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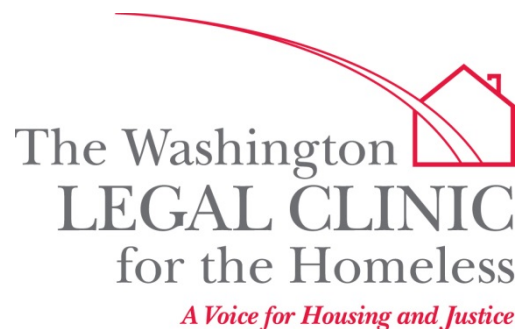
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**Testimony before the DC Council Committee on Human Services
Performance Oversight Hearing on the DC Department of Human Services (DHS)
Amber W. Harding
March 1, 2021**

The Legal Clinic envisions – and since 1987 has worked towards – a just and inclusive community for all residents of the District of Columbia, where housing is a human right and where every individual and family has equal access to the resources they need to thrive. My testimony will focus on the performance of the Department of Human Services (DHS) particularly with regard to homeless services.

2020 was a rough year, without question. But when the world turns upside down, it provides an opportunity to reassess what we may have accepted as true, or right, or just how things are. I want to take this opportunity to lay out some of the lessons I hope DC comes away with after 2020.

1. Homelessness is preventable—its existence a political choice.

There has been a fair amount of talk from DHS about how drastically its family homelessness numbers have decreased this year. Let's put aside that DC massively undercounts family homelessness by maintaining that only families currently living in shelters are homeless, closing its eyes to sister agency data that counts many more homeless kids in school. Let's also put aside the number of families who were reluctant to enter shelters where they worried, rightfully, that shared living spaces put their families at greater risk of contracting COVID-19. Let's hold for now the massive denials of family emergency shelter—to be discussed below.

The most obvious, substantial cause for the decrease in family homelessness is the eviction moratorium that has been in effect for almost a year, and, relatedly, the moratorium on time limit exits from rapid re-housing. As the authors of the recent Georgetown eviction study recently concluded: "While the Rapid Rehousing Program aids households to exit shelters more quickly, it may be contributing to eviction rates in the District. More long-term

solutions like permanently affordable housing can be more effective at achieving housing stability.”¹

We knew that stopping evictions well as terminations in rapid re-housing would decrease homelessness.² We assume others knew that, at least abstractly. But the difference that stopping all evictions and terminations made, as opposed to throwing a few coins at eviction prevention each year, magnifies the truth that homelessness and eviction are political choices that elected officials make.

*DC must dedicate enough resources to prevent every possible eviction and drastically increase its investment in deeply affordable housing.*³

2. Safe, private shelter and housing saves lives.

Our clients have been saying for years that they get sick in large congregate shelters. We have clients who sleep on the street because they feel safer there or have fewer illnesses. I have represented so many clients who could not adequately care for their health in communal shelters, who caught every cold or worse that came through, or who couldn't eat or sleep well enough to be healthy. Yet shelters continued to be large communal spaces, and even when Mayor Bowser replaced DC General, she (and the Council) refused to concede that private space is fundamental to safety, dignity, and good health. Instead, families had to share bathrooms and living space.

Then the pandemic hit. We were inundated with messaging to social distance, to stay home, to avoid mixing households. But homeless people weren't given the opportunity to follow health guidelines. They were forced to share bathrooms and dining areas with strangers. Hundreds of homeless people without kids were forced to sleep in rooms with dozens or strangers, sometimes just a few feet away.

The first COVID-19 case in DC was March 7. The first case among people experiencing homelessness was March 31. In just one month, over 200 homeless persons were infected.⁴ As of February 28, 518 people experiencing homelessness have contracted COVID-19 and 25 have died. Some people have contracted it more than once.

Eventually, DC moved over 600 people who doctors had determined were at high risk of dying of COVID-19 into a hotel program, called PEPV. Over 500 high risk individuals, though, remain on the waiting list for PEPV. With the announcement by the Biden Administration that 100% of costs for

¹ <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>

² In its performance oversight responses, DHS states that a time limit is not an allowable reason to exit families from rapid re-housing under the HSRA. While we wish that were true, it is patently incorrect, and a somewhat puzzling response considering both their aggressive advocacy for such authority *and* the hundreds of terminations on that basis that occurred annually prior to the pandemic. https://dccouncil.us/wp-content/uploads/2021/02/DHS_2021-Performance-Oversight-Pre-Hearing-Responses.pdf (Question 63, Page 89.) I would also note that the percentages appear to be wrong in Question 62 and that the eviction sealing provisions did not go into effect until January 1, 2021—not a legitimate reason to forego tracking evictions in 2020.

³ DHS and DCHA must also explain how they could place 90 families per month in rapid re-housing yet fail to place 522 households using permanent housing vouchers in FY20. (Question 54, Pages 78-79.)

⁴ By April, it became clear that the actions DHS was taking were not enough to control the spread of the coronavirus in shelters and on the street. On April 24, we sent a letter to the Mayor asking her to offer non-congregate placements to everyone who was homeless and drastically expand testing. When no response came, we sent a petition with over 800 individual signatures and 78 organizational signatures: <https://www.legalclinic.org/moving-from-congregate-shelters-to-private-rooms-needs-to-happen-now-to-save-lives/>.

these hotels would be reimbursed, including retroactive payments, we expected DHS to expand the program. That has not happened. Instead, two more people have died of COVID-19 since that announcement. DC must expand PEPV immediately to prevent further loss of life, and to accommodate every high risk person experiencing homelessness.

As much as we support the expansion of PEPV, though, we do not endorse the position DHS has taken—that PEPV is not an Homeless Service Reform Act (HSRA)-covered program and that residents have no rights to due process. DHS cannot operate a government-funded and controlled program without due process for its residents.⁵ They can comply with the HSRA or they can set up a parallel system of due process for appeals of adverse actions, but PEPV cannot be a black hole of legal rights for its residents. High risk individuals should not have to jettison all of their legal rights just to survive the pandemic. (DHS, unfortunately, has a long, troubling history of trying to get out of providing basic constitutional rights to shelter applicants and residents.)

When this pandemic has run its course, we hope that DC will revisit its plans for new shelters—with an eye to creating much smaller and more private spaces for people to be when they become homeless. If we had had humane shelters, the numbers of homeless people impacted, dozens fatally, by COVID would be far smaller. There is no excuse for continuing to force people to live in such settings.

DHS needs to expand PEPV and bring all sites into compliance with due process or the HSRA. If they do not voluntarily come into compliance, the Council needs to amend the emergency authorization for PEPV to clarify that it is an HSRA-covered program. The ICH needs to revisit shelter redesign and maximize the privacy and safety of future shelters.

3. Low barrier programs are humane and anti-racist.

When the pandemic hit, DC streamlined many of its programs to try to make them lower barrier. DHS acknowledged that collecting and submitting documents for verification of eligibility would be much more difficult and would get in the way of receiving lifesaving services. In the summer, the Council developed a program for excluded workers that acknowledged documentation of need would be challenging and should not be a barrier to assistance. In the fall, the Council passed emergency legislation that removed many of the barriers to applying for ERAP and allowed self-certification in order to ensure that renters could access assistance more easily. The sky has not fallen. There are no reports of widescale fraud. These changes should be celebrated and maintained post-public health emergency.

And still emergency shelter for families remains extremely high barrier, perhaps the highest barrier public benefit program in the District.⁶ At the beginning of the pandemic, DHS came to the Council and asked for authority to extend Interim Eligibility decisions past the end of the public health emergency. They also shifted to a phone system for intake, since the Virginia Williams Family Resource Center building was closed. I was told by Director Zeilinger that they would increase their

⁵ DHS admits several times that it runs PEPV, and yet somehow also claims it is not a “DHS program.”

⁶ Of note, Director Zeilinger testifies today that the Homelessness Prevention Program “has successfully prevented a *shelter stay* for more than 8000 families” (emphasis added). The purpose of that program is to prevent homelessness, not shelter stays. This is yet another example of how the agency has conflated ending shelter use with ending homelessness, to the detriment of many families.

use of Interim Eligibility to place families who could not provide verification that they had no safe place to go.⁷

Nevertheless, we regularly get calls from families who are turned away from shelter because they can't provide documentation that they have nowhere to go—a burden the law actually does not put on them but DHS continues to. (The burden is actually on DHS to prove that someone has a safe place to go, not on the applicant to prove that they do *not* have a safe place to go.)

This high barrier, unlawfully run, intake system is dangerous to families every day. During a pandemic it is particularly cruel. Just in the last two months, here are some examples—for each case the family was not placed until a lawyer intervened:

- During a snowstorm, a mom was told she could not go into shelter because she is on her mother's voucher. She explained that her mother had kicked her out of the apartment and had physically assaulted her, leading to a stay away order.
- A mother was told she could not be placed in shelter until she provided her mother's lease to show she wasn't on it, a letter from her uncle's landlord saying she can't stay there, and additional names of friends and family members she could potentially stay with. Since she couldn't get the documents, she was denied shelter.
- A family was denied shelter even after the family they were doubled up with tested positive for COVID-19.
- A mother and her one-year-old child slept in a hallway after being unable to provide an aunt's lease to prove they were not on it.
- A pregnant woman in her third trimester was denied family shelter because Virginia Williams determined that she could stay in a hypothermia shelter for women.

A little math shows that these stories are not, as DHS often claims, exceptions or one-offs. In its performance oversight responses (question 44, page 66), DHS states that, in FY20, 7463 families applied for shelter through Virginia Williams and 1180 families applied through the hotline, for a total of 8643 applications. Out of those applications, only 807 were deemed eligible and placed in shelter. 1705 were referred to the Homeless Prevention Program and 867 were found ineligible—although really a referral to Homelessness Prevention Program is also a denial of shelter and finding of ineligibility. Using these numbers, only 9.3% of applications for family emergency shelter were granted in FY20—a 90.7% denial rate. For FY21, the denial rate has risen to 94.6%-- during a period of time that included many hypothermic nights.⁸

High barrier programs are not just harmful—they are also racist. Pernicious, poisonous myths that poor Black people game the system to get public benefits, cannot be trusted to tell the truth, or do not know what is best for themselves or their families form the foundation of DC's high barrier family shelter intake. If families apply for emergency shelter, it is because they have decided that

⁷ Oversight answers belie this commitment: in FY20 only 150 families were placed in Interim Eligibility. (Question 49, Page 74.) Notably, DHS seems states that “If a family is in an interim eligibility placement and are determined ineligible for shelter because they have a safe place to stay, the length of the non-shelter placement is at least seven (7) to fourteen (14) days.” (Question 45f, Page 68.) The law, however, requires a minimum of 14 days for access to safe housing. *See* DC Code §4-753.02(c-1)(9)(A).

⁸ DHS also claims “none of the denials took place during a hypothermic night,” an assertion that defies belief for many reasons, first and foremost that our office has represented numerous families denied shelter on hypothermic nights. (Question 45e, Page 68.)

shelter is safest option for their family. That decision is not an easy one for most families, and DHS should respect that families know what is best for them.

DC needs to recommit to a low barrier family shelter intake system during the pandemic and beyond. The HSRA should be amended to allow self-certification for all elements of eligibility.

4. External forces impact poverty and housing affordability.

This pandemic has laid bare the core flaw of rapid re-housing: its arbitrary time limit leaves no room for crisis. DHS was, rightfully, quick to decide that it would be unfair and unwise to terminate families when a global pandemic interfered with a family's ability to increase their income and afford market rent. But the speed and clarity of that decision stands starkly in contrast with their historic refusal to consider a more individualized exit policy for families in the program. The COVID-19 pandemic is not the only factor outside of families' control. What about the lack of available jobs that pay enough for families to be able to afford rent? Lack of affordable childcare, education or housing? Centuries of systemic racism?

Individual decisions or motivation are not primary causes of lack of housing stability. Building a program around the myth that families, almost exclusively Black families, need an arbitrary time limit to motivate them to increase their income is racist. Cutting families off from support before they can afford the rent is unjust, pandemic or no, and disproportionately harms Black families.⁹ DHS admits in its performance oversight responses that in FY20 that only 17% of families were exited from rapid re-housing because they no longer required assistance. (Question 64, Page 90.) (They also made no commitment to extend families in rapid re-housing past March, but will extend participants without children—a puzzling distinction between populations.)

People who are suffering from housing instability because of the pandemic or co-occurring recession are worthy of support. But so are people who are suffering from housing instability because of a myriad of other external forces, some centuries in the making.

DC must do away with arbitrary time limits in programs, including rapid re-housing, and focus on resolving systemic inequities that have led to widescale housing instability and lack of deeply affordable housing.

⁹ See this article about the racism inherent in focusing on individual versus systemic causes of poverty. <https://www.urban.org/urban-wire/poverty-results-structural-barriers-not-personal-choices-safety-net-programs-should-reflect-fact>