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Testimony before the District of Columbia Council
Committee on Human Services
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Public Hearing:
Bill 18-547, the Adoption Reform Amendment Act of 2009

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Good afternoon Chairman Wells and members of the Human Services Committee. My name is Judith Sandalow. I am the Executive Director of the Children's Law Center[1] (CLC) and a resident of the District. I am testifying today on behalf of CLC, the largest non-profit legal services organization in the District and the only such organization devoted to a full spectrum of children's legal services. Every year, we represent 1,200 low-income children and families, focusing on children who have been abused and neglected and children with special health and educational needs. The majority of our clients are children in foster care or their caretakers.

I am pleased to testify in strong support of the Adoption Reform Amendment Act, especially the provisions in the bill that would extend adoption and guardianship subsidies until youth turn 21 and expand guardianship subsidies to include foster parents who are not kin to a child. These changes will remove the largest legal barriers to foster children leaving foster care to permanent families. I thank you, Chairman Wells, and your colleague, Councilmember Michael Brown, for the leadership you have shown in moving this bill forward.

I. Extending and Expanding Adoption and Guardianship Subsidies Will Help Scores of Children Leave Foster Care for Adoption or Guardianship Every Year.

This bill removes two substantial barriers to adoption and guardianship created by current law. First, both adoption and guardianship subsidies currently end when a child turns 18.[2] This contrasts with District law which permits children to remain in foster care – and foster parents to continue receiving foster care subsidies – until they turn 21.[3] This disparity creates a disincentive for foster parents, especially foster parents of older youth, to seek adoption or guardianship. Few 18 year olds are truly financially independent of their families – and foster children face additional

[1] Children's Law Center works to give every child in the District of Columbia a safe home, meaningful education and healthy life. As the largest nonprofit legal services provider in the District, our 70-person staff partners with hundreds of pro bono attorneys to serve 1,200 at-risk children each year. Applying the knowledge gained from this direct representation, we advocate for changes in the city's laws, policies and programs. For more information, visit www.childrenslawcenter.org.

[2] D.C. Code §§ 4-301(e) (adoption) & 16-2399(d) (guardianship).

[3] D.C. Code § 16-2303. Similarly, District law provides that a parent's child support obligations continue until age 21. *Butler v. Butler*, 496 A.2d 621 (D.C. 1985).

challenges to independence. Foster children have disproportionately high rates of educational delays, mental illness, and special needs.[4] Extending subsidies to 21 will help children and families meet those challenges.[5]

Second, current law does not provide good options for children who want to live permanently with their foster parents while maintaining birth family connections. Some children, especially older children, understand that they are better off living with foster parents than their birth parents. But they maintain significant contact with and their identity remains tied to their birth families. Foster parents who become guardians give foster children permanency without severing the legal tie to their birth families – thus presenting a legal option to serve these children's best interests. But DC law does not currently allow guardianship subsidies to non-kinship foster parents, effectively closing off this option to many children.[6]

Removing these two barriers to adoption and guardianship will dramatically increase the number of foster child adoptions and guardianships each year. CLC currently represents numerous clients for whom this bill will make an immediate and significant difference. In many of these cases, the Family Court either recently adopted or reaffirmed a permanency goal of APPLA – "alternative planned permanent living arrangement" or, more accurately, long-term foster care – because the District's existing subsidy laws create a barrier to adoption or guardianship.

In these cases, passing the bill's subsidy reform elements would remove the only barrier that stands between these youth and legal permanency. For example:

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[4] Peter Pecora *et al.*, *Improving family foster care: Findings from the Northwest Foster Care Alumni Study* 32-34, http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm; Mary Bruce Webb *et al.*, *Addressing the Educational Needs of Children in Child Welfare Services*, in Child Protection: Using Research to Improve Policy and Practice 253 (2007).

[5] The Federal government through Fostering Connections has also recognized the need for support of families and foster children until 21. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, § 201(c) (2008) (amending 42 U.S.C. § 673(a)(4)).

[6] D.C. Code § 16-2399(b)(3).

- We represent the grandparents of a 17 year old in foster care. The grandparents have provided their grandson a stable and permanent home – but not a legally permanent home. With limited resources and with their grandson on the cusp of turning 18, they could not afford to file for guardianship. They requested a goal change to APPLA instead. The government attorney took the government's new position in court – that the goal should never be APPLA – but the Family Court judge understood that it makes no sense to have a goal of guardianship when the District's guardianship law wouldn't provide the grandparents a subsidy for more than a couple months. The Family Court granted the goal change to APPLA – but our clients will likely seek guardianship if the bill passes.
- We are the guardian *ad litem* for an 18 year old young woman. She has lived in one foster home for three years and wants to stay with this family. She also has a strong connection to her birth family – making adoption inappropriate – and she is not eligible for a guardianship subsidy under current law because her foster family is not kin. Moreover, because she is 18, under current law, pursuing adoption or guardianship would immediately cut off her financial support. Understanding these concerns, the Family Court has set her goal as APPLA. Now the foster family is planning on moving to North Carolina over the summer, and our client's fate is in doubt. Without a legal permanency option that fits her needs, this youth may be stuck in the foster care system here in the District rather than with her family. If the Council enacts this bill and ensures that it will take effect by this summer, then she will likely be able to leave foster care and stay with her family of the past three years.
- We obtained pro bono counsel for a woman raising her goddaughter in foster care on a tight budget. She had intended to file for guardianship, but when she learned that the subsidy would end when the youth turns 18 this month, she instead sought a permanency goal of

APPLA. The judge easily granted the request for APPLA – a goal this kinship caregiver would revisit if this bill becomes law.

- We are the guardian *ad litem* for a 17 year old foster child. He lives in a stable foster home and has a permanency goal of APPLA. He understands that he cannot live with his birth mother, but he does not want to be adopted – because adoption would terminate his legal relationship with her and he has a relationship with her and a strong part of his identity is his connection to her. Guardianship – which provides legal permanency without terminating rights – would be the ideal option. Unfortunately, under current law, his foster parent is not eligible for a guardianship subsidy because she is not "kin," and even if she was eligible, the subsidy would end in less than a year when the youth turns 18. If this bill passes, we will encourage our client and his foster parents to seek guardianship.

Beyond our own clients, we know that these changes will have a significant impact. American University Professor Mary Eschelbach Hansen is one of the nation's leading scholars on adoption and, using data provided by CFSA, she was able to predict the impact of these subsidy changes. She is testifying about her work today, so will only note her bottom line – these subsidy changes will likely lead to more than 100 more children every year leaving foster care to permanent families.

II. These Changes Will Save the District Millions of Dollars.

These subsidy changes are not only good for children, but also good for the government's bottom line. Keeping children in foster care is expensive to CFSA and other District agencies, and when children grow up in foster care those costs continue year after year until the child turns 21. When a child leaves care, significant costs are saved: the costs of assigning social workers to manage a foster care case, the costs of CFSA-provided services to foster children, the elevated costs of certain foster care placements (especially congregate care and therapeutic foster care), the costs of

assigning an Assistant Attorney General for an open foster care case, the cost of enrolling District children living in Maryland foster homes in Maryland public schools, and the cost of providing District Medicaid to children living in Maryland who switch to Maryland Medicaid when adopted.

These subsidy changes come with costs, too, of course – more adoption and guardianship subsidies will be paid and will be paid for longer than under current law, and federal Title IV-E reimbursements may not be as generous for adoption and guardianship subsidies as they are for foster care subsidies. But these costs are dwarfed by the savings. The Chief Financial Officer (CFO) projects that these subsidy changes will result in $3.9 million in savings over the next four years.[7] In an era when every agency faces severe budget cuts and the Mayor and the Council face difficult budget decisions, these savings will provide essential resources to maintain the District's safety net.

III. Amending Provisions Regarding The Timing of Subsidy Changes

We strongly urge the Committee to change to the timing of the adoption and guardianship subsidy amendments to take effect immediately. Quite simply put, the sooner the bill takes effect, the sooner new adoptions and guardianships can occur in Family Court. The bill as written proposes to delay its effective date until October 1, 2010. As noted above, there are cases where this delay may lead to a youth being separated from her family. The delay also creates an incentive for lawyers and judges to delay adoptions and guardianships until the law takes effect. Indeed, in the past month, our office has fielded numerous calls from pro bono attorneys planning to wait to file for adoption or guardianship until after October 1, 2010 – unnecessarily delaying permanency for youth and cost savings for the District. Therefore, we urge the effective date be changed so the subsidy provisions take effect as soon as the bill does.

[7] Natwar M. Gandhi, Chief Financial Officer, Fiscal Impact Statement, Adoption and Guardianship Expansion Act of 2009, http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/B18-453_.pdf.

In addition, we urge members of this Committee to ask your colleagues on the Council to enact the bill – or, at least, the adoption and guardianship subsidy provisions – to take effect immediately via emergency and temporary legislation. We are all aware that the District government as a whole, and CFSA in particular, face budget pressures so significant as to constitute a fiscal emergency. At the Committee of the Whole hearing on February 19, 2010, it was established that CFSA is *both* significantly overspending its budget *and* failing to obtain projected federal Medicaid revenue, leaving a large budget hole in FY 2010 – with a potentially enormous budget hole looming for FY 2011. This bill is not a silver bullet to CFSA's budget challenges, but it will help. And the sooner it takes effect, the sooner that help will come.

The bill's timing language also risks other unintended consequences. The proposed language – "Beginning on October 1, 2010, eligibility for payments shall continue until the child reaches 21 years of age" – suggests that *any* adoptive parent or permanent guardian will be eligible for a subsidy extension, even if the adoption or guardianship was finalized long ago. Extending adoption and guardianship subsidies retrospectively would spend significant funds and would not result in any new adoptions or guardianships – because, by definition, they would apply to children who have already left foster care. The CFO's report was based on a prospective change only, and retroactive change would likely not provide a cost savings.

To ensure that the subsidy changes take effect immediately and have only a prospective effect, we urge the following changes:

- Section 501 should be amended to read: "~~Beginning on October 1, 2010, eligibility for payments shall continue until the child reaches 21 years of age.~~ **For adoptions finalized on or after the effective date of the Adoption Reform Amendment Act of 2009 D.C. Law 18-___), eligibility for payments shall continue until the child reaches 21 years of age.**"

- Section 502(b)(2) should be amended to read: "~~Beginning on October 1, 2010, eligibility for subsidy payments under this section shall continue until the child reaches 21 years of age.~~ **For guardianships finalized on or after the effective date of the Adoption Reform Amendment Act of 2009 (D.C. Law 18-____, eligibility for subsidy payments under this section shall continue until the child reaches 21 years of age.**"
- The purpose section should be amended to describe these changes. We recommend amending lines 22 and 23 on page 1 of the bill to read: ". . . to extend subsidies for a child from 18 years of age to 21 years of age **and to expand eligibility for guardianship subsidies for adoptions and guardianships finalized after the effective date of this Act** ~~beginning in fiscal year 2010~~."
- Emergency and temporary legislation should be introduced that will take effect for adoptions and guardianships finalized on or after the effective date of the emergency and temporary laws.

IV. Limiting Post-Adoption Contact Agreements to Private Adoptions

We urge the Committee to limit the scope of the bill's provision for judicially-enforceable post-adoption contact agreements to private adoptions. Such agreements may be appropriate in private adoptions. But applying Title I to adoptions of foster children could disrupt delicate Family Court dynamics. Unlike private adoptions – which are fundamentally voluntary – an abuse or neglect case is fundamentally coercive, and that coerciveness creates a very different atmosphere. We are also concerned these contracts will lead to adoptive families being hauled back into court for visitation battles. In the divorce context these battles are damaging enough for children, and would be here as well. We agree with the Foster and Adoptive Parent Advocacy Center that subjecting

adoptive families to these court battles makes them second class families. We also share FAPAC's concern that these agreements may provide a disincentive to adopt.

To this end, we urge the addition of a new section 101(c): "**This section shall not apply when the prospective adoptee or adoptee is the respondent in a child abuse or neglect case under Chapter 23 of Title 16.**" This language would make the post-adoption contact agreement provisions apply only to private adoptions and not to foster care adoptions.

V. Technical Changes

Finally, I have several technical changes to recommend to for the bill:

a. Title I. Post Adoption Contact Agreement

We recommend several changes to Title I, Post Adoption Contact Agreement:

- Section 101(a), on line 2 of page 2, should refer to a "prospective adoptee **or adoptee**." This change will make this phrase parallel with the phrase in line 1, "prospective adoptive parent or an adoptive parent."
- Section 101(a), lines 2-4, should read: "a written agreement to allow contact, after the adoption, between the birth parent or other birth relative of the adoptee and the adoptee ~~and~~ **or** adoptive parent while the adoptee is a minor." Use of the word "or" is important to provide flexibility to birth and adoptive parents negotiating a post-adoption contact agreement. Parents may not wish to negotiate contact with both adoptive parents *and* adopted children in every case. Parents may, instead wish to agree only to contact between the birth parent and adoptive parent – agreeing, for instance, that the adoptive parent will share a letter and a photograph with the birth parent annually. The bill's language should be amended to reflect that option. This change will also comport with the Maryland statute on which the bill is based; Maryland Family Code § 5-308(a) reads: "a written agreement to

allow contact, after the adoption, between: (i) the parent or other relative of the adoptee; and (ii) the adoptee *or* adoptive parent."

- Section 101(b)(1), on line 8 of page 2, should read "If a dispute arises between the parties **to a post-adoption contact agreement**, ..." This addition clarifies that the section only applies to those parties who have a post-adoption contact agreement, and not other parties to the adoption case who may not have such an agreement. For instance, if a birth mother signs an agreement but a birth father does not, the birth father should not be permitted to raise a dispute regarding that agreement.
- Section 101(b)(2), on lines 14-15 of page 2, should read "In any judicial resolution of a dispute, the ~~District~~ Family Court shall enforce an agreement made in accordance with this title~~, based on~~ **if the Family Court finds that enforcement of the agreement is in** the best interests of the adoptee." This change clarifies the actual legal standard to be applied. Also, the phrase "District Family Court" is not used elsewhere in the statute and should read "Family Court" (or, perhaps, "Family Court of the District of Columbia") for consistency. *See*, *e.g.*, D.C. Code § 11-1101(a).
- Section 101(b)(3), on line 17 of page 2, should be changed to place the phrase "**in the best interest of the child**" in place of "justified." "Justified" is not a recognized legal standard. The term appears in the Maryland statute, but connected to another phrase ("justified because an exceptional circumstance has arisen"). Maryland Family Code § 5-308(f)(2). The Council's bill appropriately excluded the "exceptional circumstances" standard as too onerous, and it should also replace the remaining term "justified."

b. Title III Volunteer Adoption Registry

We recommend several changes to Title III, Volunteer Adoption Registry. First we appreciate that this section applies to all children who have ever been in foster care, as the definition

of the registry in section 301(a)(3) makes clear. We support the inclusion of all foster children in the registry because many foster children lose touch with family members during the course of their foster care case. We recommend the following changes:

- Amend the name of the registry to be "Volunteer ~~Adoption~~ **Foster Care** Registry." Because all former foster children are covered, the name "Volunteer Adoption Registry" is confusing.
- Amend Section 301(a)(3), on lines 13-16 of page 5, to read: "(16) To establish and maintain the Volunteer ~~Adoption~~ **Foster Care** Registry, established pursuant to section 308 as a post-care service, for ~~an~~ individuals 18 years or older, who were, or currently are, ~~under the jurisdiction of the Agency~~ **respondents in child abuse or neglect cases under Chapter 23 of Title 16** and their immediate birth family members, as defined in section 308(g)." This technical change more accurately describes the legal status of foster children. They are not "under the jurisdiction" of CFSA; rather, they are respondents in a legal proceeding who usually (but not always) are committed to the custody of CFSA. Similarly, section 308(g)(2) should be amended to read "'Registrant' means an individual, 18 years of age or older, who was, or currently is, ~~under the jurisdiction of the Agency~~ **a respondent in a child abuse or neglect case under Chapter 23 of Title 16** or his or her immediate birth family member."
- On line 22 of page 5, "an" should be replaced with "a."
- The Title should be amended to reflect that many registrants will not have been adopted. Changes include:
    - Section 308(b)(1)(A)(v) should be amended to read "Name of adoptive parents**, if applicable;**"
    - Section 308(b)(1)(B) should be amended to read "The name and address of the child placement agency that placed the child for adoption**, if applicable**";

    - Section 308(e)(3)(A) should be amended to read "The child placement agency that placed the child for adoption**, if applicable**;" and
    - Section 308(e)(4) should be amended to replace "adoptee" with "child" or "former foster child" wherever it appears.

- We urge the Committee to include a provision exempting current foster children from paying a fee for registering. Section 308(b)(2) would be amended to read: "Pay a one-time fee, to be established by rule, which may be waived or reduced for individuals with verified income at or below the national poverty level. **A registrant who, at the time he or she registers, is the respondent in an open neglect case under Chapter 23 of Title 16 shall not be required to pay a fee.**" Foster youth who register are, by virtue of their status as foster youth, dependent on the state for support. Accordingly, they should be automatically waived from having to pay this fee. Moreover, registering may help older foster youth form lifelong connections with separated family members – an important goal of the foster care system that this bill should encourage by waiving the fee.
- The phrase "District Family Court" should be amended to "Family Court" in section 308(e)(3)(C), as suggested above regarding section 101(b)(2).
- We urge the Committee to provide further clarification regarding situations in which individuals wish to share contact information with certain family members but not others. For instance, an adopted child may want to reconnect with a sibling, but not his birth parents, or may want to reconnect with one parent, but not another parent. The statute, however, reads as if an individual faces an all-or-nothing choice: register and consent to the sharing of one's information with *all* other registrants, or do not register. In addition, when two immediate birth family members wish to reconnect and both register, they should be able to do so. Yet the statute as drafted prevents such contacts in certain cases. If a former

foster child wishes to reconnect with his birth mother but not his birth father, that reconnection should not depend on the consent of the birth father, especially if he lacks a meaningful connection with the birth mother. To better accommodate these situations, we recommend the following changes:

- Section 308(b)(1)(C) should be amended to read "A statement of consent to be identified to other registrants who are matched as **immediate** birth family members**, including a statement whether the registrant consents to be identified to any immediate birth family member who registers or only to specific birth family members. If the registrant only consents to be identified to specific immediate birth family members, the statement shall indicate by name which immediate birth family members for whom the consent is valid.**"
- All of the subparagraphs under Section 308(e)(4)(C) should be deleted as unnecessary. A new section 308(e)(4)(D) should be added which provides: "**Information shall only be provided regarding immediate birth family members who are registrants. Information regarding a nonregistering immediate birth family member shall not be provided.**"

c. *Conforming amendments*

We urge a technical amendment to section 603. This section creates a valuable change by permitting older youth to be adopted even if they do not live with their adoptive parents for a full six months. Such a provision is important for youth who attend college (and thus do not live with any adult for six-month stretches) but who nonetheless want the benefits of legal permanency. The language in the proposed section, however, introduces terms that do not have accepted meaning in District law. The proposed language – "participating in the Child and Family Services Agency's

independent living program; and living independently" – lacks a clear meaning and thus could pose potential implementation problems. If a youth attends college 9 months of the year and resides with a prospective adoptive parent for 3 months, is the youth participating in an "independent living program"? The answer may be "no," because the youth does not live in one of the congregate care facilities known as independent living programs. The better statutory approach is to apply this section to any youth over 18 with an open abuse or neglect case. We urge the Committee to revise the language as follows:

- A prospective adoptee shall be exempt from the 6-month requirement if he or she is: (A) Eighteen years of age or older; **and** (B) **A respondent in an open abuse or neglect case under Chapter 23 of Title 16** ~~Participating in the Child and Family Service Agency's independent living program; and (C) Living independently~~.

VI. Conclusion

Again, I thank you, Chairman Wells, and your co-introducers and co-sponsors for your leadership on these issues. I hope this bill will move rapidly towards enactment – and that the subsidy provisions in particular are enacted quickly as emergency and temporary legislation. My colleagues and I are eager to do what we can to help this bill move forward quickly – and we are even more eager to work with our many present and future clients who will be immensely helped by this bill.

I thank you for this opportunity to testify and look forward to your questions.