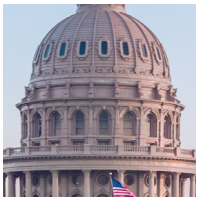

TEXAS PUBLIC POLICY FOUNDATION

Testimony

April 6, 2021

SB 190
Preserving and Strengthening Families

Testimony Submitted to the Texas Senate Committee on State Affairs

By Andrew C. Brown, JD

Chairman Hughes 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 Senate Bill 190 and our state's efforts to preserve and strengthen families.

In 2018, Congress enacted the Family First Prevention Services Act, one of the most comprehensive overhauls of federal child welfare policy in more than 30 years. This landmark reform seeks to reduce the number of children removed from their families and placed into foster care by allowing states to utilize Title IV-E funds to provide in-home preservation services to families at risk of separation. Family First is based on decades of research showing that the act of placing a child in foster care is inherently traumatic and results in long-term negative outcomes for the child. By shifting the focus of the child welfare system toward family strengthening and preservation, Family First recognizes that removal should be reserved solely for those situations where the risk of harm to a child who remains with their family outweighs the known harm that will be caused by placing the child in foster care.

This is a long-overdue change to the culture of child welfare practice, but in-home services are just one piece of the puzzle. To fully implement Family First and create a more compassionate child welfare system, we must also bring the standards that DFPS and the courts rely upon when making removal decisions into alignment with the priority for family preservation.

Senate Bill 190 accomplishes this transformational goal in four primary ways:

1. Reduces the harm caused to children by unnecessary separation from their parents;
2. Prioritizes support for families over removal of children into foster care;
3. Ensures accuracy and fairness in CPS investigations; and
4. Allows children in foster care to either return home or be adopted more quickly.

For most of the last decade, the number of Texas children removed from their families and placed in the custody of the Department of Family and Protective Services increased. It is well documented that the mere act of separating a child from his or her family, even for a short period of time, is a traumatic event that carries significant risk of long-term harm to the child. A seminal study from the Massachusetts Institute of Technology, for example, found that children who entered foster care experienced higher rates of negative outcomes like juvenile justice involvement, teenage pregnancy, and economic instability than similarly at-risk peers who remained with their families. Other studies have shown that post-traumatic stress disorder (PTSD) rates among foster care alumni were equivalent to, and in some cases greater than, that of U.S. combat veterans.

These numbers are tragic and should motivate us to change our approach toward struggling families in our communities. The story becomes even more concerning when you realize that a child's likelihood of removal is often linked to where they live. An analysis of DFPS data reveals dramatic differences in county-level removal rates. For example, the removal

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rate in Lubbock County is more than double the state average, and the rate in McLennan County is nearly four times higher.

One major factor driving this disproportionality is poverty. Last summer, we published an analysis of the link between child poverty and removals for allegations of neglect in the state, which I have submitted with my testimony. In Texas, the majority of children who enter foster care enter due to allegations of neglect, and roughly 75% of child maltreatment victims are victims of neglect only—meaning no physical or sexual abuse was alleged. Our research found that a child living in one of the 25 poorest counties in Texas is statistically more likely to be separated from their family due to an allegation of neglect than a child living in one of the 25 wealthiest counties in Texas.

Part of the problem, which Senate Bill 190 seeks to remedy, is our state's overly broad definition of neglect. Currently, the Family Code lacks an overarching definition of neglect. Instead, the code attempts to define neglect through a list of general circumstances that may be considered neglect. These general circumstances are often speculative, linking the determination to harm that "could have" occurred. The broad and ill-defined nature of neglect allows for issues rooted in poverty, such as the inability to access adequate housing, unaffordable child care, or food insecurity, to lead to child welfare involvement. As a consequence, circumstances that could be remedied by providing supportive services to families are instead addressed by more heavy-handed and disruptive interventions. Senate Bill 190 addresses this by creating a clear, narrowly tailored definition of neglect to help frontline workers and the courts to better distinguish between circumstances requiring removal and those that can be addressed through less intensive community-driven supports.

This new neglect definition incorporates the standard of immediate danger, which has a clear meaning under both federal statute and Texas case law. Utilizing immediate danger instead of the current, amorphous standard of "substantial risk" is beneficial because it does not inhibit DFPS from protecting children who are in danger while simultaneously reducing the risk of subjecting those not in danger to unnecessary trauma. The more precise definition of neglect created by SB 190 coupled with the increased availability of family preservation services through Family First provides more options and greater flexibility for supporting struggling families.

Reducing removals and creating more consistency in how DFPS responds to allegations is critical to SB 190's goal of preserving families. Equally important is ensuring that children who enter foster care are able to exit to a safe, stable home as quickly as possible. On average, a child who enters the custody of DFPS will spend about 20 months in care. Children who exit to adoption will have spent over 2 years in the care of the state, and those who age out will spend, on average, more than 3 years in care. In order to reduce the time children spend in foster care, SB 190 makes important changes to procedures governing reunification and adoption.

Section 6 of the bill promotes reunification by requiring the return of a child to his or her family at the end of each permanency hearing unless the court finds that there is a continuing danger to the physical health or safety of the child and returning the child home would be contrary to the child's welfare. Under this provision, courts retain the authority to order monitoring and services to ensure a successful transition and help the family remain intact.

Section 7 of the bill will help reduce the time it takes for children to achieve permanency through either reunification or adoption. The Family Code currently requires a final trial on the merits in child protection cases to commence by the first anniversary of the date the court rendered temporary orders. The purpose of this provision is to prevent children from lingering in foster care. However, the code does not set a date for when the court is required to enter a final order after trial has commenced—a loophole that has resulted in children experiencing exceptionally long stays in foster care. A disturbing example of this is a 2018 case known as *In re J.D.G.* In this case, a final trial on the merits commenced in November 2016 but, due to numerous delays, did not conclude until late May 2018—nearly 2½ years after the children were placed in DFPS conservatorship. In a scathing concurring opinion, Justice Harvey Brown highlighted the need for legislative action to ensure timely resolution of these cases to prevent harm to children caused by unnecessarily long stays in foster care. Senate Bill 190 solves this problem by requiring the trial to be brought to final resolution within 90 days after it commences.

As the culture of child welfare practices shifts toward a more compassionate approach focused on strengthening rather than separating families, Senate Bill 190 makes necessary changes to Texas Family Code that will help Texas achieve this important goal. This legislation in concert with implementation of the Family First Prevention Services Act and the ongoing rollout of community-based care will allow Texas to become a model of successful child welfare reform.

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

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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