

# TEXAS LAWYER

Commentary

## Legal Issues Regarding Children in Rural Foster Care

Almost 10 years ago, nine children who had been in the Texas foster care system filed a class action lawsuit alleging that the system failed to protect...

By **Daniel Pollack and Elisa Reiter** | September 14, 2020 at 12:00 PM



Daniel Pollack, attorney and professor at Yeshiva University's School of Social Work in New York City, and Elisa Reiter, Board Certified in Family Law by the Texas Board of Legal Specialization.

Almost 10 years ago, nine children who had been in the Texas foster care system filed a class action lawsuit alleging that the system failed to protect them from an unreasonable risk of harm. In 2015, U.S. District Court Judge Janis Jack took the state to task for operating a system where “rape, abuse,

psychotropic medication and instability are the norm,” and children “almost uniformly leave state custody more damaged than when they entered.” Many of those children were placed in rural foster homes. [M.D. v. Abbott.](#)

By definition, many children in foster care have experienced trauma due to abuse or neglect. Their health or mental health may be severely compromised. Significant communication technologies have enhanced access to health and social services in rural areas. Even so, it is difficult to say that these innovations have brought measurable quality consequences to foster children living in rural areas.

The latest Adoption and Foster Care Analysis and Reporting System (AFCARS) [report](#) indicates that there are approximately 437,000 children in foster care. Undoubtedly, finding a foster home for each one is challenging. If the child lives in a rural area it is a particularly daunting task. A sparse population means doing a home study of prospective foster parents can be an **entire day’s assignment for a recruiter. It can also mean that everything that is familiar to a child in foster care will literally and figuratively quickly fade into a rearview mirror as the child travels many miles away from home.**

**Laws and regulations enacted to ensure a foster child’s safety may deter** prospective foster parents. Even once a foster home is licensed, there are numerous legal issues impacting the rural foster care system.

1. *Oversight*

- a. *Neglect and abuse investigations.* State officials cited Prairie Harbor, a residential treatment center in Houston, Texas, over 60 times in a two-year period, from February 2017 through December, 2019. In a hearing on September 3, 2020 U.S. District Judge Janis Jack expressed incredulity that

state officials continued to place foster children at Prairie Harbor for seven **months after the death of a child in the facility's care.**

- b. *Licensing standards and inspections of licensed agencies.* While officials of the Texas Department of Family and Protective Services (TDFPS) testified that they had ceased placing foster children with Prairie Harbor, Judge Jack **stated that a simple internet search gleaned proof that the home's owner and executive director had a new treatment center in Corpus Christi, Texas. Judge Jack found it "stunning" that the Texas Health and Human Services Commission failed to create "stipulations that the owners of these facilities are not allowed to open under another name."**
- c. *Assure that foster children who enter the system do not age out more damaged than when they entered the system.* In her 2015 ruling, Judge Jack found that foster children regularly become the victims of sexual abuse, often leaving the system more damaged than when they were initially placed in the system.
- d. *24/7 supervision.* In November, 2019, Jack held TDFPS in contempt for failing to comply with her prior orders, focusing on the failure of many foster homes in rural areas to provide around-the-**clock "awake" supervision 24/7.** She imposed a \$150,000 fine in November, 2019 against the state.
- e. *Assuring checks and balances.* Foster care providers need to stand ready to be interviewed if they face allegations of negligence or abusive treatment of children in their home, particularly if children in their care are nonverbal or are intellectually disabled.
- f. ***Tracking 'child on child' abuse.*** There is no centralized system that shows which foster children have a history of physical or sexual abuse. Foster parents need to keep their own records, keep their agencies informed, and may need to provide documentation to a centralized system.

## 2. *Fixing a broken system*

- a. *Imposing enforcement actions.* While there are 13 types of enforcement actions available, TDFPS rarely imposes enforcement actions against agencies. Foster care providers need to take enforcement actions seriously, or face probation, monetary penalties, and denial, suspension or revocation **of the operator's foster home permit.**
- b. *Implementing better safety standards.* There appears to be variation between urban and rural areas, and how critical safety standards are imposed by TDFPS in each.
- c. *Overworked/underpaid caseworkers.* In 2011, it was estimated that caseworkers in Region 3 would need 34 work days each month to address their assigned tasks. Reduction of caseloads per case worker would reduce risk to children in residential operations and increase staff retention.
- d. *Meeting greater needs.* Foster parents need to be adequately trained to meet the needs of children placed with them, which may be more difficult in a rural setting than in an urban setting. As of 2015, 39% of children were placed out of their region and 60% were placed out of their county. Foster care providers need to help children learn how to function when they age out of the system. Fewer moves would benefit children in the system. Rural foster care providers may need to limit the number of foster children they accept. Foster parents cannot simply rely on medication to monitor or restrain children. Foster children should be able to leave foster care with basic life skills, and do so closer to their home communities.

To assure the safety of children in rural foster care, and to forestall unreasonable risk of harm to such children, the current system in Texas needs a serious overhaul.

Daniel Pollack *is an attorney and professor at Yeshiva University's Wurzweiler School of Social Work in New York City.*

Contact: [dpollack@yu.edu](mailto:dpollack@yu.edu); 646-592-6836.

Elisa Reiter *is Board Certified in Family Law by the Texas Board of Legal Specialization. Contact: [elisareiter@msn.com](mailto:elisareiter@msn.com); 214-219-9800.*