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A Centimeter Tall:

A perilous journey of growing up and aging out of Texas foster care

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Report

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Abstract

A Centimeter Tall:

A perilous journey of growing up and aging out of Texas foster care

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Ashley Gallardo was raised in an abusive home from which she was removed and put into the Texas foster care system. There, she grew up and aged out at 18 having experienced six years of moving from foster home to foster home, being separated from her brothers and living a life that showed her little consistency or love.

Ashley experienced major issues with the Texas foster care system that the Department of Family and Protective Services has long been working to address. Gaining access to her Child Protective Service case file gave her a peak into her past as she now actively advocates for a better foster care system. Her story is a journey that shows the inadequacies in Texas foster care and the efforts being made by DFPS to improve the system whilst the state faces a class action lawsuit filed against the child welfare system.

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A Centimeter Tall:

A perilous journey of growing up and aging out of Texas foster care

As Ashley Gallardo's 18th birthday approached on November 19, 2005, she daydreamed of moving back in with her mother in Austin, Texas. People always told Ashley how, with her long, dark-brown hair, olive complexion and hazel, almond-shaped eyes, she looked just like her mother. "Just like sisters," they'd say. Living together was the chance Ashley felt she needed to make her mother proud. They could go shopping together, and see movies together, and best of all Ashley would have a home. Nothing was scarier than wondering where she was going to live when she aged out of Texas foster care.

"I *really* wanted her to love me," Ashley says. "I thought if I do perfect and I'm great, she'll love me and we can be a family again."

For six years Ashley moved through foster placements in urban Austin homes and in small-town homes in rural Central Texas. Therapists psychoanalyzed her every move and Child Protective Services caseworkers controlled all the details of her life. Now she was expected to become an adult, and three months worth of Preparation for Adult Living classes was her introduction to the world that lay ahead of her. A world in which she hoped someone was waiting for her after a past in which, it seemed, nobody wanted her. She feared her birthday, and it consumed her thoughts. "Please don't let my 18th birthday come... please don't let my 18th birthday come."

A psychologist reported on Ashley's expectations of living with her mother in a treatment plan sent to her CPS caseworker in August 2005:

Some of her desires appear to be based in fantasy rather than reality, perhaps indicating a desire to recapture a childhood that was lost to her.

The reality was that Ashley's mother refused to apologize for past physical and emotional abuse of her children. Ashley's efforts to live with her included providing access to the \$900 she'd saved from working at Taco Cabana, I-HOP and H-E-B during her time in foster care. Her mother spent all the money. The reality was that she still didn't want Ashley.

Texas hadn't been a very consistent parent to Ashley either. In the system she'd been given a different reality: she was a likely candidate for teen pregnancy and substance abuse. But she was determined to prove them wrong. An air mattress, rocking chair, small side table and a book collection furnished the first apartment she lived in Buda, Texas upon aging out. The furniture was hand-me-downs from foster parents she briefly lived with when she was 17. "It wasn't a lot, but I was lucky to have it," she says.

Ashley met Estevan through a job at Walgreens, and six months later they wed and moved to an apartment in Austin. "I was 18 and scared, so it was a safety thing. A survival thing. Because if I'm not going to make it, he won't make it and someone will go down with me," Ashley says. Together, they piled on the credit card debt, but continued working, and Ashley enrolled at Austin Community College.

But Ashley's calling, the outcome that makes her stand out from other foster youth, came through her ties to a foster care alumni group. They encouraged her to testify about her experiences before the Texas Legislature on changes needed in the foster care system and on the rights of foster youths. "A lot of alumni fresh out of care just want to vent and talk about it. I was angry, and ready to testify," Ashley says. She did her best to speak eloquently before the representatives. Through nerves, she told them she had no health records from her time in foster care, and that attempts to access her CPS file were futile. That's when Representative Eddie Rodriguez of Austin assigned one of his aides to get a copy of her file. A couple of months after testifying she was handed a heavy box filled

with papers, copies of medical reports, grade reports, CPS files and more. She couldn't bring herself to read more than a few pages because the papers contained such harsh criticisms of Ashley, but the effort on the part of Rodriguez revitalized her outlook. She knew she was one of the lucky ones, and she was determined to make the system better for others.

Thousands of children in Texas foster care experience the inconsistencies of a broken child welfare system. In 2010, 17,027 children were taken into care by the Department of Family and Protective Services. When children are removed into foster care they are put in temporary foster homes like a shelter or a group home, the goal being to reunify them with family or find a new permanent home. If neither of these outcomes is reached within 12 to 18 months, as was the case with Ashley, the child enters the state's "Permanent Managing Conservatorship." Through PMC, the state becomes the full guardian of the child. Sometimes the children are moved from foster home to foster home, interrupting their education and sense of community with new schools, neighborhoods and cities. In far too many cases the long-term plan for the child becomes permanent care until they age out. In November 2010, the Texas Supreme Court Commission for Children, Youth and Families criticized PMC in a report, saying the "clock stops ticking" when the child leaves temporary care and enters permanent care with the state. "Though the State's responsibility for the child's life and well-being does not change—and arguably increases—the attention paid to the child's case diminishes drastically."

The poor handling of youth in PMC is now the subject of a class action lawsuit filed March 29, 2011 on behalf of nine children in Texas foster care by lawyers from the national advocacy group Children's Rights, along with lawyers from three Texas law firms. The suit is against, in their official capacities and not personally, Texas Governor Rick Perry, Executive Commissioner Thomas Suehs of the Health and Human Services Commission, and Commissioner Anne Heiligenstein of DFPS, which is a division of HHSC. Children's Rights has taken legal action in 18 states in order to insure "top-to-

bottom” child welfare reform, according to their website. Six of those cases have been successfully settled, eight are currently active, and four, including the suit against Texas, are in pre-judgment. “We do very thorough investigations and it begins by local advocates noting problems for us. And then you look at all the readily available state and federal data,” says Stephen Dixon, an attorney with Children’s Rights. “ We’ve looked at Texas more than once.”

The complaint *M.D. v. Perry*, (the children are named by their initials, beginning with M.D.), asserts, “Each child in the state’s PMC relies on Defendants for child welfare services, and is harmed or put at risk of harm by the systemic and legal deficiencies of Texas’s child welfare system.”

The state maintains that major strides have been made in children’s welfare. "Texas foster children are safe, well-cared for and live in a system that is nationally recognized for finding thousands of loving, adoptive homes each year," Commissioner Heiligenstein said in a statement to the press following the filing of the lawsuit in March. However state and federal reports, like the Federal Government’s Child and Family Services Review from 2002 and 2008, have continuously point to areas of the system that need improvement including the stability of the foster care placement, the permanency goal for the child and preserving connections with relatives.

Ashley is now the chair for the central region of the Foster Care Alumni of America in Texas, and she has seen some good changes made for foster youth with each passing legislative session since she aged out in 2005. But the efforts are enforced slowly, and usually on the front end. It’s simply too little too late for the youth nearing and fearing their 18th birthdays. “I spoke to some girls who were in a Residential Treatment Facility, which is like a hospital, and they asked how I made it. They’ll tell me the reason they are in the hospital is because their birthday is in three months. They don’t want out, and would rather be hospitalized,” says Ashley.

Compounding the trauma of growing up in PMC, a majority of foster youths experience traumatic abuse or neglect that leads to their intake into the system. Texas has a low removal rate, which means a majority of confirmed investigations of abuse or neglect result in the child staying at home and the family receiving services in home like anger management classes. Jane Burstain, a Senior Policy Analyst with the Austin-based Center for Public Policy Priorities, a nonprofit think tank, says it's important to see the big picture of how the system works. "Texas' low removal rate means only the most difficult cases get services, and of those that get services only *the* most difficult cases get removed," she says. "A state that provides services to a lot of people and removes everyone looks better than Texas because it can send everyone home really easy, whereas Texas never removed those kids in the first place." Last year 16,347 youths were removed from their homes as a result of a CPS abuse or neglect investigation. Out of all confirmed investigations of child abuse or neglect, the child's mother was the perpetrator in 49.5 percent of all cases.

For the first 11 years of her life, Ashley lived with her mother, brothers Matt and Paul, an endless supply of men who dated their mom, and frequent visits from Child Protective Services. In a telephone conversation with Ashley, Matt once asked her, "Would you have rather stayed living with mom, or been put in foster care?" Ashley's head dropped and her voice softened in response, "Yeah, I know. Foster care."

A lot of people think Ashley's mom was a great parent. "But how do you *look* like you beat the crap out of your kids?" Ashley asks. Deception was key. Long-sleeved shirts and pants to cover bruises. A bunch of empty boxes wrapped in Christmas paper under the tree also *looks* great to visitors.

But as early as 1994, when Ashley was almost seven years old, CPS was being called on reports of physical and emotional abuse.

August 22, 1994 - Physical abuse, Emotional abuse: According to the referral Ms. Delacruz slapped Ashley and left a mark on her face because Ashley did not clean the kitchen properly.

Ashley was the fall guy for her mother's abuse. As a child she took on the role of an adult, with responsibilities akin to a caretaker and housekeeper. She was expected to cook, clean, do the family laundry, and watch her brothers while her mother went to clubs with boyfriends. Neighbor Rodney Love, with whom the kids would sometimes visit for food or to get away from abuse, told CPS the children's mother treated Ashley, "like a slave." Despite her reliance on Ashley, her mother showed zero affection to her daughter. "She didn't want a girl, so I was like her mistake and she would always say that," Ashley says. But Matthew, the oldest son, was rarely beaten, and never had to do chores because his mother said he was the man of the house. The roles in the household were clearly askew.

January 1, 1996 - Emotional abuse: A referral of physical abuse was received at the same time and was not investigated. According to the referral Ms. Delacruz attempted hanging herself and this suicide attempt traumatized her children.

May 29, 1997 - Physical abuse: The referral states that Ms. Delacruz hits the children.

Ashley's mother attempted to hide her abuse from others, including the children's stepfather Gregory, who lived with them before divorcing their mother in 1997 because she became pregnant by another man. A counselor took notes of Gregory's experience with the children's mother:

He said Elizabeth would hit her children all over their bodies with whatever she could find. According to him, his wife had no control when she was angry... he found out later

that his wife would have her children stay home from school or would have them stay with a babysitter to hide the abuse.

The beatings evolved over the years. Ashley remembers early on her mother would kick them, or hit them with her hand for anything from not completing a chore to talking too loud or simply bothering her. They would be made to kneel on grains of rice with their noses touching the wall. The grains stabbed into their kneecaps and left a bumpy mosaic of red indentions, and sometimes her mother would forget and leave them there while she went out. There was also a thick leather belt. There were extension cords. Sometimes it was whatever was lying around.

October 5, 1998 - Physical abuse: According to the referral, Ms. Delacruz repeatedly hit Ashley on the hands and forehead with a wooden flute.

The recorded CPS reports spread over a period of six years, but they do not take into account Ashley's memories of repeated physical and emotional abuse, nor the weight of responsibility that blemished any semblance of a normal childhood. When her stepbrother Valentin was born, Ashley spent so much time feeding him and changing his diaper that he called her "Mama". Ashley was 11. She was getting old enough to know she could call CPS, however CPS didn't always help, and sometimes she so feared retribution that she would end up lying about what happened. Ashley has an intense memory of being beaten by a wire hanger. It occurred on December 9, 1999 after Ashley was unable to locate several shirts of her mother's. According to the CPS report, Ashley stated that her mother hit her with "hangers and a board," and "pulling her hair" caused a "bleeding wound on the top of the head." The board was a 2x4 supportive beam from under her twin bed. EMS treated the wound, but several weeks later after interviews in which Ashley stuck up for her mother and said such abuse had not happened again, the case was closed. The CPS report concluded:

The case is being ruled out due to one time occurrence of incident and the child is able to protect herself.

But the child wasn't able to protect herself. CPS was called to the home two more times before the final case of physical abuse occurred. Ashley remembers her mother dragging her down the hallway by her ponytail and repeatedly beating her with different objects, all because she couldn't find Valentin's socks and a shirt. According to the narrative of Ashley's phone call to CPS, her mother called her "a bunch of bad words" like "bitch".

April 18, 2000 - Physical abuse: The referral stated that Ms. Delacruz hit Ashley with a cup and a board cutting her ear. The cut is covered with a Band-Aid. Ms. Delacruz threatened the children that when she came home from work if the house was not cleaned she would beat them. The children called their stepfather to come get them. Ashley went to stay with a friend. The children all left due to fear of being beaten. The referral indicated that abuse has gone on in the past, but the children would not admit it until now.

Ashley was sent to live with her aunt in Cedar Creek, Texas, south of Austin, and the boys were sent to live with their stepfather in south Austin while the case underwent an investigation. "My aunt didn't want me either," Ashley says. She mouthed off one day, like many pre-teens do, about wanting to wear designer clothes and not wanting to shop at Wal-Mart. Her aunt took her to the Children's Advocacy Center of Austin for therapy and told the staff she was leaving Ashley there because she could no longer deal with her serious emotional needs. "She left me there and she didn't come back," Ashley says.

In July of 2000, Ashley was immediately admitted to the Austin Children's Shelter, which at the time consisted of two homes with 30 beds for youth. During intake she had to remove clothing to show any scars or bruising, the body of evidence she accrued over the years. CPS visited the home of her mother to find that Matt had returned to living

with her instead of with his stepfather. Matt was removed from the home and sent to Lifeworks Shelter in Austin. The Austin Police Department prepared felony criminal charges against Ashley's mother, and CPS continued to contact relatives, neighbors and others close to the family to assess possible placements for the children.

Away from her family, everything Ashley knew of relationships came to an abrupt halt and was replaced with an inundation of "newness". Her role as a caretaker suddenly shifted to that of a kind of patient. She was expected to talk to strangers about her life, to answer questions from therapists, to get along with other youth. She refused to eat until she could be with her brothers. She began to pull out her hair, and impulse control disorder called Trichotillomania that is generally a response to anxiety, stress or depression. After individual therapy, her CPS worker recorded the therapist's notes on Ashley:

Miriam describes Ashley as a "pretty disturbed kid", who will most likely age out of the system and will probably need RTC (Residential Treatment Care) eventually. Ashley does have a very needy personality and dotes on attention and is probably a better than average candidate for teen pregnancy.

Within two weeks of entering care, Ashley's mother relinquished her rights to the children. She refused a final visit with them, and had a relative drop off the children's belongings with CPS. Her final responsibility was signing her initials 14 times next to each line of a paragraph at the end of the court's Affidavit of Relinquishment. It read:

"I REALIZE THAT I SHOULD NOT SIGN THIS AFFIDAVIT UNTIL I HAVE READ AND UNDERSTOOD EACH WORD, SENTENCE, AND PARAGRAPH IN IT. I REALIZE THAT I SHOULD NOT SIGN THIS AFFIDAVIT OF RELINQUISHMENT IF THERE IS ANY THOUGHT IN MY MIND THAT I MIGHT SOMEDAY SEEK TO CHANGE MY MIND.

I REALIZE I SHOULD NOT SIGN THIS AFFIDAVIT OF RELINQUISHMENT IF I AM NOT THINKING CLEARLY BECAUSE OF ILLNESS, MEDICATION, MY EMOTIONAL STATE, OR ANY OTHER REASON. BECAUSE I REALIZE HOW IMPORTANT THIS DECISION IS FOR THE FUTURE OF MY CHILD, I HAVE PUT MY INITIALS BESIDE EVERY LINE OF THIS PARAGRAPH SO THAT IT WILL ALWAYS BE UNDERSTOOD THAT I HAVE READ THIS AFFIDAVIT OF RELINQUISHMENT, UNDERSTAND IT, AND DESIRE TO SIGN IT.”

The children entered Temporary Managing Conservatorship with DFPS, temporary care while CPS search for a permanent placement, and an attorney was assigned *ad litem*, Latin for “for the lawsuit”, to represent their best interest. The state would have a year to 18 months to place the children with relatives or another appropriate permanent family, or else they would enter PMC. According to DFPS, 57.6 percent of children end up in placements out of their home county and 17 percent of children are placed out of their region. Nearly 20 percent of sibling groups are not placed together. The children’s stepfather was the first choice in the placement process, and Matt and Paul moved in with him in south Austin, but Matt was later moved to a foster home due to his behavioral issues, and Paul was eventually sent to live with their real father in San Antonio. Austin Children’s Shelter’s Individual Assessment Plan for Ashley stated the following:

Ashley has been the family scapegoat and has been hurt more frequently than her brothers...Ashley’s brothers are currently living with Mr. Castillo, their stepfather. Ashley is placed in a therapeutic foster home near her brothers where she can receive therapeutic services and support through this difficult time in her life. She wants to live with her stepfather but at this time, it is not in her best interest.

The placement arrangement initially angered Ashley. “There’s no certainty in foster care. These poor children come in and they’re in a stranger’s house in a strange environment eating strange food with strange customs. Strange *everything*. And they don’t know what is going on,” says Roy Block, the executive director of the Texas Foster Family Association. Block, along with his wife, fostered 48 children over a period of 17 years, and adopted three into their family that included two biological children. He now works with TFFA to support foster families in the state, and advocate for them through policies and legislation. “Am I going to be here tomorrow? Am I going to leave? Where am I going to be? When am I going home? They have a bunch of questions.”

“When am I going to get to live with my brothers? Why can’t our mom just take a class to get us back?” Ashley had so many questions. Throughout her stay in the therapeutic foster home her caretaker Mary Sheppard reported on Ashley:

9/1/00: Acts a lot older than her age.

10/1/00: Doesn’t know how to be a kid. A lot of anger towards mother.

Ashley would slowly make progress in the home, but not living with her brothers continued to plague her, and in spite of the abuse she grieved the loss of having her mother in her life. Ashley had become wired to do as her mother says, and that meant taking care of their house and her brothers. She expected consequences when she failed. Though it sounds harsh, that was her normalcy, and she missed it. A majority of children taken into foster care are placed in homes operated by private contractors, of which there are approximately 340 in the state who are reimbursed by the state based on the child’s “level of care”. Ashley was assigned a “level of care” of 3. “The level of care system, which are basic, moderate, specialized and intense, are four levels of care that Youth For Tomorrow, a private agency, assign to the kids. The level of care is tied to how much providers are paid each day for a child. So the higher level of need, the more money each

day,” says Ashley Harris, a policy worker with the advocacy group Texans Care for Children and a former CPS caseworker.

In 2010, the level of care system became a target of a foster care redesign effort put forth by Commissioner Heiligenstein and DFPS to address ways to improve child and youth placement outcomes. A Public Private Partnership composed of stakeholder groups like foster families, former foster youth and service providers, spent months dissecting the system’s contracting policies and service needs. In a letter to the commissioner dated December 13, 2011, the PPP addressed recommendations for the foster care system: “The current model does not reward good outcomes and in fact provides financial disincentive as children improve and service levels decrease or permanency goals are accomplished.”

A new model for paying contractors was proposed in a bill to the Texas Legislature in 2011 and would involve a performance-based contracting system that would tie financial incentives to outcomes and remedies of care instead of to the youth’s front-end level of need. “This session I would say the biggest systemic issue is foster care redesign, which really isn’t a legislative issue. There’s really nothing the legislature needs to do, this is something that DFPS needs to do,” says Burstain. “What they need from the legislature for redesign is the flexibility in how they spend the money.” As of early May 2011, the Texas Senate and House passed a budget for DFPS that will allow for the redesign to be implemented despite a major budget shortfall in the state. It could take years for contracting changes to take effect across the entire state.

To address her “specialized” level of care needs Ashley was scheduled to meet with a therapist weekly. She was prescribed Zoloft for dealing with her emotions and depression, as well as sleeping pills to help her rest at night. She was anxious, and continued pulling out her hair. CPS had not heard from Ashley’s mother since she relinquished her rights to the children, and Ashley blamed herself for her and her sibling’s situation. In Sheppard’s home she turned 13 years old, her first birthday without

her family. The next month Matt was moved to a foster care group home in Mullin, Texas, a rural town two and a half hours away from where Ashley was located.

“I think that first placement determines their overall well-being and ability to sustain a placement, or it dramatically hinders them,” says Harris. “It’s a traumatic experience enough to have to question your whole reality, and I think it just sets a child up to have placements continue to break down cause that initial placement was too foreign.”

Not all foster children have bad experiences after the initial shock of being pulled from their home. “There are kids who have been placed and have no negative experiences,” says Harris. “And on some occasions it’s actually the child who calls CPS, an older teenage who recognizes that foster care might be a better option for them.”

Other children find consistency in staying in the same school system. Vivian Dorsett, president of Foster Care Alumni of America in Texas, lived in a faith-based group home when she was removed from her abusive home with her older siblings at age 3. The group home was like a cottage atmosphere as opposed to an orphanage-style building with bunk beds. Usually a young married couple would come and live in the cottage with them for certain periods of time. Although they went through around 13 different sets of parents, the school system remained the same. “Being in the same school is really what kept me together. I was an angry child, and I had independent anger issues, but I never got caught up in drugs or was over-medicated because I stayed involved in extracurricular sports. I was lucky to have house parents who encouraged that,” Dorsett says.

Throughout Ashley’s first placement CPS worked with the children’s real dad, whom they found was married and living in San Antonio, to determine if he would be a suitable permanent placement. The idea was unsettling because for so long living with their dad was a threat used against them by their mom. The siblings were allowed a weekend visit

to test it out, and afterwards Ashley and Matt were assertive about their desires not to live with him. The experience was another step back from the prospect of living with her brothers. Her psychiatrist switched her to a new anti-depressant, Wellbutrin, and Mary Sheppard reported:

5/1/01: Lots of confusion about future. Clings to hope of going with family members. Still has a lot of attitude if she doesn't get her way.

Sheppard and Ashley's therapist noted that she was overly interested in the opposite sex, though the reports never say what a "normal" interest in the opposite sex is for a 13-year-old girl. When she visited Matt's foster home, she would develop quick crushes on the boys in care with him, and they would write letters to each other. Sheppard began making photocopies of the letters. In November of 2001, Ashley wrote to a boy named Mark:

I'm going to be good for you. Tell me how come you're in foster care. I'm a level 2 and I'm here for the same reason as Matthew, but my mom wants Matthew, and Paul, and Valentin, but she said that she hates me and that whoever wants me is stupid. Sometimes I feel a centimeter tall cause I just have a part that is in my heart that's empty cause I just never feel loved.

Her letters read more like diary entries, confessions of her struggles in foster care.

November 10, 2001

I haven't been doing well, I have been so upset, confused, sad I don't know what's going on in my life....

I wish that my foster mom understood how I feel all the time for the past week I have cried in the dark cause I kept telling myself that I won't make it, no one loves me and to tell you the truth I feel so alone.

Ashley was nearing the 18-month deadline after which she would enter PMC. During this time, and for unrecorded reasons, her therapist started missing their weekly appointments. Sheppard noted the issue:

11/1/01: Therapist not being met as needed. Missed appointment, talked to caseworker to find out why. Starting to get some chores done. Affectionate, likes to be hugged. Keeping family in touch.

Mental health care was one of the primary reasons Ashley was in the therapeutic home setting instead of with her brothers, but her care floundered. Similar issues are included in one of the factual allegations in *M.D. v. Perry* regarding children being denied necessary services while in state custody. The 2008 Child and Family Services Review conducted by the U.S. Department of Health and Human Services found “mental health of the child” as an area needing improvement rather than a strength of the system. Ninety percent of cases are required to have “concerted efforts to address the mental health needs of children” for a rating of “Strength”, but Texas only had 68 percent at the time.

There are various reasons why mental health support could fall short, including a lack of providers in the area, however in such cases it is also possible that the CPS caseworker assigned to the case was overloaded. One reason former CPS worker Harris resigned from her position was because she felt her caseload was too high to adequately address the needs of the youth under her supervision.

“Every one case that you have has different parties and different people involved. I had a group of three siblings in one case. Each had a different therapist, they were all three placed in different areas. They had an attorney. They all had different schoolteachers. Now if I’m doing a good job as a caseworker, I need to be in communication with every single one of those people including the psychiatrist, the in-home behavioral therapist...

it's not just the parent or the kid. If you are doing good case managing you're having constant communication with those people," she says.

Overloaded caseworkers has long been a problem in the Texas foster care system, with caseloads averaging around 30 per worker currently. The Child Welfare League of America recommends 15 to 17 caseloads per worker. CPS is also facing potential cuts to staff and caseworker funding in the present legislative session. The Senate's budget would result in 146 fewer caseworkers, and the House budget would result in 88 fewer. "It's not good. The workload is already really high. That does affect their ability to get permanency for these kids, especially for the harder kids," says Burstain.

No recorded action was made by Ashley's CPS worker when her therapist again missed their scheduled appointments, three out of four in one month. Sheppard recorded:

12/1/01: Seeing therapist supposed to be weekly. Has missed three. No show by therapist. [Ashley] Has lost phone privileges due to poor grades in school.

The next month, Ashley was evaluated by a psychologist, Dr. Mary Kilpatrick, on December 7, 2001, due to a potential change in placement. Dr. Kilpatrick recorded some of Ashley's completions of sentence stems to show how they reflected her attitudes and beliefs.

My moods and emotions are different everyday cause I am happy but then sad about my mom and brothers.

Looking ahead, I see myself doing good having a great life looking forward to the best not the worst.

Knowing who I am I want to find out who I am I don't know anything that I'm actually good at.

My attitude bad cause I'm a very happy person, but then I can be so mean.

What interests me most is how come my mom can't take a class to get us back.

I have trouble coping with the fact that I probley (sic) won't see my mom that's so hard to do.

What scares me most is to know will I make it when I grow up and when I'm on my own.

When I need advice I don't ask anyone cause I don't know how to.

My biggest problem is my mom. I want to see my mom so bad that's another goal of mine now.

Without phone privileges, Ashley had less contact with her brothers and other relatives throughout the holidays, all just before her case was set to be seen in court.

1/1/02: Resigned to stay in foster care. Wants more visits with brothers. Is talking about problems more openly (hairpulling). Will now ask for help.

Ashley and Matt were officially transferred to Permanent Managing Conservatorship on January 4, 2002. Paul's legal status would be changed to PMC several months later when his living arrangement with his their father was no longer considered suitable due to finances and Paul's desire to be with Matt. According to the Permanency Plan submitted to the court by their CPS caseworker Michael Martinez, "The permanency plan for Ashley is a concurrent plan of Family Reunification with her father and Long Term

Foster Care. The estimated date of achieving permanency is July 2002 for Reunification and November 19, 2005 for Long Term Foster Care.”

Essentially, Ashley was given until the coming July to decide if she was comfortable and felt safe living with her father, or she’d be in foster care until her 18th birthday on November 19, 2005. Sheppard wrote an update after Ashley learned of her legal status, and the upcoming move to a new placement:

2/1/02: Has therapy when therapist shows up. Supposed to be twice monthly but she has been missing again. Getting more and more attitude. Rude. Wants last word. Talks back all the time. Has to be repeatedly talked to about everything. Is worried about upcoming move. Blames everyone for screwing her up.

Now in PMC with the state, Ashley was moved to a therapeutic foster home in Star, Texas, 30 minutes from where Matt, and eventually Paul, lived. They were assigned a new CPS worker named Romanus Ike. “Caseworkers can’t write everything down, so there’s a lot of knowledge lost about the case when the child gets a new worker,” says Burstain. Within days of Ashley’s arrival in Star she had numerous doctors appointments, which included her first Pap test, and the administration of Depo-Provera, a contraceptive shot that prevents menstruation. She was switched to another anti-depressant, this time Celexa.

In 2010, the average length of stay for a youth in PMC was more than three-and-a-half years. Ashley would end up in PMC for nearly four years until her 18th birthday, and during this time she’d have nine different placements and two additional caseworker changes. Her experience is best described by a phrase repeated throughout *M.D. v. Perry*, “languish in foster care.”

Of the CPS records she has in her case file, the data from her time in PMC is somewhat scarce. The records that do exist say few positive to say about her. It makes it painful for her to even consider reading through them. Tackling the negativity in the system is one of Block's main objectives he hopes to get across through his advocacy. "I'm tired of them telling me what Johnny did wrong. How about what Johnny did right? Sure, we can't ignore the negative. But sometimes we forget that kids are kids no matter where they came from," he says. Focusing on the negative, on risks and punishments, has also made the job of a foster parent increasingly difficult. Creating a sense of normalcy for a child isn't easy when they can only ride in the car with people who have had background checks and been approved to drive foster children. They can only swim in a pool if an adult who is lifeguard and CPR certified is present, which sounds reasonable if it's a public pool. But on a hot summer day in Texas are other kid's parents going to hire a lifeguard so the kids can swim in the backyard?

And if spending the night at a friend's house sounds fun, forget about it unless they've had a home study and everyone in the house over age 18 has had background checks. "Not many parents want to go through that process, so obviously a lot of us have never been to sleepovers," says Ashley. Any school field trips and outings also have to be approved by a caseworker, and if they don't respond in time then you can add another thing to the list foster youth miss out on.

"Everyone in the system wants to protect the children, but you can't put children in a glass bubble. You *have* to let them live, and of courses there are risks, but they have to take risks and learn from them," says Block. Even taking the children on a trip to the coast from San Antonio meant filling out paperwork. When Ashley was in care they were never allowed to jump on a trampoline because any injuries mean serious paperwork and scrutiny, so when she aged out of care and got her tax return the first thing she purchased was a trampoline.

After nearly a year of living in Star, Ashley's behavior was not in accordance with the rules of her foster parent's home. She was often caught kissing her boyfriend, and the foster parents were concerned she might be having sex. After repeated threats of removal from the home, Ashley was placed in a new home in Round Rock, Texas, about an hour and a half from her brothers. This meant a new caseworker. Entering a new school in the middle of the semester caused her to fail three classes, so she had to start summer school. It also meant less frequent visits with her brothers. The one thing Ashley could hold on to between placements was her books. Mary Sheppard introduced Ashley to the novels of V.C. Andrews. Notorious for centering on family sagas and dark secrets, they tend to have a rags-to-riches quality. A quote from one of the most well known Andrews books, *Flowers in the Attic*, reads:

I wish the night would end,
I wish the day'd begin,
I wish it would rain or snow,
or the wind would blow,
or the grass would grow,
I wish I had yesterday,
I wish there were games to play...

Books became a true escape for Ashley, a way to *not* think about her life for a little while. Each time she was moved to a new placement, sometimes with little time to pack all her belongings, she made sure to bring her collection of books. Ashley took the books, and kept the stories inside her each time she switched schools, entering classes in the middle of lessons she had not learned. It was never easy to catch up, and she never saw her grades to know the difference. Report cards were sent to her caseworkers. There was never enough time to build relationships or trust anyone other than her books. "No one could ever take reading away from me," she says.

After nine months in the Round Rock home, the foster family in Star, Texas said she could come back under the condition that she sign a contract with her foster mother saying she would not date anyone, among other things. Desperately wanting to remain close to her brothers, Ashley signed the contract. She remembers it as one of the most blatant examples of the conditional nature of foster care. Unconditional love was a fantasy she knew of only from novels. The contract between Ashley and Mrs. Goulart, her foster mom, included the following text:

1/2/2003

The conditions for staying in the Goulart home are as follows:

Have to totally break up with Jason and not have a boyfriend until the next school year. Reason for this is because Ashley needs to gain trust and get a grip on who she is and how she needs to handle her responsibilities...

Gain self-confidence and like who she is...

Has to tell the truth about everything even about boys. Any kind of lying will not be tolerated...

If she does not follow these guidelines and breaks them it will cause her removal from the home. If caught doing things on the "down-low" with boys or staying with Jason it causes her to be removed from home. It is the same as lying to us.

Soon after returning to the home an incident occurred in which Ashley told a counselor at school that her foster father had tried to kiss her. She was removed from the home, and no investigation was made. She was placed in a home in her brother's hometown, which thrilled her, but when she arrived the foster mother threatened Ashley to "stay away from

my husband.” Within two weeks Ashley was again removed from the home and sent to a foster home in the Austin area.

After Ashley’s last foster family placement she ended up at a group home at the Settlement Home in Austin, and she was happy about that. “I think it’s cause they figured out that maybe living with parents wasn’t something that was good for me,” she says. In foster homes the parents wanted her to call them “mom” and “dad” like the rest of the kids. They insisted they were her parents. “No, no your not. You’re my parents until I mess up and you get rid of me,” Ashley says.

Ashley thrived despite the fear of turning 18. She had jobs, and through the Department of Family and Protective Services she attended Preparation for Adult Living classes. The PAL program lasted three months and consisted of 38 hours of classes that addressed topics like housing and transportation, nutrition, job skills, substance abuse/stress management and money management. They took field trips to try apartment hunting, and comparing food and household item costs at H-E-B. Upon completion they received a transitional living allowance of \$1,000.

When she aged out, she’d given up on living with her mother because her mother emptied her savings account. She tried to go sign up for an apartment, an experience she calls funny because the landlord laughed at her. With no credit to her name, she needed a cosigner. A foster care advocate ended up going back with her and helping her set up the apartment with her PALS money, and one of her former foster parents gave her the air mattress, rocking chair and small table.

“Kids are just not prepared to be on their own. They’re not getting the skills needed to be independent of an organization or someone doing everything for them. The reality is when you’re in foster care everything is set. It’s not perfect, you’re not getting the love and support you truly need, but your clothing, medical and other things are,” Harris says.

“Everyone else makes appointments for you and makes sure those needs are met even if they’re not perfect. And that’s fine for children who turn 18 and have mom and dad to call, but these children have no one.”

“They may be old enough chronologically, but they’re usually not old enough emotionally,” says Block. “And they have no home to go to during the holidays, or someone to go to during that first major breakup. “You just need that support. Sometimes you can get that from a girlfriend or something, but sometimes you just need family. I know far too many of our foster kids end up in the penal system, far too many end up living on the street. The success isn’t anywhere near where it needs to be.”

When she worked with transitioning youth, Harris insisted that they make their own doctors appointments starting at 16. “If you have a problem with someone, bring it to their attention and tell me later because I can’t be your first line of complaint.” Harris tried to help them learn tasks that many kids learn from modeling their parents or older siblings, like making phone calls to make a reservation at a restaurant, or calling to ask the bank a question.

Her involvement in the foster care alumni group helped Ashley adjust to doing daily activities on her own. She testified during the 2007 legislative session, and has been actively participating in public policy reform ever since. It’s been six years since she aged out and two major overhauls of the foster care system have been attempted. The first in 2005. “Senate Bill 6 gave DFPS a lot more money for investigators and really tried to beef up the investigative part, and then had a plan for privatizing everything post investigation,” says Burstain. With the investigations came more youth into the system, and there were simply not enough homes, and not enough workers working the homes of youth who stay home while their family receives Family Based Safety Services.

“Privatization was rolled back in Senate Bill 758 in the 2007 session, and they gave a lot more money for FBSS workers,” Burstain says. In 2009, the focus continued on supporting the FBSS workers who help keep children in their homes, and then they also focused on youth aging out. “The way that the department kind of sees the transition is, we worked on investigations, then we worked on when kids get services, then we work on the back end of the system, and now we’re working on foster care. If you look at it it kind of has been a natural progression because there’s no way you can address every part of the system all at once.”

But are the legislative efforts making big changes fast enough? Ashley knows thousands of children are entering into the broken system she faced. But thousands of foster youth are also reaching that pivotal age of 16 when they fear turning 18. And in the six years since she aged out, thousands of foster youth have had to make that same frightening transition into the real world. If her abusive childhood sounds scary, and her years of jumping around a broken system daunting, consider how she felt becoming an adult without a steady trampoline to launch her.

The lawsuit against Texas is largely an effort to instigate enforceable reform. “There’s children currently suffering in the system, and it’s urgent for the children who are currently suffering,” says Dixon of Children’s Rights. The efforts for foster care redesign will be implemented in small areas of the state at first, so overhauling the structure of Texas’ foster care system could take several years. “We can’t wait for some kind of speculative solutions that are being debated right now and worked out. There’s talk of rolling things out over years, in small populations that aren’t even in the system yet, they’re talking about children newly entering, being studied as some element of what they’re calling foster care redesign are being rolled out.”

Burstain agrees with DFPS that the lawsuit is untimely and could be costly, taking resources away from actually providing services to youth. “I don’t think that the problem

in Texas is that DFPS has its head buried in the sand and is thinking we don't have any problems. I mean they realize there are issues which is why they're doing the foster care redesign. They realize that the foster care system as it's currently structured is not working."

Dixon affirms that the process doesn't have to be lengthy or costly. That happens when some states hire private law firms that run up the bills, and he doesn't expect that to be the case in Texas. "The attorney general is defending the case. The problem of long, protracted, expensive thing I think is minimal in Texas because we have the attorney general's office which is very competent and I think will be reasonable," he says.

The efforts made by the Texas Legislature have continued to move the system forward. Data shows the number of adoptions since 2003 has grown over 100 percent, and roughly 80 percent of youth are served in their homes rather than removed. "If you're doing a good job then that small group is going to stand out because you've basically gotten everyone else home and so that group is going to stand out even more. To a certain degree I think that's what's happening in Texas," says Burstain.

A hearing on May 26 in federal court in Corpus Christi, Texas will determine whether *M.D. v. Perry* will remain a class action suit, or if the nine children will be bringing their own individual cases. A period of discovery will follow, during which lawmakers will closely investigate the children's cases. If the case goes through as class action, and succeeds, the judge will reward injunctive relief as opposed to money damage. A process involving experts and the judge will then come up with the appropriate course of action to be taken by the state, and the court will closely monitor the efforts. "The real question to me that the lawsuit is asking is whether on a systematic basis for the vast majority of kids, Texas is essentially failing them," says Burstain.

Ashley agrees that she was better off not living with her mother, but her experiences in Texas foster care were not much better. She hates to see youth currently experiencing the exact same feeling of “languishing in care” that she felt, youth in PMC with a plan to age out. Working with foster youth gives purpose to her bad experiences, and for that she feels thankful because she can make a difference. In the past year she became very close to a family who has decided to adopt her at age 23. She will soon have a mom and dad, and two sisters and two more brothers. Unconditional love is finally starting to make sense to her. She filed for divorce from her husband, a decision made after they separated and she finally felt what it was like to be independent. “I feel like I’ve grown up so much in the last year being on my own and having to be responsible. It gave me a chance, and I robbed myself from that before because I was so scared,” she says.

In January she got her drivers license, and in April she purchased a new car. “What I really want to do is just drive around in my car with my windows down and listen to music,” she says. It’s at once a feeling of supreme independence, but it’s also one of those memories, the kind that is happy because it’s from the time she lived with her brothers. After her mom would have a bad breakup, she would load Ashley and her brothers into the car and she would just drive from sunset until it was dark. “And she’d have the windows down and we’d be listening to music and it was just okay. There was nothing to be scared of,” Ashley says.

Now Ashley cruises from her home in San Marcos, to her job in downtown Austin, to the steps of the Capitol to testify, and to foster care facilities where she encourages youth who are aging out. On the weekends she plays Aunt Ashley to her nieces in Brownwood, Texas, where her brothers live, and by Sunday she’s home in Austin in time for dinner with her new family. Ashley’s life isn’t perfect, but it’s consistently full of love, and she’s far from that emptiness that once left her feeling a centimeter tall.

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VITA

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This report was typed by the author.