



## Legal Protection for Children In Long-Term Foster Care

### *Testimony before the House Human Services Committee*

by Brandon Logan, J.D., CWLS

My name is Brandon Logan, and I am the director of the [Center for Families and Children at the Texas Public Policy Foundation](#), a non-profit, non-partisan think tank based here in Austin. Prior to my current position, I was an attorney ad litem for children under the care of the Texas Department of Family and Protective Services (DFPS) for over a dozen years. I have represented hundreds of children throughout Texas. I am certified as a Child Welfare Law Specialist by the [National Association of Counsel for Children](#).

I am here to testify in support of HB 3109, because all children in the temporary or permanent managing conservatorship of the state need effective, independent legal representation.

#### **Current Law**

In a suit filed by the Department of Family and Protective Services (DFPS) seeking termination of the parent-child relationship or appointment of DFPS as conservator of the child, [Section 107.016, Texas Family Code](#), provides for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court. Section 107.016 has been interpreted as permitting the discharge of the guardian ad litem or attorney ad litem when DFPS has been named the child's permanent managing conservator ([M.D. v. Abbott, 171](#)).

#### **Federal Lawsuit**

In December 2015, a federal judge declared that “rape, abuse, psychotropic medication, and instability are the norm” in the Texas foster care system and that the state has been deliberately indifferent to that fact for decades ([M.D. v. Abbott, 255](#)). The judge noted that children in the permanent conservatorship of the state are at an increased risk of harm because most “do not have an attorney ad litem to set hearings and file pleadings with a court or notify a court when the child needs assistance” ([M.D. v. Abbott, 7](#)). The M.D. court decreed:

“All PMC children shall be entitled to an attorney ad litem and a CASA volunteer, as well as any other representative appointed to TMC children that the Special Master determines is necessary for PMC children’s safety and well-being” ([250](#)).

#### **Children’s Right to Counsel**

Children in dependency cases have a procedural due process right to effective legal representation ([Pitchal 2005](#)). Furthermore, children in the permanent managing conservatorship enjoy substantive due process rights including the right to be free from an unreasonable risk of harm caused by the state ([M.D. v. Abbott, 255](#)).

Texas currently violates the right of children in its care to be free from unreasonable risk of harm ([M.D. v. Abbott, 255](#)). Without effective legal representation, children are unable to access the courts and are left at the mercy of the agency that has been found consciously indifferent to the risk it is causing them.

#### **Costs of Representation**

Although there is an increased initial cost in providing attorneys for children in the state’s long-term conservatorship, children with effective legal representation achieve permanency more quickly ([Zinn 2008, 9](#)). Expedited permanency means

reduced court costs, less money spent on foster care, and fewer services needed for the child ([Zinn 2008, 22](#)). This long-term savings indicates that providing abused and neglected children with effective legal representation throughout the case not only leads to better outcomes for children but also might be economically advantageous for the state ([Zinn 2008, 22](#)).

## Conclusion

HB 3109 makes it clear that the right of children to counsel continues after DFPS is named the permanent managing conservator. As compared to children in the temporary managing conservatorship, children in the permanent managing conservatorship of the state are at increased risk of harm with fewer procedural protections. The increased costs of providing representation should be balanced against both the cost savings from effective representation and the improved outcomes for children in achieving permanency, accessing services, and avoiding harm in care.

I urge the committee's favorable consideration of HB 3109, which will make a positive difference for Texas foster children. I look forward to your comments and questions. ★



**Brandon Logan, J.D., CWLS**, is the Director of the Center for Families and Children at the Texas Public Policy Foundation. Before joining the Foundation, Brandon represented hundreds of children as attorney and guardian ad litem in child welfare courts throughout Texas. He is certified as a Child Welfare Law Specialist by the National Association of Counsel for Children. Brandon has also represented parents, grandparents, and foster families in custody and adoption cases across the state.

## **About the Texas Public Policy Foundation**

The Texas Public Policy Foundation is a 501(c)3 nonprofit, nonpartisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

