

Testimony Before the Vermont House Committee on Human Services
April 14, 2020

COVID-19 Response: Foster Care and Family Visitation

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Good afternoon Chair Pugh and members of the Committee:

My name is Allison Green and I serve as Legal Director at the National Association of Counsel for Children, a national non-profit organization founded in 1977 dedicated to advancing the rights, well-being and opportunities for children impacted by the child welfare system. Today, NACC represents a national membership network of child welfare legal professionals, including attorneys who represent children, parents, and child welfare agencies, as well as other multi-disciplinary partners such as CASAs, medical professionals, and judges.

I am before you today to share context and information about the committee's proposed bill to suspend in-person parent-child family time (also known as visitation)¹ during the current public health crisis. Although well-intended, the legislation is problematic and out-of-step with national and state level responses to this issue. Generally speaking, the concerns are three-fold. The proposed legislation:

- (1) unnecessarily impedes viable options for safe family time to continue, methods that are already underway in other jurisdictions;
- (2) expressly contravenes federal guidance and national best practice; and
- (3) unfairly and disparately impacts youth in the custody of the state foster care agency.

¹ According to the federal Children's Bureau, "[w]hat the field most often regards as "visitation" and "visitation plans" seldom fulfills the needs that parents and children have for meaningful and nurturing time together. This language often implies standard visitation schedules whereby all parents receive a predetermined amount of supervised time with their child, regardless of the parents' circumstances and protective capacities, and for "visitation" to increase only as parents "earn" the right for longer and unsupervised interactions...Viewing child and family contacts during foster care less as "visits" and more as "family time" suggests the critical importance of the length and quality of time that children spend with their parents, separated siblings, and other important family members." See ACYF-CB-IM-20-02; Available at: <https://www.acf.hhs.gov/sites/default/files/cb/im2002.pdf>

(1) The proposed legislation unnecessarily impedes viable options for safe family time to continue.

Across the country, child welfare agencies and courts are grappling with the same question Vermont's Department for Children and Families is now facing. In-person family time is a legal requirement that is critical to maintaining parent-child attachment and promoting reunification. However, effectuating in-person time is now complicated by the serious health concerns raised by the COVID-19 pandemic.

Although it is too soon to have comprehensive data on this, jurisdictions are responding in a variety of creative ways. For example:

- In **Wyoming**, in-person visits are not prohibited. Instead, a multidisciplinary case team reviews and makes family time determinations. The team considers and utilizes virtual options when someone in the foster home is high-risk.
- Similarly, in **Oregon**, family time may continue when all parties - parents, resources parents, the relevant Tribe, and caseworkers - agree there are no health-related barriers and there is sufficient space to practice social distancing.
- In many other states, including **Connecticut, Florida, Arizona**, and some places in **Louisiana**, in-person family time is still permitted in certain instances; for example, in cases where the parent is approved to visit in kinship home and all parties agree the visit can safely take place. This maybe a particular strategy of interest to Vermont, where Child Trends reports that 28% of youth in foster care are already placed with a relative.²
- Earlier this month, **California's** Judicial Council issued an emergency rule affirming that decisions about in-person family time must be made on a case-by-case basis.³ This rule was promulgated after Dr. James Watt, the Acting Deputy Director of the Center for Infection Diseases and Interim State Epidemiologist at the California Department of Public Health filed a declaration in Los Angeles Court attesting that a blanket ban on in-person visitation was "**more restrictive than necessary under the current public healthy guidelines.**" [emphasis added].⁴
- Even in **Washington** state – an epicenter of the pandemic - some localities are continuing in-person family time. There, the state's Supreme Court issued an order delineating specific factors to consider, such as the child's age and developmental level, the feasibility of in-person and remote visitation, and the functional capacity of the parent and child.⁵

² Williams, Sarah Catherine and Kristin Sepulveda. "The share of children in foster care living with relatives is growing." Child Trends. 24 May 2019. Available at:

<https://www.childtrends.org/the-share-of-children-in-foster-care-living-with-relatives-is-growing>

³ California Emergency Rule 6. Effective 6 April 2020. Available at: <https://caanet.org/app/uploads/2020/04/20-141-Adoption-of-Emergency-Rules-FINAL.pdf>

⁴ "Declaration of James Watt, MD, MPH in Support of Children's Law Center of California (CLC) Motion for Modification of Presiding Judge's Standing Order Regarding Visitation Issued 3/20/20." 2 April 2020.

⁵ "Order Re: Dependency and Termination Cases." The Supreme Court of Washington. 3 April 2020. Available at:

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Emergency%20Order%20on%20Dependency%20and%20Termination%20Cases%204-03-2020.pdf>

This small sampling of jurisdictions is illustrative, but by no means exhaustive. It confirms that states can and do make case-by-case determinations that balance compliance with COVID-19 directives with the critical importance of family time to maintain family connections, promote healthy attachment, and achieve reunification. NACC has continued to hear stories from the field where safe, even socially distanced, in-person family time is occurring, for example by taking a walk together outside, or having a family “dance off” from a healthy distance. To be clear: there are safe ways to allow continued, enriching contact between parents and children, and those solutions are already being utilized across counties and states nationwide. It is the role of the child welfare agency to support families in understanding the current public crisis and give them the tools needed to safely interact.

Before taking the drastic step of legislating the suspension of all in-person family time contemplated by the proposed bill, NACC urges the Committee and the Vermont child welfare community to query whether some of the same considerations that have proven helpful in other states have been attempted here: *Has the agency considered permitting in-person visitation in cases where all parties, including the kinship caregiver, agree? Has the agency considered how this would impact cases where unsupervised contact already is approved, and no caseworker is needed to transport or supervise? Has a public health expert been consulted about ways to safely effectuate in-person family time, as occurred in California? Would multidisciplinary teams – the professionals who know the family best – be available to help assess these decisions in tailored way, as they are doing in Wyoming?* If the answer to any of these questions is no, then moving to suspend all in-person family time is premature.

Even in jurisdictions where in-person family time has been wholly suspended, the authority to make those decisions has remained with the executive branch or the judiciary. These are typically interim policies or temporary court orders that can be readily amended without having to go through a legislative process. NACC is aware of no other state that has sought to codify this change in statute, as Vermont is considering today. NACC strongly recommends against such a change, which would render the child welfare agency and courts less nimble to respond to the quickly evolving COVID-19 landscape and stymie their ability to professional obligations to examine each case and make individualized, best interest recommendations. There is simply no reason to embed a response to a fast-changing problem into state law that is, but its very nature, slower to amend or revert.

(2) The proposed legislation expressly contravenes federal guidance and national best practice.

Furthermore, federal guidance and best practice firmly recommend against blanket cessation of in-person family time. On March 27, 2020, the federal Children’s Bureau, through Associate Commissioner Jerry Milner, issued a formal letter to all child welfare legal and judicial leaders, stating: the “[Children’s Bureau] strongly discourages the issuance of blanket orders...doing so is contrary to the well-being and best interest of children, may contribute to additional child trauma, and may impede the likelihood of reunification.” The guidance further underscored the need for “continued

family time, especially in times of crisis and heightened anxiety” and recommended “ask[ing] parents their preference when deciding how to proceed.”⁶

This federal guidance aligns with what social science and child welfare law dictate about the importance of family time. A growing body of research associates meaningful family time with positive outcomes, perhaps more so than any other intervention. Studies demonstrate that quality family time yields greater likelihood of reunification and increased chances of sustained case closures (permanency that “sticks”).⁷ For children, it supports attachment and bonding, reassures them that they are not to blame for family separation, and expedites permanency. For parents, family time enhances motivation to work toward treatment goals, provides opportunities to practice new skills, and positively engages them in the child’s development, education, and medical needs.

Conversely, “[r]esearch shows ending or reducing family time due to a parent’s non-compliance with a case plan is problematic and can negatively impact parental engagement and well-being.”⁸ When child and families do not maintain regular contact, it can deteriorate the attachment relationship, sometimes irreparably, disconnect the child from their cultural community and extended relatives, and protract time spent in foster care.

From a legal perspective, sweeping suspensions of visitation, without case-specific findings of risk or harm, raise due process and constitutional concerns, as well as questions about meeting the federal reasonable efforts requirement. Looking ahead, the proposed legislation may not only prolong time to reunification but may also delay adoptions and guardianships by denying families the guaranteed opportunity to sustain a healthy attachment.

Parents and youth have the best information about their level of exposure, options for safe family time, and access to technology, if needed. We know that teenagers in foster care spend a lot of time with their biological family, even if that contact is not officially “approved.” It is far better to engage with young people in foster care, educate them about this virus, and help them learn how to issue-spot risk and make good decisions, rather than to unilaterally shut down all family time and likely have young people “vote with their feet” – that is, engage in contact anyway, but without the appropriate safety measures in place, putting everyone involved at greater risk.

COVID-19 has thrust the entire world into a state of heightened anxiety and has stripped most of us of many coping mechanisms and comforts of daily living. To put it mildly, it has made life harder. And if as adults we feel that level of anxiety, imagine for a moment what that is like for children and teenagers.

⁶ March 27, 2020 Letter from Associate Commissioner Milner. Available at:

https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/news_items/march_27_2020_letter_from_a.pdf

⁷ See, e.g., “Family Time and Visitation for Children and Youth in Out-of-Home Care.” Administration for Children and Families Information Memorandum. ACYF-CB-IM-20-02. 5 February 2020. Available at:

<https://www.acf.hhs.gov/sites/default/files/cb/im2002.pdf> “

⁸ Id.

And then imagine again what that is like for youth in foster care, who are already cut off from so many parts of their life, to be told that they are unilaterally cut off from their family as well. Being removed from one's home and separated from parents is often a significant traumatic experience itself and may result in myriad long-term negative consequences.⁹ The proposed legislation would exacerbate the harms research has proven will develop when family time is ended or reduced.

(3) The proposed legislation unfairly and disparately impacts youth in the custody of the state foster care agency

Finally, this committee should be concerned that the proposed legislation singles out youth in foster care for different treatment than their peers. Children who are subject to custody orders in domestic relations matters continue to move between their family homes during the public health crisis. Why should a child be treated differently simply because the state is a party to their case?

Youth experiencing foster care, and alums of the foster care system, have told those of us positions of privilege and power over and over again: *don't single us out, don't make us feel different, just treat us like any other kid*. Families outside the child welfare system have the ability to design the type of contact they will have during this period; children and parents in the system should have the same opportunity to let their wishes be known and to be a part of crafting what family time should look like for their own family.

Conclusion

Although well-intentioned, the proposed legislation is overly reactive to the current public health crisis. More measured and thoughtful deliberation is needed to formulate a policy that works best for Vermont's children, families, DCF caseworkers, and the resource parent community.

COVID-19 is not, in and of itself, a danger that should keep families separated - no matter the duration of time. Child welfare practitioners have the skills, knowledge, and ongoing ethical duty to have meaningful, case-specific conversations, thoughtfully consider each family's safety and needs, synthesize that information with up-to-date guidance from public health officials, and make recommendations accordingly.

Thank you for the opportunity to testify and I look forward to answering any questions.

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⁹ See, e.g., Trivedi, Shanta. "The Harm of Child Removal." NYU Review of Law & Social Change. Vol. 43, Issue 3. (2019). Available at: <https://socialchangenyu.com/review/the-harm-of-child-removal/>