Modification to Sunset Issue 2 on the Department of Family and Protective Services

Offered by Senator Schwertner

December 10, 2014

Background

- Sunset Findings. In Issue 2 of the Sunset staff report on DFPS, staff found the agency and its caseworkers overburdened by continual change, as a result of both frequent legislative change as well as the agency's own initiatives. This constant state of transition distracts DFPS from developing an approach to improve its most basic processes and delivering desired results.
- CPS Operational Assessment Findings. The Stephen Group, which conducted DFPS' contracted CPS operational review, found similar issues with the agency's policymaking and implementation process. Perhaps the most notable finding of their review was that that **on average caseworkers spend only about 26 percent** of their time with children and families, with paperwork and other administrative tasks eating up a significant portion of the remainder. The report noted both DFPS' constant stream of new policy as well as burdensome and prescriptive requirements in the Texas Family Code that have the effect of making caseworkers spend more time and resources on compliance than on child well-being.
- Sunset Commission Recommendations. To address these issues, in August the Sunset Commission recommended the agency implement changes based on the CPS Operational Assessment with an immediate focus on retention, process, and policy to streamline its processes and allow more time for staff to spend with children and families. **The Commission also directed DFPS to identify statutory barriers that impede needed changes to achieve the vision of the Sunset Commission** and The Stephen Group, and report these by October 2014.

Overview of Modification Contents

- This modification includes statutory changes that are needed to streamline and clarify DFPS' statute, and give the agency flexibility to implement the changes in progress through CPS Transformation. While DFPS is taking a step back and scrutinizing its internal processes, the agency needs assistance from the Legislature to streamline and simplify statutory requirements — as well-intentioned as they are — that have a cumulative effect of overburdening caseworkers with redundant, excessive paperwork requirements, taking time away from children and families, and ultimately contributing to high turnover.
- This list of proposed statutory changes is based on DFPS' proposal in its October report to the Sunset Commission on the progress of CPS Transformation. Not all of those proposals are included here; instead, these changes represent the agency's proposals most closely tied to the areas of focus adopted by the Sunset Commission in August — retention, process, and policy improvements. Many of these changes are also clarifying and streamlining in nature, removing statutes duplicative of or in conflict with federal law, or that no longer reflect the current business reality of the agency.
- The ultimate intent of these changes is to help DFPS improve retention, streamline requirements, provide the agency with additional flexibility, and increase the amount of time caseworkers spend with children and families.

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p. 35 **Tex. Fam. Code (TFC) § 162.308(d).** State employee who violates state laws restricting race or ethnicity based adoptive placement decisions subject to immediate dismissal.	**Duplicative of Federal Law.** Differences in state statute and federal law cause confusion while DFPS could rely on federal law, which provides financial penalties and injunctive relief.	Repeal and rely on federal law.
p. 36 **TFC § 261.3021.** Subject to the appropriation of money, mandates specific casework documentation and management by DFPS.	**Limits Agency Flexibility.** Statute contains unnecessarily prescriptive direction for management tasks typically left to agency decision making. Such detail ties the agency's hands, limiting its ability to adjust procedures and streamline processes without legislative intervention. Currently, under this statutory directive, caseworkers lack flexibility to adjust workload considerations or higher priority tasks that may have a greater and more immediate bearing on child protection during the same time frame. Caseworkers could benefit from an internal approach regarding best practice.	Repeal statute but instead require DFPS to adopt rules defining appropriate deadlines for completing timely case documentation.
pp. 36-37 **TFC § 262.115(c).** Requires parent-child visits three days after the department is appointed temporary managing conservator.	**Limits Agency Flexibility.** While DFPS recognizes the importance of early parent-child visits, prescriptive statutory provisions leaves little room for adjustment based on case circumstances and good professional judgment. The Department remains committed to fostering parent-child relationships, and could benefit from additional flexibility to adjust competing demands.	Amend statute as follows. Sec. 262.115(c). The department shall ensure that a parent who is otherwise entitled to possession of the child has an opportunity to visit the child not later than the ~~third~~ fifth day after the date the department is named temporary managing conservator of the child unless: (1) the department determines that visitation is not in the child's best interest; or (2) visitation with the parent would conflict with a court order relating to possession of or access to the child.

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p. 37 **TFC § 263.303.** Required content of the permanency progress report.	**Limits Agency Flexibility.** Including instructions, the permanency progress report is a 13-page form. The estimates on the time required to complete initial permanency progress reports ranged from 30-45 minutes on the low end to one or more days on the high end, with reports on siblings and children prescribed multiple medications representing the greatest workload.	Preserve flexibility without dictating form of the report, by repealing the current statute and replacing it with the following: Sec. 263.303. PERMANENCY PROGRESS REPORT. (a) Not later than the 10th day before the date set for each permanency hearing other than the first permanency hearing, the department or other authorized agency shall file with the court and provide to each party, the child's attorney ad litem, the child's guardian ad litem, and the child's volunteer advocate a permanency progress report unless the court orders a different period for providing the report. [no change] (b) The permanency progress report must contain: (1) any information required to inform the court's conduct of the permanency review hearing in accordance with § 263.306; (2) information on significant events as provided in [new section--no number yet]; and (3) any other information the department determines is appropriate. (c) Nothing in this section shall be construed to require the department to file a separate report if the department determines that the requirements of state and federal law can be met using another document, including the child's or family's case plan, as applicable. SEC.___. DFPS shall review its current permanency progress and

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		placement review reports and determine whether: 1) another document such as the child's or family's service plan could be filed instead of the current report, or 2) a brief summary report would maximize department and court resources in order to better serve children and families.
pp. 38-39 **TFC § 263.502.** Required distribution and contents of placement review report.	**Limits Agency Flexibility.** Similarly to the permanency progress report, the current placement review report has grown lengthy to accommodate various directives, many of which target the same basic information regarding safety, permanency and well-being. The form itself is 12 pages, including the instructions. In addition, the entire subchapter focuses on "placement review" when the focus should continue to be on permanency for the child, even though a final order has been issued.	Modify similarly to 263.303, as follows: Sec. 263.502. [~~PLACEMENT REVIEW~~] PERMANENCY PROGRESS REPORT FOLLOWING FINAL ORDER. (a) Not later than the 10th day before the date set for a permanency [~~placement review~~]hearing, the department or other authorized agency shall file a permanency progress [~~placement review~~] report with the court and provide a copy to each person entitled to notice under Section 263.501(c) [~~263.501(d)~~]. (b) The permanency progress report must contain: (1) any information required to inform the court's conduct of the permanency review hearing in accordance with § 263.503; (2) information on significant events as provided in [new section--no number yet]; (3) for any child or youth whose permanency goal is another planned permanent arrangement, documentation of: (A) the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the State agency to return the

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		child home or secure a placement for the child with a fit and willing relative (including adult siblings), a legal guardian, or an adoptive parent, including through efforts that utilize search technology (including social media) to find biological family members for the children; and (B) the steps the State agency is taking to ensure that: (i) the child's foster family home or child care institution is following the reasonable and prudent parent standard; and (ii) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities (including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in the activities); and (4) any other information the department determines is appropriate. (c)[~~(b)~~] For good cause shown, the court may order a different time for filing the [~~placement review~~] report or may order that a report is not required for a specific hearing. (d) Nothing in this section shall be construed to require the department to file a separate report if the department determines that the requirements of state and federal law can be met using another document, including the child's or family's case plan, as applicable.
pp. 40-41	**Duplicative of Federal Law.**	Repeal and rely on federal law.

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TFC § 264.108 (e). State employee who violates state laws restricting race/ethnicity based foster placement decisions subject to immediate dismissal.	Differences in state statute and federal law cause confusion while DFPS could rely on federal law, which provides financial penalties and injunctive relief.	
p. 41 **Tex. Human Res. Code (HRC) § 40.0324.** Requires DFPS, subject to the availability of funds, to develop a program to provide for the timely replacement of caseworkers with trainees hired in anticipation of vacancies, and to consider the turnover rate for caseworkers by region in developing the program.	**Unnecessary Provision.** Currently, the FTE cap, not statutory authority, limits hiring making this provision unnecessary.	Repeal.
p. 41 **HRC § 40.0326**. Requires DFPS to target individuals who hold bachelor's degrees or advanced degrees in certain fields in its recruitment of CPS caseworkers.	**Limits Agency Flexibility.** This provision is unduly restrictive. DFPS may need to prioritize workers with associate degrees or other critical training to ensure maximum hiring flexibility and changes in need.	Repeal.
pp. 41-42 **HRC § 40.0327.** Requires DFPS to use special assessment tools in screening applicants for employment with the child protective services division.	**Limits Agency Flexibility.** This provision is unduly prescriptive and inhibits needed flexibility in hiring practices. DFPS should use good business judgment to determine the screening method for hiring CPS staff.	Repeal.
p. 42 **HRC § 40.036.** Specifies required training and curriculum for CPS caseworkers.	**Limits Agency Flexibility.** This provision is unduly prescriptive and could interfere with future retention and training decisions. Management needs flexibility to alter structure and content of training to best meet the agency's	Repeal.

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	changing needs.	
p. 42 **HRC § 40.037.** Specifies required training for CPS managers as soon as they are hired or promoted before they can begin working in the new managerial position.	**Limits Agency Flexibility.** This provision creates delays in managers starting their positions because managers frequently have to travel long distances for trainings or wait for a training to be offered in their area before they can begin working. Inability to deploy critical staff like supervisors is directly damaging to staff job function, morale and willingness to remain with the agency. Transformation efforts will address training needs, but removing this barrier only further supports that goal.	Repeal.
pp. 42-43 **HRC § 40.0528.** Mandates a comprehensive staffing and workload distribution plan for CPS to reduce caseloads, enhance accountability, improve quality of investigations, eliminate delays, and ensure efficient and effective use of resources; mandates numerous steps for carrying out the plan, including financial incentives for recruiting and retaining investigative staff.	**Unnecessary Provision.** This provision requires an additional report that duplicates ongoing agency efforts. In addition, the investigative incentives may need to be explored in light of the agency's current recruitment and retention efforts.	Repeal.

[1] This column contains DFPS' explanation of each problem as described in the "Report to the Sunset Advisory Commission: Child Protective Services Transformation" in Appendix A, Review of Statutory Barriers. http://www.sunset.texas.gov/public/uploads/files/reports/CPS_Transformation.pdf

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pp. 43-44 **New Provision.**	**Unclear Statutory Authority.** Federal law (recently passed HR 4980) includes a provision requiring licensing standards to "ensure appropriate liability for caregivers when a child participates in an approved activity and the caregiver approving the activity acts in accordance with the reasonable and prudent parent standard." DFPS currently lacks the ability to grant immunity from liability in this circumstance.	Add a provision to Texas law, similar to that in place in Florida (Florida Statutes § 409.145), which provides, *inter alia*: "Limitation of liability.—A caregiver is not liable for harm caused to a child who participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with the reasonable and prudent parent standard. This paragraph may not be interpreted as removing or limiting any existing liability protection afforded by law."
p. 44 **Tex. Educ. Code (TEC) §25.001(g).** Requires a public school to allow a student in DFPS conservatorship to continue attending the school the student attended at the time the student entered conservatorship (without having to pay tuition) until the student completes the highest grade offered by the school, even if the placement is outside the attendance zone for the school.	**Unclear Statutory Authority.** State statute is not broad enough to allow DFPS to comply with federal law aimed at improving child well-being. Federal law (Fostering Connections) requires DFPS to coordinate with local educational agencies to ensure that a child remains in the school in which the child is enrolled at the time of initial placement (or any subsequent placement change), unless remaining in that school is not in the best interests of the child. Changes to this section of the Texas Education Code in 2013 expanded the ability of a child coming into conservatorship to remain in the school the child was in at the time of initial placement to all grades rather than just high school. However, the Texas Education Code still does not require a school district to allow a student to continue attending the same school ***district*** the student attended at the time of placement, in cases where the current school is not appropriate but another one in the district might be. It also does not apply to subsequent school changes that might occur because of placement changes while a child is already in DFPS	Amend to expand the guarantee to allow a student to remain in the same school district, and for any subsequent placement changes after the child is already in conservatorship. Suggested language: A student enrolled in a primary or secondary public school who is placed in the conservatorship of DFPS at a residence outside the attendance area for the school or outside the school district is entitled to continue to attend the school <u>or a school in the same district</u> in which the student was enrolled immediately before entering conservatorship <u>or at the time of any placement change</u> [~~until the student successfully completes the highest grade level offered by the school at the time of placement~~] without payment of tuition.

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	conservatorship.	
pp. 44-45 **TEC § 25.087(b)(1)(F).** Authorizes "excused absences" from school, including absences for foster children who are participating in any activity ordered by a court under TFC Chapter 262 or 263 that cannot be scheduled outside of school hours.	**Unclear Statutory Authority.** Children's services are not generally court-ordered, although the parents' may be. Therefore (b)(1)(F) is not clearly applicable to the child if the child's therapy or other activities in the service plan are not court-ordered.	Amend to cover any absence to comply with the child's plan of service under Texas Family Code Chapter 262 or 263.
p. 45 **TEC § 54.366.** Outlines eligibility criteria for higher education tuition fee waiver for certain students formerly in DFPS conservatorship.	**Limits Agency Flexibility.** Based on the current eligibility criteria, in cases where either the parental rights of the parent are reinstated after a termination of parental rights, or where permanent managing conservatorship is awarded to the biological parents after termination, the youth will not be eligible for this important benefit. This exclusion can operate as a disincentive against permanency, and there are reports of youth remaining in care so they do not lose the tuition and fee waiver.	Add subsection (c) as follows: <u>(c) Notwithstanding Subsection (a)(1), a child who exits conservatorship to the legal responsibility of the child's parent, including a parent whose rights were previously terminated, may be exempt from the payment of tuition and fees if the department determines, utilizing factors specified in department rule, developed in consultation with the Texas Higher Education Coordinating Board.</u>
pp. 45-46 **TFC § 58.0052.** Requires juvenile service providers, upon request of another juvenile service provider, to share a multi-system youth's personal health information or history of governmental services for purposes of identifying such a youth, coordinating and monitoring care for the youth, and improving quality of services provided.	**Impedes Case Work.** Probation departments do not always share the terms of probation for a youth in conservatorship with CPS, making it difficult for caseworkers to find a suitable placement for a youth leaving the juvenile justice system.	Amend statute (or another appropriate provision of Chapter 58) to require probation officers to share the youth's terms of probation with CPS immediately upon request.
p. 46	**Impedes Case Work.** Some courts	Amend TFC §§ 103.001 and

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TFC § 103.001(b). Provides venue for suit in which an adoption petition can be filed. **TFC § 155.001(c).** Sets forth the parameters of the jurisdiction for the court of continuing, exclusive jurisdiction.	hearing adoptions of CPS children require the underlying CPS suit be transferred, if the adoption petition is filed in a different Texas county than where the original case is filed. This practice, not required by law, causes a delay in getting the court file transferred and additional work for CPS caseworkers	155.001(c) as follows: Sec. 103.001(b): A suit in which adoption is requested may be filed in the county where the child resides or in the county where the petitioners resides, notwithstanding that another court has continuing, exclusive jurisdiction under Chapter 155. Transfer of the suit in which a court acquired continuing exclusive jurisdiction is not required pursuant to chapter 155. Sec. 155.001(c): If a court of this state has acquired continuing exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child except as provided by this chapter, Sec. 103.001(b), or Chapter 262.
pp. 46-47 **New provision for TFC Chapter 104.**	**Unclear Statutory Authority.** The limitations on using a child's prerecorded or remote testimony, as specified in TFC § 104.002-104.006, could be applied or construed to require a child in care to attend Chapter 263 hearings in-person even when the child's physical presence is not necessary to convey the child's wishes to the court or the child does not want to attend the hearing. The requirement of in-person attendance can also lead to additional caseworker stress and strain, as discussed in TFC § 263.302. Allowing remote or prerecorded testimony for Chapter 263 hearings, yet mandating that every child is allowed to attend or participate in the hearing will allow children to effectively communicate with the court *and* enable caseworkers to help carry out the children's wishes without having to force children who do not want to attend hearings to attend.	Add new statute to TFC Chapter 104 as follows: 1. The limitations on using prerecorded or remote testimony of a child 12 years of age or younger, as specified in TFC § 104.002-104.006, do not apply to a child's out-of-court testimony in any status, permanency, or placement review hearing held pursuant to Chapter 263, and 2. A child of any age must be allowed to attend or participate in the hearing as provided in Chapter 263.

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p. 47 **TFC § 104.007.** Allows professionals in a DFPS case to testify via videoconference upon agreement of DFPS' and defendant's counsel.	**Impedes Case Work.** Current law requires agreement from both parties to a case in allowing videoconference. Amendment would improve case efficiency and facilitate obtaining testimony of professionals without having to delay hearings until professionals are able to attend the hearing.	Amend TFC § 104.007(b) to allow judge to order the testimony of a professional to be taken by videoconference even if the state's counsel and defendant's counsel do not agree, if good cause exists.
pp. 50-51 **TFC § 162.0065.** Exempts DFPS from certain redaction if the identity of persons whose identities would otherwise be redacted is already known to the adoptive parents.	**Limits Agency Flexibility.** DFPS supports the provision of a complete case record to a prospective adoptive family upon request. However, there are times when the most important document to an adoptive parent is the child's health, social, educational, and genetic history report (known as a HSEGH), rather than the entire case file (e.g. a grandparent who is intimately familiar with the conservatorship case because the grandparent has been involved continuously). Compiling this information results in delayed adoptions, when the necessary information depends on the nature of the relationship between the adoptive and biological families. With greater flexibility to tailor the information compiled and, to eventually consider producing a more robust HSEGH in lieu of providing the entire case record with the associated redaction workload, DFPS can better provide for permanency.	Amend statute as follows: [~~EDITING~~] ADOPTION RECORDS IN DEPARTMENT PLACEMENT. Notwithstanding any other provision of this chapter, in an adoption in which a child is placed for adoption by the Department of Family and Protective [~~and Regulatory~~] Services[~~,~~]: (a) the department is not required to edit records to protect the identity of birth parents and other persons whose identity is confidential if the department determines that information is already known to the adoptive parents or is readily available through other sources, including the court records of a suit to terminate the parent-child relationship under Chapter 161[~~.~~]; (b) the department may, in accordance with department rule, develop a format for the report required by section 162.007, other than the format provided in section 162.007, which the department determines is appropriate based on the relationship between the adoptive parents and the child or the child's family, the provision of the child's case record to the adoptive parents, or other factor specified in department rule; and

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		(c) the department must produce a child's case record in accordance with section 162.006 upon request; however, the department may, but is not required to, produce the child's case record in accordance with section 162.006 if the department has compiled a complete report on the child's health, social, education, and genetic history in accordance with section 162.007, and the adoptive parent indicates that the parent wishes to proceed with the adoption.
P. 52 **TFC § 262.114(b).** Evaluation of kinship placements.	**Impedes Case Work.** Allows the Department to place a child without criminal or CPS background check. Not conducive to child safety.	Repeal.
pp. 55-56 **TFC § 263.401.** Provides for dismissal of a DFPS suit unless the court finds there are extraordinary circumstances.	**Unclear Statutory Authority.** Current statute does not address the relationship of the dismissal deadline and cases that are halted because of a successful motion for new trial, the declaration of a mistrial, or a successful appeal and remand. A trial court, therefore, does not have a clear basis upon which to retain the case. DFPS must file a new removal and depend on the judge to reassert jurisdiction. In the interest of child safety, in addition to judicial and caseworker efficiency, there needs to be a clear path for the court to follow.	To clarify that if a court has taken jurisdiction in a CPS case and it must be retried or is remanded, add (b-1) and amend (c) as follows: (b-1) If, after commencement of the initial trial on the merits within the time required by Subsection (a) or (b), the court grants a motion for a new trial or mistrial, or the case is remanded to the court by an appellate court following an appeal of the court's final order, the court shall retain the suit on the court's docket and render an order in which the court: (1) schedules a new date on which the suit will be dismissed if the new trial has not commenced, which must be a date not later than the 180th day after the date: (A) the motion for new trial or mistrial is

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		granted; or (B) the appellate court remanded the case; (2) makes further temporary orders for the safety and welfare of the child as necessary to avoid further delay in resolving the suit; and (3) sets the new trial on the merits for a date not later than the date specified under Subdivision (1). (c) If the court grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the new dismissal [~~required~~] date [~~for dismissal under Subsection (b)~~], the court shall dismiss the suit. The court may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1).
p. 61 **HRC § 40.0521(b).** Requires that written information concerning community services that are available to victims of domestic violence be distributed to those victims.	**Impedes Case Work.** The requirement that information be distributed in writing can pose a safety threat to victims as taking protective measures can be one of the most volatile and lethal times for a victim. In addition, the provision may be unnecessary, as ordinary casework practice would lead a caseworker to explain appropriate community resources to a victim.	Repeal.

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p. 62 **TFC § 261.307.** Requires DFPS, as soon as possible after initiating an investigation, to provide the parent or person with legal custody specific information relating to the investigation procedure. The information must be brief and easily understood and written in a language the person understands, or, if the person is illiterate, read to the person in a language the person understands.	**Limits Agency Flexibility.** State statute goes well beyond federal law. The statute can be interpreted to require a lengthy, line-by-line review which diverts focus from discussions of more immediate relevance to the investigation. Further, the parent, faced with the reality of an investigation, is not likely to want to go over information in the manual in depth with the caseworker, and being forced to do so damages any prospect the caseworker has of building rapport with the parent. DFPS staff agree it is critically important to develop helpful information for a parent but this can be done as a matter of best practice.	Repeal the section and replace with a mandate that DFPS is required to provide information to the child's parents in accordance with federal law. Require DFPS to develop protocols and necessary materials to provide information to individuals being investigated.
pp. 62-63 **New provision for TFC Chapter 263 (or 264).**	**Impedes Case Work.** The requirements for CPS caseworkers to notify key parties in a CPS case of important events are spread throughout the Family Code, do not consistently address the parties to whom notice must be given, exclude the child's biological parents, and are not always realistic or an efficient use of caseworker time (e.g. § 264.117 requiring notice of "each event involving the child…report[ed] in the child's case file"). See also TFC §§ 264.119 and 266.005(b). In addition, as agency technology evolves, several of the key parties may have access to information on significant events electronically, so a notification requirement for a caseworker would be unnecessarily duplicative. Finally, a consolidated provision serves to streamline the Code.	Create consolidated section requiring notification of significant events to: • Child's biological parent, unless the parent cannot be located • Child's attorney ad litem • Child's guardian ad litem • Child's CASA • Child's caregiver • Residential child care provider Provide that a significant event includes: • placement changes, including inability to locate an appropriate placement for one or more nights; • major medical procedures or changes; • initial prescription of psychotropic medication; • major changes in school performance or serious disciplinary events; and • any other event at the

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		discretion of DFPS. Require notifications of placement changes to occur 48 hours prior to the placement or change unless it is an emergency placement or change, and notifications regarding major medical procedures or changes or initial prescription of psychotropic medication to occur within 24 hours. Other notifications must occur as soon as possible. Provide that notwithstanding any notification requirement, DFPS may but is not required to provide notice of a significant event if the individual has electronic access to the system where the significant event is reflected.
pp. 65-66 **TFC § 263.301.** Required notice of permanency hearings to certain listed individuals and entities within 10 days prior to the hearing.	**Impedes Case Work.** DFPS caseworkers are already required to send a report to all the same individuals and entities prior to the hearing in question. Workers' efficiency could be maximized by utilizing the report to provide notice of an upcoming hearing. There is a slightly different list of parties to notify of a permanency hearing and a placement review hearing. While it may make additional sense to notify a child's child-placing agency (CPA) after rendition of a final order, there seems to be no compelling reason not to notify the CPA prior to a final order, and CPS has required as much by policy since it implemented the law. Moreover, the law is not clear inasmuch as a CPA administrator's designee may be the right person to notify in order for a person more involved in the child's case to attend a hearing or review the department's report in anticipation thereof.	Amend as follows: Sec. 263.301. NOTICE. (a) Notice of a permanency hearing shall be given as provided by Rule 21a, Texas Rules of Civil Procedure, to all persons entitled to notice of the hearing. (b) The following persons are entitled to at least 10 days' notice of a permanency hearing and are entitled to present evidence and be heard at the hearing: (1) the department; (2) the foster parent, pre-adoptive parent, relative of the child providing care, or director of the group home or [~~institution~~] <u>general residential operation</u> where the child is residing; (3) each parent of the child; (4) the managing

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		conservator or guardian of the child; (5) an attorney ad litem appointed for the child under Chapter 107; (6) a volunteer advocate appointed for the child under Chapter 107; (7) the child if: (A) the child is 10 years of age or older; or (B) the court determines it is appropriate for the child to receive notice; [~~and~~] (8) the licensed administrator of the child-placing agency responsible for placing the child or the licensed administrator's designee, including the child-placing agency's case manager for the child; and (9) any other person or agency named by the court to have an interest in the child's welfare. (c) If a person entitled to notice under Chapter 102 or this section has not been served, the court shall review the department's or other agency's efforts at attempting to locate all necessary persons and requesting service of citation and the assistance of a parent in providing information necessary to locate an absent parent. (d) Nothing in this section shall be construed to require the department to utilize a separate document to provide notice of the hearing, so long as such notice is prominently displayed in an easy to read manner at the beginning of any document that may be utilized for this purpose.
pp. 66-67	**Impedes Case Work.** The required annual refresher training is a prescriptive	Repeal requirement for annual refresher training, leaving

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TFC § 264.015. Requires DFPS to include training in trauma-informed programs in training to foster care/kinship providers and staff, and to require caseworkers to complete annual refresher training courses; mandates that DFPS assist other programs in developing training.	requirement that forces caseworkers to take time to learn a lesson they have presumably already learned, and potentially at the cost of more timely training or at the cost of visiting children and families. Moreover, DFPS does not need a statute to embed principles of trauma-informed care. If trauma-informed care is a best practice that CPS determines should be prioritized over other best practices, then CPS can add it to any training given by DFPS to caregivers, caseworkers, etc. without a statutory mandate compelling it.	remaining language intact.
p. 67 **TFC § 264.107(b).** Requires DFPS to use HHSC's "standard application" for the placement of children in contracted residential care.	**Limits Agency Flexibility.** At this time, the need for a "common application" is limited primarily to DFPS and possibly Texas Juvenile Justice Department. While there is an abbreviated form that can be used in certain circumstances, the primary form (without any content added) is 18 pages. With attachments and information added, the application can easily become 50 pages or more. Caseworkers must complete the application using information that is available elsewhere in the record, making double work. Feedback from providers is that the application is not helpful to them. Accordingly, and in light of evolving best practices, DFPS is examining the application and assessment process.	Repeal.
p. 68 **TFC § 264.117(a).** Requires DFPS to notify a child's attorney ad litem "about each event involving the child that the department reports in the child's case file."	**Impedes Case Work.** This provision is prescriptive and extremely burdensome, while also being fundamentally impossible for an overworked caseworker to fully accomplish. As such, it seemingly creates a disincentive for good documentation. See recommendations for consolidated notification statute.	Repeal.

Remove Prescriptive Statutory Provisions		
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p. 71 **TFC § 161.1031.** Requires the case worker to obtain the medical history of the child's family at the time the parent executes an affidavit of relinquishment.	**Impedes Case Work.** There has been significant caseworker feedback about the overabundance of forms. The parent should be asked this information earlier in the process, not when the emotions are so raw. The decision on when to obtain medical history should be based on department (or in the case of a private adoption, CPA) policy and decisions at the field level based on the needs of the child and the availability of the parent.	Repeal and replace with language requiring DFPS to obtain medical history of the child's family as soon as possible, making every reasonable effort to obtain the history prior to a parent executing an affidavit of relinquishment.
p. 72 **TFC § 261.203(d).** Requires DFPS to provide a copy of a request for information to the attorney ad litem (AAL) for the deceased child, if any.	**Unnecessary Provision.** In many cases, a request for child fatality information is made by the media well after the death of the child; however, an appointment does not generally survive the death. While it is possible for an attorney to be appointed to represent the estate of a child, it is not clear that such an attorney is within the meaning of this subsection, that DFPS would have knowledge of such appointment, or that it makes sense to use DFPS resources to attempt to find or maintain contact with an AAL who is appointed after death.	Repeal.
p. 73 **TFC § 261.3012.** Requires that a caseworker responding to the highest priority report, to the extent reasonable, identify and solicit family assistance in completing any paperwork but remain ultimately responsible for the appropriate completion of the paperwork.	**Impedes Case Work.** This provision is overly prescriptive and appears to focus more on paperwork than child safety. While CPS has developed a family information form (Form 2626), this form is designed to gather information to better care for a child coming into care, not necessarily to have the family assist the caseworker in completing paperwork the worker is otherwise required to complete. As such, this provision and its purpose could be better served through policy or practice.	Repeal.
p. 74 **TFC § 261.310.** Requires DFPS to develop and adopt by rules certain standards, including annual	**Limits Agency Flexibility.** Current statute focuses largely on forensic interviewing techniques. As the child welfare system has evolved and many states have moved to a less forensic model for investigating less serious	Repeal entire section other than general directive to develop standards that encourage professionalism and consistency for persons who investigate child abuse

Remove Prescriptive Statutory Provisions		
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professional training, for persons who investigate child abuse and neglect. Mandates specific criteria for the standards and professional training curriculum.	cases, such as cases involving neglect, a family's need for service, or cases handled through a differential response, it is more practical to allow the agency to structure its training requirements and standards to be agile and reflect current best practice to the greatest extent feasible. This would allow the agency to quickly respond to the evolving best practice in child welfare as it evolves.	or neglect.
pp. 74-75 **TFC § 261.3101.** Requires DFPS, subject to the availability of funds, to employ or contract with medical and law enforcement professionals to assist with investigation assessment decisions and intervention activities; to employ or contract with subject matter experts to serve as consultants to DFPS; and designate liaisons within DFPS to develop relationships with local law enforcement agencies and courts.	**Limits Agency Flexibility.** The entire section legislates decisions that could be left to the managerial discretion of the Department. Repealing the statute would allow DFPS greater discretion to use experts and consultants and establish liaisons in the community as needed.	Repeal.
p. 76 **TFC § 262.105(b).** Requires DFPS to file a petition for termination 45 days after taking possession of child without court order.	**Archaic Language.** DFPS should file its petition on the day of or the first working day after taking possession of child without court order. While there may be limited exceptions, DFPS nearly always files in the alternative and includes termination. Accordingly, provision is in direct tension with TFC § 262.106 and at odds with best practice, which might indicate modifying an initial pleading to include termination at a later date.	Repeal.
p. 77 **TFC § 264.107(a).** Requires DFPS to use a system for	**Archaic Language.** The substance of this provision dates back to the Sunset bill for the then-DHS in 1987. Senate Bill 298 § 3.03 (70 (R)). While the	Repeal.

Remove Prescriptive Statutory Provisions		
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foster care placements that conforms to the "levels of care" adopted and maintained by HHSC.	name of the agency has been updated to HHSC, the substance has not been adjusted for the fact that the former six-level "Levels of Care" system has been replaced with a service level system that promotes placement of children in the least restrictive setting. In addition, the current language does not afford requisite flexibility to account for a redesigned foster care system that does not use a service level system.	
pp. 77-78 **TFC § 264.107(c).** Requires DFPS to use real-time technology to screen and match children with qualified placements that have vacancies.	**Limits Agency Flexibility.** As originally enacted, this provision applied to an independent administrator of outsourced services. Senate Bill 6 § 1.48. In response to amendments made by SB 758 (80 (R)), which imposed the duty directly on DFPS, the agency developed its Child Placement Vacancy database (CPV), which is basically a manual tool providers are required to use by contract. However, utilizing technology to assist in placement decisions is simply the baseline of good business judgment in the 21st century, nor does DFPS need a statute to exercise good business judgment; moreover, depending on technological enhancements and the roll-out of Foster Care Redesign, the need for the CPV as such may be obviated.	Repeal.
p. 78 **TFC § 264.107(d).** Requires DFPS to ensure placement decisions are reliable and made in a consistent manner.	**Duplicative of Federal Law.** Federal law and monitoring are already focused on safety, well-being, and permanency in a child's placement, so there is no need to restate federal goals in state law. Moreover, doing any action consistently and reliably does not equate to doing the action well.	Repeal.
p. 78 **TFC § 264.1071.** Directs DFPS, in making placement decisions, to ensure stability for children in care under	**Limits Agency Flexibility.** This statutory language legislates decisions that could be left to agency management, without adding any benefit to child safety. There are varied and complex	Repeal.

Remove Prescriptive Statutory Provisions		
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the age of two.	reasons why placements fail or change. Moreover, it is an unduly narrow focus on one age group.	
pp. 78-79 **TFC § 264.1075.** Directs DFPS to utilize assessment services to determine the most appropriate placement for a child in substitute care; requires DFPS to assess whether a child has developmental disability or mental retardation and authorizes the assessment to be conducted by certain individuals and entities.	**Limits Agency Flexibility.** Children should be adequately assessed upon entry into care, which is measured by the CFSR and is a basic obligation of the system. There is no need to codify it for emphasis, to specify the precise contours of the assessment, or to focus on one particular type of issue, i.e. developmental disability or mental retardation.	Repeal.
p. 79 **TFC § 264.110.** Among other things, requires DFPS to establish a registry of people who will accept foster care placements of a child, possibly pending termination and with no ability to be compensated, and mandates that DFPS make a "reasonable effort to place a child with the first available qualified person on the list" if the child cannot be placed with a family member.	**Archaic Language.** This is arcane and overly prescriptive language (harkening back to pre-automation days) that does not reflect the way adoptive placement decisions or foster care maintenance payments are made today. In addition, and in contravention of current best practice, the focus is more on the rights of a person to get preferential treatment on a first-come-first-served basis for an adoptive child, instead of focusing on the adoptive placement that would be in the best interests of the individual child.	Repeal.
pp. 79-80 **TFC § 264.111.** Requires DFPS to maintain and make available a lengthy and detailed list of data elements related to substitute care and adoption.	**Limits Agency Flexibility.** Not only is it difficult for a statute at this level of granularity to keep pace with terminology, the focus ends up being out of sync with current practice, e.g. this statute focuses entirely on adoption and substitute care, to the exclusion of reunification and other permanency outcomes. DFPS can still produce the required data if needed, but repealing this statute will permit maximum	Repeal.

Remove Prescriptive Statutory Provisions		
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	flexibility for developing and reporting to the public on key measures of the agency's performance and the functioning of the system on the whole.	
pp. 80-81 **TFC § 264.123.** Directs specific actions, including specific notifications, when a child runs away from or returns to foster care.	**Limits Agency Flexibility.** This entire section is overly prescriptive and would be better addressed in policy. In fact, the author of HB 943, which was enacted in 2011, essentially took existing DFPS policy on this topic and codified it almost verbatim into statute. Moreover, recently enacted federal law, HR 4980, addresses the same purpose but with less prescriptiveness. All agree that timely notification of law enforcement is critical when a child runs away from care but the development of protocols to best address situations in which a child runs away from care can and likely should occur outside the bounds of codified law to permit maximum flexibility.	Rewrite the section to require DFPS to adopt policies and protocols concerning the actions that must be taken and the persons who must be notified in the event that a child is missing from or returns to foster care. Include language that mandates collaboration with law enforcement, National Center for Missing and Exploited Children, the OAG Human Trafficking Task Force, and other appropriate entities in the development of effective protocols. Also, include language directing DFPS to exhaust all appropriate options in attempting to locate a child who is missing from foster care.
p. 81 **TFC § 264.207.** Requires DFPS to adopt policies to improve services, including policies to "provide for conducting a home study within four months *after* the date an applicant is approved." Delineates multiple, highly specific requirements for DFPS policies adopted pursuant to the subsection, including working with private child-placing agencies, "establish[ing] goals and performance measures in the permanent placement of children", etc.	**Unnecessary Provision.** First, it is impossible and unsafe to approve a home and then conduct a home study after approval. To ensure child safety, the home study must be done before approval. Second, a statute like this locks DFPS into a time frame that does not recognize how much of the process depends on an applicant. Finally, there is much of the statute that seems to merely restate basic ideas, such as to improve services and be consistent across the state. These are laudable principles, but they can be carried out in the absence of statute and none of them get at the current, safety-driven efforts the agency is undertaking to improve the home assessment process.	Repeal.
pp. 81-82	**Unnecessary Provision.** As a statewide agency with a need to repeatedly locate	Repeal.

Remove Prescriptive Statutory Provisions		
Transformation Report Page Number/Statutory Provision	**DFPS' Summary of Problem**	**Proposed Change**
TFC § 264.208. Directs DFPS to create a division for locating persons and relatives and to use contractors and volunteer resources to the extent feasible.	parties and other key persons in child welfare cases, and to prove up the efforts to the court, DFPS does not need a statute to legislate its internal structure in this regard.	
pp. 83-84 **TFC § 264.752(b).** Requires DFPS to use federal funds available, to the extent permitted by federal law, under Title IV-E, Social Security Act (42 U.S.C. Section 670 et seq.), and to seek a federal waiver to administer the Relative and Other Designated Caregiver Placement program.	**Unnecessary Provision.** This provision is unnecessary, as there are no IV-E funds available for this program, and this provision duplicates other FFP-maximization directives.	Repeal.
pp. 90-91 **TFC § 266.005.** Requires DFPS to notify the biological parents regarding certain medical conditions of the child within specified timeframes, including specific notifications regarding psychotropic medications. Some biological parents exempted. Defines "significant medical condition."	**Impedes Case Work.** Notice requirement can in some contexts be unnecessary and burdensome. While in many cases it may be appropriate to notify the biological parents of a significant medical decision within 24 hours, in other cases (e.g. in cases where the medical condition is not of an urgent nature) more time could be allowed and the agency could be required to give notice "as soon as possible," rather than within 24 hours. Current requirements regarding notice of psychotropic medication prescriptions in effect require immediate notice, as it can be unknown when the next visit with the family will occur.	Repeal. See discussion of consolidated notification statute (pp. 62-63, new provision for TFC Chapter 263 or 264).
p. 91 **HRC § 40.0305**. Directs DFPS to implement specific technology projects.	**Unnecessary Provision.** The statutory mandate is unnecessary in that subsections (a) and (d) restate basic business principles, and subsection (e) is unduly prescriptive laying out specific projects.	Repeal.

Remove Prescriptive Statutory Provisions		
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pp. 90-91 **HRC § 40.031(b) and (e).** Directs the executive commissioner to establish an investigations division to oversee and direct the investigation functions of the child protective services program; provides that reports of alleged child abuse or neglect investigated under Section 261.401 or 261.404, Family Code, are not subject to investigation by the investigations division.	**Limits Agency Flexibility.** Directions regarding specific divisions or staff are unnecessary to codify in law. The agency should have the ability to make nimble decisions about its programs and the staff best suited to perform an investigation. The investigations specified in subsection (e) are handled by the state agency responsible for the facility in question or the APS services division of the department, and TFC § 261.401 and .404 adequately codify their authority to continue conducting investigations.	Repeal subsections (b) and (e).
p. 92 **HRC § 40.031(c)**. Directs the commissioner to designate a person with law enforcement experience as the director of the investigations division.	**Limits Agency Flexibility.** This provision limits DFPS' ability to recruit and hire candidates.	Repeal.
p. 92 **HRC § 40.031(d).** Requires investigation division, as appropriate, to refer children and families in need of services to other department divisions or entities with whom the department contracts.	**Unnecessary Provision.** This prescription is unnecessary, as referral for services is already an internal management decision and common practice, without the necessity of a statutory requirement.	Repeal.
p. 92 **HRC §40.052.** Prescribes duties related to quality service delivery for DFPS.	**Archaic Language.** These provisions are outdated, having been around since at least 1991 when the Department of Protective and Regulatory Services was created, and are also unnecessary, prescribing a general directive to promote quality in service delivery. In addition, subsection (3) is codified elsewhere.	Repeal.

Remove Prescriptive Statutory Provisions		
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p. 93 **HRC § 40.0522.** Requires DFPS to assure the availability of community education programs on child abuse and neglect; and assure that training on child abuse and neglect is available to professionals who are required by law to report, investigate, or litigate those cases.	**Unnecessary Provision.** This provision appears unnecessary. Moreover, there is no specific implementation for the provision, and it has been in place for so many years (since 1997) that any particular legislative intent has been largely diluted. Finally, DFPS can educate and collaborate in the absence of statute.	Repeal.
pp. 93-94 **HRC § 40.0524(d).** Requires DFPS to establish a process by which a multidisciplinary team is involved in the development and implementation of procedures related to the department's child abuse and neglect services with services provided by other agencies.	**Archaic Language.** While it is important for DFPS to work closely with multidisciplinary teams, this provision seems unnecessarily prescriptive and implies a level of involvement beyond ordinary cooperation and beyond what occurs in practice today.	Repeal.
p. 94 **HRC § 40.0525.** Requires DFPS to separate the performance of investigations personnel from the delivery of services to clients and to develop policies for exchanging information between investigations employees and employees who are responsible for the delivery of services to clients; provides that DFPS is not required to establish separate departments for investigations and service delivery.	**Limits Agency Flexibility.** This provision mandates administrative structure at a level of detail that inhibits the agency's ability to make agile decisions in light of current best practice and business need. Moreover, the legislative intent is no longer aligned with current legislative thought, which emphasizes the importance of combing and aligning investigations with Family-based Safety Services.	Repeal.

Remove Prescriptive Statutory Provisions		
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pp. 95-96 **HRC § 40.0566**. Requires DFPS to develop and implement a statewide outreach program to inform counties about federal funding; requires the designation of specific personnel and directs DFPS to maintain a record of funding amounts.	**Unnecessary Provision.** This provision is unnecessary because DFPS does not need to mandate outreach to counties. If it does mandate county outreach, it should be a general mandate and not specify such requirements as a database of local county personnel.	Repeal.
p. 96 **HRC § 40.069.** Prescribes a detailed (two-page) affidavit that is required for applicants for temporary or permanent employment with DFPS whose job "involves direct interactions with or the opportunity to interact and associate with children".	**Unnecessary Provision.** This provision is unnecessary given criminal and CPS background checks. Moreover, the questions are extremely broad and ask an applicant to explain any mental health conditions, which seems unnecessarily intrusive.	Repeal.

Eliminate State Law That Duplicates or Deviates From Federal Law		
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p. 100 **TFC § 161.001(1)(L).** Directs that the court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has been convicted of or adjudicated for one of the crimes listed pursuant the Texas Penal Code.	**Conflicts With Federal Law.** CAPTA, 42 U.S.C. § 5106a(b)(2)(B)(xvii) requires that a state include as grounds for termination a conviction for certain crimes. Texas's current law refers only to a conviction under the Texas Penal Code. However, as written, CAPTA refers only to the convictions generally and not limited to a conviction under a particular state's laws. Nothing about conforming state law to federal law *compels* any action by a court, which must still determine that the termination ground has been proven (which would include any necessary inquiry into the circumstances of the conviction) *and* that termination is in the child's best interest.	Amend subsection as follows: (L) been convicted or has been placed on community supervision, for being criminal responsible for the death or serious injury to a child under the following sections of the Penal Code, <u>or under a law of another jurisdiction that contains elements that are substantially similar to the offense under the following Penal Code sections,</u> or adjudicated under Title 3 for conduct . . .[no additional changes].
pp. 100-101 **TFC § 162.015.** Court cannot delay or deny adoption or otherwise discriminate based on race or ethnicity of child or prospective adoptive parent, in making best interest determination with exception for proceeding subject to Indian Child Welfare Act.	**Duplicative of Federal Law.** This provision is unnecessary, as it is a similar but not exact duplication of federal law.	Repeal.
p. 101 **TFC § 264.108(d).** Recruitment of minority families cannot be a reason to delay placement of child with an available family of different race/ethnicity.	**Duplicative of Federal Law.** This duplication of federal law is unnecessary.	Repeal.
p. 102 **TFC § 264.016.** Requires DFPS to ensure that youth	**Duplicative of Federal Law.** 42 U.S.C. § 675 (5)(I) requires that each child in foster care age 16 and above receive a copy of any consumer report pertaining	Repeal.

Eliminate State Law That Duplicates or Deviates From Federal Law		
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in conservatorship receive their credit report and information on interpreting the report and correcting inaccuracies.	to the child, at no cost, each year and receives assistance (*including when feasible from any court appointed advocate*) in interpreting and resolving any inaccuracies in the report. The state law predated the corresponding federal provision, which is broader.	
p. 102 **TFC § 264.1072.** Requires DFPS to develop a plan for the educational stability of a child in accordance with 42 U.S.C. § 675.	**Duplicative of Federal Law.** An educational stability plan is already required by federal law (42 U.S.C. § 675(5)(1)(G)), and there is no need to duplicate the mandate in state law.	Repeal.
p. 102 **TFC § 264.108.** Proscribes certain considerations of race or ethnicity in making placement decisions.	**Duplicative of Federal Law.** See TFC § 162.308.	Repeal.
pp. 102-103 **TFC § 264.118.** Requires DFPS to follow federal law mandating a National Youth in Transition Database (NYTD); provides that the identity of a foster youth participating in the survey is confidential.	**Unnecessary Provision.** The requirement to follow federal law is superfluous.	Repeal subsection (a) and provide, either here or in a general confidentiality statute for Chapter 264, something similar to the following: The identity of each child participating in a department survey as required by 42 U.S.C. Section 677(f) and 45 C.F.R. Section 1356.80 et seq. is confidential and not subject to public disclosure under Chapter 552, Government Code. The department shall adopt procedures to ensure that the identity of each child participating in a department survey remains confidential.
pp. 103-104 **HRC §40.001.** Definitions.	**Duplicative of Federal Law.** The definition of family preservation in subsection (5) partially but not completely restates a defined term in federal law. See 42 U.S.C. § 629a. Moreover, the definition is strangely	Repeal subsection (5). Repeal Chapter 54 or move language to the DFPS subtitle. Move definitions to a title-wide definitions section.

Eliminate State Law That Duplicates or Deviates From Federal Law		
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	limited to family preservation, although DFPS is designated by Chapter 40 to provide family preservation *and* family support services, both of which are defined terms in law. The definitions in § 40.001 apply to "this subtitle," which is Subtitle D, Department of Protective and Regulatory Services: Child Welfare and Protective Services and includes Chapters 40-49, but not Chapters 51-54, which also pertain in part to DFPS.	

Streamline Texas Law to Support Caseworker Best Practices for Safety, Permanency, and Well-Being		
Transformation Report Page Number/Statutory Provision	**DFPS' Summary of Problem**	**Proposed Change**
pp. 104-105 **TFC § 107.003(a)(3)(F).** Allows the child's attorney ad litem and amicus attorney to attend case staffings concerning the child.	**Streamlining Roles and Responsibilities.** While at some points in history, some counties may have operated as "authorized agencies" for purposes of child protection, at this point DFPS is the single state agency authorized to care for children and the single state agency authorized to approve, license, or certify individuals and entities seeking to care for or place children for foster care or adoption.	Delete reference to "authorized agency" in subsection (a)(3)(F).
p. 105 **TFC § 161.005(b).** Allows parent to sue to have DFPS named the managing conservator of the child.	**Impedes Case Work.** Creates method for placing child in foster care without method to pay for that care.	Repeal.
p. 105 **TFC §162.005(c).** The report (HSEGH) shall include a history of physical, sexual, or emotional abuse suffered by the child, if any.	**Unclear Statutory Authority.** Mandated contents of HSEGH report should be consolidated in a single statute.	Recommend moving subsection (c) to 162.007, which lays out the required content of HSEGH reports.
pp. 105-106 **TFC §162.006(a) and (a-1).** Requires DFPS, licensed child-placing agencies and any other entity placing a child to inform prospective adoptive parents of their right to examine the records and information relating to the history of the child; edit records to protect the identity of certain parties; and to include any investigation records in which child alleged or	**Unclear Statutory Authority.** Need to clarify statute by separating two functions: producing entire case records versus compiling report of child history data. Restructuring and revising for maximum clarity, flexibility, timeliness to permanency, and efficient use of staff time.	Move subsections (b)-(e) of this section into TFC § 162.007 or into a new section (see below). Recommend consolidating contents of TFC § 162.018, which also concerns the provision of an entire case record, into TFC §162.006.

Streamline Texas Law to Support Caseworker Best Practices for Safety, Permanency, and Well-Being		
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confirmed as sexual abuse victim in foster home or residential child-care facility.		
p. 106 **TFC §162.006(b)-(e).** DFPS and listed entities must compile health, social educational and genetic history of child and must provide copy on proof of identity and entitlement after payment of reasonable costs; report to be retained 99 years from date of adoption.	**Unclear Statutory Authority.** While these subsections relate to the compilation of a report (aka a "HSEGH") about a child, they are interspersed with provisions that relate to the production of an entire case record.	Consolidate subsections (b)-(e) which pertain to the required contents of the HSEGH, into TFC § 162.007 or into, a new section.
pp. 106-107 **TFC §162.018.** Requires DFPS, licensed CPAs and others to provide copies of the records and other information relating to the history of an adopted child to the adoptive parents and an adult adopted child. If applicable, the information must be edited to protect the identity of the biological parents and anyone else whose identity is confidential.	**Unclear Statutory Authority.** This relates to the same content that is covered in TFC § 162.006.	Consolidate §162.018 with §162.006(a) and (a-1). Could be consolidated into TFC § 162.006 or a new section.
p. 107 **TFC §162.302.** DFPS must promote adoption with information, support, and adoption assistance; legislative intent to reduce costs of foster care by providing stability and permanency; licensed CPA's and counties to	**Archaic Language.** Provision reflects outdated concepts (counties and CPA's do not handle adoption assistance and do not incur foster care expenses), legislative intent that is now duplicated by subsequently enacted federal law (goal of sibling placements), and effectively add no value to the Code.	Repeal, but retain the general directive to DFPS to operate the adoption assistance program. Move general directive into § 162.304 (added below), which details the financial and medical assistance provided by this program.

Streamline Texas Law to Support Caseworker Best Practices for Safety, Permanency, and Well-Being		
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perform these duties; DFPS to keep records; legislative intent to place siblings together where possible.		
pp. 107-108 **TFC §162.303.** DFPS, counties and CPAs must disseminate information about adoption assistance, with special focus on low income families.	**Archaic Language.** Reference to counties is a hold-over from county-based system and no longer accurate, and federal law separately requires that DFPS publicize the adoption assistance program. 45 C.F.R. 1356.40(f). Emphasis on low income families does not directly conflict with prohibition on means testing for this program but is certainly in tension.	Repeal.
p. 108 **TFC § 162.304 (a).** DFPS shall enter into Title IV- E adoption assistance agreements with adoptive parents.	**Unclear Statutory Authority.** Insert directive to DFPS to operate the adoption assistance program (*if § 162.302 is repealed, essentially insert language currently in §*162.302 (a).	Add a general directive regarding operation of program so the subsection reads something similar to the following: "The department shall operate a program to provide adoption assistance for eligible children and shall enter into adoption assistance agreements with the adoptive parents of a child as authorized by Part E of Title IV of the federal Social Security Act, as amended (42 U.S.C. Section 673)."
pp. 108-109 **TFC §162.304 (b-1), (b-2).** DFPS to pay $150 for health benefits for child adopted from DFPS meeting eligibility requirements, including ineligibility for Ch. 32 medical assistance.	**Unnecessary Provision.** Program creates confusion for public because it has not been funded since 2012 and payments only continue as to previously qualified children.	Add a provision to make payment of the stipend explicitly "Subject to the availability of funding…"
p. 109 **TFC § 162.304 (c).** Authorizes DFPS to subsidize medical care for child.	**Archaic Language.** This legacy language, which pre-dates the creation of DHS, creates confusion because adopted children receive Medicaid or an equivalent benefit, and neither DFPS nor another agency is funded to subsidize in	Repeal subsection.

Streamline Texas Law to Support Caseworker Best Practices for Safety, Permanency, and Well-Being		
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	any way other than the provision of Medicaid or comparable benefit.	
p. 109 **TFC § 162.304 (d).** The county may pay an adoption or medical subsidy for foster children in county responsibility.	**Archaic Language.** Outdated reference; originates from a system in which counties were responsible for the foster care payments for certain children.	Repeal subsection.
p. 109 **TFC § 162.304 (e).** Authorizes payment of adoption assistance for child receiving SSI benefits, regardless of whether DFPS is conservator.	**Duplicative of Federal Law.** Federal law makes this child population eligible, making state authority unnecessary. 42 U.S.C. § 673(c).	Repeal subsection.
pp. 109-110 **TFC §162.3041 (a)-(d).** Subject to appropriations, DFPS to offer adoption assistance until age 18 (if adoption assistance began after 16th birthday and child meets academic/training/work criteria) or up to age 21 (child with mental or physical disability).	**Duplicative of Federal Law.** This authority, which already exists in federal law, has never been funded in Texas. Without funding, the prospect of extended adoption assistance for this population, as opposed to the group of individuals who can and do qualify for extended adoption assistance pursuant to TFC § 162.3041(a-1), creates confusion for adoptive parents and unnecessarily populates the Code with authority that already exists in federal law. 42 U.S.C. § 673(a)(4)(A)(ii).	Repeal.
p. 110 **TFC § 162.308(a).** No presumption that same race or ethnicity is in child's best interest permitted in adoption placement by DFPS or CPA.	**Duplicative of Federal Law.** State law barring a presumption that race or ethnicity matching in placement is in child's best interest does not contradict but invites confusion because the federal law prohibits delay or denial of adoption based on race, color or national origin.	Repeal.
p. 110 **TFC § 162.308(b).** DFPS or a CPA placing a child	**Duplicative of Federal Law.** State statute mandates a single option for determining when race or ethnicity can be used in selecting an adoption	Repeal.

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must have an independent psychological evaluation showing detriment to the child to be placed with a family of particular race or ethnicity, in order to deny, delay or prohibit an adoption because of the family's race or ethnicity.	placement when federal law (MEPA-IEP) applies strict scrutiny to placement decisions based on race, ethnicity or national origin but leaves open how that is implemented.	
p. 111 **TFC § 162.308(c).** Recruitment of minority families may not be reason to delay placement with an available family of different race or ethnicity.	**Duplicative of Federal Law.** Unnecessary repetition of federal law (MEPA-IEP).	Repeal.
p. 111 **TFC § 162.308(e).** Injunctive relief for violation of state law regarding use of race or ethnicity in adoptive placement.	**Duplicative of Federal Law.** Unnecessary remedy because federal law provides injunctive relief and financial penalties, as well as full panoply of remedies through the Office of Civil Rights.	Repeal.
pp. 113-114 **TFC § 261.308(b),(c).** Requires DFPS or designated agency to make a complete written report of the investigation and submit the report with recommendations to the court, district attorney, and appropriate law enforcement agency if sufficient grounds for filing a suit exist. Authorizes the court to direct DFPS or designated agency to file a petition requesting appropriate relief.	**Archaic Language.** This is legacy hold-over language, first introduced in much the same substance, in 1975, by Acts 1975, 64th Leg., Ch 1052, §6.08, during part of a major codification of what was then Title 2 of the Family Code. This was during the time when centralized responsibility for child protection was not vested in a state agency (DFPS) with authority to determine when it is appropriate to file suit for the protection of the child as provided under Chapter 262, TFC. This subsection creates a burdensome duty that no longer advances child safety. CPS is already obliged under other law to cooperate in a joint investigation or a prosecution arising from an investigation, and a court	Repeal.

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	can order submission of a report at any time it believes such evidence relevant to a court proceeding, which usually occurs only during the discovery phase of a suit, but the court should not direct DFPS to file a petition at any time.	
p. 114 **TFC § 261.309(d).** Requires DFPS to conduct an administrative review of findings as soon as possible but not later than 45 days after receipt of request.	**Limits Agency Flexibility.** The 45-day time frame is not realistic in every case. In 1995 when this provision was enacted, it is likely that records redaction was performed in a decentralized manner, making the 45-day time frame more realistic. However, this also meant that production and redaction were inconsistent. Since that time, the function has been centralized, and the volume of the work has increased such that 45 days is not a sufficient time frame for producing redacted records to an alleged perpetrator who would need them in order to properly speak about his or her case. Allowing a good cause exception preserves the integrity of the statute but takes into account that there may be circumstances that require DFPS to exceed the statutorily specified time frame despite best efforts.	Amend subsection (d) as follows: Unless a civil or criminal court proceeding or an ongoing criminal investigation relating to the alleged abuse or neglect investigated by the department is pending, the department employee shall conduct the review prescribed by Subsection (c) as soon as possible but not later than the 45th day after the date the department receives the request<u>, unless good cause is shown to extend the time frame</u>. If a civil or criminal court proceeding or an ongoing criminal investigation is pending, the department may postpone the review until the court proceeding is completed.
pp. 114-115 **TFC § 261.311.** Sets a 24-hour time frame for DFPS to notify each parent and any legal guardian of the allegations, the fact that child was interviewed or examined, and of an administrative closure, unless doing so will endanger the child's or another person's safety.	**Limits Agency Flexibility.** Notifying a parent that a child was interviewed or examined is appropriate, but requiring that the notice must be given within 24 hours strains caseworker resources for something that may be less directly related to child safety than other tasks-particularly when considering notification to an individual who is not the child's primary caregiver and may be difficult to locate. As such, this time frame does not further the safety of any child, and could have the unintended consequence of requiring a caseworker to postpone another duty that does impact child safety in order to attend to	Amend statute as follows: 1. Amend subsection (a) and instead require the agency to make reasonable efforts to give the child's "primary caregiver" notice of an interview within 24 hours and exercise due diligence to notify any parent not already notified of an interview within a reasonable time after the interview. 2. Delete "or designated agency" and "or agency" throughout the statute. See TFC § 261.103(a).

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	this statutory time frame for notification.	
pp. 115-116 **TFC § 261.406(b).** Requires DFPS to send a copy of its completed investigation report to the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director. Requires DFPS, upon request, to provide a copy of the report to the parent, managing conservator, legal guardian, or person alleged to have committed the abuse or neglect.	**Impedes Case Work.** It is unnecessarily burdensome to require DFPS to provide a copy of the investigative report to five different entities. It is more efficient to require DFPS to provide the report to the Texas Education Agency and make it available to the specified entities upon request. In addition TFC § 261.308(d) already contains more appropriate reporting provisions to ensure proper steps are taken to notify any entity within the school hierarchy as necessary to protect a child from potential harm.	Delete requirement in subsection (b) that DFPS provide a copy of the report to five separate entities and instead require DFPS to provide a copy to the Texas Education Agency and make the report available to specified entities *upon request*.
p. 116 **TFC § 262.1041.** Allows law enforcement to bypass CPS and take child directly to child-placing agency.	**Unnecessary Provision.** There is no basis to pay for foster care under this system and this provision is reportedly never used. DFPS can accomplish the purpose of the statute without the statute by constructively taking possession of a child and having the child delivered to a child-placing agency.	Repeal.
pp. 116-117 **TFC § 262.1095.** Obligates the department to give information on the case to certain individuals.	**Unclear Statutory Authority.** Subsection (a)(1)(A) requires the department to give information to adult relatives of the most likely alleged father. Early in the case the caseworker may have little information to determine who is the "most likely" alleged father. This concept is unclear and in need of precision that reflects the reality of day-to-day casework where there may be multiple alleged fathers for multiple children in a single case. DFPS believes in the importance of involving fathers	Add precision to the concept of notifying relatives of alleged fathers early in a CPS case, and correct a drafting error, by revising subsection (a)(1)(A) as follows: (a) When the Department of Family and Protective Services or another agency takes possession of a child under this chapter, the department: (1) shall provide information as prescribed by this

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	and their relatives but in some instances early in the case, it may not be immediately possible. There is a drafting error, inasmuch as the individuals listed in subsections (1)(A) and (B) are separate groups of people. There may be some crossover but many will be simply in one group or the other. Furthermore, recent changes to federal law now includes additional parties who must be notified under this provision.	section to each adult the department is able to identify and locate who: (A) is related to the child within the third degree by consanguinity as determined under Chapter 573, Government Code, or is an adult relative of the alleged father of the child [~~who~~] <u>if</u> the department [~~determines is most likely to be~~] <u>has a reasonable basis to believe the alleged father is</u> the child's biological father; [~~and~~] <u>or</u> (B) is identified as a potential relative or designated caregiver, as defined by Section 264.751, on the proposed child placement resources form provided under Section 261.307.
pp. 118-120 **TFC § 262.2015.** Defines "aggravated circumstances" under which the department does not have to make reasonable efforts to reunify with parents.	**Conflicts with Federal Law.** CAPTA and title IV-E both require that a state have policies and procedures in effect to not *require* reunification following a removal with a parent 1) who has subjected a child to aggravated circumstances as defined in state law 2) if a court of competent jurisdiction determines that a parent has committed certain offenses or acts, or is required to register as a sex offender or 3) has had parental rights to a sibling involuntarily terminated. 42 U.S.C. § 5106a(b)(2)(xvi); 42 U.S.C. § 671(a)(15)(B) and (D). Texas law does not fully track all of federal law, and as this statute is the place where the legislature has heretofore memorialized compliance with the requirements in question, the provision should be updated.	Recommend amending section as follows: (b) The court may find under Subsection (a) that a parent has subjected the child to aggravated circumstances if: (1) the parent abandoned the child without identification or a means for identifying the child; (2) the child <u>or another child of the parent</u> is a victim of serious bodily injury or sexual abuse inflicted by the parent or by another person with the parent's consent; (3) the parent has engaged in conduct against the child <u>or another child of the parent</u> that would constitute an offense under the following provisions of the Penal Code:

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		[no change to subsections (A) through (O)]. (4)-(5) [no change] (6) the parent has been convicted for: (A) the murder of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1111(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States; (B) the voluntary manslaughter of another child of the parent and the offense would have been an offense under 18 U.S.C. Section 1112(a) if the offense had occurred in the special maritime or territorial jurisdiction of the United States; (C) aiding or abetting, attempting, conspiring, or soliciting an offense under Subdivision (A) or (B); or (D) the felony assault of the child or another child of the parent that resulted in serious bodily injury to the child or another child of the parent; [~~or~~] (7) the parent's parental rights with regard to [~~two other children~~] <u>another child of the parent</u> have been involuntarily terminated[~~.~~]<u>; or</u> <u>(8) the parent is required under any state or federal law to register with a sex offender registry.</u>

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p. 120 **TFC § 263.1015.** No service plan required for child abandoned without identification whose identity cannot be determined.	**Unnecessary Provision.** TFC § 262.2015 already permits the court to dispense with the requirement of a service plan and to make reasonable efforts to reunify if "the parent abandoned the child without identification or a means for identifying the child." TFC § 262.2015(a)(1).	Repeal this statute and retain 262.2015(a)(1).
p. 120 **TFC § 263.102.** Requirements for parents' service plan.	**Archaic Language.** Subsection (a)(5) does not align with the permanency goals permitted under state and federal law. See 42 U.S.C. § 675(5)(C); Tex. Fam. Code § 263.3026. Subsection (c) merely restates reasonable professional judgment. Subsections (f) and (g) codify best practice, but only for a specific subset of the foster care population (children under 2). There does not appear to be a compelling reason to single out one segment of the child population in statute, nor is there a need to codify best practice.	Revise (a)(5) to repeal current content and replace with a requirement that the plan "specify the primary and concurrent permanency goal". Repeal (c). Repeal (f) and (g).
pp. 128-129 **TFC § 264.002.** Lists requirements for DFPS concerning the enforcement of child protection laws and the involvement in all matters involving the interests of children where adequate provision has not already been made.	**Archaic Language.** The language in § 264.002 has its origins in law enacted by Acts 1931, 42nd Leg., Ch. 194 (SB 375), which created the "Division of Child Welfare" in the "Board of Control". Over the 80 years since SB 375 was enacted the state's child welfare system has undergone fundamental change, gradually evolving from a largely county-based system that was inextricably intertwined with the juvenile justice system and that had very minimal state involvement, to a largely centralized state-wide system with separate enabling authority (HRC 40) and managed by a single state agency that is independent of the juvenile justice system. The language in § 264.002 has not kept pace with this evolution, and no longer accurately reflects the respective	Repeal every provision in this section other than (e), which provides that the department may not spend funds to accomplish the purposes of this chapter unless the funds have been specifically appropriated for those purposes. Move or combine Subsection (e) into a subtitle-wide provision to the effect of "The department may not spend funds to accomplish the purposes of this subtitle unless the funds have been specifically appropriated for those purposes."

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	roles and responsibilities of the state vis-à-vis the counties and other public and private entities with respect to child welfare.	
pp. 129-130 **TFC § 264.012.** Mandates that DFPS ask the parents of a child (or certain but not all young adults) who die in foster care or extended foster care to contribute to funeral expenses for the child.	**Limits Agency Flexibility.** Originally enacted by HB 1826 in the 75(R), the provision is currently inflexible and mandates that caseworkers go through a largely meaningless exercise that can appear jarring and officious at such a difficult and painful juncture. Moreover, while very rare, many would find it objectionable to ask biological parents to pay for the burials costs of a child who is removed from those parents and dies in foster care due to abuse and neglect of a foster caregiver. At a minimum, there is a gap in the authority to pay expenses for young adults, as only those in extended foster care on some, but not all, bases are listed.	Repeal and replace with a streamlined version, which might look like the following: Sec. 264.012. (a) From funds appropriated to the department for the child protective services program, the department may pay the reasonable and necessary burial expenses of a child or young adult who dies while: (1) in the conservatorship of the department; or (2) receiving extended foster care services as provided under Section 264.101. (b) The department may request assistance from a child's or young adult's parents with payment of the reasonable and necessary burial expenses, as appropriate.
pp. 130-131 **TFC § 264.014 and § 264.121(e).**	**Limits Agency Flexibility.** The current system is inflexible. DFPS is directed to obtain certified copies of a youth's birth certificate, a social security card, and an identification certificate by the time of a youth's 16th birthday. At the time of discharge at the age of 18 or older, DFPS is directed to provide a birth certificate (not necessarily certified), the social security card as well as a personal identification certificate. Depending on the situation the youth may need a certified copy or original. Other times the youth may need only a copy. In addition, DFPS is working with	Consolidate with 264.121(e). Direct DFPS to ensure that by the age of 16, youth in care receive or are given a copy of (according to the preference of the youth) a certified copy of the youth's birth certificate, a social security card or replacement social security card, as appropriate, and a personal identification certificate under Chapter 521, Transportation Code. Direct DFPS to provide the following to a young adult who leaves care on or after the age of

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	Appleseed on a tool to potentially provide the youth electronic access to their key documents. The statutory scheme should permit maximum flexibility to accommodate varying needs.	18, if the young adult does not already have it: (1) the young adult's birth certificate; (2) the young adult's immunization records; (3) the information contained in the young adult's health passport; (4) a personal identification certificate under Chapter 521, Transportation Code; (5) a social security card or a replacement social security card, if appropriate; and (6) proof of enrollment in Medicaid, if appropriate. Again specify that the document provided may be an original, or a copy, depending on the preference of the youth.
pp. 131-132 **TFC § 264.101.** Sets forth authority for and limitations on DFPS' expenditure of foster care maintenance dollars.	**Unclear Statutory Authority.** The current provision does not support the current reality faced by caseworkers. First, the language refers only to children for whom DFPS has initiated a suit and not necessarily children of whom DFPS has lawfully taken possession pursuant to other law, e.g. in Chapter 262 TFC. Caseworkers and other staff have historically scrambled to find money to pay for an otherwise lawful placement, by asking the Child Welfare Board for the funds. Second, caseworkers may properly need to place a child into a facility that does not meet the definitions in Chapter 42 of the Human Resources Code (e.g. older youth or young adult in an HCS home awaiting a waiver slot).	Amend statute as follows: (a) The department may pay the cost of foster care for a child only if: (1) [~~for whom the department has initiated a suit and has been named managing conservator under an order rendered under this title, who is a resident of the state, and who~~] the child has been placed by the department in: [~~(A)~~] a foster home or other residential child-care facility [~~child-care institution~~], as defined by Chapter 42, Human Resources Code, or in a

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	More recently, caseworkers have struggled with the issue of human trafficking victims, some of whom may in limited circumstances need a secure facility to receive treatment.	comparable residential facility in another state; and (2) the department: (A) has initiated suit and been named conservator; or (B) has the duty of care, control, and custody after taking possession of the child in an emergency without a prior court order as authorized under this Code …[no revisions proposed for the remaining subsections].
p. 132 **TFC § 264.117(b).** Requires DFPS to give a child's attorney ad litem (AAL) at least 48 hours notice of a non-emergency placement change.	**Impedes Case Work.** There are multiple, different notification statutes that have been added to the Code over the years. They do not cover the same entities or provide consistent directives.	Repeal. See consolidated notification statute, pp. 62-63.
pp. 132-133 **TFC § 264.119.** Requires DFPS to give a child's residential child-care provider or child-placing agency at least 48 hours notice of a non-emergency placement change	**Impedes Case Work.** This was already required by DFPS's contract with providers and therefore did not add to DFPS's administrative burdens, but it does add to the length of the Code and represent another provision that partially addresses required notifications. See TFC § 264.117(b).	Same recommendation as in § 264.117(b). Also note that "child-placing agency" is subsumed within the term "residential child-care". See HRC § 42.002. Whether the provision is streamlined as recommended or left intact, the reference to "child-placing agency" can be repealed.
p. 133 **TFC § 264.121(e).**	N/A.	Consolidate and streamline provision as described under TFC § 264.014.
p. 140 **TFC § 266.001.** Definitions related to the medical care	**Unclear Statutory Authority.** Because the statute defines medical care for which treatment can be given by	Amend statute to make clear that for purposes of medical consent, the definition of "medical care"

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and educational services for children in foster care.	reference to the "health care and related services provided" by Medicaid, the agency has at times been in a position whereby a service or treatment not covered by Medicaid is recommended or ordered for a child in DFPS conservatorship, yet DFPS does not have the authority to provide (or refuse) consent. In some instances the biological parents, in addition to the judge, should be involved, but decision-making authority is unclear. For example: in a child's circumcision. Conversely, there are procedures not covered by Medicaid, such as withdrawal of life sustaining treatment or organ donation, but for which DFPS would still need authority over as conservator, with input of parents and judge if necessary.	includes any medical care ordered or prescribed by a qualified health care practitioner, regardless of whether the treatment is provided under Medicaid, so that the agency can appropriately tailor the protocols to the seriousness and type of treatment. If provisions related to drug research program are eliminated, corresponding definitions in (2-a) and (4-a) should be eliminated as well. Suggest title or subtitle-wide definitions for Title V so that Commission, Commissioner, Department, do not need to be redefined. Foster child or foster care probably also needs title-wide definition.
pp. 140-141 **HRC § 40.0523.** Requires DFPS and the Children's Trust Fund of Texas Council to develop and implement a statewide education program designed to prevent infant mortality.	**Unclear Statutory Authority.** DFPS PEI program staff confirmed that an "infant mortality prevention education program" can be characterized as one type of child abuse and neglect primary prevention program, rendering it unnecessary to have a specific statute for an infant mortality prevention education program. Later enacted provisions (HRC §§ 40.101-107) direct DFPS to carry out child abuse and neglect primary prevention programs. This specific provision, therefore, thwarts DFPS's ability to flexibly expend limited funding on the types of primary prevention programs that are most needed at any given time. Additionally, this provision is outdated, as the Children's Trust Fund of Texas Council was abolished and incorporated into DFPS' PEI program in 2001.	Repeal.

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pp. 141-142 **HRC § 40.101.** Definitions related to child abuse and neglect primary prevention programs.	**Unclear Statutory Authority.** These definitions are pertinent to PEI's responsibility for developing, funding, and implementing primary prevention and early intervention programs. The purposes of these definitions would be better served positioned within Texas Family Code Chapter 265 (Prevention and Early Intervention Services). Caseworkers could more easily reference and utilize PEI-related material if all of the applicable provisions were streamlined into one comprehensive Chapter. Additionally, expanding the definition of "primary prevention" to include an infant mortality prevention education program would provide DFPS with the maximum flexibility to use limited funds for the primary prevention purposes that appear to be the highest priority at any point in the future. This expansion would eliminate the need for a specific statute for an infant mortality prevention education program while maintaining its significance as one type of primary prevention program (See HRC § 40.0523).	Move statute to Texas Family Code Chapter 265 (PEI subchapter) and consolidate into TFC § 265.001 (Definitions) for clarity and organizational purposes. Amend HRC § 40.101(2) to read as follows: (2) "Primary prevention" means services and activities available to the community at large or to families to prevent abuse and neglect before it occurs, and may include an infant mortality prevention education program.
p. 142 **HRC § 40.102.** Requires DFPS to operate the children's trust fund to develop and carry out child abuse and neglect primary prevention programs.	**Unclear Statutory Authority.** This statute falls under PEI's responsibility for coordinating prevention and early intervention programs. See HRC § 40.101.	Move statute to Texas Family Code Chapter 265 (PEI subchapter) for clarity and organizational purposes.
pp. 142-143 **HRC § 40.104.** Describes the requirements DFPS must follow in regards to administrative costs and other funds expended relating to child abuse and	**Unclear Statutory Authority.** This statute falls under PEI's responsibility for coordinating prevention and early intervention programs. See HRC § 40.101.	Move statute to Texas Family Code Chapter 265 (PEI subchapter) for clarity and organizational purposes.

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neglect primary prevention programs.		
p. 143 **HRC § 40.105.** Authorizes and describes the child abuse and neglect prevention trust fund account.	**Unclear Statutory Authority.** This statute falls under PEI's responsibility for coordinating prevention and early intervention programs. See HRC § 40.101. Additionally, this statute contains inconsistent language, in that money is dedicated for "abuse prevention programs" when "abuse" and "neglect" have separate statutory definitions and are not, in fact, synonymous. Given the title of HRC § 40 Subchapter D, the titles of § 40.102 and § 40.105, and the language used within § 40.105, the inconsistent terminology within this statute seems to be inadvertent.	Move statute to Texas Family Code Chapter 265 (PEI subchapter) for clarity and organizational purposes. Amend HRC § 40.105(a) and (e) to clean-up of inconsistent terminology, as follows: (a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund. Money in the trust fund is dedicated to child abuse <u>and neglect primary</u> prevention programs. (e) All marriage license fees and other fees collected for and deposited in the trust fund and interest earned on the trust fund balance shall be appropriated each biennium only to the operating fund for [~~primary~~] child abuse <u>and neglect primary</u> prevention programs.
pp. 143-144 **HRC § 40.106.** Authorizes and describes the child abuse and neglect prevention operating fund account.	**Unclear Statutory Authority.** This statute falls under PEI's responsibility for coordinating prevention and early intervention programs. See HRC § 40.101.	Move statute to Texas Family Code Chapter 265 (PEI subchapter) for clarity and organizational purposes.
p. 144 **HRC § 40.107.** Authorizes DFPS to solicit contributions from any appropriate source and provides stipulations and limitations concerning contributions for child abuse and neglect primary prevention programs.	**Unclear Statutory Authority.** This statute falls under PEI's responsibility for coordinating prevention and early intervention programs. See HRC § 40.101.	Move statute to Texas Family Code Chapter 265 (PEI subchapter) for clarity and organizational purposes.

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pp. 144-145 **HRC § 54.001.** Requires DFPS to develop rules for filing protective orders on behalf of a family member.	**Archaic Language.** This chapter, originally enacted in 1995 by HB 418 (and recodified in the clean-up bill SB 797 from the 76th, which sought to address the fact that "the Texas Family Code is under criticism based on its overcrowded and disorganized condition") appears to be unnecessary. DFPS has full access to an array of protective remedies for domestic/family violence. TEX. FAM. CODE § 82.002(c)(2). However, the purpose of any rulemaking requirement seems to date back to a time when the legislature sought to ensure that protective orders were filed and heard on victims' behalf. As the body of research and best practice regarding family and intimate partner violence has evolved, it has become clear that the circumstances under which DFPS would seek an order on a victim's behalf would realistically only be if the victim requested it. While DFPS could adopt rules to that effect, they would serve little purpose other than to restate good case practice, which DFPS has not undertaken to do in rule with respect to other orders in CPS cases.	Repeal.
p. 145 **HRC § 54.002.** Requires DFPS provide prior notice to a non-abusive parent or adult member of a household of the department's intent to file for a P.O. and to exercise reasonable caution in providing such notice.	**Archaic Language.** This provision is at odds with current best practice and parent/child safety. The most volatile and lethal time for a victim of family violence is often when the victim attempts to take measures to protect herself and separate from her batterer. DFPS should not seek a protective order without the involvement and readiness of the victim, so there should not be a case where DFPS is letting the victim know its plans but the victim has not been closely involved in the planning.	Repeal.
pp. 145-147 **Tex. Gov't Code §**	**Unclear Statutory Authority.** This provision originated decades ago and has	Repeal language giving the agency authority to conduct background

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411.114. Describes and directs DFPS's access to criminal history record information.	been steadily added to, in a manner that does not necessarily reflect current terminology ever since. The numbering is off and many subsections do not reflect current business reality.	checks on specific groups listed, and replace with catch-all authority authorizing DFPS to run background checks on anyone when deemed necessary to the protection of a vulnerable child, elderly person, or person with a disability. This change would not alter any current language requiring background checks of certain groups. For an example of such broad authority: Sec. 411.091. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS ALCOHOLIC BEVERAGE COMMISSION. (a) The Texas Alcoholic Beverage Commission is entitled to obtain from the department criminal history record information maintained by the department that the commission believes is necessary for the enforcement or administration of the Alcoholic Beverage Code. (b) Criminal history record information obtained by the commission under Subsection (a) may be used only for the enforcement and administration of the Alcoholic Beverage Code.