



January 21, 2020

The Honorable Holly J. Mitchell
Chair, Senate Budget Cmte
California State Senate
Sacramento, CA 95814

The Honorable Phil Ting
Chair, Assembly Budget Cmte
California State Assembly
Sacramento, CA 95814

The Honorable Richard Pan
Chair, Senate Budget Cmte Sub 3
California State Senate
Sacramento, CA 95814

The Honorable Dr. Joaquin Arambula
Chair, Assembly Budget Cmte Sub 1
California State Assembly
Sacramento, CA 95814

RE: Budget Request on Child Support Pass-through, Payments and Collections

Dear Budget Leaders,

Our organizations are writing in response to the Governor's January Child Support System Budget Proposals and to request consideration of the following Budget Act of 2020-21 investments. Through these requests, we seek to change State policy on child support pass-through, payments and collections to better support low-income children and their families and reduce child poverty in California.

We hope you will consider our responses to the Governor's proposals and our additional requests in your deliberation of this year's budget priorities and, if appropriate, offer an opportunity to discuss them in committee. We have broken these issues up by department to facilitate your review.

Department of Social Services (DSS)

DSS Request One: Pass-through all child support payments made to the child.

Governor's January Budget Proposal: Increase child support passed through to the family from \$50 to \$100 for the first child and \$200 for two or more children. Continue redirecting the rest of each month's child support payment to the state, county and federal government.

Background: Last year, more than 260,000 children living in poverty in California – the large majority of whom are children of color - had part of the child support payment made for their child intercepted by the government. Some of that money was passed through to the federal government.

While California cannot change the 1975 federal law that requires single parents who sign up for certain public benefits to sign over the rights to their child support payments to the government, we can change how we implement it. Under this federal law, two different types of child support systems were created: 1) a private system under which payments go to children and families without any government intervention, and 2) a

public system under which payments go mostly to government to reimburse the cost of providing health and basic needs assistance. The latter exclusively includes poor children and families. California has chosen to implement this policy by **keeping all but \$50 of child support payments made** to a family when a child receives aid through the California Work Opportunity and Responsibility to Kids (CalWORKs) program, Medi-Cal, and in some cases Foster Care.

Last fiscal year, the state of California collected \$410 million on behalf of low-income children who currently or previously received CalWORKs. Nearly 90% of their child support payments - \$368 million- were redirected to pay back the government for the cost of public benefits.¹ In a state with one of the highest child poverty rates, these policies take valuable resources from low-income children. Redirecting parents' child support payments to pay back the cost of public benefits also diminishes the impact of California's considerable efforts to reduce child poverty. Although the state has increased CalWORKs grants by 25%, low-income parents pay back those benefits through their child support payments. To pay back the cost of these benefits, parents' tax returns- including federal and California EITC payments- are intercepted, reducing the impact of these benefits intended to support children.

This is a racial justice issue as these policies disproportionately strip resources from children of color and the families and communities in which they live. Due to generations of disinvestment and systemic barriers, children of color are more than three times as likely as white children to receive Temporary Assistance to Needy Families (TANF), and therefore are more likely to have their child support payments intercepted. More than two-thirds of the children impacted by these policies are children of color.²

Redirecting low-income families' child support payments has more than just a financial impact. In addition to taking away needed resources, research shows these policies create conflict in families, as the custodial parent does not know how much the other parent is actually contributing.³ It drives non-custodial parents into unemployment and the underground economy, the latter so that they can send more of their earnings directly to their children.⁴ Studies show that the accrual of child support debt creates a barrier to engaging with their family, and results in noncustodial parents having less contact with their children.⁵

The good news is that, while state lawmakers can't change federal child support laws, we can change how we implement them. Across the country, states are working to

¹ Analysis of Proposed Increase in State Funding for Local Child Support Agencies. California Legislative Analyst's Office. <https://lao.ca.gov/Publications/Report/3989>

² "The Payback Problem: How taking parents' child support payments to pay back the cost of public assistance harms low-income children and families." April 2019.

³ "The Payback Problem: How taking parents' child support payments to pay back the cost of public assistance harms low-income children and families." April 2019.

⁴ Ibid

⁵ Indebted Relationships: Child Support Arrears and Nonresident Fathers' Involvement with Children

put children at the center of their child support policies. **Colorado became the first state to pass through 100% of parents' child support payments through to their children, and payments increased drastically.**⁶ On average, families receiving TANF received an extra \$167 each month because of this policy change.⁷ Parents paid more, because they knew the money was going where it should: to their children.

California has a chance to right this backward policy, and better support low-income families of color. We are requesting that all the payment made on behalf of a child be passed through to the family.

Below is a chart published by the National Council of State Legislatures detailing the child support pass-through policy of each state.⁸

State	Pass-Through	Is that amount disregarded?
Alabama	No	No
Alaska	Yes, \$50	Yes
Arizona	No	No
Arkansas	No	No
California	Yes, \$50	Yes
Colorado	Yes, 100%	Yes
Connecticut	Yes, \$50	Yes
Delaware	Yes, \$50	Yes
District of Columbia	Yes, \$150	Yes
Florida	No	No
Georgia	Yes, up to unmet need	Yes
Guam	No	No
Hawaii	No	No
Idaho	No	No
Illinois	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
Indiana	No	No
Iowa	No	No
Kansas	No	No
Kentucky	No	No
Louisiana	No	No
Maine	Yes, \$50	Yes
Maryland	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
Massachusetts	Yes, \$50	Yes

⁶ "The Payback Problem: How taking parents' child support payments to pay back the cost of public assistance harms low-income children and families." April 2019.

⁷ Evaluating the Effect of Colorado's Full Child Support Pass Through Policy. Colorado Office of Performance and Strategic Outcomes.

⁸ National Council of State Legislatures: <https://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>

State	Pass-Through	Is that amount disregarded?
Michigan	Yes, \$100 for 1 child, \$200 for 2+ child	No
Minnesota	Yes, 100%	Yes, \$100 for 1 child, \$200 for 2+ child
Mississippi	No	No
Missouri	No	No
Montana	Yes, \$100 ⁵	Yes
Nebraska	No	No
Nevada	No	No
New Hampshire	No	No
New Jersey	Yes, \$100	Yes
New Mexico	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
New York	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
North Carolina	No	No
North Dakota	No	No
Ohio	No	No
Oklahoma	No	No
Oregon	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
Pennsylvania	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
Puerto Rico	Yes, \$50	Yes
Rhode Island	Yes, \$50	Yes
South Carolina	Yes, up to unmet need	Yes
South Dakota	No	No
Tennessee	Yes, up to unmet need ⁷	Yes
Texas	Yes, \$75	Yes
Utah	No	No
Vermont	Yes, \$50	Yes
Virginia	Yes, Up to \$100	Yes
Virgin Islands	No	No
Washington	No	No
West Virginia	Yes, \$100 for 1 child, \$200 for 2+ child	Yes
Wisconsin	Yes, 75%	Yes
Wyoming	No	No

DSS Request Two: End double counting of child support payment made in CalWORKs

Governor's January Budget Proposal: None.

Background: Earlier this year, in *Christensen v. Lightbourne*, 7 Cal.5th 761, 776-77 (2019), the California Supreme Court recently upheld the legality of a current DSS policy to double count a child support order paid as countable gross income in the CalWORKs household that made the payment in addition to the household that received it.

We seek to reinstate the policy to exclude the child support paid by a CalWORKs applicant or recipient family to another family as income in the CalWORKs program for the household that made the payment. The Department had this policy in place for 30 years -- from 1968 until it was reversed by the Pete Wilson Administration in 1997 by his DSS Director, Eloise Anderson -- with no adverse consequences (5 Cal.5th at 775). Under the current policy -- set out in All County Letter 97-59, the Department counts as income available to a CalWORKs family money the family never receives: wages, unemployment, or disability benefits garnished from a parent and paid as child support to non-custodial children in a different CalWORKs unit. The change we seek would make the policy consistent with other benefits programs administered by DSS. The table below outlines how child support payments are counted as income for the family making the child payment, and the family receiving the child support payment.

Before Policy Change

Program	CalWORKs Family Unit One Payee Living With Custodial Child	CalWORKs Family Unit Two Recipient Child Living with Custodial Parent
CalWORKs	Counted as Income	Counted as Income
CalFresh	Excluded as Income	Counted as Income
Medi-Cal	Excluded as Income	Counted as Income

After Policy Change

Program	CalWORKs Family Unit One Payee Living With Custodial Child	CalWORKs Family Unit Two Recipient Child Living with Custodial Parent
CalWORKs	Excluded as Income	Counted as Income
CalFresh	Excluded as Income	Counted as Income
Medi-Cal	Excluded as Income	Counted as Income

While the California Supreme Court upheld the legality of this policy, it also emphasized that the policy was not statutorily mandated but rather enacted and maintained as a matter of the Department's discretion. It went on to say:

"In its briefing and at oral argument, the Department asserted that its decision that child support payments were no longer deductible as income was 'discretionary' in nature . . . Given the lack of any indication in the statute compelling or prohibiting the deduction of child support payments from income, we agree that the Department's decision to include child support payments as income is properly characterized as quasi-legislative."

The Court acknowledged the arguments of the plaintiff, whom Western Center on Law and Poverty represented, that "counting money paid under the child support scheme as income to the paying family under CalWORKs, thereby rendering children in the paying family ineligible for CalWORKs aid, **risks undermining the programs' shared goals of supporting and prioritizing all children** (Id. at 776)." **The Supreme Court**

concluded that the plaintiff's "arguments are not without force, and the exclusion she urges may have merit as a matter of policy (Id.)."



We ask budget leaders to take action to exclude child support actually paid to another CalWORKs family unit as income available to the CalWORKs family unit of the paying parent. That would bring the Department's policies in line with, among other programs, CalFresh and Medi-Cal.⁹ And perhaps most importantly, treatment of garnished child support would then be the same as how it is treated under the family child support laws.¹⁰

Department of Child Support Services (DCSS)

DCSS Request One: Stop charging 10 percent interest on child support debt owed.

Governor's January Budget Proposal: None.

Background: When a parent misses a payment, they begin to accrue debt to pay back the government, known as an arrearage. The state has the authority to charge interest on this debt at a rate set by state statute, or to not set any interest at all (as 15 states have elected). In California, the interest on the debt owed to government is set at the same rate as other civil judgments: 10 percent. Research shows that the noncustodial parents required to pay these arrears are usually low-income and disproportionately from communities of color. The 10 percent interest

⁹ Manual of Policies and Procedures 63-502.2(p) and 22 California Code of Regulations §50554

¹⁰ Family Code §4059(e)

rate charged to these families creates yet another systemic barrier to their achieving economic security.¹¹

Unlike many penalties for public assistance payback debt, charging interest is not federally required. According to the National Council of State Legislatures (NCSL),¹² 35 states authorize interest charges for child support arrears, ranging from .05 to 12 percent. Fifteen states have elected not to charge interest.

- 12% per annum: Colorado, Kentucky, and Washington
- 10% per annum: Arizona, Arkansas, California, Iowa, and Wyoming
- 9% per annum: Illinois, New York, and Oregon
- 6% per annum: Alaska, Guam, Maine, Texas, Vermont, Virginia, and Wisconsin
- 4% per annum: Minnesota and New Mexico
- Dependent on Market Factors: Florida, Michigan, Nebraska, Nevada, North Dakota, Ohio, and Puerto Rico.
- Other: Alabama, Georgia, Massachusetts, Mississippi, Missouri, Oklahoma, Rhode Island, South Dakota, Tennessee, and West Virginia.
- No interest: Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Mississippi, Montana, New Hampshire, New Jersey, North Carolina, Pennsylvania, and Utah

DCSS Request Two: Eliminate uncollectible government owed child support debt.

Governor's January Budget Proposal: Eliminate uncollectable government owed child support debt. This appears to be the same as our request.

Background: Right now, California noncustodial parents owe more than \$7 billion in debt to repay the cost of public benefits.¹³ Research shows that ninety-five percent of this debt is owed by someone who is very poor, with old debt, or who lives out of state, making the debt incredibly difficult and costly to collect.¹⁴ The median income of a parent paying back this debt is less than \$15,000 a year.¹⁵

If the Department could lower public assistance payback debt, it would lift a formidable economic burden off of hundreds of thousands of low-income parents of color in California. An Urban Institute evaluation of a pilot in San Francisco found that parents who are relieved of their public assistance debt made more consistent and timely payments, children received more financial support, parents' employment

¹¹ Ibid

¹² National Council of State Legislatures, <https://www.ncsl.org/research/human-services/interest-on-child-support-arrears.aspx>

¹³ Office of Child Support Enforcement FY 2018 Preliminary Data Report. Table P-89

¹⁴ Examining Child support Arrears in California. The Urban Institute. March 2003.

¹⁵ "The Payback Problem: How taking parents' child support payments to pay back the cost of public assistance harms low-income children and families." April 2019.

barriers were reduced, their housing and credit scores improved, and their relationships with their children improved.¹⁶

The current debt relief programs are out of reach for the most disenfranchised people. We are requesting that California provide for automatic relief of state-owed debt for categories of people who are federally eligible for this relief and whose sole source of income is uncollectable.

DCSS Request Three: Make Reforms Necessary to Implement the Quadrennial Review.

Governor's January Budget Proposal: None.

Background: Every four years, states are required to conduct a "quadrennial review" in order to maintain federal funding of child support programs under Title IV-D of the Social Security Act. This process is currently being finalized and the findings from the review may result in recommendations to the legislature and the Governor regarding the child support guidelines in California State, including recommendations for legislative action if necessary. We anticipate some of the changes that will be necessary in order to comply with federal rules, will be helpful to reduce harm to families with a child support order who are living in poverty. This includes changes to driver's license suspension, issuing contempt orders and incarceration, and setting right-sized orders. We urge budget leaders to include advocates in preparing any budget proposals related to the quadrennial review.

Thank You for Your Consideration

We know that the legislature shares our goal of making California a state where all people regardless of race or income are treated fairly and with respect and dignity. We believe the reforms proposed will help achieve these goals. We look forward to working with you in the months ahead to ensure that these provisions are included in the Budget Act of 2020-21 and thank you for your consideration.

Sincerely,

Manuel Galindo, A New Way of Life

Maya Ingram, ACLU of California

Ken Oliver, All of Us or None

Marc Philpart, Alliance for Boys and Men of Color

Miguel A. Garcia, Anti Recidivism Coalition

Sabrina Hamm, California Asset Building Coalition

Alicia Lewis, Center for Employment Opportunity

Shimica Gaskins, Children's Defense Fund California

Terry Kim, Children's Institute

Heather McCulloch, Closing the Women's Wealth Gap

¹⁶ Relief from Government-Owed Child Support Debt and Its Effect on Parents and Children. The Urban Institute. August 2019.

Kevin Aslanian, Coalition of California Welfare Rights Organization
Sara Shortt, Community Housing Partnership
Asher Waite-Jones, East Bay Community Law Center
Derick Morgan, Ella Baker Center
Jackie Wong, End Child Poverty California
Ashley Rojas, Fresno Barrios Unidos
Peter Edelman, Georgetown Law Center, Author of "Not a Crime to be Poor."
Alan-Michael Graves, Good+ Foundation – Fatherhood Initiative
Jackie Wong, Grace Institute
Debra Gore-Mann, Greenlining Institute
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Donna Harati, Homeboy Industries
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Desiree Nguyen Orth, Justice & Diversity Center, Bar Association of San Francisco
Danica Rodarmel, Lawyers' Committee for Civil Rights
Sacha Steinberger, Legal Link
Ken Oliver, Legal Services for Prisoners with Children
Solana Rice, Liberation in a Generation
Mindy Garland, Los Angeles Black Worker Center
Autumn McDonald, New America California
Lewis Brown, PolicyLink
Juliet Sims, Prevention Institute
Megan Joseph, Rise Together Bay Area
Katherin Katcher, Root & Rebound
Jane Fischberg, Rubicon Programs
Chala Bonner, Safe Return Project
Ryan Berryman, San Bernardino Fatherhood
Anne Stuhldreher and Christa Brown, San Francisco Financial Justice Project
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Jacob Dumez, San Francisco Office of Financial Empowerment
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Sereeta Reid, Time for Change Foundation
Anne Marks, Youth ALIVE!
Anthony Robles, Youth Justice Coalition LA
Amika Moto, Young Women's Freedom Center
Jess Bartholow, Western Center on Law and Poverty

CC: Honorable Toni Atkins, President Pro-Tempore of the California State Senate
Honorable Anthony Rendon, Speaker of the California State Assembly
Members of the 2019-20 Budget Committee
Ann O'Leary, Chief of Staff, Office of the Governor
Michael Wilkening, Secretary, California Health and Human Services Agency

David Kilgore, Director, California Department of Child Support Services
Anthony Williams, Office of the Governor
Tam Ma, Office of the Governor
Ryan Anderson, Legislative Analyst Office
Jackie Barocio, Legislative Analyst Office
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Cathy Senderling-McDonald, County Welfare Directors Association of California
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