also mandated by SB 6.

¹²⁰ Senate Bill 6 gave the department the option to contract with for-profit providers knowing that they would be likely to have better access to sufficient capital to undertake such a massive project.

¹²¹ Privatization Position Paper, Casey Family Programs, August 2007.

¹²² "Creating Foster Care Capacity for Abused and Neglected Children," CPPP, January 2008.

¹²³ SB 758 Implementation Plan, Texas Department of Family and Protective Services, December 31, 2007, p. 15.

¹²⁴ Relevant sections of SB 758 were codified in Texas Family Code Section 264.106.

¹²⁵ "Privatization of State Foster Care and Adoption Services: An Idea Whose Time Has Come or a Disaster in the Making?" CPPP, April 2007.

¹²⁶ SB 758 Implementation Plan, p. 21.

¹²⁷ Texas Family Code, § 264.106(a)(5).

¹²⁸ These recommendations are based on the approaches developed in Casey Family Programs' Privatization Position Paper.



Glossary

CAPITATION A financial model in which private providers are paid a fixed rate for each child in a general population, such as a geographic area.

CAPPED ALLOCATION A financial model in which private providers are paid a fixed rate for each child in a limited population, such as all children removed from their homes in a particular county that come into state conservatorship.

CASE COORDINATION The coordination and monitoring of services provided to a child or family, excluding legal or ultimate decisionmaking authority.

CASE MANAGEMENT The planning and decisionmaking by a case manager of placement decisions, treatment decisions, reunification decisions, and the legal court work leading to permanency for a child.

CASE RATES A financial model in which private providers are paid for each child, regardless of the services offered.

CHILD AND FAMILY SERVICES REVIEW (CFSR) A review administered to states by the Children's Bureau of the U.S. Department of Health and Human Services developed to ensure that state practices conform to federal child welfare requirements. These standards include specific child welfare outcomes in the areas of

safety, permanency, and child well-being, as well as the systemic factors that affect those outcomes.

CONSERVATORSHIP Texas uses the term "conservatorship" for what in other states is called guardianship. "Conservatorship" is when a court appoints a person, the state, or an authorized agency to be legally responsible for a child.

CHILD PLACING AGENCIES (CPAs) Private agencies that recruit, train, and supervise foster homes.

FOSTER CARE The temporary placement of children outside their homes into licensed and subsidized placements due to abuse, neglect, or dependency. Foster care is a subset of substitute care.

INDEPENDENT ADMINISTRATOR A model for privatizing child protection in which the independent administrator acts like a general contractor and selects, coordinates, and works through subcontractors. The independent administrator does not provide any actual services itself.

KINSHIP CARE The placement of a child with a family member other than a parent.

LEAD AGENCY A model for privatizing child protection in which the lead agency both administers the contract

and provides services, using subcontracts to provide the services that the lead agency does not offer.

OPEN ENROLLMENT CONTRACT A contract that is open to any potential provider who establishes through acceptable means (such as licensure or certification) that it meets all provider service standards and agrees to all terms and conditions set forth in the contract, including the established rates.

PERFORMANCE-BASED CONTRACT A contract that involves financing arrangements that align payment with the quality of specified outcomes. This generally gives private providers greater flexibility in determining how funds are used and shifts the financial risk to the private providers.

PERMANENCY A process in which a child leaves the legal responsibility of the state, usually by leaving substitute care through reunification, relative placement, or adoption.

SERVICES “Conservatorship services” are “services provided directly by the department that the department considers necessary to ensure federal financial participation and compliance with state law requirements, including initial placement of a child and approval of all subsequent placements of a child, approval of the child and family case plan, and any other action the department considers necessary to ensure the safety and well-being of a child.”

“Substitute care services” are “services provided by a substitute care provider to or for a child in the temporary or permanent managing conservatorship of the department or for the child’s placement, including the recruitment, training, and management of foster and adoptive homes by a child-placing agency.”

STATE-PAID CARE Foster care placements paid for by the state including foster family homes, basic child care, emergency shelters, foster group homes, and residential care facilities.

SUBSTITUTE CARE The placement of a child who is in the conservatorship of the state or authorized agency in care outside the child’s home.

References

- Additional Improvements are Needed as DCF Redesigns its Lead Agency Oversight Systems.* (January 2006). Florida Office of Program Policy Analysis and Government Accountability. Report No. 06-05. <http://www.oppaga.state.fl.us/monitor/reports/pdf/0605rpt.pdf>.
- Business Plan Fiscal Year 2006-07.* (November 30, 2006). Florida Department of Children and Families.
- Casey Family Programs.* (August 2007). *Privatization Position Paper.*
- Child and Family Services Reviews, Federal Fiscal Years 2001 and 2002.* (2002). U.S. Department of Health and Human Services, Children's Bureau, Administration for Children and Families.
- Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care.* (June 2006). Florida Office of Program Policy Analysis and Government Accountability, Report No. 06-50.
- Community-Based Care White Paper for State Fiscal Year 2005-2006.* (June 2006). University of South Florida.
- Craig, C., Kulik, T, James, T. Nielsen, S, and Orr, S. (December 1998). "Blueprint for the Privatization of Child Welfare." Reason Public Policy Institute, Policy Study No. 248. <http://www.rppi.org/ps248.html>.
- Details of Exceptional Items Presented to the Senate Finance Committee.* (October 23, 2006). Texas Department of Family and Protective Services. http://www.dfps.state.tx.us/Documents/about/Presentations/2006-10-23_LAR_ExceptionalItems.pdf.
- DFPS Fiscal Year 2006 Data, Management Reporting and Statistics Log 20581. (2006). Texas Department of Family and Protective Services.
- DFPS Fiscal Year 2006 Data, Management Reporting and Statistics Log 20580. (2006). Texas Department of Family and Protective Services.
- Ensuring the Long-Term Success of Florida's Community-Based Child Welfare System.* (March 2006). Florida Tax Watch.

- Evaluation of the Florida Department of Children and Families Community-Based Care Initiative in Manatee, Sarasota, Pinellas, and Pasco Counties, Final Report on Fiscal Year 2001-2002.* (June 2002). University of South Florida, Louis de la Parte Florida Mental Health Institute.
- Final Report: Kansas Child and Family Services Review.* (March 2008). U.S. Department of Health and Human Services, Children's Bureau, Administration for Children and Families.
- Florida DCF Child Welfare Annual Statistical Data Tables Fiscal Year 2004-2005.* (October 2005). Florida Department of Children and Families.
- Florida DCF Quick Facts.* (January 2007). Florida Department of Children and Families.
- Freundlich, Madelyn, and Gerstenzang, Sarah. (2003). *An Assessment of the Privatization of Child Welfare Services.* Washington DC: Child Welfare League of America, Inc.
- Friedman, Mark. (May 1997). *A Guide to Developing and Using Performance Measures in Results-based Budgeting.* Prepared for The Finance Project.
- Hamilton, Billy. (August 30, 2007). *2007 Advanced Texas Administrative Law Seminar: Policies Related to Privatization and Limits on Governmental Outsourcing.*
- Inherently Governmental Functions.* (September 1992). Office of Federal Procurement Policy (OFPP) Policy Letter 92-1. (http://www.dla.mil/j-3/a-76/A_76SupplementaryHandbookApp5.html).
- Loyola, Mario. (September 2007). *Mercenaries vs. Counterinsurgency.* National Review Online.
- McCown, F. Scott. (April 2007). *Privatization of State Foster Care and Adoption Services An Idea Whose Time Has Come or a Disaster in the Making?* Center for Public Policy Priorities. <http://cppp.org/files/4/POP%20288%20Privatization%20of%20Substitute%20Care.pdf>.
- McCullough, Charlotte. (2005). *Child Welfare Privatization: Synthesis of Research and Framework for Decision-Makers.*
- McCullough, Charlotte. (November 15, 2006). *Trends in Child Welfare Privatization.* McCullough Associates.
- Miller, Carol Marbin. (April 17, 2008). *Hard times put kids at risk, as well as programs to serve them.* Carol Marbin Miller. The Miami Herald.
- National Data Analysis System.* (March 2007). Child Welfare League of America. http://ndas.cwla.org/data_stats/data_trends.asp.
- National Needs Assessment and Knowledge Gaps Analysis Findings.* (September 2006). National Quality Improvement Center on the Privatization of Child Welfare Services, University of Kentucky College of Social Work.
- Nightingale, Demetra Smith, and Pindus, Nancy M. (October 15, 1997). *Privatization of Public Social Services, A Background Paper.* Urban Institute.
- Pfeffer, Jeffrey. (2007). "Sins of Commission." *The Conference Board Review.*
- Privatization of Child Welfare Services.* (April 4, 2005). Texas Alliance of Child & Family Services.
- Report to Congress.* (1996). United States Department of Health and Human Services, Children's Bureau.
- Report to the Legislature: Evaluation of the Department of Children and Families Community-Based Care Initiative, Fiscal Year 2005-2006.* (January 2007). University of South Florida.
- Rider 13, *Human Resources Management Plan.* (October 19, 2007). Texas Department of Family and Protective Services.

http://www.dfps.state.tx.us/documents/about/pdf/2007-10-19_Rider13.pdf.

Sells, Julia (2001). *Child Welfare Privatization Reform Efforts in the States*. Pacific Research Institute.

Senate Bill 6, 180 Day Progress Report. (June 1, 2006). Texas Health and Human Services Commission and Texas Department of Family and Protective Services.

Senate Bill 758 Implementation Plan. (December 31, 2007). Texas Department of Family and Protective Services. http://www.dfps.state.tx.us/Documents/About/pdf/2007-12-31_SB758.pdf

Snell, Lisa (2000). *Child-Welfare Reform and the Role of Privatization*. Reason Public Policy Institute, Policy Study No. 271. <http://www.rppi.org/ps271.html>.

Sheila A. v. Finney, Sheila A. v. Haden, and J.D.B. v. Barton), 253 Kan. 793, 861 P.2d 120 (Kan. 1993); 259 Kan. 549, 913 P.2d 181 (Kan. 1996).

SRS Children and Family Services Outcome Performance Across Time. (October 18, 2005). Kansas Department of Social and Rehabilitative Services. <http://www.srskansas.org/CFS/datareports.html>.

Statewide Transition Plan, Outsourcing DFPS Substitute Care and Case Management Services. (March 1, 2006). Texas Health and Human Services Commission and Texas Department of Family and Protective Services.

Texas Boll Weevil Eradication Foundation, Inc. v. Lewellen, 952 S.W.2d 454 (Tex. 1997).

2004 Data Book. (2004). Texas Department of Family and Protective Services. http://www.dfps.state.tx.us/Documents/About/Data_Books_and_Annual_Reports/2004/Databook/pdf/Databookfy04.pdf.

2005 Data Book. (2005). Texas Department of Family and Protective Services. http://www.dfps.state.tx.us/Documents/about/Data_Books_and_Annual_Reports/2005/databook/pdf/FY05_Databook.pdf.

2006 Data Book. (2006). Texas Department of Family and Protective Services. http://www.dfps.state.tx.us/Documents/About/Data_Books_and_Annual_Reports/2006/databook/FY06_Databook.pdf.

2007-2008 Business Plan. (January 2007). Kansas Department of Social and Rehabilitative Services.

Media Coverage

Miami Herald, “Hard Times Put Kids at Risk, as wells as Programs to Serve Them,” Gary Fineout & Mary Ellen Klas, April 17, 2008

The Florida Legislature asked child-welfare administrators to cut tens of millions of dollars from safety-net programs for vulnerable children at a time when kids may be at greater risk due to the economic slowdown.

Herald Tribune, “YMCA entangled in unorthodox land deal,” Michael Braga, Bob Mahlburg, August 12, 2007

“Sarasota attorney and Sarasota Family YMCA board member David Band sold half a run-down office building on land tainted by groundwater pollution to the YMCA for \$830,000 and donated the other half to the nonprofit as an \$830,000 gift that could save Band and his partners at least \$200,000 on their tax bills. The same day, the YMCA made a quick profit by selling the entire building for \$1.3 million, receiving \$300,000 in cash, while providing the buyers with a \$1 million interest-only loan. Band and his partners benefited by transferring the risk of the loan to the YMCA, leaving the Y exposed to losses if the new owners cannot meet their obligations.”

Miami Herald, “Study: Foster Care System Flawed,” Carol Marbin Miller, August 7, 2007

A comprehensive review, conducted by the Chapin Hall Center for Children of the University of Chicago on privatized foster care services in Miami-Dade, Broward, and Monroe counties, found that South Florida children in foster care are not receiving the support and care they should be – from regular immunizations, preventive dental care, and counseling, to being bounced between foster homes because “caregivers become frustrated over a lack of support from child-welfare agencies.” The Chapin Hall report involved the review of 90 foster children’s files – 45 from Child-Net and 45 from Our Kids.

St. Petersburg Times, “Child Protection in Florida Falters,” Editorial, August 7, 2007

“State Dept. of Children and Families Secretary Bob Butterworth calls that no one will escape the review of child-protection services at the Sarasota Family YMCA. Over the past decade the YMCA grew into a \$91-million-a-year state-funded business, and signs show of its faltering. The agency’s financial priorities have become murkier, as well. Butterworth: ‘Everything is on the table. Our system, if not broken, is in desperate need of serious repair.’”

Florida Times-Union, “State to Review Sarasota YMCA”, Carol Marbin Miller, August 4, 2007

Sarasota Family YMCA has been “the target of recent criticism because it receives among the highest per-child funding for private foster agencies statewide but is among the worst at caring for children, according to state records. Cracks in Florida’s child welfare system were revealed after the disappearance case of 2-year-old Courtney Clark and systemic problems were found with the Sarasota YMCA and poor oversight by the DCF. The review of the Sarasota Family YMCA is the latest in an ongoing state effort to root out problems that occurred in the Courtney Clark case. The girl’s mother took her from foster care in September. But the caseworker, employed by a Sarasota YMCA subcontractor, did not report her missing to law enforcement for four months.”

Tampa Tribune, “Panel Will Look At Ways To Improve Child Welfare Statewide,” Sherri Ackerman, August 4, 2007

“A top state official launched a new task force Friday with a primary goal: Make the state’s child welfare system work better. Butterworth created the panel June 18, four days after authorities located a toddler who went missing from Florida’s foster care system for nine months.

“The Child Protection Task Force convened for its first meeting at Stetson University College of Law in Tampa to discuss ways to make DCF the gold standard in child welfare and to help craft child protection legislation. Among those changes, Butterworth wants the panel to look at rewriting laws that allow DCF more authority over community-based agencies providing local foster care and adoption services for the state.”

Associated Press State and Local Wire, “Fla. State contractor defends actions in missing girl case,” unlisted, June 19, 2007

“The company responsible for monitoring a missing 2-year-old in foster care said it was working hard to locate her, despite criticism it did not immediately call local police.”

Orlando Sentinel, “DCF will investigate how toddler could ‘disappear under the radar,’” Adrian G. Uribarri, June 19, 2007

“The Florida DCF is investigating why a 2-year-old girl in state foster care wasn’t reported missing for almost four months.”

Miami Herald, “DCF chief blasts ChildNet boss,” Erika Bolstad, April 25, 2007

“Florida’s top child welfare official said Tuesday that problems at Broward’s private foster care agency were the fault of the group’s now-fired CEO.

“Even before allegations of theft, fraud and doctored invoices surfaced this month, ChildNet lacked accountability, and former CEO Peter Balitsaris had a dysfunctional relationship with state child welfare managers, said DCF Secretary Bob Butterworth.”

Miami Herald, “ChildNet told to fix troubling problems,” Erika Bolstad, April 24, 2007

“As many as 20 employees of Broward’s private foster care agency may have had invalid or suspended driver’s licenses, or had such shoddy driving records that they shouldn’t have been driving children, according to findings released Monday by the Department of Children & Families.”

Miami Herald, “The Miami Herald Fred Grimm column: Thieves add new dimension to foster care,” Fred Grimm, April 17, 2007

“The key phrase was ‘once again.’ In 1996, shameful treatment of foster children was the same old news. But the scandal that exploded last week out of ChildNet, a private vendor hired to manage foster care cases in Broward County, introduced a new element in the old story—petty criminality. ChildNet workers ripped off Christmas presents. In an inside job, they stole donated presents and \$8,000 worth of Wal-Mart gift cards meant for foster kids from ChildNet offices in Fort Lauderdale.”

Newsday, "Protests over privatizing: Suffolk looking for private contractor, but union says work can be done by Child Protective Services," Rick Brand, March 2, 2007

"Suffolk welfare officials are seeking a private contractor to provide a wide range of new preventive services, sparking complaints from union officials who say the work has been done by caseworkers from Child Protective Services. Social services officials say no county jobs will be replaced, and the county is only following the model of programs in New York City and Nassau that aim to help families without the stigma of involvement by Child Protective Services, which also investigates abuse and neglect complaints."

Newsday, "Outsourcing on the Rise," March 1, 2007

"While critics question the outsourcing of social work, which often deals with delicate family situations, other child welfare advocates say the plans work well over time and have proven cost-effective. But the Child Welfare League of America has been skeptical of aspects of the practice. In a 2003 report, the Washington-based advocacy group criticized Kansas for doing the changeover too quickly and faulted inadequate communication between contracted agencies and government, as well as delayed payments to contracted agencies. But over time the problems were resolved, the report said."

Youth Law Center, "Victory for Florida Foster Children" Nov. 9, 2006

"State Circuit Judge Janet Ferris has issued a permanent order on behalf of foster children in the Florida Panhandle area in a lawsuit against the Florida Department of Children and Families (DCF) that alleged that foster children were being forced to live in an unlicensed DCF office conference room. The order, known as a writ of mandamus, directs DCF and its private contract agencies to obey Florida state law and only use licensed facilities for the emergency placement of children removed from their homes."

Bonita Daily News, "Child Welfare to appoint new board of directors," Deirdre Conner, October 8, 2006

(This article is an update to all the information from Deirdre's previous article on Sept. 26)

"The fired board members from Children's Network, previously under Camelot, plan to pursue the new contract, which begins March 25. As a new nonprofit agency they call The Children's Network Inc., fundraising has already begun, and if they lose the bid, they plan to use the cash to build a group home for teens transitioning out of foster care."

Naples Daily News, "After Major Shuffle, DCF eliminates \$100M deal with Children's Network," Deirdre Conner, September 26, 2006

"The state Department of Children and Families has terminated a private company's \$23.5 million yearly contract for child welfare services. The move came just weeks after the parent company of the Children's Network of Southwest Florida dismissed its local board of directors and fired its chief executive. Ousted board members cried foul, saying Camelot Community Care Inc. was curbing local control to protect a for-profit company. Camelot said the Children's Network was endangering children with its plan to quickly cancel sub-contracts and bring all social workers in-house."

Youth Law Center, "Partial Settlement in Florida Shelter Care Lawsuit," August 9, 2006

"Youth Law Center announces the partial settlement of Susan C. et al. v. Department of Children and Family Services, et al., our case in Tallahassee, Florida, regarding the practice of DCF and its private contractor to make foster children live in a DCF conference room for days, and sometimes weeks, upon end. The private contractor, Big Bend Community Based Care, entered into a settlement with plaintiffs on August 7, 2006, that states, among other things, that they will set a policy prohibiting overnight stays in offices, conference rooms, or other unlicensed placements in the DCF District over which it manages foster care services. The settlement does not affect ongoing litigation against the State of Florida, but YLC and local counsel hope that the state will make a similar agreement soon."

Herald Tribune, "YMCA-run foster care struggling," Todd Ruger, June 25, 2006

"State reviews and reports show YMCA's foster care program is lagging behind other agencies on key measures of child safety during the fiscal year 2004. It was among the worst agencies for the number of foster children who re-enter the system less than a year after they leave it, and also scored poorly for the number of times a child is bounced from home to home. YMCA executives shrug off the report, saying their agency instead looks to semiannual evaluations by the state to see how it's doing."

South Florida Sun-Sentinel, "Report shows increase in abuse since privatization of state child-welfare system," Josh Hafenbrack, June 25, 2006

"Florida's switch to a privatized child-welfare system has been followed by increased instances of abuse and more children shuffled among foster homes, a state audit has found.

"The number of Florida children who are abused multiple times has steadily increased since the state started shifting its child-welfare system to private hands in 1999, according to a report released this month by the Legislature's investigative arm, the Office of Program and Policy Analysis & Government Accountability."

Youth Law Center, "Class Action Lawsuit Filed on Behalf of North Florida Foster Children," April 4, 2006

"A class action lawsuit filed in Florida state court today charges the Department of Children and Family Services ("DCF") and a private contract foster care agency, Big Bend Community Based Care, Inc., with failing to find appropriate and licensed foster placements for abused and neglected children. Specifically, DCF and Big Bend are accused of forcing foster children to sleep night after night in a conference room in a DCF building at 3019 Jackson Bluff Road in Tallahassee."

Kansas City Star, "Foster-Care Providers are offered incentives," Laura Bauer, March 14, 2005

"Nine years after private contractors took over, Kansas' foster-care system is twice as expensive and still struggling to move children into permanent homes at a faster pace. So in an attempt to improve a system that in 1996 pioneered private child welfare, the state is raising the stakes for contractors. Starting in July, the state will pay them more money during the first six months a child is in foster care. But that money will be cut more than two-thirds if a child lingers in the system longer than a year. The idea is to cut the average time a child is in the system, which is 23 months, roughly what it was before Kansas privatized services."

Miami Herald, "FBI targets child care agency," Carol Marbin Miller, Date not given

"Two private investigators hired to look into irregularities at ChildNet allege the privately run child welfare agency responsible for various illegal activities."

Herald Tribune, "Sarasota YMCA under review," Bob Mahlborg, Date not given

(This article discusses the same story of the Sarasota YMCA under investigation by the DCF.)

"DCF Regional Director Nick Cox said past examinations had focused on the YMCA's problems with specific children.

"This is more of an overall review of the agency,' Cox said."



Center *for* Public Policy Priorities