

**Testimony before the District of Columbia Council
Committee on Public Safety and the Judiciary
Child Support Guideline Commission Confirmation Hearing**

**Legal Aid Society of the District of Columbia
June 12, 2009**

The Legal Aid Society of the District of Columbia¹ supports the general mission of the District of Columbia Child Support Guideline Commission to review the District of Columbia Child Support Guideline, D.C. Code § 16-916.01, and recommend changes to the Mayor. However, according to the plain language of the Child Support Guideline, neither action by the Child Support Guideline Commission nor legislation is necessary to update the Guideline's self-support reserve for noncustodial parents.

The District of Columbia Child Support Guideline creates a self-support reserve for noncustodial parents. The self-support reserve is the amount of annual income that noncustodial parents can set aside to meet their personal subsistence needs. The dollar amount of the self-support reserve is critical to determining a noncustodial parent's child support obligation because this figure dictates the amount of the parent's income that is available to pay child support.

As of the effective date of the Child Support Guideline Revision Act of 2006, the self-support reserve was \$12,382. The Child Support Guideline mandates that the self-support reserve must be updated every two years by publishing the new reserve amount in the District of Columbia Register. The Guideline also outlines a simple formula that must be used to update the self-support reserve: 133% of the United States Department of Health and Human Services (HHS) Poverty Guidelines for a single individual. The 2009 HHS poverty guideline for a single individual is an annual income of \$10,830. Therefore, the self-support reserve must be increased to \$14,403.90, which is 133% of \$10,830. The only action that is necessary to update the self-support reserve is publication of the new amount in the District of Columbia Register.

Although the Child Support Guideline does not indicate which entity should update the self-support reserve, the Child Support Services Division of the Office of the Attorney General (CSSD) should be responsible for this action. CSSD developed and maintains the online Child Support Guideline Calculator, which District of Columbia Superior Court judges use to calculate a noncustodial parent's child support obligation and to enter support orders. To ensure that child support orders are being calculated properly, CSSD must replace the outdated self-support reserve amount with the new figure in the Child Support Guideline Calculator. Therefore, CSSD should be responsible for ensuring that the necessary action is taken to update the self-support reserve.

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." Over the last 77 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.

Pursuant to the Child Support Guideline Revision Act of 2006, the self-support reserve should have been updated no later than April 1, 2009. Nevertheless, the Child Support Guideline Calculator continues to use the outdated self-support reserve figure to calculate the support obligation. To our knowledge, District of Columbia Superior Court judges and assistant attorney generals continue to use the Child Support Guideline Calculator to establish and modify child support orders; the calculations are not being done manually. Consequently, since April 1, 2009, every child support order established or modified in the District of Columbia Superior Court for a noncustodial parent who earns more than \$12,382 annually has been calculated incorrectly. Estimates by the District of Columbia Appleseed Center for Law and Justice indicate that the District of Columbia Superior Court enters hundreds of child support orders each month.

Although noncustodial parents at various income levels have been adversely impacted by the failure to update the self-support reserve, those living in poverty have been especially harmed. As indicated above, the dollar amount of the self-support reserve is critical to calculating a noncustodial parent's child support obligation. The updated self-support reserve amount is \$2,021.90 more than the amount currently being used to calculate the child support obligation of noncustodial parents. This increase is particularly significant in these difficult economic times.

The Child Support Services Division should immediately publish the new self-support reserve amount in the District of Columbia Register and update the online Child Support Guideline Calculator accordingly. Until CSSD has taken this action, District of Columbia Superior Court judges and assistant attorney generals should manually calculate child support orders using the updated self-support reserve amount (\$14,403.90). In addition, CSSD and the District of Columbia Superior Court should ensure that each child support order that has been entered since April 1, 2009 is reviewed and modified appropriately, and obligors are granted legally permissible relief for any overpayment.

The Self-Support Reserve Amount is Critical to Accurately Calculating the Child Support Obligation of Noncustodial Parents

The District of Columbia Child Support Guideline states:

A parent with a legal duty to pay support may maintain a self-support reserve as provided in this subsection. The self-support reserve shall be calculated at 133% of the United States Department of Health and Human Services [sic] poverty [sic] guideline per year for a single individual. As of the effective date of the Child Support Guideline Revision Act of 2006, the self-support reserve shall be \$12,382. The self-support reserve shall be updated every 2 years and any revision shall be published in the District of Columbia Register. D.C. Code § 16-916.01(g)(1).

A parent with a legal duty to pay support, but with adjusted gross income below the self-support reserve, shall be considered unable to contribute the amount determined under subsection (f) of this section. The judicial officer shall treat a parent at this level of income on an individual basis, and shall

order the parent to pay only the amount that the judicial officer determines the parent is able to pay, while meeting personal subsistence needs. D.C. Code § 16-916.01(g)(2).

Where the judicial officer finds that a parent with adjusted gross income below the self-support reserve has the ability to pay child support under paragraph (2) of this subsection, there shall be a presumption that the parent can pay a minimum amount of \$50 per month, while meeting personal subsistence needs. The presumption may be rebutted downward to \$0 or upward above \$50 per month by evidence of resources or circumstances affecting the parent's ability to pay, including age, employability, disability, homelessness, incarceration, inpatient substance abuse treatment, other inpatient treatment, or other appropriate circumstances. The judicial officer shall issue written factual findings stating the reasons for the entry of a minimum order below or above \$50 per month. D.C. Code § 16-916.01(g)(3).

As these provisions demonstrate, the dollar amount of the self-support reserve is critical to determining a noncustodial parent's child support obligation. If the noncustodial parent's adjusted gross income is below the self-support reserve amount, the judicial officer must determine the parent's child support obligation on a case-by-case basis rather than using the standard calculation. If the judicial officer finds that the parent is able to pay child support, there is a presumption that the parent can pay a minimum of \$50 per month for child support. Moreover, the self-support reserve amount is deducted from the annual adjusted gross income of all noncustodial parents to determine the amount of available income the parent has to pay child support. *See* D.C. Code § 16-916.01(m). Therefore, the amount of the self-support reserve dictates the amount of child support a noncustodial parent is ordered to pay.

The District of Columbia Child Support Guideline Mandates that the Self-Support Reserve Must be Updated Every Two Years by Publishing the New Reserve Amount in the District of Columbia Register

Subsection (g)(1) of the District of Columbia Child Support Guideline clearly mandates that the self-support reserve must be updated every two years and such revision must be published in the District of Columbia Register. D.C. Code § 16-916.01(g)(1). Therefore, updating the self-support reserve is not discretionary, and the only action necessary to update the figure is publication of the new amount in the District of Columbia Register. Neither action by the Child Support Guideline Commission nor legislation is necessary to update the self-support reserve amount.

The District of Columbia Child Support Guideline Mandates that the Self-Support Reserve Amount Must be Calculated at 133% of the United States Department of Health and Human Services Poverty Guidelines for a Single Individual

Subsection (g)(1) of the District of Columbia Child Support Guideline outlines a simple formula for updating the self-support reserve. The Guideline mandates that the self-support reserve must be calculated at 133% of the United States Department of Health and Human

Services (HHS) Poverty Guidelines for a single individual. D.C. Code § 16-916.01(g)(1). The 2009 HHS poverty level for a single individual is an annual income of \$10,830. *See* 74 Fed. Reg. 4199-04. Therefore, the self-support reserve amount must be increased to \$14,403.90, which is 133% of \$10,830.

The Child Support Services Division Should Update the Self-Support Reserve

Although the Child Support Guideline is silent regarding which entity must update the self-support reserve, the most logical government body to take on this responsibility is the Child Support Services Division of the Office of the Attorney General (CSSD). CSSD developed and maintains the Child Support Guideline Calculator. Any individual can access this calculator through the Internet. District of Columbia Superior Court judges, assistant attorney generals, private attorneys, and child support litigants rely on this calculator to determine the support obligation of noncustodial parents. In order to ensure that child support orders are being calculated properly, CSSD must replace the outdated self-support reserve amount with the new figure in the Child Support Guideline Calculator. Therefore, CSSD should be responsible for taking the necessary action to update the self-support reserve.

CSSD should immediately publish the updated self-support reserve amount in the District of Columbia Register and ensure that the agency's information technology staff updates the figure in the online Child Support Guideline Calculator. Until CSSD completes this action, District of Columbia Superior Court judges and assistant attorney generals should manually calculate child support orders using the updated self-support reserve amount (\$14,403.90).

The Self-Support Reserve Should Have Been Updated No Later Than April 1, 2009

Pursuant to Section 4 of the Child Support Guideline Revision Act of 2006, DC Law 16-138, the new Child Support Guideline became applicable on April 1, 2007. Therefore, because the Guideline provides that the self-support reserve must be updated every two years, the amount should have been updated no later than April 1, 2009.

The online Child Support Guideline Calculator continues to use the outdated self-support reserve amount to calculate the support obligation. District of Columbia Superior Court judges and assistant attorney generals exclusively rely on the Child Support Guideline Calculator to establish and modify child support orders. It is our understanding that judges and assistant attorney generals have continued to use the inaccurate Guideline Calculator after April 1, 2009; they have not calculated support orders manually. Consequently, since April 1, 2009, every child support order established or modified in the District of Columbia Superior Court for a noncustodial parent who earns more than \$12,382 annually has been calculated incorrectly. Estimates by the District of Columbia Applesseed Center for Law and Justice indicate that the District of Columbia Superior Court enters hundreds of child support orders each month.

Noncustodial Parents Living in Poverty Have Incurred Significant Harm Because the Self-Support Reserve Has Not Been Updated

Because the self-support reserve has not been updated pursuant to the Child Support Guideline, numerous child support obligors are being ordered to pay more child support than they are legally obligated to pay. Although noncustodial parents at various income levels have been adversely impacted by the failure to update the self-support reserve, those living in poverty have incurred the most significant harm. The updated self-support reserve amount is \$2,021.90 more than the amount currently being used to calculate the child support obligation for noncustodial parents. This increase is particularly significant in these difficult economic times.

The self-support reserve was included in the Child Support Guideline to ensure that noncustodial parents living in poverty could both meet their most basic subsistence needs and pay child support. The failure to update the self-support reserve amount pursuant to the Guideline has resulted in child support orders being entered that low-income noncustodial parents cannot afford to pay. The obligors who have managed to pay these inflated child support orders have incurred substantial hardship to do so. The obligors who have failed to make the court-ordered payments have accumulated debt and are subject to significant consequences for failure to pay this debt, including suspension of their driver's license, seizure of their income tax refund and bank account funds, and incarceration.

The Child Support Services Division and District of Columbia Superior Court should ensure that each child support order that has been entered since April 1, 2009 is reviewed and modified appropriately. Furthermore, CSSD and the Court should ensure that obligors are granted legally permissible relief for any overpayment.

Conclusion

Neither action by the District of Columbia Child Support Guideline Commission nor legislation is necessary to update the self-support reserve. The Child Support Services Division should immediately publish the new self-support reserve amount in the District of Columbia Register and update the online Child Support Guideline Calculator accordingly. Until CSSD has taken this action, District of Columbia Superior Court judges and assistant attorney generals should manually calculate child support orders using the updated self-support reserve amount (\$14,403.90). In addition, CSSD and the District of Columbia Superior Court should ensure that each child support order that has been entered since April 1, 2009 is reviewed and modified appropriately, and obligors are granted legally permissible relief for any overpayment.