

**An Examination of the Child and Family  
Services Agency's Performance  
When it Removes Children from and  
Quickly Returns them to their Families**

**Findings and Recommendations from the  
Citizens Review Panel**

**The District of Columbia Citizen Review Panel  
September, 2011**

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# INTRODUCTION

## THE CITIZENS REVIEW PANEL

The Citizens Review Panel is mandated by District and Federal law to serve as an external, independent oversight body for the District's child welfare system, evaluating the strengths and weaknesses of District government agencies involved in child protection as well as neighborhood-based services provided by vendors. The Panel is specifically charged with examining the policies, practices, and procedures of the Child and Family Services Agency (CFSA). Based on this examination, the Panel is to evaluate the extent to which CFSA is effectively discharging its child protection responsibilities.

Members of the District's Panel include informed and committed citizens from a variety of professional backgrounds. All members are residents of the District and reside in 6 of the District's 8 wards. Further information about the Panel can be found on the Panel's website, [www.dc-crp.org](http://www.dc-crp.org).

The D.C. Citizens Review Panel became concerned about the large and steadily increasing number of children whom CFSA had removed from their families only to return them back home to their families very quickly from 2006 to 2010. We wondered whether these children were being removed unnecessarily or whether they were being prematurely returned to their families under questionable circumstances.

Prompted by this concern, the Panel decided to undertake a study in which we would examine CFSA cases in which these quick returns had occurred. We submitted a request to CFSA to conduct this study in April, 2010. After negotiations with CFSA about what the study protocol should be, the Panel finally launched this investigation in February, 2011. A five-member subcommittee of the Panel performed the case reviews, completed them in April, and then, in late April, met to discuss what the subcommittee had learned and to draft the findings and recommendations that were subsequently included in the Final Report.

Each of the Report's findings and recommendations reflects the consensus of the five Panel members who performed the reviews. The Draft Report was presented to the full Panel in May, and, after some edits were made, the full Panel tentatively approved the Draft Report and sent it to CFSA in June for comment. CFSA sent the Panel its response to the draft on July 15, 2011. The Panel made some changes based on CFSA's comments and then formally adopted the Report as the entire Panel's report in September, 2011. The central finding of the Panel's study is that CFSA has been at times removing children from their homes and putting them in foster care unnecessarily

In making its findings and recommendations, the Panel is conscious of the extremely difficult decisions that CFSA's child protection social workers must make every day. On one hand, removal represents a dramatic – often traumatic – event for any family. These separations can impose an emotional toll on children or parents. On the other hand, very real safety concerns are at stake. Some children do suffer serious abuse and neglect at the hands of their parents; in some cases the only available response is to separate the child from the parent because the emotional harm of that separation is less than the harm inflicted by the parent's abuse or neglect. High quality investigations and removal decisions are essential because these competing concerns are both so important.

The federal law that mandates the creation of Citizens Review Panels – the Child Abuse Prevention and Treatment Act – provides that Citizens Review Panels have access to otherwise confidential specific case files to evaluate child protection systems’ performance.<sup>1</sup> Although Citizens Review Panels may review such case files, Panels and their members must respect the confidentiality of children and families discussed in case files.<sup>2</sup> Accordingly, the Panel cannot make public in this Report either the case files we reviewed or the names of relevant children and families. Instead we have referred to families throughout this Report by initials and CFSA case or referral numbers.

The Panel would like to thank and acknowledge the CFSA staff who worked hard to make the requested information available to Panel members and thus made this review possible. In particular, we acknowledge the helpful assistance of John Vymetal-Taylor, Brady Birdsong, Loren Ganoe, and their respective staffs.

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<sup>1</sup> 42 U.S.C. § 5106a(c) (4)(A).

<sup>2</sup> 42 U.S.C. § 5106a(c)(4)(B).

## EXECUTIVE SUMMARY

In recent years, the Child and Family Services Agency (CFSA) has removed hundreds of District of Columbia children from their families only to send those children back home to their families very quickly. From 2006 to 2010, at least 18.8% and as many as 35.4% of all children removed returned home within four months.

CFSA's child removal decisions must balance the need to protect children from serious abuse or neglect with the need to protect children from the significant emotional trauma that comes from the government separating them from their families. The Citizens Review Panel – a group of informed District citizens volunteering their time – engaged in a close examination of 27 cases involving 41 children in which children left foster care soon after they entered to determine if CFSA decided to remove children from and return them to their families appropriately and with an adequate balancing of all pressing needs. Two separate Panel members reviewed each case and completed a standard review tool modeled in part on existing CFSA quality evaluation tools.

The Panel found some good news: the vast majority of these children safely reunified with their families and did not suffer repeat maltreatment.

This finding, coupled with the short time between the children's removal and return home, raises questions about the propriety of the removals themselves and about CFSA decision-making from the removals through the child's exit from foster care. According to DC law, these removals are only justified if they are necessary to protect children from an imminent risk of abuse or neglect posed by their families. If, as found in this report, these children safely reunified soon after their removal, could those children have stayed safely at home the entire time? Could CFSA have put government or community-based supports in place without removing children? Could Family Court proceedings and CFSA visits ensure children's safety at home without removal? Are there new approaches that could keep these children safely at home without the harm of removal?

The Panel concludes that CFSA generally was right to have significant concerns about the families, but, in the Panel's view, was often wrong to conclude that removing children from their families on an emergency basis was necessary to address those concerns. In contrast, CFSA's decisions to return children to their families were virtually always right – children rarely faced either significant safety concerns in those homes at the time of their exit from foster care or had documented cases of further maltreatment in that home. Taken together, these findings attest to the need for significant reforms to prevent unnecessary removals – and to prevent the unnecessary harm they cause to children and families.

The Panel recognizes that, in responding to hotline calls and dealing with family breakdowns, CFSA is often confronted with situations in which there are no clear cut, indubitably "right" decisions. The Panel's study of cases involving children who quickly leave foster care revealed many cases in which CFSA made quality investigations and appropriate removal decisions. However, the Panel also found too many cases of inadequate investigations and poor removal decisions.

## THE PANEL'S FINDINGS

The Panel makes 17 specific findings:

- 1) CFSA removed children quickly after receiving abuse and neglect reports. In 20 of 27 cases reviewed, removals occurred on the same day as a hotline report. In five other cases, removals occurred within two days of a hotline report. CFSA investigated more than two days before removing children from families in only two cases; 12 days in one case and more than four months in another.
- 2) In all 27 cases, CFSA removed children without a Family Court Order, meaning the cases required some emergency – some immediate danger of serious harm – to have legal justification for removal. When it had time to obtain a Family Court Order, CFSA did not do so.
- 3) Because CFSA removed children so quickly after receiving a hotline call, pre-removal Family Team Meetings (FTMs) rarely occurred. In 26 of 27 cases reviewed, CFSA removed children without holding FTMs.
- 4) In 16 of the 27 cases reviewed, CFSA held a FTM after removing children. These meetings often identified effective plans for children to stay safely with their families. Although pre-removal FTMs are not possible in every case, convening FTMs before removing children might have prevented many of these removals.
- 5) No immediate danger to children justified CFSA's quick removals in the majority of cases. In only less than one quarter of all cases reviewed, Panel members explicitly found that there was immediate danger of serious harm to children which justified removals. The average evaluation of children's safety and parenting quality at the time of removal was 3.64 and 3.61, respectively, on a 6 point scale – reflecting concerns, but not emergencies.
  - a. In many cases, services to families helped children reunify quickly but were not provided prior to removing children.
  - b. In many cases, alternatives to foster care – especially the provision of in-home services or safety plans – were unused or unexplored by CFSA prior to removal.
  - c. In a significant minority of cases, CFSA properly removed children due to an immediate danger.
- 6) Finding 5 has several important implications. In cases that lacked an emergency justifying removal without a court order, CFSA (a) lacked an adequate legal justification for the majority of its removals; (b) could and should have sought Family Court approval first; (c) should have made greater efforts to conduct a pre-removal FTM.
- 7) In the cases the Panel reviewed, some of CFSA's investigations did not account for different facts regarding different siblings, and instead removed entire sibling groups. The Report describes three cases in which CFSA removed 9 children in total. The Panel concluded that the removal of 4 of those children was justified; the other 5 children did not face an imminent danger and could have remained safely at home with services.
- 8) Many cases involved some legal complexity, yet in no case did social workers seek the advice of CFSA lawyers before removing children.

- 9) Several cases involved children who needed very short-term alternative caretaking arrangements. To address these situations and provide safe alternatives to removing children, District law and a federal court order encourage (though do not require) CFSA to provide respite care. In cases in which respite care was indicated, CFSA did not use it to prevent a removal or offer it to the family as an alternative.
- 10) Several cases involved parents who had designated or could have designated an alternative caretaker – usually another relative not implicated in any abuse or neglect. Yet CFSA appeared not to consider these alternative caretakers or not to abide by such designations. CFSA usually did not ask parents whether there were alternative caretakers who might be able to provide an alternative to foster care. In no cases reviewed did CFSA permit children to live with alternative caretakers.
- 11) In several cases, Metropolitan Police Department (MPD) actions caused harm to children and impeded CFSA’s work. In three cases involving domestic violence, the MPD arrested both the perpetrator and the survivor, leading CFSA to remove the survivor’s children. In one case, MPD refused to permit CFSA access to a parent to discuss immediate child care arrangements. In another, MPD removed a child based on his mother’s alleged unwillingness to care for him despite her pleas to not take her son. These cases demonstrate that, even though CFSA and MPD have at times effectively collaborated, there is a need for CFSA and MPD to collaboratively review policies and practices in situations where their work intersects in order to prevent occurrences like those described in the above four cases.
- 12) In two cases reviewed, CFSA properly removed children from neglectful mothers, but did not release them to their fit fathers. No evidence in the case record suggested safety concerns in placing the children with their fathers or suggested any evidence that the fathers were unfit or unwilling to take care of their children. This action violated a core child welfare principle: Children’s best interests are presumptively served by living with fit parents, unless CFSA can prove otherwise. Unnecessarily separating children from fit parents does not serve their best interest.
- 13) After reviewing an entire case file and rating various elements of CFSA’s work in the case, reviewers answered a bottom line question: based on everything in the case file, was the removal justified? 29 of the Panel members’ 54 case reviews<sup>3</sup> concluded that the case record did not justify the removal.
- 14) In 25 of the 27 cases, children left foster care to the same home from which CFSA removed them. (In the other two cases, they left foster care to live with their fathers, in the cases noted in Finding 12.) Children’s quick exits from foster care, therefore, cannot be explained by changes in custody.
- 15) Children were safe upon leaving foster care and returning to their families. In 26 of 27 cases reviewed, children did not suffer abuse or neglect that could reasonably have been predicted when the children left foster care and reunified with their family.
- 16) CFSA made or supported most of the decisions for children to leave foster care, either returning children on its own or supporting a Family Court decision to do so. In only 4 of the 27 cases did the records show CFSA objecting to a Family Court order returning children home.

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<sup>3</sup> There were 2 reviews completed on the 27 cases studied.

17) In 2 cases, CFSA records lacked essential data regarding removal decision-making.

## RECOMMENDATIONS

The Panel recommends that CFSA take thoughtful and urgent steps to reform these areas. The Panel makes the below recommendations as proposed elements of such reform:

- 1) The Panel recommends that CFSA, in its policy manual for CPS investigations, clearly define what immediate dangers to children justify their removal without a Family Court order. Existing CFSA policy documents, including the *CPS Investigations Practice and Operational Manual* (IPOM), lack such a decisive definition. The Panel's core finding that immediate threats did not justify the majority of removals studied suggests a significant need for clarification of the standard for such emergency removals and effective training and supervision to ensure this standard is always met.
- 2) The Panel recommends that CFSA make better use of legal procedures to file a case without removing children. A legal process exists that CFSA could use when the Agency has concerns about a family but an immediate danger does not require removal. However, CFSA does not have a policy in place *to use* these legal procedures when true emergencies do not exist. The Panel recommends that CFSA develop such a policy, train its staff on implementing this policy, and use it when appropriate.
- 3) The Panel recommends that CFSA increase its use of pre-removal Family Team Meetings in non-emergency cases. When pre-removal Family Team Meetings are not possible, The Panel urges CFSA to continue making extensive efforts to hold post-removal FTMs.
- 4) The Panel recommends that when CFSA investigative social workers are faced with a legally complex case, they consult with CFSA attorneys – who work in the same building as CFSA social workers – before making a removal, as long as doing so would not delay justified emergency action. The Panel recommends that CFSA promulgate a policy to put this practice into effect.
- 5) The Panel recommends that CFSA make an individualized determination for every child – even children in sibling groups. The Panel recommends that CFSA promulgate a policy stating that the facts of one child are relevant to – but not decisive in – the individualized determination whether other children in the home are abused or neglected and face an imminent danger requiring immediate removal.
- 6) The Panel recommends that CFSA make more frequent and effective use of alternatives to foster care, including respite care; kinship care arrangements (especially those directed by parents through the District's custodial power of attorney statute); and respect for non-offending parents' rights. The Panel recommends that CFSA promulgate formal policies to guide practice in these areas and train its staff appropriately so that CFSA uses these alternatives when they can keep children safely with families.
- 7) The Panel recommends that CFSA coordinate with MPD to avoid the problems revealed in several specific cases discussed in Finding 11. The Panel recommends that CFSA negotiate with MPD to ensure that (a) MPD consults with CFSA prior to removing children; (b) MPD understands the harmful consequences of arresting both perpetrator and survivor of



domestic violence; (c) MPD permits CFSA access to arrested parents so parents may identify alternative caretakers for their children.

The Panel believes that these recommendations will significantly improve CFSA's investigations and removal decision making.

## **ACKNOWLEDGING CFSA'S PROGRESS**

During the time that the Panel was undertaking its case review and developing its findings and recommendations, CFSA took some steps that address the issue of unnecessary removals and show promise of reducing them. The Panel acknowledges CFSA for this progress.

First, CFSA told the Panel in June that it was going to pilot Differential Response, a best practice successfully implemented by a number of states, which provides for alternative responses to reports of suspected child abuse or neglect. Traditionally, when the CFSA hotline accepts a report, CFSA launches an investigation of the family. Differential Response recognizes that, in some reports of suspected child abuse or neglect, the child's immediate safety is not threatened. When this is the case, Differential Response provides for an assessment of the needs and strengths of the family rather than a more adversarial investigation. CFSA pointed out that research shows that when families participate in such non-adversarial assessments, they are more receptive to and likely to engage in helping services.

The Panel applauds CFSA for piloting Differential Response and urges CFSA to adopt it as standard practice. In many of the cases that the Panel's subcommittee reviewed, such a family assessment may have prevented the child from being put in foster care and may have given the family the services it needed to be sufficiently well-functioning.

Second, CFSA recently completed the *CPS Investigations Practice and Operational Manual* (IPOM), whose purpose is "to provide clear standards and improve the quality and timeliness of practice." On pages 137-139 of the IPOM, CFSA directs Child Protective Services (CPS) social workers, in making safety assessments, to look at whether the signs of present danger to a child are **not** great enough to put the child in "immediate danger of serious harm" or whether "protective capacities" exist that "offset the threat of serious harm." The Panel is pleased that CFSA is requiring this kind of analysis because we think it may lead to fewer unnecessary removals of children from their homes. However, as this Report recommends, CFSA still needs to more clearly define what imminent threats or safety risks to children justify their removal from their homes without a Family Court order.

In addition, the IPOM, on pages 140-144, provides for "safety plans" developed with the family that can be an alternative to removal in many situations. The IPOM lays out the factors CPS social workers should consider in determining whether a parent (or other caregiver) is safe or unsafe to be involved in developing a safety plan and lists other factors to consider in determining if a safety plan can be developed with the family. The Panel thinks these alternative safety plans, if well employed by CPS social workers, should reduce the number of removals.

The IPOM further states, on page 153, that “as a first course of action,” CPS social workers “are required to make reasonable efforts to prevent the removal of children from their families.” The IPOM goes on to describe “reasonable efforts” as “any activity that purposefully attempts to prevent and preserve the in-home status of a child” and it cites, as examples of such activities, better assessment of imminent threats to the child, the development of alternative methods for in-home safety plans, and/or identifying people and resources to help prevent a child’s removal. The Panel commends this CFSA policy requiring efforts to prevent removal, because the central finding of our Report is that CFSA has been removing children from their homes unjustifiably and our central recommendation is that CFSA should seek alternatives to removal. The Panel urges CFSA to train, manage, and hold accountable CPS social workers for acting in the letter and spirit of this policy.

The IPOM, on page 173, states that “during an investigation, consultation between CPS staff and CFSA’s legal team ensures that CPS dispositions and actions are within the guidelines of federal and District rules and regulations.” The Panel believes this statement is an affirmation of the Report’s recommendation that, in complex cases, CPS social workers would be wise to consult with CFSA legal staff.

The Panel commends CFSA for its frequent and effective use of Family Team Meetings (FTMs) even though these meetings are not required by law. The Panel praises the positive results these FTMs often produce. The Panel’s concern, however, is that these FTMs typically occur after children are removed, not before. The Panel believes that, in many cases, if FTMs were held before children were put into foster care, it would obviate the need to remove those children from their families. The Panel recognizes that circumstances may sometimes make it impossible for CPS social workers to organize an FTM on such a quick timeline, but the panel urges CFSA to make strong efforts to hold pre-removal FTMs more frequently.

**THE PANEL'S FULL REPORT ON CFSA'S PERFORMANCE  
WHEN IT REMOVES CHILDREN FROM AND QUICKLY RETURNS  
THEM TO THEIR FAMILIES**

**I. BACKGROUND**

A large number of children removed from their families by CFSA leave foster care quickly. According to CFSA's public data, at least 18.8% and as many as 35.4% of children removed from families by CFSA leave foster care within 4 months. CFSA's data<sup>4</sup> show the following number of children who entered foster care, and the number of children who left foster care in fairly short periods of time:

<b>Year</b>	<b>Number of children removed</b>	<b>Number of children who left foster care in less than one month</b>	<b>Number of children who left foster care in 1-4 months</b>	<b>Total who left foster care in 0-4 months</b>	<b>Percentage of those who entered foster care who left in 0-4 months</b>
FY 2010	809	197	89	286	35.4%
FY 2009	661	123	98	221	33.4%
FY 2008	765	134	70	204	26.7%
FY 2007	632	119	60	179	28.3%
FY 2006	686	96	141	237	34.5%

The above data do not provide a cohort analysis – that is, they do not track a set of children removed by CFSA during the same time period. Rather, the data report all children who entered care and all children who left care within a given fiscal year. Children whom CFSA removed in one fiscal year and left foster care in the next fiscal year are not tracked as such in CFSA's public data. In response to a data request from the Citizens Review Panel, CFSA has provided a cohort analysis that tracks all children who entered foster care in fiscal years 2006 through 2009. That data is appended to this report.<sup>5</sup> Like CFSA's publicly-released data, CFSA's cohort data also shows a significant and consistent practice of children leaving foster care soon after CFSA removes them:

<b>Year</b>	<b>Number of children removed</b>	<b>Number of children who left foster care in 1-9 days</b>	<b>Number of children who left foster care in 10-29 days</b>	<b>Number of children who left foster care in 30-119 days</b>	<b>Total who left foster care in 1-119 days</b>	<b>Percentage of those who entered foster care who left in 1-119 days</b>
FY 2009	622	70	15	74	159	25.6%
FY 2008	703	59	26	47	132	18.8%
FY 2007	572	81	22	47	150	26.2%
FY 2006	676	67	29	109	205	30.3%

<sup>4</sup> CFSA data is found in annual reports available at <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Performance>.

<sup>5</sup> See Appendix F.

This data reported by CFSA to the Panel contains some differences from CFSA’s public data. Both the number of removals in a given year and the number of children who left foster care relatively quickly after their removal in a given year are significantly higher in CFSA’s public data than in the data provided to the Panel. CFSA explained the differences in two ways.<sup>6</sup> First, the public data defines stays in foster care of, say, only four months as including stays that are nearly five months; that is, a stay of 4 months and 29 days is considered a four month stay. Data provided by CFSA to the Panel only included children who left foster care within 120 days of their entry. Second, CFSA’s public data includes children who left foster care less than 24 hours after their entry, while data provided to the Panel does not. Both of these factors contributed to lower numbers in the data reported to the Panel.

More important than these numerical differences are the bottom line similarities: However one looks at the data, a significant percentage of children removed by CFSA leave foster care soon after they enter. This practice has been consistent over the past 5 years. The data discussed above therefore does not suggest that this practice is linked to the Jacks-Fogle crisis of 2008, the recession, or any other single event or trend.

This practice relates to core child protection decisions – decisions to remove children from and return them to their families. The population of children affected by this practice – hundreds of children every year – is significant both in absolute numbers and as a proportion of the District of Columbia’s foster care population. As such, this study falls squarely within the Panel’s mission of providing oversight to the District of Columbia’s child protection system.

The Panel examines this in the context of numerous and varied questions about the quality of CFSA’s investigations and whether it removes too many children or too few children. The Office of the Inspector General has criticized CFSA’s child protection investigations, finding that investigations are often rushed and of low quality.<sup>7</sup> The *LaShawn A.* court monitor has issued two studies in recent years criticizing CFSA’s child protection investigations.<sup>8</sup> In the most recent study, the Monitor has taken CFSA to task for not “consistently consult[ing] with persons who are most familiar with children and their families,” not “connect[ing] families to services and supports during the investigation,” and not holding Family Team Meetings before removing children.<sup>9</sup>

Local advocates have also raised the issue with the District of Columbia Council. Some have raised concerns about CFSA removing children from their families unnecessarily. Others have expressed questions about why CFSA has not removed *more* children in the midst of a severe recession – which could cause increased stress on parents and thus increase the risk of child abuse or neglect. Mayor Vincent C. Gray’s Health and Human Services Transition Committee concluded that CFSA removes children unnecessarily, recommending to the new Mayor that he “address the

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<sup>6</sup> Appendix G at 4.

<sup>7</sup> D.C. Office of the Inspector General, *Child and Family Services Agency Child Protective Services Administration*, Report of Inspection, April 2011, <http://oig.dc.gov/news/PDF/release10/CFSA-CPS-Report-of-Inspection-April-2011.pdf>.

<sup>8</sup> The Monitor issued one study in 2007 and one in 2010. See *An Assessment of the Quality of Child Abuse and Neglect Investigative Practices in the District of Columbia*, <http://www.cssp.org/publications/child-welfare/class-action-reform/an-assessment-of-the-quality-of-child-protective-services-investigative-practices-in-the-district-of-columbia-november-2007.pdf> and *An Assessment of the Quality of Child Abuse and Neglect Investigative Practices in the District of Columbia*, <http://www.cssp.org/publications/child-welfare/class-action-reform/an-assessment-of-the-quality-of-child-protective-services-investigative-practices-in-the-district-of-columbia-may-2010.pdf>.

<sup>9</sup> See *id.* at 8-10.

expensive and harmful current practice of unnecessarily removing children from their birth families.”<sup>10</sup>

In this context, it may be helpful to begin by laying out some facts:

First, the number of removals has *increased* in recent years. As noted above, CFSA removed fewer than 700 children in both FY 2006 and FY 2007. As the Jacks-Fogle crisis hit in January 2008 and, later, the recession hit, removals increased to 765 in FY 2008. The number fell back to 661 in FY 2009, only to spike again to more than 800 in FY 2010.<sup>11</sup> It is not correct to suggest that removals are decreasing.

Second, the numbers of hotline calls and related investigations have also increased; roughly speaking, they increased after the Jacks-Fogle crisis and have stayed steady over the ensuing three years.<sup>12</sup> As a result, the ratio of removals to investigations has decreased. This fact should not be unexpected, as a greater proportion of the new hotline calls may involve unsubstantiated or less severe allegations. Moreover, it is quite possible that CFSA has grown better at identifying the children most in need of protection through removal and is rightly leaving other children at home with their families. As noted in the executive summary, CFSA has taken recent steps towards better distinguishing between children who CFSA needs to remove and children for whom other options should be tried.

What is most important for the purposes of this study is that CFSA’s practice of removing many children from their homes only to have those children leave foster care quickly has remained a significant and constant feature of the District’s child protection system. For five consecutive years, CFSA’s public data show that the percentage of children who leave foster care within four months of entry has fluctuated between 27 and 35 percent of all children removed. And the percentage of children who leave foster care within one month of entry has fluctuated between 14 and 24 percent. In the most recent year (FY 2010), the numbers are at the high end of those ranges.

This ongoing CFSA practice is worthy of significant consideration.. The above numbers reflect hundreds of children being removed only to be quickly returned to their homes every year. For these children and their families, these are severe, possibly life-changing events.

The fact that many children enter and then quickly exit foster care is also worthy of study for what it may say about CFSA’s investigations and removal practices more generally. Indeed, many of the recommendations detailed later in this report apply as forcefully to other cases as they do to quick foster care exit situations.

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<sup>10</sup> Transition Report of the Health and Human Services Committee, Co-Chaired by Maria Gomez and Peter Edelman, at 8, available at [http://hpla.doh.dc.gov/hpla/frames.asp?doc=/hpla/lib/hpla/social\\_work/sw\\_instruction\\_08\\_03\\_2007\\_updated.pdf](http://hpla.doh.dc.gov/hpla/frames.asp?doc=/hpla/lib/hpla/social_work/sw_instruction_08_03_2007_updated.pdf).

<sup>11</sup> Total removal numbers may be found in CFSA annual reports available at <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Performance>

<sup>12</sup> Former Director Roque Gerald testified to the D.C. Council that hotline calls spiked from 7,435 in 2007 to 11,445 in 2008 and remained above 11,000 in 2009 and 2010. The number of investigations increased from 4,926 in 2007 to 7,278 in 2008 and remained above 6,000 in 2009 and 2010. Testimony of D.C. Child and Family Services Agency Interim Director Roque R. Gerald, to the D.C. Council Committee on Human Services, March 17, 2011, at 3.

In making these findings and recommendations, the Panel is conscious of the extremely difficult decisions that CFSA's child protection social workers must make. On one hand, removal represents a dramatic – and often traumatic – event for any family. Many parents have had the experience of a toddler crying when dropped off at preschool – even with a parent giving him a goodbye hug, assuring him that she will return within hours, and turning him over to a classroom full of unfamiliar faces. Now imagine that same child taken away by a stranger, over the parent's objection, and without anyone able to tell him what will happen next or even when he will see his parent again. Days pass and people still cannot explain what will happen next, or why he hasn't been able to see mommy for a long time. Weeks pass, and he gets to see his mom for brief visits, and then is taken away again, with no idea when he will see her again. It is not hard to see the emotional toll these separations impose on children or their parents.

On the other hand, very real safety concerns are at stake. Some children do suffer serious abuse and neglect at the hands of their parents and in some cases the only available response is to separate the child from the parent because the emotional harm of that separation is less than the harm inflicted by the parent's abuse or neglect.

High quality investigations and removal decisions are essential because these competing concerns are both so important. The Panel's study of cases involving children who quickly leave foster care reveals a significant number of both inadequate investigations and poor removal decisions. The Panel offers the findings and recommendations in this report in the hope that they will help CFSA improve this essential element of its work, strengthen CPS standards and policies, and produce better outcomes for children and families.

## **II. METHODOLOGY**

### **A. Case Reviews**

The Panel used the statistics described above to identify a category of cases to review more closely. The Panel reviewed 27 cases involving 41 children who CFSA removed from their families between January 1, 2009 and June 30, 2009, and who left foster care within 120 days of that removal. By reviewing cases in this time period, the Panel was able to review not only the decisions to bring children into and return children from foster care, but subsequent evidence of children's safety upon exiting foster care. The Panel could determine if that child was the subject of any further reports of abuse or neglect in the months that have passed since that child's return home. In contrast, reviewing only more recent cases would not have provided that ability.

The Panel requested that CFSA randomly select cases for review that met one of three specifications:

1. Cases involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 10 days of their entry;
2. Cases involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 11-30 days of their entry; and
3. Cases involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 31-120 days of their entry;

CFSA staff randomly selected those cases and provided Panel members with the documents necessary to review those cases. CFSA selected 15 cases in category 1; the Panel reviewed 14 of those cases. CFSA selected 5 cases in category 2 and explained that only 5 cases fell into that category; the Panel reviewed all 5 of those cases. CFSA selected 15 cases in category 3; the Panel reviewed 8 of those cases.<sup>13</sup> Panel members stopped reviewing cases after completing reviews of 27 cases and reaching consensus that these reviews provided sufficient material for this study. In addition, the Panel members who reviewed cases – who had volunteered their time to do so – had reached the limit of their ability to review cases. The unreviewed cases were concentrated among category 3 because CFSA provided those cases to the Panel later in the process.

CFSA has correctly commented that the Panel’s sample is somewhat skewed towards category 1 – those cases in which children spent the shortest amount of time in foster care.<sup>14</sup> It is difficult to determine whether this fact affected the results: Panel members did not discern significant differences between cases in the various categories, though the Panel recognizes that fairly small numbers of each category were reviewed.

Documents provided by CFSA typically included an investigation summary for the investigation that led to the child’s removal, social workers’ case contact notes regarding their activity in the case and their interactions with children, parents, and others, and a listing of any previous or subsequent child protection investigations involving the child and the results of any such investigation.

CRP members used a uniform case review instrument when reviewing each case.<sup>15</sup> The instrument first asked basic objective questions about a case, including from whose custody was the child removed, to whose custody did the child go after foster care, who made the decision for the child to leave foster care, the dates of the relevant hotline call and foster care entry and exit, the existence of any reports of abuse or neglect subsequent to the child’s exit from foster care, and the existence of any Family Team Meetings (FTMs) before or after entry into foster care.

The instrument next asked eight subjective questions about the safety of the child and the quality of parenting and of CFSA’s engagement with the family at the time of removal and at the time the child left foster care. These questions were modeled after existing questions in CFSA’s “quality service review” (QSR) tool, which CFSA and the *LaShawn A.* Court Monitor use to measure performance in individual cases. The Panel used QSR questions because they have already been used frequently by the Agency and are accepted as effective measures of Agency performance. The questions also permitted Panel members to measure any changes that occurred during the life of a case – that is, if child safety increased from the time of the child’s removal to the time of the child’s exit, or if CFSA worked with the family well before removing the child or if CFSA worked with the family well between removal and exit.

Average scores on these eight questions are reported in Appendix C.

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<sup>13</sup> CFSA comments on a draft version of this report incorrectly suggest that the Panel only reviewed 2 cases in category 3. CFSA’s states correctly that it provided 15 cases in category 3, but states incorrectly that the Panel excluded 13 cases from category 3. See Appendix G at 4. In fact, the Panel reviewed 8 of the 15 cases provided. The 8 cases reviewed were chosen simply for being on top of the pile of case files provided by CFSA – that is, they were randomly selected.

<sup>14</sup> Appendix G at 4-5.

<sup>15</sup> The Instrument is attached in full in Appendix B.

Finally, the instrument contained summary questions to evaluate if the removal and exit decisions were appropriate. Throughout the instrument, and especially at the end, reviewers could offer comments explaining their answers and providing important details about the cases.

To ensure that no single Panel member's views would dictate conclusions about specific cases, each case file was reviewed independently by two Panel members. After Panel members independently reviewed a given case, they then discussed their findings and attempted to reach consensus as to core judgments. Reviewers reached consensus in the majority of cases and chose similar numerical scores and came to the same ultimate conclusion regarding the appropriateness of removal and exit decisions. In the minority of cases in which consensus could not be reached each reviewer's scores are included in the aggregate statistics discussed in this report so that all of the five reviewer's opinions are included.

After completing case reviews, the five reviewers individually compiled their findings and recommendations. The five reviewers then discussed those findings and recommendations and found a substantial degree of consensus. The findings and recommendations that follow reflect consensus views of the five reviewers, unless qualified (i.e. "some reviewers found"). All of the core findings and recommendations are endorsed by all five individuals who reviewed cases.

Finally, the Panel provided CFSA with a draft version of this report. CFSA provided thoughtful written responses, for which the Panel is appreciative.<sup>16</sup> The Panel revised some portions of the report in light of those comments and added responses to CFSA's comments in other areas. Those revisions and responses are noted throughout this report.

## **B. Limitations**

As with any study, the Panel's methodology includes some limitations.

First, the Panel reviewed removals and exits that occurred in 2009, not more recent removals. The Panel believes that the added value of measuring whether children in these cases were subsequently maltreated outweighs the time lag in reviewing cases from this time period. That conclusion is particularly true because aggregate statistics show that the phenomenon studied has continued and, if anything, increased from 2009 to 2010. Although certain policies and practices within CFSA have evolved in the intervening two years, the Panel is aware of no changes that would lead to different conclusions or recommendations regarding this category of cases.

Second, the Panel's review of individual cases was limited to reviews of case records only. Panel members did not interview the social worker or other individuals involved in cases. Relatedly, the Panel did not review Family Court records or transcripts.<sup>17</sup> The Panel acknowledges that such interviews may have provided important insights into particular decisions that were not

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<sup>16</sup> CFSA's comments are attached to this report in Appendix G.

<sup>17</sup> CFSA suggests that the Panel's findings discussed below show that the Panel members "disagree with the judgment of the [D.C. Family] Court" in a significant number of cases. Appendix G at 6. Although that *may* be the case, we cannot know because facts may change in the intervening time period which makes it hard to undo the initial removal at a shelter care hearing. In addition, the standard applied by the Family Court is different, and less strict, than the standard to be applied by CFSA when deciding whether to remove a child. *Compare* D.C. Code § 16-2309(a) & § 16-2310(b); *see also* note 87. The Panel did not review Family Court records and is hesitant to draw conclusions regarding the Family Court's role without having access to the Court records.



reflected in the case records. Nonetheless, the Panel determined that reaching our conclusions based on case record reviews is sound because in making decisions as important as a child's removal and return home, the Panel believes CFSA ought to include adequate justification for these decisions in its case records. Indeed, various provisions of federal law require the Agency to document, for instance, the efforts made to prevent the need to remove a child from her family, and so the Panel expects such documentation to be clear within Agency files.

Third, the Panel only reviewed certain types of cases – those in which children left foster care quickly after entering. The Panel thus can only speculate whether other fact patterns exist, such as children who were left at home in unsafe situations, or children who were unnecessarily removed and forced to stay in foster care for longer periods of time..

### **C. Additional Aggregate Statistical Data**

As described in the attached project proposal, the Panel requested in April 2010 additional statistical information from CFSA that addressed a large number of children who quickly left foster care.<sup>18</sup> The goal of that data request was to provide a slightly more rigorous statistical analysis than was permitted from the publicly-reported data discussed above, in three areas. First, the public data relates to the number of children who enter and exit foster care within a given fiscal year; children who enter foster late in one fiscal year and leave early in the next are not tracked as such, and the Panel hoped the Agency could provide data to perform a cohort analysis. Second, the Panel hoped to track, in the aggregate, the subsequent safety outcomes of children who were returned home after quick stays in foster care. And, third, the Panel hoped to track in the aggregate where children lived following their exit from foster care – whether they returned to the parent or family member from whom they were removed or whether they left foster care to a new caretaker.

CFSA provided the requested data in July 2011. CFSA had provided some raw data in January 2011, but that data required significant technical work to become usable. The Panel discussed this issue with CFSA staff in March 2011, and CFSA staff agreed to work on the data to make it more usable and to promptly follow up with the Panel regarding the status of the data. CFSA did not provide the Panel with this data until July 2011, which was after the Panel had circulated a draft Report for CFSA's comments. That data is discussed in Part I (background) and in Finding 15 in Part IV and the data are appended to this report.

## **III. D.C. LAW GOVERNING CHILD PROTECTION INVESTIGATIONS AND REMOVALS**

A short review of the District's legal structure for child protection investigations and removals helps frame this Report's findings and recommendations.

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<sup>18</sup> See Appendix A at 2-7.

A child protection investigation begins when someone – a teacher, a neighbor, a relative, or anyone else – calls CFSA’s child protection hotline and alleges that a parent has abused or neglected a specific child. District law requires CFSA to investigate these allegations promptly.<sup>19</sup>

CFSA then investigates the allegations and reaches its conclusion whether the allegations are accurate. If not, the allegations are “unfounded,” and CFSA has no authority to remove the child. If CFSA cannot reach a conclusion, the allegations are “inconclusive,” and CFSA has no authority to remove the child. But if CFSA believes the allegations are accurate, then they are “substantiated.”<sup>20</sup>

Substantiated allegations do not automatically – or even usually – lead to CFSA removing a child. In recent years, CFSA has substantiated abuse or neglect of more than four times as many children as it removed.<sup>21</sup> Rather, when CFSA substantiates child abuse or neglect allegations, it can take one of several options.

First, it can refer a family to a community based organization such as a neighborhood collaborative so that the collaborative can provide and coordinate services to prevent future instances of abuse or neglect and to allow children to stay safely with their families.

Second, CFSA can open an “in-home” case. For these families, CFSA provides services to reduce the likelihood of repeat maltreatment and avoid the need to remove the child from the family.

Third, if working voluntarily with a family is not enough, CFSA can file an abuse or neglect petition with the D.C. Family Court. CFSA can ask the Court to order the child removed, or to take less dramatic actions, such as ordering the family to comply with specific services.

Fourth, CFSA may immediately remove the child, and then file a child abuse or neglect case in Family Court. Under D.C. law, this option should only occur when CFSA “has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary,”<sup>22</sup> or that some similar standard is met.<sup>23</sup> When CFSA removes a child under this authority, the Family Court will hold an initial hearing within 72 hours of the child’s removal to determine whether the child should be released to his parent or another caretaker or remain in foster care.<sup>24</sup>

Before removing a child under either the third or fourth paths outlined above, federal and District law require CFSA to make “reasonable efforts” to prevent that removal.<sup>25</sup> The *LaShawn A. Modified Final Order* defines such reasonable efforts to include the provision of intensive home-

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<sup>19</sup> D.C. Code § 4-1301.04. Recent legislation will permit CFSA to apply a “family assessment” to low and moderate-risk cases, rather than an investigation. D.C. Law 18-228, Families Together Amendment Act of 2010. CFSA plans to pilot such assessments beginning in late summer 2011. No cases reviewed in this report were subject to that law.

<sup>20</sup> D.C. Code § 4-1301.02(13A), (19A), & (20A).

<sup>21</sup> According to “Child Maltreatment” reports published annually by the federal Children’s Bureau, CFSA substantiated 3279 cases and removed 624 children in FY 2009, substantiated 2645 cases and removed 627 children in FY 2008, substantiated 2757 cases and removed 586 children in FY 2007, and substantiated 2759 cases and removed 668 children in FY 2006. Data is available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/index.htm#can](http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can).

<sup>22</sup> D.C. Code § 16-2309(a)(3).

<sup>23</sup> D.C. Code § 16-2309(a).

<sup>24</sup> D.C. Code § 16-2312(a)(1).

<sup>25</sup> 42 U.S.C. § 671(a)(15); D.C. Code § 4-1401.09a.

based crisis intervention services, homemaker services, parent education and counseling, mental health services, substance abuse programs, housing assistance, respite care, day care, emergency cash assistance, access to other public benefits, and less intensive family services.<sup>26</sup>

These reasonable efforts can also include holding a Family Team Meeting. During such meetings, CFSA brings together the parent or parents, the child (if age appropriate), other family members, and other service providers or individuals who provide important support to the family and child. CFSA facilitates a discussion about its concerns for the child's safety and asks the family to develop a plan to ensure the child's safety. Such plans can avoid the need for removing the child or, when the FTM occurs after a removal, develop plans to enable the child's prompt reunification.

FTMs can occur at any point – before a removal, after a removal and before an initial hearing, or after a removal and after an initial hearing. District law specifically provides that FTMs “may” occur between a removal and an initial hearing,<sup>27</sup> but nothing in the law prohibits CFSA from holding FTMs at any time. Indeed, CFSA policy has long called for FTMs to be held when a child is at imminent risk of removal.<sup>28</sup> And the value of FTMs may be greater before a removal – that is why the most recent *LaShawn A.* order requires CFSA “to offer and facilitate pre-removal Family Team Meetings in 70% of applicable cases requiring child removal from home.”<sup>29</sup>

#### IV. FINDINGS

The National Conference on State Legislatures has bluntly stated that: “Many children who are in foster care do not need to be there.”<sup>30</sup> The Panel concludes that this is true in the District of Columbia.

The Panel's review of CFSA cases leads us to conclude that, in too many situations, CFSA is too quick to separate children from their families when alternatives to foster care exist. CFSA could have found an alternative to removal and foster care in the majority of cases that we studied – through better identifying true emergencies (and thus using emergency removal procedures less frequently), holding FTMs before removal, providing more supportive services before removal, and working with parents to identify alternative caretakers when parents temporarily could not take care of their children..

To CFSA's credit, the Panel's review also leads to the conclusion that decisions to send a child home from foster care are almost always the right decisions. Case reviews revealed that children almost always returned to the home from which they were removed, rarely faced significant safety concerns in those homes at the time of their exit from foster care, and rarely experienced documented cases of further maltreatment by their families.

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<sup>26</sup> *LaShawn A. v. Dixon*, Modified Final Order at p. 9-10, III.C.2.

<sup>27</sup> D.C. Code § 16-2312(a-1).

<sup>28</sup> CFSA Family Team Meeting Policy,

[http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/Policies/Program\\_Family%20Team%20Meetings.pdf](http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/Policies/Program_Family%20Team%20Meetings.pdf), at 3 (2007).

<sup>29</sup> *LaShawn A. v. Fenty*, 17 Dec. 2010 Order Approving Implementation and Exit Plan at I.B.7.a.

<sup>30</sup> National Conference of State Legislatures, *Legislative Strategies to Safely Reduce the Number of Children in Foster Care*, at 1 (2010), [http://www.ncsl.org/documents/cyf/strategies\\_reducing\\_the\\_number\\_of\\_children\\_in\\_foster\\_care.pdf](http://www.ncsl.org/documents/cyf/strategies_reducing_the_number_of_children_in_foster_care.pdf).

The following sections describe in detail the specific findings that led to the Panel's more general conclusions set out above. These sections provide short summaries and analyses of illustrative cases for specific findings, as well as relevant summary quantitative data points from the Panel's case reviews. The short case summaries are intended to illustrate the specific findings; they are not intended to provide a comprehensive summary of each case.

**FINDING 1:** Removals quickly followed CFSA's receipt of abuse and neglect reports.

One of the most striking features of the Panel's review is the near uniformity of one data point: the time between CFSA's receipt of a child abuse and neglect report and CFSA's decision to remove children. In nearly all of the reviewed cases, very little time passed between the report and the removal:

- In 20 of the 27 cases reviewed, **zero days** passed between the report of abuse or neglect and the child's removal; CFSA removed the children in these 20 cases on the same day CFSA received the report.
- In 3 of the 27 cases reviewed, **one day** passed between the report of abuse or neglect and the child's removal.
- In 2 of the 27 cases reviewed, **two days** passed between the report of abuse or neglect and the child's removal.
- In 1 of the 27 cases reviewed, **12 days** passed between the report of abuse or neglect and the child's removal.
- In 1 of the 27 cases reviewed, **more than four months** passed between the report of abuse or neglect and the child's removal.

**FINDINGS 2-5:** Implications of the short timeline between report and removal

The quick action to remove children comes with obvious and important consequences:

**Finding 2:** In all 27 cases reviewed, CFSA used the emergency removal procedure outlined above. In **zero cases reviewed**, CFSA filed a petition alleging abuse or neglect and asked a judge to order the child removed.

CFSA's use of emergency removals trigger the legal requirement outlined in Part III – that some "immediate danger" must be present and that no alternative exists to removing the child. Whether such facts existed in the cases reviewed is discussed in **Finding 6**.

It is noteworthy that even in the two cases involving relatively longer time spans between a child abuse and neglect report and children's removal; CFSA treated the cases as emergency removals. In one case, CFSA removed the child for educational neglect following a lengthy in-home case; the child was chronically truant but was physically safe in his grandmother's home.<sup>31</sup> Although problems existed, no emergency justifying a removal without a court order was documented, and it is not clear how CFSA could have treated a family that had an in-home case opened for nearly five months and which presented no immediate danger to the child as an emergency removal. In the second case,<sup>32</sup> 12 days passed between the report and the child's removal, but it is hard to tell what

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<sup>31</sup> The "A" Family. (We have not used the family's actual initial.) Case Number 201045.

<sup>32</sup> The "B" Family, Case Number 201353.

transpired in that time period because the case records were so spotty. It appears that an infant child was hospitalized due to inadequate weight gain. The child was hospitalized for some period of time and there was no imminent risk that his mother was trying to cut his hospitalization short. It is thus not clear what emergency justified CFSA's removal without a court order.

In both of these cases, the rush to remove the child rather than go to court led to an unnecessary removal – and likely unnecessary harm to the child. In the first case, the child left foster care just 3 days after he entered. No significant change in his safety or quality of care giving changed in those three days. In the second case, the child stayed in foster care for almost two months. During that time, the child's mother accepted regular nurse visits to assist with feeding and administering the child's HIV medication; the child subsequently gained weight and his viral counts remained low. It is not clear why this same result could not have been achieved without removing the child.

**Finding 3:** As a result of the short timeline between child abuse and neglect reports, CFSA did not hold Family Team Meetings before removal, with only one exception. Pre-removal FTMs occurred in only 1 of the 27 cases reviewed. **In 26 of 27 cases, CFSA removed children without holding FTMs.** This finding only addresses whether a FTM did or did not occur before the removal. Finding 4 will discuss whether some of these cases could have or should have had an FTM before the removal.

This conclusion is consistent with the *LaShawn A.* court monitor's 2010 conclusion that 80 percent of children deemed "at risk of removal" did *not* have a Family Team Meeting.<sup>33</sup>

**Finding 4:** Post-removal FTMs were held more frequently and with significant success. **In 16 of the 27 cases, CFSA held FTMs after removing the children.** These FTMs often identified a satisfactory safety plan leading to children's safe return. The Panel found that FTMs represented a consistent bright spot in CFSA's practice. CFSA made strong efforts to include all relevant family members in FTMs and used the meetings to reach reasonable decisions. FTMs helped lead CFSA to make good decisions for children – often returning them home to their families quickly.

**Finding 5:** The absence of pre-removal FTMs likely had direct consequences in some of the 27 cases Panel members reviewed. The success of FTMs in identifying solutions to keep children safely with their families begs the question of whether pre-removal FTMs could achieve the same result without removing children. Although there is no way to know for sure what would have happened had CFSA held pre-removal FTMs, the Panel concludes that pre-removal FTMs should have been tried and could have prevented many of the removals at issue.

*Example: The "C" Family.*<sup>34</sup> CFSA found evidence of repeated use of a cord to whip or beat a child, leaving multiple marks on various parts of the child's body. CFSA removed him and his three siblings. (For consideration of other cases in which CFSA removed all siblings despite only having evidence of harm regarding one, see **Finding 8**.) After their removal, CFSA held a family team

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<sup>33</sup> Center for the Study of Social Policy, *An Assessment of the Quality of Child Abuse and Neglect Investigative Practices in the District of Columbia*, at 41, <http://www.cssp.org/publications/child-welfare/class-action-reform/an-assessment-of-the-quality-of-child-protective-services-investigative-practices-in-the-district-of-columbia-may-2010.pdf>.

<sup>34</sup> Case number 203135.

meeting and, through that meeting, developed a safety plan with the children’s mother. Three of the children were returned three days after their removal and the fourth was returned less than one week after his removal. A pre-removal FTM could have led to the same safety plan and prevented the removal.<sup>35</sup>

*Example: The “B” Family (discussed in **Finding 2**).*<sup>36</sup> CFSA was concerned about a mother’s care for her infant son, whose weight gain and growth was not healthy, according to his doctors. These concerns were serious and legitimate. CFSA did not attempt to hold a family team meeting before removing the child. Subsequently, the child’s mother accepted regular nurse visits to assist her in feeding the child and providing necessary medication. The child reunified with his mother two months after the removal. He gained weight and doctors’ concerns about his health faded. A pre-removal FTM could have led to the same result without the removal and two month separation.

**FINDING 6-7:** An immediate danger to children did not justify the quick timeline in these cases, a conclusion with important implications.

The Panel found that most of the cases reviewed did not involve an immediate danger to children that could only be addressed by removing the child and placing him/her in foster care. This finding is consistent with a 2010 finding of the *LaShawn A.* court monitor. After reviewing 190 investigations which led to CFSA removing 22 children from their homes, the court monitor concluded that “the *immediate* removal was warranted” in less than half of those removals.<sup>37</sup>

**Finding 6:** Many cases involved services provided to parents that did, in fact, help the situation. However, in most of those cases, it was not clear why these same services could not have been provided without removing the children and sparing them the trauma of an extended separation from their parents, and often their siblings.

The Panel also found many cases in which alternatives to foster care existed but were either unused or unexplored by CFSA. In these cases it was not clear why CFSA chose to remove children rather than provide services with the child in the home.

The Panel must note that we found that a significant minority of the cases we reviewed involved children who needed temporary removal due to an immediate danger and whose relatively quick exit from foster care was appropriate and safe.

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<sup>35</sup> CFSA cites this case as an example of the Panel “understat[ing] the level of danger to the children involved.” Appendix G at 5. The Panel respectfully disagrees. The Panel does not suggest that CFSA should not have been concerned about the evidence of physical abuse. On the contrary, *some* action to protect the child was indicated by the evidence of repeated use of a cord for discipline. The question is what action was necessary. The Panel believes CFSA should have used a FTM to develop a safety plan *without* removing the child first; indeed, a post-removal FTM led to precisely that result. The Panel has revised the case summary above to make clear the extent of evidence that led to the removal, but stands by the overall conclusion.

<sup>36</sup> Case number 201353.

<sup>37</sup> Center for the Study of Social Policy, *An Assessment of the Quality of Child Abuse and Neglect Investigative Practices in the District of Columbia*, at 40, May 24, 2010 (emphasis added). Thirteen investigations led to the removal of 22 children. The court monitor found that “the immediate removal was warranted” in only six of those 13 investigations.

The above findings can be illustrated by a review of the numerical scores Panel reviewers assigned to questions in the review tool. Summary data is appended to this report.<sup>38</sup> Key data points include:

- Slightly less than one quarter of all reviews explicitly found that immediate dangers to children justified removals:
  - Reviews evaluated how well CFSA engaged with the child and the family before removing the child. Reviewers had the option of choosing “not applicable” because the “removal occurred due to an emergency which legitimately justified the child’s immediate removal, which resulted in CFSA lacking the ability to engage the family before removal.” **Only 12 of 54<sup>39</sup> reviews chose this option.**
  - Reviews evaluated how well CFSA implemented plans with the child and family before removing the child. Reviewers had the option of choosing “not applicable” because the “removal occurred due to an emergency which legitimately justified the child’s immediate removal and, as a result, CFSA lacked the ability to implement any plans with the family before removal.” **Only 13 of 54 reviews chose this option.**
  
- Reviews’ ratings of children’s safety at removal reflected, on average, some concerns, but not immediate dangers warranting removal.
  - Reviews evaluated a child’s safety at the time CFSA removed the child on a six-point scale with 1 being the safest and 6 being the least safe. **The average score was 3.64.**
  - **22 of 54 reviews scored child safety at removal as a 3 or better – reflecting at least “fair safety from imminent risk of physical harm.”**
  - A score of 4 – worse than the average – would reflect “an unacceptable safety issue in one setting that poses an elevated risk of physical harm for the child.” But even that score does not indicate that a removal is justified; “protective supervision or services” may have sufficed. In contrast, a score of 5 or 6 would reflect multiple risks of harm, and a score of 6 would reflect “high” levels of risk.
  - **Only 10 of 54 reviews scored child safety at removal as a 5 or 6.** If children faced immediate dangers severe enough to warrant removal, one would expect a higher number of 5s and 6s.
  - Reviews showed positive improvement in children’s safety from the time of removal to their exit from foster care. **The average child safety score at removal was 3.64, compared with an average score of 2.67 at foster care exit. This increase is positive news and reflects some important changes in families’ behavior with children.** But this increase does not show that removal was necessary to achieve that improvement – especially given the fairly high average scores regarding children’s safety at removal.

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<sup>38</sup> Appendix C.

<sup>39</sup> The Panel reviewed 27 cases, and two members reviewed each case, leading to 54 total reviews.

- Reviews' ratings of parents' and caregivers' physical support of the child at the time of removal reflected, on average, some concerns, but not immediate dangers warranting removal.
  - Reviews evaluated the quality of parenting (or, in the case of a non-parent caregiver, care giving) on a six-point scale with 1 being the best and 6 being the worst. **The average score was 3.61.**
  - **21 of 54 reviews scored parenting/care giving at removal as a 3 or better – reflecting at least “fair parenting/care giving,” casting doubt on the propriety of the removals.**
  - A score of 4 – above the average – does not indicate that a removal is justified; it reflects “minor or moderate problems,” a “marginal” ability to parent, and “some concern” about the child’s ability to continue living there. In contrast, a score of 5 or 6 reflects “substantial and continuing” or “serious and worsening problems,” respectively and reflects “growing” or “serious” concern about the child’s ability to remain in the home.
  - **Only 10 of 54 reviews scored parenting/care giving at removal as a 5 or 6.** If children faced immediate dangers severe enough to warrant removal, one would expect a higher number of 5s and 6s.
  - Reviews showed positive improvement in parenting/care giving quality from the time of removal to their exit from foster care. **The average parenting/care giving score at removal was 3.61, compared with an average score of 2.87 at foster care exit.** This increase is positive news and reflects some important changes in families’ behavior with children. But this increase does not show that removal was necessary to achieve that improvement – especially given the fairly high average scores regarding parenting/care giving quality at removal.
  
- Reviews' ratings of CFSA’s engagement with the family and implementation of plans with the family before removal reflected concerns about the quality of CFSA’s pre-removal work – suggesting that CFSA often failed to adequately explore providing services to a family to prevent the need for removal.
  - Reviews evaluated the quality of CFSA’s engagement with families before removal on a six-point scale, with 1 being the best and 6 the worst. Excluding the minority of reviews (discussed above) which found that an immediate danger to the child justified an absence of engagement and implementation, **the average engagement score was 4.12 and the average implementation score was 4.95.**
  - CFSA’s engagement work fell between a 4 – “marginal engagement” marked by “limited or inadequate outreach efforts” – and a 5 – “poor engagement.” **23 of 54 reviews rated CFSA’s engagement as a 5 or a 6, and only 14 reviews rated CFSA’s engagement as a 3 or better.**
  - CFSA’s implementation work fell between a 4 – “marginal implementation” – and a 5 – “poor implementation.” **28 of 54 reviews rated CFSA’s pre-removal implementation as a 5 or 6, and only 10 reviews rated CFSA’s engagement as a 3 or better.**



- CFSA’s engagement with families and implementation of plans improved significantly after removal. This improved work surely helped achieve some of the improvements in safety and parenting noted above. But read in context of other scores, these numbers suggest that improved engagement and implementation *before* removal could have achieved those same safety and parenting improvements without the trauma and risk of a removal.
  - **The average engagement score between removal and foster care exit was 2.94. The average implementation score between removal and foster care exit was 3.2.**

*Example: The “D” Family.*<sup>40</sup> A child was living with his uncle, who reported to CFSA that he was facing eviction. The uncle said he was feeling overwhelmed, “tired, frustrated, and hungry” and that caring for the child would hinder his relinquishing his apartment. CFSA interpreted this situation as an admission of the uncle’s inability to raise the child and an immediate threat to the child – even though the eviction was not imminent and the uncle’s story could reasonably have been understood as a request for assistance. CFSA removed the child. The case record reveals a later email from CFSA’s lawyer to a Child Protective Services staff member stating “had CFSA responded differently to the uncle’s repeated requests for help, this case might never have led to a removal.” The Panel agrees with this assessment. No imminent danger was present. The eviction was not scheduled for several weeks. CFSA could have helped the uncle obtain a housing lawyer to help him fight the eviction in landlord-tenant court or helped him obtain housing assistance, but instead CFSA removed the child. It is possible that the uncle would have refused to take the child back even if CFSA had provided this sort of assistance. But there is no way to know. We do know that the uncle did take the child back just three days later – strongly suggesting that the uncle did desire to keep the child.<sup>41</sup>

*Example: The “E” Family.*<sup>42</sup> CFSA had evidence that a parent had physically abused one child and properly removed that child. But there was no evidence of such abuse against or imminent danger to the younger child. CFSA removed that child anyway and did not explore whether steps short of removal – such as establishing a safety plan, petitioning a case in Family Court, or providing parenting assistance – could have kept the child safe. The child who was not abused reunified three days after his removal.

*Example: The “A” Family (discussed in Finding 2).*<sup>43</sup> A child lived with his grandmother. He was safe but CFSA was concerned that his grandmother did not ensure that he attended school. As serious as educational neglect is, it does not pose any immediate danger to the child. The case record reflects no evidence of imminent risk to the child. This case is particularly striking because it was the case reviewed with the longest period of time between the investigation referral and removal; the referral occurred in January 2009 and the removal in June 2009. If there was a true emergency, the child likely should have been removed much sooner than June. But the Panel found

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<sup>40</sup> Case number 202733.

<sup>41</sup> CFSA cites this case as an example of the Panel “understat[ing] the level of danger to the children involved.” Appendix G at 5. The Panel respectfully disagrees. The Panel acknowledges that concerns with the family existed. But the Panel concludes that alternatives to removal that could have addressed the uncle’s underlying needs should have been explored prior to taking that step. In response to CFSA’s comments, the Panel has revised the case summary above to make clearer the extent concerns presented by the uncle.

<sup>42</sup> Case number 203384.

<sup>43</sup> Case number 201045.

none, and thus found no basis for the Agency to have removed this child without a Family Court order. The child reunified three days after CFSA removed him.

*Example: The “B” Family (discussed regarding Findings 2 and 4).*<sup>44</sup> CFSA was concerned about a mother’s care for her infant son, whose weight gain and growth was not healthy, according to his doctors. These concerns were serious and legitimate. But when the hotline call arrived, the child was hospitalized and was safe. The week prior to the removal, the child’s mother stated that she would take the child out of the hospital against medical advice; had she attempted to do that, an emergency removal would have been warranted. But several days passed between the mother’s statement and CFSA’s removal; the mother did not act on that statement in the meantime.<sup>45</sup> At the time of removal, there was no indication of any immediate danger to the child. Yet CFSA did not attempt to hold a family team meeting or take any other steps before removing the child. Subsequently, the child’s mother accepted regular nurse visits to assist her in feeding the child and providing necessary medication. The child reunified with his mother two months after the removal. He gained weight and doctors’ concerns about his health faded.

*Example: The “F” Family.*<sup>46</sup> CFSA found that the family’s home was dirty and concluded that the parents were providing marginal care to their four children. But the case record did not provide evidence of imminent dangers to the children. CFSA should have pursued its legitimate concerns without removing the children – CFSA had opened a community case, but had not filed a child abuse or neglect case without first removing the children. The children reunified three months after their removal.<sup>47</sup>

Several other families, whose cases are discussed below, provide additional examples for this finding.

**Finding 7:** The Panel found that **Finding 6** has several important implications.

First, most of the removals studied lacked an adequate legal justification. None of the removals occurred pursuant to a Family Court Order, and thus all occurred pursuant to CFSA’s authority to remove children to protect them from some immediate danger when removal is necessary to such protection. The Panel found that those conditions did *not* exist in the majority of cases.

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<sup>44</sup> Case number 201353.

<sup>45</sup> CFSA comments on a draft version of this report assert that the mother’s “threat” to take the child from the hospital “certainly constituted an ‘immediate danger’ to the child.” Appendix G at 8. The Panel respectfully disagrees. CFSA’s comment acknowledges that the mother’s statement was made “the week prior to the removal.” CFSA’s comment does not explain why CFSA did not remove the child at the time that statement was made. If that statement “certainly” created an immediate danger, why did CFSA wait to remove the child? And, after several days had passed without the mother acting on that statement, what immediate danger existed at the time of removal? CFSA’s comments do not answer these questions.

<sup>46</sup> Case number 202561.

<sup>47</sup> CFSA’s rightly comments that a community case had been opened before the removal and thus was not an appropriate alternative to the removal. Appendix G at 7. The Panel’s draft report had suggested that CFSA should have either opened a community case or filed a neglect case in Family Court without removing the children. We have revised the finding to remove the former suggestion. We note that CFSA’s comments do not explain why it did not file a court case without removing the children. Indeed, elsewhere in CFSA’s comments, the Agency explains that when, as in this case, a parent does not accept in-home services, CFSA can “seek[] the Court’s authority to convince the parent to accept services.” It remains unclear why CFSA did not take that path in this case.

Second, in the majority of cases reviewed – in which the Panel found no immediate danger justifying the child’s removal – CFSA could have (and, legally, should have) filed a petition in the Family Court prior to removing the child. But CFSA did not do so in any of the reviewed cases, as noted in **Finding 2**.

Third, in the majority of cases reviewed – in which the Panel found no immediate danger justifying the child’s removal – CFSA could have held a Family Team Meeting before removing the children. But CFSA did not do so in 26 of the 27 cases reviewed, as noted in Finding 3.

**FINDINGS 8-9:** Many cases reviewed involved a substantial degree of factual and legal complexity, yet CFSA’s investigatory steps leading up to children’s removal did not sufficiently take into account such complexity.

**Finding 8:** Many cases involved multiple siblings. In these cases, different siblings had different facts – sometimes very different facts – requiring individual consideration. That is why District law requires proof not just that one sibling was abused but that each child removed faced some imminent danger of abuse.<sup>48</sup> Yet CFSA removed *all* siblings at once without any apparent analysis individualized to each child of whether an emergency removal was appropriate for him or her.

*Example: The “G” Family.*<sup>49</sup> This case involved a family with four siblings. The eldest child exhibited extremely difficult behaviors and was suspected of having molested his younger sister. The children’s mother seemed unable to manage the eldest child’s behavior well and resorted to physical abuse; the Panel considers CFSA’s removal of the eldest child to be justified. But the only immediate danger to the younger sister came from that eldest child; once he was removed, there was no need to remove her as well. Other concerns existed regarding two of the three other children. One of the two other children needed immediate medical attention, but CFSA did not help him get that medical attention, and simply removed him. The mother’s failure to provide that medical attention makes the removal decision regarding this child a close call; the Panel believes more alternatives to removal should have been provided. There were allegations that the mother had withheld food from the children, though no suggestion that the children appeared malnourished (thus making it difficult to conclude that this troubling allegation established an immediate danger). The youngest child showed no evidence of abuse or neglect yet was removed as well. CFSA should have removed the eldest child and put services in place to keep the three younger children safely with their mother. Indeed, the youngest child – who was never in any danger – was returned within two weeks of the removal, and the two other children were returned within three months of their removal after intensive therapy had been put in place. The Panel concludes that those three children should not have been removed and, instead, the family should have been subject to CFSA and possibly Court oversight and therapy put in place.<sup>50</sup>

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<sup>48</sup> D.C. Code § 16-2301(9)(A)(v).

<sup>49</sup> Case number 195606.

<sup>50</sup> CFSA comments on a draft version of this report suggest that the Panel inappropriately “dismisses” legitimate concerns in this case, especially those related to one child’s need for immediate medical attention. Appendix G at 6. As with similar comments regarding other cases, two responses are appropriate. First, the Panel recognizes the serious concerns that did exist in this case and has revised the case description to more explicitly note them. The Panel makes no attempt to “dismiss” them. Second, the Panel stands by its conclusion that the precise concerns differed from one sibling to another, and that alternatives to removal could and should have been explored prior to removing all of them.

*Example: The “H” Family.*<sup>51</sup> This case involved a family with three siblings. Two of the siblings had been neglected and removed in one month; those siblings were not the subject of the Panel’s review. At the time of their removal, the third child was living with another relative. About one month later, that child came to live with her mother. There was no evidence of any neglect of that child. Yet when CFSA learned that the child was with her mother, CFSA removed her and she spent about 5 weeks in foster care. The case record reflected no justification for her removal or stay in foster care, and no changes in her mother’s ability to care for her during her five week stay in foster care. Rather, CFSA appeared to assume that the removal of one sibling justified the removal of the others.

*Example: The “C” Family (the same family discussed regarding Finding 5).*<sup>52</sup> CFSA had evidence that a parent had physically abused one child and properly removed that child. But there was no evidence of such abuse against the younger child. CFSA removed that child anyway and did not explore whether steps short of removal – such as establishing a safety plan, petitioning a case in Family Court, or providing parenting assistance – could have kept the child safe. The child who was not abused reunified three days after his removal.

**Finding 9:** The cases reviewed by the Panel involved some legal complexity, yet in no case did social workers seek advice from with CFSA lawyers before removing children. The absence of legal consultation contributed to inappropriate removals. Such consultation would have helped ensure individualized consideration of all children involved and adequate justification for a removal. Better distinctions between true emergencies and other situations that do not require immediate removals (see Findings 6-7) would permit more such consultations. But even with true emergency removals, nothing prevents a social worker at a child’s home from speaking with a lawyer at the CFSA office.

*Example: The “E” Family (the same family discussed regarding Finding 6):* The removal of the third sibling appeared to be based on the incorrect belief that a Family Court order placing the other two siblings applied to the third sibling as well. There was no apparent justification for this belief. As all CFSA lawyers and social workers should know, each child has a separate court case and an order regarding one sibling does not necessarily apply to other siblings. Had the social workers consulted a lawyer prior to removing the third sibling, her unnecessary removal might have been avoided.

*Example: The “T” Family.*<sup>53</sup> A man previously convicted of abusing his step-daughter was released from prison. CFSA suspected he was again living with his step-daughter and was concerned he may abuse her again. CFSA then removed her and her two younger siblings. (All suspicions related to the older child and there was no apparent individualized analysis of risks faced by the younger child, so this case could also be an example for Finding 8.) CFSA returned all three children and decided not to prosecute the case three days later after the CFSA lawyer concluded that the Agency lacked sufficient evidence to prosecute the case. Pre-removal consultation with the lawyer could either have helped CFSA generate sufficient evidence<sup>54</sup> or avoided an unnecessary removal.

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<sup>51</sup> Case number 202712.

<sup>52</sup> Case number 203384.

<sup>53</sup> Case number 140227.

<sup>54</sup> The Panel suggested that a legal consultation might have helped CFSA generate sufficient evidence because we simply cannot know what further investigation might have turned up. The Panel does not suggest whether or not further investigation would have lead to sufficient evidence. CFSA’s comments on the Panel’s draft report state that “[t]here is

*Example: The “D” Family (the same family discussed regarding Finding 6).*<sup>55</sup> A child was living with his uncle, who reported to CFSA that he was facing eviction. CFSA interpreted this situation as an admission of the uncle’s inability to raise the child rather than a request for assistance and removed the child. The case record reveals a later email from CFSA’s lawyer to another CFSA staff stating “had CFSA responded differently to the uncle’s repeated requests for help, this case might never have led to a removal.” The Panel agrees with this assessment. Had the social worker consulted this lawyer before removing the child, this view may have prevailed and the unnecessary removal avoided.

**FINDINGS 10-11:** Many cases involved situations in which alternative short-term caretakers – and not foster care – were necessary, yet CFSA removed children rather than find such alternatives.

**Finding 10:** Several cases involved children who needed very short-term alternative caretaking arrangements. CFSA operated as if foster care was the only option. In none of these cases did CFSA offer or provide respite care – even though District law and the *LaShawn A. Modified Final Order* specifically list this service as one CFSA should provide to help preserve families.<sup>56</sup> The Panel urges CFSA to take immediate action to follow both the letter and spirit of these legal authorities. Absent such action, the Panel urges the federal court Monitor and plaintiffs’ counsel to take appropriate action with the federal court.

*Example: The “J” Family.*<sup>57</sup> A mother of several children needed medical attention. She arrived at a hospital with her children and did not have someone who could take care of them overnight after she was admitted to the hospital. The mother could not identify any relatives who could take care of her children, nor had she planned for anyone to take care of her children while in the hospital.<sup>58</sup> These facts raise concerns, but instead of removing the children, CFSA could have provided respite care. In actuality, CFSA placed these children in foster care. These children were reunited with their mother four days later, after her release from the hospital. But CFSA placed the mother on the child protection registry, inhibiting her ability to obtain employment in a variety of fields, and she will bear the burden of that registry placement for years. And she and her children faced the risk of an extended separation by CFSA’s usage of the foster care system, rather than provision of respite care. As one Panel member noted on this case: “A Draconian way to care for children while mother is in the hospital. Are there no alternatives except placing kid in foster care???”

*Example: The “K” Family.*<sup>59</sup> A teenage mother who was herself in foster care was placed in a congregate care facility. She felt unsafe there and so ran away with her son. She needed medical

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nothing to suggest that a lawyer could have helped ‘generate additional evidence.’” Appendix G at 9. That may well be the case – but if so, it only underscores the point that insufficient evidence existed, and a legal consultation could have prevented an unnecessary removal.

<sup>55</sup> Case number 202733.

<sup>56</sup>D.C. Code § 4-1303.03(a)(13)(j) & (b)(4)(j); *LaShawn A. v. Dixon*, Modified Final Order at p. 10, III.C.2.g.

<sup>57</sup> Case number 192756.

<sup>58</sup> CFSA’s comments rightly note that identifying relatives who could take care of the children “would have been the preferred option.” Appendix G at 8. The Panel agrees. But in this case, when no such relatives were identified, respite care presented a better option than removal. More generally, the mother’s inability to identify anyone who could take care of her children raises concerns about her social isolation. But removing her children did nothing to address that need, nor was it necessary to protect her children.

<sup>59</sup> Case number 203127.

attention and had no one to take care of her son. Rather than provide respite care, CFSA removed the child and placed him in foster care.<sup>60</sup> CFSA also placed this young woman on the child protection registry, imposing a significant disability on her efforts to obtain steady employment and achieve self-sufficiency. The young woman and her son were reunified less than two weeks after his removal once CFSA found a foster home for her – something it likely should have done weeks earlier, before she had run away from her previous placement.

CFSA's comments on the draft version of this report state the following about this case: "In fact, the report speaks of her [the mother's] immaturity and poor decision making. At the time they were found, the mother had no formula or extra diapers for the child and no coat (in February)."<sup>61</sup> These facts are significant and concerning. But removing the young woman's child was more invasive than necessary to address them. For instance, CFSA could have provided a small amount of formula, diapers, and a coat.

CFSA's comments also state the following about this case: "Prior to the removal the investigator worked with the mother to try to identify any family or supports that could care for the child, but none could be found. Here again, CFSA's only real option was to place the child in a licensed foster home."<sup>62</sup> The Panel disagrees with CFSA's analysis, and respectfully suggests that this case represents a good example of when respite care could have prevented a removal. The lack of relative caretakers is indeed concerning; such social isolation is likely not good for the young woman or her child. But it is illogical to conclude, as CFSA does, that the "only real option" was to remove the child. CFSA could have used respite care while the young woman received medical attention, and CFSA could have explored other options besides removal while respite care was used. CFSA's comments do not explain why this was not possible.

**Finding 10(a):** In several cases, a parent designated (or could have designated) an alternative short-term caretaker – usually another relative not implicated in any abuse or neglect. CFSA did not respect such designation and instead removed children from their families, placing them in foster care, and placing their parents on the child protection registry. In no cases reviewed did CFSA permit children to live with alternative caretakers. These cases most frequently involved situations in which a parent was arrested. CFSA appeared to operate as if no alternative approaches existed – CFSA did not consider releasing children to individuals named by parents, even when those individuals were present, and in several cases failed to even ask the parent to designate an alternative caretaker. Alternative approaches do exist, however. For instance, parents have the authority to designate another individual as a short-term caretaker by granting them a custodial power of attorney.<sup>63</sup>

These cases are particularly concerning because CFSA's actions contradict its own policy statements. CFSA's policy statement provides that to establish neglect when a parent is in jail, that

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<sup>60</sup> The draft version of this report included this statement: "CFSA took this step even though its own investigation concluded that the child faced no immediate danger and that his mother had a high degree of protective capacity." One reviewer's notes on this case reflected these statements were made in CFSA's investigation summary. CFSA's comments on the draft version of this report state that the investigation summary does not reflect this conclusion. Appendix G at 8. The Panel has not re-reviewed the case file and instead deleted this sentence from the above summary as it does not detract from the bottom line conclusion.

<sup>61</sup> Appendix G at 8.

<sup>62</sup> Appendix G at 8.

<sup>63</sup> D.C. Code § 21-2301.

“CFSA must demonstrate that the caregiver made no appropriate provision or plan for the child’s care.”<sup>64</sup> Yet even when appropriate provision for children’s care existed – as when another family member arrived on the scene to take care of the children – CFSA still insisted on removing the children. And in several cases, CFSA failed to make efforts to determine if a parent had made some provision or plan for children’s care.

*Example: The “L” Family.*<sup>65</sup> The father of four children assaulted their mother. The Metropolitan Police Department arrested both the father and the mother following this incident. (The MPD’s role is discussed in Finding 11.) An aunt of the children appeared on the scene but neither MPD nor CFSA considered releasing the children to her. The case record reflected no effort to determine the mother’s wishes regarding short-term care of her children. CFSA removed the children. Their mother was released from jail very shortly and CFSA returned the children three days after their removal. CFSA could have avoided this traumatic separation and the placement of the mother on the child protection registry by permitting the aunt to take the children or asking the mother to designate a temporary caretaker via a custodial power of attorney.

*Example: The “M” Family.*<sup>66</sup> This child’s parents were in the process of divorcing, and her father physically assaulted her mother. MPD arrested both parents and contacted CFSA. The child’s brother was temporarily staying with the children’s grandmother. The grandmother physically came to CFSA to request that she take care of the child who was removed, but CFSA did not release the child to her grandmother. The case record indicates no effort to ask the mother to designate a caretaker. CFSA removed the child, placed her with strangers, and placed her mother on the child protection registry. Her mother was quickly released and reunified with her daughter four days after the removal.

*Example: The “N” Family.*<sup>67</sup> A father assaulted a mother while their two children were in another room. MPD arrested both parents. CFSA – to its credit – attempted to talk with their mother on the day of her arrest to identify alternative caretakers, but MPD refused CFSA access to her while she was in a police station. The DV incident, arrest, and loss of her children appeared to trigger an understandable mental health crisis in the children’s mother, who was subsequently hospitalized. The children reunified with their mother when she was released from a hospital two weeks after the removal. Better handling of the case by both MPD (which should not have arrested the mother) and by CFSA (which should have sought alternative caretakers and not accepted MPD’s refusal of access to the mother) may have prevented those difficult two weeks.

**Finding 10(b):** In one case, CFSA refused to release two children to their own mother who had done nothing wrong.<sup>68</sup> The children’s maternal grandmother was a recovering substance abuser and had been clean and sober for a substantial amount of time. Their mother reasonably relied on the grandmother’s babysitting. Unfortunately, the grandmother relapsed one evening and left the young children alone. CFSA could not immediately locate the mother and reasonably took custody of the children. But when the mother showed up at CFSA that same day, CFSA inexplicably refused

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<sup>64</sup> CFSA Investigations Policy, at 24, <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Policy/CFSA+Policy+Manual+Table+of+Contents/Program+Policies/Program+-+Investigations>.

<sup>65</sup> Case number 203179.

<sup>66</sup> Case number 203311.

<sup>67</sup> Referral number 653217 (case number not available).

<sup>68</sup> The “O” Family, referral number 648592.

to release her children to her, despite its legal obligation to release them to her “with all reasonable speed.”<sup>69</sup> Instead, CFSA kept the children in foster care for three days and then released them.

**FINDING 11:** The sometimes problematic role of the MPD

The Metropolitan Police Department plays an important role in removal decisions. As the examples discussed in Finding 10 reveal, MPD arrest decisions can lead CFSA to make removal decisions. The MPD then takes custody of arrested parents and may or may not provide CFSA access to those parents to explore alternative temporary caretaking arrangements or to investigate possible arrest. Three specific actions by MPD in the cases reviewed, discussed below, are particularly harmful to children and call for reform.

CFSA’s comments on a draft version of this report state that “CFSA and MPD have a long standing partnership in collaboratively conducting investigations” and that the above cases “do not fully recognize this partnership.” This point is well taken. The Panel did not review the CFSA-MPD relationship in general and only makes findings regarding the cases reviewed.

**Finding 11(a):** To state the obvious, police should arrest criminals and not their victims; MPD should arrest only the perpetrator of domestic violence and not the survivor. Yet in several cases (described above regarding Finding 10), one partner assaulted another, and MPD arrested both individuals. In such a situation, MPD should determine who is at fault and arrest that individual, and only that individual; MPD should leave the adult who is not at fault to take care of any children who are involved. By arresting the second individual, MPD not only violates the domestic violence survivor’s rights, but creates an entirely unnecessary crisis for her children.

This conclusion is consistent with domestic violence advocates’ calls for law enforcement to “identify the predominant aggressor” and to “avoid dual arrests at all costs!”<sup>70</sup>

The Panel urges MPD to review its practices to determine if the cases described above are aberrations or reflect more widespread activity. We note that since 2003, the Metropolitan Police Department has operated under a “General Order” regarding intrafamily offenses, which outlines in detail the practices police officers are supposed to follow to identify the primary aggressor.<sup>71</sup> When an individual officer cannot identify the primary aggressor, the General Order provides that the officer “shall request that a detective or a supervisory official respond to the scene to assist in making the determination.” The General Order further provides that dual arrests – as occurred in the above cases – should only occur in limited circumstances. The Panel did not attempt to review MPD practices and cannot determine based on the CFSA records reviewed if MPD officers followed this General Order. But the Panel is concerned that violations of the Order may have occurred.

**Finding 11(b):** When MPD arrests parents and refers their children to CFSA, it is essential that CFSA be able to speak with parents. Parents can identify alternative caretakers. Such

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<sup>69</sup> D.C. Code § 16-2311(a)(1).

<sup>70</sup> D.C. Coalition Against Domestic Violence, Identifying the Predominant Aggressor, Slides 1 and 23, <http://dccadv.org/img/fck/file/Resources/DCCADV%20Predominant%20Aggressor.pdf>.

<sup>71</sup> Metropolitan Police Department, General Order 304.11, Intrafamily Offenses, at 15-16, <http://www.justiceonline.org/dcmpd/GOOPS30411.pdf>.



interviews are essential to determining if the child was abused or neglected and what steps CFSA should take. The Panel is troubled by the case in which MPD refused CFSA access to a parent who had been arrested. Both MPD and CFSA ought to recognize that when a parent is simultaneously the subject of a criminal and child protection investigation that both investigations are important and that the agencies must cooperate.

**Finding 11(c):** In at least one case that did not involve the arrest of a parent, MPD made the initial decision to remove a child. That decision was suspect, and the child remained in foster care for more than one month. In that case,<sup>72</sup> a teenage boy physically attacked his mother while they stayed at the D.C. General family shelter. Someone called the MPD and the mother – who had just been attacked – said in anger that her son had to go. She soon recanted that statement and asked the MPD to not remove him. MPD removed him anyway – despite the absence of neglect in this specific instance. CFSA went on to provide therapy to help mother and child develop a healthier and safer relationship, and the family reunified. MPD could have prevented that two-month separation by showing more discretion on the day of removal and providing therapy without removing the child.<sup>73</sup>

**FINDING 12:** Inappropriate refusal to release children to non-offending fathers

In two cases, CFSA appropriately removed children from their respective mothers and the children left foster care to their fathers' custody. Although the Panel does not question – and indeed applauds – CFSA's removal actions in these two cases, CFSA's subsequent behavior threatened to harm the children by impeding their prompt reunification with their fathers. These cases suggest a problem with how CFSA handles cases involving one unfit parent and one non-offending parent. The non-offending parent should quickly obtain custody of his child because children's best interests are presumptively served by living with a fit parent. But these two cases suggest that CFSA inexplicably – and likely illegally – interfered with the fundamental right of these children and their fit parents to live together.

*Example: The "P" Family.*<sup>74</sup> This child's mother left her overnight with a babysitter without telling the sitter that she would be gone overnight and without making any alternative arrangements. The babysitter was unable or unwilling to take the child indefinitely. CFSA could not locate the mother and took custody of the child. CFSA also quickly identified the girl's father. He attended her post-removal family team meeting. The case record revealed no reason to conclude that he was anything but a fit father. Yet CFSA refused to release the child to him after the FTM. And CFSA inexplicably objected to the Family Court order releasing her to her father's custody. But for that order, the child could still be in foster care.

*Example: The "Q" Family.*<sup>75</sup> The mother of this young girl was arrested for grand theft. She identified her aunt as an alternative caretaker, but the aunt refused to take the child. (The Panel gives CFSA credit in this case for considering the aunt as a caretaker and wishes such efforts were

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<sup>72</sup> The "R" Family, case number 125447.

<sup>73</sup> The Panel's draft report had also faulted CFSA for not sufficiently questioning MPD's actions. CFSA's comments on that drafts highlighted the actions it did take – specifically, trying to find the mother at the shelter on the same day the incident with MPD took place. Unfortunately, the mother was not present when CFSA arrived. Appendix G at 9. CFSA's comment is well taken and the Panel has revised this case vignette to focus on the removal itself by MPD.

<sup>74</sup> Case number 203010.

<sup>75</sup> Case number 203173.

made in other cases in which a parent identified alternate caretakers.) The child's father was promptly identified. The father was young and may have benefitted from some parenting supports, but the case record reflects that CFSA nonetheless kept the child in foster care for nearly 3 months. The case record reflects no evidence that the father abused or neglected the child or was otherwise unfit.

Beyond these two cases, the case records reviewed revealed little effort to identify children's fathers. Children most frequently lived with their mothers and in 24 of the 27 cases reviewed, CFSA removed children from their mothers. When a parent – most often a father – is involved in his child's life and is not responsible for any abuse or neglect that occurred, prompt efforts to identify him and help him obtain custody of his children is both good practice and respects the legal right of fathers to the custody of their children and of children to live with their non-offending parents. The Panel is concerned about the dearth of material in the case records regarding children's fathers and paternal relatives. Certainly, some of this absence reflects the social problem of too few involved fathers, but the Panel fears that a portion also reflects CFSA's failure to identify fathers adequately and pursue placements with them seriously.

**FINDING 13:** The majority of removals studied were not justified.

After evaluating each case, Panel members answered several concluding questions, including whether reviewers agreed with CFSA's removal decision. **In 26 of 54 reviews, the answer was “no,” either because children faced no risk of harm which would justify removal or because alternatives to removal should have been explored prior to removing the child.** In 3 more reviews, Panel members chose “unknown” because “the case record does not reflect sufficient information to determine if the child should have been removed” – itself indicating a concerning lack of justification for the removals in those cases. **In 25 of 54 reviews, the answer was “yes.”**

These results – 29 of 54 reviews showing disagreement with or lack of justification in the case record for a removal – lead to the conclusion that the majority of removals studied were not justified.<sup>76</sup>

**FINDING 14:** Children in cases reviewed almost always returned to the same caretaker from whom CFSA removed them.

The Panel concludes that quick return cases do not involve changes in custody, with only rare exceptions. In all but two of the cases reviewed (the two cases involving fathers discussed in Finding 12), the children at issue returned to the same caretaker from whom they were removed. That is, in 25 of 27, or 93 percent of the randomly selected cases, children's quick exit from foster care cannot be explained by a change in custody from one caretaker to another.

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<sup>76</sup> The number of unjustified removals may be even larger. Four of the 25 “yes” answers reflected significant concerns about the removals. One review with a yes answer stated that the removal was not justified by an imminent risk of harm “but because CFSA had no choice.” In that case, CFSA did have a choice – to provide respite care. (S. Family, Case number 203127.) Comments regarding another case (C. Family, case number 202733): “Seems like a Draconian way to care for children while mother is in hospital. Are there no alternatives except placing kids in foster care???” and that the removing social worker “had ZERO alternatives,” given the systemic problem of no respite care. Comments for another (T. Family, case number 201045) included a statement that the youth did not face imminent harm and that the reviewer did not know whether the children ought to have been removed.

**FINDING 15:** Children are safe upon leaving foster care and returning to their families.

The Panel concludes that quick exits from foster care did not result from inappropriate decisions to return children to their families. Neither CFSA nor the Family Court placed children at significant risk of harm by returning them to their families quickly. The vast majority of cases involved no further substantiated maltreatment reports. Only 4 of the cases reviewed included any subsequent allegations of maltreatment, and only 3 of those cases lead to children re-entering foster care. **Thus, in 24 of 27, or 86 percent of cases, there was no documented future maltreatment. And in 25 of 27, or 89 percent of cases, there were no foster care re-entries.**

A closer look at the data yields an even stronger conclusion. One of these 4 instances of maltreatment was not severe enough to lead to the child's re-entry to foster care. Two other instances of maltreatment related to issues entirely different from those at issue during the child's first stay in foster care, and thus could not be reasonably predicted from the child's first stay in foster care. For instance, one case<sup>77</sup> involved two brothers forcibly separated from their mother for three days when the children's grandmother failed to babysit them as promised. After refusing to return the boys to their blameless mother for three days, CFSA decided (wisely) not to pursue the case and let the family reunify. Sometime later, the boys' mother was the victim of a serious assault by the boys' father (her ex-partner) and she needed significant time to recover in a hospital before she could care for the children, who were placed in foster care in the meantime. This later case does not suggest that the children should not have remained in their mother's custody in the first case.

Only 1 of the 4 instances of maltreatment even arguably involved the same issues that arose during the child's brief entry into foster care. We say "arguably" because the two Panel members who reviewed that case disagreed over whether the later maltreatment should be considered a new issue or a continuation of the old issue.<sup>78</sup>

Even assuming that this later case involved a continuation of the old issue, only 1 of the 27 cases reviewed had a subsequent finding of maltreatment and re-entry into foster care that could be tied back to the earlier case. Put another way, children experienced new maltreatment in a manner that could have or should have been predicted before the children were reunified in only one case reviewed. **In 26 of 27, or 96 percent of the cases reviewed, children did not suffer abuse or neglect that could reasonably have been predicted when the children left foster care and reunified with their family.**

This finding is supported by other elements of the Panel's review. The Panel rated children's safety at the time of their exit from foster care on a six-point scale, with a 1 being the safest. **The average child safety score at foster care exit was 2.67, reflecting something between "good safety" and "fair safety."** Only 1 of 54 reviews rated child safety at foster care exit as a 5 or 6. The Panel also rated the quality of parenting/care giving at the time children left foster care on a six-point scale, with a 1 being the best. **The average parenting/care giving score at foster care exit was 2.87, reflecting something between "good" and "fair parenting/care giving."** Only 4 of 54 reviews rated child safety at foster care exit as a 5 or 6.

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<sup>77</sup> The R. Family, referral number 648592.

<sup>78</sup> The B. Family, referral number 653217.

Panel members also recorded whether they agreed with the decision that the child should leave foster care. **46 of 54 reviews answered “yes”** – either because the child faced no significant threat of harm upon returning or because the risk of harm from a continued separation from their families was greater than the risk of harm upon their return to families.

This finding is also consistent with data provided to the Panel by CFSA. Of the 159 children who CFSA removed in FY 2009 and who left foster care within 120 days of their removal, only 2 children had been removed in the subsequent six months.<sup>79</sup> Similar low numbers are present for children removed in earlier years.<sup>80</sup> CFSA reported higher numbers of removals among children as more time passed. For instance, 14 of the 132 children removed by CFSA in FY 2008 and who returned in less than 120 days were removed six to 12 months after they first left foster care. These numbers are themselves fairly small – less than seven percent of relevant children were re-removed by CFSA within six to 12 months of their exit from foster care.<sup>81</sup> In addition, as more time goes on, the possibility that a later removal relates to factors that could not have been predicted at the time of the initial exit from foster care increases.

The Panel thus concludes that CFSA’s allowing children to quickly leave foster care does not reflect children leaving foster care who should have remained in government custody. This conclusion is consistent with data reported to the federal government, which shows that more than 96 percent of D.C. children who suffer one form of maltreatment are not found to have been subject to repeated maltreatment within the following six months – a success rate that is above both the national median performance and the standard set by the U.S. Department of Health and Human Services and for which we commend CFSA.<sup>82</sup>

**FINDING 16:** CFSA made or supported most of the decisions for children to leave foster care.

The Panel’s reviews lead to the conclusion that most children left foster care with CFSA’s support. In nine cases, CFSA decided to release the child and not prosecute the case. In 14 cases, the Family Court issued an order releasing children from foster care and returning them to their families, and the case records reflect no indication that CFSA objected to such orders. In only four cases did the Family Court decide to return children to their families over CFSA’s objection.

**FINDING 17:** Missing data.

Most of the case files reviewed contain thorough case notes. A handful, however, lacked essential information, such as case notes in the days leading up or immediately following a removal.<sup>83</sup> CFSA staff kindly reviewed CFSA’s FACES database to determine if more data were available in

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<sup>79</sup> See Appendix F.

<sup>80</sup> Four children in the FY 2008 cohort, three children in the FY 2007 cohort, and seven children in the FY 2006 cohort were removed within six months of their exit from foster care.

<sup>81</sup> 10 of the 150 children in the FY 2007 cohort were re-removed six to 12 months after they left foster care, as were 9 of the 205 children in the FY 2006 cohort. Taken together with the FY 2008 data, 33 of the 487 children removed by CFSA who left foster care in less than 120 days were re-removed by CFSA six to 12 months after their exit.

<sup>82</sup> Testimony of D.C. Child and Family Services Agency Interim Director Roque R. Gerald, to the D.C. Council Committee on Human Services, March 17, 2011, at 5.

<sup>83</sup> See case numbers 202712 & 201353.

that database and reported that it was not. The Panel hopes that these are isolated instances. If not, the Panel urges CFSA to ensure that social workers maintain appropriately detailed case notes.

The Panel emphasizes that the majority of the case files reviewed contained thorough notes. CFSA's comments on a draft version of this report state that "the CRP suggests that CFSA does not include adequate justification of removals in the case file."<sup>84</sup> To be clear, with exception of the two cases noted regarding this finding, the Panel does not suggest a widespread problem with case records. The Panel's findings discussed above do relate to the justification for removal, but the Panel does not make general findings about the documentation of case activity by CFSA.

### **CONCLUDING THOUGHTS REGARDING PANEL'S FINDINGS**

Taken together, the above findings suggest that many children removed by CFSA who stay in foster care for a relatively short period of time did not have to be removed from their families. Removing a child is a severe step that is traumatic for children and should be used only when necessary. In many of these cases, the Panel concludes that alternatives to removal could have and should have been explored before that step was taken.

The Panel recognizes that the families in the cases reviewed typically needed some significant assistance, and often some oversight or monitoring, and had significant problems, including problems that raised concerns about children's safety. The question is how CFSA should have best responded to those concerns. A group of independent, modestly informed, and concerned citizens – members of the Citizens Review Panel – reviewed these cases and concluded that in many cases, a step short of removal should have been tried.

The Panel reached this conclusion with the benefit of hindsight – reviewers could see what (if anything) changed between a child's removal and a child's return home, and whether the child was safe upon return. By definition, the cases reviewed included children who were able to return home fairly quickly, and the reviews found that these children were safe upon their return. Those facts naturally raise the question whether CFSA could have arranged for services to be provided to these families before removing them. We hope that using the benefit of hindsight will provide useful insight to CFSA's case handling decisions.

In comments responding to a draft version of this report, CFSA states its belief that the Panel's case "vignettes regularly understate the level of danger to the children involved."<sup>85</sup> The Panel respectfully disagrees. Each reviewer took great care to review each case file. Reviewers' evaluations balanced the risk to children in each particular situation with the harm to children that would come from removing them from their families, and to consider alternative solutions to removal. The Panel acknowledges what we take to be CFSA's core concern – that these cases do, in fact, involve families with some significant needs, in which some child safety concerns exist.

The core disagreement between the Panel and CFSA appears to rest in what to do about these safety concerns. CFSA's comments suggest it stands by removal decisions in each case. We hope that this is not CFSA's permanent position as we believe it understates the harm to children

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<sup>84</sup> Appendix G at 2.

<sup>85</sup> Appendix G at 5.

caused by removal, and under appreciates alternatives to removal. We believe that this report supports that conclusion and demonstrates room for improvement.

## V. RECOMMENDATIONS

Section IV identified areas in CFSA’s investigations and removal practice that the Panel believes need to be improved. The Panel is sympathetic to the incredibly difficult job that CFSA has in child protection investigations and removal decisions, but the difficulty of those decisions does not detract from the need to address areas that need improvement. We ask CFSA to address these areas with urgency.

The good news is that the findings discussed in Section IV identify significant opportunities for improvement. Based on those findings, the Panel makes the following recommendations to CFSA. As noted below, many of these recommendations overlap with each other.

### 1) **The Panel recommends that CFSA clearly define what immediate risks to children justify their removal without a Family Court Order.**

CFSA could avoid many unnecessary removals by more accurately identifying when a true emergency exists. To accomplish this goal, we urge CFSA to develop clearer guidance for child protective service staff regarding when emergency removals are appropriate and when they are not. We further urge CFSA to train CPS staff and supervisors on this guidance, and evaluate CPS staff and supervisors based on their compliance with this guidance. We note that this strategy is similar to one recommended by the National Conference of State Legislatures as a means of safely reducing the number of children entering foster care.<sup>86</sup>

The Panel is struck by the absence of any direct CFSA policy defining what circumstances justify an emergency removal. As explained in Part III, District law governing removals suggests that emergency removals should be rare.<sup>87</sup> Yet existing guidance in CFSA’s policy manual does not broach the topic of what constitutes a true emergency.<sup>88</sup>

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<sup>86</sup> National Conference of State Legislatures, *Legislative Strategies to Safely Reduce the Number of Children in Foster Care*, at 8 (2010), [http://www.ncsl.org/documents/cyf/strategies\\_reducing\\_the\\_number\\_of\\_children\\_in\\_foster\\_care.pdf](http://www.ncsl.org/documents/cyf/strategies_reducing_the_number_of_children_in_foster_care.pdf) (recommending that States “[c]learly define ‘child abuse,’ ‘child neglect,’ ‘safety risk’ and ‘safety threat’”).

<sup>87</sup> CFSA’s comments on a draft version of this report take issue with the Panel’s use of the word “rare.” Appendix G at 2. Indeed, the statute does not use that word in describing emergency removal authority. But the statute is structured to make emergency removals permissible in only limited circumstances meeting two criteria – when the child faces an “immediate” danger and removal is “necessary” to protect the child from that danger. The standard for a judge to order a child into shelter care is less strict; shelter care is appropriate if necessary to “protect the person of the child” – without reference to any immediate danger. Compare D.C. Code § 16-2309(a)(3) and §16-2310(b)(1). Emergency removals are, therefore, limited by the statute and should only occur when their strict criteria are met.

<sup>88</sup> See, e.g. CFSA Administrative Issuance 09-18, Court Papering for Child Protective Services (CPS) Investigations, [http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI\\_CourtPaperingforChildProtectiveServicesCPSInv.pdf](http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_CourtPaperingforChildProtectiveServicesCPSInv.pdf).

Other CFSA data show that removing children without a Court order is not simply widespread but nearly universal. CFSA has reported that it removed children before filing a court petition in 98 percent of all cases in FY 2010, and 97 percent of cases filed so far in FY 2011.<sup>89</sup>

Given the prevalence of emergency removals, the legal structure imposing limits on such removals, and the Panel's findings that emergencies did not, in fact, justify many of CFSA's removals, the Panel strongly recommends that CFSA address this issue with urgency.<sup>90</sup>

**2) The Panel recommends that CFSA make better use of legal procedures to file a case without removing children.**

As described in Part III, District law provides two avenues for CFSA to remove a child. If an emergency exists and removal is necessary to protect the child from that danger, CFSA can remove a child and then go to Family Court. CFSA can also file a child abuse or neglect case in Family Court and ask the Court to order the child placed in the Agency's custody. It is striking that CFSA has a policy describing what social workers should do when they remove children without seeking Court approval first,<sup>91</sup> but it has no policy for filing a case in Family Court without seeking removal of children.<sup>92</sup> Perhaps the absence of such policies (and related training and supervision) explains the statistic cited above stating that nearly every court case begins not with CFSA filing a petition but with CFSA removing a child.

When true emergencies do not exist or when alternatives to removal may protect the child, the Panel urges CFSA to use the proper legal path and file an abuse or neglect petition in the D.C. Family Court before it removes children. We recommend that CFSA:

- Issue a policy describing how child protection workers can, before removing a child, file a Family Court case and seek a Family Court order for a removal in those cases, if the social worker believes a removal is necessary. This policy should likely be issued in conjunction with guidance defining what situations justify emergency removals.

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<sup>89</sup> CFSA reported that out of 661 neglect petitions in FY 2010, 648 involved pre-petition removals. Of 164 petitions through January 31, 2011, 159 involved pre-petition removals. CFSA Performance Oversight Responses, Round 2, Q6. According to the Family court, pre-petition removal has accounted for 86 to 90 percent of new filings every year from 2005 through 2009. District of Columbia Family Court 2009 Annual Report at 40, <http://www.dccourts.gov/dccourts/docs/family/2009FamilyCourtAnnualReport.pdf>.

<sup>90</sup> In July 2011, CFSA provided the Panel with its recently updated Investigations Practice Operational Manual, which includes sections on safety assessments and removal decisions. The Panel has not had time to evaluate this detailed document and thus reaches no conclusion whether this document addresses this recommendation.

<sup>91</sup> CFSA Administrative Issuance 09-18, Court Papering for Child Protective Services (CPS) Investigations, [http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI\\_CourtPaperingforChildProtectiveServicesCPSInv.pdf](http://cfsa.dc.gov/CFSA/Publication%20Files/Policy%20Manual/AIs/AI_CourtPaperingforChildProtectiveServicesCPSInv.pdf).

<sup>92</sup> CFSA Investigations Policy, at 29-33, <http://cfsa.dc.gov/DC/CFSA/About+CFSA/Policy/CFSA+Policy+Manual+Table+of+Contents/Program+Policies/Program+-+Investigations>. This Policy outlines steps to take when a social worker removes a child first, but includes no guidance for initiating a court case without removing a child. CFSA provided the Panel with a copy of its new Investigations Practice Manual. This Manual is not a formal Policy, and so does not address the concern about a Policy governing emergency removals but not papering cases without a removal. Still, to CFSA's credit, that Manual does include a section on "Community Papering" – that is, filing a neglect case without removing a child. But the Manual suggests that such cases may only occur "[w]hen CFSA has been working with a family through an in-home case," that is cases "no longer in CPS" – a standard which excludes all but one of the cases discussed in this report. The Panel does not believe that community papering should be so limited, and suggests that CFSA expand the process discussed in the Manual to include CPS cases.

- Train CPS social workers, supervisors, and CFSA attorneys on this policy, and evaluate social workers and supervisors based on their adherence to it.

CFSA’s comments on a draft version of this report assert CFSA’s belief that circumstances in which community papering is appropriate “are rare.”<sup>93</sup> The Panel respectfully disagrees; this report identifies a number of cases in which such papering would have been appropriate. Even if only a small portion of all cases are appropriate for community papering, a policy explaining when such community papering is appropriate and training staff on that policy would be a step forward..

**3) The Panel recommends that CFSA increase its use of pre-removal family team meetings in non-emergency cases**

One of the bright spots in this study is the role of family team meetings, which effectively brought family members together to develop plans for children to reunify safely with their families. The Panel supports continued use of post-removal FTMs as an effective practice in many cases following emergency removals. Still, FTMs would be even more effective if they could develop plans to *keep* children safely with their families – and avoid unnecessary removals.

The Panel urges CFSA to hold FTMs before removing children when it is reasonably possible to do so. The Panel urges CFSA to devote resources for any necessary increase in the number of FTMs, and to develop any policies necessary for child protection investigators to refer families for pre-removal FTMs.

CFSA’s comments on a draft version of this report suggest that the Panel misunderstands the use of FTMs in part because we did not review “cases with successful FTM for comparison.”<sup>94</sup> Respectfully, that assertion is inaccurate. The Panel reviewed many cases in which successful FTMs occurred after CFSA removed a child and in which the Panel believes the FTM could have succeeded in preventing the removal.

**4) The Panel recommends that CFSA investigative social workers seek advice from CFSA attorneys before removing a child when such consultation would not delay appropriate emergency action.**

The Panel’s review found instances in which an assistant attorney general – a CFSA lawyer – declined to prosecute cases with inadequate evidence or sought to arrange services that could have been provided pre-removal. The Panel’s review also found significant numbers of cases with both factual and legal complexity, such as different facts regarding different children and the involvement of the police. Our review also revealed one case in which CFSA removed a child and separated him from his mother for more than one month without any legal basis due to apparent confusion about that child’s legal status – a removal that a quick call to a lawyer could have prevented.<sup>95</sup> Any removal will trigger a Family Court process in which CFSA’s lawyers will play an important part. It thus stands to reason that seeking the advice of an attorney makes sense prior to removing children when the case is complex and when consultation will not delay appropriate emergency action. The Panel is concerned that the case records reviewed did not reveal such consultation in any case – even

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<sup>93</sup> Appendix G at 3.

<sup>94</sup> Appendix G at 7.

<sup>95</sup> See discussion of the M. family in findings 7 and 8.



though CFSA lawyers work in the same building as CFSA social workers. The Panel is not aware of any CFSA policy explaining the circumstances when CPS social workers should seek legal consultation.

The Panel thus recommends that CFSA promulgate a policy suggesting that CPS workers seek the advice of CFSA lawyers before removals when such consultation will not delay appropriate emergency action. The CFSA lawyers would advise CPS workers whether they have sufficient evidence to establish their case in Family Court and whether a case should be brought regarding all children or just one or two siblings.

CFSA offered this response to this recommendation: “There is nothing in the D.C. Code that requires CFSA to consult with their attorneys before removing a child. In fact, D.C. Official Code § 4-1301.07 (Removal of Children) does not require social workers to consult with their attorneys before removing a child. Moreover, this would shift practice in requiring that social workers consult with attorneys before removing children. This proposed practice change is flawed and usurps the authority of trained social workers.”<sup>96</sup>

The Panel respectfully disagrees with CFSA’s response. First, nothing in the Panel’s recommendation suggests that D.C. law requires social workers to consult with attorneys. The absence of such a legal requirement does not mean that CFSA CPS social workers cannot or should not consult with attorneys on their own. However, since CFSA raised what the D.C. Code provides, it is noteworthy that D.C. Code § 16-2305(c) (1) gives the Attorney General – and not CFSA or social workers – the power to decide whether to file a neglect petition. It seems appropriate for CFSA social workers to consult with the very attorneys who are statutorily charged with deciding whether to prosecute cases triggered by a removal decision.

Moreover, the Panel’s suggestion is entirely consistent with the Panel’s understanding of CFSA practice. CFSA speaks frequently of “teaming” with different professionals, including its own lawyers. Consultation with its own lawyers does not “usurp the authority of trained social workers.” Rather, like teaming of any kind, it gives those social workers essential information to make difficult decisions. Indeed, CFSA provided the Panel with its updated “Investigations Practice Operational Manual,” which itself contains a short section on the availability of CFSA attorneys to consult with social workers during the course of an investigation.<sup>97</sup> We recommend that CFSA expand its use of such consultation.

**5) The Panel recommends that CFSA make an individualized determination for every child – even children in sibling groups.**

Each child is his or her own person and deserves individualized consideration. The Panel asks CFSA to reform its apparent practice of removing *all* children in a home whenever the facts warrant removal of one child. There will certainly be situations in which all children in a home must be removed – but only when evidence shows an imminent risk of harm to each individual child. But the Panel’s case reviews show that significantly different facts often applied to different siblings. We recommend that CFSA develop and implement clear policy guidance (a) requiring an individualized consideration of all children before removal and (b) making clear that evidence regarding one child

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<sup>96</sup> Appendix G at 2.

<sup>97</sup> CFSA Investigations Practice Operational Manual at 173 (April 2011).

is relevant to but not decisive regarding what CFSA ought to do regarding other children in the same home.

**6) The panel recommends that CFSA make more frequent and effective use of alternatives to foster care.**

The Panel's findings suggest that CFSA could avoid unnecessary removals of children if it made effective use of three strategies to avoid foster care. For all three of these areas, we recommend that CFSA promulgate formal policies to guide practice in these areas and train and manage its staff appropriately.

First, the Panel recommends that CFSA provide respite care more broadly – a step consistent with District law and the *LaShawn A.* Modified Final Order provision, both of which require CFSA to provide family preservation services that may include respite care.<sup>98</sup> When a parent needs an alternate caretaker for a short period of time, respite care and not foster care is the appropriate response – it better safeguards the child and avoids an unnecessarily adversarial and punitive step regarding the parent. We urge CFSA to develop the capacity to provide such care and develop and enforce practice guidance regarding when it is effective. CFSA comments on the draft of this Report state that “[w]hen appropriate, CFSA does provide respite care.”<sup>99</sup> The Panel is heartened to know that CFSA provides such care. However, the Panel reviewed several cases in which respite care was appropriate but not provided, and the Panel continues to recommend that CFSA provide respite care in such cases.

Second, we encourage CFSA to review its practices regarding non-offending parents to ensure that they are promptly identified and that children are released to willing parents absent evidence that they pose some significant risk to children.

Third, we recommend that CFSA make use of the District's 2007 custodial power of attorney statute<sup>100</sup> to let parents authorize other individuals to provide short-term care when the parents are unable to. A sample power of attorney form is appended to this report.<sup>101</sup> When a parent cannot take care of a child for the short term – for instance, when a parent needs medical attention or is arrested – CFSA can ask the parent to identify an appropriate caretaker via a power of attorney, and ensure that the child is released to that individual.

We note that this idea is similar to a recent recommendation of the National Conference of State Legislatures to “[r]equire the child welfare agency to divert children from foster care, when safe and appropriate, through voluntary placement with relatives.”<sup>102</sup> Using a process such as the custodial power of attorney is an easy way to begin to follow that recommendation.

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<sup>98</sup>D.C. Code § 4-1303.03(b)(4)(J); *LaShawn A. v. Dixon*, Modified Final Order at p. 10, III.C.2.g. CFSA comments on a draft version of this report rightly point out that the D.C. statute states that CFSA must provide services to preserve families which “may” (but not “shall”) include respite care. Nonetheless, CFSA also acknowledges that it “does provide respite care.”

<sup>99</sup> Appendix G at 3.

<sup>100</sup> D.C. Code § 21-2301.

<sup>101</sup> Appendix D.

<sup>102</sup> National Conference of State Legislatures, *Legislative Strategies to Safely Reduce the Number of Children in Foster Care*, at 9 (2010), [http://www.ncsl.org/documents/cyf/strategies\\_reducing\\_the\\_number\\_of\\_children\\_in\\_foster\\_care.pdf](http://www.ncsl.org/documents/cyf/strategies_reducing_the_number_of_children_in_foster_care.pdf).

CFSA comments on the draft version of this Report raise two objections to this suggestion.<sup>103</sup> The Panel respectfully disagrees with both of CFSA’s objections. CFSA states that it should not permit parents who are deemed unfit to designate another person to take care of their children. The Panel thinks that this objection is an over-generalization. If a parent lacks capacity to take care of a child him or herself *and* lacks capacity to make decisions for the child, the parent should do neither. But in many situations – including many of the cases reviewed by the Panel – a parent may have lacked capacity to do the former, but had capacity to do the latter. Cases involving mothers arrested after being victims of domestic violence provide vivid examples of such cases. The Panel thinks that CFSA policy and practice need to reflect the reality that some parents who cannot take care of a child can and should be able to make decisions for that child. The Panel takes heart that in several cases reviewed, individual social workers demonstrated their understanding of this point by asking parents to identify alternative caretakers and working to find those individuals. Indeed, CFSA’s comments on the Panel’s draft report even cite several such cases.<sup>104</sup> Those comments appear to contradict CFSA’s stated opposition to letting parents identify alternate caretakers.

CFSA also states that “social workers cannot have parents sign a legal document as it would constitute practicing law without a license.”<sup>105</sup> Although social workers should not provide legal advice to parents, there is a distinction between providing legal advice and informing a parent of an option that they possess.<sup>106</sup> We respectfully suggest that CFSA begin to do the latter.

**7) The Panel recommends that CFSA coordinate with MPD to avoid the problems identified in this report.**

As described in Finding 11, the MPD’s actions contributed to unnecessary removals of children. To avoid such problems, we recommend that CFSA coordinate with MPD to ensure that (a) MPD consults with CFSA prior to removing children; (b) MPD recognize the harmful consequences of arresting both the perpetrator and survivor of domestic violence; and (c) MPD permit CFSA’s access to arrested parents so that parents may identify alternative caretakers for their children.

The panel recommends that CFSA negotiate appropriate memoranda of understanding with MPD, issue appropriate policies, and train and manage its staff to put these concepts into practice.

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<sup>103</sup> Appendix G at 2.

<sup>104</sup> CFSA notes its efforts “to identify or locate relatives who could care for the children” when the parent could not in one case. Appendix G at 8.

<sup>105</sup> Appendix G at 2. CFSA’s criticism misstates the Panel’s suggestion. We do not suggest that CFSA “have” parents sign anything. Rather, CFSA can inform the parent, in appropriate cases, of his or her ability to designate a custodian and, as noted in the text above, ask if they wish to do so.

<sup>106</sup> Indeed, this distinction is precisely why the disclaimer language on the sample power of attorney form – i.e. “this document is for information purposes only” – exists.

## VI. CONCLUSION

This study concludes that, when children leave foster care quickly – a significant and long-standing feature of the District’s child welfare system –it is likely that CFSA removed the child unnecessarily. Several areas for improvement stand out: (a) CFSA inaccurately considered a situation as presenting a risk of imminent harm to children. (b) CFSA removed children before providing essential assistance to families to make removal unnecessary. (c) CFSA failed to explore alternatives to removal.

The consequences of these practices are severe. Children are separated from their parents, emotionally and psychologically harming both children and parents. Parents are placed on the child protection registry, limiting their future employment prospects – and thus limiting their ability to take care of their children. And families are put at risk of long-term separations through an unpredictable foster care and Family Court system.

These harms need not be repeated. The Panel has offered a set of recommendations that we believe will reduce the incidence of harmful and unnecessary removals. We ask CFSA to implement them and address the issue of unnecessary removals thoughtfully and urgently.

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**Appendix A: Citizens Review Panel Study Proposal, April 2010**

**Citizens Review Panel of the District of Columbia**  
**Oversight Project Regarding Children with Short Stays in Foster Care**

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**Background: The phenomenon to be explored**

A large number of children removed from their families by the Child and Family Services Agency (CFSA) leave foster care quickly. According to CFSA's public data, anywhere from one-fifth to one-third or more of children removed from families by CFSA leave foster care within 4 months.

CFSA's public data<sup>1</sup> show:

- In FY 2009, 123 children left foster care in less than one month and a total of 221 children left foster care in less than four months, while CFSA removed a total of 661 children. In percentage terms, 18.6% of all removed children left foster care in less than one month and 33.4% left within 4 months.
- In FY 2008, 134 children left foster care in less than one month and a total of 204 children left foster care in less than four months, while CFSA removed a total of 765 children. In percentage terms, 17.5% of all removed children left foster care in less than one month and 26.7% left within 4 months.
- In FY 2007, 119 children left foster care in less than one month and a total of 179 children left foster care in less than four months, while CFSA removed a total of 632 children. In percentage terms, 18.8% of all removed children left foster care in less than one month and 28.3% left within 4 months.
- In FY 2006, 96 children left foster care in less than one month and a total of 237 children left foster care in less than four months, while CFSA removed a total of 686 children. In percentage terms, 14.0% of all removed children left foster care in less than one month and 34.5% left within 4 months.

This phenomenon has been consistent over the past 4 years and the data discussed above does not suggest that this phenomenon is linked to the Jacks-Fogle crisis of 2008, the recession, or any other single event or trend.

This phenomenon relates to core child protection decisions – decisions to remove children from and return them to their families. The population of children affected by this phenomenon – hundreds of children every year – is significant both in absolute numbers as a proportion of the District of Columbia's foster care population. As such, this project falls squarely within the Panel's mission of providing oversight to the District of Columbia's child protection system.

**Citizens Review Panel Project**

The Panel has voted to explore the phenomenon described above. The Panel will explore all possible explanations for this phenomenon. Possible hypotheses include, but are not limited to:

- Children removed and quickly returned should not have been removed in the first instance. Perhaps no risk significant enough to justify removal existed, or perhaps some risks existed but could have been better met through services provided in the home rather than through

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<sup>1</sup> CFSA data is found in annual reports available at <http://cfsa.dc.gov/cfsa/cwp/view,a,3,q,614813,cfsaNav,%7C31321%7C.asp>.

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removal. If this hypothesis is true, it might suggest problems in CFSA front-end removal and court papering decisions.

- Children removed and quickly returned should have been removed but should not have been returned so quickly. If this hypothesis is true, it might suggest problems in CFSA decisions to reunify families, or in the Family Court processes that follow removal of a child.
- Children removed and quickly returned should have been removed and they and their families were subsequently provided with important and effective services which rendered their quick return home safe and appropriate. If this hypothesis is true, it would suggest excellent practice by CFSA.

The above list of possible hypotheses is not intended to be exclusive; alternative explanations may arise during the course of the Panel's work. In addition, some cases may be best explained by one hypothesis while other cases by another hypothesis.

It bears repeating that the above list includes hypotheses only, not conclusions. The goal of the Panel's oversight project is to test the above hypotheses and determine if any of them are correct or whether some other explanation describes the phenomenon.

Depending on what explanation the Panel finds for the phenomenon described above, we may also offer recommendations for improved performance. Any recommendations will follow from whatever conclusions are reached regarding the phenomenon of removals and quick exits from foster care.

### **Methodology**

The Panel will pursue this oversight project by reviewing both aggregate CFSA data and reviewing individual cases. Reviewing both categories of data will lead to the most accurate results possible. Aggregate data will allow the panel to analyze trends based on a statistically significant sample, while a more detailed review of a smaller number of cases will allow for nuanced and fact-specific judgments than are possible when reviewing cases in the aggregate.

#### *Aggregate data*

The Panel seeks to aggregate data to analyze at least three aspects of the above phenomenon:

1. Cohort analysis: The statistics summarized in the Background section above compare the number of children who exit foster care in one given fiscal year to the number of children who enter in that same fiscal year. There is a slight mismatch in those groups, as a child who leaves foster care at the beginning of the fiscal year may actually have been removed towards the end of the previous fiscal year. At this preliminary stage, the Panel believes the statistics validly identify a significant phenomenon, especially considering the relatively stable numbers of both removals and quick returns over the previous four years. Nonetheless, the Panel would like to obtain more robust data, and so will request from CFSA data that provides a cohort analysis – that is, data that tracks a category of children who CFSA removed in a particular year, even if subsequent events (especially their exit from foster care) occurs in a different fiscal year.

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2. Analysis of subsequent safety outcomes: An important element of the oversight project is determining whether children who quickly exit foster care are safe – whether they are the subjects of future child protective hotline reports, whether such reports are substantiated, and whether the child is subsequently removed.
  
3. Analysis of where children live following their exit from foster care: CFSA’s public data, summarized above, records timelines from children’s entry into to their exit from foster care. But this data does not report whether a child who leaves foster care quickly returns to the family member from whom they were removed, or whether they are released to another family member. It is possible, for instance, that a child might be removed from one parent and released to another parent, or removed from a parent and released to a relative through a third party custody action.

Following the above principles, the Panel requests the following data from CFSA:

a. Fiscal year 2009:

- The number of children who CFSA brought into foster care in fiscal year 2009
- The number of children who were brought into foster care in fiscal year 2009 and who left foster care within 10 days of their entry, regardless of whether the exit date fell in fiscal year 2009 or 2010
  - Of children who exited foster care within 10 days of their entry, the number of children who within six months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care
  - Of children who exited foster care within 10 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
- The number of children who were brought into foster care in fiscal year 2009 and who left foster care within 30 days of their entry, regardless of whether the exit date fell in fiscal year 2009 or 2010
  - Of children who exited foster care within 30 days of their entry, the number of children who within six months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care
  - Of children who exited foster care within 30 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
- The number of children who were brought into foster care in fiscal year 2009 and who left foster care within 120 days of their entry, regardless of whether the exit date fell in fiscal year 2009 or 2010



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- Of children who exited foster care within 120 days of their entry, the number of children who within six months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
  - Of children who exited foster care within 120 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
- b. Fiscal year 2008:
  - The number of children who CFSA brought into foster care in fiscal year 2008
  - The number of children who were brought into foster care in fiscal year 2008 and who left foster care within 10 days of their entry, regardless of whether the exit date fell in fiscal year 2008 or 2009
    - Of children who exited foster care within 10 days of their entry, the number of children who within six months and 12 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 10 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2008 and who left foster care within 30 days of their entry, regardless of whether the exit date fell in fiscal year 2008 or 2009
    - Of children who exited foster care within 30 days of their entry, the number of children who within six months and 12 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 30 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2008 and who left foster care within 120 days of their entry, regardless of whether the exit date fell in fiscal year 2008 or 2009
    - Of children who exited foster care within 120 days of their entry, the number of children who within six months and 12 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the

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- victim in a substantiated case of abuse or neglect; and (c) re-entered foster care
- Of children who exited foster care within 120 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
- c. Fiscal year 2007
  - The number of children who CFSA brought into foster care in fiscal year 2007
  - The number of children who were brought into foster care in fiscal year 2007 and who left foster care within 10 days of their entry, regardless of whether the exit date fell in fiscal year 2007 or 2008
    - Of children who exited foster care within 10 days of their entry, the number of children who within six months, 12 months, 18 months, and 24 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 10 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2007 and who left foster care within 30 days of their entry, regardless of whether the exit date fell in fiscal year 2007 or 2008
    - Of children who exited foster care within 30 days of their entry, the number of children who within six months, 12 months, 18 months, and 24 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 30 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2007 and who left foster care within 120 days of their entry, regardless of whether the exit date fell in fiscal year 2007 or 2008
    - Of children who exited foster care within 120 days of their entry, the number of children who within six months, 12 months, 18 months, and 24 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.

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- Of children who exited foster care within 120 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
- d. Fiscal year 2006
  - The number of children who CFSA brought into foster care in fiscal year 2006
  - The number of children who were brought into foster care in fiscal year 2006 and who left foster care within 10 days of their entry, regardless of whether the exit date fell in fiscal year 2006 or 2007
    - Of children who exited foster care within 10 days of their entry, the number of children who within six months, 12 months, 18 months, 24 months, 30 months, and 36 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 10 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2006 and who left foster care within 30 days of their entry, regardless of whether the exit date fell in fiscal year 2006 or 2007
    - Of children who exited foster care within 30 days of their entry, the number of children who within six months, 12 months, 18 months, 24 months, 30 months, and 36 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 30 days of their entry, the number of children who, upon exit from foster care lived with (a) the individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.
  - The number of children who were brought into foster care in fiscal year 2006 and who left foster care within 120 days of their entry, regardless of whether the exit date fell in fiscal year 2006 or 2007
    - Of children who exited foster care within 120 days of their entry, the number of children who within six months, 12 months, 18 months, 24 months, 30 months, and 36 months of exit were (a) the subjects of a report of suspected abuse or neglect; (b) the victim in a substantiated case of abuse or neglect; and (c) re-entered foster care.
    - Of children who exited foster care within 120 days of their entry, the number of children who, upon exit from foster care lived with (a) the

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individual(s) from whom the child was removed; (b) a parent, but not the individual(s) from whom the child was removed; (c) a relative or another third party, but not the individual(s) from whom the child was removed.

The Panel would also like to invite CFSA to suggest any other forms of aggregate data which CFSA believes would be helpful to this project.

*Case specific data*

Consistent with CAPTA's suggestion that Citizens Review Panels review data, policies, and specific cases, the Panel requests the opportunity to review case files for a subset of quick return cases. The Panel intends to review cases of children who were placed in foster care at any point between January 1, 2009 and June 30, 2009, and who left foster care within 10, 30, and 120 days of entry. By reviewing cases in this time period, the Panel will be able to review not only the decisions to bring children into and return children from foster care, but subsequent evidence of children's safety upon exiting foster care. For instance, if a child entered foster care in June 2009 and left foster care in September 2009, the Panel could determine if that child was the subject of any further reports of abuse or neglect in the months that have passed since her return home. In contrast, reviewing only more recent cases would not provide that ability.

More specifically, the Panel requests access to 45 case files, including:

1. 15 children's case files involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 10 days of their entry;
2. 15 children's case files involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 11-30 days of their entry; and
3. 15 children's case files involving children who entered foster care between January 1, 2009 and June 30, 2009 and who left foster care within 31-120 days of their entry;

The 15 children's case files within each of the three categories listed above should be chosen randomly from among the full set of relevant cases.

Timelines from a child's removal and entry into foster care to his exit from foster care should be calculated inclusively. For example, if a child entered foster care on February 1, 2009 and left foster care on February 10, 2009, the child was in foster care for 10 days.

The Panel requests the complete CFSA case file regarding each randomly-selected child. The complete case file should include all records in CFSA's possession, including but not limited to records of the report of suspected abuse or neglect, investigation and substantiation of that report, any services offered to the family before removal, all case contacts while the child was in foster care, reasons for the child's exit from foster care, and all contacts with the family (including reports of suspected abuse or neglect) that occur after the child's exit from foster care.

The Panel will review all 45 cases provided. To ensure that no single Panel member's views will dictate conclusions about specific cases, each case file will be reviewed independently by at least two Panel members, who will discuss their conclusions regarding specific cases and decide by consensus how each case is to be evaluated.

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In addition, the Panel will provide CFSA an opportunity to respond to Panel evaluations of specific cases, as well as evaluations of any identified patterns or aggregate data before releasing a final report.

**Confidentiality**

CAPTA plainly envisions that Citizens Review Panels will have access to specific case files to evaluate child protection systems' performance.<sup>2</sup> CAPTA also envisions that Panel members must respect the confidentiality of children and families discussed in case files.<sup>3</sup> The Panel recognizes that by asking CFSA to provide access to case files, we are asking for confidential information. Panel members are fully aware that our access to such case files is contingent on strict compliance with confidentiality rules.

To respect these confidentiality rules, the Panel commits to the following:

1. Only Panel members and staff, and no other individual, will have access to requested case files.
2. All Panel members have signed formal acknowledgements that we are bound by confidentiality rules and subject to appropriate punishments for any violations of such rules. Upon selection by CFSA of a Panel Facilitator, individuals working for the facilitator will be requested to sign similar forms. Their failure to do so will exclude them from any involvement with individual case review.
3. Any conversations regarding individual cases will involve only Panel members and staff who have signed documents indicated in point 2.
4. Any written description or evaluation of cases will remove all identifying information, including, but not limited to:
  - a. The names and dates of birth of children, parents, and any other family members;
  - b. Any home addresses;
  - c. Any references to the neighborhoods in which a child or family lives or lived;
  - d. Any references to specific schools attended by the child;
  - e. Any other identifying information regarding the child or family.
5. As appropriate for individual cases, written descriptions or evaluation of cases will alter certain details – such as the sex of the child – to further prevent any inadvertent identification of specific children or families.
6. Panel members will review case files in a manner that respects the confidential information included therein. Panel members will not review files in public places.

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<sup>2</sup> See 42 U.S.C. § 5106a(c)(4)(A).

<sup>3</sup> 42 U.S.C. § 5106a(c)(4)(B).

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- a. The Panel is open to receiving files in either paper or electronic format, and requests suggestions from CFSA as to what means of obtaining files is administratively the least burdensome.

The Panel invites CFSA to suggest revisions or additions to the above list to ensure that confidential information is protected while simultaneously ensuring that the Panel can adequately pursue its oversight project.

**Timeline**

The table below lists the Panel's intended timeline for this project. The Panel appreciates CFSA's cooperation with this timeline.

The Panel looks forward to beginning work on this oversight project promptly. To that end, the Panel requests that CFSA raise any concerns about this project, including the below timeline, as well as any suggestions regarding the project (including, but not limited to suggestions specifically invited in the text above) by the Panel's May 5, 2010 meeting.

<b>Action</b>	<b>Deadline</b>
1 Citizens Review Panel submits Oversight Project Memorandum (this document) to CFSA, including requests for aggregate data and case files to review	April 23, 2010
2 CFSA presents any concerns or suggestions regarding the Panel's Oversight Project	May 5, 2010 (next CRP meeting)
3 Citizens Review Panel responds to CFSA's concerns or suggestions with a revised Oversight Project Memorandum	May 19, 2010
4 CFSA provides access to requested case files	June 1, 2010
5 CFSA provides requested aggregate data	July 1, 2010
6 Citizens Review Panel completes review of case files	September 30, 2010
7 Citizens Review Panel completes draft report analyzing the case files and aggregate data, and provides draft report to CFSA	October 31, 2010
8 CFSA provides any responses to draft report	November 30, 2010
9 Citizens Review Panel completes final report	December 31, 2010
10 CFSA provides a formal response to Citizens Review Panel report	February 28, 2011

This timeline does not preclude informal conversations between the Panel and the Agency at Panel meetings or other times about this Oversight Project. It also does not preclude either the Panel or the Agency from requesting additional steps not included in the above timeline or otherwise requesting that the timeline be revised.

## **Appendix B: Citizens Review Panel Case Review Instrument**

**Case Review Instrument for DC CRP Research Study on Quick Foster Care Exits**

**Basic information**

Child(ren)'s Name(s): \_\_\_\_\_

Case Number: \_\_\_\_\_

Date of Review: \_\_\_\_\_

Reviewer: \_\_\_\_\_

1) From whose custody was the child removed?

Mother's & father's

Mother's

Father's

Third party acting in loco parentis

Other: \_\_\_\_\_

2) To whose custody did the child go upon leaving foster care?

Mother's & father's

Mother's

Father's

Third party acting in loco parentis (same third party from whom the child was removed)

Third party acting in loco parentis (different than the third party from whom the child was removed)

Other: \_\_\_\_\_

3) How was the decision for the child to leave foster care made?

CFSA made the decision (such as a decision to not file or nor prosecute a neglect petition)

The Family Court made the decision, following the recommendation of CFSA

The Family Court made the decision, over the objection of CFSA

If the Family Court made the decision, did any party other than CFSA (either parent, GAL) object? \_\_\_\_\_

4) Timelines

a. One what date did CFSA receive the child protection hotline call which led to the child's removal? \_\_\_\_\_

b. On what date did CFSA remove the child and place the child in foster care? \_\_\_\_\_

c. On what date did the child leave foster care? \_\_\_\_\_



5) Subsequent history

- a. Has the child been the subject of a child protection hotline report since leaving foster care?

Yes

No

- b. Has the child been the subject of a substantiated child protection hotline report since leaving foster care?

Yes

No

- c. Has the child re-entered foster care?

Yes. If yes, was the child's reason for re-entry:

An issue that was evident during the child's first stay in foster care

A new issue

No, the child has not re-entered foster care.

6) Family Team Meetings

- a. Was a Family Team Meeting held *before* CFSA removed the child?

Yes

No

- b. Was a Family Team Meeting held between the child's removal and the first court hearing?

Yes

No

# Review Item 1: Evidence regarding safety of the child at the time of removal by CFSA

## Description of the documented situation as of the child's removal by CFSA

- [ ] 1 Situation indicates **optimal safety** for all persons in all the child's daily settings. The child has a safe living situation with reliable and competent parents/caregivers, is free from intimidation, and presents no safety risks to self or others.
- [ ] 2 Situation indicates **good safety** for the child in his/her daily settings and for others near the child. The child is generally safe at home/residence with adequate parents/caregivers, is free from intimidation, and presents no or minimal safety risk to self or others.
- [ ] 3 Situation indicates **fair safety** from imminent risk of physical harm for the child in his/her living and learning settings and for others who interact with the child. The child has a minimally safe living arrangement with the present parents/caregivers, has limited exposure to intimidation, and presents minimal safety risk to self or others.
- [ ] 4 Situation indicates **an unacceptable safety issue present in one setting** that poses an elevated risk of physical harm for the child in his/her living settings and for others who interact with the child. The child's living arrangement may require protective supervision or services.
- [ ] 5 Situation indicates **substantial and continuing safety problems** that pose elevated risks of physical harm for the child in his/her living and learning settings and for others who interact with the child. The child's living arrangements may require protective supervision or specialized services.
- [ ] 6 Situation indicates **adverse and worsening safety problems** that pose high risks of physical harm for the child in his/her daily settings and for others. The child may require protective supervision or intensive services to prevent injury to self or others.

Comments:

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## Review Item 2: Evidence regarding safety of the child at the time of foster care exit

Description of the documented situation in the home in which the child lived after leaving foster care, at the time of the child's exit from foster care.

- [ ] 1 Situation indicates **optimal safety** for all persons in all the child's daily settings. The child has a safe living situation with reliable and competent parents/caregivers, is free from intimidation, and presents no safety risks to self or others.
- [ ] 2 Situation indicates **good safety** for the child in his/her daily settings and for others near the child. The child is generally safe at home/residence with adequate parents/caregivers, is free from intimidation, and presents no or minimal safety risk to self or others.
- [ ] 3 Situation indicates **fair safety** from imminent risk of physical harm for the child in his/her living and learning settings and for others who interact with the child. The child has a minimally safe living arrangement with the present parents/caregivers, has limited exposure to intimidation, and presents minimal safety risk to self or others.
- [ ] 4 Situation indicates **an unacceptable safety issue present in one setting** that poses an elevated risk of physical harm for the child in his/her living settings and for others who interact with the child. The child's living arrangement may require protective supervision or services.
- [ ] 5 Situation indicates **substantial and continuing safety problems** that pose elevated risks of physical harm for the child in his/her living and learning settings and for others who interact with the child. The child's living arrangements may require protective supervision or specialized services.
- [ ] 6 Situation indicates **adverse and worsening safety problems** that pose high risks of physical harm for the child in his/her daily settings and for others. The child may require protective supervision or intensive services to prevent injury to self or others.

Comments:

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## Review Item 3: Evidence regarding parent/caregiver physical support of the child at removal

### Description of the Documented Evidence at the time of removal

- [ ] 1 **Optimal Parenting/Caregiving.** The child receives **optimal** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are willing and able to parent, and put forth great effort to parent well. Caregivers participate fully in planning services, teacher conferences, and special events. The child is assisted with homework, tutoring as needed, special assignments, and participation in extracurricular activities.
  
- [ ] 2 **Good Parenting/Caregiving.** The child receives **good** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are generally willing and able to parent, and put forth effort to parent well. Caregivers usually participate in planning meetings and teacher conferences. The child is usually assisted with homework and participation in extracurricular activities.
  
- [ ] 3 **Fair Parenting/Caregiving.** The child receives **fair** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are fairly willing and able to parent, and put forth fair effort to parent well. Caregivers occasionally participate in planning meetings and teacher conferences. The child is assisted with homework and extracurricular activities minimally. There is minor concern regarding the stability of the placement.
  
- [ ] 4 **Marginal Parenting/Caregiving.** The child is experiencing **minor or moderate problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are marginally willing and able to parent, and put forth marginal effort to parent well. The child's basic and special needs are inconsistently met. Caregivers seldom participate in planning meetings and teacher conferences. The child is inconsistently or inadequately assisted with homework or extracurricular activities. There may be some concern about the stability of the placement.
  
- [ ] 5 **Poor Parenting/Caregiving.** The child has **substantial and continuing problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are generally not willing and able to parent, and put forth minimal effort to parent well. Basic care of children, supervision, and assistance lapse for extended periods of time. The child is likely to be doing poorly in school, truant, suspended, or expelled. There is growing concern regarding stability with placement disruption seen as possible.
  
- [ ] 6 **Adverse Parenting/Caregiving.** The child has **serious and worsening problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The P/C's are not willing and able to parent, and put forth no effort to parent well. The P/C may be frequently absent or unable to perform parenting responsibilities for extended periods of time. There is serious concern regarding basic care, supervision, and assistance for the child. The child is most likely doing poorly in school, truant, suspended, or expelled. There is serious concern regarding stability and placement disruption is likely.

Comments:

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## Review Item 4: Evidence regarding parent/caregiver physical support of the child at foster care exit

Description of the documented evidence at the time of exit from foster care regarding the individual to whose custody the child left foster care.

- [ ] 1 **Optimal Parenting/Caregiving.** The child receives **optimal** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are willing and able to parent, and put forth great effort to parent well. Caregivers participate fully in planning services, teacher conferences, and special events. The child is assisted with homework, tutoring as needed, special assignments, and participation in extracurricular activities.
- [ ] 2 **Good Parenting/Caregiving.** The child receives **good** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are generally willing and able to parent, and put forth effort to parent well. Caregivers usually participate in planning meetings and teacher conferences. The child is usually assisted with homework and participation in extracurricular activities.
- [ ] 3 **Fair Parenting/Caregiving.** The child receives **fair** food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are fairly willing and able to parent, and put forth fair effort to parent well. Caregivers occasionally participate in planning meetings and teacher conferences. The child is assisted with homework and extracurricular activities minimally. There is minor concern regarding the stability of the placement.
- [ ] 4 **Marginal Parenting/Caregiving.** The child is experiencing **minor or moderate problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are marginally willing and able to parent, and put forth marginal effort to parent well. The child's basic and special needs are inconsistently met. Caregivers seldom participate in planning meetings and teacher conferences. The child is inconsistently or inadequately assisted with homework or extracurricular activities. There may be some concern about the stability of the placement.
- [ ] 5 **Poor Parenting/Caregiving.** The child has **substantial and continuing problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The parents/caregivers are generally not willing and able to parent, and put forth minimal effort to parent well. Basic care of children, supervision, and assistance lapse for extended periods of time. The child is likely to be doing poorly in school, truant, suspended, or expelled. There is growing concern regarding stability with placement disruption seen as possible.
- [ ] 6 **Adverse Parenting/Caregiving.** The child has **serious and worsening problems** with the adequacy of food, clothing, shelter, and supervision in his/her current home. The P/C's are not willing and able to parent, and put forth no effort to parent well. The P/C may be frequently absent or unable to perform parenting responsibilities for extended periods of time. There is serious concern regarding basic care, supervision, and assistance for the child. The child is most likely doing poorly in school, truant, suspended, or expelled. There is serious concern regarding stability and placement disruption is likely.

Comments:

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## Review Item 5: Engagement of the Child and Family

### Description of CFSA's engagement with the family during the investigation up to time of removal

- [ ] 1 **Optimal Engagement.** Consistent efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Excellent outreach efforts are used as necessary to engage and build rapport with difficult-to-reach family members, including scheduling time and location based on family convenience, individualized problem solving, and support with transportation and child care. The youth is always invited to participate in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 2 **Good Engagement.** Good efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Arrangements are made so that the family can be full participants. The team can identify many strategies and efforts that have been used to increase the family and youth engagement and involvement that have been made over time. The youth is usually invited to participate in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 3 **Fair Engagement.** Fair efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Some outreach efforts are used as necessary to engage difficult-to-reach families, and the plan shows a goal and efforts to constructively engage the family. The youth is sometimes invited to assist in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 4 **Marginal Engagement.** Marginal efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Limited or inadequate outreach efforts have been made to engage difficult-to-reach family members. The team members do not know why the family will not engage in the process or have made assumptions that may not be accurate. The youth is not often invited to participate in planning, deciding on service arrangements, or articulating and accomplishing goals.
- [ ] 5 **Poor Engagement.** Poor efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Minimal efforts may have been made by the team to increase the engagement and participation of the family. The youth is rarely invited to participate in planning, deciding on service arrangements, or articulating and accomplishing goals.
- [ ] 6 **No Engagement.** No efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Service planning and decision-making activities are conducted at times and places or in ways that prevent effective child and family participation. Decisions are made without the knowledge or consent of the parents, the caregivers, or the child. Appropriate alternative strategies, supports, and services are not offered. Important information may not be provided to parents, youth or caregivers.
- [ ] 7 **Not applicable.** The removal occurred due to an emergency which legitimately justified the child's immediate removal and, as a result, CFSA lacked the ability to engage the family before removal.

Comments:

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## Review Item 6: Engagement of the Child and Family

### Description of CFSA's engagement with the family between removal and exit from foster care

- [ ] 1 **Optimal Engagement.** Consistent efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Excellent outreach efforts are used as necessary to engage and build rapport with difficult-to-reach family members, including scheduling time and location based on family convenience, individualized problem solving, and support with transportation and child care. The youth is always invited to participate in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 2 **Good Engagement.** Good efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Arrangements are made so that the family can be full participants. The team can identify many strategies and efforts that have been used to increase the family and youth engagement and involvement that have been made over time. The youth is usually invited to participate in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 3 **Fair Engagement.** Fair efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Some outreach efforts are used as necessary to engage difficult-to-reach families, and the plan shows a goal and efforts to constructively engage the family. The youth is sometimes invited to assist in planning, deciding on service arrangements, and articulating and accomplishing goals.
- [ ] 4 **Marginal Engagement.** Marginal efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Limited or inadequate outreach efforts have been made to engage difficult-to-reach family members. The team members do not know why the family will not engage in the process or have made assumptions that may not be accurate. The youth is not often invited to participate in planning, deciding on service arrangements, or articulating and accomplishing goals.
- [ ] 5 **Poor Engagement.** Poor efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Minimal efforts may have been made by the team to increase the engagement and participation of the family. The youth is rarely invited to participate in planning, deciding on service arrangements, or articulating and accomplishing goals.
- [ ] 6 **No Engagement.** No efforts have been made to include the child, P/C, family, and team members in planning and implementing services. Service planning and decision-making activities are conducted at times and places or in ways that prevent effective child and family participation. Decisions are made without the knowledge or consent of the parents, the caregivers, or the child. Appropriate alternative strategies, supports, and services are not offered. Important information may not be provided to parents, youth or caregivers.

Comments:

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## Review Item 7: Implementation of Plans with the Child and Family

Description of the CFSA's implementation of plans to keep children safely with family during the investigation up to time of removal

- [ ] 1 **Optimal Implementation.** An excellent pattern of intervention implementation shows that all planned strategies, supports, and services set forth in the plans for the parent, family, and focus child are fully and expertly implemented in a timely, competent, and consistent manner. High quality services are being provided at levels of intensity and continuity necessary to meet priority needs, manage risks, and yield desired results. Providers are receiving excellent support and supervision in the performance of their roles.
- [ ] 2 **Good Implementation.** A good and substantial pattern of intervention implementation shows that all important planned strategies, supports, and services set forth in the plans are well implemented in a timely, competent, and consistent manner. Good quality services are being provided at levels of intensity and continuity necessary to meet most priority needs, manage significant risks, and meet most intervention goals. Providers are receiving good support and supervision in the performance of their roles.
- [ ] 3 **Fair Implementation.** A fair pattern of intervention implementation shows that the strategies, supports, and services set forth in the plans are being implemented in a minimally timely, competent, and consistent manner. Fair quality services are being provided at levels of intensity and continuity necessary to meet some priority needs, manage key risks, and meet short-term intervention goals. Providers are receiving minimally adequate support and supervision in the performance of their roles.
- [ ] 4 **Marginal Implementation.** A somewhat limited or inconsistent pattern of intervention implementation shows that most of the strategies, supports, and services set forth in the plans are being implemented but with minor problems in timeliness, competence, and/or consistency. Services of limited quality are being provided but at levels of intensity and continuity insufficient to meet some priority needs, manage key risks, and meet short-term intervention goals. Providers are receiving limited or inconsistent support and supervision in the performance of their roles. Minor-to-moderate implementation problems are occurring.
- [ ] 5 **Poor Implementation.** A poor pattern of intervention implementation shows that many of the strategies, supports, and services set forth in the plans are not being implemented adequately. Services of poor quality are being provided at levels of intensity and continuity insufficient to meet many priority needs, manage key risks, or meet short-term intervention goals. Providers are receiving poor support and inadequate supervision in the performance of their roles. Continuing implementation problems of a significant nature are present.
- [ ] 6 **Absent or Adverse Implementation.** Intervention strategies, supports, and services are not being implemented in a timely, competent, and coordinated manner. - **OR** - Intervention may be implemented in an inappropriate or unsafe manner, leading to harmful conditions or adverse results. Providers are not receiving support in the performance of their roles. Serious and worsening implementation problems are ongoing and unaddressed.
- [ ] 7 **Not applicable.** The removal occurred due to an emergency which legitimately justified the child's immediate removal and, as a result, CFSA lacked the ability to implement any plans with the family before removal.

Comments:

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## Review Item 8: Implementation of Plans with the Child and Family

### Description of CFSA's implementation of plans between removal and exit from foster care

- [ ] 1 **Optimal Implementation.** An excellent pattern of intervention implementation shows that all planned strategies, supports, and services set forth in the plans for the parent, family, and focus child are fully and expertly implemented in a timely, competent, and consistent manner. High quality services are being provided at levels of intensity and continuity necessary to meet priority needs, manage risks, and yield desired results. Providers are receiving excellent support and supervision in the performance of their roles.
- [ ] 2 **Good Implementation.** A good and substantial pattern of intervention implementation shows that all important planned strategies, supports, and services set forth in the plans are well implemented in a timely, competent, and consistent manner. Good quality services are being provided at levels of intensity and continuity necessary to meet most priority needs, manage significant risks, and meet most intervention goals. Providers are receiving good support and supervision in the performance of their roles.
- [ ] 3 **Fair Implementation.** A fair pattern of intervention implementation shows that the strategies, supports, and services set forth in the plans are being implemented in a minimally timely, competent, and consistent manner. Fair quality services are being provided at levels of intensity and continuity necessary to meet some priority needs, manage key risks, and meet short-term intervention goals. Providers are receiving minimally adequate support and supervision in the performance of their roles.
- [ ] 4 **Marginal Implementation.** A somewhat limited or inconsistent pattern of intervention implementation shows that most of the strategies, supports, and services set forth in the plans are being implemented but with minor problems in timeliness, competence, and/or consistency. Services of limited quality are being provided but at levels of intensity and continuity insufficient to meet some priority needs, manage key risks, and meet short-term intervention goals. Providers are receiving limited or inconsistent support and supervision in the performance of their roles. Minor-to-moderate implementation problems are occurring.
- [ ] 5 **Poor Implementation.** A poor pattern of intervention implementation shows that many of the strategies, supports, and services set forth in the plans are not being implemented adequately. Services of poor quality are being provided at levels of intensity and continuity insufficient to meet many priority needs, manage key risks, or meet short-term intervention goals. Providers are receiving poor support and inadequate supervision in the performance of their roles. Continuing implementation problems of a significant nature are present.
- [ ] 6 **Absent or Adverse Implementation.** Intervention strategies, supports, and services are not being implemented in a timely, competent, and coordinated manner. - **OR** - Intervention may be implemented in an inappropriate or unsafe manner, leading to harmful conditions or adverse results. Providers are not receiving support in the performance of their roles. Serious and worsening implementation problems are ongoing and unaddressed.

Comments:

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## Summary

1) Did CFSA have sufficient information to decide to remove the child?

Yes.

No.

2) Do you agree with CFSA's removal decision?

Yes. The child faced imminent harm or an imminent risk of serious harm and removing the child was the only means of protecting the child from that harm.

No. The child did not face any harm or risk of harm which would justify removal.

No. The child faced a risk of harm, but alternatives to removal should have been explored prior to removing the child.

Unknown. The case record does not reflect sufficient information to determine if the child should have been removed.

3) Was sufficient information available to decide that the child should leave foster care?

Yes.

No.

4) Do you agree with the decision that the child should leave foster care?

Yes. There was no significant risk of harm to the child in the care of the adult to whose custody the child left.

Yes. Some risk of harm existed upon leaving foster care, but that harm was less than the harm of continuing the child's separation from his/her parent.

No. The child faced an unacceptable risk of harm upon leaving foster care.

Unknown. The case record does not reflect sufficient information to determine if the child should have been removed.

5) If you believe that the right decisions were not made, who bears responsibility for the wrong decisions?

CFSA

Family Court

Other: \_\_\_\_\_

No right decisions were made

Final Comments:

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## **Appendix C: Average Scores on Review Items 1-8**

<b>Review Item</b>	<b>Average rating on a 1-6 scale, with 1 reflecting the most positive and 6 the most negative rankings</b>
1: Child safety at removal	3.64
2: Child safety at foster care exit	2.67
3: Parent/caregiver physical support of the child at removal	3.61
4: Parent/caregiver physical support of the child at foster care exit	2.87
5: Engagement of child and family at removal	4.12*
6: Engagement of child and family between removal and foster care exit	2.94
7: Implementation of plans with the child and family before removal	4.95*
8: Implementation of plans with the child and family between removal and foster care exit	3.2

\* Review items 5 and 7 also included a ranking of “not applicable,” described as: “The removal occurred due to an emergency which legitimately justified the child’s immediate removal and, as a result CFSA lacked the ability to engage the family before removal [item 5]/implement any plans with the family before removal.” Cases deemed “not applicable” were excluded from the averages posted above. 12 of 54 reviews were rated “not applicable” on review item 5, and 13 of 54 reviews were rated “not applicable” on review item 7.

The Panel reviewed 27 cases, with two individuals reviewing each case, for a total of 54 reviews.

## Appendix D: Sample Custodial Power of Attorney Form

*These materials are for information only. They do not provide legal advice. If you have questions about whether a custodial power of attorney is right for you or your family, or how to prepare a custodial power of attorney, you should seek legal advice.*

## INFORMATION ABOUT CUSTODIAL POWERS OF ATTORNEY

### **What is a custodial power of attorney?**

District of Columbia law permits a parent to identify a person other than a parent (“third party”) with whom his/her child will live. By signing a custodial power of attorney, the parent authorizes the third party to make decisions on the child’s behalf. A custodial power of attorney can also authorize the third party to obtain services, like medical care or mental health care, for the child. You may wish to give such authority to a third party if you cannot take care of your child due to, for instance, a physical or mental health condition, extended hospitalization, incarceration, military deployment, or for any reason. You do not have to say why you are granting a custodial power of attorney, but you may do so if you wish.

### **What powers does a custodial power of attorney grant?**

The parent decides what powers to grant to the third party when preparing the custodial power of attorney. The attached sample power of attorney lists various powers that a parent may wish to grant. To grant the *most* power to a third party, a parent should check all of the lines in paragraph 5, especially the last line.

A parent may also limit the powers granted by the power of attorney. A parent may do so by writing specific limitations in paragraph 7.

### **Do I have to get a custodial power of attorney notarized?**

Although notarization is not required, it may be helpful. Notarization may make it easier to use the form to obtain services for the child.

### **How should a third party use a custodial power of attorney?**

When the third party seeks to enroll a child in school, obtain medical care for the child, or obtain any other service or benefit for the child, the third party should bring the notarized custodial power of attorney along with a copy of the law (which is also attached).

### **Can a parent revoke or withdraw the custodial power of attorney?**

Yes. A parent can revoke the custodial power of attorney at any time after signing it. The custodial power of attorney form itself may describe *how* a parent can revoke the custodial power of attorney. A sample revocation form is also attached.

### **How long does a custodial power of attorney last?**

Generally, if the custodial power of attorney does not include a time limit, it lasts until the parent revokes it. The sample form provides that you can revoke it in writing at any time, and a sample revocation form is also attached.

A parent can also specify a time limit for the power of attorney. For example, the parent could write in the form: “This custodial power of attorney shall take effect on [date] and shall remain in effect until [date].”

### **What is the difference between a custodial power of attorney and a court custody order?**

A custodial power of attorney is a legal document signed by a parent but not approved by a court. Generally, it is easier to revoke a custodial power of attorney than to change a court custody order. Every case is different and you should seek legal advice if you have questions about which option to use.

**DISTRICT OF COLUMBIA CUSTODIAL POWER OF ATTORNEY  
PURSUANT TO D.C. CODE § 21-2301**

1. I, \_\_\_\_\_, am the parent of the child(ren) listed below. There are no  
Parent's name  
court orders now in effect which would prohibit me from exercising the power that I now  
seek to convey.

2. My address is:  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_ is an adult whose address is:  
Third party's name  
\_\_\_\_\_  
\_\_\_\_\_

4. I grant to \_\_\_\_\_ the parental rights and responsibilities listed  
Third party's name  
below regarding care, physical custody, and control of the following child(ren):

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

5. I grant \_\_\_\_\_ these parental rights and responsibilities  
Third party's name  
regarding the above-listed child(ren):

INITIAL EACH POWER YOU ARE GRANTING. IF YOU DO NOT WISH TO GRANT A  
SPECIFIC POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED  
NOT, CROSS OUT EACH POWER THAT YOU DO NOT WISH TO GRANT.

- \_\_\_ physical custody of the child(ren) listed above;
- \_\_\_ the authority to enroll the child(ren) listed above in school;
- \_\_\_ the authority to obtain educational records regarding the child(ren) listed above;
- \_\_\_ the authority to make all school-related decisions for the child(ren) listed above;
- \_\_\_ the authority to obtain medical, mental health, or dental records regarding the  
child(ren) listed above;
- \_\_\_ the authority to consent to medical, mental health, or dental treatment for the  
child(ren) listed above;
- \_\_\_ the authority to act as representative payee for any Social Security benefits for which  
the child(ren) listed above may be eligible;
- \_\_\_ the authority to receive any other benefits for which the child(ren) listed above may  
be eligible; and
- \_\_\_ all of the rights and responsibilities listed above and, to the greatest extent possible by  
law, the authority to make any other decision or obtain any other benefits necessary for  
the welfare of the child(ren) listed above.



6. This custodial power of attorney does not include authority to consent to the marriage or adoption of the child. In addition, unless otherwise agreed by the parties in writing, the custodial power of attorney granted in this form does not affect:

- A) the right of the above-listed child(ren) to inherit from his or her (their) parent;
- B) the parent's right to visit or contact the child(ren);
- C) the parent's right to determine the child(ren)'s religious affiliation;
- D) the parent's responsibility to provide financial, medical, and other support for the child(ren).

7. The custodial power of attorney granted in this form is further limited by these instructions:

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8. As set forth in D.C. Code § 21-2301, the custodial power of attorney granted in this form does not affect my rights in any future proceeding concerning custody of or the allocation of parental rights and responsibilities for the child(ren) listed above.

9. The custodial power of attorney granted in this form shall take effect immediately. It shall continue to be effective even if I become disabled, incapacitated, or incompetent.

10. The custodial power of attorney granted in this form shall continue until I revoke it in writing and notify \_\_\_\_\_ in writing of my revocation.  
Third party's name

11. A person or entity that relies on this custodial power of attorney in good faith has no obligation to make any further inquiry or investigation into the authority of the attorney to act as described in this document. Revocation of this custodial power of attorney is not effective as to a person or entity that relies on it in good faith until that person or entity learns of the revocation.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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(Parent's Signature)  
District of Columbia

**REVOCAION OF A DISTRICT OF COLUMBIA CUSTODIAL POWER OF ATTORNEY  
PURSUANT TO D.C. CODE § 21-2301**

1. I, \_\_\_\_\_, am the parent of the child(ren) listed below. My  
Parent's name  
address is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_ is an adult whose address is:  
Third party's name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. On \_\_\_\_\_ I signed a custodial power of attorney granting to  
Date  
\_\_\_\_\_ parental rights and responsibilities regarding the care,  
Third party's name  
physical custody, and control of the following child(ren):

Name: _____	Date of Birth: _____
Name: _____	Date of Birth: _____
Name: _____	Date of Birth: _____
Name: _____	Date of Birth: _____

4. I hereby revoke the above-reference custodial power of attorney. I have sent written notice of this revocation in person, by regular mail, or by fax to \_\_\_\_\_ on \_\_\_\_\_. This revocation will take  
Third party's name Date  
effect upon that person's receipt of that written notice.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Parent's Signature)

**Appendix E: A list of cases reviewed by the Citizens Review Panel**

	<b>Family Initial</b>	<b>Case Number</b>	<b>Referral Number</b>
1	B.	203171	649336
2	D.	190800	650683
3	B.	202733	
4	F.	203174/9	649469
5	K.	203305	652574
6	J.	203135	
7	C.	140227	651309
8	S.	203127	649029
9	C.	192756	652702
10	G.	203311	650692
11	G.	203384	
12	G.	195606	649149
13	G. (this case involved siblings of the child at issue in number 11)	195606	649149
14	J.	203448	652665
15	T.	201045	
16	S.	203241	650253
17	M.	201353	646708
18	B.		653217
19	B.	203010	648367
20	R.		648592
21	M.	203179	649719
22	S.	202561	
23	J.	71207	650386
24	M.	202712	
25	C.	203384	649339
26	M.	125447	649763
27	C.	203384	651638

**Appendix F: Cohort data provided by CFSA to the Citizens Review  
Panel in July 2011**

2006

Foster care entries	676			
total exits from care	1045			
	Less than 10	Less than 30	Less than 120	totals
Total number leaving within:	67	29	109	205
referrals : six months	5	4	7	16
Referrals : 6-12 months	6	6	9	21
Referrals: 12-18	1	0	8	9
Referrals: 18-24	9	4	6	19
Referrals: 24-30	4	4	5	13
Referrals: 30-36	3	4	4	11
Substantiations: six months	2	2	2	6
Substantiations: 6-12 months	3	3	7	13
Substantiations: 12-18 months	1	0	1	2
Substantiations: 18-24 months	8	3	1	12
Substantiations: 24-30 months	2	3	0	5
Substantiations: 30-36 months	0	0	1	1
Removals: six months	2	1	4	7
Removals: 6-12 months	0	3	6	9
Removals:12-18 months	0	1	4	5
Removals: 18-24 months	2	0	1	3
Removals: 24-30 months	0	3	2	5
Removals:30-36 months	0	0	2	2
Living with parent	57	17	92	166
Living with other	8	10	8	26

Removals as a % of total entries - 6 months	0.01035503
Removals as a % of total entries - 12 months	0.013313609
Removals as a % of total entries - 18 months	0.00739645
Removals as a % of total entries - 24 months	0.00443787
Removals as a % of total entries - 36 months	0.00739645
Removals as a % of total entries - 30 months	0.00295858

Removals as a % of exits - 6 months	0.006698565
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2007

Foster care entries	572			
total exits from care	827			
	Less than 10	Less than 30	Less than 120	totals
Total number leaving within:	81	22	47	150
referrals : six months	9	3	7	19
Referrals : 6-12 months	13	9	10	32
Referrals: 12-18	11	1	7	19
Referrals: 18-24	10	4	1	15
Substantiations: six months	7	0	3	10
Substantiations: 6-12 months	1	8	1	10
Substantiations: 12-18 months	3	0	2	5
Substantiations: 18-24 months	4	3	1	8
Removals: six months	2	0	1	3
Removals: 6-12 months	1	7	2	10
Removals:12-18 months	2	0	2	4
Removals: 18-24 months	2	1	0	3
Living with parent	71	19	38	128
Living with other	8	3	2	13

Removals as a % of total entries - 6 months	0.005244755
Removals as a % of total entries - 12 months	0.017482517
Removals as a % of total entries - 18 months	0.006993007
Removals as a % of total entries - 24 months	0.005244755

Removals as a % of exits - 6 months	0.012091898
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2008

Foster care entries	703			
total exits from care	678			
	Less than 10	Less than 30	Less than 120	Totals
Total number leaving within:	59	26	47	132
referrals : six months	6	4	5	15
Referrals : 6-12 months	8	2	6	16
Substantiations: six months	5	2	1	8
Substantiations: 6-12 months	3	2	1	6
Removals: six months	2	2	0	4
Removals: 6-12 months	4	3	7	14
Living with parent	47	24	38	109
Living with other	8	2	4	14

Removals as a % of total entries - 6 months 0.0056899  
Removals as a % of total entries - 12 months 0.019914651

Removals as a % of exits - 6 months 0.005899705



2009 622 foster care entries

Foster care entries		622			
total exits from care		712			
	Less than 10		Less than 30	Less than 120	totals
Total number leaving within:		70	15	74	159
referrals : six months		7	2	4	13
Substantiations: six months		2	2	2	6
Removals: six months		0	2	0	2
Living with parent		64	15	63	142
Living with other		3	0	6	9

Removals as a % of total entries - 6 months 0.003215434

Removals as a % of exits - 6 months 0.002808989

Removals

Returned within 10 days

Time Frame	6 months	12 months	18 months	24 months	30 months	36 months
2006	2	0	0	2	0	0
2007	2	1	2	2		
2008	2	4				
2009	0					

Removals

Returned within 30 days

Time Frame	6 months	12 months	18 months	24 months	30 months	36 months
2006	1	3	1	0	3	0
2007	0	7	0	1		
2008	2	3				
2009	2					

Removals

Returned within 120 days

Time Frame	6 months	12 months	18 months	24 months	30 months	36 months
2006	4	6	4	1	2	2
2007	1	2	2	0		
2008	0	7				
2009	0					

**Appendix G: CFSA comments on a draft version of this report,  
submitted to the Panel on July 14, 2011**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
Child and Family Services Agency

**Memorandum**

To: Rashida Brown  
Chair, The District of Columbia Citizen Review Panel

From: Loren Ganoe  
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RE: Draft CRP Study

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Thank you for submitting the draft of *An Examination of the Child and Family Service Agency's Performance when it Removes Children from and Quickly Returns them to their Families: Findings and Recommendations from the Citizen Review Panel*.

Ensuring child safety is one of CFSA's most critical mandates. In recent years, CFSA has focused intensely on improving the quality of policy and practice for the Child Protective Services Division. The Agency recently completed the *CPS Investigations Practice and Operational Manual* (IPOM). The purpose of the IPOM (attached) is to provide clear standards and improve the quality and timeliness of practice. The IPOM addresses many of the issues that were raised in the CRP's study and should be informative to the CRP's work going forward.

Staff from CFSA and the Office of the Attorney General's Family Services Division have thoroughly reviewed the draft study provided by the CRP. Feedback from this review is attached for your consideration. We appreciate the significant amount of effort that the CRP has put into the development of this report. We hope that our feedback will be helpful in the report's finalization.

If you have any questions or clarification, please feel free to contact me.

## **Legal Considerations**

### **1. CRP recommendation that CFSA to consult with attorneys before removal:**

CFSA Response: There is nothing in the D.C. code that requires CFSA to consult with their attorneys before removing a child. In fact, D.C. Official Code § 4-1301.07 (Removal of Children) does not require social workers to consult with their attorneys before removing a child. Moreover, this would shift practice in requiring that social workers consult with attorneys before removing children. This proposed practice change is flawed and usurps the authority of trained social workers.

### **2. CRP recommendation that CFSA should have parents sign the legal custodial of power authorization form when a child is being removed:**

CFSA Response: The custodial power of attorney section was added by the Safe and Stable Homes for Children and Youth Amendment Act to help parents establish temporary arrangements for the care of their children without litigation. The overall purpose of the Safe and Stable Homes Act was to allow third parties to have custody when it was in the child's best interest. Though the initial draft of the legislation did not provide for a custodial power of attorney, it was added to the enrolled version after it was brought up at the hearing that a fit parent should be able to make a custodial decision for their child without having to go to court. To that end, when a social worker is removing a child a preliminary determination has been made that the parent is not fit and therefore this request to have the "non-fit" parent to make a custodial decision is improper. Additionally, and more importantly social workers cannot have parents sign a legal document as it would constitute practicing law without a license<sup>1</sup>.

### **3. Emergency Removal and Reasonable Efforts**

On page 12 of the study, the CRP suggests that CFSA does not include adequate justification of removals in the case file. Reasonable efforts are documented in each complaint that is filed. Further, case records include the clinical assessment of the social worker. It is important to note that in the District Code, consistent with ASFA, the child's safety and health is the paramount concern, DC Code 4-1301.09a(a), and that reasonable efforts to prevent removal should be made, except when provision of services would put the child in danger. DC Code 4-13019a(b)(2).

On page 30 of the study, the CRP indicates that the DC Code dictates that emergency removals should be rare however this not stated in the law. The DC Code says that a child may be taken into custody by the agency when the social worker has reasonable grounds to believe the child is in immediate danger from his or her surroundings and that the removal of the child from his or her surroundings is necessary.

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<sup>1</sup> In the very document CRP provides it states that this document is for information is for information purposes only. They do not provide legal advice. If you have questions about whether a custodial power of attorney is right for you or your family, or how to prepare a custodial power of attorney, you should seek legal advice.

#### 4. Respite Care

Throughout the study, the CRP refers to the Agency's legal obligation to provide respite care. DC law does not require the use of respite care. DC Code 4-4303.03(a) spells out the duties and powers of the director of CFSA. Included in these is the authority to provide protective service clients appropriate services necessary for the preservation of families. These services MAY include: respite. 1303.03(a)(13)(j). When appropriate, CFSA does provide respite care.

#### 5. Community Papering

On page 6 of the study, the CRP recommends:

“CFSA should make better use of legal procedures to file a case without removing children. A legal process exists when CFSA has concerns about a family but an emergency does not require removal.”

The circumstances where community papering is appropriate following an investigation are rare. We typically community paper cases from in-home units. In February 2011, training was provided for all in-home social workers in Divisions I and II regarding community papering. There is occasionally a basis in a CPS case to community paper. However, if we are petitioning and asking for removal, the standard the court is applying is that shelter care is needed to protect the person of the child. If a CPS investigator believes this to be true, they have the authority to remove - see DC Code 16-2309(a)(3) - when he or she has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and removal is necessary. Most often when we community paper, we are seeking the Court's authority to convince the parent to accept services. We often do not ask for shelter care in those petitions, but instead seek conditional release with the condition that the parent accept necessary services.

### Data

#### 1. Data referenced from CFSA Annual Report

On page 8 of the CRP study, data from CFSA's Annual Public Report (APR) was represented as inaccurately represented as cohort data. The CRP used the total number of entries for a fiscal year as the denominator and the total number of exits (less than 4 months) as the numerator. To get an actual calculation, the CRP would need to use as the numerator the number of entries in a fiscal year for which the child remained in foster care for less than 4 months. In other words, if a child was in the numerator, he/she should be in the denominator. This would not necessarily be the case based on the data in the Annual Public Report. The children who exited care might have entered care in the prior fiscal year. The CRP did not use this information in their calculation. **CFSA recommends that the CRP use the analysis that is attached (please see below).**

APR data for removals and exits (discharges) are unique counts (i.e. each removal counts as one so if a child entered, exited and entered again in a fiscal year he/she would be counted twice).

AFCARS is a unique count of children but keeps a running total of the number of removals and exits for each child. We report only the most recent entry and exit date in the AFCARS file. So if a child entered care for the first time on 10/1/2009; exited care on 10/30/2009 for reunification; then re-entered on 1/1/2010 and then exited care on 3/31/2010 only the latter dates would appear in the AFCARS data but we would report two total removals and two total discharges for the child. However, for the short stay analysis we weren't looking at aggregate totals of entries and exits but only those for which the file contained actual entry and exit dates. Additionally, entries that last less than 24 hours (entry and exit on the same day) are not included in AFCARS but were on the APR data.

The APR timeframes for length of stay in care are different than the CRP's timeframes in their request for data. The APR has timeframes of less than 1 month; 1 - 4 months; 5 - 8 months; etc. The timeframes in their request was less than 10 days; less than 30 days; less the 120 days. They should not equate 4 months with 120 days. For the APR anything less than 5 months is in the 1 - 4 month category. In other words if you exited prior to the first day of your 5th month in care it is less than 5 months.

## **2. Data Requested by the CRP**

As part of the study, the CRP requested the following data from CFSA for children entering care in FY 2006 through FY 2009 and exiting within certain periods of time. Initially, the CRP attempted to complete the analysis of the data. The CRP then requested CFSA's assistance in completing the analysis. The completed analysis is attached.

## **Case Reviews**

### **1. Cases Reviewed**

The original request from the CRP was to review 15 children who had been removed from their parents from January through June of 2009 and who left out of home care in one of three time frames: less than 10 days, 11 to 30 days, and 31 to 120 days. A sample of such cases was pulled that included 15 cases each in the first and third categories. However, the reports showed only five children who were removed during the specified time frame and returned between 11 and 30 days later. The entire sample thus made available was 35 cases.

CRP reviewers were given access to printed records from FACES which included contact notes, investigation summaries, hotline reports, court reports, and any other documentation related to the removal or investigation that CFSA staff was able to access. As mentioned in the CRP report, no interviews with staff or managers of the programs were included in the review process. Printed files containing case records were made available for the review teams beginning in April, 2011. The first records provided were those involving children with the shortest stays in out of home care. This was deliberate in that these records were the shortest and contained the fewest types of records.

Of the 35 cases selected, only 27 were actually used in the CRP review. Those excluded included one from the first category (1 to 10 days) and 13 from the 30-120 day group. The case from the first group was reviewed by at least one reviewer but was removed from consideration over CFSA's objections. The cases from the third group were available but never reviewed. **As a result, the**

**sample is rather lopsided, as half of the cases actually reviewed were of children returned home almost immediately.**

### **3. Minimizing of Safety Factors**

The CRP report uses brief summaries of the removal situations to support its claim that children are removed from their home unnecessarily, without justification. However, these vignettes regularly understate the level of danger to the children involved. For example, in one of the cases mentioned, the CRP report says that “CFSA found some evidence of excessive discipline of one child” (p.17). A full description of the child’s injuries are found in this passage from the investigation summary:

“The Medico-Legal revealed a loop mark to the right side of the face (red) skin broken 1”x 3” ; a loop mark right torso & shoulder (6” long); a loop mark on left back (3 1/2’ long); a partial loop mark on the left hand above knuckles; 4-5 hypopigmented 1/2cm lesions on left side of neck / shoulder, irregular shapes; a loop mark posterior aspect of the right arm near shoulder (3” long); a loop mark anterior on the right thigh (9cm long with abrasion); a loop mark on the right back near shoulder (6cm long) with abrasion. The loop mark lesions are consistent with being beaten with a cord which is what C-1 described. C-1 was likely beaten and undressed with some sort of cord as she disclosed.”

To categorize this level of injury as “some evidence of excessive discipline” is at best troubling, as these injuries indicate a pattern of abuse rather than a single incident. Furthermore, the victim was only seven years old, and sustained injuries over many parts of her body, including her face.

In a second example, the CRP report minimizes concern of a relative who comes to CFSA seeking relief. The CRP report describes the situation thus:

“A child was living with his uncle, who reported to CFSA that he was facing eviction. CFSA interpreted this situation as an admission of the uncle’s inability to raise the child and an immediate threat to the child – even though the eviction was not imminent, and the uncle’s news could reasonably have been understood as a request for assistance.” (p.20).

The child in question had been born prematurely, had been exposed to PCP, and was believed to have developmental delays. The investigator’s notes make it clear what kind of help the uncle was seeking at the time. He reports that the uncle “noted several times during this interview that *he would not take the child back* (emphasis added)..., noting that he wants to leave the apartment as quickly as he could and having to care for the child would hinder this effort.”

The investigator further quoted that the uncle as saying that providing care for his nephew was “getting to me, feeling overwhelmed”, and that the uncle was “tired, frustrated, and hungry” (investigation 652568, p. 4). Further, the uncle was himself a recovering PCP user. The dangers associated with forcing this man to continue to care for a child under these circumstances are not acknowledged by the CRP reviewers.

### **3. The Role of the Family Court**



Half of the children whose cases were reviewed by CRP spent more than 10 days in out of home care. For a child to remain in care for more than 10 days; a hearing would need to occur and the Court would have needed to approve of the child's removal. However, the CRP – whose reviewers were not in court for any of these hearings and heard none of the testimony—felt that only a quarter of the removals were justified. In essence, the reviewers disagree with the judgment of the Court in 25% of the cases reviewed, a fact not mentioned in the report. Their argument that FACES documentation should have done an adequate job of describing the risk and safety factors is well taken, and CFSA recognizes that documentation in many cases can be improved. However, the most comprehensive review mechanisms for child welfare, including those utilized by the Federal government in the Child and Family Service Reviews, recognize that the case records alone do not tell the whole story. The CRP's conclusion that in 29 of the 54, removal was not warranted (finding 13, p. 6) is clearly at odds with the decisions made by CFSA and the Court on those same cases.

The following example illustrates this point. In discussing the G. family, consisting of four children, the report states the following:

“The eldest child exhibited extremely difficult behaviors and was suspected of having molested his younger sister. The children's mother seemed unable to manage the eldest child's behavior well and resorted to physical abuse; the Panel considers CFSA's removal of the eldest child to be justified. But the only immediate danger to the younger sister came from that eldest child; once he was removed, there was no need to remove her as well, yet CFSA did so.”

Although the panel opined that there was no need to remove the other children, the Court upheld the removal of all four. This was based on the other factors in the case, which CRP fails to mention here—namely, the allegations of physical and sexual abuse regarding the others, and reports by the children that the mother would not feed them. The referral actually came in for medical neglect of one child, as the mother had not taken him to a doctor for treatment despite pleas from the child's school. This child was so ill at the time of the pre-placement screening that he could not walk by himself, was given oxygen treatment at the clinic, and was sent home with two prescriptions. The CRP report dismisses this concern by stating that the child “had a bad cold”.

#### **4. Prior Case History**

CFSA printed case information from the FACES system to provide to the CRP reviewers. The information printed included the Referral Acceptance Snapshot (the hotline report), the Investigation Summary, and case notes for the investigation which prompted the removal; all case notes, court reports, and any subsequent investigation information for the six months following removal; and similar FACES information, if any, in the six months preceding the removal. This was to give the reviewers a clear picture of what led up to the removal of the children as well as what actions were taken afterwards.

Social workers making decisions regarding removals must take into account prior CPS history and the family's record of involvement with the agency, both to gauge the safety of the child and to make an informed estimate of the family's ability to respond to services. There were several places in the report where it appeared that the reviewers either did not read the information on prior history, or chose to discount its relevance.

One such example is found on page 21:

“CFSA found that the family’s home was dirty and concluded that the parents were providing marginal care to their four children. But the case record did not provide evidence of imminent dangers to the children. CFSA should have pursued its legitimate concerns without removing the children – either through a community case or by filing a child abuse or neglect case without first removing the children. The children reunified three months after their removal.”

What the reviewers failed to notice, even though they were provided with documentation, was that at the time of the removal the family had been receiving in-home services for six months, following a prior of referral of neglect for the same issues. Six months of “a community case” had not alleviated the problems, and yet CRP recommends it as an alternative to removal.

Another example involves a child removed due to concerns of medical neglect:

“CFSA was concerned about a mother’s care for her infant son, whose weight gain and growth was not healthy, according to his doctors. These concerns were serious and legitimate. But when the hotline call arrived, the child was hospitalized and was safe. There was no indication of any immediate danger to the child while he was hospitalized. ... CFSA removed the child without a court order and without a pending emergency.”

Again, by reviewing the case record, the reviewers should have noticed that the mother had threatened to take the child from the hospital against medical advice the week prior to the removal. This certainly constituted an ‘immediate danger’ to the child, a finding that the court subsequently agreed with in allowing the child to remain in care for two months.

## **5. Family Team Meetings (FTM)**

One of the options to removal that is frequently cited in the CRP report is the use of Family Team Meetings (FTMs) to address child safety issues. FTMs can be effective in developing safety plans, identifying caregivers, and in putting together arrangements that allow for children to remain safely in their homes. Such meetings occur frequently at CFSA, and with positive results. Cases where this happened were not part of CRP’s sample, and so they have no cases with successful FTM for comparison.

However, in the majority of the cases in the current sample, the situation that presented itself to the CFSA investigators did not allow for an FTM to occur. These meetings may take days to coordinate, especially if relatives or participants are unavailable, out of town, or have conflicting schedules. Investigators do not have the option of leaving children in unsafe settings, or having them wait in a CFSA office, while an FTM is organized. In one of the examples given above (with the child removed from a hospital), the CRP faults CFSA for not holding a pre-removal FTM. However, an FTM had already been held, several months earlier, and it produced a plan which was not proving effective in changing the parent’s dangerous behavior. Although an additional FTM was one option to consider, in this case it was clearly felt that doing so would not protect the child.

A similar concern is raised by the frequent claim that CFSA removed a child without a court order. Again, in the majority of these situations, waiting for an order would have placed the children at undue risk of future abuse or neglect. In the case mentioned above where there was concern about the child's weight gain, there had been a prior petition, which was dismissed after an FTM safety plan was accepted by the family.

## **6. Recommendations for Preventing Removal**

Several of the options that the CRP report cites as ways to avoid placement are in fact used by CFSA staff. However, they were either not appropriate for specific cases, or were not utilized in a way that CRP could recognize. For example, the report faults CFSA for not making better use of respite for children when parents are unavailable to care for them. One case in particular is cited where a mother contacted CFSA to help care for her children while she was hospitalized in order to receive "medical attention" (actually, it was a pregnancy). The record makes it clear that CFSA was unable to identify or locate relatives who could care for the children, which would have been the preferred option. When this did not bear fruit, the children were placed in foster care.

In another example where respite is suggested, the CRP states:

"A teenage mother who was herself in foster care was placed in a congregate care facility. She felt unsafe there and so ran away with her son. She needed medical attention and had no one to take care of her son. Rather than provide respite care, CFSA removed the child and placed him in foster care. CFSA took this step even though its own investigation concluded that the child faced no immediate danger and that his mother had a high degree of protective capacity .... The young woman and her son were reunified less than two weeks after his removal once CFSA found a foster home for her – something it likely should have done weeks earlier, before she had run away from her previous placement." (p.24)

There is no language in the investigation suggesting that the mother had a "high degree of protective capacity". In fact, the report speaks of her immaturity and poor decision making. At the time they were found, the mother had no formula or extra diapers for the child, and no coat (in February). Prior to the removal the investigator worked with the mother to try to identify any family or supports who could care for the child, but none could be found. Here again, CFSA's only real option was to place the child in a licensed foster home. In this case, again, the Court found reasonable efforts had been made to avoid removal.

In several cases, such as the one below, the CRP report encourages legal consultation as a way to avoid placement:

"CFSA suspected that a man was abusing his step-daughter, and removed her and her two younger siblings. ...CFSA returned all three children and decided not to prosecute the case three days later after the CFSA lawyer concluded that the Agency lacked sufficient evidence

to prosecute the case. Pre-removal consultation with the lawyer could either have helped CFSA generate sufficient evidence or avoided an unnecessary removal.” (p.23)

In this case, CFSA did not suspect that the man was actively abusing his daughter. He had recently been released from prison, where he was incarcerated for having done just that several years earlier. CFSA never had information to suggest that abuse was taking place, but was concerned that the child’s mother had allowed him back into the home. The Agency had been informed, incorrectly it turned out, that this was a clear violation of his probation. The decision not to paper the case was due in part to the inability of corrections to revoke the man’s parole due to their own unclear notice. There is nothing to suggest that a lawyer could have helped “generate additional evidence” regardless of when the conversation took place.

CRP suggests that CFSA should oppose decisions of the Metropolitan Police Department (MPD). CFSA and MPD have a long standing partnership in collaboratively conducting investigations. The examples provided do not fully recognize this partnership or give the Agency credit for its efforts to prevent removal. For example, the CRP stated:

“In at least one case that did not involve the arrest of a parent, MPD made the initial decision to remove a child. That decision was suspect. CFSA exacerbated the situation by failing to question MPD’s removal, leading the child to remain in foster care for more than one month.”

The investigation summary does state that the worker returned to the shelter the same day with the youth in an attempt to locate the mother and return the youth to her, but she had left the facility with her other two children. The time frame (more than one month) also indicates that the Court supported the removal. The report further states:

“In that case, a teenage boy physically attacked his mother while they stayed at the D.C. General family shelter. Someone called the MPD and the mother – who had just been attacked – said in anger that her son had to go. She soon recanted that statement ...MPD removed him anyway – despite the absence of neglect. CFSA failed to question that removal and did not release the child back to his mother.” (P.26)

An FTM was held the day after this incident, and at that time the decision was made to keep the youth in shelter care until a suitable relative home could be identified. It should also be noted that the family has long history with CFSA, that the mother had received services from CFSA and other agencies in the past and continued to struggle with providing basic care for her children. The mother had kicked the youth’s older sister out of the home a few months earlier. The reviewers’ conclusion that there was an “absence of neglect” cannot be supported.