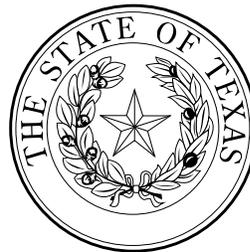


**Department of Protective
and Regulatory Services**

Staff Report



**Texas Sunset
Advisory Commission**

1996

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**DEPARTMENT OF PROTECTIVE
AND REGULATORY SERVICES**

SUNSET STAFF REPORT

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EXECUTIVE SUMMARY



Executive Summary

The Texas Department of Protective and Regulatory Services (PRS) is responsible for providing protective services to the state's most vulnerable citizens — children, people with disabilities, and the elderly. Since its creation as a separate agency in 1991, PRS has been the subject of on-going legislative criticism. A succession of directors, changes in management direction, lack of a unified vision, and problems with managing money have led to questions about the agency's ability to provide protective services as effectively as possible. Problems with this agency do not come from the performance of frontline caseworkers, but in the policies and management of the agency. As a result, resources are not being maximized to support the delivery of services. Because the agency performs such a vital and important function for the state, these problems need to be remedied quickly. The Sunset staff review focused on better ways to deliver services to the citizens of the state, to quickly move children into permanent settings, and to correct management problems faced by the agency. The following describes the results of the review.

1. Separate Investigations and Service Delivery Within PRS.

PRS caseworkers currently serve conflicting roles, investigator and social worker. Presently, a caseworker must investigate allegations of abuse or neglect, then attempt to work with that same family to help solve the problems that led to abuse or neglect. Building trust and developing partnership with the family is difficult for the same caseworker who investigated and may have removed a child from their home. Separating these functions would provide focused and better trained investigators while allowing social workers to concentrate on providing direct family services.

Recommendation: Require PRS, where possible, to separate investigations from the actual delivery of services to victims and their families. Certain service regions of the state, primarily expansive but sparsely populated rural areas, may not have caseload requirements that justify separate staff. PRS must have the flexibility to retain general caseworkers to perform both functions in these areas.

2. Improve PRS' Ability to Protect Children and Provide Services.

PRS must thoroughly investigate all reports of child abuse or neglect that meet statutory definitions, regardless of severity. Full investigations of less serious problems divert already limited staff resources from serious cases of abuse and from service delivery. Child welfare experts recommend a more flexible approach. Many states have adopted a system where full investigations are reserved for serious cases while social service efforts, such as family assessment or crisis intervention, are used to deal with less serious incidents. This approach could replace Texas' "one size fits all" response to reports of abuse.

Recommendation: Authorize PRS to establish a flexible response system, starting with a pilot program, to address reports of child abuse and neglect. The system should provide for full investigation of serious reports of abuse or neglect. For less serious reports, PRS would quickly assess the family situation and provide social services to

the child and the affected family without involving them in a full-blown, adversarial investigation.

3. Remove Obstacles to Allow Quicker Permanent Placement of Children in PRS Conservatorship.

Children often remain in PRS' care for long periods of time, moving from one foster home to another. Experts agree that this type of placement, particularly for abused or neglected children, can impair a child's development and lead to behavioral problems later in life. However, the current system has several statutory barriers that prevent children from being quickly placed in permanent homes. The primary barriers are the lack of a separate court hearing on permanency placement for the child and the inability to terminate parental rights when parents do not adequately comply with a family service plan. These barriers should be removed.

Recommendation: Set a 12-month deadline for PRS to seek termination of parental rights or return a child to the family. Further, state law should allow termination if a parent fails to complete the court-approved service plan.

4. Improve PRS' Adoption Process Through Better Coordination of Adoptions and Increased Use of Private Adoption Agencies.

One reason children remain in foster care too long is due to the extended time PRS takes to find adoptive homes. Several problems characterize the Department's adoption process. The Department's recruitment of adoptive parents has not kept pace with the growing number of adoptable children, the time children wait to be adopted varies widely from region to region, and the state spends money on foster care longer than should be necessary. Finally, PRS does not turn to private adoption agencies for help when its own efforts have failed.

By not focusing attention on adoption, abused or neglected children remain in foster care without a permanent family.

Recommendation: Require PRS to monitor and enforce regional adoption performance goals and to increase the use of private adoption agencies. PRS should also begin efforts to find adoptive homes for abused or neglected children soon after deciding to seek termination of parental rights. Finally, PRS should remove barriers that limit foster parents from adopting.

5. Improve the Way PRS Manages Contracts.

Contracting problems at the agency have resulted from a lack of centralized policy, monitoring, and accountability. Sometimes, these weaknesses have translated into financial irregularities by some providers and subsequent requests by the federal government for the state to refund the payments in question. To responsibly use and safeguard state funds, the Department must have well-developed and coordinated contract systems that can detect poor performance, waste, misuse, or fraud.

Recommendation: Require PRS to set standards in contracts that include clearly defined goals, outputs, and measurable outcomes that directly relate to the program objectives. The PRS Board and executive management must set and clearly communicate contract objectives to all parties. Finally, the Department should use a risk assessment methodology to closely monitor compliance with both financial and performance requirements.

6. Improve the Foster Care System by Measuring the Quality of Care Through the Contracting Process.

PRS spends more than \$175 million per year on a foster care system in which quality or effectiveness of the care provided is not measured. In fact, the

system contains financial disincentives for providers to improve quality and effectiveness of care. For that reason, PRS should modify its contracting process to include quality measures ensuring that children in foster care are benefiting from the services they receive.

Recommendation: Require PRS to implement a contracting process that promotes the quality of care and holds contractors accountable to performance measures. PRS should monitor provider performance, evaluate effectiveness, and report findings to the Legislature.

7. Improve Investigations of Abuse, Neglect, and Exploitation in MHMR Facilities and Community Centers.

PRS' investigations of abuse, neglect, and exploitation within MHMR facilities and community centers are hampered by poor coordination between PRS and MHMR. However, the two agencies have taken intermediate steps to correct problems in the timeliness and quality of investigations, such as not allowing facility or community center directors to unilaterally overturn PRS investigative findings. Nevertheless, PRS and MHMR efforts need to be supported by statutory changes to make the caseloads manageable without endangering clients.

Recommendation: Allow PRS to prioritize investigations and require PRS and MHMR to develop and implement a common system of tracking cases. In addition, only MHMR's state office—not local facility or program directors—should be authorized to overturn PRS' investigative findings, and only for documented reasons.

8. Require PRS to Better Coordinate Protective Services with Mexican Authorities.

PRS' state office has not effectively addressed the unique circumstances of providing protective services along the Texas-Mexico border. The Department has failed to renew a written agreement of cooperation between El Paso and Ciudad Juárez and does not aggressively pursue working relationships between other Texas and Mexican border cities. Long-term collaboration with Mexican authorities is needed but requires support of PRS' executive management.

Recommendation: Require PRS to study the unique problems of protecting children and adults of foreign citizenship or in a foreign country. Based on its study, PRS must develop effective approaches to solve problems in delivering services along the border.

9. Clarify that the Counties Represent the Department in Child Abuse and Neglect Cases.

Fifty-eight Texas counties have refused to represent the state in child abuse and neglect cases. As a result, PRS has had to manipulate the system to represent itself. While most counties have accepted the statutory responsibility for representing PRS, these 58 counties have abdicated their responsibility, relying on ambiguous language in the statute. For PRS to protect children who have been abused and to move children towards a permanent placement, the Department must have timely and competent legal representation.

Recommendation: Clearly require the county attorney to represent the Department in child abuse and neglect cases, except where that office has been abolished or where the district attorney has already assumed responsibility.

10. Require PRS to Develop an Outreach Program to Assist Counties in Accessing Federal Funds.

PRS has not made an adequate effort to develop a standardized, statewide program to educate counties on the federal programs available to them. Two existing federal programs allow counties to access federal dollars to help defray costs associated with child protective services. PRS has the responsibility to make sure that information provided to counties is timely, consistent, and available to all counties, regardless of the county's decision to participate.

Recommendation: Require PRS to develop a standardized outreach program to provide counties with information and technical assistance on all federal funding resources available to them.

11. Increase Revenue by Improving Cost Recovery in the Child Care Licensing Program.

Unlike most other regulatory boards and commissions in Texas, the PRS Board does not have the authority to adjust fee levels to cover the cost of child care regulation. Because fees are set in statute and fee revenue currently covers only 11 percent of regulatory costs, the agency's licensing program has relied on federal funds for support. If the child care industry paid a greater share of its regulatory costs, these limited federal funds could be used by other PRS programs to provide direct services to children.

Recommendation: Authorize the PRS Board to set fees at levels necessary to cover the costs of regulation and remove specific license fees for child care facilities from the statute. The Board should set the fee for each type of facility based on the regulatory effort required.

12. Give PRS Authority to Assess Administrative Fines in its Child Care Licensing Program.

The Department's child care licensing program has limited enforcement ability by not having administrative penalty authority, an approach commonly used by other regulatory agencies to address violations of statute or rule. As a result, PRS took formal action regarding only 122 of the more than 95,000 validated violations found in fiscal year 1995. Without administrative penalties, PRS does not have the flexibility to address less severe violations of the statute and rules.

Recommendation: Authorize the Department to assess administrative penalties of up to \$100 per violation, per day for violations of the statute and PRS rules. To ensure clarity and consistency, the Department must develop a schedule of fines tied to the severity and frequency of the offense and repeat violations. All fines would be deposited in the General Revenue Fund.

13. Improve the Handling of Complaints by Developing a Coordinated Statewide Complaint Resolution Process.

Complaints made against the Department are not received or resolved consistently by the state office, the regions, or programs within the regions. Neither regional nor state office management are aware of most complaints made against the agency. Without a centralized complaint tracking process, information about problem areas is not available to the PRS Board and agency management. Effective improvements cannot be made without knowing where the problems are.

Recommendation: Require the Department to develop a centralized complaint tracking system and a consistent, statewide complaint resolution process.

14. Increase Return on Technology Investments Through Centralized Accountability and Management of Information Systems.

PRS's substantial investments in information systems are not fully supported by agency-wide strategic project analysis and oversight. Without a point of central accountability for information systems, the agency runs the risk of committing millions of dollars to projects that may not capture all information necessary to promote effective daily operations, planning, and decision-making.

Recommendation: Require the Department to establish an internal committee to coordinate the development and use of information technology. In addition, the Department should assign day-to-day responsibility for each project under development to specific project managers reporting to the agency's resource manager.

15. Improve the Administrative Hearings Process Through Transfer to the State Office of Administrative Hearings.

The Legislature has clearly expressed its intent to transfer most hearing functions of state agencies to the State Office of Administrative Hearings. PRS still conducts its own administrative hearings relating to contracts, license revocations, and regarding the release of information. These hearings should be transferred to the State Office of Administrative Hearings.

Recommendation: Transfer the Department's Administrative Procedure Act hearings to the State Office of Administrative Hearings.

16. Continue the Texas Department of Protective and Regulatory Services for 12 Years.

A continuing need exists to provide protective services to children, people with disabilities, and the elderly, and to regulate child care facilities. Organizationally, the question of PRS' proper location in the health and service system remains unanswered. To effectively evaluate the proper organizational structure of PRS, other major health and human service agencies must be considered. Currently, only three health and human service agencies are under Sunset review. However, next biennium the majority of health and human service agencies will be under Sunset review, providing an opportunity to evaluate the organizational structure of the state's health and human service system. Even if continued for 12 years, PRS would be considered as part of that evaluation.

Recommendation: Continue the Department for 12 years.

Fiscal Impact Summary

The recommendations contained in this report would result in a revenue gain to the state's General Revenue Fund in the amount of more than \$5 million per year for the upcoming biennium. In addition, three of the recommendations could achieve total savings of approximately \$60 million annually to be reallocated within the Department for client services. These three recommendations require PRS to address permanency placement for children in PRS conservatorship, clarification of legal representation, and the transfer of administrative hearings to the State Office of Administrative Hearings. Other recommendations could result in savings that cannot be estimated.

APPROACH AND RESULTS



Approach and Results

Approach

The Sunset review of the Department of Protective and Regulatory Services (PRS) presented a challenge to the Sunset staff. In 1995, the Legislature moved up the Department's Sunset review date two years to 1997. Since its creation in 1991, PRS has had difficulty in developing and managing systems to support the effective protection of the state's most vulnerable populations — children, people with disabilities, and the elderly. The Legislature determined that PRS could benefit from review under the Sunset process.

In structuring this review of the Department, the Sunset staff did not attempt to side with varying philosophies of dealing with child abuse, protection of children, people with disabilities, and the elderly, or the treatment of families involved. These philosophies, such as family preservation versus immediate removal of the child from the family, each have their merits and their supporters. Support for these philosophies swings back and forth and varies from state to state. In addition, the Sunset staff is not an expert on the social philosophies of child abuse and treatment. For the staff to support one of these approaches over another was inappropriate — the philosophical debate is better left to the advocates of each approach, the Legislature, and the PRS Board and executive management.

The purpose and focus of this Sunset review was to improve the operation of the Department of Protective and Regulatory Services so that the needs of children, families, people with disabilities, and the elderly are better served, regardless of philosophy. To that end, the recommendations in this report address several themes, but basically attempt to improve investigations and service delivery; remove any stumbling blocks in the permanent placement of children; and strengthen management that supports the functions of the agency.

The Sunset staff's approach in each of these issue areas represents our attempt to address concerns and problems identified in each of PRS' major programs. While these recommendations may need refinements, as will surely be identified in the Sunset Commission's deliberations, the staff is confident that our suggestions bring to light

PRS' Sunset date was moved up two years to allow for positive change through the Sunset process.

many of the problems that exist in PRS' current way of doing business. The Sunset review of PRS showed that some of the Department's current approaches were simply not working very well and required a change. What will not come across in this report are the things that PRS does well. The review did find a dedicated staff that works hard to carry out a very difficult mission given it by the Legislature. Unfortunately, Sunset reviews, by design, focus on improvements needed and do not allow much time to be spent on what is already working well.

Review Activities

In conducting the review the Sunset staff:

- Worked with PRS staff — executive management, state office staff, and regional staff from each of the Department's major programs;
- Worked with staff from the Legislative Budget Board and the State Auditor's Office;
- Worked with the Lieutenant Governor's Office, the Speaker's Office, the Senate Health and Human Services Committee, the House Appropriations Committee, and the House Human Services Committee;
- Worked with the Health and Human Services Commission and other health and human service agencies;
- Attended public meetings of the PRS Board;
- Surveyed and met with advocacy and interest groups about their concerns with the protective process and recommendations for improvement;
- Traveled to PRS offices in Austin, Arlington, Dallas/Fort Worth, Houston, San Antonio, and the Valley;
- Visited state hospitals, state schools, and community centers, and licensed facilities such as emergency shelters, residential treatment centers, foster homes, personal care homes, day care centers, and family group homes;
- Accompanied PRS caseworkers on in-home investigations and investigations of the Mental Health and Mental Retardation facilities and community centers as well as on inspections of child care businesses; and

The review of PRS showed that some of its current approaches were not working very well and required a change.

- Reviewed agency documents and reports, state statutes, legislative reports, previous legislation, literature on child and elder abuse, other states information, and information available on the Internet.

The Sunset staff wishes to acknowledge the assistance provided by the State Auditor's Office (SAO). The State Auditor assigned an auditor to work as a member of the Sunset team reviewing PRS. This assistance proved very beneficial in developing several of the recommendations in this report.

Results

The Sunset review of the Department started with answering the threshold question of whether functions performed by PRS continue to be needed. The goal of PRS is to protect children, elderly adults, persons with disabilities, and victims of family violence from abuse, neglect and/or exploitation through development and efficient management of an integrated service delivery system. The Sunset staff concluded that PRS' activities to achieve this goal should continue. The state has identified the protection of children, people with disabilities, and the aged as an essential role of government. In the state's strategic plan, one of the primary missions of state government is to "to protect and enhance the health, well-being, and productivity of all Texans."

Once the Department's functions were deemed necessary, the focus of the review shifted to the organizational structure used to carry out these functions. PRS was evaluated to see if consolidation or transfer of all or some of its functions was warranted. While the functions performed by PRS are not duplicated, they might benefit from being moved back into the Department of Human Services or another human service agency with strong management and a well-developed support system. However, for reasons discussed below, the Sunset staff chose not to reach a conclusion on the issue of reorganization in this report.

Since PRS' creation in 1991, it has had six directors, each with a different management philosophy. Lack of consistency and continuity has prevented the agency from developing management, information, and financial support systems necessary for delivery of good services. Before PRS can be objectively evaluated as to whether its functions should remain in an independent agency or be transferred elsewhere, the Department needs to address management problems and improve how investigative and social service functions are supported and performed. As a result of the agency's new leadership, the Sunset review, and

The Sunset staff chose not to reach a conclusion on possible reorganization until the review of the state's health and human service agencies in two years.

legislative oversight, the accountability and services provided by the agency should improve.

However, these problems need to be addressed quickly by the Department as they have lingered since the days the programs were part of the Department of Human Services. In 1988, the Senate Committee on Health and Human Services concluded: "The agency was unaccountable. No one could say for sure how much money was being spent or even what it was spent on. Accurate counts of employees or caseloads were not available. Statistics were skewed. Caseworker turnover was high."

During the 1998-1999 biennium, the Sunset Commission is scheduled to review most of the state's other health and human service agencies, including the Health and Human Services Commission. As with most Sunset reviews, consolidation will be a major part of the agencies' evaluations. At that time, the Sunset Commission staff will consider where PRS fits into any reorganized state health and human services delivery system that might be proposed.

"The agency was unaccountable. No one could say for sure how much money was being spent or even what it was spent on." — Senate Committee on Health and Human Services (1988).

In reviewing how PRS carries out its mission, staff focused on three main functional areas: investigating and providing services to victims of abuse, neglect, or exploitation and their families; the process for finding permanent placement for children removed from their homes; and management and the ability of systems in the agency, such as information technology, to support the delivery of protective services.

Investigations and Service Delivery - PRS receives complaints of abuse, neglect, or exploitation, investigates allegations, and provides services to those identified as being eligible. Sunset staff looked at the current process for prioritizing intake, performing investigations, and providing services. **Issues 1 and 2** address the organization and performance of investigations and service delivery.

Permanency Planning - PRS is responsible for providing foster care and finding permanent placement for more than 15,500 children in PRS conservatorship. Costs for providing these services totaled more than \$207 million in fiscal year 1995. The review of this process identified several opportunities for streamlining. These opportunities are discussed in **Issues 3 and 4**.

Federal Funds Management and Budgeting - PRS receives a biennial appropriation of more than \$1 billion. Problems with management of federal funds has left the agency more than \$38 million short of the money needed to provide critical services to children, people with disabilities,

and the elderly in fiscal year 1997. To address these problems, PRS needs to reevaluate its organizational structure and staffing and develop information systems to provide accurate information to the Board and management in a timely manner. See **page 172 of the background** for more detail on financial concerns.

Management Information Systems - PRS is among the top five agencies in the state in expenditures for information resources, spending more than \$103 million in fiscal years 1994 and 1995. Concerns with management of information technology at PRS resulted in the Legislature placing all of PRS' expenditures under quarterly review. Without effective oversight and management, the Department runs the risk of investing millions of dollars in projects that do not live up to expectations. **Issue 14 and page 200 of the background** provide more information on the management of the Department's information technology.

Training - Advocacy groups and law enforcement officials have raised questions about the effectiveness of PRS training. During the course of the Sunset review, staff came across workers who had received inadequate or no training. To effectively investigate reports of abuse, neglect, and exploitation and provide services to the victims of abuse and their families, PRS employees must have a good understanding of investigation techniques, social service delivery methods, the state's legal system, the Family Code, and numerous other statutes. Training is addressed in **Issues 1, 2, 7, and 10**.

Communication, Coordination, and Consistency - Throughout the review of PRS, staff noted numerous examples of inconsistency in program implementation, lack of coordination between regions, and lack of communications between the state office and regions and among regions. Before the current Director, the Department followed a decentralized management approach intended to provide flexibility in the regions. While flexibility is certainly desirable and necessary in a state as large and diverse as Texas, failure to know what is going on, much less try to control it, has led to concerns about investigations and the delivery of services. **Issues 7, 9, 10, 13, and 14** address these concerns and offer improvements.

Working with Other Agencies and Levels of Government - To effectively provide services to the state's citizens, PRS and other health and human service agencies need to work together to leverage resources, provide assistance when needed, and prevent people from falling through the cracks. The process for investigating allegations of abuse in MHMR

facilities highlights the lack of consistent cooperation between health and human service agencies. Although both MHMR and PRS have worked to solve problems, the Lieutenant Governor and the Senate had to intervene to get the two agencies to develop a corrective plan. The agency must also improve its relationship with local governments and Mexico. For the service delivery system to work, PRS must work with other health and human service agencies and the Health and Human Services Commission to solve mutual problems. **Issue 7** provides more information on investigations in MHMR facilities and **Issues 8, 9, and 10** address working with other levels of government.

Contracting - PRS' contract administration system contains weaknesses that inhibit accountability. Contracting problems at the agency have resulted from a lack of centralized policy, monitoring, and responsibility. Specifically, PRS spends more than \$175 million per year on foster care without knowing the quality of services or the effectiveness of the treatment in meeting the needs of abused and neglected children. The current method of contracting does not ensure, promote, or reward quality care. To improve the foster care system, PRS is working to modify its contracting system for residential care services to include quality measures that can be used to evaluate not only services, but providers. **Issue 5** addresses problems with the overall contracting process, while **Issue 6** deals with contracting for foster care.

Aggressive Regulation of Child Care Facilities - The child care licensing program (CCL) has not aggressively regulated the child care industry. Strong regulation in this industry is essential to protect children from harm and abuse. In fiscal year 1995, the child care licensing program conducted 35,430 facility inspections which resulted in 91,775 violations cited. The Department also investigated 9,887 complaints, 41 percent of which were validated. These violations, however, only resulted in a total of 122 formal actions against facilities (denial, probation, or revocation of licenses). CCL does not have the authority to use administrative fines — an enforcement tool commonly used by other regulatory agencies to address violations. Additionally, PRS staff is hesitant to seek adverse action against facilities because of concerns with the administrative hearings process. **Issues 11, 12, and 15** address fees and administrative hearings and recommend additional tools for use in regulation.

As outlined above, the Sunset staff recommends the following changes to improve the effectiveness and efficiency of services provided by the Department. These recommendations include both changes in the statutes that govern PRS and several directives for management action by the

Department. Details on each of these changes are included in this report in separate discussions of the following:

Recommendations

1. Separate investigations and service delivery to increase protection of and services to victims of abuse and neglect.
2. Improve PRS' ability to protect children and provide services to families affected by reports of abuse or neglect.
3. Remove obstacles to allow quicker permanent placement for children in PRS conservatorship.
4. Improve PRS' adoption process through better coordination of adoptions and increased use of private adoption agencies.
5. Improve the way that PRS manages contracts.
6. Improve the foster care system by measuring the quality of care through the contracting process.
7. Improve investigations of abuse, neglect, and exploitation in MHMR facilities and community centers.
8. Require PRS to better coordinate protective services with Mexican authorities.
9. Clarify that the counties shall represent the Department in child abuse and neglect cases.
10. Require PRS to develop an outreach program to assist counties in accessing federal funds.
11. Increase revenue by improving cost recovery in the child care licensing program.
12. Provide PRS with authority to assess administrative fines in its child care licensing program.
13. Improve the handling of complaints by developing a coordinated statewide complaint resolution process.
14. Increase return on technology investments through centralized accountability and management of information systems.

These recommendations include both changes in statute and several management actions needed by the Department.

15. Improve the administrative hearings process through transfer to the State Office of Administrative Hearings.
16. Continue the Texas Department of Protective and Regulatory Services for 12 years.

Fiscal Impact

The recommendations contained in this report would result in a revenue gain to the state's General Revenue Fund in the amount of more than \$5 million per year for the upcoming biennium. In addition, three of the recommendations could achieve total savings of approximately \$60 million annually to be reallocated within the Department for client services. These three recommendations require PRS to address permanency placement for children in PRS conservatorship, clarification of legal representation, and the transfer of administrative hearings to the State Office of Administrative Hearings. Other recommendations could result in savings that cannot be estimated.

The recommendation to continue the Department would require its annual appropriations of between \$520 and \$540 million to continue.

Fiscal Year	Total Gain to the General Revenue Fund	Total Savings to be Reallocated within the PRS
1998	\$5,043,000	\$59,126,000
1999	\$5,043,000	\$65,626,000
2000	\$5,043,000	\$65,626,000
2001	\$5,043,000	\$65,626,000
2002	\$5,043,000	\$65,626,000

ISSUES

Issue 1



Separate Investigations and Service Delivery to Increase Protection of and Services to Victims of Abuse and Neglect.

Background

The Department of Protective and Regulatory Services (PRS) includes three divisions directly responsible for protecting vulnerable citizens in Texas from abuse, neglect, and exploitation — children, people with disabilities, and the elderly. Child protective services (CPS), adult protective services (APS), and child care licensing (CCL) are the three agency divisions responsible for carrying out the mission of the Department.

Child and adult protective services include investigations of suspected abuse and neglect. In cases involving the elderly and disabled, APS also investigates reports of suspected exploitation. APS is responsible for investigations in the home and in Mental Health and Mental Retardation (MHMR) facilities and community centers. In each case, PRS must conduct a thorough investigation of the reported incident, interviewing the victim, the alleged perpetrator, and others who may have knowledge of the incident. The Department, based on the facts gathered during an investigation, may proceed with civil court action to protect the victim. The statute requires that all reports be referred to the appropriate law enforcement agency for possible criminal prosecution.

If the investigation and analysis of the case indicate that abuse, neglect, or exploitation occurred, the victim (and the family in child abuse cases) is eligible for services. Services to victims of abuse or neglect in MHMR facilities are handled by MHMR. Services provided by CPS and APS are managed by the caseworker in addition to their ongoing investigation duties. CPS services include family and adult support, family preservation, residential care, and counseling. APS provides direct social services, guardianship when required, and provides purchased services that may include a variety of short-term assistance.

Services provided by CPS and APS are managed by the caseworker in addition to their ongoing investigation duties.

In the area of child care licensing, PRS regulates the operation of child care facilities. CCL also investigates allegations of abuse or neglect in these facilities. Civil action can be brought against the facility where the abuse occurred and the perpetrator may be prosecuted criminally. CCL does not provide services to victims of abuse. CCL caseworkers only perform investigations.

The Sunset review focused on PRS' investigations and service delivery to determine if the current system provides needed protection and services to children, adults, other individuals, and their families.

Findings

- ▼ **Caseworkers, who function as investigator and social service deliverer, serve conflicting roles.**
 - ▶ In the PRS model, caseworkers often investigate allegations of abuse or neglect and provide needed social services to the victim and the family. The role of the investigator is to determine if abuse occurred, identify and gather evidence against the perpetrator, assess the risk of abuse/neglect, and remove the child if necessary. The caseworker tries to help the family function better and stay intact if possible.

According to the American Public Welfare Association, the two functions — investigation and service delivery — inherently conflict when practiced on the family, because one treats some members of the family as perpetrators of abuse and neglect and the other views the family as the needy client.¹
 - ▶ The adversarial nature of an investigation hinders the development of trust between the caseworker and the family needed for effective service delivery. PRS policy states that the success of a family services worker “depends on the worker’s ability to establish relationships of trust and partnership with families.”² This system causes conflict between the agency and the family and reduces the caseworker’s ability to serve in either role.
- ▼ **Serving the roles of investigator and service deliverer makes caseload management difficult for caseworkers.**
 - ▶ Managing both functions can be overwhelming for caseworkers not only because of the sheer number of cases but

PRS caseworkers are torn between investigating family members as perpetrators and serving the same family as a client.

- **CCL** - In some regions, child care licensing has two investigation units that conduct different types of investigations. Some child care licensing workers investigate complaints involving violations of the minimum standards. Other workers only conduct specialized investigations of abuse or neglect in child care facilities.

▼ **PRS executive managers and regional staff have recently recommended separating investigations and service delivery throughout the state.**

- ▶ In a recent internal review of the agency's functions, PRS staff recommended that the Department be organized along functional lines rather than program lines. The new organization would have four functional areas including intake/outreach, investigation, on-going services, and regulation. This change would separate investigations and on-going service delivery in the three program areas: CPS, APS, and CCL. The Department believes this approach will better focus resources.
- ▶ PRS staff anticipate that separation of investigations and service delivery will strengthen investigations, create a system of checks and balances, and increase accountability.

▼ **Most PRS caseworkers do not receive adequate training or have enough experience to function most effectively as investigators.**

- ▶ Investigative training is essential in allowing caseworkers to effectively perform their duties, especially since investigations are extremely controversial and caseworker turnover is high. Yet, current training does not adequately prepare caseworkers as investigators. A review of the training program for new caseworkers found little emphasis on investigations. Investigative training composes only a small section of the complete training class new caseworkers must attend. In addition, the Department does not certify that caseworkers have received training. Caseworkers are left to develop skills through on-the-job training.

Caseworker training and job qualifications do not ensure workers are good at investigation.

- ▶ Caseworker qualifications do not ensure good investigations. Caseworkers are required to have a college degree; however, CPS caseworkers are not required to have education or previous experience in either social work or law enforcement.
 - ▶ Presently, PRS staff and the general public have no way of determining the quality of PRS investigations. Little emphasis on training is evidenced by lack of standards to measure how well investigations are being performed. Outcome measures, such as the number of justified removals of children, are not available to show how well investigations are being conducted in the state.
- ▼ **PRS investigations should be of a high quality to support the actions of the Department.**
- ▶ Although PRS does not criminally charge and prosecute perpetrators for abuse and neglect, the Department does determine the nature and extent of abuse and neglect, identify the perpetrator, and take actions based on the investigation. Actions could include removal of the child from the home and possibly termination of parental rights.⁴
 - ▶ Recent legislation requires PRS to conduct joint investigations with law enforcement in cases of serious physical or sexual abuse.⁵ The purpose of this legislation was to improve the quality of investigations. PRS caseworkers must receive training comparable to their law enforcement counterparts to better assist in these investigations.
 - ▶ While all child abuse cases may not result in criminal prosecution, some may result in termination of parental rights. Termination of parental rights is a very serious action and should be based on strong investigative findings. Recent legislation raised the burden of proof for termination of these rights.⁶ This change in legislation places more responsibility on the caseworker and requires well-developed investigative skills. Caseworkers must be able to document all the events, from investigation on, that occurred in the case in order to prove the need for termination to the court.

PRS could consolidate similar investigative functions performed by each of its programs.

PRS should separate investigations and service delivery to allow staff to perform each function more effectively.

- ▼ **The investigative functions for all three protective services programs are similar and could be consolidated.**
 - ▶ Each major PRS program, CPS, APS, and CCL receives complaints and investigates allegations of abuse, neglect, or exploitation (for APS only). Each program uses similar intake procedures and methods to categorize the severity of the allegation, investigates reports based on time frames determined by the severity of the complaint, and takes action based on information gathered during the investigation.
 - ▶ Regardless of program, all investigations share the same basic elements. Investigators must all know basic interview techniques, such as how to precisely and unambiguously word questions, as well as how to adequately support their findings in written reports. Investigators need to be able to document any signs of abuse or neglect discovered during an investigation with photographs, witness statements, medical statements, video statements, and descriptive and factual narratives.⁷ CPS investigations must be consistent and precise because this critical evidence is used to support removal of the child from the family.
 - ▶ Although investigations are similar and should be consolidated, the functional consolidation should account for subtle differences in types of investigations conducted. General investigators would require cross-training to work on various types of investigations. Some types of cases would probably require specialized investigations. These cases include child deaths, severe physical abuse, and sexual abuse.
- ▼ **Organizational separation of investigations and service delivery would help PRS improve both functions.**
 - ▶ Separation of investigation and service delivery functions would allow PRS to develop and focus training in the area where it is needed most — investigations.
 - ▶ The separation will also create a system of checks and balances for the abuse investigation process. By dividing the functions, management will be better able to identify poor performance and hold investigators and service delivery caseworkers accountable for their work.

- ▶ PRS could assess the skills of caseworkers and assign those caseworkers with the best investigative skills to investigations and caseworkers with interest and backgrounds in social services to on-going service delivery.
- ▶ Separating investigations and service delivery will allow service delivery caseworkers to more effectively manage their caseloads without interrupting service delivery to conduct investigations. The separation will also allow investigators to concentrate on investigations.

Conclusion

PRS caseworkers currently serve conflicting roles, investigator and social worker. PRS must investigate allegations of abuse, neglect, or exploitation. If abuse, neglect, or exploitation is found, PRS must take action to remedy the situation. This action could include removing a child or abusive parent from the home. Currently, the caseworker who performs these functions must then approach that same family and attempt to help solve the problems that led to abuse or neglect. Building trust and developing partnership with the family is difficult for the same caseworker who investigated and found abuse or neglect.

PRS has recognized this problem and taken steps in some regions to separate investigations and service delivery. This approach would be beneficial across the state. Both functions would benefit from separation with more focused, better trained investigators and social workers to carry out the Department's mission.

Recommendation

Changes in Statute

- **Require that PRS, where possible, separate investigations and service delivery within the Department.**
- **Authorize PRS to continue using caseworkers to perform both investigations and service delivery in service regions where workload does not warrant separation.**

This recommendation would require PRS to expand current efforts to separate investigations from the actual delivery of services to clients and their families. This approach would eliminate the current conflict caseworkers experience when trying to perform both functions and allow PRS to improve the quality of each. Certain areas of the state, primarily large but sparsely populated rural regions, may not have caseload requirements that could justify separate staff. PRS would have the flexibility to retain general caseworkers to perform both functions in these areas, although PRS should increase investigative training for such staff.

In the APS program, the recommended investigation approach will not have an effect on the majority of cases. Since most APS cases have no perpetrator but involve self-neglect, the APS investigator essentially documents the situation and arranges for services. This recommendation would allow APS to continue to use general caseworkers to perform both functions when appropriate.

To implement this separated approach, PRS would need to develop procedures that provide for an exchange of information between investigations and service delivery caseworkers. For example, coordination will be necessary so that the service delivery caseworker has the facts of a case to help assess the services needed by a child or the family.

While staff supports separation along functional lines, this recommendation would not require PRS to consolidate. That decision should be made by the Department after studying the effect of such a change in organization. The following management recommendation discusses this option.

Management Actions

- PRS should study the benefits of consolidating the investigative functions of CPS, APS, and CCL into one division within the Department.
- PRS should sufficiently train its investigators to ensure they have expertise to assess allegations and properly substantiate their findings.

Consolidating all investigations within the Department would unify this function that has been divided by program area since the agency's creation. Many state agencies benefit from dividing their work by function rather than programmatically. PRS would have one division providing this vital function and would be able to concentrate on increasing the skill level of investigators and developing a consistent, agency-wide approach to detecting abuse and neglect. This is not a recommendation to change PRS' statute, but rather a directive that the Department give serious consideration to consolidation along functional lines. The consolidation could be implemented under current statutory authority.

PRS currently provides some investigative training to its caseworkers. However, the amount of time spent on investigative training does not equal the importance of the functions. In addition, the Department does not certify or ensure workers have received training. Consolidation of investigations would allow the Department to develop specialized training for investigators.

Fiscal Impact

The recommendations to separate investigations and service delivery will not result in a fiscal impact to the state. Information obtained from the Department indicates that separating these functions could be accomplished with current resources and would not affect current state/federal funding streams.

¹ American Public Welfare Association:W-MEMO, "Innovative Designs of Service Delivery in Child Protective Services", July 1995, pp. 39 - 44.

² Texas Department of Protective of Regulatory Services, *Child Protective Services Policy Handbook*.

³ *The New York Times*, "Many States Fail To Meet Mandates on Child Welfare", March 17, 1996.

⁴ Tex. Fam. Code, Section 261.301 (e)(1)-(2) and Child Protective Services Handbook, Section 2231.

⁵ Tex. Fam. Code, Section 261.301 (f).

⁶ Tex. Fam. Code, Section 161.001.

⁷ Child Protective Services Handbook, Section 2262.

Issue 2



Improve PRS' Ability to Protect Children and Provide Services to Families Affected by Reports of Abuse or Neglect.

Background

PRS' child protective services program serves two different but important roles: investigator of alleged child abuse and neglect and provider of social services to children and families involved in these cases. Currently, PRS investigates all reports that meet the statutory definition of abuse or neglect. Services are provided if the investigation determines that the family is eligible for services and a need exists.

Reports of child abuse and neglect enter the system three ways: 24-hour child abuse hotline calls, calls made directly to regional offices, and through centralized intake centers in certain regions. The process begins at intake when, based on information received, intake workers evaluate the report to make sure it fits the statutory definition of, and Departmental guidelines for, child abuse or neglect and whether the child is in need of protection.

The severity of the suspected child abuse or neglect determines the timing of the investigation. Investigations of Priority I reports, the most serious allegations, must be initiated within 24 hours of receipt; investigations of Priority II reports must be initiated within 10 days.¹ Investigations determine whether abuse occurred, assess the risk of further abuse, and evaluate the need to immediately remove the child from the home. If PRS substantiates the risk of abuse or neglect, then the family is eligible for services; if not, services are not provided.

In the most serious reports of alleged abuse or neglect, child protective services (CPS) investigators are often faced with the decision of removing a child from the home. Eventually, PRS must return the child to the home or initiate actions to make the removal permanent.

PRS requires serious reports to be investigated within 24 hours, less serious cases in 10 days.

In less serious cases, CPS investigators confirm whether abuse occurred and determine the need for family services. CPS may provide direct services, help the family apply for Medicaid or Aid to Families with Dependent Children, or help find classes on parenting skills and stress/anger management. Provided while the child stays in the home, these services are intended to preserve the family unit.

The Sunset review examined the CPS investigative process and focused on whether a full-blown investigation of every report, regardless of severity, is the best use of resources. In addition, the Sunset staff considered how PRS could best provide services to families where abuse or neglect has occurred.

Findings

- ▼ **PRS has recently adopted rules to implement a new investigation process.**
 - ◆ In March 1996, the PRS Board approved new investigation rules based on changes by the 74th Legislature. The Legislature revised the Family Code to give the agency discretion in determining when and how investigations are conducted. The change resulted from a court case that suggested PRS should have more discretion in deciding whether or not to investigate all reports of abuse or neglect.
 - ◆ The new rules, effective August 1996, provide the Department with more flexibility in performing investigations. The Department would be allowed to end an investigation if no abuse or neglect is confirmed. Under the old law and rules, the Department was required to complete all investigative procedures and paperwork regardless of whether the report was confirmed or not.
 - ◆ The new rules identify three stages of investigations that the caseworker may use depending on the facts and circumstances of the case.
 - Preliminary investigation - This investigation involves collection of information and interviews with the child and witnesses. If information collected results in the situation no longer fitting the statutory definition of abuse or neglect, a caseworker may administratively close this case without a full investigation. Examples that would

warrant administrative closure include when the alleged victim is not a child or the initial witnesses refute the allegations.

- Abbreviated investigation - CPS staff interview and examine the alleged victim and interview at least one parent. Based on this information, if the caseworker determines that no abuse or neglect has occurred or is likely to occur, and no significant risk factors are identified, an investigation may be concluded early without formal findings.²
- Thorough investigation - CPS caseworkers conduct preliminary steps in the process and find evidence that warrants a full investigation. The worker then completes all steps in conducting a full investigation as required by rule.

Reports of abuse or neglect that involve any risk factors would still receive a thorough investigation under the rule changes.

- ▶ This new approach allows PRS to better manage time spent on investigating, but does not improve or emphasize the delivery of services to assist the child or family.
- ▼ **While this new approach will address problems existing in the old system, some fundamental problems will still exist.**
- ▶ Neither the old approach nor the newly adopted one reduces the adversarial nature of CPS investigations. All reports of abuse or neglect will still be investigated, regardless of severity. The majority of reports do not involve abuse or neglect and, even in confirmed cases, the incident is usually not classified as severe. In those less severe cases, children and families benefit more if the parents are not alienated and stigmatized by a formal accusation of wrongdoing. Often the best response is a low key investigation or assessment that evaluates the situation and responds accordingly — rapid intervention or family services. The chart, *Priority of Child Abuse and Neglect Investigations*, shows the number and severity of reports received by PRS.

All reports of abuse or neglect must be fully investigated, regardless of severity.

Priority of Child Abuse and Neglect Investigations Fiscal Year 1995		
	Number of Reports	Percent of Reports
Total reports assigned for investigation	125,613	100
Priority I reports at intake before investigation	39,945	31.8
Priority II reports at intake before investigation	85,668	68.2
Total reports investigated	107,695	100
Priority I after investigation	13,055	12.1
Priority II after investigation	28,161	26.1
Investigation did not confirm abuse or neglect	66,679	61.8

- PRs' current intake and priority system, even with the new rule changes, does not provide a quick enough response to Priority II cases. Current policy mandates that a Priority II case must be investigated within 10 days. This time limit for the investigation process puts some children at increased risk of abuse and neglect. Children involved in reports classified at intake as Priority II but upgraded to Priority I after investigation face a particularly higher risk of abuse or neglect because of the slower response time.

PRs reports that 1,387 Priority II cases became Priority I after investigation. While this is less than two percent of total Priority II cases investigated in fiscal year 1995, PRs' initial contact with over 1,300 children occurred up to 10 days after the incident of abuse or neglect.

In addition, the Department has no way of knowing whether the 10-day requirement is being met by caseworkers in the field because its current information management system does not capture that information.

- The new approach does not emphasize the use of intervention services as an effective means of protecting children from further abuse or neglect. Intervention services that include family preservation and prevention programs for child victims, at-risk children, and their families lower the level of risk to the child by addressing negative environmental and behavioral patterns that lead to abuse.

Studies have shown that prevention services improve parental knowledge and attitude about healthy family relations and abuse of a child. In Texas, approximately 90 percent of all families that receive intervention services from PRS do not return to the PRS system within 12 months from the conclusion of service delivery.³ Yet, in the last fiscal year, PRS spent only 2.6 percent of the total CPS budget, \$11.1 million, on prevention services.

▼ **Other states have adopted a system that provides flexibility, improves use of resources, and emphasizes intervention services.**

- ▶ In a 1993 report, the U.S. Advisory Board of Child Abuse and Neglect of the U.S. Department of Health and Human Services recommended a new national strategy for protecting children. This report suggested placing limitations on the types of cases in which the primary response is to gather evidence against parents and putting more emphasis on providing appropriate services to the child and the family.⁴ Of course, the primary objective of this approach is preserving the safety of the child.
- ▶ Across the nation, other states are rethinking the way they approach less severe reports of child abuse and neglect. Reform measures include a “dual track” response system that no longer treats investigations as the only way to respond to reports of abuse. Such an approach allows quicker access to services and uses family-centered assessment and prevention measures to reduce the risk of future incidences of abuse and neglect. This response system also includes a strong investigation component to address severe cases of abuse.
- ▶ Florida, Missouri, West Virginia, North Dakota, South Dakota, and New Hampshire have implemented dual track response programs.⁵ This approach to reports of child abuse or neglect does not require that an investigation take place as a condition for services. These states have sought to create a flexible response system to protect children and address the different intervention needs of families. The goal of these flexible systems is to strengthen the agency’s response to more severe abuse incidents, test the effectiveness of social services in less severe cases of abuse, and expand the use of assessment to include family strengths, as well as risk factors. Other states,

While 90 percent of families receiving prevention services do not return to PRS' system, PRS spent only 2.6 percent of child protection funds on prevention.

including South Carolina and Colorado, have similar CPS reform measures pending before their Legislatures.

Conclusion

PRS needs a better way to tailor its response to reports of neglect and abuse. Recent rule changes allow the Department to modify the length of investigations based on preliminary findings. While the new rules allow a system that is more flexible and better able to use resources than the old approach, some problems still remain. The new rules still require an accusatory investigation as the initial contact with a family in which abuse or neglect is alleged to have occurred. Also, PRS must spend time investigating every report rather than being able to decide when immediate delivery of services would better serve a child and the family.

Child welfare experts have recommended a more flexible approach that many states are adopting. Investigation is reserved for serious cases and social service efforts, such as crisis intervention, are used to deal with less serious incidents. This approach could replace the current “one size fits all” response to reports of abuse. PRS could help children and families that need help and, in more serious cases, remove a child from the home and pursue legal action against those causing harm to the child.

Recommendation

Changes in Statute

- **Authorize PRS to establish a flexible response system to address reports of child abuse and neglect that:**
 - provides for full investigation of serious reports of abuse or neglect; and
 - allows less serious reports to be addressed through assessing the need for and delivery of social services to the child and the affected family.

The flexible response system would allow the agency to more appropriately allocate resources — investigating serious cases of abuse and neglect and providing assessment and family preservation services in less serious cases. This process would not be more lenient on suspected child abusers. PRS would be better able to focus investigative resources on Priority I and other serious reports of child abuse and neglect. The process would also allow those cases originally identified as less serious to be easily reclassified and fully investigated. The family would be able to access services almost immediately to prevent further, more serious abuse, and avoid resulting intervention by the state.

One approach to implementing the flexible response system would be a pilot program in a single service region. This approach would allow the Department to study the results of this flexible response system and compare those results with their new staged investigation process. In addition, the Department could redefine the criteria for child abuse and neglect cases to ensure certain kinds of cases would continue to be investigated.

Management Actions

- PRS should ensure that direct services caseworkers are trained to adequately assess suspected abuse or neglect when dealing with children and families.
- PRS should place emphasis on increasing the use of intervention services in dealing with children and families involved in abuse or neglect cases.

This recommendation offers a significant change to the way PRS currently handles cases of abuse and neglect. PRS would ultimately decide how to implement the recommended flexible response system. However, Sunset staff offers the following to help the reader understand how this new approach could work.

PRS would use its existing procedure to receive and classify all incoming reports of abuse or neglect. Priority I cases and reports the Department considers to be high or borderline high risk would still be fully investigated as done currently. However, less serious cases would be treated differently. PRS would use family assessment intervention to respond to these cases. PRS would have the flexibility to identify those cases needing a full investigation and those receiving a family assessment.

Family assessment interventions would be initiated by either contacting the reporting party, any other person who knows the family's situation, or by contacting the family by phone or in person. Before contacting the family, the caseworker would review past CPS involvement with the family, the report, and other indicators of the strengths and weaknesses of the family, such as the criminal history of family members. The caseworker, based on the initial assessment of the report, would decide how soon to visit the family, but in no case longer than five days.

During the assessment with the family, the caseworker would:

- *explain the purpose of PRS' involvement with the family;*
- *determine the family's knowledge of the allegation and any report identified problem;*
- *conduct an assessment of risk and the perceived needs of the child and family in a manner that is sensitive to the family's social, economic, and cultural environment; and*

- *explain the possible services and outcomes of the Department's response.*

Families eligible to receive immediate help would be provided Departmental or community-based services according to a case management plan developed by the caseworker.

A family assessment visit would be completed within five days from receipt of the report, five days sooner than the current deadline of 10 days for responding to Priority II reports. Based on results from the staggered implementation, PRS could revise the optimum time to begin the family assessment intervention.

If the family chooses not to cooperate with the caseworker and the family poses an actual or potential risk to the child, the report would be investigated. If the worker believes a report, originally assigned for service delivery only, involves serious abuse or neglect, then the case is switched to Priority I classification and fully investigated. If the family chooses not to cooperate and the child faces no probability of harm, the caseworker would close the case. The caseworker, as an employee of PRS, would still be authorized to remove the child from the home immediately, if needed. Caseworkers would need sufficient training to adequately assess abuse or neglect that should be more fully investigated.

This new process would protect the child in situations of alleged child abuse and neglect by initiating services earlier but without the antagonism of a full investigation. Allowing a caseworker, trained in detecting abusive environments and assessing current risk to the child, to enter the home and offer services to the family would keep the child's family system stable and intact.

This report also includes a recommendation that PRS separate the investigation of reports of abuse from direct delivery of service. That approach is essential to constructing an effective dual response system, as recommended in this issue. Sunset staff suggests that the two recommendations be considered together when evaluating the merits of this recommendation.

Fiscal Impact

The fiscal impact of the recommendation authorizing PRS to implement a flexible response system cannot be determined as the cost of providing a family assessment cannot be estimated. The Department should use a pilot program to determine not only the effectiveness of the flexible response system, but also the fiscal impact.

¹ The Department of Protective and Regulatory Services, *Child Protective Services Policy Handbook*.

² Texas Administrative Code, Title 40, Part 19, Section 700.507(b)(2).

³ Texas Department of Protective and Regulatory Services, *Legislative Appropriation Request*, FY 1996-97.

⁴ U.S. Advisory Board on Child Abuse and Neglect, U.S. Department of Health and Human Services, *Neighbors Helping Neighbors: A New National Strategy for the Protection of Children*, Fourth Report, September 1993.

⁵ Results of staff other states' survey.

Issue 3



Remove Obstacles to Allow Quicker Permanent Placement for Children in PRS Conservatorship.

Background

Children in the conservatorship of PRS often linger in state care and do not achieve permanent placement as quickly as possible. Indefinitely keeping children in substitute care or placing a child in several different foster homes is not compatible with PRS' emphasis on quickly finding the most appropriate permanent placement for each child. One of the Department's major objectives in service delivery is to "reduce the number of placements of our clients and achieve permanent placement quickly with as little disruption to their lives as possible."¹

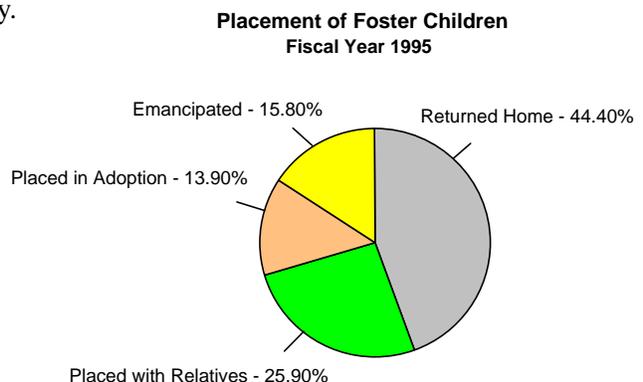
Federal and state law stress that permanent placement is in the best interest of children.

Children in substitute care are under PRS' legal responsibility and are placed outside their own home. Substitute care placements include foster homes, institutions, foster group homes, residential treatment facilities, hospitals, other juvenile facilities, adoptive homes, relative home placements, and independent living arrangements. Foster care is the largest subset of substitute care; it includes all of the placements above except for hospitals, adoptive homes, relative home placements, and independent living arrangements. The chart, *Placement of Foster Children*, shows the results of the Department's efforts to place children in a permanent arrangement.

Federal and state law emphasize that expedient permanent placement is in the best interest of children and both require periodic review to ensure that a child is moving toward permanency.

Federal requirements include evaluation of reasonableness of services to preserve families, periodic review hearings, and adherence to deadlines for permanency planning issues.²

Texas law requires a permanency plan for each child and is designed to move children through the conservatorship process and keep them from lingering in foster care. Permanency planning is



implemented through case planning and is monitored by the court system. A family service plan, which includes the child's permanency goal, must be filed with the court within 45 days of the adversary hearing, which is held 14 days after the child's removal from the home. Not later than the 60th day after the adversary hearing, the court shall hold a status hearing to review the service plan for reasonableness, accuracy, and compliance with court orders. After the status hearing, an initial review hearing will be held not less than 180 days after the adversary hearing. Subsequent hearings to review the status of and permanency plan for the child are held every six months thereafter and include the projected date for achieving

the child's permanency plan. If parental rights are terminated, the court shall review PRS' efforts to place the child for adoption at least once every six months.

The General Appropriations Act, 74th Legislature, includes a goal for PRS to achieve permanency for 88 percent of children in substitute care within 24 months. The Act also includes a rider stating the intent of the Legislature is that PRS actively seek permanent homes for the children who are in the Department's substitute care program for long periods.

Agency policy also emphasizes achieving permanent placement for children as soon as possible. Planning for a child's permanent placement is an ongoing activity that begins as soon as the Department receives a report of child abuse or neglect, and continues through every stage of service. The permanency plan for every child in the Department's managing conservatorship must be directed toward one of the following goals: family preservation, family reunification, permanent placement with relatives, adoption, alternative long-term care, or adult living. These goals are explained in detail at the left.

Permanency Goal Definitions

Family Preservation. This goal is selected if the child can be safely maintained in the family environment with supportive services from the Department without the Department having to take legal custody of the child. At some point, the Department will close its case with the family.

Family Reunification. This goal focuses on providing services to the family to deal with the issues of abuse or neglect so that the child who has been removed from the home can be returned to the parents. At some point, the child is returned to the family with court approval. After a supervisory period, a recommendation is made to the court to return sole legal custody to the family.

Permanent Placement With Relative or Close Family Friends. This goal is selected if the plan is to place a child who is in the legal custody of the Department with a relative or close family friend through either adoption or transfer of conservatorship, after a supervisory period.

Adoption by Non-relative. This goal focuses on placing a child who is in the custody of the Department with an unrelated family for adoption. Parental rights must first be terminated by the court. After a supervisory period, the adoption is consummated.

Alternative Long-term Care. This goal is selected when the child cannot be returned safely to the family, cannot be placed with relatives or close family friends, and adoption is not a possibility for the child. Under this goal, the Department raises the child unless at some point legal custody can be transferred to a caretaker or another permanency goal becomes available. Formal, court-approved agreements are made with the foster families who have on-going relationships with these foster children to ensure that the children receive long-term consistent care.

Adult Living. This goal is selected for youth in the custody of the Department who are 16 or older (though may start as early as 14) unless another permanency goal is more appropriate. Under this goal the Department will either prepare the youth to live independently as an adult or arrange the long-term care and support the youth will need in adulthood because of a disability.

Permanency planning services provided by PRS caseworkers include reviewing case plans, conducting permanency planning staffings every six months, and working with birth parents, relatives, foster parents, and adoptive parents. Staff receives specialized training on strategies to achieve permanency quickly. Beyond the standard permanency planning services, PRS conducts several projects aimed at speeding permanent placement. For example, PRS takes part in several federally-funded programs that focus on reducing the number of children in foster care for more than two years, reducing the number of placements for foster care children, and finding permanent placements for children with special needs. These programs stress greater collaboration, improved training, and streamlining the permanency process.

The statewide average length of stay for children in substitute care at the end of fiscal year 1995 was 22 months. The average number of placements for a child in foster care is three. About 70 percent of children under PRS' legal responsibility achieve permanency within one year. PRS' permanency efforts have been limited by rising costs and an increasing number of children in conservatorship. The number of children in PRS legal custody has increased by 51 percent since 1990 and substitute care costs have almost tripled.

Many factors can affect permanency planning, such as parents' willingness to meet case plan requirements, services available to parents, legal requirements, court processes, caseloads of child protective services (CPS) workers, a caseworker's experience, internal agency procedures, foster parents' abilities, availability of adoptive homes, and the severity of the child's problems. The Sunset review focused on the Department's effort to achieve the goal of providing an appropriate, permanent home for abused or neglected children as quickly as possible. The Sunset staff also looked at whether steps in the permanency process could be adjusted to achieve permanent placement more quickly.

Findings

- ▼ **Many children remain in the Department's care for long periods of time, causing harm to the children and diverting resources that could be used to care for other children.**
 - ▶ At the end of fiscal year 1995, PRS had 7,497 children who had been in substitute care for more than 24 months. These children represent 53 percent of all children in PRS substitute care. On average, PRS moved these children, who had been in

Many abused and neglected children linger in the state's care for long periods of time.

care for extended periods of time, from home to home 5.3 times. The number of placements for these children is 76 percent higher than the average for all children in PRS conservatorship.

- ▶ Studies have shown that multiple placements and extended periods of time in care can cause long-term emotional and behavioral problems in children.³
- ▶ Widely accepted principles of child development state that children should be quickly placed in a permanent situation to avoid harm.
 - Stable and continuous care givers are critical for normal emotional development. Children need secure and uninterrupted emotional relationships with adults who are responsible for them.
 - Children need the security of parents who are committed to their care. The lack of parents who provide unconditional love and care can profoundly affect a child's self image.
 - Having a permanent family adds predictability to a child's life. Foster care, with its lack of permanency and instability, can cause great stress.
 - The child rearing ability of a family is usually superior to that of the state. Conscientious, caring parents can make the best, most timely decision for a child, while decision-making concerning a child in state-supervised foster care is often fragmented and inconsistent.⁴
- ▶ Allowing children to unnecessarily stay in PRS conservatorship not only increases the chances for long-term psychological problems for the child, but also diverts resources that could be used to serve other children. The costs for out-of-home care are extremely high. Substitute care made up approximately \$207 million or 39 percent of PRS' budget in fiscal year 1995.⁵ The average monthly cost per child in foster care has increased from \$882 in fiscal year 1990 to \$1,385 in fiscal year 1995.

Allowing children to stay in foster care is costly, not only for the child, but for the state as well.

- ▼ **One weakness in the current permanency process is that in Texas, the hearing process does not include a separate hearing to determine the best placement situation for the child and the steps necessary for achieving this permanent placement.**
 - ▶ As a condition for receiving federal funds, federal law requires a hearing to determine a permanent plan within 18 months after a child enters substitute care.⁶ In addition, Texas law requires that, if the child has been in care for 18 months or more, one of the factors that the courts must consider at “review hearings” is the future status of the child. However, current law does not separate a permanency planning hearing from a review hearing. Permanency (i.e. “future status”) is only one of many things to be decided in a review hearing if the child has been in care 18 months or more.
 - ▶ A National Council of Juvenile and Family Court Judges report notes, “Maintaining the distinction between review hearings and permanency planning hearings is a key to achieving permanency for foster children.”⁷ Review hearings should be held for the purpose of overseeing case progress and adjusting service plans. A permanency hearing should be held for the sole purpose of deciding upon a permanent placement for the child.⁸

- ▼ **Another problem with Texas’ permanency process is the lack of deadlines limiting the amount of time that a child can remain in PRS conservatorship or specifying when a hearing must be held to determine the appropriate long-term placement of a child.**
 - ▶ Texas law is silent on the amount of time that a child can spend in the conservatorship of the state. At the end of fiscal year 1995, a total of 4,806 children were in substitute care for over one year and not in a permanent living arrangement. Of this total, 25 percent have been in care between one year and 18 months, 16 percent have been in care between 18 months and 24 months, and 59 percent have been in care over two years.

*Texas law is silent
on how long a
child can stay in
the state's care.*

- ▶ A recent conference on national court improvement endorsed a 12-month permanency planning hearing as an important reform for states to consider.¹⁴
- ▼ **One barrier to permanent placement is the inability to terminate parental rights when parents do not adequately comply with the family service plan.**
 - ▶ The family service plan, which is submitted to the court at the 60-day status hearing, details the steps parents must take to provide a safe home and to have their children returned home. Under the current legal grounds for termination of parental rights, parents who make no significant progress toward completing the family service plan can keep their rights from being terminated by exerting minimal effort and complying partially or infrequently with just one step of the plan, such as visitation with the child or attending counseling. This causes children to linger in foster care when the parent has no real intention of providing a safe, caring home.
 - ▶ Parents' compliance with the service plan is one of the factors currently considered at the review hearing. Furthermore, the service plan states, as required by statute, that parental rights could be terminated if the parents fail to comply with the service plan.¹⁵ However, statutory termination of parental rights cannot be based on failure to satisfactorily comply with the service plan.
 - ▶ As of March 1996, 2,300 children, whose permanent placement goal is to be reunited with their parents, have been in PRS care for over a year. The length of time that these children have been in PRS custody indicates that the parents are not making a good faith effort to comply with the permanency plan.
- ▼ **Because of the unique nature of child abuse and neglect cases, special court case management procedures may be needed to ensure that children do not get backlogged in the system.**
 - ▶ The National Council of Juvenile and Family Court Judges, in explaining why child abuse and neglect cases are different than other cases noted: "Unlike most litigation, child abuse and neglect cases deal with an ongoing and changing situation.

Lack of a good faith effort by parents contributes to children staying in foster care too long.

- ▶ The point at which a child first comes into PRS conservatorship is a critical juncture for the child because inadequate assessments and inappropriate placements can compound a child's trauma, result in unnecessarily moving the child, and prolong the child's stay in foster care.
- ▶ In some areas of the state, PRS uses child assessment centers to improve the initial assessment of children's needs. Assessment centers evaluate children's therapeutic, medical, educational, and other needs as well as develop a plan to meet the permanent placement needs of each child. Benefits of assessment centers include:
 - decreased trauma for the child;
 - greater information sharing and coordination of efforts;
 - decrease in placement staff time; and
 - access to specialized assessment expertise.

In addition, Houston has a project that combines initial assessments with the multi-disciplinary team review to assist in the determination of treatment services and placement options.

Conclusion

Despite existing law, agency policy, and special projects focused on achieving permanency quickly, many abused or neglected children remain in foster care far too long, often being moved from home to home several times. Beginning with the initial assessment of the child and continuing through the court reviews and hearings on the service plans and placements for the child, numerous obstacles prevent children from achieving permanency as quickly as possible, both in agency practice and in law. The following recommendations seek to address these obstacles and assist PRS and the courts in fulfilling their responsibility to provide children with safe, permanent homes.

Under the PRS system, many abused or neglected children remain in foster care for too long.

Recommendation

Changes in Statute

- For children in PRS conservatorship, require either termination of parental rights or reunification with the family within 12 months.

This recommendation will require the courts to hold a hearing on permanency within a year from removal and either set the case for a trial on termination of parental rights or return the child to the family. By determining permanency for the child at 12 months, the need for future hearings would be eliminated, reducing the burden on the courts. The parties would be encouraged to move towards permanency faster if a permanency plan becomes definite earlier. Under exceptional circumstances, and in keeping with the best interests of the child, a court could grant extensions.

- Allow termination of parental rights if a parent fails to complete the court-approved service plan.

If a parent is clearly not substantially complying with the steps set out in a court approved service plan to provide a safe home, parental rights should be terminated so that the child can move to a permanent home. Failure to comply with a service plan within a year would be considered as a “substantial risk” that the child will be further abused or neglected, thus becoming a ground for termination of parental rights.

This change would free many children for permanent placement. As of March 1996, 2,300 children had permanency plans to be reunited with their families, but have remained in foster care over one year. This recommendation will also stress to the parents the importance of quickly complying with the service plan.

- Require PRS to study the feasibility of setting up Special Master court programs in the regions and report to the 76th Legislature.

This recommendation will require the Department to look at examples of court masters programs being used in Texas and other states and evaluate the benefits and practicality of implementing such programs in other areas of the state. PRS would make recommendations to the Legislature on whether the program should be created and funded.

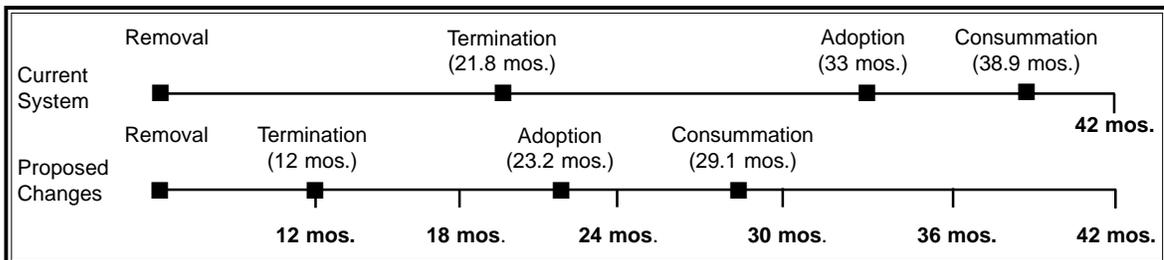
Management Actions

- PRS should develop a systematic approach to assessing a child's needs at the time of removal from the home.
- PRS should analyze the effectiveness of using children's assessment centers and placement teams to evaluate a child before placement.

Standard assessment procedures are necessary to ensure accurate initial assessments and service plans. This decision should not be left up to a single caseworker who may have limited knowledge about a child. Appropriate initial assessments improve treatment, decrease the time children spend in care, and ensure that state resources are directed toward meeting children’s needs. Assessment centers and special placement teams have the potential to improve this process. PRS should see whether use of this approach should be expanded.

Fiscal Impact

The recommendation to speed up the permanent placement of children would have a positive fiscal impact to the state. PRS could achieve savings of approximately \$65 million a year as a result of setting a time limit of 12 months for either terminating parental rights or reuniting the child with the family. The cost savings was estimated using the number of children in substitute care over 12 months and applying the average foster care cost of \$1,385 per month by the nine month reduction. The estimate was adjusted for implementation costs and for exceptions to the 12-month deadline. All savings achieved through this recommendation would be reallocated within PRS for client services. Below is an illustration of the current process compared with a new timeline based on the recommendation.



Other recommendations, such as allowing termination of parental rights for failure to meet service plan requirements and thoroughly assessing children’s needs when they first enter foster care may also result in savings related to speeding permanent placement of children. However, the specific fiscal impact of these recommendations cannot be determined.

Fiscal Year	Total Savings to be Reallocated within the PRS
1998	\$58,500,000
1999	\$65,000,000
2000	\$65,000,000
2001	\$65,000,000
2002	\$65,000,000

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- ¹ PRS Functional Review Findings, *Phase I Service Delivery Alternatives*, February 28, 1996, p. 5.
- ² Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).
- ³ Child Welfare League of America, *Children Can't Wait*.
- ⁴ National Council of Juvenile and Family Court Judges. "*Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*" Spring 1995, p.13.
- ⁵ DPRS 1995 Annual Report, p.79.
- ⁶ 42 U.S.C. § 675(5)(C)(1989).
- ⁷ National Council of Juvenile and Family Court Judges, "*Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*", Spring 1995, p. 78.
- ⁸ *Ibid.*
- ⁹ "*A Second Court that Works: Judicial Implementation of Permanency Planning Reform*", the American Bar Association Center on Children and the Law, pp. 94-95.
- ¹⁰ Minn. Stat. § 260.191, subd. 3b.
- ¹¹ Mich. Comp. Law § 712A.19a(1); Mich. Ct. R. 5.973(C).
- ¹² Ohio Revised Code § 2151.415.
- ¹³ "*Judicial Implementation of Permanency Planning Reform: One Court that Works*" and "*A Second Court that Works: Judicial Implementation of Permanency Planning Reform*", the American Bar Association Center on Children and the Law.
- ¹⁴ National Court Improvement Program Conference, March 1996.
- ¹⁵ Tex. Fam. Code §263.102 (b).
- ¹⁶ National Council of Juvenile and Family Court Judges, "*Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*", Spring 1995, p. 15.
- ¹⁷ *Ibid.*, at 19.
- ¹⁸ PRS Press Release, March 1, 1996.
- ¹⁹ Information supplied by DPRS, Region 08.

Issue 4



Improve PRS' Adoption Process Through Better Coordination of Adoptions and Increased Use of Private Adoption Agencies.

Background

Like other state child welfare agencies across the country, PRS has the authority to become managing conservator of children who have suffered abuse and neglect. To regain custody of their children, parents must prove that they can ensure and protect the safety of the child and lower the risk of future abuse or neglect. If these family preservation and reunification efforts fail, PRS has the authority to file for termination of parental rights and begin the adoption process. Other states' protective service agencies, as well as PRS, have developed adoption services to aid in the permanent placement of these children.

Once a court terminates parental rights, PRS promotes the adoption of children by providing information to prospective adoptive parents concerning the availability and needs of the children and assisting parents in the adoption process. State law and agency rules presume that permanent placement is in the child's best interest once the child is under PRS' conservatorship. Regional staff recruit families in the area to adopt children in that region. PRS also contracts with local organizations and agencies for family recruitment assistance and works with private adoption agencies to find adoptive families.

Families who adopt special needs children — children over the age of two; children of ethnic minority; children with physical, mental, or emotional conditions or disabilities; or sibling groups — may receive financial adoption assistance. Adoption subsidies help cover the costs of counseling, therapy, and medical care and supplies. Families who receive subsidies are automatically eligible for Medicaid and social services. Subsidies may be provided until the child's 18th birthday.

To address the needs of more difficult to place children and gain more exposure for children available for adoption, PRS established the Texas Adoption Resource Exchange (TARE) in the early 1960s to link available children with families in public and private agencies through

PRS places abused or neglected children for adoption if parental rights must be terminated to protect the child.

various publications, programs, and media. PRS uses TARE to place children when an adoptive family has not been found within 90 days.

Since 1985, the number of foster children in Texas has increased dramatically. In that year, the number of children in foster care was 5,193. Five years later, in 1990, 7,156 children were in PRS foster care. In 1995, PRS had 11,700 children in foster care.¹ This trend underscores the need to quickly move children suitable for adoption out of temporary situations into permanent homes.

Overall, PRS completed the adoptions of 804 children. An additional 67 children were placed with adoptive families in 1995, however, these children await legal finalization of their adoption through the courts. Also, 1,220 children are eligible for adoption and have adoption as their permanency plan but had not been placed as of the end of fiscal year 1995. To place children in adoptive homes, PRS spent \$35.7 million, \$29.3 million in subsidy expenditures and post adoption services and \$9.8 million in staff costs, about eight percent of the total CPS budget. In fiscal year 1995, PRS contracted for 55 placements of PRS children with private adoption agencies, about seven percent of all adoptions, at a cost of \$7,000 per child or a total of \$114,932.² PRS pays a negotiated and prorated fee for sibling groups. Fourteen child placing agencies contract with PRS to provide adoption placement services.

The Sunset review examined PRS' adoption placement services to determine whether any barriers prevented swift and appropriate adoptions and whether PRS should increase its use of private adoption services.

Findings

Foster care for a child waiting for adoption costs the state about \$1,385 per month.

- ▼ **Slow placement of PRS children available for adoption consumes valuable PRS resources through continued high foster care costs.**
 - ▶ According to PRS, the average monthly cost of foster care for a child in the PRS system is approximately \$1,385. However, the 1995 fiscal year average adoption subsidy was \$392.14 per month. The average length of time a child in PRS custody had to wait in foster care from termination of parental rights to placement with an adoptive family was 15.6 months in fiscal year 1995. This number includes the average time unplaced children had waited by the end of fiscal year 1995. With adoption subsidies costing the state less than one-third of the

cost of foster care, slow placement of PRS children into adoptive homes costs the agency and uses scarce state resources.

- The chart, *Adoption Timeframes by Region*, shows the average time at the end of fiscal year 1995, that children had spent in foster care between termination of parental rights and placement with an adoptive family (includes unplaced children).

Adoption Timeframes by Region		
Region	Regional Office	Average Months Waited
1	Lubbock	15.6
2/9	Abilene	14.2/11.7
3	Arlington	12.7
4	Tyler	17.5
5	Beaumont	7.2
6	Houston	22.2
7	Austin	12.9
8	San Antonio	19.1
10	El Paso	21.8
11	Edinburg	20.9
TOTAL		15.6

On average, eligible children spend more than a year in foster care waiting for PRS to find an adoptive home.

- According to a 1993 national Child Welfare League of America survey, the average length of time a child had to wait between termination of parental rights and placement with an adoptive family when placed through state-sponsored placement services was 10 months.³ The amount of time PRS takes to place these children is more than 50 percent higher than the national average.

PRS also tracks children unplaced by the agency. At the end of fiscal year 1995, over 1,200 unplaced children had spent an average of 20 months in foster care waiting to be adopted.

- ▼ **Studies have found that extended time in foster care hurts the emotional and psychological well-being of children.**
 - ▶ The amount of time that many children spend in PRS care and the inability of PRS to substitute as an effective “parent” can lead to bleak futures for these children. Studies have found that former foster children are over-represented among welfare recipients, the homeless, and in juvenile and adult prison populations. The American Civil Liberties Union states that 40 percent of all former foster children end up on welfare.⁴ According to the Bureau of Justice Statistics, former foster children make up nearly 14 percent of America’s prison population.⁵ Comparable Texas statistics were not available.
 - ▶ In a report by The National Council of Juvenile and Family Court Judges, four widely accepted child development principles are outlined to guide statutory changes that promote permanent placement:
 - Children need secure and uninterrupted emotional relationships with adults responsible for their care;
 - Children need the security of having parents committed to their care to help form the child’s self-image;
 - A permanent family adds predictability to a child’s life and security about the future which substitute care cannot; and
 - The child-rearing competence of safe, attentive families is always superior to that of the state.⁶

- ▼ **PRS does not aggressively promote adoptions.**
 - ▶ None of the PRS regional offices make full use of the Texas Adoption Resource Exchange (TARE) to assist in the adoption of PRS children. Regional offices are supposed to alert the state office about children who have not been placed within 90 days after termination of parental rights so that these children can be placed with TARE. Although 1,220 children are available for adoption, only 218 children and 150 families are registered with TARE.
 - ▶ The Department places a low priority on the statewide recruitment of families to adopt PRS children. The state office’s effort to recruit families for PRS children, the Texas

Adoption Resource Exchange, receives a very small portion of the federal Title IV-E and Child Abuse Prevention and Treatment Act (CAPTA) funds, a total of \$50,000 per year for fiscal years 1996-97.⁷

- ▶ The regional disparities in average times to place PRS children, as shown in the previous chart, exemplify the lack of a statewide approach to promoting adoptions. Three of the regions averaged almost two years to place children, yet the state office does not penalize regions for slow placement, nor advise or encourage regions to more quickly place children.

Three PRS regions averaged almost two years to find adoptive homes for eligible children.

▼ **The state office does not track the effectiveness of adoption services in the regions, resulting in inconsistencies.**

- ▶ Although the PRS state office collects some adoption placement data from the regions, the state office does not set goals or outcomes that must be reached by the regions. The effectiveness of the regional offices is not monitored and tracked with the goal of creating more effective adoption placement guidelines and lowering the amount of time children wait to be adopted. In addition, no procedures exist to help regions that do not place children promptly and no sanctions exist for regions that do not use the TARE system, even though PRS policy requires TARE to be used by the regions.
- ▶ PRS regional offices do not similarly track children through the adoption process and the state office does not closely monitor their placement rates. Some regions have promoted the adoption of children by foster families, while other regions have prohibited these types of placements.⁸ In gathering the information about the average length of time to place a child after termination of parental rights, Sunset staff found that PRS state office personnel did not know why some regional offices took longer to get children adopted than others. The explanations from the regions for the differing lengths of time varied.

As seen on the chart, *Adoption Time Frames by Region*, the two regions that take the longest time to place children are San Antonio and El Paso. These regions give different reasons for the delays in adoption. The San Antonio region has had problems with turnover in its adoption workers that led to long delays in placement. On the other hand, the El Paso region

PRS does not monitor the effectiveness of regional adoption services.

has had problems with low numbers of adoption workers and has experienced several court interventions by birth parents after termination of parental rights that delayed adoptions. Additionally, El Paso placed children with families in other states, a process which led to some delay. PRS' state office was unaware that these problems existed and without adequate monitoring, such problems will not be addressed and will continue in the future.

▼ **Other states have been successful in using different methods to place children into permanent adoptive homes.**

Other states, facing similar problems to those in Texas, have chosen privatization to improve their adoption services.

- ▶ Other states have experienced the same problems as Texas in placing children with adoptive families. In response, many states have chosen privatization to improve their adoption services. Thirty-six state and county child protective services agencies purchase adoption services from private and public adoption agencies.⁹ A survey by Sunset staff of the five most populous states: California, Florida, Pennsylvania, Ohio, and Illinois found that these states also do not collect performance measures comparing private adoption agencies and the state agency's adoption efforts.
- ▶ Michigan is well-known across the country for its success with privatization of adoption services. Michigan's Department of Social Services must place children in its care within six months from the date of permanent wardship. Failure to place within six months results in the child being eligible for placement statewide by any private adoption agency contracting with the Department. The reimbursement system awards more money to agencies that place children quickly. In fiscal year 1994, Michigan placed 1,890 children, at an average of 14 months after termination of parental rights. Fifty-eight percent of these adoptions were performed by private agencies. Based on the reimbursement rate for private adoption agencies, 62 percent of these agencies took less than eight months to place children in the state's care.¹⁰
- ▶ California is another state that has created adoption procedures that place children with adoptive homes in a short time period. California, which implements services through a county-based system, employs two devices to get children adopted quickly. First, California promotes foster parent adoptions statewide. Between 80-85 percent of all adoptions are by foster parents.

In contrast, less than 50 percent of all adoptions in Texas are by PRS foster parents. Some PRS regions have actually actively discouraged foster parents from becoming emotionally attached to and adopting the children they foster.

The second difference between California and Texas is when the adoption process begins. As soon as the agency identifies families that cannot be reunified, a report on the child stating the likelihood of adoption and any identified prospective parents must be brought to the hearing that terminates parental rights. Essentially, the adoption process begins when the child cannot be reunited with the family and the agency waits for a hearing on the termination of parental rights. In Texas, the adoption process begins only after termination of parental rights. In 1993-94, approximately 43.6 percent of California adoptions were completed in less than six months. ¹¹

Almost 44 percent of California adoptions are completed in less than six months.

▼ **Through more effective contracting procedures, PRS could provide incentives for private adoption agencies to quickly place children.**

- ▶ The statute currently allows PRS to contract with private adoption agencies. PRS pays the private adoption agency \$3,500 at the time of adoptive placement and, upon adoption, pays an additional \$3,500 for the adoption agency's service.
- ▶ In contrast, Michigan prorates the fee paid to the private agency based on the amount of time spent placing the child. The more time used, the less money paid. This payment structure provides incentives for quick placement.

On average, a Texas child waits six months longer to be adopted, than a child in most other parts of the country.

▼ **Reducing delays in PRS' adoption process and increasing the use of private adoption agencies would reduce overall foster care costs to PRS.**

- ▶ For every child who remains in PRS custody after termination of parental rights, Texas pays for the costs of continued care. On the average, a child in Texas waits approximately six months longer to be adopted than a child in most other parts of the country. That difference translates into an additional \$10.1 million spent on children placed or waiting to be placed by the agency last year.
- ▶ PRS projects that it will spend over \$18 million on adoption subsidies in fiscal year 1996. This figure, however, is much

lower than the substitute care costs that PRS would incur for that same child under PRS conservatorship. State and federal law mandate that adoption subsidies must be at or below the base foster care payment, about \$15 per day per child.

- ▶ Spaulding of Houston, a private adoption agency, placed 38 PRS children in 1995 with an average placement of 5.3 months per child. Based on the ages of the children and the potential number of years they could have remained in foster care, Spaulding claims it saved about \$5.2 million in foster care costs. The cost to PRS for using Spaulding for its adoption services and their estimation of the cost of state subsidies was \$1.8 million, for a total net savings to the state of about \$3.3 million.¹²

Texas does not have a cohesive, effective adoption system for abused or neglected children.

Conclusion

Lack of processes to quickly move adoptable children into permanent homes costs the state, prospective families, and the children. A child available for adoption who lingers in foster care costs the state thousands of dollars and has less chance of overcoming emotional and psychological problems. While the population of children in foster care has increased dramatically in the last 10 years, PRS has failed to recruit enough families for the children eligible for adoption. PRS spends little money using available programs, such as TARE, to recruit families and place children.

The problem is compounded by a general lack of statewide effort and poor monitoring and tracking systems. In addition, the regional offices have no incentives to place children with adoptive parents quickly and are subject to no penalties for slow placement. A cohesive, effective adoption system is not in place in Texas and must be addressed to meet the needs of children who have already suffered from abuse and neglect. The following recommendation is intended to move children that cannot be returned home more quickly out of PRS custody to adoptive homes, thereby reducing the amount of time a child spends in foster care.

Recommendation

Changes in Statute

- Improve the PRS adoption process by requiring the Department to:
 - create a centralized tracking and monitoring system;
 - set goals and performance measures to be tracked through the system; and
 - develop an approach to address failures by regions to place children for adoption within a reasonable period of time.
- Increase use of private adoption agencies by requiring PRS to:
 - seek a private agency to place a child that has been available for adoption over 90 days;
 - make information on children available for adoption over 90 days accessible to private adoption agencies; and
 - create financial incentives for rapid placement of children by private adoption agencies.
- Require PRS to encourage foster parents to be dually licensed as foster and adoptive parents.
- Require PRS to begin the search for prospective adoptive parents when it has decided to petition the court for termination of parental rights and to present to the court a report on the child's adoptability and any prospective parents.

This recommendation would require PRS to develop a system to monitor and track adoptions statewide, identify and assist service regions that do not place children quickly, and require the participation of regions in the TARE system. In addition, a greater emphasis would be placed on the use of private adoption agencies. If a PRS service region does not place a child within 90 days, a private adoption agency would be allowed to place the child and would be paid a fee based on the amount of time spent placing the child. This recommendation would also require PRS foster parents to pursue adoption. This will represent a change in philosophy in some PRS service regions.

Creating a statewide, monitored system for placing children and using every available resource, would significantly help Texas children find a permanent home and reduce the amount of money the state pays to keep them in foster care.

Fiscal Impact

Improving PRS' adoption processes will have a positive fiscal impact on the state. The recommendation would reduce the length of time a child would stay in substitute care. The cost savings of this recommendation cannot be determined as the number of months a child would have to wait to be adopted cannot be estimated. All savings achieved through reduction in substitute care costs would be reallocated within the Department for client services.

¹ Texas Department of Protective and Regulatory Services, *1995 PRS Legislative Data Book*.

² Texas Department of Protective and Regulatory Services, *1995 Legislative Data Book*.

³ Child Welfare League of America, *Child Abuse and Neglect: A Look at the States - CWLA Stat Book*, 1993, p.92.

⁴ *USA Today*, "Adoptable kids go wanting", March 14, 1996, p.12A.

⁵ Policy Review, "What I Need Is A Mom": The Welfare State Denies Homes to Thousands of Foster Children, Summer 1995, p. 46.

⁶ National Council of Juvenile and Family Court Judges, "Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases", Spring 1995, p.13.

⁷ Phone Interview with Ella Zamora, PRS staff, Texas Adoption Resource Exchange.

⁸ Interviews with adoption staff in Regions 3 and 6, October and November 1995.

⁹ Child Welfare League of America, *Child Welfare Service Delivery Survey*, April 1995.

¹⁰ Phone Interview with Henry Hofstra, Michigan Department of Social Services.

¹¹ Phone Interview with Karen Gunderson, California Department of Social Services - Adoptions Branch, April 1, 1996.

¹² Spaulding for Children, *Cost Benefit Analysis: Adoptive Placements-1995*, January 1995.

Issue 5

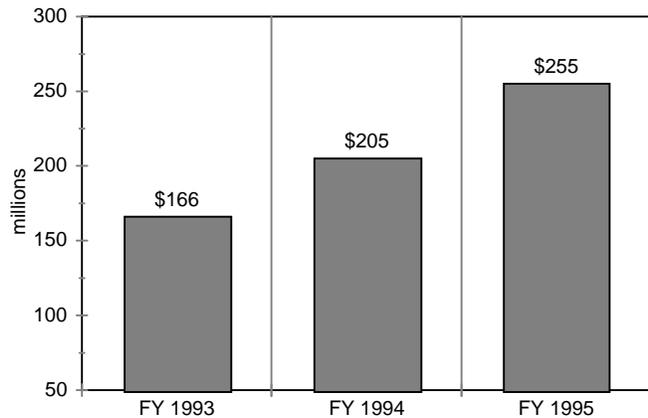


Improve the Way that PRS Manages Contracts.

Background

The Department of Protective and Regulatory Services (PRS) is responsible for providing support services to the victims of abuse and neglect. Facing extensive caseloads, the Department relies on contracts with licensed therapists, counselors, and foster care providers to address demands for support services statewide. Trends show cases of abuse and neglect continue to increase, directly affecting PRS caseloads and the need for contracted services. Reported cases of abuse and neglect involving adult elderly and disabled clients in the community have nearly doubled from 25,400 in 1991 to 46,600 in 1995. Reported cases involving children climbed 12 percent over the same period, reaching 168,612 in 1995. To help deal with these levels of activity, the Department spent more than \$255 million for contracted foster care and other client services in fiscal year 1995.

Contracted Client Services



The Department uses a variety of contract services to assist geographically dispersed clients with diverse needs. Contract services include psychological evaluation, individual and family counseling, personal assistance, parenting classes, and alternative anti-gang, truancy, or runaway services. The Department also contracts for foster care, residential child care, and adoption. PRS has 11 regional offices throughout the state, each of which is responsible for investigating and assessing cases of abuse and neglect, preparing treatment plans, and executing contracts to provide the necessary services. As indicated in the table, "Contractor Selection Process," the process for awarding contracts to providers varies depending on the type of service being offered.

Contract payment methods are defined in two categories, unit rate and cost-reimbursement. Under the unit rate method, contractors are reimbursed a fixed rate per child for services delivered. Under the cost reimbursement method, which includes both fixed fee and fixed budget contracts, contractors are reimbursed the actual costs for providing services, limited to a maximum amount stated in the contract.

Contractor Selection Process			
Contract Type	Payment Method	Contracting Method	Description
Residential Child Care Foster Care Placement	Unit Rate Unit Rate	Enrollment	Providers meeting certain criteria are licensed by PRS. Once licensed, they must meet PRS Level of Care standards to obtain a PRS contract. Selection of providers from the pool of those enrolled is based on factors such as client needs and location.
Post-Adoption Assistance Runaways/At-Risk Youth Major IRT Contracts Consulting Contracts	Unit Rate Fixed Budget Fixed Budget Fixed Budget	Competition	Department Level: Providers submit competitive bids to Department headquarters. For post-adoption assistance contracts, regions use Department evaluations to select contractors for client services.
Preparation for Adult Living In-Home Casework	Unit Rate or Fixed Budget		Regional Level: Providers submit competitive bids to regional offices. Each region independently develops the provisions of Request for Proposal (RFP) and selects the contractor.
Adoption	Fixed Fee	Recruitment	Providers are selected based on previous work experience with PRS or professional reputations.

The Sunset review focused on the Department's contract administration function to determine if the agency has adequately established the organizational structure, financial controls, and monitoring systems to support the efficient delivery of protective services and ensure the state is getting the highest quality service at the best price.

Findings

- ▼ PRS contracted with providers to supply more than \$250 million in client services in fiscal year 1995, representing more than 59 percent of the agency's total client service expenditures.
 - ▶ PRS is highly dependent on contractors to provide services to its clients. Child Protective Services (CPS) contracts for more than 60 percent of its direct client support services and Adult Protective Services (APS) contracts for more than 17 percent of its services.¹ CPS contracts for more services due to a

higher number of cases and higher levels of out-of-home care provided for abused or neglected children.

- ▶ The number of contractors PRS uses to fulfill its mission is significant. In fiscal year 1995, PRS received services from 1,260 contractors.² Given the high volumes of contracted services, a significant risk exists for contractor fraud or performance problems to occur.

▼ **State and federal auditors, as well as private consultants, have repeatedly identified problems with PRS' contract administration system.**

- ▶ State and federal auditors found that decentralized policies and procedures created inconsistencies in regional selection and monitoring of contractors.³ PRS has not consistently provided regional offices with the following support necessary for an effective contracting process:

- risk-assessment tools;
- competitive bidding requirements;
- updated contracting procedures manual;
- performance and outcome measures;
- centralized database and monitoring systems;
- cost-adjusted rate-setting methodology; and
- internal audit coverage.

- ▶ In 1995, consultants hired by PRS to evaluate the operational effectiveness of the agency, reported that its contract administration system needed immediate attention.⁴ Specific findings noted in this study included:

- lack of an agency-wide comprehensive contracting system;
- lack of checks and balances within programs;
- lack of oversight and consistency among regions;
- failure to use provider outcomes in contracting considerations;
- inconsistency in contracting procedures between program and legal staff;

Several review efforts have identified problems with PRS' contract administration system.

- inconsistency in procurement practices and methodologies; and
- inconsistency in training procedures from program to program and region to region.

▼ **State and federal auditors have identified significant contract administration problems within the CPS program.**

- ▶ As the largest user of contracting in the agency, problems related to CPS' contracting are symptoms of PRS' overall contract administration deficiencies.
- ▶ Two federal Department of Health and Human Services Inspector General reports issued in 1995 and 1996 criticized services and operations of child-placing agencies, which PRS contracts with to place children in foster care.
 - The 1995 report found PRS does not have an overall system and controls to ensure child placing agencies and their foster homes are meeting required standards and that state caseworkers are monitoring the status of the children while they are in the care of foster homes.⁵
 - The 1996 report found child placing agencies were improperly using an average of 38 percent of the funds intended to provide food, clothing, and shelter for children under their care. In addition, the audit found the state paid the child placing agencies for duplicate claims and for services not provided or billed by the child placing agencies. The report recommended the state refund the federal government for foster care maintenance payments improperly retained by child placing agencies, duplicate payments, and payments for services not provided or billed.⁶

▼ **A 1994 State Auditor's Office management audit found PRS lacked a well-defined contract administration process for foster care services. Findings in the report included:**

- foster care agreements are not adequately managed;
- lack of a planning process for procuring foster care providers;
- limited qualification criteria for the selection of foster care providers;

The CPS foster care program has suffered from weaknesses in contract administration.

- provider agreements are open-ended and do not include performance standards or requirements and sanctions; and
 - lack of a comprehensive monitoring and evaluation cycle to identify problems and improve services based on outcome information.
- ▼ **Problems with PRS' contract administration system have led to questionable expenditures of state funds.**
- ▮ Inadequate contracting management controls have decreased PRS' ability to hold providers accountable for the use of state funds. As a result, PRS did not detect questionable contract expenditures.
 - ▮ In 1995, the State Auditor's Office reviewed four contractors or care providers engaged by PRS.⁷ The following questionable expenditures were among those identified:
 - A provider engaged in several related party transactions, using PRS funds for the purchase of a program director's home for \$417,000.
 - A provider purchased and improved, at a cost of \$196,357, a house used for the executive director's office and other administrative purposes.
 - PRS funds were used to purchase blueprints, surveys, and plans for a \$5 million church complex a provider intended to build.
 - ▮ PRS contract funds are intended to pay for cost of service plus certain administrative costs. These state funds are not intended to be a major profit center for a provider. Under PRS' unit rate per child payment system, providers are paid the same rate despite variances in the actual cost of providing the service due to regional location or management environments. PRS contract rates and provisions allow a provider to keep and spend, at their discretion, the difference between the rate paid and the costs incurred for services.

Inadequate management controls have led to questionable expenditures of state funds.

Other state agencies have experienced contracting problems resulting in the loss of millions in state funds.

- ▼ **Other state agencies have experienced significant contracting problems resulting in a loss of millions of dollars in state funds.**
 - ▶ While using contractors to provide products and services to clients can be effective, a poorly designed or monitored system can lead to waste and abuse.
 - ▶ The Governor and the Legislature placed the Texas Commission on Alcohol and Drug Abuse in conservatorship in 1995 amid allegations of widespread financial abuses by treatment providers under contract to the Commission. Subsequent investigations uncovered irregularities in 35 of the 72 providers audited, including double billing for expenses, excessive salary payments, abuse of travel compensation, and purchase of personal vehicles and houses using state funds. These investigations identified \$20 million in questionable costs.
 - ▶ The Department of Criminal Justice has come under scrutiny recently for a variety of contracting irregularities including:
 - the purchase of \$9.2 million worth of security fencing and \$33.6 million worth of food-supplement by prison officials without seeking competitive bids or board approval; and
 - an investigation into allegations of favoritism and irregularities in prison construction contracting, including payment of higher than average wages, state computer and office equipment which is unaccounted for, and contractors billing the state for inappropriate expenses.
 - ▶ Given the high-dollar volume of PRS contracts, a similar potential exists for losses unless strong contracting oversight systems are in place.
 - ▶ These and other contracting problems have led to the appointment of a joint Senate and House investigating committee to identify cross-cutting weaknesses in state contracting processes and develop strategies for correcting those weaknesses.

- ▼ **State agencies must have a good contract administration system in place to ensure contractor activities support the agency's delivery of services and that state funds are used properly.**
 - ▶ Agencies using contractors to accomplish state goals delegate the implementation of tasks but not the responsibility for the conduct and outcome of those tasks. Through contract administration policies and procedures, an agency can:
 - establish quality standards for services provided to citizens;
 - ensure that services purchased were actually provided; and
 - evaluate whether services need to choose achieved the desired goal or impact.
 - ▶ Contract administration systems allow an agency to protect taxpayer interests while fulfilling its mission. Total state expenditures for contracts exceeded \$23 billion during fiscal year 1995. Through financial monitoring of contracts, an agency can determine the reasonableness and efficiency of contractor expenses and detect waste or misuse of state funds.
 - ▶ The following table details the “best practice” components of contract administration derived from sources such as State Auditor recommendations, federal procurement guidelines, and public policy research organization recommendations. The specific nature and extent of contract administration vary from contract to contract. As such, these practices are not necessarily mandatory for each type of contract.
- ▼ **PRS has initiated efforts to improve the operation and oversight of its contract administration system but is still missing several key steps of the process.**
 - ▶ PRS formed an internal task force to address chronic problems associated with contract administration. The task force completed its report in April of 1995, recommending fundamental improvements. At the time of this report, several recommendations had been completed:
 - establishment of a centralized department of contract administration with a director supported by five budgeted

"Best Practice" Contract Administration	
Action	Components
Planning	Agencies should conduct effective planning before they make contracting decisions: <ul style="list-style-type: none"> ● use of a formalized planning process to examine service needs and develop contract expectations; ● appropriate approval by oversight entities; and ● development of detailed RFBs/RFPs.
Contract Award	Agencies should use bid evaluation procedures that ensure selection of the best overall vendor: <ul style="list-style-type: none"> ● bids evaluated on specific criteria contained in RFBs/RFPs; ● evaluation criteria place emphasis on factors other than price such as technical factors, vendor experience, and past performance; ● bids evaluated by a team consisting of both contracting and user personnel; and ● eligible vendors are screened based on past performance and other related factors.
Monitoring Contractor Performance	Agencies should continually monitor contractor performance: <ul style="list-style-type: none"> ● specific contract and quality assurance monitoring provisions should be included in the contract; ● contract management participation should include all relevant parties (financial, regulatory, program, etc.); and ● level of monitoring should be consistent with size of contract and risk.
Performance Measures	Contracts should contain provisions designed to hold contractor accountable: <ul style="list-style-type: none"> ● contracts should include clearly defined goals, outputs, and measurable outcomes that directly relate to program objectives.
Sanctions	Contracts should include clearly defined sanctions or penalties for noncompliance with contract terms and conditions such as performance bonds, liquidated damages clauses, and retainage clauses.
Financial Controls	Contracts should clearly specify the accounting, reporting, and auditing requirements applicable to funds received under the contract.
Risk Management	Agencies should set up a formal program using a risk assessment methodology to monitor compliance with financial and performance requirements under the contracts, including a determination of whether the contractor has achieved performance objectives.
Payment Methods	Agencies should set up a formal program to obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.
Extensions and Modification of Scope	Contracts should contain provisions giving the agency flexibility to adjust to changing requirements: <ul style="list-style-type: none"> ● documented procedures establishing the requirements for controlling contract amendments; ● require approval and sign-off of the changes by key agency users, management, steering committees, and board members; and ● independent analysis of contract amendments.
Post-Implementation Review	Agencies should conduct post-implementation performance reviews to analyze contractor performance: <ul style="list-style-type: none"> ● analyze the cost-benefit of continuing the contract with the initial contractor; and ● use of an audit compliance tracking system to monitor significant findings to ensure corrective action occurs.
Management Information Systems	Agencies should develop information systems that support centralized contractor databases: <ul style="list-style-type: none"> ● identify duplicate payments on both intra-and interagency basis; and ● compile performance data on contractors for use in eligibility screening.

- staff positions, including accountants, program specialists and an information systems specialist;
- development of risk-assessment methodologies for child and adult services;
 - hiring a full-time internal auditor;
 - activation of automated contract registry;
 - development of contract outcome measures; and
 - assessment of regional needs as part of an ongoing agency-wide functional review.
- ▶ Although PRS has made significant progress, the agency has not fully developed other recommended contract administration system components as of this report:
- contracting procedures manual;
 - index of purchased services;
 - contract evaluation techniques;
 - caseworker training materials; and
 - contract monitoring schedule.
- ▶ Although progress has been made implementing the recommendations of the task force, the Department has yet to begin fully operating under a centrally accountable, consistent system throughout the agency.

Contracting problems have resulted from a lack of centralized policy, monitoring and accountability.

Conclusion

While contract services are a reasonable means of spreading limited resources among clients statewide, the PRS contract administration system contains weaknesses that inhibit accountability. Contracting problems at the agency have resulted from a lack of centralized policy, monitoring, and accountability. In some cases, these weaknesses have translated into financial irregularities by some providers and subsequent requests by the federal government for the state to refund the payments in question.

PRS is not alone in facing the challenge of developing an effective contracting process. As state government has increasingly relied on privatization, several agencies in Texas have experienced similar problems managing contract services. Significant contracting deficiencies have been repeatedly cited at PRS over the past few years. To responsibly use

and safeguard state funds, the Department must have well-developed and coordinated contract systems that can detect poor performance, waste, misuse, or fraud. The following recommendations are intended to provide both a statutory and operational framework for PRS to implement the components of a model contract administration system.

While PRS has taken steps to improve its contracting process, more work is needed. Statutory guidance is necessary to ensure that, once in place, an adequate process is maintained in the future.

Recommendation

Changes in Statute

- **Require PRS to include the following standards in each contract for the purchase of program-related client services:**
 - clearly defined goals, outputs, and measurable outcomes that directly relate to the program objectives;
 - clearly defined sanctions or penalties for noncompliance with contract terms and conditions; and
 - clearly specified accounting, reporting, and auditing requirements applicable to funds received under the contract.
- **Require PRS to include the following in contract monitoring:**
 - use a risk assessment methodology to monitor compliance with financial and performance requirements under the contract; and
 - obtain and evaluate program cost information to ensure all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

The current appropriations act contains a general rider relating to contracting requirements for all health and human services agencies that includes provisions similar to these. This recommendation would clearly state legislative intent in the agency's enabling statute. PRS would be specifically required to ensure it has the processes in place to effectively contract for client services and hold contractors accountable for the services they deliver. The most significant impact will be ensuring the delivery of quality care to the agency's clients.

Management Actions

- **Require the PRS Board and the Department's executive management to establish objectives for contract administration and communicate these objectives to PRS staff and contract providers.**

The Board and executive management of the Department should clearly define expectations related to contract administration. Objectives should clarify the purpose of strengthening contract development and monitoring, including establishing clients, not providers, as the first priority in the contracting process. Formal objectives will provide context for changes in agency structure and procedures experienced by program and contract staff, and providers that contract with the Department.

- **PRS should centralize the oversight of contract administration functions by placing primary responsibility for all service contracting in the state office at the executive management level.**

Centralization of contract administration functions will decrease the potential for inconsistent selection and monitoring of contractors at the regional level and from program to program. Placing the contract administration function at the executive management level will clarify the authority of the function and ensure visibility.

- **PRS should require program directors to provide feedback to the Executive Director or contract staff concerning the impact of contract activities on service delivery.**

This recommendation would ensure the development of contracting policies and procedures includes the input of program staff. Discussions in periodic meetings will identify potential conflicts between program and contracting objectives.

- **PRS should separate responsibilities and authority for components of the contract administration system between the state office and the regions.**

The role of the state office should be to incorporate guidance from executive management into processes and resources that support the achievement of department objectives. The role of regional staff should be to implement official policy; facilitate interaction between clients and contractors; and obtain, review, and report financial, output, and outcome data. A contracts specialist should be formally designated in each region to ensure central policy is incorporated into regional contracting activities.

Suggested Separation of Contracting Responsibilities	
State Office Responsibilities	Regional Office Responsibilities
Policy development and exceptions (standards, sanctions)	Review of specifications provided by program staff
Operational procedures and Training	Collection of required documentation from contractors
Outcome measures	Verification of qualifications/licensing
Support documents (contract formats, general provisions)	Selection of contractors
Desk and field financial/performance monitoring	Initiation/cessation of payments
State/federal compliance monitoring	Review of reasonableness of contractor payments
Contract management tools (risk assessments, database)	Compile data for reporting and evaluation
Communication of policy to regional staff and contractors	

- **Require the efforts of the contract administration functions to be coordinated with the Department's internal audit function.**

Given the high profile, high risk nature of the Department's programs and related contracting, internal audit should appropriately evaluate the performance of contract administration and regularly provide management with an independent assessment of the operations.

Fiscal Impact

This recommendation to improve the contracting process would result in positive fiscal impacts to the Department and the state. The recommended contract oversight system could be administered using existing contract administration staff. Based on similar contract administration efforts in private industry and in other government agencies, the Department could expect to achieve significant savings. Total savings cannot be determined as the number, value, and savings associated with contracts cannot be estimated. Any savings achieved through implementation of this recommendation would be reallocated within the Department for client services.

¹ Robert Morris, Contracting Director, PRS.

² Ibid.

³ Office of the State Auditor, *Contract Administration at Selected Health and Human Services Agencies - Phase Three*, February 1996, p. 48.

⁴ Tonn and Associates Report, "An Analysis of the Responsiveness of Management and Staff to CAPS and Related Automation Enhancements," September 1, 1995.

⁵ Department of Health and Human Services, Office of Inspector General, *Improvements Needed in Monitoring Child Placing Agencies in the Texas Foster Care Program*, August 1995.

⁶ Department of Health and Human Services, Office of Inspector General, *Maintenance Payments Retained by Child Placing Agencies in the Texas Foster Care Program*, February 1996.

⁷ *Contract Administration at Selected Health and Human Services Agencies - Phase Three*, p. 11.

Issue 6



Improve the Foster Care System by Measuring the Quality of Care Through the Contracting Process.

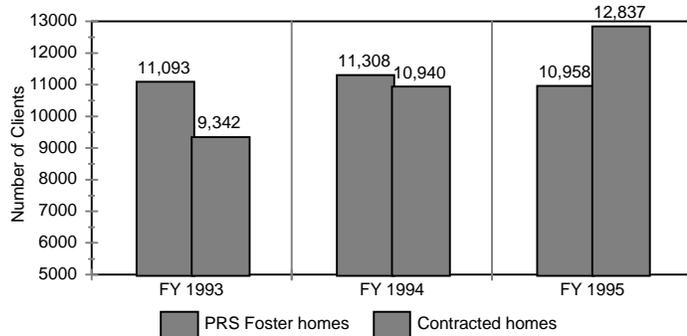
Background

While the previous issue addresses PRS' overall contracting process and lays out a model contracting system, this issue deals specifically with contracted foster care and how contracting can be used to help ensure that quality care is purchased at the best price.

In general, foster care in Texas is provided through PRS foster families who sign up directly with the Department and through contracts with private foster care providers, which include both foster families and foster care facilities. In fiscal year 1995, 10,958 children received services through PRS foster families. In the same year, 12,837 children received foster care through private providers who entered into contracts with PRS. Contracted foster care is the single largest area of contracting for the agency. While contracted foster care covers 54 percent of the children in PRS care, it represents 78 percent of the total foster care budget, or \$136 million in fiscal year 1995.

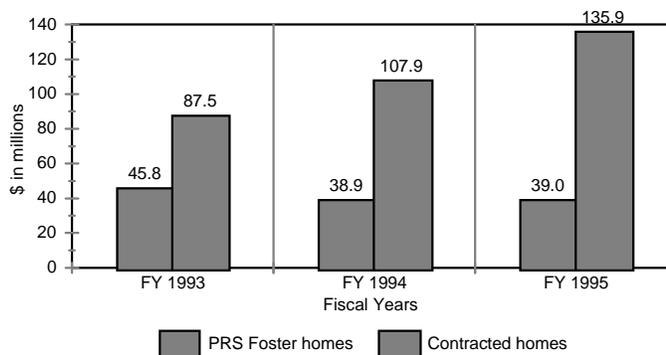
PRS foster families are certified by the Department and must meet certain requirements to care for foster children, such as completing background checks, home studies, and 15 hours of in-service training annually. In contrast, private businesses that care for foster children must be licensed by PRS and enter into contracts with PRS to provide foster care for children removed from their homes.

**Children in Foster Care
PRS Homes vs. Contracted Care**



Duplicated client count. Child may have been in both facility types during the fiscal year.

**Foster Care Expenditures
PRS Homes vs. Contracted Care**



Both PRS foster families and contracted foster care providers are reimbursed through daily rates based on the level of care a child needs. Children are placed in one of six level of care categories, with rates ranging from \$15.85 a day for Level 1 care to \$187.83 a day for Level 6 care. Children are assessed based on their physical, behavioral, emotional, educational, and familial needs. Children in Level 1 care do not have any severe behavioral or medical needs and require parenting in a normal family environment. Levels 2 through 6 represent children with increasingly severe needs who require closer supervision and support. Children at Level 6 require highly structured care in a residential treatment facility. They have very severe impairments, are consistently unable or unwilling to cooperate in their care, and may present a high risk of harming themselves or others.

In recent years, the number of children in higher levels of care has grown dramatically as the severity of children's needs has increased. For example, from fiscal year 1990 to fiscal year 1995, a period when the foster care population almost doubled, the number of children in Level 6 care increased 700 percent. Over the same period of time, the average monthly cost per child in foster care increased from \$882 to \$1,385.

The number of children needing higher levels of services has increased dramatically which has led to more reliance on contracted foster care.

This trend contributes greatly to PRS' increased reliance on contracted foster care. In general, private contractors take care of children with more severe behavioral or medical needs, while PRS foster families usually care for children in normal family settings. PRS has contracts with several types of licensed foster care providers, such as residential treatment facilities, child placing agencies, therapeutic camps, foster group homes, and emergency shelters. The number of private contractors licensed to provide foster care has increased from 5,120 in 1990 to 7,360 in 1995.¹

While the increasing number of providers has given PRS more options, this growth has not occurred in a planned manner to ensure that the increase in providers matches the need for services. The growth in contracted foster care providers is due in part to PRS' open enrollment policy. All providers that meet minimum requirements, primarily obtaining a license to operate, are allowed to contract with the agency. The open enrollment policy was initiated at a time when few providers were in business and PRS was trying to encourage the development of a larger base of providers. As reimbursement rates for the higher levels of care have increased in recent years, the number of contracted foster care providers has also grown.

PRS has recently proposed rules to create additional conditions that providers must meet to contract with the Department. These regulations include enrollment requirements related to appropriate staffing and limits on the number of children who can be placed in certain licensed foster homes. PRS also has the authority to remove children and discontinue placements if conditions in a contracted facility constitute an immediate threat to the health, safety, or welfare of a child. However, contracts do not currently provide specific measures to indicate the quality of the services being provided.

The Sunset review focused on PRS' foster care contracting process and the ability of this process to ensure that Texas foster children receive the highest quality care possible.

Findings

- ▼ **The current system of contracting for foster care does not measure the quality or effectiveness of the care provided.**
 - ▶ The current method of contracting for foster care does not measure the quality of care provided and whether children are benefiting from the services they receive. PRS does not maintain reliable information to indicate which providers are doing a good job of meeting children's needs and which are performing poorly.
 - ▶ With the absence of a specific process to measure quality care, monitoring of residential care contractors is ineffective. PRS' current system includes a number of checkpoints to monitor children in foster care. These include:
 - Department placement coordinators who initiate and monitor contracts;
 - Youth for Tomorrow, which contracts with PRS to ensure children are receiving services at the appropriate level of care and tracks reductions in levels of care;
 - state office contract staff who conduct financial monitoring; and
 - caseworkers who are responsible for visiting children quarterly.

PRS' monitoring of residential care contracts does not measure which providers are meeting children's needs and which ones are performing poorly.

However, none of these efforts thoroughly evaluate the effectiveness of residential care services the state is purchasing.

- ▼ **The current method of paying foster care providers does not create incentives for cost effective quality care.**
 - ◆ PRS pays providers for services using reimbursement rates based on the level of care system. This gives providers an incentive to keep children at higher levels of care for greater lengths of time because that produces the greatest reimbursement. Those providers who treat children effectively and move them to lower levels of care receive lower reimbursement rates, and in essence are penalized for their success.
 - ◆ Competition among providers is limited because all providers get contracts if they meet certain basic requirements, and the rates for services are fixed. Currently, providers do not have to compete with each other on the basis of quality care.

- ▼ **The current contracting system does not provide PRS a way to discontinue placements with poorly-performing providers.**
 - ◆ Apart from the most severe cases involving an immediate threat to a child's health and safety, PRS does not have a process to document poor quality care and to discontinue placing children with providers who have a history of poor performance.
 - ◆ Absent a way to objectively measure quality care and to decide which providers deserve placements, PRS caseworkers are forced to base decisions on their relationships and experience with facilities. This subjective process makes caseworkers susceptible to pressures from providers trying to get placements.

- ▼ **The current open enrollment process does not allow PRS to effectively manage the availability of residential care throughout the state.**
 - ◆ Because the open enrollment process allows all providers who meet certain basic requirements to contract for foster care placements, PRS has been unable to systematically develop residential care services to match the state's needs.

The current contracting process gives providers an incentive to keep children in higher, more costly levels of foster care.

- ▶ Open enrollment does not require PRS to conduct a needs assessment to determine the type, number, and location of residential care providers needed. Currently, many areas of the state have far too many residential care vacancies while in others, such as the Valley, PRS is forced to place some children outside the region because of a lack of available residential placements. In addition, a community's ability to support a facility is not assessed when PRS contracts with a facility.
 - ▶ PRS has licensed facilities with approximately twice as many foster care beds as children needing placement in contracted foster care. The state indirectly pays for part of facilities' costs of maintaining empty beds because the rate setting methodology includes overhead costs. In addition, PRS incurs costs associated with licensing and inspecting facilities that are not serving many children.
 - ▶ With many providers not operating near capacity, some may be forced to close their facilities. However, the current system does not allow PRS to ensure that quality providers continue to receive placements and poorer performers are the ones who go out of business.
- ▼ **The State Auditor's Office and the federal Department of Health and Human Services have identified problems with PRS' contracting process for foster care.**
- ▶ A 1994 State Auditor's Office report found that PRS lacks a well-defined contract administration process for foster care services. For example, the agency has no process to identify current needs for services, no performance standards to measure quality care, and no comprehensive monitoring process to ensure accountability.²
 - ▶ Two federal Department of Health and Human Services audits in 1995 and 1996 criticized services and operations of child placing agencies, which PRS contracts with to place children in foster care. One report stated that PRS "does not have an overall system and controls to ensure that child placing agencies and their foster homes are meeting required standards and that state case workers are monitoring the status of the children while they are in the care of foster homes."³ Specific problems indicated include:

State and federal audits have criticized PRS' foster care contracting system.

- treatment plans were not followed;
- state and child placing agency case workers did not have frequent contact with children or foster homes;
- fire and health inspections were not always performed;
- background checks were incomplete or not made; and
- training was not provided to all foster parents.

Federal auditors also found that child placing agencies were inappropriately retaining foster care payments intended to meet the basic needs of children.⁴

▼ **PRS is currently in the process of identifying quality outcome measures that can be included in contracts.**

- ▶ PRS has convened a quality outcomes work group and has conducted meetings in each of its service regions to develop meaningful outcome measures. PRS expects to incorporate measurable outcomes for use in contracts by September 1996.
- ▶ In the agency's recent internal functional review, staff recommended incorporating an evaluation component into all contracts so that progress and outcomes for each client are evaluated frequently.
- ▶ Other states have problems similar to Texas in measuring foster care outcomes. A recent survey found only 12 states that have developed outcome measures for child welfare services. As states move toward developing managed care systems, which 41 states are considering, clear outcome measures will have to be developed to determine the effectiveness of any new system.⁵

PRS is developing quality measures for its contracts which should be available by September 1996.

▼ **As with contracted foster care, agreements with PRS foster homes do not include outcome measures.**

- ▶ Like contracted foster care, PRS does not have a system to measure how well children in PRS foster homes are doing.
- ▶ Private child placing agencies are responsible for children placed in their foster homes. Likewise, PRS, which is licensed as a child placing agency, has responsibility for ensuring that the children it places in its foster homes receive appropriate care and move toward a permanent placement as soon as

possible. Without outcome measures, PRS cannot be held accountable for ensuring quality placements.

Conclusion

PRS cannot afford to run a \$175 million a year foster care system without knowing how effective this system is in meeting the needs of children who have been abused or neglected. PRS currently contracts with private providers to care for these children without any reliable information on whether or not the care the state is buying is benefiting the child.

The current method of contracting for these services does not promote or reward quality care. For the state's foster care system to work, PRS must modify its contracting system for residential care services to include quality measures to help ensure that abused and neglected children who must be removed from their homes are adequately cared for. The following recommendation ensures that the results of recent steps by PRS to address this issue remain in place in the future.

Recommendation

Changes in Statute

- **Require PRS to:**
 - assess the need for foster care services throughout the state and contract with providers to match the needs identified; and
 - take into consideration the local community's ability to support a facility and its clients before entering into a contract.
- **PRS should structure its contracts for services so that providers are held accountable to measures that indicate the effectiveness or services provided to children in foster care.**
- **PRS should monitor provider performance and ensure that performance is a factor in any future contract decisions.**
- **PRS should include terms for sanctions and possible termination in all foster care contracts.**

These recommendations will require PRS to implement a contracting process that allows the agency and the Legislature to evaluate the effectiveness of contracted foster care and lays the foundation for the future direction of the Texas foster care system. This approach represents a departure from the current open enrollment process to one in which

PRS contracts for foster care placements when and where it needs those services. In areas where there are an abundance of providers, contracting only for services needed will create competition in the industry. Since rates are standardized, the competition will focus on quality of care.

Establishing a contracting process for foster care services which evaluates how effectively children are being served also represents the first steps toward developing managed care or other initiatives to make the foster care system more cost-effective while maintaining high standards for care. A sound contracting process which focuses on measuring quality outcomes is critical for PRS to move forward with a Request for Proposal process, managed care system, or any type of increased reliance on the private sector for services.

As PRS noted in its recent internal functional review, putting this type of contracting system in place will improve outcomes for clients, increase accountability, and allow the agency to increase the number of clients served within present funding levels.⁶ At the same time, a comprehensive assessment of where, how many, and what types of residential care providers are needed throughout the state will enable PRS to identify needs and plan the development of the system accordingly. Consideration of the effect on the community of any new contract, such as for residential treatment centers, should be included in this assessment. Evaluation of the community's capacity to support a facility is needed because local support is critical to successfully meet the needs of children in residential treatment facilities.

■ **PRS should develop outcome measures to be included in agreements with PRS foster families.**

Once outcome measures are established for contracted foster care providers, similar measures should be developed to apply to children in PRS foster homes. Although PRS foster homes mostly provide basic care for foster children who do not have severe treatment needs, about half the children in foster care reside in PRS foster homes. These children should not be exempt from the close monitoring and evaluation of the effectiveness of care that is expected in contracted care situations.

As children go from placement to placement, they may go from contracted care to PRS foster homes. To ensure continuity in the system, PRS foster homes should have measures to determine how well a child is doing in the foster care setting. Just as providers of contracted foster care will be held accountable for the children in their care, PRS should be held accountable for closely monitoring children in its foster homes.

Fiscal Impact

This recommendation could result in positive fiscal impact to the Department and State. The fiscal impact of this recommendation to improve the quality of foster care cannot be determined because the number of children and length of stay in foster care cannot be estimated. However, a monthly average of 11,700 children are in paid foster care with an average monthly cost per child of \$1,385. Improving efficiency and quality of services could result in significant savings as children spend less time in higher levels of care and move to permanent placement more quickly.

For example, a child that spends 90 days at Level of Care 6 costs PRS \$16,904. If the child receives high quality services and progresses to Level of Care 5 after 45 days it would reduce costs by about \$4,000 for the same 90 day period. Any savings achieved through implementation of these recommendations would be reallocated within the Department to provide client services.

¹ DPRS, *Legislative Data Book, Fiscal Year 1995*, p.137.

² State Auditor's Office, *A Review of Management Controls at the Texas Department of Protective and Regulatory Services*. September 1994, p.24-28.

³ Department of Health and Human Services, Office of Inspector General, *Improvements needed in monitoring child placing agencies in the Texas foster care program*, August 1995, p.5.

⁴ Department of Health and Human Services, Office of Inspector General, *Maintenance payments retained by child placing agencies*, February 1996, p.5.

⁵ Child Welfare League of America, *Survey on Managed Care and Child Welfare (preliminary draft)*, March 1996, p. 4.

⁶ DPRS, *Findings of the Functional Review Task Force: Phase I*. February 28, 1996, p.51.

Issue 7



Improve Investigations of Abuse, Neglect, and Exploitation in MHMR Facilities and Community Centers.

Background

The Department of Protective and Regulatory Services (PRS) has the responsibility for investigating incidents of abuse, neglect, and exploitation in the Texas Department of Mental Health and Mental Retardation (MHMR) facilities and community MHMR centers, as well as their related outreach programs. Currently, PRS is responsible for investigating abuse, neglect, and exploitation in five state centers, nine state hospitals, 13 state schools, and 36 community centers in Texas. The Legislature gave PRS these responsibilities through legislation passed in 1991 and 1995, as shown on the following page.

Investigations in these state-operated facilities are conducted by investigators in the Department's adult protective services (APS) division. In fiscal year 1995, facility and community center investigations made up 11.3 percent of APS' total investigations.¹ Investigations in both MHMR facilities and community centers have been increasing steadily since PRS assumed the responsibility for these investigations.

Investigations of abuse, neglect, and exploitation in MHMR facilities and community centers must be initiated within 24 hours of receipt of the report. The superintendent of the facility or the director of the community center program, in which the incident is alleged to have occurred, must be notified within one hour of the intake of the report. The superintendent or director of the facility is responsible for ensuring the immediate safety of and, if necessary, medical attention for the alleged victim. If the allegation involves an abuse-related criminal offense as defined by the Texas Penal Code, the appropriate local or state law enforcement agency must be notified within one hour of receiving the report² and receive a copy of the investigative report.³ The entire investigation, including findings and the narrative report, must be completed by the APS investigator within 14 days of receiving the report and submitted to the superintendent of the MHMR facility or the director of the community MHMR center for

MHMR facility and community center investigations make up 11.3 percent of all APS investigations.

LEGISLATIVE HISTORY OF MHMR FACILITY AND COMMUNITY CENTER INVESTIGATIONS

72ND LEGISLATURE - 1991

In response to the settlement of the Lelsz litigation against the state, the Legislature transferred investigations of abuse, neglect, and exploitation in MHMR facilities to the Department of Protective and Regulatory Services (PRS). All funds, staff, records, and equipment used for investigations at the state schools, state hospitals, and state centers were included in the transfer. The Lelsz case demanded objective investigations which resulted in the separation of the investigations of abuse, neglect, and exploitation from the facility in which the maltreatment was alleged to have occurred.¹

74TH LEGISLATURE - 1995

The Legislature clarified PRS' responsibility for investigations of abuse, neglect, and exploitation in MHMR community centers. MHMR contracts with non-profit community MHMR centers for mental health and/or mental retardation services in local communities. These centers provide community-based support systems and operate under legal authorization of local boards of trustees.²

MHMR agreed to transfer funds to PRS for community center investigations when PRS did not receive funding for these investigations in its appropriation. Through an interagency cooperation contract, MHMR agreed to pay PRS an amount not to exceed \$470,000 annually based on the projected need for investigations in fiscal year 1996. This amount was based on MHMR's experience that PRS would investigate 767 cases in fiscal year 1996 or 64 investigations per month.³ Since July 1, 1995, PRS has investigated an average of 126 community center cases per month.⁴

¹ PRS. 1995 Annual Report: A Window on PRS, Fulfilling the Public Trust.

² Adult Protective Services. Program Briefing for Sunset Commission, October 1995.

³ State of Texas Interagency Cooperation Contract, Contract No. C559600032 (between MHMR and PRS).

⁴ PRS. Adult Protective Services. Status of Proposed Community MHMR Center Rules.

final determination. A complete overview of the investigation process is shown on the following page.

Since PRS took over abuse, neglect, and exploitation investigations in MHMR facilities and community centers, the investigation process and its results have been criticized. The Sunset review focused on PRS' system of investigation, the Department's working relationship with MHMR, and how the results of investigations are handled by MHMR.

Findings

▼ Workload for MHMR facility and community center investigators has increased.

- ▶ The number of investigations in MHMR facilities and community centers has increased from 2,296 in fiscal year 1992 to 4,276 in fiscal year 1995* and, on average, the number of new investigations per investigator per month has increased from 4.9 in fiscal year 1992 to 7.1 in fiscal year 1995.⁴
- ▶ Originally, MHMR contracted with PRS to conduct 64 community center investigations per month, or 767 investigations per year. However, APS estimates that it will conduct 1,512 investigations this year based on the average number of cases that APS has investigated per month since July 1995. PRS and MHMR did not accurately estimate the number of community center investigations that would be performed. Consequently, PRS' contract with MHMR does not provide the resources necessary to complete these investigations in a timely manner.
- ▶ Because investigations have increased significantly and the contract is not based on the actual number of investigations, PRS and MHMR are revising their interagency contract.

Community center investigations have exceeded MHMR estimates by more than 100 percent, forcing PRS and MHMR to renegotiate their contract.

* Comparison of these numbers is difficult because PRS and MHMR track investigations differently. Please see pages 5-6 for details.

INVESTIGATION PROCESS IN MHMR FACILITIES AND COMMUNITY CENTERS¹

Report is received at PRS' Statewide Intake or the local APS office.

Statewide Intake / local office notifies the on-call investigator immediately.

Upon being notified, the investigator:

- initiates the investigation within 24 hours of intake by face-to-face contact;
- immediately notifies the head of the facility or community center; and
- notifies law enforcement within one hour of initiating the investigation if the allegation involves physical abuse or sexual assault.

During the investigation, the investigator:

- photographs, within 24 hours, any injuries;
- ensures that the intake form is completed and entered into the APS data system;
- interviews and collects written statements from the alleged victim, collateral witnesses, and alleged perpetrator;
- gathers supporting documents;
- evaluates the data collected and makes a determination (based on a preponderance of the evidence) whether abuse, neglect, or exploitation occurred; and
- completes the investigation within 14 calendar days, but investigators may request extensions in 14 calendar day increments, subject to state office approval.

After completing the investigation, the investigator:

- writes the investigative report;
- provides the written report and supporting documents to the head of the facility or community center;
- provides written notification of investigation findings to the incident reporter; and
- completes form to close case on the APS data system and, if previously notified, provides a copy of the case to law enforcement.

¹ PRS and MHMR. Report to the Senate Committee on Health and Human Services, February 23, 1996, page 16.

▼ **APS investigations in MHMR facilities and community centers have exceeded required time frames and PRS does not have the flexibility to adjust investigation timelines when necessary.**

- ▶ MHMR and PRS rules for MHMR facility and community center investigations state that every investigation must be completed within 14 calendar days. The statewide average for completing investigations in facilities during the first quarter of fiscal year 1996 was 34 days.⁵ Driving this average were 413 cases that exceeded the 14-day completion date. Fifty percent of these cases were extended due to the detailed case documentation and lengthy paperwork required, and 39 percent were extended because witnesses were unavailable.⁶
- ▶ Chapter 261 of the Family Code states that when investigating reports of child abuse or neglect, “The department may by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child.” The APS statute has no comparable provision allowing PRS to set priorities for MHMR facility and community center investigations. Without this flexibility, every investigation, regardless of severity, must be initiated within 24 hours, which results in a backlog of cases. These cases have been initiated, but not completed because the investigator’s time is spent initiating every new case received immediately after it is received.

While PRS can prioritize child abuse investigations, the agency cannot prioritize investigations in MHMR facilities and community centers.

▼ **PRS and MHMR have conflicting methods of counting and classifying incidents of abuse that make investigation performance difficult to assess.**

- ▶ Both PRS and MHMR track the number of intakes, investigations, and findings of abuse, neglect, and exploitation, as well as the classifications of abuse in MHMR facilities and community centers. However, because the agencies use different methods to count and classify incidents, information is not consistent and cannot be easily compared.
- ▶ PRS and MHMR count the number of cases differently. MHMR counts cases based on incidents. PRS counts cases based on the number of MHMR clients affected by the incident. For example, if an MHMR employee yelled at a group of 12 MHMR clients, MHMR would count that as one incident resulting in one case to be investigated. PRS would count it as 12 incidents because 12 clients were involved and

would record the incidents as 12 individual cases. Also, MHMR does not count a case until the investigation is completed, while PRS counts a case as soon as it is received at intake.

- ▶ PRS and MHMR also classify the results of investigations differently. PRS classifies a case as either confirmed, unconfirmed, inconclusive, or unfounded. MHMR classifies the same cases for its purposes, but does not use the unfounded category as does PRS. This results in differences as to how the two agencies track the outcome of investigations.
- ▶ Without a comparable approach to count cases and classify investigation results, PRS and MHMR cannot track or compare results to ensure that investigations are timely and the results are appropriate. Only by using a common database can the two agencies accurately determine whether incidents of abuse, neglect, or exploitation are increasing or decreasing.

The timeliness and quality of PRS investigations have been questioned.

- ▼ **The quality of PRS' investigations within MHMR facilities has been questioned.**
 - ▶ Lieutenant Governor Bob Bullock recently charged the Senate Committee on Health and Human Services to look into the timeliness, quality, and procedures of PRS' investigations in MHMR facilities and community centers. The committee's charge followed a newspaper story reporting that a large number of investigations were exceeding the 14-day completion time frame and that the confirmation rate of abuse, neglect, or exploitation in these cases was decreasing although the number of allegations was increasing.
 - ▶ In a recent *Austin American-Statesman* article, PRS was criticized for its lack of cooperation with the Austin Police Department (APD) in investigating cases of abuse, neglect, or exploitation in MHMR facilities and community centers.
 - APD stated that they had problems in pursuing criminal cases in instances of abuse and neglect in state facilities because protective services workers and police were investigating the same incidents and APS caseworkers were not preserving crucial evidence.

- APD also criticized PRS' notification process, saying that PRS did not notify the state or local law enforcement of allegations of abuse and neglect in state facilities in a timely manner.
 - ▮ MHMR superintendents have been concerned with the quality of investigations as well. In fiscal year 1995, MHMR superintendents overturned an average of 19 percent of PRS' confirmations of abuse or neglect. Broken down by type of facility, state hospital superintendents overturned 30 percent of confirmed cases, state school superintendents 13 percent; and state centers 10 percent.⁸ Facility superintendents have indicated that they overturn APS' investigative findings when they determine that reports lack a preponderance of evidence to support taking administrative action against an employee. Two main areas account for most of the overturns: when APS investigators conclude that performing a physical prevention technique, in response to a client's aggressive behavior, is a form of abuse; and when APS investigators fail to interview all the witnesses in a particular investigation.
 - ▮ Advocacy groups have expressed concern about the number of cases exceeding the 14-day completion time frame and the effect these extensions have on confirmation rates. They argue that the longer a case stays open, the less likely the investigation will result in a confirmation of abuse, neglect, or exploitation.⁹
- ▼ **PRS' ability to address abuse in state facilities and community centers has been hampered by the fact that MHMR superintendents and community center directors have been able to overturn PRS' findings.**
- ▮ Until December 1995, MHMR rules allowed facility superintendents and community center directors to either agree with or overturn PRS' findings. In instances of disagreement, the superintendent or community center director did not have to take disciplinary action against the employee that APS found to have committed abuse, neglect, or exploitation and did not have to justify their reasons for overturning APS' investigatory findings.
 - ▮ In fiscal year 1995, MHMR facility superintendents overturned an average of 19 percent of PRS' confirmations of abuse or neglect. This represents 167 cases in which PRS

Before December 1995, the head of an MHMR facility or community center could overturn PRS findings, without justification or oversight.

SENATE EXAMINES PRS INVESTIGATIONS IN MENTAL HEALTH FACILITIES

Recently, the Department of Protective and Regulatory Services (PRS) and the quality of its investigations of abuse and neglect within Mental Health and Mental Retardation (MHMR) facilities and community centers have come under the close scrutiny of the Texas Legislature. Concerns about increasing investigations, decreasing confirmation rates, and a considerable backlog in the completion of cases resulted in a public hearing of the Senate Committee on Health and Human Services on February 9, 1996. The Committee found problems in both the PRS and MHMR systems in regards to abuse and neglect investigations in MHMR facilities and community centers. The agencies, together with the Committee, are currently working on identifying, analyzing, and resolving these problems.

Adult Protective Services (APS), a division of PRS, is responsible for investigating abuse, neglect, and exploitation not only in the community, but also in MHMR facilities and community centers. APS received the responsibility for investigations in MHMR facilities in 1991. Previously, an MHMR facility employee or a committee of MHMR employees under the supervision of the facility superintendent conducted these investigations. This investigation process was seen as a potential conflict of interest and, in response to the settlement in the Lelsz lawsuit, PRS received the responsibility for these investigations. In 1995, the Legislature transferred the responsibility for investigations of abuse and neglect of persons receiving services through MHMR community centers to PRS as well.

Since the investigatory functions in MHMR facilities and community centers were transferred, PRS has been criticized by MHMR and Advocacy, Inc. for the timeliness and quality of investigations within these facilities. Both MHMR and Advocacy, Inc. have expressed concern over the amount of time the investigations take to complete, the number of cases that exceed the 14-day completion time frame, and the quality of the investigations.

These same concerns were expressed in a series of articles in the *Austin American-Statesman* in January. The article, "Mental Health Abuse Reports Leap," referred to problems with PRS' investigation of client abuse and neglect at MHMR facilities and community

centers, including increasing allegations and fewer confirmed cases, as well as, an alleged backlog of cases open past the 14-day completion time frame in MHMR facilities. In response to this article, Lt. Governor Bullock charged the Senate Committee on Health and Human Services to look into the procedures of facility investigations performed by PRS.

In response to the Senate committee inquiry, PRS is coordinating with MHMR, Department of Human Services (DHS), and the Office of the Attorney General (OAG) as well as other affected agencies and interest groups to identify and address a number of issues related to investigations within MHMR facilities. These issues include data integrity, quality of investigations, and improvements to the investigation process.

PRS has developed a detailed work plan to address each of these issues, as well as other areas the Senate committee regards as necessary, and has taken the following steps to address the problems with abuse and neglect investigations in MHMR facilities:

- The backlog of cases that had exceeded the 14-day time frame has been reduced from 413 cases to zero.
- PRS and MHMR have agreed to develop and rely on a single data base for statistics concerning facility and community MHMR center investigations, thus allowing data from both agencies — such as total cases reported, confirmation rates, and compliance with key performance standards — to be compared over time.
- PRS, MHMR, DHS, TDH, and Advocacy, Inc. are working together to develop a common data base for mentally retarded persons and persons being treated for mental illness.
- PRS, OAG, and law enforcement are working together on an analysis of the facility and community center investigation process.

- ▶ As of February 12, 1996, data concerning the number and classifications of abuse, neglect, and exploitation investigations in MHMR facilities and community centers from both the PRS and MHMR management information systems had been reconciled.¹² Also, with the implementation of the Child and Adult Protective Services System (CAPS) for APS, PRS and MHMR will rely on a single data base for statistics concerning facility and community MHMR center investigations.¹³

Conclusion

PRS has the responsibility for investigating allegations of abuse, neglect, and exploitation in MHMR facilities and community centers.

Investigations have exceeded required time frames and required additional resources from PRS and other agencies to reduce backlogs. PRS' inability to meet these demands has raised questions about the quality of the investigations, especially when performance has been difficult to measure. PRS and MHMR have taken steps to improve the investigation process. Additional changes would ensure that elderly and disabled clients in MHMR facilities and community MHMR centers receive the highest protection available.

Recommendation

Changes in Statute

- Authorize PRS, through rules, to prioritize investigations of incidents of abuse, neglect, or exploitation in MHMR facilities and community centers.

Allowing APS to prioritize investigations would ensure that those persons most seriously abused or neglected would receive the highest priority and be protected immediately. Prioritizing would ensure consistency throughout the intake and investigation processes not only between APS and CPS, but also with other health and human service agencies that perform facility investigations.

Requiring PRS to adopt the priority system through the rulemaking process would ensure that the system developed is responsive to the concerns of MHMR, advocacy groups, and clients and their families. PRS would have the flexibility to set up this priority system and is currently exploring several different options with representatives from the Legislature and advocacy groups.

- **Require PRS and MHMR to develop and implement a common system of tracking investigations of client abuse, neglect, and exploitation and classifying the results of the investigations.**

PRS and MHMR have agreed to use a single database for reporting incidents, the Child and Adult Protective System (CAPS) as of June 1, 1996, and are currently developing this system. The statute should ensure that this coordination takes place and continues in the future. This recommendation would ensure that the agencies continue to use comparable data to measure the outcome of investigating abuse, neglect, and exploitation within MHMR facilities and community centers. This recommendation would also ensure that PRS and MHMR maintain consistent data over time.

- **Allow only MHMR's state office, not local MHMR superintendents and community center directors, to overturn PRS' investigative findings for cause in MHMR facilities and community centers. Require MHMR to report to PRS when the Department's investigatory findings are overturned and the reasons for the decision.**

This recommendation formalizes MHMR's recently adopted policy of allowing PRS' findings to be overturned only by the state MHMR office, not by facility superintendents or community center directors.

Management Action

- **PRS should enhance training of its MHMR investigators to ensure good quality investigations.**

The agency should make training of its MHMR investigators a priority, especially in the areas of interview protocol and investigative report writing. PRS may call upon other state agencies that do facility or civil investigations for advice in developing and maintaining an effective, on-going training program, including the Department of Human Services, the Department of Health, and the Office of the Attorney General. Further, the Department should accept the offers MHMR advocacy and support groups have made to assist PRS with training.

Fiscal Impact

Improving investigations in MHMR facilities and community centers would not result in a fiscal impact to the state. These recommended changes will strengthen the PRS investigative process already in place and can be accomplished with existing staff and resources.

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- ¹ Texas Department of Protective and Regulatory Services, Adult Protective Services, Program Briefing for Sunset Commission, October 1995 (I-2).
 - ² Texas Administrative Code, Chapter 710, Subchapter A & B
 - ³ Human Resources Code, Chapter 303, § 14 (f).
 - ⁴ PRS and MHMR, Report to the Senate Committee on Health and Human Services, February 23, 1996.
 - ⁵ PRS Board work session, January 25, 1996
 - ⁶ PRS and MHMR, Report to the Senate Committee on Health and Human Services, February 16, 1996.
 - ⁷ Gamino, Denise “Stepped-up efforts yield 2 state hospital arrests”. *Austin American-Statesman*. March 8, 1996.
 - ⁸ PRS and MHMR, Report to the Senate Committee on Health and Human Services, March 1, 1996
 - ⁹ Meeting with Advocacy, Inc. January 24, 1996.
 - ¹⁰ PRS and MHMR Report to the Senate Committee on Health and Human Services. February 16, 1996.
 - ¹¹ Ibid.
 - ¹² Ibid.
 - ¹³ Ibid. February 23, 1996.

Issue 8



Require PRS to Better Coordinate Protective Services with Mexican Authorities.

Background

State and local protective service agencies in Texas and Mexico face mutual challenges in dealing with cases of overlapping responsibility in cities along the Texas-Mexico border. These agencies could benefit by cooperating with each other in providing services to abused or neglected children or elderly persons who have ties on both sides of the border. Activities in which Texas and Mexican protective service workers need to collaborate include investigating allegations of abuse or neglect, locating absent parents, obtaining records, and placing clients with relatives in the other country.

PRS' counterpart in Mexico is the National Organization for the Integral Development of the Family (DIF), which provides social and protective services to families, children, elderly persons, and persons with disabilities. DIF operates primarily through municipal child welfare programs.

Six twin cities straddle the Texas-Mexico border: El Paso-Ciudad (Cd.) Juárez; Del Rio-Cd. Acuña; Eagle Pass-Piedras Negras; Laredo-Nuevo Laredo; McAllen-Reynosa; and Brownsville-Matamoros. Both PRS and DIF handle cases in these cities that may fall into one of the following categories:

- the parents and their child are documented or undocumented aliens living in the other country;
- the parents are citizens of Mexico but their child is a citizen of the U.S. or vice versa;
- the elderly person is a documented or undocumented alien living in the United States; or
- the child or elderly person is a citizen of one country but has relatives who are willing to care for him or her in the other country.

Texas and Mexico face mutual challenges in dealing with child and adult abuse and neglect cases along the border.

For example, in a typical child protective services (CPS) case, PRS may take custody of an abandoned child and begin providing services, including foster care. The PRS caseworker may need help from Mexican authorities locating the parents, obtaining a birth certificate and medical records on the child, and finding a suitable placement, preferably in Mexico, if the child has relatives there.

PRS needs help in Mexico tracking absent parents, obtaining records, and placing children with relatives across the border.

PRS does not track the number of child protective services cases involving documented or undocumented aliens or the amount of money the Department spent on them. Individual regional offices along the border, however, report investigating a total of about 170-200 such cases a year, including activities DIF performs for PRS in Mexico.¹ In a survey for fiscal year 1993, PRS found 105 undocumented Mexican children were in foster care in Texas.²

Adult protective services (APS) may investigate an elderly Mexican citizen reported to be neglecting himself and provide services. The elderly person has no relatives in the U.S. who are willing to care for him, so the APS worker must locate relatives in Mexico and arrange for the client to return to his native country. APS also provides services to undocumented Mexican workers who enter the country illegally and sustain disabling accidents.

PRS does compile statewide caseload figures for adult protective services. In fiscal year 1995, APS investigated 680 cases involving Mexican citizens; provided services after investigation to 497 aliens; and provided guardianship to one such client. PRS reports having spent \$101,320 investigating these cases (\$149 per case) and \$73,603 purchasing services for Mexican elderly or disabled citizens.³

The Sunset review focused on the unique problems related to providing child and adult protective services along the border with Mexico.

Findings

- ▼ **Texas and Mexico have attempted to establish local collaborative agreements in the past.**
 - ▶ In conjunction with a 1986 symposium sponsored by the University of Texas on human services in the United States and Mexico, Governor Mark White and the head of Mexico's federal health department, which oversees DIF, signed an agreement encouraging human services agencies and their local programs on both sides of the border to collaborate in

▼ **Cooperating with Mexican officials has been beneficial.**

- ▶ The experience of PRS' El Paso CPS office shows that cooperation with Mexican officials can pay off. By returning 151 children in its custody to permanent homes in Mexico, the El Paso CPS office saved the state about \$1.6 million in foster care costs from 1988 to 1992.⁷
- ▶ In one case, the parents of a 14-year old mentally retarded girl from Cd. Juárez abandoned her in El Paso. The state paid \$300 a day to take care of the girl's special needs. Because a written protocol was in place, Mexican officials activated a pre-established network of services, reunited the child with her parents in Cd. Juárez and provided services to her and her family. Had the girl remained in PRS' custody, the state would have paid \$109,500 per year for her care.⁸
- ▶ PRS serves the best interests of Mexican children abandoned by or taken away from abusive parents in Texas by working with Mexican officials to place them with relatives or close family friends in Mexico.
- ▶ The El Paso CPS' office cooperation agreement with Mexican officials provided the following benefits while it was being performed:
 - Four-to-one favorable caseload exchange: Under the agreement, Mexico's DIF would help CPS in four cases for every one with which CPS helped DIF.
 - Diligent search efforts: Child welfare workers in Ciudad Juárez helped CPS locate parents and relatives in Mexico to prevent placing children in Texas foster care.
 - Home studies: Required for foster or adoptive placements, home studies were jointly prepared by CPS and DIF.
 - Obtaining witnesses: To obtain needed information regarding a child in the state's custody, the border agreement allowed CPS and DIF to bring witnesses from Mexico into Texas.

The El Paso service region estimates that it saved about \$1.6 million between 1988-1992 because of the written agreement with Mexico.

▼ **The Texas Juvenile Probation Commission (TJPC) has successfully established cooperative agreements with its Mexican counterparts in four border counties.**

- ▶ Beginning with a study in 1982, TJPC's Border Children Justice Project established uniformity in policies and procedures applied by Texas and Mexican states in the handling of juvenile offenders in Cameron, El Paso, Val Verde, and Webb counties.

The program coordinates the return of Mexican and American juvenile offenders to their native communities across the border. Participants in the border project include the U.S. and Mexican consulates, border patrols, law enforcement officials, juvenile courts, correctional officials, and child protective agencies.

- ▶ In Val Verde County, the local TJPC border liaison also works with PRS' regional CPS office to coordinate the return of abandoned Mexican children to relatives on the other side of the border and to facilitate investigations, home studies, and record retrieval in Mexico.⁹

TJPC has established successful agreements with Mexican border states.

Conclusion

Texas and Mexico have joint problems that warrant shared solutions in addressing social problems along the border. The agreement between the El Paso and Cd. Juárez child welfare offices illustrates the potential advantages of creating liaison relationships between border communities to cooperatively provide protective services. Unfortunately, the El Paso-Cd. Juárez agreement has lapsed and PRS offices in other border cities have never executed written agreements. PRS' state office has not vigorously supported efforts to improve coordination of services with human service agencies and other authorities in Mexican border cities. The lack of an agency-wide policy for handling cases involving aliens or requiring action in Mexico has resulted in inconsistent local practices and fragile working relationships in Mexico, which often do not survive changes in political administrations. The Department should address the unique circumstances faced by its regional offices along the border.

PRS should take steps to improve its working relationships with Mexican counterparts.

Recommendation

Change in Statute

- PRS should coordinate and enter into agreements, where appropriate, with Mexican authorities to ensure the delivery of child and adult protective services along the border.

This recommendation would require PRS to address the unique circumstances of providing protective services along the Texas-Mexico border. After studying the problems its child and adult protective programs face in serving clients of foreign citizenship or in a foreign country, PRS would be required to develop effective methods for working with Mexican authorities in the twin border cities of Texas and Mexico.

Fiscal Impact

Conducting the study on improving coordination will not have a fiscal impact. PRS has indicated it can study the border issues using existing resources.

¹ PRS regional offices El Paso, Del Rio, Brownsville, and Harlingen, April 1996.

² Information supplied by PRS state office, March 28 and April 3, 1996.

³ Information supplied by PRS state office, April 3, 1996.

⁴ Torre, Luis. Border Liaison, PRS El Paso CPS office, April 1996.

⁵ Gonzalez, Julio. CPS Specialist, PRS El Paso CPS office, April 1996.

⁶ Ibid.

⁷ Daigle, Lesley. *Child Welfare Services Along the U.S.-Mexico Border: Efforts in Bi-National Cooperation*. LBJ School of Public Affairs, 1994. The estimated savings are based on an average total foster-care cost of \$10,700 per child for 18.6 months, which was the average length of stay in foster care from 1988 to 1992.

⁸ Torre, Luis. Border Liaison, PRS El Paso CPS office, 1992.

⁹ Lara, Carlos. JPC/PRS Border Liaison, Del Rio. April 1996.

Issue 9



Clarify that the Counties Shall Represent the Department in Child Abuse and Neglect Cases.

Background

PRS is involved in legal proceedings throughout the state. Most cases involve removing abused or neglected children from their homes. These cases are held in the child’s county of residence.

Whenever PRS removes a child from the home, the Department must go to court to file suit under Title 5 of the Texas Family Code.¹ Four types of hearings are included under Title 5: ex parte hearings, adversarial hearings, status hearings, and termination hearings. These hearings are very time consuming and require many court appearances.

Once a PRS caseworker removes a child from the home for the protection of the child, an ex parte hearing - a hearing brought for the benefit of the Department, at which the parents are not present - must be held to get the court’s approval for the removal.² Following the ex parte hearing is an adversary hearing held within 14 days of the removal to provide the parents an opportunity to appear before the court and contest the removal if they so wish.³ After the ex parte and adversarial hearings, a status hearing must be held within 60 days of the adversary hearing⁴ to review the service plan developed by the Department detailing how it intends to provide services to the child and family.⁵ Subsequent review hearings are held every six months thereafter to review the progress of the parents and child under the service plan.⁶ Finally, if the court does not return the child to his/her family, the case may culminate in a final hearing or jury trial for termination of parental rights.⁷

The statute governing removal of a child has created confusion over who is responsible for representing PRS in these hearings. Provisions in Section 264.009 of the Family Code specify that either “the prosecuting attorney who represents the state in criminal cases in the district

Hearings Required Under Title 5, Texas Family Code				
Removal	Ex parte Hearing*	Adversary Hearing	Status Hearing	Review Hearing**
	1 day	14 days	60 days	6 months

*This hearing can be held either before or after a child is removed.

**After the initial review hearing, subsequent hearings are held every six months.

or county court of the county where the action is brought or the attorney general” will represent PRS in actions under Title 5 of the Family Code. In some counties, however, both the county attorney and the district attorney represent the state in criminal matters, thus either could represent PRS under this provision. The ambiguous language of this provision has caused problems for the Department in obtaining legal representation in some counties because it does not specifically identify one entity to be responsible for child protection cases.

The Sunset review focused on the legal process involved in removing a child from his/her home, the language of the statute, and the difficulty the Department experiences in obtaining legal representation in certain areas of the state for child protection cases.

Findings

- ▼ **The statute fails to identify one entity responsible for child abuse and neglect cases in the counties.**
 - ▶ The statute identifies three different entities who could potentially represent PRS in child abuse and neglect cases: the local county attorney, the local district attorney, and the state attorney general.
 - ▶ No hierarchy or order of preference is established between the three. The statute does not give the county attorney, the district attorney, or the Attorney General sole or primary responsibility for child abuse and neglect cases.
- ▼ **The lack of clarity in the statute has led several county and district attorneys to decline to provide legal representation to PRS in child abuse and neglect cases.**
 - ▶ PRS has taken over legal representation of child abuse and neglect cases in 58 counties because local entities have refused to do so, based on the statutory ambiguity.⁸
 - ▶ Some counties have both a county attorney and a district attorney, both of whom prosecute criminal cases for the state in the district or county court. In some counties, neither entity has taken child protection cases for PRS because each claims the other can or should take the case.⁹
 - ▶ Even if the county has only one entity responsible for representing the state in criminal cases (i.e. either a county

Some local prosecutors have refused to represent PRS in legal proceedings related to child abuse cases.

attorney or a district attorney), some county officials have used the language in the statute naming the Attorney General as the responsible entity to justify not taking these cases.¹⁰

▼ **Because county and district attorneys have not provided representation, PRS has been forced to represent itself in 58 counties.**

- ▶ The Department currently does not have statutory authority to represent itself in these cases. The statute identifies only the local prosecuting attorney or the Attorney General as the entities responsible.
- ▶ In August 1995, the Department requested authorization from the Attorney General to deputize the PRS regional attorneys so they could represent the Department in child abuse and protection cases. The deputization covers all PRS regional attorneys in 58 named counties where PRS has no prosecutorial representation.
- ▶ PRS attorneys have taken over representing the Department in these cases because local prosecutors have refused to represent the Department. The time required to provide this representation takes away from the time these attorneys could devote to their other job duties, such as representing the Department in administrative hearings, providing legal counsel to staff, and reviewing contracts.

Counties in which PRS has assumed legal representation of child protection cases*		
Archer	Guadalupe	Montague
Atascosa	Hardeman	Nolan
Bandera	Haskell	Pecos
Baylor	Howard	Presidio
Brewster	Hudspeth	Real
Callahan	Jack	Runnels
Clay	Jeff Davis	Scurry
Coleman	Jones	Shackelford
Comanche	Karnes	Stephens
Cottle	Kendall	Stonewall
Crane	Kent	Tom Green
Culberson	Kerr	Upton
Dimmit	Kinney	Val Verde
Eastland	Knox	Ward
Edwards	La Salle	Wilbarger
Fisher	Leon	Wilson
Foard	Martin	Young
Frio	Maverick	Zavala
Gaines	Medina	
Gillespie	Mitchell	

*as of 4/16/96

▼ **Both the Texas Constitution and prior law require local prosecutors to represent the state in child protection cases.**

- ▶ Article 5, Section 21 of the Texas Constitution provides that “the county attorney shall represent the State in all cases in the District and inferior courts in their respective counties,” and that if a county has both a county attorney and a district attorney, the Legislature shall determine the respective duties of each.¹¹
- ▶ District or county attorneys have been responsible for representing PRS under current statutory language since 1977. Before 1977, representation was not addressed in statute for four years because a provision in the civil statutes was inadvertently dropped when Title 2 of the Family Code was

Local prosecutors have historically represented the state in child protection cases.

enacted in 1973. The earlier provision provided that the court could call on the county attorney to support a petition filed on behalf of a dependent and neglected child.¹²

- ▼ **In addition, the Attorney General does not have adequate resources located in the counties to represent PRS in child abuse or neglect cases.**
 - ▶ The Attorney General has rarely represented PRS in child abuse and neglect cases. Because these cases involve frequent local court appearances, the attorney representing PRS in these cases should be located in or in close proximity to the county where the cases will be heard. The Attorney General does not have the necessary staff in the regions to handle these cases. Likewise, regional child support offices of the Attorney General are not equipped, funded, or staffed to provide such representation for the Department.
 - ▶ The Attorney General does have a Termination Project that consists of two attorneys, funded by PRS, who handle some cases in which the Department wants to file for termination of parental rights. The approach used in this project is not feasible in most child abuse or neglect cases because of funding constraints.

- ▼ **Many local attorneys have cited inadequate resources, the volatile nature of these cases, or potential conflicts of interest as reasons for not taking child abuse and neglect cases for the Department.**
 - ▶ The Department has found that more and more prosecuting attorneys are threatening to or actually withdrawing from representing the Department in child abuse and neglect cases because of a lack of resources. These cases require many court appearances, operate under the Family Code, and involve complex civil procedures, an area of the law with which many attorneys used to practicing in the criminal courts may be unfamiliar.
 - ▶ Local attorneys may be uncomfortable with the emotional and volatile nature of these cases and may not want to be involved. They may also be uncomfortable with the Department's recommended action, such as termination of parental rights. However, the issues in these cases are often no less volatile

More and more, local prosecuting attorneys, citing resource pressures, are withdrawing from representing the Department in local cases.

than those involved in criminal prosecution of child abuse cases.

- ▶ Many county or district attorneys in smaller counties may be familiar with the parties involved and may have a conflict of interest in representing the Department because of a previous attorney-client relationship in the attorney's private practice, particularly if the attorney has previously represented a party in a divorce or other family law matter.
- ▼ **To address resource concerns and lack of funding to handle child protection cases, federal funds are available to allow county and district attorneys to be reimbursed for providing representation to PRS in child abuse and neglect cases.**
- ▶ PRS has provided some counties with information about a federal program to reimburse counties for their legal costs incurred in representing the Department. To draw down these federal funds (Title IV-E), the counties apply through PRS, the state agency responsible for administering these federal funds.
 - ▶ Four counties have received federal funds to date: Harris County has received \$116,741; Dallas County has received \$17,750; Smith County has received \$2,798; and Upshur County has received \$187. Thirteen other counties have approved cost allocation plans, which could be submitted to seek reimbursement.
- ▼ **For PRS to protect children who have been abused and to move children towards a permanent placement, the Department must have timely and competent legal representation.**
- ▶ The nature of child abuse and neglect cases necessitates immediate and frequent court appearances. Once a child has been determined to be at risk of abuse and neglect, removal must take place immediately and court approval for this action is necessary either before or immediately after removal. Many subsequent hearings are required to check on the status of the child and the parents and approve service plans submitted by the Department.
 - ▶ The Department must work towards developing a permanent plan for the child. If the Department has determined that termination of parental rights is in the child's best interest,

To adequately protect abused children, PRS must have good legal representation.

County and district attorneys, when necessary, should be required to represent PRS in local child abuse and neglect cases.

another court hearing will be necessary. If the Department cannot secure legal representation for these actions, the case will not be heard or decided, and the child will languish in foster care.

- ▶ The longer it takes PRS to move a child through the system, the higher the costs to the state to provide foster care. Keeping children in state care longer than necessary uses resources that PRS could use to serve children in emergency situations.

Conclusion

The Legislature has clearly expressed its intent to protect children from abuse and neglect. Because the courts oversee every action of the Department once a child is removed, PRS must receive timely legal representation in court to serve the best interests of the child. While some counties have accepted the responsibility for representing PRS, others have abdicated their responsibility, relying on ambiguous language in the statute.

The burden of representing the Department in child abuse and neglect cases is not a new one for the county prosecutor. Before 1973, the county attorney could be called on by the court to represent the Department in child abuse and neglect cases. To correct an inadvertent repeal of this provision, the Legislature, in 1977, established the current policy requiring the county attorney, district attorney, or the Attorney General to represent PRS. For PRS to be able to fulfill its mission of protecting children from abuse and neglect, someone must shepherd these cases through the court system in a timely manner.

Recommendation

Changes in Statute

- Require the county attorney to represent the Department in child abuse and neglect cases, except where that office has been abolished or where the district attorney has already assumed responsibility.
- Remove the Attorney General's responsibility for legal representation of the Department.

■ **Require the Attorney General to continue to provide assistance to the counties and PRS in termination cases.**

The Department must be properly and timely represented in court when child abuse occurs. To achieve this goal, the recommendation will continue the practice of having a local prosecutor, familiar with the local court system, represent PRS in child abuse or neglect cases. The county attorney will be solely responsible for these cases unless such an office no longer exists or the district attorney has already assumed responsibility and is currently representing the Department in child protection cases. To help alleviate costs of these services, PRS must assist counties in seeking federal funding for reimbursement of costs incurred.

This recommendation will not change existing practice. The Attorney General has never represented PRS in cases of child abuse and neglect. Assistance with termination cases through the Termination Project is already directly funded by PRS and should continue. Removing the Attorney General's responsibility for these cases will eliminate confusion.

Fiscal Impact

PRS would achieve cost reductions in the amount of about \$550,000 per year as a result of this recommendation. The estimated cost reductions would be achieved by eliminating the costs for providing legal representation in counties where county and district attorneys do not. The estimated savings include regional attorney and legal staff time, travel costs, and other costs associated with providing legal representation and has been adjusted for transition costs and on-going Department assistance. All savings would be reallocated within PRS for client services.

Fiscal Year	Total Savings to be Reallocated within the PRS
1998	\$550,000
1999	\$550,000
2000	\$550,000
2001	\$550,000
2002	\$550,000

¹ Tex. Fam. Code, § 262.001.

² Tex. Fam. Code, § 262.106.

³ Tex. Fam. Code, § 262.201.

⁴ Tex. Fam. Code, § 263.201.

⁵ Tex. Fam. Code, § 263.102.

⁶ Tex. Fam. Code, §§ 263.304-263.305.

⁷ Tex. Fam. Code § 161.001.

⁸ Letter from DPRS General Counsel to Attorney General requesting deputization for PRS attorneys to provide representation, August 1995.

⁹ One previous example was Wise County, as detailed in the *Wise County Messenger*, August 27, 1995.

¹⁰ Ibid.

¹¹ Tex. Const., art. 5, §21.

¹² Tex. Rev. Civ. Stat. Ann. Art. 2333 (repealed 1973).

Issue 10



Require PRS to Develop an Outreach Program to Assist Counties in Accessing Federal Funds.

Background

The Department of Protective and Regulatory Services (PRS) uses two programs, the County Reimbursement Program and the County Contribution Program, to assist counties in obtaining federal funds for services related to foster children.

The County Reimbursement Program allows participating counties to draw down federal funds to offset county expenditures on services provided to eligible foster children. The federal dollars available to counties for the County Reimbursement Program come out of funds allocated through Title IV-E (Foster Care Maintenance, Adoption Assistance, and Independent Living). The amount of reimbursement depends on the type of county expenditure and is supplemental to any foster care payments made directly by PRS. Examples of county expenditures that qualify for federal reimbursement are direct delivery/staff-provided services, training, and incidental costs for child care such as clothing, school supplies, and transportation costs related to parental visitations.

Additionally, beginning in February 1994, the federal government allowed the County Reimbursement Program to be used by county/district attorneys to offset the costs of representing eligible foster care children.

The county submits expenditure reports to PRS for processing with reimbursement to the county based on the program's match rate. The amount of federal reimbursement depends on the type of service provided, with matching rates ranging from 50-75 percent.

The second program, the County Contribution Program, allows participating counties to use federal dollars to fund additional staff and pay for associated administrative services. The federal money available to counties for the County Contribution Program is drawn from a combination of federal funding sources—Title IV-E, Title IV-A (Emergency Assistance), and Title XIX (Medicaid).

Two federal programs are available to provide funds to counties.

The County Contribution Program differs from the County Reimbursement Program in that the county agrees to spend a certain dollar amount which is used as a match for federal dollars—increasing the total dollars available to pay for staff/services. Each county choosing to participate submits a plan to PRS outlining the staff/services they wish to purchase. The County Contribution Plan uses match rates—much like Medicaid—to determine the amount of federal dollars coming back to the county. The current federal financial participation rate is 57 percent state and 43 percent federal.

For example, a county contributes \$10,000 to PRS. PRS, in turn, uses the \$10,000 as a match to receive additional federal dollars. This process results in the county receiving approximately \$17,500 for staff/services—for each 57 cents the county spends, it receives \$1 in services. This plan does not allow for a direct cash reimbursement to the county and requires all federal dollars to flow through PRS to the county.

PRS is responsible for assisting counties in accessing available federal funds.

Both programs are available to any county operating a child welfare board or to the county/district attorney responsible for representing foster children. Federal guidelines mandate that each entity negotiate a contract with PRS outlining its participation in a specific program.

The Sunset review focused on whether PRS adequately informs counties that federal funds are available to them, encourages counties to participate in programs that defray county costs or increase dollars for service delivery, and provides the necessary technical assistance to counties participating in the two federal programs.

Findings

- ▼ **As the state entity responsible for securing federal funds, PRS has the duty to assist counties in drawing down federal dollars to increase the level of services in Texas.**
 - ▶ Both the County Reimbursement and County Contribution Program are administered by PRS. PRS is the official contact for these programs and has an obligation to share this information with counties.
- ▼ **PRS has not developed a statewide program to provide information to and assist counties in accessing federal funds.**
 - ▶ No standardized, statewide program exists to help counties get federal funds. Counties rely on PRS to provide them with

information concerning funding for services. Currently, by PRS policy, regional directors are responsible for developing a program to provide information to counties about available federal funds. Each regional director decides on the method for contacting and assisting counties within their respective regions. This method does not ensure that consistent information is provided to the counties.

- ▶ In a Sunset staff phone survey, selected non-participating counties were contacted to determine their knowledge of the federal programs and funds available to them. Several counties did not know that the federal programs even existed. For example, the Austin/Travis County Health and Human Services Department, housing the county child protective services, had no knowledge of the County Reimbursement Program or the County Contribution Program and had not received information concerning federal funds from PRS in the last six months.¹ Because PRS regional staff in Travis County had no knowledge about available federal programs, they were unable to provide the county with any information or assistance.

In PRS Region 4, which covers Northeast Texas, the regional director has developed a very aggressive program for providing counties with information concerning the availability of additional federal dollars. Almost 50 percent of the counties in Region 4 participate in the Cost Reimbursement Program. Four of the participating counties receive federal dollars for both welfare services and legal costs. Region 4 counties represent almost half of the total counties participating in federal programs statewide.

- ▶ The information services provided to counties by PRS are currently controlled by PRS policy. Policies can change and can be influenced by budget constraints. Placing requirements in statute would ensure information efforts remain a priority for PRS.

▼ **In fiscal year 1995, only 12 percent of qualifying counties participated in the County Reimbursement Program.**

- ▶ All counties with a county child welfare board are eligible to participate in the County Reimbursement Program, which has been available since January 1993. In fiscal year 1995, only

PRS has no coordinated, statewide program to assist counties in accessing federal funds.

Only 12 percent of qualifying counties participated in the County Reimbursement Program. Only three percent of counties participated in the County Contribution Program.

Conclusion

PRS, as the state agency responsible for providing services to foster children, has the duty to maximize all available resources for the benefit of its clients. As state resources become more scarce, PRS should look for alternative sources of revenue, particularly through federal initiatives, to fund services for children.

The two existing county programs—the County Reimbursement Program and the County Contribution Program—provide counties with avenues for additional resources for serving eligible foster children. All counties with child welfare boards are eligible to participate in the two federal programs, yet only 12 percent are participating in the Reimbursement Program, and three percent in the Contribution Program.

PRS has not made an adequate effort to develop a standardized, statewide program to educate counties on the federal programs available to them, as evidenced by the low participation rate of counties in both programs. PRS has the responsibility to make sure that information provided to counties is timely, consistent, and available to all counties, regardless of their decision to participate.

Educating counties on the availability of federal programs is the key to increasing participation. As evidenced in PRS Region 4, an aggressive, structured approach to getting counties to participate has yielded almost 50 percent participation and represents almost half of the total participating counties in the state. PRS needs to adopt this approach statewide.

Counties in regions that have provided information and assistance have been successful in securing federal funds.

Recommendation

Change in Statute

- **Require PRS to develop a standardized outreach program to provide counties with information and technical assistance on all federal funding resources available to them.**

This recommendation would require PRS to develop a standardized, statewide process to provide information and technical assistance to counties related to federal assistance programs.

The assistance program should include the designation of contacts at the county level and within PRS. A statewide coordinator should be designated in the central office to work with the federal programs and personnel in each region and to develop methods for

educating counties. PRS should also develop a data base containing key personnel in counties, type of assistance provided, and the date contacted.

PRS should work with the LBB to ensure that federal funds going directly to the counties are identified and noted. Counting federal funds provided to the counties as PRS funds could inappropriately inflate PRS receipts and result in a reduction in state funding. If this were to happen, these new federal funds accrued by the counties would not enhance PRS services, but would reduce PRS resources.

Fiscal Impact

Improving outreach to counties would not result in any fiscal impact to the state; however, significant federal dollars could be made available to participating counties in the form of reimbursed dollars or enhanced services. The amount of federal funds that counties could receive cannot be determined as the participation rate for counties and funds spent cannot be estimated.

Historical data on counties participating in the County Reimbursement Program indicate that qualifying county expenditures can be reimbursed with federal dollars at rates of 50 to 75 percent. Participating counties received almost \$1 million in reimbursement in fiscal year 1995. Counties that participate in the County Contribution Program are receiving \$1 dollar worth of services for each 57 cents of county expenditure and received an additional \$1.4 million in staff/services for fiscal year 1995.

¹ Phone interview, Dennis Campa, Community Services Division Director, Austin/Travis County Health and Human Services Department, March 21, 1996.

Issue 11



Increase Revenue by Improving Cost Recovery in the Child Care Licensing Program.

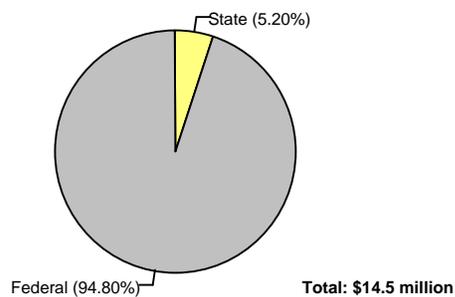
Background

The child care licensing program (CCL) at PRS is responsible for regulating facilities that care for children in a variety of settings: day care centers, family day homes, and other day care programs; and residential child care facilities. To ensure children are cared for in safe and healthy environments, CCL performs the following regulatory functions:

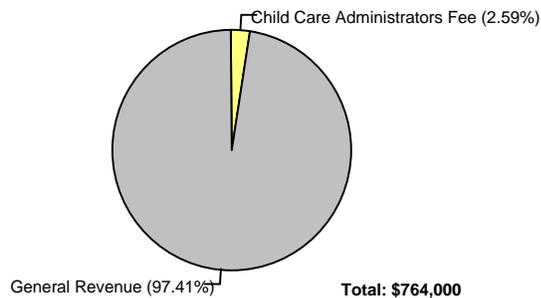
- licenses, registers, and monitors day care centers, family day care homes (registered family homes), and other day care programs;
- licenses and monitors residential child care facilities, which care for, supervise, and treat children on a 24-hour basis;
- licenses and monitors child placing agencies, which place children in foster care and provide adoption services;
- licenses administrators of residential child care facilities;
- conducts criminal history checks on persons who apply to child care facilities for employment; and
- investigates complaints of abuse and neglect and other serious incidents in licensed and registered facilities and those subject to regulation.

In fiscal year 1996, PRS has budgeted \$14.5 million to regulate child care personnel and facilities.

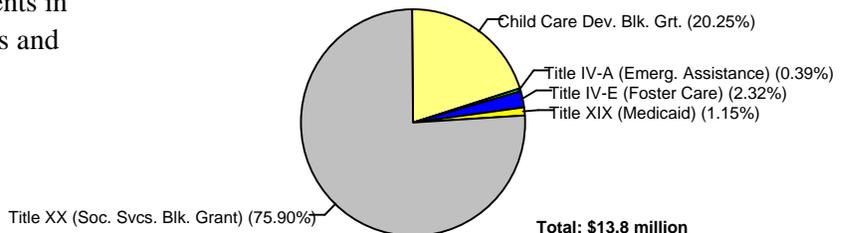
**CCL Funding Sources
Fiscal Year 1996**



**State Funds Breakdown
Fiscal Year 1996**



**Federal Funds Breakdown
Fiscal Year 1996**



Federal funds accounted for \$13.8 million, or 94.8 percent, state general revenue made up \$744,000, or 5.2 percent, and the remaining \$20,000 came from the administrators fee collected.

PRS collects two primary types of fees, those for licensed and registered facilities and those for licensed administrators. The statute treats administration of these fees differently. The specific fee for each category of licensed facility is set in statute and the Board has no authority to change the fee amount. Revenue generated from these fees is deposited in the state's General Revenue Fund.

In contrast, the Board has the authority to and sets the fee for the administrators license at an amount that recovers the cost of administering the license. The agency retains the revenue collected from this fee. The following table details the current fee structure and number of licensees and revenue for fiscal year 1995:

Fees for facilities are set in statute and cannot be adjusted by the PRS Board to recover regulatory costs.

Description	Current Fee	Number	Revenue
Registered Family Homes			
Request to Register	\$35	2,517	\$88,095
Annual Fee	\$35	12,066	\$422,310
Licensed Facilities			
Application Fee	\$35	2,263	\$79,205
Provisional Licensing Fee			
- Child Care Facility	\$35	1,388	\$48,580
- Child Placing Agency	\$50	1	\$50
Annual License Fee			
- Child Care Facility	\$35+\$1 per child	8,597	\$928,514
- Child Placing Agency	\$100	77	\$7,700
Capacity Amendment	\$1 per child	451	\$10,585
Child Care Administrators License			
Examination Fee	\$25	301	\$7,525
Initial Licensing Fee	\$50	140	\$7,000
Renewal Fee	\$50	578	\$28,900
TOTAL			\$1,628,464

Current state policy regarding regulation reflects a goal that fees paid by a regulated industry should cover the costs of regulating that industry. Meeting this goal requires that state agencies have a flexible fee policy that allows regulatory costs to be covered by fee revenues. The Sunset review focused on the ability of the Department to recover the costs of

regulating the day care and residential care industry, as well as the effect of fee revenues on the level of services provided and caseloads.

Findings

▼ **Fees currently paid by the child care and residential treatment businesses cover only 11 percent of the cost of regulation.**

- ▶ In fiscal year 1996, PRS budgeted about \$14.5 million to regulate the child care and residential care industries. During fiscal year 1995, the agency collected about \$1.6 million in fees from regulated entities. This fee revenue represents about 11 percent of the total operating cost of the program.

▼ **Most regulatory agencies set fees at a level to cover the costs of regulatory activities.**

- ▶ The current trend in regulatory programs is to allow the boards and commissions of regulatory agencies to set the fee levels to cover the cost of administering their programs.
- ▶ For example, the Texas Department of Health is directed to set license fees to cover the costs of administering most of its regulatory activities, including hospitals, convalescent and nursing homes, and chemical dependency treatment facilities. In addition, professionals such as doctors, dentists, pharmacists, and lawyers pay licensing fees that cover the cost of regulating their professions.

▼ **Because fees are set in statute, the PRS Board cannot change fee amounts and cannot cover the cost of regulation.**

- ▶ In all licensing categories except the administrators license, fees are set explicitly in statute and the PRS Board has no flexibility to raise or lower the fee. The Legislature last increased the fees in 1985.
- ▶ Agencies with fee authority set fee levels through the rulemaking process. This process ensures public participation because an agency must post proposed fees in the Texas Register and hold a public hearing if properly requested as it does with any proposed rule. The Legislature still controls regulatory program costs and expenditures through the appropriations process.

Fees paid by regulated child care facilities cover only 11 percent of the cost of regulation.

Child care regulation fees have not increased since 1985.

- ▼ **Funding for child care licensing has not increased sufficiently to allow PRS to keep pace with the increased workload.**
 - ◆ Total funding for the child care licensing program has remained relatively flat, actually declining approximately \$600,000 since 1993. While fee revenue generated does not directly drive funding for the program, revenue generated is often a factor in legislative appropriation decisions.
 - ◆ While funding has declined, the number of licensed facilities has increased by 584 since 1993, and the licensed capacity of facilities has increased by almost 50,000 children. This increase in facilities and children in care has resulted in higher workload for PRS licensing staff and a decrease in facility inspections. The caseload per worker has increased from 76 facilities in 1993 to 84 facilities in 1995. Total facility inspections have dropped by 1,870 since 1993.

While total funding for child care regulation has decreased, the number of facilities and children in care has increased.

- ▼ **Recovering more of the costs of child care regulation would free up federal funds for use in other programs.**
 - ◆ As noted earlier, most funding for the child care licensing program comes from federal sources, primarily those received by the state under the Title XX Social Services Block Grant. Title XX funds are allocated based on a state's relative population size up to a nationwide ceiling. The state may spend these funds on any social service program it deems appropriate.
 - ◆ PRS receives a total of about \$64.9 million in Title XX funds annually. Of this total, about \$10.4 million is currently used to support the child care licensing program. Given the lack of restrictions on the use of Title XX funds, this money could fund other agency activities if more fee revenue was available to fund the cost of the licensing program. This would depend, of course, on whether the Legislature appropriated this fee revenue to PRS to support the child care licensing program.
 - ◆ PRS receives about \$2.7 million in Child Care Development Block Grant funds annually which would continue to be used to fund the licensing program.

▼ **Increasing cost recovery for child care regulation should result in minimal increases for families paying for child care.**

- ▶ Based on legislative appropriations requests, PRS has historically requested \$5 million to \$6 million in general revenue funding for the child care licensing program. If PRS increased fees to generate this amount, the impact on individual facilities and, in turn, families using their services, will be minimal.
- ▶ The following table illustrates the potential impact on both facilities and families assuming PRS needed to raise \$5 million in additional revenues through fees:

Facility	Fee Amount:		Average Cost Increase:	
	Current	Proposed	Per Facility	Per Child
<i>Family Homes</i>				
Annual Registration Fee	\$35	\$50	\$15.00	\$2.50
<i>Day Care Facilities</i>				
Annual Licensing Fee	\$35	\$50	\$296.08	\$4.21
Capacity Fee	\$1/child	\$5/child		
<i>Residential Care Facilities</i>				
Annual Licensing Fee	\$35	\$100	\$465.00	\$10.46
Capacity Fee	\$1/child	\$10/child		

While this example oversimplifies the impact of an increase in fees, it does show this approach is feasible from a cost standpoint.

▼ **Depositing revenues from the administrators license in the General Revenue Fund would be consistent with the treatment of the Department’s facilities licensing fees.**

- ▶ Unlike other fees collected by the Department, which are deposited in the General Revenue Fund, administrative fees are kept by the agency.

Increased fees will have a minimal impact on facilities or the families using them.

Increasing fees could allow federal funds currently used to subsidize child care regulation to be used to provide other services such as foster care.

Conclusion

Unlike most other regulatory boards and commissions in Texas, the PRS Board does not have the authority to adjust fee levels to cover the cost of child care regulation. Because fees are set in statute and fee revenue currently covers only 11 percent of regulatory costs, the agency's licensing program has relied on federal funds that could be used by other programs where PRS provides direct services to children.

During the past few years, the number of child care facilities has increased, straining the Department's ability to maintain regulatory efforts. Without the ability to set fee levels, the PRS Board cannot balance regulatory expenditures and fee revenues, or provide the Legislature with additional state revenues to more adequately fund the program.

Recommendation

Changes in Statute

- Remove specific license fees for child care facilities and authorize the PRS Board to set fees at levels necessary to cover the state's costs of regulation.
- Require the Board to set the fee for each type of facility based on regulatory effort required.
- Specify that administrators license fees collected shall be deposited in the General Revenue Fund.

This recommendation will give the PRS Board the flexibility to set fee amounts to recover program costs as appropriate and allow the agency to use federal funding currently supporting regulatory activities to support other children's programs. This flexibility will also allow the Board to react to anticipated changes in federal funding methods. When setting fee amounts, the Board should take into consideration the amount of federal money available, specifically for child care regulatory activities; the impact of higher fees on different sectors of the regulated community; and the costs of regulating the different types of facilities. For example, fee levels should recognize that facilities licensed for larger capacity require more regulatory effort, and those facilities should be charged accordingly.

Management Action

- **Require PRS, in future legislative appropriations requests, to request general revenue funding for the child care licensing program equal to revenues generated by fees.**

By correlating general revenue funding to fee revenue for its child care licensing program, PRS can attempt to match program funding levels authorized by the Legislature with fee revenue generated. This recommendation also ensures the legislative appropriations process works as a check on the size of the regulatory program and its associated fees. PRS should work with the Legislative Budget Board to develop a budget pattern that relates fee revenue to the cost of regulation.

Fiscal Impact

Allowing the PRS Board to set fee amounts could result in increased revenue to the state. Fee amounts for child care facilities and centers have not been increased since 1985. PRS has historically requested \$5 million to \$6 million in general revenue funding for the child care licensing program and, for purposes of this fiscal estimate, that amount was anticipated for the next biennium. If PRS increased fee revenue and the Legislature appropriated this money to PRS, then federal funds currently used for CCL could be used to increase regulatory efforts or in other agency programs. The fee revenue anticipated from this recommendation represents a gain to the General Revenue Fund. In addition, administrators license fees currently received by PRS and reappropriated to the agency would be deposited in general revenue.

Fiscal Year	Gain to General Revenue	Change in Number of FTEs for FY 1996
1998	\$5,043,000	0
1999	\$5,043,000	0
2000	\$5,043,000	0
2001	\$5,043,000	0
2002	\$5,043,000	0

Issue 12



Provide PRS with Authority to Assess Administrative Fines in its Child Care Licensing Program.

Background

The agency’s child care licensing program (CCL) is responsible for enforcing the minimum standards for the health, safety, and well-being of children in regulated day-care facilities and family day-care homes. To ensure compliance with the statute and agency rules, licensing staff inspect regulated day-care providers periodically. Licensed facilities are inspected at least once each year, while registered homes are inspected on a three-year cycle. Providers with poor compliance histories are visited frequently, while providers with good histories are visited less routinely.

The Department’s enforcement authority consists of denying license applications or revoking a license if the provider is habitually in noncompliance with licensing standards. In cases where noncompliance puts the health and safety of a child in immediate danger, PRS can seek a court order immediately closing a facility. Licensing staff may address less serious offenses by developing corrective action plans, and working with providers to address violations.

In fiscal year 1995, CCL conducted more than 35,000 inspections and investigated about 9,800 complaints at more than 29,000 regulated facilities. These activities generated a total of 223 corrective action plans and 122 formal actions against facilities.

For most regulatory agencies, the state has authorized a full range of enforcement powers. These powers include the authority to issue reprimands, warnings, suspensions, or revocations. For agencies regulating situations with potential harm to the health and safety of the public, additional enforcement powers may be granted. These powers include the authority

CCL Enforcement Data Fiscal Year 1995 ¹	
Type	Number
Licensed, Certified, and Registered Facilities	29,435
Child Care Facility Inspections	35,430
Complaints Investigated	9,887
Complaints Validated	4,071
Licenses/Requests to Register Denied	8
Licenses/Registrations Revoked	48
Licenses Suspended	8
Probation	58
Total Formal Actions	122
Corrective Action Plans	223

to seek court-ordered injunctions, to pursue civil and criminal causes of action in court, and to administratively assess monetary penalties.

The Sunset review of the child care licensing program focused on the Department's range of enforcement powers. Although PRS has several enforcement tools, the Department does not have the authority to use written reprimands and/or administrative penalties, which are flexible and effective means to deal with less severe or repeat violations.

CCL does not have authority to assess an administrative fine — a common regulatory enforcement tool.

Findings

- ▼ **The child-care licensing program does not have the standard enforcement tools commonly used by other regulatory agencies to address violations of statute or rule.**
 - ▶ The following chart shows the standard enforcement tools used by regulatory agencies in the state compared to those available to the child care licensing program.

Standard Enforcement Sanctions	PRS Authority
Written Reprimand	No*
Probation	Yes
Suspension	Yes
Revocation/Denial	Yes
Administrative Penalty Authority	No
Civil Penalty Authority	Yes
Criminal Penalties	Yes
Injunctive Authority	Yes

*This provision is included in the Across the Board (ATB) recommendations applied to all agencies with licensing functions.

- ▶ Most major regulatory agencies have a range of available sanctions including court actions, suspension and revocation, and administrative penalties. Agencies with administrative penalty authority include the Texas Department of Health, the Texas Department of Agriculture, the Texas Natural Resource and Conservation Commission, the Texas Railroad Commission, the Texas Animal Health Commission, the Texas Alcoholic Beverage Commission, and almost every occupational licensing agency. These agencies regulate programs that address health and safety issues. Administrative penalty authority is used to protect the well-being of Texas citizens.

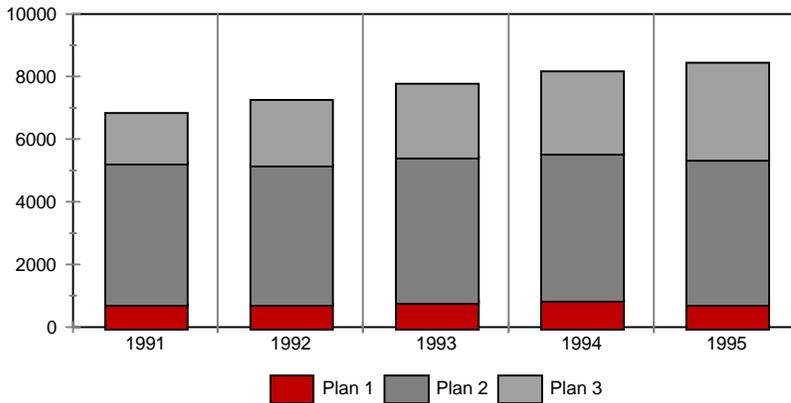
- The Sunset Commission has routinely recommended the use of administrative penalties by regulatory agencies. Usually, the Legislature has included this authority, where appropriate, in legislation passed to re-create the agencies.

▼ **Enforcement tools currently available to the child-care licensing program do not adequately deter licensees from repeatedly violating the Department’s statute and rules.**

- Currently, PRS uses more frequent inspections and corrective action plans to encourage those providers who have committed less serious violations to reach compliance. The frequency of monitoring is determined using a differential system that bases the level of annual monitoring on past compliance history. Plan 1 requires inspections every three to five months; plan 2, every six to nine months; and plan 3, every 10 to 12 months.
- This approach has not been effective in moving facilities into compliance with the minimum standards. Since fiscal year 1991, 70 percent of all facilities have consistently remained in Plans 1 and 2, the more frequent monitoring plan categories.

Enforcement tools currently available to CCL do not deter licensees from repeatedly violating the Department's statute and rules.

Child Care Licensing Monitoring Plans



- CCL validated more than 4,000 complaints and cited more than 91,000 violations in 1995. Since a validated complaint indicates a violation took place, the present enforcement structure clearly does not deter violations of the Child Care Licensing Act.

Corrective action plans require PRS to spend a great deal of time working with licensees.

- ▼ **The Department is forced to use corrective action plans because severe penalties such as probation, suspension, or revocation are not appropriate for minor violations.**
 - ◆ In fiscal year 1995, the child care licensing program conducted 35,430 facility inspections, which resulted in 91,775 violations cited. The Department also investigated 9,887 complaints, 41 percent of which were validated. These violations, however, only resulted in 122 formal actions against facilities (denial, probation, or revocation).
 - ◆ Many minimum standards violations do not represent an immediate threat to the overall health and safety of the children in a facility. Examples include failure to notify the Department of changes in operations at the facility, failure to post the required notices and information, incomplete enrollment information and records, and incomplete staff records. However, unaddressed minor violations may lead to more serious threats in the future.
 - ◆ PRS has been hesitant to suspend or revoke licenses because of the severe nature of these actions and the higher burden of proof required since these actions typically are appealed in an administrative hearing. These hearings are costly and time consuming and tie up resources that could be used for additional monitoring.
 - ◆ Severe sanctions for less serious violations can have an adverse impact on children and families since closure of a facility requires parents to find alternatives to care in a market where availability may be limited. Faced with this reality, PRS staff is hesitant to recommend adverse actions against a facility.
- ▼ **Using corrective action plans to gain compliance with minimum standards requires PRS to spend a great deal of time working with licensees.**
 - ◆ In fiscal year 1995, a total of 223 facilities were involved in formal corrective action proceedings. Corrective action plans require a significant commitment of staff resources since staff must develop the plan, meet with the facility administrator to review the plan, and then conduct multiple follow-up monitoring visits to ensure the facility is carrying out the plan.

- ▼ **Currently, the statute is unclear as to whether PRS' existing range of sanctions for use with licensed facilities also applies to registered facilities.**
 - ▶ In fiscal year 1995, 12,769 registered family homes were providing care for more than 76,000 children. Family homes typically care for 4-6 children in the caretaker's own residence and are only required to register with the Department, as opposed to day care centers which the Department licenses. Over 30 percent of the abuse and neglect cases reported to licensing staff occurred in family homes subject to regulation. Of the most serious cases that CCL referred to law enforcement, all occurred in family homes subject to regulation.²
 - ▶ Once a facility becomes registered, the registration remains valid until revoked or surrendered. PRS has no explicit sanctions, short of revocation, to deal with registered facilities out of compliance with minimum standards.

PRS needs authority to assess fines to effectively deal with violations in its CCL program.

Conclusion

Adequate enforcement authority deters violations of state laws and regulations. Currently, the Department has relatively severe penalties, such as license suspension or revocation, to deal with both serious and minor violations. PRS has been forced to use corrective action plans, which are often ineffective for repeat offenders and require a significant amount staff time. Compared to other regulatory agencies, the Department has limited enforcement powers and often has difficulty fitting the punishment to the offense.

Administrative penalty authority is a common regulatory tool used by other regulatory agencies to address violations of statute and rule. Without this authority, PRS has been unable to effectively deal with less serious violations and repeat offenders. Staff spend considerable time developing essentially unenforceable corrective action plans attempting to gain compliance.

Recommendation

Changes in Statute

- Authorize the Department to assess administrative penalties of up to \$100 per violation, per day for violations of the statute and PRS rules.
- Require PRS to develop a schedule of fines tied to the severity and frequency of the offense and repeat violations.
- Allow PRS to charge facilities for the reasonable costs of formulating and monitoring corrective action plans.
- Require all fines be deposited in the General Revenue Fund.
- Clarify that all child care licensing sanctions also apply to registered facilities.

The Department's administrative penalty authority would be modeled after the standard Sunset approach used in the past for other regulatory agencies. This approach would provide an administrative review process to ensure that each violator is afforded due process. The statute would contain guidelines PRS would use when determining the amount of the penalty. The PRS Board would be authorized to set fines to fit the severity of the violation, considering the history of the violator and the extent to which the violator may have acted without knowledge or intent to violate the law. The Board would be required to establish a standard method for using administrative penalties, including penalty ranges for different types of violations. None of the recommended changes would affect the Department's ability to revoke or deny a license or to seek a court order to close a dangerous facility.

The \$100 penalty limit is based on the seriousness of violations when compared to the limits provided for other agencies. The penalty amount was also compared to current civil penalty limits specified for violations of the Department's statute and rules. Allowing a range for the penalty amount will allow the Department to assess penalties that fit the seriousness of each violation and deal with repeat offenders. While authority to use the administrative penalties may increase the need for administrative hearings, two other issues in the report address the Department's ability to provide the necessary administrative hearings in a timely manner: Issue 11 recommends that child care licensing fees be increased to cover an appropriate amount of the cost of regulation and Issue 15 recommends transferring administrative hearings to the State Office of Administrative Hearings;

Allowing PRS to charge facilities for the costs related to administering corrective action plans will act as an additional disincentive to facilities who continually fail to comply with the minimum child care licensing standards. These funds could be used to hire additional

staff solely responsible for administering corrective action plans. This would allow existing licensing staff to focus on routine monitoring and inspection activities.

Clarifying that all child care licensing sanctions apply to registered facilities will ensure consistent regulation of both family homes and licensed facilities. This clarification would also eliminate any confusion as to the Department's authority to regulate registered facilities.

Fiscal Impact

The recommendation allowing PRS to use administrative fines would result in a positive fiscal impact to the state. The authority to levy penalties would result in increased revenue to the General Revenue Fund. The exact amount cannot be determined as the number of violations, frequency of violations, and amount of penalties cannot be estimated. Although not required by this recommendation PRS could request that revenue generated by charges for corrective action plans be appropriated to the agency.

¹ PRS Annual Report, 1995.

² Child Care Licensing Division, Department of Protective and Regulatory Services.

Issue 13



Improve the Handling of Complaints by Developing a Coordinated Statewide Complaint Resolution Process.

Background

Like other state agencies, the Department of Protective and Regulatory Services (PRS) is required to establish a complaint resolution process. The statute requires the agency to inform the public how to make a complaint against the agency and to maintain a record of all complaints filed. In addition, the agency must notify the complainants quarterly until the complaint is resolved.¹ These requirements mirror the Sunset Commission's standard approach to dealing with complaints.

In contrast to complaints PRS receives about abuse, neglect or licensed child care facilities, which are handled through the agency's intake process, this issue addresses complaints received by the Department against its personnel, policy, and procedures. As part of the process developed to deal with these kinds of complaints, PRS created the Office of the Ombudsman in the state office in 1993. The Ombudsman also handles complaints made directly to the state office, answers information requests from legislators and other elected officials, and, before September 1, 1995, functioned as a central repository for reports of abuse or neglect at other state agency facilities. The Ombudsman handled 1,504 inquiries in fiscal year 1995; 469 of these inquiries were classified as "information only." The Ombudsman Office also provides a more specific review called an Ombudsman Office Review for individuals designated as alleged perpetrators following a PRS investigation. The Ombudsman completed 22 formal reviews in fiscal year 1995.

Most complaints are received and resolved at the regional level, as addressed by agency rule that "encourages the resolution of complaints at the local level."² Each agency program is responsible for resolving complaints within its program area. For example, a caseworker may attempt to address the complaint himself or he may refer the complainant to a supervisor. In either case, usually only a notation of the complaint is made in the case file.

The Department is required by statute to have a process to address complaints.

If the complaint is not resolved to the complainant's satisfaction, it may be appealed to a supervisor or regional director. Those complaints not resolved within the regional chain of command may be referred to the Ombudsman. Complaints received or resolved at the regional level are not reported to state office, but those received by the Ombudsman are entered into a central tracking system. Because the agency does not track complaints handled in the regions, the agency does not know how many complaints were received in fiscal year 1995.

PRS' current complaint process does not comply with statutory requirements.

The Sunset review focused on the agency's basic complaint resolution process and the Office of the Ombudsman to determine whether complaints were handled consistently and adequately, and whether needed information was provided to the Board and agency management.

Findings

- ▼ **The Department's complaint resolution process does not comply with statutory requirements.**
 - ▶ The statute requires that PRS make information available to the public about its complaint process.³ Standard complaint forms or other information describing the complaint process are not used at the regional level. While PRS does distribute brochures with the Ombudsman's toll-free number, PRS has failed to disseminate posters with the complaint number to the regions. Recently, PRS initiated a pilot project distributing these posters in a selected region.
 - ▶ PRS' statute and rules require that PRS maintain information on every complaint it receives, maintain a file on every complaint it has the authority to resolve, and give quarterly notice to the complainant until final disposition.⁴ The Department's process does not work this way. Most complaints are received and handled at the regional level. The complaint is noted in the case file but not reported to a central repository in the state office. No individual complaint file is maintained, nor is the complainant given quarterly notice of the disposition of the complaint.
- ▼ **Complaints are not received or resolved consistently in the state office, the regions, or programs within the regions.**
 - ▶ When the Ombudsman receives a complaint, it is entered into a tracking system, categorized by type of complaint, person

making the complaint, and program involved. Complainants are notified as to the status and final disposition of the complaint.

- ▶ State office procedures are not used at the regional level. Each region has a different system for dealing with complaints. This results in inconsistent complaint resolution between the regions and little or unreliable data on the type or number of complaints provided to the state office. In addition, complaints may be handled differently by each program within a region.

Without a standard complaint process, PRS does not address complaints consistently.

- ▼ **Because the agency does not use a centralized complaint tracking system, neither the regional management nor the state office are made aware of most complaints made against the agency.**

- ▶ PRS does not know how many complaints it has received, the types of complaints, or how or if they were resolved. Complaints received at the regional level are, for the most part, resolved at the regional level. These complaints are not tracked within the regions or statewide. Regional management does not have a way to know about complaints received or how they are resolved. In addition, unless a complaint is referred to the Ombudsman, state office does not hear about the complaint.
- ▶ The Ombudsman has an automated system for tracking and receiving complaints and uses this system for complaints received by the Ombudsman. This system is not used for complaints received in the regions or by state office program staff.

PRS management does not know the number of complaints the agency receives or how they are resolved.

- ▼ **The role of the Ombudsman is ill-defined, resulting in duplication of effort and diminished effectiveness.**

- ▶ The Ombudsman serves multiple roles within the agency, serving as one point of entry for complaints, a forum for review of regional complaint resolution, an appeal process for individuals accused of abuse, and as a point of contact for legislative inquiries and public information. Because some of these functions are also performed at other levels within the agency and the regions, what this office does is sometimes confusing and duplicative.

of his complaint could appeal up the chain of command at the regional program level, to the Ombudsman, or to both. Additionally, each program may handle complaint appeals differently.

- ▶ The Department must have a system in place, consistent for all regions and programs to provide an appeal process for an individual dissatisfied with the initial response to his or her complaint. A standard appeal process will increase the Department's accountability to its clients and the public.
- ▼ **A centralized complaint tracking system would increase agency consistency and accountability and provide better information to the state office for identifying problem areas.**
 - ▶ A centralized, statewide complaint system will provide PRS with consistent data from across the state and will enable the agency to better identify and address problems with agency operations.
 - ▶ A centralized system will make the agency more accountable to its clients and the public and allow better resolution of complaints.

PRS needs to develop a statewide, centralized complaint system to improve its ability to know about and resolve complaints.

Conclusion

The Legislature has clearly expressed its intent that PRS provide the public with an efficient and effective method of complaint resolution. PRS has not established an adequate complaint process. Regional staff handle most complaints, but do not follow the complaint file maintenance and notice procedures as required in statute, nor do they consistently report complaints to the state office to allow tracking of complaints received and their resolution. Further, the role of the Ombudsman is unclear and places the office in the position of carrying out conflicting and multiple duties. Finally, without a standard method of complaint resolution, the agency cannot fully analyze the types of complaints received to identify potential problems with agency operations.

Recommendation

Changes in Statute

- **Require the Department to develop a centralized complaint tracking system.**

This recommendation will provide consistency in the agency's complaint resolution process and satisfy statutory requirements. The state office will maintain records on complaints received by the state office and from regional offices. Reports on complaints would then be compiled and periodically provided to the Executive Director and the Board.

- **Require the Department to develop a consistent, statewide complaint resolution process.**

This recommendation will require the agency to develop a more formalized complaint process with consistent procedures for complaint intake and resolution for use throughout the regions. Components of this complaint process should include a process to provide specific information to complainants about the complaint process and assistance in filing the complaint, use of a form which captures standard information about the complaint, and quarterly notice to the complainant of the complaint's status.

- **Require the Executive Director to develop a process for appeals of complaint resolution decisions.**

The Executive Director should institute a clear and consistent process to provide a forum for appeals by complainants who are not satisfied with the outcome of their complaint at the regional level. As discussed below, the Ombudsman's office should not play a role in hearing appeals on such complaints.

Management Action

- **Require the agency to clearly define the role of the Ombudsman.**

The current system of complaint resolution and the Ombudsman's role within it are unclear, making the Ombudsman's Office somewhat ineffective and resulting in confusion about the entire complaint process. With a defined role and clear objectives, the Ombudsman's Office could provide the agency with a useful tool in managing complaint information and in assisting complainant's appeals. Possible roles for the Ombudsman's office could include the central repository for all information on complaints and legislative inquiries, analysis of data on these complaints and inquiries for distribution to the Board and management, and assisting complainants with the filing of complaints and tracking the progress of their complaints. However, the Ombudsman's Office should not hear appeals of how the agency resolved a complaint. If the

Ombudsman is involved with helping complainants and tracking the progress of complaint resolution, the Office would not be in a position to judge the merits of the Department's disposition of complaints.

Fiscal Impact

This recommendation would not result in a fiscal impact to the state. The recommended changes involve improving processes already in place and will not require additional staff.

¹ Tex. Hum. Res. Code § 40.004 (c)-(e).

² 42 Tex. Admin. Code § 744.2 (c)(2).

³ Tex. Hum. Res. Code § 40.004(b).

⁴ Tex. Hum. Res. Code Ann. §§ 40.004(d)-(e), 42 Tex. Admin. Code § 734 (g)-(h).

⁵ Tonn and Associates report, "An Analysis of the Responsiveness of Management and Staff to CAPS and Related Automation Enhancements," September 1, 1995, pp. 20-21.

⁶ Ibid.

⁷ State Auditor's Report, "A Review of Management Controls at the Texas Department of Protective and Regulatory Services," September 1994, pp. 9-13.

⁸ 42 Tex. Admin. Code § 744.2 (c)(2).

Issue 14



Increase Return on Technology Investments Through Centralized Accountability and Management of Information Systems.

Background

The Department of Protective and Regulatory Services is among the top five state agencies in expenditures for information resources. The agency reported expenditures of more than \$103 million for fiscal years 1994 and 1995.¹

The Department relies on information resources to support its service delivery mission. The agency's primary information resources goals are to develop an integrated service delivery system and provide technical services for administrative and program divisions. Key information requirements related to these goals include automated systems for case management, personnel management, financial analysis, accounting, management reporting, contract administration and performance measurement.

The deputy director of the information resource technologies (IRT) division reports directly to the Department's Executive Director. IRT assigns division staff to functions which include: Child and Adult Protective Services (CAPS) system management, contract management, operations management, technical services, change management, and software development. A technology management team, consisting of the information resources manager, technical services director, project manager, and child and adult protective services deputy directors, meets twice a month to make decisions on automation issues.

The Department is developing three major automation systems that will support all agency operations: CAPS, the integrated financial management system, and the management reporting database. PRS currently relies on information systems maintained by the Department of Human Services (DHS) to support program functions not

PRS is one of state government's largest users of information technology.

State Agency Expenditures for Information Resources*	
	FY 1994-95
Texas Department of Transportation	\$228,548,000
Texas Department of Human Services	136,251,000
Protective & Regulatory Services	103,426,000
Comptroller of Public Accounts	102,027,000
Office of Attorney General	77,640,000
Texas Department of Criminal Justice	67,001,000
U.T. Medical Branch - Galveston	55,253,000
The University of Texas at Austin	52,272,000
U .T. M.D. Anderson Medical Center	45,357,000
Department of Public Safety	39,148,000
TOTAL	\$906,923,000

*Figures are estimated amounts taken from the agencies' biennial operating plans.

provided for by CAPS and administrative support systems such as payroll, personnel, budgeting, accounting, and purchasing. DHS provides these services through an interagency contract with the Department at an annual cost of \$6.3 million. Development of the new automation systems coincides with the Department's plans to phase-out reliance on systems maintained by DHS and implement an integrated system for all major agency functions.

The most significant technology project currently underway is the CAPS project, with an estimated cost of more than \$82 million.² When fully implemented, the Department intends for CAPS to replace or integrate existing client information systems and automate caseworker processes currently performed manually. Key capabilities of the new system include: tracking client status and services, compiling output measures, and reducing paper requirements.

Historically, the state's child and adult protective services programs have lacked automation and were unable to easily provide performance data. The Sunset review focused on the Department's process for assessing information needs and managing information systems.

Findings

- ▼ **Historically, the child protective services program has not provided the Legislature and agency administrators with information needed to assess their performance.**
 - ◆ The 1989 Staff Report to the Senate Committee on Health and Human Services, which provided the impetus to transfer the child protective services program from DHS to PRS, included the following findings:
 - statistical information generated on the child protective services (CPS) program lacks pertinent data that would allow a comprehensive assessment of the program's strengths and weaknesses;
 - because the agency does not maintain data on the number of children and families needing or receiving services, information is not available to evaluate the effectiveness or estimated cost of the various kinds of services required; and

PRS' child protective service program has historically been unable to produce information on performance.

- because accurate data is not available, it is not possible to find out how many individual Texas children and families are affected by child abuse each year.
- ▮ The report also noted that several of the program's performance deficiencies could be attributed to inadequate automation support.
 - While DHS had automated most other programs for several years, many local CPS offices still did not have even the most basic computer equipment to enable employees to immediately check the statewide computer system for vital information about previous abuse reports involving a particular child or alleged perpetrator.
 - CPS offices did not have basic word processing equipment to handle the tremendous volume of paperwork, including extensive case record documentation and preparation of official court documents.
 - Automation would permit better tracking of children in foster care placements so the child could be located immediately and the child's caseworker easily identified.
- ▮ The report recommended the Legislature provide sufficient funding to maintain a statewide data bank on previous child abuse reports and provide caseworkers immediate access to the information. This funding was approved for the CAPS system after responsibility for state protective services programs was transferred to PRS in 1992.
- ▼ **Although CAPS was designed and funded to fulfill critical information needs at the newly created agency, problems in development of the multi-million dollar information system drew scrutiny from the Legislature.**
 - ▮ Legislators, concerned that large technology projects often come in late and over budget, established a statewide Quality Assurance Team (QAT) responsible for monitoring the state's critical technology projects which meet specific risk criteria. The Department's CAPS system was identified as a high-risk project by the QAT, which consists of representatives from the Department of Information Resources (DIR) and the State Auditor's Office (SAO). The QAT reviews project planning,

PRS' problems with implementing information technology led to scrutiny by the Legislature.

implementation status, expenditures, and evaluation of selected high-risk projects.

- ▶ The QAT revealed that PRS has had trouble finalizing project costs for CAPS. In January 1995, the QAT reported that an additional \$7.9 million in state funds is needed to fully implement the Child Protective Services portion of the case management system.³ Further, PRS reported significant variances in total costs for CAPS, ranging from a low of \$43.7 million in 1993 to a high of \$107.6 million in 1994.⁴ Variances are due to increased quantities of equipment and services from the vendor, as well as failure to include maintenance and operations costs in earlier project estimates.
- ▶ DIR identified additional problems related to project quality, projected benefits, scope, and implementation schedules.⁵ These problems generated concern over the level of program management support and end-user involvement in defining CAPS capabilities.
- ▶ Since PRS continues to make substantial investments to build its technology infrastructure, the 74th Legislature included a rider in the PRS appropriation requiring QAT to provide external oversight of all the Department's technology expenditures.

The Department's focus on CAPS limited oversight of other computer projects.

- ▼ **The agency's focus on CAPS created problems with the management of other information systems at PRS.**

 - ▶ Important technology projects have not received adequate attention because the information resources technologies (IRT) division was originally established to provide oversight to the vendors developing CAPS.⁶ In addition to the oversight provided by IRT, PRS has two technology project steering committees, but both have been occupied with overseeing application development, managing resources, and coordinating implementation of CAPS. Neither fulfills the function of comprehensively analyzing, prioritizing, and coordinating the agency's information systems.
 - ▶ IRT has one technical project manager for CAPS and one available for all other information system projects. During fiscal year 1996, ten non-CAPS projects are scheduled, some significant projects, without managers. These projects include functions critical to the agency's operations, such as

development of an integrated financial management system and the Services to At-Risk Youth (STARS) tracking system.

- ▶ Because of strained technical resources, other divisions, instead of IRT, have assumed responsibility for developing major ongoing automation projects. IRT has provided consultation and technical approval of equipment purchases for these projects, but has not had the resources to fully commit to system analysis, planning and development.⁷
 - The finance division hired its own systems analyst to assist in the development of the \$1.2 million integrated financial management system. The systems analyst does not have to report or be accountable to IRT. No formal channel exists for incorporating agency objectives such as compatibility, security, and quality control. While a project manager has not yet been assigned, project encumbrances total \$534,000, nearly half the project's total budget.⁸
 - To create a management reporting database, the program statistics division assumed many system development functions that an agency's MIS division would normally serve. Program Statistics staff performed functions such as defining equipment requirements, verifying data and establishing quality controls for the project, leaving less time for staff to respond to agency information requests and conduct forecasting and trend analysis. Although the division has not developed a formal budget and milestone schedule, nearly \$200,000 has been spent for its automation project.⁹
- ▶ The Department still depends on DHS for technology services that may not be cost effective. PRS pays \$6.3 million annually for automated services ranging from payroll and purchasing to micrographics and data storage. The State Auditor's Office has identified weaknesses in the interagency contract, citing lack of defined performance standards and no clear relationship between the cost of the contract and services provided.¹⁰ Because of weak contract provisions, PRS cannot hold DHS accountable for low quality or lack of performance.

PRS' contract for automation services may not be cost effective.

- ▼ **The Department's strategic planning process for technology does not drive information management decisions.**
 - ▶ The selection of information system projects for implementation is not based on strategic analysis. PRS does not clearly link projects planned and those actually implemented. Currently PRS is developing a management reporting database that does not appear in its 1994-1999 operating plan, finalized in December 1995. Additionally, a \$1.2 million financial management system now under development appears only as a line item in the 1995-1999 strategic plan, with no explanation of the intended purpose or scope. Further, the agency's internal functional review recommended that PRS establish one computer system to support all programs and services, rather than relying on DHS systems for certain licensing and business services. These management goals to replace inherited DHS systems are not included in the strategic or biennial operating plan by previous PRS management.
 - ▶ The agency evaluates information system proposals on a division-by-division basis rather than weighing the information needs of the agency as a whole. Projects are generally approved by the executive management team, composed of the Executive Director and deputy directors, if the project addresses a valid information need and money is available within the budget of the requesting division.
 - ▶ Changes in Executive Director support and IRT staff turnover have also contributed to problems with technology planning and implementation. The executive level position of information resource manager (IRM) has been vacant for nine months, with an interim IRM assigned. The IRM is responsible for directing automation activities, including planning for future needs, developing computer systems, setting policies for security and quality, monitoring purchases, and coordinating user departments.
- ▼ **As a result of fragmented technology planning and management, existing PRS information systems are unable to provide key operational and performance information.**
 - ▶ Management and staff have varying information needs to support their job functions. Executives focus on financial and performance data useful for planning, controlling, and

Current information systems do not generate key data needed for management and evaluation of programs.

evaluating, whereas line staff focus on data required for day-to-day operations. Information systems should provide relevant, accurate, and timely data to support all operational decisions.

- D Key administrative and program information requested by Sunset staff during the review could not be provided by the agency, including the following items:
 - number of CPS complaints received at each regional office concerning PRS activities;
 - number of investigations initiated within required time limits from the date abuse or neglect is reported; and
 - time it takes investigators to initiate abuse and neglect investigations after a report.
- D The Department was able to obtain other critical information within the agency only after 3-4 days delay, such as:
 - status of encumbrances to individual contractors;¹¹
 - hardware or labor expenditures-to-date for automation projects;¹² and
 - total agency purchases by category, such as purchases of professional consulting services.¹³
- ▼ **To effectively manage more than \$100 million in information system investments, PRS needs an integrated, strategic planning process for technology.**
 - D Complex information systems are necessary for PRS to deliver services and manage the agency's workload. Information technology helps the agency manage abuse and neglect cases, deliver services to remote offices, track the status of licensed facilities, manage a multimillion dollar budget with multiple funding sources and more than 5,500 employees, and generate performance and financial information on the agency.
 - D A strategic technology management process would allow PRS to maximize the benefits of automation projects, reduce related risks, and pinpoint accountability for their success. The federal Office of Management and Budget (OMB) cites three critical attributes necessary for a successful technology

PRS needs to effectively manage its information systems which represent a \$100 million investment by the state.

investment process: senior management attention, mission focus, and comprehensive approach.¹⁴

- Senior management attention is crucial for technology investments because of the institutional knowledge required to decide the potential impact and the authority required to provide resources and ensure accountability.
- Maintaining a focus on the agency's mission requires all projects to be justified as to relative contributions to achieving agency goals. Mission benefit is a more important criterion to apply than cost or completion dates when considering multiple technology investments.
- A comprehensive approach to information technology consists of a formal, standardized process for weighing and evaluating the factors that influence an investment decision. OMB suggests a four-step process for prioritizing and selecting technology projects: 1) screen project proposals based on uniform criteria; 2) analyze relevant risks, benefits, and costs; 3) prioritize projects based on expected return on investment and risk ranking; and 4) determine the right mix of projects to fund considering performance improvement priorities and internal resource allocations.

PRS needs to support automation with agency-wide analysis and oversight.

Conclusion

PRS' substantial investments to replace and update obsolete information systems are not fully supported by agency-wide strategic project analysis and oversight. Without centralized accountability for information systems, PRS and the state run the risk of committing millions of dollars to projects that may not capture all information necessary to promote effective daily operations, planning, and decision-making.

Recommendation

Change in Statute

- **Require PRS to establish a strategic technology steering committee.**

The committee would be responsible for evaluating all major automation project proposals as to: assessing information needs, defining standard criteria for prioritization, forecasting returns on project investments, and investigating available resources. The committee would also make recommendations to the Executive Director and define

review thresholds for projects. The agency Information Resources Manager would chair the committee with membership including senior management, information resources staff, and representatives of the primary users.

Management Actions

- **PRS should assign all system development staff to the Information Resource Technologies Division.**

While each division retains its own budget for technology projects, agency staff involved in system analysis and development should reside within IRT. In this manner, IRT retains control over the accuracy, security, compatibility, and integration of systems. Other divisions are responsible for identifying functional requirements for their projects and funding the necessary hardware and software.

- **The IRT Division should assign project managers for all systems under development that the strategic technology steering committee has assessed and executive management has approved.**

IRT should establish a reasonable limit for the number of projects assigned to each project manager based on the technical complexity of the project, the complexity of the arrangement with any contractors, and the administrative duties required of the project manager.

- **The Department should undertake a comparative cost analysis of all existing outsourcing arrangements including the interagency agreement with DHS for information technology support and the contract with Andersen Consulting for ongoing support of CAPS.**

This analysis should evaluate the cost effectiveness of alternatives for the services including in-house operations and outsourcing to another agency or a private vendor. Any modifications to the agreements should be coordinated through the Department's contracting function to ensure the contracts contain adequate service level agreements and appropriate sanctions for non-performance.

Fiscal Impact

The statutory recommendation to establish a strategic steering committee would not result in additional costs. Management recommendations could produce savings in the long-run. Technology resources currently absorbed by CAPS should become available for other projects as CAPS nears implementation in the Fall of 1996. Better management of technology could reduce additional expenditures for projects that do not meet projected implementation time lines and budgets.

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- ¹ Department of Information Resources, "Information Resources Expenditures For FY 1994/1995." January 4, 1996.
 - ² Department of Protective and Regulatory Services, "Biennial Operating Plan: Fiscal Years 1994-1999," December 1995, p.27.
 - ³ Quality Assurance Team, QAT Report, January 10, 1995.
 - ⁴ Department of Information Resources, "Project Quality Assurance Progress Report," January 31, 1995.
 - ⁵ Ibid.
 - ⁶ Department of Protective and Regulatory Services, "Strategic Plan for Information Resources Management: 1995-1999," December 1994, p. 8.
 - ⁷ Interview with Debby Wattman, Project Manager, Information Resources Technologies, PRS, February 27, 1996 and with Art Duncan and Pamela Hart, Project Manager, Business Area Analyst, Information Resources Technologies, PRS, March 8, 1996.
 - ⁸ Department of Protective and Regulatory Services, "Fourth Quarter Growth and Expansion Report," Information Resources Technologies Division.
 - ⁹ Interview with Jayne Goynes, Director of Program Statistics, PRS, March 14, 1996 and Department of Protective and Regulatory Services, "Fourth Quarter Growth & Expansion Report", Information Resources Technologies Division.
 - ¹⁰ State Auditor's Office, "A Review of Management Controls at the Texas Department of Protective and Regulatory Services," September 1994, p.20-21
 - ¹¹ Interview with Robert Morris, Director of Contract Administration, PRS, March 1, 1996.
 - ¹² Interview with Debby Wattman and Oscar Gonzales, Information Resources Project and Contract Managers, PRS, February 27, 1996.
 - ¹³ Interview with Art Riojas, Director of Business Services, PRS, March 14, 1996.
 - ¹⁴ Federal Office of Management and Budget, "Evaluating Information Technology Investments," pps. 3-4.

Issue 15



Improve the Administrative Hearings Process Through Transfer to the State Office of Administrative Hearings.

Background

The Department of Protective and Regulatory Services (PRS) conducts three types of hearings that are governed by the Administrative Procedures Act (APA) — contract hearings, licensure hearings, and release hearings.

Contract hearings are held for appeal of terminations or suspensions of payments for either regional or state contracts. The Department holds licensure hearings for appeal of registration and license revocations for both registered family homes and child care licensing facilities. Release hearings concern appeals to prevent the release of information by PRS concerning alleged perpetrators that could result in an adverse action for an individual or facility.

Hearings conducted to remove children from the home are civil actions and are not governed by the APA. These hearings are not subject to transfer.

A PRS administrative law judge (ALJ) conducts these administrative hearings throughout the state. After a hearing, the administrative law judge issues a written decision and final order. Unlike the administrative hearing process of many state agencies, the Department’s enabling statute does not require the record and the administrative law judge’s recommendation to be reviewed by the agency or the Board. The ALJ’s decision is final unless appealed outside the agency.

If the ALJ’s decision is appealed, contract and release hearing appeals are heard in Travis County District Court. A licensure appeal is usually adjudicated in the district court of the county in which the petitioner resides although, upon request of the petitioner, the case can be heard in Travis County. The chart on the following page, *Location of Administrative/Appellate Hearings by Type*, shows the type of hearing, location of the administrative hearing, and location for appeal.

APA Hearings Conducted by PRS Region - FY 1995		
PRS Region		Number of Hearings Conducted
Region 1	Lubbock	7
Region 2/9	Abilene	4
Region 3	Arlington	23
Region 4	Tyler	1
Region 5	Beaumont	0
Region 6	Houston	18
Region 7	Austin	5
Region 8	San Antonio	5
Region 10	El Paso	0
Region 11	Edinburg	5
TOTAL		68

Location of Administrative/Appellate Hearing by Type			
Hearing Type	No. Heard	Administrative Hearing Site	If Appealed: Hearing Site
<i>Contract Hearings</i>			
Regional	1	County in which petitioner resides	Travis County District Court
State	0	Austin	Travis County District Court
Licensing/Registered Family Home Hearings	23	County in which petitioner resides	County in which petitioner resides, unless requested by petitioner to be heard in Travis County
Release Hearings	44	County in which petitioner resides	Travis County District Court

PRS employs one full-time administrative law judge and one full-time support person to schedule and conduct APA hearings. In fiscal year 1995, PRS spent approximately \$76,000 for this function, an amount which includes salaries, related costs such as travel, conferences and seminars, and overhead. The average cost of a hearing, in 1995, was about \$905.¹

In 1991, the Legislature created the State Office of Administrative Hearings (SOAH) to conduct administrative hearings for state agencies. The Sunset Commission has routinely included administrative hearings conducted by agencies in its reviews to determine whether this service could be better performed by SOAH. The review focused on whether transferring the Department's APA hearings to SOAH would increase the independence, quality, and cost effectiveness of the hearings.

The current hearing process creates the perception that hearings are not independent and fair.

Findings

- ▼ PRS's administrative hearings process would be more independent if located at SOAH.
 - ▮ The majority of the participants in PRS hearings--the administrative law judge, the Department's attorneys, and the staff that investigated and brought the charge--are all employed by PRS. Also, the ALJ, and the attorneys who represent PRS in a hearing, are all ultimately accountable to the general counsel of PRS. This relationship provides the opportunity for ex parte communication and creates the perception that the hearings process and the ALJ's decision is not independent and fair.
 - ▮ The lack of independence, both perceived and real, would not exist if APA hearings were conducted by an ALJ employed by

SOAH. The ALJs assigned to perform hearings for PRS would be housed with SOAH. Transferring administrative hearings would separate the Department's role as a party in hearings from its responsibility to conduct the hearing.

- As with other agencies' hearings, SOAH would consider the applicable PRS rules or policies in conducting hearings. In this way, PRS would still determine how policy matters or recurring issues will be treated by ALJs.

▼ **SOAH has the experience and ability to hold quality administrative hearings.**

- SOAH serves as the central administrative hearings office for the state and hires highly qualified ALJs. SOAH currently employs 66 ALJs with an average of 14 years of experience.² To enhance their skills and abilities, each ALJ receives, on average, more than 73 hours of continuing education and in-house training on hearings and law-related topics each year.³
- SOAH currently holds hearings for 44 agencies, including the Texas Alcoholic Beverage Commission, the Texas Department of Transportation, the Texas Workers' Compensation Commission, and 26 occupational licensing agencies.⁴ PRS licensure hearings are similar to hearings for occupational licensing agencies.
- SOAH already holds APA hearings similar to those conducted at PRS. SOAH hearings for the Texas Department of Insurance, the Texas State Board of Medical Examiners, and the Public Utility Commission involve confidentiality issues similar to release hearings conducted by PRS.⁵

*SOAH serves as
the central
hearings office for
the state.*

▼ **SOAH has greater ability to conduct hearings around the state than PRS.**

- By hearing cases regionally, SOAH would give affected persons more timely access to the hearings process and reduce costs by eliminating travel time of an ALJ being sent from Austin.
- In fiscal year 1995, SOAH employed 28 ALJs at 13 regional offices and 20 remote office locations around the state.⁶ The ALJs travel to locations within their regional areas to hold hearings.

Recommendation

Change in Statute

- **Transfer the Department's Administrative Procedure Act hearings to the State Office of Administrative Hearings.**

This recommendation would transfer the Department's APA hearing function to the State Office of Administrative Hearings. In conducting hearings, SOAH would consider the applicable substantive rules or policies of PRS. In this way, PRS would still determine how broader policy matters or recurring issues will be treated by administrative law judges. As with the current hearings process, the decisions by the ALJ would be final unless appealed to court.

The personnel grievance hearings held by the Department's ALJ would be reassigned to other qualified legal personnel within PRS. As with most transfers of hearings to SOAH, the cost of conducting a hearing would be paid through an interagency contract between the two agencies. The hearings conducted to remove a child from the home or a guardianship hearing for the elderly are not governed by the APA and would not be subject to the transfer.

Fiscal Impact

The fiscal impact of transferring administrative hearings to SOAH cannot be determined at this time. The specific costs to conduct the hearings would depend on the structure of the interagency contract between the Department and SOAH. The elimination of the ALJ function at the Department would provide savings of approximately \$76,000. This money could be used to pay SOAH for services provided under the contract.

Historical data indicates that costs related to administrative hearings transferred to SOAH have been reduced by approximately 27 percent. Any savings achieved through the transfer to SOAH would be reallocated within the Department for client services.

Fiscal Year	Total Savings to be Reallocated within the PRS
1998	\$76,000
1999	\$76,000
2000	\$76,000
2001	\$76,000
2002	\$76,000

¹ Memorandum from Jerry Abel, Chief Financial Officer, Texas Dept. of Protective and Regulatory Services, January 29, 1996.

² Letter from Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, January 30, 1996.

³ Phone Interview with Steven Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, February 7, 1996.

⁴ Letter from Steven L. Martin, Chief Administrative Law Judge, State Office of Administrative Hearings, January 30, 1996.

⁵ Interview with Steven L. Martin, Chief Administrative Law Judge, Phillip A. Holder, Director, Central Hearings Panel, and Charmaine J. Rhodes, Senior Administrative Law Judge, State Office of Administrative Hearings, January 29, 1996.

Issue 16



Continue the Texas Department of Protective and Regulatory Services for 12 years.

Background

The Department of Protective and Regulatory Services (PRS) was created in 1991 by House Bill 7, 72nd Legislature, as part of the restructuring of the state's health and human services system. The ultimate goal of the Legislature was to restructure the system to improve services at the local level by reducing administrative duplication and making services more accessible to clients. PRS was created as a separate agency to focus more attention on abuse and neglect of the state's most vulnerable citizens — children, people with disabilities, and the elderly.

On September 1, 1992, all functions of child and adult protective services and child care licensing were transferred from the Department of Human Services (DHS) to PRS. In addition, investigations of abuse and neglect in facilities operated by the Department of Mental Health and Mental Retardation (MHMR) were transferred from MHMR to PRS. While investigation, service delivery, and regulatory functions were transferred to PRS, many business and support functions remain at DHS. These services are provided to PRS through a contract with DHS.

PRS' primary role is to investigate complaints of abuse and neglect against children, people with disabilities, and the elderly. PRS then provides counseling and other support services to the victim and family. PRS also licenses and regulates child care and substitute care providers, and maternity homes. PRS' activities are divided into four major functions:

- protective services for children and their families;
- adult protective services to the elderly and disabled;
- licensure and regulation of child care and substitute care providers; and
- support services for agency operations.

PRS was created to focus more attention on the abuse and neglect of the state's most vulnerable citizens — children, people with disabilities, and the elderly.

One primary mission of state government is "to protect and enhance the health, well-being, and productivity of all Texans."

In a Sunset review, continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First, a current and continuing need should exist for the state to provide the functions or services. In addition, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits must outweigh any disadvantages of transferring the agency’s functions or services to any other state agency. The evaluation of the need to continue PRS and its current functions led to several findings which are discussed in the following material.

Findings

- ▼ **The state has identified the protection of children, people with disabilities, and the elderly as an essential role of government.**
 - ▶ In the state’s strategic plan, one of the primary missions of state government is “to protect and enhance the health, well-being, and productivity of all Texans.”¹
 - ▶ One of the goals supporting this mission is “All Texans will be physically and emotionally safe.” Strategies to achieve this goal include investment in education and prevention to avoid the need for more costly foster care and crisis services. The state must develop a program to involve all communities in the prevention of abuse and provide support to those persons in need. The state also has the responsibility to protect those individuals in state institutions and foster care and provide safe and nurturing environments.
 - ▶ PRS plays an important role in helping the state meet this goal. To measure success in meeting this goal, the state has developed the following indicators in the statewide strategic plan:

Key Indicators of Success
<ul style="list-style-type: none"> ● Incidence of confirmed cases of abuse and neglect of children. (PRS)* ● Incidence of confirmed cases of abuse and neglect of the elderly and persons with disabilities. (PRS) ● Percentage of population living in counties with immediate temporary emergency shelter for victims of abuse. (PRS) ● Percentage of persons receiving care from licensed providers. (PRS) ● Percentage of youth needing substance abuse treatment who receive treatment. ● Number of children’s deaths from abuse, neglect, or domestic violence. (PRS) ● Homelessness rate per 1,000 population.

*Statewide indicators that are directly influenced by PRS performance.

▼ **PRS provides a critical service to the state's most vulnerable citizens and to all Texans.**

- ▶ PRS is responsible for investigating complaints of abuse and neglect of children, people with disabilities, and the elderly. PRS also provides services to abused or neglected individuals and their families. Services include foster care, family preservation, parenting classes, counseling, and other purchased services.
 - PRS' child protective services (CPS) program investigated 107,895 reports of child abuse or neglect in fiscal year 1995 — an increase of 19 percent over five years. The number of children for which the agency has legal responsibility has increased from 14,220 in fiscal year 1991 to 17,973 in fiscal year 1995.
 - The adult protective services (APS) program performed 46,574 investigations and provided services to more than 33,000 elderly and disabled persons living in their own homes in fiscal year 1995. In-home community investigations are up 31 percent since fiscal year 1991, and the number of clients served has increased 89 percent.
 - The number of reports of abuse investigated by APS in MHMR facilities and community centers has increased from about 2,500 in fiscal year 1991 to 6,100 in fiscal year 1995.
- ▶ As a regulatory entity, PRS licenses day care facilities, residential care facilities, and residential care administrators. PRS also sets and enforces minimum standards for these facilities.
 - The child care licensing program regulated and licensed more than 29,000 day care and residential care facilities and performed 35,430 inspections in fiscal year 1995. The number of regulated facilities has increased eight percent since fiscal year 1991 and the number of inspections has increased 29 percent. The program also investigated more than 9,887 licensing complaints dealing with minimum standards and 705 complaints of child abuse or neglect in licensed facilities.

*In fiscal year 1995,
PRS investigated
107,895 reports of
child abuse and
46,574 reports of
elder abuse.*

with disabilities and the elderly if they are unable to care for themselves.

- Other state agencies are also responsible for investigating abuse in limited situations due to their responsibilities for regulation of certain facilities. The Texas Department of Human Services (DHS) investigates abuse and neglect in nursing homes, private mental retardation facilities, and personal care homes. The Texas Department of Health (TDH) investigates abuse and neglect in private psychiatric hospitals.
 - Several agencies provide services to some of the same clients served by PRS. Children in foster care receive Medicaid funded through TDH. Families of abused children may receive services from the Texas Department of Mental Health and Mental Retardation (MHMR), DHS, the Texas Commission on Alcohol and Drug Abuse, TDH, and from local organizations. Elderly persons receive services through the long-term care program at DHS and through the Texas Department on Aging.
 - ▶ While other agencies perform regulatory and licensing functions similar to PRS, no other agency regulates child care facilities, 24-hour residential care facilities, or administrators.
- ▼ **While the functions performed by PRS could be located in another agency, the timing is not right to fully evaluate transfer of those functions.**
- ▶ Since PRS' creation in 1992, it has not had stable leadership. During the last four years, PRS has had six agency directors. Lack of consistency and continuity has prevented the agency from developing management and financial support systems necessary for good service delivery. In addition, the agency is working to implement several recent changes to the Family Code and Human Resource Code.
 - ▶ The PRS Board has recently hired a new Executive Director with a strong business and management background. One of the first efforts of the new Director was a top to bottom functional evaluation of the agency's service delivery system as well as a review of the agency's support systems. This effort was aimed at identifying better ways to perform the agency's functions.

Lack of consistent management has prevented PRS from operating efficiently.

provide more information on the management of the Department's information technology.

- ▶ **Training** - Advocacy groups and law enforcement officials have raised questions about the effectiveness of PRS training. During the course of the Sunset review, staff came across workers who had received inadequate or no training. To effectively investigate reports of abuse, neglect, and exploitation and provide services to the victims of abuse and their families, PRS employees must have a good understanding of criminal and civil investigation techniques, social service delivery methods, the state's legal system, the Family Code, and numerous other statutes. Training is addressed in Issues 1, 2, 7, and 10.
- ▶ **Communication, Coordination, and Consistency** - Throughout the review of PRS, staff noted numerous examples of lack of communication, coordination, and consistency among regions and with the state office. Prior to the new Director, the Department followed a decentralized management approach intended to provide flexibility in the regions. While flexibility is certainly desirable and necessary in a state as large and diverse as Texas, failure to know what is going on, much less trying to control it, has led to concerns about investigations and the delivery of services. Issues 7, 9, 10, 13, and 14 address these concerns and offer improvements.
- ▶ **Working with Other Agencies and Levels of Government** - To effectively provide services to the state's citizens, PRS and other health and human service agencies need to work together to leverage resources, provide assistance when needed, and prevent people from falling through the cracks. The process for investigating allegations of abuse in MHMR facilities highlights the lack of consistent cooperation between health and human service agencies. Although both MHMR and PRS have worked to solve problems, the Lt. Governor and the Senate had to intervene to get the two agencies to develop a corrective plan. The agency must also improve its relationship with local governments and Mexico. For the service delivery system to work, PRS must work with other health and human service agencies and the Health and Human Services Commission to solve mutual problems. Issue 7 provides more information on investigations in MHMR facilities and Issues 8, 9, and 10 address working with other levels of government.

- Contracting** - PRS does not hold its contractors accountable for their performance. Contracting problems at the agency have resulted from a lack of centralized policy, monitoring, and responsibility. Specifically, PRS spends more than \$175 million per year on foster care without knowing the quality of services or the effectiveness of the treatment in meeting the needs of abused and neglected children. The current method of contracting does not ensure, promote, or reward quality care. To improve the foster care system, PRS is working to modify its contracting system for residential care services to include quality measures that can be used to evaluate not only services, but providers. Issue 5 addresses problems with the overall contracting process, while Issue 6 deals with contracting for foster care.
- Aggressive Regulation** - The child care licensing program (CCL) has not aggressively regulated the child care industry. Strong regulation in this industry is essential to protect children from harm and abuse. In fiscal year 1995, the child care licensing program conducted 35,430 facility inspections, which resulted in 91,775 violations cited. The Department also investigated 9,887 complaints, 41 percent of which were validated. These violations, however, only resulted in a total of 122 formal actions against facilities (license denial, probation, or revocation). CCL does not have the authority to use administrative fines, an enforcement tool commonly used by other regulatory agencies to address violations. Additionally, PRS staff is hesitant to seek adverse action against facilities because of concerns with the administrative hearings process. **Issues 11, 12 and 15** address fees and administrative hearings and recommend additional tools for use in regulation.

PRS' functions should be continued. Questions concerning PRS remaining a separate agency should be answered as part of a comprehensive look at all health and human services agencies.

Conclusion

Protective services for children, people with disabilities, and the elderly and child care regulation are essential state functions. The state's strategic plan emphasizes protection of the state's most vulnerable citizens. Currently, the protective and regulatory functions provided by PRS are not duplicated by other state agencies. Organizationally, the question of PRS' proper location in the health and service system remains unanswered. Many services provided are unique to PRS, such as statewide protective services functions, while other functions, such as licensing and regulation,

are performed by other state agencies. To effectively evaluate the proper organizational structure of PRS, other major health and human service agencies must be considered. Currently, only three health and human service agencies are under Sunset review. However, next biennium the majority of health and human service agencies will be under Sunset review providing an opportunity to evaluate the organizational structure of the state's health and human service system.

The Department's newly appointed Director has led a comprehensive functional review of the agency's service delivery system and support functions. The functional review was performed by workers, supervisors, program directors, field and support staff, and regional directors from all programs and regions. The review identified many areas for improvement, including some of the areas identified above. These changes, along with those suggested in this report, should allow PRS to fulfill its mission.

Recommendation

Change in Statute

- **Continue the Department of Protective and Regulatory Services for 12 years.**

This recommendation would continue PRS to ensure that the state has a process for investigating abuse and providing services to victims and their families. PRS would continue to regulate child care facilities, foster families, residential treatment centers, and maternity homes. However, for PRS to effectively perform these critical functions, the Department needs to address some fundamental management and system problems as identified throughout the report.

As for reorganization, PRS has still not justified that a separate agency is the best way for Texas to provide protective services. The Sunset staff will consider the location of protective services within the state's health and human service system during the next biennium when other health and human service agencies are under Sunset review.

With the lingering questions regarding PRS' status as an independent agency, the Sunset staff's recommendation for a 12-year Sunset date needs some explanation. The staff has reviewed PRS programs and made recommendations. Reorganization needs to be considered in two years when the state's other related agencies are under review. This evaluation may occur, under the provisions of the Sunset Act, without a specific Sunset review date. By extending the Sunset date for PRS by only two years, staff would have to review all PRS operations again in the next Sunset review cycle. Fully re-evaluating

PRS in the next cycle would unnecessarily divert staff resources from reviewing the other 29 agencies already scheduled.

Fiscal Impact

If the Legislature continues the current functions of PRS using the existing organizational structure, the Department's annual appropriations of between \$520 and \$540 million would continue to be required.

¹ *Texas Tomorrow*, 1994. Governor's Office of Budget and Planning.

² Child Welfare League of America, *Survey on Managed Care and Child Welfare* (preliminary draft), March 1996, p.1.

ACROSS-THE-BOARD RECOMMENDATIONS

Department of Protective and Regulatory Services	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Update/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Update	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Provide for notification and information to the public concerning agency activities.
Update	11. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	12. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	13. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	14. Require information to be maintained on complaints.
Apply	15. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	16. Require development of an equal employment opportunity policy.
Update	17. Require the agency to establish career ladders.
Update	18. Require a system of merit pay based on documented employee performance.

Department of Protective and Regulatory Services	
Recommendations	Across-the-Board Provisions
	B. LICENSING - Facilities
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Apply	6. Authorize agencies to use a full range of penalties.
Apply	7. Specify disciplinary hearing requirements.
Apply	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	9. Require the policymaking body to adopt a system of continuing education.

Department of Protective and Regulatory Services	
Recommendations	Across-the-Board Provisions
	B. LICENSING - Administrators
Update	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Already in Statute	2. Provide for timely notice to a person taking an examination of the results of the examination and an analysis, on request, to individuals failing the examination.
Apply	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Apply	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Apply	7. Specify disciplinary hearing requirements.
Not Applicable	8. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Update	9. Require the policymaking body to adopt a system of continuing education.

BACKGROUND

Background

Agency History

In 1991, the 72nd Legislature created the Department of Protective and Regulatory Services (PRS) as part of the House Bill 7 restructure of the state's health and human services system. The Legislature redesigned the system to improve services at the local level by reducing administrative duplication and making services more accessible to clients. PRS was created as a separate agency to focus more attention on the protection of the state's most vulnerable citizens — children, the elderly, and people with disabilities.

PRS assumed all responsibilities for child and adult protective services and child care licensing from the Department of Human Services (DHS) on September 1, 1992. In addition, investigations of abuse and neglect in Department of Mental Health and Mental Retardation (MHMR) facilities were transferred from MHMR to PRS.

Since its creation, PRS has been given these additional responsibilities:

- Services to At-Risk Youth (STARS) from DHS (1993);
- maternity home regulation from the Department of Health (1993);
- the functions of the Office of Youth Care Investigations from the Health and Human Services Commission (1993); and
- investigations of abuse and neglect in community mental health and mental retardation centers from MHMR (1995).

PRS' primary role is to protect children, the elderly, and persons with disabilities from abuse and neglect. PRS receives reports of mistreatment, investigates those reports that meet the statutory definitions of abuse or neglect, and provides social services to the victim and the family. PRS also sets minimum standards for and regulates child care providers, which include both day care providers and 24-hour care providers, and regulates maternity homes.

PRS' functions were separated from DHS to focus more attention on the protection of vulnerable Texans and to address concerns with DHS' management of these efforts.

RESTRUCTURING OF THE HEALTH AND

The health and human service system in Texas has been structured and restructured since the creation of the Texas Department of Health in 1879 and the Department of Public Welfare in 1939. As the role of the federal government has increased, the number, types, and complexity of government social services has expanded. Concurrently, Texas government has struggled with how to best provide these services to citizens of the state. Today, concerns still exist about how these services should be organized and delivered as evidenced by legislation each session to realign the different components of the health and human service system.

State lawmakers have always recognized the need to improve the delivery of health and human services in Texas. The complex problems associated with the fragmentation of health and human services have been well documented: duplication, inefficiency of service, high costs, and basic objectives not being met. In the late 1970s, the Legislature conducted two significant studies on the structure, operations, and delivery of health and human services. The second study, conducted by the Special Committee on Delivery of Human Services in 1978 and completed in 1980, included recommendations that attempted to make the system more effective through planning and coordination. The recommendations of the Committee recognized the need for a coordinating body to oversee the delivery of health and human services and, in 1983, the Legislature created the Texas Health and Human Services Coordinating Council (HHSCC). The Council was expected to coordinate services and policy planning by human service agencies through the evaluation of health and human service issues and policies and by recommending changes to the Governor and the Legislature. As the 1991 Sunset Commission report on the Council stated, "The Legislature intended for the Council to serve as a forum for policymakers and leaders of the health and human service agencies [to] study and develop solutions to the problems brought about by Texas' complex health and human service delivery system."

In its enabling statute, the Legislature directed the Council to focus on two issues for the next two bienniums: services to children and health care needs and costs in Texas. The Council's statute also allowed the review of other issues, such as data collection projects during the 1990-1991 biennium, but the Council focused mainly on services to children. Although theoretically sound, the Council lacked the authority to coordinate program efforts among agencies and failed to develop a coordinated planning process for health and human services during the seven years of its existence.

The Texas Performance Review (TPR), in 1991, studied the health and human service system and recommended alternatives for improvement. Foremost, TPR recognized that the origin of many problems was largely attributed to the fragmentation of services. The review determined that a single unified system would provide these solutions to the problems resulting from the current system:

- comprehensive, statewide planning and development;
- a continuum of care for families and individuals;
- integration of services to improve client access;

HUMAN SERVICES SYSTEM IN TEXAS

- effective use of management information systems;
- incentives to maximize existing resources;
- system-wide accountability;
- an environment that promotes teamwork and creativity; and,
- mechanisms that foster innovation at the agency and local levels.

TPR recommended a significant reorganization of the structure and delivery of health and human services in Texas to the 72nd Legislature. In the 1991 session, the Legislature passed House Bill 7 with the specific intent to improve the coordination of the service delivery system. This legislation established the Health and Human Services Commission (HHSC) to replace the Health and Human Service Coordinating Council and act as an umbrella agency for all the health and human service agencies in Texas. One of HHSC's key responsibilities was to develop a standard approach for client eligibility determination for health and human services. The Commission was also charged with maximizing state, federal and local funds for service delivery, emphasizing coordination between agencies, and flexibility and local decisionmaking in service delivery. Agencies under the umbrella of the Commission include Texas Department of Aging, Texas Commission on Alcohol and Drug Abuse, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Early Childhood Intervention, Texas Department of Health (TDH), Texas Department of Human Services (DHS), Texas Juvenile Probation Commission, Texas Department of Mental Health and Mental Retardation (MHMR), Texas Rehabilitation Commission, and the Texas Department of Protective and Regulatory Services (PRS). The Texas Youth Commission was originally included under HHSC's jurisdiction but was removed by the 73rd Legislature. (See Appendix 1 — Texas Health and Human Services Agencies).

In addition to the creation of HHSC, the restructuring of health and human services involved reassigning the functions and services provided by several of the agencies. DHS and TDH were restructured to place most state-funded acute health services in TDH and long term care services in DHS. Most significantly, House Bill 7 created the Texas Department of Protective and Regulatory Services and transferred child and adult protective services and child care licensing from DHS to PRS. PRS was also given the charge of investigating incidences of abuse and neglect in MHMR facilities.

The 73rd and 74th Legislatures made additional changes to the health and human services system, but the basic organization of the agencies remained. (See Appendix 2 — Significant Changes to the PRS statute). The structure established by House Bill 7, however, was not intended to be a permanent solution. The legislation required the Commissioner of Health and Human Services to recommend further reorganization of the programs to the Legislature. That process is ongoing as of the writing of this report. To provide an opportunity to evaluate the structure and make necessary changes, the Legislature changed the Sunset review dates for the affected agencies to 1999.

Board Members and Committees
<p>Four members with demonstrated interest in PRS services:</p> <p>Maurine Dickey, Dallas (Chair) Catherine Clark Mosbacher, Houston Judge William H. (Bill) Sheehan, Dumas Susan Herring Stahl, Dallas</p>
<p>Two public members:</p> <p>Jon Martin Bradley, Dallas Jean P. (Penny) Beaumont, Bryan</p>
<p>Current Advisory Committees:</p> <p>Advisory Committee for the Office of Protective Services for Families and Children Advisory Committee for the Office of Adult Protective Services State Advisory Committee on Child-Care Administration and Facilities Texas Multidisciplinary Taskforce on Children's Justice Advisory Committee on Promoting Adoption of Minority Children Strategic Directions Advisory Committee</p>
<p>Board Subcommittees</p> <p>Advisory Committees Agenda (Board Meeting) Adult Protective Services Automation (CAPS) Budget Community Partners (Volunteers) Foster Care and Child Protective Services Issues Internal Audit Managed Care Personnel Sunset Commission</p>

Policymaking Structure

PRS is governed by a six-member Board appointed by the Governor with the advice and consent of the Senate. Four members of the Board must have a demonstrated interest in the services provided by the Department and two members must represent the public. Board members serve staggered six-year terms with one member designated annually by the Governor as chair.

The Human Resources Code sets out the duties and responsibilities of the Board. Board members adopt rules to ensure the Department's compliance with state and federal law, allow the implementation of agency programs, and set the minimum standards of care for child care facilities. The Board also adopts the level of care rates which regulate foster and substitute care payments.

The Board oversees the operation of the Department and hires the Executive Director, with the approval of the Governor. The Board may delegate to the Executive Director any power or duty granted to the Board except rule-making authority. The Board has 11 subcommittees to assist with agency oversight and policy development. The Board has a regularly scheduled meeting every other month but, in fiscal year 1995, met a total of 15 times to conduct board duties. It also appoints advisory committees and may establish divisions within the Department as necessary.

Funding and Organization

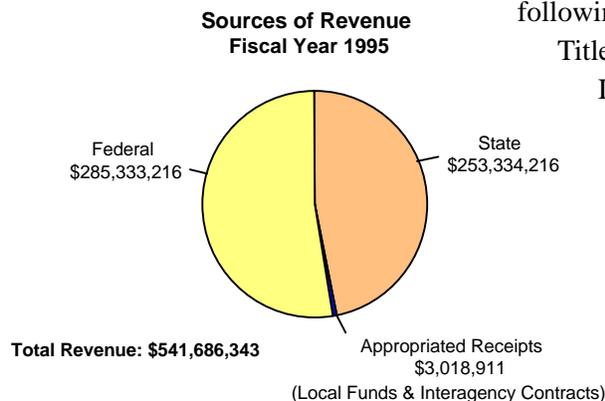
FUNDING

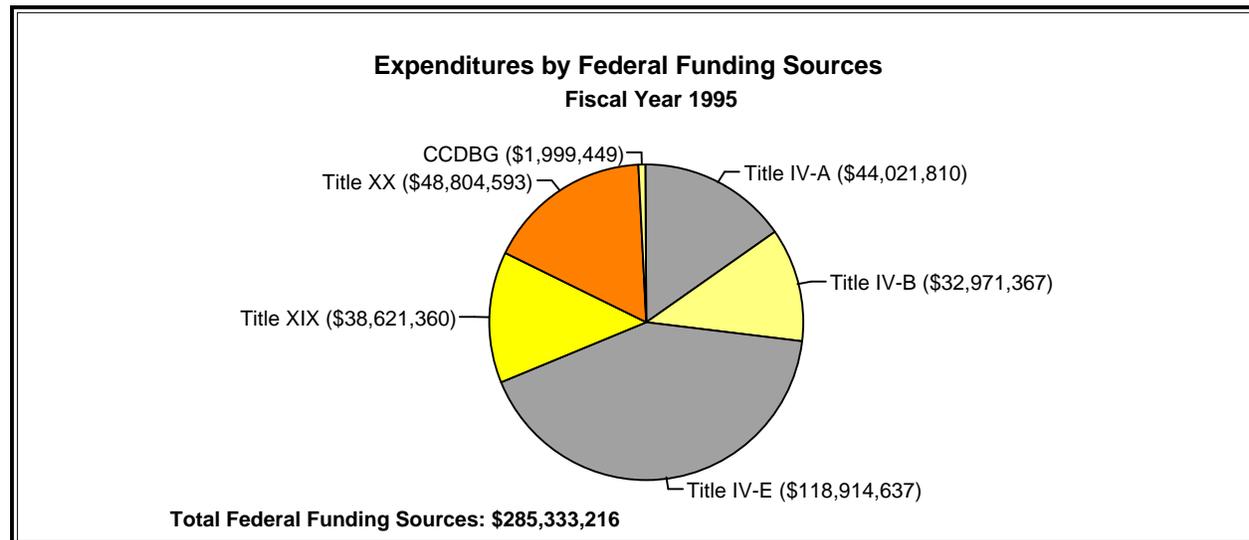
PRS is funded by both state and federal funds. Over 50 percent, or \$285 million of PRS' annual budget in fiscal year 1995 came from federal funding sources. Sources of federal funding shown on the

following page include: Title IV-A Emergency Assistance, Title IV-B Child Welfare and Family Preservation, Title IV-E Foster Care, Adoption Assistance and

Independent Living, Title XIX Medicaid, Title XX Social Services Block Grant, and the Child Care Development Block Grant.

State revenue is used to fund the balance of PRS' budget not covered by federal dollars. Over \$253 million, or 47 percent, is supported by general revenue and licensing fees collected. Based on the





Federal Funding Sources

Title IV-A Emergency Assistance **\$44,021,810**

- Enables states to meet crisis needs of families with children — allows for a broad array of short-term services such as shelter, housing, food, and clothing. Limited to 12 months of assistance.

Title IV-B Child Welfare Services; Family Preservation and Support **\$32,971,367**

- Eligible child welfare services include emergency caretaker and homemaker services, emergency financial assistance, family preservation activities, mental health services, alcohol and drug abuse counseling, and post-adoption services.
- Family Preservation and support services include improving parenting skills, reunification and preplacement preventive services (such as intensive family preservation, and permanency planning).

Title IV-E Foster Care Maintenance, Adoption Assistance and Independent Living **\$118,914,637**

- Funds room, board, and supervision for eligible children placed in foster care, adoption assistance payments, transitional independent living, training, and reasonable costs for administration.

Title XIX Medicaid **\$38,621,360**

- Case management services provided by PRS staff and in-home services provided by contractors to Medicaid eligible clients and administrative functions performed by PRS that promote efficient administration of the Medicaid program.

Title XX Social Services Block Grant **\$48,804,593**

- Allows for a wide range of social services with typical activities to include day care, protective services for children and adults, and home care services for the elderly and handicapped. These funds cannot be used for foster care payments.

Child Care Development Block Grant **\$1,999,449**

- Funds the monitoring of minimum standards for those entities receiving the grants.
- Enables inspection of registered family homes.

Source: Texas Department of Protective and Regulatory Services

SUMMARY OF THE BUDGETARY PROBLEMS OF

Almost eight months into the current fiscal year, the Department of Protective and Regulatory Services continues to have significant budgetary problems which have left the agency more than \$38 million dollars short of the budget needed to provide critical services to children, the elderly, and people with disabilities for the upcoming fiscal year.

The Legislature appropriates more than one-half billion dollars to PRS for each year of the biennium. These funds are a mixture of both state and federal sources. In recent years, federal funds have become an increasingly larger percentage of the total budget of the Department, totaling almost 60 percent of total revenues for the 1996-97 biennium. The Legislature appropriated more than \$200 million of general revenue to PRS for each year of the 1996-97 biennium.

The \$38 million shortfall represents a culmination of events which have taken place for almost a year. Detailed below is the timeline and description of the circumstances that account for the shortfall.

November 1994

LEGISLATIVE APPROPRIATION REQUEST

Prior to the 1994-95 biennium, the Legislature, implementing recommendations of the Texas Performance Review recommendations, instructed the Department to re-evaluate and maximize the federal funding programs available to them. In

pursuing this directive, PRS was able to draw-down additional revenues of approximately \$84 million in federal dollars for use during the 1994-95 biennium to serve clients that were previously served through general revenue funds.

In continuing the federal funds initiative, PRS identified two areas during the 1996-97 budget preparation — Title IV, Emergency Assistance Money and Title XIX, Medicaid — where additional increases in federal dollars could be available for child protective services. These federal monies, totaling \$108 million for the biennium, were related to foster care payments and were included in the method of finance for PRS' total appropriation approved by the 74th Legislature.

April - July 1995

PRS STAFF DISCOVERS THAT FEDERAL FUNDS HAVE BEEN OVERESTIMATED

In April 1995, PRS discovered that inaccurate methodology had been used to project some of their federal funding sources, inflating the federal amounts used in the budget by more than \$40 million for the upcoming biennium. Although PRS staff and management became aware of the exaggerated numbers in the budget in late April, the PRS Board was not notified until late June 1995 and the Legislature was not informed until July 1995—too late to take corrective action.

PROTECTIVE AND REGULATORY SERVICES

August-October 1995

FIRST \$40 MILLION SHORTFALL AND THE REDUCTION IN FORCE

In August 1995, PRS realized that drastic measures would have to be taken to compensate for their budgetary shortfall. PRS staff, Executive Director, and the PRS Board informed state leadership that more than \$40 million in total — or approximately \$20 million/year of the biennium — would have to be cut from the budget to bring it in line with revenues. In order to compensate for the loss of federal funds in the budget, PRS was forced to cut 450 jobs and not fill an additional 239 positions, resulting in estimated savings totaling \$16 million for fiscal year 1996.

The reduction in force alone was not sufficient to bring anticipated expenditures in line with revenues for fiscal year 1996 — another \$4 million had to be cut from purchased and contracted services. By realigning methods of finance and utilizing federal funds from previous years available for carry-forward, PRS was able to adjust anticipated expenditures in-line with revenues for the fiscal year 1996 at a substantially lower amount than appropriated. The biennial budget included approximately \$71 million in federal monies (Title XIX) that were unapproved at the federal level and were at risk. The Department estimated that fiscal year 1997 revenues and expenditures would be adjusted accordingly when more information on federal funds became available.

November-December 1995

FINANCIAL REVIEW

The growing concerns over the financial problems and shortfalls at PRS prompted Governor Bush and Dr. Mike McKinney, Health and Human Services Commissioner, to request an analysis of the financial situation at the Department. This review determined that only \$11 million out of the anticipated \$71 million of the unapproved Title XIX federal monies budgeted for the biennium could even be considered for final federal approval. Once again, PRS had to shift funding to compensate for losses in federal monies. Solving the immediate financial crisis for fiscal year 1996 would escalate the shortfall for fiscal year 1997.

January - March 1996

Department's Report to Leadership

As of the writing of this report, the Department's financial situation has further deteriorated. The unapproved federal plan for Title XIX monies is still pending and revised estimates indicate that substitute care payments will exceed budgeted amounts in fiscal year 1996. Although the Department has tentatively solved the immediate crisis for fiscal year 1996, the estimated shortfall now stands at more than \$38 million for fiscal year 1997.

Expenditures by Function Fiscal Year 1995		
	Number of Staff	Estimated Expenditures
Child Protective Services		
Intake	269	7,444,265
Child/family Services	4,528	146,713,634
Purchased Services	0	41,794,572
Intensive Family Preservation	301	11,125,804
Substitute Care Payments	2	207,196,747
Alternative Services	10	4,128,375
Hope Center	0	1,839,665
Total, Child Protective Services	5,110	\$420,243,062
Adult Protective Services		
Adult Protective Services	513	21,477,693
MHMR Services	89	3,032,744
Total, Adult Protective Services	602	\$24,510,437
Licensing of Child Care and Child Placing		
Total, Child-care Regulation	375	\$13,722,860
PRS Automation Project		
Total, Automation Initiative	9	\$55,712,009
Indirect Administration		
Central Administration	51	4,686,750
Information Resources Technology	93	11,354,517
Other Support Services	139	6,035,587
Regional Administration	146	5,421,121
Total Administration	429	\$27,497,975
Grand Total	6,525	\$541,686,343

Source: Texas Department of Protective and Regulatory Services
1995 Annual Report

matching rate of federal programs, state dollars are used to qualify Texas for the receipt of federal funds.

Based on 1993 legislative mandates, PRS began several new federal funding initiatives to qualify for new sources of federal funding in 1994. For example, PRS qualified for additional federal funding under the Title XIX Medicaid Targeted Case Management Program and the Title IV-A Emergency Assistance Program. Through these initiatives, PRS was successful in obtaining over \$80 million in additional federal funds during the fiscal year 1994-95 biennium. PRS' increased reliance on a variety of federal funding sources continued in the agency's fiscal year 1996-97 budget.

In fiscal year 1995, PRS spent approximately \$542 million. PRS' expenditures are divided into five major areas: child protective services, adult protective services, child care licensing, automation, and agency administration. PRS spent about \$255 million in fiscal year 1995 on purchased client services.

The Legislature has established a statewide goal of 30 percent of all agency contracts to be made with Historically Underutilized Businesses (HUBs). The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews. PRS purchased 43.69 percent of goods and services from HUBs in fiscal year 1995.

Purchases from HUBs Fiscal Year 1995	
Total Purchases of goods and services	\$47,107,394
Total Spent with Certified HUBs	\$20,585,779
Percent Spent with Certified HUBs	43.69%
Statewide Average	15.89%
State Goal	30%

Source: General Services Commission

ORGANIZATION

PRS is the fifth largest agency in the state in terms of staff. In fiscal year 1995, PRS employed 6,525 employees with 450 located in the state office and 6,075 in the regional offices.¹ State office develops policy and rules for the Board's approval; oversees and coordinates program operations in the regions to ensure consistency; and provides public information, information resources technology, and legal services for the Department. Regional offices are responsible for providing direct services to the Department's clients such as intake, investigation of reports, family preservation services, foster care and adoption placement, maintenance of foster care facilities, and inspection of day care facilities. PRS is divided into 11 regions across the state, according to the uniform health and human service agency boundaries. (See *Protective and Regulatory Services Regions*)

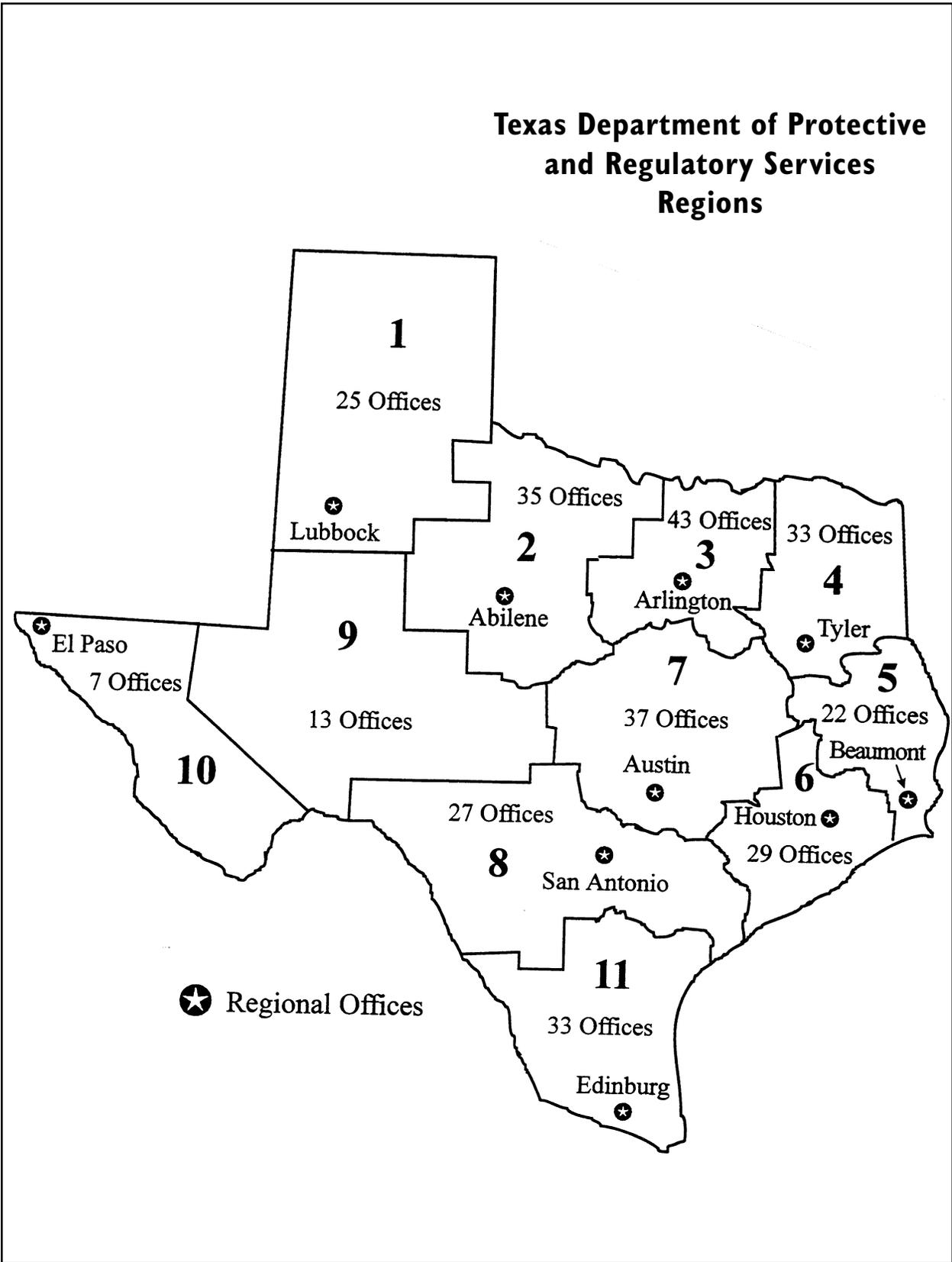
Jim Hine, the new PRS Executive Director as of January 1996, is in the process of implementing a new organizational structure at the agency that will include changes at both the state office and regional level. The state office will be organized into five major divisions: programs, government relations, information technology, finance, and legal.

Regional administration is being restructured completely. Instead of maintaining a management approach that authorizes the four directors in each region to jointly manage the region, the Executive Director has appointed one person as administrator in each region. Establishing a single regional director position in the region is an attempt to provide better accountability and promote greater coordination of the three agency programs and management support.

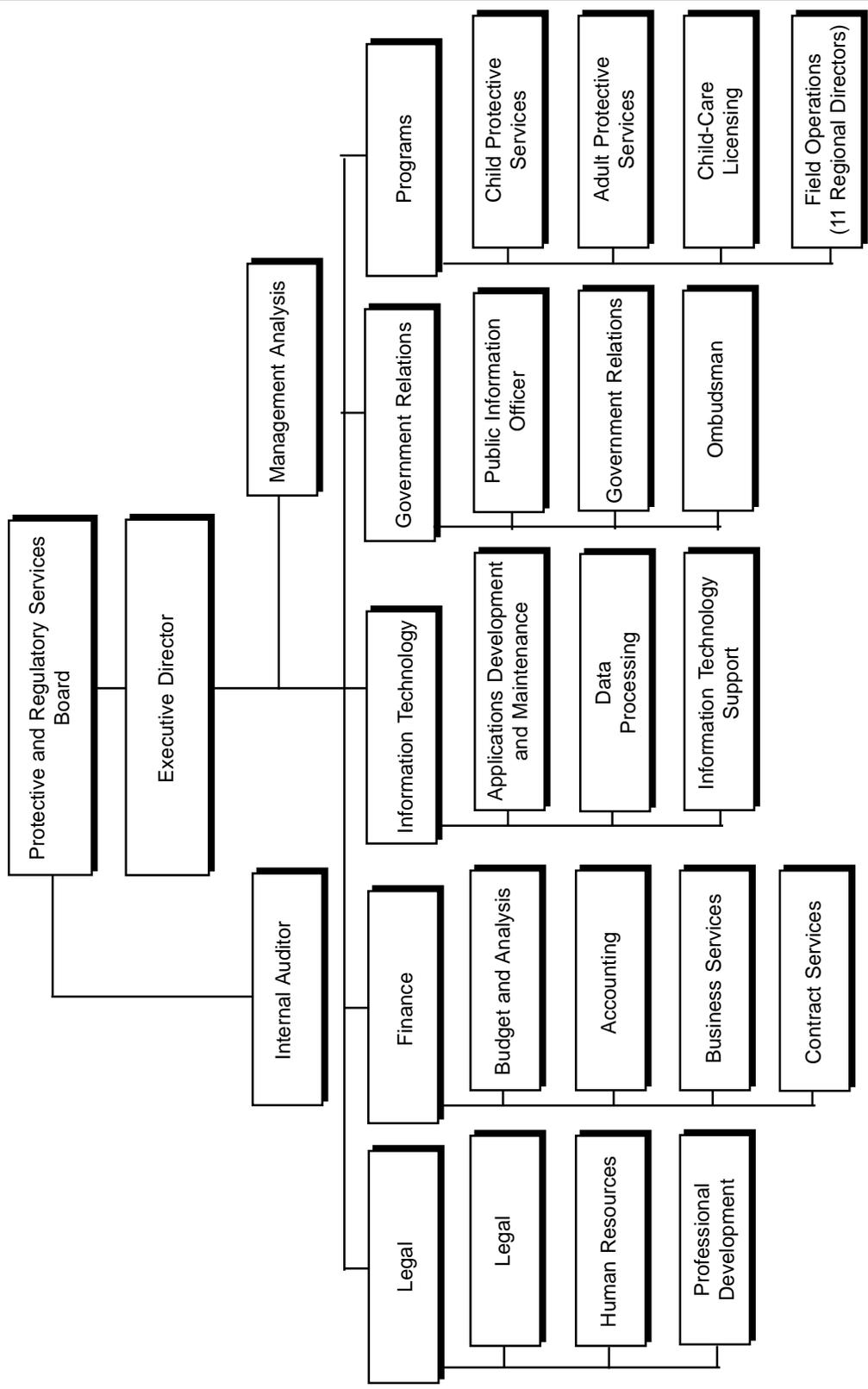
At Hine's direction, PRS is also conducting a thorough assessment of all the agency's functions. Using staff from all areas of the agency, the functional review task force is analyzing the strengths and weakness of the agency and identifying ways to improve PRS' service delivery system. The task force's initial recommendations include restructuring the agency based on functions instead of programs. Services would be based on the major functions performed by PRS such as intake/outreach, investigations, on-going services, and regulation, instead of on child protective services, adult protective services, and child care licensing.² These changes in the service delivery system will be reflected in the planned organizational changes. (See *PRS Organizational Chart*)

Strong leadership and management is essential to ensure that services are coordinated and consistent among the Department's 11 regions.

Texas Department of Protective and Regulatory Services Regions



Texas Department of Protective and Regulatory Services Organizational Chart



Equal Employment Opportunity Statistics Fiscal Year 1995							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	State Goal	Agency	State Goal	Agency	State Goal
Officials/Administration	49	14%	5%	18%	8%	57%	26%
Professional	4827	18%	7%	20%	7%	77%	26%
Technical	72	10%	13%	26%	14%	54%	41%
Protective Services	NA		13%		18%		15%
Para-Professionals	484	26%	25%	35%	30%	89%	55%
Administrative Support	1744	26%	16%	28%	17%	95%	84%
Skilled Craft	NA		11%		20%		8%
Service/Maintenance	1	0%	19%	0%	32%	0%	27%

Source: Texas Department of Protective and Regulatory Services

PRS is subject to the General Appropriations Act including provisions which set employment goals for minorities and women by specific job category. These goals are a useful measure of diversity and an agency's commitment to developing a diverse workforce.

Agency Operations

PRS was created to protect children, the elderly, and people with disabilities from abuse, neglect, and exploitation.

(See Appendix 3 for Program Comparison Information from Other States). To fulfill this goal, PRS performs four major functions:

- protective services for families and children;
- adult protective services to the elderly and people with disabilities;
- licensure and regulation of child care providers; and
- services to support agency operations.

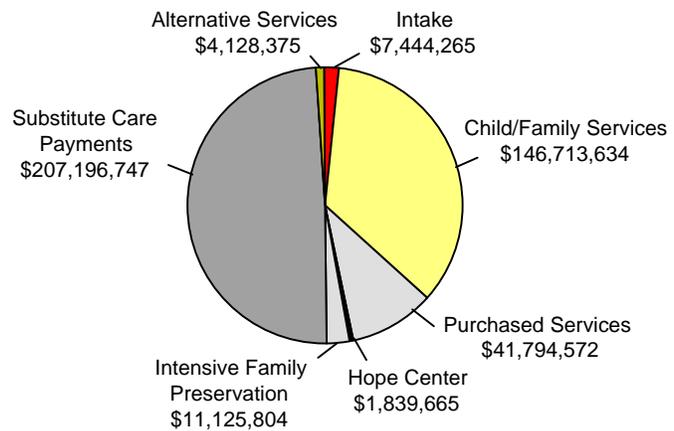
PROTECT AND PROVIDE SERVICES TO AT-RISK FAMILIES AND CHILDREN

In 1931, the Texas Legislature created the Child Welfare Division within the Texas Board of Control to address the problem of child abuse and neglect. In 1939, the Child Welfare Division was transferred to the newly created Texas Department of Public

PRS Strategic Plan
<p>In 1991, Texas government adopted a strategic planning and budgeting process to move from short-term budget decisions, often based on crisis intervention to long-term goal setting, allocating funds according to set priorities, and improving accountability for results. Strategic planning focuses the budget process more on results rather than efforts.</p> <p>The mission of the Department of Protective and Regulatory Services is to protect the physical safety and emotional well-being of the most vulnerable citizens of Texas. The strategic plan for the agency includes one primary goal:</p> <p>Goal A: Protective Services</p> <p>To protect children, elderly adults, persons with disabilities, and victims of family violence from abuse, neglect and/or exploitation through development and efficient management of an integrated service delivery system.</p> <p>This goal's objective is to reduce the confirmed incidence of child abuse and neglect from 13.8 per 1,000 to 9.5 per 1,000 children by fiscal year 1999 and reduce the effect of abuse and neglect by providing quality protective services to 70 percent of the at risk children and their families.</p> <p>Strategies under this goal include automated intake, child and family services, purchased services, substitute care payments, adult protective services, MHMR investigations, and child care regulation.</p>

Welfare. Over the next three decades county, state, and federal efforts to address child abuse and neglect gradually increased. When the Texas Family Code became effective January 1, 1974, citizens were mandated to report suspected child abuse to the Department of Public Welfare. In 1977, the name of the Department of Public Welfare was changed to the Department of Human Resources and in 1985, it was renamed again as the Department of Human Services. In 1987, the Legislature enacted statutory definitions of abuse and neglect of children. In 1991, PRS was created as a separate state agency.

CPS Expenditures by Strategy Fiscal Year 1995



Total CPS Expenditures: \$420,243,062

Source: Texas Department of Protective and Regulatory Services 1995 Annual Report

The mission of Child Protective Services (CPS), the largest program in the Office of Protective Services for Families and Children, is to ensure that children and youth live in safe, nurturing, permanent homes, free from abuse or neglect. As mandated by the Texas Family Code, CPS investigates child abuse and neglect by parents or others responsible for the child and provides services when caregivers cannot act in their protective role. In fiscal year 1995, more than 78 percent of PRS' expenditures, or approximately \$420 million, went to protective services for families and children with the majority of the money used for substitute care.³

Below is a step-by-step description of services CPS provides to protect Texas' 5.3 million children from abuse or neglect.

- Intake/Investigations
- Family Preservation
- Foster Care
- Reunification/Adoption
- Preparation for Adult Living

Child Protective Services Strategies:

Intake: Receive reports of suspected abuse or neglect and assign those reports which meet the statutory definitions of abuse or neglect for investigation.

Child and Family Services: Conduct investigations, provide in-home services, out-of-home placements, and permanency planning for children at-risk of abuse or neglect and their families.

Purchased Services: Contract for services to treat children who have been abused or neglected, enhance their safety, and enable families to provide safe, nurturing homes.

Family Preservation: Provide intensive services to prevent unnecessary removal of children from their homes and enable early and safe reunification of children in foster care with their families.

Substitute Care Payments: Purchase out-of-home care, including care in foster homes, residential treatment facilities and adoptive homes for children who are removed from their homes.

Alternative Services: Provide anti-gang, truancy, runaway, and other services for children who need them.

Hope Center: Operate therapeutic wilderness programs in East Texas and an Alternative School and Family Therapy program in Houston.

Child Abuse includes:

- mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- sexual conduct harmful to a child's mental, emotional, or physical welfare;
- failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code; or
- causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photography, film, or depiction of the child is obscene or pornographic as defined by the Penal Code.

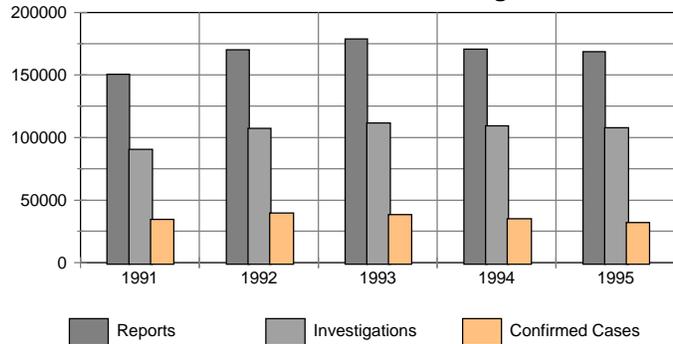
Child Neglect includes:

- the leaving of a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child; or
- the following acts or omissions:
 - placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury of a substantial risk of immediate harm to the child;
 - the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
 - the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential care or having run away.

Intake/Investigations

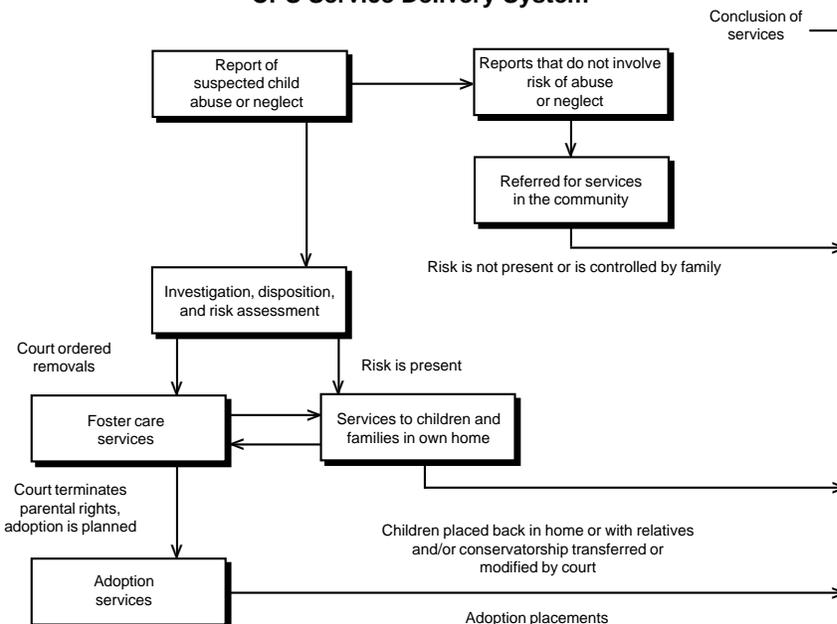
A child and the child's family become involved in the protective service system when CPS receives a report of abuse or neglect through one of three major avenues: a 24-hour statewide hotline, calls made directly to local offices in the regions, or centralized intake centers in certain regions. In Texas, anyone who suspects that a child has been abused or neglected is required by law to report the abuse or neglect. The identity of all complainants is confidential, except as authorized by state or federal law, agency rule, and Attorney General's opinion or as required by court order.

Reports, Investigations, and Confirmed Cases of Child Abuse and Neglect



When a report of abuse or neglect is received at intake, it is evaluated using the Structured Model for Assessment of Risk in Texas (SMART) system. The SMART system is a risk assessment model that helps staff assess the risk of abuse by considering previous reports of abuse, the child's vulnerability, parent's history, and the way the family functions and interacts. A report that does not involve abuse or neglect as defined by the Family Code is not investigated; instead, PRS refers the caller to appropriate community organizations, such as Family Outreach programs or Parents Anonymous, for services. A report that meets the statutory

CPS Service Delivery System



definition of abuse or neglect is assigned a priority classification, Priority I or Priority II, based on the degree of risk or harm to the child.

Priority I investigations, which involve children who face an immediate risk of abuse or neglect that could result in death or serious harm, are initiated within 24 hours of receiving the complaint. Examples of Priority I investigations include cases in which a child has died, sexual abuse is alleged, a child is severely injured, a preschool child is left alone, or a child appears to be severely malnourished. Priority II reports, which are cases with no indication of immediate risk of serious harm to the child, are initiated within 10 days. Examples of Priority II cases include minor injuries from alleged abuse, malnourishment, alleged sexual abuse by an absent parent who does not have frequent contact with the child, and lack of attention to medical needs that is not life threatening.

Even in confirmed cases of abuse or neglect, PRS attempts to keep families intact if the child's safety can be maintained.

Because allegations of child abuse involve both civil and criminal law, CPS works closely with local law enforcement to protect children and to provide necessary information to permit law enforcement to determine if criminal action is warranted. All complaints that are assigned to a caseworker and investigated are also referred to the appropriate law enforcement agency to determine if a criminal investigation is needed. In addition, recent legislation requires PRS to conduct joint investigations with law enforcement in cases of serious physical or sexual abuse. If law enforcement decides not to investigate, CPS has the authority to investigate on its own.

Generally, a CPS caseworker conducts the investigation through interviews with the child, the parents, the alleged perpetrator, and any other occupants of the household such as siblings or step-parents. The child is also examined by a physician if necessary. Through the investigation, CPS staff determine whether the child has been abused or neglected or is at risk of abuse or neglect and whether the child's safety can be maintained in the family's home. If the caseworker confirms abuse or neglect, CPS either allows the child to stay at home with close supervision and support services or seeks court action to remove the child. In all cases, CPS develops a service plan for the child that describes the services needed and sets goals for ensuring the child is permanently placed in a safe, nurturing home.

Family Preservation

In some instances, the Department provides intensive, short-term services to address the needs of the family. This approach is used if the caseworker determines that the child, who has been abused or neglected,

can remain in the home safely with support services and close supervision. PRS' emphasis on family preservation is based on the belief that children's needs are best met in their families. In addition, federal law requires the agency to make "reasonable efforts" to keep families intact to receive federal funding. Reasonable efforts are required to ensure that the agency has taken appropriate actions and provided necessary services to rehabilitate a family before a child is removed unless such efforts would jeopardize the child's safety.⁴ The court determines whether or not the agency has fulfilled this requirement.

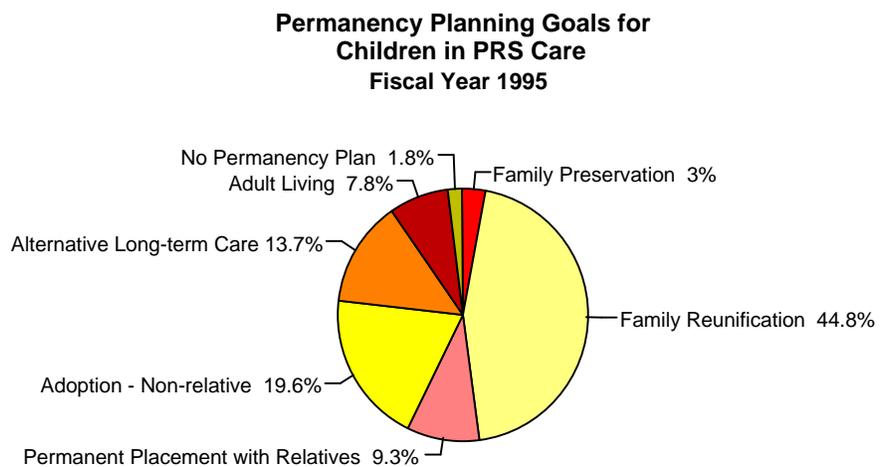
Family preservation, depending on the needs of the child and family, may include services such as counseling, parenting education, child care, drug treatment, and close caseworker supervision. The agency contracts with private entities to provide many of these services. Family preservation caseworkers handle a smaller caseload than other CPS caseworkers so they can intensely monitor the family under their care.

Foster Care

When PRS determines that abuse or neglect has occurred and the child cannot safely remain in the home, the Department seeks a court order to remove the child from the home and becomes managing conservator of the child. Under the Family Code, either the county attorney, the district attorney, or the Attorney General has responsibility for representing the Department in court once a child has been removed from the home.

After PRS removes the child, the caseworker and/or other child care experts assess the condition of the child and the family and develop a permanency plan. This plan describes the services that are necessary to stabilize and improve the condition of the child. The plan also details options for the permanent placement of the child. Options for permanent placement include:

- family preservation;
- family reunification;
- permanent placement with relatives;
- adoption;
- alternative long-term care; and
- preparation for adult living.



PRS must file this permanency plan with the court within 45 days after the child is removed from the home. The plan sets deadlines, states the ultimate placement goal for the child, and lays out the steps necessary to achieve this goal. The court reviews the plan every six months at a review hearing.

The Department places children removed from their homes in a variety of settings including relatives' homes, foster group homes, foster family homes, residential foster care facilities, or emergency shelters. Children are placed in foster care if a relative is not available or if the degree of care required is more than a relative can be expected to provide. PRS uses six Levels-of-Care (LOC) categories to determine the services a child needs and the reimbursement the foster care provider will receive.

Foster care can be divided into two major types of settings: foster homes and residential care facilities. Foster homes — individuals and families who agree to house and support foster children — provide approximately 70 percent of the foster care in Texas. Foster families usually care for children that do not have serious behavioral or medical problems.

PRS-certified foster families must meet certain requirements set out by the

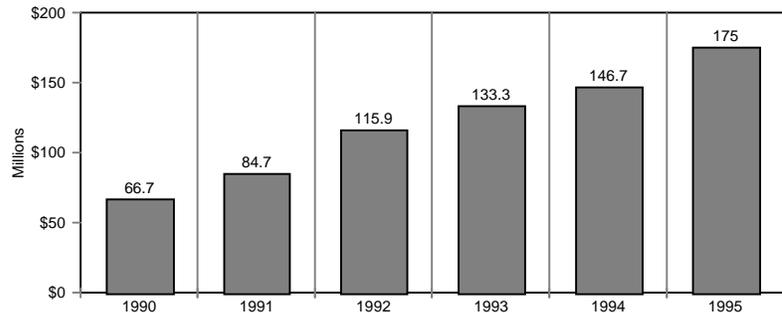
Level of Care System in Texas
<p>The LOC System includes six categories of service depending on the child's needs.</p> <p><i>Level 1</i> (\$15.85/day) care is the least restrictive level of care. These children require parenting in a normal family environment.</p> <p><i>Level 2</i> (\$33.95/day) care is also provided in a normal family environment with the availability of additional structure and guidance to meet the child's individual needs.</p> <p><i>Level 3</i> (\$58.08/day) care is provided in residential care facilities or therapeutic family homes. These children require structured, supportive care with the availability of therapeutic counseling as necessary.</p> <p><i>Level 4</i> (\$82.64/day) care is provided in residential care facilities or highly skilled therapeutic family homes. These children require a structured, individualized treatment program that includes regular therapeutic counseling.</p> <p><i>Level 5</i> (\$99.68/day) care is provided in residential treatment facilities. These children have severe problems that require a highly structured treatment program including intensive therapeutic counseling and 24-hour supervision.</p> <p><i>Level 6</i> (\$187.83/day) care is provided in highly structured residential treatment facilities licensed to provide inter-disciplinary treatment services to children who are severely impaired and require constant supervision, treatment, and care in a limited access area.</p> <p>Emergency care is not specifically defined in the LOC System. Any child, at any care level, may require emergency care.</p>

Department to qualify to care for foster children. For example, foster parents must have a home study, background check, and 15 hours of in-service training annually. At the end of fiscal year 1995, PRS had 3,452 foster families certified in the state, up from 3,027 in 1991.⁵ In addition to foster homes, private child placing agencies enroll foster parents who care for PRS children. Child placing agencies recruit families to provide foster and adoptive care for children in PRS conservatorship.

When a foster family or basic care facility cannot provide the level of care needed, the child is placed in a residential treatment facility licensed by PRS. Children placed in residential treatment facilities usually have severe behavioral or medical

problems. For example, these children may present a risk to themselves or others, be chemically dependent, have severe mental retardation, and/or require 24-hour medical supervision. Residential treatment facilities provide a more structured setting for children who need intensive services and supervision. These facilities offer a wide range of psychological, medical, and educational services that help stabilize children so they are able to live in a permanent home. At the end of fiscal year 1995, approximately 2,000 children were placed in licensed residential treatment centers/therapeutic camps in Texas.

**Foster Care Expenditures
Fiscal Years 1990 - 1995**



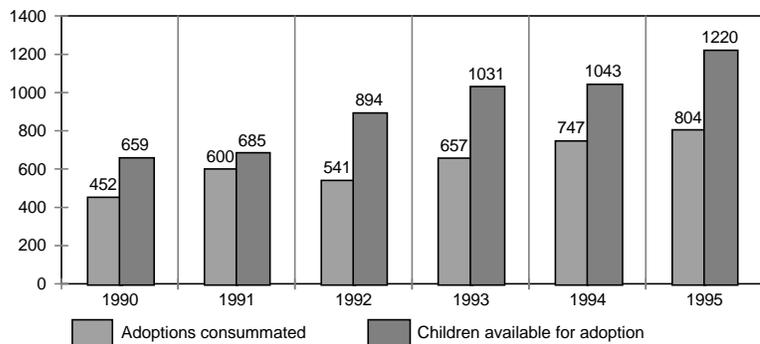
Foster care is the largest part of PRS' budget, accounting for \$175 million in 1995, up from \$67 million in fiscal year 1990. During the same time, the number of children in foster care increased from 7,156 to 11,700. In 1993, the latest year for which this data is available nationwide, Texas placed a lower percentage of children in foster care than any other state. Texas placed 2.1 children per 1,000 while the national median was 5.3 children per 1,000.⁶

Texas, like many other states, is looking for ways to provide quality social services at lower costs. Managed care is one option that Texas hopes can solve problems associated with growing caseloads and limited resources. The textbox on the following page discusses managed care in other states and in Texas.

Reunification/Adoption

The child may be reunited with his/her family if the parents meet the requirements set out in the service plan developed for each child removed from the home, and it is determined after a case review by the CPS caseworkers, the attorney ad litem, CASA (Court Appointed Special Advocate) volunteer, and other interested parties believe that the child will be safe at home. The court must approve the return of the child.

**CPS Adoptions
Fiscal Years 1990 - 1995**



THE INFLUENCE OF MANAGED CARE

Most, if not all, states are currently struggling to meet the growing demands for child welfare services within the limits of scarce resources. Some states have come under court supervision for failing to adequately ensure the safety and well-being of vulnerable children, while many others are on the verge of a crisis. As states look at overhauling their child welfare systems, reforms based on managed care principles are sweeping the country as the best option for providing quality services to vulnerable children while reducing costs. Managed care is expected to have a major impact on child welfare services in practically every state in the very near future; however, at present, no working models exist to guide states.

Key Concepts: Managed care for child welfare services does not have one specific meaning but generally refers to the concept of managing the way services are provided and paid for to reduce costs and ensure quality care. The main components of a managed care system include a service delivery arrangement, a review of quality and appropriateness of services, and reimbursement of providers.¹ These components must be carefully balanced to create an effective managed care system. Currently, no state has a working system in place to help see which services should be included, who should oversee the service system, or how payment for services should be determined. States must develop their own specific approach to meet their needs.

Potential benefits: Growing caseloads and limited resources require better management of the state systems to protect vulnerable children. Managed care has the potential to reduce costs, ensure quality care, make services less fragmented and more accessible, and increase the focus on preventive care.

Managed care offers an opportunity for PRS to provide better, cost effective services for children and families. For example, a managed care system could reward foster care providers for successful treatment of children by negotiating set rates which create an incentive to provide timely, effective services so a child remains in care only as long as necessary. On the contrary, Texas' current reimbursement system gives incentives for providers to keep children at higher levels of care for longer time periods because reimbursement is based on the length and level of care provided.

Managed care systems also require increased monitoring and quality assurance to ensure that the services provided are effectively meeting the children's needs. The ultimate result of managed care could be better outcomes for children and better use of the state's resources.

Uncertainties: Many states are considering using some form of managed care to provide child welfare services but, because no proven models exist, a long list of questions has to be answered before a managed care system can be implemented. According to a 1995 Child Welfare League of America survey, 88 percent of the 51 state, local, and city agencies surveyed said their states are exploring managed care options for child welfare services. Forty-seven of the 51 agencies expect managed care to affect them in the next year.²

For example, New Jersey is considering one of the broadest plans to overhaul their child welfare system by contracting with a private managed care company to oversee the provision of services for abused and neglected children. Under New Jersey's proposal, caseworkers would still investigate reports of child abuse and neglect, but they would turn over most of their other caseload to a private for-profit company that would coordinate services like foster care, therapy, and adoption. The private company would manage the \$225 million in contracts New Jersey has with 1,300 agencies that arrange services for the more than 46,000 children under state supervision.³ Because of the degree of uncertainty involved in this type of proposal, child welfare experts have expressed mixed reactions to it. Some believe the experiment is worthwhile given the poor performance of the existing system, while others have expressed serious doubts about what might happen to the quality of care if a for-profit company is put in charge of the system.⁴

ON CHILD WELFARE SERVICES

Fourteen other states have requested waivers from federal regulations to allow them to experiment with new approaches to service delivery. However, no proven managed care models are available to provide a blueprint for states. In fact, a federal judge in New York recently delayed New York City's plans to use a managed care system for foster care because of uncertainties about how quality care would be maintained as providers are given financial incentives to close cases faster.⁵

The lack of data and experience in this area has resulted in numerous unanswered questions about managed care for child welfare services. For example:

- What will the funding sources be for the managed care system?
- How will the agency measure the effectiveness of services and determine the cost of services?
- Which services will be included in the managed care system? Are both long term and short term services included under managed care?
- How does the managed care organization coordinate with the CPS caseworker?
- How is court ordered treatment handled?

Texas pilot projects: Because of the many uncertainties involved in changing the current system of services, PRS is planning to proceed with pilot projects to determine the strengths and weaknesses of a managed care system and assess the array of options available to the state before making system-wide changes.

PRS is currently developing three different managed care pilot projects:

- full service pilot which would include all services after investigations;
- pilot which would include only substitute care services; and
- pilot which would increase utilization review through the Department's contract with Youth for Tomorrow.

The specific details of the pilot projects have not yet been developed. PRS is planning to develop RFPs to implement the projects later in the year.

Enhanced contracting: The Sunset staff recommendations in this report regarding general contracting and contracting for foster care services will help lay the foundation for PRS to develop a managed care system. The Department is currently lacking an essential element of a managed care system, the ability to monitor the quality and effectiveness of services. With outcome measures clearly defined in contracts, PRS will have the ability to develop the necessary managed care service arrangements and payment methods and a system in place to analyze the performance of contractors while maintaining quality care. PRS has a proposed implementation date of September 1, 1996, for this approach.

¹ David Emenhiser, Robert Barker and Madelyn DeWoody. *Managed Care: An Agency Guide to Surviving and Thriving*. Child Welfare League of America, Washington, D.C., 1995, p. x.

² Child Welfare League of America. *Managed Care and Child Welfare: A Child Welfare League Perspective*. 1996, p.3.

³ *The New York Times*. "Child Welfare Debate Turns to Privatization." March 2, 1996. p. 11.

⁴ Ibid.

⁵ *The New York Times*. "A Flawed Plan for Foster Children." January 7, 1996.

This is the most common approach to achieving permanent placement for children in PRS' managing conservatorship. If a child is returned to the home, CPS continues to monitor the child and family to ensure that the child is safe and in a stable environment. From 1991 to 1995, 72 percent of the children in substitute care were eventually returned to their family or a relative's home. Of these children, 28 percent experienced further abuse or neglect or were returned to foster care.⁷

If the problems cannot be resolved and the family cannot be reunited, CPS seeks to terminate parental rights and find an adoptive home for the child. PRS children often need adoptive families who can deal not only with the children's sense of family loss, but also with the physical, emotional, or mental damage sustained as a result of abuse or neglect. All adoptive families receive training on the special emotional, psychological, behavioral, and physical needs of PRS children. Most children in CPS care who are awaiting adoption have special needs — they tend to be older; have emotional, mental or physical disabilities; belong to ethnic minority groups; or need to be placed with one or more siblings. From 1991 to 1995, the average time a child spent in PRS care before being adopted was 41 months.⁸ In fiscal year 1995, CPS completed 804 adoptions.

To help place special needs children, CPS contracts with private child placing agencies to assist in recruiting adoptive families. In 1995, seven percent of PRS adoptions were placed through private agencies. CPS has also developed the Texas Adoption Resource Exchange (TARE) that matches prospective families with PRS children through various publications, videos, and the Internet.

In addition, PRS provides subsidies to encourage the adoption of special needs children through three different programs for adoptive families: the Adoption Subsidies; the Non-Recurring Adoption Expense; and the Post-Adoption Services programs. Subsidies help cover the costs of special services needed by children such as therapy, counseling, dental treatment, and medical care and supplies.

The amount of the adoption subsidy is determined based on the needs of the child; however, payment cannot exceed \$15.85 a day, which is the Level of Care 1 rate. Subsidies can be provided through the month of the child's 18th birthday. Subsidies also pay up to \$1,500 per child for non-recurring expenses associated with the adoption.

SPECIAL PROGRAMS: PROTECTIVE SERVICES FOR FAMILIES AND CHILDREN

In an effort to provide better and more preventive services to the children of Texas, the Legislature created and funded several special programs within PRS. These programs open new avenues for CPS to deliver services to at-risk children through collaboration with the community-based providers, local governments, and affected disciplines. The Legislature created and funded these statewide projects to address the prevention and consequences of child abuse and neglect.

Services to At-Risk Youth (STARS) - The STARS program provides services such as family crisis intervention counseling, short-term residential care, and individual and family counseling to runaways, truants, and youths in at-risk situations through contracted community-based organizations. Last session, the Legislature expanded the STARS program to include seven to nine year old children who commit delinquent offenses and 10 to 16 year old youths who commit misdemeanor or state jail offenses. Over \$22 million was appropriated to fund these services for at-risk children and youth. Currently in only 137 counties, PRS plans to extend the STARS program to all Texas counties by 1999.

Community Youth Development Program - The 74th Legislature created this interagency grant program to fund programs that provide support services to families and enhance the development of youth in communities with high incidences of juvenile crime. The communities will assist the creation of community groups to help alleviate family and community conditions that lead to crime. Grants are awarded based on the level of crime per zip code in the state. Currently, 11 Texas zip code areas will receive grants during the 1996-97 biennium. Agencies collectively involved in the administration of this program include: Texas Youth Commission; Texas Juvenile Probation Commission; Texas Education Agency; Health and Human Services Commission; Texas Department of Health; Texas Commission on Alcohol and Drug

Abuse; Texas Department of Mental Health and Mental Retardation; University of Texas at Arlington Graduate School of Social Work; and the Criminal Justice Policy Council. Last session, the Legislature dedicated \$10.5 million for grants in the 1996-97 biennium.

Child Advocacy Centers - Child advocacy centers were created during the 1980s to provide a child-sensitive environment for children to tell their abuse stories. Today, child advocacy centers are neutral, child-friendly facilities where multi-disciplinary teams of doctors, PRS caseworkers, law enforcement, district attorneys, and victim assistance organizations can conduct coordinated case management and interviews, primarily for sexual and severe physical abuse cases. Because child advocacy centers lacked adequate funding, the 74th Legislature included a first-time appropriation of \$1.5 million, which has to be matched through other public or private contributions, to encourage and support the creation of 15 new community child advocacy centers. Currently, 18 child advocacy centers operate around the state and 12 more are in the planning stage.

Child Death Review Teams - Legislation passed in the last session requires the routine reporting of all sudden and unexpected child deaths to PRS and law enforcement agencies. For fiscal years 1996-97, the Legislature appropriated \$500,000 to PRS for the creation of multi-disciplinary review teams that coordinate, assist, and direct investigations of child fatalities in Texas. PRS has review teams located at 12 sites in the state with 11 additional sites in the developmental stage. The review teams are expected to improve the identification of child deaths caused by abuse or neglect and provide information to prevent future deaths from occurring.

Families with children who are eligible for subsidies may also receive contracted post-adoption services to help the child and family adjust to the new adoption, cope with past trauma, and disruption of the adoption. Services include information and referral, casework services and planning, parent groups, counseling, respite care, residential placement in critical needs times, and crisis intervention.

Preparation for Adult Living

In some instances, the state cares for children until they reach adulthood. Because these young adults do not have the normal financial and emotional support of a family, CPS offers an independent living program, Preparation for Adult Living (PAL), to help young adults make the transition and cope with living on their own. In fiscal year 1995, 437 young adults reached age 18 while participating in the PAL Program. The PAL program includes a variety of services such as independent living skills training, sex education, money management, vocational assessment, job readiness training, college preparation courses, transitional living allowances, self-esteem enhancement, and other services aimed at helping youths aged 14 to 20 make the transition into responsible adulthood. During fiscal year 1995, 2,326 youths participated in the PAL program.⁹ In addition to services provided by the PAL program, the state has a tuition waiver program that exempts these youth from tuition and most fees at state-supported universities, colleges, and vocational schools.

PROTECT AND PROVIDE SERVICES TO THE ELDERLY AND PEOPLE WITH DISABILITIES

Definitions of Adult Abuse, Neglect, and Exploitation

- Abuse is defined as negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment resulting in physical or emotional harm or pain.
- Neglect is defined as the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain of the failure of a caretaker to provide such goods or services.
- Exploitation is defined as the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

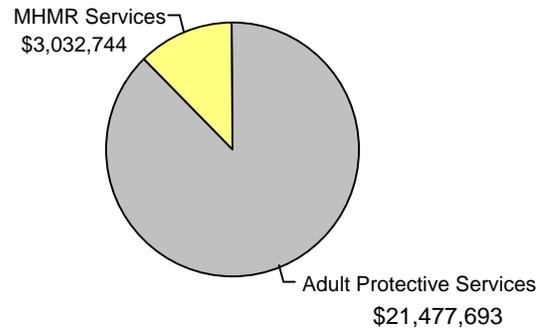
The Adult Protective Services (APS) program has its roots in the passage of Title XX of the federal Social Security Act established in the mid-1970s. Title XX required states receiving federal funding to protect children, the elderly, and adults with disabilities from abuse and neglect. The Texas Legislature, in 1981, created Chapter 48 of the Human Resources Code, which established the state's authority and responsibility for protecting elderly and disabled adults from abuse, neglect, and exploitation.¹⁰

Initially, the duty of protecting elderly and disabled adults was included within the Services to the Aged and Disabled program at the Texas Department of Human Services (DHS). APS became a separate program within DHS in 1985 and was transferred to PRS by HB 7 in September 1992.

The mission of APS is to protect elderly persons 65 years and older and disabled persons 18 years and older from abuse, neglect, and exploitation in the community and at certain state facilities. Major APS activities include community investigations, mental health and mental retardation (MHMR) facility investigations, and MHMR community center investigations. MHMR investigations include investigating complaints in 26 MHMR facilities and 36 community MHMR centers throughout the state. PRS spent approximately \$24.5 million to provide adult protective services in fiscal year 1995.

With the number of people over age 65 growing rapidly and with the increasing responsibility for investigating abuse of MHMR clients, the APS program is under additional pressure to keep up with escalating demands for services.

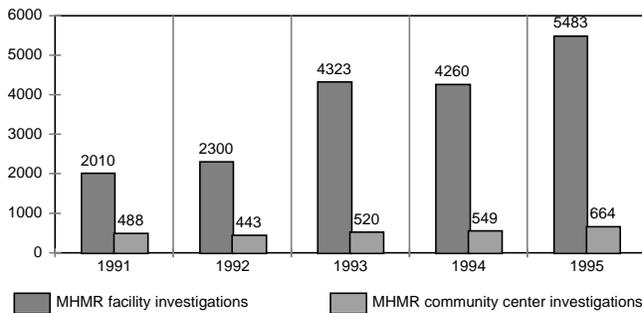
**APS Expenditures
Fiscal Year 1995**



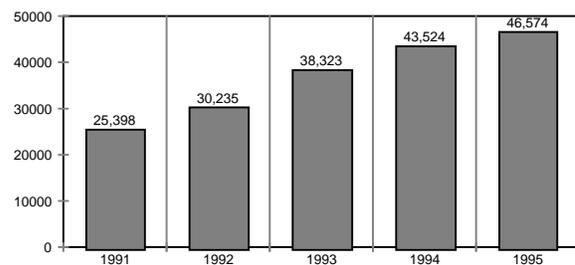
Total APS Expenditures: \$24,510,437

- Includes direct and purchased services and \$.5 million for guardianship contracts
- Includes \$.3 million from MHMR to conduct investigations in community MHMR centers

**Investigations in MHMR Facilities and Community Centers
Fiscal Years 1991 - 1995**



**In-home Investigations
Fiscal Years 1991 - 1995**



In-Home Investigations

In-home investigations involve allegations of abuse, neglect, or exploitation in private residences, unlicensed room and board homes, and adult foster care homes licensed by DHS. APS also investigates reports of abuse, neglect, and exploitation in nursing homes when the alleged perpetrator is not an employee of the nursing home.

Reports of abuse, neglect, or exploitation can come through the 24-hour hotline or local APS offices. Upon receipt of a report, APS staff determine whether a complaint requires investigation based on statutory definitions of abuse, neglect, and exploitation. Reports that meet the

definitions are assigned a priority classification based on the severity of the abuse. Reports not meeting the statutory definition may be referred to other agencies or local service organizations. All investigations, regardless of severity, must be initiated within 24 hours. If abuse, neglect, or exploitation is confirmed as an offense under any state law, APS notifies a local law enforcement agency. APS may remove the victim from the home to protect the victim from further harm if the victim lacks capacity to consent and the situation presents a threat to their life or physical safety. APS may refer the client to community resources that provide aid to elderly or disabled persons or purchase short-term emergency services for the client. These short-term services may include:

- crisis intervention;
- counseling;
- negotiation/mediation;
- emergency food, shelter or clothing;
- prescription medication;
- psychiatric assessment;
- restoration of utilities; and
- in-home care.

Complaint Priority Classifications In-Home Investigations	
Priority I	Serious harm or danger of death from abuse or neglect. (Caseworkers must attempt a face-to-face visit with the client within 24 hours of the Department's receipt of the report.)
Priority II	At risk of serious harm from abuse, neglect, or exploitation. (Caseworker must attempt a face-to-face visit with the client within three calendar days from the receipt of the report.)
Priority III	All other reports of abuse or neglect. (Caseworker must attempt a face-to-face visit with the client within seven calendar days of receiving the report.)
Priority IV	Exploitation when no danger of imminent impoverishment or deprivation of basic needs. (Caseworker must attempt a face-to-face visit with the client within 14 calendar days of receiving the report.)

The courts may appoint APS as guardian of incapacitated or disabled persons who cannot care for themselves and have no family and friends to serve as guardian. In appointing PRS as guardian, the court may design the guardianship to promote maximum independence based on the person's level of incapacity. Guardianship duties include providing for the care, control, and protection of the person; providing clothing, shelter, and food; ensuring appropriate habilitation and rehabilitation services; maintaining detailed financial records; ensuring monthly contact to assess status; and documenting case actions. In fiscal year 1995, PRS was appointed guardian in 67 cases.

Facility Investigations

In addition to investigations in the community, APS investigates reports of abuse, neglect, and exploitation in state-operated facilities (state hospitals, state schools, state centers) and community MHMR centers and related outreach programs. In 1991, House Bill 7 transferred MHMR facility investigations to PRS. Before this transfer, an MHMR facility employee or a committee of MHMR employees under the supervision of the MHMR facility superintendent investigated reports of abuse, neglect, or exploitation in state hospitals and state schools. Allowing the investigators to be employees of the reported facilities created a potential conflict of interest and subjected the investigators to pressure from the facility. Shifting investigative responsibility for these facilities required MHMR to transfer to PRS all property and records; all funds appropriated by the Legislature for the function, program, or activity; and all employees who had performed the duties for MHMR.

House Bill 7 also required PRS to review and monitor MHMR's investigations in community MHMR centers. In 1995, the Legislature further expanded PRS' role by transferring all responsibility for investigations in community MHMR centers to PRS. With this transfer of jurisdiction, MHMR agreed to pay PRS \$470,000 a year so APS could set up an investigative unit for the community centers. This amount is being renegotiated by the two agencies because of an increase in the number of community center investigations.

PRS has developed joint rules with MHMR to govern facility and community center investigations. APS must initiate every investigation within 24 hours of intake and complete it within 14 days. APS reports the findings to MHMR, but the head of the MHMR facility or community center may disagree with the finding. In cases of disagreement, MHMR and PRS' state office are responsible for final disposition. APS does not have the authority to take disciplinary action against the MHMR employee

confirmed to have committed the abuse. If the investigation confirms abuse, MHMR rules state that appropriate disciplinary action must be taken against the employee. APS recommends how incidents should be classified, which if accepted by the facility, may influence the level of discipline MHMR must exercise.

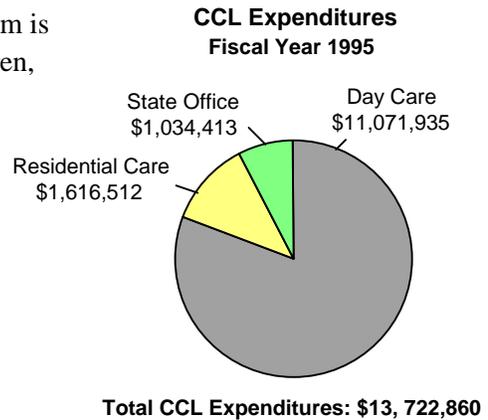
REGULATE CHILD CARE

Regulation of private child care facilities has been required by Texas law since 1941 when child welfare services were consolidated within the Department of Public Welfare. Since that time, the child care industry has changed dramatically, primarily because of the needs of working mothers. In the early 1970s, several incidents of abuse that occurred in licensed facilities received publicity. The Legislature responded in 1975 by passing the Child Care Licensing Act, which provides the basic statutory framework for the regulation of child care today.

Licensed, Certified, and Registered Child Care Facilities by Number and Licensed Capacity		
Fiscal Year 1995		
Type of Facility	Number of Facilities	Licensed Capacity
Day Care		
Day-care centers	7,305	602,793
Kindergartens/nursery schools	380	24,885
Schools/kindergartens and above	92	7,416
Group day-care homes	1,529	18,387
Total Licensed/Certified Facilities	9,306	653,481
Total Registered Family Homes	12,769	76,614
Total Day Care Facilities	22,075	730,095
Residential Child Care		
Institutions providing basic child care	79	4,849
Institutions serving children with mental retardation	10	528
Emergency shelters	65	1,540
Halfway houses	3	71
Residential treatment centers	106	4,609
Therapeutic camps	7	377
Foster group homes	47	573
Foster family homes	68	270
Child-placing agencies (24-hour care and adoption)	176	N/A
Agency foster group homes	110	993
Agency homes	6,689	21,087
Total 24-hour Care Facilities	7,360	34,897
Grand Total	29,435	764,992

Background

The primary mission of the Child Care Licensing (CCL) program is to license and regulate persons and facilities that care for children, including day care and 24-hour, residential care facilities. Regulators ensure that licensees meet minimum standards and provide a caring, safe, and healthy environment for children. The program also licenses child care administrators, certifies state entities involved in child care, and conducts criminal history checks on persons who work with children. Over 29,000 regulated child care facilities have the capacity to serve more than 750,000 children in Texas.



Licensing Fees	
Description	Current Fee
Registered Family Homes	
Request to Register	\$35
Annual Fee	\$35
Licensed Facilities	
Application Fee	\$35
Provisional Licensing Fee	
- Child Care Facility	\$35
- Child Placing Agency	\$50
Annual License Fee	
- Child Care Facility	\$35*
- Child Placing Agency	\$100
Amendment to License Capacity	\$1 per child
Child Care Administrators License	
Examination Fee	\$25
Initial Licensing Fee	\$50
Renewal Fee	\$50

* plus \$1 for each child the facility is licensed to serve.

The Child Care Licensing program is funded with general revenue and federal funds from several sources, including the Child Care Development Block Grant, the Title XX Social Services Block Grant, and the Title IV-E Foster Care and Adoption Assistance program. All licensed facilities, administrators, or registered homes must pay fees, which are established in statute. All fee revenue, with the exception of the administrators license, which PRS keeps, is deposited in the general revenue account.

RECENT REVISIONS TO

In March 1994, the PRS Board reviewed the minimum standards for day care facilities and proposed new standards to ensure better care and bring Texas in line with national standards. Several day care groups and associations opposed the new higher standards, arguing higher standards would increase costs and force some families out of the system. To address this concern, the 74th Legislature postponed the adoption of some of the higher standards and required the Department to conduct an economic impact and cost/benefit study by December 1, 1996. Tonn & Associates has been hired to determine whether imposing higher standards on the day care industry will increase costs for Texas families and, if so, whether the increased cost to families are acceptable in light of the benefits received.

Chapter 42 of the Human Resources Code requires the PRS Board to establish minimum standards for the safety, health, and well-being of children in day care. The statute mandates the Department to conduct a comprehensive review of all standards for child care at least every six years. Before 1994, the minimum standards were last revised in 1985. The 1985 revisions emphasized increasing the competency of child care providers by upgrading director qualifications and increasing director and staff annual training requirements. Last revised in 1976, one of the most controversial standards, child/staff ratios, was not addressed in 1985.

In March 1994, after a three-year review process, the Board published the new proposed minimum standards for licensed day care centers in the Texas Register. A 60-day public comment period followed and five public hearings were held across the state in Houston, McAllen, Lubbock, Dallas, and San Angelo. In addition, the Department mailed approximately 13,000 copies of the proposed standards to all licensed day care centers and other interested parties and set up a toll-free comment line.

During the 1994 review, the Department proposed higher minimum standards to improve the conditions for ensuring a basic level of health, safety, and well-being for children in licensed day care centers in Texas. The revisions were in keeping with the national trend of upgrading standards to respond to changes in the economic and social condition of families, new scientific evidence about what children need and the effects of child care on children, and changes in the child care industry.

Several groups raised cost concerns related to implementation of the new standards. The primary group opposing the revision was the Texas Licensed Child Care Association which represents smaller, for-profit facilities. These groups contended lowering the child/staff ratio by two children per age group in most cases would increase the cost of day care, forcing some clients out of the system. Not all day care groups opposed the higher standards. The Texas Association for the Education of Young Children (TAEYC) supported the lower child/staff ratios, believing lower ratios would lead to better care and bring Texas more in line with national averages.

After additional study and public testimony and in response to the growing concern over the economic impact of the proposed child/staff ratio revisions, the PRS Board, at its October 1994 meeting, approved the revised standards, effective June 1995, with the following exceptions:

DAY CARE MINIMUM STANDARDS

- new child/staff ratios would not be enforced until June 1997; and
- new director qualifications would not be enforced until June 1998.

Additionally, the 74th Legislature enacted Senate Bill 1662, which further delayed implementation of the child/staff ratios, group sizes, and the infant area space requirements until September 1, 1997. The bill also required the Department to conduct an economic impact study of the requirements by September 1, 1996. No additional money was appropriated for the study, with the cost of the study (estimated to be \$100,000) coming out of the Department's existing appropriation. The study is currently being conducted and the results are to be presented to the PRS Board by September 1, 1996. The Board is then required to consider the results and make its recommendation to the Legislature by December 1, 1996.

Old Standard	New Standard	Effective Date
No director's qualification requirements related to child development education and training.	Adds requirements to director's qualification for child development education and training.	July 1995. Current directors were given until 1998 to comply.
No provisions related to pre-service training for new employees.	Requires eight hours of pre-service training for all staff.	July 1995
One staff person with first aid training must be present at the center during all hours of operation.	One staff person per group of children must have first aid training.	July 1995
Staff must participate yearly in at least 15 clock hours of training in understanding children and improving job performance.	Maintain training requirement, but do not allow first aid or CPR training hours to count towards the annual training requirements.	July 1995
Thirty square feet per child averaged facility-wide.	There must also be at least 30 square feet per each child under 18 months of age in the areas in which care is being given.	September 1997
No requirements related to visual supervision.	Children must be observable by an adult at all times.	July 1995
No requirement related to work hour limits.	No staff can be regularly scheduled for more than 10 hours daily in direct child care.	July 1995
Allowed corporal punishment in certain cases.	Prohibits corporal punishment.	July 1995
Child/staff ratios and maximum group size based on age of children in care.	Reduces child/staff ratios anywhere from 1- 4 children depending on age group and reduces maximum group size by an average of five children.	September 1997

General Regulatory Responsibilities

The PRS Board adopts minimum standards for all the different types of facilities regulated by the agency. These standards provide basic conditions for the safety, health and well-being of children in the facilities. Minimum standards address education and experience requirements of child care staff, the physical environment of the children, and interaction between staff and children. PRS is required to conduct a comprehensive review of the standards every six years.

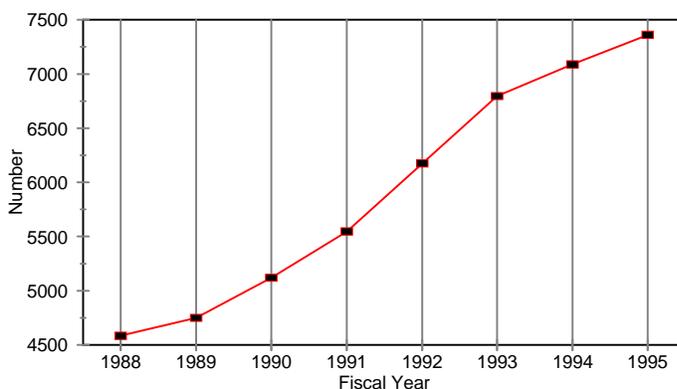
PRS enforces the minimum standards established for all licensed facilities. At least one unannounced inspection of each licensed facility is required annually. In addition, CCL investigates complaints reported about facility non-compliance. Possible penalties for violations of minimum standards include probation, denial, or revocation of a license as well as civil and criminal penalties not including administrative fines. In cases of an imminent threat to the health and safety of children, PRS may immediately close a facility.

CCL also investigates reports of child abuse and neglect in regulated child care facilities. This responsibility resides in CCL, which has the authority to penalize facilities in violation of the law. Investigations are performed by licensing staff trained in abuse and neglect, with substantiated cases forwarded to appropriate PRS staff and local law enforcement. In fiscal year 1995, CCL confirmed 130 cases of abuse or neglect.¹¹

Types of Facilities Regulated

CCL is divided into two major regulatory programs: day care regulation and 24-hour child care regulation. The regulatory process for both programs is similar and both share administrative support staff. The differing purpose and functions of the two types of facilities require specialized staff to meet different regulatory needs.

Licensed Residential Facilities



Day care facilities regularly provide care for children for less than 24 hours. These facilities do not provide regular overnight care. Most day care facilities serve families in which the parent or parents work and are unable to care for their children during working hours. CCL licenses day care facilities that meet the minimum standards for protecting the health, safety, and well-being of the children in care. Licensing

staff inspect all licensed facilities three times before issuing a license and at least once a year thereafter to be sure that the facility meets the minimum requirements in areas such as child to staff ratios, minimum space requirements, and qualifications of staff. In fiscal year 1995, CCL issued 1,309 licenses, registered 2,769 family homes, inspected 35,300 child care facilities, and investigated 9,179 complaints.

The second type of regulated facility, residential care, typically provides long-term, 24-hour therapeutic care. Children in these facilities are usually placed by a state agency such as PRS or the Texas Youth Commission or by parents of children with behavioral or emotional problems. CCL also enforces minimum standards for 24-hour child care providers such as foster group homes, foster family homes, residential treatment centers, emergency shelters, and child placing agencies. These facilities can provide an array of services from basic child care to therapeutic and medical services.

Residential child care facilities are a critical part of PRS' foster care system because the Department contracts with these providers to care for children that must be removed from their homes. Residential child care facilities not only serve children in PRS conservatorship but they may also contract with other government entities, such as juvenile probation departments and private pay clients. The number of licensed residential child care facilities has grown significantly in recent years.

PRS also regulates maternity homes. Currently, 11 maternity homes have been licensed. PRS has published proposed minimum standards and the Board is scheduled to adopt final rules in May 1996.

CCL also licenses administrators of residential child care facilities with seven or more children in care. Administrators must pass an examination and meet requirements related to education and experience. License renewal is contingent on maintaining continuing educational requirements. In fiscal year 1995, PRS licensed 1,111 child care administrators.

SUPPORT AGENCY OPERATIONS

PRS has established four divisions to support the primary programs of the agency: information resource technologies, finance, legal services, and government relations.

CHILD AND ADULT

The Department of Protective and Regulatory Services began planning the development of an automated case management system in 1991. The system, known as the Child and Adult Protective System (CAPS), was designed to provide a basic office automation infrastructure, manage several complex social service functions, and capture program data required by state decisionmakers and the federal government.

Given the complexity and size of the project and the ambitious implementation schedule, the agency contracted with Andersen Consulting to design, develop, install, and provide ongoing support for the computer system. Installation of hardware and office automation software began in January 1994. The Department initially estimated the cost of the project at more than \$91 million. Implementation began in September 1995 with the initial release of the case management software in field test, with full implementation of the system by September 1996. Subsequent scope modifications reduced the cost to approximately \$82 million. To qualify for enhanced federal funding (75 federal/25 state match), made available to encourage the development and implementation of automated child welfare systems, the project must be fully implemented by October 1996. The following table details the historical project expenditures.

Historical Project Expenditures				
Funding Source	FY 94	FY 95	FY 96	Total
State (GR)	1,458,050	18,695,506	2,146,917	22,300,473
Federal	3,892,594	49,911,857	5,731,676	59,536,127
Total	5,350,644	68,607,363	7,878,593	81,836,600

Concerns over the high cost of the project, and estimated cost variances, identified during the appropriation process, led the Legislature to closely scrutinize the project beginning in 1993. To address these concerns, the Legislature placed a rider in PRS' fiscal year 1996-97 appropriation that makes the expenditure of funds for technology by the agency contingent on quarterly approval of a special review team consisting of the Legislative Budget Board, Department of Information Resources, State Auditor's Office, and the Health and Human Services Commission. The agency is currently complying with provisions of the rider and the project is on schedule for full implementation in September 1996.

The CAPS project is designed to provide complete casework management for reported cases of abuse and neglect in the state. The system is based on a client/server network that links all worker activities, from intake to foster care and adoption, and is designed to meet all federal requirements for the Statewide Automated Child Welfare Information Systems (SACWIS) and the Adoption and Foster

PROTECTIVE SYSTEM (CAPS)

Care Analysis and Reporting System (AFCARS). Computer equipment has been distributed to 283 regional and field offices statewide and will directly support more than 6,000 caseworkers and support staff with office automation, case management, and electronic communication capabilities. The first phase of the project provided workers with general use, commercially available office automation software, and a network to allow electronic communication and statewide sharing of information. The second phase of the project, when fully implemented, will provide workers with custom case management software.

The system was developed to meet the business needs of the agency such as management of a complex case process, collection of data required for new federal reporting systems, and case management problems such as inaccurate and unavailable information for casework and management, excessive time spent on paperwork, and reliance on multiple automation systems.

The intended benefits of the project include:

For Clients:	For Caseworkers:	For Management:
Improved service delivery	Reduction in paperwork	Improved ability to review cases
Quicker client response	Elimination of recording redundant information	Improved responsiveness to requests for information
Faster case decisions	Automatic production of management information	Consistent and timely data
Reduce length of agency involvement	Reduced turnover through improved morale	Improved availability of resource and outcome information
Improved outcomes	Aids analysis of reported information	Improved accountability and reporting
		Improved communication with other agencies

Once completed, the system will allow workers to access statewide information on cases, access online help and agency policies, retrieve data from other systems to locate families and resources, and eliminate duplicate entry of information. The completed system will serve Child and Adult Protective Services and will interface with the Department of Public Safety, the Department of Human Services, the Attorney General, and the Texas Youth Commission where appropriate.

Information Resource Technologies

Information Resource Technologies (IRT) oversees the agency's management information systems and automation projects. The division manages the Child and Adult Protective System (CAPS), the automated case management system for CPS and APS. IRT also coordinates the agency's other automated systems.

Finance

The finance division is responsible for the agency's budgeting, strategic planning, forecasting and statistics, contracts, and research and evaluation. The division develops the agency's Legislative Appropriations Request (LAR) and operating budget, which determines the amount of funding for the agency and how that money is expended. This budget process includes identifying and submitting applications for federal funds.

Legal Services

Legal Services ensures that the agency complies with statutes, rules, and regulations governing the operation of the agency and delivery of services. The division provides legal advice to agency staff concerning state and federal laws and rules, program policy, contracts, and personnel issues. The division also represents the agency in administrative hearings and in court when this authority has been delegated to PRS by the Attorney General. The division also oversees human resources and professional development to ensure that the agency has fair and equitable employment policies and procedures.

Government Relations

Government Relations assists the agency in communication with the Legislature, local and county government, other state agencies, federal agencies, Congress, and other interested public and private organizations. Primary responsibilities include responding to inquiries from elected officials and public and private organizations; providing information to state policymakers; reviewing state and federal legislation, laws, and regulations; and providing information to the press and media.

The division includes the Ombudsman's Office, which receives complaints from the public about how the agency operates. In some cases, this office reviews how complaints are handled in the regions to ensure PRS staff have followed proper procedures. The Ombudsman's Office also provides a statutorily mandated review process for persons accused of abuse or neglect.

¹ Texas Department of Protective and Regulatory Services, 1995 Annual Report, p.79.

² Texas Department of Protective and Regulatory Services. *Findings of the Functional Review Task Force: Phase I: Service Delivery Alternatives*, February 28, 1996. p.6.

³ DPRS, 1995 Annual Report, p. 79.

⁴ 42 U.S.C. Sections 671(a)(15),672(a)(1); 45CFR Section 13156.21(d)(4)

⁵ DPRS, 1995 Annual Report, p.44.

⁶ Child Welfare League of America, *Protecting Abused and Neglected Children: A Look at 50 States*. October, 1995.

⁷ DPRS. *1995 Legislative Data Book*. p.118.

⁸ Ibid.

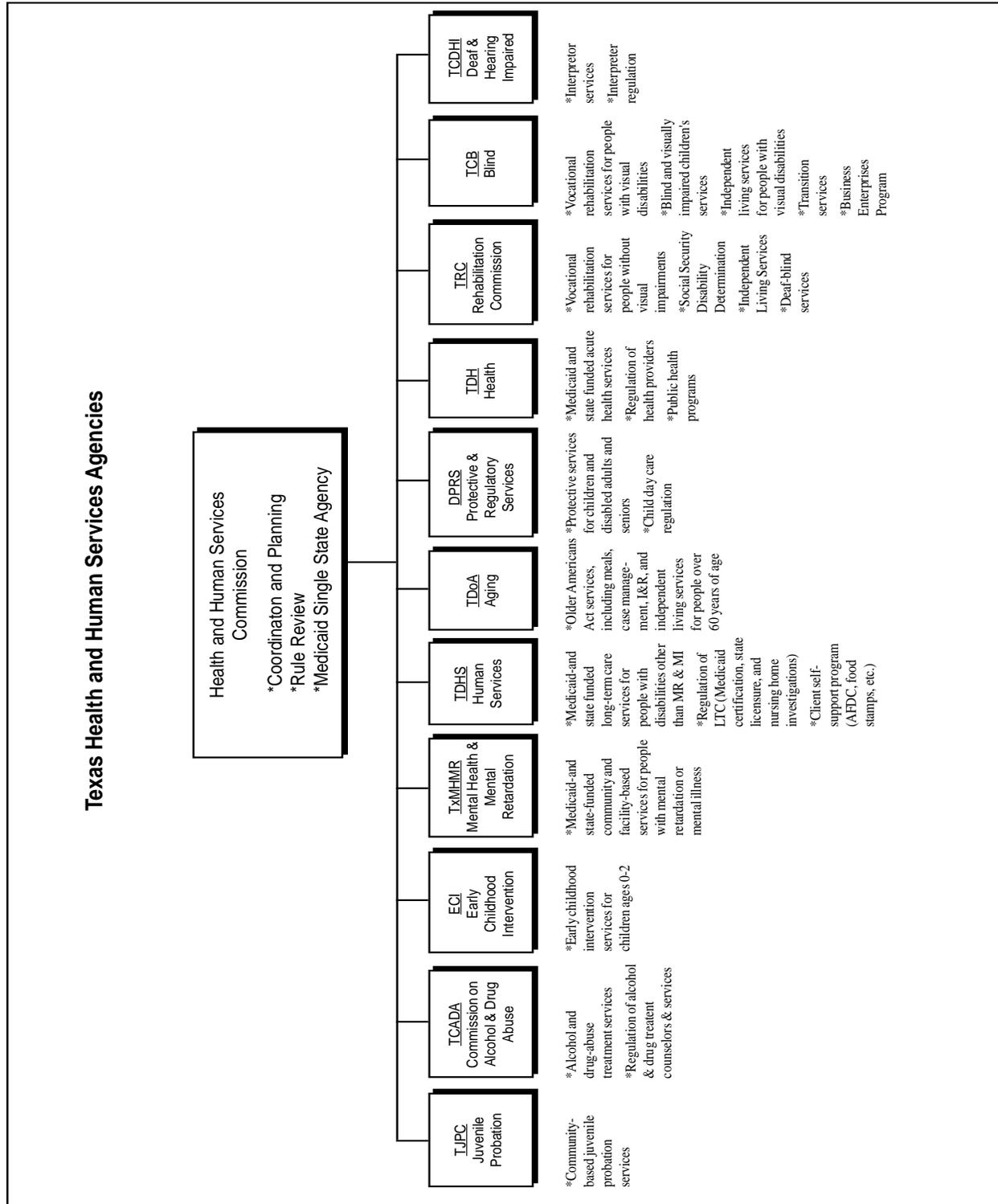
⁹ Texas Department of Protective and Regulatory Services, *1995 Annual Report*, p. 50.

¹⁰ Ibid, p. 9.

¹¹ PRS Legislative Data Book (Draft), 1995, p. 82.

APPENDICES

Appendix 1



Appendix 2



Significant Changes to the Protective and Regulatory Services Statute 74th Legislature (1995)

Agency-Wide Legislation

The 74th Legislature revised PRS' enabling statute and moved the agency's Sunset date.

SB 374 - Moves the Sunset date for PRS from 1999 to 1997.

HB 1662 - Recodification of PRS enabling statute.

Expands PRS authority to access criminal history information.

Clarifies PRS' confidentiality requirements.

Grants PRS a general exemption from payment of court costs, filing fees, and other fees.

Makes all PRS employees and volunteers immune from civil liability.

Child Protection Services

The 74th Legislature made several significant changes in the law affecting Child Protective Services policy. A complete revision of the Family Code combined with new prevention measures required major policy changes for the agency. Some important changes are highlighted below.

SB 81 - Authorizes the establishment of children's advocacy centers and child fatality review teams.

SB 131 - Requires PRS to document indications of domestic violence, including elder, spouse and child abuse, to include in its annual report.

SB 1487 - Prohibits PRS from considering race or ethnicity as a primary factor in adoption or foster care placement.

HB 327 - Expands STAR program to 7-9 year olds and to "At-Risk" children. Establishes the Community Youth Development grants program at PRS.

HB 433 - Rewrite of the Family Code:

Sets out the powers and duties of an attorney ad-litem to represent a child's interest in court.

Allows the court to terminate parental rights based on a parent's failure to visit a child and lack of progress toward meeting court ordered requirements to resume custody of the child.

Requires the court to order either or both parents to make child support payments while a child is in PRS managing conservatorship.

Requires allegations of abuse in juvenile detention facilities to be reported to law enforcement for investigation, instead of CPS.

Requires the court to make a finding in all removal orders that it is contrary to the child's welfare to remain in the home and that reasonable efforts to keep the child at home have been made.

HB 2569

Entitles PRS to an expedited hearing if PRS determines that a child should be removed from home because of immediate danger.

Establishes citizen review teams to evaluate casework and decision-making related to investigations of child abuse.

Requires PRS to establish a registry of persons willing to accept foster care placement of a child under PRS care.

Requires PRS to develop swift adoption teams.

Transfers the Child Abuse Program Evaluation Committee from the Governor's Office to PRS.

Requires PRS to notify law enforcement of all investigations to give law enforcement the opportunity to participate in joint investigations of child abuse.

Requires each county to develop a county child protective services plan to be submitted to PRS.

Adult Protective Services

The 74th Legislature completely revised Chapter 48 of the Human Resources Code which relates to protective services for elderly and disabled persons. Major changes are highlighted below.

HB 1111 Rewrite of APS statute:

Gives APS the responsibility for investigating abuse and neglect in community mental health and mental retardation centers.

Requires PRS and MHMR to develop joint rules for investigations in state MHMR facilities.

Gives APS the latitude to determine the extent of investigation to be conducted in response to reports of abuse, neglect, or exploitation.

Allows APS to contract for guardianship services and removes the requirement that PRS and its contractors must post a bond in guardianship proceedings.

Gives APS authority to seek appointment as a guardian as a last resort.

Provides immunity from civil or criminal liability for law enforcement officers, volunteers, and others who participate in PRS investigations.

Allows APS to remove a vulnerable person without a court order when it is not possible to secure a medical report.

Allows APS to seek injunctions against interference with an investigation or delivery of protective services.

Clarifies that APS is not responsible for funding services for people aging out of CPS conservatorship and transferring to APS guardianship.

Changes APS definition of abuse to include mention of sexual abuse and remove language which should be placed in the definition of neglect.

Expands APS powers to provide protective services to an individual without consent if the person lacks the capacity to give consent.

Child Care Licensing

The main child care licensing issue debated by the 74th Legislature related to minimum standards for day care facilities. Significant provisions are contained in HB 1662.

HB 1662 - Delays implementation of the new minimum day care standards relating to child/staff ratios, group sizes or square footage requirements until September 1, 1997.

Requires PRS to conduct an economic impact study of the new minimum standards. PRS must submit the report to the Legislature by December 1, 1996.

Specifies membership on the State Advisory Committee on Child-Care Administrators and Facilities.

Appendix 3

Selected Child Protective Services Statistics From the Ten Most Populous States												
	CA	TX	NY	FL	PA	IL	OH	MI	NJ	NC	US	
Children under 18 - 1993	8,594,000	5,183,000	4,468,000	3,169,000	2,872,000	3,068,000	2,859,000	2,506,000	1,896,000	1,704,000	67,020,000	
Children reported as abused or neglected - 1993	455,526	177,328	230,916	161,686	24,909	126,960	147,106	126,601	65,102	92,739	2,877,461	
Children reported per 1,000 children - 1993	53.0	34.2	51.7	51.0	8.7	41.4	51.5	50.5	34.3	54.4	42.9	
Children with substantiated/indicated report of abuse and neglect - 1993	161,612	58,304	59,311	81,982	7,814	43,519	51,850	19,522	10,510	29,809	1,004,080	
Children removed from their homes - 1993	22,448	4,475	7,445	10,783	4,310	8,161	*	6,325	481	2,958	120,726	
Maltreatment related fatalities - 1993	49	108	56	63	54	70	46	*	28	40	1,028	
Children in out-of-home care - 1993	88,262	10,880	59,658	9,568	18,976	33,815	15,922	10,382	7,673	11,024	440,073	
Per-child Title IV-E (foster care) maintenance payments - 1993	\$398.72	\$651.76	\$648.34	\$290.90	\$698.40	\$542.49	\$570.58	\$455.59	\$240.58	\$397.82	\$468.01	
Number of residential facilities for children - 1993	1,424	345	548	221	328	234	88	223	72	91	6,706	
Children adopted - 1992	14,722	8,235	9,570	6,839	4,663	4,766	5,155	5,408	2,464	2,938	125,248	
Per-Capita child welfare expenditures - 1995	*	\$22.12	\$111.94	\$23.00	\$68.09	\$94.30	\$45.91	*	\$39.60	*	\$32.29	
Children in poor and near poor families (under 150% or poverty) per 1,000 children - 1992	351	367	325	376	260	300	272	302	205	320	314.9	

*Data not available
 Source: Child Welfare League of America. Child Abuse and Neglect: A Look at the States; The CWLA Stat Book. 1995.

Selected Child Care Licensing Statistics From the Ten Most Populous States				
Family Homes				
State	Family Homes	Regulation	Fees	Administrative Penalties
California	52,800	Licensure	\$25 application fee per family home (1-6) \$50 application fee per large family home (7-12) Assessed yearly.	\$50 fine per day, per violation
Texas	14,298	Registration (4-6) Licensure (7-12)	\$35 application fee \$35 annual registration fee	No fines
New York	8,575	Registration (3-6) Licensure (7-12) Renewed every 2 years	No fees	\$25 - \$250 fine per day, per violation based on severity of violation
Florida	7,100	Registration (1-6) Licensure (7-10)	Determined by individual counties. severity of violation	\$25 - \$500 fine per day, per violation based on severity of violation
Pennsylvania	6,751	Registration (4-6) Licensure (7-12)	No fees.	Fines are allowed by law but not used
Illinois	7,666	Licensure (4 or more) Renewed every 2 years	No fees.	No fines. Suspension, probation, and revocation
Ohio	6,605	Certification (1-6) annual renewal Licensure (7-12) renewed every two years	\$50 application fee \$25 renewal fee	\$25 - \$50 fine per day, per violation based on severity of violation
Michigan	14,000	Registration (1-6) renewed every three years. Licensure (7-12) renewed every two years.	Initial/renewal fees Registration: \$25/\$10 Licensure: \$40/\$20	No fines. Probation and revocation
New Jersey	4,000	Voluntary registration	No fees	No fines. Probation and revocation
North Carolina	3,458	Registration Renewed every two years	\$4 application fee	\$1 - \$1,000 fine based severity of violation

Selected Child Care Licensing Statistics From the Ten Most Populous States				
Day Care				
State	Day Care Centers	Fees	Renewal	Administrative Penalties
California	11,500	\$100 - \$1,000 annual fee based on capacity	Issued on a perpetual basis	\$50 fine per day, per violation
Texas	7,305	\$35 application fee \$35 annual licensing fee + \$1 per capacity	Annually	No fines. Suspension, probation and revocation
New York	3,800	No fees	Every two years	\$25 - \$50 fine per day, per violation based on severity
Florida	6,000	\$25 - \$100 based on capacity	Annually	\$25 - \$500 fine per day, per violation, based on severity
Pennsylvania	3,198	No fees	Annually	Fines are allowed by law but not used. Unregulated operations fined \$25 - \$300 per day
Illinois	2,500	No fees	Every two years	No fines. Suspension, probation and revocation
Ohio	3,550	\$100 application fee \$50 renewal fee	Every two years	\$25 - \$250 fine per day, per violation, based on severity of violation
Michigan	4,000	\$50 - \$80 based on capacity \$25 - \$40 renewal fee	Every two years	No fines. Probation and revocation
New Jersey	2,500	\$100 - \$200 based on capacity	Every three years	No fines. Probation and revocation
North Carolina	3,400	Facility tax based on capacity	Annually	\$1 - \$1,000 fine based on severity of violation

**DEPARTMENT OF PROTECTIVE AND
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