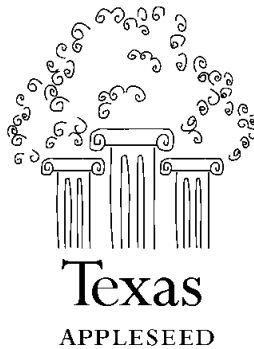


Improving the Lives of Children in Long-Term Foster  
Care:  
The Role of Texas' Courts & Legal System

An Overview of Study Findings and Recommendations



TEXAS APPLESEED

Submitted to the Texas Supreme Court Commission for Children, Youth and Families  
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## **Texas Appleseed Mission**

Texas Appleseed's mission is to promote justice for all Texans by using the volunteer skills of lawyers and other professionals to find practical solutions to broad-based problems facing the most vulnerable -- including the state's foster children.

## **Acknowledgements**

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# Overview of Permanent Managing Conservatorship Study Findings & Recommendations

*No child enters or leaves foster care without a court order. A judge decides where the child will live, with whom, and for how long. Every day, Texas courts decide whether a child goes home or to a relative, visits a sibling, or becomes legally free for adoption.*<sup>1</sup>

For more than 26,000 children in Texas, the State is acting as their parent.<sup>2</sup> More than half have been in the system for more than a year and are long-term wards of the State.<sup>3</sup> These are the children in long-term foster care, or Permanent Managing Conservatorship (PMC).

In 2009 alone, the State removed more than 12,000 abused or neglected children from their homes.<sup>4</sup> Once a child has been removed, the State has a year, with a possible six-month extension, to resolve the case either by reuniting the family, placing the child permanently with a relative, or adoption. If none of these options are achieved, the child enters PMC.<sup>5</sup> In August 2009, 13,602 children were “permanently” in the State’s care.<sup>6</sup>

And, the number of children in long-term foster care is likely to grow. Though the number of children removed from their families had been decreasing over the last four years,<sup>7</sup> today the Texas Department of Family and Protective Services (DFPS) is seeing an increase in removals. This increase is driven by the economic crisis coupled with the state’s population growth.

## The Impact on Children

By all accounts, too many children get “stuck” in the foster care system -- spending over three years in long-term foster care system without a parent.<sup>8</sup> Even a day without a parent is a terrifying experience for a child.

A full 10 percent of these youth never find a family; instead, they turn 18 and “age out” of foster care.<sup>9</sup> Studies show that young people who “age out” of long-term foster care are more likely to become homeless, have mental and physical disabilities, be involved in crime, become a teen

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<sup>1</sup> Tex. Supreme Court’s Permanent Judicial Commission on Children, Youth & Families, created under the leadership of former Justice Harriet O’Neill, *available at* <http://www.supreme.courts.state.tx.us/children.asp>.

<sup>2</sup> Texas Department of Family and Protective Services (DFPS), *Annual Report and Data Book 2009* at 53.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 49.

<sup>5</sup> *See* Tex. Fam. Code § 263.401. Within 12-18 months time from the point that the Department is named the temporary conservator, the court must determine whether it will dismiss the case brought by the Department or place the child in permanent care of the Department. *See id.*

<sup>6</sup> DFPS Data Book *supra* note 2, at 53.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 61.

<sup>9</sup> *Id.*

parent, have little education, and live below the poverty line.<sup>10</sup> According to the nationally recognized Casey Family Programs, teens in foster care (ages 15-19) are among the “most disconnected youth” in America.<sup>11</sup>

As one judge put it, “These are the children that even God has forgotten.”

## **What the State Can Do**

No one wants these children to be forgotten. Texas recognizes that the state is a poor parent and that far too many children are in long-term foster care. The Department of Family and Protective Services (DFPS), the Texas Legislature and the federal government’s Child and Family Services Review (CFSR) have all cited the need for improvement. Many studies, reports and recommendations focus on how DFPS, and its Child Protective Services division, should be improved and changed.

The Department and Child Protective Services are only part of the equation. The courts also play a critical role in these children’s lives. As Texas Supreme Court Justice Harriett O’Neill (retired) noted, the courts are the “gatekeepers for families in crisis.”<sup>12</sup> Every child has an active court case before a judge; most also have an attorney. The court regularly oversees these children’s cases, holding hearings at least every six months. Although there are minimum statutory requirements that must be met, Texas courts have broad discretion in how they manage these cases and how extensive the oversight is. The decisions made at these court hearings affect children in the system each day they remain in foster care. Yet, few reports or studies have examined how the courts and the legal system can help improve the life outcomes of children in long-term foster care.

When the State initially files a petition to remove a child from his or her home, there are several safeguards and court-related regulations and resources to protect the child’s rights and their well-being. Before the State becomes the “Temporary Managing Conservator” of the child, there is a court hearing and a written order.<sup>13</sup> The child is appointed an Attorney Ad Litem and a Guardian Ad Litem. Indigent parents are entitled to an appointed attorney. Many children will have a CASA (Court Appointed Special Advocate) volunteer who works with them. There is intense, regular oversight of the child’s case.

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<sup>10</sup> Katherine Kortenkamp & Jennifer Ehrle, *The Well-being of Children Involved with the Child Welfare System: A National Overview* (Series B, No. B-43) (Washington, DC: The Urban Institute) (Jan. 2002); Richard Wertheimer, *Youth Who “Age Out” of Foster Care: Troubled Lives, Troubling Prospects* (Washington DC: Child Trends) (2002).

<sup>11</sup> Astrid Atienza & Richard Wertheimer, *Vulnerable Youth: Recent Trends* (Working Paper) (Washington, DC: Child Trends) (April 2006). The three other categories were: (1) youth involved in the juvenile justice system; (2) teens who have children of their own; and (3) youth who never finished high school.

<sup>12</sup> Texas Supreme Court Advisory, *Statement by Justice Harriet O’Neill* (September 2007), available at [http://www.supreme.courts.state.tx.us/advisories/Statement\\_Justice\\_ONeill\\_080609.htm](http://www.supreme.courts.state.tx.us/advisories/Statement_Justice_ONeill_080609.htm).

<sup>13</sup> Tx Fam. Code. § 262

However, if the child is not reunited with a parent or placed with a relative within a year to 18 months, the court enters an order appointing DFPS as “Permanent Managing Conservator” and the level of scrutiny paid to individual cases significantly wanes -- even though some court oversight continues. This occurs whether or not parental rights to the child were terminated as part of the order granting PMC to DFPS. In other words, although the State’s responsibility for the child’s life and well-being does not diminish, there is often a sense that the “clock stops ticking” when the child enters into Permanent Managing Conservatorship (PMC).<sup>14</sup>

Texas Applesseed, under the direction of the Supreme Court’s Permanent Judicial Commission for Children, Youth and Families, has researched how the courts and the legal system can better help children in PMC.

The Commission’s request for this study recognized the flaws in the existing system:

*...these children in long-term foster care often receive less intervention from the courts than children in Temporary Managing Conservatorship at a time when more supervision is needed. It is common practice for courts to dismiss both the attorney ad litem and CASA once DFPS takes permanent legal custody of a child. At the same time, court oversight lessens as the Texas Family Code requires courts to hold hearings less frequently after permanent managing conservatorship is granted.*

*Despite shrinking oversight, however, courts are still responsible for outcomes of safety, permanency and well-being for all children on their dockets. As courts are arbiters of what happens to children in foster care, Texas needs to use best practices in its legal system to improve the outcomes of these youth.”<sup>15</sup>*

**Study:** *To examine how long-term life outcomes for PMC children growing up in foster care can be improved, this study will identify common problems of PMC children, the needs of these children, services available to them, and barriers to successful outcomes for PMC children. It will also identify best practices within the legal system and how using those best practices may improve these outcomes .*

<sup>16</sup>  
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The commissioning of this study underscores the commitment of the State’s highest court to finding ways to improve the lives of Texas children in long-term foster care.

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<sup>14</sup> Interview notes, Judge, child placement agency executive (2009).

<sup>15</sup> Charge to Applesseed Subcommittee of the Basic Projects Committee, Texas Permanent Judicial Commission on Children, Youth and Families.

<sup>16</sup> *Id.*

## Texas Appleseed Review Process

With a team of the state's leading foster care experts, major pro bono support led by Fulbright & Jaworski L.L.P., along with McGinnis, Lochridge and Kilgore, L.L.P., and strong cooperation from DFPS, Texas Appleseed conducted detailed quantitative data analysis of all children in PMC in Texas. Appleseed also completed a thorough quantitative and qualitative analysis of PMC data in 15 selected court jurisdictions in Bexar, Dallas, El Paso, Harris, Tarrant, Taylor and Travis counties, and including the Brazos River Valley, Centex, Central Texas, Northern Panhandle, Northeast Texas, Permian Basin, Rio Grande Valley and Southeast Texas Child Protection Courts. These 15 court jurisdictions include the six largest urban areas, eight Child Protection Courts representing diverse geographical and demographic areas of the state, and one smaller jurisdiction not in a Child Protection Court. These jurisdictions accounted for 65% of the children in PMC in 2008.

The Department of Family and Protective Services provided Appleseed with raw data on all children in PMC from 2005 through 2008.<sup>17</sup> With assistance from RPC Consulting, Appleseed analyzed the data to determine such issues as how long children had been in the state's custody, how many different homes or "placements" they had, and how many caseworkers oversaw their cases. Appleseed examined more than 30 different data elements, many which had not been analyzed before.

The data for the 15 selected court jurisdictions provided insights into the variability of outcomes between jurisdictions. Texas Appleseed and its partners visited each of the selected jurisdictions and conducted nearly 150 interviews with a wide range of stakeholders including: judges, CASA staff and volunteers and staff, Attorneys Ad Litem, prosecutors, CPS caseworkers, DFPS officials and attorneys, Guardians Ad Litem, foster parents, child placement agencies, residential treatment centers, and most importantly foster children and young people who had aged out of the system. These interviews revealed significant variations in practices, policies and procedures in each jurisdiction.

For this project, Casey Family Programs, national leaders in foster care initiatives, undertook an extensive review of best practices found nationwide on legal and court strategies to achieve timely permanency for children.<sup>18</sup> Casey Family Programs reviewed the literature and had conversations with key advisors from 10 states and one county identified as having promising practices to help Texas explore the ways in which the court system can reduce the time children and youth spend in foster care.<sup>19</sup> Their findings are consistent with the best practices identified by the National Council of Juvenile and Family Court Judges (NCJFCJ), a national judicial organization whose mission is to improve the court and system practices in juvenile and family

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<sup>17</sup> 2008 was the most recent year that the full data set was available when the study began in 2008.

<sup>18</sup> See Casey Family Programs, *Promising Court Practices: Strategies to Achieve Timely Permanency*, Nov. 2009 at 2.

<sup>19</sup> *Id.*



cases.<sup>20</sup> These practices, as well as Texas specific best practices, have been studied and reviewed for this report.

## Major Findings

From our extensive interviews, it appears that almost every court jurisdiction believes it is doing a “good” or “very good” job of monitoring the foster care cases. The vast majority of stakeholders are concerned for and committed to the children they serve. In most jurisdictions, the stakeholders have respect for one another, the judges who oversee foster care cases, and the well-intended, if overworked, Child Protective Services staff.

There also is widespread acknowledgement that the entire foster care system is under-resourced. The Department of Family and Protective Services and its caseworkers, as well as judges, CASAs and Attorneys Ad Litem, are overworked or underpaid, or both. In 2009, caseworkers were routinely handling around 30 cases, even though the national standards call for between 15 and 17 cases per caseworker.<sup>21</sup> Judges have seen the number of cases on their dockets grow, and many judges only have 10 to 15 minutes to review one case before moving on to the next one. CASA can only represent about half of the children who need their services, and when children enter PMC, CASA represents even fewer children. Attorneys often are paid little to meet with their clients; in at least one jurisdiction, the rate is \$20 an hour.

A few jurisdictions in Texas are serving their children in PMC well. Most are not. And resources alone, while desperately needed and clearly deserved, cannot fix this broken system. Our research documented a system plagued with problems. In the majority of jurisdictions there is:

- a lack of urgency to find permanent homes for these children,
- a lack of accountability and preparedness for these children’s well-being,
- a lack of clear roles for the legal participants,
- a sense that the children themselves do not need to be heard,
- a void in the courtroom from those who know the child, and
- a lack of communication and coordination of these cases.

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<sup>20</sup> See National Council of Juvenile and Family Court Judges (NCJFCJ), Publication, *available at* <http://www.ncjfcj.org/content/view/101/224/>. Texas has one certified NCJFCJ Model Courts, Travis County.

<sup>21</sup> DFPS Data Book *supra* note 2, at 32; Child Welfare League of America, Recommended Caseload Standards, *available at* <http://www.cwla.org/newsevents/news030304cwlacase-load.htm> (last visited June 21, 2010).

Moreover, there is sense among those outside the foster care system that these cases are “bottom of the barrel,” given that they are often assigned to inexperienced prosecutors and newly licensed attorneys (appointed as Attorneys Ad Litem) and to associate judges who lack the ability to garner the resources they need. Unfortunately, in far too many jurisdictions, these cases are not a high priority.

Among these issues, the lack of urgency is the most pressing problem. An impetus to act expeditiously to fulfill a foster child’s dream to be in a family, just to be in a safe permanent home, is too often absent from the court process. The entire tenor of the case changes once children enter PMC. It is as if “the clock stops ticking” and “the pressure is off,” since the child is no longer in “temporary” custody of the State. Because the most pressing legal issue – whether a child will be returned home – has been determined, there is a sense that the child has achieved some “permanency.” Even the name of the child’s status implies stability; the child is now in “Permanent Managing Conservatorship.” Nothing is farther from reality.

This lack of immediacy is compounded by many judges’ perception of their role in these cases. They see themselves as arbiters of disputed issues, rather than in a more quasi-fiduciary role to protect the best interest of the child. Texas law recognizes these children are wards of the state, and as such, this gives the court broad discretion to ensure the children’s well-being.

Additionally, there is no one person or group of people who takes full responsibility and accountability for how the child is faring. Ideally, the child’s caseworker would truly know and have responsibility for the child. The reality is that CPS’s crushing workload makes it impossible for them to fulfill that role. They work hard to make sure the child is in a safe “placement” and try to get the child adopted, but few caseworkers have time to really know each of their children. If a child has a CASA volunteer, that CASA usually is the only person who truly knows the child and knows how the child is doing. Most children in PMC do not have CASA volunteers.

The process is further hampered by a lack of clear roles for those who are in the courtroom during these proceedings. When a child is first removed from his or her home, the case usually follows the traditional adversarial process. Attorneys represent all parties. Cases go to trial. Judges act as arbiters of disputed issues. The law sets out very strict timetables which must be met. However, the role of the court and the legal system significantly changes when a child enters PMC.

PMC cases require more collaboration and multi-disciplined approaches to assure the child’s well-being and best interests are considered. These cases also call for more communication and coordination between all the parties than is required in other types of cases. The majority of Texas courts, however, continue to operate under the traditional adversarial framework. If the judge is not presented with a dispute between the parties, he or she does not see a reason to look deeper into the case. The same holds true for the prosecutors and Attorneys Ad Litem. But, these

cases are not the typical conflict cases most lawyers and judges see; they demand a different type of advocacy. In most jurisdictions, the parties do not fully recognize and adapt to these differences

Even though the Texas Family Code requires the child to attend each review hearing, in most courthouses in Texas, the children are not invited to participate. The opportunity to appear and speak to the judge rarely happens. As a result, the court does not hear first hand from the child, and the child – the most important person in the process – is not heard.

Also, those closest to the child, and who know the child best, are often not heard. Foster families, relatives, child placement agencies and others who are *required to receive notice of the hearings* do not regularly receive those notices, and are rarely at the court hearings. Consequently, their insights are not available to the court.

If a child is not doing well in her foster home, whose responsibility is it to help her? If she is falling behind at school, what does she need to do to catch up? These are the kinds of issues that courts should be monitoring in PMC cases, and that requires attorneys, the Department of Family and Protective Services, and the judge to have open lines of communication and coordination.

All of these factors combine to create a system that is failing our children in far too many jurisdictions across the state. It does not have to remain this way.

### **Strengths of the System**

Despite the significant challenges Texas' foster care system faces in reshaping its court and legal process for children in PMC, Texas is fortunate to have a strong statutory framework and two key best practices which are leading to needed change.

Texas law governing the court process for children in PMC is strong.<sup>22</sup> It requires many of the practices identified by the National Council of Juvenile and Family Court Judges (NCJFCJ), Casey Family Programs, the American Bar Association and others as critical components of PMC oversight. The statute requires regular reviews of a comprehensive list of issues every six months. Children are required to be present in court, unless specifically excused. Volunteer advocates, Attorneys Ad Litem, foster families and others are allowed to be present and entitled to be heard at the hearings. A solid legal framework is already in place for children in PMC.

Both the NCJFCJ and Casey highlight strong judicial leadership as the one of the most important practices needed to bring about systemic changes in court practices. Texas has such leadership. The Texas Supreme Court Permanent Judicial Commission for Children, Youth and Families,

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<sup>22</sup> See Tex Fam. Code § 263.501.

which charged Texas Appleseed with this study, has shown the will and the ability to help improve judicial oversight of child welfare cases.

Casey and the NCJFCJ also note that interdisciplinary teams, consisting of the judiciary, the state's child welfare department, CASA and other stakeholders, are essential to bring about systemic reform. Again, Texas has this interdisciplinary working relationship. Through the Commission, high level judges, the DFPS Commissioner, Deputy Commissioner and Associate Commissioner for CPS, court administration leadership, state leaders from CASA, children's rights organizations and many other stakeholder groups are working collaboratively to improve Texas' foster care system.

With strong judicial leadership and active, engaged collaboration between all the stakeholder groups, Texas has the key elements to see dramatic improvements to the court and legal system for PMC.

## **Policy Recommendations**

To develop a strong, practical set of policy recommendations, Texas Appleseed invited some of the state's leading legal experts in foster care to meet and collectively develop the policy recommendations found in this report. These experts included district and associate judges, state agency heads, foundation leaders and advocacy organization leaders. This group studied the Promising Practices identified by Casey Family Programs, the quantitative and qualitative data collected by Texas Appleseed, and they brought to the discussions their own depth of experience in foster care. Together, this group spent many hours discussing appropriate recommendations.

The findings in this report are those of Texas Appleseed alone, gleaned from our field research, interviews, and data analysis. The policy recommendations presented here are the collaboration of some of the finest legal thinkers on foster care in Texas.<sup>23</sup> We make the following recommendations to require and encourage more attention, substance, and meaning to the hearings and processes necessary to get Texas children safely and permanently out of state custody. One recommendation includes a new pilot project, a few require changes in the Texas Family Code, and others will require more resources. But most importantly, while increased resources are necessary for some changes, most of the recommendations require that court jurisdictions adhere more closely to existing state laws that are on the books to protect the rights of vulnerable foster children.

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<sup>23</sup> See document entitled "Texas Appleseed Policy Development Team" attached.

## **BENCHMARK PERMANENCY HEARING PILOT**

### **Overview**

Nearly 70% of children who enter PMC leave foster care within two years. But the majority of children who stay in foster care for more than two years will “age out,” and leave at 18 with no permanent home.

Every child who enters PMC has a “permanency plan,” setting out a goal intended to ensure that the child has a safe, permanent home when they exit care. The permanency plan is theoretically realistic and achievable, and assumes all parties and persons involved in the case will work together to reach the plan’s stated goal. Currently, once the plan is prepared and agreed to, it is required by the Texas Family Code to be reviewed once every six months by a judge with the intent being to see if it is still achievable or if there are other, better options for the child to find a permanent home.

To keep the focus on finding a permanent home for children in PMC, the intensity of court oversight and the structure used must be changed significantly to ensure that permanency is achieved more effectively and efficiently. The framework of the proposed change requires that the submitted permanency plan be carefully reviewed and modified – not just rubber-stamped – when the child enters PMC. It would also require the court to conduct a full, complete review of the child’s case and permanency plan if a child reaches a two year anniversary in PMC and the permanency outcome identified in the child’s plan has not been achieved.

Texas Appleseed recommends that the Commission design, implement, and evaluate a pilot program to determine if the changes in the scope, frequency, and nature of the hearings described below result in more children achieving true permanency by finding a permanent home, as opposed to simply aging out. The Commission will need to determine the number of courts in the pilot based on available resources, but we recommend eight courts (four test and four control) become a part of a two-year pilot project, selected to provide geographic and demographic representation. The test courts will implement the new hearing structure and their results and outcomes will be observed, reviewed, and compared with those of the control courts.

### **Pilot Goals and Objectives:**

- 1) To ensure that finding a permanent home for the child is the focus of the PMC stage.
- 2) To develop a timeline for placement review hearings that will seek to ensure all stakeholders are deeply involved and working toward permanency for the child constantly and consistently throughout the child’s duration in foster care.
- 3) To utilize review criteria already established for placement review hearings to ensure that each stakeholder is accountable for their part in moving the child through the processes required to establish permanency for the child in an efficient and effective manner.

- 4) To place more emphasis on the permanency plan established when a child first enters PMC so that the plan is realistic and achievable and not just used as a placeholder.
- 5) To monitor closely the permanency plan and to pursue change in the permanency plan when it becomes evident the previously established plan is not viable.
- 6) To change the perception of the PMC stage of foster care among stakeholders.

**Pilot Description:**

The hearing process set out below is designed to assure that the permanency plan is achieved and the child finds a permanent home.

*Timeline and Requirements:*

Beginning with the final order naming DFPS the Permanent Managing Conservator of the child, the following must be observed:

- 45 days – **Scheduling Order Hearing**
  - At the hearing, the judge must issue a scheduling order that includes the 90 day permanency implementation assessment hearing, subsequent assessment reviews every 4 months, and notes the two-year mark for the case.
  - Amendments to the scheduling order shall be available, if good cause shown.
- 90 days – **Permanency Implementation Hearing**
  - Identify and establish a means to resolve any outstanding legal issues that may prevent the child from achieving the goal of the permanency plan, including but not limited to the possible need to revisit termination of parental rights, pending juvenile citations, appeals, emancipation, and immigration status
  - In accordance with the current provisions of the Texas Family Code, review the established permanency plan to assure that it is appropriate and achievable.
  - Establish each stakeholder’s duties and tasks with regard to the child’s permanency that must be completed prior to the next permanency hearing.
  - Require the department to prepare a different permanency plan, if the plan in place is not appropriate or achievable
  - Establish a time by which a new plan must be submitted.

- *As often* as necessary, but no longer than every 4 months from the Permanency Implementation Hearing – **Permanency Progress Hearings**<sup>24</sup>  
(These hearings would follow, generally, the current requirements for Placement Review Hearings)
- The Department and other stakeholders must prepare a detailed statement describing all efforts they have made on the child’s behalf in pushing towards permanency since the last hearing and since the child has been in PMC
  - Judge must issue an order determining whether:
    - All persons or parties required to be given notice are present at the hearing
    - The CPS worker and other stakeholders have accomplished his or her required task established at the previous hearing or the permanency implementation hearing and if not, establish the reason the task was not completed
    - The department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child
    - The child’s current placement is necessary, safe, and appropriate for meeting the child’s needs, including with respect to a child placement outside of the state, whether the placement continues to be appropriate and in the best interest of the child
    - The child confirms that the placement is meeting her needs
    - The foster parent or caregiver confirms that the placement is able to meet the child’s needs.
    - Efforts have been made to ensure the child is living in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care
    - The services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community
    - Other services that are needed to meet the child's special needs or circumstances, which have been identified in the permanency plan, are being provided to the child, and if not, the reason why.

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<sup>24</sup> Note name change from “Placement Review Hearing” to “Permanency Progress Hearings.”

- If the child is committed to the Texas Youth Commission or released under supervision of the Texas Youth Commission, the child's needs for treatment, rehabilitation, and education are being met and the TYC caseworker's treatment plan is in the court's file.
- At the end of 2 years of permanency – **Benchmark Review Hearing**
  - All stakeholders must prepare for the court a report detailing every step each has taken to get the child to permanency as established by the child's permanency plan
  - The judge shall issue an order similar to that of the permanency review hearing but the order shall include a determination establishing whether:
    - The child's permanency plan is appropriate and designed to meet the needs of the child and shall remain the same because it is being implemented as required and shall include a date by which the permanency plan will be achieved, OR
    - The child's permanency plan is not viable and the department must develop another permanency plan by a specified deadline that ensures the child will have a permanent and safe home and a timeframe for achieving the plan. The Court's order shall include any terms, conditions, or deadlines that the Court deems necessary or appropriate to achieve a timely and viable plan
- From this point, every 4 months there shall be a Permanency Progress Hearing and every 3<sup>rd</sup> Permanency Progress Hearing shall be replaced by a Benchmark Hearing



## RECOMMENDATIONS FOR ALL JURISDICTIONS

### PLACEMENT REVIEW HEARINGS

**Judges must recognize their critical role in the PMC process.** The duty and responsibility of the court is to protect the best interests of the child, require adherence to the law, and hold individual stakeholders accountable. In PMC cases, judges have a responsibility to play an active oversight role in reviewing and enforcing the appropriate delivery of services for children, including services that support the child's education, mental, emotional, and physical needs, involvement in the legal process, and the appropriate attention given to their transition to adulthood.

The primary consideration of the Court should always be the best interest of the child and the judge should consider revising or overturning agency decisions concerning services, case plans, and child placement when the court determines those decisions are not in the child's best interest. This oversight role requires that the judge be more than an arbiter who decides issues upon the basis of what may be presented. Instead, the judge is the ultimate authority who must ask searching questions and insist on all necessary information to make an informed decision about the best interest of the child even when the stakeholders have not brought forward sufficient information to the court or performed as they should.

The judge should carefully tailor his or her judicial demeanor as appropriate by modeling dignity and respect, expressing compassion and encouragement for the children and youth before them. When necessary, she must demand accountability and even impose sanctions to insist on completion of a proposed plan or disposition. The judge may make appropriate use of any and all judicial power and authority to advance and protect the best interests of the child.

**The judicial leadership within each jurisdiction must ensure, to the extent possible, that there is one judge assigned to a youth throughout the youth's entire duration in PMC.**

Court jurisdiction is usually the one stability in a child's case. CPS workers change, children are moved from location to location and county to county as various placements fluctuate and levels of care change. A judge who consistently hears the legal case and knows the child may often be the one constant in a foster child's life. Stable judicial oversight can also ensure continuity and consistency from the other stakeholders involved in the case.

It should be noted that some believe there should be one judge from the time that the child enters TMC until she achieves permanency so that the judge has a comprehensive understanding of the child's case; others believe a new judge at the beginning of the PMC process provides all stakeholders with the sense of a fresh start and a renewal of efforts to find the child a stable, permanent home. We find that the judicial split between TMC and PMC should be left up to the leadership of each jurisdiction; however the jurisdiction should remain consistent in how it uses its judges in the foster care system. This means that the leadership within each jurisdiction must make a conscious, informed decision on how judges' dockets will be split regarding TMC and

PMC cases to guarantee a child remains with the same judge once she enters the PMC phase of the legal case.

**Children and youth must be in court.** Sec. 263.501(f) of the Texas Family Code requires youth attendance in court at all Placement Review Hearings. It is identified by Casey Family Programs as a best practice. There is an exception to the rule, allowing judges to *specifically* excuse the child's attendance. This exception should be used only rarely in extreme cases where it would harm the child to be in court. The judge may speak to the child in chambers or in open court, as deemed appropriate.

Having the child in court serves both the judge and the child. It allows the judge to actually see the child and ensure she is not being harmed by her current placement. The judge may also gain valuable information from the child about her placement, her plans, and other information which could lead to better outcomes. It also allows the child to express her opinion on what should happen in her life. Additionally, it enables a child to feel and know that she is taking part in planning her life. Moreover, it gives the child a sense of control and stability and makes the process seem real. Lastly, it also allows her to know and understand that people care about her and are working to provide her with a permanent home.

**Placement Review Hearings should take place as often as necessary, but at a minimum should occur every 4 months.** Currently, § 263.501 of the Texas Family Code requires placement review hearings to occur every six months. Although six months pass rapidly for an adult, it is a significant portion of a child or youth's life. The infrequency of these hearings dulls any sense of urgency for the parties involved in the PMC process, at a time when youth in care may need the most attention. When hearings are held six months apart, stakeholders tend to put off completing steps which secure the child's permanency until shortly before the next six-month placement hearing. To ensure each stakeholder is pushing forward in the next steps to get the child to permanency, placement review hearings should be held as often as necessary, but at least as frequently as every four months.

Casey Family Programs and other national organizations have recognized every four months as the maximum time a court should wait to have a hearing concerning the progress of a child's permanency plan. This time period helps the case move forward and keeps a close focus on finding permanency for the child.

**In every PMC case there should be an advocate for the youth. The advocate can be a CASA volunteer who is appointed as the GAL or as a friend of the court or another GAL.**

A GAL's role is to ensure that the child's best interests are served, and although lawyers are needed at times in the PMC process, lawyers are not social workers. Much of the PMC process, even the parts of the process that occur in the courtroom, requires more of a social work focus.

In some cases, a GAL who is more focused on the social work aspect of the PMC process may be more crucial than AAL. **[Requires a statutory change.]**

**Attorneys ad litem must be appointed or retained when adversarial legal issues arise and there is a conflict amongst stakeholders.** That is where the skills of an attorney are best applied in the PMC process.

**Every child should have a CASA volunteer.** CASA volunteers have been lauded across the state for their active, involved, knowledgeable participation in the lives of their foster children. They generally provide the courts with the most current, well-informed assessment of the child and her needs. CASA volunteers receive required training which enables them to serve the child's best interest, training that much more closely resembles the training of a social worker as opposed to that of a lawyer enabling them to serve the child's best interest efficiently and effectively. As such, in the PMC process, CASA should be appointed as GAL, "special advocate," or a "volunteer advocate" for every child.

**Regardless of whether CASA is appointed as the GAL, the CASA must be allowed to present its report to the court and have the ability to request a hearing.** As noted, the most consistently positive stakeholder involved in the foster care system and in the child's life was the CASA volunteer. In many cases, a CASA volunteer had the most comprehensive report on the child to present to the court when allowed to present. In fact, in many cases, it is the CASA's report that is the basis of the AAL's report.

Unbeknownst to many, CASAs, whether serving as the GAL, "special advocate," or "volunteer advocate," have the ability to *request* a hearing by submitting a letter to the court that has been approved by a CASA supervisor *and* copied to all parties in the case in accordance with § 263.501 of the Texas Family Code. Additionally, CASA has the ability to request an AAL for the child.

CASA must be encouraged by the judge to present its findings to the court and to request hearings. Judges must consider CASA's reports and respect its requests for hearings.

**Notice of placement review hearings must be provided in accordance with § 263.501 of the Texas Family Code and as required by the code, Texas Rule of Civil Procedure 21.** It is common across the state to find that important stakeholders, such as the child's foster parents, relatives, or child placement agency, were not in court as is provided by statute for placement review hearings. The overwhelming reason given for the stakeholders' absence from the courtroom is that the stakeholder never received notice of the hearing. Section 263.501(d) of the Texas Family Code requires that DFPS, foster parents, pre-adoptive parents, relatives providing care, directors of group homes or institutions, each parent of the child, each possessory conservator or guardian, AAL, volunteer advocate (usually CASA), and any other person or agency named by the court as having an interest in the child's welfare must be notified 10 days prior to the placement review hearing. In many jurisdictions, notification of all pertinent parties is not happening.

Notice must be provided in accordance with Texas Rule of Civil Procedure 21, almost exclusively by DFPS, so that all pertinent stakeholders can appear in court and gain a more comprehensive view of the child's well-being in order to determine whether permanency, as identified in the permanency plan, is realistic and achievable.

**Judges must issue a written order with fact-specific findings for each of the determinations required by § 263.503.** Many PMC hearings are viewed as less important than most other civil hearings in Texas courts. Typically, hearings are conducted in 10-15 minutes, children are not in court, the child's well-being is not well established, and progression toward achieving the child's permanency plan goes undocumented. The Texas Family Code sets out issues that should be discussed and resolved at each hearing, but it is evident from the length and depth of hearings as they stand now that this information is not being gathered or established by the judge. By requiring that a specific judicial order is issued, a vital court record of the hearing will be created. Additionally, it will serve as a common reference point for every stakeholder, informing each of the status of a child's case and will help each individual involved understand what steps he or she must take before the next hearing.

Required Findings<sup>25</sup>:

1. Whether the child's current placement is necessary, safe, and appropriate for meeting the child's needs, including with respect to a child placed outside of the state, whether the placement continues to be appropriate and in the best interest of the child and the reasons why are documented in the Department's court report.
2. Whether efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care and those efforts are documented in the Department's court report.
3. Whether the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community and are stated in the Department's court report.
4. Whether other plans or services are needed to meet the child's special needs or circumstances and are stated in the Department's court report.
5. Whether the department or authorized agency has exercised due diligence in attempting to place the child for adoption if parental rights to the child have been terminated and the child is eligible for adoption and evidence of that due diligence has been documented in the Department's court report.
6. Whether for a child for whom the department has been named managing conservator in a final order that does not include termination of parental rights, a permanent placement, including appointing a relative as permanent managing conservator or returning the child

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<sup>25</sup> All required findings are from § 263.503 of the Texas Family Code except the findings listed in **bold** font

to a parent, is appropriate for the child and the reasons why those options are not appropriate are documented in the Department's court report.

7. Whether for a child whose permanency goal is another planned, permanent living arrangement, the department has:
  - a. documented a compelling reason why adoption, permanent managing conservatorship with a relative or other suitable individual, or returning the child to a parent is not in the child's best interest; and
  - b. identified a family or other caring adult who has made a permanent commitment to the child
8. Whether the department or authorized agency has made reasonable efforts to finalize the permanency plan that is in effect for the child and what those reasonable efforts are.
9. **That the child attended the placement hearing and if not in attendance, why.**
10. **Whether there is a legal issue that requires an AAL**

**Docket schedules must be composed efficiently so that children and stakeholders can attend.** It is not uncommon for a large number of placement review hearings to be scheduled for a certain day, without great specificity as to the time of each hearing. Many individuals involved in these hearings could sit in court for hours, or all day, waiting for their hearing. People must miss a full day of work, children must miss school, travel plans are not able to be estimated, and CPS workers cannot be out visiting other children whom they also serve due to docket inefficiencies.

Judges must schedule placement review hearings in a way that allows stakeholders to receive approximately a 2-hour window in which their respective case will most likely be heard. For instance, judges could schedule their hearings so that easier cases occur earlier in the day, leaving the difficult and more complex cases for the afternoon. This will ensure better planning on the part of all stakeholders, make for more effective and efficient hearings, and will help ensure all pertinent individuals are available and in court. Courts should also consider holding hearings late in the day or perhaps into the evening so that the youth can attend and not miss school.

**“Placement Review Hearings” should be called “Permanency Progress Hearings” to change stakeholder mindset.** Words are powerful. It is important for stakeholders to remember that the goal of a placement review hearing is to get the child to permanency in a safe, healthy environment that fosters the child's well-being well after the child has reached majority age. **[Requires statutory change]**

## **JUDICIAL TOOLS**

**Judicial training is essential.** Foster care cases are significantly different than many other types of cases. These cases are often complex, involve sensitive subjects, and require nuanced decision making and fact finding. But what truly makes these cases unique is the fact that a

child's stability and her present and future relationships in life hang in the balance. With all that resides in their hands, judges must partake of all education and knowledge they can when it comes to these cases.

Thankfully, Texas judges have a wide variety of training programs available to them through several trusted organizations including but not limited to NCJFCJ, the Texas Center for the Judiciary, the Texas Office of Court Administration, and TAC's Judicial Education Center. It is essential that judges take advantage of these programs and training opportunities whenever possible; no matter how experienced the judge.

We recommend several specific types of judicial training to better help judges address the issues they face when dealing with these cases and hearings. The types of training may include:

- Video instruction on how complete hearings should look
- Implicit Bias and Undoing Racism education classes
- How to speak to children both generally and children who have been through trauma
- Disabilities and children with disabilities, including training on when medical or other specialists need to be appointed and other available resources for special needs children
- Knowledge of federal and state programs available to certain types of children to better assist those children and youth receive services that are needed and available, including a discussion of the pros and cons of each program or resource
- Intersection of juvenile justice and foster care
- Transition Planning
- Continuing education on legislative updates, new federal mandates, appellate decisions, automation, and procedural changes required by new statutes and/or rules

Additionally, we would recommend that the Basic Grant Committee of the Commission consider increasing the number of judicial training hours required for child abuse and neglect judges, considering there is available training but so few judges take advantage of the vital information provided through these conferences and trainings.

**Judges need to use of Benchbooks or Bench Cards as soon as they become available in this area of law.** The use of benchbooks can provide key information and resources to assist judges in conducting placement review hearings. They can provide which questions to ask at the hearings, checklists of issues to be considered and important information about the cases and the process.

The Permanent Judicial Commission on Children, Youth and Families is developing a benchbook for foster care cases. When the benchbook is available for Texas judges, all judges who hear PMC cases should make use of this new and important resource.

**Quantitative data should be used to help judges gauge their improvement in getting children in permanent and safe homes as quickly as possible.** Most stakeholders who were

interviewed thought they were doing a fairly good job getting children out of the foster care system. However, despite the best of intentions, when one looks at the data, a significantly different story is told. It is important for stakeholders, especially judges who have the oversight power, to be able to review the data for their county and for their court, to be presented the data so that the judge understands what that data means, and to be able to compare the data to other areas of the state so they can gauge whether their jurisdiction is operating as efficiently and effectively as possible for the children whom they are meant to provide for and protect. The Children's Commission also provides technical assistance to judges who are interested in understanding how permanency data affects the youth and children on their docket and can help identify system inadequacies that are contributing to longer stays in care.

## **OTHER ISSUES**

**Judges should not be bound to accept a mediated settlement agreement if the agreement is not in the best interest of the child.** Mediated settlement agreements are meant as a means to get all interested parties involved in the decision making to help the child achieve a stable life and environment in the quickest most efficient means possible.

There has been a question as to whether judges have the authority to reject a mediated settlement agreement when it is not in the best interest of the child. Judges must reject these types of agreements if the agreement is not going to serve the best interest of the child. These agreements should however only be rejected or accepted in their entirety. **[Statutory clarification.]**

**As youth approach aging out of foster care, stakeholders should prepare for the possibility that youths often plan to return to their biological parent(s) when they leave care.**

**Stakeholders should work with the child – and if appropriate, the child's parents – to ensure that the process of reuniting with family is done as safely as possible.** Many of the stakeholders that Texas Appleseed interviewed indicated that youth often want to find their parents and return "home" when they age out. For too long, the foster care system has ignored this reality to the disadvantage of the youth leaving care. Stakeholders should talk with youth as they approach aging out to determine whether this is a priority for the youth. If it is, stakeholders should attempt to assist the youth in making contact with their biological parents and might consider arranging meeting(s) between the foster child and their parent(s). Section 263.503(b) of the Texas Family Code allows parents to be given six months of services to help a child transition home. This will not only give the foster child some support through this process, it may also provide stakeholders with the opportunity to steer the youth toward more appropriate plans if reunification appears to be a poor choice.

**Judges and stakeholders should encourage youth to extend foster care beyond age 18 to provide a youth who ages out with additional support when necessary.** Under certain circumstances, youth can extend their stays in foster care and receive foster care benefits while they complete their GED or high school, work at least 20 hours per week, are attending college

or vocational training, or if they are disabled and cannot perform or undertake any of the other tasks. Also, a judge with jurisdiction of the child prior to age 18 may be able to issue a temporary exit from care order that allows the youth to leave care and return for up to 12 months from the date of the order and still access services. Extended care and return to care require some court oversight, judicial approval of the youth's permanency plan, and review hearings at least once every 12 months. This program becomes effective October 1, 2010.



# Texas Children in Long-Term Foster Care

## FY 2008

In 2008, more than 21,000 Texas children were in Permanent Managing Conservatorship at some time during the year.

During that year, nearly 6,000 children entered PMC. Over 60% of these children were six years old or younger.

Just over 7,000 children left the system in 2008, nearly half were six years old or younger. The vast majority of those who left had been in PMC for two years or less. While 64% of the children who exited care were adopted, nearly 20% turned 18 and “aged out.”

A full 80% of the children who were adopted were nine years old or younger.

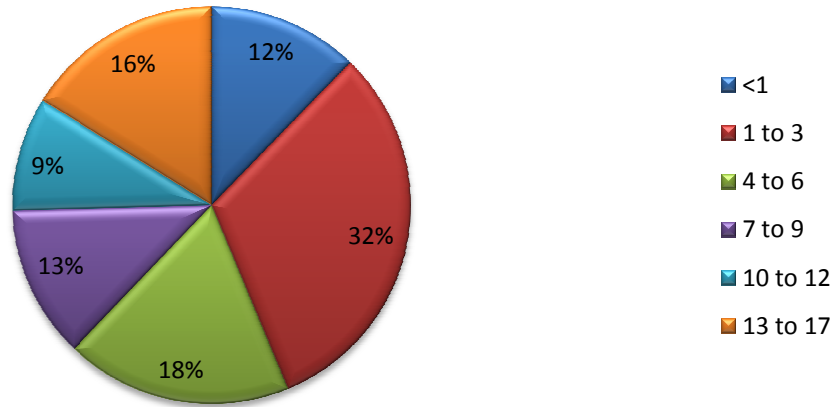
While in care, almost every child moved from one placement to another on more than one occasion. Those who were adopted lived, on average, in four placements before they were adopted. Those children who aged out lived in an average of ten different placements.

The following charts provide more data about these children in PMC. It also provides data by jurisdiction on the 15 jurisdictions studied.

This data is based on raw data provided to Texas Appleseed from DFPS. It has been analyzed with the expert assistance of RPC Consulting. Appleseed acknowledges and appreciates the Department’s willingness to provide this data and RPC’s invaluable analytical assistance.

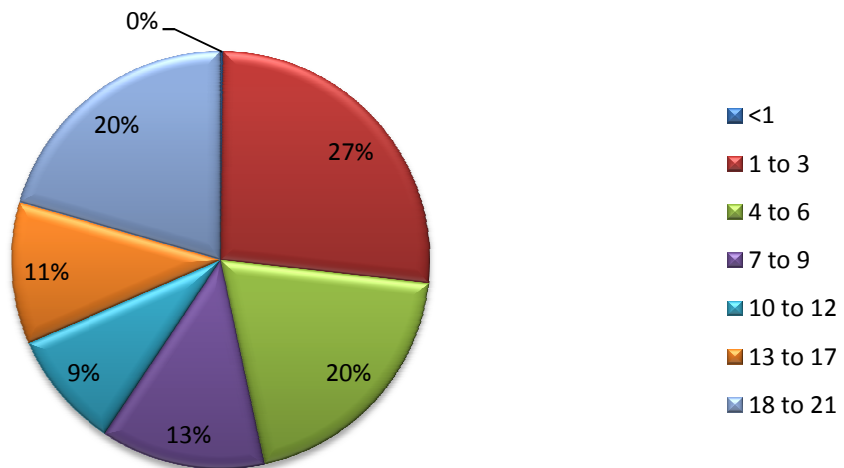
*NOTE: Texas Appleseed’s data on children in Permanent Managing Conservatorship (PMC) differs from the Department of Family and Protective Services Data Book. The Appleseed data examined the foster care population **over an entire fiscal year** (FY 2008). In contrast, the DFPS Data Book is based on the number of children in PMC **on a single day** -- August 31<sup>st</sup>, the last day of the State of Texas’ budget year. Analyzing an entire fiscal year’s worth of data provides an enhanced understanding of Texas’ foster care population. For example, 21,044 children were in PMC at some point during FY 2008, compared to a much smaller number -- 13,984 children -- in PMC on August 31, 2008.*

### Percentage of Children Who Entered PMC in FY08 by Age



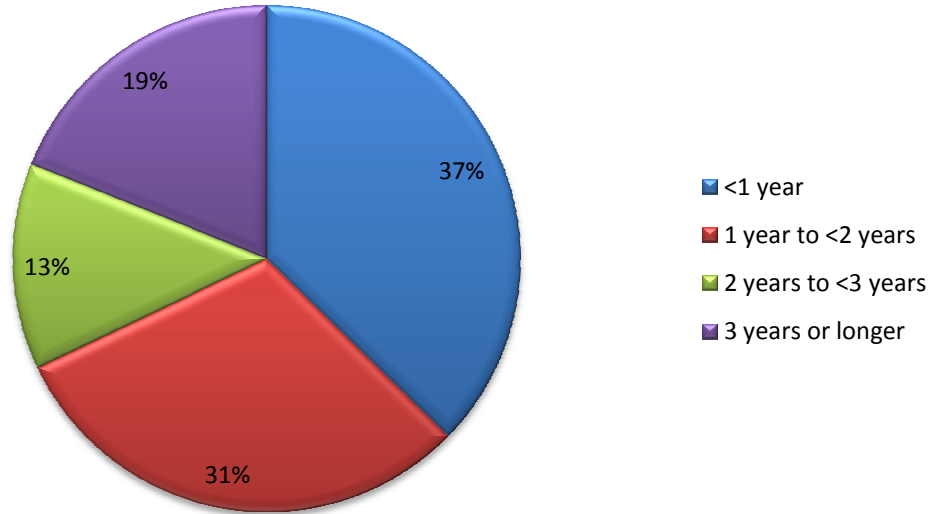
NOTE: Just over 6,000 children entered PMC in FY 2008.

### Percentage of Children Who Exited PMC in FY08 by Age at End of Year

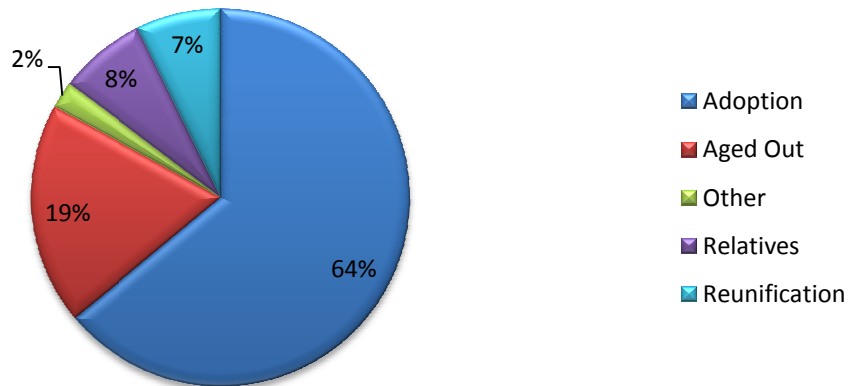


NOTE: About 7,000 children in PMC exited foster care in FY 08.

### Percentage of Children Exiting PMC in FY08 by Length of Time to Exit

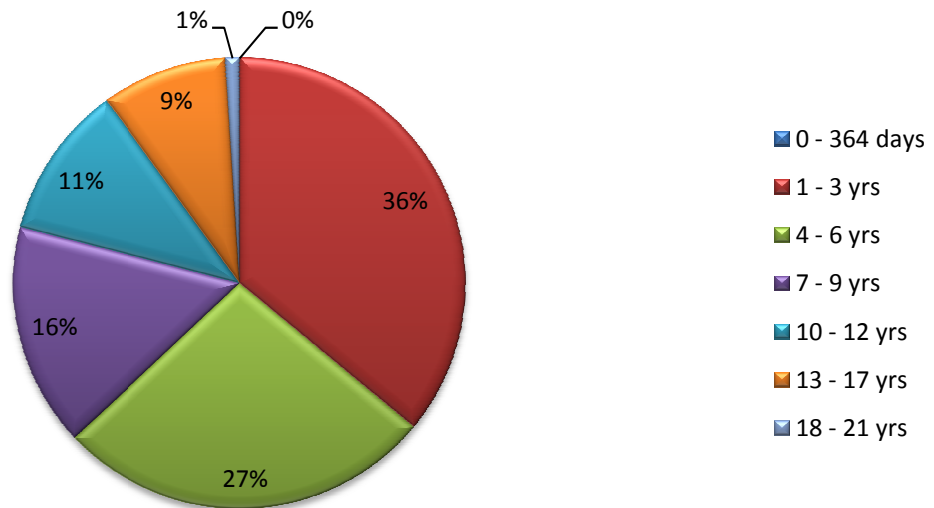


### Percentage of Children Exiting PMC in FY08 by Outcome

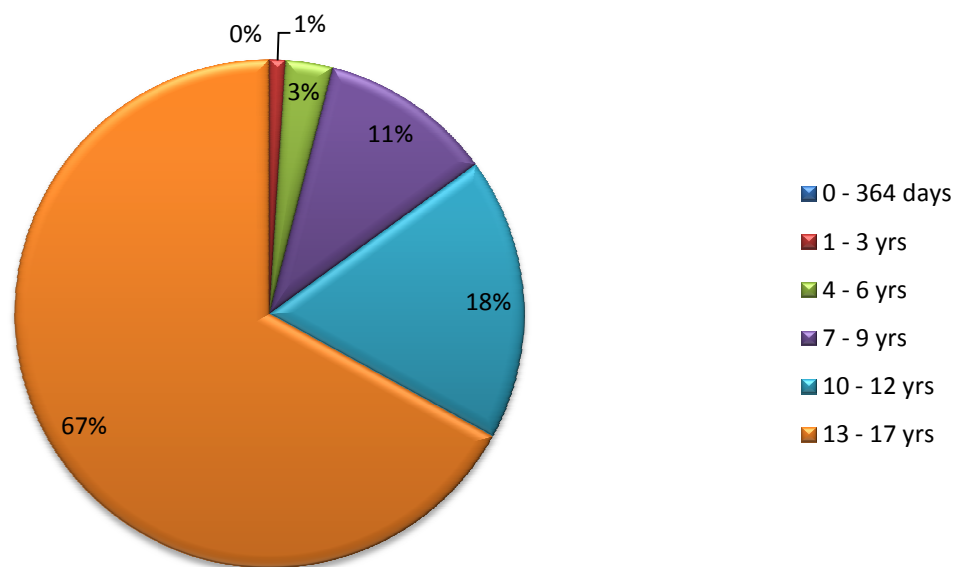


NOTE: Other includes emancipation under Texas Family Code Chapter 31, court-ordered on independent living arrangements, running away or incarceration in the Texas Youth Commission.

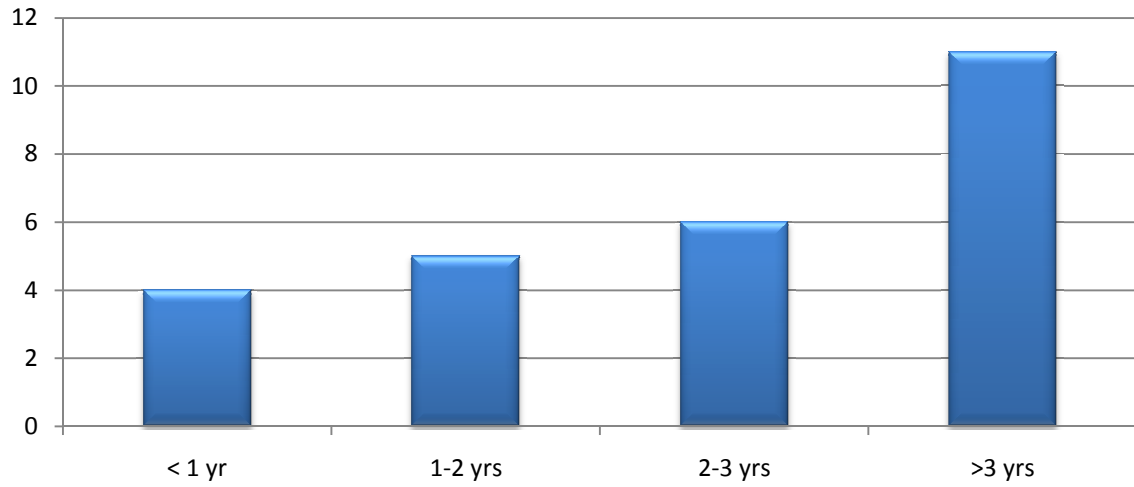
**Percentage of Children Exiting PMC Through Adoption in FY08 by Age at Adoption**



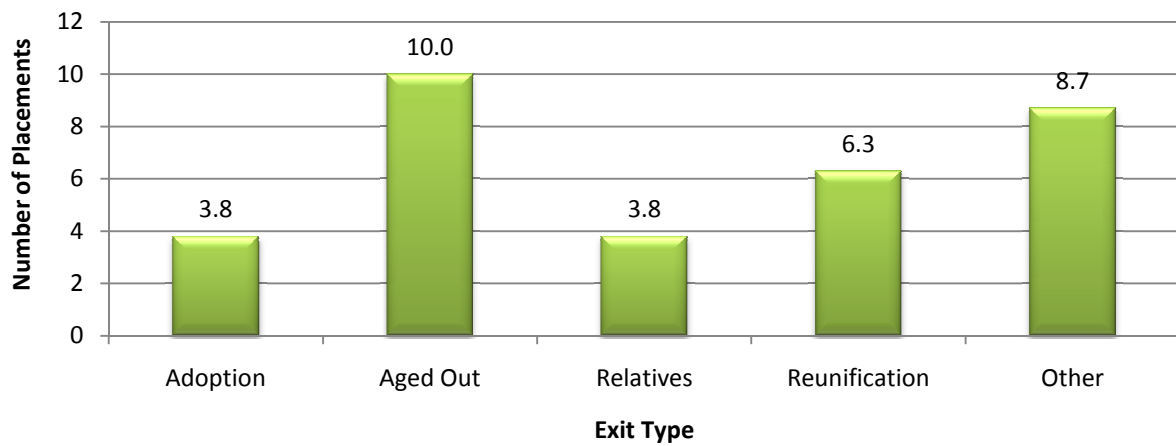
**Percentage of Children Aging Out of PMC in FY08 by Age of Entry in PMC**



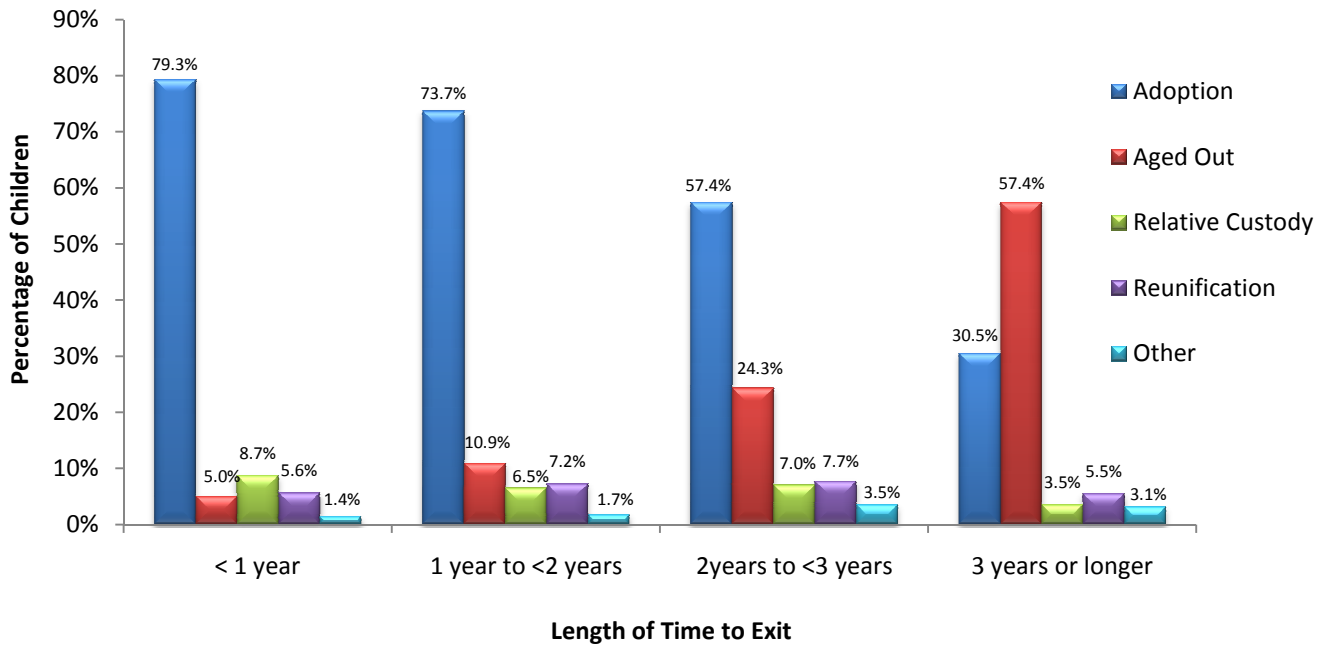
### Average Number of Placements for Children in FY08 Based on Length of Time to Exit



### Average Number of Placements for Children in FY08 Based on Exit Type



## Length of Time to Exit PMC in FY 08, Based on Outcome



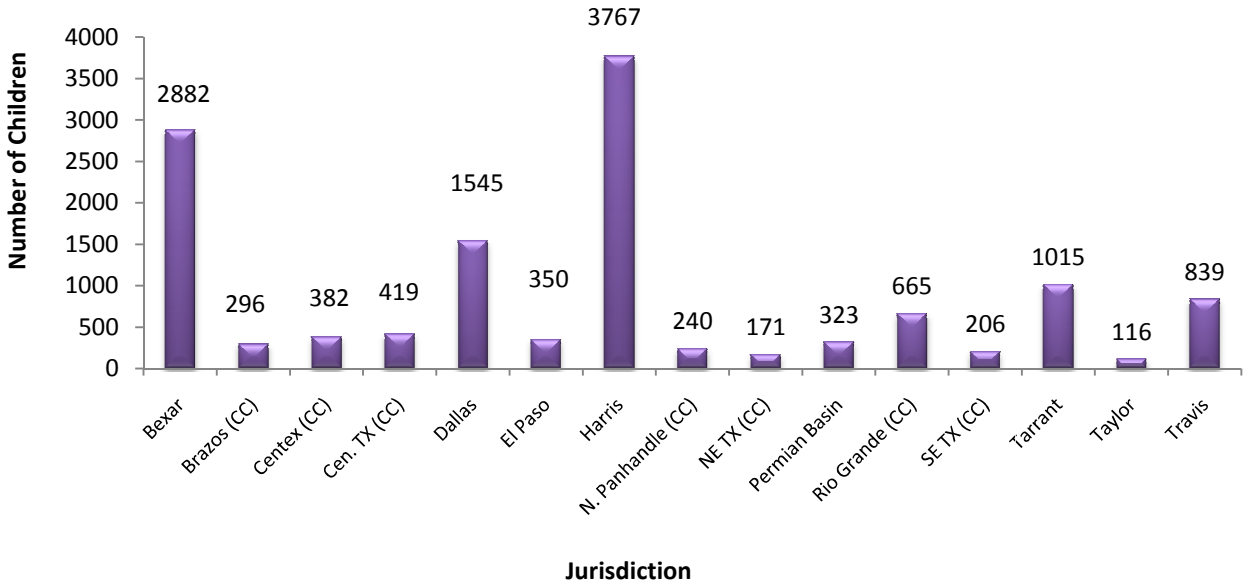
## **CHILDREN IN PMC BY JUDICIAL JURISDICTIONS STUDIED**

*NOTE: The jurisdictional data demonstrates that there is great diversity in outcomes for children in different jurisdictions. These variations are attributable to a wide range of variables including availability of resources, utilization of available resources, judicial philosophy, judicial experience, judicial leadership, demographics, and regional values.*

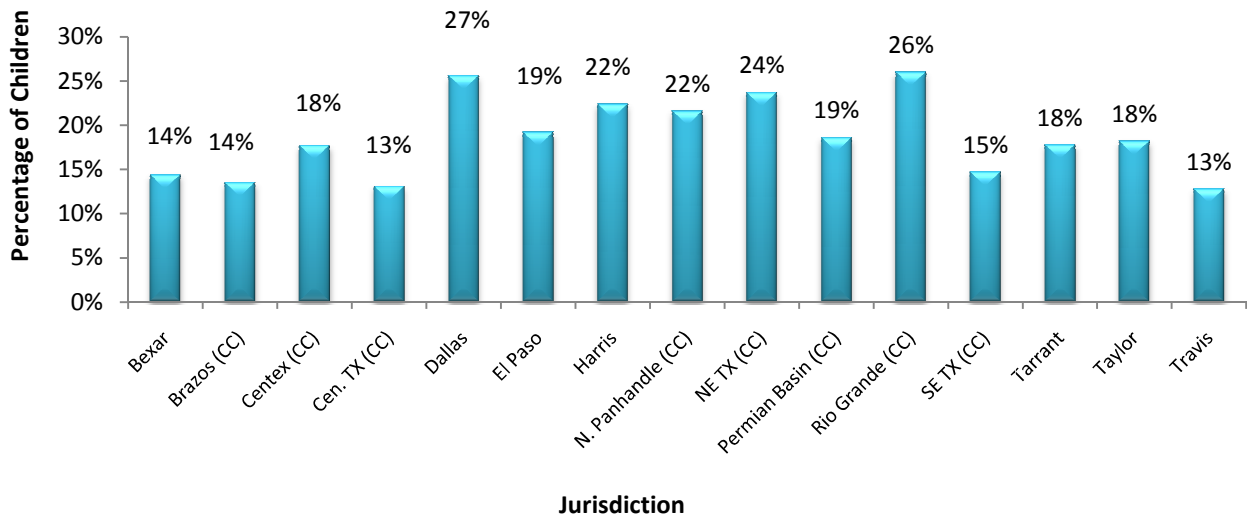
*For example, at first glance it may appear that Dallas County is below average in moving children out of permanent managing conservatorship (PMC) and into adoptive homes. However, when one looks at other data points it shows that Dallas County has a proportionately lower number of children entering PMC for a county of its size. Thus, since fewer children enter PMC in Dallas than in similar sized counties, it could mean that children who enter PMC in Dallas County may be those with higher challenges for adoption. Another example is the Child Protect Court of the Rio Grande Valley (Rio Grande) where the judge holds the philosophy that terminating parental rights (TPR) is not useful to most children, which would seem to indicate that children are prevent from being adopted leaving them in foster care longer than necessary. However, Rio Grande has one of the highest successful reunification rates in the state, disproving what the numbers of TPR in Rio Grande might indicate.*

*This data and the differences demonstrated with it help provide a starting point for evaluating changes that can improve the entire system, what changes individual counties might make, and what counties can learn from one another in their efforts to get children out of foster care and into safe, permanent homes.*

## Number of Children in PMC in FY08, by Texas Court Jurisdiction

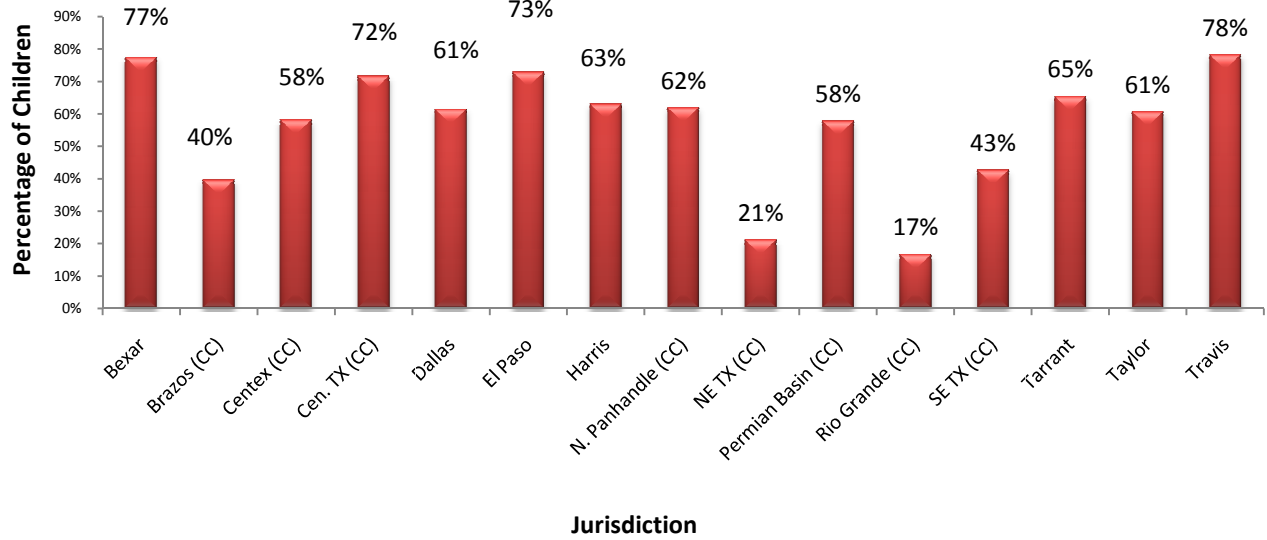


## Percentage of Children Exiting PMC in FY08 After More Than Three Years in PMC, by Court Jurisdiction





## Percentage of Children Exiting PMC in FY08 Through Adoption, by Texas Court Jurisdiction



## Percentage of Children Aging Out of PMC in FY08 by Texas Court Jurisdiction

