

Senate Committee on Jurisprudence

Report to the 82nd Legislature



December 2010

Senate Jurisprudence Committee

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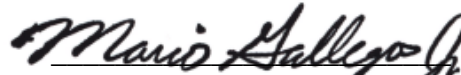
The Honorable David Dewhurst
Lieutenant Governor of Texas
P.O. Box 12068
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Dear Governor Dewhurst:

The Senate Committee on Jurisprudence is pleased to submit this report to the 82nd Texas Legislature on the Committee's assigned interim charges.


Respectfully submitted,


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Robert Duncan


Carlos Uresti


Juan "Chuy" Hinojosa

Interim Charges

The Senate Committee on Jurisprudence is charged with studying the following issue prior to the 82nd Texas Legislature:

1. *Study the effectiveness of current regulation and practices of debt management providers in Texas, including credit service organizations, and assess the extent to which individuals' estates are protected in transactions with debt management providers. Make recommendations to enhance protections.....page 1*
2. *Study the guardianship program implemented by the Department of Aging and Disabilities and the Department of Adult Protective Services, including the efficiency and effectiveness of the program, the relationship between the two agencies, the appropriate rights for parents, and whether clients and their assets are adequately protected.....page 6*
3. *Study and make recommendations to promote and enable confidential information sharing among state agencies and courts serving at-risk children and youth to ensure that comprehensive and appropriate services are being provided. The study should focus on the technological, legal, and fiscal barriers that prevent information sharing among these entities regarding affected children and youth.....page 16*
4. *Evaluate the voluntary relative placement process in issues of guardianship and the ability of nonparent relatives to make decisions for children under their care. Monitor the progress and implementation of SB 1598 relating to an agreement authorizing a nonparent relative of a child to make certain decisions regarding the child.....page 20*
5. *Monitor the implementation of legislation addressed by the Senate Committee on Jurisprudence, 81st Legislature, Regular and Called Sessions, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation.*

The Senate Committee on Jurisprudence is statutorily required to review the following issue prior to each regular legislative session:

Section 111.001 of the Texas Family Code requires a review of the guidelines for support of a child under Chapter 154 of the Texas Family Code.....page 23

Charge One

Charge One

Study the effectiveness of current regulation and practices of debt management providers in Texas, including credit service organizations, and assess the extent to which individuals' estates are protected in transactions with debt management providers. Make recommendations to enhance protections.

Background

In today's economic environment, businesses and organizations offering assistance to debt-ridden consumers have flourished.¹ Consumers with large amounts of unsecured debt have increasingly turned to the debt relief industry for assistance. The debt relief industry covers all products designed to help consumers reduce or eliminate debt - including credit counseling, debt management plans, and debt settlement. While some providers have proven to be viable options for financially distressed Texans, others have contributed to the problem. Debt relief companies that charge exorbitant fees and use deceptive trade practices have left some consumers in worse financial shape.

Relevant Legislation

In 2005, providers of debt management services in Texas were brought under the regulatory authority of the Office of Consumer Credit Commissioner (OCCC).² Limited to 501(c)(3) designated organizations, Senate Bill 1112 modernized the regulatory approach to debt management providers requiring them to register, maintain standards, and provided for penalties by amending Chapter 394 of the Texas Finance Code.

Providers of for-profit debt management services emerged as state attorneys general and the Federal Trade Commission (FTC) began taking action against credit counseling agencies (CCA) that used deceptive trade practices and misleading claims to attract customers.³ In 2006, the Internal Revenue Service also began investigating the activities of service providers and revoked or terminated the federal tax-exempt status of 41 companies.⁴ The federal and state efforts to curb bad business practices reduced the number of CCAs willing or able to provide debt management services to consumers. Also

¹ Bernard L. Weinstein, Ph.D, Terry L. Clower, Ph.D., "Debt Settlement: Fulfilling The Need for An Economic Middle Ground." (2009).

² Senate Bill 1112, 79th Legislative Session.

³ Statement of Gregory D. Kutz, "Debt Settlement: Fraudulent, Abusive, and Deceptive Practices Pose Risk to Consumer: Testimony before the Senate Committee on Commerce, Science, and Transportation." 111th Congress 6 (2010) at 3.

⁴Federal Register, Part III, Federal Trade Commission, 16 CFR Part 310, Telemarketing Sales Rule; Final Rule. Vol. 75, No. 153 (August 10, 2010) at 48461.

during this time, the economy began to slow, leaving consumers unable to fully repay their debts as they would have to through a CCA's debt management plan. With fewer nonprofit agencies providing services and increasing debts came an increase of for-profit debt relief services, specifically debt settlement companies.⁵

The 80th Texas Legislature addressed this change by removing the 501(c)(3) status requirement to ensure for-profit providers of the debt relief industry would be regulated.⁶ In 2009, Senate Bill 2233 was filed to create the Uniform Debt Management Services Act (UDMSA) in Texas. The bill would have created a task force to study the debt settlement industry and modernized the regulation of debt management service providers for Texas. After substantial revision, the bill enjoyed support in the Senate, underwent further modifications in the House Committee on Pensions, Investments and Financial Services, but died in the House Calendars Committee. The UDMSA has been fully adopted by seven states, while others have adopted only portions of the act.⁷

On July 21, 2010 the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "the Act") was signed into federal law, marking "the greatest legislative change to financial supervision since the 1930s."⁸ Most notably, the Act consolidates rulemaking and a majority of enforcement and supervision authority over consumer protections, including consumer financial products and services, to the newly created Consumer Financial Protection Bureau (CFPB).⁹ Title X of the Act provides the CFPB a mandate to focus on consumer protections previously administered by a multitude of federal agencies - the Federal Trade Commission, the Federal Reserve Board of Governors, the Office of the Comptroller of Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration to name a few.¹⁰ Rule-writing is to commence within the next few years, so the full impact of the law will not be known for some time.¹¹ The Act specifies that CFPB regulations do not preempt state consumer protection laws unless they are found to be inconsistent, and clarifies that more protective state laws are not inconsistent.¹²

In the most recent effort to better protect financially distressed consumers, the FTC adopted amendments to the Telemarketing Sales Rule (TSR) to prohibit debt relief companies from collecting advanced fees, making misrepresentations, and to ensure

⁵ See Kutz, *supra* note 3, at 4.

⁶ Senate Bill 884, 80th Legislative Session (2007).

⁷ Oral Testimony of Michael Kerr, National Conference of Commissioners of Uniform State Laws, May 13, 2010.

⁸ Davis Polk, "Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010." (July 21, 2010) at i.

⁹ "Breaking Down Financial Reform: A Summary of the Major Consumer Protection Portions of the Dodd-Frank Wall Street Reform and Consumer Protection Act." *Journal of Consumer & Commercial Law*, 10.09.114, (2010) at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, H.R. 4173 (2010) at Act §1041.

clarity of disclosures to consumers.¹³ The new Rule covers sellers and affiliates of for-profit debt relief services and expands the scope of the TSR to in-bound calls.¹⁴ Previously, the TSR did not cover phone calls made by consumers in response to advertisements produced by a provider or an affiliate. To avoid conflicting or duplicative rules, the FTC and CFPB are directed by the Dodd-Frank Act to negotiate agreements for coordination of efforts. The FTC rule could make progress in curbing concerns regarding fees and misleading statements, however, the FTC's authority is rooted in the TSR. Unscrupulous companies could be encouraged to forgo telemarketing and interact with customers through different means - solely the internet or in person meetings. While a move to personal meetings would appear to be positive, it would allow a debt management company to successfully dodge new regulations, leaving consumers vulnerable to unfair and deceptive trade practices prohibited in the rule.

Debt Settlement

Debt settlement is one of the various forms of debt relief that has garnered national attention in recent years. It is an aggressive form of debt relief where consumers stop paying their debt and begin depositing money, once used to pay those debts, into a dedicated savings account.¹⁵ After several months of recommended savings, the settlement company contacts the creditors to negotiate a lump-sum payoff of the debt.¹⁶ Creditors are not obligated to negotiate or accept a settlement offer and may pursue collection activities against a consumer during the process.¹⁷ Fee models vary significantly and may consist of initial fees, monthly fees, and/or contingency fees based on the amount of savings provided to the consumer.¹⁸ Before a settlement is reached, consumer debt levels increase as creditors continue to assess interest, late fees, over-limit charges, and other fees associated with the defaulting accounts.¹⁹ A consumer's credit report reflects the non-payment and late charges assessed by creditors, and if not previously unusually low, a consumer's credit score will drop when participating in a settlement program.²⁰

¹³ See Federal Register, *supra* note 4.

¹⁴ Federal Trade Commission, "Debt Relief Services & The Telemarketing Sales Rule: A Guide for Business." (2010) available at FTC.GOV.

¹⁵ State of Texas v. CSA-Credit Solutions of America, INC., Case No. D-1-GV-09-000417(261 St Judicial District Court, Travis Co., Texas), Plaintiff's Original Petition (March 26, 2009) at 2.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ See Federal Register, *supra* note 4, at 48462.

¹⁹ See State of Texas, *supra* note 15, at 3.

²⁰ *Id.*

Proponents of the industry assert that settlement is preferable to bankruptcy which would impair a credit score for many more years.²¹ Consumers are attracted to debt settlement for two main advantages - they are able to satisfy obligations while paying less than the full amount owed, and it can be a realistic alternative to bankruptcy.²² Settlement companies also provide financial education and coach consumers on how to handle phone calls and letters from creditors and collection agencies.²³ Many consumers who are considering debt settlement are being forced to address their debt problems due to collection efforts. Debt settlement offers the most immediate form of debt relief available in today's economy.²⁴

There have been allegations of fraudulent, abusive, or deceptive practices by some debt settlement companies. Suits commonly allege that a provider falsely promised high success rates and unobtainable negotiation results and failed to adequately disclose the timing or amount of upfront fees.²⁵ Service providers have also been accused of providing customers with unrealistic time frames for completion. Debt settlement companies generally do not administer a consumer's savings account and are not regulated by Texas statute unless they control those funds.²⁶ The Office of the Attorney General of Texas (OAG) has filed six suits against debt settlement companies in recent years to protect consumers and recoup damages.²⁷ Pursuing unscrupulous companies through the Texas Deceptive Trade Practices-Consumer Protection Act has proven to be a lengthy and cumbersome process for the OAG.

Credit Counseling Agencies and Debt Management Plans

Traditionally, consumers with large amounts of debt have turned to CCAs for debt relief.²⁸ CCAs work with customers to create debt management plans (DMP), assist in developing budgets, and provide financial education. A DMP is created through negotiations between a consumer, the CCA employee, and creditors, and is a schedule to pay back unsecured debts in full but under more favorable terms.²⁹ DMPs can be negotiated to provide for reduced interest rates, elimination of late payment fees, and various repayment options.³⁰ Nonprofit CCAs are typically funded by participants

²¹ See Weinstein, *supra* note 1, at 5.

²² *Id.*

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ See Federal Register, *supra* note 4, at 48463. See also State of Texas v. CSA-Credit Solutions of America, INC., *supra* note 15.

²⁶ Written testimony of Leslie L. Pettijohn, Office of Consumer Credit Commissioner, May 13, 2010 at 6.

²⁷ Oral testimony of Jay Dyer, Office of the Attorney General, May 13, 2010.

²⁸ See Kutz, *supra* note 3, at 3.

²⁹ *Id.*

³⁰ *Id.*

through an enrollment fee, usually \$25 to \$45, along with an average monthly charge of \$25.³¹ To be successful in a DMP, a consumer must have sufficient income to pay back full balances owed to creditors and payments are typically spread over three to five years.³² Out of the 58 debt management service providers registered in Texas, five are for-profits.³³

Proponents of credit counseling and DMPs claim the programs encourage a lifestyle change and prevent a return to high debt. During a DMP a consumer's accounts are usually in current status. CCAs have been accused of charging excessive fees, abusing their nonprofit status, misleading consumers of the likelihood of a program's success, and of overstating the amount of interest charges that could be saved.³⁴ Success or completion rates have also been misrepresented to consumers and have proven to be difficult to determine for both debt management and debt settlement due to their subjective nature.

³¹ See Federal Register, *supra* note 4, at 48460.

³² *Id.*

³³ See Pettijohn, *supra* note 27, at 6.

³⁴ See Federal Register, *supra* note 4, at 48460.

Charge Two

Charge Two

Study the guardianship program implemented by the Department of Aging and Disabilities and the Department of Adult Protective Services, including the efficiency and effectiveness of the program, the relationship between the two agencies, the appropriate rights for parents, and whether clients and their assets are adequately protected.

Background

When an individual is found to be incapable of taking care of some or all of his or her physical and economic needs, the individual may be taken to a probate court to be designated as partially or totally incapacitated. An application for guardianship of an individual may be filed by any person, including a court or entity, unless the person has an interest that is adverse to the proposed ward.³⁵ Courts generally prefer to appoint a family member as guardian, but if no family member is living, qualified, or able, the court may appoint the Department of Aging and Disability Services (DADS), a guardianship program, or a private professional guardian to serve the needs of the individual. A person or entity that is compensated for guardianship services must be certified by the Guardianship Certification Board. While the State has made progress to improve services and provide better protections for individuals and families, a continued effort is necessary.

There are several issues currently facing the state guardianship program as well as guardianship in general. The state program is currently run by DADS in conjunction with the Department of Adult Protective Services (APS). The agencies have been working to make the process more effective and efficient for the people served by the program. DADS also contracts with guardianship programs around the state to serve as guardians for wards in the areas the programs serve. The guardianship programs and DADS work together to provide services to mutual clients.

The Texas Probate Code allows for the removal of a guardian accused of specific acts without notice to the guardian. While there is a strong need to protect a ward in emergency situations, family members have expressed the desire to be heard when accusations of misconduct are made against them. The Code also provides that all expenses in a guardianship proceeding be paid out of the proposed ward's estate unless there are specific court findings. Fees in a guardianship proceeding can be very high, especially if there are disputed issues. Public testimony showed that in some cases legal fees have completely exhausted a ward's estate.

³⁵ Texas Probate Code §642.

Recent Legislation

In the 81st Legislative Session, the legislature passed several bills to help protect wards through increased reporting requirements for professional guardians, increased criminal background checks on guardians, and other means. Senate Bill 1055 requires guardianship programs and private professional guardians to report to the Guardianship Certification Board each year with information regarding the number of wards served, the name and contact information of all employees and volunteers who perform services for wards, and amounts of money received from public sources.³⁶ It also requires private professional guardians to apply annually for a certificate of registration to the clerk of the court in which each guardianship proceeding takes place.³⁷

Criminal background checks for guardians were enhanced by Senate Bill 1056 and 1057. Senate Bill 1057 requires the clerk of the court to obtain criminal history information from The Texas Department of Public Safety (DPS) on an individual, the staff of a guardianship program, or the staff of a private profession guardian being named guardian of a ward.³⁸ A criminal justice agency, including DPS, is authorized by Senate Bill 1056 to disclose criminal history information to the clerk even if that information is protected by an order of nondisclosure.³⁹

Issue 1: The efficiency and effectiveness of the guardianship program implemented by the Department of Aging and Disabilities and the Department of Adult Protective Services.

The State Guardianship Services Program (Program) was established as part of APS in September 1993 to serve children aging out of foster care and began including APS clients in September 1995.⁴⁰ The Program was transferred from APS to DADS during APS' reform in December 2004.⁴¹ The transfer of the Program to DADS was codified in Senate Bill 6 (79(R)) effective September 9, 2005.⁴² A Memorandum of Understanding (MOU) was created in 2006 between APS and DADS to outline the roles and duties of each agency.⁴³ The MOU has been updated to address recent legislation, as well as other policy and process improvements.⁴⁴

³⁶ Senate Bill 1055, 81st Legislative Session (2009).

³⁷ *Id.*

³⁸ Senate Bill 1057, 81st Legislative Session (2009).

³⁹ Senate Bill 1056, 81st Legislative Session (2009).

⁴⁰ Written testimony of Beth Engelking, Texas Department of Family and Protective Services, June 24, 2010 at 4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 10.

APS Role

Chapter 48 of the Human Resources Code authorizes APS to investigate allegations of abuse, neglect, or exploitation of the elderly and adults with disabilities.⁴⁵ As part of an investigation, APS conducts a thorough assessment of client needs in every case. APS may obtain Emergency Orders for Protective Services (EOPS) if the client is in a state of abuse or neglect that presents a threat to life or physical safety, and may obtain a professional assessment of a client's capacity to consent to services when an EOPS is needed, a client at high risk refuses services, or a client is in an ongoing state of abuse, neglect, or exploitation and may need a guardian.⁴⁶ Once the investigation has been completed, APS develops a service plan to remedy any abuse, neglect, or exploitation validated during the investigation, which may include a referral for guardianship services.⁴⁷

Prior to referring a client to a guardianship program, APS makes several determinations:

- (1) whether or not the client is in an ongoing state of abuse, neglect, or exploitation or is at risk of abuse, neglect, or exploitation;
- (2) whether least restrictive alternatives through family and friends or other social services are adequate to protect the client;
- (3) whether a suitable family member or friend is willing to serve as an alternate guardian;
- (4) whether the client has sufficient resources or benefits to meet his or her needs or will be eligible for resources or benefits⁴⁸; and
- (5) whether guardianship may resolve some or all of the problems and protect the client.⁴⁹

If APS considers a public guardian necessary, the case is reviewed by the APS regional risk/exploitation specialist to ensure the case is appropriate for referral.⁵⁰ If it is appropriate, a referral is then made to DADS guardianship services or county programs in Harris and Galveston Counties.⁵¹ Once APS makes a referral, the staff will work in partnership with DADS guardianship staff to assist in the assessment, prepare information for filing with the probate court, and serve as a resource during the probate proceedings.⁵²

⁴⁵ Texas Human Resources Code §48.001.

⁴⁶ See Engelking, *supra* note 6, at 5.

⁴⁷ *Id.*

⁴⁸ See MOU Between DFPS and DADS Concerning Guardianship Services at 3 ("A person with no funds who cannot be made eligible for benefits because of immigration status or any other reason cannot be served by the DADS guardianship program.").

⁴⁹ See Engelking, *supra* note 6, at 6.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 7.

APS will also notify a probate court of current investigations involving alleged victims who have guardians or pending guardianships.⁵³ If the alleged victim has a pending guardianship, a "Notice to Probate Court of APS Investigation" is sent to the court where the guardianship is filed as soon as APS is aware of the pending guardianship.⁵⁴ If the alleged victim has a guardian or a pending guardianship, APS submits the "APS Court Report for Guardianship" to the court to which the guardian is accountable upon conclusion of the investigation.⁵⁵

DADS Role

DADS provides access to long-term services and supports for older individuals and those with intellectual and physical disabilities.⁵⁶ The Human Resources Code directs DADS to provide services to individuals who are (a) referred by APS as victims of abuse, neglect, or exploitation, and subsequently determined by a court to lack capacity and are without other means of providing protective services, (b) incapacitated, aging out of Child Protective Services conservatorship and incapable of managing their own affairs as determined by a court with probate authority, or (c) referred directly to the program by a court with probate authority in certain circumstances. Those circumstances include persons who appear to need a guardian and a joint agreement is made between the court and DADS or are wards of the court and located more than 100 miles from the court which created the guardianship and no other individual or entity is available to serve as guardian (this type of referral is limited to 55 annually).⁵⁷ Senate Bill 271, which was enacted in 2009, created the "Guardianship of Last Resort" described in (c), above.⁵⁸

When the DADS Guardianship Program receives a referral from APS, a certified guardianship specialist conducts a complete and thorough assessment of the individual's circumstances and condition, attempts to identify less restrictive alternatives to guardianship, and searches for family members, other individuals, or entities to serve as guardian.⁵⁹ If no other alternative is available and DADS guardianship services are appropriate, DADS files an application with the appropriate court to be appointed guardian.⁶⁰ DADS is required to file for guardianship within 70 days from the date the referral is received from APS.⁶¹ With the approval of APS, DADS may extend, by not

⁵³ *Id.* at 9.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Written testimony of Chris Traylor, Texas Department of Aging and Disability Services, June 24, 2010 at 1.

⁵⁷ See Texas Human Resources Code §161.101. See also Texas Human Resource Code §48.209.

⁵⁸ Senate Bill 271, 81st Legislative Session (2009).

⁵⁹ See Traylor, *supra* note 22, at 10.

⁶⁰ *Id.*

⁶¹ Texas Human Resource Code §161.101(c-1).

more than 30 days, the date by which DADS must file for guardianship.⁶² The average length of time between referral and the filing of an application for guardianship was 32 days in FY 2010.⁶³ Also, DADS did not request an extension on the time by which it must file for guardianship during FY 2010.⁶⁴

If a court appoints DADS as guardian of an individual, the guardianship responsibilities may include arranging for services, making medical decisions, arranging for placement, managing finances, as well as other things the individual may need.⁶⁵ These responsibilities are carried out by DADS staff who are required to achieve and maintain certification through the Texas Guardianship Certification Board. Staff must pass a comprehensive examination and an initial and recurring fingerprint based criminal background check at the state and federal level, and complete 12 hours of continuing education in the field of guardianship or related subjects for recertification every two years.⁶⁶

In order to ensure additional protection for the individuals under its care, DADS conducts quality assurance and monitoring visits specific to the delivery of guardianship services by DADS staff and contracted providers, performs complaint investigations, and establishes rules, standards, procedures, and protocols for contracted guardianship providers.⁶⁷ DADS executes surprise visits to its contracted guardianship providers that can last more than a week.⁶⁸ After these visits, DADS makes suggestions for improvement to the providers.⁶⁹

At least annually, DADS must review each pending guardianship case "to determine whether a more suitable person, including a guardianship program or private professional guardian, is willing and able to serve as successor guardian for a ward . . ." ⁷⁰ In addition, if DADS "becomes aware of a guardianship program, private professional guardian, or other person willing and able to provide guardianship services that would otherwise be provided by [DADS] to an individual referred to [DADS] by [APS] under §48.209, [DADS] shall refer the individual to that person or program for guardianship services."⁷¹ Under the Texas Probate Code, DADS staff may also help the individual seek restoration and dismissal of the guardianship under the direction of the court.⁷²

⁶² Texas Human Resource Code §161.101(c-2).

⁶³ Oral testimony of Chris Traylor, Texas Department of Aging and Disability Services, June 24, 2010. This number is down from 59 days in FY 2009.

⁶⁴ *Id.*

⁶⁵ See Traylor, *supra* note 22, at 12.

⁶⁶ *Id.* at 7.

⁶⁷ *Id.* at 13.

⁶⁸ Interview with Colleen Colton, Guardianship Services, Inc. on September 28, 2010.

⁶⁹ *Id.*

⁷⁰ Texas Human Resources Code §161.108.

⁷¹ Texas Human Resources Code §161.102.

⁷² See Traylor, *supra* note 22, at 14.

Collaboration Between APS & DADS

APS and DADS collaborate throughout the referral and court processes to establish a framework for an effective and cooperative working relationship to benefit persons served by both agencies.⁷³ This collaboration includes the sharing of information by APS that is vital to the DADS application for guardianship.⁷⁴ APS attends guardianship hearings without a subpoena when DADS provides notice that APS testimony will be necessary.⁷⁵ APS and DADS also participate in a joint staffing process with the purpose being to help ensure positive outcomes for mutual clients.⁷⁶

APS and DADS each pursue less restrictive alternatives to guardianship.⁷⁷ The agencies work together to select and finalize an appropriate less restrictive alternative for the client, if one is available.⁷⁸ If a less restrictive alternative is finalized and APS receives a new intake and validates an instance of abuse, neglect, or exploitation within six months, the agencies work together to expedite the referral and assessment process.⁷⁹

If DADS disagrees with an APS assessment that a guardianship is necessary for a client, a resolution must be attempted at a joint staffing between the agencies at the supervisor and staff worker level.⁸⁰ If a resolution cannot be reached, APS may seek a review of the decision not to seek guardianship, which should be completed as quickly as possible.⁸¹

An Interagency Steering Committee (ISC), consisting of the Assistant Commissioners for APS and CPS, DADS Assistant Commissioner for Access and Intake, as well as other staff, meets quarterly and as needed to discuss and address issues which may impact the ability of either party to effectively deliver services.⁸² The agencies have agreed to uphold and support the agreements made within the committee and ensure their respective staff members are notified of decisions.⁸³

The legislative changes, as well as the APS and DADS procedure and policy changes have led to improvements in both the services provided to individuals and the efficiency of those services. These improvements can be seen in the interactions between the agencies, courts, contracted guardianship providers, and individuals in the guardianship

⁷³ "Memorandum of Understanding Between DFPS and DADS Concerning Guardianship Services" at 1.

⁷⁴ *Id.* at 5-7.

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ *Id.* at 8.

⁷⁸ *Id.*

⁷⁹ *Id.* at 10.

⁸⁰ *Id.* at 11.

⁸¹ *Id.* at 11-12.

⁸² *Id.*

⁸³ *Id.*

program. However, public testimony from the hearing suggested there is room for further progress.

Issue 2: Section 761(a) of the Texas Probate Code allows for the removal of a guardian without notice to the guardian under certain circumstances through an ex parte hearing.

Background

Section 761 of the Texas Probate Code was enacted in the 73rd Legislative Session in 1993 and went into effect on September 1, 1993.⁸⁴ Section 761(a) of the Texas Probate Code reads:

The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who: (1) neglects to qualify in the manner and time required by law; (2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge; (3) having been required to give a new bond, fails to do so within the time prescribed; (4) absents himself from the state for a period of three months at one time without permission of the court, or removes from the state; (5) cannot be served with notices or other processes because of the fact that: (A) the guardian's whereabouts are unknown; (B) the guardian is eluding service; or (C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship; (6) has embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care; (7) has neglected or cruelly treated a ward; or (8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.⁸⁵

Section 761(c) provides for the removal of a guardian on the court's own motion or on the complaint of an interested person "after the guardian has been cited by personal service to answer at a time and place set in the notice . . ."⁸⁶ In pertinent part, 761(c)(6) provides that a guardian may be removed after notice and hearing when "the guardian neglects or cruelly treats the ward."⁸⁷ Therefore, sections 761(a)(7) and (c)(6) appear to cover the

⁸⁴ Texas Probate Code §761.

⁸⁵ Texas Probate Code §761(a).

⁸⁶ Texas Probate Code §761(c).

⁸⁷ *Id.*

same types of situations, with only one section requiring notice to the guardian prior to removal.⁸⁸

Under 761(a), a family member, or any other person or entity who has been appointed as guardian by a court, may be removed as guardian in an ex parte hearing of which he or she has no notice.⁸⁹ The removal action may be brought by the court, or "any interested person."⁹⁰ By its nature, an ex parte hearing for the removal of a guardian is one in which the guardian has no chance to defend himself or herself or to provide any evidence.⁹¹

In order to attempt to be reinstated, a guardian who is removed under subsections 761(a)(6) or (7) of the Texas Probate Code must file an application under section 762 for a hearing to determine whether the personal representative should be reinstated as guardian.⁹² This application must be filed within 10 days after the date the court signed the order of removal.⁹³ Section 622 also allows the clerk of a court to require a person other than the guardian, attorney ad litem, or guardian ad litem to give security for probable costs of the guardianship proceeding before filing an application in relation to a guardianship proceeding.⁹⁴ Prior to removal as guardian, the person could not have been required to give security for probable costs.⁹⁵

Since section 761 of the Texas Probate Code was enacted, there have been six ex parte hearings for the removal of a guardian under 761(a)(7) in Tarrant County Probate Court #2.⁹⁶ Each of these hearings resulted in the removal of the guardian.⁹⁷ None of the six removed guardians were later reinstated as guardian.⁹⁸ There were also approximately six ex parte hearings for the removal of a guardian in Travis County between 1993 - 2010. There are competing concerns on this issue. Main concerns include protecting a ward in an emergency situation and keeping a family member as guardian when possible and appropriate. Public testimony suggests family members appointed as guardian but later removed would, at the very least, want to have an opportunity to be heard when allegations of cruelty or neglect are brought.

Issue 3: Current law provides that fees for guardians and attorneys incurred during guardianship proceedings and throughout a guardianship, if one is established, may be

⁸⁸ Texas Probate Code §761(a) & (c).

⁸⁹ Texas Probate Code §761(a).

⁹⁰ *Id.*

⁹¹ Black's Law Dictionary, 9th Edition at 1324.

⁹² Texas Probate Code §762.

⁹³ *Id.*

⁹⁴ Texas Probate Code §622(b).

⁹⁵ *Id.*

⁹⁶ Interview with Steve Fields, Tarrant County Probate Court #2.

⁹⁷ *Id.* (during that time period, two other guardianship orders were set aside during the 30 day time period in which the judge has plenary power to set aside an order).

⁹⁸ *Id.*

paid out of the proposed ward's estate so long as the applicants acted in good faith and for just cause. Public testimony showed that in some cases this has led to the depletion of the ward's estate.

In a proceeding for the appointment of a guardian, "the court shall appoint an attorney ad litem to represent the interests of the proposed ward."⁹⁹ In addition, the court "may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding."¹⁰⁰

Both the attorney ad litem and the guardian ad litem are entitled to reasonable compensation for their services to be taxed as costs in the case.¹⁰¹ A person appointed as guardian of another person may also be authorized to receive compensation from the ward's estate.¹⁰² The amount of compensation is supposed to be restricted to an amount not exceeding five percent of the ward's gross income and five percent of all money paid out of the estate.¹⁰³ However, a guardian or the court may ask that the amount of compensation be adjusted upward upon review of the services rendered by the guardian.¹⁰⁴

If the ward's estate has sufficient funding, the costs of any attorneys, mental health professionals, and interpreters must also be paid from the estate.¹⁰⁵ Lastly, the court may authorize the payment of reasonable attorney's fees to an attorney who represents a person who filed an application for guardianship, regardless of whether the person is appointed as guardian.¹⁰⁶ The only prohibition for the attorney's fees being paid from the ward's or proposed ward's estate is if the court finds that the applicant did not act in good faith and for just cause in filing and prosecuting the application.¹⁰⁷

Recent Legislation

During the 81st Legislative Session, House Bill 3080 was passed which amended sections 665, 665B, and 665D of the Texas Probate Code dealing with compensation of guardians and attorneys in guardianship matters.¹⁰⁸ The purpose of the bill was "to provide a court with more flexibility in setting the compensation of a guardian . . . ," and

⁹⁹ Texas Probate Code §646(a).

¹⁰⁰ Texas Probate Code §643(a) .

¹⁰¹ Texas Probate Code §§643(b) & 665A.

¹⁰² Texas Probate Code §665(a).

¹⁰³ Texas Probate Code §665(a) - (b).

¹⁰⁴ Texas Probate Code §665(c) - (d).

¹⁰⁵ Texas Probate Code §665A.

¹⁰⁶ Texas Probate Code §665B(a).

¹⁰⁷ Texas Probate Code §665B(b).

¹⁰⁸ House Bill 3080, 81st Legislative Session (2009).

" . . . protect the ward's estate from excessive compensation where an attorney is also serving as guardian . . ." ¹⁰⁹

Issue 4: DADS contracts with private guardianship programs throughout the state to serve as successor guardians for wards who are in the DADS guardianship program.

Section 161.103 of the Texas Human Resources Code permits DADS to contract with a guardianship program for the provision of guardianship services when appropriate. ¹¹⁰ DADS contracted with several guardianship programs across the state, including Guardianship Services, Inc. in Tarrant County, Family Eldercare in Travis and Williamson Counties, and Friends for Life based in McClennan County which serves 39 counties throughout Texas. ¹¹¹

Employees and volunteers of the guardianship programs perform guardianship functions on behalf of the program and are closely supervised by program superiors. ¹¹² These employees and volunteers are certified guardians, assigned to specific wards, and will stay with the ward until the staffer or the ward leaves the program. ¹¹³ If an employee or volunteer leaves, the program has the ability to utilize another employee or volunteer to perform guardianship functions for that ward without returning to court. ¹¹⁴

The guardianship programs receive compensation from DADS for each individual for which the program is appointed guardian. ¹¹⁵ DADS and the programs stay in close contact, and DADS performs monitoring duties at least once a year for about a week each time. ¹¹⁶ During the monitoring visits, DADS and the programs work together to improve the services provided to the individuals under the care of the programs. ¹¹⁷

Directors of the programs also give input to DADS staff regarding how the agency could improve its policies and procedures. ¹¹⁸ Through this collaboration, the programs have seen noticeable improvement in the efficiency and effectiveness of the services that DADS provides. ¹¹⁹

¹⁰⁹ House Bill 3080, 81st Legislative Session, Bill Analysis (2009).

¹¹⁰ Texas Human Resources Code §161.103.

¹¹¹ Interviews with Colleen Colton, Guardianship Service, Inc., September 28, 2010, and Inez Russell, Friends for Life, October 7, 2010.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

Charge Three

Charge Three

Study and make recommendations to promote and enable confidential information sharing among state agencies and courts serving at-risk children and youth to ensure that comprehensive and appropriate services are being provided. The study should focus on the technological, legal, and fiscal barriers that prevent information sharing among these entities regarding affected children and youth.

Background

Today's youth are dealing with complex issues brought on by peers, family members, and difficult social and economic environments. The over exposure of a youth to difficult issues can encourage undesirable behaviors such as crime, violence, substance abuse, and poor academic performance. Youth in these conditions are abnormally susceptible to abuse, neglect, and becoming serious or habitual juvenile offenders. This population, sometimes referred to as "at-risk", make up a common core of consumers for youth-serving agencies. Youth-service agencies such as the Texas Education Agency, the Texas Youth Commission, the Texas Health and Human Services Commission system, and local mental health authorities focus on or provide services to this population of youth and their families. Information sharing is a critical piece of service agencies and their ability to maximize the efficiency and effectiveness of a program or service. Impediments to information sharing between youth and family service agencies is a substantial concern to law enforcement, education, social service, and juvenile justice professionals.

While interagency information sharing exists in various forms on the state level and in the community, Texas youth serving agencies currently lack an information sharing infrastructure. An infrastructure encompassing all youth-service agencies would facilitate the coordination and delivery of services to benefit agencies, youth, and their families. Much of the information sought is private, and its access is statutorily and/or procedurally controlled. Confidential records are currently released by various methods including parental consent, youth consent, judicial order, and subpoena. Agencies may enter into interagency agreements or a Memorandum of Understanding (MOU) to establish protocol for information sharing with other agencies.

Information sharing is subject to various laws, policies, and procedures. State guidelines for juvenile information and data sharing are contained in a number of Texas statutes including the Education, Family, Criminal Procedure, Government, and Human Resources codes. Each youth service agency also implements policies and procedures to manage information within their scope. Federal law directs information sharing practices through multiple bodies of legislation, the Family Educational Rights and Privacy Act (FERPA), the Child Abuse Prevention and Treatment Act (CAPTA), the Health Information Portability and Accountability Act (HIPAA), and the Juvenile Justice

Delinquency Prevention Act. These laws, policies, and procedures address the collection, maintenance, and release of information on their respective issue.

Children's Aftercare Reentry Experience (CARE)

The 81st Legislature passed House Bill 1232 to establish a local behavioral health intervention pilot project in Bexar County. The CARE project requires the local mental health authority to enter into an MOU with multiple agencies to coordinate behavioral health services for the county's children and youth. The bill requires extensive information sharing among state entities and contracted providers to improve treatments, case management, and reduce duplication of assessments. The pilot presents the agencies and their partners the opportunity to proactively intervene on behalf of "children and youth who need behavioral health treatment rather than a placement in an alternative session for behavioral management."¹²⁰

Information Sharing

The purposes for information sharing can be broadly divided into three categories: individual case-planning, data for policy development, and data for program evaluation.¹²¹ The over arching goal is to improve outcomes for youth and their families, as well as their communities. Sharing for individual case-planning and decision-making has the most immediate effect on youth and their families. Increased information sharing between service providers encourages coordination of juvenile services that foster more informed, appropriate decisions regarding juveniles and their families. This personally identifying information presents the biggest concern for an individual's privacy, and is contained in medical, educational, and court records, and other communications.

Unlike case-planning, the collection of data and reporting for law and policy development is characteristically non-identifying information. Aggregate data on populations served and agency processes and practices can expand the decision-makers and agencies understanding of the youth and families they serve.¹²² Policy-makers benefit from increased information sharing to measure the effectiveness, costs, gaps, and redundancy in services.¹²³

Data collected for program evaluation is also useful to policy-makers and agencies. The collection and reporting of data can be used to assess performance, effectiveness, and

¹²⁰ House Bill 1232, 81st Legislative Session, Bill Analysis (2009).

¹²¹ Child Welfare League of America and Juvenile Law Center, "Models for Change Information Sharing Tool Kit." (2008) at 9.

¹²² *Id.* at 13.

¹²³ Office of Juvenile Justice and Delinquency Prevention, "Guidelines for Juvenile Information Sharing." (2006) at 2.

progress towards targeted goals of the agencies and their services.¹²⁴ Aggregate data can also be used to evaluate information sharing networks and policies. Agencies and policy-makers can utilize data to better determine if sharing initiatives are meeting the needs of the consumers.

Technology

Technology is no longer a barrier to information sharing.¹²⁵ Automated systems are currently used to collect, access, and distribute information for and between multiple agencies on many levels. These systems are equipped with numerous measures to protect the integrity and ensure confidentiality of private information. Restricting users, firewalls, encryption, and passwords are some of the measures used as security safeguards. However, many of these systems are not designed to communicate with one another, and there are costs associated with the development of new interfaces.¹²⁶ Also, restrictions may apply to systems developed through federal funding such as the Department of Family and Protective Services' system, Information Management Protecting Adults and Children in Texas (IMPACT).¹²⁷ While not case specific, IMPACT sends and receives information between 15 other agency departments but requires federal approval for some new interfaces.¹²⁸

Legal

Laws and policies that give direction for information sharing are often seen as barriers to providing appropriate services to youth. The Human Resources Code and the Family Code make all youth information confidential with specific exceptions, making it difficult to argue that information can be shared.¹²⁹ Invited testimony suggested state law was generally more restrictive than Federal and presented a significant legal barrier. And that federal policy including FERPA, CAPTA, and HIPAA do not preclude the type of information sharing discussed in the committee's charge.¹³⁰

Multiple Texas statutes provide an opportunity for the creation of interagency agreements to set out guidelines and processes for information sharing. However, the process of creating an MOU is administratively burdensome and lengthy.¹³¹ Opportunities to better serve youth through information sharing are neglected while agencies trudge through the

¹²⁴ See Child Welfare League of American and Juvenile Law Center, *supra* note 2, at 10.

¹²⁵ Oral testimony of John Tuell, Tuell & Associates Consulting, LLC, August 26, 2010.

¹²⁶ Oral testimony of Liz Kromeri, Department of Family and Protective Services, August 26, 2010.

¹²⁷ Written testimony of Liz Kromrei, Department of Family and Protective Services at 4.

¹²⁸ *Id.* at 7.

¹²⁹ Oral testimony of Charles Eldred, Texas Youth Commission, August 26, 2010.

¹³⁰ See Tuell, *supra* note 6.

¹³¹ Oral testimony of Nydia Thomas, Texas Juvenile Probation Commission, August 26, 2010.

time consuming creation process. Invited testimony also cited the permissive nature of interagency agreements as an obstacle to sharing. There is a disconnect between some youth-service agencies caused by differences in culture, terminology, and purpose that has created mistrust. The permissiveness of an agreement allows the mistrust to guide decision making, preventing or slowing the release of information and defeating the purpose of the interagency agreement.

The confidentiality of a youth's personal information is a fundamental concern regarding information sharing. All information is confidential, but written consent from a youth or their guardian can authorize its release. At times, the youth or their family present a legal barrier to information sharing.¹³² When a youth or parent refuses to provide consent it can be difficult for agencies to place the youth in appropriate programs and offer a full range of services. Current law does not provide for the release of confidential information without consent in the "best interest" of a youth.¹³³

¹³² See Eldred, *supra* note 10.

¹³³ *Id.*

Charge Four

Charge Four

Evaluate the voluntary relative placement process in issues of guardianship and the ability of nonparent relatives to make decisions for children under their care. Monitor the progress and implementation of SB 1598 relating to an agreement authorizing a nonparent relative of a child to make certain decisions regarding the child.

Background

As of May 2007, there were over 600,000 children in Texas living in households headed by a grandparent, aunt, uncle, or other relative.¹³⁴ Of those, over 244,000 children lived without either parent in the household.¹³⁵ These situations brought up the issue of who may make educational, medical, and other important and sometimes emergency decisions on behalf of children living in these households.

In the 81st Regular Legislative Session, the Legislature addressed this issue by enacting Senate Bill 1598 which added Chapter 34 to the Texas Family Code.¹³⁶ Senate Bill 1598 amended the law relating to an agreement authorizing a nonparent relative of a child to make certain decisions regarding the child.¹³⁷ Chapter 34 now allows a parent to authorize another relative to consent, accept, and care for a non-child minor relative for certain acts that are provided for by law and specified in the agreement.¹³⁸

Authorization Agreement

Chapter 34 applies only to agreements made between a parent of a child and a person who is the child's grandparent, adult sibling, or adult aunt or uncle.¹³⁹ The agreement may authorize the relative to perform the following acts in regard to the child:

- (1) to authorize medical, dental, psychological, or surgical treatment and immunization of the child, including executing any consents or authorizations for the release of information as required by law relating to the treatment or immunization;
- (2) to obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

¹³⁴ AARP Foundation, available at <http://www.giclocalsupport.org/grandfactsheet/doc/Texas07-final.pdf>.

¹³⁵ *Id.*

¹³⁶ Senate Bill 1598, 81st Legislative Session (2009).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Texas Family Code §34.001.

- (3) to enroll the child in a day-care program or preschool or in public or private primary or secondary school;
- (4) to authorize the child to participate in age-appropriate extracurricular, civic, social, or recreational activities, including athletic activities;
- (5) to authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;
- (6) to authorize employment of the child; and
- (7) to apply for and receive public benefits on behalf of the child.¹⁴⁰

The acts listed above may be excluded from or limited by the agreement.¹⁴¹ The agreement may not confer the right to authorize the performance of an abortion on the child or the administration of emergency contraception to the child.¹⁴²

When there are no court orders regarding the child, and no court proceedings are pending, either parent may execute an authorization agreement at any time.¹⁴³ However, a parent may not execute an authorization agreement without a written court order if (1) there is a court order or pending suit affecting the parent-child relationship; (2) there is pending litigation in any court concerning custody, possession, or placement of the child or access to or visitation with the child; or (3) a court has continuing, exclusive jurisdiction over the child.¹⁴⁴ If a parent executes an authorization agreement in violation of section 34.004(b), the agreement is void.¹⁴⁵

If only one parent signs the authorization agreement, and the other parent is living and has not had his or her parental rights terminated, the parties to the agreement must mail a copy of the executed agreement to the parent who was not a party to the agreement at the parent's last known address not later than the 10th day after the date the agreement was executed.¹⁴⁶ Should the parties fail to mail a copy of the agreement to the other parent as prescribed by law, the agreement is void.¹⁴⁷

An authorization agreement terminates when stated in the agreement, revoked by any party by written notice, or a court enters an order with regard to the child.¹⁴⁸ After an agreement is terminated or determined to be void, a person who is not a party to the agreement who relies in good faith on the agreement without knowledge that it is void or terminated is not subject to civil or criminal liability or

¹⁴⁰ Texas Family Code §34.002(a).

¹⁴¹ *Id.*

¹⁴² Texas Family Code §34.002(c).

¹⁴³ *See* Texas Family Code §34.001 - .002, and 34.004.

¹⁴⁴ Texas Family Code §34.004(b).

¹⁴⁵ Texas Family Code §34.004(c).

¹⁴⁶ Texas Family Code §34.005(a).

¹⁴⁷ *Id.*

¹⁴⁸ Texas Family Code §34.008.

professional disciplinary action.¹⁴⁹ In addition, a person can be found guilty of a Class B misdemeanor if that person presents a document that is not a valid authorization agreement as a valid agreement, makes a false statement on an agreement, or obtains an agreement by fraud, duress, or misrepresentation.¹⁵⁰

¹⁴⁹ Texas Family Code §34.007.

¹⁵⁰ Texas Family Code §34.009.

Child Support Review

Child Support Review

*Section 111.001 of the Texas Family Code requires the Senate Committee on Jurisprudence to review guidelines for support of a child under Chapter 154 of the Texas Family Code every two years.*¹⁵¹

Child Support in Texas

Before the adoption of child support guidelines, child support orders in Texas and other states varied greatly from court to court. As a result, the U.S. Congress passed the Family Support Act of 1988. The Act required states to set child support guidelines which were rebuttable presumptions in proceedings establishing child support orders.¹⁵² Each state adopted child support guidelines to provide more uniformity as mandated by federal law.¹⁵³

Texas uses the percentage of income model to determine the amount of child support a noncustodial parent must pay to a custodial parent.¹⁵⁴ The percentage of income model considers the income of the noncustodial parent when calculating a child support award.¹⁵⁵ Under the model, the noncustodial parent must pay a certain percentage of his or her net monthly income to the custodial parent for the support of the child(ren).¹⁵⁶ The percentage of net monthly income that must be paid is determined by the total number of children the noncustodial parent has the duty to support - both those involved in a case before the court, and those who are not.¹⁵⁷

The guidelines provide the court with a rebuttable presumption that the amount of child support computed using the guidelines is reasonable and in the child's best interest.¹⁵⁸ The presumption may be disproved if a party can show that a deviation from the guidelines would be in the best interest of the child(ren).¹⁵⁹ The Texas Family Code provides 23 reasons that a court may use to vary from a child support amount computed using the guidelines, including the amount of time of possession of and access to a child by the noncustodial parent, the age and needs of the child, and the cost of travel in order to exercise possession of and access to a child.¹⁶⁰

¹⁵¹ Texas Family Code §111.001.

¹⁵² Texas Child Support Guidelines Report, Office of the Attorney General Child Support Division, 2010 at 2.

¹⁵³ *See Id.* at 6.

¹⁵⁴ *Id.* at 2.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 3.

¹⁵⁷ *See* Texas Family Code §154.129.

¹⁵⁸ Texas Family Code §154.122.

¹⁵⁹ Texas Family Code §154.123.

¹⁶⁰ Texas Family Code §154.123(b).

During the interim, legislators work with the Office of the Attorney General to ensure child support laws are working properly and amend laws that are out of date or require modification each session. During the 81st Legislative Session, Senate Bill 865 was passed which dealt with child support enforcement and disbursement, health care coverage for children, and amended several sections of the Texas Family Code to correct, conform, and remove outdated language.¹⁶¹ Fixing problems as they arise makes the need for a total overhaul less likely.

Cost of Raising Children

Every year the USDA is required to estimate the cost of raising children from birth to age 17.¹⁶² These estimates vary drastically depending on the age and location of the children as well as the income of the parents.¹⁶³ However, they do give insight into the cost of raising a child for the average family. (See Appendix A.¹⁶⁴)

Since 2000, there has been both an increase in the average wage earned by workers and an increase in the cost of raising children.¹⁶⁵ An analysis by the Attorney General of guideline computations using the average wage each year demonstrates that the increase in child support awards grew at a comparable rate to the growth in the average cost of raising children during the past decade.¹⁶⁶ (See Appendix B.¹⁶⁷)

Deviation

The vast majority of Texas proceedings involving child support resulted in orders that were in line with the child support guidelines.¹⁶⁸ Between 2008 - 2010, only 17% of newly established or modified cases that went through the Texas Office of the Attorney General's Child Support Division deviated from the guidelines.¹⁶⁹

Child support rulings may vary from the guidelines for many different reasons. From 2008 - 2010, the most common statutory justifications for deviation from the child support guidelines were due to an agreement between the parties or the amount of time of possession of and access to a child.¹⁷⁰

¹⁶¹ Senate Bill 865, 81st Legislative Session (2009).

¹⁶² Texas Child Support Guidelines Report, Office of the Attorney General Child Support Division, 2010 at 7.

¹⁶³ *Id.* at 7 - 9.

¹⁶⁴ *Id.* at 8, *citing* Lino, Mark. "USDA Expenditures on Children by Families, 2009," at 30.

¹⁶⁵ *Id.* at 14 - 15.

¹⁶⁶ *Id.* at 14.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 17.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 19.

Appendix A

Table 5. Estimated annual expenditures on a child by husband-wife families, urban South, 2009

Age of child	Total expense	Housing	Food	Transportation	Clothing	Health care	Child care and education ^a	Miscellaneous ^b
Before-tax income: Less than \$56,850 (Average = \$36,360)								
0 - 2	\$8,010	\$2,680	\$1,110	\$930	\$620	\$550	\$1,820	\$300
3 - 5	8,030	2,680	1,200	980	490	520	1,660	500
6 - 8	7,750	2,680	1,640	1,080	560	580	690	520
9 - 11	8,450	2,680	1,890	1,090	570	630	1,080	510
12 - 14	8,860	2,680	2,050	1,190	680	950	720	590
15 - 17	8,890	2,680	2,040	1,320	730	880	770	470
Total	\$149,970	\$48,240	\$29,790	\$19,770	\$10,950	\$12,330	\$20,220	\$8,670
Before-tax income: \$56,850 to \$98,420 (Average = \$76,490)								
0 - 2	\$10,950	\$3,520	\$1,330	\$1,370	\$740	\$750	\$2,480	\$760
3 - 5	10,950	3,520	1,420	1,420	590	710	2,330	960
6 - 8	10,890	3,520	2,010	1,520	670	830	1,360	980
9 - 11	11,650	3,520	2,300	1,530	690	890	1,740	980
12 - 14	12,290	3,520	2,470	1,630	830	1,240	1,550	1,050
15 - 17	12,720	3,520	2,470	1,760	900	1,170	1,970	930
Total	\$208,350	\$63,360	\$36,000	\$27,690	\$13,260	\$16,770	\$34,290	\$16,980
Before-tax income: More than \$98,420 (Average = \$172,250)								
0 - 2	\$18,310	\$6,380	\$1,810	\$2,100	\$1,020	\$870	\$4,490	\$1,640
3 - 5	18,280	6,380	1,900	2,140	850	830	4,340	1,840
6 - 8	18,270	6,380	2,510	2,250	940	960	3,370	1,860
9 - 11	19,090	6,380	2,850	2,250	980	1,020	3,750	1,860
12 - 14	20,370	6,380	3,050	2,360	1,160	1,430	4,060	1,930
15 - 17	21,960	6,380	3,040	2,490	1,260	1,350	5,630	1,810
Total	\$348,840	\$114,840	\$45,480	\$40,770	\$18,630	\$19,380	\$76,920	\$32,820

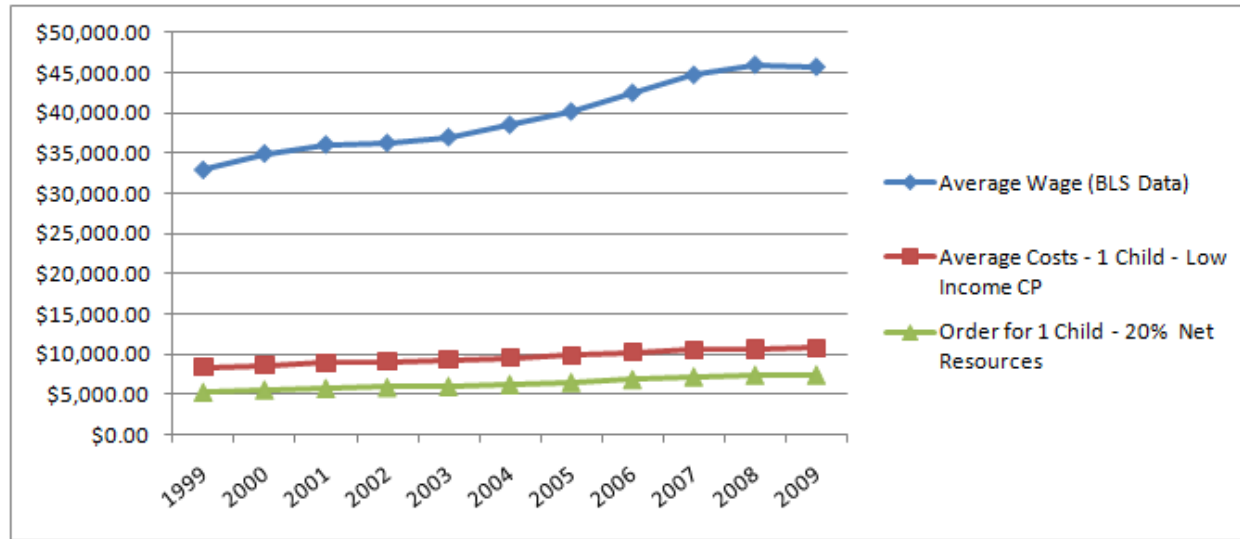
Estimates are based on 2005-06 Consumer Expenditure Survey data updated to 2009 dollars by using the regional Consumer Price Index. For each age category, the expense estimates represent average child-rearing expenditures for each age (e.g., the expense for the 3-5 age category, on average, applies to the 3-year-old, the 4-year-old, or the 5-year-old). The total (0 - 17) row represents the expenditure sum of all ages (0, 1, 2, 3, ...17) in 2009 dollars. The figures represent estimated expenses on the younger child in a two-child family. Estimates are about the same for the older child, so to calculate expenses for two children, figures should be summed for the appropriate age categories. To estimate expenses for an only child, multiply the total expense for the appropriate age category by 1.25. To estimate expenses for each child in a family with three or more children, multiply the total expense for each appropriate age category by 0.78. For expenses on all children in a family, these totals should be summed.

The Southern region consists of Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

^a Includes only families with Child care and education expenses.

^b Includes personal care items, entertainment, and reading materials.

Appendix B



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Average Wage (BLS Data)	\$32,898.00	\$34,941.00	\$36,045.00	\$36,248.00	\$36,968.00	\$38,511.00	\$40,150.00	\$42,458.00	\$44,695.00	\$45,939.00	\$45,692.00
Average Costs - 1 Child - Low Income CP	\$8,367.75	\$8,635.50	\$8,894.25	\$9,054.00	\$9,281.25	\$9,560.25	\$9,879.75	\$10,215.00	\$10,539.00	\$10,651.10	\$10,732.80
Order for 1 Child - 20% Net Resources	\$5,298.27	\$5,582.61	\$5,758.73	\$5,884.20	\$6,007.58	\$6,237.43	\$6,485.21	\$6,830.09	\$7,173.17	\$7,366.73	\$7,384.73