

Texas Lawmaker Commits to Restricting Hidden Foster Care

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Texas Lawmaker Commits to Restricting and Tracking Hidden Foster Care

By [Sara Tiano](#)



Texas state Rep. Lacey Hull (center) speaks at the House Republican Caucus press conference on foster care on July 20. She's behind a bill before the state Legislature that would track and restrict hidden foster care.

A special session bill before the feuding Texas Legislature takes aim at a practice widely referred to as “hidden foster care” — the separation of children from their parents by child welfare agencies, outside of the watchful eye of the courts.

Legal scholars and child welfare experts have long been concerned about these often informal maneuvers, under which social workers arrange for children to be moved from their homes to the care and custody of friends and relatives. An article published in the Stanford Law Review last year estimated that between 100,000 and 300,000 children may be separated in this manner each year with no transparency or accountability — a number on par with children entering the formal foster care system.

In Texas last year, the Department of Family and Protective Services reported about 12,000 children currently in such placements.

The sheer number of children moved from their homes through these shadow processes stunned Republican state Rep. Lacey Hull, who learned of the practice from friends who work as parent advocates and attorneys.

“I think it would be pretty shocking to people to see what the true numbers are of kids who are not in their home,” Hull said in a recent interview with The Imprint.

Unlike cases handled by the court-monitored child welfare system, hidden foster care cases do not require evidence presented to a judge that a child is being abused or neglected, warranting their removal from home. What’s more, under these informal arrangements, there are no lawyers to advise parents of their rights, and low-income caregivers who receive the children are denied access to the financial support, health care and therapeutic services provided to foster parents.

In a series of stories The Imprint has published this year, legal scholars and child welfare experts say these arrangements can lead to pressure on parents to give up their kids under threat of foster care removal, while allowing social workers to act without oversight of their decisions about when and how to intervene in families. Parents may sign an agreement with social workers, but they do so often under pressure, legal advocates say.

Hull’s bill in Texas is among at least three nationwide introduced in the wake of the influential 2020 Stanford Law Review publication. The legislation was first introduced in March as House Bill 2680, but failed to receive the necessary votes to proceed. Hull has since introduced the similarly worded House Bill 265 during the special session, which is temporarily stalled out by a partisan faceoff.

The legislation would provide court oversight and attorneys for parents faced with the removal of their children outside the formal foster care process, and require that the number of children removed from home under these circumstances be tracked and reported to the federal government.

The Houston lawmaker said she knows that getting her bill passed during the special session may be a longshot — especially after Democratic lawmakers fled the state in early July to protest a voting rights bill, temporarily preventing a quorum and the ability to take legislative

action.

But as a mother, she said, the issue tugs at her. She said all Texas parents facing the removal of their children should have access to legal counsel and “their day in court” when faced with the removal of their children — and have a system in place holding all parties accountable.

In Texas, Parental Child Safety Placements include signed agreements between parents and social workers created when investigators determine “the child cannot safely stay with a parent” or “the placement is needed to protect a victim from a sibling perpetrator,” according to the Department of Family and Protective Services. The state describes the arrangements as, “temporary, short-term placement that should last no longer than 60 days,” though research by the Supreme Court of Texas Children’s Commission found many children remain separated from their parents for far longer.

The bill proposed by Hull would place a 30-day limit on such placements, requiring social workers to open a court case if they wanted to keep the child out of their home long-term. It would also guarantee the right to legal counsel for parents who sign the placement agreements, ensuring they have an informed advocate. If signed into law, the state would have to report the number of children removed through safety plans to the federal government.

Though child welfare advocates have long held concerns about extra-judicial family separations, Josh Gupta-Kagan, a law professor at the University of South Carolina, brought national attention to the issue — and coined the phrase “hidden foster care” — in his April 2020 law review brief.



University of South Carolina law professor Josh Gupta-Kagan coined the term “hidden foster care.”

After reviewing Hull’s legislation, he said the bill takes a significant step toward addressing many of the dangers in current child welfare practice.

“The Texas bill is directed at some of the most important reforms to ensure due process in safety plans,” Gupta-Kagan said.

He and other critics have deep concerns that the lack of court oversight can lead to kids being taken from their parents unnecessarily, or not being returned to them as quickly as they should be.

In an interview with The Imprint Weekly podcast, Gupta-Kagan told host John Kelly:

“We establish due process protections because we recognize not only is there a fundamental legal right of parents and children to live together, but that it’s generally good for children to be with their parents — even when their parents are deeply imperfect — and that separating children and parents is inherently traumatic and likely harmful to children.”

Texas, he said, is among the states with the highest rates of opting for hidden foster care over the formal system.

The extraordinarily high stakes in the agreements described as “voluntary” — between typically low-income, struggling parents and social workers with the power to remove their children — are inherently coercive, critics of the deals say, leaving some caregivers without sufficient resources to provide proper care. The housing arrangements also can be sudden, with children arriving abruptly with no time to prepare.

Advocates are increasingly scrutinizing hidden foster care, which can be relied upon when social workers believe a child is unsafe, but don’t have sufficient evidence to prove it in court. During grand jury testimony in May, a [North Carolina](#) child protection worker admitted that he and his colleagues separated families using Custody and Visitation Agreements — documents that are similar to the agreements used in Texas but were later found in court to be unlawful. According to an article published by the nonprofit Carolina Public Press, the documents were used by social workers to avoid having to justify their decisions in court.

This option is often used for convenience by social workers who are struggling to keep up with crushing caseloads, said Andrew Brown, a legal fellow with the Texas Public Policy Foundation.

“Safety plans can often be used as a crutch when they don’t feel they have the time to do a fulsome investigation to get the evidence,” Brown said. And it’s the families waiting to be reunited who pay the price, he added: “They’re left in a limbo while caseworkers focus on other cases.”

Regulating this alternative to foster care has its own set of concerns: increased surveillance entangling more low-income families in the child welfare system, and additional trauma to children suffering separation from their parents. Indeed, some relatives taking in kin would prefer not to have social workers and courts hovering over their lives, even if it means bearing the financial costs on their own.

Informal kin placements generally allow parents to have more agency in deciding who their children live with and how they’re cared for, said Alan Dettlaff, dean of the University of Houston’s school of social work. “When people want to increase surveillance and restrict voluntary placements, they’re not realizing the harm that the system causes,” Dettlaff said.

While safety plans are “widely used” in the Lone Star State, Brown said it’s challenging to get an accurate account of precisely how many families are separated this way each year. A [report](#) from the Texas Children’s Commission offered some insight, revealing 34,000 “informal kinship placements” had been made in 2014 in the state. The following year, Gov. Greg Abbott (R) raised concerns, directing the child welfare department to develop a screening tool for the homes children were being placed in and to begin tracking families’ return rates.



Andrew Brown is the senior fellow of child and family policy at the Texas Public Policy Foundation. Photo via the foundation’s website.

Since then, the number of children living away from their parents under safety plans has declined, with child welfare officials reporting [closer to 12,000](#) such placements in 2020.

Brown said tackling the issue legislatively has required educating lawmakers on the complex, and somewhat controversial, issues involved.

Hull said after she introduced HB 2680 she faced significant pushback from the child welfare department and some of her statehouse colleagues, specifically around the time limit on safety plans that the bill would impose. To compromise, Hull added an optional 30-day extension.

“The problem we have is there is no deadline,” for these types of informal arrangements Hull said. “The bill was really trying to help rein that in.”

Under current Texas policy, safety plans “should not last more than 60 days,” but that timeframe can be extended, and is not legally mandated, according to the child welfare department’s [handbook](#). Six additional states have policies dictating time limits on hidden foster care arrangements, most between one and three months, according to Gupta-Kagan’s report.

Two states have recently passed or introduced legislation restricting the practice, following the law professor’s widely circulated article.

A [2020 law in Missouri](#) places a 90-day limit, and requires the child welfare agency to develop a written case plan with an exit strategy. Parents must be informed in writing of their right to terminate the voluntary placement.

In California, [a bill](#) by Assembly member Mark Stone (D) aims to limit entries into hidden foster care by triggering a child abuse investigation in most cases involving the transferred custody of a child. The bill is moving through the Legislature with no recorded opposition to

date.

Gupta-Kagan said Stone's bill misses a key protection: "Texas' bill is stronger because it provided a right to counsel for parents, while California's did not," he said. "Counsel is the single most important reform required."

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