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Eliminating Unnecessary Delays to Child Permanency

Key Points

- Permanency is important. “Foster care is a temporary setting and not a place for children to grow up,” and parent-child relationships are quintessential to children’s development.
- On average, depending on the way a child exits state custody, youth will spend about 13 to 50 months in foster care.
- In current child protective cases, as long as the final permanency trial is commenced within a 12-month deadline, children may remain in foster care and in temporary placements for an indefinite amount of time.
- The COVID-19 pandemic illuminated that permanency might be jeopardized in emergencies as hearings were rescheduled, parent visitations canceled, and foster placements disrupted.

Executive Summary

A child is highly monitored from the moment he is removed from his home and throughout the child protective case, but what happens when the case is closed, the state gets custody, and the child is left in foster care? Most children spend between 13 and 50 months in care before reaching any final permanency.

Permanency in this paper is defined, as per Child and Family Services Reviews, as a “legally permanent, nurturing family for every child involved the system” ([Child and Family Services Review, n.d., para. 1](#)).

In this definition, both permanency of a stable home and parent-child relationships are integral to the healthy development and overall well-being of a child. When a child experiences disruption, healthy development and well-being are jeopardized, possibly leading to negative long-term outcomes and behavioral dysfunction.

While the child welfare system and government have prioritized child permanency in policy, permanency initiatives have fallen short in reality. Through specific court deadlines, prioritizing family rehabilitation, and emphasizing monitored returns, the child welfare system can help foster youth gain stable biological or adoptive families quicker.

Introduction

The state is a bad parent. This statement was reaffirmed by U.S. District Judge Janis Jack, who found that Texas foster youth often left foster care more damaged than when they entered ([M.D. v. Abbott, 2015, p. 823](#)). Despite the improvements the state has made since this ruling, removing youth from their home may not always be the right choice. One former Child Protective Services caseworker said of ideal versus adequate home life that adequate may be “better than being torn out of your home and away from everyone and everything you know and love” ([Friedersdorf, 2014, para. 11](#)). But when a child must be put into care, finding a permanent placement, whether through reunification or adoption, must be prioritized and expedited.

The focus on permanency is not new in child and family law. Its primacy in the foster care system is marked in the Adoption and Safe Families Act (ASFA), which outlined permanency as one of three top priorities regarding child abuse and neglect, ranking permanency among safety and well-being ([Administration for Children and Families, 1998](#)). The federal legislation specified that states’ child protective agencies must focus on reunification or adoption within 90 days in order to receive federal funding.

The law made clear that “foster care is a temporary setting and not a place for children to grow up” ([Administration for Children and Families, 1998, p. 2](#)). Under Section 103(a)(3) of ASFA, states must hold a permanency hearing no later than 12 months after the child entered foster care. Additionally, states must move to terminate parental rights and pursue adoption if a child has been in care for 15 of the last 22 months.

The Texas Family Code supports these federal requirements. According to Section 263.401, CPS courts must render a final custody order within 12 months of removal, with a 6-month extension for special circumstances. In addition, a stated major goal of any CPS agency intervention is to achieve a safe, permanent home for a child who has experienced maltreatment ([Child and Family Services Review, n.d.](#)).

The Importance of Permanency

The child welfare system and child advocates put much stock in permanency for youth in care for good reason. There is a substantial body of research focused on the emotional and physical effects of disruption in a child’s life. According to attachment theory, which explores relationships and bonds between people, including the parent and child, it is imperative for children to have stable emotional bonds for healthy development ([Goldsmith et al., 2004, p.2](#)).

Attachment is the natural desire for an attachment figure when a child perceives danger. If a child cannot access their attachment figure, it can induce insecurity that is only remedied by reunification with the figure or until another figure is found ([Schuengel et al., 2009, p. 2](#)). In the foster care system these two remedies translate to family reunification or adoption. Permanency is critical because a lack of attachment can lead to maladaptive development and long-term negative outcomes such as decreased mental or physical health, lower educational attainment, obesity, and poverty ([p. 2](#)).

One study showed that teachers reported more behavior problems after a child was placed in foster care than when the child remained at home with maltreating parents ([Lawrence et al., 2006](#)). Overall, the study found equal levels of maladjustment among children placed out of home and children remaining in high-risk families. While this is counterintuitive, this research points out that parent-child relationships are quintessential to children’s development and well-being.

These results on outcomes for children with disrupted attachments are even more powerful when comparing youth who grew up in foster care with their adopted peers. A Swedish study found that youth in long-term foster care

had categorically worse outcomes than adoptees: worse school performance, lower cognitive competence, and less self-support capability in young adult years ([Vinnerljung & Hjern, 2011](#)).

What we can take from this research is that foster care can be a necessary evil. When children must be removed from their home for their safety, there are equal and sometimes greater risks that come from involvement in the system. Thus, the primary aim for children in care must be quick, stable, and permanent placement.

The Problem

Depending on the way a child exits state custody, youth will spend on average 19.3 months in Texas foster care ([Department of Family and Protective Services, 2019](#)). In 2019, children who were reunified with their families spent the least amount of time in care with an average of 12.8 months, whereas youth who aged out of foster care spent 44.8 months. For children adopted by non-relatives, their length of stay in care was 27.7 months. Based on what we know about the effects of placement disruption on children, these foster care timelines are bleak.

Despite the findings from research on permanency and state and federal law requiring action to be taken to secure stable, permanent placements within a certain timeframe, shortfalls in codified language have led to children staying in foster care for unnecessarily long periods.

In a typical child protective case, the timeline begins with the removal of the child and the subsequent emergency hearing where the court decides whether there is present danger in the home. According to the Texas Family Code Section 262.106, within 14 days, the court holds the adversary hearing, which determines whether the child will be returned home, or it enters a temporary order.

After the adversary hearing, if the state is granted temporary managing conservatorship, Texas Family Code Section 263.201 requires that the court hold a status hearing at the 60-day mark from removal, where the permanency plan is reviewed. This is the last hearing before the permanency hearings begin starting at day 180. In the initial permanency hearing and all permanency hearings conducted until the 12-month dismissal deadline, the court must review all services required, potential placements or reunification, and current placement (Section 263.304 of the Family Code). Permanency hearings happen every 120 days after the initial permanency hearing.

The final hearing, or the trial, is when the court enters a final order, or the case is dismissed (as laid out in Section 263.401 of the Family Code). The case may be extended

by 180 days under extraordinary circumstances. The trial may end with the child returned to the parent, managing conservatorship granted to a relative or other person, CPS appointing the managing conservator, or the termination of parental rights.

In the case of an extension, the child may be returned home under court-supervised monitoring or remain in another placement until the final trial. This trial, known as a monitored return, is a viable tool for CPS to use at earlier stages in the case timeline to allow the parent-child attachment to continue, while still ensuring child safety.

Section 263.401(a) of the Texas Family Code states that a court's jurisdiction over a suit affecting the parent-child relationship is automatically dismissed after 12 months. However, as long as the trial begins before the 12-month mark, there are few limitations to a case's length. As acknowledged in Justice Brown's concurring opinion *In re J.D.G and A.E.G.J.*, "once trial commences, there is no limit on how long the case may linger in trial" (2018, p. 857). As long as the trials are commenced within the 12 months, children may remain in foster care and in temporary placements for an indefinite amount of time.

In *In re J.D.G and A.E.G.J.*, the Department of Family and Protective Services did not complete the trial or return custody to the mother in question, despite the case plan goal being family reunification. Instead, the trial was delayed 18 months. In the end, "more than three years passed between the date of Andres's injuries and the date of the termination. During those three years, the boys lived with relatives and then various foster placements, and their interaction with their mother was limited to supervised visits" (*In re J.D.G. and A.E.G.J.*, 2018, pp. 858-859).

In the opinion, the court acknowledged that the loophole provided by the "commences the trial" language in section 263.401 allows for extending "termination trials in nonjury cases instead of effectuating the Legislature's goal of a timely determination of parental rights to allow for permanency for the children involved" (*In re J.D.G. and A.E.G.J.*, 2018, p. 860).

Setting a time limit of 90 days after the trial begins serves all parties involved and all possible ends. For parents who are seeking reunification, the strain of family separation and CPS oversight has an ending. For children moving toward adoption, the 90-day period puts a definite end to the trial and allows adoption efforts to move forward faster. A 90-day period allows the court ample time and flexibility to realistically and quickly reach a final resolution.

Child Welfare Revelations from COVID-19

Following the outbreak of the COVID-19 pandemic and subsequent mandatory shutdowns, further gaps in ensuring and prioritizing permanency for foster youth were revealed. The Children's Bureau issued guidance to legal and judicial leaders noting that they had been made aware of jurisdictions delaying necessary services, postponing hearings, and suspending or significantly reducing family visitation ([Children's Bureau, 2020, pp. 2-3](#)). The empirical data for tracking Texas's child welfare system's pandemic behavior is not yet available, but a survey of standing orders issued by child protection courts across the state reveals widespread delays in permanency hearings and suspension of in-person visitation between parents and children ([Children's Commission, n.d.](#)).

In the guidance letter, the bureau noted that these actions may jeopardize the safety and well-being of children, lead to longer stays in foster care, "contribute to additional child trauma, and may impede the likelihood of reunification" ([Children's Bureau, 2020, p. 3](#)).

Multiple organizations have issued recommendations for protecting parents and children amidst the pandemic and promoting permanency. These recommendations have ranged from expediting family reunifications and other permanency options through continued hearings, suspending or altering service plans that put parents at risk of contracting the virus, fast-tracking relative or fictive-kin placements when a current foster placement is disrupted, and maintaining in-person visitation ([Brown et al., 2020](#)).

The recommendations are meant to combat the harm these emergency-related practices could cause. By pushing back against delayed CPS hearings and calling for continued hearings, even if through virtual channels, the department can continue to progress toward the permanency case goal, so children are not in temporary settings longer than necessary.

By suspending or altering service plans, parents may not be punished for uncontrollable delays in completing their requirements, aiding in their ability to potentially regain custody and permanency for their child. At a time where public offices, transportation, and some services were or still are completely or partially shut down, faulting parents for the inability to continue progressing in their service plan is counterproductive.

In cases where the virus has disrupted foster placements, safely expediting kinship placements can increase stability and offset the disruption in the child's life. The more foster placements a child has, especially unfamiliar placements, the more detrimental the disruptions are on the child's

development. Finally, in-person visitations must continue at the rate they were occurring before the pandemic to cultivate the important parent-child bonds and again minimize disruption to the child.

All these measures are important because permanency for foster youth is more than just a stable home. Permanency means permanent and stable living conditions as well as continuity of family relationships and connections ([Child Welfare Information Gateway, n.d.](#)).

Policy Recommendations

Update Section 263.401 to include a timeline for conclusion of trial. The trial should conclude no later than 90 days after the final trial is commenced.

Increase the importance of reunifications in permanency decisions. Disrupted attachments to parents, regardless of maltreatment, has negative impacts on the child. When a child must be removed from the home, emphasize family rehabilitation and monitored returns to ensure the least amount of trauma.

With these policy recommendations, it would be remiss not to acknowledge that increased efforts toward legal permanency for children would also require a concerted effort to expand adoptive home capacity. Adoptive home recruitment is an expansive topic of its own, but the first step to successfully finding permanent homes for children is allowing communities to lead capacity growing efforts in their own regions. Communities are best positioned to address unique local barriers and call upon neighbors to rally around their children in need.

Conclusion

Supporting permanency for foster youth is a noncontroversial policy. All branches of government have expressed and guided the child welfare system toward ensuring children have stable homes and attachments. By adding a definite timeframe for concluding child protective cases and ensuring the system still functions as intended during emergencies, the policies and rules that mandate permanency efforts can be upheld to their truest intent. ★

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