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Testimony before the U.S. Senate
Subcommittee on Human Rights
“The Human Rights of Foster Children”
October 25, 2023

Good afternoon, Chairman Ossoff, Ranking Member Blackburn, and members of the U.S. Senate Subcommittee on Human Rights. My name is Melissa Carter. I am a Clinical Professor of Law at Emory Law School in Atlanta, Georgia. Thank you for inviting me here today. I am testifying today in my personal capacity; the views I express are my own and do not necessarily represent my employer.

My comments do, however, reflect more than 20 years as a child welfare professional in Georgia serving in direct representation and system improvement roles. In that time, I have had the privilege to work closely with the state’s dedicated juvenile court bench in support of a range of court improvement initiatives, to form families as an adoption lawyer and advocate for the well-being of children impacted by the dependency and delinquency systems, and to investigate complaints about administrative actions of our child-serving agencies as the state Child Advocate.

For the past 13 years, it has been my privilege to lead the Barton Child Law and Policy Center, a multidisciplinary child law program founded to address the need in Georgia to bring about systemic policy and process changes in the child welfare system and promote the legal rights and interests of children involved with the child welfare, youth justice, and related state systems. The Center’s work is directed by Emory Law faculty and performed by law and other graduate students enrolled in the Center’s four legal clinics. Students impact outcomes for children, youth, and families through research, systems advocacy, public education, and trial and appellate representation.

As Director, I am responsible for all aspects of program administration, including maintaining the Center’s reputation as an expert informant, capacity builder, and honest broker. My days are largely spent advising state leaders of child welfare systems, serving as a policy advocate to elected officials, and educating students and stakeholders about child and family law and policy advocacy. In addition to my faculty position, I serve in a variety of capacities in Georgia’s child welfare system, including as a member of the First Lady’s Children’s Cabinet, Vice-Chair of the State Juvenile Justice State Advisory Group, and co-chair of the Children’s Justice Act Taskforce, which has historically functioned as one of the state’s citizen review panels required by the Child Abuse Prevention and Treatment Act.

I work in close partnership with judges, lawyers, service and placement providers, policymakers, advocates, agency leaders, and of course, students and the youth and families we serve. I do not claim to speak directly for any of them, but I will do my best to honor what I have learned from them. I'll start by thanking the subcommittee for your interest in the experiences of children and families impacted by Georgia's child welfare system. I hope to provide you some context for deeper understanding of system realities as they relate to the outcomes we seek. I welcome your questions and refer you to my written statement which is more comprehensive.

Georgia's Utility as a Case Study

In this work, it is often said that "if you've seen one child welfare system, you've seen one child welfare system." State variation in the design, operation, and outcomes of state child protection and foster care programs is considerable. And no one jurisdiction is "doing it right." But, as a starting point, I would characterize Georgia's child welfare system as typical in some key respects:

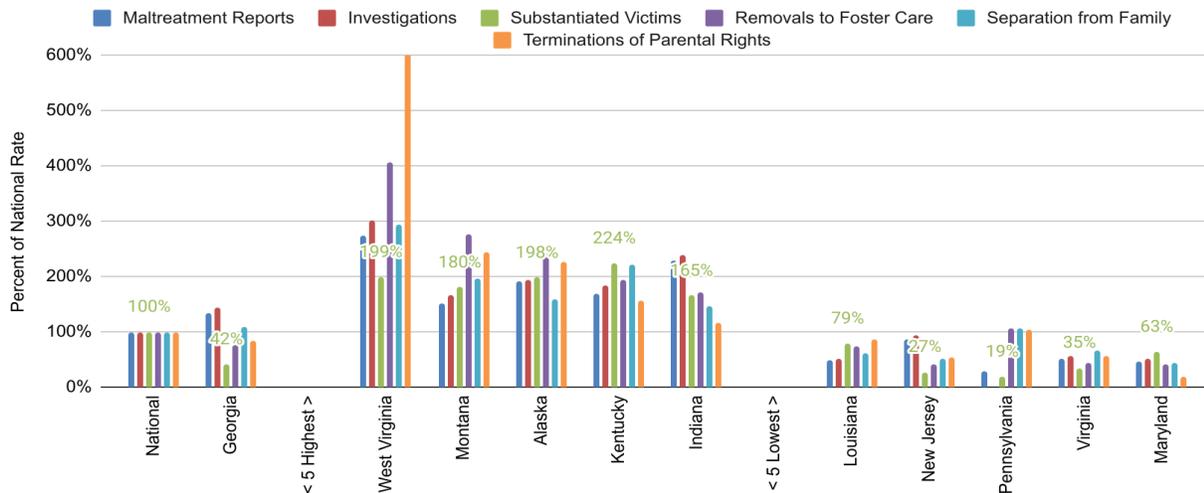
- 1) We are oriented around the federal policy aims of child safety, permanency, and well-being. As a result of collective policy efforts, the state's legal and regulatory framework remains compliant with requirements imposed by the dozens of federal child welfare laws enacted by Congress over the decades. Accordingly, visibility into outcomes is possible through systematically collected and reported child welfare administrative data, particularly the Adoption and Foster Care Analysis Reporting System (AFCARS) and the National Child Abuse and Neglect Data System (NCANDS). Moreover, accountability exercises that use those and similar data sets, like the Child and Family Services Review (CFSR) provide useful insight into system performance as context for improvement.

Those data help us describe the state in terms of the basic hydraulics of the system and allow us to situate Georgia in a national context:

- Approximately 10,700 children and youth are in the state's foster care system today.ⁱ At that census, Georgia has the 12th largest foster care program in the country.
- Georgia's rate of entry into foster care is relatively low, at 1.9 per 1,000 children in the population, placing it within the lowest 20% of states.ⁱⁱ
- Children who enter foster care in Georgia stay longer, on average, than children in foster care in other states. The median length of stay in foster care in Georgia is the 7th longest; children who enter foster care remain separated from their families for an average of nearly 19 months.ⁱⁱⁱ

The chart below illustrates the significant variation across states in some common descriptive metrics, including maltreatment reports, investigations, substantiated victims, removals to foster care, and family separation. As you can see, Georgia lands squarely in the middle (except for substantiations, discussed below), near national rates. As such, the state can serve as a useful case study.

Maltreatment Reports, Investigations, Substantiated Victims, Removals to Foster Care, Separation from Family...



2) We have blinders. Outcome data has rich and standardized information about child, family, and case characteristics, but it does not provide qualitative insight into the experiences of those who are impacted by our system. For that, we must listen to children, youth, and families and the judges, lawyers, social workers, and service providers who are the internal stakeholders of this system. Their accounts tell us about the impact of routine failures in our system of care rooted in resource constraints, workforce issues, overburdened legal systems, barriers to healthcare access, inadequate mental and behavioral health services, lack of coordination and communication, outdated and inefficient data systems and technology supports, and complex policy and regulatory schemes.

These complex and entrenched problems can't be solved by gathering additional data, defining issues more narrowly, or other transactional approaches. For that reason, the nation's child welfare system is being called to fundamentally transform. The state's responsibilities for child protection are being reconceptualized with a focus on promoting children's healthy development through approaches that emphasize prevention and family strengthening. Meaningful collaboration is key to this paradigm shift. Collaborative quality improvement -- the idea of bringing multiple stakeholders together to share information, identify gaps, and develop solutions to improve the quality of practice -- has existed in child welfare culture for decades.^{iv}

Such an approach fundamentally relies on -- and fosters -- transparency and trust, which allows the system to adapt and improve more readily.

Research exploring the organizational structure of public child welfare agencies highlights the importance of practice based on family needs and cross-professional collaboration.^v Using these as criteria, Georgia's child welfare system appears to be lacking what is needed to meet the challenge of accomplishing key outcomes. Our system structure does not reflect what works for child welfare staff or for vulnerable and at-risk families.^{vi} The culture of collaboration that has been built over years has eroded, and routine engagement and communication has become more unusual, giving rise to institutional distrust. In Georgia, the evidence points to systemic failures.

It is important to note that this critique is not directed at, nor a reflection of, the many dedicated case managers, supervisors, and others at the front line working tirelessly to solve problems for families. Child welfare systems generally may not be designed to fulfill the myriad mandates imposed on them. Inherent system challenges are more intractable in Georgia, however, because we lack the operational capacity, policy infrastructure, and practice tools to make case management tasks feasible. As a result, we are continuously unable to offer meaningful and sustainable solutions to the children, youth, and families we serve.

I will focus on two primary system conditions that are holding problems in place:

- 1) The inability of Georgia's child welfare system to reliably assess, measure, and monitor child safety; and
- 2) Policy decisions that reinforce the institutional interests and the status quo rather than center the needs of Georgia's children and families

Georgia Does Not Have a Sound Approach to Ensuring Child Safety

Georgia's child welfare system performance largely mirrors national trends in rates of reporting, intake, and investigation. Georgia DFCS receives upward of 120,000 reports of suspected child maltreatment each year.^{vii} About half of those reports are screened out.^{viii} For accepted reports of maltreatment, continued state intervention in the family is calibrated according to ongoing assessments of child safety.

States take different approaches to child safety assessment and decision-making. Georgia uses a combination of informal and structured approaches throughout the life of a case. At the outset, an Initial Safety Assessment (ISA) is used to determine whether an accepted report will be assigned for investigation or alternative response.^{ix} In Georgia, approximately 34,000 accepted reports are investigated annually.^x An investigation involves meeting with the child, parents, and other household members; observing the physical home environment; obtaining and reviewing reports and records; conducting checks of child welfare and criminal history; and

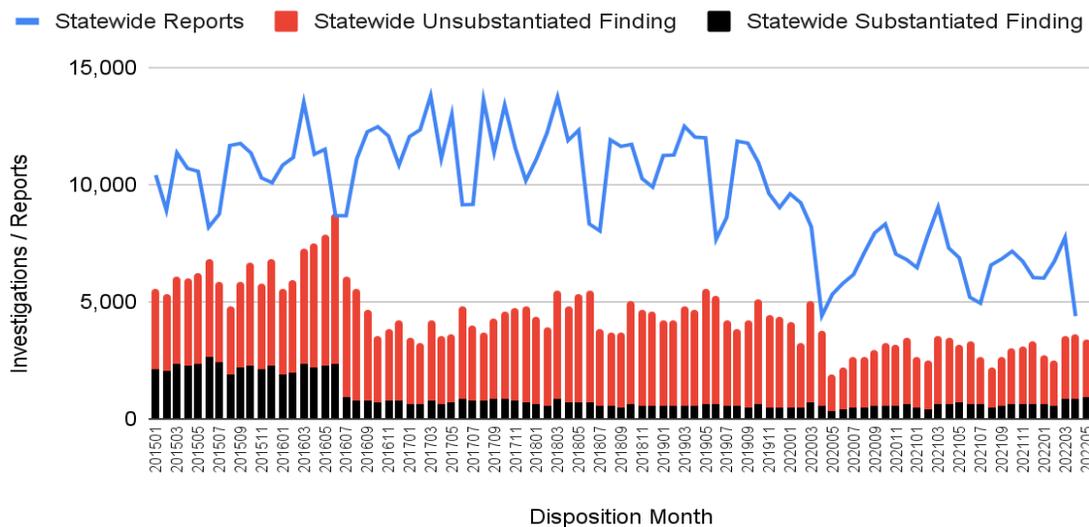
interviewing collateral contacts to gather information about the family.^{xi} It concludes with two administrative determinations: (1) whether to substantiate the maltreatment and (2) whether the child is safe or unsafe.^{xii}

Georgia cannot reliably measure or monitor child victimization.

Substantiation is an investigative conclusion as to the validity of maltreatment allegations. Maltreatment will be substantiated when the balance of evidence collected during the investigation indicates that it is more likely than not that the alleged abuse or neglect occurred.^{xiii} This indicator has long been used as the basis for measuring child safety. In NCANDS, a victim is defined as “a child for whom the state determined at least one maltreatment was substantiated or indicated; and a disposition of substantiated or indicated was assigned for a child in a report.”^{xiv} Thus, safety is evaluated in the CFSR by recurrence of maltreatment, measured as a percentage of victims of substantiated maltreatment who were substantiated as victims in a subsequent report within 12 months.^{xv}

In Georgia, this metric has lost its efficacy. In July 2016, child welfare investigatory practice in Georgia changed dramatically. Substantiations suddenly dropped by 50% on July 1 of that year. As explanation, DFCS case managers point to the implementation of the state’s child abuse registry, which imposed punitive consequences on parents and caregivers in direct contravention of the problem-solving ethos of social workers and the tenets of the practice model.^{xvi}

GA CY2015-2022: Investigations by Disposition Month



To be clear, Georgia DFCS still receives and investigates the same average number of maltreatment reports. How the agency disposes of those reports is what has changed. Instead of being guided by substantiation, the investigative conclusion and subsequent case management activities heavily turn on the determination as to whether the child is safe or unsafe.

Safety assessment and decision-making informs whether an in-home or out-of-home safety plan is warranted, which service referrals should be made, and the conditions under which the child will return home.^{xvii} The implication of this practice shift is that DFCS is now routinely intervening in families – including seeking court authorization to place children in foster care and mandating services for parents – without a formal determination based on investigative evidence that establishes that it was more likely than not the alleged maltreatment occurred. Without a formal substantiation, no metric exists for the safe/unsafe determination. Thus, without substantiation, we have less ability to precisely calibrate and monitor safety and the effectiveness of protective interventions. We have lost our best proxy measure for child victimization and our bottom-line metric for success in our primary mission: child safety.

Workforce conditions undermine sound casework.

Decisions about child safety are made under pressures of limited time, resources, and information, and the weight of uncertainty. The stakes are high. Decision-making errors in either direction can result in harm to a child. Unsurprisingly, research has shown that workers can assess the same case characteristics and reach widely varied decisions in identical cases.^{xviii}

To counter ad-hoc approaches, states have long sought effective safety assessment instruments. Indeed, interest in risk and safety assessment tools has recently been renewed in Georgia.^{xix} Yet even valid and reliable assessment tools cannot and should not replace sound clinical judgment. In Georgia, historically high rates of turnover mean that new, inexperienced, and sometimes temporary contract workers are making critical safety decisions. Problematically, stakeholders often report that case managers are not properly trained or adequately supervised. Lacking these supports, case managers default to emotion, fear, or gut instinct as the foundation for their clinical decisions about families. Those decisions then become norms that are institutionalized and perpetuated as local practice.

Policy Decisions Do Not Prioritize Family Needs

Strengthening families requires addressing risk and vulnerability before they lead to crises and embracing models that integrate public assistance, childcare, healthcare, and other forms of support that provide and enhance family stability. Georgia's fragmented social safety net works against this objective and impedes the child welfare system's potential for progress.

By providing critical support to families during times of economic hardship, safety net programs can eliminate the need for child welfare involvement and the risk of unnecessary family separation. For that reason, alongside its responsibilities for child protection, DFCS is authorized by law to administer public assistance programs. Unfortunately, DFCS has made resource investment and policy choices that are institutionally self-interested and leave families more vulnerable.

When economic hardship impacts a family, caregivers become overloaded and destabilized. Families seeking help in Georgia encounter a fragmented human services system. Their unmet service and support needs appear outwardly as a reason for making a report to DFCS.^{xx} In the state's most recent AFCARS submission, DFCS reported 42% of children who entered foster care were removed for reasons of neglect.^{xxi} Neglect includes a broad range of parental conduct and failures, including inability to provide a child with adequate food, clothing or shelter needed for the child's well-being.^{xxii} Research suggests that child welfare involvement can be avoided by increasing access to economic and concrete supports,^{xxiii} yet the financing of Georgia's child welfare system restricts access to these programs and constrains options for case managers and families.

Georgia invests in intervention, not prevention.

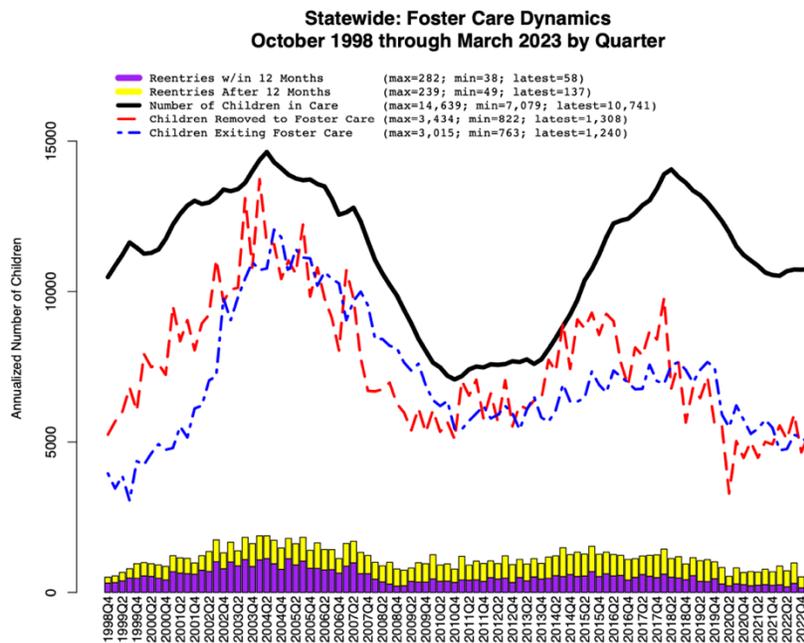
One stark example is how the state has chosen to use its Temporary Assistance to Needy Families (TANF) block grant. One of the express goals of TANF is to provide assistance to low-income families so that children can be cared for in their own homes, yet Georgia makes little of the funding available in the form of economic and concrete support directly provided to families. In FY2021, Georgia spent 21% of TANF on basic assistance, including cash assistance to families.^{xxiv} Because Georgia's TANF benefit level has remained unchanged for 30 years, at just \$280 per month for a family of three, this investment results in only five families for every 100 in poverty being helped.^{xxv}

Most of Georgia's TANF funding is spent on child welfare services, which includes child protective services and services offered by community providers. In total, spending in this category made up 59% of spending in FY2021 -- \$265 million of the total \$450 million grant.^{xxvi} The national share of U.S. TANF spending on child welfare was just 9%.^{xxvii} In this way, policymakers and leaders in Georgia have chosen to use public funds to support the system of intervention rather than to support families in poverty. Moreover, none of the TANF grant historically has been used to help families afford the cost of childcare, and the state's spend on work programs has declined considerably in the last decade-plus, now amounting to only \$7 million.^{xxviii} Georgia's sparing investments in families has resulted in the state accumulating more than \$159 million in unspent TANF block grant funds.^{xxix} Ironically, DFCS is worsening the challenges of the child welfare system by choosing not to invest in building capacity within families to meet their own needs.^{xxx}

More frequent and meaningful collaboration is needed to inform policy decisions

Policy decisions like this impact the robustness of our child welfare system. DFCS, like its sister agencies in other states, enjoys considerable discretion in making policy decisions aimed at the substantive goals of child safety, permanency, and well-being. Indeed, accountability itself is a choice to be made. The oversight frameworks established in child welfare induce compliance in Georgia but do not offer powerful enough incentives to drive systemic improvements. For example, when funding limitations on group home placements imposed by the Family First Prevention Services Act (FFPSA) took effect,

DFCS leadership simply substituted state funding to continue funding group home placements for children in foster care, perpetuating the status quo. These group home placements do not meet the criteria for Qualified Residential Treatment Programs, but often are the placement to where children and youth who have been “hoteled” are discharged.^{xxxii} Moreover, it appears that despite having an approved prevention plan for more than a year, DFCS has yet to contract for or initiate FFPSA prevention services. As with this example, outcome driven policy decisions in Georgia’s child welfare system reflect the choice of the decision maker. Leadership transitions are a structural change that create noticeable volatility as can be seen from the graph of the state’s foster care population over time. Georgia’s foster care population peaked at nearly 15,000 children in care in 2005 following a series of policy decisions that increased the agency’s presence in the community and mandated investigation of all reports by mandated reporters. It was then cut in half over the next five years, primarily because of the development of an alternative response pathway. Over the next seven years, the foster care population returned to nearly 15,000 children following a directive to the new agency leader to reverse course.



While all jurisdictions confront similar challenges to a greater or lesser extent, this is the local context that impedes or accelerates system transformation.

Conclusion

Georgia’s system is changing, but data and testimonies from those with professional and lived expertise indicate that change is not necessarily leading to meaningful and sustainable improvements in conditions of well-being for children, youth, and families. As this subcommittee continues its work, I ask that you:

- 1) Continue to work with experts in the child welfare field who can offer research-informed guidance;

- 2) Consider how policies might be refined to improve transparency and accountability in the system; and
- 3) Engage stakeholders for the myriad perspectives, deep expertise, and vast experience that will help shape a better and shared path forward for Georgia’s children, youth, and families and the system professionals that serve them.

ⁱ CHILD.’S BUREAU, U.S. DEP.T OF HEALTH & HUM. SERVICES, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FOSTER CARE FILES, FFY2021. Unless otherwise noted, data referenced were made available by the National Data Archive on Child Abuse and Neglect, Cornell University, Ithaca, New York. Data from the AFCARS Foster Care File are originally collected by state child welfare agencies pursuant to federal reporting requirements. The author and collaborators at Fostering Court Improvement have analyzed the data and analyses are on file with them. Neither the collection of the original data, the Archive, Cornell University, or its agents or employees bear any responsibility for the analyses or interpretations presented here.

ⁱⁱ CHILD.’S BUREAU, U.S. DEP.T OF HEALTH & HUM. SERVICES, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2012, *see supra note 1*.

ⁱⁱⁱ FFY2021 AFCARS DATASET.

^{iv} The Pew Commission on Children in Foster Care was one of the first influential policy initiatives to call for meaningful strategies to promote collaboration in the child welfare system. *See* The Pew Comm’n on Children in Foster Care, *Fostering the Future: Safety, Permanence and Well-Being for Children*, at 36, *available at* https://www.pewtrusts.org//media/legacy/uploadedfiles/phg/content_level_pages/reports/0012pdf (calling for “incentives and requirements for collaboration between courts and child welfare agencies on behalf of children in foster care”). Several federal child welfare laws have since codified this expectation, including the Child Abuse Prevention and Treatment Act, Pub. L. 93-247, and the Child and Family Services Improvement and Innovation Act, Pub. L. 112-34.

^v Blome, Wendy Whiting & Steib, Sue D., 2014. "The organizational structure of child welfare: Staff are working hard, but it is hardly working," *Children and Youth Services Review*, Elsevier, vol. 44(C), pages 181-188.

^{vi} Atlanta Journal Constitution, *For Family & Children Services caseworkers in Georgia, 'It's like being in an emergency room.'*

^{vii} Georgia Department of Human Services, Division of Family and Children Services Office of Child Welfare, presentation to the Board of the Department of Human Services, August 2023, <https://dhs.georgia.gov/august-2023>.

^{viii} FFY2021 NCANDS DATASET.

^{ix} Georgia Division of Family and Children Services Child Welfare Policy Manual Policy 4.0, Introduction to Initial Safety Assessment (Dec. 2020).

^x FFY101` NCANDS DATASET; *see also* DHS Board presentation, *supra* note 8.

^{xi} Georgia Division of Family and Children Services Child Welfare Policy Manual Policy 5.1, Conducting an Investigation (Dec. 2020).

^{xii} Georgia Division of Family and Children Services Child Welfare Policy Manual Policy 5.3, Making an Investigation Determination (Jan. 2022).

^{xiii} *See id.*, defining “substantiated” to mean “the allegations of child abuse, as defined by Georgia statute, is supported by a preponderance of the evidence.”

^{xiv} *See* U.S. Department of Health & Human Services, Administration for Children and Families, Children’s Bureau, *Child Maltreatment 2021* at 20, <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2021.pdf>.

^{xv} Capacity Building Center for the States, *Recurrence of Maltreatment*, https://capacity.childwelfare.gov/sites/default/files/media_pdf/Recurrence-of-Maltreatment-508.pdf.

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- ^{xvi} See Atlanta Journal Constitution, *Georgia ends child abuse registry, saying database undermined intent*.
- ^{xvii} Georgia Division of Family and Children Services Child Welfare Policy Manual Policy 19.11, Safety Assessment (Mar. 2023).
- ^{xviii} Rossi, P. H., Schuerman, J., & Budde, S. (1999). Understanding decisions about child maltreatment. *Evaluation Review*, 23(6), 579–598. <https://doi.org/10.1177/0193841X9902300601>
- ^{xix} Testimony of Jerry Bruce, Georgia Office of the Child Advocate, at a hearing of the Senate Foster Care and Adoption Study Committee, Georgia General Assembly, Atlanta, GA, August 9, 2023.
- ^{xx} See e.g., In re V.G., 352 Ga.App. 404 (Ga. Ct. App. 2019), 834 S.E.2d 901.
- ^{xxi} FFY2021 AFCARS DATASET.
- ^{xxii} Georgia Maltreatment Codes, linked from Georgia Division of Family and Children Services Child Welfare Policy Manual Policy 5.3, Making an Investigation Determination (Jan. 2022).
- ^{xxiii} Dana Weiner, Clare Anderson, and Krista Thomas, Addressing Economic Hardship Key to Preventing Child Welfare System Involvement, Chapin Hall, 2021, <https://www.chapinhall.org/research/economic-supports-child-welfare/>.
- ^{xxiv} Center on Budget and Policy Priorities, *Georgia TANF Spending*, https://www.cbpp.org/sites/default/files/atoms/files/tanf_spending_ga.pdf.
- ^{xxv} Alex Camardelle, *Modernizing Cash Aid for Thousands of Georgia Children in Deep Poverty*, Georgia Budget and Policy Institute, <https://gbpi.org/modernizing-cash-aid-for-thousands-of-georgia-children-in-deep-poverty/>.
- ^{xxvi} Center on Budget and Policy Priorities, TANF Cash Assistance Should Reach Many More Families in Georgia to Lessen Hardship, https://www.cbpp.org/sites/default/files/atoms/files/tanf_trends_ga.pdf.
- ^{xxvii} CBPP, supra note 24.
- ^{xxviii} *Id.*
- ^{xxix} *Id.*
- ^{xxx} Ginther, Donna K., & Johnson-Motoyama, Michelle. (2022). Associations between state TANF policies, child protective services involvement, and foster care placement, *Health Affairs*, 41(12), 1744-1753. <https://doi.org/10.1377/hlthaff.2022.00743> (finding that increases in TANF caseloads were associated with significant reductions in numbers of neglect victims and foster care placements).
- ^{xxxi} Accountability Agent and Monitoring and Technical Assistance Team, Period 34 Monitoring Report (June 2023), 35-38, <https://cslf.gsu.edu/files/2023/08/Kenny-A-V.-Kemp-thirty-fourth-report-July-1-2022-to-December-31-2022.pdf>.