

**Testimony before the District of Columbia Council
Committee on the Judiciary
Child Support Services Division of the Office of Attorney General
Agency Performance Oversight Hearing
Fiscal Year 2014-2015**

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March 4, 2015

The Legal Aid Society of the District of Columbia¹ and Bread for the City² provide this testimony about the Child Support Services Division (CSSD) of the Office of the Attorney General (OAG), the agency that initiates the vast majority of child support cases in the District's Superior Court. Our testimony addresses both the Council's and the agency's role in the upcoming implementation of federal child support rules governing state programs, and the need for legislative reform of the District's paternity laws.

Legal Aid and Bread for the City have significant experience litigating with and against attorneys from OAG/CSSD. Both organizations have long represented custodial and noncustodial parents (mothers and fathers) in child support cases in the District of Columbia. Starting in 2011, Legal Aid and Bread for the City received Access to Justice grant money from the D.C. Bar Foundation to fund a joint Child Support Community Legal Services Project. Through this Project, we offer court-based legal services at the Paternity and Child Support (P&S) Branch of the D.C. Superior Court. Five days per week, attorneys from Legal Aid and Bread for the City provide legal information, advice, and same-day temporary representation to custodial and non-custodial parents in their paternity and child support cases. We also represent custodial and non-custodial parents in the Domestic Relations Branch and Domestic Violence Unit of the Court, in which OAG/CSSD is often involved in the child support part of the case. Now in the fourth year running the Child Support Resource Center, we are the only non-governmental staff routinely appearing in the Paternity and Support Branch of the court. As a result of our longstanding commitment to representing litigants with child support cases and our

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." Over the last 80 plus 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. Legal Aid also handles appellate cases in the D.C. Court of Appeals. More information about Legal Aid and its work can be found on our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² Bread for the City, founded in the mid-1970s, provides low-income residents of Washington, D.C. with 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 legal help in the following areas: family law, housing, and public benefits.

ongoing presence at the District's Superior Court, we are intimately familiar with many of the challenges currently facing OAG/CSSD.

Although we frequently oppose OAG/CSSD in the courtroom, we unreservedly share OAG/CSSD's goal of reducing poverty among District children. In the past, we have discussed our ongoing concerns at length in order to provide this Committee with outside perspective on the grave, serious problems at CSSD affecting the lives of children and parents living in poverty. In 2012, 2013, and 2014, we testified regarding our concerns with OAG/CSSD's performance—including a lack of transparency with respect to its programs and a lack of engagement with community stakeholders—as well as problematic policy and litigation choices we believe are at odds with the interests of District residents and contrary to the law.³

We recognize, however, that we are now entering a new era under the first popularly elected Attorney General in the District of Columbia. We look forward to working, both in partnership and as courtroom adversaries, with Attorney General Racine. Attorneys from our organizations were part of transition meetings tasked to identify necessary reforms within OAG/CSSD, and we intend to continue to follow up with him and his staff to address areas we believe need reform and improvement.

For these reasons, we will not rehash the issues that we have previously raised with this Committee and instead focus today on two narrow matters where we believe that the Council and this Committee can play a critical role: (1) the upcoming implementation of federal rules governing state child support programs; and (2) the need for legislative reform of the District's paternity establishment law.

³ We respectfully refer the Committee to our 2012, 2013, and 2014 Joint Testimony before the Committee on the Judiciary and Public Safety.

OAG/CSSD should pursue a transparent and collaborative process for implementing optional rules finalized by the federal child support agency that could significantly impact the lives of low-income families in the District.

In November 2014, the Office of Child Support Enforcement (OCSE)—the federal child support agency that oversees state child support agencies, including CSSD—published proposed revisions to federal regulations governing state child support programs and invited public comments. We believe that it may be necessary for the Council to enact new legislation permitting OAG/CSSD to implement some of the provisions in the final OCSE rule, which has not yet been published. To the extent that legislative change is required, Bread for the City and Legal Aid look forward to working with the Council and CSSD as such new legislation is drafted.

We also anticipate that the final OCSE rule will include optional changes, and Bread for the City and Legal Aid are hopeful that OAG/CSSD will elect to adopt permissive changes that may be included in the final rule and would benefit low-income families in the District. For example, we strongly support OCSE’s proposal to permit state child support agencies to provide limited services to custodial parents. Under the current system, custodial parents who want the assistance of their state child support agency must use the state agency throughout all stages of the child support case, including paternity establishment, initiation of the case, establishment of the child support order, and enforcement of the order. The new regulation would allow custodial parents to select only those services that are best for their family at any given time.

In addition, we strongly support OCSE’s proposals to provide additional protections to noncustodial parents who receive only Supplemental Security Income (SSI) or who concurrently receive SSI and Social Security Disability Insurance (SSDI) (because the individual’s SSDI benefit is low enough that the person is also eligible to receive some SSI), as well as the proposal to allow federal IV-D funds received by state child support agencies to be used to support job services for non-custodial parents. We have testified in prior oversight hearings about the importance of implementing an evidence-based work-services program to help noncustodial parents gain stable employment so they can pay their orders consistently, which provides stability and security to custodial parents and children. Additionally, we support the federal agency’s proposal to allow states to permit parents to meet their medical support obligations through Medicaid, Children’s Health Insurance Program (in D.C., the D.C. Healthy Families program), and other coverage plans available in the state, rather than requiring parents to pay for expensive private health coverage that is less comprehensive and, often, less accessible to low-income District children.⁴

Bread for the City and Legal Aid are hopeful that OAG/CSSD’s process for determining which proposed changes to embrace will be transparent and open to stakeholders in the child support system, including legal services providers, child support advocates, the Court, and parents themselves. District government agencies are most successful in improving the welfare of District residents when they work collaboratively with community stakeholders. In the past, OAG/CSSD has been reluctant to involve key stakeholders in decisions related to major new

⁴ Bread for the City and Legal Aid also provided commentary on several other rules proposed by OCSE. We would be happy to provide a copy of our comments to the Committee upon request.

initiatives and has failed to share information about challenges and outcomes of those initiatives. For example, at last year's hearing, we testified about CSSD's decision not to renew its contract with Educational Data Systems, Inc. (EDSI), an employment services agency with a track record of success in providing job services, training, and job placement for non-custodial parents in other urban settings. OAG/CSSD decided not to renew its contract with EDSI, and declined to release any information about its Non-Custodial Parent Employment Program. Much could be learned from an audit of the Non-Custodial Parent Employment Program's data and this information could inform the development of future OAG/CSSD employment programs. Child support payments are critical to reducing child poverty in the District, and OAG/CSSD should be willing to engage and share information with community stakeholders to ensure that the District's child support system functions as fairly and effectively as possible.

Recommendation:

- Once the OCSE issues a final rule regarding the administration of state child support programs, the Council should help ensure that OAG/CSSD works transparently and collaboratively with stakeholders in the child support community to determine which optional changes to adopt.

The Council should prioritize legislative reform to simplify and streamline the District's paternity establishment law, thereby making the law more accessible to District residents.

We are hopeful that we will be able to have a productive conversation with the new Attorney General to address OAG/CSSD's current practice of opposing paternity challenges in virtually every case where an Acknowledgment of Paternity (Acknowledgment) has been signed, even when (1) parents were not provided with required statutory notices and protections mandated by District and federal law before signing, (2) putative fathers were lied to about the probability of their paternity, (3) both the mother and putative father want genetic testing, and/or (4) DNA testing conclusively proves that the putative father is not actually the biological father. OAG/CSSD's hard-line position diverts resources from the agency's goal of establishing paternity and setting accurate support orders for District families, and it prevents many children from knowing or having relationships with their biological family. However, due to the recurring nature of this issue and the impact it has on District families, we recommend a more permanent solution—namely a legislative one.

By way of background, generally, in order to establish a child support order, paternity must first be determined for a child's father. In the District, unmarried parties can establish the father's paternity of a child by going to court to request DNA testing or by signing a legal form called an Acknowledgment of Paternity at the hospital or Vital Records. The Acknowledgement was created by federal and D.C. law to provide unmarried biological parents with an efficient means of legally recognizing the relationship between a father and child without the need for court involvement or DNA testing.

To safeguard the Acknowledgment of Paternity process and ensure that the system is not abused, federal and D.C. law include procedural requirements that must be followed for parties to validly execute an Acknowledgment. First, parties must be under oath. Second, they must be given written and oral notice of the alternatives to, legal consequences of, and rights and responsibilities that arise from the Acknowledgment, which includes the right to obtain DNA testing prior to signing and the potential consequence that they might have to pay child support.⁵

Based on the experience of D.C. residents served by the Child Support Community Legal Services Project over the past several years, it appears that too often, hospital and Vital Records staff fail to provide the statutorily mandated notices. Many individuals we have met through the Project report that they were not told that they could obtain DNA testing prior to the putative fathers' signing an Acknowledgment at the hospital or at Vital Records. Many putative fathers and mothers also did not understand that they should *not* sign the Acknowledgment if they have any doubts about paternity. In addition, when they do not receive the proper notice, parties do not understand the 60-day rescission period and the otherwise binding nature of the Acknowledgment.

Problems arise when parties sign an Acknowledgment without understanding the significance of the document or their right to not sign it. Too often understandable concerns about paternity arise after the signing of an Acknowledgment, because the mother has subsequently revealed that another man could be the child's father, or the parties have obtained a private genetic test that shows that putative father is not the child's biological father. Parties seek relief and assistance from the court to clarify and resolve these extremely personal and complicated matters. Often, their main request is to have the court order a genetic test to determine paternity once and for all.

We believe a signed Acknowledgment generally should not be a basis either to deny a party's request to obtain genetic testing if there is a good faith basis to believe the person who signed the Acknowledgment may not be the father, or to prevent disestablishment of legal paternity where private genetic testing conclusively shows the man is not the biological father. Yet, in our experience, in the past OAG/CSSD has opposed almost all requests for genetic testing if a putative "father" has previously signed an Acknowledgment regardless of the circumstances. This is true even when it is clear that the parties were not given the proper notices and warnings at the hospital or at Vital Records, and in instances when the mother was unsure or lied about the identity of the child's father.

This blanket opposition holds even when it is biologically impossible for the putative "father" to be the genetic father. In one case handled by the Project, a putative "father" was incarcerated throughout the entire period of potential conception. When he was released from jail, the mother lied to him about the baby's birth date and induced him into signing an Acknowledgment of Paternity. The parties were not given the statutorily required notices, but signed anyway. The alleged "father" thought that the document was to change the baby's last name to his own. After signing, the mother informed him that the baby was not biologically his, and subsequently, she went back to Vital Records on her own and changed the baby's name to

⁵ D.C. Code § 16-909.01.

name him after another man—the person she identified as the true biological father. At the time of the initial child support hearing, the mother was married to the true biological father, and she and the child were living with him. Despite admitting that the statutory procedures were not followed and that the alleged “father” could not be the child’s biological father, OAG/CSSD argued at trial and on appeal that he should remain the child’s “legal father” and pay child support because he had signed an Acknowledgment and failed to rescind it within the 60-day time period.

OAG/CSSD’s past opposition in cases like this one diverts resources that could be used to assist custodial parents in finding actual biological parents and obtaining child support from those who have a legal and moral obligation to provide for their children. OAG/CSSD’s position puts the executed Acknowledgment—no matter what the circumstances—above all, to the detriment of citizens of the District.

Other states have passed legislation to reconcile the ease of Acknowledgments of Paternity with the clarity provided by DNA testing. In particular, Maryland law provides that in most circumstances a declaration of paternity in an order can be modified or set aside if a genetic test establishes that the individual named in the order is not the biological father.⁶ Additionally, in Maryland, the law states that the court shall order paternity testing if requested by either party or the government.⁷ Virginia, California, Illinois, Alabama, Colorado, Georgia, Minnesota, Missouri, Florida, South Dakota, and Louisiana all also specifically allow a “father” who signed an Acknowledgment to subsequently disestablish paternity based on genetic testing, and numerous other states at least provide some means for a “father” to challenge paternity after the rescission period.

Moreover, challenges to paternity would not be necessary if individuals had more ready access to DNA testing prior to signing Acknowledgments of Paternity. Even though most individuals sign Acknowledgments at the hospital shortly after a child’s birth, DNA testing is not offered on-site as an immediate alternative or precursor to signing an Acknowledgment. Parties have to file a petition to start a paternity case, await a hearing date and obtain a court order if they want legally admissible DNA testing. Bread for the City and Legal Aid attorneys have also seen how the cost of paternity testing outside of the court process can be a significant barrier for parties. For example, reliable genetic testing through a private company, such as Fairfax Identity Laboratories, costs approximately \$450.

We will be meeting with the Attorney General’s Office to urge a change in policy regarding these matters. Depending on the results of these meetings, we may be urging the Council to simplify the District’s paternity establishment law and clarify the right for an individual to obtain DNA testing and challenge paternity. Either way, we urge the Council to pass legislation to offer free or low-cost genetic testing to low-income individuals prior to presenting them with an Acknowledgment of Paternity.

⁶ Md. FAMILY LAW Code Ann. § 5-1038.

⁷ Md. FAMILY LAW Code Ann. § 5-1029.

Recommendations:

- The laws governing paternity establishment in the District are admittedly complex. The Council should prioritize legislative reform to simplify and streamline the District's paternity laws, thereby making them more accessible to District residents. Bread for the City and Legal Aid would welcome the opportunity to work with the Council and OAG/CSSD to craft legislation that clarifies the law.
- The District should offer free or low-cost genetic testing to low-income individuals at hospitals and at Vital Records prior to presenting them with an Acknowledgement of Paternity.