



Testimony for the Judiciary Committee

***S. B. No. 57 AN ACT CONCERNING ESTABLISHMENT AND ENFORCEMENT OF CHILD SUPPORT IN TITLE IV-D CASES.**

***S. B. No. 432 (RAISED) AN ACT ESTABLISHING A DEMONSTRATION PROJECT FOR AN OFFICE OF ADMINISTRATIVE HEARINGS.**

***H. B. No. 5816 (RAISED) AN ACT PERMITTING EMPLOYERS TO COLLECT ADMINISTRATIVE FEES FOR PROCESSING INCOME WITHHOLDING ORDERS FOR CHILD SUPPORT PAYMENTS.**

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Testimony

Good afternoon, Senator McDonald, Representative Lawlor and members of the Judiciary Committee. My name is Patricia A. Wilson-Coker, Commissioner of the Department of Social Services. I am very pleased to have this opportunity to testify in favor of **S.B. No. 57, *An Act Concerning Establishment and Enforcement of Child Support in Title IV-D Cases***. This is legislation introduced in the committee at the request of Governor. I am grateful for this opportunity to discuss how the Governor's recommended legislation will strengthen the state's ability to ensure that parents provide necessary financial and medical support to their children.

This bill includes fourteen (14) provisions to strengthen the state's ability to ensure that parents provide necessary financial and medical support to their children. I will briefly discuss each of the bill's provisions and explain why its passage will help improve the self-sufficiency of Connecticut families.

(1) The first provision would authorize the IV-D agency, that is, the Bureau of Child Support Enforcement within the Department of Social Services, to obtain address and employer information on the parties to a child support case from the records of cell phone providers. The IV-D agency already has access to location information in the customer records of public utilities and cable television companies. This provision extends that access to providers serving an ever-increasing population who have only cell phones, and no longer retain the "land lines" that are subject to the existing law. Location allows establishment of paternity and child support orders, as well as enforcement of such orders. As under existing law, the IV-D agency must safeguard and limit disclosure of information to the purpose of administering the IV-D program. Entities that provide information to the IV-D agency under existing and proposed law are relieved of liability for any required disclosure.

(2) The second provision would mandate that payments of all forfeited appearance and performance bonds in IV-D cases be distributed as required by federal law. Present law requires that forfeited bonds be paid to the State in Temporary Assistance to Needy Families (TANF) cases, and to the family in non-TANF cases. Federal distribution requirements in great part reflect a "family first" approach, so the proposal will result in more money going directly to families.

(3) The third provision would authorize electronic funds transfer, also known as "EFT", for all support payments that go through the "State Disbursement Unit". The "State Disbursement Unit" is the automated centralized collection and disbursement unit required under state and federal law. The EFT provision would allow the IV-D agency to establish a direct deposit account for deposit of child support payments electronically on behalf of any recipient of child support payments who does not establish such an account on his or her own behalf. The recipient would have access to the child support through a debit card to make purchases, including money orders for the payment of rent or utility bills, or to obtain cash at automated teller machines ("ATMs").

EFT for child support payments improves customer service by making the funds available within 24-48 hours of processing. As a result, most EFT customers receive their child

support one to two days earlier than if the payments are sent by mail. EFT also eliminates the risk and worry about support checks being lost or stolen. Finally, child support EFT benefits the state by reducing the postage and handling costs of mailing checks.

(4) The fourth provision would prohibit the establishment of HUSKY contribution orders against low-income obligors, as defined in the child support guidelines regulations. This provision replaces existing language, which prohibits such orders only when they would reduce current support. The interplay of the existing statutory language with the former child support guidelines effectively limited the prohibition to low-income obligors. But under changes to the child support guidelines effective August 1, 2005 the existing language could be interpreted to prevent the establishment of HUSKY orders in all cases. That is because HUSKY orders are now a deduction from the income base for determining current support, and not a deduction from the basic child support obligation of a low-income obligor. Since the new guidelines specifically prohibit the entry of HUSKY contribution orders against low-income obligors, the existing prohibition is no longer needed. The proposed language protects low-income obligors while ensuring that HUSKY orders are entered in appropriate cases.

(5) The fifth provision would authorize recovery of the costs of genetic testing for determining paternity ONLY from fathers who are not low-income obligors, as defined in the child support guidelines. At present, the court process provides that the person requesting the tests pays for them up-front, unless indigent. If the party is indigent, the State pays, and recovers from the father if he is subsequently adjudicated. On the other hand, under the administrative process, the State pays up-front in all cases, and can only recover costs from the father if he is subsequently adjudicated and able to provide support. This proposal seeks consistent treatment in the recovery of genetic testing costs in the court and administrative processes. It would change both the court and the administrative process by exempting low-income obligors; and it would change the administrative process by authorizing recovery from both adjudicated and acknowledged fathers who are not low-income obligors.

(6) The sixth provision would expand extension of support to high school students under age 19 who live with a custodial party other than a parent. 2004 child support amendments extended support liability for unmarried eighteen-year-old high school students. The amendments were patterned on the 1994 provision for dissolution of marriage cases, which limited extended liability to cases where the child resides with a parent. This proposal seeks to clarify the rule for all cases, dissolution as well as non-dissolution, to extend support liability for all children, whether living with a parent or another caretaker.

(7) The seventh provision would apply the existing 3-year limit on past-due support provided in the paternity petition and agreement to support statutes consistently in all support cases when the obligor is the acknowledged or adjudicated father. 1985 and 1989 laws limited recovery of past-due support in paternity petition actions and cases with support agreements (for acknowledged fathers), respectively, to the three years preceding filing. But similar provisions were not added to various other support statutes that establish liability for past-due support. As a result, interpretations of the applicability and calculation of the three-year limitation have varied, resulting in confusion and uncertainty among child support agencies,

the judiciary, and the public. The proposed amendments would resolve this confusion, instituting a three-year limitation on past-due support in all cases where paternity is established either by acknowledgment or adjudication. Under the proposal, the three years would begin with the signing of the acknowledgment or the filing of the paternity petition. The limitation would not be extended under this proposal to past-due support accrued for children born to married parties.

(8) The eighth provision would expedite the execution of child support *capias* mittimus orders, and permit the expansion of system resources for serving *capias* orders. *Capias* mittimus orders are entered in child support cases to obtain the appearance of a party to a child support proceeding (normally the defendant or obligor) when that party has received notice of a proceeding but has failed to appear at a hearing. They are entered in IV-D cases by family support magistrates. Currently there are only about twenty state marshals willing to serve child support *capias* orders for the state and two special police officers employed by DSS for this function. Under existing law and system constraints, the backlog of un-served *capias* orders has grown to well over 2,000. This situation undermines the judicial authority of family support magistrates and neutralizes court-based enforcement against parents who evade their child support responsibilities and flout the court's authority to summon them. Usually this means that the family is not receiving any support.

There are two parts of this bill that would help to enhance child support *capias* executions. One would eliminate the two-person statutory cap on the number of special policemen assigned to DSS for this purpose. The other would authorize state marshals to execute *capias* orders based on a copy of the original order. While these are just two small improvements, they will help to improve the *capias* process and get more support money to families.

Regarding the second part, I urge a small amendment to section 24, which would allow the special policemen employed by DSS to serve *capias* in IV-D matters, to execute *capias* orders based on a copy of the original, the same as state marshals. I will submit proposed language for this amendment.

(9) The ninth provision would allow consideration of assets, not just present income, when determining the support obligation of an incarcerated child support obligor, and prohibit modification of the order if the obligor is incarcerated for an offense against the child or the custodial party. The 2003 law that required new or modified support orders against incarcerated or institutionalized obligors to be based on the obligor's present income has been interpreted to limit consideration of other factors when setting the support orders of such obligors. The proposal would clarify the statute's intent to permit consideration of all of the obligor's available resources in establishing or modifying support awards in such cases. The proposal would also prevent an obligor who is incarcerated or institutionalized as the result of criminal acts committed against the child or the custodial party benefiting from those acts by a reduction in ordered support for the period of incarceration or institutionalization.

(10) The tenth provision would clarify the law that requires consideration of the child support and arrearage guidelines in setting support awards to require that support amounts are determined in accordance with the guidelines in effect on the date of determination. The law

does not specify clearly that the guidelines in effect as of the date support amounts are determined are the ones to be used both for current support and arrearage determinations. The proposal would ensure uniformity of interpretation and expectation, stating clearly the rule set forth in informal advice of the Office of the Attorney General, and recognized by Family Support Magistrates.

(11) The eleventh provision would authorize the IV-D agency and cooperating agencies to obtain financial records of putative fathers as well as legally liable relatives. While federal law authorizes full utilization of location tools, including the Federal Parent Locator Service, to investigate individuals whose paternity has not yet been established, state law presently authorizes the IV-D agency to obtain location and property information only on persons already found liable for support. This proscription inhibits the ability of child support agencies to investigate alleged fathers of children receiving child support services. It also prolongs the court process of support establishment, encouraging continuances for the determination of ability to pay once paternity has been established. The IV-D agency is required to protect any information it obtains on putative fathers, and may only disclose information in connection with the administration of the child support program.

(12) The twelfth provision would require Probate Courts to notify the Attorney General of petitions for emancipation and termination of parental rights, as well as claims for paternity by a putative father, to permit the state to become a party in IV-D cases. Legal emancipation, termination of parental rights, and claims of paternity by a putative father are all actions that may substantially affect support rights and liabilities. When the State is involved in supporting or providing child support services to a child who is the subject of such an action, the State's interests may also be affected. This proposal seeks to provide an avenue for the child support agency or its legal representative to be informed of such actions so that the State can become a party. The Attorney General is already a required party in paternity cases where the child receives public assistance and in dissolution of marriage cases where a party receives public assistance or IV-D services.

(13) The thirteenth provision would authorize the child support agency to change the payee of a support order administratively in IV-D cases. Frequently individuals are referred to the agency or apply for services who are caring for children covered by a support order, but who are not the payee of the order. In the minority of such cases, the IV-D agency is authorized to change the payee of the support order administratively, directing payments to the new custodial party. Cases where this change can occur are those in which the State is a party in both cases due to receipt of public assistance benefits. In the majority of cases, however, the State is not a party to at least one of the cases. In those cases, a child support agency must bring a motion to add party plaintiff in order to redirect payments under the existing support order to the appropriate party. While the motion is pending, payments may be directed incorrectly to a party no longer caring for the child. The proposal remedies this by authorizing the child support agency to change the payee of a support order administratively in cases receiving child support services from the State, upon notice to the obligor, the obligee and the court. This change would expedite payments to the party actually caring for the child, and allow the IV-D agency to direct its efforts more efficiently toward more complex paternity and support order determinations. The proposal would not permit the

agency to switch the payee from one parent to the other, since that kind of change would require an entirely new support determination. Under the proposal, an administrative change of payee could only be made from a parent to a third party custodian, or vice versa, where the identity of the obligor remains the same.

Regarding this provision, I urge the committee to adopt an amendment to the various sections of the bill in which this provision is found, those being sections 2, 5, 12, 13, 17, and 23. I will submit proposed language for this amendment. The amendment would permit the obligor or obligee to object to the administrative payee change within ten business days following mailing of the notice. I believe this is an important protection in those few cases in which a party may misrepresent the facts on which a payee change is based. The amendment would also clarify that the notice is filed with the court or magistrate only after the 10-day objection period has expired, and add a reference to the statute that requires parties to support and paternity proceedings to file and update location and identification information with the state case registry.

(14) The fourteenth provision would require the child support agency to provide notice of a real property lien and the right to a fair hearing subsequent to filing the lien in IV-D cases. The child support lien statute presently requires notice and an opportunity for a hearing prior to securing the lien. A child support lien arises by operation of law whenever the obligor under a support order owes five hundred dollars in past-due support. This proposal would continue to afford the obligor notice and an opportunity for a hearing, but these protections would be offered only after the lien is secured by filing an instrument in the land records of the town where the property is located. This amended procedure would better protect the interests of the State and the custodial party in those instances where the obligor might otherwise convey the property subject to the lien before the lien can be perfected.

Next, I would like to briefly state my opposition to ***House Bill No. 5816, An Act Permitting Employers to Collect Administrative Fees for Processing Income Withholding Orders for Child Support Payments.*** The collection of an administrative fee for processing child support withholding orders will be burdensome to low-income obligors. Many noncustodial parents in Title IV-D cases are in low-paying jobs, and the collection of a two-dollar fee each pay period beyond the income withholding itself would strain their ability to support themselves. Finally, it would undercut years of efforts in the child support community to remove the stigma sometimes associated with income withholding, and instead encourage obligors and employers to view income withholding for child support as just a routine way of paying support. This is important, since income withholding is the most effective way of collecting regular support payments.

I also oppose ***S.B. 432, An Act Establishing a Demonstration Project for an Office of Administrative Hearings.***

This bill would transfer the administrative hearing function within DSS to a newly established agency of administrative hearings. The new agency would hear cases and render only proposed final decisions for the Commissioner's approval, modification or rejection

because neither state nor federal law gives authority to this newly established agency to render final decisions for DSS. The new agency would have 45 days to issue a decision with the possibility of a 45- day extension. The hearing record would need to be returned to DSS with the proposed decision so that the final decision could be made by the Commissioner. The Commissioner is then required to allow each party to present briefs, a step not currently required in the DSS process. The Commissioner is required to approve, modify or reject the proposed decision within 21 days, with the possibility of an additional 21-day extension. If the Commissioner does not act within 21 days, the proposed decision would become final. It is completely unclear as to how a final decision would be issued if the Commissioner rejects the proposed final decision. The time frames contemplated are certainly lengthier than the current timeframes in the Uniform Administrative Procedure Act (UAPA), to the client's disadvantage.

DSS hearing requests for 2005 numbered 10,513. Of that number 4,165 were related to the Medicaid program. Under federal law, DSS is the single state agency for the administration of the Medicaid program. As such, no other agency may have the authority to change or disapprove an administrative decision of DSS when it acts in its capacity as the single state agency. No agency may substitute its judgment for that of the Medicaid agency with respect to the applications of policies, rules and regulations issued by the Medicaid agency. While it may be permissible for another agency to conduct a Medicaid hearing and issue a proposed final decision, the final decision must be that of DSS. Thus the thousands of proposed hearing decisions involving the Medicaid program would have to be substantively reviewed as outlined above.

DSS uses one application so that a client may concurrently apply for multiple DSS programs. Thus SAGA, TFA and Food Stamp hearing requests are very often companion requests to Medicaid cases. To separate them would require an inefficient bifurcation of issues to the client's inconvenience. The bill would transfer DSS' 14 hearing officers to the newly created agency and make them administrative law judges. There would be no staff at DSS to perform the final decision making function for the Commissioner. Currently DSS Hearing Officers are authorized to issue final agency decisions. If it were deemed that additional evidence was necessary, the case would have to be sent back to the new Office of Administrative Hearings for the receipt and consideration of the additional evidence starting the process over again. The process contemplated by this bill is cumbersome, lengthy, hugely inefficient and duplicative. It would require DSS to hire new staff to conduct the review of records and proposed decisions issued by the new agency.

The Department's Office of Legal Counsel, Regulations and Administrative Hearings is well-equipped to handle the agency's hearings and does so to ensure fairness and impartiality to all clients in accordance with the UAPA. Consistently over the course of past years clients prevail in DSS hearings about one third of the time. Hearing Officers apply agency policy to cases with which they have had no involvement. A Hearing Officer is always impartial as to the facts. Agency final decisions may be appealed to Superior Court. I am not aware of a client ever appealing a DSS hearing decision based on bias on the part of a Hearing Officer. The UAPA supports agencies using their expertise to interpret and apply agency policy. DSS policy is vast, complex, detailed and often changing along with changes in state and federal

law. DSS Hearing Officers typically draw upon their familiarity with agency policies and programs gained from their experience working directly with clients in a regional DSS office through eligibility and redetermination processes. The Hearing Officers are not attorneys and are not required to be under the UAPA. They conduct hearings with a high degree of professionalism and issue clear well-written decisions. They take very seriously the impartiality required of them and have a thorough understanding of DSS regulations, as well as applicable state and federal law.

If the general assembly wishes to establish a new agency composed of administrative law judges, DSS should not be one of the agencies selected to have its hearing functions transferred. As explained above, state law may not be changed to authorize the proposed new agency to issue final decisions for DSS. Moreover, the numbers and complexity of the cases do not lend themselves to participating in a demonstration project.

Thank you again for this opportunity to testify. I would be happy to respond to any questions you may have.