

January 10, 2025

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Senator William Smith
Chair, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: **SB 191 (2025): OPPOSE**

Dear Chairman Smith and Members of the Committee:

I strongly oppose SB 191 and urge the Committee to issue an unfavorable report. The bill would not help the hundreds of foster children who will languish in unlicensed (*i.e.*, illegal) settings such as a DSS office, hotels, and worst of all, psychiatric hospitals, psychiatric wings of acute care hospitals, or even hospital emergency departments. Instead, it will give the local Departments of Social Services and their parent agency the Department of Human Services a way to obtain court sanction because the court is faced with an unconscionable Sophies' Choice of cutting off funding for the child (effectively putting the child on the street) or making a factual finding that no alternative exists to the unlicensed placement. In virtually all such cases, the parties and the court will check off the requisite boxes, make the statutory findings, and give the State a pass for having created this deplorable situation in the first place. This is a shameful fig leaf, and the General Assembly should not put it into law to camouflage what is happening to the most vulnerable children in the state—foster children who have suffered grave maltreatment and cannot be placed with their families.

The State has been placing and keeping foster children in illegal, unlicensed placements for the last five to six years, at least. Hundreds of children have languished in these situations. Time and time again, the Secretaries of the Departments of Health ("MDH") and Human Services ("DHS") have testified before various legislative histories and vowed to fix the problem soon. Year after year, the promised fixes don't arrive or don't work as promised. Just last year, the DHS Secretary testified at a budget hearing that "I will fix it." Yet the Office of Public Defender reports that currently it represents 10 children in hospital overstay. The Baltimore City Department of Social Services reported last night that three foster children had to stay overnight in one of its offices. Last Friday (January 3, 2025), the most recent data available, it reported six foster children in hospital overstay.

Hospital overstay typically last for several weeks and many times last for several months. According to Baltimore City data that I have analyzed, most of these children are not waiting for highly restrictive residential placements to open up, but, rather, ultimately are placed with relatives, foster parents, or in group homes. DHS openly asserts that there is no placement

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shortage, yet children languish in these situations on waiting lists for placements to open up—and when a placement opens, the child is placed.

Having just learned of this bill and the very rapid deadline for providing testimony, I do not have time to provide an analysis of current Baltimore City data. Therefore, the Committee should consider the relatively recent data as of May 31, 2024 that Plaintiffs’ counsel shared with the federal court for the District of Maryland in early June 2024 in enforcement proceedings in the *L.J. v. Lopez* class action, where a modified consent decree prohibits DHS and Baltimore City DSS (“BCDSS”) from housing children in unlicensed facilities.

- On May 17-23, 2024, BCDSS illegally housed **nine** Plaintiffs in hospital overstay. On May 28-30, 2024, it illegally housed **nine** more in hotels.
- Most children (approximately 90%) leave for community placements, not RTCs or other hospitals.
- On most days, at least one foster child is housed in a BCDSS office.
- The problem is getting worse: **21 children** illegally housed on May 22, and, statewide, **68 foster children** (15 in hospitals and 53 in hotels) on January 25.
- The net supply of beds continues to plummet, declining by *dozens* in the previous year. DHS has admitted to **losing 125 beds in FY 2024**.
- The mean length of hospital overstay was **32 days** during FY 2024.
- On May 21, 2024, BCDSS housed **five children in an office**, and a total of **20 children** in an office, overstay, or hotel that night. This was well over 1% of all foster children in BCDSS custody.
- In 2023, BCDSS housed children in its offices **222 times**. From January 1 through May 30, 2024 it had already done so **157 times**. By contrast, there were only 39 nights when no foster children were housed in the building during that period.

Pls. Reply Mem. in Supp. of Pet. for Enforcement, *L.J. v. Lopez*, Case 1:85-cv-04409-SAG, at 1-

2, 8, 18, ECF No. 698 (D. Md. June 10, 2024). Plaintiffs also provided some case examples:

- A 16-year-old girl had been in a hotel since Jan. 8 because she is third on the waitlist at a group home, one treatment foster care (“TFC,” aka therapeutic foster homes) provider “cannot find a parent for her,” and another lacks a home “that is able to accommodate any teenagers.”

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- For another 16-year-old girl in a hotel since April 19, BCDSS reports these placement efforts: “As of 5/28/24, [...] TFC reported that they do not have any placements that are accepting females at this time. [...] TFC reported that they do not have any openings.”
- One youth discharged from Sheppard Pratt on December 20, 2023 with a recommendation for RTC placement, was housed in a hotel until May 20, six months later, waiting for a spot to open at one of the five RTCs that accepted him.
- A youth spent a month in a hotel, from Jan. 5 to Feb. 8, because his treatment foster parent closed her home and the provider had no other families available, until another provider in Baltimore found a foster home for him.
- A 14-year-old youth with Type 1 diabetes was hospitalized after his TFC provider failed to replace his glucose monitoring device after it expired and did not take other measures to monitor his glucose. He spent 16 days in overstay, Oct. 22 to Nov. 7, 2023, because all but one TFC and group-home provider rejected him, and the one group home that accepted him required training on diabetes management.
- One youth with a history of severe sexual trauma had been at Spring Grove Hospital since September 2023, following three months at JHH. BCDSS was told that she would be ready for discharge in December, and it has been searching for an RTC since then. Sheppard Pratt RTC told BCDSS that it “is not accepting any new referrals at this time.” In February 2024, the hospital wrote to the juvenile court that she is stable and not an imminent threat to herself or others and can be placed elsewhere. It has told BCDSS that her prolonged stay is detrimental to her wellbeing.

Id. at 19-20. The problem is not, as the State often portrays it, mostly older children with severe behavioral health disorders that no facility will take. Most children do get placed in the community, eventually. Medically fragile infants have had to stay in hospitals without medical necessity due to the lack of foster homes.

The hospital overstays are particularly deplorable. Languishing in an E.R. or psychiatric ward without medical necessity harms children: their schooling is interrupted (it often takes weeks or months before small amounts of tutoring are arranged); they rarely exposed to fresh air; they have no or scant opportunity for recreation; and they have almost no socializing opportunities. Visits from relatives or friends are infrequent. And the academic literature is clear that prolonged hospitalization damages children, as their developmental progress is halted and impaired. Before the Committee gives DHS the judicial fig leaf it is seeking, it should appear from the medical practitioners who must try to serve these children under horrific conditions about just what harm is occurring and would receive judicial authorization should SB 191 be enacted.

If a parent abandons a child in a hospital because it is unable to care for the children in the home with the services available, DSS often will file a CINA petition in juvenile court against the

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parent. When DSS refuses to pick up a foster child from the hospital when called by a hospital social worker because DSS lacks a placement and services to care for the child, the same neglect is occurring. It is no less a form of maltreatment when the State does it.

The question that the Committee should ask of DHS is whether it believes that SB 191 will reduce the number of children in illegal unlicensed placements, and, if so, why. Having worked with this problem intensively over the last six years, I strongly believe that SB 191 will have virtually no effect on improving conditions for foster children. Rather than pass a bill that will not help, the Committee should direct DHS to implement solutions that have worked in other jurisdictions. These have been passed on to DHS, but we await word on whether they will be adopted.

As for my interest in the issue, I am co-counsel for the class of Baltimore City foster children in the *L.J.* case discussed above and have served as class counsel since 1988. In addition, I am co-counsel with Disability Rights Maryland in another federal class action, *T.G., et al. v. Md. Dep't of Human Servs., et al.*, which also seeks to end hospital overstay of foster children outside of Baltimore City. *T.G.* also is pending in the U.S. District Court for the District of Maryland. Overall, I have been involved in foster care reform at the federal, state, and local levels since 1979.

In sum, I urge the Committee to focus on solutions, whether enacted by the General Assembly or developed by DHS and MDH. At a minimum, there should be hearings on placement needs and service deficiencies that have caused the placement crisis. And advocates should be given time to develop and present fulsome testimony rather than the few days of notice provided for SB 191. Giving DHS the fig leaf it seeks to paper over the problem with minimal public input is a terrible fix. It will hurt foster children. I urge the Committee to issue an unfavorable report for SB 191.

Respectfully submitted,

/s/ Mitchell Y. Mirviss