

## **Chapter 11. Child Abuse and Neglect in Texas**

*Ruby Preston*

### **Introduction**

Cox, Conrad, Allen and Hanser (2008) present the grim reality of how children are mistreated and abuse from a national perspective. Texas certainly has its share of abuse and neglected cases. How Texas responds and attempts to prevent these acts is explored in this chapter.

### **Texas Department of Family and Protective Services**

The Texas Department of Family and Protective Services (TDFPS) is currently a division of the Texas Department of Health and Human Services. Previously called the Texas Department of Protective and Regulatory Services, the agency is mandated to protect children, adults who are elderly or have disabilities living at home or in state facilities (TDFPS, 2006). It also licenses group daycare homes, day-care centers, and registered family homes. The legal base for the operation of TDFPS is provided by the Texas Family Code and the Human Resources Code.

Texas Department of Family and Protective Services (TDFPS) is also charged with managing community-based programs that prevent delinquency, abuse, neglect and exploitation of Texas children, elderly and disabled adults. There are four divisions that provide services through TDFPS. These divisions are Adult Protective Services, Child Protective Services, Child Care Licensing, and Prevention and Early Intervention (TDFPS, 2006). Adult Protective Services provide investigations of abuse and/or neglect as well as services to the elderly and disabled who are adult but unable to care for themselves. Child Protective Services (CPS) provides investigations of abuse and/or neglect as well as services to children under eighteen years old. Child Care Licensing investigates reports of abuse and/or neglect of children under the care of a licensed child care provider. The provider can be a private licensed home or a commercial day care center. Prevention and Early Intervention provides services to children who are developmentally delayed or brain damaged. This chapter focuses on Child Protective Services (CPS).

### **Abuse and Neglect**

There are several categories of abuse and neglect that are reported and investigated in the state of Texas: Physical Abuse, Physical Neglect, Sexual Abuse, Emotional Abuse, Medical Neglect and Neglectful Supervision and Abandonment, which will be defined below (TDFPS, 2006). Exploitation of a child may be an extension of any of the above allegations and more recently has been more prevalent via the Internet. The allegations are mandated to be investigated by CPS if the alleged perpetrator is a parent or primary caretaker, if not they are referred to the proper agency and law enforcement. It

is a Class B Misdemeanor to fail to make a report if you suspect child abuse or neglect. The number to the central intake in Austin, Texas is 1-800-252-5400. Anyone and everyone who witnesses suspected child or adult abuse and/or neglect are required to report (TDFPS, 2006).

## **Physical Abuse**

Physical abuse is defined as the 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 (Texas Family Code, 2006). If a child receives a mark or a bruise on the body that is above the torso during the course of receiving corporal punishment, it can be considered physical abuse. It may not be considered physical abuse if the injury is below the torso or in a non-vital part of the body, rather termed over-discipline and services are provided. If a child is physically disciplined with an appliance cord, it is considered physical abuse even if a substantial injury did not occur. It is against the law in the state of Texas to physically discipline a child using an appliance cord and the perpetrator of such an action could go to jail.

A child who is physically abused by someone other than a parent or caretaker is considered a victim of assault, except if the perpetrator is school staff. If school staff is accused of physical abuse, they will receive a Physical Abuse confirmation from CPS. This validation will extend to their personal family as well and will be considered if they receive a report regarding the care of their own children. The parent of a child who consents to someone else, such as a minister, to physically discipline a child may be validated for physical abuse by the agency for their actions. Physical abuse is also defined as 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.

A child who is born testing positive for controlled substances or exhibiting signs of withdrawal from them or alcohol will be confirmed as being physically abused by his mother. In some instances, the child will not test positive but the mother will and that situation results in confirmation of physical abuse as well due to the potential that the controlled substances or alcohol were in the child's system at one point. A parent or primary caretaker will also be validated for physical abuse in Texas if they encourage, cause, or expressly permit a child to use a controlled substance or alcohol.

The form of physical abuse known as Munchausen's syndrome by proxy (MSBP) takes a very experienced and skilled caseworker as well as a supervisor to detect. The incidences of this psychological disorder need to be handled by staff with specialized expertise because of the seriousness of the outcome if it is not detected or thoroughly investigated. Most perpetrators of MSBP are mothers and they do not stop until the child is taken out of their care. These children may continue to have unexplained injuries all of their lives or they may die before their abuser is stopped. Law Enforcement should be involved at the onset of the investigation to ensure that the proper evidence is gathered for prosecution.

## **Child Neglect**

There are four types of child neglect in Texas (TDFPS, 2006); they include: physical, medical, neglectful supervision and abandonment. Physical Neglect is defined as failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child. It excludes the failure caused primarily by financial inability unless relief services had been offered and refused. A thin line exists between what is considered neglectful and what is considered poverty, especially with the onset of drug use among caretakers. A child's well-being rests with a caseworker making an accurate assessment to determine if the problem exists because the parent is improperly using the food stamps and other benefits, or that the benefits are insufficient.

Medical Neglect is defined as failing to seek, obtain, or follow through with medical care for a 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 (Texas Family Code, 2006). The agency may remove children whose parents prevent them from having medical procedures done at the advice of a medical professional. The child may be returned to the care and custody of their parents after the deemed necessary procedure.

Neglectful Supervision is defined as the act of placing or leaving a child in a situation where the child would be exposed to a substantial risk of physical or mental harm. Placing the child in or failing to remove a 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 capacity (Texas Family Code, 2006). A tool known as a Supervision Chart exists for intake workers to determine if the report constitutes neglectful supervision. The chart takes into account the child's age and the ages of any other children left with him as well as the child's maturity level. Latchkey children are not victims of child neglect in Texas.

Finally, abandonment is simply the action of placing a child or failing to remove a child without arranging for necessary care for the child. Additionally a demonstration of an intent not too also fits under this definition.

## **Emotional Abuse**

Emotional Abuse is defined as 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 (Texas Family Code, 2006).

Emotional Abuse is usually assessed in regards to a child's performance in school. A child who has been making good grades in school and suddenly declines, changes in their environment or circumstances should be explored. Emotional Abuse receives the fewest confirmations of all the allegations due to the difficulty of pinpointing the cause of the impairment because of definition ambiguity.

## **Sexual Abuse**

Sexual Abuse is defined as sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of indecency with a child sexual assault or aggravated sexual assault. It is also defined as failure to make a reasonable effort to prevent sexual conduct harmful to a child, compelling or encouraging the child to engage in sexual conduct 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 photograph, film, or depiction of the child is obscene or pornographic. It goes further to include parent or primary caretakers who cause, permit, encourage, engage in or allow a sexual performance by a child (Texas Family Code, 2006).

Law Enforcement is usually housed with the Children's Assessment Center, the County facility where children are interviewed, examined and counseled if they were sexually abused in Texas. Three agencies are required to work together to determine the validity of the allegations, prosecute the offender and assist the child in recovering from the abuse. All classifications of sexual abuse are handled in the CAC with that agency working with CPS and Law Enforcement. The perpetrators may be a parent, a parent's paramour, a relative of the child or caretaker and a stranger. Once CPS investigates and determines the perpetrator is a stranger, Law Enforcement continues the investigation until prosecution. Perpetrators have a separate entrance at the back of the building so that there is no chance they may encounter the victim child. The entire building is designed to make the child feel completely at ease and totally safe. Staff members at the CAC include medical doctors, nurses, psychologist, psychiatrist, social workers, detectives and volunteers (TDFPS, 2006).

## **Investigations**

In the fiscal year 2006, there were 6,300,598 children living in the state of Texas. Of these children, 347,396 were involved in CPS investigations. There were 97,995 children confirmed as abused or neglected, 59,427 were provided services while 17,536 were removed from their home. These figures include child victims as well as other children living in the home who are not victims of abuse or neglect (TDFPS, 2006).

Reporters of child abuse or neglect are kept confidential by law. Nevertheless, a reporter can choose to remain anonymous to ensure confidentiality. This may prevent the reporter from following-up on the report due to them not being given a case ID number by the intake worker. Every person who reports an abuse or neglect case should be given a priority number for the case and a case ID number to follow-up with the progress of the investigation. There are two Priorities given for case assignments. Priority I reports include all reports of children who appear to face an immediate risk of abuse or neglect that could result in death or serious harm. Investigations of these reports must be initiated within 24 hours of receiving the call report. Priority II reports include all reports of abuse or neglect that are not assigned as Priority I. These investigations must be initiated within 10 days of receiving the report. Some reports received do not meet the statutory

definition of abuse or neglect, as defined in the Texas Family Code, and thus are not assigned (TDFPS, 2006).

- An investigation will receive a disposition at the conclusion, the dispositions are:
- Reason-to-believe. Based on a preponderance of the evidence, staff conclude that abuse or neglect has occurred. If this is the disposition, the family will have a risk assessment to determine if the factors are controlled for risk of abuse and/or neglect in the near future. Every child taken into custody must have a reason-to-believe disposition concerning the report on them but, not every reason-to-believe case will be a custody case. Most of these cases are referred to in-home services such as parenting and counseling; they can be within the agency or contracted outside of the agency.
- Ruled-out. Staff determines based on available information that it is reasonable to conclude that the abuse or neglect has not occurred. The case is then closed and no further contact is usually made with the family.
- Unable To Complete. An "unable to complete" investigation is one that cannot be concluded and assigned another disposition because the family could not be located to begin the investigation, or the family was contacted but subsequently moved and could not be located to complete the investigation or the family refused to cooperate with the investigation. CPS policy outlines several required actions the caseworker needs to complete with the "Unable To Complete" disposition. This disposition results in the case remaining on file with any obtained information. It is sent to closed files to wait for another report to match with it in the future and sometimes it doesn't take long for that to happen.
- Unable-to-determine. Staff concludes that none of the dispositions specified in [1 through 3 above] is appropriate. This disposition will also result in the report staying in the system and another report may result in a risk assessment that determines custody is warranted.
- Administrative closure. Information received after a case was assigned for investigation reveals that continued Child Protective Services intervention is unwarranted. These cases rarely get assigned to a field caseworker and are sent to closed files before going on to an investigative unit.

The most common reporter of abuse is school staff. The most common allegation confirmed is Neglectful Supervision. The perpetrators are usually a female parent of the victim child who is single and between the ages of 26-35. The confirmed victim is usually female between the ages of 1 to 3 (TDFPS, 2006). Texas is divided into 11 regions containing 254 counties, the largest county is Harris County located in Houston. Harris County is in Region 6 with 12 surrounding counties.

## **Intervention**

Once a report of abuse and/or neglect is called into the statewide intake system in Austin, the intervention begins at that point. An intake worker decides if necessary with the help of a supervisor, if the report warrants assignment to the field. If the report is assigned for field investigation, the investigator makes an assessment regarding the risk

factors to the safety of the alleged victim or any child living in the home. There is a detailed survey regarding the child's environment and the family's history called a Risk Assessment. This instrument has to be completed by the worker before the investigation can be completed.

If it is determined that there are no risk factors, the case is closed. If there are risk factors, the decision is made to either remove the child to safety or provide services to the family with the child remaining in the home. A tool called a Safety Plan is done at the point that it is determined that the child is at risk in the home. It requires the signature of the person designated to enforce the measures that are taken to ensure immediate safety of the child as well as the caseworker completing the investigation. The most severe action of an investigation is the removal of the child from the family system and placement into the foster care system.

Protective services should be the first option for most families coming to the attention of CPS. These services should be provided by the agency and include counseling, evaluation, testing, homemaker services, parent and community group referrals, day care services and many more that can be accessed and paid for through the agency.

## **Race and Ethnicity Issues**

Texas has recently been ordered by Governor Rick Perry to undergo changes to remedy several problems in the protective services, most notably that of disproportionality. Disproportionality is the over-representation of a particular race or cultural group in a particular program or system. This phenomenon has been documented for decades, nationwide, in different programs, such as child protective services, special education services, juvenile justice, and the criminal justice system. African-Americans are represented in those systems at higher rates than their percentage of the general population, both nationwide and in Texas. In the Texas child protective services system, a higher percentage of African-American children are removed from their homes, a lower percentage are successfully reunited with their families, and a higher percentage age out of foster care without an adoptive family or other permanent placement (TDFPS, 2006).

In 2005, DFPS began to address systemic factors and identify improvements in practices to address the disproportionate representation and disparate outcomes for African-American children and their families within the CPS system. Those include all phases of service, such as investigation, removal, placement and emancipation. CPS dedicated specific staff to this initiative and has begun to work with Casey Family Programs and a community advisory group in Houston (CPS, 2006).

Figures 11. 1. and 11.2. present the racial/ethnic make-up of children in Texas. Hispanic or Latino is the majority followed by White or "Anglo", with a smaller population of African American and "other". Removals from the home show a pattern of Hispanic or Latinos receiving the most removals followed by Whites "Anglos" then African Americans and "others" (Renewal Initiatives, 2005).

Figure 11.1

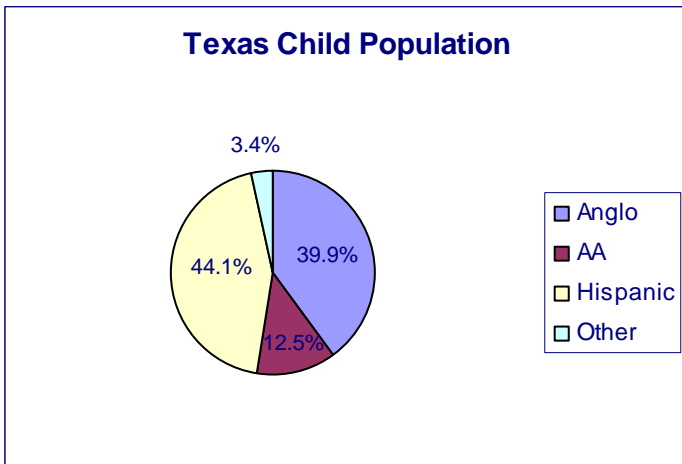
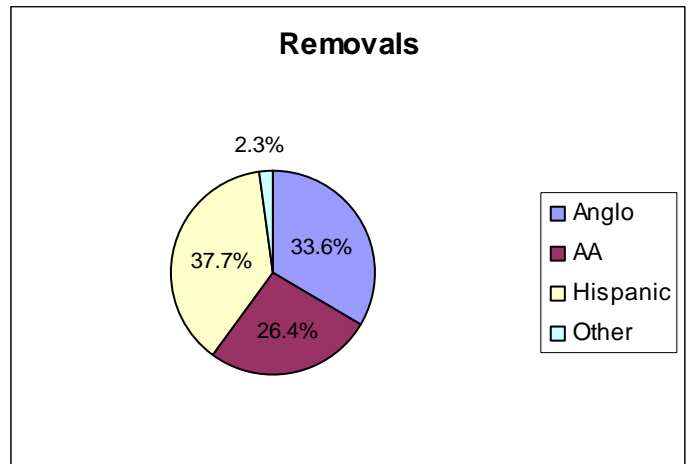


Figure 11.2



**Source: Renewal Initiatives**

**<http://www.dfps.state.tx.us/About/Renewal/CPS/disproportionality.asp>**

Once a child is removed and enters the foster care system, a judge decides if the agency was warranted in doing so. In Harris County, the largest county in Texas, the worker attends an emergency court hearing the next business day after removing a child from its' home. If the emergency placement is approved, the worker attends another hearing ten to fourteen days later called a Show-Cause hearing. At the Show-Cause hearing, the caseworker must present concrete evidence that the child should remain in foster care because all other avenues to secure the child's safety have been exhausted. For fiscal year 2006, there were 17,536 children removed from their homes in the Texas.

After a court approves the removal of the child, the family should be provided with services from the agency to remedy the problem. The services must be reasonable and able to be accomplished in six months because that is when the case must go back to court to justify continued intervention. Every six months after the Show-Cause hearing, CPS must provide evidence to the Court that the child must remain in their custody or non-suit their case against the parents and return the child. The judge can determine that the agency's case against the parents is not enough and dismiss the case in spite of the agency's objections, returning the child to the parent. If the court returns the child to the parent, it is the agency's responsibility to ensure that the family receives services to remedy the problem that caused the child to be removed in the first place.

Permanency is established for the child once they are returned home, permanently placed with a relative or placed for adoption. Unfortunately, with older children there is the option of permanent custody to the Department of Family and Protective Services. These children sometimes age out of the CPS system at 18 and then enter the Adult Protective Services part of the agency if they are not able to live as an independent adult at that age. There are success stories involving children who graduated from high school and entered college, which is totally paid for by the agency as long as the school is state-funded.

## **Child Death Review Teams**

Texas has child death review teams that, until last year, were under the auspices of the Department of Family and Protective Services. These teams are now under the guidance of the Texas Department of State Health Services. The Texas Child Fatality Review Team State Committee is a multidisciplinary, multi-agency group, mandated by state law that oversees and assists the work of local review teams in Texas. The State Committee works to develop a statewide understanding of the scope and magnitude of childhood mortality, not only from abuse and neglect but accidental deaths as well. In 2003, 10 Texas children died after being left in vehicles in which they were riding. Most of the children were infants and their deaths were ruled accidental. Texas led the nation that year for the number of child deaths due to the child being left in a car in which they were riding (TDFPS/Child Fatality Review Team, 2006).

## **Careers in Texas**

Texas Department of Family and Protective Services are always hiring additional staff, especially in the CPS division. They are currently required to hire an additional 2300 caseworkers. A degree from a four-year college is all that is required especially if one speaks Spanish or an Asian dialect, previously they required a degree in social work or social sciences. There has also been an increase in pay, especially if one is assigned in investigations the entry-level pay is \$28,740.00 a year (TDFPS, 2006).

Becoming a CPS investigative caseworker requires a willingness to view the work not as a job, but more as a mission. The mission is to intervene to ensure safety for as many children as possible for as long as possible. One will never feel as though their pay warrants the amount of work they do or they are required to do, workers that have tenure of more than a couple of years tend to disregard the pay. One must be available for consult 24/7 because you never know when a case you just made contact on will go awry or what investigators call “blow up”. There is a part of the agency called the Chimney Rock Center (CRC) in Houston that is an intake unit opened for children and their families after normal business hours. CRC may call a caseworker in the middle of the night to report that a child was transported to the office by police. Counties located outside of Houston, Harris County do not have a CRC and therefore the police will call the worker on call to come for the child and decide on a placement in the middle of the night. Caseworkers are divided into three career tracks, starting with a Child Placement Service Specialist II or a CPSS II and ending with a CPSS IV. There are positions of CPSS V that are obtained through promotion to this lead worker position. The CPSS V should be the more experienced and skilled worker in a program, a worker who mentors the newer worker coming into the agency. There is usually one CPSS V per program and about 4 to represent the agency in the Family Courts that hear CPS cases.

There is a little more control for caseworkers moving into the substitute/foster care, on-going protective services, foster-home development, intake at main office or CRC, or the recently formed Family Group Decision Making (FGDM). However, the agency is quickly moving towards outsourcing everything but investigations. The agency



has been placed on a five-year plan to be revamped to spend more time on protecting children and the plan is from 2005 through 2009 (TDFPS, 2006).

### **Summary**

Child abuse and neglect has been an issue under debate in Texas for years. The agency that is mandated by the Texas Family Code and Human Resources Code is currently the Texas Department of Family and Protective Services. The agency has undergone name changes, changes in policy and procedure, changes in the scope of their mandate and the methods of their intervention. One thing that has remained constant is that they are required to protect the most vulnerable citizens of Texas. How that is done is constantly under debate.

Texas is currently under a five-year plan to overhaul its' protective services when it comes to children. Several state legislators have become involved in resolving the issue of disproportionality due to pressure on the Governor to address the issue with the agency. The information regarding the practices and policies of this agency seem to be constantly evolving and may do so until the end of the five-year overhaul. The agency appears to be going towards privatization with so many of their services being outsourced so that they will be able to concentrate on investigating reports of abuse and neglect.

Those interested in a mission rather than just a job may have no problems starting a career with the agency, especially if they speak a foreign language. It would behoove one to know that the greatest reward will be that in knowing that another child is safe and able to reach their potential to be a great parent themselves and a productive citizen of any State.

### **Critical Review Questions**

1. Who are the perpetrators in CPS-confirmed child abuse or neglect cases? In sexual abuse cases, what is the central location that houses all of the agencies involved?
2. How is emotional abuse defined differently in Texas? Is it similar or different to mental abuse?
3. What is disproportionality and how has it affected the CPS system in Texas? How would that impact the social fabric in that state and others?

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