



## Effects of CPS Involvement on Child Well-being

### *Testimony before the House Juvenile Justice and Family Issues Committee in support of HB 3297*

by Brandon Logan, J.D., CWLS

Chairman Dutton, Vice Chairman Dale, and Members of the Committee:

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. We support HB 3297.

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](#).

Intervention by Child Protective Services (CPS) in the family is traumatic and can have long-lasting psychological effects for children. We should recognize that removal and foster care are not innocuous events for children. Rather, we must balance the risks of removal and foster care against the risks of remaining in a home where neglect or abuse may have occurred. The involvement of the state must be no more than is absolutely necessary to protect children from immediate risk to physical health or safety.

#### **Rate of Removal**

In 2014, CPS purportedly [removed 17,378 children](#) from their homes, resulting in an official removal rate of 2.4 per 1,000 children. The same year, CPS secured the placement of [an additional 34,000 children](#) outside their homes through a process called Parent Child Safety Placement (PCSP). Although this process is supposed to be voluntary, it is often anything but—with parents [threatened or coerced](#) into agreeing to separation from their children.

Removals and new PCSPs resulted in the separation under state supervision of 51,378 children from their parents. [Federal regulations](#) define removal as “the physical act of a child being taken from his or her normal place of residence, by court order or a voluntary placement agreement and placed in a substitute care setting” (emphasis added). PCSPs should be included when considering the number of CPS removals, especially in state-by-state comparisons.

Advocates of increased state intervention [falsely claim](#) that, compared to other states, Texas is a “[low removal state](#).” Between 2010 and 2013, [state removal rates](#) ranged from 1.3 to 8.6 children per 1,000 children in the population, and the median across states was 3.7 children per 1,000 children in the population. Including PCSPs, the actual removal rate in Texas in 2014 was 7.1 per 1,000 children. Although the official removal rate places the state in the bottom quarter of states, Texas actually ranks sixth in frequency of removals (behind the District of Columbia, West Virginia, Nebraska, South Dakota, and Wyoming).

#### **Research on the Effects of Intervention**

Contact with Child Protective Services (CPS) in any capacity, whether or not a child was removed from the home, may be detrimental to a child’s psychological health and development.

## CPS Investigation Harms Children

CPS investigations have lasting negative psychological effects on children and can result in worsening conditions for the family as a whole. A [2008 study](#) comparing suspected victims of child neglect who went through a CPS investigation with suspected victims who did not go through such an investigation found no evidence that investigation by CPS improved modifiable risk factors such as education, poverty, and social support. Family functioning or child behavior problems did not improve as a result of CPS investigation, and maternal depression symptoms actually worsened.

The study suggests shifting attention to broader household, caregiver, and child risk factors and strengthening the social, medical, and community resources needed to deliver services to address those risks. Minimizing the extent and impact of CPS investigations protects children from trauma and families from undue intrusion. CPS is implementing a program called [Alternative Response](#) to help families in need while respecting the integrity of the family unit by limiting the duration and scope of investigation.

## Removal Harms Children

Several recent studies now advance previous research by explicitly comparing outcomes for children removed from their homes against outcomes for children who remained in the home despite maltreatment. Separating a child from a parent for even a relatively short time can have a devastating emotional and physical impact on the child. Removal and foster care placement leads to long-term negative outcomes for children. Removal of children from their homes and separation from family affect children's ability to form relationships in the future. Children who come to anticipate parental unavailability as a result of CPS intervention suffer distorted adjustment to caregivers in foster care and beyond.

A [study](#) linking children in Cook County, Illinois, across a wide range of government programs compared children placed in foster care with other children who were investigated for neglect or abuse but not removed. It found significant differences in long-term outcomes between the groups, including juvenile delinquency, teen motherhood, employment, and earnings. Children removed from home and placed in foster care fared worse than their counterparts who suffered neglect or abuse but were not removed. The results point to better outcomes when children on the margin of placement remain at home.

## Foster Care Harms Children

Yet another [study](#) compared children in three groups: (1) children who had experienced maltreatment and were placed in foster care; (2) children who had experienced maltreatment and remained with their families; and (3) children with similar risk factors who experienced neither foster care nor maltreatment. The study concluded that children who had been placed in foster care displayed higher levels of behavioral problems than did the children who had experienced maltreatment but were not placed in foster care. Children placed in foster care also experienced behavioral problems later into adolescence and early adulthood than did children who experienced maltreatment but were not placed in foster care.

Finding a “forever family” fails to remediate the negative effects of removal and foster care. Even [after adoption](#), children display lower aptitudes for math, reading, and behavioral development. Data shows that “adopted children in kindergarten and first grade display above-average levels of problem behavior, exhibit below-average levels of positive learning attitudes, and score below average on reading and math assessments, despite their advantaged family background.”

## Conclusion

Because removal and foster care present risks that adoption cannot cure, policymakers should focus efforts on keeping children at home. The state is often too quick to separate children from their parents. [Evaluation of removals](#) in Arkansas indicates that more than 20 percent of children are removed unnecessarily from their homes. Research indicates that remaining with a safe but minimally adequate parents is better for children than removal, quality foster care, and adoption by superior adoptive parents.

## Recommendations

1. The Family Code should provide further guidance when balancing the harm of removal and foster care against the risk of remaining in the home.

Currently the burden of proof for removal of children is “facts sufficient to satisfy a person of ordinary prudence and caution.” According to the [DFPS Attorney Handbook](#), “sufficient evidence to ‘satisfy a person of ordinary prudence and caution’ is the same burden as the ‘probable cause’ requirement for a search warrant.” In fact, DFPS indicates that the evidence required for removal is higher only than the scintilla-of-evidence standard. The burden to remove children from their homes and to separate families should be higher than that required for the search and seizure of property. The law has viewed children as more than mere property for several centuries.

The burden of proof required for removal should be increased to “facts sufficient to produce in the mind of a reasonable person a firm belief or conviction.” In layman’s terms, the state should be reasonably confident before removing a child from her home. The space between the current burden of proof and that proposed by HB 3297 is occupied by children on the margin who would be [better off at home](#).

2. The Family Code should extend procedural due process protections for children and parents to prioritize family reunification. Currently family reunification is little more than a buzzword. [Seventy percent](#) of children removed from their parents are never returned. Those children who are returned home spend an average of [13 months](#) in CPS care.

HB 3297 increases procedural protections for children and parents by giving parents the opportunity to be heard, by clarifying and strengthening the termination process, and by limiting the length of time CPS may keep a family in limbo.

3. Decisions affecting the state’s interference in the family should be made by elected officials, accountable to local communities. Sections of the Family Code allowing unelected state employees to serve in roles traditionally filled by elected judges and prosecutors should be repealed.

District and county attorneys represent CPS in 50.2 percent and 31.8 percent of cases, respectively—meaning CPS is represented by locally elected officials in 82 percent of child protection cases ([JFA Associates](#), 31). Representation of DPFS by elected attorneys provides an important check on the agency as well as community input in decisions affecting local families.

District courts and statutory county courts throughout Texas have jurisdiction to hear matters involving child protection. Associate courts threaten the legal rights and privacy of families, particularly low-income families, which historically have been safeguarded by a robust adversary system ([Murphy, 910-11](#)). Procedural and evidentiary protections commonly utilized by elected judges are disregarded by associate courts in favor of expedited administrative procedures (cf. [Meekins, 4](#)).

I urge the committee’s favorable consideration of HB 3297, which will make a positive difference for Texas children and families. I look forward to your comments and questions. ★

## About the Author



**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.

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