



## **Testimony on SB 841-844 to the Senate Judiciary Committee**

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March 11, 2014

Chairman Jones and members of the committee, my name is Jacqueline Doig. I am the Director of Advocacy for the Center for Civil Justice (CCJ), a non-profit law firm with offices in Saginaw and Flint. We represent low-income clients in a 14-county region of mid-Michigan and the Thumb.

CCJ works closely with private, non-profit human services providers throughout our service area, in efforts to remove barriers to self-sufficiency for low income individuals and families, and to improve governmental safety net programs that assist individuals who lack economic security. We also work closely with civil legal services and legal aid programs throughout Michigan.

For several years, we have operated a statewide Food and Nutrition Helpline that has assisted thousands of Michigan residents in need of help paying for food. Among other things, the Helpline helps callers assess whether they qualify for the Food Assistance Program (formerly "food stamps"), determine whether they are receiving the correct amount of assistance, and resolve difficulties they may be having in accessing assistance for which they are eligible under federal law. The most common calls to the Helpline from current Food Assistance recipients involve the inability to contact DHS caseworkers -- voice mailboxes that are full so that the client cannot even leave a message, unreturned calls, voicemail messages that simply report the caseworker is off on indefinite leave, and so on. The next most common calls are those involving paperwork that has been submitted to DHS in person, by fax, or by mail, but then has gone missing. None of this is surprising given the size of the DHS bureaucracy, the very paper-intensive nature of their work, the very high caseloads carried by DHS workers, and the frequent transfer of cases from one worker to another.

We urge you not to lose sight of the needs of low income individuals and families as you go after large scale traffickers.

### **Individual Fraud vs. Trafficking or Retailer Fraud**

**At the outset, it is important to distinguish between cases in which individuals are accused of fraud when DHS claims a household has been overpaid assistance as a result of the household intentionally withholding of information or providing incorrect information, and Food Assistance trafficking cases, in which Food Assistance benefits are exchanged for non-food items.**

The Center for Civil Justice has virtually no experience with Food Assistance trafficking cases, especially involving retailers, but we have worked with many households accused of "fraud".

Although we do not handle criminal matters, we have advised and represented households being investigated by the Department of Human Services Office of Inspector General and threatened with disqualification from receiving Food Assistance Program benefits based on alleged fraud. Most Prosecutors routinely decline to handle these cases through the criminal process when the overpayment amount is relatively small, and DHS instead pursues Food Assistance disqualifications through the administrative hearing process. In virtually all of these cases, the household has been overpaid Food Assistance and the OIG insists the household intentionally failed to report information such as increased income, while the household maintains that the information was reported but lost by DHS and that they were unable to reach a caseworker to verify that the information was received. In a few cases, the accused individual has not understood their reporting responsibilities, or has been unable to comply with those responsibilities, due to cognitive or mental disabilities, domestic violence, or other issues. Disqualifications due to overissuances deprive low eligible low income households of food help they need to make ends meet.

### **\*\*\*SB 843 OIG Authority\*\*\***

We are very concerned about SB 843 insofar as it would allow OIG investigators to carry weapons and exercise arrest powers. The proposed amendment would give the DHS Director unlimited authority to turn OIG investigators into law enforcement officers in all cases. There is **no distinction in the bill between large scale investigations of retailer fraud or trafficking, and individual cases of alleged failure to report information** resulting in an overpayment. There also is **no provision requiring appropriate training** for individuals who will be given these law enforcement powers, to ensure that the Constitutional rights of those being investigated and the safety of the public are protected.

Any increased authority for the OIG should be carefully circumscribed and accompanied by stringent training requirements.

### **\*\*\*SB 841 and 842 Penalties\*\*\***

We also are concerned about SB 841, which reduces the dollar amount threshold for treating trafficking as a felony, from \$250 to \$100. Labeling individuals as felons has significant and long term consequences when those individuals seek employment, education, or licensing. Branding an increasing number of low income individuals as felons based on transactions involving such small sums only serves to perpetuate poverty. Other crimes require a higher dollar value before they are labeled as a felony. While we do not condone the illegal use of Food Assistance, the elimination of cash assistance for families living in deep poverty exposes many parents to extreme financial pressures as they strain to meet the needs of their children. **Labeling individuals as felons because of a single mistake involving as little as \$101 in benefits is overly harsh and counterproductive.** We encourage you to retain the \$250 threshold in current law.

We understand that the proposed change in the felony threshold from \$250 to \$100 would make state law consistent with the federal statute, but the state law would remain inconsistent with – and in some cases harsher than – federal law in other respects.

**We oppose the proposed changes that would increase the penalties for Food Assistance trafficking. We encourage you to use the same maximums as are established in federal law, i.e.:**

- \$1,000 / 1 year for misdemeanor trafficking
- \$10,000/5 years for felonies involving –less than \$4,999.99
- \$250,000 and 20 years for felonies involving \$5,000 or more

The courts have sufficient latitude to impose higher penalties depending on whether an individual is being sentenced for a first or subsequent offense.

**We also urge you to adopt the provision of federal law that allows the court to permit a person convicted of trafficking to work and pay restitution prior to sentencing, and to receive a suspended sentence upon payment in full.** See 7 USC 2024(b)(2). This would accomplish the goals of punishment and restitution, while preserving critical opportunities for employment that are a win-win for both the recipient and state.

#### **\*\*\*SB 841 Forfeiture\*\*\***

**We oppose the very broad forfeiture provisions proposed in SB 841.** These provisions are written so broadly that it appears a low income family that is eligible to receive Food Assistance could lose their home if they traded their Food Assistance benefits for non-food items while in the home.

#### **\*\*\*SB 841 Aggregate Amount\*\*\***

The definition of “aggregate amount” in SB 841 unfairly defines the amount used to determine maximum penalties as the sum of (1) the benefits actually trafficked for cash or goods plus (2) the full amount of the benefits available on the Bridge Card involved in the transaction. While it makes sense to impose a penalty based on the full amount available on the Bridge Card if the Bridge Card itself is traded away, it does not make sense to impose a penalty based on all benefits available on the Bridge Card if only some portion of those benefits are unlawfully traded for non-food items.<sup>1</sup> It is also unfair to double count the amount being trafficked, making it more likely that an insignificant, non-violent, economic crime becomes a felony.

Thank you for the opportunity to testify. Please feel free to contact me if you have any questions.

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<sup>1</sup> For example, a family might have \$200 in Food Assistance and \$400 in cash assistance on their Bridge Card. They might trade \$50 of Food Assistance for \$50 worth of non-food items. Their penalty should be based on the \$50 unlawfully traded, not the \$550 they have retained or spent lawfully on other items.