

**Senate Judiciary Committee
Subcommittee on Human Rights and the Law**

Hearing on The Human Rights of Foster Children

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Written Testimony of Emma M. Hetherington, J.D.

Chairman Ossoff, Ranking Member Blackburn, and members of the Senate Judiciary Subcommittee on Human Rights and the Law, thank you for the opportunity to testify. My name is Emma Hetherington and I am a Clinical Associate Professor and Director of the Wilbanks Child Endangerment and Sexual Exploitation, or CEASE Clinic at the University of Georgia School of Law.¹ Prior to joining the faculty at Georgia Law I served as a Senior Child Advocate Attorney in DeKalb County, Georgia, practicing under the Kenny A. settlement decree. In that role I represented children from birth through age 21 in foster care dependency proceedings, with a specialized focus in representing older youth in care, many of whom had been sexually abused earlier in their childhoods and who would eventually become victims of commercial and sexual exploitation, also referred to as domestic minor sex trafficking. I have also had the honor of representing adult clients as a Managing Attorney at the Georgia Law Center for the Homeless. I do not have the exact statistics on how many of my clients at the Law Center had previously been in foster care, but I can confidently say that a substantial portion, if not a majority of my clients at the Law Center had a history of child welfare system involvement, and nearly all had experienced early childhood and adolescent maltreatment.

In addition to serving on Georgia Law's faculty and overseeing the work of the Wilbanks CEASE Clinic, I am a certified a Child Welfare Law Specialist (CWLS) and expert in trauma-responsive and quality legal representation for children and survivors of sexual violence. I currently serve on several statewide task forces and multidisciplinary teams (MDT), including Georgia's Statewide Human Trafficking Task Force; the State Expert Committee on Sexual Assault, Child Abuse, and Human Trafficking; and the Statewide Commercial and Sexual Exploitation of Children (CSEC) MDT. Most recently, I was appointed to the Supreme Court of Georgia's Committee on Justice for Children.² Needless to say, over the past 12 years I have dedicated my career to improving the quality of legal representation for children in foster care, particularly those who are survivors of child sexual abuse, exploitation, and trafficking.

The views I express in this statement are my own and do not represent the University of Georgia or any of the statewide committees, multidisciplinary teams, or task forces on which I serve. Rather, I am testifying today in my personal capacity as an attorney, advocate and expert on the child welfare legal system, trauma-responsive legal representation, child sexual abuse, and CSEC.

INTRODUCTION

When the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.³

-CHIEF JUSTICE WILLIAM REHNQUIST

Chief Justice William Rehnquist wrote these words not in a case involving adult prisoners or children facing juvenile delinquency charges, but in a case involving the abuse and neglect of a child.

We should be able to safely assume that if a State has taken such drastic measures as to disrupt the integrity of a family unit, that a child will be better off in the State's care than at home. However, over the past 12 years, I have witnessed a system that fails to protect the well-being, health, and safety of children. To be clear, my statement is not meant to disparage the individual case managers and other professionals working tirelessly at DFCS to protect children and ensure the provision of necessary services. I have worked with countless individuals over the years who have gone above and beyond the call of duty, and who at times have been forced to disobey agency directives to protect the children in their care. I applaud their work and dedication to child protection and want to assure them that I see and appreciate their work.

However, the overarching structure, internal policies, and administrative directives within DFCS obstruct and undermine the good work being done across Georgia. The testimonials and case data included in my statement do not describe one or two outliers. Rather, those experiences describe what we see on a daily basis in our work at the CEASE Clinic, throughout the State of Georgia, and across the United States.

CEASE CLINIC CLIENTS

Approximately half of CEASE's legal work involves client-directed legal representation for survivors of child sexual abuse (CSA) and/or CSEC in foster care proceedings. While CEASE serves survivors statewide, our current dependency caseload is concentrated in 4 counties that are representative Georgia's diverse populations and regions.⁴ In addition to direct legal representation, CEASE provides pro bono consulting to attorneys, advocates, and other professionals work with children in foster care.

CEASE Clients comparison chart

	CEASE Clients	Georgia	United States
Average age at time of foster care entry in years	14	6.8	6.7
Average time in foster care in months	25.5	24.0	21.7
Children with more than 2 placements during most recent time in foster care	88%	36%	35%
“Child behavior” identified as one of the reasons for removal	59%	10%	6%
“Sexual abuse” identified as one of the reasons for removal	6%	3%	5%

As a teaching, training, and research center, CEASE engages in research and policy analysis regarding State and National child welfare trends. At first glance CEASE clients do not appear to be representative of the “average” child in foster care.

A look beyond the numbers and into our clients’ actual experiences and circumstances reveals that our clients are in fact representative of the foster care population.

History of Early Childhood Maltreatment

100%

of CEASE clients experienced early childhood maltreatment

97%

of CEASE clients have previous child welfare agency involvement

“Early life maltreatment is a significant predictor of emotional dysregulation, internalizing and externalizing behaviors, social maladjustment, and academic difficulties.”⁶ If left untreated, those behaviors are likely to grow in severity and frequency, leading not only to future child welfare, but also juvenile justice and criminal systems involvement. Like other children with previous child welfare system involvement our clients are “significantly older than those who enter for the first time... with the most common reasons being neglect, parental drug abuse, caretaker inability to cope, and child behavior problems.”⁷

To state more plainly, CEASE’s clients are representative of children who have experienced early childhood maltreatment and either did not receive adequate services at the time of state intervention and/or did not receive ongoing support to maintain stability and prevent future removal.

CORRELATION BETWEEN FOSTER CARE AND CSEC VICTIMIZATION

Another characteristic of CEASE’s clients that may appear to set their experiences apart from most children in foster care is that they are all survivors of CSA and/or CSEC. But like most children in foster care, they were abused and/or neglected beginning at an early age, had multiple encounters with state child welfare agencies, and became more vulnerable to additional abuse and neglect when the system failed to provide meaningful and individualized prevention and intervention services designed to address underlying maltreatment. And like all children in foster care, CEASE clients are at a heightened risk for becoming victims of sexual violence and trafficking.

“Although no study has conclusively found that trafficking victimization is more likely to cause entry into the child abuse and neglect legal system, or vice versa, multiple studies indicate a strong correlation between the two.”⁸ In the United States, the average age of entry into child trafficking is estimated to be between the ages of 11 and 14.⁹ Foster care entry creates additional vulnerabilities that increase the likelihood of trafficking victimization, such as multiple placement changes, abuse and neglect in out-of-home placements, low self-esteem, and minimal social support, and lack of education.¹⁰

QUALITY LEGAL REPRESENTATION: A MEANS TO HOLD STATE AGENCIES ACCOUNTABLE

In most of our foster care dependency cases, CEASE attorneys serve as the client-directed attorney for children rather than as a Guardian ad Litem, or “best interest” attorney. CEASE prioritizes cases where its attorneys can serve in the client-directed role for children.

*High-quality legal representation of children promotes widespread improvement of the child protection system. Children’s attorneys play a vital role in holding state actors accountable for their duties to serve children and families fairly. They facilitate the recognition and protection of the civil rights of children and youth involved with the child protection system.*¹¹

-NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Given the trends that CEASE has seen over the past several years, holding state child welfare agencies accountable for failing to care for children in its custody is one of our highest priorities. The following are some of the patterns and practices that we have seen across 35 of our foster care cases:

- **100%** of our clients were neglected and/or abused by caregivers, often due to poverty or lack of family preservation services catered to the specific needs of our clients and their families.
- **100%** of our clients were first sexually abused prior to adolescence.
- **100%** of our clients reported experiencing abuse and/or neglect while in the legal and physical custody of Georgia DFCS, including children placed in therapeutic foster homes, psychiatric residential treatment facilities, and CSEC-specific placements.¹²
- **0%** of our clients have received consistent and adequate preventative pediatric health care as recommended by the American Academy of Pediatrics while in DFCS's custody.¹³
- **0%** of our clients have received consistent and adequate pediatric gynecological care as recommended by the American Academy of Pediatrics while in DFCS's custody.¹⁴
- **20%** of our clients are on track to graduate high school on time.
- **0%** of our clients have received consistent and adequate mental health services.
- **80%** of our clients have been detained for status offenses, delinquency matters, or on adult criminal charges.
- **89%** of client detentions occurred after the client had run away from a placement.
- **82%** of client detentions occurred as a result of, or in conjunction with the client being sexually abused or trafficked.
- **5%** of our clients have left foster care safer or better cared for than when they entered.

BLAME, SHAME, AND REVICTIMIZATION: FOSTER CARE AS AN ACCELERATOR ON THE SEXUAL ABUSE-TO-PRISON PIPELINE

The blame, shame, and revictimization of children in the foster care system documented by CEASE is not just a Georgia problem. Rather, the problem is national in scope. The signs of victimization often go unnoticed or are mistaken for “delinquent” behaviors by child welfare agencies and other professionals.¹⁵ Survivors of CSEC, particularly girls, are more likely to have trauma responses that are seen as “criminal,” leading to arrest and prosecution rather than the provision of appropriate therapeutic and medical services.¹⁶ When survivors are not properly identified, their “abusers are shielded from accountability, and the trauma that is the underlying

cause of the behavior is not addressed. The choice to punish instead of support sets in motion a cycle of abuse, family separation, and even incarceration or detention that has harmful consequences for some of the our most vulnerable children.”¹⁷

Child survivors of sexual abuse and CSEC may be “pushed into the legal system in three main ways as a direct result” of their trauma:

- 1) *Through blame and criminalization for being sex trafficked;*
- 2) *For acting in self-defense against abusers; and*
- 3) *Through punishment and criminalization for reporting abuse.*¹⁸

- GEORGETOWN’S LAW CENTER ON GENDER JUSTICE & OPPORTUNITY AND RIGHTS4GIRLS

Child welfare professionals “continue to point to common misconceptions that further exacerbate barriers to identification” of child victims.¹⁹ Lack of identification increases the likelihood that a child survivor will be treated like a juvenile delinquent, a criminal, and even a prostitute. Rather than providing trauma-responsive care to the child, the system punishes the child. As a result, the State hits the accelerator on the child’s path on what is known as the sexual abuse-to-prison pipeline.

The following are words and phrases CEASE has seen DFCS uses to describe our clients in both internal and external documents and communications:

- **PROMISCUOUS**
- **HYPERSEXUALIZED**
- **SEX ADDICT**
- **MANIPULATIVE**
- **SEEKING THE ATTENTION OF OLDER MEN**
- **ENGAGING IN RISKY BEHAVIORS**
- **NONCOMPLIANT**
- **PROSTITUTE**

The following are examples of statements blaming child victims of sexual abuse and trafficking made by DFCS in internal and external documentation and communications:

- *Accusing clients as young as 13 years old of “grooming” other children in their placements when they are engaging in healthy relationship building, such as helping another child do their hair.*

- *Failing to file police reports after children as young as 12 years old have been sexually assaulted or trafficked because of DFCS's belief that the child was the instigator and the adult was a blameless victim of the child's promiscuity.*
- *Blaming children as young as 12 years old for being raped or molested because they have exhibited "promiscuous" or "hypersexualized" behavior.*

As our clients travel down the sexual abuse-to-prison pipeline, their behavioral responses to the trauma they have experienced worsens, and in turn so do the responses to their trauma. The following are examples of the abuse and neglect CEASE's clients have experienced while in foster care in Georgia:

- *Being placed in solitary confinement with no therapeutic oversight while placed in a psychiatric residential treatment facility.*
- *Being handcuffed while obtaining medical care, including invasive procedures such as intravaginal ultrasounds, because they are deemed a flight risk.*
- *Having chronic urinary tract infections and reporting other medical issues related to pregnancy, but not being provided access to postpartum medical care.*
- *Being encouraged to fight other girls in a group home for the entertainment of staff.*
- *Calling DFCS case managers during times of crisis after business hours and on weekends, not receiving any response, and then later being told they need to call DFCS's child abuse reporting line, 855-GACHILD if they need assistance after hours.*

SHADOW FOSTER CARE IN GEORGIA: CHINS DEPENDENCY

One of the most concerning trends that the CEASE Clinic has witnessed over the past several years is one of Georgia's shadow foster care systems, often referred to as "CHINS Dependencies."

Georgia's code section on Children in Need of Services (CHINS) was added as part of Georgia's Juvenile Code "rewrite" in 2014 as a means to separate children who are alleged to have committed status offenses such as running away or being "unruly" from those who are alleged to have committed a delinquency offense.²⁰ In theory, the CHINS code could be used to better identify children whose behaviors and actions are direct results of abuse and neglect, including those who have been sexually abused and/or trafficked, thereby allowing DFCS to investigate claims of maltreatment, provide meaningful family preservation services, and seek legal custody of children who are in need of the State's protection. However, one significant and unintended result of the CHINS framework has been a means by which DFCS can find justification in

blaming a child for behavioral responses stemming from trauma, and instead send children further down the abuse-to-prison pipeline.

Simply put, when a court places a child in DFCS's legal custody through a CHINS case, DFCS often views the child not as "dependent," but as responsible for their own court-involvement and placement in foster care.

Even more concerning is the fact that the protections afforded to children under Article 3 of Georgia's Juvenile Code, the section that governs typical dependency matters, have not been consistently followed once a child enters DFCS's legal custody pursuant to a CHINS case, including the appointment of client-directed attorneys with expertise in child welfare law, and other Due Process protections afforded to those taken into the State's custody against their own will.

In 2023, DFCS, through Georgia's Department for Human Services, introduced legislation meant to remedy the confusion brought by Georgia's CHINS provisions that purportedly "clarifie[d] procedures in custody hearings, and work[ed] to ensure that all agencies involved in juvenile court cases [were] making efforts to avoid children coming into their care unnecessarily, by granting the right services."²¹ In many ways, the proposed legislation reinforced DFCS's federal and state obligation to make reasonable efforts to prevent the removal of children from their homes.²² In making reasonable efforts in non-emergency circumstances, DFCS must investigate the allegations of maltreatment, assess for safety issues in the home, and provide services to prevent children from entering foster care. This mandate comports with well-established principles concerning the fundamental constitutional right to family integrity and the severe harm and trauma caused by family separation.²³ Children should remain in their homes, except under the most compelling of circumstances.

However, DFCS claims that by placing children in their legal custody through a CHINS case fails to give the agency adequate time to investigate allegations of maltreatment and to meet reasonable efforts mandates. CEASE has found have found that in most CHINS cases, DFCS had previously received maltreatment reports, investigated those reports, and often provided family preservation services for a period of at least several months, and in some case, years. In most cases, DFCS has had ample time to investigate and provide reasonable efforts to prevent removal. The problem is not time, but rather DFCS's conclusion that these children have not been abused or neglected.

CEASE's review of child protective services records reveals clear instances of abuse, neglect, exploitation, and other forms of maltreatment that our clients have suffered since early childhood at the hands of multiple caregivers and family members. Even where CEASE has discovered ample evidence of past and current maltreatment, DFCS remains adamant that those children are not "dependent" and are in DFCS's legal custody because of the child's behavior.

CHINS dependency cases are demonstrative of DFCS’s response to an unknown number of children in their legal custody who are not receiving meaningful, timely, or adequate prevention services. Georgia’s Annual Progress and Services Report (APSR) for fiscal year 2023, which provides an annual update on the progress made toward accomplishing the goals and objectives in the state’s Child and Family Services Plan pursuant to federal regulations, found that Georgia is not adequately maintaining children safely “in their homes whenever possible and appropriate”.²⁴

The report finds that DFCS fails to implement services in a timely manner and makes vague service referrals that miss pertinent information. The report also found inadequate prevention services due to families minimizing their needs, resulting in a lack of service recommendations; an inadequate number of service providers, leading to delays in services; and DFCS waiting for recommendations from assessments before referring families to services. “Additionally, when services are implemented, there is not consistent follow up with those providing the services to ensure it is appropriately mitigating the safety concern.”²⁵

- GEORGIA’S CHILD AND FAMILY SERVICES PLAN AND ANNUAL PROGRESS AND SERVICES REPORT

Notably absent in the FY2023 APSR is any finding that as a result of courts forcing DFCS to take legal custody of children through either CHINS or dependency cases, DFCS has not been provided the chance to investigate claims of maltreatment and make reasonable efforts to prevent the removal of children from their homes. Rather, the report is replete with examples of delays caused by DFCS in the provision of not only safety assessments and family preservation services, but also reports of delays in the referral or provision of post-removal services necessary to achieve timely permanency; delays in referrals for formal assessments; delays in renewing service authorizations for services already in place, resulting in unnecessary gaps in services; and court delays due to DFCS’s inability to present sufficient evidence to support statutorily required findings.

Delay after delay and excuse after excuse cause children to be subjected to ongoing abuse and neglect, and increasingly vulnerable to future harm. To clarify, I am in no way advocating for more children to be brought into foster care. In many cases, removal is more traumatizing for children than remaining in a home where they continue to experience maltreatment.²⁶ Rather, I am voicing concern in cases where a child has clearly been neglected, abandoned, abused, and/or exploited, and the child is not safe at home after the provision of evidence-based interventions. In such instances a child is legally dependent, but unless the State views that child as a victim of abuse, neglect, and/or exploitation, the child is expected to fend for themselves, at times experiencing homelessness. When a child’s basic needs—e.g. food, shelter, clothing, and secure relationships—are not met, they become more vulnerable to the predation of those who will meet their needs through commercial and sexual exploitation.

FOSTER CARE AS A RESTRICTION OF A CHILD'S LIBERTY

Though children involved in the child protection system are often subjected to similar restrictions of liberty as children accused of delinquent acts (including a limited right to association with family, temporary placement in hotels, CPS administrative offices, group homes, institutions, or locked psychiatric facilities, and, at times, even physical confinement) the Supreme Court has not yet considered whether they too have a right to legal counsel. Given the similar liberty interests at stake, the Gault²⁷ analysis should apply equally to children in custody of the government and subject to child protection proceedings.²⁸

-NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

The following are examples of the consequences of the unchecked restriction on a child's liberty interests when the State removes them from their home and places them in foster care:

Placement

Being in foster care can be a very traumatic experience, therefore when a child is initially placed or re-enter[s] foster care, making an appropriate placement selection can minimize trauma to the child.²⁹

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 10.4

- **80%** of CEASE's child-clients have been placed in group homes at some point during their time in care.
- **54%** of CEASE clients have had more than 5 placements.
- **40%** of CEASE clients have had more than 10 placements.
- **9.7:** Average number of placements CEASE clients have been in while in DFCS custody.
- **74%** of CEASE clients have reported on at least one occasion incidents of abuse and/or neglect by a foster care provider.
- **64.24 miles:** Average distance between our clients' foster care placements and the homes from which they were removed.

As reported by the Annie E. Casey Foundation, "[t]oo often, placement changes are blamed on youth and, specifically, behavioral challenges, when in reality such changes are often due to systemic factors such as inadequate, inaccessible, and fragmented services and supports."³⁰

The following are examples of statements and indicators marked on DFCS Universal Applications that are used to locate placements for CEASE clients, and that result in CEASE clients being more likely to be placed in congregate care settings, and often prevent acceptance by any placement resource:

- SEXUALLY PROMISCUOUS
- CHILD RAN AWAY TO BE WITH BOYFRIEND
- CHILD IS SEXUALLY ACTIVE
- CHILD IS NOT A VICTIM
- CHILD HAS HAD AN STD
- CHILD DATES OLDER MEN
- CHILD IS A SEX ADDICT
- CHILD DOES NOT KEEP HERSELF SAFE WHEN HAVING SEX
- CHILD HAS SEXUAL PROBLEMS
- A FOSTER HOME IS NOT AN OPTION FOR THIS CHILD DUE TO HER CSEC HISTORY

Education

Children and youth in foster care, like all other children and youth, need and deserve a positive school experience. It not only enhances their well-being, but also helps with their successful transition to adulthood. [. . .] In addition to the trauma of being removed from their homes, many of these children/youth experience frequent placement and school moves. Placement changes impact the child/youth's school stability and increases their risk of falling further behind academically. To avoid this result, DFCS is committed to reducing school changes, which can be as traumatic as foster care placement.³¹

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 10.13

- **17%** of CEASE clients are on track to graduate high school with peers their age.
- DFCS often delays enrolling CEASE clients in school, at times up to periods of 2 to 3 months. Examples of reasons for delayed enrollment include placement changes (both past and anticipated) and failing to provide schools with necessary information to allow for expedited enrollment.
- Several CEASE clients have been placed in congregate care settings with in-house educational programs that are not accredited in Georgia. As a result, even when they are engaged in coursework, academic credits will not count towards state graduation requirements.

Medical, Dental, and Disability-Related Care

The Division of Family and Children Services (DFCS) shall: Arrange appropriate and timely medical and dental care for each child in foster care...³²

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 10.11

- *CEASE clients regularly experience delays in both preventative and acute medical and dental care.*
- *Several CEASE clients have required urgent or emergency medical or dental care due to DFCS's failure to timely obtain preventative and acute care.*
- *CEASE clients are at heightened risk for teen pregnancy and sexually transmitted infections, but are not provided with "free access to evidence-based teen pregnancy prevention programs..."³³*

Mental and Behavioral Health

When a child enters foster care, it is extremely important to assess the child's psychological and behavioral health needs.³⁴

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 10.12

- **100%** *of CEASE clients have been diagnosed with at least one mental and/or behavioral health disorder.*
- **34%** *of CEASE clients have either been placed in a psychiatric residential treatment facility or have been hospitalized for an acute mental health crisis, such as suicidal ideations.*
- *DFCS does not prioritize contracting with qualified and experienced mental health providers, resulting in CEASE clients rarely receiving evidence-based services from an appropriately licensed clinician.*
- *Several CEASE clients have experienced unnecessary delays in receiving mental and behavioral health services due to DFCS's failure to make referrals for services.*

Independent Living and Transition Out of Foster Care

Adolescence is a time of preparation for the future. Many adolescents leaving foster care have significant difficulty making a successful transition to adulthood. Congressional

findings indicate “children aging out of foster care show high rates of homelessness, non-marital childbearing, poverty, and delinquent or criminal behavior. They are also frequently the target of crime and physical assaults. The John H. Chafee Foster Care Independent Living Program (ILP) was created to support youth that are vulnerable to these conditions.”³⁵

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 13.0

- *Most, if not all, of CEASE clients have experienced delays in having family team meetings and/or transitional roundtables designed to assist children in successfully transitioning out of foster care and into independent living.³⁶*
- *Several CEASE clients have reported feeling ill-equipped to leave foster care, including concerns with access to transportation, confusion over what benefits they may or may not continue to receive, lack of job readiness, and health insurance concerns.*

Missing and Exploited Children

Missing children/youth are at great risk of victimization and exploitation. They usually do not perceive the inherent risks or see themselves as potential victims. Because of the potential dangers to the child, the [Social Services Case Manager] is to consider a runaway/missing child episode a major event that requires intensive intervention and safety planning.³⁷

-GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES POLICY NO. 19.22

- *DFCS often fails to follow its own policies on missing and exploited children, including failing to timely file missing persons reports, failing to contact the National Center for Missing and Exploited Children (NCMEC) within 24 hours of a child’s disappearance, and failing to make ongoing efforts to try to locate a missing child.*
- *DFCS often fails to report suspected CSEC to the Children’s Advocacy Centers of Georgia’s CSEC Response Team, Georgia’s “victim assistance organization, as certified by the Criminal Justice Coordinating Council pursuant to Code Section 15-21-132, which provides comprehensive trauma-informed services designed to alleviate the adverse effects of trafficking victimization and to aid in the child's healing...”³⁸*
- *Several of CEASE’s clients have attempted to contact DFCS when they have run away from foster placements and have not received responses in a timely manner, resulting in the child being missing from care for a long period of time and increasing the likelihood of sexual assault and/or trafficking victimization.*

THE CYCLE CONTINUES, BUT IT DOESN'T HAVE TO

Children in Georgia's foster care system are often neglected, abused, and further traumatized once they enter the State's custody and care, finding their health, safety, well-being, and liberty at risk. Every state must provide children in foster care who have reached the age of 14 with a copy of "the rights of the child with respect to education, health, visitation, and court participation... and the right to stay safe and avoid exploitation," a document which must be signed by the child with an acknowledgement that they have "been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way."³⁹

The document describing the rights of children in foster care in Georgia that should be provided to children ages 14 and older are essentially a list of human rights and include:⁴⁰

- **THE RIGHT** *to fair and equitable treatment by DFCS, foster parents, and other partners in the care of children in foster care.*
- **THE RIGHT** *to information regarding their heritage and cultural background.*
- **THE RIGHT** *to be safe from abuse, neglect and exploitation.*
- **THE RIGHT** *to know why they are in the child welfare system.*
- **THE RIGHT** *to have their educational needs met.*
- **THE RIGHT** *to have their health needs met.*
- **THE RIGHT** *to have intensive, ongoing efforts made to reunify them with their birth family (i.e. parents or relatives) or to secure a safe, permanent home.*
- **THE RIGHT** *to participate in the development of the case plan and to review, sign, and receive a copy of the case plan. One member of the case planning team may be designated to be the youth's advisor/advocate, with respect to the application of the reasonable and prudent parent standard to the youth.*
- **THE RIGHT** *to choose up to two members of the case planning team who are neither their foster parent nor caseworker.*
- **THE RIGHT** *to participate in Juvenile court proceedings regarding their family.*
- **THE RIGHT** *to receive the services needed to help them transition to adulthood.*

Nonetheless, Georgia DFCS continues to violate the rights of children in their care.

State DFCS serves as the gatekeeper for resources that can help solve the problems presented to this Subcommittee. Federal funding that flows through State child welfare agencies is disproportionately allocated to state agencies and its own attorneys, who consistently fight to deny children not only services, but also respect, dignity, and basic liberty. The federal government can provide oversight to ensure that federal funding is allocated to quality attorneys like those at the CEASE Clinic to represent children, not just in Georgia, but across the United States.

In order to improve Georgia's and our nation's child welfare system, the following 3 responses need to be prioritized:

- 1) **Quality Legal Representation for Children:** *Children in foster care should not only be guaranteed the right to legal counsel, but to effective, quality legal representation. As noted by Judge Marvin Shoob in Kenny A. v. Perdue, effective counsel must be in the form of a client-directed attorney in order to protect a child's due process rights in dependency proceedings, and requires more than simply showing up to court.*⁴¹
- 2) **Trauma-Responsive Training, Implementation, and Care:** *Georgia's foster care system must be trauma-informed and culturally-responsive to ensure that the needs of each child and their family are met. Shifting how the state cares for children, however, cannot be done by training alone. Oversight and program evaluation are necessary to ensure proper implementation of evidence-based or promising practices and interventions.*
- 3) **Youth Empowerment, Voice, & Choice:** *We must amplify the voices of children in Georgia's foster care system. We cannot know how we are doing if we do not hear from those the system is meant to protect. We cannot know if our children's needs are being met, or if they are being subjected to further harm unless we listen, believe, and empower them to come forward and tell us what they need and how we can do better. Evaluations and surveys can be conducted to help measure the quality of legal representation and determine whether trauma-informed and culturally-responsive care are actually being provided to children in foster care.*

CONCLUSION

Rather than continue to describe what I have witnessed as an attorney and advocate for children in foster care, I would like to share the words of another one of my clients, who gave me permission to share her story.

I am a victim of the Georgia Division of Family and Children Services. I entered care when I was 15 years old. My 18th birthday is less than a month away. I have yet to have a transitional roundtable to ensure a smooth and successful exit from care, but that is not

the only issue. Over the past 3 years I have been from placement to placement without welfare checks from DFCS. I have had to remind my case workers about my appointments, visitation with family, and upcoming court dates. There are many children in DFCS custody who have not received proper care or the love and nourishment that they need and deserve. Children go into the system to be in a safer environment, to grow, and to learn. The State doesn't pay attention to these children. I understand that case workers have many cases, but at the end of the day it is their job to make sure that every child in their care is safe and protected. DFCS has made decisions about my life that I was unaware of. The way my case has been handled these past three years has caused me further pain and trauma and worse off than before I entered care. The school I attended in one placement wasn't accredited, so even if I had completed a course, I had to retake it in order to receive credit towards graduation. My education, mentality, and experience with the system is the most traumatic thing I have experienced. And I've experienced a lot, from abuse to neglect to commercial and sexual exploitation. Being so young and vulnerable, even teenagers, we deserve love, not just to be dropped off with people you don't know or who don't care about you. I knew that I wasn't heard within these last three years. I've had to manage on my own and build my own strength. Constantly disobeying my caseworker was what I did if I wanted to have my voice heard. I've put my life jeopardy and placed myself in dangerous situations in attempts to leave DFCS's care—the care that has failed to provide me with adequate, or any medical, dental, or mental health care. In my mind leaving DFCS has always been the goal, and at times I didn't care if I ended up dead trying to leave. I am grateful to make a statement, and to finally be heard, and to help get justice for all of the children and young adults in DFCS's custody.

Thank you for the opportunity to speak and to listen to the voices of those most affected by Georgia's foster care system. I welcome any questions the subcommittee may have regarding my testimony and written statement.

ENDNOTES

¹The Wilbanks Child Endangerment and Sexual Exploitation (CEASE) Clinic is the first of its kind in the nation, providing free, quality, and trauma-responsive legal and social work services to survivors of child sexual abuse, exploitation, and trafficking in juvenile court dependency proceedings, civil lawsuits, and post-conviction relief matters. The clinic not only provides direct representation to survivors, but also serves as a teaching, training, policy, and research center as part of the University of Georgia School of Law. Since opening its doors in 2016, CEASE has served more than 200 survivors and expanded its services to assist survivors across the sexual abuse-to-prison pipeline. Among the core goals of CEASE's mission is to educate and prepare future lawyers and social workers to be effective advocates for survivors and to provide guidance on policies and practices to ensure that all survivors have access to justice that is culturally-responsive and trauma-informed. CEASE employees three full-time attorneys, a social worker, and a legal administrative specialist. Each semester clinic staff supervise law and social work students in all phases of litigation, policy advocacy, and community outreach and education. For more on the CEASE Clinic, visit their website at <https://cease.law.uga.edu/>.

² “The mission of the [Statewide Human Trafficking] Task Force is to protect the citizens of Georgia from perpetrators and systems of exploitation while concurrently working to support recovery of adults and victims of all forms of exploitation to ensure that they are ready for college, work, and a successful future.” <https://cjcc.georgia.gov/human-trafficking-task-force>; “The [Sexual Assault, Child Abuse and Human Trafficking State Expert] Committee [SEC] is an initiative of the Georgia SART [Sexual Assault Response Team] Project. The SEC promotes a statewide, comprehensive and unified response to combat sexual assault, child abuse and human trafficking through a combination of trainings, reviews of sexual assault and child advocacy centers, publishing of the SART Guide, coordination of the SEC, and other initiatives. Members meet quarterly to work on projects such as protocol development, training initiatives and legislative topics.” <https://svrga.org/state-expert-committee>; The Statewide Commercial and Sexual Exploitation of Children (CSEC) Multidisciplinary Team (MDT) is organized by the Children’s Advocacy Centers of Georgia’s (CACGA) CSEC Response Team to ensure a more coordinated and effective system response to commercial sexual exploitation. <https://www.cacga.org/csec-response-team/>; “The Supreme Court’s Committee on Justice for Children (J4C) has administered the Court Improvement Project to develop and implement a data-driven plan for continuous improvement in juvenile dependency cases... [J4C’s] broadened assignment requires [is] to (1) assist in the implementation of nationally recognized best practices in Georgia’s juvenile courts; (2) provide child safety, permanency, and judicial process measures for juvenile courts; (3) work toward ensuring placement stability and decreasing time to permanency for children in foster care; (4) work to improve outcomes for children with delinquency and status - offense cases; (5) advocate for improvements in juvenile law and policy; and (6) ensure technical compliance with federal grant requirements.” <https://georgiacourts.gov/j4c/>.

³ *DeShaney v. Winnebago Cnty. Dept. Soc. Servs.*, 489 U.S. 189, 200 (1989).

⁴ Counties in which CEASE currently provides legal representation include counties in Northeast Georgia, South Georgia, and Metro-Atlanta, and represent both urban and rural communities.

⁵ ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) FY 2021 DATA, *The AFCARS Report: Georgia*, U.S. DEP’T OF HEALTH AND HUM. SERVS., ADMIN. FOR CHILD. AND FAM., ADMIN. ON CHILD., YOUTH AND FAMS., CHILD.’S BUREAU (Jun. 2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarts-ga-2021.pdf> (last visited October 23, 2023); AFCARS FY 2021 DATA, *The AFCARS Report #29*, U.S. DEP’T OF HEALTH AND HUM. SERVS., ADMIN. FOR CHILD. AND FAM., ADMIN. ON CHILD., YOUTH AND FAMS., CHILD.’S BUREAU (Jun. 2022), <https://www.acf.hhs.gov/cb/report/afcarts-report-29> (last visited October 23, 2023); ANNIE E. CASEY FOUNDATION KIDS COUNT DATA CENTER, *Children in foster care with more than two placements in the United States* (April 2023), <https://datacenter.aecf.org/data/tables/8822-children-in-foster-care-with-more-than-two-placements#detailed/1/any/false/2048,574,1729,37,871,870,573,869,36,868/any/17680,17681> (last visited October 23, 2023); ANNIE E. CASEY FOUNDATION KIDS COUNT DATA CENTER, *Children entering foster care by age group in the United States* (April 2023), <https://datacenter.aecf.org/data/tables/6270-children-entering-foster-care-by-age-group#detailed/1/any/false/2048,574,1729,37,871,870,573,869,36,868/1889,2616,2617,2618,2619,122/13037,13038> (last visited October 23, 2023).

⁶ HEATHER P. FINSTER & KATE E. NORWALK, *Characteristics, experiences, and mental health of children who re-enter foster care*, CHILD. AND YOUTH SERVS. REV. 129 (2021).

⁷ *Id.*

⁸ BRIAN ATKINSON & EMMA HETHERINGTON, *Child Trafficking*, CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN NEGLECT, ABUSE, AND DEPENDENCY CASES, at 527 (Josh Gupta-Kagan et al. eds., 4th ed. 2023).

⁹ KIMBERLY KOTRLA, *Domestic Minor Sex Trafficking in the United States*, 55 SOC. WORK 181, 182 (2010).

¹⁰ *Supra* note 8.

¹¹ NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, *Seen, Heard, and Represented: A Policymaker’s Guide to Counsel for Kids* at 15 (2023), <https://counselforkids.org/wp-content/uploads/2023/04/C4K-PolicyPaper-FINAL-DIGITAL-2.pdf> (last visited October 22, 2023).

¹² “Abuse” defined as: (A) Any nonaccidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child; (B) Emotional abuse; (C) Sexual abuse or sexual exploitation; (D) Prenatal abuse; or (E) The commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child. O.C.G.A. § 15-11-2(2).

“Emotional abuse” defined as “acts or omissions by a person responsible for the care of a child that cause any mental injury to such child's intellectual or psychological capacity as evidenced by an observable and significant impairment in such child's ability to function within a child's normal range of performance and behavior or that create a substantial risk of impairment, if the impairment or substantial risk of impairment is diagnosed and confirmed by a licensed mental health professional or physician qualified to render such diagnosis.” O.C.G.A. § 15-11-2(30). “Neglect” defined as: (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child's physical, mental, or emotional health or morals; (B) The failure to provide a child with adequate supervision necessary for such child's well-being; or (C) The abandonment of a child by his or her parent, guardian, or legal custodian. O.C.G.A. § 15-11-2(48).

¹³ AMERICAN ACADEMY OF PEDIATRICS AND BRIGHT FUTURES, *Recommendations for Preventive Pediatric Health Care* (Apr. 2023), https://downloads.aap.org/AAP/PDF/periodicity_schedule.pdf (last visited October 19, 2023).

¹⁴ AMERICAN ACADEMY OF PEDIATRICS, *Adolescent Sexual Health AAP Policy Statements* (Feb. 3, 2022), <https://www.aap.org/en/patient-care/adolescent-sexual-health/adolescent-sexual-health-aap-policy-statements/> (last visited October 18, 2023).

¹⁵ MALIKA SAADA SAAR, ET AL., *THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY* (2015), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf> (last visited October 23, 2023).

¹⁶ *Id.*

¹⁷ *Id.*, at 12.

¹⁸ YASMIN VAFA & REBECCA EPSTEIN, *Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls*, RIGHTS4GIRLS AND GEORGETOWN LAW'S CENTER ON GENDER JUSTICE & OPPORTUNITY (2023), https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2023/04/Criminalized-Survivors_Georgetown-Gender-Justice.pdf (last visited October 19, 2023).

¹⁹ *Supra* note 8 at 6.

²⁰ KIRSTEN WIDNER, *Children in Need of Services: A Guide to Cases Under Article 5 of Georgia's New Juvenile Code*, JUST GEORGIA (2013), <https://www.law.uga.edu/sites/default/files/Guide%20to%20Children%20In%20Need%20of%20Services%20Procedures%20in%20Georgia's%20New%20Juvenile%20Code.pdf> (last visited October 19, 2023).

²¹ Katherine Landergan, *Lawmakers mull changes to reduce the number of foster kids in hotels*, THE ATLANTA JOURNAL-CONSTITUTION, March 8, 2023, <https://www.ajc.com/news/atlanta-news/lawmakers-mull-changes-to-reduce-the-number-of-foster-kids-in-hotels/5366Y74CXBBXPLMDJD6NLZUL2Y/> (last visited October 23, 2023).

²² 42 U.S.C. § 671(a)(15) (providing that in order for a State to be eligible for foster care and payments under Title IV-E of the Social Security Act, it must make reasonable efforts “to preserve and reunify families (i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home”); O.C.G.A. § 15-11-202.

²³ Vivek Sankaran, Christopher Church & Monique Mitchell, *A Cure Worse Than the Disease: The Impact of Removal on Children and Their Families*, 102 MARQ. L. REV. 1161, 1167 (2019).

²⁴ GA. DIV. OF FAM. AND CHILD. SERVS., *FY 2023 Annual Progress and Services Report* (Jun. 30, 2022), <https://dfcs.georgia.gov/document/document/2022-annual-progress-and-services-report/download> (last visited October 23, 2023).

²⁵ *Id.* at 42.

²⁶ “Research, policy, and practice indicate that child removal and entry into foster care evokes emotional and psychological trauma and is the most drastic safety intervention utilized by a child welfare agency. The harm that can occur as a result of removal results in a ‘monsoon of stress hormones ... flood[ing] the brain and body.’ Even brief separations can cause the release of higher levels of cortisol-stress hormones-that begin to damage brain cells. And, unlike other areas of the body, research suggests that ‘most cells in the brain cannot renew or repair themselves.’ The evidence about the harm of involuntarily separating children from their parents is so overwhelming that Dr. Charles Nelson, professor of Pediatrics at Harvard Medical School, concluded: ‘There's so much research

on this that if people paid attention at all to the science, they would never do this. In the context of foster care cases, perhaps not never, but certainly less.” *Supra* note 23 at 1167.

²⁷ *In re Gault*, 385 U.S. 1 (1967) (finding that juvenile criminal defendants are entitled to Due Process protection under the Fourteenth Amendment of the U.S. Constitution).

²⁸ *Supra* note 11 at 4.

²⁹ GA. DIV. OF FAM. AND CHILD. SERVS., “Selecting a Placement Resource”, *Child Welfare Policy Manual*, Policy No. 10.4 (March 2023).

³⁰ CASEY FAMILY PROGRAMS, *Strong Families: What impacts placement at 2* (May 2023), <https://www.casey.org/media/23.07-QFF-SF-Placement-Stability-Impacts.pdf> (last visited October 21, 2023).

³¹ GA. DIV. OF FAM. AND CHILD. SERVS., “Educational Needs”, *Child Welfare Policy Manual*, Policy No. 10.13 (March 2022).

³² GA. DIV. OF FAM. AND CHILD. SERVS., “Medical, Dental, and Developmental Needs”, *Child Welfare Policy Manual*, Policy No. 10.11 (April 2020).

³³ *Id.* At 8.

³⁴ GA. DIV. OF FAM. AND CHILD. SERVS., “Psychological and Behavioral Health Needs”, *Child Welfare Policy Manual*, Policy No. 10.12 (April 2020).

³⁵ GA. DIV. OF FAM. AND CHILD. SERVS., “Introduction to the Independent Living Program”, *Child Welfare Policy Manual*, Policy No. 13.0 (December 2014).

³⁶ Both state and federal law require transition planning and services that are “personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.” *Fostering Connections to Success and Increasing Adoptions Act of 2008*, P.L. 110-351; O.C.G.A. § 15-11-201; *John H. Chafee Foster Care Independence Program (Foster Care Independence Act of 1999)* (P.L. 106-169); Title IV-E of the *Social Security Act* §§ 475(1)(D) and 475A(b); *Preventing Sex Trafficking and Strengthening Families Act of 2014* (P.L. 113-183).

³⁷ GA. DIV. OF FAM. AND CHILD. SERVS., “Missing Children”, *Child Welfare Policy Manual*, Policy No. 19.22 (December 2020).

³⁸ O.C.G.A. § 15-11-130.1.

³⁹ 42 U.S.C.A. § 675a(b).

⁴⁰ GA. DIV. OF FAM. AND CHILD. SERVS., “Youth Rights and Responsibilities”, *Child Welfare Policy Manual*, Policy No. 13.7 (October 2015).

⁴¹ *Kenny A. ex rel. Winn v. Perdue*, 356 F.Supp.2d 1353 (N.D. Ga. 2005).