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Testimony Before the District of Columbia Council
Committee on Youth Affairs
Committee on the Judiciary and Public Safety
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Joint Public Hearing:
B26-400 – Statutory Neglect Amendment Act of 2025

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Introduction

Good morning, Chairperson Parker and Chairperson Pinto, and members of the Committees. My name is Katherine Piggott-Tooke, and I am the Appellate Deputy Director at Children's Law Center. Children's Law Center 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.

Thank you for this opportunity to testify regarding B26-400, Statutory Neglect Amendment Act of 2025 ("the Act"). Children's Law Center attorneys serve as guardians *ad litem* for children in the care and custody of the District of Columbia.[1] Currently, we represent approximately half the children involved with the Child and Family Services Agency ("CFSA") – several hundred children in foster care and protective supervision each year.[2] I began my work at Children's Law Center in 2012 as a staff attorney, after having clerked in D.C. Superior Court. For four years, I served as a court-appointed guardian *ad litem* for youth of all ages with open neglect matters in DC. In 2016, I became a supervisor in our guardian *ad litem* project, while still maintaining a case load of clients.

In the last six years, I have continued to supervise GALs, but in my appellate role, I consult on complex neglect trial-level litigation, handle and supervise appeals arising in neglect proceedings, and work to assess and advance our long-term strategy on systemic issues.

Children's Law Center strongly supports the proposed legislation and urges the Committees to move it forward as quickly as possible. Children's Law Center has two primary reasons underlying its support. First, the legislative amendments focus the statute on the condition of the child, rather than the qualities of the parent. This better protects children – both from unsafe conditions in the home and from unnecessary intervention that is also harmful to children – by keeping their condition at the center of determining neglect. Second, it better distinguishes when conditions that arise from deprivation can be remedied by targeted provision of resources (and therefore are conditions that stem solely from poverty) from conditions that are true neglect. Relatedly, it holds the government accountable for providing and connecting families to the services and supports that prevent the need for a neglect case, while also ensuring the government can intervene when necessary to protect children.

Further, Children's Law Center also believes this legislation provides clarity where the current language has proven confusing and provides critical updates that reflect improvements in practice over the twenty years since the code was recodified, and

in doing so, better meets the needs of the children we serve, who are at the heart of our advocacy.

In my testimony, I will explain in more detail the bases for this support and provide several ways the proposed legislation could be further strengthened to promote children's safety and families' well-being.

The Proposed Legislation Strengthens Protections for Children and More Effectively Holds the Government Accountable for Supporting Families

Nearly five years ago, CFSA became a Thriving Families, Safer Children jurisdiction, marking an intentional shift in how the Agency views its role in preventing child abuse and neglect. CFSA established the 211 Warmline as an alternative pathway for families that are struggling with poverty – so, instead of subjecting them to a CPS investigation, CFSA connects them with resources and support. As part of that initiative, CFSA sought to reexamine the neglect code to determine if updates and revisions were necessary to support and codify efforts to distinguish poverty from neglect and keep families together safely whenever possible. To this end, CFSA formed a working group that met several times a month, for several years, made up of the three primary types of attorneys that practice and litigate under the neglect statute – Assistant Attorneys General (from the Office of the Attorney General, "OAG") who represent the government in neglect proceedings, guardians *ad litem* (from Children's Law Center), and attorneys from the Counsel for Child Abuse and Neglect ("CCAN") who represent parents.

Over the course of several years, this collaboration of professionals, who are often in adversarial postures in court, met several times a month to discuss, find common ground, debate, run hypotheticals, and argue some more. In between meetings, we conducted research, wrote drafts to propose to the group, consulted our colleagues, and dissected ideas proposed by the others. As far as I know, this is the first time DC neglect legislation has been revised through a targeted and collaborative effort involving attorneys from all perspectives with deep experience with and knowledge of the work.

The group recommended changes that would provide clarity where the current language has proved confusing and update the statute to reflect improvements in practice over time. First, the recommendations focused the statutory definition of neglect on the condition of the child, with the perspective that the goal of our laws should be to ensure that every circumstance where a child is unsafe or faces imminent risk in their parents' care is covered by the neglect definitions, not to target specific parental behaviors or characteristics that may or may not compromise the child's safety. The recommendations better distinguish between conditions caused by poverty and conditions caused by abuse or neglect by clarifying language to exclude cases where resources alone would enable the child to remain safely in their home and by holding the government accountable for providing those resources rather than pursuing neglect

charges against the child's parent. The recommendations provide more clarity for families, practitioners, and judges.

B26-0400, the Statutory Neglect Amendment Act of 2025, proposed by Councilmember Parker and referred to both the Committee on Youth Affairs and the Committee on Judiciary and Public Safety, largely reflects and honors the hard work, resulting compromises, and recommendations of our working group. Children's Law Center believes that passing this Amendment would improve the District's work to keep children safe and with their families where possible, and below, we explain our support for the most important proposals. We have also identified a few priority areas where the proposed Amendment could be strengthened.

The Proposed Legislation Will Better Distinguish Neglect from Poverty.

Holding CFSA Accountable for Providing Resources or Support Prior to Pursuing a Neglect Case Will Reduce Unnecessary Intervention for Families who Need Resources, not a Neglect Case.

The proposed revisions to § 16-2301 (9)(A)(ii) strive to identify (as neglected) children who have been harmed, or are at substantial risk of harm, due to the parent (1) not meeting a child's critical needs or (2) failing to provide adequate supervision.[3] The Council and our working group's proposals seek to provide more guidance than currently exists to distinguish these cases from those where the neglect arises from a true lack of resources – poverty. In the latter cases, it's important to hold CFSA accountable for responding with a connection to resources rather than a neglect

intervention. Children should not be without food, a safe environment in which to live, or education. But when children go hungry on the weekends because their mother was improperly deemed ineligible for SNAP, are living in an apartment without running water because of a negligent landlord, or are unable to get to school because they have to move to different family members' apartments around the DMV every few days – these children are better served by their parent being connected to a housing conditions or public benefits lawyer, or Virginia Williams for temporary family housing, than by being subjected to a neglect case, facing possible separation from their family and community. The law will best serve children who are suffering deprivation due to poverty rather than concerns related to parenting by holding the Agency responsible for directing resources to resolve the family's needs before seeking a neglect adjudication.

In an effort to codify this Agency accountability to attempt to direct resources to a family prior to beginning a child protection intervention, the Neglect Statute Amendment and our working group included a reference to §4–1301.09a,[4] which sets forth when the Agency is required to make reasonable efforts and to what end, and the working group proposal also included a reference to the list of services and supports CFSA is authorized to provide (§ 4-1303.03 (a)(13)).[5] Directing the court's attention to the Agency's duty and ability to provide specific support, such as emergency financial aid, homemaking services, or daycare, will provide guidance to help courts evaluate

what efforts are reasonable and thereby help ensure that the Agency will be held accountable for concrete attempts to resolve poverty-related deprivations.

Subsection (b) is the relevant provision within the first reference, § 4-1301.09a, and requires the agency to make reasonable efforts to preserve and reunify the family "prior to the removal of a child from the home in order to prevent or eliminate the need for removing the child, unless the provision of services would put the child in danger" and "to make it possible for the child to return safely to the child's home."[6] The Office of the Attorney General is correct in pointing out in their written testimony that this subsection applies to the decision to remove a child or return a child to their families. The purpose of adding the reference to this section in Title 16 was to apply the same obligation to make reasonable efforts to resolve the deprivation to the decision to intervene, investigate, and file a petition alleging neglect. To maintain the improvements to accountability, while also ensuring that the provision is clearer, Children's Law Center recommends amending the proposed language of the § 16-2301(9)(A)(ii)(II) so that it reads:

> (II) The failure of the child's parent, guardian, or custodian to plan for or provide the child with adequate food, clothing, or shelter; education; or treatment or care necessary for the child's physical or mental health, provided the failure is not due solely to lack of financial means, which the Agency may demonstrate by making reasonable efforts to resolve the deprivation, including, but not limited to exercising the Director's powers under § 4-1303.03 (a)(13).

In the alternative, Children's Law Center would also support the Committee applying the financial means provision and the related Agency obligation to the failure to provide supervision portion of the definition (§ 16-2301(9)(A)(ii)(I)). We provide a proposal to accomplish this and streamline the (ii) in the following section.

Proposed Changes Render the Financial Means Language Meaningful

We are glad to see the proposed legislation:[7] (1) explicitly proscribe the now-common practice of using eligibility for or receipt of public benefits as the sole means of determining whether a parent has sufficient financial means; and (2) recognize that a parent's homelessness or lack of stable housing alone cannot justify a finding of neglect. These important provisions provide much needed clarity to the current financial means language.

Under current case law, in order to establish that the neglect is not due to poverty alone, the government must establish that poverty is not the only factor causing the deprivation or that the parent had, or had available, sufficient financial resources to care for the child.[8] But to satisfy this requirement, case law also establishes that introducing evidence that a parent is eligible for or receiving public benefits is sufficient to establish that the parent had, or had available, sufficient financial resources to care for the child, and thus any neglect is thereby not attributable to poverty.[9] As such, there is no way to prove that neglect *is* attributable to poverty- either you are eligible for

public benefits and thus not poor, or you are not eligible and thus not poor. The financial means test is rendered meaningless. For this reason, and to reflect the reality that the maximum amount of public benefits has not kept pace with the cost of providing for a family's basic needs, Children's Law Center welcomes the Committee's desire to codify a meaningful and realistic way to determine whether conditions a child is experiencing could be resolved with resources, rather than intervention designed to ensure safe parenting.

We are concerned, however, about where the current proposal has situated this critical guidance. Including these important provisions only in §4-1301.04 limits their application to the Agency during the substantiation phase of a case. While this may be helpful to ensure that the Agency is applying the accurate legal definition of neglect throughout every stage of their work with families, there is no mechanism for any outside parties to hold the Agency accountable to this standard or for the judge to incorporate these important qualifiers into their findings. We urge the Committees, therefore, to move or also add these provisions into Title 16, into the definition of neglect itself in § 16-2301, or into § 16-2316. This will ensure that these provisions are properly applied as judicial standards during neglect proceedings and that the court holds the Agency accountable for distinguishing between conditions caused by lack of resources as opposed to conditions resulting from neglect.

Incorporating all of Children's Law Center's recommendations as to this provision, Children's Law Center proposes the following language for § 16-2301(9)(A)(ii):

> (ii) who is suffering or is at substantial risk of suffering serious physical, mental, or emotional harm, due to the parent, guardian, or custodian's failure to provide adequate care, including supervision, subsistence, and education as required by law, based on a consideration of the totality of the circumstances, and the failure is not due to the lack of financial means of his or her parent, guardian, or custodian;
>
> (a) In assessing parental care, factors such as the child's age, mental ability, physical condition, and environment shall be considered.
>
> (b) A child shall not be found neglected under this subdivision solely due to indigence, including, but not limited to, homelessness, lack of stable housing, or the lack of food or clothing.
>
> (c) Eligibility for or receipt of public benefits alone is insufficient to establish that the failure is not due solely to lack of financial means under this provision.
>
> (d) The Agency may demonstrate that the failure is not due to the lack of financial means by making reasonable efforts to resolve the deprivation, including, but not limited to exercising the Director's powers under § 4-1303.03 (a)(13).

Alternatively, the proposed subsections (a)-(d) above could be added to § 16-2316, so that a new § 16-2316 (g) reads:

> (g) Where the petition alleges a child is neglected pursuant to section 16-2301(9)(A)(ii):
>
> (1) In assessing parental care, such factors as the child's age, mental ability, physical condition, and environment shall be considered;

(2) A child shall not be found neglected under this subdivision solely due to indigence, including, but not limited to, homelessness, lack of stable housing, or the lack of food or clothing;

(3) Eligibility for or receipt of public benefits alone is insufficient to establish that the failure is not due solely to lack of financial means under this provision; and

(4) The Agency may demonstrate that the failure is not due to the lack of financial means by making reasonable efforts to resolve the deprivation, including, but not limited to exercising the Director's powers under § 4-1303.03 (a)(13).

The Proposed Legislation Properly Focuses on the Condition of the Child, Not the Condition of the Parent.

Allowing Parents to Plan for Supervision of their Child is Not Hidden Foster Care.

The proposed amendment to § 16-2301(9)(A)(ii)(I) seeks to define as neglected a child who has been harmed, or has been at a substantial risk of harm, due to "the failure of the child's parent, guardian, or custodian to plan for or provide adequate supervision for the child, after considering such factors as the child's age, mental ability, physical condition, and environment" (emphasis added). The expectation underlying this definition of neglect is that parents will ensure that children have the adult supervision that their safety requires. Parents are not required to directly supervise their children at all times. Parents may arrange for a daycare, a babysitter, a grandparent, a neighbor, or an older sibling to supervise their child, provided that the supervision arranged is appropriate for their particular child. For example, a single parent undergoing surgery may arrange for relatives to care for their children for a few days.

This arranging of care is of course extremely common and distinguished from entering into a safety plan with CFSA[10] to address what has been deemed a threat to a child's safety and well-being. In the latter circumstances, also known as kinship diversion,[11] CFSA has investigated allegations of abuse or neglect, determined that a child would be unsafe remaining with their current caregiver, and, rather than petitioning the court for custody of the child, allowed the family to make a plan for the child (a "safety plan") to reside with family or kin.[12] The concerns with kinship diversion should not be addressed by legislating that all children whose parents have arranged for alternate care be deemed neglected. For example, we want a parent who is going through a hard time to seek childcare assistance from trusted resources while they seek substance abuse treatment without fear that this is per se neglect of their children. If the child is adequately cared for, child welfare intervention is not warranted or desirable.

The Committee Correctly Eliminated the Parental Incapacity Provision, § 16-2301(9)(A)(iii).

The proposed Neglect Statute Amendment, as written, eliminates the "parental incapacity" definition of neglect, currently codified at § 16-2301(9)(A)(iii) and characterizing as neglected a child "whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity." Our working group arrived at this same recommendation, and we are asking the Council to keep this provision out of

§ 16-2301(9)(A) despite the Office of the Attorney General's recent testimony requesting that the provision be left in the code.

The relevant focus for a neglect court is the child's condition, not the parent's condition. If a parent is incarcerated, hospitalized, deceased, or physically incapacitated, and the parent has arranged for the child's care, then the child is not neglected. If the parent has not or is not able to provide any plans for the child's care, then the child is neglected pursuant to § 16-2301(9)(A)(ii). As to mental incapacity, generally taken to refer to significant mental health and/or substance use concerns, under current law, proof of a parent's mental incapacity alone is not sufficient to establish that the child is neglected pursuant to § 16-2301(9)(A)(iii); "the government is required to demonstrate the existence of a nexus between a parent's mental incapacity and an inability to provide proper parental care."[13]

The DC Court of Appeals, in perhaps the seminal case analyzing neglect based on § 16-2301(9)(A)(iii), stressed the importance (and, in this case, absence) of firm evidence, likely expert testimony, that the child had suffered harm as a result of exposure to his parent's delusional disorder.[14] The Court of Appeals noted, though, that the case law is well-established that a "finding of neglect does not require actual harm to the child; such a finding can rest on a risk of physical or emotional injury that has not yet occurred. A finding of neglect, however, cannot be established simply because there is a bare possibility of future harm, no matter how insubstantial the risk

or the possible harm. We think that the requisite showing was well expressed in *In re A.H.*,[15] which upheld a finding of neglect based on a 'substantial risk of serious harm.'"[16]

When the Agency can establish that a parent's mental health condition or use of substances compromises their ability to provide parental care and creates a substantial risk of serious harm to the child, this child will be found neglected pursuant to the proposed definition of neglect § 16-2301(9)(A)(ii). Consider the example provided by the OAG, "in which a mother has severe, ongoing mental health issues and gives birth to a second child. The mother has psychotic episodes and continues to display psychosis in the hospital after the baby's birth. In such a scenario, CFSA may rely not only on the mother's current behaviors, but also on the mother's documented history of psychosis and demonstrated inability to safely parent her other child."

In this scenario, the Agency would need to establish, via historical and current relevant evidence, that the mother's regular and ongoing episodes of psychosis are such that releasing the infant to her care would place the infant at substantial risk of harm. If the mother created a plan to engage in mental health treatment and to provide additional supervision of the child, such as by the child's other parent or a grandparent, then the child would not be neglected. If the mother failed to provide a plan to address the substantial risk of harm, the child would be neglected pursuant to § 16-2301(9)(A)(ii). The (iii) does not increase the District's ability to keep children safe but

may lead to increased neglect cases where a parent is penalized (with the child suffering a neglect case and potential family separation) for having a mental health condition that is not impacting care of a child. A focus on the condition of the child ensures children are in safe conditions without risking unjustified intervention.

The Proposed Legislation Provides Clarity and Reflects Improvements in Practice.

The Neglect Statute Amendment legislation improves clarity and readability throughout. In particular, the proposed legislation better distinguishes abuse from discipline by eliminating a double negative in the physical discipline exception[17] and by eliminating a list of prohibited examples of physical discipline that is explicitly not exhaustive.[18] The proposed legislation moves unacceptable conduct into the definition of "abused"[19] and states simply that, "for the purposes of this subchapter, the term "abuse" does not include physical discipline administered by a parent, guardian, or custodian to their child, provided that the child is at least 3 years of age, and the physical discipline is reasonable in manner and moderate in degree,"[20] leaving the reasonableness determination to the court.

The Neglect Statute Amendment legislation is further improved by separating neglect by abandonment from neglect by abuse.[21] "Abandoned" is further defined in § 16-2301(52) to incorporate the full scope of conduct that could constitute abandonment into a consistent definition.[22] It is especially important for the law to provide clarity to parents and practitioners around abandonment, since a neglect finding of abandonment

has particularly significant consequences: a finding of abandonment is one of the enumerated aggravated circumstances under which the Agency does not have to make reasonable efforts to reunify a child with their parent.[23] Consider a case where a mother is the primary custodian but falls gravely ill and is unable to care for the children, so they live with their father, who they don't know well and subjects them to severe physical abuse. When they go to trial (about three months after a court case is initiated), the judge would adjudicate children neglected based on abandonment by the mother and abuse by the father. Even if the mother had recovered by that point, the government would then be required to make efforts to reunify the children with the abusive father, but not with the ill mother.

Eliminating Provisions Targeting Conditions and Characteristics of Parents Maintains the Focus on the Condition of the Child and Does Not Compromise Child Safety

The provision that the Committee proposed removing (the current § 16-2301(9)(A)(iii)), the three provisions the Committee considered but ultimately did not propose removing (the current § 16-2301(9)(A)(viii), (ix), and (x)), and the newest addition to the neglect code (the current (xi)), are not necessary to protect children from harm and directs the system to focus not on the condition of the child, but on parental characteristics, conditions, and blameworthiness which risks introducing bias and inconsistency around decision-making as to when a child protection response is necessary.

We Urge the Committee to Eliminate the Drug-Related Provisions (the current §16-2301(9)(A)(viii), (ix), and (x))

The neglect statute working group, after much debate, recommended eliminating all three of the neglect definitions that direct specific attention to drug-related allegations and behaviors, as opposed to the condition of the child, to reduce our child welfare system perpetuating its structural bias. Insofar as these behaviors related to drugs cause harm to a child, this harm is already covered by the broader abuse (i) and neglect (ii) provisions, which keep the inquiry focused on the impact on the child to ensure child safety. If a child is hospitalized for ingesting a substance (whether illegal or not, i.e., whether cocaine, vodka, or bleach) while not being adequately supervised, this falls squarely under the (ii). If a parent intentionally administers a harmful substance to a child, that would constitute abuse under the (i). A child who is regularly exposed to illegal drug-related activity is no more in danger than a child who is regularly exposed to illegal violent activity, unsecured firearms, or legal but dangerous circumstances such as prescribed medication, lighters, or knives left where children can easily access them. Rather than creating a separate provision when illegal drugs are involved, the (ii) compels consideration of the totality of the circumstances, which include the child's home environment and the adequacy of supervision.

As for the (viii), a child who is born dependent on a controlled substance or has a significant presence of a controlled substance in their system at birth, pursuant to DC Code §16-2317(b), the Court may not make a finding of neglect based solely on a finding

that a child is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth. As a result, to establish neglect under this provision, the Agency must establish facts that raise concerns about the child's safety in the parent's care after birth. So it does not make sense that this would be one of the stand-alone definitions of neglect.

Beyond the redundancy of this provision, the working group was informed by research, policy statements from groups like the American College of Obstetricians and Gynecologists,[24] and prior testimony from the Medical Society of the District of Columbia, that mothers would be more likely to be forthcoming about their substance use and open to support from healthcare workers than from CPS workers who have the power to remove their children. Interactions with CPS are harmful in and of themselves.[25] They should be reserved for when there is actual and immediate concern for the infant's safety. A positive test alone does not mean that an infant is automatically in danger, particularly when the positive result is for cannabis, so mandated reporters should be *permitted* to call when there is a direct concern for the infant's safety but not *required* to call for the positive test alone.

To the extent the Committee opts to retain these three drug-related parental behavior provisions, we strongly urge carving out cannabis, to avoid causing more harm than protection. What we heard from CPS is that the primary threat to a newborn whose parent uses alcohol or cannabis is unsafe sleep practices. Use of these substances

by parents of newborns is correlated with sleep-related fatalities, particularly when co-sleeping. The best intervention for this is safe sleep education. CPS, when called to meet with a mother whose baby tested positive for cannabis at birth, provides a free pack 'n play and safe sleep education. CPS was called for cannabis-positive births 99 times in FY2023, 90 times in FY2024, and 30 times in FY2025, as the CFSA data dashboard currently reports.[26] This valuable service would be better coming from DC Health. A healthcare worker is better poised to have an open and honest conversation with a new parent than a CPS worker who is able to remove the child. Hotline reports and CPS visits should be reserved for cases when there is credible and immediate concern about a child's safety.

Children's Law Center will continue advocating for the Committee to remove these redundant, biased, and potentially harmful definitions of neglect from the legislation in favor of amending the newborn discharge requirements within DC Health.

The Committee Should Eliminate § 16-2301(9)(A)(xi) Because Female Genital Mutilation is Already Prohibited by Law and Already Constitutes Abuse under § 16-2301(9)(A)(i)

The newest definition of neglect is what has been very recently codified as § 16-2301 (9)(A)(xi), and what the Neglect Statute Amendment proposes codifying as § 16-2301 (9)(A)(ix),[27] defining as neglected a child "who has been subjected to, or is in imminent danger of being subjected to, female genital mutilation pursuant to § 22-1431(b)." While Children's Law Center unequivocally condemns female genital

mutilation, provisions like this have been co-opted by Republicans in states such as Idaho and Texas to target parents who seek and provide gender affirming care for their children. Not only is the act of female genital mutilation and cutting illegal in the District of Columbia, pursuant to § 22-1431(b),[28] but from a neglect perspective, this would be covered under the abuse provision, the (i). We submit that the risk, albeit small here in the District, of this provision being weaponized to target medical care for transgender youth, outweighs the benefit of having this stand-alone definition of neglect, and we believe children at risk of female genital mutilation will be protected under the proposed definitions even if that standalone provision is eliminated.

Eliminating the Proposed Per Se Unexplained Injury Provision and Adding Language to the Unwilling Caregiver Provision Promotes Clarity.

The New Per Se Unexplained Injury Provision Should Be Removed

We recommend that the Council remove the legislation proposed as § 16-2301 (9)(A)(x), "whose parent, guardian, or custodian can give no satisfactory explanation for evidence of illness or injury to the child."[29] This language was pulled from § 16-2316(c), which is current law and which the Council has not proposed to repeal. § 16-2316(c) states that, "Where the petition alleges a child is a neglected child by reason of abuse, evidence of illness or injury to a child *who was in the custody of his or her parent, guardian, or custodian* for which the parent, guardian or custodian can give no satisfactory explanation shall be sufficient to justify an inference of neglect." This is known as the "unexplained injury provision," and allows judges to *infer* that a child is neglected

when (1) the child sustains an injury, (2) the injury occurred *while the child was in their parent's custody*, and (3) the parent can't provide a reasonable explanation for the injury. This is important to protect a child from further harm when a parent causes an injury (either by abuse or by failing to adequately supervise the child) and does not disclose what caused the injury, thus making it difficult to determine if the injury will recur.

But adding an unexplained injury provision within the definitions of neglect creates a conflict in the law- *either* an unexplained injury is *per se* neglect, *or* it's when a judge can infer neglect, but it does not make sense to have both. Additionally, the proposed per se definition of neglect, the proposed (x), leaves out an important qualifier: the child must have been in the custody of the parent when the injury occurred for the system to assign neglect. As the language stands, consider a parent who drops their healthy and unharmed baby off at daycare. Later that afternoon, the second shift of daycare staff notices an injury and calls the parent. The parent, at work, replies that they have no idea how the child got that injury- the injury was not present when the parent dropped the child off that morning. Should the daycare or parent call CPS, under the proposed (x) definition of neglect, the parent who cannot provide an explanation for the injury renders their child neglected by law, even though the injury occurred at daycare.

The law, as it is currently written, is sufficient and better tailored to protect children who have been injured due to abuse or inadequate supervision where the

parent has not provided an explanation. In these cases, the court would find that the child was neglected pursuant to § 16-2301(9)(A)(i) and § 16-2316(c) or § 16-2301(9)(A)(ii). We urge the Committee to remove this new per se definition.

The Council Should Add Clarifying Language to the Unwilling Caregiver Provision

§ 16-2301(9)(A)(iv) is known as the "unwilling caregiver" provision and is intended to capture cases where the parent may not yet have failed to meet the child's needs (which would be deemed neglect under § 16-2301(9)(A)(ii)) but has explicitly expressed an intention of no longer meeting the child's needs.

According to CFSA's most recent performance oversight data, in FY23, CFSA received 180 calls to the hotline with the allegation category of "caregiver discontinues or seeks to discontinue care."[30] In FY24, there were 169 such calls.[31] In FY23 there were 165 investigations for "caregiver discontinues or seeks to discontinue care" and in FY24, there were 167 such investigations.[32] When asked to identify the top ten factors that led to an investigation being substantiated, CFSA reported that in FY23, "caregiver discontinues" was the eight most frequent factor that led to an investigation being substantiated (36 cases total); in FY24, "caregiver discontinues" the tenth most frequent factor (34 cases total). These are cases where the parent is dropping their child off at the Agency or refusing to assume custody when a juvenile judge releases them, explaining that they cannot or are not willing to resume caring for the child. For this reason, it is important to include the language "states that they are unable" to distinguish this type

of neglect from cases where the Agency or the court may be assessing a wider range of circumstances around whether the parent "is able" to care for their child.

As written, the proposed amendment also creates a conflict in the law. For example, if a parent is incarcerated or hospitalized, they are "unable" to care for the child. However, if they make an adequate plan for the care of the child, the child is not neglected, as is made clear by the proposed § 16-2301(9)(A)(ii). If a youth is being released from a psychiatric hospitalization and the youth's mother says that she is not able to meet the youth's mental health needs, but she arranges for the youth's grandmother, who is available and willing to assume care and secure mental health treatment for the youth, to assume care, CFSA involvement is not warranted or needed. However, under the language in this provision as written,[33] all that is needed to justify intervention and a finding of neglect is to show that the mother is "unable" in some way.

Conclusion

Thank you for the opportunity to testify today. Children's Law Center and I are enthusiastic about the overall positive changes the Neglect Statute Amendment would bring to the practice and our clients' (present and future) lives. I remain available to the Committee in consideration of this important legislation.

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[1] Children's Law Center attorneys represent children who are the subject of abuse and neglect cases in DC's Family Court. Children's Law Center attorneys fight to find safe homes and ensure that children receive the services they need to overcome the trauma that first brought them into the child welfare

system. DC Children's Law Center, About Us, *available at*: https://www.childrenslawcenter.org/content/about-us. The term "protective supervision" means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision. D.C. Code § 16-2301(19).

[2] DC Children's Law Center, About Us, available at: https://www.childrenslawcenter.org/content/about-us.

[3] Lines 35-42 in the proposed draft.

[4] Line 42 in the proposed draft.

5 D.C. Code § 4-1303.03 sets forth the duties and powers of the Director of CFSA, which includes "to provide protective service clients appropriate services necessary for the preservation of families, or to contract with private or other public agencies for the purpose of carrying out this duty. These services may include: (A) Emergency financial aid; (B) Emergency caretakers; (C) Homemakers; D) Family shelters; (E) Emergency foster homes; (F) Facilities providing medical, psychiatric, and other therapeutic services; (G) Day care; (H) Parent aides; (I) Lay therapists; and (J) Respite care. D.C. Code § 4-1303.03(a)(13)

[6] D.C. Code § 4-1301.09a(b).

[7] Lines 83-91 in the proposed draft.

[8] *In re A.H.*, 842 A.2d 674, 688 (D.C. 2004).

[9] *In re W.T.L.*, 825 A.2d 892, 893 (D.C.2002)

[10] CFSA's Program Policy on Safety Plans is available at https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program_Policy_Safety_Plans_July_22_Final.pdf

[11] For more information on what constitutes kinship diversion, as well as a brief discussion of the merits and concerns, see https://cms.childtrends.org/wp-content/uploads/2019/06/kinship-diversion_ChildTrends_June2019-2.pdf

[12] Children's Law Center is aware that some caregivers who take on a custodial role as a part of kinship diversion safety planning feel coerced, ignorant of the rights they may have if CFSA agreed to license them, and unsupported after they agree to care for the child. Children's Law Center supports better implementation and safeguards for families and children, but not at the expense of expanding the definition of neglect to include all children outside their parents' care.

[13] *In re K.M.*, 75 A.3d 224, 231 (D.C. 2013) (internal citations omitted). A nexus is also required when substance use is alleged, "We have said that "mere existence of parent's alcoholism or substance abuse does not constitute grounds for a [neglect proceeding] unless the parent demonstrates an unwillingness or inability to properly care for the child." *In re B.L.*, 824 A.2d 954, 956 (D.C. 2003) (internal citations omitted).

[14] *In re K.M.*, 75 A.3d 224, 231-32 (D.C. 2013).

[15] *In re A.H.*, 842 A.2d 674, 686 (D.C. 2004)

[16] *In re K.M.*, 75 A.3d 224, 233 (D.C. 2013) (internal citations omitted).

[17] § 16-2301 (23) (B)(i) currently states that, "the term 'abused', when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term 'discipline' does not include…"

[18] § 16-2301(23)(B).

[19] This language is proposed to be codified at § 16-2301(23)(A); lines 57-67 in the public draft.

[20] This language is proposed to be codified at § 16-2301(23)(B)(i); lines 68-72 in the public draft.

[21] Currently, § 16-2301(9)(A)(i) defines as neglected a child, "who has been abandoned or abused…" and § 16-2301(9)(A)(vii) defines as neglected a child "who has resided in a hospital located in the District of

Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child." The proposed legislation, at § 16-2301(9)(A)(iii) defines as neglected simply a child "who has been abandoned."

[22] The proposed § 16-2301(52) (lines 73-82 in the public draft) incorporates a child being left in a hospital, as is currently codified at § 16-2301(9)(A)(vii) as well as the conduct that justifies an inference of neglect pursuant to § 16-2316 (d)(1)(C), "Where the petition alleges a child is abandoned as referred to in section 16-2301(9)(A), as amended by this act, the following evidence shall be sufficient to justify an inference of neglect ... (C) the child's parent, guardian or custodian is known but has abandoned the child in that he or she has made no reasonable effort to maintain a parental relationship with the child for a period of at least four (4) months..." While we are unaware of how the Council originally arrived at four months as the triggering point for abandonment, our working group discussed cases in which circumstances have complicated a parent's ability to demonstrate a reasonable effort in a shorter period of time, such as when one parent is actively thwarting the non-custodial parent's ability to ascertain the child's whereabouts, where a parent is grappling with serious illness, or where a parent faces immigration-related challenges. Absent such compelling circumstances, a child can still be deemed neglected pursuant to § 16-2301(9)(A)(ii) after shorter periods where a parent has not provided adequate care or supervision.

[23] See § 4-1301.09a(d)(1)(A).

[24]Alcohol Abuse and Other Substance Use Disorders: Ethical Issues in Obstetric and Gynecologic Practice, American College of Obstetricians and Gynecologists Committee Opinion, issued June 2015, reaffirmed in 2021, available at https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2015/06/alcohol-abuse-and-other-substance-use-disorders-ethical-issues-in-obstetric-and-gynecologic-practice.

[25] We urge the Committee to consider the research of another witness at the 11/13/2025 Hearing, Kelley Fong, who cites to her book in her written testimony and whose relevant research on the harm of CPS calls is summarized succinctly in her essay, "The cascading consequences of a Child Protective Services call," available at https://press.princeton.edu/ideas/the-cascading-consequences-of-a-child-protective-services-call.

[26] https://cfsadashboard.dc.gov/page/special-investigation-types

[27] Lines 53-54 in the proposed draft.

[28] D.C. Code § 22–1431, Prohibition on Female Genital Mutilation, defines FGM, classifies the act as a crime, and specifically states that neither parental consent nor religion, custom, ritual or standard practice may be considered defenses.

[29] This language is proposed to be codified at § 16-2301(9)(A)(x); lines 55-56 in the public draft.

[30] FY24 CFSA Performance Oversight Responses, response to Q75, *available at*: https://lims.dccouncil.gov/Hearings/hearings/698.

[31] *Id.*

[32] FY24 CFSA Performance Oversight Responses, response to Q76, *available at*: https://lims.dccouncil.gov/Hearings/hearings/698.

[33] Line 44 in the proposed draft.