

## How Lack of Phila. Foster Care Oversight Endangers Children

*Editor's note: This is the first part of an occasional investigative series examining how children and families are impacted by problems in the Philadelphia foster care system, family court, and by insufficient legal representation. It is the result of numerous interviews with family members of foster children, lawyers and officials, and a review of state, city and court records.*

BY P.J. D'ANNUNZIO  
*Of the Legal Staff*

The phone rang in Virginia McKale's house, interrupting what had been an otherwise peaceful November evening with her husband and children in their Cherry Hill, New Jersey, home.

McKale approached the phone cautiously. It had been a difficult few months during the autumn of 2017—her two grandsons had been taken by the Philadelphia Department of Human Services from the custody of their mother,

McKale's stepdaughter, who struggles with heroin addiction on the streets of Kensington.

Court dates, clashes with social workers, and enduring the relentless anxiety of being

have to hear: her grandson had been raped in foster care.

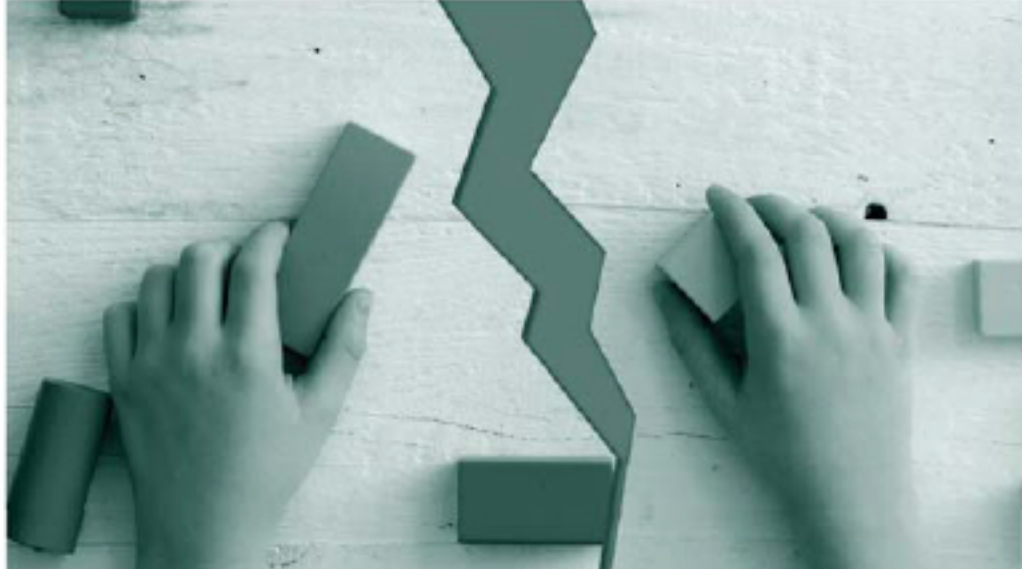
"I almost lost my mind," McKale recalled. "It was a nightmare."

The call catapulted McKale, 40, into a nearly yearlong struggle to rescue her grandchildren from dire straits. Month after month she battled the system put in place to safeguard her grandchildren, and other kids whose well-being is in its hands—a fight that included tangling with caseworkers who she said tried to keep the incident under wraps, an account confirmed by a former DHS employee who had contact with the case and who spoke on condition of anonymity.

McKale's story is one of many instances of abuse in Philadelphia foster homes and is a symptom of a systemic problem that centers on Community Umbrella Agencies, or CUAs, which are private entities that DHS contracts with to provide caseworkers

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## Fractured Families



separated from her beloved grandchildren pushed her to the breaking point. It was about to get worse, as McKale found out when she picked up the receiver and heard words no parent or grandparent should ever

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in addition to vetting potential foster homes.

While DHS removes children from abusive or potentially dangerous family situations and decides whether foster care is necessary, a CUA chooses the foster parent (ultimately approved by DHS) and its workers are tasked with ensuring the welfare of children and making progress reports in court. CUAs are also obligated to ensure state and federal background checks are performed on prospective foster parents, although DHS investigates reports of abuse.

According to Pennsylvania Office of Children, Youth and Family records obtained by The Legal, there were just over 60 reports of abuse in care in Philadelphia foster homes in 2016 and 2017 combined.

However, that number may not reflect the true scope of the problem. Frank Cervone, executive director of the Support Center for Child Advocates, said child abuse in foster care is underreported.

Cervone explained that children who have suffered abuse in foster homes are forced to face a terrible conundrum: Do I stay here with the abuse I know, or do I report and be moved to a place that could be much worse?

In a case Cervone handled in which a girl had been sexually abused in multiple homes and endured the trauma of repeatedly moving, she eventually decided to stop reporting. "She said, 'I can deal with this better than I can being moved again,'" Cervone recalled. "It's kind of, the devil you know is better than the one you don't. So she made a calculated choice at age 13 to put up with whatever she was receiving because she didn't want to move again."

He continued, "Kids, like the rest of us, are making choices, like in a cost-benefit way that all leads to the possibility that there is underreporting. Just like in domestic violence—they feel compelled [to not report] because the abuser is paying the rent, or 'he might get more violent with me.'"

In McKale's case, her grandchildren, Tyler, age 9, and Peter, age 5—given pseudonyms for this article—were separated after being removed from their mother. Despite McKale's protests that she could house them both in her seven-bedroom home, former Philadelphia Family Court Judge Lyriss Younge denied that request because McKale lives across state lines. Younge was later removed from the family court following a Legal Intelligencer article detailing her history of due process violations.

Peter, suffering from severe brain damage caused by a birth injury that leaves him unable to speak or walk, was sent to a specialized facility. In less than a year, Tyler was moved five times. He started off at a DHS facility, then was sent to his aunt's house in Warminster, before being moved to a foster home in Philadelphia, then to the North Philadelphia foster home where he was raped by another 9-year-old, and finally to an undisclosed foster home where he now resides.

The night Tyler was raped, he was kept in the foster home until the next morning instead of being immediately removed, McKale said. According to the DHS

employee, the police were not involved and Tyler was never taken to a doctor for a medical examination. He also did not receive counseling until six months later. The incident report, filed by the foster parent, was watered down and did not contain specific details, the DHS employee said.

"They know they've done wrong," McKale said, "and every time I turn around they're trying to cover it up."

McKale's grandchildren are not the only ones whom the system has endangered. Two family members of foster children also have horror stories of their own. Their last names have been omitted to protect the children.

According to Danielle, whenever her 5-year-old daughter asked her foster mother for a drink of water, she was told to "drink your pee," or sweat and spit. Her daughter suffered from trauma-induced bed wetting, which the foster mother chose to curb by dehydrating her.

Danielle, 33, of North Philadelphia, lost her three daughters and newborn son in February after she tested positive for marijuana. However, her children—who secretly funneled information about their living conditions to her by slipping letters in her purse during parental visits—said that the foster mother smoked marijuana incessantly in front of them.

Additionally, Danielle said the foster mother stole care packages meant for the children and confined the three girls, none of whom were older than 12, and infant boy to an empty room for hours each day. She also said her children, including the baby, were not properly buckled up when traveling in the foster mother's car—which she drives without a license.

"My kids were tortured and this is something they'll have to deal with for the rest of their lives," Danielle said. "They should have been put with family."

Tamiera's 2-and-a-half-year-old cousin, whom she adopted at birth, was taken by DHS in 2017 after a social worker reported Tamiera for not having a child car seat for the girl, a report Tamiera, 34, of Northeast Philadelphia, disputes.

From February 2017 to February 2018, the toddler was moved four times. While she was in foster care, she was struck on the head so hard that she developed a lump. She also had scratches on her body, according to Tamiera.

At one point, the girl developed a severe rash on her genitals because the foster mother could not afford diapers and refused to change her as needed, Tamiera said.

"It's completely shocking," she said. "I'm just hoping to get justice."

### LOOKING THE DEVIL IN THE EYE

There has been enough abuse and neglect in the Philadelphia child welfare system over the years for lawyer Nadeem Bezar to make a living out of suing foster agencies.

In the 10 years since he started his practice at the Center City firm Kline & Specter, he's represented over 100 children and families in abuse cases—some of which involved the death of a child.

"I've looked in the eye of the devil," Bezar said, recalling some of the horror stories that have come out of the city's foster care system.

"I've seen [cases of] children less than 5 years old being sodomized, being made to perform oral sex. ... I've seen that done in

exchange for candy, safety, or from threats of violence," he continued. "I've seen it done incestuously, by strangers, fosters, people employed within the child welfare system. I've seen residential treatment centers where workers have sex with young boys and girls in those facilities."

Disturbingly, Bezar said that the bulk of those cases have come in the last couple of years, which coincides with the rise of the CUAs as DHS's go-to for services.

The use of CUAs has its origin in a 2006 initiative spurred by then-Philadelphia Mayor John Street, who called for an overhaul of the child welfare system following the death of 14-year-old Danial Kelly. Kelly, who suffered from cerebral palsy, died emaciated and covered in bone-deep bed sores allowed to fester due to neglect.

Over the better part of a decade, city work groups and task forces deliberated on the best way to improve DHS; the conclusion at which they arrived was to outsource case work and foster placement through privatized community-based agencies, the product of a 2011 plan dubbed "Improving Outcomes for Children." The first two CUAs went online in 2012 and the remaining eight followed in 2015.

A 2016 to 2017 DHS review of the CUAs, called the CUA "Scorecard," showed the agencies were off to a dubious start. The scorecard uses a rating system of Liberty Bells to gauge the quality of multiple aspects of service, with one bell representing "critical" and five bells being "superior." According to the scorecard, no CUA rated above an average score of three bells, or "competent."

One of the lowest-ranked CUAs was the North Philadelphia-based Asociación Puertorriqueños en Marcha (APM), which received a two-bell average rating of "unsatisfactory." APM is the agency that handled McKale's grandson Tyler's case.

Both APM and DHS declined to comment on Tyler's case, explaining they do not confirm or deny specific case information.

As for the CUA ratings, Philadelphia DHS Commissioner Cynthia Figueroa said those numbers are out of date and a forthcoming scorecard will show that the agencies have improved in critical areas.

"There has been significant progress and stabilization with the CUAs," Figueroa said. "We still have, certainly, work to do to continue to improve."

Rick Olmos, APM's communications director, echoed that sentiment: "APM has made vast progress from the report card, as you will see in the new report card coming out in 10 days."

DHS spent more than \$75 million on CUAs in Fiscal Year 2017. That's more than 10 percent of its \$684 million budget for that year. According to the most recent figures available for Fiscal Year 2018, DHS spent at least \$82 million on CUAs.

Figueroa said that since the initial ratings, DHS has met with each CUA periodically to discuss areas of concern and plans for improvement. In the case of APM, the quality of its workforce was seriously deficient. "The ongoing conversation with APM is then related to those priority areas," Figueroa said.

DHS has also established a professional development program called "DHS University" to provide the CUA personnel

with much-needed training, technical assistance and analytics.

"So it's not like we evaluate them and watch from a distance," Figueroa said. "We're following up, we're intimately involved; it's sort of an ongoing discussion."

"I'm very pleased with the progress that's been made," she added.

Despite Figueroa's assurances that conditions have improved, family members of children in foster care and people who work with the system on the ground level told The Legal they are still not happy with the state of the child welfare system, claiming CUAs put children at greater risk now than when DHS was handling cases.

One concern about the CUAs, according to family lawyers, is that many of their caseworkers are to this day underpaid, unmotivated and poorly trained.

Philadelphia family lawyer William Calandra, who represents parents in dependency cases—dealing with adoption, custody and foster care—said high staff turnover in the CUAs is part of the problem.

"If you represent a parent, your client is going to have to deal with two or three caseworkers" during the length of the case, he said, adding, "It's very difficult work and they're underpaid."

Social workers in Philadelphia make anywhere from \$32,000 to \$48,000 annually, according to DHS.

Calandra also said he's noticed more instances of abuse in care now than in years past.

"I can tell you that, sadly, it happens far too often," he said. "I think we're seeing more of it than we did 10 years ago when DHS was more actively involved in the cases."

John Capaldi, a former city solicitor who represented DHS in the courtroom, said the system does not do enough to rehabilitate families, keeping children in foster care for longer than necessary.

Capaldi, now a dependency lawyer, said, "Taking children away from parents in a lot of cases is fracturing and maybe does more harm than good." Many of these cases involve parents who struggle with substance abuse, but who are not abusive toward their children, Capaldi said.

"Yes, there are many instances where children need to be removed," he continued, "but I've seen many cases where children are removed from parents who, if they were provided with better [substance abuse] treatment and care," would have been motivated to get clean for their kids.

Once a child is put into foster care it's a "crap shoot," Capaldi added. "You have foster homes that are excellent and then you have foster homes where people are motivated by money and other things."

Philadelphia foster parents are paid a per diem rate of \$29.63 for a child under 13, and \$39.63 for a youth age 13 or older. Additional payments are allotted for children and youths with medical needs or behavioral health issues. A foster parent housing someone with medical and psychological needs could make up to \$142 a day per child.

Beyond what is spent on foster parent pay, money is misspent and the child welfare system is generally coming apart at the seams, according to Capaldi.

"There is a lot of corner-cutting, stuff held together with spit or gum and you hope it holds," he said.

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Resources are not used wisely, especially in instances where children are removed from families with housing issues, Capaldi said.

"The CUA agencies are stewards of the money; they don't give the children and families what they need to succeed. There's a lot of waste," he said. "There's situations where the agency will take a family of four kids and split them up. It would make more sense to subsidize an apartment for [the] mom because it would cost less than to pay four foster parents."

### SLIPPING THROUGH THE CRACKS

A prospective foster parent must receive a child abuse clearance and undergo a criminal background check. While state and federal authorities perform these procedures, in Philadelphia it is up to CUAs and foster providers to determine what to do with the results.

A criminal history of homicide, sex crimes and assault are obvious disqualifiers, as are crimes related to harming or endangering children.

However, a candidate who committed any criminal act short of that—even felonies—could still be considered. Hiring such applicants is left to the discretion of the foster agency, if the past criminal conduct is not prohibited under the Child Protective Services Law.

For instance, Tenisha Williams, who in 2009 pleaded guilty to charges of tampering with records and interfering with the custody of children in Lower Merion Township, was later cleared to be a foster parent in Philadelphia.

In the midst of a custody battle with her estranged husband, Everett Terry, Williams concealed the whereabouts of their children and forged Terry's signature on court papers that would essentially strip him of parental rights and award Williams primary custody, according to a Montgomery County Detective Bureau affidavit.

Williams served a term of probation, but was not legally disqualified from fostering.

A biological mother whose child was in Williams' home said the foster mother provided excellent care to her child, but expressed alarm that someone convicted of interfering with child custody could be a foster parent.

Williams declined multiple requests for comment for this article.

"People need to be able trust ... the ones who are given the responsibility to care for these children while the courts are figuring out whether these children are safe at home," the biological mother said of the vetting process.

Some criminals slip through the cracks altogether and the failure to properly vet foster parents has led to disastrous consequences. Criminal charges and lawsuits producing multimillion-dollar judgments against CUAs are often the result of such cases.

In 2016, 10-year-old Ethan Okula died because his caregivers, who worked with the CUAs NorthEast Treatment Centers and NET Treatment Centers, failed to get him medical attention for an intestinal blockage.

Okula complained of severe stomach pain and began vomiting shortly after arriving at school. The school nurse called his foster mother to pick him up at 9:30 in the morning. The foster mother who had been housing Okula for six months, Denise Alston,

sent her friend to the school at 1 p.m. The friend took Okula home, where he laid on the couch.

By the time Alston found Okula unresponsive and called 911 at 6 p.m. that evening, the child had died of a bowel obstruction, according to a DHS fatality report.

Criminal charges were subsequently filed against Alston and her wife, Carol Fletcher. They are both awaiting trial. The two CUAs settled a lawsuit with Okula's estate in May for \$5 million.

In 2017, Bethanna, a CUA in South Philadelphia, was hit with an \$11 million jury verdict for sending a child to live with foster parents Walter and Deborah Scott, who subjected her to beatings and sexual abuse.

The girl, referred to in court papers as S.S., claimed that from age 6 to 10 she was molested and repeatedly sexually assaulted by Walter Scott and beaten by Deborah Scott. Her court papers also noted that Walter Scott had been under investigation for child rape based on accusations from other children in the foster home, and in 2016, pleaded guilty to multiple counts of involuntary deviate sexual intercourse with a child and rape of a child, among other charges.

The main allegation in S.S.'s lawsuit was that Bethanna failed to sufficiently investigate the Scotts' criminal history, which also included welfare fraud convictions. Bethanna denied any negligence on its part. "At no time did any case worker, supervisor, child advocate, medical or mental health provider document any suspicions that S.S. was being physically or sexually abused," Bethanna's court papers said.

Bezar, the Kline & Specter lawyer specializing in child abuse lawsuits, handled both cases.

"There is a need for foster parents," he said, stipulating, "I think people who vet them are sometimes forcing the applications through. I think good people are easy to find and bad people are getting through the process."

Indeed, the need for foster parents in Philadelphia has increased. Early in 2018, DHS put out a recruitment call for 300 more families to open their doors to foster children.

While noting that foster parent turnover is high, Figueroa, the DHS commissioner, said the system was not in a crisis state in terms of the number of available foster parents.

"The opportunity to have more resource parents is a benefit for the whole system," she said, using an alternate term for foster parents.

Figueroa also said improvements have been made to the abuse reporting and investigative apparatus, in particular the DHS abuse hotline.

Still, Capaldi, the family lawyer who formerly represented DHS as a city solicitor, said DHS cannot be absolved of responsibility for what the CUAs have failed to do.

"I know DHS relies on the CUA system, that's their eyes and ears," he said. "When there are cracks and things that haven't gotten done, DHS will refer to a CUA and make a CUA responsible. In my opinion, it's DHS—the buck stops with them. They're the ones that have to ensure the agencies they subcontract with are competent."

He added, "There are agencies that are out there that are deficient that still need to be held to task or removed. Even today."

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