

**Testimony of Mitchell Y. Mirviss, Esq. before the Senate Budget & Taxation Committee
HB 406: Children in Out-of-Home Placements – Placement in Medical Facilities**

Position: SUPPORT

March 30, 2022

I represent the class of Baltimore City foster children in the custody of the Baltimore City Department of Social Services (“BCDSS”) in the federal class action, *L.J. v. Massinga*. Since 1988, the Department of Human Services (“DHS”) and BCDSS have been subject to a federal consent decree, as substantially modified and expanded in 2009, regarding conditions and services for the foster children and their families. Defendants have never been in substantial compliance, and they are far from compliance now.

The modified consent decree (“MCD”) prohibits placement of Baltimore foster children in hospitals, offices, and other unlicensed placements. Despite the MCD’s clear prohibition of the practice, for the past four years, BCDSS and other local departments of social services have been warehousing children in psychiatric hospitals, psych wards of other hospitals, and even in hospital E.R.s due to a statewide placement shortage now in its sixth year running. These illegal and grossly inappropriate placements can last weeks, months, or even a year or longer.

In 2021 alone, 49 or 50 different Baltimore City foster children had a total of 69 separate hospital overstay. ***The average length of hospitalization was 55 days.*** And Baltimore City accounts for less than half of the total foster care population in the State. As of December 31, ***eleven children*** were in hospital overstay statewide. As of March 18, 2022, ***nine Baltimore City children*** were in hospitals without medical cause. One Baltimore City child has stayed in a hospital for 483 days. All of these children have been warehoused in psychiatric hospitals or wards without medical justification or have been kept in emergency rooms of hospitals for extended periods of time without medical justification.

During 2019, the OPD represented one child who had been wrongly hospitalized on seven different occasions. One of the Baltimore children hospitalized last year was only *six years old*. He is the *second* six-year-old known to have been hospitalized without medical need since 2019. Some of the children have been hospitalized three or four times. As of today, there are several foster children who are stuck in a surreal, highly illegal *Cuckoo’s Nest* world.

This is a disaster. In my 37 years of representing foster children in Baltimore, I have never seen anything this bad. That includes children sleeping in hard chairs in a DSS office building without showers or bathing facilities; dozens of children sheltered in a motel run by social services without adequate supervision; and children stuck in residential treatment centers because less restrictive placements are not available.

Children have been discharged by their treating psychiatrists or released by administrative law judges because the child does not meet the criteria for involuntary hospitalization but remain stuck in the hospital because the local DSS refuses to pick up the child, stating that no placement

is available. Juvenile court judges have resorted to ordering the placement of the child in a private psychiatric hospital for no reason other than the lack of an appropriate placement. Children have moved from E.R. to E.R., staying days and sometimes weeks at a time, for no reason other than the lack of an appropriate placement.

Hospitals are not licensed child placement agencies. These placements are illegal and unconstitutional, yet they persist because DHS lacks adequate placements. Federal legislation, the Families First Services Prevention Act of 2018, prohibits most congregate-care placements for foster children, yet here in Maryland we are using the very worst, the absolutely most restrictive placements—psychiatric wards and E.R.s—for our most vulnerable, highest need children. A psychiatric hospital or an E.R. is a terrible place for a child: he or she does not go to school, does not have contact with the community, is separated from family and friends. These children already are highly traumatized, highly vulnerable children, and yet we traumatize them further. The literature confirms that over-hospitalized children are likely to regress and be further traumatized.

Children are kept in hospitals because Maryland has a shortage of adequate foster care placements. It has failed to develop an appropriate array of supportive services that can allow children to live in community placements without disruptive hospitalizations. Unfortunately, DHS has failed to plan for the actual needs of its foster care population and to budget for services that would fix the problem. The State has been well aware of the problem for four years running now. A year ago, several advocates and I were preparing to sue but did not because the State announced plans to expand and create dozens of new placements and beds. That information turned out to be misleading (at best). New plans were announced last summer, but they will not solve the problem. As of today, ***only four new beds have been filled***, and these are (a) reserved for developmentally disabled children; and (b) located in Frostburg, far from Baltimore. DHS had an RFP for 60 new beds; ***it received only one proposal for only fifteen new beds***, which DHS admits is not enough.

Because the State has failed to curb these illegal placements and has no plan to do so, the General Assembly needs to step in and enact strong measures that will prevent DSS agencies from continuing to mistreat foster children in this way. HB 406 provides legal clarity and financial protection to hospitals. These are vital measures, even if they do not go far enough. Similar measures, such as HB 1032 (2020), have put DHS and MDH on clear notice that such provisions might be necessary if they did not create placements for these children.

HB 406 would at least be a start in addressing the crisis. No foster child should be warehoused in a psychiatric ward or an emergency room merely because the State has failed to take steps to develop appropriate placements for the children. This is a clear dereliction of our *parens patriae* responsibility to care for these maltreated children as if they were our own.

Respectfully submitted,

/s/ Mitchell Y. Mirviss