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**DEVELOPMENTS IN FAMILY LAW IN THE  
DISTRICT OF COLUMBIA: THREE SIGNIFICANT  
LEGISLATIVE CHANGES FOR CHILD SUPPORT**

**Meridel Bulle-Vu,\* Tianna Gibbs,\*\* and Ashley McDowell\*\*\***

**INTRODUCTION**

Over the last decade, the District's child support law has changed in three significant ways: (1) by the enactment of a statute that requires sentencing judges to notify obligors of their right to modify or suspend their child support order during incarceration; (2) by the passage of a law that requires the District of Columbia government to distribute up to the first \$150 of child support collected each month to custodial parents who receive Temporary Assistance for Needy Families (TANF); and (3) by substantial revisions to how child support orders are calculated under the District's Child Support Guideline (the Guideline).<sup>1</sup> These developments resulted from collaboration between the bar, the bench, and community advocates. The first two statutes stem from legal services providers and child support advocates working in partnership to lobby for legislation that ensures that

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<sup>1</sup> D.C. CODE § 6-916. *See Introduction to the Child Support Guideline Calculator*, D.C. CHILD SUPPORT SERVS. DIV., <http://csgc.oag.dc.gov/application/main/intro.aspx> (last visited Apr. 4, 2015).

noncustodial parents do not accrue child support arrears when they are unable to pay and custodial parents receive the maximum amount of child support paid for their children. The revision of the Child Support Guideline resulted from the work of the District of Columbia Guideline Commission—a committee comprised of family law practitioners, judges, and community advocates convened to solicit and review economic data and feedback from the courts and practitioners—with the goal of determining the efficacy of the existing Guideline and recommending possible changes. All three changes have improved the District’s child support system, particularly as it affects low-income families, and have brought the District of Columbia towards the forefront of progressive state policies.

### **I. INCARCERATED OBLIGOR STATUTE**

The incarcerated obligor statute,<sup>2</sup> which went into effect in May 2005, requires judges to notify noncustodial parents who pay court-ordered child support in the District and who are convicted of a crime and sentenced to more than 30 days of incarceration of their right to modify or suspend their child support order while they are incarcerated.<sup>3</sup> The law also provides mechanisms for assisting child support obligors with filing the necessary paperwork to modify or suspend their child support orders.<sup>4</sup> This statute is one of the most progressive laws of its kind in the country. It is intended to prevent a noncustodial parent from accruing child support arrears while

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<sup>2</sup> D.C. CODE § 23-112a.

<sup>3</sup> D.C. CODE § 23-112a(a) (“At all sentencing proceedings in which an individual will be sentenced for a period of imprisonment of more than 30 days, or at any proceeding in which a judge is revoking probation that will result in a sentence of imprisonment of more than 30 days, the sentencing court shall inquire as to whether the individual being sentenced is subject to a child support order. If the individual being sentenced is subject to a child support order, the sentencing court shall explain that: (1) The individual being sentenced may petition to modify or suspend child support payments during the period of the individual’s imprisonment; and (2) Child support payments will continue to accrue under the order unless the order is modified or suspended.”).

<sup>4</sup> D.C. CODE § 23-112a(b) (“The court shall provide each individual being sentenced with a copy of a pro se petition to modify the child support order pursuant to § 46-204. The petition may be filed in open court during sentencing. The petition shall be deemed filed in the case in which the child support order was entered as of its filing in open court, and the petition shall be included in the records of that case.”). D.C. CODE § 23-112a(c) (“The clerk of the Court shall effectuate service of the petition in accordance with § 46-206.”).

incarcerated and unable to pay, which benefits families and obligors.<sup>5</sup> Noncustodial parents are less likely to pay their support order if a large amount of arrears accumulates.<sup>6</sup> Furthermore, noncustodial parents face numerous penalties for failing to pay child support, including driver's license revocation and seizure of income tax refunds and bank account funds.<sup>7</sup>

The anecdotal experience of many District family law practitioners suggests that not all sentencing judges consistently provide the required notice, and even when they do, not all motions are properly filed and orders suspended. However, for those obligors who do receive notice, the incarcerated obligor statute increases the likelihood that noncustodial parents pay their child support obligation after they are released from prison and provide their children with the financial support that they desperately need.<sup>8</sup>

## II. CHILD SUPPORT PASS-THROUGH

The child support pass-through law,<sup>9</sup> which went into effect in October 2005, requires the District of Columbia government to distribute up to the first \$150 paid each month towards a current child

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<sup>5</sup> Committee Report, Bill 15-712, Omnibus Public Safety Ex-Offender Self-Sufficiency Reform Amendment Act of 2004 4 (Dec. 1, 2004) (“Specifically, the legislation seeks to alleviate the burden of large child support arrearages accumulated by individuals while incarcerated by providing a reasonable procedure through which these child support obligations may be suspended during periods of incarceration.”).

<sup>6</sup> See, e.g., TAKING CARE OF THE DISTRICT’S CHILDREN: THE NEED TO REFORM DC’S CHILD SUPPORT SYSTEM, DC APPLESEED CENTER FOR LAW AND JUSTICE, CROWELL & MORNING LLP, KILPATRICK STOCKTON LLP 40 (2007) (“Insurmountable child support debt can interfere with [noncustodial fathers’] willingness and ability to pay current support.”). See also REPORT OF THE DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMM’N, FINAL RECOMMENDATIONS 29 (2004) [hereinafter GUIDELINE COMM’N REPORT] (“[U]nlimited retroactive support often results in uncollectible arrears, especially for low-income parents with a legal duty to pay support . . . These uncollectible arrears can discourage payments on current support, as well as continued parental involvement.”).

<sup>7</sup> D.C. CODE § 46-225.01(a) (“[N]o car registration or driver’s license shall be renewed or issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice.”); D.C. CODE § 46-224(a) (“A lien is created by operation of law against the real and personal property of an obligor subject to a support order who resides or owns property in the District for amounts of overdue support.”).

<sup>8</sup> See *supra* note 6.

<sup>9</sup> D.C. CODE § 4-205.11(c)(5).

support obligation to custodial parents who receive Temporary Assistance for Needy Families (TANF). The law also disregards this child support income when determining a family's eligibility for TANF, which means that the family receives TANF benefits in addition to child support without any reduction in benefits.<sup>10</sup> Before the law was passed, custodial parents who received TANF benefits rarely collected any of the child support paid for their children because these payments were fully assigned to the government.<sup>11</sup> When a custodial parent enrolls in or receives TANF, he or she assigns the right to child support to the District government in exchange for cash assistance.<sup>12</sup> The District government uses these payments to reimburse the state and federal governments for the TANF expenditure.<sup>13</sup> Before the enactment of the child support pass-through law, the government was first in line to receive child support, and families only received support after the government was reimbursed.<sup>14</sup>

The child support pass-through law greatly benefits families living in poverty in two ways. First, it provides families who receive TANF with up to \$150 in additional income each month.<sup>15</sup> Although this amount seems small, it is significant for TANF recipients, who only receive a maximum of \$428 each month for a family of three (e.g., a mother and two children).<sup>16</sup> Second, the law gives noncustodial parents an incentive to meet their child support obligation because they will be assured that at least part of the funds that they pay will be received by their children. Recent evaluations of the pass-through law suggest that it is having the desired effect: For families who starting receiving TANF after the law's enactment, noncustodial parents paid

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<sup>10</sup> D.C. CODE § 4-205.11(a)(8) (provides "In determining the need of families who are applying for or receiving TANF . . . disregard up to the first \$150 received per month by the assistance unit that represents a current monthly child support obligation or a voluntary child support payment from an absent parent or spouse.").

<sup>11</sup> D.C. CODE § 4-205.19 (b)–(c) (2005).

<sup>12</sup> D.C. CODE § 4-205.19.

<sup>13</sup> CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., RL 33422, ANALYSIS OF FEDERAL-STATE FINANCING OF THE CHILD SUPPORT ENFORCEMENT PROGRAM 8 (July 19, 2012).

<sup>14</sup> 42 U.S.C. § 657(a)(1).

<sup>15</sup> D.C. CODE § 4-205.11(a)(8).

<sup>16</sup> DC FISCAL POLICY INST., DISTRICT OF COLUMBIA'S TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM (May 21, 2012), <http://www.dcfpi.org/wp-content/uploads/2012/02/3-21-12-TANF-Overview.pdf>.

19.7 percent more child support and were 7.4 percentage points more likely to pay than would have been statistically expected.<sup>17</sup>

### III. CHILD SUPPORT GUIDELINE REVISION

In April 2007, the District of Columbia Council passed the Child Support Guideline Revision Act of 2006, known as the Guideline Revision Act, bringing sweeping change to the District's child support laws.<sup>18</sup> The Family Support Act of 1988 required all states, including the District, to adopt child support guidelines for calculating and setting child support orders.<sup>19</sup> Federal law also required that states review their guidelines every four years.<sup>20</sup> It is under this framework that the Guideline Revision Act was passed, improving on the District's pre-2007 laws and addressing problems of transparency, consistency, and fairness in the District's child support laws.

The Guideline Revision Act improves upon the District's previous child support laws by creating a presumptive regime that applies to all child support cases in the District and provides greater transparency and consistency to judges, attorneys, and litigants alike. Of the numerous important changes included in the Guideline Revision Act, perhaps the most significant is the reorientation of the Guideline to an income-shares model of calculation with more explicit consideration of low-income noncustodial parents' ability to pay.<sup>21</sup> The new Guideline also adjusts the threshold of the use of the joint custody calculation;<sup>22</sup> provides greater clarity about the treatment of common sources of parental income when calculating the presumptive child support amount;<sup>23</sup> specifically excludes means-tested public benefits from a parent's income;<sup>24</sup> addresses how to account for derivative benefits received by the child of a recipient of Social Security

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<sup>17</sup> KYE LIPPOLD, AUSTIN NICHOLS & ELAINE SORENSEN, URBAN INST., EVALUATION OF THE \$150 CHILD SUPPORT PASS-THROUGH AND DISREGARD POLICY IN THE DISTRICT OF COLUMBIA 47 (Nov. 2010), <http://www.urban.org/research/publication/evaluation-150-child-support-pass-through-and-disregard-policy-district>.

<sup>18</sup> D.C. CODE § 16-916.

<sup>19</sup> 42 U.S.C. § 667(a).

<sup>20</sup> *Id.*

<sup>21</sup> GUIDELINE COMM'N REPORT, *supra* note 6, at 14; D.C. CODE § 16-916.01(f)(1)(C)-(D); D.C. CODE § 16-916.01(m).

<sup>22</sup> D.C. CODE § 16-916.01(q)(1).

<sup>23</sup> D.C. CODE § 16-916.01(d).

<sup>24</sup> D.C. CODE § 16-916.01(d)(6).

Disability Insurance;<sup>25</sup> provides for a “self-support reserve” for low-income noncustodial parents;<sup>26</sup> overrules prior case law to make the standard for modification of support orders applicable to court orders and consent agreements alike;<sup>27</sup> and sets a two-year limit on the award of retroactive support.<sup>28</sup>

Prior to 2007, the District’s Guideline followed a “hybrid formula” based on a percentage of the noncustodial parent’s income, adjusted based on the children’s ages, to determine the amount of a noncustodial parent’s child support order.<sup>29</sup> Orders were primarily based on the noncustodial parent’s income. Moreover, a specified dollar amount of the custodial parent’s income was “disregarded,” or subtracted from that parent’s income before the order was calculated. A “schedule,” or chart, divided noncustodial parents into income brackets and set a base percentage of income to be paid as support based on the ages of the children.<sup>30</sup> Judges were given more discretion as to the amount of the final order.

The Guideline Revision Act shifts away from the hybrid formula to a formula that divides child-rearing costs proportionally between parents based on their share of the combined income.<sup>31</sup> By using both parents’ gross incomes to set the order, the new Guideline formula is more transparently fair. Child-rearing costs are not based on actual family expenditures, but rather on economic data on the average costs of child-rearing at various income levels. Both parents’ gross incomes are combined to determine the total amount of money available to the child(ren). The monetary obligation is divided between the parents in proportion to their share of the combined income, with no variation based on the ages of the children. For parents who share physical custody, a shared custody adjustment is applied presumptively when the noncustodial parent has custody at least 35 percent of the time—a reduction from the 40 percent threshold in the former Guideline. Actual reasonable child care costs, health insurance premiums, and

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<sup>25</sup> D.C. CODE § 16-916.01(l).

<sup>26</sup> D.C. CODE § 16-916.01(g)(1)(A).

<sup>27</sup> D.C. CODE § 16-916.01(t).

<sup>28</sup> D.C. CODE § 16-916.01(v)(1).

<sup>29</sup> See Council of the District of Columbia, Comm. on the Judiciary, Committee Report on Bill 16-205, Child Support Guideline Revision Act of 2006, 3 (Feb. 28, 2006) [hereinafter Committee Report].

<sup>30</sup> See D.C. CODE § 16-916.01(q) (2005).

<sup>31</sup> GUIDELINE COMM’N REPORT, *supra* note 6, at 14; see D.C. CODE § 16-916.01(f)(1)(C)–(D); D.C. CODE § 16-916.01(m).

extraordinary medical costs—incurred by either parent—are shared proportionally and added on to the base support order.<sup>32</sup>

The Guideline Revision Act also amends the treatment of various income streams as used in the calculation of each parent’s gross income. While the Act eliminates the custodial parent “disregard,” it does specify that means-tested benefit income, including from Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and the Supplemental Nutrition Assistance Program (SNAP), is excluded from the recipient’s gross income in the Guideline calculation, as is income received by third parties or parents’ other children.<sup>33</sup>

For parents who receive Social Security Disability Insurance (SSDI), their benefits and any related derivative benefits received by the child are included in calculating that parent’s gross income, regardless of whether the parent who receives the benefits is the custodial or noncustodial parent.<sup>34</sup> Derivative benefits are awarded to the child of an individual who is eligible to receive SSDI disability benefits.<sup>35</sup> The benefit amount received by the child depends on several factors, including the amount of the parent’s disability benefit and how many of the disabled parent’s children claim benefits. Under the revised Guideline, derivative benefits are counted as income for the parent on whose behalf they are paid.<sup>36</sup> Then, the amount of the derivative benefits is also treated as if it were child support and deducted from that parent’s out-of-pocket child support obligation, as calculated by the Guideline.<sup>37</sup> In practice, because the amount of derivative benefits often exceed a low-income noncustodial parent’s support obligation, the out-of-pocket child support obligation of a noncustodial parent receiving SSDI is often completely covered by the derivative benefits received by the child. In addition, derivative benefits received by the child may also be credited towards support arrearages.<sup>38</sup>

Finally, alimony paid from one parent to the other is deducted from the payor’s gross income, and alimony received from any source is added to the recipient parent’s gross income.<sup>39</sup> Combined, these

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<sup>32</sup> Committee Report, *supra* note 29, at 17.

<sup>33</sup> D.C. CODE § 16-916.01 (2005).

<sup>34</sup> D.C. CODE § 16-916.01(d)(9).

<sup>35</sup> 20 C.F.R. § 404.350.

<sup>36</sup> D.C. CODE § 16-916.01(d)(9).

<sup>37</sup> D.C. CODE § 16-916.01(l)(1).

<sup>38</sup> D.C. CODE § 16-916.01(l)(2).

<sup>39</sup> D.C. CODE § 16-916.01(d)(3).

changes in how income is calculated offer greater protection for low-income custodial and noncustodial parents alike.

The Guideline Revision Act went one step further towards protecting low-income noncustodial parents by increasing the “self-support reserve” for noncustodial parents to 133 percent of the federal Health and Human Services poverty guideline, to be updated every two years by the District’s mayor.<sup>40</sup> The self-support reserve creates a protected minimum income for noncustodial parents: It provides that noncustodial parents with income at or less than this amount should pay presumptively no more than \$50 per month in support. This critical measure ensures that noncustodial parents retain sufficient income after child support to remain self-supporting. In addition to increasing the amount deemed necessary for subsistence, the Guideline Revision Act also amends the Guideline calculation so that the self-support reserve is the last step, applied after all other add-ons and adjustments, to “protect [its] integrity.”<sup>41</sup>

The final result of the new Guideline is a single presumptive amount, without the plus or minus three percent variation included in the prior Guideline.<sup>42</sup> While judges can still deviate from the Guideline amount, the circumstances for a departure are limited and the Revision Act requires judges to state the reasons for a departure in any given case.<sup>43</sup> The new Guideline applies to all orders established since the Revision Act’s enactment, as well as all modifications of orders entered under the prior law.<sup>44</sup>

When determining whether to modify a child support order, the Guideline Revision Act specifies that the modification standard is a “substantial or material change in circumstances.”<sup>45</sup> This standard now applies to any child support obligation, regardless of whether it is included in an order or as part of a consent agreement, or whether it is incorporated or merged into a court order. This provision effectively overrules case law that laid out a stricter standard for the modification of unincorporated consent agreements.<sup>46</sup> Finally, the Guideline Revision Act sets a presumptive two-year limitation on the award of retroactive support.<sup>47</sup> The pre-2007 law did not specifically address the

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<sup>40</sup> D.C. CODE § 16-916.01(g)(1)(A) (2014).

<sup>41</sup> GUIDELINE COMM’N REPORT, *supra* note 6, at 7.

<sup>42</sup> *Cf.* D.C. CODE § 16-916.01(m) (2005).

<sup>43</sup> D.C. CODE § 16-916.01(p).

<sup>44</sup> D.C. CODE § 16-916.01(a).

<sup>45</sup> D.C. CODE § 16-916.01(r)(4)(A).

<sup>46</sup> *Cf.* *Cooper v. Cooper*, 472 A.2d 878 (D.C. 1984).

<sup>47</sup> D.C. CODE § 16-916.01(v)(1).

length of retroactive support, but under case law, retroactive awards commonly extended back to the date of a child’s birth.<sup>48</sup> The new limit of 24 months prior to the date of filing is intended to help prevent large amounts of uncollectible arrears owed by low-income noncustodial parents, to create more certainty about child support awards, and to encourage the establishment of support orders earlier in a child’s life.<sup>49</sup> When the court finds that the noncustodial parent has acted in bad faith or there are other extraordinary circumstances, the court can order retroactive support for a longer period.<sup>50</sup> Conversely, the court may order retroactive support for a shorter period, including none at all, if the court finds that it would be unjust.<sup>51</sup>

## CONCLUSION

Taken together, the Incarcerated Obligor Statute, the Child Support Pass-Through law, and the Guideline Revision Act improve the legal landscape of child support in the District, particularly for low-income families and obligors. These changes served to increase access to justice for obligors facing incarceration, incentivize the payment of child support by obligors and the money available for children, and provide greater clarity to the bench, bar, and litigants when setting child support orders. Child support is a vital anti-poverty tool, and the legislative changes enacted in the past decade will help ensure that children and families get a fair amount of support without further impoverishing low-income noncustodial parents.

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<sup>48</sup> See *Hight v. Tucker*, 757 A.2d 756, 760 (D.C. 2000) (“Once paternity is established . . . an award of child support may, and usually should, be made retroactive to the birth of the child.”); see also *J.A.W. v. D.M.E.*, 591 A.2d 844, 847–848 (D.C. 1991).

<sup>49</sup> GUIDELINE COMM’N REPORT, *supra* note 6, at 29.

<sup>50</sup> D.C. CODE § 16-916.01(v)(1).

<sup>51</sup> *Id.*