

May 27, 2014

Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

Re: Comments on Staff Report
Department of Family and Protective Service
May 2014

Dear Sunset Advisory Commission:

I respectfully submit the following comments for your consideration regarding the Sunset Staff Report about the Department of Family and Protective Services (DFPS)(May 2014). The sunset staff generally produced a strong report, evidencing a good understanding of the challenges facing DFPS. I hope my specific comments are useful to you.

By way of [background](#), I have been deeply engaged in child protection for 25 years, first as a district judge hearing child abuse cases, then a child welfare policy wonk working on legislation, and now as Director of the Children's Rights Clinic at the UT Law School, where we represent children as attorneys and guardians ad litem in child protection cases.

Issue 1—Turnover

It is no coincidence that caseworker turnover in Child Protective Services (CPS) is the first issue the report discusses. The report correctly identifies caseworker turnover as the key issue affecting agency performance. As the report notes, high turnover produces high vacancy rates, which produces higher caseloads for the workers remaining, which in a vicious cycle leads to even higher turnover.

To give you a sense of the magnitude of the problem, at the end of FY 2013, DFPS employed 4,733 CPS caseworkers, but throughout FY 2013, DFPS lost 1,34 caseworkers. The agency estimates it incurred a direct cost of \$72.7 million to hire and train replacements. The indirect cost in program effectiveness is incalculable but even more significant. Across the nation, experts identify constant caseworker turnover as the biggest problem in child welfare.

Turnover is likely to grow worse as the economy improves. Just before the Great Recession, turnover was at an all time high of 40 percent. Turnover dropped significantly with the recession, but with an improving economy, turnover is worsening—trend lines are up.

While recognizing the importance of the problem, the report proposes only small bore recommendations that focus on marginally improving working conditions.

These recommendations may keep a few caseworkers on the job, but in the end they won't significantly affect turnover.

Even under the best of conditions, helping abused and neglected children is very difficult work. The state simply pays caseworkers too little to keep them on the job. To get a good understanding of the salary problem, I recommend you review the [Child Protective Services Salary Study](#), which DFPS prepared at the direction of the 2011 Legislature and released in December 2012. The current average salary for all caseworkers is about \$37,000.

Attributing turnover to working conditions as the sunset staff report does instead of inadequate salaries leads to the mistaken assumption that improving working conditions will reduce turnover while improving salary will not. As the DFPS salary study reports, about 75 percent of CPS caseworkers say that they are dissatisfied or very dissatisfied with their compensation. With this level of dissatisfaction, caseworkers are likely to leave given the opportunity to do other meaningful work at a higher salary. Caseworkers have many such competitive opportunities.

For example, public school teachers—who have less dangerous and difficult work—are paid an average of \$48,375. While our public schools have teacher turnover, they do fill their positions each year, and the average tenure of our public school teachers is 7.7 years, more than double the average tenure for our CPS caseworkers, which is 3.6 years.

To truly address the devastating problem of high turnover, I encourage the commission to direct staff to develop some big ideas, including a comprehensive salary proposal.

How much of a salary increase is needed? Undoubtedly if Texas paid each caseworker a million dollars a year, the state could easily keep all its positions filled regardless of working conditions. Likewise, if the state paid each caseworker only a dollar a year, it couldn't keep its positions filled no matter how pleasant the working conditions.

Somewhere between a million a year and a dollar a year is a competitive salary that will significantly reduce turnover. The current salary structure, through, has produced only high turnover, a large vacancy rate, and short average tenure.

With a corps of 5,000 caseworkers, to increase the average salary \$10,000, the state would need to spend an additional \$50 million. But that figure is still less than the annual direct cost of turnover and much less than the devastating indirect cost from turnover to children and families—and ultimately to society.

Here is another big idea to reduce turnover: The state could dramatically alter how it staffs child protection. For example, instead of hiring four-year college graduates and assigning each an independent caseload, the state could form platoons head by

a four-year college graduate but staffed by two-year community college graduates. I envision small platoons, for example, 1 college graduate and 3 to 5 community college graduates. Community colleges could be engaged to develop associate degrees in social work to produce a ready workforce willing to work for what we are willing to pay.

While some will rightly argue that casework is complex and difficult, requiring a college-educated caseworker, perhaps a less educated but significantly more stable workforce (enhanced by strong training and close supervision) would be better for children and families.

The sunset staff report discusses how turnover has been studied again and again all to no end. I am afraid that the sunset report too is destined to take its place on the list of these endless, futile studies unless the commission seizes this opportunity to call for big ideas.

For example, the commission could recommend a pilot in two regions that raises average salaries by \$15,000, and a pilot in two other regions that requires hiring community college graduates with enhanced training and supervision. If either effort showed results, it would be game changing. I urge the commission to send staff back to the drawing board to develop some big ideas to reduce turnover.

As far as they go, I have no issues with Recommendations 1.1 – 1.9. I do have one observation regarding Recommendation 1.1. The fiscal discussion suggests a serious disconnect between what sunset staff is recommending and how DFPS says it would implement the recommendation. In discussing the fiscal implications, DFPS says it would implement the sunset staff recommendation to handle “employee complaints outside the direct chain of command” with two new employees at \$40,000 each to “resolve complaints.” If the commission seriously wants a process where employee complaints can be considered and addressed outside the chain of command, it will require assigning the job full-time to someone with far more tenure and experience than two \$40,000-a-year employees.

Issue 2—Crisis Culture

The report hits the nail on the head when it observes: “What DFPS sorely needs is a timeout to breathe and a chance to regroup after being in constant transition for so long.” The report colorfully likens policymaking for DFPS to a game of “whac-a-mole” in which DFPS hammers every new problem or tragedy with a new initiative, leaving DFPS without the time to attend to critical issues of basic management. If the commission is not vigilant, the sunset process itself could contribute to this destructive dynamic.

I have no issues with Recommendations 2.1 – 2.10.

Issue 3—Foster Care

Foster Care Redesign holds significant promise for improving our child welfare system. Sunset staff has given you a good summary of the initiative as well as the pros and cons. I have been part of the effort from early days as a member of the Public Private Partnership that developed redesign, which is discussed in the report.

I strongly support Recommendation 3.2 and I have no issues with Recommendation 3.3 - 3.4. I am concerned, though, about Recommendation 3.1, which seems to conflict with the critically important Recommendation 3.2.

As sunset staff notes: “Currently, very little data or experience exists to judge the performance of foster care redesign.” Sunset staff wisely recommends in 3.2 that DFPS should not decide on broad-based implementation of foster care review until “after thorough evaluation of performance and cost data from experience under the new system.”

From the beginning, this has been the position of the Public Private Partnership. Here is the text of the original and still controlling [recommendation of the PPP](#) to the DFPS Commissioner in December 2010:

Implementation

The PPP recommends the model initially be implemented in a limited number of catchment areas. This initial group of catchment areas (set up as “innovation zones” or “test” sites) would include metro and non-metro catchment areas and would be of sufficient size to be fiscally viable. To minimize risk and maximize opportunities for success, the PPP also recommends phasing in the redesigned system as follows:

- Stage I:
 - Implement performance based contract for continuum in specific geographic catchment areas
 - Blend rates across all service levels and eliminate tie between billing and authorized levels of care
- Stage II
 - Increase providers' role with families of children in their care
 - Provide allocation for services to families of children in care
- Stage III
 - Implement case rate to include length of stay incentives
 - "Hold harmless" in regard to financial remedies during first year
 - Implement reinvestment of incentives to further improve outcomes for children in foster care.

In addition, the PPP proposed evaluation of catchment areas and modification of the model, if needed, prior to expanding implementation to new geographic areas.

As you can see, the PPP expressly proposed evaluation before expanding to new geographic areas, and recognized that modification of the model might be required. Yet, Recommendation 3.1 would require DFPS to develop “rollout timelines.” This is the very mistake that Recommendation 3.2 cautions against—a decision to move forward with a particular model before it is clear that moving forward is the right direction.

For example, sunset staff notes the serious cost questions raised by foster care redesign. The Legislature approved funding for foster care redesign on the condition that redesign is revenue neutral. In Article II of the General Appropriations Act for 2014-15, [Rider 6.d for DFPS](#) provides (emphasis added):

The department may use funds in strategy B.1.11, Foster Care Payments, for payment rates for foster care redesign. The payment rates for foster care redesign may not result in total expenditures for any fiscal year that exceed the amounts appropriated by this Act for foster care and related family services, except to the extent that any increase in total foster care expenditures is the direct result of caseload growth in foster care.

Now that redesign is underway, consensus is emerging that redesign requires more funding and cannot be both successful and revenue neutral. Until a cost is determined, and a decision to pay that cost has been made, no rollout should be mandated and no timeline should be established.

Sunset staff, however, is concerned that the state “needs a clear vision to dispel uncertainty among stakeholders and to guide its efforts.” While the desire for a clear vision is understandable, the real world is a messy place:

- As the PPP said in its recommendation letter in December 2010, foster care redesign is a test. At this point, we know too little to turn the test into a plan for statewide implementation.
- Adopting a rollout timeline will not dispel uncertainty unless the proposal is to commit the state to moving ahead with foster care redesign regardless of cost and regardless whether it is good for children and families! Until foster care redesign is proven affordable and workable, uncertainty among stakeholders is unavoidable.
- Moreover, some uncertainty among stakeholders is desirable. The stakeholders in question are private contractors with whom the state is negotiating price and performance. A rollout timeline undermines the state’s power to negotiate both. DFPS loses its bargaining power if the state mandates that it move forward pursuant to some timeline.

The better course is to give the two projects underway an opportunity to mature and give DFPS an opportunity to evaluate them. It is too soon for a vision and an implementation plan.

Issue 4—Regulated Care

I now turn to the recommendations regarding regulating daycare and residential care. The report leans toward tougher enforcement of regulations, and questions DFPS' effort to work with providers to bring them into compliance, noting:

The desire for a lighter enforcement hand may stem from concerns that a strong enforcement approach could harm child care providers and ultimately affect the affordability of day care and the availability of foster care for abused and neglected children. However, to go slow on enforcing regulations designed to protect children from safety risks out of concern that some providers may have trouble meeting such protective standards is essentially to accept a level of risk to children simply because the state needs providers, regardless of quality.

These report describe the state's dilemma well. The state doesn't pay adequate child daycare rates. The state doesn't pay adequate child care residential rates. Consequently providers struggle to comply with standards. Imposing monetary sanctions on an underfunded provider only makes it harder for the underfunded provider to come into compliance and more likely the provider closes. So if the state takes a harder enforcement line, it may be left with fewer providers.

While the failure to comply with standards does put children at risk, a shortage of daycare and residential care is also dangerous for children. The sunset staff report does not analyze whether tougher enforcement would curtail access and what risk that would create for children.

Divorced from the call for tougher enforcement, I have no issues with Recommendations 4.1 – 4.4. If implemented, the recommendations would provide DFPS more enforcement tools and require DFPS to develop an intentional enforcement policy.

As one tool, more aggressive targeted enforcement might even be useful. Until the state pays higher rates for care, however, the state should not signal that it wants DFPS to move from a compliance model to aggressive across the board enforcement.

Issue 5--Information

I have no issues with Recommendations 5.1 – 5.6, but I do want to make one point. An important nuance has been lost in the discussion of disposition definitions. Just as the law doesn't ask a jury to decide whether a crime occurred, but instead asks the jury to decide whether a particular person committed a crime, the law doesn't ask DFPS to decide whether abuse occurred, but instead asks DFPS to decide whether a particular person (a parent or other caretaker) committed abuse.

Sunset staff correctly notes that there is a difference in being unable to determine whether abuse was committed at all and being unable to determine whether a particular person committed the abuse. While that is true, the legal question DFPS must answer is whether a particular person committed abuse.

Like a [Scot's Verdict](#) in a criminal case, DFPS can find 1) a parent guilty (meaning they did it—Reason to Believe), 2) an allegation not proven (meaning DFPS can't say the parent did it or didn't do it—Unable to Determine), or 3) a parent not guilty (meaning DFPS can say the parent didn't do it—Ruled Out). If DFPS can't say the parent did it, DFPS can't legally take action to interfere in the family.

If DFPS makes an unable-to-determine finding, and if there are later allegations of maltreatment regarding the same child or same parent, it may be useful for DFPS to know in the later case whether in the first case 1) a child was likely abused but it is unknown by whom or 2) it was unknown whether the child was even abused.

In actual investigations, however, this distinction is not necessarily clear, and to learn the meaning of an unable-to-determine finding, an investigator would go to the case details. The effort to distinguish between Unable to Determine Maltreatment and Unable to Determine Perpetrator means dealing with a new level of complexity with accompanying training problems that may not be worth it.

Issue 6—Prevention and Early Intervention

I have no issues with Recommendations 6.1 – 6.5. Sunset presents an opportunity to put prevention and early intervention back on the state's agenda.

Issue 7—Recover of Regulatory Costs

I have no issues with Recommendations 7.1 – 7.3, but they will divert some funding for providers. See discussion under Issue 4.

Issue 8—Stakeholder Input

I have no issues with Recommendations 8.1 – 8.4.

Issue 9—DFPS Organization

The commission should heed the staff warning under Issue 2 that DFPS desperately needs “to get off the treadmill of perpetual change.” Sunset should not divert DFPS from focusing on basic management by forcing it to cope with significant structural change.

Conclusion

Protection of children is a critical state mission. Thank you for considering how to strengthen our system, and thank you for this opportunity to comment on the sunset staff recommendations. Please let me know if I can provide any additional information.

Respectfully submitted,



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