



# Testimony

## HB 2680 Hidden Foster Care

### *Testimony Submitted to the Texas House Human Services Committee*

By Andrew C. Brown, JD

Chairman Frank and Members of the Committee:

My name is Andrew Brown, and I have the privilege of serving as a senior fellow of child and family policy at the Texas Public Policy Foundation. Thank you for the opportunity to offer testimony in support of [House Bill 2680](#).

This bill sheds light on what has traditionally been a hidden part of our child welfare system. In Texas, and many other states, child protection agencies often utilize agreements between a family and the agency to either temporarily place a child outside of the home or require the family to submit to supervision and services without going through the normal family court process. Dr. Josh Gupta-Kagan, an associate professor at the University of South Carolina School of Law, has famously labeled these arrangements “[hidden foster care](#)” because they resemble foster care but often lack court oversight and are not reported in official data reports.

Drawing from limited data that are publicly available, it is estimated that the hidden foster care system is at least equal in size to, if not larger than, the traditional foster care system. According to the DFPS Data Book, more than [76,000 distinct children received family-based safety services](#) during fiscal year 2020. During that same year, there were nearly [48,000 children in the formal foster care system](#). To truly understand the size and scope of our state’s child welfare system, it is not enough to simply look at the number of children removed from their families into foster care. We must also closely examine other ways the department intervenes with families and places restrictions on their lives, especially when those interventions occur without judicial oversight. House Bill 2680 would provide critical transparency into these practices by requiring the department to report the number of children subject to parental child safety placements as well as the number of cases in which a family is ordered to participate in services.

Beyond the lack of transparency surrounding the department’s use of safety placements, the practice itself has come under criticism from family advocates and courts for being arbitrary and coercive. Although presented to families as “voluntary,” legal scholars and at least one federal appeals court have found that they are anything but. A Third Circuit case, [Croft v. Westmorland County Children & Youth Services](#), held that safety placement agreements based on a threat of child removal are inherently coercive because they provide the family a false choice—either agree to the safety placement or face the possibility of having your children removed into foster care. In Texas, one form used for safety placements explicitly states that if the family is unable to carry out the plan successfully, then [DFPS may seek further legal action](#), including placement of the child in foster care.

A final area of concern with respect to the use of safety placements is that they are not subject to any time limits. The Texas safety plan form referenced earlier includes the following language: “This safety plan will cease to be in effect when you are notified as such by your caseworker, or DFPS is no longer investigating or providing services to you or your family.” Since safety placements are not subject to judicial oversight, the sole arbiter of whether a safety plan may be lifted is the department caseworker. Without any outside accountability or statutory limitations, families may be subject to the open-ended and arbitrary demands of the department for an untold amount of time. Although a resource guide published by the department suggests that these [arrangements are intended to be temporary](#), current code does not impose any firm limitation on how long the department may keep a family under a safety placement. House Bill 2680 addresses this problem by placing a 30-day time limit on safety placement agreements.

It is important to provide DFPS caseworkers with tools to promote family preservation and avoid removals of children into foster care. However, these tools must be transparent, subject to meaningful outside oversight, and time limited. Otherwise, they can be easily abused and deny families basic constitutional protections. House Bill 2680 strikes the proper balance between providing the department with the necessary tools to prevent removals while ensuring that these tools are subject to constitutionally required limitations.

Thank you for your time, and I look forward to answering your questions.

## ABOUT THE AUTHOR



**Andrew C. Brown, JD**, is the distinguished senior fellow of child and family policy at the Texas Public Policy Foundation.

Brown has dedicated his career to serving vulnerable children and strengthening families through community-focused, liberty-minded solutions. As an attorney, he has represented children in the child welfare system, advocated for the rights of parents, and helped build families through domestic and international adoption.

Andrew earned his BA magna cum laude in political science from Baylor University and his JD from Southern Methodist University Dedman School of Law. He is licensed to practice law in Texas and Virginia. His work on international adoption law and other child welfare issues has been published in leading legal journals and respected media outlets.

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