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# DISPROPORTIONALITY

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## Introduction

Disproportionality is the over representation of a race or cultural group in a particular program or system. By most measures of child well-being, African American, American Indian, Hawaiian and Alaska-Native children who are involved in the nation's child welfare system have worse experiences and outcomes than do white children.

This phenomenon has most significantly affected African American children, with national data indicating that African American children represent 33% of children in foster care, although they represent only 15% of children in the general population.<sup>10</sup> This overrepresentation of African American children has been observed in the child welfare system for more than thirty years,<sup>11</sup> yet persists as a national concern.<sup>12</sup>

## A. In Texas

In Texas, as compared to children of other races:

- African American children are more likely to be removed;
- African American children are least likely to return home;
- African American children are less likely to exit to reunification and more likely to exit to emancipation;
- African American child have the longest wait to exiting foster care; and
- For Native American children in the care of CPS, the trends and patterns are unstable due to the low numbers. CPS and the Children's Commission continue to work with the tribal communities to address how to best meet the needs of the community.<sup>13</sup>

DFPS data from FY2015 shows African American children were much more likely than Anglo or Hispanic children to be reported as victims of child abuse or neglect and are removed from their families at almost twice the rate of the general population. African American children comprised 11.4% of the general child population of Texas but accounted for almost 20.7% of all children awaiting adoption. Even when other factors are taken into account, African American children spend more time in foster care, or other substitute care, are less likely to go home to their parents, and wait longer for adoption.

While African American and American Indian children are overrepresented in foster care, White children are proportionately represented and Hispanic children are

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underrepresented. However, most Hispanic children wait longer than White children to be adopted.<sup>14</sup>

## **B. The Elimination of Disproportionality and Disparities**

Texas Health and Human Services Commission (HHSC) and DFPS have been addressing disproportionality at the statewide level since 2005. In 2010, HHSC created the Center for Elimination of Disproportionality and Disparities (CEDD) to partner with health and human services agencies, external stakeholders, other systems, and communities to identify and eliminate disproportionality and disparities affecting children, families, and disparately impacted individuals. The CEDD works to identify the systemic factors and practice improvements that address the disproportionate representation and disparate outcomes for children, families, and disparately impacted individuals in the state's health and human services programs.<sup>15</sup>

The CEDD partners with CPS to continue promoting equity within the child welfare system. Specific CPS practices include:

- Developing and delivering cultural competency training to service delivery staff;
- Increasing targeted recruitment efforts of foster and adoptive families who can meet the needs of children who are waiting for permanent homes;
- Targeting recruitment efforts to ensure diversity among CPS staff; and
- Developing collaborative partnerships with community groups, agencies, faith-based organizations and other community organizations to provide culturally competent services to children and families of every race and ethnicity.

## **C. What You Can Do About Disproportionality?**

Many Texas judges want to know what they can do to combat disproportionality from the bench. In 2010, the Supreme Court Children's Commission formed the Judicial Workgroup Addressing Disproportionality (JWD).

- The JWD mission is to educate the judiciary & legal stakeholders on how to address cultural & institutional racism that contributes to the over-representation of African American, Native American and Hispanic youth and families in the child protection system.
- Since 2011, there have been 15 different judicial trainings where judges learned how unconscious bias could be affecting their decision-making.
- In 2016, the JWD hosted 70 participants in a Poverty Simulation Seminar. Six judges brought court teams to participate in a simulation where they assumed the roles of families facing poverty and experienced and how difficult it is to survive day-to-day,

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and navigate the court system in a child welfare case, when you have limited means. **Contact the Children’s Commission if you are interested in hosting a Poverty Simulation in your region.**

There are also many opportunities to partner with your community to contribute to this effort. Leaders in the African American community who speak out in support of these efforts are making powerful statements to children and families in the child welfare system and to their communities. Partnerships with the Alabama-Coushatta, Ysleta del Sur Pueblo, and Kickapoo Traditional Tribe of Texas are ongoing.

The National Council of Juvenile and Family Court Judges (NCJFCJ) developed the [Courts Catalyzing Change Preliminary Protective Hearing Benchcard](#), a practical and concrete judicial tool for use at the first hearing. This Benchcard reflects best practices for one of the most critical stages in a child abuse and neglect case.<sup>16</sup>

Health and human services agencies, the justice system, and other systems must partner with each other to make a difference in past patterns. The child welfare system plays a pivotal role in the solution, because it addresses the family as a whole and has the potential to decrease future disparate outcomes for African Americans. By working with local, regional, state, and national agencies in education, juvenile justice, health, and other stakeholders, the child welfare community seeks to identify common issues and barriers to equal access to community services for all Texans. While this is not an isolated issue in child welfare, child welfare leaders in Texas are committed to ongoing conversations and solutions that will contribute to the reduction of disproportionality and disparities and improve outcomes. Texas CPS has state and regional disproportionality representatives who are working in partnership with communities and stakeholders to ensure our children, youth and families remain at the heart of our work.

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## COURTS CATALYZING CHANGE

### PRELIMINARY PROTECTIVE HEARING BENCHCARD©

[Courts Catalyzing Change Preliminary Protective Hearing Benchcard](#)<sup>17</sup>

*(Courtesy of the NCJFCJ; adapted with permission of NCJFCJ)*

Reflections on the Decision-Making Process to Protect Against Institutional Bias

Ask yourself, as a judge:

- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?

### KEY INQUIRIES, ANALYSES AND DECISIONS THE COURT SHOULD MAKE AT THE PRELIMINARY PROTECTIVE HEARING

Persons who should be Present:

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
- Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Parent partners
- Relatives – relatives with legal standing or other custodial adults, including adult half-siblings
- Paternal and maternal relatives

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- Non-related extended family, fictive kin (someone who is known and trusted by the families; godparents)
  - Assigned caseworker
  - Agency attorney
  - Attorney for each parent (if conflict exists)
  - Legal advocate for the child
  - Guardian ad Litem (GAL)
  - Court Appointed Special Advocate (CASA)
  - ICWA expert (if ICWA applies)
  - Tribal representative/tribal liaison
  - Treatment and/or service providers, parent mentors if assigned/available, substance abuse coach, DV advocate
  - All age-appropriate children
  - Foster parents
  - Cultural leaders, cultural liaisons, religious leaders
  - Court-certified interpreters or court-certified language services
  - Education liaison/school representative
  - Court reporter
  - Court security

COURTS CAN MAKE SURE THAT PARTIES AND KEY WITNESSES ARE PRESENT BY:

- Ensuring that the judge, not the bailiff or court staff, makes the determination about who is allowed to be in the courtroom.
- Asking the youth/family if there is someone else who should be present.
- Requiring quick and diligent notification efforts by the agency.
- Requiring both oral and written notification in a language understandable to each party and witness.
- Requiring service/tribal notice to include the reason for removal, purpose of the hearing, and availability of legal assistance in a language and form that is understandable to each party and witness.

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- Requiring caseworkers and/or protective service investigators to facilitate attendance of children, parents, relatives (paternal and maternal), fictive kin, and other parties.
  - Facilitating telephonic or video conferencing appearance at hearings.

## REVIEWING THE PETITION

- A sworn petition or complaint should be filed prior to the preliminary protective hearing and served/provided to the parents.
- The petition should be specific about the facts that bring the child before the court.
- The petition should not be conclusory without relevant facts to explain and support the conclusions.
- Petitions need to include allegations specific to each legal parent or legal guardian if appropriate.
- If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.
- Petitions/removal affidavits need to include specific language clearly articulating the current threat to the child's safety.

## ENGAGE PARENTS

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about?
- What family members and/or other important people should be involved in this process with us?
- Do you understand the petition? (review petition with parties)

## DUE PROCESS

- Who are the child's parents and/or guardians?
- How was paternity determined?
- What were the diligent search efforts for all parents?
- Have efforts to identify and locate fathers been sufficient? What has been done?
- How were the parents notified for this hearing?

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- was the notice in a language and form understandable to parents and/or guardians?
  - Do the parents understand the allegations?
  - Are the parents entitled to representation? Are there language issues to consider when appointing attorneys?
  - Are there issues in the case that are covered by the Americans with Disabilities Act?

#### LEGAL THRESHOLD FOR REMOVAL

- Has the agency made a prima facie case or probable cause showing that supports the removal of the child?
- Have the family's cultural background, customs and traditions been taken into account in evaluating the event and circumstances that led to the removal? Have the parent(s) cultural or tribal liaison/relevant other(s) been asked if there is a culturally-based explanation for the allegations in the petition?

#### REASONABLE EFFORTS (TO PREVENT REMOVAL)

- Were there any pre-hearing conferences or meetings that included the family?
  - who was present?
  - what was the outcome?
- What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services rationally related to the safety threat?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?
  - have non-custodial parents, paternal and maternal relatives been identified and explored? What is the plan to do so?
- How has the agency intervened with this family in the past? Has the agency's previous contact with the family influenced its response to this family now?

#### WHAT IS PREVENTING THE CHILD FROM RETURNING HOME TODAY?

- What is the current and immediate safety threat? Has the threat diminished? How do you know that? Specifically, how can the risk be ameliorated or removed?

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- What is preventing the child from returning home today? What type of safety plan could be developed and implemented in order for the child to return home today?
    - what specifically prevents the parents from being able to provide the minimally adequate standard of care to protect the child?
    - will the removal or addition of any person from or in the home allow the child to be safe and be placed back in the home?
  - If the safety threat is too high to return the child home, how have the conditions for return been conveyed to the parents, family and child, and are you satisfied that they understand these conditions?

#### APPROPRIATENESS OF PLACEMENT

- If child is placed in foster care/shelter, have kinship care options been fully explored? If not, what is being done to explore relatives? If so, why were the relatives deemed inappropriate?
- If child is placed in kinship care, what steps have been taken to ensure the relative is linked with all available training, services, and financial support?
- How is the placement culturally and linguistically appropriate?
  - from the family and child's perspective, is the current placement culturally and linguistically appropriate?
- How does the placement support the child's cultural identity? In what way does the placement support the child's connection to the family and community?
- How does the placement support the family/child's involvement in the initial plan?
- What are the terms of meaningful family time with parents, siblings and extended family members?
  - do the terms of family time match the safety concerns? Is it supervised? Specifically, why must it be supervised?
  - is the time and location of family time logistically possible for the family, and supportive of the child's needs?

#### REASONABLE EFFORTS TO ALLOW THE CHILD TO SAFELY RETURN HOME

- What services can be arranged to allow the child to safely return home today?
- How are these services rationally related to the specific safety threat?



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- How are the parents, extended family, and children being engaged in the development and implementation of a plan for services, interventions, and supports?
  - How will the agency assist the family to access the services?
    - does the family believe that these services, interventions, and supports will meet their current needs and build upon strengths?
    - has the family been given the opportunity to ask for additional or alternate services?
  - How are the services, interventions and supports specifically tailored to the culture and needs of this child and family?
    - how do they build on family strengths?
    - how is the agency determining that the services, interventions, and supports are culturally appropriate?
  - What evidence has been provided by the agency to demonstrate that the services/interventions for this family have effectively met the needs and produced positive outcomes for families with similar presenting issues and demographic characteristics?

#### CLOSING QUESTIONS TO ASK PARENTS, CHILDREN, AND FAMILY MEMBERS

- Do you understand what happened here today?
- Do you understand what the next steps are?
- Do you have any questions for the court?