

POLITICS & POLICY

# Texas Is Quietly Leading the Way on Limiting Child Protective Services Overreach

Policy changes aimed at reducing the number of children who end up in foster care—many championed by progressives in blue states—are being passed by Republicans in Texas.

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Texas Monthly; Getty

In 2015, James Frank, a Republican state representative from Wichita Falls, and his wife, Alisha, were nearing the empty-nest stage. The youngest of their four boys was fifteen and considering college, but they weren't quite ready to throw in the towel on child-rearing (they still had "a little more tread on the tires," Frank would later say). So that year, the couple decided to adopt two brothers, aged nine and eleven, out of Texas's foster care system.

As the boys adjusted to life with their new family, Frank was often called to the elementary school due to the behavior of his new eleven-year-old son, who would refuse to work in class or not move after the bell rang, as if he were glued to his seat. "He would shut down," Frank said. "That was just his coping mechanism."

The following summer, as his son approached middle school, Frank worried that the behaviors would worsen at a new school. But when weeks went by without a complaint from his teacher, Frank was surprised. One night when he was chatting with his son, he said, "Hey, I really kind of expected to be up at school some.' I said, 'What's the deal?' And he said, 'I know where I'm going at night.'"

Today, his sons are seventeen and nineteen; the older one's working and the youngest is getting ready to apply for college. But those difficult early days with the boys stuck with Frank and influenced his desire to make changes to the state's embattled foster care system by focusing on reducing the number of kids who end up in it in the first place. "We need to consider how damaging it can be to move a kid around constantly," Frank said. "You just can't jerk these kids around."

Several laws that passed this session make Texas the unlikely front-runner in limiting overreach by Child Protective Services by tightening statutes related to removals, informing parents of their rights, and banning anonymous reports of abuse to the state hotline. The bills, which were passed with little fanfare or controversy, are the result of a small group of legislators, including Frank, who have spent the last several sessions working to keep more children in their homes. And the reforms represent an unlikely alliance between conservative legislators and progressive-minded activists

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who are seeking to reduce the surveillance of poor and Black families by the state’s child welfare agency.

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The first and most comprehensive bill, **HB 730—authored by Frank** and cosponsored by Democratic representatives Gene Wu and Josey Garcia—requires caseworkers to tell parents of their rights at the start of an investigation, similar to the Miranda rights given to suspects in police custody. About **80 percent of CPS investigations** result in no finding of abuse, according to Department of Family and Protective Services data, but the process can be invasive and traumatic for those families. Investigators can search parents’ homes, conduct private interviews with their children, and request medical information and drug testing from parents, all without parents learning who made a complaint against them or what the complaint alleged.

In Texas, if there’s no court order mandating otherwise, parents have the right to refuse entry to abuse investigators and decline drug tests and mental health evaluations. But most parents aren’t aware of their rights. Many parents involved with CPS are poor, and indigent parents aren’t appointed an attorney to represent them until the state’s child welfare agency goes to court seeking to remove their child. This leaves many parents without legal

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advice and confused about what requests from CPS investigators they are allowed to refuse.

“Removals I have always considered a police action. It is, and should be treated with the professionalism of such,” said Frank, who authored HB 730. In addition to requiring investigators to inform parents of their rights, the law will also raise the standard from “good cause” to “probable cause” to gain court-ordered entry into a home.

This isn’t the first time the Lege has taken steps to limit the number of children entering foster care. In 2021, Texas lawmakers changed the definition of neglect, the most common reason for CPS investigations of families. In Texas last year, only a third of investigations involved allegations of physical or sexual abuse. Neglect encompasses a variety of issues that can be poverty-related, like housing or food insecurity. And for many children, staying in homes under less than ideal circumstances is still less traumatic than being removed from their parents. The 2021 law requires a judge to find a child is in “imminent danger,” rather than the previous standard of “substantial risk of harm,” before removing a child for issues of neglect. The law change has resulted in a clear reduction in removals over the past two years, data shows—in 2020, more than 16,500 children were removed from their parents in Texas; in 2022, about 9,600 were removed.

Frank views HB 730 as an extension of the 2021 changes, which provide clearer legal guidance to both parents and CPS investigators on what the state is actually allowed to do when investigating abuse or neglect. “We need to improve the processes by which we remove kids, and if we do that, then we can have less kids in the system and we can focus our energy, resources, and people on the kids that need help,” Frank said.

The second bill, HB 63, authored by Representative Valoree Swanson, a Republican from Spring, bans anonymous reporting to CPS, with the goal of reducing false reports that can come from vindictive ex-partners or others using abuse reports as a tool to harass parents. In 2022, there were 12,473 anonymous calls to the state; only about 1,000 of those calls resulted in a substantiated finding of abuse or neglect, the Texas Tribune reported.

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Anonymous calls will be replaced with confidential calls, meaning the state intake line will take the person's information but will not share it with the person being investigated. "No state legislature has passed such a bill other than Texas," said Richard Wexler, the executive director of the National Coalition for Child Protection Reform.

The bills both passed with bipartisan support; the laws will go into effect September 1.

Progressive advocates in New York have been pushing for reforms similar to the ones passed by Texas. Two bills were introduced in New York that would ban anonymous reporting and implement "family Miranda" rights, but as the bills were moving through the legislature, New York City's child welfare agency **lobbied for changes** that would remove the notification about certain rights and carve large loopholes for anonymous reports. The New York State Legislature adjourned without either bill passing.

In Texas, child welfare abolitionists are surprised by the unlikely alliance between progressives and conservative Republicans. Josie Pickens is the program director of the upEND Movement, an organization based at the University of Houston that seeks to abolish the child welfare system completely, which it describes as a "family policing system" that is "built on a model of surveillance and separation." Instead, progressives are hoping to grow the safety net for poor families, who are often in need of basic support but are met with a system unable to give it. "How can we get housing assistance? How can we get food assistance? How can we do these things that will prevent families from being surveilled and punished by this system?" Pickens said.

Pickens attributes the alliance between Republicans and progressives partly to the right's focus on individual rights, and by extension the rights of the parent. (Conservative Texans have also used "parents' rights" to **pass bans on gender-affirming health care** for trans children, and **push bans across the state** on books focused on the history of racism or on LGBTQ people.) But she says the acknowledgement of CPS overreach is partly a result of a growing awareness of the foster care system's damaging approach, one that

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leaves both parents and children traumatized. “It’s not a partisan issue. It’s a human rights issue,” Pickens said.

Meanwhile, centrist Democrats have often found themselves on the other side of these reforms. State senator José Menéndez, a Democrat from San Antonio, **spoke out against the change** in the definition of neglect last year. During debate on the anonymous reporting ban this year, Menéndez **suggested an amendment** to replace the ban on anonymous reporting with a bill “discouraging” anonymous reports. “None of us in this room want any child to suffer abuse or neglect. And I would hate for us to vote for a policy where the trade-off is . . . [having] a child possibly die from abuse or neglect,” Menéndez **said at the time**.

Representative Frank said that clarifying the language of the laws helps safeguard the rights of the majority of parents, while also allowing for removals of children who are in danger. “The idea that ‘Oh, just do whatever’s in the best interest of the child’—well, I’m sorry, that’s really open-ended,” Frank said of the legal standard that governs child welfare cases. “It just opens up so many opportunities for really, really bad mistakes.”

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