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Testimony Before the District of Columbia Council
Committee on the Judiciary
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Public Hearing:
B21-0683, the "Comprehensive Youth Justice Amendment Act of 2016"

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Introduction

Good morning Chairman McDuffie and members of the Committee on the Judiciary. My name is Sharra E. Greer. I am the Policy Director at Children's Law Center¹ and a resident of the District. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

We support the goal of this bill to bring critical reforms to the District of Columbia's juvenile justice system that prioritize rehabilitation, reduce over-incarceration, restore judicial discretion, promote humane confinement, enhance agency oversight, and protect young immigrants. We have a few specific concerns that are primarily technical. One change we are recommending is particularly important to correct an unintended impact on children who have been abused or neglected.²

I am going to focus my testimony today on a part of the bill that removes a barrier to moving cases forward in DC Superior Court that poses a particular problem in custody cases. In order for most court proceedings to move forward, the affected parties must be notified, usually by notifying the party in person, or "serving process." If that is not possible because, for example, the party lives outside of the District, the party can be notified by publication. DC Code section 13-336(a) states that "publication

may be substituted for personal service of process upon a defendant who cannot be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months..." Unfortunately, this does not authorize service by publication when a plaintiff does not know the whereabouts of the defendant or the defendant is purposefully avoiding service. As a result, cases are often delayed for long periods of time without any way to move the proceedings forward. This is a particular challenge for children in custody cases. If one of the parents cannot be located, or is avoiding service, the status of the child's legal custodian stays in limbo.

We are strongly supportive of the change proposed by this legislation that would allow service by publication when the "defendant who cannot be found after diligent efforts or who by concealment seeks to avoid the service of process."³ This change will resolve the problem and allow many cases to move forward. Service by publication in these circumstances is common and brings the District in line with other jurisdictions.⁴

We do urge one change to this section. Many of our clients, and the *pro se* clients in family court seeking custody, live at or significantly below poverty. The least expensive publication costs \$75 and at times plaintiffs are required to publish in two publications.⁵ This cost presents a significant hardship for many of our clients. DC Code currently allows in divorce proceedings, when satisfactory evidence is presented to the court that the plaintiff is unable to pay the cost of publishing an advertisement, the court to direct that publication can be made by posting the order of publication in the

Clerk's Office of the Family Division of the Superior Court.⁶ We would urge this option be available in custody matters as well.⁷

Thank you for the opportunity to testify, and I look forward to answering any questions.

¹ Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to be the voice for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² Under current law (§ 16-2310(b)), a child may not be placed in shelter care prior to a fact finding hearing or dispositional hearing unless doing so meets the three requirements stated in that section. The bill would additionally require that the child be alleged to be delinquent or in need of supervision before the child could be placed in shelter care. The change would eliminate the ability to place into shelter care children removed from a home because of abuse or neglected before an initial hearing. This would leave these children with no place to be housed for 72 hours. We do not believe the intent of this amendment was to prevent the placement of abused or neglected children into foster care prior to an initial hearing. We urge this section be changed. We also have some additional suggestions regarding the changes to the confidentiality provisions which we look forward to discussing with the committee.

³ Sec. 601.

⁴ For example:

- Washington: "When the defendant, being a resident of this state, has departed therefrom with intent to defraud his or her creditors, or to avoid the service of a summons, or keeps himself or herself concealed therein with like intent" - West's RCWA 4.28.100.
- Wyoming: "In suits for divorce, for alimony, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a nonresident of the state, or the defendant's residence cannot be ascertained, or the defendant keeps concealed in order to avoid service of process" Wyoming Rules of Civil Procedure, Rule 4.
- Alabama: "When a defendant avoids service and that defendant's present location or residence is unknown and the process server has endorsed the fact of failure of service and the reason therefor on the process and returned it to the clerk or where the return receipt shows a failure of service, the court may, on motion, order service to be made by publication" -ARCP Rule 4.3.
- Nevada: "In addition to methods of personal service, when the person on whom service is to be made resides out of the state, or has departed from the state, or cannot, after due diligence, be

found within the state, or by concealment seeks to avoid the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service is to be made, and that the defendant is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of summons” -NV ST RCP Rule 4.

- Virginia: “That diligence has been used without effect to ascertain the location of the party to be served” -VA Code Ann. § 8.01-316.
- Maryland: “Plaintiff has shown by affidavit that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant” -MD Rules, Rule 2-122.

⁵ Washington Times Publication Cost as of 5/16.

⁶ DC Code 13-340.

⁷ Specifically we propose amending DC Code section 13-340(a) to read “In actions for divorce *or child custody under D.C. Official Code, Title 16, Chapter 45* in which service by publication is authorized under this chapter, and satisfactory evidence is presented to the court that the plaintiff is unable to pay the cost of publishing an advertisement pursuant to D.C. Official Code sec. 13-340, without substantial hardship to himself or herself, or to his or her family, the court may direct that such publication may be made by posting...”