

TEXAS SUNSET ADVISORY
COMMISSION
2014

PUBLIC TESTIMONY
WRITTEN SUBMISSION

ON

DEPARTMENT OF FAMILY PROTECTIVE
SERVICES

NEEDED REFORM

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June 30, 2014

Introduction to Written Submission to the Sunset Commission
on
Texas Department of Family and Protective Services 2014

First, a brief introduction of K J Magnuson. I am a legal reform advocate and have participated in the process of agency reviews and legislative action since 1981. Having no pecuniary interest in this process but rather a keen sense of recognizing ineffective government operations. It has been found that conflicts of interest frequently exists even when many governmental agencies or entities fail to be cognizant of it's own failed practices and policies. The citizens of Texas and the public in general always suffer the consequences of either ineffective, incompetent practices, or out right corruption. In many instances *due process* has taken a back seat to procedural expedience.

The agency under review **Texas Department of Family and Protective Services** has a rather daunting task to perform while having to be impartial and provide *due process* in every case it undertakes. While my comments are going to focus on the **Child Protective Services, CPS**, part of this agency the comments about processes and goals in most instances will apply to the agency as a whole.

In 2012 the submission on the State Commission on Judicial Conduct raised issues and concerns that were not addresses by the Texas legislature in the 2013 session. Corrupt practices by many courts in violation of statutory law and constitutional rights have continued. The abuses have been exacerbated by corrupt judges embolden by the seemingly disinterested legislature. This corruption and abuse of power by many judges in Texas is particularly acute when it comes to Family Law issues. To recommend correction to CPS would be impossible to do without recommending radical changes to the Texas Family Code especially as it applies to the judicial process.

Any findings of abuse or neglect by CPS will result in court proceedings which are lengthy and expensive. Even if the accused is found innocent of any of the accusations or findings by the agency, there is no means of recovery for economic loss no mater how unfounded or egregious the findings by CPS. The "state" can attack a "family" with state and federal financing with few resources available to the accused for mounting a defense especially when indigent. When this is taken to the extreme through overzealous and omnipotent judges; *due process* is extinguished. This is the current situation in Texas. Judges following the law and applying standards set by stare decisis on a consistent basis are rare and it is no guarantee they will not deviate in the future especially with the paper tiger of Texas judicial regulation, the State Commission on Judicial Conduct.

In the failures of this agency in many cases, there seems to be emerging a list of Federal grants and funding sources that in combination with grants available to the Family Court processes, a subliminal motivation of this agency to abandon its impartiality and potentially falsify the case reports to support expenditures or infusion of external capital. This can be only seen in the outrageous outcomes and actions by CPS and the courts which defy logic and law. However, to find a direct connection is difficult if not impossible since this agency and the courts are not consistently subject to the Texas Public Information Requests. The agency and the family courts are hiding many of the grant expenditures from the public if not out right harassment and

retaliation if someone dares to request such record. A more transparent CPS is necessary in all functions and standards of procedure and practices.

CHILD PROTECTIVE SERVICES

This agency is delegated a special task of protecting children from abuse and neglect. For the purposes of this review neglect is abuse. The Texas Family Code has provided various duties, responsibilities and investigative powers on this agency. All of the actions taken by this department when there is a finding of abuse require lengthy court involvement.

Divorce and Family Courts

Many times the complaints originate as anger or feelings of betrayal from a couple poised on the brink of divorce. Where many unscrupulous attorneys have urged their clients to file complaints of abuse against their estranged spouse as a preemptive strike. This is done by the attorneys to create more complicated cases and increase billable hours. This leads from CPS to the abuse of power by many Texas Family Court Judges to deny due process and allow many attorneys to profit excessively from the conflagration they either fomented or accelerated. These judges allow pleadings by attorneys many of which are frivolous in nature supported by hearsay testimony or out right fabrications by many CPS investigators.

CPS Investigators

The CPS investigators and supervisors are the front line in contact with families. Their power to interfere with the custody of children is quasi judicial in nature while also having quasi police powers. This is a rare if not unique situation and an untenable temptation for abuse.

Rights of Families

Families being the parents and children and for this review parents equates to the adults with legal custody. All parents have constitutional protections that cascade down through the rights of rearing their children as they see fit. The "state" under our republican form of government can only intercede when criminal laws are violated or when there is a clear and present danger of imminent harm. Despite the wishes that all children have a happy and safe life; the states desire to safe guard all collides with the constitutional rights of the parents right to retain custody and rear their offspring as they see fit.

Alleged Abuse

Removing a child or threatening to remove is the most horrifying nightmare that could happen to parents. It is at least equivalent in magnitude to a criminal charge and arrests. The Texas Family Code which uses the phrase "reason to believe" as a justification for action falls short on constitutional protections for the rights of both parents and children. A criminal complaint requires more than reason to believe but some type evidence to reach a threshold for a warrant and arrest. Then there is the magistrate to protect the accused's rights with an examining trial to establish "probable cause."

The existing system with CPS has no parallel mandated process to provide free competent legal counsel if one cannot afford counsel. The issue here is not to imagine the worse case where abuse is clear and evidence obvious and abundant but where a conscientious CPS investigator is motivated by the fear where there is no evidence but a perception that something is wrong. That under these hypothetical contexts the CPS investigator might asks the question to themselves, "what is something happens if I take no action?"

Abuse of Power

This is a powerful incentive to over react or to write more critically to allow others to use the report to take overt action. Then at least the CPS investigator has provided a pretext for removal or separation from one parent. They light the match while the attorney ad litem, amicus attorney, or counsel for one of the parents provides the gasoline. While the case burns the parents and children are irreparably harmed. CPS erroneously records another victory for children while the attorneys divide up the community property as excessive litigation fees. The community property usually consists of the home, the savings, retirement , and the children's college fund if the family was affluent enough to have a fund.

There are those CPS investigator that let power go to their heads and act omnipotent. A person challenging their findings may on many occasions find threats of retaliation and permanent removal of the child. CPS investigators and counselors will threaten the children with never seeing their parents if they don't fully cooperate and stop complaining.

There are many in CPS doing the job through proper processes and practices. Some even stand up to abusive judges that wish to dismiss their reports when it is convenient or expedient.

This agency in conjunction with the Family Code and court need significant reform.

Due to time limitations I submit this as incomplete but will submit an amended version to all members of the Sunset Commission and ask them to update the filing for public viewing.

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June 30, 2014