



501 3<sup>rd</sup> Street, NW · 8<sup>th</sup> Floor  
Washington, DC 20001  
T 202.467.4900 · F 202.467.4949  
[www.childrenslawcenter.org](http://www.childrenslawcenter.org)

Testimony Before the District of Columbia Council  
Committee on the Judiciary and Public Safety  
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Public Hearing:  
Bill 25-291, the Safer Stronger Amendment Act of 2023

Danielle Robinette  
Policy Analyst  
Children's Law Center

## Introduction

Good afternoon, Chairwoman Pinto, members of the Committee, and staff. My name is Danielle Robinette, and I am a policy analyst at Children's Law Center. I am testifying today on behalf of Children's Law Center which believes every child should grow up with a strong foundation of family, health and education and live in a world free from poverty, trauma, racism and other forms of oppression. Our more than 100 staff – together with DC children and families, community partners and pro bono attorneys – use the law to solve children's urgent problems today and improve the systems that will affect their lives tomorrow. Since our founding in 1996, we have reached more than 50,000 children and families directly and multiplied our impact by advocating for city-wide solutions that benefit hundreds of thousands more.

In our *Guardian Ad Litem* (GAL) program, Children's Law Center attorneys are appointed by DC Superior Court judges to represent District children who have open neglect proceedings in family court. We make sure their perspectives and wishes are heard and their best interests are prioritized. Our representation includes advocating for the supports and services children need to heal from the traumas that brought them into the child welfare system and to leave the foster care system safe, healthy and learning. Our GALs are appointed "to appear on behalf of the child and represent [their] best interests' in any proceeding 'wherein the custody of a child is in question.'"<sup>1</sup> Our

comments are grounded in the experiences of our attorneys and clients who navigate the court system every day.

First, we support the proposed expansion of protections for students who may be abused by adults at school. However, we have serious concerns about the proposed expansion of pretrial detention of children, ostensibly for their own protection. We find it difficult to imagine a set of circumstances in which incarceration is in a child's best interest, especially given the serious risk of harm that pretrial detention poses to children. Instead, we strongly urge the Council to support children and youth in the juvenile justice system through meaningful investments in DC's public behavioral health system.

### **Support for Expanded Protections for Schoolchildren**

Children's Law Center supports the addition of contractors, consultants, and volunteers to the definition of "significant relationship" in DC Code § 22-3001(10)(D) and to the list of persons with authority over secondary education students while at school in DC Code § 22-3009.03.<sup>2</sup> This amendment recognizes that schools may solicit contractors, consultants, and/or volunteers who are on campus and interact closely with students. A student's relationship with and trust in these adults is not meaningfully different simply because the adult is not directly employed by the school. As such, these individuals may develop significant relationships with students comparable to teachers, counselors, coaches, etc. and, in rare cases, may use their positional power to coerce and abuse students. These amendments to the law will ensure that any adult working or

volunteering at a school, regardless of their employer, can be held accountable for any inappropriate action taken against students.

### **Opposition to Incarcerating Children for Their Own Protection**

Under current law, a child shall not be placed in pretrial detention unless a judge determines that the child poses a risk of significant harm to the person or property of others, or if there is reason to believe the child will not appear at their next court hearing.<sup>3</sup> The Safer Stronger Amendment Act of 2023 proposes adding language to DC Code § 16-2310(a)(1) that would find pretrial detention of a child is required to protect that child from significant harm.<sup>4</sup> Children’s Law Center opposes this addition to the Code.

As introduced, the new language at § 16-2310(a)(1) imagines a situation in which pretrial detention of a child is required to protect that child despite no finding that the child poses a significant risk to the person or property of others.<sup>5</sup> In such a scenario, the judge is asked to order pretrial detention for the child’s own good. As an organization with nearly three decades of experience representing the best interests of children with unique and complex needs, it is difficult for us to imagine a set of circumstances in which incarceration is in a child’s best interest. At best, this provision is an unnecessary addition to the Code that judges may never find appropriate to use. At worst, it creates a slippery slope upon which judges feel an obligation to detain children even when they pose no significant risk to the community. The latter result is particularly worrying given the evidence that pretrial juvenile detention has a criminogenic effect on children. One study

found that “pretrial detention was associated with a 33% increase in felony recidivism and 11% increase in misdemeanor recidivism within one year.”<sup>6</sup> Another study found that “juvenile detention significantly harms critical outcomes [... and] leads to a 31% decline in the probability of high school graduation, and a 25% increase in the probability of an adult arrest.”<sup>7</sup> For these reasons, Children’s Law Center opposes the legislation’s proposed addition of “or of the child” to DC Code § 16-2310(a)(1). Instead, we strongly urge the Council to consider alternative methods of supporting DC children by meeting their behavioral health needs.

### **Support Children and Youth in the Juvenile Justice System through Meaningful Investments in DC’s Public Behavioral Health System**

If the District’s goal is to protect children from harm, there are myriad supports that ought to be explored before incarceration is considered. In December 2021, Children’s Law Center, alongside community-based partners and healthcare experts, published *A Path Forward – Transforming the Public Behavioral Health System for Children, Youth, and their Families in the District of Columbia* (“*A Path Forward*”) (see Appendix). This extensive report makes dozens of recommendations for transforming DC’s public behavioral health system for children into a system that provides appropriate, equitable, and high-quality behavioral health services throughout the continuum of care for children in DC.<sup>8</sup> Specifically, *A Path Forward* makes four recommendations to better support youth in the juvenile justice system:

- Increase access to affordable, high-quality behavioral health services and social service supports for justice-involved youth and their families<sup>9</sup>;
- Ensure continuity of behavioral health services and supports upon reentry into the community<sup>10</sup>;
- Implement training to individuals and organizations working with at-risk and justice involved youth<sup>11</sup>; and,
- Increase peer support and mentoring opportunities for justice-involved youth.<sup>12</sup>

Each of these recommendations is “informed by best practices around the country, feedback, and input from expert stakeholders across the District and focus groups conducted with District youth and caregivers.”<sup>13</sup>

Additionally, the report makes several recommendations that would bolster DC’s behavioral health system as a whole and support children before they become involved in the juvenile justice system. Below are just a few of the recommendations for DC government agencies and the DC Council which could better protect and support children in their communities:

- Prioritize and support the development of a sustainable data system that routinely captures and analyzes data on prevalence, incidence, severity, risk factors, social determinants, functional outcomes, and access to care for behavioral health conditions<sup>14</sup>;
- Develop an updated strategic plan for children’s behavioral health<sup>15</sup>;
- Establish an Interagency Council on Behavioral Health that aligns with the Collaborative Governance Model<sup>16</sup>; and,
- Adequately fund the School-Based Behavioral Health (SBBH) Expansion Program.<sup>17</sup>

Children’s Law Center believes that “[c]hildren flourish when they receive the right behavioral health care at the right time.”<sup>18</sup> If the goal of the suggested addition of “or of

the child” to DC Code § 16-2310(a)(1) is to protect children from potential harm, we strongly urge the Council and the relevant executive agencies to focus instead on reforming DC’s public behavioral health system to better meet the needs of children and families. Our team and partners stand ready to support these efforts, which are as complex as they are critical. We appreciate the efforts the Council has made to start the systemic change

Thank you for this opportunity to testify and I welcome any questions.

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<sup>1</sup> Superior Court of the District of Columbia, “Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases,” at 1, *available at*: <https://www.dccourts.gov/sites/default/files/2017-09/Order14-01-GALPracticeStandards.pdf> (citing D.C. Code § 16-918(b)).

<sup>2</sup> See Safer Stronger Amendment Act of 2023 (as introduced) at line 84-90, *available at*: <https://lms.dccouncil.gov/downloads/LIMS/53020/Introduction/B25-0291-Introduction.pdf?Id=161560>.

<sup>3</sup> See DC Code § 16-2310(a)(1)-(2).

<sup>4</sup> See Safer Stronger Amendment Act of 2023 (as introduced), *supra* note 4, at line 91-96.

<sup>5</sup> See *id.*, at lines 95-96.

<sup>6</sup> Sarah Cusworth Walker & Jerald R. Herting, “The Impact of Pretrial Juvenile Detention on 12-Month Recidivism,” 66 *Crime & Delinquency* 1865, 1865 (2020), *available at*:

<https://journals.sagepub.com/doi/pdf/10.1177/0011128720926115>

<sup>7</sup> E. Jason Baron, et al., National Bureau of Economic Research, “Pretrial Juvenile Detention” (Working Paper 29861), at 20, *available at*: [https://www.nber.org/system/files/working\\_papers/w29861/w29861.pdf](https://www.nber.org/system/files/working_papers/w29861/w29861.pdf)

<sup>8</sup> *A Path Forward – Transforming the Public Behavioral Health System for Children and their Families in the District*, at 21, (December 2021), *available at*: [https://childrenslawcenter.org/wp-content/uploads/2021/12/BHSystemTransformation\\_Final\\_121321.pdf](https://childrenslawcenter.org/wp-content/uploads/2021/12/BHSystemTransformation_Final_121321.pdf). This report is released by Children’s Law Center, Children’s National Hospital, the District of Columbia Behavioral Health Association, Health Alliance Network, Early Childhood Innovation Network, MedStar Georgetown University Hospital Division of Child and Adolescent Psychiatry, Parent Watch, and Total Family Care Coalition.

<sup>9</sup> *Id.*, at 176.

<sup>10</sup> *Id.*, at 177.

<sup>11</sup> *Id.*, at 178.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at 11.

<sup>14</sup> *Id.*, at 40.

<sup>15</sup> *Id.*, at 41.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*, at 66.

<sup>18</sup> *Id.*, at 11.