

# The Dallas Morning News

## Judge: Texas doesn't shield foster kids from sexual abuse, overuses mental-health drugs

Foster care providers cited for deficiencies last year faced average fines of \$245, a wrist slap, judge says.



Texas is backsliding on protecting foster kids from sexual abuse and keeping emotionally disturbed children from being overprescribed psychotropic drugs, U.S. District Judge Janis Graham Jack said Wednesday.

By [Robert T. Garrett](#)

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AUSTIN — Foster children who previously were victims of sexual abuse are being placed in bedrooms alongside youth flagged for histories of sexual aggression and the state is doing nothing about it, a federal judge said Wednesday.

Texas has a checkered history on foster care, with multiple condemnations of its system from blue-ribbon panels in recent decades.

On Wednesday in a federal courthouse in Corpus Christi, U.S. District Judge Janis Graham Jack said that, while Texas has shaped up in some areas over the past few years, it has been backsliding in other ways — with threats to children’s safety growing, not receding.

Wednesday’s all-day court hearing included testimony that too many foster care children are prescribed four or more medications at one time without the necessary evaluations and assessments. Also, the state isn’t moving fast enough to reduce the number of children who are bunked in hotels and churches because they don’t have placements, Jack said.

## Political Points

Turnover is spiking again among Child Protective Services workers charged with protecting foster kids, “which is horribly disruptive to children” removed from their birth families because of abuse and neglect, Jack said. [In the first six months of the current fiscal year,](#) CPS foster care caseworkers are quitting at what would be an annual rate of 35%.

Seven years ago, to help alleviate a caseworker shortage, [CPS lowered its requirement that they be college graduates](#) and started accepting two-year associate degrees. To improve retention, Jack has imposed nonbinding “caseload standards” of 14-17 children per worker. State officials conceded they’re struggling to retain workers.

On Wednesday, Jack and the lead plaintiffs’ lawyer for the children also expressed outrage after Jordan Dixon, the Health and Human Services Commission’s chief policy and regulatory officer, testified in federal court in Corpus Christi that her agency levied just \$8,600 in fines against 35 operations with poor track records last year.

“I don’t know how that’s going to affect anybody’s conduct, if they’re putting children at risk and not meeting minimum standards and they simply get penalized \$245” apiece, said plaintiffs’ lawyer Paul Yetter.

Dixon said state law caps the fines at \$500 per violation.

In foster care, the biggest sanctions aren't fines but the risk of losing a license and having CPS cancel a contract and stop sending children. In the lawsuit, Jack has said the commission doesn't revoke enough licenses and CPS fails to yank contracts and slap providers with placement holds.

Her requirement that shoddy providers be placed on "heightened monitoring," which triggers waves of inspections, has been denounced by the Legislature's top child welfare policy writers as overkill.

Yetter, a Houston business lawyer who's worked for free on the case since it was filed in 2011, has seen the number of long-term foster children he represents decline to about 9,000, from 12,000.

After many if not all of Jack's proposed remedies survived review by an appeals court, "the state's efforts have been productive in certain ways," Yetter said. Still, "there isn't progress being made promptly enough" and the state hasn't offered enough solutions, he said.

In late 2019, Jack hit Texas with fines of \$50,000 a day for failing to make progress on her orders. She suspended them after three days. [Last June, she threatened to impose even bigger fines](#) — fines so big, the state could invoke a criminal defendant's right to a jury trial. [In January, she warned that more massive fines might be coming](#).

On Wednesday, she seemed to hedge on whether she'd impose financial sanctions at a June 27 hearing. She said she instructed her monitors first to build a more airtight case that misuse of psychotropic drugs is endangering the children.

Jack said she was "kind of depressed" after reading the latest report of her monitors, two child welfare experts who are paid more than \$1 million a month by state taxpayers.

Monitors Kevin Ryan of New Jersey and Deborah Fowler of Austin report directly to Jack on whether Texas is complying with dozens of orders the judge has issued since 2015. Ryan and Fowler have hired dozens of people to help them evaluate the system. Between September 2019 and last December, Ryan's Public Catalyst and Fowler's Texas Appleseed organizations were paid \$41.3 million.

The report covered their multiday visits, including at night, to 14 general residential operations between December 2021 and December 2022.

Jack, 76, a former nurse who caught her first glimpse of Texas child welfare as a Corpus Christi family lawyer, is an appointee of former President Bill Clinton. She no longer handles a full docket and now spends much of her time in Dallas, near grandchildren.

For nearly a decade, she has said Texas foster children leave the system in worse shape than they enter. But Texas is recalcitrant and change is hard to achieve, Jack said Wednesday.

Yetter said that, before the June hearing, he and other lawyers for the children in Dallas, Houston and New York will ask for contempt-of-court sanctions against the state over three failings. It continues to place too many children in unlicensed settings, fails to provide youngsters with the ability to report maltreatment and relies too heavily on psychotropic drugs to manage children's behavior rather than to bring them healing, he said.

## **Judge's authority questioned**

Reynolds Brissenden, a lawyer in Attorney General Ken Paxton's office who represents the commission, said Jack hasn't issued any specific orders on mental-health medications.

"We don't believe that those are appropriate topics to be moving on for a show cause" order triggering contempt-of-court sanctions, he said in response to Yetter.

When the judge gave them a chance, lawyers for Paxton who represent the Department of Family and Protective Services and Gov. Greg Abbott, the other defendants in the 12-year-old, class-action suit, offered no response to Yetter.

Jack insisted she does have approval from the 5th U.S. Circuit Court of Appeals to oversee the potent mental-health drugs as part of an approved injunction that allows her to compel Texas to end unconstitutional treatment of children placed in unreasonably unsafe institutional settings.

"You've got children under 3 years old under multiple psychotropic drugs, without any of the tests that you say are necessary for these drugs," she told protective services department chief Stephanie Muth and Cecile Young, executive commissioner of the Health and Human Services Commission.

"Can you imagine, as a child, taking four or more psychotropic drugs without any monitoring?" she said.

Fowler and Ryan found that 47% of the children at the 14 facilities whose records they examined were prescribed at least four psychotropic drugs. Of those, nearly three-fourths had never or not within the past year received a clinical review required by the state's [guidelines for using psychotropic drugs](#) for foster children.

## **Botched probe of sexual abuse**

On botched investigations by Child Protective Investigations, Jack and her monitors singled out a congregate-care facility in Harris County they said mishandled a resident boy's outcry last May that a roommate had touched him sexually while he slept.

Not only did staff members of Gold Star Academy in Spring fail to report the boy's allegation to a child-abuse hotline, as required, but they impeded his desire to report the incident to Texas' protective services officials, according to a new report by Jack's court-appointed monitors.

An email sent to Gold Star Academy seeking comment early Wednesday afternoon received no reply. No one answered the main telephone number listed in state records or returned the call after an SMS notification of a reporter's number.

Jack said that, although her monitors set in motion an investigation of the Gold Star resident's outcry, state child care investigators conducted a "deficient" probe and inappropriately ruled out neglectful supervision.

Clint Cox, the department's deputy associate commissioner of child protective investigations, said investigators gathered from children at Gold Star "inconsistent statements." It couldn't act "on an unknown alleged perpetrator," who remains unknown, he said.

"With DFPS, we do not find children as alleged perpetrators against another child ... in care," Cox said.

"OK, that is part of the problem. That is child abuse," Jack shot back.

The monitoring team member who reported the boy's outcry to the hotline quoted him and other roommates as saying the inappropriate sexual conduct occurred during the 15 minutes between required regular bedroom checks by two nighttime staff members, the monitors' report says.

The adult employees were not positioned to see what was happening because they had other nighttime duties, such as ironing the children's clothes for school the next day, the report adds.

And the facility and Cox's staff ignored how the child accused of inappropriate touching was flagged in CPS records as having a history of sexual aggression, Jack said.

"You put a sexual aggressor in with a sexual victim, and the obvious happened. And it still got 'ruled out,'" she said.