



www.legalaiddc.org
1331 H Street, NW
Suite 350
Washington, DC 20005
(202) 628-1161

**Testimony of Caroline Fehr
Senior Staff Attorney
Legal Aid DC**

**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Office of the Attorney General

February 25, 2025

Legal Aid DC¹ submits the following testimony regarding the performance of the Child Support Services Division (CSSD) of the Office of the Attorney General (OAG). CSSD is tasked with initiating child support cases, establishing and enforcing support orders, and collecting child support for families who request CSSD's assistance or who are required to engage with CSSD as a condition of their receipt of Temporary Assistance for Needy Families (TANF) funds. Legal Aid has worked closely with CSSD for several years, communicating and collaborating on individual cases as well as systemic advocacy efforts. We continue to litigate both with and against attorneys from OAG/CSSD via the Child Support Resource Center (CSRC), one of our courthouse offices where we assist otherwise unrepresented litigants. Although we frequently oppose OAG/CSSD in individual cases, we unreservedly share OAG/CSSD's goal of reducing poverty among District children.

To that end, we use our testimony this year to highlight an incredible opportunity for the Council to update District laws and structurally refocus CSSD to *support children*.

Since 2012, we have testified before the Council annually regarding OAG/CSSD's performance, areas of concern, and ways in which we hope to collaborate with the

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

agency in support of our goal of a better-functioning child support system in the District. Over the past several years, our relationship with OAG/CSSD has been collaborative and productive. We continue to meet regularly with OAG/CSSD leadership to discuss issues arising in court, ideas for policy reform, and new ways we can jointly serve low-income residents of DC and increase access to justice. We are especially appreciative of Attorney General Schwalb for dedicating the time of his senior staff to participate in the meetings, and for his willingness to consider bold change to improve the lives of the District's children. We applaud CSSD and OAG leadership for their responsiveness to some of the concerns we've raised over the years, including – since last year's Oversight Hearing – prioritizing improvements in customer service, changing internal protocol to accept service of court filings by email, and reconsidering previously held positions on issues like the statute of limitations and genetic testing. Legal Aid remains troubled about other as yet unresolved issues, such as CSSD's continued refusal to recognize Medicaid as a means-tested benefit, and we urge the Committee to inquire about OAG's position on the agency's position on imputing income to parents who receive Medicaid or other means-tested benefits or amend the legislation to expressly include Medicaid.

Others of the continuing challenges CSSD faces are perpetual and the result of its role as a public-facing agency with multiple responsibilities, including customer service, case management, litigation, and enforcement. However, many perennial challenges stem from CSSD's structure as a debt-collection agency whose goal is to collect funds to pay the government back for benefits a family receives, with the collections going primarily to benefit the government rather than the family.² CSSD's function as a debt-collection agency and the problems that result are not directly the fault of the Attorney General or agency leadership. In fact, these issues can best – and perhaps only – be remedied by legislative reform to eliminate our outdated "cost-recovery" model.

Legislative changes to allow *all* child support to go to children would in turn allow CSSD to shift its operations to be wholly family centric. A child support system that operates solely to *support children* would dramatically improve the lives of District families,

² The federal child support program was created by Title IV-D of the Social Security Act (Title IV-D). Title IV-D had two main purposes: to recover the costs of cash assistance, often referred to as "welfare," that was paid to the custodial parent who is owed child support, and to reduce the need for cash assistance by increasing custodial families' child support income. To participate in the federal program that provides cash assistance to families, states must establish a local agency to administer the federal child support program. CSSD is the District's IV-D agency. See Vicki Turetsky and Diana Azevedo-McCaffrey, Understanding TANF Cost Recovery in the Child Support Program, Center on Budget and Policy Priorities, January 3, 2024, available at <https://www.cbpp.org/research/income-security/understanding-tanf-cost-recovery-in-the-child-support-program>.

especially those living at or below the poverty level, and it will simultaneously remedy some of the performance issues that have plagued CSSD.

Legal Aid urges OAG and the Council to make systemic changes that are well overdue. Our testimony today highlights two specific actions: (1) legislation ensuring that 100% of all child support recovered goes to families, not the government, and (2) OAG's commitment to forgiving arrears once the statute of limitations has elapsed. We have spoken with Attorney General Schwalb and his team about these ideas, and we are appreciative and optimistic about their willingness to consider, support, and even champion structural changes to benefit District families. Legal Aid is excited to continue these conversations both with OAG and the Council and to provide whatever support we can to transform these proposals into reality.

CSSD Should Pursue and Implement Meaningful Systemic Changes to Better Support District Families and Eliminate Its Cost-Recovery Approach

Over the years, Legal Aid has testified about the numerous performance issues that CSSD has struggled to remedy. Through our work representing individual litigants in child support and parentage cases, advising parents through the Child Support Resource Center courthouse office, and regularly meeting with CSSD and the Court, we interact with CSSD more regularly than any other entity and are uniquely situated to inform the Council about the issues we encounter. We feel a responsibility to hold CSSD accountable and push the agency to do its absolute best. However, so many of the problems we see are built into the system itself, and only full-scale legislative reforms by this Council can solve them.

Legal Aid sees firsthand how the District's current child support system fails the families who need the most help. For low-income families, the child support system functions largely as a debt collection operation, the goal of which is to force low-income parents to pay the federal government back for public benefits they or their children received. The District's portion of funds that CSSD collects do not go to families and are not used to create or bolster social welfare programs for low-income families: they are solely used to fund CSSD's operations. Using child support in this way is inconsistent with the values that OAG promotes elsewhere: helping to ensure that families can raise healthy and hopeful children. This type of system is also out of step with modern federal policy and the trends in many progressive states – including now Maryland – toward child support truly *supporting children*.

Here is how the current system works: under federal law, a family applying for TANF must agree to help the District government collect child support from a non-custodial

parent, and to assign their rights to this child support over to the District government.³ While a custodial parent is receiving TANF, federal law requires the custodial parent to help collect the child support that has been assigned to the government, most of which the government keeps. The District splits the collections with the federal government according to a rate set by the federal government (in the District's case, now, 50-50)⁴, and the federal portion is used as repayment for the TANF benefits for "cost recovery."

This system means that the families involved in TANF cases did not seek the government's help to collect child support; their participation in the child support program is compulsory and often runs counter to their interests. The parents in child support cases are continually confused and frustrated by CSSD's role in TANF cases. Legal Aid regularly encounters non-custodial parents who believe their co-parent initiated the case, only to learn that the case was initiated by the government and that some – or sometimes, all – of the support they pay does not reach or benefit their child at all.

Legal Aid has testified many times about CSSD's persistent communication issues, namely how difficult it is for parents to speak to someone about their case, how frustrating and confusing it is when CSSD does not fully explain its role or address parents' concerns, and how problematic it is when custodial parents do not receive adequate notice of hearings to have an opportunity to participate. We appreciate that the current AG and CSSD leadership are focused on improving customer service, but it is not surprising that these problems repeatedly arise given that CSSD is structurally set up to have mixed incentives; cost recovery means CSSD must serve itself more than the custodial parents.

In addition, the cost-recovery system disrupts families who have found their own solutions outside of court. If a non-custodial parent was providing any kind of support – monetary or otherwise – it is likely to stop or be diminished once a child support order is in place. A father who was caring for his children in the evenings may stop doing so to work longer hours now that his paycheck is being garnished. If a parent was purchasing clothes or diapers, they will most likely stop doing so, and if they were providing more money than \$150 per month – D.C.'s current pass-through limit for families on TANF –,

³ 42 U.S.C. §§ 608(a)(2), 608(a)(3).

⁴ During the Coronavirus Disease 2019 (COVID-19) public health emergency period, the Family First Coronavirus Response Act (FFCRA; P.L. 116-127) increased the District's rate by 6.2%. The enhanced rate has been phasing out since April 2023. In FY23, the District's rate was 56.2%. On January 1, 2024, the District's rate returned to 50%.

their children will have *less* support once the order begins.⁵ Additionally, the fact that the government keeps much of the money it collects may make it less likely that payments will occur in the first place: research indicates that, when non-custodial parents know the money they pay will not get to their children, they may be less likely to make child support payments.⁶

Legal Aid regularly hears from custodial parents in TANF cases who do not want a child support case to move forward because it jeopardizes their relationship with their co-parent or aggravates the family dynamic by involving a parent who previously refused to be involved in their child's life. In some situations, a child support case actually endangers the custodial parent. Even though CSSD can stop proceedings if the custodial parent has good cause to believe it would endanger them, sometimes the damage is already done.

In Legal Aid's experience, families find this system frustrating, confusing, and unhelpful. And no surprise – it *is* confusing and frustrating to digest that CSSD instead funds itself by taking money from the poorest families in the District. This money is a relatively small part of the agency's budget but would make a significant difference for the children at issue. At its core, the cost-recovery system punishes families for being poor, for having co-parents who live in separate households, and for daring to ask for help. By keeping some of the money for itself, this system actively makes it *harder* to break the cycle of poverty. This fact would remain even if CSSD functioned perfectly, and that is why significant reform is critical.

The Council has options under existing federal law to change the District's child support system to actually help low-income families. While the District cannot change the TANF assignment of rights, it *can* ensure child support actually goes to support children.

⁵ Lenna Nepomnyaschy and Irwin Garfinkel, "Child Support Enforcement and Fathers' Contributions to Their Nonmarital Children," *Social Science Review*, Sept. 2010.

⁶ The Urban Institute, "Evaluation of the \$150 Child Support Pass-Through and Disregard Policy in the District of Columbia," November 2010, available at <https://www.urban.org/sites/default/files/publication/23436/412779-Evaluation-of-the-Child-Support-Pass-Through-and-Disregard-Policy-in-the-District-of-Columbia.PDF>. See also, e.g., Colorado Department of Human Services, Evaluating the Effect of Colorado's Full Child Support Pass-Through Policy, <https://drive.google.com/file/d/1lh2NsnwZP27eoZEjOPpHtUKMs2qOUW65/view>; The Center for Law and Social Policy, Policy Brief: More Child Support Dollars to Kids: Using New State Flexibility in Child Support Pass-Through and Distribution Rules to Benefit Government and Families, July 2006, available at <https://www.clasp.org/wp-content/uploads/2022/01/0305.pdf>.

The District Should Pass Through All Child Support Collected to Children

D.C. laws regarding child support for children who receive or previously received TANF were once the most progressive nationwide. However, District policies have remained stagnant and even failed to take advantage of changes in federal law that allow and even incentivize directing more child support to children.

Before 1996, the federal government required states to “pass through” to families the first \$50 in child support received each month if the family was receiving cash assistance. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), sometimes referred to as “welfare reform,” which abolished the mandatory \$50 pass-through. States could continue a pass-through policy, but the federal government stopped sharing the cost. This meant that, if a state continued the \$50 per month pass-through, it had to pay the federal government its share of each \$50 passed through to a family. In this environment, most states, including the District, discontinued the \$50 pass-through.

In 2005, the District enacted a \$150 per month pass-through policy, which went into effect in April 2006 and still remains in place nearly twenty years later.⁷ Under this policy, when CSSD collects child support for a family receiving TANF, up to \$150 of each month’s on time payment of the current order amount goes to the custodial parent, and any additional money stays with the government. The custodial parent receives up to \$150 in child support in addition to any TANF benefits they otherwise receive.⁸ However, the pass through applies only to current, on time support; if the non-custodial parent pays late, the custodial parent does not receive *any* portion of that month’s child

⁷ D.C. Code § 4–205.19(c)(5).

⁸ As a condition of waiving the federal share of passed-through dollars, federal law requires that these amounts be “disregarded” for purposes of calculating a family’s eligibility for benefits and the amount of those benefits. That means that a family’s benefits are unaffected by receipt of passed-through child support dollars. The District’s policies reflect this requirement: amounts passed through are disregarded, and preserving this policy is critical to ensuring that additional child support that is passed through is in fact additional support, instead a replacement other dollars that the family would receive.

support.⁹ At the time the Council enacted D.C.'s pass-through, the District's policy was progressive when compared to most states and federal policy.

In January 2006, Congress passed the Deficit Reduction Act (DRA), which included incentives for states to pass more child support to families. Under the DRA, the federal government will waive its share of any pass through of monthly payments to families receiving TANF benefits up to \$100 for families with one child and up to \$200 for families with two or more children.¹⁰ The District never updated its pass-through policies in response to this federal policy change.¹¹ This means that the District now is passing through slightly more than the federal waiver amount for families with one child, but it is missing out on the opportunity to provide additional child support to larger families by sharing the cost of the additional pass-through with the federal government.

Eight states have enacted pass-through policies that mirror the federal law. But updating by \$50 the amount of money passed through to families does not address the structural problems inherent in cost recovery as a model. Other states are recognizing this and shifting their laws to pass-through 100% of child support to the children for whom it is paid, including Colorado, Illinois, Michigan, and Minnesota. In addition, Maryland has bills pending this legislative session to immediately move to a 100% pass-through: just last week, the Maryland Senate Finance Committee held a hearing on SB 703, proposed legislation that would pass through all child support collected in a month to a family seeking support under the Family Investment Program.¹² The Maryland House is scheduled to hold a hearing on the companion bill today, February 25, 2025.¹³

Legal Aid urges the Council to do the same and pass through of all the child support the District collects, regardless of when or how it is collected or whether it is money

⁹ The pass-through policy only applies to payments that are made on time in the month they are due. If a payment is late, it is treated as arrears and is not subject to the pass-through policy. D.C. Code § 4-205.19(c)(5).

¹⁰ 42 U.S.C. § 657(a)(6)(B).

¹¹ D.C. Code § 4-205.19(c)(5).

¹² Maryland Senate Bill 703, An Act concerning Family Investment Program and Supplemental Nutritional Assistance Program Benefits – Child Support, available at <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/SB0703?ys=2025rs>.

¹³ Maryland House Bill 881, Maryland Senate Bill 703, An Act concerning Family Investment Program and Supplemental Nutritional Assistance Program Benefits – Child Support, available at <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/HB0881?ys=2025RS>

otherwise owed to the family or to the government. Ensuring all child support goes to support children would bring many additional benefits. A 100% pass-through would greatly simplify the distribution of collections, decrease the need for complicated audits, and generally reduce agency costs over time. This system also would increase trust in the D.C. government as a whole and CSSD specifically. Most importantly, however, is that passing through child support to the families who need it is simply the right thing to do: it will help families living far below the poverty line and provide more children with the safety and security they need and deserve.

The total cost of shifting to a 100% pass-through would be \$3-5 million per year, per our estimate. Part of the cost would be defrayed by federal waivers, reducing the expense of directing \$1 of support to the child for whom it was paid to just \$0.50 for much of the collections passed through to families.

However, the financial benefit to District families may be greater than the cost: a growing body of research demonstrates that increased pass-through policies make it easier to collect more child support because custodial parents are more willing to cooperate in trying to collect money and non-custodial parents are more willing to pay. Indeed, a study of the District's \$150 pass-through found that it resulted in an increased likelihood of payment and higher payment amounts by non-custodial parents. It found that, three years after enactment of the pass-through, non-custodial parents paid almost 11% more in child support and were about 3% more likely to pay child support. But the results were even stronger for families who entered the child support system after the policy was enacted. For these families, the non-custodial parent paid almost 20% more in child support and were about 7% more likely to pay.¹⁴

CSSD Should Waive Debts That It Cannot Collect Due to the Statute of Limitations

Child support arrears may be owed to a family or the government depending upon whether the support was due during the period when the family was receiving TANF. Only a custodial parent can forgive arrears owed to them. However, states have the

¹⁴ Evaluation of the \$150 Child Support Pass-Through and Disregard Policy in the District of Columbia. See also, e.g., Colorado Department of Human Services, Evaluating the Effect of Colorado's Full Child Support Pass-Through Policy, <https://drive.google.com/file/d/1lh2NsnwZP27eoZEjOPpHtUKMs2qOUW65/view>; The Center for Law and Social Policy, Policy Brief: More Child Support Dollars to Kids: Using New State Flexibility in Child Support Pass-Through and Distribution Rules to Benefit Government and Families, July 2006, <https://www.clasp.org/wp-content/uploads/2022/01/0305.pdf>.

authority to reduce, forgive, or write off state debt, without owing a federal share.¹⁵ OAG should exercise this authority by waiving any debt that is beyond the statute of limitations for enforcement.

As of January 2024, non-custodial parents owe the District about \$53.8 million in arrears, about \$32 million of which accrued before January 1, 2012.¹⁶ There is very little chance the District ever will collect most of that debt, for a host of practical reasons (including that many of the obligors are simply too low income)¹⁷, and because the debt likely would be unenforceable if challenged as barred by the statute of limitations.

Under District law, each unpaid individual child support payment becomes its own money judgment subject to a twelve year statute of limitations for its enforcement.¹⁸ Unless the

¹⁵ See 42 U.S.C. § 604; 45 C.F.R. § 263; “[U]nder certain circumstances, it is permissible to use federal TANF, [...] or state MOE funds to pay a benefit to a noncustodial parent to reduce or pay off child support arrearages owed to the family. While the state may also waive debt owed to the state, the state may not reimburse itself for the waived debt through TANF funds or count a waiver of debt owed to the state as a MOE expenditure [...] [t]he federal fiscal interest in arrears does not arise until a collection is made; thus, no federal share is owed on uncollected arrearages, whether or not they are waived.” U.S. Dep’t of Health and Human Services, Office of Child Support Services, Dear Colleague Letter, <https://www.acf.hhs.gov/archive/css/policy-guidance/tanf-emergency-fund-noncustodial-parents> - :~:text=Yes, under certain circumstances, it, state as a; Dep’t of Health and Human Services, Questions and Answers about allowable uses of TANF funds, Q21A21, <https://www.hhs.gov/guidance/document/questions-and-answers-about-allowable-uses-tanf-funds>; Vicky Turetsky & Diana Azevedo-McCaffrey Understanding TANF Cost Recovery in the Child Support Program (Jan. 3, 2024), <https://www.cbpp.org/research/income-security/understanding-tanf-cost-recovery-in-the-child-support-program> - :~:text=The state debt interest,, federal law to reduce, forgive, or write.

¹⁶ OAG’s oversight response for the FY23-24 Performance Oversight Hearing, Question #69. The amount owed as of January 12, 2015 was \$53,831,555, of which \$31,723,810 accrued before January 2012.

¹⁷ U.S. Department of Health and Human Services, Office of Child Support Services, Family and State Benefits of Debt Compromise, August 2022, available at <https://www.acf.hhs.gov/css/policy-guidance/family-and-state-benefits-debt-compromise>.

¹⁸ D.C. Code § 46-204(b); D.C. Code § 15-101; see *Sollars v. Cully*, 904 A.2d 373 (D.C. 2006).

District or the custodial parent filed a motion for revival within that time period, after twelve years, the judgment has no further operation or effect. Since each unpaid monthly amount becomes its own money judgment, the twelve years affects each debt in sequence, with one falling off the cliff of enforceability month by month until all unpaid support is no longer enforceable. However, the statute of limitations is an affirmative defense, leaving it to unrepresented obligors to raise it. As a practical matter, the arrears debt remains on the books and is subject to administrative (i.e., tax intercept, garnishment of wages or Social Security benefits, driver's license suspension, etc.) and judicial (civil contempt) enforcement actions until it is raised. The parent owing this outdated debt remains saddled with it into old age.

We strongly urge the District to cancel arrears owed to the government for TANF benefits that are well past the twelve-year statute of limitations on enforcement, particularly where the children the payments were meant to benefit are well into adulthood. The District could do this by cancelling government owed arrears in cases in which the youngest child is over the age of 33 – twelve years past the age of 21, when the support obligation terminates under District law. At that point, all of the individual judgments are past the twelve-year period allowed for their collection.

Legal Aid regularly sees cases where enforcement actions are taken against parents for decades-old arrears. Vacating these arrears would stop any further enforcement actions in those cases, like garnishing an obligor's Social Security disability or retirement income or seeking to jail an elderly parent for debt that accrued decades earlier. Moreover, the children at issue are far past their minority and no longer stand to benefit from any distributions of long overdue support. For example, one client came to Legal Aid for help after receiving a letter demanding he pay nearly \$7,000 towards his child support arrears, even though all arrears in his case reached the statute of limitations in 2021.

Categorically forgiving these expired arrears will save many parents from having their income seized, sometimes irrevocably, and needing to file a motion to obtain relief from the Court. The stress, delay, and financial harm caused by these cases is often exacerbated by CSSD's frequent refusal to consent to the motion or otherwise file a responsive pleading before the hearing date.

Removing the damaging debt hanging over so many low-income child support obligors – which harms their credit and hinders their efforts to work as they age – would be a meaningful step towards ameliorating the harm incurred during the decades in which the District operated its child support program as a cost-recovery system. Finally, wiping out this debt would also improve the District's arrearage-collection performance level, which is one of the performance measures reported to the federal child support agency.¹⁹

¹⁹ 45 C.F.R. § 305.2(a)(2).

Recommendations:

- The Council should enact legislation to eliminate CSSD's cost-recovery system and instead pass through *all* collected child support payments directly to the families that need them.
- CSSD should waive debt that is unenforceable due to the District's Statute of Limitations.

Conclusion

CSSD provides a crucial service to District families, but systemic reform could allow it to do even more: the District could be providing its lowest income families with a federally-subsidized boost in support, critical to improving the standard of living and outcomes for children living at or below the poverty line. The Council and OAG should refocus CSSD's operations to ensure all child support goes to supporting children, instead of continuing to collect money to support itself.

Legal Aid appreciates the opportunity to share our perspective on working with the Child Support Services Division of the Office of the Attorney General, the experience that our clients have had with CSSD, and our proposals for systemic change. We are grateful for OAG's continued collaboration with our office and we hope our feedback today will lead to a brighter, more financially-secure future for District families.