

TEXAS PUBLIC POLICY FOUNDATION

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**LEGISLATOR'S
GUIDE**
to the issues



TEXAS PUBLIC POLICY
FOUNDATION

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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

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Removal of Children from Parents

The Issue

The government may not seize a child from his or her parents absent a court order, parental consent, or imminent danger of physical or sexual abuse. Fourth Amendment protections against unreasonable seizures apply to the seizure of children from their homes.

Child Protective Services (CPS) may obtain an emergency order placing a child in state custody without notifying parents and without a hearing when probable cause exists that there is an immediate danger to the physical health or safety of a child or a child has been a victim of neglect or sexual abuse.

If there is no time to obtain an *ex parte* order, a CPS investigator, law enforcement officer, or juvenile probation officer may take possession of a child without a court order based on personal or corroborated facts that there is an immediate danger to the physical health or safety of a child or the child has been the victim of sexual abuse or trafficking. At an *ex parte* hearing on the next business day, the court retains the child in state custody if there is a continuing danger, sexual abuse or trafficking, immediate danger resulting from use of a controlled substance, or exposure to the manufacture of methamphetamine.

Although CPS previously removed a majority of children without a court order, current policy following *Gates* requires CPS to file for a court order prior to removal unless life or limb is in immediate jeopardy or sexual abuse is about to occur.

At an adversary hearing within 21 days of removal, the court must return the child unless it finds probable cause that (1) there was a danger to the physical health or safety of the child and for the child to remain in the home was contrary to the child's welfare, (2) the urgent need for protection required immediate removal, and (3) reasonable efforts were made to enable the child to return home. If the court finds probable cause, the child enters foster care.

Research demonstrates that separating a child from a parent for even a relatively short time can have a devastating emotional and physical impact on the child. Removal and foster care placement leads to long-term negative outcomes for children. Removal of children from their homes and separation from family affect children's ability to form relationships in the future.

A study in Cook County, Illinois, compared children placed in foster care with other children who were investigated for neglect or abuse but not removed. It found significant differences in long-term outcomes between the groups, including juvenile delinquency, teen motherhood, employment, and earnings. Children removed from home and placed in foster care fared worse than their counterparts who experienced neglect or abuse but were not removed. The results point to better outcomes when children at marginal risk remain at home.

Because removal and foster care present risks that adoption cannot cure, policy-makers should focus efforts on keeping children at home and reunifying families as quickly as possible.

The Facts

- In FY2017, CPS removed 19,782 children from their homes—a removal rate of

2.64 per 1,000 children. The rate of removals has increased 19.5% since 2008.

- In FY2017, CPS confirmed 39,570 cases of abuse or neglect—a maltreatment rate of 5.3 per 1,000 children. The rate of abuse or neglect has decreased 17.2% since 2008.
- After removal, children spend an average of 19.8 months in state custody. On average, foster children experience more than three different placements. Only 30% of children return home to parents.

Recommendations

- **Limit removals to cases of immediate danger to physical health or safety, in which state intervention is less detrimental than the status quo.** Removal for victim status (i.e., “a victim of neglect”) rather than imminent risk violates Fourth Amendment protections as set forth in the *Gates* decision.
- **Increase the standard of proof required for courts to remove and place children in state custody from probable cause to preponderance of the evidence.** Although probable cause may be an appropriate standard for laypersons during an emergency until a hearing can be held, due process demands courts apply a higher evidentiary standard for courts to separate families indefinitely.
- **Decisions to remove and place children in state custody should be subject to oversight by elected prosecutors and judges.** Currently, significant decisions affecting families are made by unelected and unaccountable CPS attorneys and child protection court judges in over 20% of cases.
- **Reunify families subject to appropriate court monitoring when a continuing danger to the physical health or safety of the child no longer exists in the home.** Texas is among the worst performing states in timely reunification. Families should be reunified as soon as children's physical health or safety is no longer in danger, with continued court monitoring and support to ensure success.

Resources

[“Urgent Legal Advisory for Investigations,”](#) Department of Family and Protective Service (Aug. 2008).

[The Texas Practice Guide for Child Protective Services Attorneys,](#) Department of Family and Protective Services (Sept. 2016).

[Effects of CPS Involvement on Child Wellbeing,](#) Testimony before the House Juvenile Justice and Family Issues Committee by Brandon Logan, Texas Public Policy Foundation (May 3, 2017).

[Family Privacy and Parental Rights as the Best Interests of Children](#) by Brandon Logan, Texas Public Policy Foundation (Feb. 2018).

[Gates v. Texas Department of Protective and Regulatory Services,](#) 537 F.3d 404 (2008).

“Child Protection and Child Outcomes: Measuring the Effects of Foster Care” by Joseph J. Doyle, Jr., *American Economic Review* (March 2007).

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