

Report of the Ombudsman for Children and Youth in Foster Care

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Executive Summary

In fiscal year 2021 (FY21), the HHS Foster Care Ombudsman (FCO) resolved 569 complaints from youth. Of these complaints, 273 were substantiated, 289 were unsubstantiated, and 7 were unable to be substantiated (there was not enough evidence to make a finding).

The five most common reasons for complaints by order of frequency were:

- Rights of Children and Youth in Foster Care (162);
- Case Recording (80);
- Other (51);
- The Placement Process (44); and
- General Caseworker Duties (39).

The report details recommendations for addressing issues that have been identified by FCO's investigation of complaints by youth and children in foster care. [The](#) report also documents the results of FCO recommendations from the past year, reports on efforts to outreach to youth during the COVID-19 pandemic, and recaps planned activities for FY22.

1. Introduction

[Senate Bill 830, 84th Legislature, Regular Session, 2015](#) (S.B. 830), established FCO to serve as a neutral party in assisting children and youth in foster care with complaints regarding programs and services within the Department of Family Protective Services (DFPS) and Health and Human Services system (HHS).

The bill requires FCO to publish an annual report of its activities each December. The law specifically requires the following elements be addressed in this report:

- A glossary of terms;
- A description of FCO's activities;
- A description of trends in complaints, recommendations to address them, and an evaluation of the feasibility of those recommendations;
- A list of DFPS and HHSC changes made in response to substantiated complaints;
- A description of methods used to promote FCO awareness and a plan for the next year; and
- Any feedback from the public on the previous annual report.

Table 1 in Appendix A identifies the agencies, their respective divisions or units, and functions that may be reviewed in FCO's complaint investigations.

2. Background

FCO began taking calls from children and youth on May 2, 2016.

Health and Human Services (HHS) Office of the Ombudsman (OO) staff worked with DFPS and external stakeholders to outline FCO administrative rules and standard operating procedures. Formal administrative rules for FCO were finalized January 13, 2017, updated January 10, 2019 and can be viewed on the [Texas Secretary of State](#)'s website. Contact and general information about FCO can be accessed through the [HHS](#) website.

FCO strives to adhere as closely as possible to the professional standards for governmental ombudsmen set out by the United States Ombudsman Association (USOA). These standards are independence, impartiality, confidentiality, and credible review process.

FCO's independence is assured by the enabling statute that created the office separate from the agency that has program responsibility for services. With the implementation of [House Bill 5, 85th Legislative Session, 2017](#), (H.B. 5) a portion of DFPS's regulatory power was moved to the HHS system, where FCO also resides. However, FCO is part of the HHS OO and is organizationally structured outside the chain of command of all program areas. The HHSC Regulatory Services Division (RSD) houses Residential Child Care Regulation (RCCR) and reports to the Executive Commissioner through a different chain of command.

The FCO is required in its enabling statute to serve as a "neutral party" in assisting children and youth with complaints. This neutrality is best understood by the USOA's concept of impartiality:

The ombudsman is not predisposed as an advocate for the complainant nor an apologist for the government, however the ombudsman may, based on investigation, support the government's actions or advocate for the recommended changes ([USOA Governmental Ombudsman's Standards](#)).

Impartiality is achieved through the strict process by which FCO reviews DFPS policy and HHS minimum standards and assesses how the policies are applied in each complaint brought by a youth.

FCO staff carefully compare each complaint with the agencies' policies so that findings directly relate to whether those policies and minimum standards were followed.

All complaints are documented as substantiated, unable to substantiate or unsubstantiated and reported to the respective agency. Recommendations are based on adherence to policy and made with the goal of improving services for children and youth in foster care. Recommendations are shared and agencies are given a chance to respond. Responses are included in this report.

The FCO statute requires that all communication with FCO is confidential. FCO must secure the consent of the youth before any information can be shared with any entity, including DFPS.

Statutory language authorizes FCO access to all agency records to ensure that investigations are thorough and complete. FCO staff must have prior DFPS work experience so that they are qualified to make informed findings and recommendations when responding to complaints from foster youth. FCO staff are required to take trainings in order to stay up to date on DFPS policy and HHS minimum standards and practices.

3. Foster Care Ombudsman Work

Youth may contact FCO by phone, fax, mail, or online submission. FCO staff follow up with youth within one business day of the date of contact, and then at least every five business days thereafter, until the case is closed. FCO staff maintain a record of all inquiries and complaints in a tracking system, the HHS Enterprise Administrative Report and Tracking System (HEART).

Each case is reviewed to determine if DFPS policy and HHS minimum standards were followed. FCO staff review all available information about a case through inquiry into DFPS and HHS case management systems, including Child Care Licensing Automated Support System (CLASS) and Information Management Protecting Adults and Children in Texas (IMPACT). Applicable policies include federal and state law, administrative rules, program handbooks, contracts, and internal program policies and procedures including DFPS and HHS Human Resources Policy Manual and Guidance Handbook.

Pursuant to legislative direction established in S.B. 830, if FCO staff discovers a violation of DFPS policy or HHS minimum standards not included in the youth's original complaint, they are required to open a new investigation for each violation; each violation is entered into the existing HEART case as a new complaint.

After review of available systems to determine a resolution of a complaint, FCO staff request a response from appropriate DFPS or HHS program staff, if the youth has authorized discussion of their case. In the case of youth served under the Community Based Care model, this may include responses from the SSCC. This response is included in the HEART case record for each complaint.

Upon completion of a case, a written response is provided to program staff outlining policies and minimum standards reviewed, all policies or minimum standards investigated, and if the allegations were substantiated or not, along with any recommended corrective actions. Program staff are requested to respond with a summary of actions taken in response to the FCO finding. Any response received by program staff is also included in the HEART case record for each complaint.

A written response is provided to the youth, if requested, including a description of the steps taken to investigate the complaint and a description of what FCO found as a result of their investigation. If a complaint is substantiated, the youth is also given a description of the actions taken by DFPS or HHSC in response to that finding.

If a complaint is not substantiated, the youth is given a description of additional steps they can take to have someone review their concern (e.g., speak to their Court Appointed Special Advocate (CASA) or to the judge assigned to their case). If the FCO is unable to substantiate a complaint, they will refer the complaint to the appropriate area for further review, if warranted.

During its review of complaints, FCO reviewed the following resources to determine if policy violations occurred:

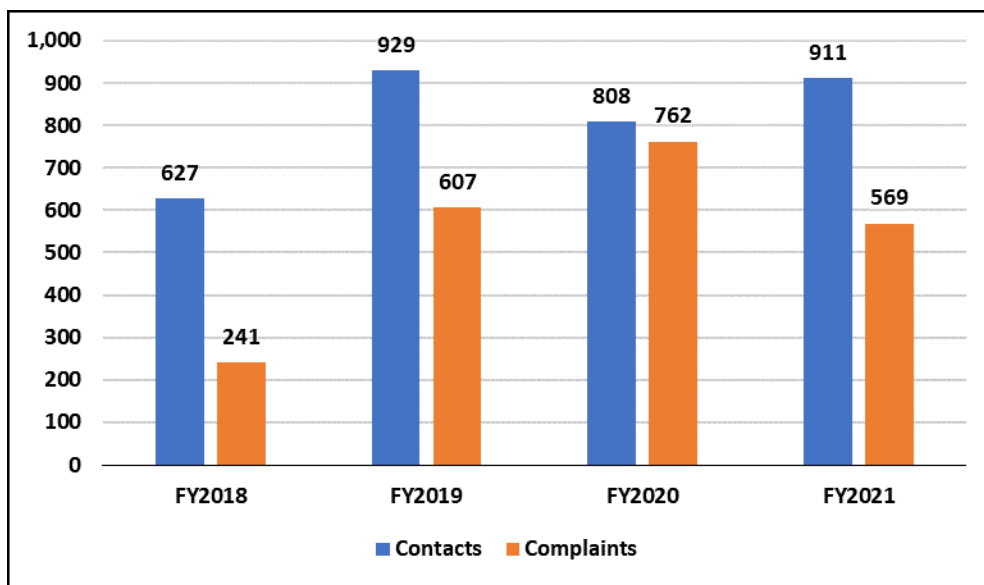
- CPS Handbook;
- Texas Administrative Codes (TAC);
- DFPS Human Resources Manual (HR) Standard of Conduct/Work Rules; and
- CPI and Community Based Care policy.

4. Contacts and Complaints

Inquiry and Complaint Data

There was an overall increase in contacts in FY21. The total contacts increased by 13% (from 808 in FY20 to 911 in FY21). Most contacts were made by phone or via online submission. Inquiries included calls from youth who called to inquire about rights, services, or to request contact information for other resources. Figure 1 below compares the contacts received in the last four fiscal years.

Figure 1: Historical View of Contacts and Complaints Comparison



FCO resolved 569 complaints in FY21. This is a decrease of 25% from 762 in FY20 to 569 in FY21. The decrease in complaint data may be attributed to temporary restrictions due to the public health emergency (PHE) which limited FCO's staff outreach efforts. Note: the total complaints include multiple complaints by individual youth and violations identified by FCO staff not included in the youth's original complaint (required by S.B. 830).

Of the 911 contacts received in FY21, 196 were from children and youth in foster care. Since FCO is authorized by statute (S.B. 830) to accept complaints exclusively from children and youth in foster care, the remaining 715 contacts from others (such as family members) were referred to the DFPS Office of Consumer Affairs.

Figure 2 below shows the disposition of complaints for FY21.

Figure 2: Disposition of Complaints

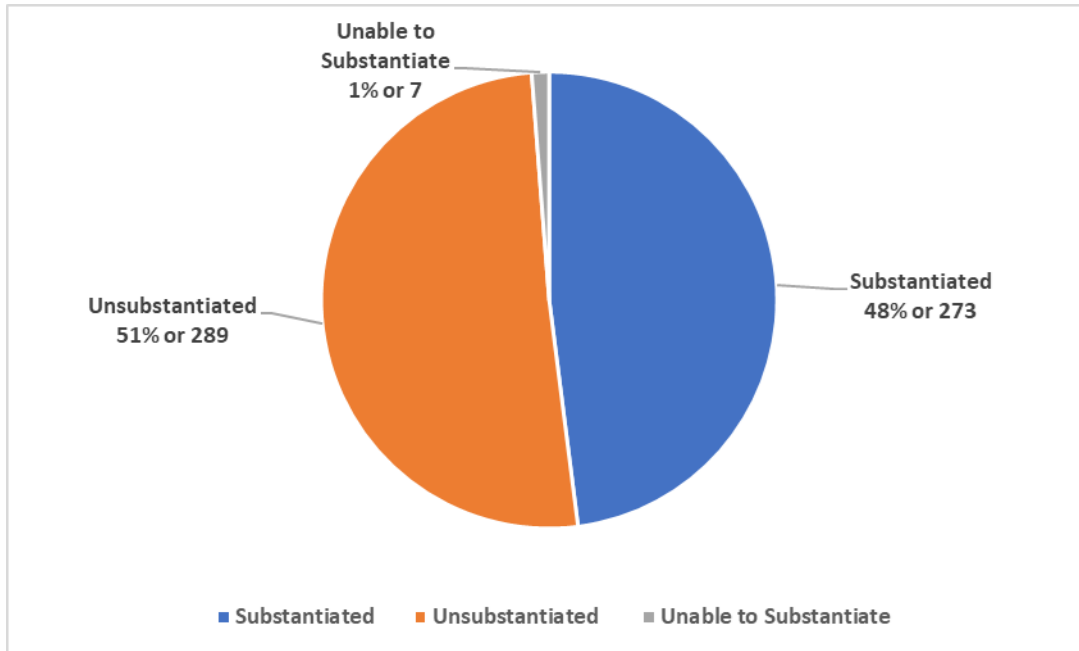


Table 1 below presents the most frequent complaints received by FCO for FY21.

Table 1 Most Frequent Reasons for Complaints

Contact Reason	CPS Handbook Section	Substantiated	Unsubstantiated	Unable to Substantiate
Rights of Children and Youth in Foster Care	Policy 6420: CPS Rights of Children and Youth in Foster Care	33	124	5
Case Recording	Policy 6133: Case Recording	64	16	0
Other	Not Applicable	30	21	0
The Placement Process	Policy 4100: The Placement Process	19	25	0

Contact Reason	CPS Handbook Section	Substantiated	Unsubstantiated	Unable to Substantiate
General Caseworker Duties	Policy 6140: General Caseworker Duties	24	13	2

While the top reason that children and youth contact FCO is related to their individual rights as outlined in Policy 6420 in the CPS Handbook, the contact reason “Case Recording,” is the highest substantiated complaint category.

The following examples help illustrate the types of complaint categories listed in Table 2:

- *Rights of Children and Youth in Foster Care* (33 of 162 substantiated or 20%) – included issues where foster youth were not allowed to contact the FCO or their caseworker, complaints about food, or discipline.
- *Case Recording* (64 of 80 substantiated or 80%) – included caseworkers failing to update or enter documentation into IMPACT in a timely manner, or not at all.
- *Other* (30 of 51 substantiated or 59%) – included various complaint types, including RCCR not addressing all potential policy violations provided by CCI in the complete investigation report or caseworkers not reporting allegations of abuse and neglect to the hotline (further in depth later in this report).
- *The Placement Process* (19 of 44 substantiated or 43%) – included issues where placements were not documented timely, or a child or youth complained about an improper discharge from placement.
- *General Caseworker Duties* (24 of 39 substantiated or 62%) – included issues where the caseworker did not return phone calls from youth within the timeframe required by policy.

Figure 3: Substantiated Complaints by DFPS Region

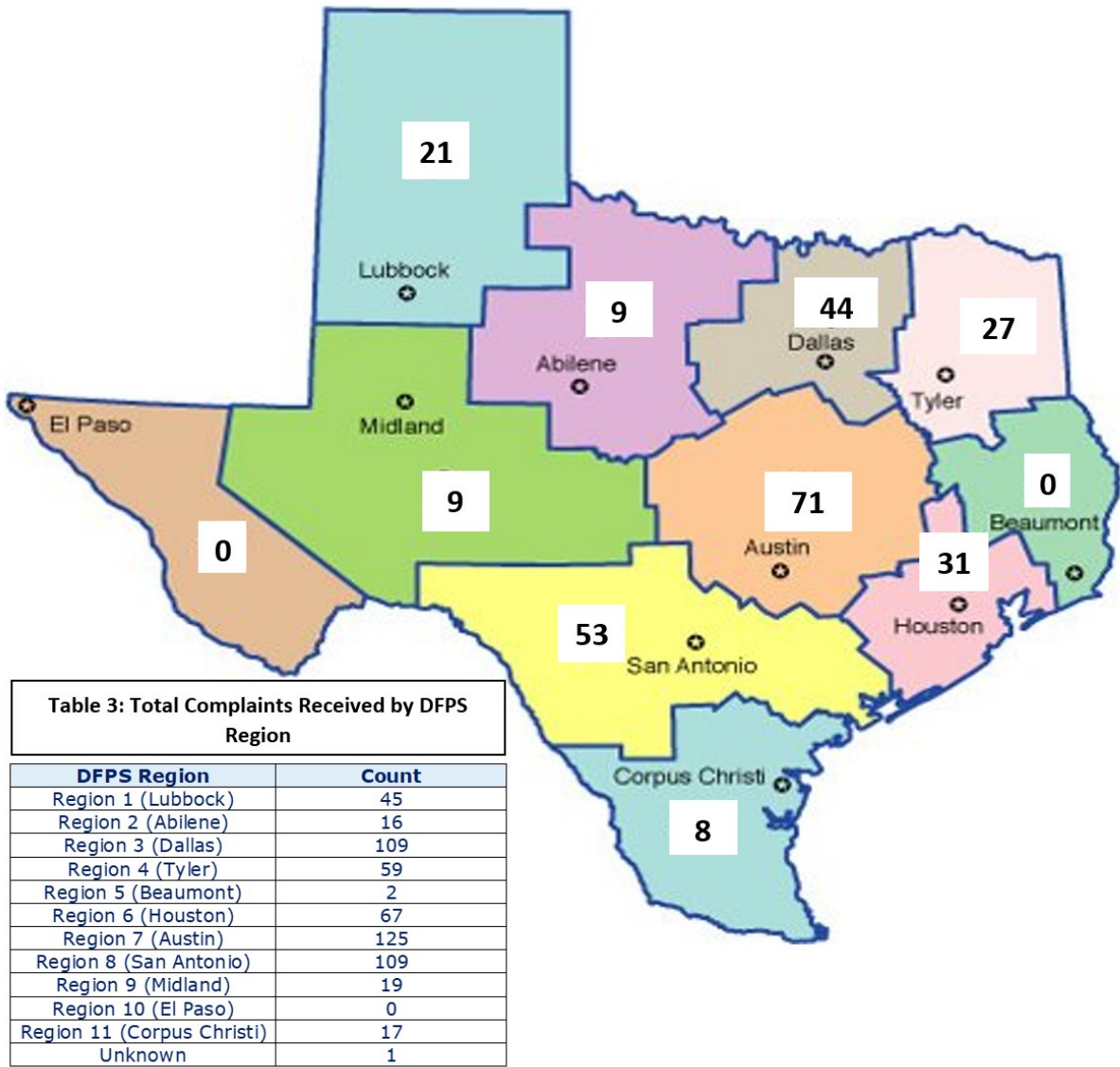


Figure 3 shows the distribution of substantiated complaints across DFPS regions, showing cases by the legal region where DFPS was granted conservatorship. The data in Figure 3 and the supplemental table that follows (Table 2) show that out of the 11 regions, two regions had over 50% of the complaints received substantiated.

Table 2: Complaints Received by DFPS Region

DFPS Region	Complaints Received	Percent Substantiated
Region 1 (Lubbock)	45	47%
Region 2 (Abilene)	16	56%
Region 3 (Dallas)	109	40%
Region 4 (Tyler)	59	46%
Region 5 (Beaumont)	2	0%
Region 6 (Houston)	67	46%
Region 7 (Austin)	125	57%
Region 8 (San Antonio)	109	49%
Region 9 (Midland)	19	47%
Region 10 (El Paso)	0	-
Region 11 (Corpus Christi)	17	47%
Unknown	1	-

Table 2 above shows the total complaints received by each region. The data show that the regions with the highest percent of substantiated complaints were in Region 7 (Austin), Region 2 (Abilene) and Region 8 (San Antonio).

FCO reviews data for potential trends and shares recommendations to address the trends regularly with DFPS and HHSC. Monthly, FCO staff share a tracking document that allows the respective agency to document updates and actions taken or not taken. This tracking document helps FCO understand the implementation or response rate of the agencies. It is also used as a facilitation tool to engage and collaborate with the respective areas. Several attempts are made to confirm response rates prior to the publication of this report.

During FY21:

- CPS responded to 104 of 273 substantiated complaint recommendations (62% response rate). CPS acted on the 104 recommendations they responded to.
- CCI program responded to all 15 substantiated complaint recommendations (100% response rate). CCI acted on all the recommendations.
- RCCR responded to all 18 substantiated complaint recommendations (100% response rate). RCCR acted on half (9) of the recommendations and provided explanations as to why they believed their initial findings were correct in the other cases.

5. Complaint Trends and Recommendations to Address Them

The following are issues of significant concern found during FCO's investigation of complaints from youth, along with the statutorily required recommendations and analysis of the feasibility of the recommendations by FCO. Any response to the recommendation by DFPS is also presented without edit or comment by FCO.

Complaints in Transfers not Fully Addressed

According to HHSC policy (Child Care Regulation Handbook), RCCR investigators are responsible for evaluating information in complaints transferred to them by CCI to determine whether to cite violations of laws, rules, minimum standards, or necessary enforcement actions. Prior to referring a complaint to RCCR for investigation, CCI documents their findings in an investigation report.

FCO found instances where complaints in CCI transferred cases were not fully addressed by RCCR. In one example, FCO found that serious incident reports (SIR) documented in the CCI investigation were not documented per minimum standard guidelines in RCCR's investigation. RCCR responded that while the operation received previous citations for SIR, they did not cite the SIR minimum standard in the current investigation because CCI did not recommend citation in the conclusion of their report.

FCO Recommendation #1: FCO recommends RCCR address all potential policy violations provided by CCI in the complete investigation report to determine if additional minimum standard violations were identified and should be cited.

Feasibility of Recommendation: Potentially difficult. While RCCR's policy requires RCCR investigators to review and cite deficiencies found in the CCI investigations referred to RCCR, RCCR leadership informs FCO that implementation "will take significantly more time" and "will impact the caseload guidelines we have to meet per the FCL agreement."

RCCR Response: RCCR agrees with the recommendation and is working on implementation.

Caseworkers Not Reporting Abuse and Neglect Allegations to Statewide Intake

CPS Policy 6160 states that a caseworker must report abuse and neglect in an open conservatorship case. The policy highlights if a caseworker has cause to believe a child might have been re-abused or neglected, the caseworker must ensure the child's safety and make a new report to SWI immediately, but no later than 24 hours.

[Section 261.101 of the Texas Family Code](#), otherwise known as the Texas Mandatory Reporting Law, mandates that any person who suspects abuse or neglect must report the allegation to local or state authorities or DFPS.

FCO review of cases found instances where caseworkers failed to report allegations of abuse and neglect of foster children placed in licensed and unlicensed placements. Instead, youths' primary caseworkers or caseworkers caring for youth instructed children to contact the FCO to convey alleged abuse, neglect, and minimum standards concerns. In these instances, FCO found none of the caseworkers assisted the youth with calling the abuse hotline. As a result, the FCO contacted SWI with the children to report the allegations.

FCO Recommendation #2: FCO recommends CPS leadership develop a mentorship program consisting of experienced caseworkers that can serve as leads to support and retrain caseworkers on core policies (including Policy 6160) and governing standards (including the Texas Mandatory Reporting Law). CPS leadership should take other actions when appropriate.

Feasibility of Recommendation: Achievable. Retraining on Policy 6160 should emphasize the caseworker's responsibility of reporting any allegation of abuse and neglect or violations of the youth's rights to SWI.

DFPS Response: DFPS has had a mentorship program that has been in existence for years and is overseen by the DFPS training program. The DFPS Internal Audit program conducted an audit of the program, and the DFPS training program has made enhancements to the Mentor program by including DFPS program protégés in the Mentorship evaluation process. Additionally, CPS will collaborate with CLOE to ensure this policy is trained during new caseworker training. Additionally, CPS will explore ways to provide refresher training for tenured staff, which may include training by mentors and/or web/computer-based training.

Child's Rights Investigations in Unlicensed Placements

In normal circumstances, when a child or youth is living in a licensed placement, RCCR investigates allegations of violations of their rights covered under the Foster Youth Bill of Rights as part of RCCR's responsibility to investigate minimum standard violations. However, RCCR does not have jurisdiction over unlicensed placements, such as a CPS office or hotel.

Although DFPS investigates cases of abuse and neglect reported by youth placed in an unlicensed placement, no policy or process exists to investigate alleged violations of the child or youth's rights or staff conduct.

When FCO assisted foster youth with contacting SWI to report the violations of their rights while placed in CPS offices, FCO discovered the intakes were closed without investigation. Instead, SWI would send an Information and Referral (I&R) to the caseworker assigned to the case. After FCO inquired about this practice, SWI Quality Assurance began referring the incidents to the DFPS Office of Consumer Relations (OCR).

OCR informed FCO that there is no process to address potential rights violations for youth in unlicensed placements. OCR began sending these complaints to the CPS regional supervisor to investigate and address with CPS staff.

FCO Recommendation #3: FCO recommends CPS create an internal investigation process like the process followed when a CPS employee is involved in a CPS investigation. To enhance the element of objectivity in the investigation, a CPI supervisor or program director from outside the complaint region should be assigned to investigate the allegation.

Feasibility of Recommendation: Achievable. CPS would need to request CPI investigate the complaints of the youth in unlicensed placements in the same way CPI conducts internal investigations.

DFPS Response: Child Protective Investigations across Texas focus their resources on addressing alleged abuse and neglect of children by their parents or caregivers, and work towards the health and safety of those children. DFPS' current practice is that any CPS employee investigation related to complaints from youth in unlicensed placements are conducted by members of the CPI Special Investigation team. This achieves the objectivity sought by the recommendation.

CPS Forms Regarding Children's Right to Call

RCCR investigates allegations of non-compliance of minimum standards and ensures that children and youth's rights are met.

Prior to August 2021, the *CPS Children's Rights for Youth in Foster Care* form included the right for a child or youth to call their caseworker, attorneys, ad litem, probation officer, CASA and Disability Rights Texas "at any time." However, the contractual standards for both General Residential Operations and Child Placing Agencies excluded the language "at any time."

This created situations where youth were contacting FCO with complaints that this right was not being granted as youth were not being allowed to call "at any time." However, RCCR could not hold the operations accountable because the contract language did not align with the form.

CPS revised the form in August 2021 and removed the phrase "at any time." In its explanation for the change, CPS cited the misalignment with contracts as the reason to delete the "at any time" provision.

FCO is concerned that there is now no uniform standard for allowing children and youth to call these essential advocates, leaving it to the discretion of staff.

FCO found instances where placements were denying youth the ability to call their caseworker "at any time." Removing the "at any time" provision presents risk not only to the youth and children, but creates an environment where providers are operating under different standards.

Youth and children in foster care should be allowed the opportunity to call their advocate just as a child would contact their parent when they are in need.

FCO Recommendation #4: FCO recommends the CPS Rights of Children and Youth in Foster Care document be revised to include the phrase "at any time." Further, contracts for placement of children and youth should reflect the "at any time" language, making it enforceable by RCCR.

Feasibility of Recommendation: Potentially difficult. This recommendation may be achieved in two phases: the first would require the CPS form to be updated and disseminated. The second phase would require contract revisions be done to reflect the updated language.

DFPS Response: CPS Rights of Children and Youth in Foster Care document was recently revised to exclude the phrase "at any time" to more closely-align with

Contracts, Minimum Standards and Texas Family Code 263.008, none of which reflect the “at any time” language. Legal approved the revision to exclude this language as this prevents youth from having the “right” to circumvent discipline issues or to contact their caseworkers as the result of problematic issues (e.g. during CWOP shifts, not in agreement with directives, etc.). Children and youth in foster care still have the right to contact their caseworker, attorney, ad litem, probation officer, court appointed special advocate (CASA), and Disability Rights of Texas.

As our move to align the Bill of Rights language closer to that of Contracts, Minimum Standards, and the Texas Family Code, we do not agree with the contracts-aspect of this recommendation. This change would then dis-align the three languages and would allow Contracts language to be contradictory to the others. Children and youth in foster care can continue to contact the aforementioned-parties; however, they should not have the documented “right” to do so “at any time” as this is outside of what is declared a “right” for them.

CCI Backlog

DFPS CCI handbook Policy 6610 (*Time Frames for Completion of the Investigation*) states that investigations must be completed within 30 days of the date and time it is opened, regardless of the investigation priority. CCI handbook Policy 6611 (*Extending Time Frames for Completing an Investigation*) requires the supervisor and caseworker to conduct case staffing by the 25th day after intake to ensure the reason for the extension request meets the criteria to request additional time to complete the investigation.

In the 15 cases referred to CCI by FCO this fiscal year, five cases were not completed within the timeframes set by CCI policy, and only one of those had an approved extension. All five cases remained open for two to five months beyond the policy’s allowed timeframe.

FCO Recommendation #5: CCI leadership should implement a plan to conduct investigations within the required timeframes to ensure the safety of children and youth in placements.

Feasibility of Recommendation: Achievable. There is existing policy to complete investigations within the required timeframe.

DFPS Response: Currently, CCI is completing 80 percent of investigations within program time frames, and state and regional program leadership are making

concerted efforts towards addressing issues towards achieving a higher number of completed investigations within their 30 calendar-day time frame.

CCI Investigation of Specific Allegations

CCI Handbook Policy 6422.11 requires the investigator to inform the alleged perpetrator of the complaints or allegations made against them at the first contact with the investigator.

In several cases, FCO found that Policy 6422.11 was not being followed by CCI investigators when they failed to ask caregivers about specific allegations related to:

- an interaction involving a youth and violation of personal space within their sleeping quarters;
- failing to provide care during a reaction to a medication; and
- physical assault, because the allegation was not included in the original intake.

FCO Recommendation #6: CCI leadership should ensure all intake allegations are addressed thoroughly per CCI policy.

Feasibility of Recommendation: Achievable. There is existing CCI policy to ensure all intake allegations are addressed.

DFPS Response: The CCI Division has implemented an additional case staffing to occur on the 20th day of the investigation between the supervisor and investigator to ensure all allegations are addressed before case closure. Currently, all investigations that receive a Reason to Believe disposition must have a secondary approval by the Complex Investigation Analyst within the CID Division. The CCI Division is planning for further secondary review for cases with the assigned Reason to Believe disposition, before closure, with our newly implemented Manager IV positions. This will allow for increased oversight and ensure all intake allegations are thoroughly addressed per CCI policy.

SSCC Use of the Term “Ombudsman”

According to a Memorandum of Understanding (MOU) between DFPS and FCO, SSCCs are prohibited from using the term "ombudsman" to prevent confusion of FCO's statutory role.

Despite the implementation of the MOU, FCO discovered an SSCC using the title "ombudsman" in their grievance material. This is concerning for youth already familiar with the FCO role, who might think they are speaking to a foster care ombudsman rather than an SSCC employee when submitting their concerns.

FCO brought this matter to the attention of DFPS, and all references to an "ombudsman" were revised to refer only to FCO.

FCO Recommendation #7: In addition to the MOU, CPS should establish a procedure to ensure SSCC materials (including operational handbooks and materials intended for foster youth) do not use the term "ombudsman" when referring to internal complaint resolution departments and specifically include contact information for FCO. This procedure should include a review of the materials as SSCCs begin operation and periodically thereafter.

Feasibility of Recommendation: Achievable. The MOU establishes the requirements for the procedures.

DFPS Response: The Office of Community Based Care will review all existing SSCC documents and materials and make edits (delete all reference to "ombudsman") by the end of January 2022. Thereafter, the OCBC will ensure accuracy of newly developed materials as new SSCCs come online.

6. Changes Resulting from Reported Substantiated Complaints

S.B. 830 requires the annual report to contain changes made by DFPS or HHS in response to substantiated complaints. Since FCO's annual recommendations are based on issues found in substantiated complaints, these are the areas FCO focuses on in this section.

In 2020, FCO made six recommendations based on substantiated complaints. DFPS has provided a response to these recommendations, which is included in Appendix B.

7. Foster Care Promotional Efforts

FCO worked with HHSC's communications team to develop an [educational video](#) regarding FCO services. The video is available on [FCO's web page](#) and can be accessed by any placement and shared with foster youth directly.

FCO staff also completed an informational video with the Texas Alliance of Child and Family Services, which they published in their internal online newsletter so it could be accessed by foster care providers. The video provides an overview of the FCO program and ways providers can assist with FCO's work.

Due to the COVID pandemic, FCO staff completed virtual presentations in FY21. In April 2021, FCO staff presented to CPS, CPI, and CCI staff. In addition, FCO provided a presentation for all field level staff on the role of FCO and what DFPS staff can expect when they receive an FCO inquiry.

FCO presented to RCCR staff over the course of two months, starting in May 2021.

FCO Outreach Efforts

In normal circumstances, FCO staff visit Residential Treatment Centers (RTCs) and meet with providers in different settings as part of a concerted outreach effort. FCO's outreach campaign is twofold to ensure that both youth and children, and providers, have information they need about FCO services, and better understand the issues they are facing in their placements.

Unfortunately, due to the COVID pandemic, FCO outreach efforts were limited to presenting virtually for all of 2020 and most of 2021. In July and August of 2021, FCO staff were able to present in-person at the Statewide Youth Leadership Council Meeting (SYLC meeting), a CPS office housing children without placements, and at a Preparation for Adult Life (PAL) Aging-Out Seminar.

At the PAL Aging-Out seminar, FCO staff attended discussions on forming healthy relationships and how youth can avoid destructive relationships, along with information on college waivers for housing and utilities.

FCO staff found that the PAL Aging-Out seminar contained vital information for youth. Youth and community representatives requested assistance for former foster youth who are homeless and unaware of their services. In addition, there were youth aging out of care who did not know the details of extended foster care.

Recommendation #8: FCO recommends CPS begin to offer these workshops to youth age 14 and above, rather than the current practice of starting at age 17.

Feasibility of Recommendation: Achievable. Consideration must be given to logistical barriers such as the need to make policy revisions and increased staff time.

FY22 Planned Activities

For FY22, FCO will:

- Resume in person outreach to meet with youth in RTCs and speak with RTC staff to educate them regarding the FCO program and services as safety measures allow;
- Continue to promote FCO efforts to provide more outreach through educational opportunities and engagement of foster care youth and service providers across the state;
- Continue to build rapport and collaborate with Child Placing Agencies (CPAs) to coordinate regional tours as safety measures allow so that youth in foster homes can speak with FCO staff as well;
- Strengthen outreach efforts across areas of Texas with low complaint numbers;
- Outreach school districts across Texas to educate school personnel on FCO program and services, providing FCO resource information for responding to questions to youth in foster care; and
- Develop FCO resource material intended for youth under the age of 10.

87th Regular Legislative Session

The state budget for FY22-23 ([Senate Bill 1, 87th Legislature, Regular Session, 2021](#)) includes a rider in the DFPS bill pattern that impacts FCO. DFPS Rider 43 requires CPS to “ensure every child within foster care receives information on how to contact and file a complaint” to FCO.

This new provision builds on the original statutory mandate for FCO to collaborate with DFPS to promote awareness of FCO among foster youth. It also addresses a finding from the Court Monitors’ June 2020 report (M.D. ex rel Stukenberg v. Abbott No. 2:11-cv-84--FIRST COURT MONITORS’ REPORT 2020) that many foster youth are still unaware of FCO and its role. Finally, it follows a recommendation

FCO included in its FY20 report regarding caseworkers checking for FCO posters at foster youth placements. FCO continues to recommend that this be implemented.

FCO has shared with DFPS the following recommendations for addressing Rider 43:

- DFPS should update CPS handbook Policy 6411 (*Contact with the Child*) to require caseworkers to document whether FCO posters were visible to children and youth during their walk-throughs on monthly visits to placements;
- CPS should provide FCO posters and links to the new FCO video to all providers in a letter explaining requirements for foster youth to have access to FCO while in placement;
- All caseworkers should be sent an email with a link to the FCO video, so that caseworkers and foster youth can view it together before placement;
- CPS should disseminate the FCO video, FCO website address, and FCO poster quarterly through their "Meeting in a Box" to ensure continued awareness of these resources;
- CPS should show the new FCO video during youth events;
- DFPS, SSCCs and FCO should continue to collaborate to identify youth events FCO staff can attend, such as PAL events or other meetings where youth gather; and
- CPS should share the FCO video on their website and through social media platforms directed at youth.

8. Public Comments Relating to the Previous Annual Report

FCO received no public comments relating to the 2020 Annual Report.

9. Conclusion

In FY21, FCO experienced an increase of 13% in contacts (from 808 in FY20 to 911). While the total number of resolved complaints decreased by 25% (from 762 in FY20 to 569 in FY21), 48% of those complaints were substantiated. FCO attributes the decrease to temporary restrictions due to the PHE which limited FCO's staff outreach efforts.

FCO uses contact data to understand trends in complaints and provide feasible recommendations to DFPS and HHS.

The issues identified by FCO investigations of complaints highlight inadequacies, breakdowns and gaps in the child protective process. While progress was made in some cases, FCO findings show a need for policy reviews and consistent application of the policies to ensure safety measures are in place and followed across regions.

The recommendations in FY21's report range from strengthening existing policies to creating and establishing standard operating procedures and processes that support caseworkers' and investigators' daily work and ensure a safe, supportive foster care system.

FCO welcomes the opportunity to collaborate with DFPS and HHS in the implementation of these recommendations.

10. Appendix A: Agencies and Business Functions

Table 3 Agencies and Business Functions

Agency	Division	Unit	Role
DFPS	Statewide Intake (SWI)	-	<p>Receives, assesses, and routes reports of:</p> <p>Child abuse and neglect;</p> <p>Abuse, neglect, self-neglect, and exploitation of the elderly or adults with disabilities living at home;</p> <p>Abuse of children in child-care facilities or treatment centers; and</p> <p>Abuse of adults and children who live in state facilities or are being helped by programs for people with mental illness or intellectual disabilities.</p>
	Child Protective Investigation (CPI)	-	<p>Examines reports of child abuse or neglect to determine if any child in the family has been abused or neglected. Additional responsibilities include:</p> <p>Working with law enforcement on joint investigations;</p> <p>Taking custody of children who are unsafe;</p> <p>Referring children to community resources that promote their safety and well-being; and</p> <p>Assisting in the fight against human trafficking.</p>

Agency	Division	Unit	Role
	Child Protective Investigation (CPI)	Child Care Investigation (CCI)	<p>Investigates allegations of child abuse, neglect, and exploitation allegations in licensed and regulated childcare operations in the state, including both daycare and 24-hour residential care settings, including foster care. Additional responsibilities include:</p> <p>Working with law enforcement on joint investigations; and</p> <p>Coordinating with childcare regulators to assure the safety, health, and well-being of children in out-of-home care.</p>
	Child Protective Service (CPS)	-	<p>Provides a variety of services to strengthen families so children can stay safe at home with their parents. Additional responsibilities include:</p> <p>Providing services to children and families in their own homes;</p> <p>Placing children in foster care;</p> <p>Providing services to help youth in foster care successfully transition to adulthood; and,</p> <p>Helping children get adopted.</p>

Agency	Division	Unit	Role
HHSC	Regulatory Services Division (RSD)	-	<p>Conducts licensing, oversight and enforcement activities over the following providers:</p> <p>Long-term care (LTC) providers, such as nursing facilities and assisted living facilities;</p> <p>Health care facilities, including hospitals and dialysis centers;</p> <p>Childcare providers; and</p> <p>Certain licensed professionals, including licensed childcare administrators.</p>
	Regulatory Services Division (RSD)	Residential Child Care Regulation (RCCR)	<p>Regulates all residential childcare operations and child-placing agencies to protect the health, safety, and well-being of children in care. Additional responsibilities include:</p> <p>Licensing and permitting operations subject to regulation under Chapter 42 of the Texas Human Resources Code;</p> <p>Monitoring regulated operations for compliance with minimum standards; and</p> <p>Investigating allegations of non-compliance of minimum standards.</p>

Agency	Division	Unit	Role
	HHS Office of the Ombudsman (OO)	Foster Care Ombudsman (FCO)	<p>Serves as a neutral party in assisting children and youth in foster care. Additional responsibilities include:</p> <p>Serving as a resource and advocate for children and youth in foster care; and</p> <p>Investigating children and youth's complaints to determine whether policies and procedures are followed.</p>

11. Appendix B: DFPS Response to 2020 Recommendations

Note: all information provided in the **Status Update** sections was received from DFPS and is presented without edit or comment by FCO.

FCO Recommendation #1: FCO recommends CPS develop policies and procedures to establish a limited timeframe a youth can be held in a psychiatric hospital setting under a CSC, and to include a multidisciplinary team assessment of youth during their placement in the hospital setting to monitor progress and actively seek alternate placement at the earliest appropriate time.

Feasibility of Recommendation: Potentially difficult, considering the complexity of securing alternate placements. However, FCO believes this issue bears continued serious concerted efforts to remedy and urges immediate policy review.

Status Update: When youth are in psychiatric hospitals, either on or past extended stay days, there are often treatment team meetings for youth that capture the intent of the multidisciplinary team assessment. DFPS is refining processes related to these ongoing meetings for children and youth in psychiatric hospitals, including having CPS Psychiatric Hospital Workers assist with scheduling/facilitating these meetings. The development of this practice and process will be finalized in November 2021. Currently, CPS limits psychiatric hospital child specific contracts to 90 days, but this is assessed on a case-by-case basis. This timeframe is often driven by the youth's needs and the availability of less restrictive environments, including but not limited to the Intensive Psychiatric Transition Program (IPTP) or the Treatment Foster Family Care (TFFC) programs.

FCO Recommendation #2: FCO recommends that DFPS establish policy and provide clear expectations and thorough training to its CPI regions regarding investigations of HCS placements they have agreed to investigate. This would address the immediate concerns about a lack of understanding about the role discovered in FCO's investigations. Further, FCO recommends DFPS and HHS work to consolidate responsibility for investigation of all HCS placements regardless of status of waiver inclusion or source of funding. This would simplify and clarify responsibility for this important task.

Feasibility of Recommendation: This would initially require policy formulation/implementation and training. However, FCO notes DFPS and HHS have had ongoing discussions regarding this issue and there could be cost and complex logistical considerations, including potential changes to statute.

Status Update: CPI will utilize the existing “Employee Investigations Update.” Decision was made that there is no need for any policy changes as the current policy covers HCS homes. The Special Investigations Division has already been conducting these investigations, so there would be no additional training involved for the investigations.

FCO Recommendation #3: CPS/CPI have mental health specialists who assist CPS field staff by providing them education and training on mental health related issues, taking part in multifaceted case staffing, conducting case reviews and assisting in case planning, providing referrals to YES Waiver and Local Mental Health Authority (LMHA) resources and conducting Mental Health First Aid trainings. FCO recommends CPS:

- simplify guidelines regarding services provided to families who engage with CPS/CPI staff regarding high needs children;
- enhance and prioritize comprehensive mental health training by the Mental Health division regarding the process of getting youth and their family united with appropriate services for emotional and behavioral needs; and
- reinforce the importance of following up and ensuring services are being delivered by the provider efficiently and, if not, develop a plan of action to correct the lapse in services.

Feasibility of Recommendation: Achievable as it would only require policy formulation/implementation and training.

Status Update: CPI currently has two FTEs designed for Mental Health Program Specialist that provide individualized support to field staff on a case-by-case basis to assist families with services for children with high mental health/behavioral needs. Caseworkers are trained and able to refer families to the Yes Waiver Program and to help identify local mental health authority contacts. The caseworkers can also contact the Mental Health Specialist directly or send family inquires to the State Office Mental Health Specialist mailbox. The CPI Mental Health Specialist also work closely with HHSC to identify local community support. CPI has participated in TAC rule development and assisted in the streamlining of referral procedures to make these services easier to access for staff and families in need. The updated procedures have now been incorporated into the HHSC public website and are located on the DFPS intranet page.

During FY20, the CPS Mental Health Specialist provided mental health educational trainings and presentations to CPS field staff. These trainings covered topics to include community resources, how to access Local Mental Health Authorities and

the services provided such as YES Waiver, Targeted Case Management and crisis services. As a follow up to trainings, a resource pamphlet was sent to CPS staff listing specific contact information in each region and how to access these services.

The CPI Mental Health Specialist and Field Division have worked extensively with HHSC to develop new protocols on mental health service referrals. Guidance through field wide correspondence have helped ensure staff remain current with the most up-to-date and readily available trainings, resources, and referral information. An updated Mental Health Protocol training is being finalized by the Center for Learning and Organizational Excellence (CLOE) with an estimated roll-out date no later than January 2022.

CPI and CPS are currently working to update policy 2390 (related to MH) to incorporate legislative changes and enhancements to mental health service referrals. CPI and CPS will work together on statewide field training once the policy changes are complete and ready for distribution. FAQs are collected from the field and distributed weekly. Lunch and Learn series (2x month) started in October 2021 to help keep field staff up on legislative, policy and field practice requirements. The CPI Mental Health Program Specialist conducts mental health trainings in all regions for field and supervision staff.

For FY21-CPS Behavioral Health Division finalized approval for Mental Health Train the Trainer events to proceed with conducting the trainings which could certify 16 new Mental Health First Aid Trainers for DFPS. For FY22, the CPS Behavioral Health and Medical Services teams have 7 staff who are currently enrolled in upcoming MHFA Train the Trainer certification courses. CPS Behavioral Health Services staff have all completed the MHFA training and are certified in MHFA. Slots for training are also being offered to CPI Behavioral Health staff. CPI currently does not have anyone trained in offering Mental Health First Aid but has identified training sessions and plan to have the Mental Health Specialist staff trained and eventually certified as trainers with a projected completion date of FY 2021-2022 year end. Mental Health First Aid Trainings were temporarily postponed and while the HHSC MHFA trainings are still on hold, virtual trainings are being offered virtually and through many Local Mental Health Authorities.

The COVID Pandemic had a great effect on trainings in recent fiscal years; however, CPS Behavioral Health Services has resumed in person trainings for staff when requested and continues to provide virtual trainings on mental health resources (including crises services), substance use disorder resources, including Medication Assisted Treatment (MAT), Plans of Safe Care (POSC), and Trauma Informed Care.

CPI policy requires that staff make regular contact with all open investigations. CPI investigators use those required contacts as opportunities for regular follow up on the status of mental health service delivery and communicate with the Mental Health Program Specialist if additional support is required or if there is a delay in service delivery that needs addressing by HHSC or the local mental health authorities (LMHA). CPI Mental Health Specialist track referrals made through the CPI program and communicate with HHSC to obtain status updates on the referrals. HHSC also communicates regularly with the LMHA assigned to the RTC referrals to ensure all required supporting documentation and evaluations have been conducted and that the youth qualifies for residential treatment. CPI and HHSC engage in monthly calls to discuss referrals that are experiencing abnormal delays due to unique treatment need and develop support plans for those families while waiting.

CPI, Post Adoptions and HHSC are currently collaborating to develop improved tracking systems that will allow for more efficient and direct follow up with local providers regarding the status of current support activities for the families being served.

FCO Recommendation #4: FCO recommends a youth's placement identification, access or authorization code be made available in the Placement Information tab under the address/phone detail section in IMPACT. FCO also recommends that when youth are placed in facilities that require approved contacts, it is standard practice for FCO to be added to the general approved contacts list.

Feasibility of Recommendation: Achievable. CPS already has policy which addresses youth information being entered as soon as possible, but no later than seven days. It would not be difficult to provide training regarding the specific location to place information within IMPACT. The requirement to add FCO to the approved contact list for all youth in restricted placements would need to be disseminated and added to caseworker training.

Status Update: CPS has an IT project underway to capture temporary placements in IMPACT. Currently, temporary absences from placement, such as medical or psychiatric hospitalizations, are not required to be entered into IMPACT. Once the IT project to enhance IMPACT is completed, it will be a requirement that when a youth is in a medical or psychiatric facility, their location is documented and captured in IMPACT. Including the FCO contact information can be explored through a future IT project. Meanwhile, staff will be reminded to provide the FCO with the access code and add to the contact list. Discussions with DFPS programs on the scope and implementation date of the current project are in progress.

FCO Recommendation #5: FCO recommends a more concentrated effort by CPS to ensure these documents are part of the placement packet and are provided to the youth once they are placed, and that caseworkers check to make sure the youth has the documents at any subsequent placement change as required by CPS policy.

Feasibility of Recommendation: Achievable as it would only require policy emphasis and training.

Status Update: In FY21, CPS hired five new Quality Assurance Specialists. These specialists are tasked with reviewing placement changes to ensure certain documents (Placement Summary Form 2279, Sexual History Report Attachment A, and Foster Care Bill of Rights) are provided by policy. Specifically, for the Foster Care Bill of Rights, these specialists check to ensure the document was provided, signed, and uploaded into OneCase at the time of initial placement and every 6 months, thereafter. If not located, the team follows up with the caseworker and chain of command, as necessary, to ensure the document has been provided to the youth and uploaded, per policy.

FCO Recommendation #6: FCO recommends CPS update CPS Policy 6414.7 to include that caseworkers document if the placement had FCO posters visible to the children and youth.

Feasibility of Recommendation: Achievable as it would only require policy changes and training.

Status Update: Senate Bill 830, 84th Legislature, required HHSC to adopt rules requiring all residential child-care facilities in which children and youth in DFPS conservatorship are placed to display information about the ombudsman for children and youth in foster care and the process for filing a complaint with the ombudsman in a location that is easily accessible and offers maximum privacy to the children and youth residing at the facility.

CPS Policy 6414.7 was moved to 6411.22 as of December 1, 2020 and states "During the monthly visit at the child's residence, the caseworker also does a physical walk-through of the child's residence to observe the environment in which the child is living and observe where the child sleeps. The walk-through includes backyards or other outdoor areas of treatment centers and foster care, parent, or kinship homes. The caseworker documents the walk-through."

During August 2021, DFPS updated Form K-908-2530 (CPS Rights of Children and Youth in Foster Care) which is to be reviewed with the child (if age-appropriate) or youth, as well as, instructions for staff to provide a signed copy to the child or

youth and caregiver within 72 hours of placement. Form K-908-2530 (CPS Rights of Children and Youth in Foster Care), section Complaints informs children and youth in foster care of their rights and includes phone numbers for DFPS Statewide Intake, FCO, Disability Rights of Texas and DFPS Ombudsman Office.

12. Glossary

Community Based Care (CBC) - Community-Based programs that contract with DFPS-CPS to provide foster care and case management services.

Child Care Investigations (CCI) – A division of Child Protective Investigations responsible for all childcare facility investigations in the state which include both day care (DCI) and 24-hour residential settings (RCCI).

Child Care Licensing Automated Support System (CLASS) – The HHS information system used by Child Care Licensing staff for record management.

Child Protective Investigations (CPI) – Division of DFPS that investigates reports of abuse and neglect of children not placed in residential settings.

Contact – An attempt by youth or others to inquire or complain about HHS or DFPS programs or services.

Complaint – A contact regarding any expression of dissatisfaction by a youth.

Fiscal Year 2021 - The 12-month period from September 1, 2020 through August 31, 2021, covered by this report.

Foster Care Ombudsman (FCO) – The neutral statutorily mandated entity that reviews questions and complaints from children and youth in foster care regarding case-specific activities of DFPS and HHS programs areas and determines whether policies and procedures are followed.

HHS Enterprise Administrative Report and Tracking System (HEART) – A web-based system that tracks all inquiries and complaints received by FCO.

Information Management Protecting Adults and Children in Texas (IMPACT) – The DFPS system used by Child Protective Services staff for case management, including documentation of abuse and neglect investigations.

Inquiry – A contact regarding a request by a youth for information about HHS or DFPS programs or services.

Preparation for Adult Living (PAL) - Implemented in 1986 to ensure that older youth in substitute care are prepared for their inevitable departure from the Texas Department of Family Protective Services' care and support.

Residential Child Care Regulations (RCCR) – Regulates all child-care operations and child-placing agencies to protect the health, safety, and well-being of children in care, largely by reducing the risk of injury, abuse, and communicable disease.

Resolution – The point at which an FCO determination can be made as to whether a complaint is substantiated, and further action is unnecessary by FCO.

Substantiated – A complaint determination where research clearly indicates agency policy was violated or agency expectations were not met.

Unable to Substantiate – A complaint determination where research does not clearly indicate if agency policy was violated or agency expectations were met.

Unsubstantiated – A complaint determination where research clearly indicates agency policy was not violated or agency expectations were met.

Youth – Children and youth under the age of 18 in the conservatorship of DFPS.

13. List of Acronyms

CASA - Court-appointed Special Advocate
CBC - Community Base Care
CCI - Child Care Investigation
CLASS - Child Care Licensing Automated Support System
CPI - Child Protective Investigations
CPS - DFPS Child Protective Services
CSC - Coordinated Specialty Care
DFPS - Department of Family Protective Services
FCO - Ombudsman for Children and Youth in Foster Care
HCS - Home and Community-based Services
HEART - HHS Enterprise Administrative Report and Tracking System
HHS - Texas Health and Human Services
IMPACT - Information Management Protecting Adults and Children in Texas
LMHA - Local Mental Health Authority Memorandum of Understanding
MOU - Memorandum of Understanding
OCR - DFPS Office of Consumer Relations
OO - HHS Office of the Ombudsman
PAL - Preparation for Adult Living
RCCR - HHS Residential Child Care Regulation
RTC - Residential Treatment Center
SSCC - Single Source Continuum Contractors
SWI - DFPS Statewide Intake
TAC - Texas Administrative Code
USOA - United States Ombudsman Association