

TESTIMONY OF:

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Thank you to the Committee on Public Health and Human Services for the opportunity to present testimony on the child welfare system and removal of children into foster care. I currently serve as a Practice Professor of Law at Penn Law School and Director of the Interdisciplinary Child Advocacy Clinic. Throughout almost two decades of this work in New York City and Philadelphia, I have seen firsthand the critical role that preventive services, high quality legal representation for parents and interdisciplinary practice play in safely reducing the number of children in foster care, providing services for families where out of home placement is required under the law, and promoting overall family stability and child well-being. My testimony reflects my individual views and does not represent any position or opinion of the University of Pennsylvania. Prior to teaching at Penn, I was the Managing Attorney of the Family Defense Practice at The Bronx Defenders, the first institutional provider of holistic representation for parents accused of abuse and neglect in Bronx Family Court. As the primary provider for representation to parents in Bronx Family Court, the practice was responsible for representing thousands of parents each year through a holistic model incorporating lawyers, social workers and parent advocates. As part of our legal practice, we worked with attorneys for children, Judges, child welfare officials and city legislators to work towards safely reducing the number of children removed from their families, and the length of children's stay in foster care.

At the Penn Law Interdisciplinary Child Advocacy Clinic, I direct law students and social work students on interdisciplinary legal teams representing children, adolescents and families in a range of civil legal matters including dependency, custody, special education and benefits. We represent clients through a medical-legal partnership with CHOP focusing on the legal issues impacting patient health, commonly referred to as the social determinants of health. We also represent adolescent clients in dependency proceedings including pregnant and parenting foster youth who are often facing dual involvement in the child welfare system as both a foster youth and investigated parent.

As the Committee is undoubtedly aware, Philadelphia has the highest rate of child removal of any large metropolitan area in the country. In 2017, there were 6,095 children in Philadelphia's

¹ University affiliation listed for identification purposes only and does not represent the position of the University.

child welfare system.² The high rates of child removal indicate that Philadelphia resorts to removal far more frequently than necessary to attempt to resolve the struggles facing parents and their children. When the interventions provided to parents and family are limited to removal or court supervision, we lose sight of the inextricable and historical link between child welfare and the underlying poverty that the vast majority of families in the child welfare system struggle with every day. Initially, it may seem preferable to err on the side of caution, divesting caseworkers of their obligation to assess and identify whether a removal is warranted and tasking the Family Court with reviewing every removal in court. However, this ignores the impact of even a short removal on a child's well-being in interrupting appropriate attachment and the relationship with the primary caregiver which is critical for child development. In light of these documented outcomes, it is clearly advisable to pursue and invest in supportive services and resources that can be provided to vulnerable families to prevent removal in the first place. Additionally, it has been and continues to be the law to provide preventive services to all families to avoid a removal and out of home placement for a child.

In Pennsylvania, most children do not enter the child welfare system for physical abuse, but rather for neglect. In the federal fiscal year 2015, only 9% of Pennsylvania children entered the foster care system for physical abuse compared to 23% who entered due to neglect.³ Across the state, 27% of children entered Pennsylvania's foster care system due to child behavior problems, 53% entered due to parental substance abuse, and 14% entered for inadequate housing.⁴ As you might infer, those issues have identifiable services which can be provided including housing assistance, mother child drug treatment programs and community based mental health services. Additionally, despite making up only 13% of the general child population in Pennsylvania, 42% of the foster care population in the state is African American, a disproportionality that needs to be included in any discussion of child welfare reform.⁵ Furthermore, after removal approximately 23% of children removed from their families in a given year achieved permanency, indicating that many children – even after being removed from their parents – lack safe, stable and permanent homes.⁶

While many families may be in need of support and resources, removing children from their parents causes significant trauma to families, and foster care often contributes to poor life outcomes for children. Studies conducted by Joseph Doyle from M.I.T. compared children placed in foster care to comparably maltreated children who remained at home. His research found that in so-called margin cases—meaning cases where investigators disagreed about whether the child should be removed from the home—the decision to remove a child from her home had devastating consequences. Children taken from their homes and placed into foster care were twice as likely to become teen mothers or be involved in the juvenile system.⁷

² See *Five Year Financial and Strategic Plan for Fiscal Years 2019-2023*, March 1, 2018 (available at <https://www.phila.gov/media/20180301094812/FY19-23-Five-Year-Plan.pdf>).

³ See Child Trends, Foster Care: Pennsylvania Federal Fiscal Year 2015 (available at https://www.childtrends.org/wp-content/uploads/2017/01/Pennsylvania-Foster-Care-Factsheet_2015.pdf)

⁴ *Id.*

⁵ *Id.*

⁶ See *Five Year Financial and Strategic Plan*, supra note 2, at 152.

⁷ See Joseph J. Doyle, Jr. and Anna Aizer, *Economics of Child Protection: Maltreatment, Foster Care and Intimate Partner Violence*, Annu. Rev. Econ. 2018. 10:87–108

Indeed, placement in foster care, even for a brief amount of time, is not a benign or neutral event in a child's life. Our laws governing removal of children from their parents require a particularly serious threat to the child's safety and require that state agencies first make reasonable efforts to avoid the child's removal. These requirements are grounded in well-established evidence about the negative impact of removal, even when necessary to protect a child. When a child is removed from her parents' care, it upends their daily existence including school, association with extended family, recreational activities and attachment to their primary caregiver, the parent. Removal causes lifelong trauma to children and can often have lasting negative consequences, including psychological problems into adulthood, many of which were highlighted this past summer when the issue of the forced separation of migrant children was featured in the news.⁸ When there is a risk to the child's immediate safety, we accept this trauma as necessary to prevent further harm to the child. Clearly, there are children who are in serious risk of harm and for whom removal is the only solution for abuse in their homes. However, as noted earlier, the bulk of the cases investigated by DHS and currently entering the system do not involved serious physical, sexual or emotional abuse but rather neglect which encompasses a wide range of issues including inadequate employment, lack of access to adequate housing and basic services, behavioral health issues and substance abuse.—issues which can be addressed by preventive services discussed below.

As a city, we must consider removal of a child from home as the last resort and shift our focus to problem solving with families to address needs caused by poverty and a renewed focus on the role of social work best practices for child welfare caseworkers in assessing and identifying supports which only in the most serious cases include placement outside of the family's home. This is critical in light of the overwhelming literature that children who are in foster care have poorer life outcomes as adults including adult incarceration rates that were three times higher than those who remained at home, and employment and earnings that were significantly lower for those removed from home.⁹

The Commissioner and DHS have already begun the critical process of moving children in out of home placement to kinship placements in their communities and reducing the number of children placed in congregate care facilities. Additionally, the department's efforts to increase cases referred for preventive services and diverted from the child welfare system is encouraging. However, more efforts and resources could be placed towards preventive services, diverting cases at the investigation stage and providing legal services for families that bring children into the foster care system. Services could include nurse family partnerships, home visiting programs, increased access to concrete supports, respite care and medical-legal partnerships.

Legal services, which might be assumed to slow down the process, are vital to protecting the rights of both parents and children. Interdisciplinary legal services, interdisciplinary legal services, where social workers inform case strategy can identify and help to address the root causes of many cases of neglect including inadequate housing, intimate partner violence and limited access to quality behavioral health services. Additionally, legal services can ensure that DHS is held accountable

⁸ American Academy of Pediatrics, AAP Statement Opposing Separation of Children and Parents at the Border (July 2018) available at <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx> (explaining that “highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health”)

⁹ *Id.*

during the investigation stage to base decisions on complete information and to seek removal only in the most serious of cases.

Other cities have made significant improvements to children's health and well-being by ensuring families' access to legal services. In other jurisdictions including Detroit and New York City, preventive legal services during a child welfare investigation did not result in increased harm or safety risk to children known to the system because of a report of alleged neglect. At the Center for Family Advocacy in Detroit, preventive legal services focused on the legal barriers that prevented a child from remaining with their family and achieved its goal of avoiding foster care placement in 98.2% of the cases.¹⁰ In those cases, social workers and lawyers were critical in assisting the family to identify issues needing support in their family, provide appropriate referrals for legal assistance or social work services, and counsel parents on how to navigate the child welfare system which is often viewed with tremendous distrust and skepticism. These are services and approaches which are appropriately separated from DHS's role as the investigating agency with the authority to remove a child from their parents' care.

In addition to preventive legal services, programs such as the nurse-family partnership allow families to receive support and assistance to identify needs, meaningfully assess strengths and challenges, and provide individualized services and referrals. The Penn Law Child Advocacy Clinic has represented young mothers and families referred from medical partners including the Nurse Family Partnership. The preventive legal representation to address a range of legal issues that may impact the family's stability and the social and medical supports provided by the community agency like Nurse Family Partnership are powerful interventions. The common theme is the focus of the services to allow children to remain safely in their family's home. For example, if a family is being investigated for inadequate housing, preventive legal services can be used to negotiate with a landlord to make repairs or abide by the terms of the lease. In the case of an imminent or actual utility shut off, advocates can assist parents with gaining medical certifications when there are young infants in the home who would be at risk without heat and electricity. Interdisciplinary legal teams can also work with older youth who may be facing disciplinary issues in school or be in need of behavioral health supports which require their consent. In each of these instances, the preventive services are aimed at allowing children to remain in the care of their parents, members of their community, and students in their school.

Finally, viewing parents as partners in this process is critical to reshaping the culture and efficacy of the child welfare system. When parents are viewed as partners, they are more likely to be engaged with preventive services ultimately supporting their children and achieving better outcomes. Family Group Decision-Making (FGDM) is a label for a collection of approaches aimed at engaging a family to participate in the planning, actions, and assessment of decisions that impact child safety, permanency, and well-being. Again, the theme of the model focuses on family preservation and the intervention of services that are collaboratively determined between the agency and the family. Many different approaches and models to FGDM have been developed and implemented within child welfare agencies and organizations across the country.

¹⁰ Detroit Center for Family Advocacy, Report at page 12.

Many states have adopted family team decision-making in some form.¹¹ Family-centered programs and practices empower families to be the decision-makers and experts in decisions being made for their children. Under the guidance of professionals like social workers, families engaged in FGDM can discuss the barriers to properly caring for children within the family unit or within the family's community and then develop a trauma-informed and sustainable plan for removing or getting past those barriers. A consensus driven decision-making process does not necessarily imply unanimity. Consensus allows individuals' ideas and suggestions to be heard and considered during the FTDM meeting.¹² Providing legal representation for parents during this process ensures that parents understand and meaningfully participate in the process understanding how to navigate the often complex and alienating child welfare system.

As a measure of these efforts, DHS could ensure greater transparency on the following types of cases: number of cases diverted from an investigation, number of cases receiving preventive services, number of cases involving issues attendant to poverty such as housing, child care, basic necessities, and lack of access to behavioral health services, and number of cases where the child is returned in the first two months. We have the opportunity for reform with increased attention to the role of high quality interdisciplinary legal services for parents throughout the investigation and removal process. Concurrently, the City can increase the potential impact of resources addressing a family's underlying poverty and training on preventive services as the default for families investigated by the agency.

Inherent in all these preventive efforts is the recognition that family instability and even elements of what is currently defined as neglect does not necessarily equate child abuse rising to the level legally where a child needs to be removed from their parents' care in order to insure safety. The child welfare system and caseworkers should be tasked with engaging more regularly with preventive services and being trained on the role of legal and social service interventions in supporting families at risk, as opposed to focusing solely on removing children from their parents' care. Once we truly take into account the role of generational poverty, the impact of trauma and adverse childhood experience, we can move towards a system that values family welfare and stability as the best predictor of improved child outcomes.

¹¹ See generally <https://www.childwelfare.gov/topics/famcentered/decisions/statelocal-examples/> (providing an overview of state and local programs for family group decision making).

¹² See Washington State Family Team Decision-Making Meeting Practice Guide, (available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=2ahUKEwiIscnus6zgAhUOMd8KHQxHD30QFjABegQIAhAC&url=https%3A%2F%2Fwww.dcyf.wa.gov%2Fsites%2Fdefault%2Ffiles%2Fpdf%2FFTDMPracticeGuide.pdf&usg=AOvVaw3OBMODp0yfA_WzoZlkKc5-).