

# Texas State Government Effectiveness and Efficiency

## Selected Issues and Recommendations



SUBMITTED TO THE 81ST TEXAS LEGISLATURE

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PREPARED BY LEGISLATIVE BUDGET BOARD STAFF

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## IMPROVE PROCESSING OF SPECIAL IMMIGRANT JUVENILE STATUS FOR FOSTER CARE YOUTH TO MAXIMIZE FEDERAL FUNDS

Children in Texas may receive child protection and related services from the Texas Department of Family and Protective Services without regard to their immigration status. Federal law requires that foster care services provided to these children be financed with non-federal sources. In fiscal year 2008, about 1 percent of the 28,094 children in the Texas foster care system were undocumented immigrants. These children may be eligible for Special Juvenile Immigrant Status, which can lead to legal permanent status. Matching Federal Funds then become available to cover a portion of their medical and foster care costs. Although the Texas Department of Family and Protective Services has policies and procedures to identify children in the foster care system who are undocumented, and to submit Special Immigrant Juvenile Status petitions, improvements to the current process are needed to maximize Title IV-E Foster Care and Medicaid federal funding.

From fiscal years 2007 to 2008, the Texas Department of Family and Protective Services filed at least 68 Special Immigrant Juvenile Status petitions on behalf of foreign-born children who are in long-term foster care. The state could realize additional Federal Funds by decreasing the time preparing and submitting petitions and legal permanent status applications using specialized staff. By providing the Texas Department of Family and Protective Services with staff to support the Special Juvenile Immigrant Status and other immigration-related processes, the state could net an estimated revenue gain of \$1.3 million in Federal Funds during the 2010–11 biennium.

### CONCERNS

- ◆ The preparation of Special Immigrant Juvenile Status petitions and legal permanent status applications may take as long as 12 months for some children in Texas Department of Family and Protective Services' long-term foster care due to inadequate staffing and procurement procedures that impede the completion of these applications. As a result, matching Title IV-E and Medicaid Federal Funds are not accessed expeditiously to save General Revenue Funds.
- ◆ The Texas Department of Family and Protective Services does not systematically track the legal status of children whose petitions and applications are approved, instead relying on conservatorship caseworkers to update the immigration status of these children and inform eligibility workers, which delays the access of federal matching Title IV-E funding.
- ◆ While the Texas Department of Family and Protective Services saves state General Revenue Funds by submitting requests to the U.S. Citizenship and Immigration Services to waive filing fees of legal permanent status applications, this additional step delays the ability to match Title IV-E federal funding for eligible undocumented children in long-term foster care by several months.
- ◆ Since 2003, 160 children in the Undetermined Immigration Status category have been emancipated from state foster care. A number of these children could have achieved Special Immigrant Juvenile Status if the county court's or district court's jurisdiction was extended past the age of 18, until the Special Immigrant Juvenile Status petition and legal permanent status application were approved by the U.S. Citizenship and Immigration Services.

### RECOMMENDATIONS

- ◆ **Recommendation 1:** Direct the Texas Department of Family and Protective Services to ensure all cases categorized as Undetermined Immigration Status are assigned to caseworkers who have experience with preparing Special Immigrant Juvenile Status petitions and legal permanent status applications.
- ◆ **Recommendation 2:** Direct the Texas Department of Family and Protective Services to work with the Health and Human Services Commission to require health maintenance organizations that provide care to children in foster care to contract with physicians approved by U.S. Citizenship and Immigration Services. The contracts should ensure access is provided to medical exams as needed to complete applications for legal permanent status filed on behalf of undocumented children in long-term foster care.
- ◆ **Recommendation 3:** Direct the Texas Department of Family and Protective Services to stop seeking fee waivers for filing fees associated with completing and filing legal permanent status applications.

- ◆ **Recommendation 4:** Decrease appropriations from General Revenue Funds to the Texas Department of Family and Protective Services for Strategy B.1.11, Foster Care Payments, by \$282,179 in fiscal year 2010 and \$279,965 in fiscal year 2011 and increase appropriations from Federal Funds to the agency for this strategy by \$282,179 in fiscal year 2010 and \$279,965 in fiscal year 2011. In addition, increase the number of full-time-equivalent positions by three to support the Special Immigrant Juvenile Status and other immigration-related processes at a General Revenue cost of \$149,759 in fiscal year 2010 and \$135,624 in fiscal year 2011 and a Federal Funds gain of \$27,115 in fiscal year 2010 and \$24,555 in fiscal year 2011 to Strategy B.1.1, CPS Direct Delivery Staff.
- ◆ **Recommendation 5:** Decrease appropriations from General Revenue Funds to the Health and Human Services Commission for Strategy B.1.2, TANF and Adults and Children, by \$371,552 in fiscal year 2010 and \$367,528 in fiscal year 2011 and increase appropriations from Federal Funds for this strategy by \$371,552 in fiscal year 2010 and \$367,528 in fiscal year 2011.
- ◆ **Recommendation 6:** Amend the Texas Family Code to extend the jurisdiction that county courts and district courts have over youth in foster care from age 18 to age 21, if Special Immigrant Juvenile Status petitions and legal permanent status applications have been filed.

## DISCUSSION

Under federal law, any abused or neglected child is eligible for short-term emergency medical care, shelter, or other services (including placement in foster care services within the child welfare system) necessary to address an emergency regardless of immigration status. In Texas, children may receive child protection services and related benefits without regard to their immigration status.

The federal government provides Foster Care (Title IV-E) federal funding to assist states in providing safe, appropriate 24-hour substitute care for children who are under the jurisdiction of the administering state agency and need placement and care outside their homes. Title IV-E funds do not subsidize all children in foster care; rather eligibility is determined by a set of criteria, including immigration status and income eligibility. Foster care services provided to

children who are undocumented must be financed with non-federal sources. According to the Texas Department of Family and Protective Services (DFPS), the state must meet specific standards and requirements to qualify for federal funding, including providing child welfare services statewide. DFPS reports that excluding a subset of the child population from protective services would not meet the federal requirement that Texas have a statewide system for child protection.

The Child Protective Services (CPS) Program at DFPS investigates reports of suspected abuse or neglect of children and takes action to protect abused and neglected children from further harm. Appropriations for child protective services for the 2008–09 biennium total \$2.1 billion in All Funds. The appropriation includes \$885.4 million in General Revenue Funds (42.6 percent). CPS relies heavily on Federal Funds from the Temporary Assistance for Needy Families (TANF) block grant program and the Title IV-E Foster Care and Adoption Assistance Programs, which together provide 49.3 percent of the appropriation.

### **FOREIGN-BORN CHILDREN IN THE TEXAS CHILD WELFARE SYSTEM**

The Urban Institute reviewed the cases of about 30,000 children in Texas who had been removed from their home due to abuse or neglect and placed in out-of-home care as of March 2006. According to the authors of *Title IV-E Funding: Funded Foster Care Placements by Child Generation and Ethnicity, Findings from Texas*, the research completed from the Urban Institute review focused solely on Latino children, because the vast majority of immigrants in Texas are Latino. The groups of Latino children studied were (1) foreign-born, (2) U.S.-born children from immigrant parents, and (3) children born of U.S.-born parents.

The Urban Institute's review made the following findings regarding the demographics of foreign-born children in Texas placed in foster out-of-home care settings:

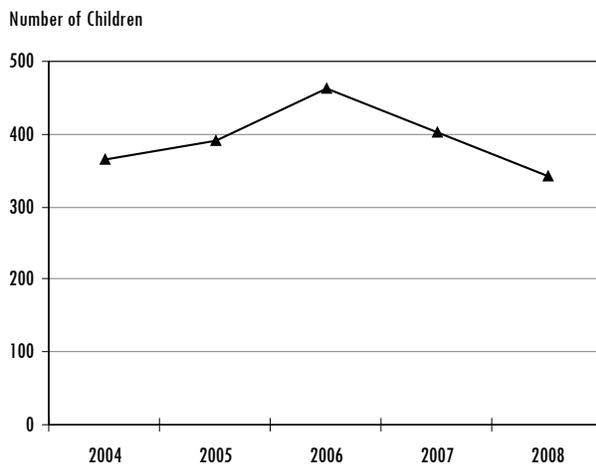
- In 2006, 1 percent of children in out-of-home care were foreign-born, compared with 7 percent in the state's general population.
- Only 5 percent of foreign-born children met eligibility requirements for Title IV-E funding.
- Foreign-born children in the Texas out-of-home care population were much older than other children. About three-quarters of the foreign-born children in care were adolescents (ages 11 to 18), compared with just one-third of U.S.-born children of immigrants.

- Fifty-nine percent of foreign-born children in the Texas out-of-home care population were female.

The review of placement settings and permanency planning in the child welfare case histories also determined differences between the groups of children. Children of immigrants in Texas were much less likely than children with U.S.-born parents to be placed with relatives, and their case goals were less likely to be associated with relatives. Only 8 percent of foreign-born children in care were living with relatives, compared with 20 percent of U.S.-born children of immigrants and 28 percent of children with U.S.-born parents. In addition, the report determined that foreign-born children were also significantly less likely to have a case goal of family reunification or relative adoption than other children. However, U.S.-born children with immigrant parents were just as likely to have these case goals as other children. The report concluded that foreign-born children are significantly more likely than other children to have a case goal of independent living.

In Texas, DFPS uses the Information Management Protecting Adults and Children in Texas (IMPACT) system as a case tracking and reporting system. Caseworkers are required to enter select identifying information, including a child’s demographic information, which includes mandatory fields such as citizenship status. For fiscal years 2004–06, the agency’s data shows an increasing number of children as having an Undetermined Immigration Status (see **Figure 164**). However, in fiscal year 2007 there was a decrease of 61 children with this status designation.

**FIGURE 164**  
**CHILDREN WITH UNDETERMINED IMMIGRATION STATUS IN DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES CARE, FISCAL YEARS 2004 TO 2008**



SOURCE: Texas Department of Family and Protective Services.

**SPECIAL IMMIGRANT JUVENILE STATUS**

The Federal Immigration Act of 1990 authorized a form of protection for children who are undocumented and who have been abused or neglected in the U.S. or abroad. These children can petition for Special Immigrant Juvenile Status (SIJS) which, if granted, prevents their deportation, provides immediate employment authorization, and begins the process for them to become U.S. citizens. Federal statute and regulations set out the eligibility requirements for SIJS. A child must meet the following criteria to be granted SIJS:

- be under the age of 21;
- be unmarried;
- be present in the U.S.;
- be declared dependent on a juvenile court located in the U.S. or placed under the custody of an agency or department of a state;
- be deemed eligible by the juvenile court for long-term foster care due to abuse, neglect, or abandonment; and
- be deemed by the juvenile court or administrative agency that it is not in their best interest to return to the home country.

A child who is in the custody of the U.S. Department of Homeland Security (DHS) must meet two other conditions to be granted SIJS. The Secretary of DHS must specifically consent to the jurisdiction of the juvenile court to determine the custody status or placement of a child. For children not in federal custody (the focus of this paper), express consent is automatically granted with the submission of an SIJS petition.

There are several conditions throughout the process a child must continue to meet to remain eligible for SIJS. The child must complete the entire process, including adjusting to legal permanent resident status before his or her 21st birthday. If the child does not adjust before his or her 21st birthday, the child will face the possibility of deportation. The child must remain dependent upon the juvenile court and eligible for long-term foster care until adjustment to permanent resident status is granted. In a situation where the court decides that the child is no longer dependent on the court or eligible for foster care (whether or not he or she is in foster care), the child will no longer be eligible for SIJS. The child cannot get married before adjustment of status is completed. Finally, the child must not get arrested, use illegal drugs, or leave the country.

**BENEFITS OF SPECIAL IMMIGRANT JUVENILE STATUS**

After petitioning for SIJS, the child is protected from deportation while the petition remains pending. Once SIJS is granted, eligible undocumented children in foster care may obtain a legal permanent resident card. These children are allowed to remain in the U.S. without the threat of deportation. Having a permanent resident card can enable children age 14 and older to work legally. Legal permanent residents are also eligible for some benefits provided by federal, state, and local governments. Additionally, legal permanent residents can apply for U.S. citizenship after five years. Children who have been in foster care or other residential care under the conservatorship of the DFPS are entitled to have their tuition and fees waived at any state-supported university, colleges, or vocational schools. However, other additional costs such as books, transportation, dormitory, lodging, or food expenses must be financed by the student. A student with legal permanent status may access federal financial assistance to pay for some of these expenses.

The State of Texas may be eligible for federal funds to support foster care for children who are legal permanent residents, but cannot claim federal reimbursement for them while they are undocumented. Foster care services for undocumented children must be paid with state and local funds. The federal government provides matching Title IV-E Foster Care Federal Funds to assist states in providing safe, appropriate, 24-hour substitute care for children who are under the jurisdiction of the administering state agency and need temporary placement and care outside their homes. Title IV-E funds may be used for payments on behalf of eligible children to individuals providing foster family homes, to child-care institutions, or to public or nonprofit child-placement agencies. Payments may include the cost of food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance (with respect to a child), and reasonable travel to the child's home for visitation. The federal-state match ratio for Title IV-E funds is the same as the Federal Medical Assistance Percentage (FMAP), which is 60.56 percent federal share in fiscal year 2008. The funding also provides for select administrative and training services, with a federal-state match ratio of 50:50 and 75:25, respectively. DFPS reported expenditures of \$3.4 million in General Revenue Funds for foster care services provided to undocumented children in fiscal year 2008.

Texas also received an estimated \$8 million in Federal Funds in fiscal year 2008 under the Chafee Foster Care Independence

Program. These funds assist states in establishing and carrying out programs that help foster youth likely to remain in foster care until 18 years of age and youth who have left foster care to make the transition from foster care to self-sufficiency. DFPS supports Texas' Preparation for Adult Living Services (PAL) with Chafee Foster Care program funds. Youth who participate in PAL services may be eligible to receive financial assistance (Transitional Living Allowance and Aftercare Room and Board) to assist them with living expenses once they age out of the foster care system. Children must be U.S. citizens, permanent legal residents, or other qualified alien status to be eligible for PAL Transitional Living Allowance and the Aftercare Room and Board services.

DFPS must ensure that children in its conservatorship receive medical care. Medical care is defined in state statute as physical, dental, behavioral, vision, and allied healthcare services such as physical therapy, occupational therapy, speech therapy, dietetic, and other health-related services. Undocumented children who are in foster care are provided healthcare coverage paid with General Revenue Funds (\$3 million in fiscal year 2008). Not only do children granted SIJS benefit from the status, but the State of Texas can also benefit by accessing federal Medicaid funding for those children. The Medicaid program provides basic healthcare for low-income citizens and people with chronic or long-term care needs, federally reimbursed at the FMAP rate.

**ESTABLISHING SPECIAL IMMIGRANT JUVENILE STATUS**

In most cases, three U.S. Citizenship and Immigration Services (CIS) applications must be filed for SIJS applicants (Form I-360, Petition for Special Immigrant; Form I-485, Application to Adjust Status; and Form I-765, Application for Employment Authorization). Although any person may complete the filings for an undocumented child seeking SIJS, the complexity of the documentation needed to support the applications requires an attorney or advocate with experience in immigration proceedings.

The I-360 Petition for Special Immigrant grants the child approval for a visa and must be determined before the child reaches the age of 21 and while the child is still dependent upon the juvenile court (in Texas, a child may remain dependent anywhere from age 18 to 21). The petition must include proof of the child's age and a copy of a juvenile court order finding that the following circumstances exist:

- The child is dependent on the state due to abuse, abandonment, or neglect.
- The child is eligible for long-term foster care.

- It is not in the child’s best interests to return to their country of origin.

Once a SIJS petition is approved, the child is automatically eligible for legal permanent status. SIJS-eligible children must adjust their visa to legal permanent status while still dependent upon the juvenile court, or they will become ineligible for legal status. Both the I-360 and the I-485 forms must be adjudicated before the child turns 21 and while the child is still under the jurisdiction of the juvenile court, which in Texas may end before age 21.

Most filings for children who are not in removal proceedings submit the I-360 and the I-485 forms simultaneously. For children not in removal proceedings, CIS has jurisdiction over adjudication of the I-485 form. The I-765 Application for Employment Authorization Document (EAD) can be submitted along with the I-485 application. Once the I-485 request is granted, the work permit is no longer necessary, nor valid.

There are several filing fee costs and expenses associated with the application for SIJS. There are no filing fees for the I-360 form for SIJS applicants. The total cost for filing the I-485 application for a child under the age of 14 is \$930, and \$1,010 for all others. See **Figure 165** for a list of the additional costs and expenses for supporting documentation submitted with the I-485 form. Once an I-485 form is submitted, the I-765 filing fee of \$340 is waived.

Federal law allows CIS to waive the filing fees of select applications based on an applicant’s inability to pay. However, there is no standard waiver request form for applicants. The CIS has provided guidance to local CIS offices on what criteria are used to determine an applicant’s inability to pay

**FIGURE 165  
SPECIAL IMMIGRANT JUVENILE STATUS  
APPLICATION ADDITIONAL EXPENSES,  
FISCAL YEAR 2008**

Native country passport
Medical exam
Original certified copy of juvenile court order
2 birth certificates or other evidence of his or her record of birth
2 certified English translations of birth certificate
4 passport-style photos
Certificates of disposition (if the child was ever arrested)
Transportation to and from attorney’s offices, court dates, USCIS appointments

SOURCE: Children’s Services department of the U.S. Conference of Catholic Bishops/Migration and Refugee Services.

filing fees. Before the I-485 application can be reviewed, the fee waiver request must be approved by CIS. According to the Children’s Services Department of the U.S. Conference of Catholic Bishops, waiver requests have been approved for SIJS applicants. However, the organization cautions that, depending on the local CIS office practice, waiver requests might delay the I-485 application approval process.

Although DHS I-360 application instructions direct that all I-360 petitions be mailed to a CIS secure post office box in Chicago, Illinois, some local CIS offices have their own procedures. For example, in Houston petitions may be filed at the local CIS office for children in removal proceedings, but all others are mailed to the Chicago address.

The local CIS office provides a notice of receipt and schedules an appointment to initiate an FBI background check with fingerprinting if an applicant satisfies the eligibility requirements for SIJS. The local CIS office staff then schedule an interview with the applicant to review the documentation and forms submitted. According to the Catholic Legal Immigration Network, the wait for the interview can vary from six months to three years depending on the local CIS office backlog or complexity of the case. The CIS staff may recommend approval of the case, request more information, or deny the case. Once the case is approved, the applicant receives a passport stamp that indicates temporary legal permanent status until they receive their permanent card. There is an appeal process in case of denial.

Federal law waives some requirements for SIJS applicants that other legal permanent status applicants must meet, such as the provision of proof that the applicant will not become a public charge. However, an SIJS applicant can be denied legal permanent status if he or she comes within grounds of inadmissibility (conduct-based actions). The SIJS applicant may request a discretionary waiver. Grounds of inadmissibility can be waived for certain immigrant juveniles:

- juveniles who have been involved in prostitution;
- juveniles who were convicted once as adults for possession of 30 grams or less of marijuana;
- juveniles who are HIV positive;
- juveniles who were deported and did not remain outside the U.S. for five years before returning;
- juveniles who committed fraud to enter the U.S. or to get a visa;

- juveniles who are alcoholics or have a mental or physical disorder that poses a risk to people or property;
- juveniles who are, or have been, drug addicts or drug abusers; and
- juveniles who helped other undocumented immigrants to enter the U.S. illegally.

There is a possibility that a waiver will not be granted. As a result, the SIJS application carries additional risk for children who fall under one of the above grounds of inadmissibility. There are some nonwaivable grounds of inadmissibility. A child who falls within one of these grounds and submits an SIJS application may be subject to deportation proceedings. There are two nonwaivable grounds of inadmissibility:

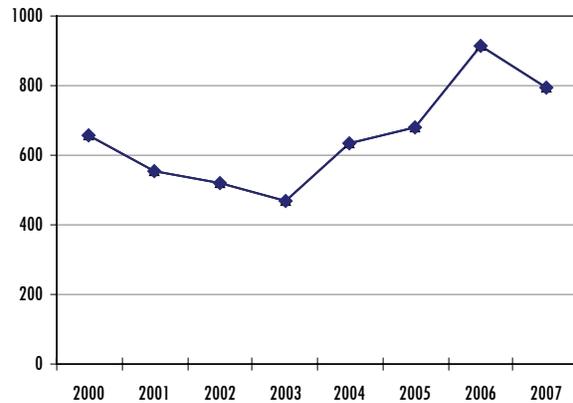
- if a person is convicted as an adult of a wide range of offenses or has made a formal admission of any drug offense; or
- if a person is considered by CIS to have been a drug trafficker.

The greatest risk to a child applying for SIJS is that if the petition is denied, DHS’ Immigration and Customs Enforcement (ICE) might attempt to remove or deport the child from the U.S. When a child files for SIJS, immigration officials become aware of the fact that the child is present in the U.S. illegally. If the SIJS petition and adjustment of permanent status application are denied, CIS might transfer the file to ICE, which could use that information to place the child into removal proceedings for deportation.

Across the country a relatively small number of undocumented minors are granted legal permanent status pursuant to the SIJS statute. According to the *Yearbook of Immigration Statistics* published by DHS, nearly 1.1 million immigrants were admitted for legal permanent residence in the U.S. in 2007. While approximately 26 percent of those admitted were under the age of 21, only 796 minors, or less than three-tenths of 1 percent of the total, were admitted as legal permanent residents pursuant to the SIJS statute. **Figure 166** shows that the total number of minors admitted pursuant to the SIJS statute has remained relatively static for the five-year period preceding 2005; there was a slight increase in 2006.

Despite the fact that SIJS is an option, currently there is no data available on how well this option has been implemented by states. Information gathered from the Los Angeles County Special Immigrant Status Unit indicates that Los Angeles County is responsible for a significant number of the legal

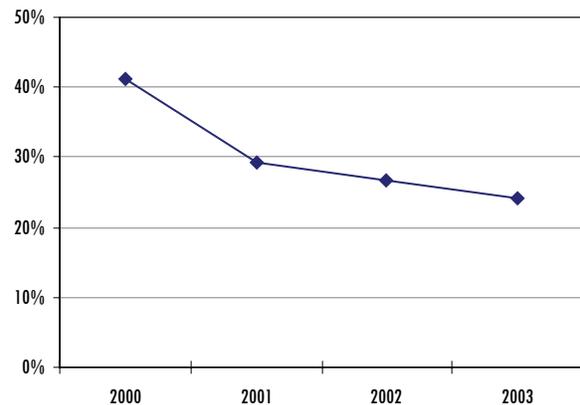
**FIGURE 166**  
NUMBER OF ADJUSTMENTS TO PERMANENT LEGAL STATUS TO UNDOCUMENTED MINORS, FISCAL YEARS 2000 TO 2007



SOURCES: Legislative Budget Board; U.S. Citizenship and Immigration Services, Office of Immigration Statistics.

permanent residence approvals for the past several years. **Figure 167** shows that Los Angeles County made up as much as 41 percent of the total number of legal permanent residents admitted pursuant to the SIJS statute in fiscal year 2000.

**FIGURE 167**  
PERCENTAGE OF ADJUSTMENTS TO PERMANENT LEGAL STATUS TO UNDOCUMENTED MINORS ATTRIBUTED TO LOS ANGELES COUNTY, FISCAL YEARS 2000 TO 2003



SOURCES: Legislative Budget Board; Los Angeles County Special Immigrant Status Unit.

According to an Annie E. Casey Foundation report published in 2006, *Undercounted. Underserved. Immigrant and Refugee Families in the Child Welfare System*, there is no reliable national data about the number of immigrant children who emancipate from the child welfare system without obtaining permanent residency. Most of the advocates interviewed by the authors claimed that local child welfare agencies, attorneys, and state juvenile courts have failed to inform

many eligible youth in a timely manner of the opportunity to apply for SIJS status.

### **SPECIAL IMMIGRANT JUVENILE STATUS MODELS IN OTHER STATES**

There are a variety of models in other states of systems for pursuing Special Immigrant Juvenile Status for children in foster care on which Texas could base improvements to its approach.

The Department of Children and Family Services (DCFS) in Illinois administers the state-run child welfare system. Within the DCFS, there is an Immigration Services Unit that is responsible on a statewide basis for helping caseworkers obtain legal permanent status for eligible foster children in the Illinois child welfare system. The unit is responsible for seeking:

- legal permanent status for foreign-born children and youth;
- citizenship status for qualified youth who are legal permanent residents;
- replacement of Legal Permanent Resident Cards;
- refugee status adjustment, stay of deportation, asylum or removal of conditional status; and
- assistance in obtaining birth documents from foreign consulates.

Pro bono attorneys in Illinois also have access to a resource developed by the National Immigrant Justice Center titled *Special Immigrant Juvenile Status in Illinois, A Guide for Pro Bono Attorneys*. In coordination with the Illinois Task Force on Unaccompanied Immigrant Children, the center created a document that outlines how to prepare and file SIJS petitions and how to assist undocumented children in foster care achieve legal permanent status.

In 2005, the Florida Legislature enacted legislation which clarified the requirements for seeking SIJS and legal permanent status for undocumented children who are in foster care. This statute directed Florida's Department of Children and Families or a community-based care provider to determine whether a child is a citizen of this country by the time of the first judicial review for the child. This legislation also provided guidance to the department, community-based care providers, and the courts as to the findings necessary to support a petition for SIJS and an application for legal permanent status. The department or the community-based care provider must seek SIJS status and permanent residency within 60 days after the entry of a

court order determining that such action is in the best interest of the child. The statute also authorized the courts to retain jurisdiction solely for the purpose of allowing time for the child's petition to be considered if filed before the child's eighteenth birthday.

A collaborative effort between child advocates, private practice law firms, and law school faculty made possible a resource on the SIJS process in Florida. The manual titled, *Florida: Special Immigrant Juvenile Status in Florida: A Guide for Judges, Lawyers, and Child Advocates*, provides an overview of the SIJS application process in Florida and highlights potential difficulties in the process.

The state of California is one of the 11 states that supervises a county-administered system of child welfare services. The Los Angeles Department of Children and Family Services is broken up into eight service planning areas. The Special Immigrant Status (SIS) Unit, which consists of one supervising children's social worker, four eligibility workers, and administrative staff, was started in 1988 and processed about 400 amnesty applications. In 1990, this unit began filing SIJS applications. The SIS Unit responsibilities include:

- processing all SIJS applications for the eight service planning areas in LA County;
- obtaining replacement of lost or stolen "green cards" for immigrant youth in the county;
- filing of USCIS work permits for children age 14 and older;
- filing for U.S. naturalization for eligible children; and
- assisting children to obtain a Social Security card and California ID under certain circumstances.

The SIS Unit has its own budget approved annually by LA County. The budget includes funding to pay for SIJS filing fees and associated expenses, which reduces the dependency on waivers that slow the process of approval of applications. The SIS Unit also receives funding to provide transportation for the children to attend meetings required by the CIS. In addition, each staff member in the SIS Unit is a county-certified translator. According to the director of the SIS Unit, having translators on staff reduces the reliance on securing outside translators for a variety of tasks related to SIJS petition filings (i.e., contacting foreign churches, schools, and governments). The SIS Unit has also used innovative tools to support SIJS petitions, such as bone scan tests to provide proof of age.

Since 2006, the SIS Unit has processed over 2,400 applications for legal permanent status which were approved by CIS, obtained over 300 replacement legal permanent status cards, filed over 200 applications for U.S. naturalization, and obtained over 600 CIS work permits.

There are some best practices that can be explored to improve the SIJS process at the Texas DFPS. The SIS Unit has fostered a relationship with the local CIS staff by holding quarterly meetings with CIS staff. SIS staff file SIJS applications in person at the local CIS immigration office. There is a one-day appointment for all SIJS cases where SIS Unit staff will take applicants and remain for their interviews.

LA County policies have also been developed to ensure that children are identified and assisted in achieving permanent legal status when they are in long-term care. The LA County SIS Unit must be notified when a permanency planning order is made, or if a permanency planning order has not been made but there is a great likelihood that it will be ordered in two to three months.

California state regulations require caseworkers to work with foster children on any concerns related to their immigration status. As part of a foster child's independent living plan, local child welfare caseworkers must teach an undocumented child how to acquire and receive a completed application for SIJS. In addition, state legislation was enacted requiring local child welfare agencies to submit reports before children age out of foster care that include verification that children have certain critical documents such as proof of citizenship or residence.

The SIS Unit provides systematic training of new case workers (Training Academy) on SIJS and other forms of immigration relief. The SIS Unit provides SIJS presentations at all regional offices and publicizes the SIJS process via email, flyers, and posters. To ensure that eligible foster children are identified, the SIS Unit reviews reports generated from the state Child Welfare Services/Case Management System that list the records of children born in other countries and cross-references this information with reports that list the children who are General Relief Ineligible (GRI). When a child is placed in foster care and is not eligible for Title IV-E Foster Care or for the Emergency Assistance Program funded by TANE, the child's foster care costs must be funded with county funds and are considered GRI.

In 2005, the California Legislature passed legislation requiring that a dependent child of the court who is not a legal permanent resident or citizen of the U.S. and for whom

the court has determined parental reunification is no longer an option, be provided an attorney specializing in immigration law who may pursue legal permanent resident status or citizenship for that child. Although the bill was vetoed by the governor, it might serve as model legislation to ensure that undocumented children in foster care are provided the resources to access SIJS.

The New York City Administration for Children's Services (ACS) has addressed the issue of undocumented children in foster care by convening a special Immigrant Issues Subcommittee Advisory Board composed of ACS personnel, community-based service providers and advocates. In 2004, with a grant secured from the Annie E. Casey Foundation, ACS created a special Director of Immigrant Services position to oversee policy and practice issues regarding immigrant families and to whom the Immigrant Issues Subcommittee Advisory Board reports. This subcommittee developed a handbook, *Immigration and Language Guidelines for Child Welfare Staff*, that provides child welfare staff with information on immigration status and agency policy on eligibility for immigrants and lists resources for immigrant families. Included in this list of resources is a comprehensive list of all the advocacy and law organizations that will provide information and assistance to undocumented children in foster care. While pro bono immigration and law services are secured for undocumented children in foster care, NYC's ACS reimburses contract service providers for the costs associated with filing SIJS petitions. ACS also provides specialized training to caseworkers on immigration status.

Estimates provided by the ACS's Director of Immigrant Services indicate that there are approximately 100 to 150 children in foster care that are involved in the SIJS petition process at any one time. There are about 50 children in New York City's ACS Foster Care system who receive SIJS each year. The approval time for SIJS petitions has improved from up to four years to one year, due to ACS staff and advocates raising concerns and working with the local CIS office.

A website created by students at the Child Advocacy/Immigration Clinic at Columbia Law School in New York City also serves as a resource for information on SIJS. This website provides the public with information about SIJS, including distinct sections of information for eligible youth, caseworkers, pro bono attorneys, and law guardians. The website provides sample immigration forms, sample letters with information about SIJS for undocumented youth to bring to his/her law guardian (the equivalent of the attorney ad litem in Texas), and provides video clips that are narrated

by youths in the New York foster care system who have been through the SIJS process.

### **RECENT FEDERAL ACTIONS**

Congress may consider legislation that would impact the SIJS process in the upcoming congressional session. House Resolution (HR) 6649, the Foster Children Opportunity Act, has been introduced and referred to the House Committee on Ways and Means. HR 6649 seeks to prevent undocumented children in the foster care system from missing the opportunity to change their immigration status by making the following state requirements:

- All children in the foster care system must be screened for eligibility under SIJS.
- Immigrant children must be assisted in obtaining legal permanent status under SIJS, or other appropriate provisions of immigration law.
- Juvenile courts and child welfare agencies must determine whether it is in a child's interest to file petitions or to appoint immigration counsel.

This proposed legislation would allow the use of Court Improvement Program funds training for judges and lawyers to assist SIJS-eligible foster children. Finally, technical assistance provided by the U.S. Department of Health and Human Services would be made available to child welfare agencies to carry out the provisions of this bill.

### **SPECIAL IMMIGRANT JUVENILE STATUS EFFORTS IN TEXAS**

In order to comply with Title IV-E federal funding requirements, DFPS caseworkers must determine the immigration status of children. Caseworkers must follow a four-step process to determine the child's immigration status as part of the foster care Assistance Application. According to the CPS handbook, caseworkers must assign one of the following four immigration status categories in the case record:

- U.S. Citizen;
- Permanent Resident;
- Other Categories of Qualified Alien; or
- Undetermined Immigration Status.

Caseworkers must first determine if the child is a U.S. citizen by collecting documentation such as a birth certificate from one of the 50 states or U.S. territories. **Figure 168** shows the additional steps and documentation needed to support the category selected for the child.

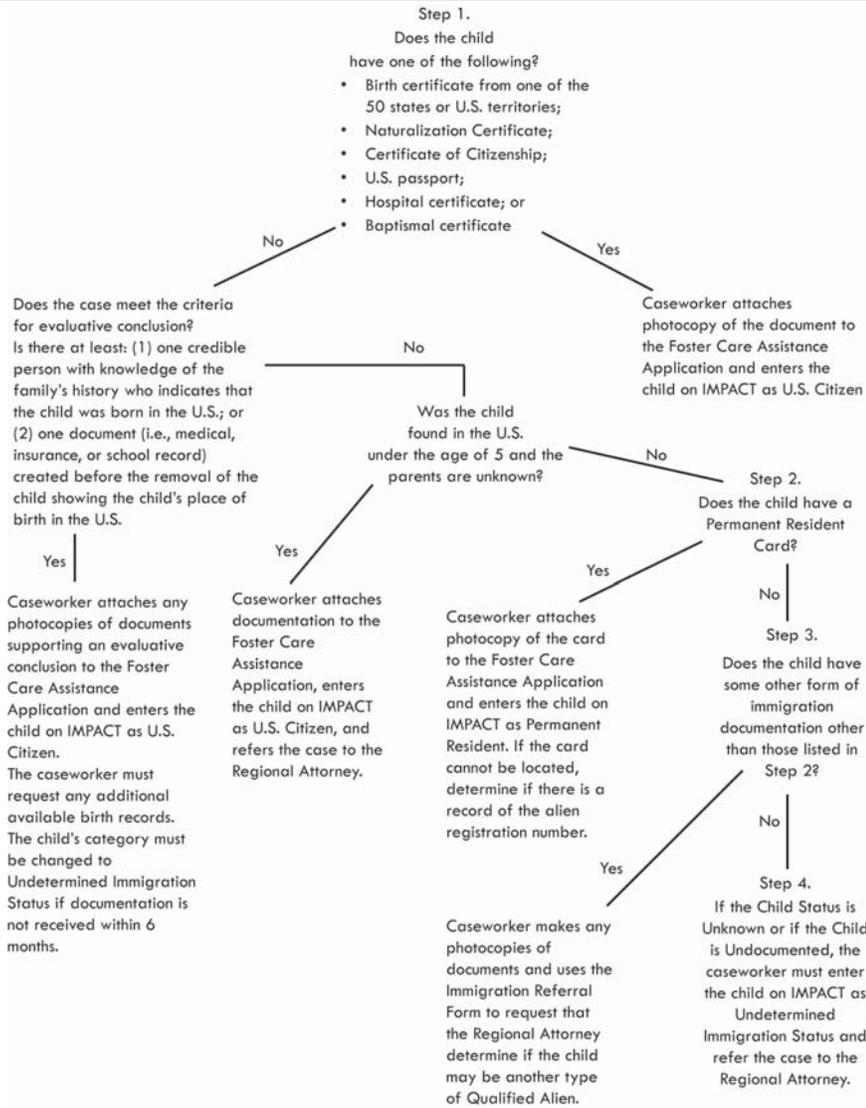
State policy directs caseworkers to monitor a child's immigration status to ensure that an eligible child has the opportunity to obtain legal permanent status. A caseworker must refer every case categorized as Undetermined Immigration Status to the Regional Attorney. DFPS caseworkers must also review the immigration status of every child with an Undetermined Immigration Status at every permanency planning meeting. The regional attorney must be immediately notified by the caseworker if the decision is made not to reunify a child with Undetermined Immigration Status with his or her family or the child turns age 16 or older (and the child will not be returning to the native country). Caseworkers must also assist in obtaining the information and documents needed for the SIJS petition and follow up the SIJS petition until it is approved. Once the SIJS petition is approved and legal permanent status is granted, the caseworker is responsible for notifying the Eligibility Specialist to change the immigration status category of the child. **Figure 169** shows the current process for a SIJS filing in Texas for a child in long-term foster care.

DFPS regional attorneys are responsible for most of the SIJS petition filings, which are in addition to their duties to assist regional staff and represent DFPS in court when other arrangements cannot be made. One DFPS regional attorney is assigned in each DFPS region to address immigration cases. There is also an attorney in the state office that is assigned primarily to assist DFPS regional attorneys with immigration cases. There are two DFPS regions that have pro bono attorneys assisting undocumented children with SIJS filings. According to DFPS, when particularly complex cases arise, DFPS attorneys consult with local immigration attorneys or, occasionally, refer a case to a private immigration attorney. DFPS regional attorneys also provide an overview of the SIJS process and other immigration relief opportunities in the legal component of the Core Basic Skills Development training for caseworkers.

### **CHALLENGES TO ACCESSING SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN IN TEXAS FOSTER CARE**

The SIJS process in Texas relies greatly on the caseworker to identify a child's immigration status, refer the case to regional attorneys, and monitor the child's immigration status improvements. Some DFPS staff and immigration advocates express concerns that this reliance on a caseworker who already carries caseloads exceeding nationally recommended levels might lead to failure to screen some children in foster care for SIJS eligibility or failure to update records regarding permanency planning outcomes. A review of Texas case

**FIGURE 168**  
**VERIFYING IMMIGRATION STATUS OF CHILDREN IN TEXAS FOSTER CARE SYSTEM, FISCAL YEAR 2008**



SOURCES: Legislative Budget Board; Texas Department of Family and Protective Services.

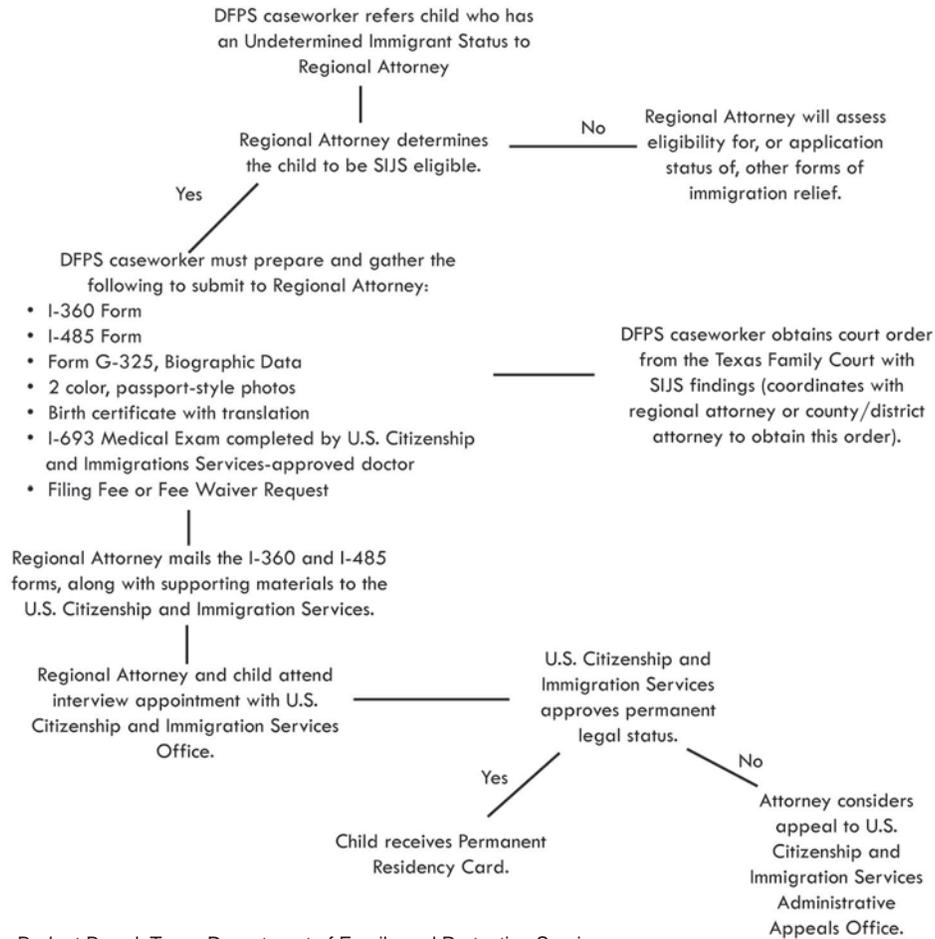
records by the Urban Institute in March 2006 shows that 24 percent of the case records of children in out-of-home placements did not include data for case goals, and this occurred primarily in counties with higher caseloads.

DFPS does not systematically track the number of children whose SIJS petitions are approved. The agency relies on the caseworker to update the child's immigration status to legal permanent resident. DFPS rules require the agency to reconsider a child's eligibility for foster care assistance whenever changes in the child's circumstances affect his eligibility for foster care assistance. According to DFPS, there are currently 259 foreign-born children in the conservatorship

of DFPS who are classified as Undetermined Immigration Status. Not all these children are eligible for SIJS; **Figure 170** shows that 79 have a permanency goal of returning to the family. There are 76 children who do not have family reunification as a permanency goal. DFPS reported that applications for SIJS are in progress. A total of 38 children have SIJS petitions filed with CIS.

According to some DFPS regional attorneys, there are caseworkers who have experience in preparing SIJS petitions, but it is more likely that a caseworker with no experience with SIJS petitions will have to gather all the information and documents needed to file a SIJS petition. DFPS staff and

**FIGURE 169**  
**CHRONOLOGY OF A SPECIAL IMMIGRANT JUVENILE STATUS CASE IN TEXAS FOSTER CARE SYSTEM, FISCAL YEAR 2008**



SOURCES: Legislative Budget Board; Texas Department of Family and Protective Services.

**FIGURE 170**  
**CHILDREN WITH UNDETERMINED IMMIGRATION STATUS**  
**AUGUST 2008**

STATUS	NUMBER OF CHILDREN
Permanency Goal of Returning to Family	79
Special Immigrant Juvenile Status Petitions Filed	38
Permanency Goal is not Family Reunification	76
Not Eligible for Special Immigrant Juvenile Status	5
On Runaway Status	6
Case Record needs to be updated to reflect Legal Permanent Residents or U.S. Citizens	15
Immigration Status Pending	40
<b>TOTAL</b>	<b>259</b>

SOURCE: Texas Department of Family and Protective Services.

advocates reported that some caseworkers do not prioritize the gathering of supporting documents for SIJS petitions and in some instances will rely on a guardian ad litem or even

the child to complete the applications. Survey results gathered by LBB staff indicated that the time it takes to prepare a SIJS petition or legal permanent status application varies from 3 months to 18 months. Recommendation 1 directs DFPS to ensure all cases categorized as Undetermined Immigration Status are assigned to caseworkers who have extensive experience with resolving immigration issues.

The SIJS process in Texas is also supported by DFPS border liaisons located in three DFPS regions. Border liaison responsibilities vary across regions but may include the following:

- coordinating with CPS' counterpart agency in Mexico, Sistema Nacional para el Desarrollo Integral de la Familia (DIF);
- working with the U.S. Consulate in Mexico and the Mexican Consulate in Texas regarding child abuse or neglect and repatriation issues;

- assisting in locating children, parents and relatives in Mexico as part of a DFPS investigation;
- facilitating requests for home studies and psychological evaluations of Mexican nationals who are possible placements for children in DFPS care;
- requesting supervision from DIF for children placed in Mexico;
- assisting in acquiring birth, death and marriage certificates from Mexico; and
- assisting with making child abuse or neglect referrals to Mexico. Even if the reported victim of abuse/neglect child is now in Texas, a request is made to DIF to ensure safety of any other children in the care of the alleged perpetrator.

Border liaisons are not full-time staff positions, rather additional assignments to current staff. The border liaison for Region 11, which includes the Rio Grande Valley and Corpus Christi, is a program director with several CPS units under her supervision. The Region 10 (which includes El Paso) border liaison works part time and is available after hours to assist CPS staff with immigration issues. The Region 8 border liaison for the San Antonio area (which includes Eagle Pass and Victoria) also is responsible for carrying a workload of CPS investigations and may be called for after hours emergencies once every five weeks. DFPS staff involved in SIJS petition filings reported that the preparation of SIJS petition filings is hindered by having to balance these activities with other responsibilities.

Advocates have reported that another challenge that delays the submission of SIJS petitions and legal permanent status applications (I-485) is obtaining funds from DFPS for the filing fees and additional supporting documentation required by CIS (i.e., medical exam and biometric fees). Medical exams and fingerprinting fee expenses cannot be waived by CIS. A medical exam must be performed by a CIS-approved physician. The physician must complete the I-693 form after examining the child for any communicable diseases and ensuring that the child is up to date on vaccinations. Medical exam costs may range from \$200 to \$250; and if additional services (e.g., x-rays, vaccinations, etc.) or follow-up visits are required, the cost will be higher. DFPS advocates surveyed reported that in most cases a medical exam cannot be scheduled until the cost of the initial exam is paid to the physician. In one instance, a pro bono attorney had to seek a court order in order to receive the funds from DFPS. This delay prevented the submission of the I-485 application by

four months. The cost for the biometric fees is \$80, and the process to receive these funds may also take several months. DFPS staff must complete a purchase order in order to cover the costs of the medical exam, but the medical exam cannot even be scheduled without paying for the cost of a basic medical exam.

The Health and Human Services Commission (HHSC) has contracted with a Health Maintenance Organization (HMO) to implement a comprehensive statewide system to meet the medical and behavioral health needs of children in the foster care system. The STAR Health Program provides every child in foster care a primary care provider to oversee and coordinate his or her care. Recommendation 2 directs DFPS to work with HHSC to require the HMO to contract with CIS-approved physicians for providing access to medical exams that are needed as part of the legal permanent status applications filed on behalf of undocumented children in long-term foster care.

DFPS policy allows caseworkers to request court-related services if the service is legally necessary and appropriate for the well-being, safety, or permanency of the child. Included in the description of court-related services is providing for SIJS, U.S. Citizenship, or CIS fees. Caseworkers must verify with the regional attorney handling the immigration issue for the child that the fee is legally necessary for the SIJS process. The source of funds will be from the county welfare board or DFPS. According to agency staff, fee waivers are requested in most cases. CIS directs field office staff to adjudicate fee waiver requests within five business days of their receipt; however, the submission of a fee waiver request may add months to the I-485 application review process. In addition, a receipt notice from the CIS office is not available for I-485 applications if it is submitted with a fee waiver request. This makes it difficult for DFPS staff to contact CIS to determine the status of the I-485 application. Recommendation 3 directs the Texas Department of Family and Protective Services to stop seeking fee waivers for filing fees associated with completing and filing legal permanent status applications.

#### **ENHANCE RESOURCES FOR SPECIAL IMMIGRANT JUVENILE STATUS AND IMMIGRATION-RELATED CASES**

In recent years, CPS has hired subject matter experts to assist caseworkers conducting investigations. These subject matter experts include: child safety specialists with expertise in assessing risk and safety, law enforcement liaison staff, nurses, youth specialists, legal liaison staff, substance abuse experts,

and investigation screeners who provide additional review when CPS reports are received. Hiring subject matter experts in immigration (SIJS and other immigration reliefs) to support the SIJS and legal permanent status application process in the Texas foster care system would reduce some of the delays in preparing applications. In addition, directing DFPS to pay for the filing fees would expedite approval time of legal permanent status applications by the CIS and enable DFPS staff to follow up on pending applications.

The 3 full-time equivalents could be hired to replace part-time border liaisons, support the SIJS process, and make improvements such as the following:

- identify and foster relationships with local SIJS CIS officers to expedite approvals of SIJS petition and legal permanent status;
- develop agreements with more Central American consulates that would lead to quicker turn around time for birth certificates, home studies, etc.;
- increase collaboration with immigration advocates, lawyers, and stakeholders who may volunteer pro bono services;
- review IMPACT reports on children who are listed as having an Undetermined Immigration Status and compare to reports of children who are funded by state-paid foster care assistance;
- provide in-depth training on SIJS and other forms of immigration relief; and
- develop a manual to distribute to family courts to increase awareness of SIJS petitions.

Recommendation 4 would decrease appropriations from General Revenue Funds to the Texas Department of Family and Protective Services for Strategy B.1.11, Foster Care Payments, by \$282,179 in fiscal year 2010 and \$279,965 in fiscal year 2011; and increase appropriations from Federal Funds to the agency for this strategy by \$282,179 in fiscal year 2010 and \$279,965 in fiscal year 2011. In addition, Recommendation 4 authorizes an increase in the number of full-time-equivalent positions for the agency by three to support the Special Immigrant Juvenile Status and other immigration-related processes at a General Revenue cost of \$149,759 in fiscal year 2010 and \$135,624 in fiscal year 2011, and a Federal Funds gain of \$27,115 in fiscal year 2010 and \$24,555 in fiscal year 2011, to Strategy B.1.1, CPS Direct Delivery Staff.

Recommendation 5 would decrease appropriations from General Revenue Funds to the Health and Human Services Commission for Strategy B.1.2, TANF and Adults and Children, by \$371,552 in fiscal year 2010 and \$367,528 in fiscal year 2011 and would increase appropriations from Federal Funds to the agency for that same strategy by \$371,552 in fiscal year 2010 and \$367,528 in fiscal year 2011.

In Texas, juvenile matters are heard in district or county courts across the state, making them the appropriate court that can make the findings of eligibility for long-term abuse, neglect, or abandonment. According to the Supreme Court Task Force on Child Protection Case Management and Reporting, there are over 350 judges in 254 counties that have jurisdiction to hear child protection cases. Although there is no specific state statute that terminates court jurisdiction of foster care children at the age of 18, many judges will end the court's jurisdiction when the child ages out of foster care (at the age of 18 or 21 in certain conditions).

According to DFPS staff, in fiscal year 2008 there were 30 children that had an undetermined status who aged out of foster care. **Figure 171** shows that a total of 160 of children aged out of foster care with Undetermined Immigration Status during the last six years. There are several reasons why these children might not have had their immigration status resolved before aging out of foster care. The reasons provided by DFPS staff include the following:

- The child's case record was never updated to reflect the most current immigration status (i.e., the child might not be undocumented or may have obtained SIJS status).
- The child's permanency planning goal still included family reunification.

**FIGURE 171**  
**CHILDREN WITH UNDETERMINED IMMIGRATION STATUS WHO EMANCIPATED, FISCAL YEARS 2003 TO 2008**

FISCAL YEAR	TOTAL CHILDREN EMANCIPATED	CHILDREN WITH UNDETERMINED STATUS WHO EMANCIPATED
2003	947	25
2004	1,084	20
2005	1,189	24
2006	1,366	36
2007	1,411	25
2008	1,332	30

SOURCE: Texas Department of Family and Protective Services.

- The child is on runaway status.
- The child is ineligible for SIJS due to criminal offenses.
- The child’s SIJS application is pending.

Federal law and regulation allow for a child to be granted SIJS and legal permanent status until the age of 21.

DFPS implemented rule changes in September 2006 to allow youth to stay in extended foster care from age 18 to the end of the month they turn 22, if they are enrolled in and regularly attending high school. Previously, youth had to graduate before turning 20. Rule changes also allow youth to remain in extended foster care from age 18 to the end of the month they turn 21, if they are enrolled in a vocational or technical education program. The age limit previously had been up to age 19.

Recommendation 6 proposes to amend the Texas Family Code to allow courts to extend foster care for children who have SIJS filings and legal permanent status applications pending with CIS. There might be a minimal fiscal impact to extending foster care past the age of 18 to children with pending applications. Eligibility for Title IV-E ends at age 18, unless a child is expected to graduate from a secondary educational institution (or an equivalent vocational or training program) by age 21. Thirty children aged out of care in fiscal year 2008 with Undetermined Immigration Status. Assuming a subset of these children may have filed SIJS petition and legal permanent status applications, matching Title IV-E federal funding would be available for those children under the age of 21 who were pursuing higher education degrees.

**FISCAL IMPACT OF THE RECOMMENDATIONS**

As shown in **Figure 172**, the recommendations in aggregate would result in a savings of \$1 million in General Revenue Funds during the 2010–11 biennium. Recommendations 1, 2, and 3 would not have a fiscal impact, as they could be accomplished within DFPS’ current agency resources.

Recommendations 4 and 5, combined, would result in a revenue gain of \$1.4 million to Federal Funds during the 2010–11 biennium (\$0.6 million in foster care and \$0.8 million in Medicaid). This report assumes that the General Revenue Fund savings of \$1.3 million for the 2010–11 biennium would be reduced by the costs required for the addition of two Program Specialists and one Attorney beginning in fiscal year 2010. Title IV-E federal funding would be available to cover a portion of these salary costs. The additional staff would decrease the time for preparing and submitting SIJS petitions and legal permanent status applications.

Ensuring access to medical exams under the STAR Health managed care system would enable DFPS staff to submit SIJS filings and legal permanent status applications more quickly to mitigate some of the delays in accessing Title IV-E funding.

Recommendation 6 would have minimal fiscal impact during the 2010–11 biennium. The fiscal impact of implementing Recommendation 6 cannot be estimated due to data limitations on the number of children with pending applications when aging out of foster care.

The introduced General Appropriations Bill for the 2010–11 biennium does not address these recommendations.

**FIGURE 172**  
**FIVE-YEAR FISCAL IMPACT OF RECOMMENDATIONS**

FISCAL YEAR	PROBABLE SAVINGS IN GENERAL REVENUE FUNDS	PROBABLE REVENUE GAIN/ (LOSS) IN FEDERAL FUNDS	PROBABLE COST IN GENERAL REVENUE FUNDS	CHANGE IN FULL-TIME EQUIVALENTS FROM FISCAL YEAR 2009
2008	\$653,731	\$680,846	(\$149,759)	3
2009	\$647,493	\$672,048	(\$135,624)	3
2010	\$647,493	\$672,048	(\$135,624)	3
2011	\$647,493	\$672,048	(\$135,624)	3
2012	\$647,493	\$672,048	(\$135,624)	3

SOURCE: Legislative Budget Board.