

FOSTER CHILDREN IN THE COURTS

HEARING
BEFORE THE
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

OCTOBER 30, 2023

ATLANTA, GEORGIA

Serial No. J-118-40

Printed for the use of the Committee on the Judiciary



www.judiciary.senate.gov
www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

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FOSTER CHILDREN IN THE COURTS

MONDAY, OCTOBER 30, 2023

UNITED STATES SENATE,
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW,
COMMITTEE ON THE JUDICIARY,
Atlanta, Georgia.

The Subcommittee met, pursuant to notice, at 10 a.m., in Room 041, Georgia State University College of Law, Hon. Jon Ossoff, Chair of the Subcommittee, presiding.

Present: Senator Ossoff [presiding].

OPENING STATEMENT OF HON. JON OSSOFF, A U.S. SENATOR FROM THE STATE OF GEORGIA

Chair OSSOFF. The Subcommittee on Human Rights and The Law will come to order.

Eight months ago, the Subcommittee opened a bipartisan inquiry into the safety of children in foster care. Because protecting America's most vulnerable children from abuse and neglect is a moral imperative.

We're talking about the most vulnerable children in our Nation, and the most vulnerable children in the State of Georgia: orphaned children; children who have faced unimaginable abuse; children who have been trafficked.

For these children in our State, the Georgia Division of Family and Children's Services, DFCS, is meant to be a sanctuary.

For years, watchdogs, oversight bodies, and advocates have been sounding the alarm about alleged systemic failures at DFCS, which receives hundreds of millions of dollars in Federal funding each year, and which is subject to Federal child welfare standards.

According to the Georgia Office of the Child Advocate, or OCA, in 2021, DFCS received reports of significant failures directly from several local child advocacy centers, and from the statewide organization, Children's Advocacy Centers of Georgia. OCA characterized these reports as evidence of, quote, "systemic threats to children who are victims of physical and sexual abuse."

The following year, in 2022, OCA issued a report outlining 15 breakdowns within DFCS and described them as, quote, "systemic." OCA reported that in all cases they reviewed to produce their investigation, quote, "DFCS failed to take adequate steps to respond to allegations of physical and sexual abuse," end quote, and that OCA itself encountered those same systemic failures, quote, "consistently throughout the State through OCA's day-to-day investigative work."

In response to that OCA investigation, Georgia DFCS denied OCA's findings.

OCA stood by its report. The allegations of widespread failures that leave Georgia foster children vulnerable to abuse and neglect, demand investigation.

And Georgia, as a case study informing our Subcommittee's inquiry, will yield crucial insights about threats to the health and safety of foster children nationwide.

To date, the Subcommittee has interviewed over 100 witnesses and has reviewed thousands of pages of records. Last week at our first public hearing, a former foster youth, a Georgia mother whose child was murdered after being placed with unfit caregivers, and experts and practitioners in child welfare law and policy, provided courageous and eye-opening testimony to the Subcommittee.

At that hearing, we also made public that, according to a DFCS internal audit from spring of this year, DFCS was failing in 84 percent of audited cases to, quote, "make concerted efforts to assess and address risks and safety concerns to children in their own homes or in foster care," which is a Federal child protection benchmark.

On Friday, we released a new analysis conducted at the Subcommittee's request by the National Center for Missing & Exploited Children, which found that 1,790 children in DFCS care were reported missing from 2018 to 2022.

This investigation continues today with the second public hearing, this time focused on Georgia's foster children in the courts. And today, three experienced judges will testify before the Subcommittee.

We are grateful for your testimony today, as you are uniquely qualified to provide authoritative, firsthand testimony about the operation of Georgia's foster care system.

I will now introduce our witnesses.

First, the Honorable Carolyn Altman. Judge Altman is a juvenile court judge at Paulding County Juvenile Court in Dallas, Georgia.

Next, we'll hear from the Honorable Nhan-Ai Simms. Judge Simms is a juvenile court judge at Gwinnett County Juvenile Court, Division 1, in Lawrenceville, Georgia.

And we'll hear from the Honorable Wenona Clark Belton. Judge Belton recently retired as a juvenile court judge at Fulton County Juvenile Court in Atlanta, Georgia.

Before their opening statements, we will swear in the witnesses. So if you would all please rise and raise your right hand.

[Witnesses are sworn in.]

Chair OSSOFF. Thank you. Let the record show that the witnesses answered in the affirmative. You may take your seats.

And now Judge Altman, we will please hear your opening statement.

STATEMENT OF HON. CAROLYN ALTMAN, JUVENILE COURT JUDGE, PAULDING COUNTY JUVENILE COURT, DALLAS, GEORGIA

Judge ALTMAN. Thank you and good morning, Senator Ossoff. I appreciate this opportunity to share about the work and the people that I care so deeply about.

I've been a juvenile court judge for 5 years, and the 10 years before that, I spent also in juvenile court representing parents and children and serving as a guardian ad litem. I'm a certified child welfare law specialist, and I consider myself a dedicated career professional in child welfare.

People sometimes ask me what it's like to be a judge, and particularly a juvenile court judge. Even after 5 years I struggle or hesitate to find the right answer or the best answer, because it is both an immense privilege and a heavy burden.

It's a privilege to bear witness to the incredible transformations we see in children and families, to see their healing, their restoration, and to get to know young people who are funny and creative, who are hurting, and are deeply thoughtful.

It's a privilege to work alongside co-laborers in this field. Dedicated, caring attorneys, CASA's, DFCS' case managers, and a host of others. The people are absolutely the best part of this work.

It's also a heavy burden to know that the decisions I make will forever change a child's life and alter a family's future. Because if the information is incomplete, inaccurate, if the system gets it wrong, if the decision that I've render is wrong, the consequences are incredibly real.

It was hard to listen to Ms. Aldridge last Wednesday, and to know that her story isn't an isolated one. Brooklyn's death is tragic, but worse, it was preventable.

And you probably know by now that statewide, our foster care population is lower than it was a few years ago. At our most, we were at 15,000, and we're currently around 11,000. And sounds like a really good thing to have fewer children in care.

But I'm increasingly concerned that we're missing children who need to be in care, and the ones who are, may not be receiving the care, services, and support that they need to really be successful.

I've seen this trend unfold in three different ways.

The first is an overuse and sometimes misuse of a safety resource plan. And what will happen is, DFCS' response to an emergency situation creates a safety plan and it's a short-term fix. But then they may not circle back, fully address the problem, and ensure that the child is properly being cared for.

And the biggest danger is that children could go from the frying pan into the fire. And they could be left with people who may not be safe. They're not screened, or vetted, or approved by DFCS. There's no criminal background checks, no drug screens—certainly no extensive training as a qualified foster parent.

And at worst, the child could be just as unsafe with the new caregiver as they were before. This is also problematic because DFCS will come in and rearrange the family with this out-of-home placement of the child, and then could, and sometimes does, administratively close the case.

Which means no services to the parent, no services to the child, and it leaves that safety resource caregiver without any help or legal ability to care for this child. And at times, the caregiver has called DFCS and said, "I need help taking care of this child." And DFCS may say, "Your case is closed. There's nothing we can do."

And in these situations, there's no court involvement, no judicial oversight, no attorneys, no due process, and no clear path for what

the parent is supposed to do to get their child returned, and also how to address the needs of the child.

A second area of concern is our high mental health special needs children. And these are usually teenagers who have extreme or elevated emotional, behavioral, mental health needs that cannot be met in the home. And we have exhausted and frustrated parents who are at their wit's end. And these children are highly vulnerable, and they need the most help.

They are often special needs kids and DFCS is actively resisting these children coming into care. I attended a meeting in August this year with about 30 other judges and DFCS leadership. DFCS Commissioner Broce said that DFCS was not set up to be caregivers for these children, and she asked judges to consider detaining the children, locking them up in a juvenile detention center for a few days, so that DFCS could maybe find a placement for them.

As judges, we do not lock up children, especially special needs children because we cannot find a place for them.

A third way that I've observed that our foster care population is decreasing is through an increase in family preservation cases, and these are instances where custody of the child is placed directly with a relative rather than with DFCS.

Now placing a child with a relative is a good thing. But the problem is, is that the children and the caregivers are not getting all of the services and benefits that they would be entitled to, if that child was in the legal custody of DFCS.

The children aren't eligible for IV-E or IV-B Federal dollars. They're not eligible for health insurance, as our foster kids are. They're not eligible for daycare. And the family caring for this child doesn't receive a foster care per diem, and isn't eligible to receive the ongoing subsidy if that placement then becomes permanent.

And so rather than giving our children, the families, and the relatives the best, the services and the benefits that they would otherwise be eligible for, DFCS will do a minimum and keep the foster care numbers down. Thank you.

[The prepared statement of Judge Altman appears as a submission for the record.]

Chair OSSOFF. Thank you, Judge Altman, for your opening testimony. Judge Simms, it's now time for your opening testimony.

STATEMENT OF HON. NHAN-AI SIMMS, JUVENILE COURT JUDGE, GWINNETT COUNTY JUVENILE COURT, DIVISION I, LAWRENCEVILLE, GEORGIA

Judge SIMMS. Good morning, Senator Ossoff. Some people are surprised when I say this, but my foremost ambition as a juvenile court judge is to work toward making my role unnecessary.

It's a testament to a deeper, more profound goal: to work in a child welfare system where the safety and well-being of our children is paramount, and the need for juvenile court intervention is minimal.

My name is Nhan-Ai Simms, and I proudly serve as a juvenile court judge in Gwinnett County, Georgia. Before I continue with my statement, I want to emphasize that I am here in my personal capacity. The views I express are my own and do not represent the

views of any other judges, county officials, or any board commission or council on which I serve.

Gwinnett county sits just outside of Atlanta, and is celebrated for and often considered one of the most diverse counties in the entire State. It probably oversees Georgia's largest school system, which in turn bears the responsibility for the State's highest number of at-risk children.

On any given day, there are roughly 350 children in foster care from Gwinnett County. Sadly, we are failing too many of them.

What I have seen develop in my time on the bench is a culture of child protection by the numbers. Cases triaged to boost statistics, and then closed prematurely in misleading triumph.

It's widely known that DFCS has been under immense pressure to address what has been a series of public relations crises. What I have seen is that pressure leading to the neglect or deliberate avoidance of the most complex and heart-wrenching cases.

In the end, we have a false sense of confidence in the effectiveness of our system. But the problems suffered by children and families still persist.

Imagine a case where a mother overdoses on fentanyl three times, and each time it was her autistic teenager who discovered her unconscious. DFCS' own notes indicate a safety threat and impending danger for the child, but still, the agency seeks no court intervention—which, if brought to court, the court would have the authority to order substance abuse treatment for the parent.

Rather than implementing any services, DFCS is even considering closing the case.

Now imagine mother fatally overdoses the fourth time. While the grandparents are literally standing over the body of their dead daughter, and DFCS having provided no services to the family the entire time, they recommend that the grandparents file a private dependency case, conveniently absolving DFCS from any further involvement at all.

This is not something I have to imagine. This is something I have received sworn testimony on.

And if that situation is not shocking enough, imagine DFCS' executive leadership suggests to a roomful of juvenile court judges that we prolong a child's time in jail, so DFCS can have more time to find a foster placement.

Again, this is not something I have to imagine, as I, and many other judges, shockingly heard it with our own ears.

To understand the depth of the crisis, we must first acknowledge its magnitude. State agencies such as DFCS are responsible for the care of countless children who are often victims of abuse, neglect, and instability.

I acknowledge that this is an extremely difficult and sobering duty. But I also acknowledge that our current system fails the many dedicated individuals on DFCS' front line, who I have had the privilege of knowing, who work tirelessly, despite the overwhelming caseloads, misallocation of resources, and a culture that seemingly prioritizes metrics over safety, statistics over children.

With those challenges unfairly placed upon caseworkers, what I've personally observed in my courtroom is an increasing gap in service provision, and a rise in inadequate information presented

to the court, including the inability to answer the most basic of questions, such as, “Where did DFCS place the child?”

On the State level, I see our child serving agencies creating legislation to circumvent the responsibilities and shifting blame onto other agencies when confronted with their own failures to ensure the safety and well-being of our children.

I am acutely aware that I am critiquing a child welfare system in which I myself play a vital role. Consequently, during my tenure on the bench, I have deliberately and proactively welcomed external scrutiny from both State and national stakeholders, to evaluate my county’s data and procedures, particularly concerning child welfare.

We’ve asked critical questions of ourselves. How many children are entering the foster care system? How long do they remain there? Are we fully utilizing all community resources before resorting to foster care placement?

By nurturing open lines of communication and embracing constructive feedback, my county has, over the last 3 years, restructured our juvenile court, introduced new programs, and, most significantly, continues to leverage all available resources to enhance the training of those who work in child welfare.

These endeavors have propelled our court toward the goals of enhancing meaningful court hearings, adopting trauma-informed practices, and most importantly, has brought together local stakeholders for collaboration on tangible, measurable objectives.

It’s important to underscore that these practices and results shouldn’t be limited to the judiciary alone. They can and should be replicated across all child welfare agencies and stakeholders.

It is imperative that we openly confront the areas of our system needing improvement. Accountability on all levels should be the driving force behind the much-needed comprehensive reform.

I will close this statement the way I started. To render my role unnecessary, I commit, and urge all of us to commit, to reshaping the child welfare system, so that our children’s welfare and safety takes priority, and the need for juvenile court intervention becomes the exception, not the rule.

[The prepared statement of Judge Simms appears as a submission for the record.]

Chair OSSOFF. Thank you, Judge Simms. Judge Belton, you may now make your opening statement.

STATEMENT OF HON. WENONA CLARK BELTON, JUVENILE COURT JUDGE, FULTON COUNTY JUVENILE COURT, ATLANTA, GEORGIA

Judge BELTON. Good morning.

I am Judge Wenona Clark Belton. I am a retired juvenile court judge. I retired nearly 3 weeks ago, after having served for 10 years as a judge for the juvenile court of Fulton County, Atlanta Judicial Circuit, where, among other things, I served as the judicial lead for the court improvement initiative, part of a multi-circuit initiative, which is coordinated with the State’s Court Improvement Program, which is designed to engage and educate child welfare professionals, partners, and stakeholders about best practices for more favorable outcomes.

I earned my law degree from the Georgia State University College of Law and my undergraduate degree from the University of Maryland, College Park.

I was recently elected to serve additional 3-year term as a board member of the National Council of the Juvenile and Family Court Judges, one of the largest and oldest judicial membership organizations in the Nation, which serves an estimated 30,000 professionals in the juvenile and family justice system, and provides resources, knowledge, and training to improve the lives of children and family seeking justice.

I am a child welfare law specialist and have been certified for over 10 years through the National Association of Counsel for Children. I also serve as a cabinet member of Get Georgia Reading. I am a member of the Children in the Courts Committee of the State Bar of Georgia. I am also a life member of Alpha Kappa Alpha Sorority, Incorporated, whose motto is, "Service to All Mankind."

I share my affiliations to demonstrate my commitment to children and families. However, my remarks today are solely based upon my own experiences, and must not be attributed to any organization of which I am a member.

Prior to my service on the bench, I was privileged to have served in a number of roles which prepared me to engage in child welfare work. I am a former foster parent and began my service in juvenile court as a CASA volunteer.

Over the last 23 years in Fulton County, I have served as a judicial staff attorney, represented the Department of Family and Children's Services, and served as the clerk of juvenile court.

I have represented indigent children in delinquency matters as a public defender, and I know better than most, the nature of the challenges that the child protection agencies face. Frontline staff who are overwhelmed, underpaid, suffer from inadequate training and burnout.

My observations are based upon 23 years of experience doing this work from several different perspectives, and this system is not working as it currently exists.

The most challenging issues I routinely observed consist of the following:

- Delays in obtaining routine and specialized assessments.

- Barriers to identifying appropriate reliable service providers.

- Ensuring appropriate services are provided in the appropriate platform in person rather than virtual.

- Insurance gaps and pitfalls.

- Routine denials by insurers for medically prescribed services and treatments, including dental and basic orthodontic services.

- A lack of appeals of those routine denials.

- A lack of appropriate placements, especially for children who suffer from significant behavioral health challenges.

- Lack of creativity, collaboration, without court intervention through court orders.

Case managers often working in silos, underutilizing, or simply not being aware of resources like the Atlanta Volunteer Lawyers Foundation, or the Georgia Justice Project.

Placing the burden on children to participate in services, and chastising them when they fail, characterizing them as difficult and uncooperative.

Failure to ensure or provide oversight to enhance educational success and minimize poor outcomes for children as they navigate through the system and eventually reach the age of maturity.

An emphasis on policy, rather than safety and protective factors.

An inability to address the primary reasons children come into care: poverty, behavioral health challenges, and substance abuse.

A lack of specialized case plans when reunification is the permanency goal.

Decision-making protocols, follow-up, and follow through, and challenges with complex case assignment.

And the fact that the only tool that judges have in their toolbox to help ameliorate these challenges is reasonable efforts.

This list is by no means comprehensive.

A colleague asked me many years ago, "Why do you care so much?"

I care because I watched a 3-year-old child in my care try to walk across town to return to his mother's home. I care because when the State and the courts intervene in the most personal of cases, the children and families deserve our best.

Juvenile Court Judges, whether they acknowledge it or not, are lawyers for each party, they're social workers, they're care coordinators, they're mediators, and they're cheerleaders.

The decisions they make have a substantial impact on a family's life.

I care because I believe you treat others as you want to be treated. Thank you.

[The prepared statement of Judge Belton appears as a submission for the record.]

Chair OSSOFF. Thank you, Judge Belton, and thank you, all, for your testimony.

The Senate and the public is grateful that you've taken time to share with us your expertise, your authoritative firsthand experience of how this system functions, and fails to function, properly.

Want to begin my questions please, Judge Altman. You mentioned that the DFCS director and DHS Commissioner Broce asked a roomful of about 30 judges, including yourself, to consider locking up children with special needs because DFCS lacked adequate placements. Did I understand that correctly?

Judge ALTMAN. Yes.

Chair OSSOFF. So just to make sure that we're clear, DFCS asked judges to consider locking up children with special needs in juvenile detention centers?

Judge ALTMAN. Yes. And if I can use Mon'a as an example, and I don't know anything about her story other than what I heard on Wednesday, it would be an example of where there could be an altercation at a group home. Two kids get into a fight, and the placement says, "Mon'a can't come back."

And DFCS' response would be, "We don't have a placement. Could you please keep her detained?"

Now, the law is wonderfully clear and instructive about when we detain children.

And because I'm a statutory person, I will tell you, it's in [Georgia Code section] 15-11-503. And it specifically says that children are only to be detained in the most limited circumstances, and only when there is—and whenever a “less restrictive alternative” is not available.

So any decisions, also—and the statute says this, any decisions about whether to detain a child should also take into account the “Protection of the child’s psychological and physical health” and to avoid the “regimentation and depersonalization of the child.”

But the statute then says, a “child shall not be detained: To punish, to treat, to rehabilitate”—so not to give them a consequence, or have them learn a lesson. That’s not the purpose of detention.

That a child shall not be detained “to allow the parent, guardian, or custodian to avoid a legal responsibility.”

And a child shall not be detained “due to a lack of a more appropriate facility.”

And when we were in this meeting, again, this was not private, it was not overheard in passing, it was in a room of 30-something judges, one of my colleagues brought that up and said, the law specifically prohibits detaining a child because of lack of placement.

And then General Counsel Regina Quick says, “Well, we can change that.”

These are children many times who have some sort of—they’re not developmentally on target. And I could just elaborate for a moment.

I call them special needs because I think that’s how the public would understand them, within a special education type of context.

They have developmental delays.

They might have a sensory processing disorder, could be on the autism spectrum.

They have language deficits.

They may lack basic vocabulary—so when an adult gives them an instruction, they literally do not understand it.

They could have had childhood trauma, and that means that they have—their maturity and their development slowed down because of the trauma that they experienced. Their brains are wired differently.

So I could be looking at a 15-year-old boy who is bigger, taller, stronger than me, and is emotionally and developmentally an 8-year-old. And if this child is detained or put in handcuffs, he understands and receives that as an 8-year-old.

Chair OSSOFF. Judge Altman, I—you cited the relevant statute. A request to lock up children with special needs in a juvenile detention facility because of a lack of adequate placements elsewhere, would that be lawful under Georgia law?

Judge ALTMAN. It is not lawful.

Chair OSSOFF. And the effect on a young child of detention in such a facility, you as judges have to weigh the impact on the child. What is the impact on a child of detention in a juvenile detention facility? A child with special needs?

Judge ALTMAN. I think they’re terrified. I think they’re absolutely terrified.

And even if there is a legal basis, probable cause to believe that they got into a fight, in any other circumstance with parents sitting

in court, we would say, this child will be released, these are the conditions, these are the things that we want you to get started on. And usually, the parent grabs a child in a big hug, and they are so relieved, and they walk out because this is scary, and it's frightening.

And for children in care, who don't have that person saying, "Please release this child, we have a place for them to stay," they have to spend extra nights in a loud cinderblock room.

And again, if they have any sort of developmental delay, sensory processing issues, it's loud, it's clanging, the sounds rattle, it's scary.

There are a lot bigger, smarter, more violent children who are in detention centers. And so, for a low-level offense or because we can't find a placement, these children are then being exposed to a lot more difficult circumstances. And it could make it worse because they are terrified.

Chair OSSOFF. Did DFCS request for judges to consider detaining children who were already in juvenile detention? Or did they also ask judges to consider detaining children with no history of delinquency?

Judge ALTMAN. I understood the request to be that if a child in care or a child who may have come to DFCS' attention through another proceeding that would be eligible for release otherwise—so there would be a connection to why a child would possibly be detained.

But the request was to extend their detention when they don't—when there's not a legal basis for them to remain detained or to be held.

Chair OSSOFF. Without a legal basis for that detention?

Judge ALTMAN. Without an ongoing need for their detention.

Chair OSSOFF. You testified that DFCS asked judges to consider locking up children with special needs for lack of adequate placements. Where else might DFCS place these children?

Judge ALTMAN. Foster homes, group homes, I think that's been one of the challenges DFCS is faced with—hoteling.

It's because these children with elevated behavioral mental health needs are more difficult to place—their needs are higher, their needs for supervision are higher.

If we also had a concentrated and intentional expansion of mental health services, and supporting foster parents, and identifying, recruiting, training, and supporting qualified foster parents for teenagers, they wouldn't—there would be no request for detention.

Chair OSSOFF. So in the absence of adequate foster homes and group homes, this is broadly speaking the same population of children who might otherwise wind up in hotels or in DFCS offices?

Judge ALTMAN. Yes.

Chair OSSOFF. How did you feel leaving that meeting?

Judge ALTMAN. Discouraged.

DFCS has an incredibly difficult job in finding placement for children with elevated mental health needs. It's incredibly difficult.

The answer is, create more placements, address the problem. The request to detain children doesn't show an understanding of what these children's needs are, of what child welfare is, of how bad this is for children.

And it's an inappropriate use of detention facilities.

And I think as—as I have been asked to detain children as part of my job, and a lot of times I will say no, because it's not appropriate. Yes, I understand their struggles. Yes, I understand this. But we do not detain children under these circumstances. And it's hard to hold that line sometimes.

But when the request is coming from the highest levels of DFCS' leadership, it's even harder to hold that line—and to really promote the well-being of children who you already know are challenged.

And keeping them detained, it's going to worsen their behaviors, it's going to worsen their outbursts, it's going to create more hardship for them.

Chair OSSOFF. Judge Simms, thank you, as well, for your testimony today.

Judge Altman has testified today regarding a meeting where DFCS' leadership asked judges to keep children in juvenile detention facilities because they lacked adequate placements. Were you at this meeting?

Judge SIMMS. I was. Yes.

Chair OSSOFF. How did you feel when you heard this request?

Judge SIMMS. Frankly, I was heartbroken.

I think, if our child welfare system has gotten to the point where we want to extend a child's time in detention just because we can't find a place for them, then something's wrong. And it's not working. And we need change.

And, you know, it's kind of one of those things when you hear executive leadership and you hear executive counsel say it—I was shocked.

Chair OSSOFF. Describe for the public—and Judge Altman provided a powerful description, I think it's important for the public, who may lack firsthand experience of, or exposure to, these facilities and these events to understand—describe for the public, a juvenile detention facility and what it can mean for a young child with special needs to be locked up in a juvenile detention facility because the State lacks adequate other placements, please.

Judge SIMMS. Sure. I mean, in kind of layman's terms, if you will, a juvenile detention facility is akin to an adult jail. Right? It's a secure facility where children are kept.

They are generally required to go to school.

The problem that we're seeing is that when children are in those facilities, they are not receiving the services that they need. Counseling, psychological evaluations, issues about transporting the child to a medical facility that they need or not, it's cumbersome.

But in particular, with the lack of staffing that we have at RYDCs—which is what we call the juvenile detention centers—that has been a problem because the safety of the children, while they're in those detention centers, is compromised.

You know, recently, I believe it was Savannah RYDC that had a riot at their RYDC. I think there were maybe only two people on staff at the time.

That's just—that's not a place that a child should be, especially if that child by law should not be there. You're simply exposing the child to more adverse childhood experiences, which anytime you

think about ACEs, adverse childhood experiences, the more a child gets, the more likely they are to not succeed.

So our goal needs to be to reduce those types of experiences and keeping a child in detention because there's no other facility, it's just not—that's not the solution.

Chair OSSOFF. And Judge Simms, just to be clear, as Judge Altman testified, and as you just alluded, Georgia law does not permit the detention of children—and in this case, we're talking about children with special needs, in some cases, because of a lack of adequate placements elsewhere, in a facility, which, as you noted, is akin to a jail. Correct?

Judge SIMMS. Yes, sir. I mean, the law specifically and explicitly forbids it.

Chair OSSOFF. Judge Simms, you testified about a culture in the system today. You testified about the public relations pressure that the agency has been under.

You noted that this has led to the triage of cases, the avoidance of the most difficult cases, the neglect of the most difficult cases. And I believe the words you used were, "in order to boost statistics." Can you describe that culture?

Judge SIMMS. Sure. I mean, I think an easy example to think about is the hoteling issue.

I don't think there's anyone in this room, anyone who works in child welfare, that thinks that reducing hoteling is a bad thing. It's obviously a worthy goal.

But if the laser focus to do that causes children to remain in unsafe environments, then we have a problem. And we have to think to ourselves, "Okay, maybe we don't have kids in hotels right now. But is that an accomplishment? Is it okay to be missing 1,700 children—but at least we don't have kids in hotels?"

I don't see that as a true accomplishment. And if that's what the push is, and we're willing to do whatever it is to get us to that point, then we really have to look at what we're trying to accomplish.

What we need to accomplish in juvenile court in these child welfare cases, is to make sure that the families have the services they need. The children are safe, first and foremost. And simply not bringing them into care, and thereby not having them in foster care, not having them in hotels, that doesn't accomplish that.

You know, Judge Altman talked about the use of safety plans. I'm seeing that in my courtroom, too. These are plans, voluntary agreements, between DFCS and the parents. They have no court oversight. There is no legal basis for whoever the child is placed with that agrees to take the child. There's no court oversight. You know, there's no one looking to make sure that there is follow through.

And in the case that I described, that was a safety plan case. It was a case where DFCS decided to keep the child in the home and have grandparents come and assist when needed. Which, in and of itself, perfectly makes sense.

But we have a special needs child, an autistic child who is in the presence of a mother, who has multiple times overdosed on fentanyl—which is not one of those things where maybe it's just laying there.

You know, if a kid touches fentanyl, you never know what's going to happen. It's one of those drugs that I have seen far too often in my court.

The first time a child touches it, the first time a child takes it unknowingly, and then they pass. That is not a situation where a child should be safety planned. Maybe the first time—maybe.

But there are court resources, once a case comes into court, that could help a situation like that. For instance, in our county, we have a Family Treatment Court, which if a case is brought into court, we go through an intensive program with the parent, providing them substance abuse treatment, creating a full kind of one-stop shop for the parents.

And that's what should have happened in that case. But to be on notice, and know that the mother has overdosed three times, and that each time it was her autistic teenager that found her and not bring that to court, not have any court oversight, not provide the services that are needed, no autistic ABA services, no drug treatment for mother.

The only services I recall that were put in place, if you call it a service is, they wanted to drug screen. That mother didn't drug screen.

And then they wanted to close the case. And then mother overdoses fourth time and ends up passing. That was a preventable type case where we could, at least, had it come to court, provided some services—but we rely on DFCS to bring those cases to court. They are the petitioner.

You know, you mentioned the OCA report. You'll notice that there was a rise in law enforcement and medical emergency removals. A big part of that is because DFCS has been refusing to remove those children that need to come into care.

There is an option for law enforcement and medical professionals to do that. But ultimately, even if they do that, it's DFCS that must file the case to proceed in court. And if they choose not to, that's in their discretion.

Chair OSSOFF. Why would DFCS be going to these lengths to avoid having to provide care for children who need it most?

Judge SIMMS. Again, as I mentioned, I wholeheartedly acknowledge that what DFCS has to do and what their responsibility is, is difficult.

And if caseworker turnover is high, they don't have individuals to provide these services. I suppose a simple solution would be to not bring children into care, so that they don't have to provide these services.

But the law is what it is. DFCS is the agency responsible for taking care of these types of cases. DJJ is responsible for dealing with delinquent children, children who commit or alleged to commit what we would call crimes in the adult world. DBHDD has their services that they provide. DFCS—this is their responsibility. Until that changes, they have to fulfill that duty.

Chair OSSOFF. Thank you, Judge Simms.

Judge Belton, thank you, as well, for your testimony today.

You mentioned that you've worked in child welfare for 23 years, as a judge, as an attorney for DFCS, and as a public defender for children.

The Subcommittee has heard from child welfare advocates, attorneys, and experts that Georgia's foster care system is now failing more than ever before. Do you agree with this assessment?

Judge BELTON. Based upon what I saw in my courtroom, I do agree. I agree wholeheartedly.

Chair OSSOFF. You mentioned that you've witnessed delays in the State's foster care system with obtaining appropriate and adequate healthcare for children. Correct?

Judge BELTON. Correct.

Chair OSSOFF. Can you describe how that unfolded in your courtroom? Or provide us with some examples?

Judge BELTON. And so what I would see on a regular basis, when children come into care, they're supposed to receive routine assessments. A Babies Can't Wait assessment, a developmental assessment, a trauma assessment.

And often those initial assessments, which are really important at the onset of a case, would be delayed—for whatever reason: "We couldn't get a hold of the provider." "The foster parent had a conflict."

And so routinely we'd see delays in the children receiving those assessments. Once the assessments were finally completed, then there were delays or barriers in identifying appropriate service providers.

And quite frankly, there are not a lot of service providers in this State—or in, especially in this jurisdiction, who specialize in child and adolescent behavioral health services.

I asked a child psychiatrist, "Why—why is there such a lack of specialists for children to deal with behavioral health challenges?" And she said, "Quite frankly, there's no real money in it."

And so the department has had a difficult time identifying appropriate service providers that provide the appropriate treatment. Not dumbed-down adult therapeutic services, but services that are appropriate for the child's developmental needs, for the fact that the child has already been traumatized by being removed from the home, nine times out of 10.

The trauma that the child has endured by being placed with children that they met—with caregivers that they may or may not be familiar with, multiple placements, transfer from school to school, children that suffer from not only behavioral health challenges, but educational challenges, as well.

And so just a routine lack of receiving the appropriate services, and like I said before, in the appropriate platform.

Now, everybody wants to provide services virtually. It is difficult enough to provide therapeutic services for an adult virtually. But when you try to engage a child who has been traumatized with therapeutic services on a computer, I, quite frankly, don't understand how you can do that.

And so the department expects children to engage with therapeutic service providers on a virtual platform. Where is the connection? Where is the rapport? And so these children are placed in front of a computer, and the expectation is that they will engage in the services, they will respond appropriately.

They don't. Most of them don't. Most of them don't want to talk to an adult about what has happened to them. They, quite frankly, don't want to do it.

And so then they are chastised and they're characterized. They were routinely characterized as being uncooperative, and refuse to engage in services.

Chair OSSOFF. I wanted to dig in a little bit more on that point, I thought it was one of the most interesting and insightful points you made in your opening statement, with respect to how the burden is on the kids to participate in these services. But then they're chastised when they fail. What does that mean?

Judge BELTON. That means, when you—I would receive reports in, during review hearings. The statute provides that there are routine regular review hearings for children that are in care.

And during a lot of those review hearings, the report from the department was, Child X refused to engage in services, they didn't want to talk to the provider, they shut down, and they are characterized as being uncooperative.

And then they're described as being involuntarily discharged from services. They didn't volunteer to be in those services. They didn't ask to be put in foster care and shoved into a therapeutic platform.

And so—and then when you see the child—because the children are in the court room. Most of the children are in the courtroom. They're entitled to be in court during their hearings.

And so when you see the demeanor of the child, when an adult has just characterized them as being a failure in therapeutic—you know, for their refusal, or lack of participation in therapeutic services, it just, it hurts your heart.

Chair OSSOFF. You mentioned in your opening testimony, Judge Belton, that the reasonable efforts standard is one of the tools that judges have to protect children. Can you explain to the public what this means? How it functions? And why it's important, please?

Judge BELTON. And so reasonable efforts, quite frankly, boils down to money. Like it was mentioned, the department receives Federal funding. And so the statute provides that the department must make reasonable efforts to prevent or eliminate the need for removal, eliminate the need for the child to remain in foster care, and to make efforts to have the child—to facilitate whatever the permanency plan is, and most of the time, where appropriate, is reunification.

And so just say you go through a review hearing, a permanency hearing, whatever type of review hearing and at the end of that hearing, the judge is required to make a finding on whether or not the department made reasonable efforts to prevent or even eliminate the need for removal, to have the child successfully return home, or whatever the ultimate permanency plan goal is.

And if the judge does not make that finding, holds—finds the department failed to make reasonable efforts, it affects their—it affects the funding.

And so if they don't get a reasonable efforts finding, that has an impact on the money that they receive—my understanding from the Federal Government, and they have to kick in money on their own.

They are given an opportunity, they have a certain amount of time to come back to court to obtain—to fix whatever they did not do to get a finding of no reasonable efforts. They have an opportunity to come back to court once they've received a no reasonable efforts finding, to respond and fix whatever they didn't fix.

Chair OSSOFF. Judge Simms or Judge Altman, would you like to add anything to the public's understanding of how these no reasonable efforts findings function—their utility, their value, their role?

Judge SIMMS. I mean, it does. It comes down to money.

And it's interesting you ask it because I'm probably one of the judges most well known for making no reasonable efforts findings. Because to me, it's simple. If the efforts aren't being made, there are no reasonable efforts.

You know, you come into my courtroom, and I've had cases where, because of the high caseworker turnover, they don't even have a caseworker. They don't have anybody in the courtroom able to tell me what's going on. And so, of course, I have to find no reasonable efforts. You literally haven't told me anything about the case.

And it, you know, I think culturally, in juvenile court, perhaps it has not been utilized much in the past. I'm like Judge Altman, kind of a statute nerd. And to me, the law is clear—if they're not making the effort—to make that no reasonable effort finding.

I'm not there to worry about money and funding. I'm there to worry about the safety of the children, the services provided to the families.

So to me, no reasonable efforts, and making that finding that reasonable efforts have not been made, is pretty simple and straightforward to me.

Chair OSSOFF. Thank you. Judge Altman.

Judge ALTMAN. I do agree with both of my colleagues.

There is—as judges, we can give direction. The way that our child welfare system works in terms of accountability, is that no reasonable efforts finding.

So what is the department doing to exit this child out of foster care back to their home safely? Or to a different permanency plan?

And what efforts are reasonable depends on the particular family, their needs, the child, the circumstances.

As Judge Simms pointed out, if you have a brand new case manager, it is not the failing of the individual case manager. It's not the failing of an individual person that the services aren't there, that the placements aren't there.

But as an agency, as a system, we should be promoting practices and policies that sustain the workers, that give us adequate placements.

And a finding of no reasonable efforts is not against one particular person, because they're supposed to be able to tag off to somebody else or say, I need some help, or I need to find a qualified service provider.

But if we don't, as a system, recruit, train, develop, promote these things, then that's where we end up with children in care with inadequate services, inadequate placements—because it's the child welfare system that is supposed to be doing these things.

And the individual case managers are feeling the stress and the strain of the impossible task that they're given, rather than going, "Please, community, help us take care of our kids and families."

Chair OSSOFF. Well, I want to thank the three of you for your service to the State, for working so hard under such difficult circumstances, hearing every day in your courtrooms, such heart-breaking and heart-wrenching stories.

And, I think, as was acknowledged in the testimony we heard today, the caseworkers on the front line who are doing this work, under resourced, in many cases under trained, the overwhelming majority, it is my impression, are working hard to try to do right by some of the most vulnerable kids in our State.

Your testimony today has helped to shine a light on the urgency of reform and accountability in this system to protect the most vulnerable children in our State from serious threats to their lives, their physical and mental health, their safety, and their future prospects.

So on behalf of the Subcommittee, and the Senate, I extend my gratitude and appreciation to you for your careers of service, and for your testimony today.

The hearing record will remain open for 1 week for statements to be submitted into the record. Questions for the record may be submitted by Senators by 5 p.m. on Monday, November 6th. And the hearing is adjourned.

[Whereupon, at 11 a.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

JUDGE ALTMAN OPENING STATEMENT

Introduction:

Good morning, I am Carolyn Altman, the juvenile court judge in Paulding County. I have been on the bench for 5 years and spent 10 years before that as an attorney in juvenile court representing children & parents, and serving as a guardian ad litem. I am a Child Welfare Law Specialist, serve on various committees within the Council of Juvenile Court Judges, and am the vice-chair of the statewide Child Fatality Review Panel. I consider myself a dedicated, career-professional in child welfare.

With 15 years in this field, I could spend hours telling you about the good work that I have seen - children protected, families restored, of dedicated & selfless DFCS case managers, CASAs, & attorneys, doing incredible work – investing in our children & encouraging our families. But today, I come with my concerns. Our child welfare system in Georgia is not doing well; our children and families are not being served well.

Statewide, our foster care population is lower than it was a few years ago. At our highest in 2018, we were at nearly 15,000, and as of March 2023, our foster care population was just over 10,000. And that sounds like a really good thing, but we are missing children who need to be in care & we are not protecting our children well.

There are three ways that I have seen this trend unfold:

1. **Overuse & Misuse of Safety Plans: Leaving children in limbo**

- DFCS responds to an emergency situation, creates a safety plan as a short-term fix, but then does not circle back to fully address the problem and ensure that the children are being properly cared for.
- The biggest danger is that children are going from the frying pan into the fire. The parents are not safe and then the children are being left with people who may not be safe – they are not screened or approved by DFCS, no criminal background checks, or drug screens, certainly no extensive training as a qualified foster parent. At worse, the child could be just as unsafe with the new caregiver as they were with the parent.

Also problematic because:

- DFCS comes in, rearranges the family, and can then *close* the case. Providing no services to the parents, no services to the child, and leaves the safety resource without any help or legal ability to care for the child. At times the caregiver then calls DFCS and says “I need help taking care of this child,” DFCS says, “Your case is closed. We can’t help you.”
- There’s no court involvement/judicial oversight, no due process, and no clear path for what the parents need to do to fix the problem and how to safely return the children.

2. **DFCS resisting high mental health needs children**

- A second area of concern is our high-mental-health-needs children – usually teenagers – whose extreme behavioral/emotional/mental health needs cannot be met in the home. Exhausted & frustrated parents are at their wits ends.
- These children are highly vulnerable and need the most help; they are special-needs kids. DFCS is actively resisting these children coming into foster care. I attended a meeting in August this year, with about 30 judges, DFCS Commissioner Broce said that DFCS was not set up to be caregivers for these high mental health needs children. She asked judges to

JUDGE ALTMAN OPENING STATEMENT

consider detaining these children – locking them up in a juvenile detention center – for a few days so that DFCS could maybe look for placements.

- As judges we do not lock children up, and especially not special-needs kids, because DFCS can't find a placement for them!

3. Family Preservation Cases

- A third way that I have observed that our foster care population is decreasing is through an increase in Family Preservation cases where custody of a child is placed directly with a relative, rather than with DFCS.
- Placing the child with an appropriate relative is a *good* thing! But the problem is that the children and caregivers are not getting all of the services and benefits that they would be entitled to if they were in formal foster care. They're not eligible for IV-E or IV-B federal dollars, not eligible for health insurance as our foster children are, not eligible for daycare assistance, and the family caring for this child does not receive a foster care per diem, is not eligible to receive an on-going subsidy if the placement becomes permanent.
- Rather than giving our children and families the *best* – with services and benefit that they could be eligible for – DFCS does the bare minimum for the family & keeps the foster care numbers down.

Judge Belton's Opening Statement

Good Morning.

I am Judge Wenona Clark Belton. I retired nearly three weeks ago after serving for ten years as a judge for the Juvenile Court of Fulton County, Atlanta Judicial Circuit, where, among other things, I served as the judicial lead for the Court Improvement Initiative, part of a multi-circuit initiative, coordinated by the state's Court Improvement Program, which is designed to engage and educate child welfare professionals, partners and stakeholders about best practices for more favorable outcomes.

I earned my law degree from the Ga State University College of Law and my undergraduate degree from UMCP. I have served for the last three years as a Board member of the National Council of Juvenile and Family Court Judges, one of the largest and oldest judicial membership organizations in the nation, which serves an estimated 30,000 professionals in the juvenile and family justice system and provides resources, knowledge and training to improve the lives of children and families seeking justice; I was recently elected to serve a second term.

I am a Child Welfare Law Specialist and have been certified for over ten years through the National Association of Counsel for Children. I also serve as a Cabinet Member of Get Georgia Reading, and am a member of the Children and the Courts Committee of the State Bar of Georgia. I am a Life Member of Alpha Kappa Alpha Sorority, Inc., whose motto is "service to all mankind."

Prior to my service on the bench, I was privileged to have served in a number of roles which prepared me to engage in child welfare work. I am a former foster parent and began my service in juvenile court as a CASA volunteer. Over the last 23 years, in Fulton County, I have served as a judicial staff attorney; represented the Department of Family and Children Services; served as the Clerk of Juvenile Court; I have represented indigent children in delinquency matters as a Public Defender. I know better than most the nature of the challenges the child protection agencies face—front line staff who are overwhelmed, underpaid, suffer from inadequate training, burnout, etc.

My observations are based upon 23 years of experience doing this work from several different perspectives—this system as it currently exists is not working.

The most challenging issues I routinely observed consist of the following:

- Delays in obtaining routine/specialized assessments;
- Barriers to identifying appropriate/reliable service providers;
- Ensuring appropriate services are provided in the appropriate platform-in-person rather than virtual;
- Insurance gaps and pitfalls—Routine denials by insurers for medically prescribed services/treatments, including dental and orthodontic services—insurance gaps, and a lack of appeals of routine denials;
- Lack of appropriate placements, especially for children who suffer from significant behavioral health challenges;

- Lack of creativity, collaboration without court intervention through court orders; working in silos-underutilizing or simply not being made aware of resources like AVLF, Georgia Justice project;
- Placing the burden on the children (and parents) to participate in services and chastising them when they fail; characterizing them as difficult and uncooperative
- Failure to ensure or provide oversight to enhance educational success and minimize poor outcomes for children as they navigate through the system and eventually reach the age of majority;
- Emphasis on policy rather than safety and protective factors;
- An inability to address the primary reasons children come into care—poverty, behavioral health challenges and substance abuse;
- Lack of specialized case plans when reunification is the permanency goal;
- Decision-making protocols, followup and follow through; complex case assignment;
- The only tool that judges have in their toolbox to help ameliorate these challenges is “reasonable efforts.”

This list is by no means comprehensive.

A colleague asked me many years ago, “why do you care so much?”

Because I watched a three-year old child in my care try to walk across town to return to his mother’s home;

Because when the state and the courts intervene in the most personal of cases, the children and families deserve our best;

Juvenile court judges, whether they acknowledge it or not, are lawyers for each party, social workers, care coordinators, mediators and cheerleaders. The decisions we make have a substantial impact on a family’s life.

I care, because I believe you treat others as you would want to be treated.

Thank you.

Judge Nhan-Ai Simms' Opening Statement
Monday, October 30, 2023 – 10:00 a.m. – Field Hearing
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
Foster Children in the Courts

Some people are surprised when I say this: but my foremost ambition as a juvenile court judge is working towards making my role unnecessary. It's a testament to a deeper, more profound goal: to work in a child welfare system where the safety and wellbeing of our children is paramount, and the need for juvenile court intervention is minimal.

My name is Nhan-Ai Simms and I proudly serve as a juvenile court judge in Gwinnett County, GA. Before I continue with my statement, I want to emphasize that I am here in my personal capacity; the views I express are my own and do not represent the views of any other judges, county officials, or any board, commission, or council on which I serve.

Gwinnett County sits just outside Atlanta is celebrated for and often considered one of the most diverse counties in the entire state. It proudly oversees Georgia's largest school system, which, in turn, bears the responsibility for the state's highest number of at-risk children.

On any given day, there are roughly 350 children in foster care from Gwinnett County. Sadly, we are failing too many of them. What I have seen develop in my time on the bench is a culture of child protection "by the numbers". Cases triaged to boost statistics, and then closed prematurely in misleading triumph.

It's widely known that DFCS has been under immense pressure to address what has been a series of public relations crises. What I have seen is that pressure leading to the neglect or deliberate avoidance of the most complex and heart-wrenching cases. In the end, we have a false sense of confidence in the effectiveness of our system, but the problems suffered by children and families *still persist*.

Imagine a case where a mother overdoses on fentanyl three times, and each time it was her autistic teenager who discovered her unconscious. DFCS' own notes indicate a "safety threat" and "impending danger" for the child, but still, the agency seeks no court intervention, which has the authority to mandate substance abuse treatment. Rather than implementing any services, DFCS is even considering closing the case. Now imagine mother *fatally* overdosing the fourth time. While the child's grandparents are literally standing over the body of their dead daughter, and DFCS having provided no services to the family this entire time, they recommend that the grandparents file a *private* dependency case, conveniently absolving DFCS from any further involvement at all.

This is not something I have to imagine – this is something I have received sworn testimony on.

And if that situation is not shocking enough, imagine DFCS executive leadership suggest to a room full of juvenile court judges that we prolong a child's time in jail so that DFCS can have more time to find a foster placement. Again, this is not something I have to imagine, as I and many other judges shockingly heard it with our own ears.

To understand the depth of this crisis, we must first acknowledge its magnitude: state agencies, such as DFCS, are responsible for the care of countless children who are often victims of abuse, neglect, and instability. I acknowledge that is an extremely difficult and sobering duty.

But I also acknowledge that our current system fails the *many* dedicated individuals on DFCS' frontline, who I have had the privilege of knowing, who work tirelessly – despite the overwhelming caseloads, misallocation of resources, and a culture that seemingly prioritizes metrics over safety...statistics over children. With those challenges unfairly placed upon caseworkers, what I have personally observed in my courtroom is an increasing gap in service provision, and a rise in inadequate information presented to the Court - including the inability to answer the most basic of questions, such as: where did DFCS place the child? On the state level, I see our child-serving agencies circumventing their responsibilities and shifting blame onto other agencies when confronted with their own failures to ensure the well-being of children and families.

I am acutely aware that I am critiquing a child welfare system in which I, myself, play a vital role. Consequently, during my tenure on the bench, I have deliberately and proactively welcomed external scrutiny from both state and national stakeholders to evaluate my county's data and procedures, particularly concerning child welfare.

We've asked critical questions of ourselves:

- How many children are entering the foster care system?
- How long do they remain there?
- Are we fully using all community resources before resorting to foster care placement?

By nurturing open lines of communication and embracing constructive feedback, my county has, over the last three years, restructured our juvenile court, introduced new programs, and most significantly, continues to leverage all available resources to enhance the training of those who work in child welfare. These endeavors have propelled our court towards the goals of enhancing *meaningful* court hearings, adopting trauma-informed practices, and most importantly, has brought together local stakeholders for collaboration on tangible, measurable objectives.

It's important to underscore that these practices and results shouldn't be limited to the judiciary alone; they can, and *should* be replicated across all child welfare agencies and stakeholders. It is imperative that we openly confront the areas in our system needing improvement; accountability, on all levels, should be the driving force behind the much-needed comprehensive reform.

I will close this statement the way I started – to render my role unnecessary, I commit, and urge all of us to commit to reshaping the child welfare system, so that our children's welfare and safety takes priority, and the need for juvenile court intervention becomes the exception, not the rule.

