



81st TEXAS LEGISLATURE

REPORT ON LEGISLATION IMPACTING CHILDREN

July 30, 2009

CHILDREN AT RISK improves the quality of life for Houston's children through strategic research, public policy analysis, education, collaboration, and advocacy.

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Executive Summary

The 81st Texas Legislative Session began on January 13, 2009. Governor Perry signed a budget of \$182.3 billion, representing a 7.4 percent increase over the current biennium. Although the budget decreases general revenue spending for the 2010-2011 biennium by \$1.6 billion in comparison to the 2008-2009 biennium, funding for key areas such as economic development, education and public safety is still maintained.

In efforts to improve the quality of education for Texas' children, much focus was placed on school accountability and finance issues. Progress was made on both of these issues, although counterbalanced at times with regressive measures. While the Legislature advanced measures to improve teacher quality, school discipline methodology, and to increase access to computers for educationally disadvantaged schools, measures to acknowledge the importance of accurate and transparent graduation rates failed, and several important course requirements, such as P.E., health education, and technology, were either reduced or eliminated altogether. Public school funding was significantly increased by \$1.9 billion to help relieve budget constraints. However, the distribution of this funding may be at issue, as the school finance bill is to be funded from federal stimulus dollars instead of from the state's general revenue.

The need for access to health services continues to impact the physical and mental development as well as the overall quality of life of children in Texas. Unfortunately, two measures which would have resulted in a significant step towards ensuring more children have health coverage did not pass. The Legislature failed to advance a CHIP buy-in option for families who cannot afford private healthcare. Also, a measure to provide 12-month eligibility for Medicaid failed to pass. Progress was made in the areas of immunization record maintenance, nutrition education in early childhood and afterschool environments, and the expansion of parenting awareness programs to middle schools.

Mental health issues negatively affect many aspects of children's lives, impacting their education, social development, as well as family life. The Legislature recognized mental health as a priority this Session by significantly increasing funding for mental health services by \$82 million. Community-based mental health services received \$50 million in appropriations through the Juvenile Probation Department for competitive grants. Success was also achieved with measures passed to establish a program to aid children and adults, as well as their families, who are affected by autism, and also to extend health insurance coverage for autism treatment for children until the age of nine.

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CHILDREN AT RISK helped draft an omnibus bill, which passed this Session, resulting in great strides in the continuation of our efforts to raise awareness about the problem of human trafficking and to provide solutions for victim relief. A significant part of the bill involves mandated training for law enforcement officers in order to aid in the identification of human trafficking victims, as it is the officers who often have the first opportunity to identify these victims as such. Additionally, the bill created a statewide human trafficking task force in the Office of the Attorney General, established an assistance program for victims of domestic human trafficking, and provides more protection for minors through changes made to the compelling prostitution statute.

Several advancements were made this Session through child welfare reform. A measure was passed to expand the population of transition-aged children in conservatorship of DFPS who receive transitional planning services. This will allow more children to receive services to help them transition to successful independent living, thus reducing their risk of incarceration or homelessness. Measures were also passed to increase adoption and foster assistance, to raise awareness of abuse by requiring school districts to implement policies regarding sexual abuse, and to help eliminate unnecessary and potentially harmful delay in domestic violence cases through the designation of a district court for domestic violence cases in Harris County.

CHILDREN AT RISK worked to address and improve issues affecting the juvenile justice system. One issue of concern is adult certification of juvenile offenders. CHILDREN AT RISK drafted a bill, which was passed by the Legislature, providing both the prosecutor and attorney for the juvenile with a minimum of five days, previously a minimum of one day, to review the juvenile's file prior to the hearing in which the transfer decision is made. A measure to permit the sealing of a juvenile offender's records prior to the standard two-year requirement upon completion of a drug court program was also passed.

CHILDREN AT RISK tracked over six hundred pieces of legislation introduced during the 81st Legislative Session. Over 6,500 letters were sent to the Legislature through CHILDREN AT RISK'S network of communication, and thousands of calls were made. In addition, hundreds of faxes and face-to-face meetings helped support our causes. This report provides an overview of our areas of priority in addition to a synopsis of what was achieved on behalf of children this Legislative Session.

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Budget

Overview of Children’s Finance Issues

Agency	Year Ending Aug. 31, 2010	Year Ending Aug. 31, 2011	Difference from 2008-2009 biennium
Children with Disabilities	\$167,230,260	\$172,999,678	+ \$13,409,206
Children with Special Needs	\$43,471,343	\$43,612,966	+ \$8,935,461
Family and Protective Services	\$1,293,397,848	\$1,360,354,493	+ \$92,112,442
Juvenile Probation Commission	\$182,774,142	\$179,815,944	+ \$34,308,247
Mental Health Services for Children	\$66,307,943	\$66,238,093	+ \$1,371,687
Texas Education Agency	\$23,578,363,776	\$25,585,646,613	+ \$13,156,419,573
Texas Youth Commission	\$233,191,500	\$222,692,522	- \$33,108,195
Women and Children’s Health Services	\$71,175,669	\$71,244,032	- \$5,225,164
WIC/Farmer’s Market Nutrition Services	\$870,526,293	\$879,347,250	+ 274,369,208

With nearly 28% of the Texas population under the age of 18 and 23.2% of our children living in poverty, it is imperative for Texas to prioritize and adequately fund programs and services to meet the basic needs of our children and to ensure a healthy society. Drafting the budget is of primary importance, as allocations determine the type and amount of funding programs will receive. Along with Texas’ current challenges such as high birth rate, high uninsured rate, low graduation rates, and natural disasters, the country entered into a severe economic recession right before the 81st Legislative Session. Fortunately, with the help of federal stimulus money, the state was able to create a budget without dipping into the Rainy Day Fund. The 81st Legislature passed a budget of \$182.3 billion for the 2010-1011 biennium which included \$12.1 billion in stimulus money from the American Recovery and Reinvestment Act (ARRA). The 7.4%

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increase over the 2008-2009 budget was in line with the Legislative Budget Board's 3.5% recommendation. However, data shows it is necessary to increase the budget by 8% every two years just to maintain current services.

Policymakers allocated \$80.7 billion for General Revenue (a 2% reduction from the 2009-2010 biennium). The General Revenue Budget allocated the following: 56% for K-12 and higher education; 27% for health and human services; 11% for public safety and criminal justice; and 6% for all other areas. Fortunately, \$6.3 billion in ARRA relief was available for Medicaid and education in 2010-2011.

Texas faced some budget challenges during the 81st Session, and the revenue which legislators had to allocate within the budget was insufficient when compared with the need throughout the state. Texas continues to be ranked in the lowest percentile on health and human services spending in the nation. There were some budget victories in the areas of early education, community-based mental health programs, and transitional services to foster youth. However, funding continues to significantly lack in health coverage, expenditures per student in the classroom, and services for victims of human trafficking. Texas must make children a priority and draft a balanced budget that reflects their importance, meets their most basic needs, as well as invests in the future of children.

Education

Early Education

Education is the pathway for many children to pull themselves out of poverty. A child's healthy development and academic progress greatly depends on positive and stimulating experiences during the first six years of life. The future academic success of early education programs can reap benefits such as higher graduation rates and college attendance. These programs provide educational opportunities for children as well as increase the ability of parents to work during the day.

HB 130 (Diane Patrick) and SB 21 (Zaffirini) would have established a grant program to expand pre-K programs in selected districts to full day, implemented the maximum class size of 22, and limited the student-teacher ratio to 1:11. It also required school districts to expend 20 percent of grant funds to contract with community child care providers. HB 130 made great strides and

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passed both the senate and house. However, the bill was vetoed by Gov. Perry. Although HB 130 was vetoed, \$25 million will be rolled into an existing expansion grant, the Early Start Program.

Other bills that failed include HB 2218 (Flores) which attempted to raise reimbursement rates for subsidized child care; HB 2072 (Flores) called for increases only for those workforce development areas that have an average maximum reimbursement rate in the bottom 25 percent; SB 1730 (West) would have raised hours of required training for child care workers; SB 59 (Zaffirini) would have outlined the qualifications of those who would provide training for child care workers, and SB 1613 (Lucio) would have created a pilot program for pre-K behavioral health.

Although very beneficial to children and families, studies suggests that many parents of eligible children are not aware of their children's eligibility, and many eligible children do not enroll in early education programs. The passage of HB 136 (Villarreal) aims to increase awareness and enrollment by requiring TEA to develop strategies for increasing public awareness of pre-K programs and to make recommendations to school districts based on the study and best practices.

School Discipline

School discipline and zero tolerance policies in Texas schools have received increased attention over the past few sessions and data indicates that thousands of students are being referred out of the classrooms and sent to alternative disciplinary settings, often falling behind their peers academically. Approximately 80% of students referred to Disciplinary Alternative Education Programs (DAEPs) are sent through discretionary placements from their schools, and DAEP schools have five times the dropout rate of mainstream schools. In an effort to reduce referrals out of the classroom, CHILDREN AT RISK actively advocated for increased behavior management training for teachers and the collection of referral data by supporting HB 2476 (Olivo). Although HB 2476 received a hearing, it was left pending in the Public Education Committee. HB 2476 aimed to establish a discipline management training program for teachers at all grade levels in age-appropriate conflict resolution techniques, require parental notification when a student is referred to a DAEP for a mandatory referral, and would have added a performance indicator in the state accountability system related to the percentage of students referred out of the classroom.

The 81st Legislature passed HB 171 (Olivo) to decrease referrals to DAEPs and hold schools accountable for their discipline decision. HB 171 requires that mitigating factors be considered

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by all school districts and their schools when disciplining a student. Beginning in September 2009 school districts must consider mitigating factors such as self-defense, intent, or lack of intent at the time the student engaged in the conduct, the student's disciplinary history, or a disability that substantially impairs the student's capacity to appreciate the wrongfulness of the conduct, regarding suspensions, removals, or expulsions.

Teacher Quality

Teacher quality impacts the classroom experience and is a priority area in education policy such as No Child Left Behind. One measure of teacher quality is the number of teachers who have obtained national certification through the National Board for Professional Teaching Standards, which sets rigorous standards for teacher knowledge and skills. Nationwide, 74,000 teachers have achieved this status. Currently, only 472 of these teachers work in Texas. The 81st Legislature passed HB 709 (Rose) which requires school districts to use at least 60 percent of the educator excellence awards program to award teachers who effectively improve student achievement as determined by meaningful, objective measures. The bill also requires that the remaining funds be used only for certain stipends, including providing stipends to classroom teachers who hold advanced certification from an organization that certifies at least 2,500 teachers in the U.S. each year based on expert evaluation, self-assessment, and peer review, of high and rigorous standards for accomplished teaching.

Texas currently faces a shortage of teachers in areas such as special education, mathematics, science, and bilingual education. As a result, many students are taught by out-of-field teachers, leading to lower student achievement in these areas. In addition, the rigid timetable for submitting paperwork and passing the Texas certification test is preventing some out-of-state teachers, who have recently moved to Texas, from being able to teach in a Texas classroom immediately. One way to alleviate the teacher shortage is to provide certified teachers from other states certification reciprocity to teach in Texas with a two-year temporary certification. HB 4152 (Rose) authorizes the State Board for Educator Certification (SBEC) to issue a certificate to certain applicants who are certified to teach in another state or county. The bill would require acceptance or rejection of 90% of completed applications within 14 days of receipt and 100% within in 30 days.

Technology and Computers in the Classroom

Ensuring that Texas students are prepared for a technology-oriented world should be a top priority for the state. The Legislature passed HB 4294 (Branch) which provides for more

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flexibility for school districts and open-enrollment charter schools to use electronic textbooks, instructional materials, and technological equipment. However, one barrier to access is the cost of computers, which makes them unaffordable for many people. Studies show students who have used a computer for several years test well, while students who have had little computer experience tend to lag behind their grade level. This disparity can be eliminated by ensuring that students and their families gain access to computers more easily. SB 2178 (Shapleigh) establishes a public school's eligibility to participate in the pilot program if 50 percent or more of the students enrolled in the school are educationally disadvantaged and the school operates or agrees to operate a computer lending program. The state surplus computers will be allotted to programs established in schools for this purpose by allowing schools with educationally-disadvantaged students to lend and eventually sell computers to families.

Sex Education and Parenting Awareness

Texas receives more federal funding for abstinence-only until marriage programs than any other state while ranking third in the nation for teen births and repeat teen births. Becoming a parent while still in school is a significant factor in dropping out for both male and female students; studies show 68% of teen mothers fail to get a high school diploma. Currently, the Education Code appropriately requires schools to emphasize abstinence when teaching human sexuality curriculum. However, it is important to also equip young people with medically accurate, age-appropriate information that will help them avoid unintended pregnancies, remain free of sexually transmitted diseases, and make responsible, informed decisions throughout their lives. Child advocates launched an Education Works Campaign in efforts to decrease the number of teen births and dropout rates. HB 741 (Castro) and HB 1567 (Villareal) attempted to require age-appropriate and medically accurate information about sexual health. Both bills died in committee.

Studies show that parenting and paternity awareness prevent teenage pregnancy, abusive relationships, and family violence. The 81st Legislature passed HB 3076 (Deshotel) expanding the parenting and paternity awareness program used in the health curriculum for high schools to be extended to middle and junior high schools. It sizes the programs and curriculum materials to provide instruction in child development, parenting skills, including child abuse and neglect prevention, and assertiveness skills.

Graduation Rates and Dropout Prevention

Statistics for graduation and dropout rates vary depending on the formula used to calculate them.

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The Manhattan Institute’s graduation calculation method compares the number of entering freshmen and the number of graduating seniors in the class four years later. A similar method used by CHILDREN AT RISK shows that in the Houston Independent School District (HISD) alone 51.2% of the students who start the 9th grade will not graduate from high school in four years. In comparison, the self-reported graduation rate from the Texas Education Agency (TEA) for HISD was 67.1%. In addition to preventing students from dropping out and addressing why students drop out of high school, accuracy in the data reported by government agencies has been an issue brought to light by consistent underreporting of dropout rates across the nation and in Texas. Underreported dropout data underscores the urgent need for legislation creating transparency in graduation and dropout rates and the need for change to our current public education system. CHILDREN AT RISK assisted in the drafting of HR 1438 (Farrar) which urged TEA to implement the U.S. Department of Education’s final regulations that describe academic indicators that may be used to demonstrate adequate yearly progress as well as implement a transparent methodology for calculating graduation and dropout rates. The resolution died in the House Public Education Committee.

According to several independent research organizations, nearly one in three students in Texas fail to graduate. Students dropout for complex reasons and often encounter obstacles and challenges in their educational experience. The Legislature passed HB 1297 (Hochberg) and HB 2263 (Eissler) to address the low graduation rates by investing in prevention programs. HB 1297 allows students to earn credit under certain circumstances by participating in optional flexible school day program courses. This bill allows students to enroll in a course program during the school year or summer to enable the student to earn class credit that the student would not otherwise be able to receive without retaking the class. HB 2263, authorizes the commissioner of education to expend high school innovation grants that are designed to prevent dropouts and promote postsecondary readiness to middle and junior high schools.

Accountability/Testing

HB 3 (Eissler) was the big school accountability bill, including curriculum and promotion requirements, of the 81st Legislative Session. Amendments included high school graduation program specifications, the procedure by which students are promoted from one grade level to the next, the standards by which schools and school districts are held accountable both financially and academically, the way in which schools and school districts report data to TEA, and the way in which the data are disseminated. The Education Commissioner gained several new powers under the bill. For the first time, the Commissioner will determine what it means to

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be college ready.

Third graders no longer must pass the state's achievement test to advance to the next grade. However, the bill keeps the requirement that fifth- and eighth-graders pass the state achievement exam to move to the next grade, and it requires the Commissioner to define what kind of instruction students must receive if they do not pass the test. HB 3 also provides high school students with more flexibility to pursue elective classes, expanding from three and a half credits to six. Consequently, high school students will no longer be required to take a health class. One less semester of physical education and two semesters of technology are also no longer required.

School Finance

Texas ranks 41st out of the 50 states and the District of Columbia in expenditures per student. In 2006 the average expenditure per student was \$7,561. The 81st Legislature passed HB 3646 (Hochberg) which substantially increased public school funding by \$1.9 billion, implemented a more equal school funding system, and increased teacher salaries. School districts will each receive at least \$120 per weighted student in average daily attendance. The bill guarantees every teacher a pay raise of at least \$800 with the expected average to be \$1,000 statewide. The amount of "recapture" of local revenue from high-wealth districts was reduced and the available funds will be distributed so that low-wealth districts, and others disadvantaged by current funding rules, will receive a proportionately larger share of new funding. However, to date Texas has used federal American Recovery and Reinvestment Act (ARRA) stabilization funds to cover HB 3646. The language clearly states that the pay increase portions of HB 3646 are contingent on federal funds received under the ARRA.

According to the Higher Education Coordinating Board, in fiscal year 2008 a total of 2,030 students received tuition waivers totaling \$4,134,826. SB 939 (Watson) increases the number of children in the conservatorship of DFPS who are eligible for the education tuition waiver to include those who are adopted at any age and those who have permanent managing conservatorship given or transferred to someone other than the parent if the date is on or before September 1, 2009. SB 939 also expands higher education assistance by raising the age these youths must enter higher education from age 21 to 25, and eliminates the requirement that the youth must enroll in higher education within three years of leaving care. Finally, SB 939 states what types of information, such as student demographics, academic achievement, and graduation rates, may be exchanged between the agency and DFPS and also provided to education research centers.

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Physical and Mental Health

Medicaid/Children's Health Insurance Program

Texas has by far the highest percentage of uninsured children at 24.6 percent compared to the national average of 15.3 percent. Of the approximate 1.4 million Texas children who lack health insurance, around 800,000 are eligible for the Children's Health Insurance Program (CHIP) or Medicaid but are not enrolled. HB 2962 (Coleman) and SB 841 (Averitt) both attempted to increase access to health coverage by proposing a CHIP buy-in option for families who cannot afford private healthcare premiums. In addition, HB 2962 would have improved the Health and Human Services Commission eligibility system performance standards, and it would have certified many Food Stamp cases for 12 months, which has no cost to the state and reduces the workload for the eligibility system. Neither bill passed.

Some families have an income level high enough to disqualify them from Medicaid benefits but low enough to prevent them from being able to fully pay for the medical care of a disabled child. This situation can result in the family choosing between food and healthcare for their child, a choice no one should have to make. The 81st Legislature passed SB 187 (Deuell), requiring the executive commissioner of the Health and Human Services Commission to develop and implement a Medicaid buy-in program for certain disabled children whose family incomes do not exceed 300 percent of the federal poverty level. The bill requires that participants pay monthly premiums on a sliding scale based on family income.

The 81st Legislature also addressed access to health coverage by passing HB 1630 (Naishtat) which will ensure children are assessed and that eligible children are enrolled in Medicaid and CHIP before they are released from the Texas Youth Commission and the Texas Juvenile Probation Commission.

Immunizations

Approximately 75 percent of Texas children receive on-time and age-appropriate immunizations. This is below the 77 percent national average. Although vaccination programs that target infants and children have dramatically reduced the prevalence of many serious diseases in the U.S., there is a great need to convey information and educate parents that the state immunization registry directly addresses. The 81st Legislature passed SB 346 (Nelson) which creates a lifespan immunization registry that Texans can opt to participate in after reaching the age of 18; and SB 347 (Nelson) which will allow Texas to transfer immunization records to other states in the event

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of a natural disaster or other declared emergency.

Nutrition and Childhood Obesity

Over the past 25 years, the prevalence of overweight American children between the ages of 6 and 19 has nearly tripled, with one third of children currently being overweight or at risk of becoming overweight. Texas is ranked sixth in the nation for childhood obesity, with over 25 percent of Texas children classified as overweight. One obstacle that many children in low-income families face is access to nutritious food. Several bills were introduced and passed in efforts to increase access to nutritious foods in school and out of school as well as increase awareness of nutrition and the importance of physical activity.

HB 1622 (Giddings) attempted to implement a children's access to nutritious food program for children at risk of hunger or obesity through nonprofits and food banks. The program would have provided access to nutritious food outside the school day. Although HB 1622 passed, funding was not appropriated.

Nutritional habits are developed early in life and should be instilled in children in various settings throughout the day, not just at school. SB 282 (Nelson) was passed and seeks to encourage nutrition education in early childhood and after-school environments and rewards achievements in school nutrition. The Department of Agriculture will develop a program that will award grants for best practices in nutrition education to public school campuses, including Head Start, and community and faith-based initiatives. Tackling the issues of early childhood health in Texas is difficult, because there are six state agencies that provide oversight of programs that serve children under the age of six. For these reasons, it was important for the state to develop a strategic coordinated plan to improve early childhood nutrition and activity. SB 395 (Lucio) creates a seven-member Early Childhood Health and Nutrition Interagency Council to develop an early childhood nutrition and physical activity plan with a recommended timeline for implementation over a six-year period.

The Texas Interagency Obesity Council is required to study existing nutrition and physical activity programs and requirements in early childhood settings and to consult with key stakeholders to identify barriers to improving related standards. The council has proven to be an effective means for coordinating and improving current health-related initiatives and should be directed to continue its efforts. With the passage of SB 870 (Lucio), the council's duties are expanded by requiring it to create an evidence-based public health awareness plan.

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Often times, school is the only environment in which children have access to safe physical activity and education. However, school curriculum and the definition of physical activity are inconsistent. SB 891 (Nelson) creates a consistent standard of physical education curriculum across the state and ensures that physical education curriculum is sequential and built upon from one year to the next. It also requires that at least 50 percent of the education class be used for actual student physical activity.

In efforts to increase access to fresh fruits and vegetables, the 81st Legislature passed SB 1027 (Watson) to establish an interagency farm-to-school coordination task force. The bill expands and coordinates current systems and creates mechanisms to facilitate local food purchases by school districts, expand food-focused experiential education, and assist farms and schools in overcoming barriers to increase the use of fresh fruits, vegetables, and health practices in school diets.

Mental Health

Studies show that one in five children and adolescents have a mental health disorder. Of youth in the juvenile justice systems, over 50 percent have at least one mental need and 20 percent experience significant functional impairment from serious mental illness. More than 50 percent of students with a mental disorder age 14 and older drop out of high school, resulting in the highest dropout rate of any disability group. The statistics are staggering and grasped the attention of the 81st Legislature. Consequently, there was an \$82 million funding increase for mental health services over the biennium bringing the total funding in the strategy to \$164 million. Community-based mental health services received \$50 million in appropriations through the Juvenile Probation Department for competitive grants. Data shows that it currently costs \$270 per day to service a juvenile in the TYC compared to \$175 for community-based mental health services. SB 1374 (West) passed and requires an evaluation of the effectiveness of community-based programs and cost analysis.

According to the Autism Society of America one of the fastest growing developmental disabilities is Autistic Spectrum Disorder (ASD), with the cost of care at around \$90 billion annually. The Autism Society of America estimates that the cost of ASD care could be reduced by two-thirds through early diagnosis and proper intervention. Although comprehensive treatment for children with autism has been proven to mitigate related complications, the associated costs are unaffordable to most Texans. Current law requires insurers to cover these expenses for autistic children between the ages of three and six. Additional coverage is needed to assist these children during a critical period of their development and to better prepare them

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for the transition to adulthood. HB 451 (Allen) passed, proposing to save the state money in long-term care costs and improve outcomes for autistic children by extending health insurance coverage for autism treatment from the time of a child's diagnosis through their ninth birthday. The 81st Legislature also passed HB 1574 (Thompson) which will establish a program to aid children and adults affected by ASD, as well as their families. The Autism Spectrum Disorders Resource Program will provide information, training, and aid to all who are touched by ASD.

Human Trafficking

Human trafficking is an issue that continues to affect Texas. It involves compelling individuals, through force, fraud or coercion, to perform labor or sexual acts. In short, it is modern-day slavery. There is both an international and a domestic side to the problem. International trafficking impacts foreign nationals within our borders and domestic trafficking primarily affects American children who run away from home. It is estimated that between 14,500 and 17,000 international victims are trafficked into the U.S. each year. Nationally, it is estimated that 450,000 children run away each year, and that approximately 1 out of every 3 of those children will be lured into sex trafficking within 48 hours of leaving home. Moreover, the average age of entry for those domestic victims is between 12 and 14 years old. Sobering statistics such as these require a strong response from the state.

In 2003, Texas became the first state to pass anti-trafficking legislation and since then, the state has continued to expand that body of laws. CHILDREN AT RISK, along with the offices of Senator Leticia Van de Putte, Representative Senfronia Thompson, and Representative Rafael Anchia drafted bills that address necessary changes to end human trafficking in Texas. Other advocates combating this issue include Concerned Women for America, Catholic Charities, the Houston Rescue and Restore Coalition, and the American Civil Liberties Union. Between the 80th and the 81st Legislative Sessions, the Office of the Attorney General issued a report on the state of human trafficking in Texas. The findings of that study educated legislators on the impact of this crime on Texas, as well as on the opportunities that exist for improvement. Charged with this new information, the legislature undertook sweeping change.

The greatest change came in the form of an omnibus bill, HB 4009 (Weber). This bill, which CHILDREN AT RISK helped to draft, mandated training for law enforcement officers. The training of law enforcement officers is a key element to combating human trafficking. Very often the victims themselves do not know that the treatment they are receiving is against the law

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and they rarely identify themselves as a “victim” to the officer. Officers are often on the front lines of the problem and if they are able to identify the victims, the victims’ chances for a rescue drastically improve. HB 4009 also created a statewide human trafficking task force in the Office of the Attorney General. This task force will develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes. Another function of the task force will be to provide one point of contact for the state. Doing so will allow Texas to become more organized on the state level, which not only will assist in prosecutorial and rescue efforts, but will also improve data collection. Finally, a centralized point of contact will also create a more unified front for Texas when dealing with federal partners.

The passage of HB 4009 also ushered in a new understanding of the domestic human trafficking problem that exists. The bill established an assistance program for victims of domestic human trafficking. Part of the program requires the creation of a database that includes the services that are available to domestic human trafficking victims. The bill also contained an outreach initiative to ensure that victims, judges, prosecutors, and law enforcement personnel are aware of the availability of services through the program. In addition, the bill created a grant program which will award funding to public and nonprofit organizations that provide direct assistance, such as housing, medical care and therapy, as well as indirect services, such as outreach, to domestic victims. However, because the grant program did not receive funding this year, the Health and Human Services Commission is charged to identify funding streams for the program. The Commission must report those findings to the 82nd Legislature by December 1, 2010. The bill also requires the Texas Juvenile Probation Commission to conduct a study on alternatives to incarceration for children who engage in acts of prostitution. Hopefully, by reviewing other successful “safehouse” models around the country, Texas can learn to avoid criminalizing these victims, and instead, place them in restorative facilities.

HB 4009 also created change to the statutory structure of Texas’ existing legislation. Previously, the compelling prostitution statute defined a minor as “under 17” years old, but the human trafficking statute included as a minor anyone “under 18”. Because compelling prostitution is the same as human trafficking from the sexual exploitation standpoint, the Legislature changed the age of minors in the compelling prostitution statute to be those “under 18”. In addition, the knowledge requirement was removed from the human trafficking and compelling prostitution statutes, in the case of minors. Based on this change, the prosecution no longer has to prove that the trafficker knew the victim was a minor. The higher penalty for trafficking a minor will attach regardless of what the trafficker knew. Finally, HB 4009 created a defense to a charge of prostitution for victims of human trafficking. For that reason, if a victim is charged with

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prostitution she can raise the defense that she was a victim of human trafficking to escape liability for the offense.

Another important piece of legislation to come out of the 81st Legislative Session was HB 533 (Anchia), which provided human trafficking victims with an avenue to sue their traffickers for monetary damages in civil court. The Legislature also passed HB 1372 (Shelton) which included human trafficking victims as a “victim” under Article 56.01(3) in the Texas Code of Criminal Procedure. This change will allow human trafficking victims to be eligible for the benefits and protections of the Victims' Bill of Rights and the Crime Victims' Compensation Act.

Finally, the 81st Texas Legislature passed three pieces of legislation that attacked sexually oriented businesses. HB 3094 (Harless) grants Harris County the authority to regulate, and potentially shut down, massage parlors that engage in “illegitimate” practices in the unincorporated areas of the county. The bill was enacted to reach massage parlors that were moving beyond Houston’s limits to escape the city’s ordinances regulating massage parlors. The bill defines an “illegitimate massage parlor” as one that allows: a nude or partially nude person to perform the massage; any individual to engage in sexual conduct in the establishment; or any individual to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual. Another bill was passed to require sexually oriented businesses to maintain certain photographic identification records. According to the bill, a sexually oriented business may not employ an individual younger than 18 years of age. These businesses must also keep records of valid proof of identification for all their employees or independent contractors and maintain the records for at least two years after the employee has stopped working at the establishment. Finally, HB 960 (Anchia) was passed to expand the ability of municipalities and counties to review the criminal background of applicants for sexually oriented business licenses. The Federal Bureau of Investigation currently will not allow municipalities and counties access to the National Crime Information Center (NCIC) criminal history record information without explicit state authorization. This bill grants municipalities and counties explicit authorization to access the Texas Department of Public Safety’s criminal history record information, which includes NCIC information. With access to this national database, Texas can now cross reference applicants’ records in other states before making the decision to grant them a sexually oriented business license.

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Child Welfare

An important bill passed by the Legislature is SB 1646 (Van de Putte) which established the Council on Children and Families. Prior to the passage of this bill, there was no single agency in Texas to coordinate the work of the ten state agencies and various local entities that provide services and funding to children and youth. The council was created to coordinate the state's health, education, and human services systems to ensure that children and families have access to much needed resources. Through analysis of the biennial legislative appropriations requests for services provided to children and their families, the council will release a biennial report identifying appropriations that could be modified in the next legislative appropriations request, thus helping to increase available services while eliminating waste.

Child Care

Texas law requires that the Texas Department of Family and Protective Services (DFPS) regulate all child care operations to protect the health, safety, and wellbeing of children in care. Applying standard licensing requirements to every type of child care program could be burdensome and could even possibly cause certain facilities to cease operation for failing to meet these requirements. As a result, DFPS exempts certain types of facilities, such as Boys and Girls clubs, from its child care facility licensing standards. On July 28, 2008, the Texas Attorney General issued an advisory opinion (No. GA-0649) which determined that DFPS did not have the authority to exempt certain types of facilities from child care licensure because exemptions for these types of facilities were not explicitly stated in the statute. As a remedy, SB 68 (Nelson) was passed, exempting from DFPS licensure certain child care facilities and child-placing agencies. The bill establishes definitions for before-school, after-school, and school-age programs and authorizes DFPS to recognize and treat certain facilities differently when promulgating minimum regulatory standards. In addition, SB 68 enhances the investigative rights of DFPS including allowing the publication notice of revocation of a facility's license on DFPS's website instead of in a newspaper in the county in which the facility is located.

Abuse

In 2008, 78 percent of clients of the Children's Advocacy Centers of Texas, Inc., were involved in sexual abuse cases. According to DFPS, a child's teacher or other school personnel is the most likely source of reports of child abuse and/or neglect. Therefore, it is imperative for teachers and school personnel to have the proper training to help them identify the signs of sexual abuse so that further abuse can be prevented and the victim can begin to receive proper

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rehabilitative care. HB 1041 (Parker) was passed, which increases awareness by requiring school districts to adopt and implement a policy addressing methods for increasing teacher, student and parent awareness of issues regarding sexual abuse of children, and counseling options for students affected by sexual abuse.

SB 2080 (Uresti) established the Texas Medical Child Abuse Resources and Education System grant program (MEDCARES) to award grants to hospitals or academic health centers for the purpose of developing and supporting regional programs to improve the assessment, diagnosis, and treatment of child abuse and neglect.

In 2007-2008, over 45,000 cases were filed in the Harris County family and juvenile courts. Due to the enormous caseload and lack of infrastructure capacity, the family courts are often unable to provide adequate relief to victims of domestic violence within the time limits set forth by the Legislature. SB 2217 (Ellis) was passed designating a district court, to be determined, as the domestic violence district court for Harris County. A significant benefit of this bill is that it requires the new domestic violence district court to give preference to domestic violence cases, including cases involving dating violence and family violence. This bill also requires the designated domestic violence court to provide timely and efficient access to emergency protective orders and other court remedies for victims of domestic violence.

Department of Family and Protective Services

Approximately 1,000 Texas youth aged out of the foster care system in 2008. Research shows that youth who transition out of foster care face many challenges which put them at greater risk of incarceration and homelessness. It is vital to their success to provide them with the services that will help them transition to independent living. HB 1912 (Rodriguez) expanded the population of transition-aged children in the permanent managing conservatorship of DFPS who would receive transitional planning services to age 14 or older, previously age 16 or older. The planning services include enrolling the youth in the Preparation for Adult Living program before the age of 16 and requiring foster care providers to provide or assist youth who are age 14 or older in obtaining experiential life-skills training. The bill also requires DFPS to ensure that each youth receives certain documents for personal identification, such as a birth certificate and social security card, on or before the date on which the youth turns 16 years of age.

HB 1151 (Thompson) requires DFPS to include training in trauma-informed programs and services in any training the department provides to foster parents, adoptive parents, kinship caregivers, and department caseworkers. Both SB 2080 (Uresti) and HB 1151 allow for

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extended adoption assistance, foster care payments, and permanency care assistance benefits for youth who meet certain higher education or employment criteria. The bills also establish the permanency care assistance program which will provide for the reimbursement of the nonrecurring expenses a kinship provider incurs in obtaining permanent managing conservatorship of a foster child.

More than 240,000 children in Texas are being raised in households with neither parent present. In order to be granted the right to act on a child's behalf, caregivers must often initiate costly court proceedings. To provide parents with a cost-effective means of giving specified authority to a caregiver, the Legislature passed SB 1598 (Watson) which requires DFPS to prescribe forms for a disclosure statement and authorization agreement that would allow a non-parent relative of a child to make certain decisions regarding the child. Both DFPS and the Texas Education Agency must make these forms available on their websites or provide copies to the public upon request without charge.

Vehicle Safety

According to the Department of Health and Human Services, motor vehicle injuries are the leading cause of death among children in the U.S. The Legislature passed SB 61 (Zaffirini), requiring a child younger than the age of eight years, unless the child is taller than four feet, nine inches, to be secured in a child safety seat when in a motor vehicle. Previously, a person operating a motor vehicle and transporting a child was required to secure a child under the age of five years and less than 36 inches in height. SB 61 also modifies the monetary costs for each offense.

Juvenile Justice

Adult Certification

In the 1990s, when crime reached its all time high, many states passed laws that allowed juvenile offenders to be tried and sentenced as adults, also known as adult certification. Texas was no exception. The goal of this legislation was to ensure that the most egregious offenders were not released back into society when they reached age 18. However, the majority of juveniles who are now being tried and jailed in the adult system are not violent offenders. In fact, recent years have been marked by a steady drop in juvenile crime, especially murder. Studies have consistently

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concluded that juveniles tried as adults are more likely to re-offend than those prosecuted in the juvenile justice system. Moreover, once they re-offend, they often commit more serious, violent offenses. For this reason, many states, including Texas, are reconsidering their laws on juvenile offenders.

Before the 81st Legislative Session, defense attorneys were provided with a minimum of *one* day to review the juvenile's file before the hearing in which the transfer decision is made. The Legislature felt the need for more time to review the juvenile's file in order for the decision to transfer to be better informed. CHILDREN AT RISK drafted and advocated for the bill that will achieve this goal. With the passage of SB 518 (Harris) both the defense attorney and the prosecutor will now have a minimum of *five* days to review a juvenile's file before this hearing. Because of this increased time, each attorney will be able to provide the judge with a more complete background of the child, including mental health needs, to ensure appropriate court placement. When children are unnecessarily transferred to adult courts, both the juvenile and taxpayers suffer. We hope, because of this new law, the number of juveniles who are certified as adults will decrease, and these adolescents can be diverted to less costly juvenile facilities where they will receive rehabilitative treatment, encounter less abuse, and become less likely to re-offend.

Sealing of Records

The 81st Legislature passed an important bill allowing juveniles to have their criminal records sealed sooner than the standard two years after the final discharge or last official action allowed by the Family Code. HB 2386 (Castro) will permit a juvenile court to seal the records of an offender who successfully completes a drug court program established by the Health and Safety Code, even if that program is completed less than two years after the last official action on the case. This bill incentivizes juveniles convicted of nonviolent drug offenses to seek treatment and complete a court program, ultimately making it easier for those juveniles to get their lives back on track.

Functions of TYC and Other Agencies and New Programs

The Texas Youth Commission (TYC) and the Texas Juvenile Probation Commission (TJPC) are two separate agencies responsible for juvenile offenders in the state. There has been much discussion to consolidate the two agencies by September 1, 2009, but with the passage of HB 3689 (McClendon) the two agencies will continue to operate as separate entities until 2011. The bill also made numerous revisions in the governance of the two agencies. Starting September 1,

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2009, TYC will be governed by a seven-member board appointed by the Governor, who will also designate the presiding officer of the board. TYC will be required to develop a plan to reduce recidivism and ensure successful reentry and reintegration into the community of juveniles released from the agency. HB 3689 also made changes to the operations of the Office of the Independent Ombudsman for TYC. There will no longer be an individual Sunset review for the Office and it will instead be reviewed together with TYC by the Sunset Advisory Commission for the 82nd Legislature. HB 3689 also continued operation of the TJPC until 2021, made changes to the composition of its governing board and advisory council, made a requirement for the agency to establish by rule funding formulas for money sent to local juvenile boards, and to coordinate with TYC to establish guidelines for community corrections pilot programs to divert certain non-violent youths from TYC. Because TYC and TJPC will continue to operate as separate agencies, TJPC will continue to focus on the front end of the juvenile justice system by ensuring there are core probation services throughout the state and by providing alternatives to state commitment. TYC will continue to focus on correctional facilities and youth on parole.

During the 80th Legislative Session, an important omnibus bill, SB 103 (Hinojosa) was passed which put in motion an overhaul of the juvenile justice system with a particular focus on juvenile correctional facilities and the TYC. Per recommendation of the Sunset Advisory Commission, a community corrections pilot program was created to target low-risk, juvenile felony offenders. This is consistent with the objective that TYC commitment should be reduced and institutional confinement be reserved for the serious cases of juvenile felony offenders. In the 81st Legislative Session, SB 1374 (West) was passed, creating a community-based corrections pilot program for juvenile felony offenders by the TJPC in consultation with TYC. This bill also requires the TJPC to report annually to the Governor and the Legislature on the operations and conditions of probation services in the state. This report will include an evaluation of the effectiveness of community-based programs and community corrections pilot programs, and information comparing the cost of a youth participating in these programs with the cost of committing a youth to TYC.

Foster Children under the Supervision of TYC

Many of Texas' most vulnerable youth are involved in both the foster care system and the juvenile justice system. Foster children receive numerous protections mandated by current law, including regular hearings to review whether the child's placement and services are appropriate. However, when a foster child is committed to TYC, these protections could end abruptly as the Family Code does not specifically address the issues of dual management. Before the 81st Session, the law did not provide any system of communication, coordination of services, or

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continuity of representation for foster children transferred between the systems. The law allowed the court to dismiss foster care cases when a child was committed to TYC because it did not address the processes to be followed in those cases. Foster children fell through the cracks of the system and lost the rights and protections previously provided to them. HB 1629 (Naishtat) was passed, addressing this issue and ensuring that services and relationships established in the foster care system continue for the child after the child's transfer to TYC. This bill mandates DFPS and TYC to communicate and coordinate services. The bill provides continuation of services for the youth, including a review hearing and uninterrupted representation and services, regardless of the placement of the foster child. This bill ensures that foster children receive the services they need so that upon exiting the system they can become independent, functioning, and productive adults in their communities.

Public Intoxication for Juveniles

HB 558 (Hernandez) made a significant change to the way juvenile cases related to alcohol are handled. Before the 81st Session, a juvenile could be prosecuted in justice and municipal courts for purchasing, possessing, or consuming an alcoholic beverage, or for operating a motor vehicle while having a detectable amount of alcohol in the juvenile's system. Juveniles could not be prosecuted in those courts for appearing in a public place while intoxicated. Instead, juveniles taken into custody for public intoxication were referred to the juvenile court system, where local policies and procedures often precluded the filing of a petition. HB 558 now authorizes a public intoxication offense committed by a juvenile to be filed in a justice or municipal court. This is consistent with the objective that children committing these offenses should be subject to rehabilitative services.

Procedural Changes to the Law

Juvenile proceedings alleging crimes are considered civil in nature, and the Family Code requires that the rules governing civil procedure are followed. However, these rules are not always a good fit, such as in motions for a new trial, because there is confusion over which rules should be used. HB 1688 (Castro) was passed, stating that Rule 21 of the Texas Rules of Appellate Procedure governs motions for new trials in juvenile cases. Rule 21 is a better fit because juvenile cases are more similar to criminal trials than civil ones. HB 1688 allows juveniles to receive more protections than under previous law because the timelines and rules regarding a new trial are clearer. Juveniles will therefore receive some of the same protections as adults concerning post-trial issues.

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Final Analysis

The 81st Legislative Session resulted in the passage of several important measures for Texas' children, and this is a hopeful indication that our children are becoming a greater public policy priority. Despite this success however, several key measures that would have resulted in much needed gains for Texas' children did not pass, and unnecessary delay tactics during the Session unfortunately left many important issues to be decided in the next session.

During this time of economic hardship felt throughout the state as well as the nation, it is imperative to ensure that children do not become economic casualties. Children must be at the forefront of public policy priorities in Texas, and this is especially true since Texas falls among the lowest in the nation in indicators of health, safety, and the most basic of needs.

The research conducted by CHILDREN AT RISK shows that the quality of life for Houston's children continues to require much improvement. Change is needed to provide greater access to healthcare, to hold accountability for our children's educational needs, and to address issues concerning their safety and overall wellbeing. Our children truly are our future, and improving the quality of life for our children today will benefit their lives as well as the community as a whole for years to come.

CHILDREN AT RISK applauds the advocates and policy makers who work diligently to help make children a priority in Texas. With their continued efforts we will work together to improve the lives of Texas' children.

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