

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

**Hearing on the Elected Attorney General Implementation
and Legal Service Establishment Amendment Act of 2013**

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The Legal Aid Society of the District of Columbia¹ and Bread for the City² oppose the passage of the proposed Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013 (“the Act”), as drafted. Given that the Act proposes sweeping structural changes to the composition of the Office of the Attorney General (“OAG”), we believe that the Council and the people of the District of Columbia are entitled to a more detailed analysis and compelling justification. Of particular concern to our organizations and clients are the provisions of the Act that propose moving the Child Support Services Division (“CSSD”) from OAG to the Department of Human Services (“DHS”).

- I. The Council should not approve the Act because the substantial changes it proposes to the Office of the Attorney General and the Department of Human Services are not needed or required to implement the 2011 Elected Attorney General Charter Amendment.

As an initial matter, we believe that the Administration inaccurately characterizes the Act’s proposed changes to District government structure as *needed* to transition from an appointed to an elected Attorney General.³ The major reorganization of key government services proposed by the Act is not required, in our view, for the implementation of the 2011 Elected Attorney General Charter Amendment. Rather, the proposed changes far exceed what is necessary to reconcile existing District laws with the referendum approved by voters in 2011 and include large-scale, substantive modifications to the distribution of responsibilities between the Mayor and the Attorney General. Indeed, the Mayor himself has said that the Act contains “significant changes” affecting both policy and practice.⁴

¹ The Legal Aid Society of the District of Columbia 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.” For more than 80 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following four priority areas: consumer, family law, housing, and public benefits. It also maintains an appellate advocacy project that litigates poverty law matters in the D.C. Court of Appeals.

² Bread for the City, founded in the mid-1970s, provides vulnerable residents of Washington, D.C. 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.

³ Letter from Mayor Vincent Gray to Chairman Phil Mendelson, Jan. 12, 2013.

⁴ *Id.*

Whether these changes *should* happen is a separate question (and one which we consider below), but as a threshold matter, we do not believe that the changes proposed in the Act are required by what District voters decided by referendum in 2011. Because the changes are not required before the District elects its first elected Attorney General, there is more time to deliberate on and consider the wisdom of the proposed changes. Accordingly, we oppose efforts to have the Council consider this Act on an expedited schedule without clearer and more persuasive evidence from the Administration that the proposed structural changes will be in the best interests of the District’s children and families.

II. There has not been sufficient analysis to determine whether the transfer of CSSD from OAG to the Mayor’s control is in the best interests of the District’s children.

With regard to whether the Act’s proposed changes – specifically, the transfer of CSSD from OAG to DHS – *should* be enacted, we believe, from our viewpoint as attorneys litigating cases alongside and against CSSD in child support matters, the burden lies with the Administration to justify the large-scale organizational changes it has proposed. Yet, to date, it appears that the Council has received minimal information regarding the proposed transfer of CSSD to DHS. To our knowledge, no real analysis has been conducted to justify this move. Insofar as we are able to ascertain, the main reason offered thus far for the proposed transfer seems to be based on the belief that CSSD is a “social service agency” and thus more properly organized under DHS in the Mayor’s office.⁵ Because the transfer of CSSD to DHS is not required to implement the Home Rule Charter Amendment, the Council should demand a comprehensive, evidence-based proposal supporting a move before considering the wisdom of such a radical reorganization.

Even the justification offered in support of the proposed move – that CSSD is primarily a social services agency – is misleading. While we do not dispute the importance of child support to the alleviation of child poverty in the District, we do question the categorization of CSSD as a “social services program” given that CSSD functions primarily as a litigation office. As the District’s IV-D agency, CSSD currently operates under a judicial model for the establishment of child support. For instance, CSSD attorneys draft and sign pleadings required to initiate a child support case in court; CSSD staff locate non-custodial parents in order to serve them with pleadings; CSSD attorneys argue cases on behalf of the agency to establish child support orders; and even if the parties reach an agreement on paternity or support, CSSD attorneys must still present the order to the court for approval. CSSD’s litigation of child support cases does not end with an agreement or court decision. Rather, CSSD attorneys must return to court to modify child support orders, and when a non-custodial parent is delinquent in his/her payments, CSSD attorneys file motions for contempt with the court. All of these functions are litigation or pre-litigation activities. That the end result of these activities is money disbursed to families does not change the fact that CSSD’s primary functioning is one of adversarial litigation and dispute resolution.

Moreover, we question the decision to move *all* of CSSD, including the agency’s in-court litigation personnel, out of the Attorney General’s line of reporting. To our knowledge, DHS does not house any attorneys who litigate cases in Superior Court. Indeed, we are unaware of

⁵ *Id.*

any District lawyers who litigate in Superior Court who are not OAG attorneys. We would like to know whether any serious thought has been given to keeping the Legal Services Section of CSSD within the Office of the Attorney General even if some of the social services functions are relocated, and if so, why was that option rejected? Even if the social services functions of CSSD were transferred to DHS, the resulting model would be analogous to the current proposal for dividing litigating attorneys from the rest of the Child and Family Services Agency (“CFSA”). As we understand it, the Act as implemented would place the litigation functions handled by CFSA attorneys within the Office of Attorney General, while all other operations would be controlled by the Mayor.

We recognize that the establishment of a child support order in IV-D cases (which includes cases in which the custodial parent or child is receiving Temporary Assistance for Needy Families (“TANF”) benefits) requires collaboration and, most importantly, communication between CSSD and the Economic Security Administration of DHS. That communication, so critical to the timely establishment of accurate orders for families receiving TANF, is not happening effectively now. If improving communication between the two agencies were a motivating reason behind the proposed transfer of CSSD from OAG to DHS, we would applaud and support that goal. However, nothing we have seen indicates that the wholesale relocation of CSSD is necessary to accomplish this goal, or that it necessarily will facilitate communication between disparate parts of DHS with independent databases and organizational priorities. Moreover, according to the federal Office of Child Support Enforcement’s most recent report, only 29.7% of CSSD’s caseload is comprised of families receiving TANF.⁶ If CSSD is relocated to DHS, we are concerned about the large number of CSSD’s current child support cases involving families who do not receive TANF.

Without any real analysis to support the proposed transfer of CSSD to DHS, and only insufficient, conclusory justifications offered to date, this move should not go forward. The rash transfer of OAG duties to DHS could reverse or impede improvements in the child support system that have been in progress for years. Both Legal Aid and Bread for the City have been working in collaboration with the Family Division of the Superior Court, CSSD/OAG, and other advocates and stakeholders to develop better services and processes for litigants with child support cases, particularly with respect to drafting court rules that apply specifically to parentage and child support cases and helping to better connect parents with employment services. A hasty reorganization of CSSD could undermine the work already done and stall much needed systemic improvements.

As advocates for families and children in the District who rely on child support to lift them out of poverty, we ask the Council to request from the Administration a detailed analysis as to why the transition of CSSD to DHS is advantageous for facilitating the newly elected Attorney General’s office. Specifically, we believe that the Council, key stakeholders, and District residents are entitled to analyses of the impact of these changes on core governmental functions and of how the proposed changes would serve the best interests of the District’s children and families who rely on the establishment of fair and accurate child support orders.

⁶ Office of Child Support Enforcement, FY2011 Preliminary Report – State Score Boxes (Oct. 1, 2012), available at <http://www.acf.hhs.gov/programs/css/resource/fy2011-preliminary-report-state-box-scores#DC-FL> (this percentage includes IV-E foster care cases, too, which would slightly lower the TANF caseload percentage).

III. Conclusion

While we remain unconvinced of the wisdom of shifting significant portions of the Office of the Attorney General to the Mayor's office, we are certain that these changes do not need to happen *now*. Other jurisdictions, including states with highly effective child support systems like Texas, house their IV-D agencies under elected attorneys general.⁷ Further, other states that have contemplated changes of this scale to their child support systems have conducted extensive evaluations before moving forward.⁸ That does not seem to have happened here, and the government services involved are too important to risk District children's wellbeing by rushing into a change of this nature. Because there are so many outstanding questions regarding the wisdom and feasibility of relocating CSSD outside of the Office of the Attorney General, we urge the Council to oppose this Act as drafted, for now, and to request the disclosure (or creation) of the comprehensive, evidence-based analyses we believe are required before changes of this scale can even be intelligently debated.

⁷ Five other states/territories designate their Office of the Attorney General or Justice Department as their IV-D agency: Guam, Hawaii, Oregon, Texas, and the Virgin Islands. Of those, Guam, Oregon and Texas elect Attorneys General. In addition, a number of states with highly judicial child support systems, such as Illinois, Indiana, Louisiana, Florida, and Michigan, split the functions of their IV-D agency between an Attorney General or local prosecutor's office and a DHS-like agency.

⁸ See, *e.g.*, Margaret Campbell Haynes, A Study of Administrative Child Support Processes (Tier Technologies, Aug. 15, 2007) (evaluating options for supplementing Indiana's judicial system with expedited administrative processes).