

ACLU

South Carolina

Summary of issues raised by Susan Dunn, Legal Director of the ACLU of South Carolina, during the public meeting held by the South Carolina Joint Citizens and Legislative Committee on Children on Tuesday, October 30, 2018 in Columbia, SC.

YOUTH JUSTICE

1. Support implementation of S.916 to Raise the Age of Juvenile Court jurisdiction to 18 for most offenses.

DJJ has responded that they will need to build most youth prisons to implement this legislation. Long term trends and best practices suggest that DJJ needs funding for community-based programs for 17 year olds not prison beds. All of these offenders will be charged with misdemeanors.

2. Eliminate incarceration of status offenders.

Many young people are referred to the juvenile justice system for status offenses such as truancy, incorrigibility or running away. These are only criminal offenses because they are children. Legislation needs to eliminate the use of incarceration **including residential evaluations** as an intervention for status offenders. We ask the committee to develop and support such legislation and to support the development of evidence based alternatives to incarceration for these children.

3. Advocate for probation orders that are individualized and proportional to the offense.

The probation orders currently used in status offense cases and in non-status offense cases are cookie cutter forms that are so generalized that they set most children up to fail. (Copies of these forms are attached.) Many, if not most of these orders stay in place for years. Most of the children who must try to live under these orders are status offenders who have not committed any crime or children that have committed minor, non-violent crimes. These are crimes that if committed by an adult would be a misdemeanor with the maximum jail time of 30 days. We should advocate for orders that have specific attainable goals and that last for a period of time that relates to the seriousness of the offense. Probation orders for status offenders and non-violent offenders should not threaten incarceration for six months.

4. Reduce the use of Residential Evaluation Centers.

The residential evaluation centers are secure facilities. Any child sent to such a facility experiences being in jail. The Family Court may send a child to a residential center in order to get an evaluation. The child may be kept in jail, away from home, for up to 45 days. In some instances, confinement to the evaluation center is being used as punishment or shock

incarceration. We encourage the Committee to support legislation which would eliminate all residential evaluation referrals for status offenders and require community evaluations referrals for all youth unless the referring judge makes a specific finding that an evaluation could not be completed safely in the community. See attached report which documents how residential evaluation is used in the state. Over 54% of the 1869 evaluations in the last fiscal year were residential. 1289 of the residential evaluations were for status offenses or misdemeanors.

5. Objective criteria for initial decision to detain.

In most jurisdictions of SC, police officers make the decision to take a child into custody or to release him or her to parents or guardians with little or no guidance. That decision, which can radically alter a child's life, is often made subjectively. In the Charleston area, the major law enforcement agencies have adopted a uniform Risk Assessment Instrument, which provides an objective numerical scale to determine whether a child should be detained or not. Use of that instrument has reduced juvenile incarceration. We urge the Committee to encourage the statewide adoption of the use of the RAI. (A copy of the RAI used in the Charleston area is attached.)

6. Limit the use of solitary confinement.

All evidence indicates that solitary confinement of young people should be avoided. Children should only be kept in isolation for short periods of time as may be needed to deescalate a situation. Despite that evidence, SC DJJ continues to rely upon solitary confinement for punishment.

DEPARTMENT OF SOCIAL SERVICES

1. Safety plans

The Department of Social Services has a state-wide pattern of using "Safety Plans" to remove children from their homes. These so-called voluntary plans provide for no due process: no notice, no opportunity to be heard, no right to representation, and no appointment of a guardian ad litem to advocate for the children involved. This pattern and practice is constitutionally suspect. There is no statutory authority for these plans. A copy of a form plan is attached. Signing such a form can hardly be characterized as voluntary. According to the attached letter to the Post and Courier, 4,600 children are currently in the custody of DSS, while 74,000 children are in kinship care. Most of the kinship care placements are the result of safety plans. This is a completely unregulated system which exists with almost no due process or judicial oversight. Our children deserve better. The Committee should investigate the use of safety plans and should make recommendations based upon its findings that protect children and families.

2. Stop incarceration of indigent parents

Despite the clear admonitions of the United States Supreme Court in *Turner v. Price*, 131 S.Ct. 2507 (2011), South Carolina continues to send indigent parents to jail when they are unable to comply with outstanding child support orders. Current research has confirmed that children suffer when their parents are put in jail for any reason. The Committee should encourage the Child Support Enforcement Division of the Department of Social Services to work with Court Administration and the legislature to develop new procedures that will protect the fabric of families by assuring that indigent parents are not incarcerated when they are unable to comply with child support orders. (States, such as Illinois, that have

adopted such measures have found that more humane interventions result in more effective collection of child support.) While DSS and the Clerks of Court are initiating a new Child Support system which will be phased in beginning this month, the new system does not address the lingering ability to pay issue which plaque our current systems.

Submitted by,



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STATE OF SOUTH CAROLINA)

COUNTY OF _____)

A JUVENILE)

_____)

A Child under Seventeen (17) Years of Age)

IN THE FAMILY COURT
_____ JUDICIAL CIRCUIT

ORDER OF PROBATION
(Status Offenses)

) Docket No. _____

Plaintiff Attorney: _____

Hearing Date: _____

Defendant Attorney: _____

Judge: _____

Guardian ad Litem: _____

Court Reporter: _____

On _____, a verified petition was filed in the Court by _____ alleging that the above named minor was a delinquent child in that (he/she) on _____ (date) in _____ County, S. C. did: _____ in violation of Section(s) _____ Code of Laws of South Carolina (1976).

An adjudicatory hearing was held on _____ (date). The minor was present and represented by _____, Esq. The minor (admitted guilt to/was adjudicated delinquent for) having _____ in violation of Section(s) _____ Code of Laws of South Carolina (1976).

A dispositional hearing was held on _____ (date). The minor was present and represented by _____, Esq.

THIS COURT FINDS AND CONCLUDES AS FOLLOWS:

- A. That this Court has jurisdiction over the parties and subject matter of this action.
- B. That this minor is a suitable candidate to be placed on probation and to be supervised on probation by the Department of Juvenile Justice.
- C. Other: _____

THEREFORE, IT IS ORDERED:

1. That the minor shall be placed on probation for _____.
2. That the minor shall comply with the following terms of probation:
 - a. You shall report to your Probation Counselor as often as you are told to.
 - b. You shall keep all appointments with other agencies to which you may be sent by the Court or by your Probation Counselor.
 - c. You shall have no unexcused absences from school, obey the rules of your school and do your school work to the best of your ability.
 - d. You shall cooperate with your parents and obey their rules or the rules of the home in which you live.

- e. You shall cooperate with your probation counselor.
- f. You shall be home by a certain hour every night. The hour you are to be home shall be set by the Court, or by your probation counselor in conjunction with your parents.
- g. You shall not be with any person who is committing a crime or breaking the law.
- h. You shall not commit any crimes or break any laws.
- i. You shall not use any type of illegal drugs or drink any form of alcoholic beverages.
- j. You shall not have in your possession any type of weapon which could be used to hurt another person.
- k. Other conditions: _____

3. Other: _____

4. ANY VIOLATION OF THIS ORDER MAY CONSTITUTE CONTEMPT AND MAY RESULT IN THE MINOR'S PLACEMENT WITH THE DEPARTMENT OF JUVENILE JUSTICE FOR A PERIOD UP TO SIX (6) MONTHS.

AND IT IS SO ORDERED.

Date: _____, 20____

_____, S.C.

FAMILY COURT JUDGE

THEREFORE, IT IS ORDERED:

1. That this minor be committed to the South Carolina Department of Juvenile Justice, for an indeterminate period not to exceed (his)/(her) twenty-first birthday, unless sooner released by proper authority, suspended upon compliance with terms of probation.
2. That the minor shall comply with the following terms of probation:
 - a. You shall report to your Probation Counselor as often as you are told to.
 - b. You shall keep all appointments with other agencies to which you may be sent by the Court or by your Probation Counselor.
 - c. You shall have no unexcused absences from school, obey the rules of your school and do your school work to the best of your ability.
 - d. You shall cooperate with your parents and obey their rules or the rules of the home in which you live.
 - e. You shall cooperate with your probation counselor.
 - f. You shall be home by a certain hour every night. The hour you are to be home shall be set by the Court, or by your probation counselor in conjunction with your parents.
 - g. You shall not be with any person who is committing a crime or breaking the law.
 - h. You shall not commit any crimes or break any laws.
 - i. You shall not use any type of illegal drugs or drink any form of alcoholic beverages.
 - j. You shall not have in your possession any type of weapon which could be used to hurt another person.
 - k. Other conditions: _____.
3. Other: _____.

AND IT IS SO ORDERED.

Date: _____, 20_____

_____, S.C.

FAMILY COURT JUDGE

Memorandum

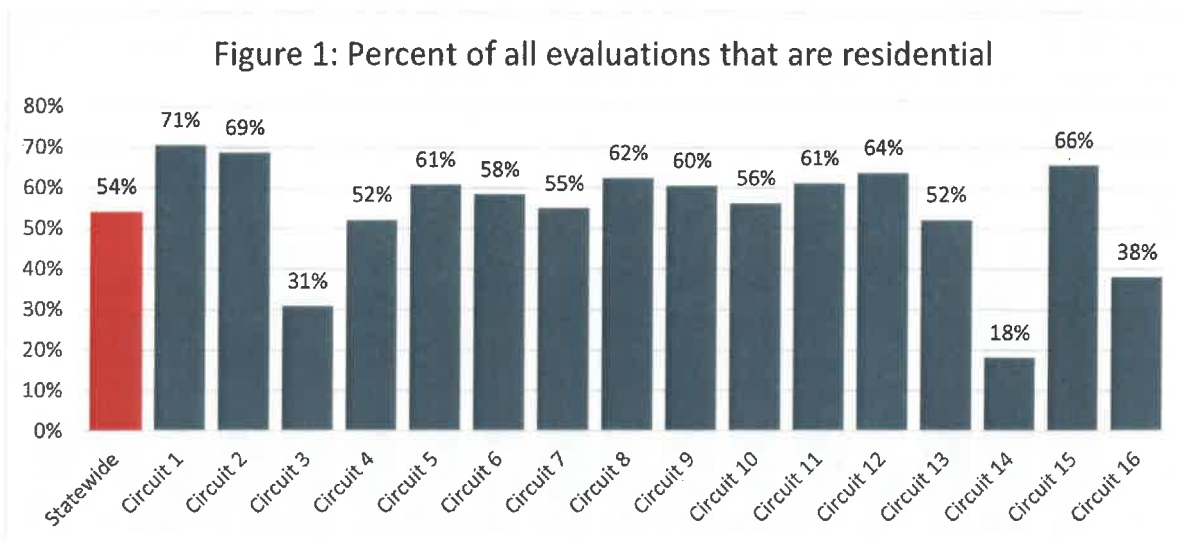
From: Josh Rovner
To: South Carolina file
Date: September 5, 2018
Re: Use of Residential Evaluation

More than half (54 percent) of all evaluations take place in the Residential Evaluation Centers and the remainder (46 percent) in the community. Due to the difficulty of analyzing the data, this memo only reviews the most recent year's use of evaluations. It is important to note that over time, a larger percentage of evaluations have been taking place in the community.

Statewide, judges are modestly more likely to order residential evaluations for more serious offenses. The percentages in this table reflect the percent of evaluations taking place in residential evaluation centers. Less than half of status offense adjudications result in residential evaluations; exactly half of misdemeanor evaluations result in residential evaluations; and two-thirds of felony adjudications result in residential evaluations. As discussed below, some circuits are far less likely to utilize residential evaluation on status and on misdemeanor charges.

	Status (n=356)	Misdemnr (n=927)	Felonies (n=586)	TOTAL (n=1869)
Statewide	47%	50%	66%	54%

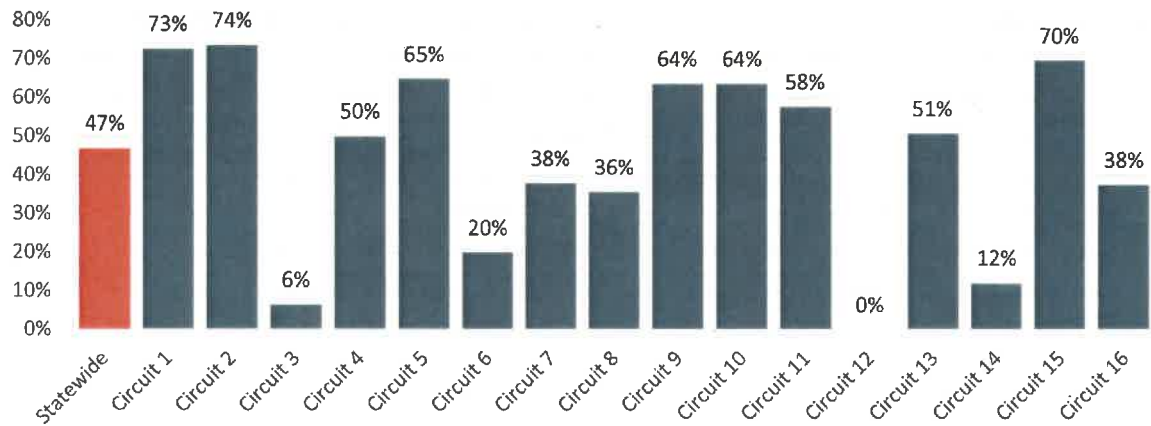
The use of residential evaluation ranges from a high of 71 percent in the First Circuit (Calhoun, Dorchester, and Orangeburg counties) and 69 percent in the Second Circuit (Aiken, Bamberg, and Barnwell counties) to a low of 18 percent in the Fourteenth Circuit (Allendale, Beaufort, Colleton, Hampton, and Jasper counties). As shown in Figure One, there is little variation overall except at the low end.



Unlike the overall use of residential evaluation, Circuits demonstrate large variety in the use of residential evaluation for status offenses. Overall, 47 percent of status offense adjudications resulting in an evaluation take place in residential evaluation centers. This ranges from at least 70 percent in the Second, (Aiken, Barnwell and Bamberg counties), First (Calhoun, Orangeburg, and Dorchester counties), and Fifteenth Circuits (Georgetown and Horry counties) to a low under 15 percent in the Twelfth (Florence and Marion counties), Third (Lee, Sumter, Clarendon, Williamsburg), and Fourteenth Circuits (Allendale, Colleton, Hampton, Beaufort, Jasper).

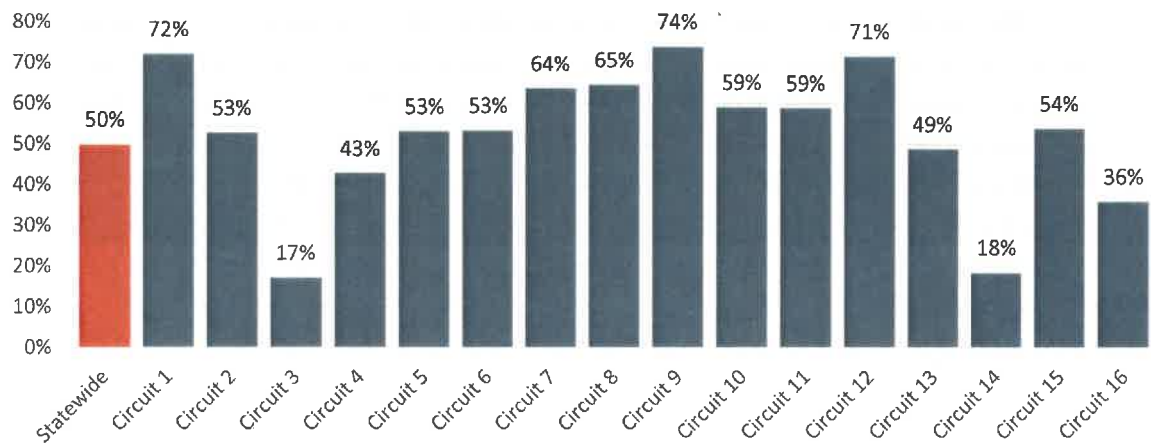
The three circuits with the highest overall use of residential evaluation are also the three circuits with the highest use of residential evaluation for status offenders.

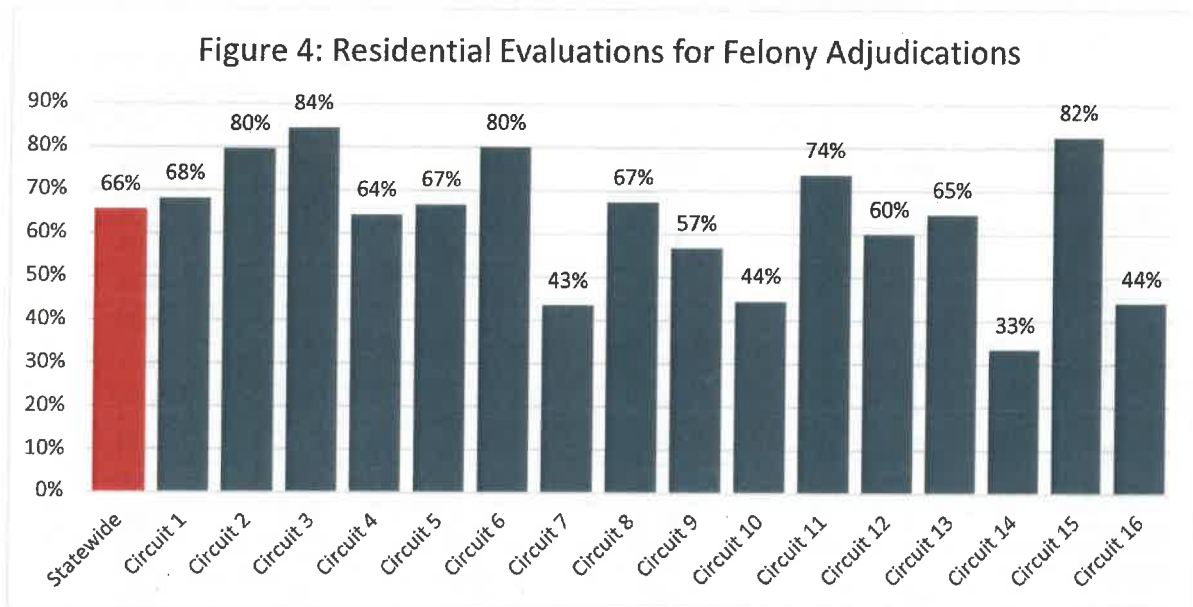
Figure 2: Residential Evaluations for Status Offense Adjudications



Half of all misdemeanor adjudications that result in an evaluation take place in residential evaluation centers. Three circuits – the Ninth, First, and Twelfth – utilize residential evaluation for more than two-thirds of all evaluations. On the other hand, the Third and Fourteenth Circuit send young people to residential evaluation center for less than one in five evaluations. The Twelfth Circuit, which never used residential evaluation for status offenders, uses it often for misdemeanants.

Figure 3: Residential Evaluations for Misdemeanor Adjudications





As shown in Figure 4, two-thirds of youth evaluations for felony adjudications are residential. In four circuits (Third, Fifteenth, Sixth, and Second), at least 80 percent of evaluations for felonies are residential. In four others (Fourteenth, Seventh, Tenth and Sixteenth), fewer than half of felony evaluations are residential.

Overall use of Residential Evaluations

Statewide, 38 percent of all young people in residential evaluation have been adjudicated delinquent on a felony offense. Status offenders comprise one-sixth of all youth in residential evaluation statewide, but there are three Circuits where status offenders are less than five percent of all youth in residential evaluation. There is no reason more Circuits cannot follow their example.

Youth adjudicated on misdemeanors offenses are the most common category of those in residential evaluation. This is not surprising, given that misdemeanors are the most common level of referral into the family courts. However, two Circuits (Third and Fourteenth) utilize residential evaluation for misdemeanants less than 20 percent of the time, and they may provide a positive example for the state.

Appendix

Table 2: Number of Youth in Residential Evaluation by Level

	Status	Misdemeanrs	Felonies	TOTAL	Youth in residential evaluation adjudicated for a felony (%)
Statewide	167	461	384	1012	38%
Circuit 1	16	31	32	79	41%
Circuit 2	14	19	35	68	51%
Circuit 3	2	12	27	41	66%
Circuit 4	6	15	18	39	46%
Circuit 5	13	17	18	48	38%
Circuit 6	2	16	20	38	53%
Circuit 7	11	56	10	77	13%
Circuit 8	5	31	37	73	51%
Circuit 9	7	17	51	75	68%
Circuit 10	7	26	8	41	20%
Circuit 11	15	40	14	69	20%
Circuit 12	0	10	18	28	64%
Circuit 13	31	79	31	141	22%
Circuit 14	3	9	3	15	20%
Circuit 15	23	50	47	120	39%
Circuit 16	12	33	15	60	25%

Table 3: Percent of Youth in Residential Evaluation by Offense Level, by Circuit and Statewide

	Status	Misdemeanors	Felonies	TOTAL
Statewide	47%	50%	66%	54%
Circuit 1	73%	72%	68%	71%
Circuit 2	74%	53%	80%	69%
Circuit 3	6%	17%	84%	31%
Circuit 4	50%	43%	64%	52%
Circuit 5	65%	53%	67%	61%
Circuit 6	20%	53%	80%	58%
Circuit 7	38%	64%	43%	55%
Circuit 8	36%	65%	67%	62%
Circuit 9	64%	74%	57%	60%
Circuit 10	64%	59%	44%	56%
Circuit 11	58%	59%	74%	61%
Circuit 12	0%	71%	60%	64%
Circuit 13	51%	49%	65%	52%
Circuit 14	12%	18%	33%	18%
Circuit 15	70%	54%	82%	66%
Circuit 16	38%	36%	44%	38%

THE CHARLESTON COUNTY JUVENILE DETENTION RISK ASSESSMENT INSTRUMENT

Juvenile Name: _____	DOB: _____
Arresting Agency: _____	Arresting Officer: _____
Gender: _____	Race: _____
SSN: _____	Assessment Officer: _____
Presenting Offense: _____	
Assessment Date/Time: _____	

FACTOR	SCORE	FACTOR	SCORE
1. Court Order A. Court Order for secure detention.....15 B. None.....0 2. Most Serious Presented Offense A. Murder/ manslaughter or attempt, robbery, any felony sex offense, or unlawful possession or use of a firearm or explosive device, or violent crime according to 16-1-60.....15 B. Other felony offense against persons.....12 C. Other felony.....9 D. Misdemeanor sex offense with prior sex offense referral, or easy access to victim.....10 E. Other misdemeanor sex offense.....5 F. Misdemeanor against person involving injury.....4 G. Other misdemeanor.....2 H. Infraction or municipal offense.....1 I. Probation violation.....1 J. Status Offense.....0 K. None.....0 3. Additional Presenting Offenses A. Two or more unrelated felonies.....3 B. One unrelated felony.....2 C. One or more unrelated misdemeanor(s).....1 D. None.....0		4. Prior Adjudications of Delinquency or Guilt A. 3 or more verified law violation referrals.....9 B. 1-2 verified law violation referrals.....6 C. None.....0 5. Current Legal Status A. Alternatives to secure detention failed.....5 B. Currently in DJJ or DSS legal custody.....4 C. Felony or misdemeanor petition pending 3 or more.....3 1-2.....2 D. Currently in diversion program.....1 E. None.....0 6. Flight Risk A. Prior escape from secure detention facility.....5 B. Prior failure to appear for court hearing.....4 C. Prior absconding from supervision.....3 D. Out of state resident.....2 E. None.....0	
		Assessment Score: _____	
		Indicated Decision: 1-9 = Release 10-14 = Detention Alternative 15 & above = Detention	

Department of Juvenile Justice Notification: _____ Date/Time: _____

Reason for Override: <input type="checkbox"/> More Restrictive <input type="checkbox"/> No suitable custodian to assume <input type="checkbox"/> Custody <input type="checkbox"/> Serious or credible threat to witness, victim, or community <input type="checkbox"/> No non-secure alternative available <input type="checkbox"/> Out-of-state runaway/missing person <input type="checkbox"/> Other, to include Habitual Runaway (describe below)	<input type="checkbox"/> Less Restrictive <input type="checkbox"/> Mental Health placement obtained <input type="checkbox"/> Does not meet local age guidelines <input type="checkbox"/> Medical condition <input type="checkbox"/> Pregnancy <input type="checkbox"/> Non-secure alternative utilized <input type="checkbox"/> Other
--	---

Explanation for "Other" override: _____

Supervisory override authorized by: _____

FINAL DECISION: _____ Release _____ Detention Alternative _____ Detain

South Carolina Department of Social Services
SAFETY PLAN

Name of Parent/Caretaker(s): _____

Name of Child/ren: _____,

Address: _____

Telephone Numbers: Home: _____ Cell: _____ Work: _____

A report of child abuse and/or neglect has been received by the Department. At this point in the investigation safety concerns have been identified by the agency and steps must be taken to make the children safe pending the completion of the investigation.

Danger or Description of the reported harm/safety threat to the child(ren). Describe specific behaviors that cause the children to be unsafe:

Describe the effects the reported harm has had on the child(ren):

DSS and the parents named above have agreed to this Safety Plan because the actions described in this plan are necessary to protect the child. Without these protective measures, the child would be at risk of being removed from the home and placed in foster care for the child's protection during the investigation. This agreement cannot be changed without the written consent of DSS or until the investigation is completed and the agency finds that the child was not abused or neglected.

Actions that will protect the child during the investigation:

Action: _____ Protector: _____

1. _____
2. _____
3. _____

Protector's Name: _____ Address: _____

Phone Number: _____ Cell Number: _____

Emergency Numbers: (Work or additional contact numbers) _____

Identify the Start Date: _____ Expected Ending Date: _____ No later than 90 days.

Have all names of **protectors** and **other adults** in the household been screened thru the CPS system and SLED, Sex Offender to determine if they have had previous involvement with the CPS division in any capacity? Yes No

If yes, list names and dates of all checks: _____

What, if any special skills or knowledge will the protector need to care for the child(ren)?

If the alleged perpetrator leaves the home during the investigation, what visitation is allowed:

Location: _____

Frequency: _____

Who will monitor and how: _____

Parents/Guardian/Significant Other:

I (we), _____, parent(s) of _____ agree by signing this Safety Plan, I (we) understand _____, also referred to as the child's protector, will be responsible for my child during the investigation. I, (we) agree to the steps outlined in this plan until the investigation is completed. I (we) understand that by signing this agreement that I am acknowledging concern for my child, but I am not admitting that I have abused or neglected my child. I agree that if at any time I find that I cannot or will not comply with any or more of the terms of this agreement, I must notify DSS immediately.

Worker's Name: _____ Phone: _____

Supervisor: _____ Phone: _____

Parent/Caregiver: _____ Date: _____

Parent/Caregiver: _____ Date: _____

Protector:

I, _____, agree to act in the capacity of protector for _____ and to provide for the child's care and to assure that the steps outlined will be followed. I agree that if at any time I find that I cannot or will not comply with the one or more of the terms this agreement, I am to immediately contact the Department's Social Services.

Worker's Name: _____ Phone: _____

Supervisor: _____ Phone: _____

After-Hours Emergency Number: _____ or Law Enforcement Number: _____

I understand that I am not to allow the parent to have unsupervised contact with the child during the investigation. I agree that should the parent attempt to remove the child from my immediate supervision or in any other way have unsupervised contact with the child I am to contact DSS.

Protector's Signature: _____ Date: _____

DSS agrees to complete the investigation in the time as indicated above and to monitor the safety plan for compliance as outlined. DSS agrees to reassess the safety plan if, through the investigation, the child's risk of danger is decreased. If the report is unfounded, the Safety Plan will end and the agency will notify both the parents and the protector in writing of the termination of the Safety Plan and case decision. If the report is founded, the agency will conduct a family team meeting to develop additional services or alternative plans for the children.

DSS Employee: _____ Date: _____

Parent(s) Refused to Sign on: (Date) _____ Worker's Initials: _____

If the parent(s) refuse to sign a valid safety plan, an out of home placement must be sought by Law Enforcement or Ex parte Order to keep the child safe, pending the completion of the investigation.

These services represent an effort by the Department of Social Services to assist this family to strengthen its capacity to protect, guide and nurture this child within the family home or with a protective caregiver who is going to provide care for the child during the investigation. Should these services prove ineffective and it is no longer possible for this child to remain safely within the family home, out-of-home care is the planned arrangement for this child.

Yes **No**

Opinion

https://www.postandcourier.com/opinion/letters_to_editor/letter-s-c-children-in-kinship-care/article_e1301e6e-d7a9-11e8-afco-dbbfb11b9fe7.html

Letter: S.C. children in 'kinship' care

OCT 26, 2018

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In response to the article, "Report: Number of SC children in state custody increased by 1,500 since 2012":

The story noted, "In most circumstances, advocates agree that children are better served when they are placed in foster homes or with relatives." This last part is significant and deserves attention.

The number of children living with relatives far eclipses the number of children in state custody. Compared to 4,600 in state custody, there are about 74,000 child victims of abuse and neglect living in kinship care, i.e., in the full-time care of relatives or family friends. The numbers are growing. The opioid epidemic has resulted in more children in need of out-of-home placement, and child welfare agencies are depending on relatives to step up to relieve an already overburdened foster care system.

What happens to most children involved with the Department of Social Services is that they are placed with relatives before being taken into state custody. This is called diversion because children are diverted from the foster care system.

The caregivers are not able to become licensed foster parents and receive no support from the state, despite the children having experienced the same sort of abuse, neglect and trauma as a child placed into foster care. Grandparents and other kinship caregivers are ill-equipped to handle the emotional and financial challenges of caring for these vulnerable children, but are left to find services and resources by themselves.

Over half of kinship families fall below 200 percent of the federal poverty level. Kinship caregivers are more likely to be disproportionately African American, poor, single, older, in poor health and less educated. Without the oversight and assistance foster families receive, kinship caregivers are unaware of government and community resources that could help. The majority of kinship caregivers don't receive the assistance they need to maintain a financially stable household. Despite this, grandparents, aunts and uncles, cousins, siblings and even family friends continue to take in children so they won't end up in foster care.

Despite these challenges, studies indicate that children in kinship care fare better than those in foster care. They tend to be safer than children placed with non-relatives. Siblings are less likely to be separated. They're less likely to change schools, and relatives are more willing to become permanent guardians. In fact, they have half the risk of behavioral

and social problems of children in foster care.

HALOS provides support, services and assistance in navigating systems to ensure children in kinship care have what they need to thrive.

In 2017, HALOS saw a 29 percent increase in the number of families served by the kinship care program compared to the prior year. HALOS serves about 10 percent of local kinship families and is the only organization focused on the unique needs of kinship families.

It is time for South Carolina and our community to recognize these unique families and provide them the support and services that ensure children in kinship care have every opportunity to live in safe, permanent homes that help them become healthy, productive adults.

Kim Clifton

Executive Director

HALOS

Jennifer Richard

Director of Philanthropy

HALOS

LaCrosse Road

North Charleston

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