

**IT TAKES A VILLAGE – A SMALL STEP IN
PHILADELPHIA CHILD WELFARE REFORM: OPENING
PHILADELPHIA FAMILY COURT’S DEPENDENCY
PROCEEDINGS**

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ABSTRACT

Philadelphia has the highest rate of child removal of any major city in the United States. Philadelphia also conducts its hearings in Philadelphia Family Court behind closed doors—with no access to the public or press. This closed-door practice prevents the legal community and the general public from understanding the inherent systemic flaws in the city’s child welfare system and how to best implement effective solutions so that the unnecessarily high rate of child removal is reduced, and children are only removed from their families for necessary safety reasons.

Other states and cities, including Pittsburgh, Pennsylvania, have implemented open family court systems in order to place a check on those in the courtroom responsible for determining whether a child must be removed from his or her home. These jurisdictions recognize that closed family courts can harbor complacency, diminish professional accountability, and foreclose the opportunity to bring attention to systemic failures that undoubtedly occur in child welfare systems across the United States.

Although Philadelphia’s child welfare system is both complex and underfunded, the alarming rates of child removal exacerbate the need to ensure that the number of children within the system should, in fact, be part of the system. Adopting a policy that explicitly allows the public and media to attend dependency hearings in Philadelphia, in

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recognition of the traditional right of access to other judicial proceedings in a free society, while still accounting for child confidentiality concerns, is one low-cost way to address child protection—a community responsibility.

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INTRODUCTION

A mother’s and father’s responsible decision to bring their fussy seven-month-old daughter, N.M., to the hospital after hearing a “pop” on her side resulted in false abuse allegations,

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a Philadelphia judge's wrongful termination of their parental rights, and subsequent placement of their daughter into foster care.¹ By the time the parents were reunified with their daughter, she was two years old.²

After the Children's Hospital of Philadelphia ("CHOP") medical team determined N.M. was suffering from two acute rib fractures, the Philadelphia Department of Human Services ("DHS") followed its protocol and filed a complaint; an adjudicatory hearing was held thereafter.³ For Judge Younge, it did not matter that a CHOP pediatrician testified that "nothing was provided to the CHOP team that would explain N.M.'s rib fractures," that the mother had no explanation for how N.M.'s injuries occurred, or that the DHS social worker described the family home as "extremely safe."⁴ Instead, the judge placed N.M. into foster care, stating, "[U]nless somebody is willing to say, 'This is how [N.M.] got injured,' [N.M.] can't come back to that home [I]f I leave her [in foster care] maybe I get closer to an answer as to what happened."⁵ Later, the Pennsylvania Superior Court overruled Judge Younge's decision⁶ and reprimanded the judge for "overreaching, failing to be fair and impartial, [having] a fixed presumptive idea of what took place, and a failure to provide due process to the two parents involved."⁷

1. See J.C. *ex rel.* N.M., 186 A.3d 998, 1001 (Pa. Super. Ct. 2018).

2. *Id.* at 1010, 1013–14.

3. See *id.* at 1001.

4. *Id.* at 1001; see *id.* at 1011–12 (explaining that Judge Younge's denial of kinship care was based off of "unsupported speculation" and the "unwarranted and continued assumption" that N.M.'s parents would abuse visitation rights despite having "fully complied with their service plan objectives" established by the court).

5. *Id.* at 1003; see *id.* at 1014 n.30. (noting that "[t]his is an extremely harsh penalty for parents who have complied in every way with the requirements of the CPSL").

6. *Id.* at 1012–14 (holding that the trial court abused its discretion in "repeated[ly] refus[ing] to consider approved kinship care, in light of the fact that it also found Parents fully compliant with their treatment goals . . . and where DHS supported kinship placement," and reversing the court's permanency orders).

7. *Id.* at 1014 n.30; P.J. D'Annunzio, *Phila. Public Defender Blames Judge for Separation of Child from Parents*, LEGAL INTELLIGENCER (May 13, 2020, 10:07 AM), <https://www.law.com/thelegalintelligencer/2020/05/13/phila-public-defender-blames-judge-for-separation-of-child-from-parents/>.

Judge Younger's "judicially-created parental alienation"⁸ may have been avoided had these dependency hearings not occurred under a veil of secrecy. The years-long courtroom battle took place in Philadelphia Family Court's normal setting—a closed court room that bars access to the public and the press and keeps court records and rulings confidential unless appealed—without "the natural control of public exposure."⁹ *The Legal Intelligencer* uncovered Judge Younger's egregious violations through interviews with parents involved in the child welfare system and family lawyers, many under anonymity for fear of reprisal by Judge Younger.¹⁰

As Judge Younger is now prohibited from adjudicating Family Court cases, those involved in Philadelphia's child welfare

8. J.C. *ex rel. N.M.*, 186 A.3d at 1012; Debra Cassens Weiss, *Appeals Court Criticizes 'Judicially Created Parental Alienation' in Case of Baby with Broken Ribs*, AM. BAR ASS'N J. (May 8, 2018, 8:00 AM), <https://www.abajournal.com/news/article/appeals-court-criticizes-judicially-created-parental-alienation-in-case-of>.

9. P.J. D'Annunzio, *Philadelphia Family Court Judge Has a History of Violating Parents' Rights*, LEGAL INTELLIGENCER (Apr. 2, 2018, 10:00 AM), <https://www.law.com/thelegalintelligencer/2018/04/02/philadelphia-family-court-judge-has-a-history-of-violating-parents-rights/> [hereinafter *Philadelphia Family Court Judge*] (noting how one attorney who regularly represented families in dependency hearings before Judge Younger commented that "[Judge Younger makes] up her mind pretty much in the first 30 seconds of the case"); *In re Younger*, No. 2 JD 19, 2020 Pa. Jud. Disc. LEXIS 30, at *45, *48, *52, *53, *80 (Pa. Ct. Jud. Discipline Dec. 1, 2020) (explaining that Judge Younger amassed a large number of "delinquent records and overdue opinions," "demonstrated an impatient, undignified, discourteous demeanor" that was "arrogant, condescending, [and] cold," caused an attorney to cry during a proceeding, and held an attorney in contempt for arriving late to a Termination of Parental Rights hearing after dealing with an "unexpected[] delay[]" in another dependency matter).

10. *Philadelphia Family Court Judge*, *supra* note 9; *In re Younger*, 2020 Pa. Jud. Disc. LEXIS 30, at *46–47; *58–61. This is not the only time Judge Younger has acted egregiously and further jeopardized a child's removal. *Id.* For example, Judge Younger refused to allow a mother to testify at her child's dependency proceeding after she stepped out of the court and became sick. *Id.* at *46–47. Instead, Judge Younger conducted the hearing without the mother present, and ultimately entered an order terminating the mother's parental rights. *Id.* at *47. On another occasion, a mother explained to Judge Younger that she was unaware her children were required to attend a truancy hearing. *Id.* at *58. Without holding a contempt hearing, Judge Younger ordered the mother to be handcuffed and placed in a holding cell, stating, "You have [two-and-a-half] hours to get those children here. If you don't get them here, I am having a bus sent here and have you sent up to [the Philadelphia prison]." *Id.* at *59–60. The mother contacted the grandmother, who then "delivered [the children] to DHS, a two and one-half-hour process." *Id.* at *60. Thereafter, Judge Younger placed the children in foster care, despite there being "no aggravating circumstances pertaining to [the children's] truancy" nor were there "allegations of abuse, neglect or safety risk pertaining to [the children]." *Id.* at *60–61.

system can feel somewhat at ease knowing their future will not be instantly jeopardized by Judge Younge.¹¹ However, although several officials and family law experts have expressed that “Philadelphia’s practice of holding non-public juvenile and dependency hearings . . . does more harm than good: keeping incompetence hidden, encouraging delays in cases where children are in limbo, and stifling any hope for systemic improvement,”¹² the lingering question remains regarding what happens behind closed doors in Philadelphia’s child dependency proceedings.

This Note argues that dependency hearings in Philadelphia, which are conducted in a closed setting, should be open to the public to expose injustices, ensure accountability on behalf of judges, DHS workers, and attorneys, and diminish systematic failures within Philadelphia’s child welfare system. Part I discusses the structure of Pennsylvania’s child welfare agencies and the procedures that take place when a child enters the welfare system. Part II examines Philadelphia’s current state of affairs, highlighting the increasingly high rates of child removal in Philadelphia and the long-lasting effects of child removal. Part III examines statutes and case law that Philadelphia can follow to allow for open dependency proceedings. Lastly, Part IV examines other states and counties within Pennsylvania that employ an open-door juvenile court policy and its consequential improvements within the child welfare system.

11. See Chris Palmer, *Philly Judge Gets 6-Month Suspension for ‘Blatant and Inexcusable’ Misconduct on the Bench*, PHILA. INQUIRER, <https://www.inquirer.com/news/philly-judge-lyris-younge-family-court-suspension-20210603.html> (June 3, 2021) (noting that two judges felt that “Younge’s penalty wasn’t stern enough” and that she “should have been permanently removed for causing ‘one disaster after another’”). Notably, Judge Younge may still serve as a judge in a probational capacity. *Id.*

12. P.J. D’Annunzio, *Secrecy in Phila. Family Court Protects Bureaucrats and Lawyers More Than Children, Experts Say*, LEGAL INTELLIGENCER (Jan. 16, 2019, 4:33 PM), <https://www.law.com/thelegalintelligencer/2019/01/16/secrecy-in-phila-family-court-protects-bureaucrats-and-lawyers-more-than-children-experts-say/> [hereinafter *Secrecy in Phila. Family Court*].

I. PENNSYLVANIA STATE AND LOCAL CHILD DEPENDENCY SYSTEM

The child welfare system is an intricate system made up of several entities working together to improve the overall welfare of children.¹³ Not only is the system itself complex, but the procedures that occur within the system have different rules and guidelines as well. To complicate the system more, several parties are involved in and attend hearings for each child placed in the welfare system.

A. *The Structure and Procedures of Philadelphia's Child Welfare System*

The configuration of child welfare systems varies by state but generally consists of many organizations and “group[s] of services designed to promote the well-being of children by ensuring safety, achieving permanency, and strengthening families.”¹⁴ Pennsylvania’s child welfare system is administered on a county-by-county basis.¹⁵ Philadelphia DHS is the county agency in Philadelphia responsible for child welfare and juvenile justice.¹⁶ DHS, overseen by the Office of Children and Families (“OCF”),¹⁷ is the “[c]ity agency charged with protecting children from abuse, neglect, and delinquency;

13. CHILD WELFARE INFO. GATEWAY, HOW THE CHILD WELFARE SYSTEM WORKS 1 (2020), <https://www.childwelfare.gov/pubPDFs/cpswork.pdf>.

14. *Id.* at 2. Child welfare services are primarily a function of state governments, but the federal government does contribute in several ways. *Id.* For example, it supports states’ services through “program funding and legislative initiatives.” *Id.* Additionally, “[t]he Children’s Bureau within the U.S. Department of Health and Human Services’ Administration for Children and Families holds the primary responsibility for implementing Federal child and family legislation.” *Id.*

15. *Overview of Pennsylvania’s Child Welfare System: J. Hearing on Legis. Recommendations by the Statewide Task Force on Child Protection Before the S. Aging & Youth Comm. and the S. Pub. Health & Welfare Comm.*, 197th Cong., 2013 Sess. 2 (Pa. 2013) (statement of Beverly Mackereth, Acting Secretary, Dep’t of Pub. Welfare).

16. *Dep’t of Hum. Servs.*, CITY OF PHILA. <https://www.phila.gov/departments/department-of-human-services/> (last visited Mar. 26, 2022).

17. *Id.*; see *Off. of Child. & Fams.*, CITY OF PHILA., <https://www.phila.gov/departments/office-of-children-and-families/> (last visited Mar. 26, 2022) (noting that the OCF “aligns the City’s policies, resources, and services for children and families” and prioritizes “safe children, . . . strong families, . . . [and] supported schools and communities”).

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ensuring their safety and permanency in nurturing home environments; and strengthening and preserving families.”¹⁸ Improving Outcomes for Children (“IOC”) is a citywide initiative that uses a “community-based” approach, which aims to “keep more children and youth safe in their own homes and communities [and] reunite more children with their families or if needed, find permanent homes for them elsewhere.”¹⁹ Philadelphia DHS implemented IOC in 2013, and IOC continues to deliver child welfare services, with the goal that “fewer children become DHS-involved and that families receive services that are best fit.”²⁰

Philadelphia recognized that “radical reform[.]” was necessary to improve DHS’s services and to mitigate the overloaded child welfare system as whole.²¹ The death of Danieal Kelly in 2006, a fourteen-year-old girl battling cerebral palsy, who was malnourished and abused at the hands of her parents, sparked outrage in Philadelphia and led to a six-year planning process to reform DHS.²² Although the city had received multiple reports concerning Danieal’s neglect, the social workers assigned to her case failed to intervene and forged false reports of home visits over the span of

18. DEP’T OF HUM. SERVS., PARENT HANDBOOK: A GUIDE FOR PARENTS OF CHILDREN IN PLACEMENT 3 (2017), <https://www.phila.gov/media/20170926145328/DHS-Parent-Handbook-Final.pdf> [hereinafter PARENT HANDBOOK].

19. CITY OF PHILA., EVALUATION OF THE IMPROVING OUTCOMES FOR CHILDREN TRANSFORMATION 1, <https://fddocuments.us/document/rsumdaplippuultilnpipaupf-for-children-ffff-ff-aa-aa-a.html> [hereinafter IMPROVING OUTCOMES FOR CHILDREN EVALUATION]; see *Improving Outcomes for Children (IOC)*, CITY OF PHILA. DEP’T OF HUM. SERVS., <https://www.phila.gov/departments/department-of-human-services/about-us/improving-outcomes-for-children-ioc/> (Jan. 24, 2019).

20. CITY OF PHILA. DEP’T OF HUM. SERVS., IMPROVING OUTCOMES FOR CHILDREN: COMMUNITY UMBRELLA AGENCIES’ SCORECARD 7 (2017), <https://www.phila.gov/media/20171018094458/Phila-DHS-Scorecard-2017-singles.pdf> [hereinafter CUA SCORECARD]; *Improving Outcomes for Children (IOC)*, *supra* note 19.

21. Sarah Evans & Jennifer Lydic, *Transforming the Culture of Philadelphia’s Child Welfare System the Power of Community Collaboration to Improve Outcomes for Children*, SOC. INNOVATIONS J. (Nov. 4, 2013), <https://socialinnovationsjournal.org/social-issues/100-human-services/1676>.

22. CUA SCORECARD, *supra* note 20, at 5; *Reports Details Philly Teen’s Horrific Death*, NBC NEWS (Aug. 1, 2008, 6:20 PM), <https://www.nbcnews.com/id/wbna25970609>.

nearly one year.²³ Therefore, as part of a neighborhood-community approach, IOC created localized Community Umbrella Agencies (“CUAs”) divided geographically among Philadelphia’s neighborhoods to transform the child welfare system to a more localized, “single-case approach.”²⁴ There are ten Philadelphia CUAs that provide families with case management services that focus on local solutions and resources by assisting families in “develop[ing] connections to formal and informal neighborhood networks” to promote family stability.²⁵

There are several landmark steps in the dependency process from start to finish: (1) an investigation by DHS; (2) a shelter hearing; (3) an adjudicatory hearing; (4) a disposition hearing; (5) and subsequent permanency hearings.²⁶ Similar to how the structure of child welfare systems varies state-to-state, each state has specialized procedures for determining whether a child is dependent and whether a child must be removed from his or her home.²⁷ DHS is responsible for “investigating reports of abuse and neglect and removing children from unsafe

23. *Reports Details Philly Teen’s Horrific Death*, *supra* note 22 (discussing how Philadelphia Department of Human Services received at least five reports of Danieal being mistreated within a two-year period, including descriptions of a “helpless child sitting unattended, unkempt and unwashed, in a small stroller in her own urine and feces”).

24. See IMPROVING OUTCOMES FOR CHILDREN EVALUATION, *supra* note 19 (explaining how IOC changed its case management “from a dual system involving DHS and contractors where it was often unclear as to who was responsible for what actions” to one that designates CUAs as the primary family contact, thereby allowing DHS “to concentrate on critical functions” like investigation and prevention services).

25. *Community Umbrella Agency*, APM PHILA., <https://apmphila.org/how-we-help/family/community-umbrella-agency/> (last visited Jan. 26, 2022); see CMTY. LEGAL SERVS. OF PHILA., PARENT TO PARENT: A GUIDE TO NAVIGATING PHILADELPHIA’S CHILD WELFARE SYSTEM PART 1, at 3 (2016), https://clsphila.org/wp-content/uploads/2019/04/Part-1-DHS-Investigations-and-CUA-Services_0.pdf [hereinafter PARENT TO PARENT PART 1].

26. See *Module Seven (7): The Court Process*, in CHARTING THE COURSE TOWARDS PERMANENCY FOR CHILDREN IN PENNSYLVANIA: A KNOWLEDGE AND SKILLS-BASED CURRICULUM, 5–6 (2016); PARENT TO PARENT PART 1, *supra* note 25, at 2–4; see also CMTY. LEGAL SERVS. OF PHILA., PARENT TO PARENT: A GUIDE TO NAVIGATING PHILADELPHIA’S CHILD WELFARE SYSTEM PART 2, at 3–4 (2016) [hereinafter PARENT TO PARENT PART 2].

27. See CHILD WELFARE INFO. GATEWAY, UNDERSTANDING CHILD WELFARE AND THE COURTS 1–2 (2016).

situations.”²⁸ If DHS receives a report of potential child abuse or neglect, usually from an initial call on its child abuse hotline, DHS begins an investigation.²⁹ Investigations include several steps: speaking with the child privately; speaking with the child’s parents, family members, or mandated reporters, such as the child’s doctors and teachers; and examining the child’s living arrangements.³⁰ After Philadelphia DHS completes an investigation, if it believes that a family needs one-on-one services to stabilize relationships with a child, DHS will assign that family to a local CUA.³¹ The CUA case manager is then responsible for “tak[ing] the steps necessary to reunify [the] family.”³²

In other circumstances, such as when DHS or a CUA believes a child is unsafe and should be removed from his or her home, an informal Shelter Hearing occurs within seventy-two hours after DHS receives an Order of Protective Custody allowing DHS to temporarily remove a child from the home.³³ During the Shelter Hearing, a judge decides whether “[the] child will remain in an out-of-home placement until” the adjudicatory hearing.³⁴

Next, the adjudicatory hearing occurs within ten days of the Shelter Hearing.³⁵ The adjudicatory hearing is the “official entry point of a child into the dependency system and provides the

28. PARENT HANDBOOK, *supra* note 18, at 3.

29. See PARENT TO PARENT PART 1, *supra* note 25, at 1; PA. DEP’T OF HUM. SERVS., CHILD PROTECTIVE SERVICES 2018 ANNUAL REPORT 134 (2018) (noting that, in 2018, a total of 5,522 reports of child abuse were made in Philadelphia County).

30. See PARENT TO PARENT PART 1, *supra* note 25, at 2.

31. See *id.* at 3.

32. PARENT HANDBOOK, *supra* note 18, at 3.

33. See PARENT TO PARENT PART 1, *supra* note 25, at 3; OFF. OF CHILD. & FAMS. IN THE CTS., PENNSYLVANIA DEPENDENCY BENCHBOOK 6-2 (2019) [hereinafter PENNSYLVANIA DEPENDENCY BENCHBOOK] (stating that the Pennsylvania Rules of Juvenile Court Procedure sections 1201 and 1202 allows “specified medical professionals, police, juvenile probation officers and the agency to take a child into protective custody” in cases of emergency).

34. See PARENT TO PARENT PART 2, *supra* note 26, at 3; see also U. PITT.: PA. CHILD WELFARE RSCH. CTR., DEPENDENCY COURT HEARINGS 1 (2016) [hereinafter DEPENDENCY COURT HEARINGS].

35. See PARENT TO PARENT PART 2, *supra* note 26, at 3; DEPENDENCY COURT HEARINGS, *supra* note 34.

basis for court-ordered agency services and interventions.”³⁶ The adjudicatory hearing is the most formal hearing in a dependency case, “similar to a bench trial,” as such the importance of the hearing and its implications “should be established by the judge . . . at the outset.”³⁷ Importantly, “[j]udicial diligence, oversight and concern are key components if the court proceedings are to meet these goals [of achieving permanency] while safeguarding the constitutional and due process rights of the parties.”³⁸

During the adjudicatory hearing, the judge determines whether a child is dependent.³⁹ The situation of a dependent child is generally classified within three categories: neglect, abuse, or status offenses.⁴⁰ In part, a “dependent child” is a child who lacks “proper parental care and control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals.”⁴¹ The

36. PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 7-1.

37. *See id.* at 7-1, 7-6.

38. *Id.* at 7-1.

39. *Id.*

40. *Id.* Neglect includes “failure to thrive . . . [and] parental incapacity while status offenses include “truancy, incorrigibility, [and] ungovernability.” *Id.* Further, “abuse” includes that which is physical, sexual, and / or emotional. *Id.*

41. 42 PA. CONS. STAT. § 6302 (2021); *see also* PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 4-1, 4-2. Under Pennsylvania law, a “dependent child” is a child who:

- (1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent’s, guardian’s or other custodian’s use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;
- (2) has been placed for care or adoption in violation of law;
- (3) has been abandoned by his parents, guardian, or other custodian;
- (4) is without a parent, guardian, or legal custodian;
- (5) while subject to compulsory school attendance is habitually and without justification truant from school;
- (6) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of his parent, guardian or other custodian and who is ungovernable and found to be in need of care, treatment or supervision;
- (7) has committed a delinquent act or crime, other than a summary offense, while under the age of ten years;
- (8) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (6);
- (9) has been referred pursuant

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agency must establish by “clear and convincing evidence that the child is dependent.”⁴²

If a judge adjudicates a child dependent, a disposition hearing will be held after the adjudicatory hearing to determine the child’s custody and whether the child must be removed from the home.⁴³ To remove a child from his or her home, the judge “must find removal is ‘clearly necessary’ and that there is no safe way for [the child] to stay at home for now. The judge must also find that [DHS made] reasonable efforts to prevent removal”⁴⁴

If a judge determines a child must be removed from the custody of his or her parents, permanency hearings take place at least every sixth months.⁴⁵ Permanency hearings review “whether the child’s current placement provides for his or her safety, protection, and physical, mental[,] and moral welfare,” establish a child’s permanency plan, and set contingent dates by which the child’s permanency goal may be attained.⁴⁶

The ultimate goal for a permanency plan is the reunification of a child and parent.⁴⁷ However, if DHS policy dictates that a child must be placed outside his or her home, the first

to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (6); or (10) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child.

42 PA. CONS. STAT. § 6302.

42. 42 PA. CONS. STAT. § 6341(c); PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 7-6.

43. See DEPENDENCY COURT HEARINGS., *supra* note 34, at 3 (stating that the “[p]urpose of the Disposition Hearing is to obtain a disposition that is best suited to the safety, protection and physical mental, and moral welfare of the child”).

44. See PARENT TO PARENT PART 2, *supra* note 26, at 4.

45. PA. RULE OF JUV. CT. PROC. NO. 1607(b) (2021); 42 PA. STAT. AND CONS. STAT. ANN. § 6351(e); *Permanency*, OFF. OF CHILD. & FAMS. IN THE CTS., <http://ocfcpacourts.us/system-professionals/child-dependency-system/court-processes-copy/permanency/> (last visited Mar. 26, 2022).

46. ALISA G. FIELD & NINA W. CHERNOFF, PENNSYLVANIA JUDICIAL DESKBOOK: A GUIDE TO STATUTES, JUDICIAL DECISIONS AND RECOMMENDED PRACTICES FOR CASES INVOLVING DEPENDENT CHILDREN IN PENNSYLVANIA 83 (4th ed. 2004).

47. See PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 12-2.

consideration is “kinship care.”⁴⁸ A child under kinship care is placed with “relatives or other individuals that have an existing significant relationship with the child.”⁴⁹ Kinship care is intended to be temporary until DHS determines that the parents have complied with DHS and addressed issues that brought the child into DHS custody in the first place.⁵⁰ However, kinship care may become permanent when reunification is not an option, through adoption or permanent legal custodianship.⁵¹

If a child cannot be reunified safely with his or her family, the CUA files a petition to terminate parental rights.⁵² Following the petition, a Termination of Parental Rights Hearing is held, where the child will be freed for adoption.⁵³ Parental rights are terminated when the parent has “refused or failed to perform parental duties” over a period of at least six months or exhibits “repeated and continued incapacity, abuse, [or] neglect.”⁵⁴ Circumstances like inadequate housing, furnishings, income, clothing, and medical care should not be sole deciding factors that terminate parents’ rights.⁵⁵

Lastly, under federal law, when a child is removed from his or her parents and placed into out-of-home care, like foster care, parents retain a limited amount of time to reunify with their child.⁵⁶ Under the Adoption and Safe Families Act, if a child has been in foster care for at least fifteen out of the last twenty-two months, state agencies file a petition to terminate parental rights (“TPR”) and “concurrently, to identify, recruit, process, and

48. See PHILA. DEP’T OF HUM. SERVS., RESOURCE PARENT HANDBOOK: A GUIDE FOR FOSTER AND KINSHIP CAREGIVERS 7 (2019) [hereinafter RESOURCE PARENT HANDBOOK].

49. *Id.* at 27.

50. *See id.* at 28.

51. *See id.*

52. *See* PARENT TO PARENT PART 2, *supra* note 26, at 4.

53. *See* RESOURCE PARENT HANDBOOK, *supra* note 48, at 24.

54. 23 PA. CONS. STAT. § 2511(a)(1)-(2) (2021); *see also* CHILD WELFARE INFO. GATEWAY, GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS 2 (2021).

55. *See* 23 PA. CONS. STAT. § 2511(b).

56. PARENT TO PARENT PART 1, *supra* note 25, at 4; *see* 42 U.S.C. § 675.

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approve a qualified [adoptive] family.”⁵⁷ If a court grants a TPR, the child’s case continues with six-month Permanency Hearings until a permanent placement, like adoption, is found for the child.⁵⁸

B. Parties Involved in a Child Dependency Case

Several parties are involved throughout the dependency proceeding process from start to finish in addition to the child and parents themselves, including a Guardian ad Litem, DHS workers, CUA case managers, and the judge. In Philadelphia, neither the public nor the media may be present at dependency proceedings.⁵⁹ Both the child and the parents are entitled to representation by effective legal counsel.⁶⁰ Despite there being state rules in place to govern standards for counsel’s conduct, “all who work in the dependency courts around the state are well-aware that deficiencies remain.”⁶¹ Out of the Philadelphia Bar Association’s 12,000 members, the “Philadelphia Family Court currently has only 72 eligible attorneys certified to accept dependent court appointments.”⁶² Therefore, although the majority of families are represented by court-appointed counsel, Philadelphia lacks certified attorneys who are willing to provide representation as court-appointed counsel in dependency cases.⁶³

57. 42 U.S.C. § 675(5)(e).

58. See PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 17-2.

59. See P.J. D’Annunzio, ‘What Are They Trying to Hide?’: Debate Over Phila. Court Transparency Stoked by New Ruling, LEGAL INTELLIGENCER (Oct. 1, 2020, 5:13 PM), <https://www.law.com/thelegalintelligencer/2020/10/01/what-are-they-trying-to-hide-debate-over-phila-court-transparency-stoked-by-new-ruling/> [hereinafter ‘What Are They Trying to Hide?’].

60. See FIELD & CHERNOFF, *supra* note 46, at 51.

61. *Id.* at 15.

62. Margaret T. Murphy & Walter J. Olszewski, Letter to the Editor: A Response From Philadelphia Family Court Leadership, LEGAL INTELLIGENCER, (Jan. 31, 2019, 2:18 PM), <https://www.law.com/thelegalintelligencer/2019/01/31/letter-to-the-editor-a-response-from-philadelphia-family-court-leadership/>.

63. See *id.*

Once a dependency proceeding is initiated, a specific attorney called a Guardian ad Litem (“GAL”) is appointed to “represent the legal interests and the best interests of the child.”⁶⁴ Once appointed, the GAL regularly meets with the child and participates in all proceedings, including hearings.⁶⁵ A child may not waive his or her right to a GAL.⁶⁶

In Pennsylvania, children are present for all dependency hearings, unless the judge determines that the child’s participation is inappropriate.⁶⁷ Judges must balance a child’s capacity to testify at the hearings with the child’s mental health and emotional wellbeing.⁶⁸

Parents are also present at all hearings and have a right to representation by legal counsel.⁶⁹ If parents are unable to employ counsel due to financial restraints, a court will assign counsel.⁷⁰ Parents may waive their right to legal counsel at any proceeding but may revoke the waiver at any time.⁷¹ Nonetheless, it is best practice that legal counsel represents a parent at all points in the process and the court should appoint an attorney “after the child’s removal from the home and prior to the shelter care hearing.”⁷²

64. 42 PA. CON. STAT. ANN. § 6311(a) (West 2019).

65. PA. RULES OF JUV. CT. PROC. NO. 1154.

66. PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 5-3.

67. *Id.* at 20-16, 20-17.

68. *See id.* at 20-22, 20-23 (explaining that, when determining whether a child should testify, a judge should consider whether the child has observational capacity and an accurate memory, can communicate and be understood, is of at least average intelligence, understands the difference between truth and falsehood, and understands the duty to testify truthfully).

69. *Id.* at 5-4; 237 PA. CODE § 1551(e).

70. 237 PA. CODE § 1551(e); PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 5-4.

71. 237 PA. CODE § 1152(d).

72. PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 6-9.

If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

237 PA. CODE § 1551(e).

The DHS caseworker and the CUA case manager are also present throughout the proceedings.⁷³ The CUA case manager “sets up planning meetings and collaborates with the other people working with [the] family.”⁷⁴ The case manager also visits the home to help provide services, accompanies families to hearings, and sets up a visitation schedule.⁷⁵ Furthermore, the CUA case manager facilitates the child’s placement in a foster home or an alternate out-of-home care setting, and checks on them regularly.⁷⁶ DHS or the CUA will also have their own lawyer, called a City Solicitor.⁷⁷

The reality is that, while DHS caseworkers and CUA case managers work tirelessly to decrease the number of children in DHS care, caseworkers consistently handle a large number of cases at any given point in time.⁷⁸ In 2015, “392 case managers were doing the work previously handled by 660.”⁷⁹ While the CUA’s goal is to assign ten cases per worker, each caseworker typically handles approximately thirteen cases, with each usually involving multiple children.⁸⁰

Last, but certainly not least, the judge is one of the most pertinent key players in the dependency proceedings. As the ultimate decision makers,⁸¹ judges “should avoid unnecessary separation of child and family if the child can remain safely

73. “Who’s Involved in Your Case?” CITY OF PHILA. DEP’T OF HUM. SERVS. (July 30, 2019), <https://www.phila.gov/departments/departments-of-human-services/whos-involved-in-your-case/>.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*; PARENT TO PARENT PART 2, *supra* note 26, at 2.

78. Julia Terruso, *Audit Outlines 71 Violations as DHS Struggles with Growing Caseloads*, PHILA. INQUIRER (May 29, 2016), https://www.inquirer.com/philly/news/20160529_Audit_outlines_71_violations_as_DHS_struggles_with_growing_caseloads.html.

79. *Id.*

80. *Id.*; see also *Testimony on Philadelphia DHS and Improving Outcomes for Children (IOC)*, CMTY. LEGAL SERVS. OF PHILA. (June 14, 2016), <https://clsphila.org/family/dhs-ioc-testimony/> (“Even more troubling, the most recent data presented to the Community Oversight Board in April suggests that 49% of CUA workers have caseloads exceeding the already-untenable 13 family cap.”).

81. NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, ENHANCED RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 16 (2016).

in the home.”⁸² The judge must provide judicial oversight, exhibiting leadership while collaborating with all stakeholders in the process.⁸³

Notably, the public is not present during Philadelphia dependency proceedings.⁸⁴ Juvenile Dependency Court does not have juries, and accordingly, the hearings that take place are not traditionally open-court proceedings.⁸⁵ However, other states and a county in Pennsylvania decided to open court doors for both the public and the media to attend child dependency proceedings.⁸⁶

II. THE CURRENT STATE OF AFFAIRS IN PHILADELPHIA

There is a consensus among parties in the child welfare system that comprehensive reform is needed.⁸⁷ Philadelphia proves to be an outlier every year regarding the rates of child removal from their families.⁸⁸ Although uncertain, it is unlikely that parents in Philadelphia abuse or neglect their children at a higher rate than parents in other cities; therefore, the high rates indicate that “Philadelphia resorts to removal far more

82. *Id.* at 14.

83. *Id.* at 16.

84. *Letter to the Editor: Closed Dependency Proceedings ‘Erode Public Confidence’, YAHOO!* (Feb. 5, 2019), https://www.yahoo.com/now/letter-editor-closed-dependency-proceedings-044923269.html?soc_src=social-sh&soc_trk=ma.

85. *See Testifying in Court*, OFF. OF CHILD. & FAMS. IN THE CTS., <http://ocfcpacourts.us/system-professionals/child-dependency-system/testifying-in-court/> (last visited Mar. 26, 2022).

86. Barbara White Stack, *Court: Juvenile Hearings Are Open; But Judge Has Right to Keep Public Out*, POST-GAZETTE (Feb. 28, 2003), <https://old.post-gazette.com/localnews/20030228opencourts3.asp> [hereinafter *Juvenile Hearings Are Open*]; see also Veena Srinivasa, Note, *Sunshine for D.C.’s Children: Opening Dependency Court Proceedings and Records*, 18 GEO. J. ON POVERTY L. & POL’Y 79, 80 (2010).

87. *See ‘What Are They Trying to Hide?’*, *supra* note 59.

88. Written Testimony of Richard Wexler, Exec. Dir., Nat’l Coal. for Child Prot. Reform, before the Committee on Public Health and Human Services, Philadelphia City Council, App. A (Feb. 12, 2019), <https://drive.google.com/file/d/1vcXNSBm3uT1Vp8jT3IkfL6s7MEHw6-FJ/view>; see *Big City Child Welfare: Philadelphia Gets a Little Better, Los Angeles Gets Worse, and the “Professional Kidnappers” Are Hard at Work in Phoenix*, NAT’L COAL. FOR CHILD PROT. REFORM: CHILD WELFARE BLOG (Nov. 15, 2020, 11:00 PM), <https://www.nccprblog.org/2020/11/big-city-child-welfare-philadelphia.html>.

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frequently than necessary.”⁸⁹ Abandoning Philadelphia’s closed-door courtroom policy and adopting an open-door courtroom policy could decrease the high rates of child removal in Philadelphia by ensuring children are removed from their families only for valid reasons and thus mitigate the proven harmful impact that subsequently follows such removal.

A. Philadelphia: Statistics and Alarming Rates Attributed to An Overburdened System

Philadelphia’s child welfare system has been scrutinized for its lack of transparency, its incompetency, and the unwarranted delays in handling cases.⁹⁰ In 2016 alone, 6,100 children were in DHS custody, either receiving in-home or out-of-home services.⁹¹ Of America’s ten largest cities, Philadelphia ranks number one for the highest rate of children removed from their homes—nearly triple the rate of New York City and quadruple the rate of Chicago.⁹² Although Philadelphia has the highest removal rate, there is no evidence that Philadelphia parents abuse their children more than parents in other cities.⁹³ This suggests the removal of children from their families is due to systemic issues rather than abuse.

89. See Kara R. Fink, Testimony Presented before Philadelphia City Council Committee on Public Health and Human Services, Hearing on Resolution No. 180787, (Feb 12, 2019), <https://www.law.upenn.edu/live/files/9009-city-council-testimony-finck-2-12-19finalpdf>.

90. See Courtenay Harris Bond, *The Kids Are Crying II*, PHILA. WEEKLY (Nov. 18, 2019), <https://philadelphiaweekly.com/the-kids-are-crying-ii/>.

91. P.J. D’Annunzio, *City Controller Weighing Performance Audit of Phila. DHS Following Media Report, Citizen Tips*, LEGAL INTELLIGENCER (Dec. 17, 2018, 2:21 PM), <https://www.law.com/thelegalintelligencer/2018/12/17/city-controller-weighing-performance-audit-of-phila-dhs-following-media-report-citizen-tips/>; see also Terruso, *supra* note 78 (“City and state officials have said there is an easy explanation for the growth in the system: Child-abuse reporting laws changed after the Jerry Sandusky/Penn State scandal. That has led to a spike in the number of calls and investigations while the city simultaneously aims to transition to a new system of private providers.”).

92. Written Testimony of Richard Wexler, Exec. Dir., Nat’l Coal. for Child Prot. Reform, before the Committee on Public Health and Human Services, Philadelphia City Council (Feb. 12, 2019), <https://drive.google.com/file/d/1vcXNSBm3uT1Vp8jT3IkfL6s7MEHw6-FJ/view>.

93. See *id.*

Philadelphia agencies' reported statistics on child removal may misrepresent the number of children actually removed from their homes, suggesting a lack of transparency from the organizations partly responsible for child removal. At first glance, DHS reports seem to present progress within the system. For example, DHS reported that in the 2018 fiscal year, 739 "families" had children removed.⁹⁴ However, what DHS does not provide in its report is the actual number of children removed from their families. These statistics are misleading because it would seem as if each family only had one child, and that child was removed, rather than accounting for the number of children removed from their families. In turn, misleading statistics only add to the lack of transparency that already engenders frustration for reformers, parents, and others involved in the system. However, reformers "have called for a 50% reduction—or more—in the number of children in foster care," and "[a]ccording to DHS reports, the number of Philadelphia children in foster placement has declined by about 18% since 2016."⁹⁵

Additionally, factors like serious substance abuse, poverty levels, crime rates, and lack of resources cannot justify Philadelphia's rate of out-of-home care and rate of entry-into-home care because other comparable cities have similar social problems but lower removal rates.⁹⁶ Critics note that nationally, "[a]ctual physical or sexual abuse . . . are

94. CITY OF PHILA. DEP'T OF HUM. SERVS., QUARTERLY INDICATORS REPORT 23 (2019).

95. Steve Volk, *For Families Involved in Philly's Child Welfare System, This Program is Building a Safety Net*, KENSINGTON VOICE (Nov. 12, 2020), <https://kensingtonvoice.com/en/child-welfare-system-philadelphia-social-work-community-legal-services/>.

96. Bethany Ao, *Philadelphia Has the Highest Rate of Family Separation, and Kids in Foster Care Need Mental Health Support*, PHILA. INQUIRER (Oct. 16, 2020), <https://www.inquirer.com/health/philadelphia-foster-care-mental-health-20201016.html>. ("Philadelphia has the highest rate of family separation in all major cities in the county—three times the rate of New York City and four times the rate of Chicago."); *Child Welfare in Philadelphia: Disingenuous Dissembling From DHS*, NAT'L COAL. FOR CHILD PROT. REFORM: CHILD WELFARE BLOG (Feb. 14, 2019, 9:48 AM), <https://www.nccprblog.org/2019/02/child-welfare-in-philadelphia.html> (noting that consultants hired by DHS reported that "other large urban child welfare systems also have high rates of children in poverty, but do not experience out-of-home care rates even approaching those of Philadelphia").

among the least common reasons for child removals More families are separated for reasons of ‘neglect.’”⁹⁷ Crucially, as noted by University of Pennsylvania Law Professor Dorothy Roberts, “in the context of child welfare investigations ‘neglect’ is often just a different word for ‘poor’—assigned to parents who are experiencing poverty.”⁹⁸ Likewise, in 2015, physical abuse was the least common reason that Philadelphia children were placed in foster care.⁹⁹ Even when poverty is factored into Philadelphia’s removal statistics, Philadelphia’s rates of removal are still alarming. According to a 2017 report from Pew Charitable Trusts, Philadelphia’s “poverty rate is the highest among the nation’s 10 largest cities.”¹⁰⁰ Furthermore, while “poverty has long been linked to child abuse and family instability” across the country in general,¹⁰¹ “other large urban child welfare systems also have high rates of children in poverty, [yet those cities] do not experience out-of-home care rates even approaching those of Philadelphia.”¹⁰² Furthermore, “[m]any of these cases involve parents who struggle with substance abuse, but who are not abusive toward their children.”¹⁰³

Philadelphia is aware that its removal rates are an anomaly and has implemented several changes in response to outraged parents whose children were removed from their custody by

97. Volk, *supra* note 95.

98. *Id.*

99. Sam Newhouse, *Philly Parents Criticize Welfare System at Emotional City Council Hearing*, METRO PHILA. (Feb. 12, 2019), <https://philly.metro.us/philly-parents-criticize-welfare-system-at-emotional-city-council-hearing/>.

100. PEW CHARITABLE TRUSTS, PHILADELPHIA’S POOR 1 (2017).

101. Kim Eckart, *Anti-Poverty Policies Can Reduce Reports of Child Neglect*, UNIV. OF WASH. NEWS (Jan. 26, 2021), <https://www.washington.edu/news/2021/01/26/anti-poverty-policies-can-reduce-reports-of-child-neglect/>.

102. *Child Welfare in Philadelphia: Disingenuous Dissembling From DHS*, *supra* note 96.

103. P.J. D’Annunzio, *Her Grandson Was Raped in a Philadelphia Foster Home. Privatized Foster Care Has Endangered Others*, LEGAL INTELLIGENCER (Oct. 10, 2018, 4:12 PM), <https://www.law.com/thelegalintelligencer/2018/10/10/her-grandson-was-raped-in-a-philadelphia-foster-home-privatized-foster-care-has-endangered-others/> [hereinafter *Her Grandson Was Raped in a Philadelphia Foster Home*].

Philadelphia DHS.¹⁰⁴ The Philadelphia City Council formed a Special Committee on Child Separations after a council hearing was held in 2019 to examine DHS's child separation procedures in order to prevent improper and unnecessary removal of children from their families.¹⁰⁵ In fact, the City Councilman-at-Large, David Oh, was investigated for child abuse after his eight-year-old son broke his collarbone during a jiu-jitsu lesson.¹⁰⁶ After taking his son to the hospital, a social worker reported Oh to DHS for abuse.¹⁰⁷ Thankfully, Oh's child was not removed from his custody, but the experience motivated Oh to speak out about DHS's practice of filing reports based on a "gut" feeling.¹⁰⁸ While the Special Committee will not be able to specifically assist separated families in regaining custody of their children, it is certainly an important step in the right direction. Because the Committee members' priorities are that "children are not unjustly taken from parents" and to "ensur[e] the due process rights of families," an open-door dependency court system would benefit individual members by allowing them, as part of the public, to attend proceedings and ensure transparency and accountability among all parties in the court room.¹⁰⁹ Therefore, even if the press or general public chose not to regularly attend dependency proceedings, the Special Committee members are passionate about mending this overburdened system. By overseeing the circumstances present

104. See P.J. D'Annunzio, *Phila. DHS Targeted by Parents, Legal Experts at Intense Council Hearing Over Child Removal*, LEGAL INTELLIGENCER (Feb. 12, 2019, 2:29 PM), <https://www.law.com/thelegalintelligencer/2019/02/12/phila-dhs-targeted-by-parents-legal-experts-at-city-council-hearing/>.

105. *City Council Announces Formation of Special Committees on Child Separations*, PHILA. CITY COUNCIL (Oct. 15, 2020), <https://phlcouncil.com/city-council-announces-formation-of-special-committee-on-child-separations/>.

106. *Id.*; Courtenay Harris Bond, *The Kids Are Crying*, PHILA. WEEKLY (Nov. 15, 2019), <https://philadelphiaweekly.com/the-kids-are-crying/>.

107. Bond, *supra* note 106.

108. *Id.* (explaining that when Oh spoke out he was told that "the social worker was 100 percent right, that she did what is required by law" and that social workers are trained to follow the mantra of "[w]hen in doubt[,] report").

109. Rochelle Bilal, *Sheriff Rochelle Bilal Appointed Member of the Special Committee on Child Separations*, PHILA. SUNDAY SUN (Nov. 13, 2020), <https://www.philasun.com/commentary/protecting-our-children-starts-with-us/>.

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and procedures that take place during dependency hearings, these individuals could better understand how Philadelphia can achieve its goal of family unification.¹¹⁰

Because Philadelphia's child welfare system lacks transparency, it cannot be corroborated that Philadelphia parents are more abusive and, given that Philadelphia chooses to bar the public and media from dependency proceedings, it cannot easily be determined if children are removed from their families for legitimate reasons. Children may be unnecessarily or mistakenly removed from their families for reasons that have nothing to do with abuse, neglect, or other appropriate reasons for removing children from their families, but a closed-door courtroom policy specifically prevents potential solutions and correcting faults in the system. One Philadelphia attorney recounted that "[a]n overburdened system [breaks] and failures [result]" and called for "transparency, objective guidelines, [and] more clearly defined roles."¹¹¹ An open-door courtroom policy could bolster transparency as to how and why a judge's decision that removal is necessary is determined, and could thus mitigate complacency, incompetency, or other systemic failures of the dependency process.

B. Child Removal from Families: An Ineffective Solution with Serious Consequences

The termination of parental rights, leading to the subsequent separation of children from their families, has long-term effects on children.¹¹² Importantly, for abused and neglected children who live in unsafe homes, removal from the home to live with a close relative or placement into foster care may be

110. OFF. OF CHILD. & FAMS., DEP'T OF HUM. SERVS., RESOURCE PARENT HANDBOOK: A GUIDE FOR FOSTER & KINSHIP CAREGIVERS 13 (2020).

111. Newhouse, *supra* note 99.

112. NAT'L CHILD TRAUMATIC STRESS NETWORK, CHILDREN WITH TRAUMATIC SEPARATION: INFORMATION FOR PROFESSIONALS 1-3 (2016) [hereinafter INFORMATION FOR PROFESSIONALS].

the best option.¹¹³ On the other hand, when either a judge's arbitrary decision, DHS's lack of oversight, or a caseworker's misjudgment or miscommunication causes unnecessary removal of a child, those children still suffer harmful effects that could have been avoided if a system of checks was in place. If the press and public could attend Philadelphia's dependency proceedings, those decisionmakers may be more attentive and inclined to explore the case facts in more detail to determine whether child removal is necessary.

For children involved in the child welfare system, having a family can be the most important key to the child's welfare.¹¹⁴ Studies have shown that when a child is removed from his or her parent, it may be "more damaging to the child than doing nothing at all."¹¹⁵ Separation from a parent can lead to post-traumatic responses, including behavioral problems such as increased anger and irritability, and mental health problems such as self-destructive thoughts and negative beliefs about oneself.¹¹⁶

Specifically in the foster care context, one study showed that "[f]ormer foster children are almost twice as likely to suffer from Post-Traumatic Stress Disorder (PTSD) as U.S. war veterans."¹¹⁷ Placement into foster care leads to confusion, and can generate mistrust.¹¹⁸ A study by the Massachusetts Institute of Technology "compared children on the margins of placement with those that were removed from their homes and

113. See *The Child Welfare Placement Continuum: What's Best for Children?*, NAT'L CONF. OF STATE LEGISLATURES (Nov. 3, 2019), <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx>.

114. *Id.*

115. *Nicholson v. Williams*, 203 F. Supp. 2d 153, 204 (E.D.N.Y. 2002).

116. See INFORMATION FOR PROFESSIONALS, *supra* note 112, at 2–3. Other posttraumatic responses resulting from child-parent separation can include "intrusive thoughts," "nightmares," "disturbing images of the separation reenacted in play" and "physical symptoms." *Id.*

117. Candice N. Plotkin, *Study Finds Foster Kids Suffer PTSD*, HARV. CRIMSON (Apr. 11, 2005), <https://www.thecrimson.com/article/2005/4/11/study-finds-foster-kids-suffer-ptsd/>.

118. *Removal from the Home: Resulting Trauma*, UPENN COLLABORATIVE ON CMY. INTEGRATION, <http://tucollaborative.org/wp-content/uploads/2017/04/Trauma-The-Impact-of-Removing-Children-from-the-Home.pdf> (last visited Mar. 23, 2022).

found that children placed in foster care are far more likely than other children at risk of foster care to commit crimes, drop out of school, join welfare, experience substance abuse problems, or enter the homeless population.”¹¹⁹ The results “suggest that placing children in foster care increases their likelihood of becoming delinquent during adolescence and requiring emergency healthcare in the short term.”¹²⁰ In circumstances where a child should not be placed with his or her parents due to abuse or neglect, placing a child with a close relative can mitigate the negative short- and long-term effects experienced by children placed in the foster care system.¹²¹

Although DHS policy prioritizes placing children with kin, or close relatives,¹²² this is not what happens in practice in Philadelphia.¹²³ According to Philadelphia DHS Commissioner Cynthia Figueroa, over half of the children in foster care are living with kin.¹²⁴ Even if that is true, with the alarming number of children in foster care in Philadelphia at any given time, the number attributed to *half of the children in foster care* is still substantially larger than in other cities, and these children are still being affected by removal.¹²⁵ In fact, the *Pennsylvania Dependency Benchbook*, a guide for judges handling dependency proceedings, recognizes that because the “deleterious impact on a child that is caused by the separation from his or her

119. Kathleen Creamer, *Testimony on Philadelphia DHS and Improving Outcomes for Children (IOC)*, CMTY. LEGAL SERVS. PHILA. (June 14, 2016), <https://clsphila.org/family/dhs-ioc-testimony/>; see also Joseph J. Doyle, *Child Protection and Adult Crime: Using Investigator Assignment to Estimate Causal Effects of Foster Care*, 116 J. POL. ECON. 746, 748 (2008).

120. Joseph J. Doyle, *Causal Effects of Foster Care: An Instrumental-Variables Approach*, 35 CHILD. & YOUTH SERVS. R. 1143, 1149 (2011).

121. See Alysse ElHage, *Keeping Children in the Family Instead of Foster Care*, INST. FAM. STUD. (Aug. 18, 2016), <https://ifstudies.org/blog/keeping-children-in-the-family-instead-of-foster-care>.

122. Heidi Redlich Epstein, *Kinship Care Is Better for Children and Families*, AM. BAR ASS'N (July 1, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/.

123. Bond, *supra* note 106.

124. *Id.* (“Fifty-six percent of youth in family foster care were in kinship care.”).

125. See, e.g., *Her Grandson Was Raped in a Philadelphia Foster Home*, *supra* note 103; see also Written Testimony of Richard Wexler, *supra* note 92.

parents is well documented,” the dependency proceedings should “focus on reunifying the family whenever possible.”¹²⁶ However, considering Philadelphia has the country’s highest rate of child removal, it is questionable whether the focus of family reunification is being actualized.¹²⁷

Although these physical and psychological effects on children exist without regard to an open- or closed-court system, changing Philadelphia’s system to an open-door policy could at least alleviate the number of children affected by these problems. The presence of the public or press at dependency proceedings would place a check on decision makers to ensure children are not unnecessarily harmed by being mistakenly or illegitimately removed from their families, which in turn mitigates the potential for negative long-term effects had a child been separated. Implementing a practice of holding dependency proceedings open to the public and press in Philadelphia would help ensure that separating children from their families is an option of last resort that should only occur in “extreme cases of imminent physical harm.”¹²⁸ In so doing, the public could see firsthand whether the circumstances warrant removal of a child from his or her family. Additionally, the general public’s attendance itself would remind the parties involved in the decision-making process to truly ask themselves if removal is necessary and whether “clear and convincing” evidence exists that the child is dependent and would be safer if removed.¹²⁹

126. PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 12-2.

127. Written Testimony of Richard Wexler, *supra* note 92.

128. Sandra Knipsel, *Separating Children from Their Families Must Be Last Resort*, UNIV. OF ROCHESTER (Oct. 28, 2019), <https://www.rochester.edu/newscenter/separating-children-from-their-families-must-be-last-resort-404962/>.

129. PENNSYLVANIA DEPENDENCY BENCHBOOK, *supra* note 33, at 6-1, 7-6.

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III. THE RIGHT OF OPEN COURT ACCESS TO THE PUBLIC AND
PRESS: STATUTES AND CASE LAW

A Philadelphia open-door dependency hearing policy can be established under current Pennsylvania statutory law and further supported by case law that discusses the right of the public and press to attend other types of judicial proceedings. The right of the public and the press to attend civil trials and criminal proceedings dates back to early Colonial periods.¹³⁰ The United States Supreme Court and lower federal courts rationalized this right together with other policy reasons to support an open-court system.¹³¹ Additionally, Allegheny County, home to Pittsburgh, Pennsylvania, applied these reasons to open its court doors to improve systemic failures within its child welfare system.¹³²

A. *Public Access to Judicial Proceedings:
Presumption of Openness*

Although the United States Supreme Court has not addressed whether the public has a right to attend juvenile dependency proceedings specifically, the Court's policy rationales underlying the right of public access to other types of proceedings is applicable to juvenile dependency proceedings.¹³³ The Court decided several pivotal cases in the 1980s to determine whether the public has a constitutional right to attend trials.¹³⁴

A presumption of openness for the public and the press to attend criminal trials promotes conversations, fosters

130. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564, 567 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 598, 604–05 (1982).

131. See *Richmond Newspapers*, 448 U.S. at 568–69; *Globe Newspaper*, 457 U.S. at 603, 605–06; *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1067–69 (3d Cir. 1984).

132. *Juvenile Hearings Are Open*, *supra* note 86.

133. See generally *Richmond Newspapers*, 448 U.S. at 567–69; *Globe Newspaper*, 457 U.S. at 603, 605–06.

134. See *Richmond Newspapers*, 448 U.S. at 580; *Globe Newspaper*, 457 U.S. at 606–08, 610–11.

education, and restores confidence in the judiciary.¹³⁵ In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court granted certiorari after two reporters for the Richmond Newspapers moved to vacate the trial judge's closure order that excluded the public from the defendant's murder trial.¹³⁶ The Court held that both the public and the press have a First Amendment right to attend criminal trials, and that right is applied to the states through the Fourteenth Amendment.¹³⁷ The Court further concluded that a "presumption of openness inheres in the very nature of a criminal trial under [this Nation's] system of justice."¹³⁸ The Court explained that historically, criminal trials had been "presumptively open" based on recognition of the "therapeutic value" of public trials: "[w]hen a shocking crime occurs, a community reaction of outrage and public protest often follows," and "[t]hereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion."¹³⁹ In its policy reasoning, the Court explained that neither "community catharsis" nor "the administration of justice [can] function in the dark" because when "a criminal trial is conducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case."¹⁴⁰ Furthermore, the Court emphasized that "[t]he educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is

135. *Richmond Newspapers*, 448 U.S. at 571–73.

136. *Id.* at 559–60.

137. *Id.* at 580.

138. *Id.* at 573.

139. *Id.* at 569–71 (citation omitted) (“[A]t the time our organic laws were adopted, criminal trials both here and in England had long been presumptively open[,] . . . [thus giving] assurance that the proceedings were conducted fairly to all concerned, and [discouraging] perjury, the misconduct of participants, and decisions based on secret bias or partiality.”).

140. *Id.* at 571–72.

secured which could never be inspired by a system of secrecy.”¹⁴¹

The Supreme Court has balanced the protection of confidential information against the value of a system of checks and balances to justify holding unconstitutional a state’s mandatory closure rule in a rape trial involving a minor.¹⁴² Two years after *Richmond Newspapers*, in *Globe Newspaper Co. v. Superior Court*, the Court invalidated a Massachusetts statute¹⁴³ that required trial judges to deny access to the press or public in criminal trials for specific sexual offenses during a minor-aged victim’s testimony.¹⁴⁴ The Court recognized that “public access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process” which “permits the public to . . . serve as a check upon the judicial process.”¹⁴⁵ The Court emphasized that even though “safeguarding the physical and psychological well-being of a minor” were both compelling interests, trial courts should determine whether closure of a court to protect a victim is necessary based on a case-by-case approach, rather than a mandatory closure requirement.¹⁴⁶

The Third Circuit applied the cases above to find that the right of public access does not only apply in criminal cases but also applies in civil proceedings as well.¹⁴⁷ Following the Supreme Court’s reasoning of public access to criminal trials both in *Richmond Newspapers, Inc. v. Virginia* and *Globe*

141. *Id.* at 572 (quoting 6 J. WIGMORE, EVIDENCE § 1834, at 438 (J. Chadbourn rev. 1976)).

142. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 598, 606–08 (1982).

143. MASS. GEN. LAWS ANN. ch. 278, § 16A (West 2012).

At the trial of a complaint or indictment for rape, incest, carnal abuse or other crime involving sex, where a minor under eighteen years of age is the person upon, with or against whom the crime is alleged to have been committed, or at the trial of a complaint or indictment for getting a woman with child out of wedlock, or for the non-support of a child born out of wedlock, the presiding justice shall exclude the general public from the court room, admitting only such persons as may have a direct interest in the case.

Id.

144. *Globe Newspaper*, 457 U.S. at 609–11.

145. *Id.* at 606.

146. *Id.* at 607–08.

147. *See Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1067–70 (3d Cir. 1984).

Newspaper Co. v. Superior Court, the court in *Publiker Indus., Inc. v. Cohen* held that the First Amendment guarantee of the public's and press's right of access to criminal trials also applied to civil trials.¹⁴⁸ The *Publiker* court reached its conclusion by historically analyzing both early English and American legal authorities to reinforce Chief Justice Burger's statement in *Richmond Newspapers, Inc. v. Virginia* that "historically both civil and criminal trials have been presumptively open."¹⁴⁹ Because *Richmond Newspapers* only analyzed whether criminal trials had been presumptively open, the *Publiker* court analyzed whether the same reasoning applied to civil proceedings, noting the rule in England "from time immemorial" was that "all judicial trials are held in open court" and that that norm in American Colonies subsequently followed.¹⁵⁰ Furthermore, the *Publiker* court emphasized that "[p]ublic access to civil trials, no less than criminal trials, plays an important role in the participation and the free discussion of governmental affairs."¹⁵¹

The underlying policies for open criminal trials and civil proceedings extend to opening dependency proceedings in Philadelphia. Although less formal than criminal trials, the stakes in dependency proceedings are similar to the high stakes in criminal trials¹⁵² because dependency proceedings determine whether a child will be removed from his or her family.¹⁵³ In fact, adjudicatory hearings are recognized as the hearing in a dependency case most similar to a bench trial.¹⁵⁴ The Third Circuit supported a presumption of openness in civil proceedings by rationalizing the opportunities similar to

148. *Id.* at 1067–68.

149. *Id.* at 1068 (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)).

150. *Id.* at 1069 (quoting E. JENCKS, *THE BOOK OF ENGLISH LAW* 73–74 (6th ed. 1967)) ("We have found nothing to suggest that the presumptive openness of the trial, which English courts were later to call 'one of the essential qualities of a court of justice,' . . . was not also an attribute of the judicial systems of colonial America.").

151. *Id.* at 1070.

152. *See id.* at 1068–70.

153. *See supra* Section I.A.

154. *See supra* note 37 and accompanying text.

criminal trials for “participation [in] the free discussion of governmental affairs,”¹⁵⁵ and therefore, open dependency proceedings could benefit from these discussions as well, considering DHS and judges are key players in dependency affairs.

Open dependency proceedings would educate the public, especially those never involved with Philadelphia DHS, to provide a greater “outlet for community concern, hostility, and emotion” regarding the high rate of child removal and the need for overall child welfare systemic reform.¹⁵⁶ For example, one Philadelphia citizen, Bridget Powell, a Philadelphia School District nurse and former temporary foster parent, was unable to gain custody of her three-year-old niece, Nas’neen, after DHS placed her in the custody of a friend of Nas’neen’s mother instead of relatives that were willing and cleared to care for Nas’neen.¹⁵⁷ Powell’s own-kept records of her interactions with DHS and Philadelphia Family Court demonstrated “a picture of missed opportunities, failed meetings and bureaucratic red-tape.”¹⁵⁸ Powell organized a staged protest and sit-in between DHS and the Philadelphia Family Court buildings “to air her grievances and to rally others who were struggling with the system,” but the main attendants were families who have had firsthand negative experiences with Philadelphia DHS and the judicial system.¹⁵⁹ However, on-lookers stopped and read signs stating “[i]nvestigate all dependency court judges” and “[o]ur children’s lives matter” and spoke to those attendants about their experiences.¹⁶⁰ Open dependency proceedings in Philadelphia would solidify those families’ experiences that passersby only briefly discovered and would further enable the

155. *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3d Cir. 1984).

156. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980).

157. Bond, *supra* note 106 (clarifying that Nas’neen was originally removed from her parents because they had substance abuse disorders).

158. *Id.* (“To date, Mayor Jim Kenney and DHS Commissioner Cynthia Figueroa refuse to meet with [Powell] and review evidence.”).

159. *Id.*

160. *Id.*

public to form their own opinions and encourage discussions about Philadelphia's child welfare system after observing proceedings.¹⁶¹ These conversations could empower the media to attend these proceedings and report egregious flaws affecting local citizens' lives to bring greater attention to the need for improvement in Philadelphia's child welfare system. The media's reporting could also encourage other members of the public to attend proceedings and "serve as a check upon the judicial process."¹⁶²

Open dependency proceedings can provide insight to the public and press on how Philadelphia's child welfare system and court procedures work, thereby restoring integrity and "confidence in judicial remedies."¹⁶³ If the public and press observed firsthand the intricacies of each dependency case before a judge, they could foster a deeper understanding and appreciation of the heavy burdens placed on judges, DHS workers, and attorneys resulting from their involvement in these highly emotional cases. In turn, it would reinforce why the proper functioning of a child welfare system is necessary and bring attention to an issue that has been covered by a veil of secrecy in closed-door courtrooms.

*B. Public Access to Dependency Proceedings in Pennsylvania:
Statutes and Case Law*

State statutes primarily govern open access to dependency court proceedings.¹⁶⁴ Although no Pennsylvania Supreme Court case has specifically addressed the public and media's

161. See Sara VanMeter, *Public Access to Juvenile Dependency Proceedings in Washington State: An Important Piece of the Permanency Puzzle*, 27 SEATTLE U. L. REV. 859, 882 (2004) (explaining that open dependency proceedings would improve "understanding among members of close-knit ethnic communities" in Washington).

162. *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982).

163. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).

164. See generally Kristen Rasmussen, *Minors Making News: A State-By-State Guide to Juvenile Courts Nationwide*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (2012), <https://www.rcfp.org/wp-content/uploads/imported/SJAJJ.pdf> (compiling a state-by-state guide to each jurisdiction's law regarding access to juvenile courts).

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right of access to dependency proceedings, the lower courts grappled with this issue and provided some guidance.¹⁶⁵ The Pennsylvania Superior Court clarified a framework that the public and media could successfully argue to gain access to juvenile dependency proceedings based on a constitutional presumption of openness.¹⁶⁶

1. *Pennsylvania statutes and procedure*

Laws regarding the general public and media access to juvenile proceedings vary from state to state.¹⁶⁷ In Pennsylvania, the Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure govern access and closure to both juvenile delinquency proceedings and juvenile dependency proceedings.¹⁶⁸ Generally, members of the public are excluded from juvenile proceedings.¹⁶⁹ Section 6336(d) of the Pennsylvania Juvenile Act provides:

Except in hearings to declare a person in contempt of court and in [delinquency] hearings as specified in subsection (e), *the general public shall be excluded from hearings under this chapter.* Only the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding or in the work of the court shall be admitted by the court.¹⁷⁰

However, the Official Comment to Section 6336(d) posits that members of the press may be considered a party having a “proper interest in the proceeding” within the court’s discretion: “[t]he section as drawn permits the court in its

165. See *In re M.B.*, 819 A.2d 59, 62 (Pa. Super. Ct. 2003).

166. *Id.* at 60.

167. See Rasmussen, *supra* note 164, at 3.

168. See 42 PA. CONS. STAT. §§ 6301, 6336 (2021); PA. R. JUV. CT. P. 100.

169. See Rasmussen, *supra* note 164, at 30.

170. 42 PA. CONS. STAT. § 6336 (2021) (emphasis added).

discretion to admit news reporters. This is frequently done with the understanding that the identity of the cases observed will not be published, a procedure generally satisfactory to the news media."¹⁷¹

Under the Pennsylvania Rules of Juvenile Court Procedure, juvenile courts may adopt local rules, in accordance with the Juvenile Act.¹⁷² Therefore, different jurisdictions in Pennsylvania can decide whether to open their court doors to the media and the public. Allegheny County is a jurisdiction that has decided to open its doors.¹⁷³ On the other hand, Philadelphia County has kept its shut.¹⁷⁴

Because Pennsylvania law has recognized the press as a potentially interested party to dependency proceedings,¹⁷⁵ the public should also be recognized as potentially interested parties rather than being excluded from Philadelphia's dependency proceedings by default. If the press can attend dependency proceedings and report cases while appropriately adhering to confidentiality guidelines, the public ultimately has the ability to obtain this information, whether it appears online, on social media, or on television. Including the public as a potentially interested party could at least allow the public to form their own opinions in dependency proceedings rather than potentially receiving biased news reports.

2. *Pennsylvania case law*

The first reported Pennsylvania decision to address whether a presumption of openness applies to juvenile dependency proceedings was *In re M.B.*¹⁷⁶ In that case, M.B. and J.B., both minors, were removed from their parents' custody for lack of

171. See *In re J.B.*, 39 A.3d 421, 433 (Pa. Super. Ct. 2012) (quoting PA CONS. STAT. § 6336 cmt. 4(b)) (emphasis omitted).

172. See PA. R. JUV. CT. P. 100.

173. *Juvenile Hearings Are Open*, *supra* note 86.

174. *What Are They Trying to Hide?*, *supra* note 59.

175. See *supra* note 171 and accompanying text.

176. *In re M.B.*, 819 A.2d 59, 60 (Pa. Super. Ct. 2003).

adequate care and placed into foster care after their eight-year-old sister was murdered.¹⁷⁷ Shortly thereafter, the local media published articles, using the children's names, about the homicide, the parents' battle to regain custody, the parents' alleged theft from a fund created for M.B. and J.B.'s sister, and about a sexual relationship between the alleged perpetrator and M.B.¹⁷⁸ The *Pittsburgh Post-Gazette* ("PG Publishing"), a local publishing company, appealed from a trial court's order denying access to dependency proceedings for M.B. and J.B., claiming that juvenile dependency proceedings should be open to the press and general public.¹⁷⁹ Based on the plain language of the Pennsylvania State Constitution, that "[a]ll courts shall be open,"¹⁸⁰ the trial court held that the "constitutional presumption of openness applies to juvenile dependency matters" but that "courts possess an inherent power to control access to their proceedings and may deny access when appropriate."¹⁸¹ Specifically, when "an interested party seeks access . . . the party seeking to keep the proceedings closed may rebut the presumption of openness by demonstrating that: (1) closure serves a compelling governmental interest, and (2) no less restrictive means to serve that interest exists."¹⁸²

The court denied *PG Publishing's* motion to open the dependency proceedings, finding that even though *PG Publishing* "may have a 'proper interest' in the[] proceeding[]" in accordance with the Official Comment of 42 Pa.C.S.A. section 6336(d), the foster care agency and the children's GALs demonstrated a "compelling interest" in protecting the children's right to privacy, with no less restrictive means

177. *Id.* at 60 (explaining that Westmoreland County Children's Bureau filed a petition "alleging that [M.B. and J.B.] were dependents because they lacked proper parental control or supervision and adequate physical, mental, or emotional care").

178. *Id.* at 60–61.

179. *Id.* at 60.

180. PA CONST. art. I, § 11.

181. *In re M.B.*, 819 A.2d at 60, 62.

182. *Id.* at 60.

available to serve that interest.¹⁸³ The trial court emphasized the need to protect M.B. and J.B.'s privacy, stating that the "media has already thrust rather embarrassing information about their personal lives into the public eye."¹⁸⁴ Furthermore, the court reasoned that the young siblings had already suffered "embarrassment of testifying about intensely personal matters in court" and may be subject to further "psychological and emotional harm."¹⁸⁵

Lastly, the court recognized that publicity could indirectly harm the siblings "because witnesses may be hesitant to speak freely and foster parents may be reluctant to get involved for fear of sacrificing their own privacy."¹⁸⁶ Thus, Pennsylvania case law recognizes the "constitutional presumption of openness" in dependency proceedings, but the media and public will ultimately be denied access to proceedings where such a presumption is successfully rebutted, as was the case for *PG Publishing*.¹⁸⁷

Philadelphia Family Court should implement an open-door policy for dependency proceedings based on a strong "presumption of openness" with the understanding that the media may have a "proper interest" in these proceedings, therefore allowing the attendance of the public and media. Interestingly, the *M.B.* trial court cited *Globe Newspapers* for the proposition that "the United States Supreme Court has recognized that protecting minors from the trauma and embarrassment of testifying in public is, in and of itself, a compelling state interest under a First Amendment analysis."¹⁸⁸ Accordingly, *Globe Newspapers* suggests that the presumption of courts should not be to close dependency proceedings out of

183. *Id.* at 65–66.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 63–65; see 42 PA. CONS. STAT. § 6336(d) (2021).

188. *In re M.B.*, 819 A.2d at 64.

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mere caution for trauma or embarrassment of a minor.¹⁸⁹ Rather, courts should operate with a strong presumption of openness unless circumstances warrant otherwise. Of course, cases with egregious circumstances or facts could give the presiding judge the option to close that case to the media and public. Therefore, while the nature of the facts in *M.B.* warranted privacy, dependency proceedings with mainly conclusory allegations and without particularly egregious facts, such as a parent not giving adequate care, can be adequately distinguished from the heightened need to protect minors in cases such as the homicide and sexual assault present in *M.B.* Although the public and press could not be a party, act as witness, give testimony, or weigh in on a dependency case presiding before a judge, their potential ability to listen to the facts and circumstances of cases ensures that the key actors are not unnecessarily removing Philadelphia children from their families based on largely conclusory allegations where no physical or sexual abuse exists.

Additionally, Philadelphia Family Court should recognize that its practice of closing its doors to the press and public is a “choice and not a requirement,” so that opening its doors could lead to child welfare reform.¹⁹⁰ In response to a critical article published by *The Legal Intelligencer*, the Philadelphia Family Court published a letter claiming that “exclusion of the public and press . . . is not a choice. It is a mandate which [the court] follow[s].”¹⁹¹ However, Philadelphia Family Court’s claim that it is mandated by statute to close its doors is misleading because Allegheny County, another Pennsylvania county bound by the same statutes and precedential case law, has opened its court doors for dependency proceedings.¹⁹² As early as 2003, Allegheny County, Pennsylvania permitted public and media

189. *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 608 (1982) (“Among the factors to be weighed are the minor victim’s age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of parents and relatives.”).

190. *‘What Are They Trying to Hide?’*, *supra* note 59.

191. *Murphy & Olszewski*, *supra* note 62.

192. *See, e.g., Juvenile Hearings Are Open*, *supra* note 86.

access to juvenile dependency proceedings.¹⁹³ Allegheny County's local child welfare system was once a "national disgrace" but is now nationally renowned.¹⁹⁴ As part of their child welfare reform, Allegheny County implemented other procedures in addition to opening its court doors—the results of which has likely decreased foster care placement.¹⁹⁵ Overall, the county's new open-door policy has at least contributed to the overall positive impact on the Allegheny County child welfare system and presents a model from which Philadelphia can borrow by opening its own courtroom doors.

IV. LEADING BY EXAMPLE: OPEN-COURT DEPENDENCY PROCEEDINGS

Given that Philadelphia's child welfare system is in need of overall systematic improvement, Allegheny County's choice to open its court system and the structure it employed is a model that Philadelphia should emulate to implement change and mitigate failures within the existing system.

A. Allegheny County, Pennsylvania: An Open-Court System

Allegheny County's DHS system transformed from a "national disgrace" to a "national model" after it underwent major reform, including opening its court rooms to the public and media.¹⁹⁶ In the decades prior to opening its court rooms, the Allegheny County court system experienced "delays and

193. *See id.*

194. *Secrecy in Phila. Family Court*, *supra* note 12; *Juvenile Hearings Are Open*, *supra* note 86; *see also* Mick Stinelli, *Longtime Allegheny County Human Services Director Marc Cherna to Retire*, PITT. POST-GAZETTE (Dec. 9, 2020, 4:46 PM), <https://www.post-gazette.com/local/city/2020/12/09/marc-cher-na-alleghe-ny-human-services-retire-casey-family-programs-award/stories/202012090169>.

195. Kate Giammarise, *Allegheny County DHS Using Algorithm to Assist in Child Welfare Screening*, PITT. POST-GAZETTE (Apr. 8, 2017, 9:00 PM), <https://www.post-gazette.com/local/region/2017/04/09/Allegheny-County-using-algorithm-to-assist-in-child-welfare-screening/stories/201701290002> (discussing a model screening resource that enables child service workers to "focus[] their limited resources on the most at-risk children" by generating a score to predict the likelihood of home removal for a child, reviewed by those service workers).

196. *See Secrecy in Phila. Family Court*, *supra* note 12; Stinelli, *supra* note 194.

shoddy work” that led to “disastrous results for children, including being left in foster care for up to 18 years as their cases worked through the system.”¹⁹⁷

A former *Pittsburgh Post-Gazette* staff writer, Barbara White Stack, wrote a series of articles on Allegheny County’s Children, Youth, and Families Office and the courts in the early 2000s, pushing for media and public access to juvenile proceedings.¹⁹⁸ Stack highlighted the need for Allegheny County to follow in the footsteps of the movement of the other few states that had open-door policies.¹⁹⁹ For example, Stack highlighted how several counties in Minnesota had opened their juvenile dependency proceedings to the public as part of a three-year pilot study which focused on the impacts of open juvenile courts.²⁰⁰ Minnesota Supreme Court Chief Justice Kathleen Blatz believed that the public needed “to hear the stories of individual children so that citizens are motivated to improve the child welfare system.”²⁰¹ Although the pilot study proved to be somewhat inconclusive, Minnesota ultimately decided to proceed with opening its court doors.²⁰² By so doing, Minnesota learned that although media attraction, attendance, and reporting was initially slow, the proceedings attracted an “‘interested public’ made up of extended family members, foster parents, and service providers who already [had] a stake in the system.”²⁰³ Moreover, former Chief Judge Kaye of the New York City Family Court opened the doors to family court proceedings in New York in 1997 and structured court closures

197. *Secrecy in Phila. Family Court*, *supra* note 12.

198. See Barbara White Stack, *Few Problems, Benefits in Open Hearings*, PITT. POST-GAZETTE (Sept. 30, 2001), <https://old.post-gazette.com/regionstate/20010930minn0930p8.asp> [hereinafter *Few Problems*]; see also; Barbara White Stack, *Panel to Study Opening Hearings on Abuse*, PITT. POST-GAZETTE (Sept. 30, 2001), <https://old.post-gazette.com/regionstate/20010930open0930p5.asp> [hereinafter *Opening Hearings*].

199. See *Opening Hearings*, *supra* note 198.

200. Barbara White Stack, *Minnesota Court Opens Most Juvenile Hearings*, PITT. POST-GAZETTE (Dec. 28, 2001), <https://old.post-gazette.com/headlines/20011228minncourtp6.asp>.

201. See *Few Problems*, *supra* note 198.

202. VanMeter, *supra* note 161, at 879.

203. *Id.*

on a case-by-case determination.²⁰⁴ To close a case in New York family court, “[j]udges . . . have to cite supporting evidence that closing a hearing is warranted.”²⁰⁵ In this way, closing a courtroom is not an arbitrary decision based on an attempt to hide complacency or inattentiveness, but rather a presumption that the court is open unless circumstances warrant closure.

In 2003, Allegheny County followed in the footsteps of states like Minnesota and New York and opened its dependency proceedings to the public and press.²⁰⁶ Allegheny County judges permitted the *Pittsburgh Post-Gazette* access to attend thousands of hearings involving allegedly abused and neglected children.²⁰⁷ The six judges who granted this access “based that decision on the state constitutional protection of open court” cited in *M.B* and reasoned that the court may admit anyone who “ha[s] a proper interest in the proceeding or the work of the court” under Section 6336(d) of the Juvenile Act.²⁰⁸ While the press and public do not have an absolute right to attend dependency proceedings in Allegheny County, Pennsylvania Supreme Court Justice Max Baer, a former family court judge in Allegheny County, explained that the “law on the subject is that courtrooms are presumptively open Assume that the press appears and the courtroom is open; nothing precludes one of the other parties—the parent, the child advocate, the county solicitor—[from asking] to close the courtroom if that’s in the children’s best interest.”²⁰⁹ This approach, based on the constitutional presumption of

204. Alan Finder, *Chief Judge in New York Tells Family Courts to Admit Public*, N.Y. TIMES (June 19, 1997), <https://www.nytimes.com/1997/06/19/nyregion/chief-judge-in-new-york-tells-family-courts-to-admit-public.html>.

205. *Id.*

206. *See Juvenile Hearings Are Open*, *supra* note 86.

207. *Id.* Once Allegheny County’s court rooms opened, Pittsburgh Post-Gazette reporter Barbara White Stack reported on many court proceedings. *See* Barbara White Stack, *Closed Juvenile Hearings Overturned*, PITT. POST-GAZETTE (Mar. 12, 2003), <https://old.post-gazette.com/localnews/20030312opencourt0312p3.asp> (noting that “[t]he Post-Gazette has attended thousands of juvenile court hearings regarding abused and neglected children in Allegheny County.”).

208. *See id.*

209. *Secrecy in Phila. Family Court*, *supra* note 12.

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openness, makes it easier for the public and media to attend hearings but still allows for court closure in those specific cases where particularly egregious facts or circumstances warrant the privacy interests of the child to come first.

By opening court doors, officials made a step in the right direction that resulted in “public scrutiny of underfunded child welfare agencies and overloaded juvenile courts.”²¹⁰ For example, in 2018, Allegheny County had 429 children placed in foster care, while Philadelphia had 2378 children placed in foster care.²¹¹ If Philadelphia implemented a similar policy and opened its courtroom doors, public scrutiny could enforce judicial accountability that would encourage a decline in Philadelphia’s rate of unnecessary child removal.

B. Follow the Lead: Proposals for Philadelphia’s Child Welfare System’s Improvement

Not unlike the articles published by Stack in Allegheny County, a *Legal Intelligencer* staff member published an investigative series into the secrecy of Philadelphia’s closed-door hearings.²¹² However, instead of this resulting in instituting reforms and opening Philadelphia’s courtroom doors the way Allegheny County did, Philadelphia Family Court judges addressed the issue differently.²¹³ They claimed:

[A] person who is not named in the statute and who seeks access to a dependency hearing must file a petition to open the hearing, and upon notice of the petition, the party seeking to keep the record closed is tasked with rebutting the presumption of openness under the two-pronged test defined therein. This is the procedure

210. *Juvenile Hearings Are Open*, *supra* note 86.

211. *Child Dependency Court Data*, UNIFIED JUD. SYS. OF PA., <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/dependency-dashboard-statewide> (last visited Apr. 4, 2022).

212. *Secrecy in Phila. Family Court*, *supra* note 12.

213. Murphy & Olszewski, *supra* note 62.

followed in Philadelphia Family Court for access to a dependency hearing by a member of the public or press.²¹⁴

However, data is lacking on the frequency in which this procedure is invoked.²¹⁵ Philadelphia continually conducts its dependency hearings behind closed doors because “no one challenges the status quo of closed courtrooms despite case law that calls for transparency.”²¹⁶ Philadelphia court spokesman Martin O’Rourke explicitly admitted this by stating that “members of the press and public can request access to individual cases, pending approval by the judge handling the case and with input from the parties . . . [b]ut the Philadelphia court system has no data on how many requests, if any, have been granted.”²¹⁷

Philadelphia officials cannot justify the high rate of children in foster care on state mandates when Allegheny County, bound by those same mandates, places children in foster care at a much lower rate. For example, Philadelphia city officials justified the growth in the number of children in the child welfare system by explaining that child-abuse-reporting laws after the Jerry Sandusky scandal led to an increase in calls and investigations.²¹⁸ However, even after these laws were implemented, the number of children in the system decreased in Allegheny County.²¹⁹ In 2018, the number of children adjudicated dependent by either a judge or hearing officer in Philadelphia was 2,598 while the number adjudicated

214. *Id.*

215. *Secrecy in Phila. Family Court*, *supra* note 12.

216. *Id.*

217. *Id.*

218. Terruso, *supra* note 78.

219. *Id.* (explaining that, in Philadelphia, “[h]otline calls are up 30 percent compared with 2015, and investigations are up 12 percent In Pittsburgh’s Allegheny County, the number of hotline calls increased by 28 percent, but substantiated reports went down 20 percent, and the number of children in the system decreased”).

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dependent by either a judge or hearing officer in Allegheny County was 840.²²⁰

Similar to Chief Judge Kaye's concerns for the New York family court system, which led to reform in Allegheny County, Philadelphia County also shares the same interest in boosting "confidence in the court process" which would result from a generally open court system.²²¹ Therefore, Philadelphia should follow in Allegheny County's footsteps and open its courtroom doors. Following Allegheny County's approach, those in the courtroom would assume that if the public or press appears, then the courtroom is open.²²² Aside from a parent's or judge's objection, "nothing [would preclude] one of the other parties—the parent, the child advocate, the county solicitor [from asking] to close the courtroom if that's in the children's best interest."²²³ Otherwise, the default presumption would be an open court, and that presumption would be regularly practiced.

Similar to Allegheny County's perspective on an open-court system outweighing confidentiality concerns, Philadelphia could adopt an open-door policy while accounting for the loss of confidentiality. One concern with opening court doors in Allegheny County was that dependency hearings would "improve [their Children and Youth Services] system, but at the expense of the individual children."²²⁴ However, since it opened its doors, the former Director of Allegheny County DHS, Marc Cherna, noted that the open court policy has bolstered accountability and in-court performance by the parties present.²²⁵ He noted that "[w]hen the press is watching,

220. *Child Dependency Court Data*, *supra* note 211 (detailing how, at the start of 2020, the number of children under court supervision was 7,448 in Philadelphia but only 1,824 in Allegheny County).

221. Finder, *supra* note 204.

222. See *Secrecy in Phila. Family Court*, *supra* note 12.

223. *Id.*

224. GEN. ASSEMBLY OF THE COMMONWEALTH OF PA, THE CHILDREN AND YOUTH SERVICES DELIVERY SYSTEM IN PENNSYLVANIA: SUMMARY OF TESTIMONY BEFORE THE TASK FORCE ON SERVICES TO CHILDREN AND YOUTH 27 (2004).

225. See *id.*

everyone tends to be better prepared.”²²⁶ In Philadelphia, too, one counter argument against open dependency hearings is the loss of confidentiality to a child’s identity. However, in a case where circumstances are not particularly egregious and a child may be jeopardized by wrongful separation from his or her parents, the check on decision makers by the presence of the public and media may outweigh this temporary loss of confidentiality. If those key players in the courtroom knew that the public and media could attend a given dependency proceeding, they would “tend[] to be better prepared,”²²⁷ thus avoiding complacency and incompetence, and perhaps ultimately preventing Philadelphia children from being wrongfully separated from their families.

CONCLUSION

It is an unfortunate reality that, oftentimes, a discussion pushing for change within a child welfare system does not occur until a catastrophic event happens. Philadelphia’s child welfare system, like most child welfare systems across the nation, is complex and intricate, where any real reform would likely take years, or even decades. One small step in the right direction is opening Philadelphia’s dependency hearings to the public and press. The presence of the media or general public in these hearings would educate the community on the importance of an effective DHS system and would place a check on all parties in the courtroom to ensure children are not taken away from their parents in a situation where removal is unnecessary. While the public and press would not be entitled to an absolute right of access, such as in cases that involve particularly egregious facts, the strong presumption and practice in Philadelphia must be that the court is open, and that a basic concern for confidentiality would not warrant default closure. Philadelphia has alarming rates of child separation, yet

226. *Id.*

227. *Id.*

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no evidence exists that parents in Philadelphia abuse their children more than parents in cities with lower separation rates, like Chicago and New York.²²⁸ However, opening court doors could change that. Uncovering the veil of secrecy on Philadelphia's dependency proceedings could ensure Judge Younge was the true outlier in her egregious actions. It could encourage legitimate discussions, place accountability on key decision makers, mitigate complacency, and help protect Philadelphia's children and parents from being unfairly separated by the system.

228. See Richard Wexler, *Op-Ed: In Big City Child Welfare Philadelphia Gets a Little Better, Los Angeles Gets Worse, & the 'Professional Kidnappers' Are Hard at Work in Phoenix*, WITNESSLA (Nov. 23, 2020), <https://witnessla.com/op-ed-in-big-city-child-welfare-philadelphia-gets-a-little-better-los-angeles-gets-worse-the-professional-kidnappers-are-hard-at-work-in-phoenix/>; *Philadelphia Is #1 Again—and It's Nothing to Be Proud Of*, NCCPR CHILD WELFARE BLOG (Jan. 23, 2019), <https://www.nccprblog.org/2019/01/philadelphia-is-1-again-and-its-nothing.html>.