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Testimony Before the District of Columbia Council
Committee on Human Services
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Public Hearing:

B23-437, the “Child Safety and Well-Being Ombudsperson Establishment Act of 2019”

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Introduction

Good morning, Chairwoman Nadeau and members of the Committee on Human Services. My name is Judith Sandalow. I am the Executive Director of the Children’s Law Center and a resident of the District.¹ 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 nearly 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 represent the best interests of hundreds of children in foster care and represent foster parents and relative caregivers of children who are in or at risk of entering the District’s child welfare system.

Today’s hearing is on two important bills currently before the Council: B23-402, the “Standby Guardian Amendment Act of 2019” and B23-437, the “Child Safety and Well-Being Ombudsperson Establishment Act of 2019.” Children’s Law Center serves many families in the immigrant community, and we work with parents who fear sudden deportation and the implications for the safety and care of their children. The Standby Guardian Amendment Act of 2019 and its expansion of standby guardianship laws is a smart way to help families in our immigrant community plan for this painful possibility. We strongly support its passage.

The focus of our testimony today is on B23-437, the “Child Safety and Well-Being Ombudsperson Establishment Act of 2019” (the “Act”). This past spring, Children’s Law Center testified about our many concerns regarding CFSA’s individual child and family level practices and about systemic issues that we believe are negatively impacting DC children involved with the child welfare system.² We believe there needs to be an effective mechanism to help children and families resolve everyday problems that should not require court intervention. There also needs to be an effective mechanism to increase transparency about and hold CFSA accountable to its own policies and processes on both an individual and a systemic level. Accordingly, we are here today to voice

our strong support for the Act and to provide the Committee with our recommendations for strengthening the proposed legislation.

An Independent Ombudsperson is Necessary for Transparency and Accountability

CFSA works to improve the safety, permanence, and well-being of abused and neglected children in the District of Columbia and to strengthen their families.³ Given the extremely sensitive and personal nature of CFSA's mission, a high degree of confidentiality is properly built into the very structure of the agency. CFSA's mandate requires them to undertake difficult, complex, and nuanced work with children and families when they are in crisis. To build trust and be successful in this work, CFSA must have strict rules and practices around the handling and sharing of information. For this reason, CFSA holds a great deal of information that they are required to keep confidential under the law.⁴ Although these strong confidentiality protections are essential to the work that CFSA does, they also create obstacles for the type of public accountability so critical to our democracy.

Beyond these natural barriers inherent in CFSA's work, the agency has developed a culture of intentional opacity. As we testified in the spring, we are consistently stymied in our attempts to get information from the agency. At the individual case level, our attorneys – whether they are representing a child or a caregiver - struggle to obtain the information they need to understand the facts, policies, and reasoning underlying agency decisions so they can advocate effectively for their clients. At the systemic level, we and other stakeholders struggle to understand what policies are in place and why and to understand whether the problems we are experiencing in individual cases are symptomatic of larger trends and issues within the agency.⁵

Currently, there are three primary sources of systemic accountability: the Citizen Review Panel on Child Abuse and Neglect (“CRP”), Council oversight, and the Court monitor in *LaShawn A. v. Bowser* (“*LaShawn*”). Although each of these entities serve an important purpose in helping

CFSA accomplish its goals, they are not sufficient. The CRP is comprised entirely of volunteers, has minimal staff support, and is neither equipped nor qualified to conduct full-scale investigations or to address individual complaints regarding CFSA practices and policies. By law, the CRP is required to meet only four times a year and issue a single annual report.⁶ At best, the CRP can examine one or two topics each year (and even that is often beyond their capacity due to lack of support and resources).

The Council does provide a broader level of oversight over CFSA. But even the Council's role is limited to broad policy and budget oversight. The Council does not have the time or capacity to conduct full-scale investigations of systemic problems within the agency or to determine if an individual complaint is indicative of a bigger systemic issue.

In recent years, the court monitor in *LaShawn*, the Center for the Study of Social Policy ("CSSP"), has been one of the only places stakeholders can go to raise policy issues or get macro-level data about CFSA. As this Committee is well aware, CFSA has spent the better part of thirty years under the supervision of a court-appointed monitor, as a result of the *LaShawn* federal class action lawsuit filed in 1989 on behalf of abused and neglected children in the District of Columbia.⁷ In 1993, the court issued an extensive remedial order imposing numerous requirements, changes, and reforms in every area of the child welfare system and tasked the CSSP to monitor and report on the District's progress in implementing these reforms.⁸ As a court-monitor, CSSP has been able to collect data, documents, and other information from CFSA to a certain extent. CSSP has in turn provided this information to the public and to the Council in the form of regular reports and testimony.

Today – twenty-six years after Judge Hogan issued his remedial order – CFSA is still working to meet the outcomes and Exit Standards set by the *LaShawn* Implementation and Exit Plan in accordance with the remedial order.⁹ According to CSSP's most recent report, CFSA has made

significant progress – but continues to struggle meet critical requirements with respect to timeliness of services, placement of children, and case planning, management, and documentation.¹⁰ Despite these challenges, and without any local community input, CFSA and the Mayor renegotiated the Exit Standards with plaintiffs’ counsel in *LaShawn* and proposed these modified exit criteria to the Court on August 29, 2019.¹¹ The Executive branch has made it clear that they believe the agency no longer requires court supervision and is ready to “move forward” without the oversight structure imposed by *LaShawn*.¹² While we still have concerns about several of the issues that are subject to the court order, particularly placement, the Court monitor’s oversight of the agency will, and should, eventually end.

When *LaShawn* ends, we will lose one of the key current accountability tools. While there still will be Council and CRP oversight we believe an additional entity is needed. Neither the Council nor the CRP can fill the role the monitor has been playing and indeed we need something beyond the Court monitor to provide accountability and protection for people involved in the child welfare system.

In addition to holding CFSA accountable at a systemic level, there is a current and unfilled need to give youth and families a forum to resolve the issues that arise at the individual level. Although both families and CFSA can go to DC Family Court to resolve case-level conflicts, there are countless instances where going to court is a terrible waste of resources and energy – and where courts cannot provide solutions quickly enough to make a difference. For example, we’ve had a number of cases where children in CFSA’s care have needed essential clothing items such as underwear or shoes but have not been able to get them for various bureaucratic reasons (e.g., CFSA and the foster parent each said the other was responsible for buying the item or CFSA disputed the need or the amount of funds or when the funds could be allocated.). Our lawyers have had to go to court just so that a child could have shoes that fit. These are problems that have a profound impact

on a child but should not require formal court hearings. Children, families, and agency staff need a place to informally work through and resolve these conflicts quickly. In addition to being too formal and resource-intensive, Family Court cannot resolve issues on behalf of foster parents who are not legally parties to a case. This leaves foster parents without any recourse when CFSA is unresponsive to their needs.

An Ombudsperson's office has the investigative capacity to address systemic issues and the informality to bring the agency, families and youth together to resolve important issues that do not need judicial resolution. The role of an Ombudsperson is to protect people from violations of their rights, abuse of powers, unfair decisions and maladministration, and to improve public administration while making the government's actions more open and accountable to the people.¹³ According to the American Bar Association, most Ombudspersons serve as third-party neutrals that use creativity and alternative dispute resolution skills to resolve the concerns of employees, visitors, customers and the public.¹⁴

The independent, external Ombudsperson envisioned by the Act will ensure that families, the public, the Council, and advocates like Children's Law Center have continued access to macro-level information about CFSA policies and practices. In addition to filling the gap in systemic accountability for CFSA, the Ombudsperson will also increase transparency with respect to case-level information and improve CFSA engagement with families and advocates.

We believe it's essential that the proposed Ombudsman have dual roles as both a neutral resource for families and CFSA to resolve problems or complaints without having to resort to court action and as an impartial investigator able to consider macro-level data and analyze systemic issues affecting the functioning of the agency.

The Ombudsperson Must Be External

The proposed legislation establishes the Office of the Child Safety and Well-Being Ombudsperson as an external entity, outside of and separate from CFSA. We believe this is a critical element to ensuring that the Ombudsperson is truly independent and therefore support this aspect of the legislation. Keeping the Ombudsperson separate from CFSA and its leadership fosters confidence in the independence and impartiality of the Ombudsperson and strengthens the Ombudsperson's ability to maintain confidentiality and establish a credible review process.¹⁵ If the Ombudsperson is viewed as fully independent and impartial, children and families can bring their problems to the Ombudsperson without fear of reprisal, and social workers and others from within the agency can bring forward concerns knowing they will be shielded from retaliation. Confidentiality and protection from retaliation will also help mitigate some of the structural power differential among youth, caregivers, case-carrying social workers and agency leadership. It will create a better environment for individuals to share the information and experiences that can help the Ombudsperson both resolve conflicts expeditiously and conduct investigations effectively. It's also important to note that impartial and independent investigations will enable the Ombudsperson to credibly support CFSA's actions when it is unfairly criticized for properly carrying out its duties.

We've seen success with this model both here in DC and around the nation. In DC, the Office of Ombudsman for Public Education was established within the State Board of Education to serve both conflict resolution and investigation functions.¹⁶ In our experience, the Ombudsman for Public Education has been quite successful in both roles and has been a helpful resource for students and families. Outside of DC, at least 15 states have established external child welfare ombudspersons, empowered to both address individual complaints and conduct systemic investigations.¹⁷

Washington state provides a good example of how this model can work. Washington's Office of the Family and Children's Ombuds (OFCO) was established in 1996 to ensure government

agencies respond appropriately to children and families involved in the state child welfare system.¹⁸ OFCO is also responsible for recommending and facilitating broad-based systemic improvements to the child welfare system and for promoting public awareness about the child protection and welfare system.¹⁹ In this capacity, OFCO completed 923 complaint investigations regarding 870 families during its last annual reporting period.²⁰ When legitimate concerns have been identified, OFCO's typical interventions include "prompting the agency to take a closer look at a concern, facilitating information sharing, mediating professional disagreements, and sharing investigative finds and analysis with the agency to correct a problematic decision."²¹ During this period, OFCO reports that, of the 923 complaints, 84 prompted intervention by OFCO, OFCO provided substantial assistance in resolving issues or concerns in an additional 39 complaints, and OFCO made a total of 40 formal adverse findings against the agency during the entire year. OFCO also submitted two annual reports during this period: one analyzing the work of the office, including systemic observations and recommendations, and one addressing the implementation of prior recommendations.²² All of this work was done by six employees with an annual budget of \$670,000.

For these reasons, we support the passage of the Act establishing an independent, external Child Safety and Well-Being Ombudsperson. However, we have a few recommendations for strengthening the bill and enabling the Ombudsperson to better serve its purpose.

The Ombudsperson Must Be Required to Seek Resolution of Case-Level Conflicts

We would like to see the Act more explicitly establish the Ombudsperson's duty to mediate case-level conflicts. Based on our experiences working with hundreds of children, caregivers, parents and CFSA staff, we believe it is vital that individuals from all parts of the child welfare system have an unbiased venue in which to resolve case-level conflicts. The proposed Ombudsperson needs to be a place where individuals can register complaints, be heard, be safe, and receiving a meaningful response within a reasonable timeframe. This will enable the Ombudsperson to resolve problems

and issues that may not rise to the level for court-involvement, but affect the day-to-day lives of children, youth, caregivers, and families in important ways. For example, if neither CFSA staff nor a youth's caregiver are providing the support she needs in order to prepare for a critical milestone, such as taking her driver's license test, the youth needs the Ombudsperson to be able to quickly ascertain the facts and the obligations of all the parties involved in time to make a difference in her life. To achieve this goal, the Ombudsperson legislation needs to clearly articulate the duty to seek resolution of case-level conflicts and explain how it will work in conjunction or in parallel with CFSA's existing conflict resolution processes.

The current draft of the Act is fairly limited in terms of how it addresses the Ombudsperson's role with respect to conflict resolution. In Section 9 "Duties," mediating case-level conflicts or individual complaints is not included as an explicit duty.²³ Rather, one of the enumerated duties is to "adopt, promulgate, amend, and rescind rules and regulations required for the discharge of the Ombudsperson's duties and implementation of this chapter, including procedures for receiving and processing complaints. . . [and] performing conflict resolution."²⁴ Section 10 "Powers" gives the Ombudsperson authority to "require the Agency's participation in alternative dispute resolution and to facilitate meetings between the Agency, and children, youth, and families to identify recommendations and resolve concerns..."²⁵ But neither of these sections, actually *require* the Ombudsperson to try to resolve case-level conflicts. Other sections of the proposed legislation, including Section 11 "Investigation of administrative acts" and Section 12 "Investigation of administrative acts -- Rights of Complainant," suggest that the Ombudsperson's primary response to receiving a complaint will be to conduct an investigation, come to a conclusion, and issue recommendations.²⁶

While we certainly agree that the Ombudsperson must have the authority to investigate complaints thoroughly and issue recommendations when necessary, we would also like to see the

Act explicitly require that, where possible, the Ombudsperson seek to resolve case-level complaints through mediation. The statute establishing the Office of Ombudsman for Public Education has good language on these points that could serve as a potential model for revisions to the proposed legislation. For example, in D.C. Code § 38-351(d), the law states that “the purpose of the Ombudsman is to serve as a neutral resource for current and prospective public school student and their parents or guardians in the resolution of complaints and concerns regarding public education in a way that . . . furthers students’ best interests.”²⁷ D.C. Code § 38-353 lays out the duties of the Public Education Ombudsman and requires that the Ombudsman “resolve complaints presented by current and prospective public school students and their parents or guardians, either through complaint resolution services as established pursuant to § 38-356 or through other informal measures.”²⁸ D.C. Code § 38-356, titled “Complaint resolution services” then details basic requirements for the Ombudsman’s complaint resolution services.²⁹ The statute provides the Ombudsman with the authority necessary to resolve complaints – including the authority to “bring persons together to resolve conflicts.”³⁰ We recommend that the proposed legislation be amended to incorporate similar provisions and to explicitly state that the Ombudsperson will seek to resolve complaints through mediation and conflict resolution, where possible and in the best interests of the children involved.

Although we would like the Act to require and empower the Ombudsperson to address and seek the resolution of case-level conflicts, we want to be clear that we are not suggesting that the Ombudsperson should be able to undermine or override decisions made by the Court. To the extent this is a concern, we suggest that language be added to the bill to make it clear that the Ombudsperson is not authorized to take actions that are contrary to court orders.

Further Work is Needed to Determine the Most Appropriate Appointing Authority for the Ombudsperson

The current draft of the Act establishes the Office of the Child Safety and Well-Being Ombudsperson as part of the CRP.³¹ The Act further proposes that the Ombudsperson be appointed by a “majority vote of attending members,” subject to the approval of a majority of the Council.³² Although the CRP has done admirable work on behalf DC children for many years, it is not the right place for the Ombudsperson to be situated and it is not equipped to undertake the significant work involved with a high-level appointment of this nature. The draft bill requires that the Ombudsperson be a highly qualified individual with both a breadth of legal and administrative experience and a depth of expertise in local, regional, and national child welfare policy, practices, data systems, and case management systems. Beyond this, to be effective in this complex and nuanced position, the Ombudsperson must have the ability to both mediate case-level conflicts both within the agency and between the agency, children, and families, and conduct meaningful investigations of agency policies and practices. Selecting the right individual to serve as Ombudsperson is imperative to the Office accomplishing its goals.

As noted above, the CRP is comprised entirely of volunteers and has minimal staff support. The dearth of support the CRP has is reflected in the fact that the CRP was not able to maintain its quorum of eight members for several years in the recent past. We are not denigrating the work of the CRP – in fact, at least one staff member of Children’s Law Center has sat on the CRP for the past 12 years. The CRP simply isn’t equipped to support the process necessary to properly search for and vet candidates to serve as Ombudsperson. Accordingly, we ask that the Committee continue to explore other options for appointment authority. We look forward to working with the Committee and other stakeholders to identify the most appropriate choice.

Conclusion

Thank you for the opportunity to testify. I look forward to answering any questions you may have.

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 nearly 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 Aubrey Edwards-Luce, Children’s Law Center, *Testimony Before the District of Columbia Council Committee on Human Services*, (February 26, 2019), retrieved from <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/AEL%20CFSA%20FY2018%20Oversight%20Testimony%20FINAL.pdf> (discussing the impact of the placement quantity and stability crises, clinical practice issues, lack of supports to birth and foster parents, and unacceptable older youth outcomes and experiences).

³ Child and Family Services Agency, *About CFSA*, retrieved from <https://cfsa.dc.gov/page/about-cfsa>.

⁴ See CFSA’s confidentiality policy requiring compliance with HIPAA and Titles 4 and 7 of the DC Code: Children and Family Services Agency. *CFSA Policy: Confidentiality*. (2011). Retrieved from https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/Program_-_Confidentiality_FINAL.pdf.

⁵ Aubrey Edwards-Luce, Children’s Law Center, *Testimony Before the District of Columbia Council Committee on Human Services*, (February 26, 2019), retrieved from <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/AEL%20CFSA%20FY2018%20Oversight%20Testimony%20FINAL.pdf> (explaining “CFSA’s lack of transparency and lack of community engagement make it very difficult to explain why these problems persist or to recommend credible solutions.”); and Judith Sandalow, Children’s Law Center, *Testimony Before the District of Columbia Council Committee on Human Services*, (February 26, 2019), retrieved from <https://www.childrenslawcenter.org/sites/default/files/attachments/testimonies/JSandalow%20CFSA%20FY2018%20Oversight%20Testimony%20FINAL2.pdf> (“I believe that one of the reasons we have seen a decline in CFSA’s effectiveness is their move away from the philosophy and practice that embraces the larger community as part of the child welfare system. . . . The lack of inclusion is made worse by a lack of transparency. Whether Children’s Law Center is working on behalf of one child or for systems change, we have difficulty getting the information we need to be productive partners. In individual cases, CFSA often refuses to give reasons for its conclusions, making it hard for children and families to team effectively. At a systemic level, policies are changed without information community stakeholders – and we often find that CFSA social workers themselves do not know what policy to follow. This lack of transparency is more than a barrier to our advocacy: it makes our child clients, their foster families and their biological families feel unstable and keeps them in a toxic state of high stress.”).

⁶ DC Code § 4-1303.51 et seq.

⁷ *LaShawn A v. Kelly*, 887 F. Supp. 297, 298 – 300 (D.D.C. 1995).

⁸ *Id.*

⁹ Center for the Study of Social Policy, *LaShawn A. v. Bowser Progress Report for the Period July 1, 2018 – March 31, 2019* at 4 – 6 (May 24, 2019) retrieved from <https://cssp.org/wp-content/uploads/2019/06/LaShawn-A-v-Bowser-Progress-Report-for-Period-July-2018-March-2019.pdf>.

¹⁰ *Id.* at 5 (“There remained 14 IEP Exit Standards still to be achieved at the start of this monitoring period. The unmet standards pertain to timely and quality child protective services practice; adequacy of case planning and service delivery to children and families; quality of worker documentation in assessing for children’s safety during visits; ensuring workers frequently visit children who have been newly placed or experienced a placement move; achieving timely permanency outcomes for children through reunification, guardianship, or adoption; appropriately conducting meaningful assessments of children who experience placement disruptions; and eliminating the practice of children and youth staying overnight at the CFSA office building.”).

¹¹ *LaShawn A. v. Muriel Bowser*, Case No. 1:89-cv-01754-TFH, Dkt. No. 1201, Joint Motion for Entry of Order Approving Exit and Sustainability Plan (August 29, 2019).

¹² Morgan Baskin, *To Escape Court Oversight, D.C.’s Child Welfare System is Cutting Corners* at 2 (April 11, 2019) retrieved from: <https://www.washingtoncitypaper.com/news/article/21063869/to-escape-court-oversight-dcs-child-welfare-system-is-cutting-corners>.

¹³ International Ombudsman Institute, *About the IOI*, retrieved from <https://www.theioi.org/the-i-o-i>.

¹⁴ American Bar Association, Section of Despute Resolution, *Report to the House of Delegates, Resolution 103*, at 4-5 (August 2017) retrieved from <https://abaombudsday.files.wordpress.com/2018/09/2017-aba-resolution-103.pdf>.

¹⁵ United States Ombudsman Association, *United States Ombudsman Association Governmental Ombudsman Standards*, 1 (Oct. 2003), retrieved from <http://www.usombudsman.org/site-usoa/wp-content/uploads/USOA-STANDARDS1.pdf>.

¹⁶ DC Code §§ 38-351 et seq.

¹⁷ See Ark. Code Ann. § 16-87-216; Colo. Rev. Stat. § 19-3.3-101 et seq.; Conn. Gen. Stat. § 46a-13k et seq.; Del. Code Ann. tit. 29 § 9001A et seq.; Ga. Code Ann. § 15-11-740 et. seq.; Me. Rev. Stat. Tit. 22 § 4087-A; Mass Gen. Laws Ch. 18C § 1 et seq.; Mich. Comp. Laws § 722.921 et. seq.; Minn. Stat. § 257.0755 et. seq.; Mo. Rev. Stat. § 37.705 et seq.; R.I. Gen. Laws § 42-73-1 et seq.; Tenn. Code Ann. § 37-3-101 et seq.; Tex. Hum. Res. Code Ann. § 12-261.001 et seq.; Utah Code. Ann. 62A-4a-208; and Wash. Rev. Code § 43.06A.

¹⁸ Office of the Family and Children’s Ombuds, *2018 Annual Report* at 4 (November 2018) retrieved from <https://www.ofco.wa.gov/wp-content/uploads/OFCO-2018-Annual-Report-1-1.pdf>.

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ *Id.* at 8.

²² *Id.* at 5.

²³ B23-437, The Child Safety and Well-Being Ombudsperson Establishment Act of 2019, at 5-6.

²⁴ *Id.* at 6, ln 139-42.

²⁵ *Id.* at 6, ln 145-49.

²⁶ *Id.* at 8-10.

²⁷ DC Code § 38-351(d).

²⁸ D.C. Code § 38-353.

²⁹ D.C. Code § 38-356.

³⁰ D.C. Code § 38-354.

³¹ B23-437, The Child Safety and Well-Being Ombudsperson Establishment Act of 2019, at 3, ln 62-64.

³² *Id.* at 3, ln 66-67 and 71-72.