

**Testimony before the District of Columbia Council
Committee on Public Safety and the Judiciary
Phil Mendelson, Chairperson
Public Hearing
Re: “Child Support Enforcement and License Suspension Amendment Act of 2010”
Bill 18-925**

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On behalf of the Legal Aid Society of the District of Columbia¹ and Bread for the City,² we submit testimony in support of the presumable goal of the “Child Support Enforcement and License Suspension Amendment Act of 2010,” – that is, improving the collection of child support from non-custodial parents who are able to support their children. However, while we support the general ambitions of this bill, we are strongly opposed to passing the bill as it is currently drafted. We are particularly concerned that the bill will unjustly penalize unemployed obligors who genuinely cannot find a job, particularly in these challenging economic times.

Bill 18-925 significantly alters the standard for when licenses and registrations must be suspended or denied. Currently, the license suspension law only applies to obligors who are earning income. The bill proposes to replace that reasonable rule with a vague “able to work” standard.

The Legal Aid Society and Bread for the City are concerned that, largely because of this shift, the bill as drafted will have adverse impacts on obligors that will ultimately exacerbate, not ameliorate, child poverty in the District. Accordingly, we urge the Committee to work with child support advocates to ensure that any amendment of the existing statute does not have negative consequences on District families, particularly those living in poverty.

Legal Aid and Bread for the City Support Measures that Increase the Collection of Child Support for Families, Particularly Those Living in Poverty

Child support has long been a critical tool for addressing child poverty in the District and across the nation. Child support is essential to the financial well-being of families living in poverty in the District. For families at 200% of the poverty level, child support composes about

¹ The Legal Aid Society was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is both the oldest and largest general civil legal services program in the District of Columbia. Over the last 70-plus years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers.

² Bread for the City, founded in the mid-1970s, provides vulnerable residents of Washington, DC, with free comprehensive services, including food, clothing, medical care, and legal and social services, in an atmosphere of dignity and respect. Bread for the City’s Legal Clinic provides representation in the following areas: family law, housing, and public benefits.

30% of their income.³ Properly administered, child support helps lift children out of poverty and provides a measure of stability for low-income families.

Child support has taken on a new urgency due to the confluence of several factors. First, child poverty, which has long been a serious problem for the District, has drastically increased during the recession. Recently released data from the United States Census Bureau indicates that 29% of children in the District were living in poverty in 2009, compared to 22% in 2007. This means over one in four District children are living in poverty.⁴ Second, the District recently learned that the Fiscal Year 2011 budget is even tighter than originally anticipated, with an approximately \$175 million budget shortfall.⁵ Those concerned about child poverty might reasonably believe that improving child support enforcement would be a relatively low-cost way to address the needs of low-income families and children.

Legal Aid and Bread for the City fully support all reasonable measures to address child poverty; indeed, we consider the elimination of child poverty a fundamental aspect of our missions. Yet, while we share the District government's desire to increase child support collection, we fear that, on the whole, the legislation as currently drafted would be counterproductive.

The Shift from a “Receiving Income” to an “Able to Work” Standard Represents a Significant Change in Child Support Policy and Process

Section 26a of the District of Columbia Child Support Enforcement Amendment Act of 1985, effective February 13, 1996 (D.C. Code § 46-225.01(a)) currently provides that no vehicle registration or license shall be issued to or renewed for obligors who are “*receiving income* and who owe[] overdue child support in an amount equal to at least 60 days of support payments.” In addition, if obligors who fall into this category have a vehicle registration or license, it can be suspended.⁶ The critical phrase in the current law is “receiving income.” Currently, obligors who are unemployed are not subject to sanctions for non-payment of child support.

Bill 18-925 represents a fundamental shift in both the policy motivating and the process for the suspension or denial of an obligor's vehicle registration or license. With regard to policy, while the sanction regime currently in effect focuses on obligors who possess financial resources but nonetheless fail to pay child support, the proposed statute would radically shift that focus to non-custodial parents regardless of whether they have any income at all. With regard to process,

³ Elaine Sorensen, The Urban Institute, *Child Support Gains Some Ground, in Snapshots of America's Families III* (2003), available at http://www.urban.org/uploadedpdf/310860_snapshots3_no11.pdf.

⁴ Jenny Reed, DC Fiscal Policy Institute, *New Census Data Reveal the Uneven Impact the Recession Has Had on the District 1* (Sept. 28, 2010), available at <http://www.dcfpi.org/wp-content/uploads/2010/09/9-28-10ACSPoverty.pdf>.

⁵ Nikita R. Stewart, *Gandhi Delivers Grim News: Another \$175 Million Shortfall*, Wash. Post, Sept. 27, 2010, http://voices.washingtonpost.com/dc/2010/09/gandhi_delivers_grim_news_anot.html?hpid=newswell.

⁶ D.C. Code § 46-225.01(a)); see also D.C. Code § 46-225.01(c)(5)(A) (requiring that the Mayor's written notice of this child support sanction specify that the obligor who owes back child support and who “is receiving income” can avoid denial or suspension of licenses or registrations by paying the arrearage in full or by agreeing to and complying with a payment schedule).

the current sanction regime contains procedural safeguards, such as those governing obligors' entry into payment agreements, which the proposed legislation does not contain. In addition, the notice requirements are unclear and inadequate and the appeal process does not provide obligors with meaningful access to a forum to challenge these sanctions.

The “Able to Work” Standard Ignores the Recession’s Impact on Obligor

Proposed Section 26a(b-1)(4) states that “[a]n obligor is “able to work” unless the obligor is (A) Permanently or temporarily disabled and not receiving either Social Security Disability Insurance or Workers’ Compensation benefits; (B) Incarcerated; (C) Released from a period of incarceration that ended less than 180 days prior to the date of the notice described in subsection (c) of this section; or (D) A recipient of means-tested public assistance.”⁷

Noticeably missing from this list are exceptions for obligors who are actively seeking work but are unable to find it, or those who, because their income has decreased, have filed a motion to modify their child support obligation, but are awaiting a decision on the modification. Indeed, the bill lacks *any* language that would indicate that it was drafted with consideration of the District’s high unemployment rate, a rate which has reached depression-era levels in some parts of the District. As drafted, the bill makes absolutely *no* exceptions for non-custodial parents who are unemployed despite their efforts to seek work.

One in ten District residents is unemployed,⁸ and almost 30% of Ward 8 residents cannot find a job.⁹ The brunt of recession-related job loss has fallen on low-wage workers: salespeople, food preparers and servers, janitors and maintenance workers, movers, security guards, construction workers, and so forth.¹⁰ Considering that the District’s child support caseload is so heavily comprised of low-income families,¹¹ passing legislation that glosses over the impact of unemployment on obligors would produce unintended negative results.

The bill would strip unemployed obligors of the very tools that they need to secure a job and support their children: their driver’s licenses, vehicle registrations, and professional licenses.

⁷ The definition of “means-tested public assistance” is unclear. The legislation is silent as to whether Supplemental Security Income (SSI), Interim Disability Assistance (IDA), Temporary Assistance for Needy Families (TANF), Program on Work, Employment and Responsibility (POWER), Supplemental Nutrition Assistance Program (SNAP, or food stamps), or any other program is considered “means-tested public assistance” in the context of license/registration suspension or denial.

⁸ District of Columbia Department of Employment Services, *District of Columbia Jobless Drops to 9.9% in August*, September 21, 2010.

⁹ Katie Kerstetter, *Increase in DC’s Unemployment Rate Falls Heavily on Those Least Able to Afford It 1* (June 25, 2010), <http://www.dcfpi.org/wp-content/uploads/2010/06/5-25-10unemployment.pdf>; see also Jenny Reed, DC Fiscal Policy Institute, *New Census Data Reveal the Uneven Impact the Recession Has Had on the District 1-2* (Sept. 28, 2010), <http://www.dcfpi.org/wp-content/uploads/2010/09/9-28-10ACSPoverty.pdf> (explaining that poverty east of the Anacostia River, in addition to unemployment, has increased during the recession).

¹⁰ Kerstetter, *supra* note 9, at 2.

¹¹ DC Applesseed Center for Law and Justice, *Taking Care of the District’s Children: The Need to Reform DC’s Child Support System 50-52* (2007).

If enacted as currently drafted, the legislation would send a message to District residents that, rather than helping unemployed obligors find jobs and support their children, the District government wants to penalize them for their predicament.

At the very least, the bill should be amended to clarify that if the obligor can demonstrate that he or she is actively seeking employment, CSSD will not refer the case to the relevant licensing agency. The bill should also be amended to accommodate obligors who have pending motions to modify their child support obligations.

These are only two of many potential unanticipated consequences of the current bill. We would like to work with the Committee, the Child Support Services Division (CSSD), and other advocates to thoroughly consider all possible effects of this legislation and ensure that the final amendment of the current statute fulfills its goal of reducing child poverty without unfairly penalizing obligors who lack the income to pay support.

The “Able to Work” Standard Raises Concerns Regarding the Disability Status of Obligor

Section (b-1)(4)(A) of the proposed legislation states that an obligor is able to work, unless he or she is “permanently or temporarily disabled and *not* receiving either Social Security Disability Insurance or Worker’s Compensation benefits.” Thus, the bill defines obligors receiving Social Security Disability Insurance (SSDI) or Workers’ Compensation as “able to work.” Such a rule would be problematic on several levels.

First, the bill classifies disabled obligors as “able to work.” Certainly, if an obligor is receiving SSDI or Workers’ Compensation, the obligor should not be considered “able to work” under any definition; indeed, the crux of these programs is that the beneficiary is *not* able to work. By classifying SSDI and Workers’ Compensation recipients as “able to work,” CSSD is trying to have it both ways and sanction obligors who are “receiving income” and those who, in the agency’s estimation, are “able to work” despite their lack of reported income. Both SSDI and Workers’ Compensation are considered income when calculating a parent’s presumptive child support obligation.¹² Accordingly, under the current statute, obligors who receive SSDI and Workers’ Compensation are “receiving income” and subject to sanctions for failing to pay support. Thus, in an effort to maintain the current pool of obligors subject to sanctions, the proposed legislation creates a fiction.

Second, by defining obligors who receive SSDI and Workers’ Compensation as “able to work,” the bill allows CSSD to determine whether an obligor is permanently or temporarily disabled. It is difficult to imagine how CSSD – an agency which has neither the expertise nor the authority to make disability determinations – would determine whether an obligor is “permanently or temporarily disabled” if the obligor is not receiving disability benefits.

The “Able to Work” Standard Raises Process Concerns

Legal Aid and Bread for the City are equally concerned that the proposed legislation fails to provide important procedural safeguards to protect the rights of obligors. By either directly

¹² See D.C. Code § 16-916.01(d)(1).

removing protections that are in the current legislation, or by failing to define the type of process that will be provided, the bill presents several potential problems.

First, although both the current law and the proposed statute allow CSSD to enter into payment agreements with obligors, the proposed statute omits all safeguards for payment agreements. Currently, under D. C. Code § 46-225.01(c)(5)(A), the obligor must agree to make monthly support payments toward arrears in an amount equal to 25% of the obligor's current monthly child support obligation for as long as the obligor is receiving income, subject to the limitations of the Consumer Credit Protection Act. The proposed legislation eliminates Section(c)(5) altogether, and as written, completely omits all rules governing payment agreements.

Second, we are concerned about the procedure for appealing CSSD's determination that sanctions are warranted. Subsection (b-3) states that the obligor is entitled to "judicial review based upon the administrative record." According to D.C. Code § 2-510, "judicial review" requires filing in the District of Columbia Court of Appeals. We are opposed to a process that would require obligors who have received an unfavorable decision from CSSD to appeal directly to the District's highest court. This is a lengthy and complicated process, one which would be difficult for *pro se* litigants to navigate. We believe that, similar to the process for appealing CSSD's seizure of bank account funds to pay child support arrears, obligors should be entitled to a hearing before the Office of Administrative Hearings, the centralized tribunal which is accustomed to hearing cases involving unrepresented litigants.

Third, the requirements for CSSD's notice regarding its intent to request the denial or suspension of an obligor's license or registration are unclear. The bill fails to specify what it considers the "last known address" for purposes of this provision. Because CSSD has access to updated contact information for obligors through the Federal Parent Locator Service, the agency should be required to search this database to ensure that the address to which the notice is sent is current. In addition, if the notice is returned, we believe CSSD should not be able to proceed with the request for denial or suspension of the license or registration.

Fourth, the current legislation does not require CSSD to send additional notice to an obligor who fails to comply with a payment agreement. However, additional notice is necessary for several reasons. For example, an obligor may send a payment and it may get lost in the mail, or the agency may fail to properly record the payment, or the payment agreement may need to be modified due to a change in the obligor's financial situation.

Finally, Subsection (e) of the bill states that the licensing authority has the burden of establishing that the registration or license should be denied or suspended. This burden is misplaced. Under D.C. Code § 2-509, which governs the administrative procedure for contested cases, "the proponent of a rule or order shall have the burden of proof." Because CSSD is the proponent of the denial or suspension, we believe that CSSD should have the burden to establish that an obligor's registration or license should be denied or suspended. Moreover, the proposed legislation fails to outline the procedure CSSD will use when an obligor contacts the agency to challenge the sanction.

The proposed legislation would replace the current procedures, which, despite their shortcomings, are at least reasonably transparent, with an unpredictable and opaque process. Given the bill's failure to provide a clear and fair process and the significance of the sanction – loss of an obligor's means to find and maintain a job -- this bill requires more time and consideration.

Conclusion

Despite laudable motives, Bill 18-925 contains serious flaws that would cause harmful unintended consequences for District residents, particularly families living in poverty. The current bill overlooks the economic realities facing many child support obligors, and it lacks specific information about the processes CSSD would use to implement these sanctions. Legal Aid, Bread for the City, and other advocates are ready to work with the Committee and CSSD to ensure that child support orders are enforced without adversely impacting District families.