



MARYLAND
LEGAL AID

Advancing
Human Rights and
Justice for All

Senate Bill 0174

Child Support – Suspension of Driver’s Licenses
In the Judicial Proceedings Committee
Hearing on February 7, 2024
Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 0174 in response to a request from Senator Muse.

MLA appreciates the opportunity to testify in support of this vital legislation. This legislation would do two main things. First, it would ensure parents with child support orders are provided due process before their driver’s license is suspended. Second, it would establish criteria for when suspending a license for alleged child support arrears is appropriate. This will temper the harmful effects of the current arbitrary, automated driver’s license suspension system used by the Maryland Child Support Enforcement Agency (“the Agency”), and it will ensure that the Agency only suspends driver’s licenses in situations that would help children and families, not cause them harm. MLA urges passage of this bill.

MLA is a private, nonprofit law firm that provides free legal services to thousands of low-income Maryland residents in civil matters. MLA’s representation of non-custodial parents in child support cases has revealed significant inequities in the Agency’s automated driver’s license suspension system. The current system criminalizes poverty and disproportionately harms low-income families.

State and Federal laws authorize the use of driver’s license suspension as an enforcement mechanism for non-custodial parents who are behind on their child support payments. Currently, the Agency automatically places any parent who has 60 days or more of arrears in a pool of people who may be randomly selected each month to be referred to the Motor Vehicle Administration (“MVA”) for driver’s license suspension. The MVA reported 20,512 driver’s license suspensions for child support in calendar year 2023. Senate Bill 0174 would significantly reduce that number by implementing a system where driver’s license suspensions are only used when appropriate, rather than as a blanket punishment. This bill creates a safeguard that Maryland residents desperately need against erroneous and egregious license suspensions.

MLA's clients are routinely harmed by driver's license suspensions.

MLA routinely assists parents with driver's license suspensions. Through this work, MLA has found that parents have their licenses suspended:

- Even when custody has changed, and the child now lives with them;
- Even when they are making payments towards their arrearage balance pursuant to a payment agreement;
- Even when they need their driver's license for work;
- Even when the suspension causes them to lose their job;
- Even when they are disabled and unable to work and therefore unable to make payments; and
- Even when they need their license to be an involved and active parent.

MLA has also found that parents are denied driver's license reinstatement requests by the Agency:

- Even when they provide proof that custody has changed, and the child now lives with them;
- Even when they provide proof that they need their driver's license for work;
- Even when they provide proof that the suspension will cause them to lose their job; and
- Even when they provide proof of a pending or potential job opportunity that requires a valid driver's license.

The following are just a few examples of the many cases where MLA clients have suffered the harmful consequences of improper and inappropriate driver's license suspension:

- Mr. M is an MLA client who was granted custody of his son by the Circuit Court. Mr. M provided a copy of the new custody order to the Agency, showing that custody had changed and he is now the custodial parent. Yet, the Agency **still suspended his license**. Mr. M only discovered his license was suspended when he was pulled over for a minor traffic infraction in Virginia. Due to the suspended license, Mr. M's car was impounded and he was stranded outside in the pouring rain with his wife and children. Ultimately, Mr. M had to pay to get his car out of impound, and he was charged with driving on a suspended license.
- Mr. R is an MLA client who was granted sole custody of his daughter in the Juvenile Court, after the mother was found to be unfit due to abuse and neglect. He provided a copy of the custody order to the Agency, showing that custody had changed and he is now the custodial parent. **Mr. R's driver's license was still suspended**, which he learned only after being pulled over for a minor driving infraction. As a result, Mr. R received a criminal citation for driving on a suspended license.

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- Mr. P is an MLA client who was granted sole custody of his son in the Circuit Court. The court also granted Mr. P's request to officially terminate his obligation to pay child support, in light of the change in custody. Mr. P provided copies of the court orders to the Agency, but **his driver's license was still suspended**. Mr. P drives trucks for a living, and he had no idea that his license had been suspended until he was out of the state, making a work delivery to a military base. The military base ran a routine background check on him, which revealed that his license had been suspended. As a result, Mr. P was unable to complete his work delivery, and **he was terminated from his job** with that trucking company.
 - Mr. G is an MLA client whose children began residing with him full time a few years ago. Mr. G filed motions to modify both custody and child support, but these motions are still pending in the Circuit Court, as he has had trouble serving the mother, who moved out of state. Mr. G made the Agency aware of the change in custody and the pending court proceedings. Nevertheless, Mr. G received a letter informing him that **his license would be suspended**. Mr. G makes his living by driving for Uber, and he provided proof to the Agency that the suspension would cause him to lose his job, but the Agency refused to lift the suspension unless he made a large lump sum payment.

We at MLA know that child custody can change rapidly in low-income families. Sometimes neither parent has stable housing or employment, so custody might switch depending on which parent has more reliable housing or income at any given point in time. While a custody switch might happen overnight, a legal modification of a custody or child support order in the Circuit Court takes at minimum a year, and often longer. For low-income parents who cannot afford attorneys, navigating the court system is extremely difficult. The current child support enforcement system does absolutely nothing to protect parents from having their driver's license suspended even in these situations where custody has changed and the former non-custodial parent is now the custodial parent.

Most parents we help have no idea their driver's license is suspended until they are pulled over. What would have been a minor traffic violation then turns into a criminal citation that carries with it collateral consequences ranging from their car being impounded, losing their job, missing shifts and losing wages, court dates, points on their license, increased insurance costs, and more. Further, a charge for "driving on a suspended license" acts as a subsequent conviction that will lock in earlier criminal charges on someone's record that otherwise would have been expungable, placing yet another barrier in the way of employment.

SB 0174 would require the Agency to seek driver's license suspension only in appropriate cases, and to provide due process before the right to drive can be taken away.

Establishing specific criteria for when suspending a license for child support is appropriate will keep Maryland in line with the controlling Federal law, 42 U.S.C. §§

666(a)(16) and 654(20). The Office of the Attorney General (OAG) submitted a letter of information in the cross-filed house bill, HB 0311, stating that the bill could cause a potential loss of Federal funding due to the requirements in 42 U.S.C. §§ 666(a)(16) and 654(20). With due respect, that information from OAG is incorrect. This bill would *not* affect federal funding.

The above cited federal laws require only that states have the authority to suspend or restrict driver's licenses (along with professional/occupational and recreational/sporting licenses) "in appropriate cases," to "increase the effectiveness of the program." Nowhere does the federal law require Maryland's lottery system in order to comply with the law. There is no lottery system for suspension of professional/occupational or recreational/sporting licenses, and that does not affect federal funding. It follows then that eliminating the lottery system for suspension of driver's licenses will not affect federal funding either.

Indeed, the Agency's current arbitrary and random lottery system is the exact opposite of one that is used "in appropriate cases." There is no determination of appropriateness when the cases are chosen by a random lottery. The purpose of the child support enforcement program is to increase economic stability for children and families, yet the Agency's current driver's license suspension system does the opposite. As exemplified above, license suspensions are often not only not "appropriate"—but also harmful to children and families and counterproductive to obtaining and keeping steady employment; certainly, this does not increase the effectiveness of the program. Further, the current system is in stark contrast to Md. Code Family Law § 10-118, which mandates that the Agency "shall promote and serve the best interests of the child."

MLA collaborates with law and policy advocates from all over the United States who are engaged in child support reform work. Many of those states have criteria limiting the Agency's authority to suspend driver's licenses, and their federal funding is not affected. In fact, New Jersey used to have an automated suspension system similar to Maryland's current system, but a federal court found it unconstitutional, and they were forced to make major changes. Defining "appropriateness," as this bill does, is embraced by Federal law.

SB 0174 calls for the implementation of a system of due process that will ensure the constitutionality of Maryland's procedures for suspending driver's licenses. The U.S. Supreme Court has found that driver's licenses are essential in the pursuit of a livelihood, and cannot be taken away without the procedural due process required by the Fourteenth Amendment.¹ This bill is in line with the 2020 legislation introduced by then-Attorney General Frosh and passed by the Maryland legislature that stopped the MVA from

¹ *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Bell v. Burson*, 402 U.S. 535, 539 (1971).

suspending driver's licenses for fines and fees. The logic behind the passage of those laws was simple: 1) people need driver's licenses to secure and maintain employment so that they are able to pay their fines and fees, and 2) people are entitled to due process. That simple logic applies here: parents need driver's licenses to secure and maintain employment so that they are able to pay their child support, and they are entitled to due process. Most child support is collected through wage garnishment and tax refund intercepts. Both of these collection mechanisms require the parent to have lawful, steady employment—to which driver's license suspension is an impediment.

Driver's license suspensions simply do not work as a child support enforcement mechanism for those who are living in poverty and do not have the ability to pay. They create an obvious barrier to employment and make it difficult to be an involved and active parent. Once the non-custodial parent's driver's license is suspended, they are unable to contribute in other ways—for example, picking the child up for visits, carpooling to school, doctor's appointments, etc.

The current automated system for driver's license suspension is dysfunctional and perpetuates the cycle of poverty.

On its face, the current law (Md. Code Family Law § 10-119) already has enumerated exceptions that limit when the Agency can suspend driver's licenses. The text of the law has exceptions for parents who are disabled, parents who are making consistent payments on their arrearage balance per a payment agreement, and parents who need their license for employment. In practice, however, the automated system is completely unfettered and operates as if those exceptions do not exist in the statute. MLA regularly sees clients who fit squarely into an exception, yet still have their driver's license suspended. This is because the automated system does not have any mechanism that removes parents who fit into an enumerated exception from the pool of people who can be randomly selected each month for license suspension.

If a parent falls under an exception, they can use it as a reason to request that the Agency reinstate their license. However, reinstatement, if granted by the Agency, is merely a temporary solution. If the parent still has an arrearage balance of 60 days or more, they are still in the pool of people who can be selected for license suspension each month, and they often will receive another license suspension notice a few months later. Further, license reinstatement does not make up for the damage that may have already been done; they might have already lost their job, been criminally charged with driving on a suspended license, or missed out on participating in an important event in their child's life because of their suspended license. Many parents are stuck in a perpetual cycle of threatened or actual license suspension, undoubtedly furthering the cycle of poverty.

SB 0174 replaces the current automated system with a judicial process that would ensure that parents receive due process before their licenses are suspended, and that the Agency uses this tool only in truly appropriate cases. Both the Agency and the courts

would not have to spend so much of their time and resources on handling reinstatements of inappropriate and erroneous license suspensions. Rather, they could focus their resources on those rare cases where the parent is purposefully hiding or withholding money, or voluntarily impoverishing themselves.

The Judiciary supports the bill, and their favorable testimony supporting the cross-filed House bill states that the bill would increase the operational efficiency of the courts by ending the “multitude of hearings” required for persons who are “repeatedly suspended, restored, and re-suspended.” As it stands now, when parents cannot get relief from the Agency, they seek relief from the Circuit Courts. Current Maryland laws and regulations, Md. Code Family Law § 10-119 and COMAR 07.07.15.05, require that when parents request investigations of their license suspension, the Agency must issue a written decision that includes the parent’s right to appeal to the Office of Administrative Hearings (OAH). Unfortunately, the Agency does not follow this process. MLA has been doing this work since 2018, and the Agency does not issue written decisions, much less ones that include the right to appeal to OAH. Since parents do not know about OAH, they file into their child support cases in the Circuit Courts, or they bring up the license suspension issue as part of an already pending modification or contempt proceeding in the Circuit Court.

The Circuit Courts already have child support dockets for establishment, modification, and contempt, and license suspensions are already handled within those dockets. Further, those dockets are already staffed by OAG attorneys, so it is unclear why OAG would need to hire 17 new attorneys, as alleged in the fiscal and policy note on the cross-filed House bill. The Judiciary receives ‘4D’ child support specific funding for many of these dockets, and they have said this bill will not affect funding or cost them anything outside of their current resources and budget. This is because they are *already* handling these cases. If OAG chooses, they can simply bring petitions for license suspension in tandem with the petitions for contempt that they are already bringing, on the dockets their attorneys already staff.

The purpose and goal of this bill is to drastically decrease the number of license suspensions, by creating criteria for appropriateness. The Agency should only be petitioning the courts to suspend a driver’s license in situations where they believe they can realistically prove that it would be appropriate under the criteria set forth in the bill. The reality is that, most of the time, it is simply not appropriate to suspend a parent’s driver’s license for child support arrears. This enforcement tool should be, and, through this bill, would be, reserved for those who have the ability to pay but are making the free and conscious choice to withhold payment, or voluntarily impoverishing themselves.

If this legislation were to pass, it would have long-term positive impacts on low-income communities and on Maryland’s economy as a whole. It would also end an opaque, arbitrary, and harmful use of government power—a literal lottery system—that presents serious constitutional concerns and should worry lawmakers of all stripes. MLA thanks

you for the opportunity to provide input and urges the committee to give SB 0174 a favorable report.

If you have any questions, please contact:

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