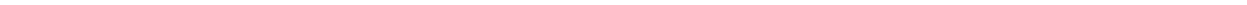

SYSTEM ISSUES

COMMUNITY-BASED FOSTER CARE

DISPROPORTIONALITY AND EQUITY

DUAL STATUS



COMMUNITY-BASED FOSTER CARE

A. What is Community-Based Foster Care?

In 2017, DFPS started implementing Community-Based Foster Care, also referred to as CBC, in certain geographic areas in the state, known as “catchment” areas. CBC is intended to delegate or outsource certain decisions about foster care delivery and case management, and it is implemented with measurable goals related to these decisions. CBC is designed to be implemented in stages. Stage I of CBC involves a single contractor handling the responsibility of finding safe, high-quality, nearby homes for children in the catchment area. Stage II is when the lead contractor assumes responsibility for the conservatorship responsibilities of the case as well, including decisions related to family reunification, permanency goals, and all legal responsibilities. At each stage of CBC, the readiness of the provider to successfully interact with all stakeholders and to serve the children and families in its catchment area is critical to the success of the roll out.

B. The Single Source Continuum Contractor

Generally, a Single Source Continuum Contractor (SSCC) is a non-profit organization which has a focus on child welfare and by law must be formed as a charitable organization. A local governmental entity can also serve as an SSCC; an example of such a local governmental entity is Harris County Child Protective Services. As part of the readiness process, DFPS is required to consider whether an SSCC has demonstrated experience in providing services to children and families in the catchment area. As part of an application to secure a contract for CBC, each SSCC must develop a Community Engagement Plan that includes details about how the SSCC will involve faith-based entities, the judiciary, CASA, Child Advocacy Centers (CAC), service providers, foster families, biological parents, youth currently and formerly in foster care, relatives, child welfare boards, attorneys for both children and parents, and any other stakeholder the SSCC wants to include. Formation as a charitable organization provides limited legal protection to the SSCC under [Tex. Civ. Prac. & Rem. Code Chapter 84](#). The legal protections are limited to acts or omissions that occur while the entity or person is acting within the course and scope of the entity’s contract with the Department and the person’s duties for the entity and only if insurance coverage in the minimum amounts required by [Tex. Civ. Prac. & Rem. Code Chapter 84](#) are in force and effect at the time of the cause of action for personal injury, death, or property damage accrues.

C. The Effect of CBC on Courts and Court Process

Stage II of CBC requires that DFPS turn over all court-related duties to the single, lead agency who controls the catchment area so that these duties become the responsibility of the SSCC and its subcontractors. (Court-related duties include service of process, notice of hearings and significant events, preparation of court reports, appearing in court and offering testimony, engaging in discovery, preparing for trial, appearing at trial and mediation, complying with all of DFPS’ current statutory duties, and complying with all court orders that would ordinarily bind DFPS will be the responsibility of the SSCC and its subcontractors). DFPS will be the party to the lawsuit, and the SSCC will act as DFPS’ agent. SSCC employees will confer with and operate under an attorney-client relationship with the DFPS legal counsel, whether DFPS is represented by a regional attorney, a county attorney, or

a district attorney. Records that are related to the provision of CBC in a catchment area are subject to the Public Information Act in the same manner as DFPS records.

D. Monitoring of the SSCC by DFPS

Rather than serve in its traditional role in CBC areas, DFPS will act as a quality oversight and assurance division to ensure contract compliance, conduct assessments of fiscal and qualitative performance of the SSCC and vendors, and create and administer a dispute resolution process. DFPS must also monitor the transfer of case management services through this division, and has the statutory authority to review, approve, or disapprove a contractor's recommendation with respect to a child's permanency goal, but it is not clear whether DFPS will have sufficient staff to monitor this aspect.

E. The Role for Judges in Community-Based Care

The role for judges in all aspects of community-based care cannot be overstated. Judges are a critical partner in planning, implementation, and oversight of this model for provision of child welfare services and permanency. Judges are encouraged to work closely with DFPS as CBC moves into a catchment area where their court is located as well as to be in continued communications with all partners as Stage I is implemented. Stage II is an especially critical time for judges to provide oversight to ensure due process for children and families. This oversight includes ongoing communication with the SSCC to clarify roles and expectations, streamline required court and legal processes, and resolve any issues. As the process evolves, these children and families will be well served by judges who remain informed about the ever-changing landscape of CBC.

F. Community-Based Foster Care Resources

In 2021, the Office of Community Based Care Transition was established as an independent office that is administratively attached to DFPS. The office will assess catchment areas where CBC services may be implemented, develop a plan for implementing CBC in each catchment area in Texas, including the order in which CBC will be implemented in each catchment area, a timeline for implementation, and an evaluation of CBC providers. [Tex. Fam. Code § 264.172](#). Additional information about the implementation of CBC, including a map of the catchment areas and updates on the Implementation Plan, is available on the [DFPS Community-Based Care](#) webpage.²⁴²

DISPROPORTIONALITY AND EQUITY

Please see the Checklist Section for the Practical First Steps to Address Disproportionality and Implicit Bias checklist.

Background

Disproportionality is the overrepresentation or underrepresentation of a group within a social system at a rate or percentage that is not proportionate to their representation in the general population. Disparity refers to the differences in outcomes and conditions for some groups of people compared to other groups because of unequal treatment or services. African American and Native American children are disproportionately represented and have worse experiences and outcomes than Anglo children in the nation's child welfare system.

Special Issue: *The terms used herein to describe populations are the same terms which are currently used to collect race/ethnicity data. In applying an equity lens to the child welfare system, it is important to note that terminology is evolving. African American, Black, Hispanic, Latino/a or Latinx, Anglo, White, Native American, and Indigenous are all terms used to describe race and ethnicity.*

Disproportionality has most significantly affected African American children, with national data indicating that African American children represent 23% of children in foster care, although they represent only 14% of children in the general population.^{243,244} This overrepresentation of African American children has been observed in the child welfare system for more than thirty years, yet persists as a national concern.^{245,246}

Disproportionality and disparity can be seen in the experience and outcomes of other populations as well. For example, a 2019 research study by the University of Texas at Austin found that 30.4% of youth in foster care self-identify as Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) compared to 11.2% of youth who self-identify as LGBTQ in the general population.²⁴⁷ Compared to heterosexual youth in foster care, LGBTQ youth in foster care report greater disparities in terms of school performance, mental health, and victimization.^{248,249}

A. In Texas

In Texas, the issue of disproportionality and disparities is complex. DFPS data from FY 2021 show:

- African American children are 1.7 times more likely to be reported to CPS than Anglo children;
- African American children are 1.9 times more likely to be investigated;
- African American children are 1.5 times more likely to be removed;
- Hispanic children are slightly less likely than Anglo children to be reported or removed, but are investigated at the same rate as Anglo children;

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- Children of “other” ethnicities are 2.2 times as likely to be reported to Statewide Intake and were likely to be investigated or removed at similar rates to Anglo children.²⁵⁰

After removal, African American children are less likely to reunify and, if reunification is ruled out, they wait longer for adoption than other populations. African American children are overrepresented in foster care, Anglo children are proportionately represented, and Hispanic children are underrepresented. However, most Hispanic children wait longer than Anglo children to be adopted.²⁵¹

DFPS collects data at critical decision points in the CPS system by race and ethnicity to measure and understand the extent of disproportionality in the child welfare system. In 2022, DFPS established an Office of Addressing Disproportionality and Disparity with two State Disproportionality Managers and two program specialists who see efforts across all division of DFPS. The Office is tasked with providing support and training to DFPS staff to improve the response to disproportionality and disparate outcomes in CPS cases. More information can be found on the DFPS webpage [Disproportionality in Child Protective Services System](#) including information on The Texas Model, Texas Community Engagement Model, and other CPS initiatives.²⁵²

B. Addressing Equity

Many Texas judges want to know what they can do to combat disproportionality from the bench. As community leaders, judges are in a key position to lead efforts in their jurisdiction to address these important issues. Advancing equity in the child welfare system requires acknowledgement of the existing disparities and understanding root causes. Understanding the history of the community which a judge serves will provide a more robust context in which to assist the children and families before the court. Asking the question, “What is the family looking for and what does this family need?” will be easier to answer when acknowledging the breadth of each person’s identity and experiences.

In 2016, the Supreme Court of Texas and Texas Court of Criminal Appeals spearheaded the [Beyond the Bench: Law, Justice, and Communities Summit](#). The Summit brought together leaders from various sectors of the community and participants generated several “Big Ideas” to addressing disproportionality and disparity. The ideas generated from this Summit provide practical steps for judges seeking to address disproportionality within their jurisdiction.

Some of these “Big Ideas” from the Summit as well as additional efforts that may be helpful in advancing equity at the local level include:

- Convene judicially-led community meetings (or Courageous Conversations) to discuss planning, data, and desired outcomes in the context of the administration of justice.
 - engaging diverse populations and community stakeholders in meaningful conversations and practice improvement will provide more meaningful avenues for change.²⁵³ Local leaders in equity work might be good partners to inform and further efforts to address these issues in child welfare.
 - obtaining and understanding a court’s data as it relates to disproportionality and disparity.
- Work with court stakeholders to understand and address issues presented by local and regional data. Ask an independent party or organization, outside of the court, to track

demographics including race with the intention of evaluating and checking assumptions about what the data reveals.

- Explore the need, feasibility, and sustainability of a specialty court docket such as drug, mental health, and veteran courts.
 - consult the Texas [Specialty Courts Resource Center](#) for support and more information.
- Educate all members of the court system about the various roles others have to create a more unified system that can help with all aspects of the needs of the individuals.
- Prioritize training regarding implicit bias for all court stakeholders.
 - there are many trainings available on equity and implicit bias, in-person and online, that can educate court staff.
- Utilize a checklist to provide reminders during a case to be aware of and guard against bias. 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 court hearing. This bench card reflects best practices for one of the most critical stages in a child abuse and neglect case.²⁵⁴ Additionally, the Children’s Commission has created a bench card for quick reference. Please see the Practical First Steps to Address Disproportionality and Implicit Bias Bench Card in the Checklist section of this Bench Book.
 - creating common language among court stakeholders is an important step to establish an understanding of race equity and inclusion principles.²⁵⁵

Special Issue: To obtain child welfare data broken down by race and ethnicity for a specific jurisdiction, judges can reach out to their DFPS Regional Director. Judges can also access public data on the [DFPS Data Book](#)..

Key concepts to understand include:

- **Equity** refers to “the effort to provide different levels of support based on an individual’s or group’s needs in order to achieve fairness in outcomes. Working to achieve equity acknowledges unequal starting places and the need to correct the imbalance.”²⁵⁶
- **Structural, institutional, or systemic bias** refers to a “set of processes that produce unfairness in the courtroom . . . [which] lock in past inequalities, reproduce them, and . . . exacerbate them . . . without formally treating persons worse simply because of attitudes and stereotypes about the groups to which they belong.”²⁵⁷
- **Explicit bias** “refers to attitudes and beliefs that are consciously held about a person or group of people.”²⁵⁸
- **Implicit bias** “refers to subconscious feelings, attitudes, and stereotypes that affect our understanding, actions, and decision-making processes in an unconscious manner.”²⁵⁹

C. Additional Resources

- “Equity as a Foundation for a Trauma-Informed Court” presentation during the [Judicial Trauma Institute](#)²⁶⁰
- Project Implicit, [Implicit Association Test \(IAT\)](#)²⁶¹
- Kirwan Institute for the Study of Race and Ethnicity, [Making Sense of Your IAT Results](#)²⁶²
- NCJFCJ, [Addressing Bias in Delinquency and Child Welfare Systems Bench Card](#)²⁶³
- The Annie E. Casey Foundation, [Race Equity and Inclusion Action Guide: Seven Steps to Advance and Embed Race Equity and Inclusion within Your Organization](#)²⁶⁴
- The American Bar Association, [Race and Poverty Bias in the Child Welfare System: Strategies for Child Welfare Practitioners](#)²⁶⁵
- Center for the Study of Social Policy (CSSP), [Key Equity Terms and Concepts: A Glossary for Shared Understanding](#)²⁶⁶
- Child Welfare Information Gateway, [Disproportionality Resource Page](#)²⁶⁷
- The American Bar Association, [Implicit Bias Videos and Toolkit](#)²⁶⁸
- National Center for State Courts, [2020 Ensuring Justice in Child Welfare Summit](#)²⁶⁹
- [Beyond the Bench: Law, Justice, and Communities Summit and Toolkit](#) sponsored by the Supreme Court of Texas and Texas Court of Criminal Appeals.²⁷⁰

DUAL STATUS

A. Definitions

A “dual system child” is a child who, prior to the child’s 18th birthday, was referred to the juvenile justice system and was involved in the child welfare system. [Tex. Fam. Code § 51.11](#).

A "dual status child" means a child who has been referred to the juvenile justice system and is:

- In the temporary or permanent managing conservatorship of the Department of Family and Protective Services;
- The subject of a case for which family-based safety services have been offered or provided by the department;
- An alleged victim of abuse or neglect in an open child protective investigation; or
- A victim in a case in which, after an investigation, the department concluded there was reason to believe the child was abused or neglected. [Tex. Fam. Code § 51.02\(3-a\)](#).

Special issue: *Dual system is a broader term that captures a youth who is involved with both systems at any time whereas dual status means the system involvement is concurrent.*

B. Data on Dual Status Youth

National studies provide some insight of the intersect between youth who experience both the child welfare system and the juvenile justice system. Children and youth who experience abuse or neglect are at a 47 percent greater risk of being juvenile justice involved, compared to the general population.²⁷¹ Females and African American youth are disproportionately represented among youth involved in both the child welfare and juvenile justice systems compared to their peers with involvement in one of these systems.²⁷² Among youth involved in both systems, 92 percent first experience the child welfare system then become juvenile justice involved.²⁷³ Although prevalence is hard to quantify and dependent on the definition used for the population, it is estimated that 45-75% of first-time juvenile petitions involve dual system youth.²⁷⁴ Involvement in both the child welfare and juvenile justice systems is associated with higher risks for mental health, education, and vocation challenges as well as higher rates of recidivism, longer stays in detention, placement instability, and poor permanency outcomes.²⁷⁵

C. Guardian ad Litem and Court Appointed Special Advocates

A guardian ad litem may serve in both the juvenile case and the child welfare case. If the guardian ad litem is serving in both cases and is an attorney, the guardian ad litem may need to become more familiar with the juvenile proceedings.

A non-attorney guardian ad litem must be very careful not to investigate any pending juvenile charges nor offer testimony concerning the guilt or innocence of a dual status child. Questions or investigations

could lead the non-attorney guardian ad litem to become a witness against the child in violation of [Tex. Fam. Code 51.11](#).

D. Considerations for Dual Status Youth

Several large, urban areas have implemented the Crossover Youth Practice Model developed by Georgetown University or the RFK Children’s Action Corps Dual Status Youth and Probation Reform Models, including Travis, Bexar, Harris, McLennan, Tarrant, El Paso, and Dallas Counties.²⁷⁶ The Child Protection Courts also have jurisdiction to hear dual status cases pursuant to [Tex. Fam. Code Chapters 51 and 201](#). These courts utilize a “one family, one court” model where the same judge hears both the child welfare and juvenile justice cases.

For cases involving dual status youth, some court considerations include:

- Upcoming court dates for both the child welfare and juvenile cases;
- Progress of each case;
- What services are being provided in each case;
- Disposition in the juvenile case, including placement options if the child is not going to be released on probation; and
- Whether the records in the juvenile case can later be sealed.²⁷⁷

Special issue: *If more than one court is involved, coordination is critical to ensure statutory timelines are met and there is minimal duplication of services. Inquire about the status of a juvenile case for a dual status child on a regular basis, at least during each statutory child welfare hearing, and more often if the child is in detention.*
