



Greater Hartford Legal Aid, Inc.
Testimony before the Judiciary Committee
March 24, 2006
Submitted by Lucy Potter
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Raised Bill No. 57: An Act Concerning Establishment and Enforcement of Child Support in IV-D cases. Position: Support the Bill with amendments.

I am an attorney at Greater Hartford Legal Aid. I have represented custodial and non-custodial parents with support enforcement issues for many years. We support most of the provisions of this bill, with the following suggested changes.

Direct Deposit of child support payments.

Section 3 of this bill authorizes the Bureau of Child Support to make payments electronically into accounts accessible via debit cards. When this was first proposed last year the legal services programs raised a number of consumer rights concerns, which are largely addressed by the language of this provision. We remain concerned that some participants may end up incurring fees, especially with the use of out of network ATMs, but hope that with experience, it will help clients get payments promptly. We do not oppose the provision .

Charging cost of paternity tests

Under current law, if a putative father moves for paternity testing and is found to be indigent, the state pays for the testing, but can charge the costs against the father if he is found to be the father. Section 10 of this bill makes the state the payor, when the putative father is a "low income obligor" whether he is found to be the father or not. Under the fee waiver statute, indigency is defined as 125% of poverty. While this accords roughly with the income level of a low income obligor who has no dependents, a putative father who is also living with other children could be well below 125% of poverty, yet not qualify as a low income obligor. He could be charged with the costs under this change. If he could not front the money, he might not be able to get the test. Under current law, he would qualify to have the state pay for the testing. We'd like to see language added giving judges the discretion to authorize state payment in such situations.

Proposed language:

Section 10, line 500, reinsert: "or is otherwise indigent and unable to pay such costs"
line 517, reinsert: "or to be otherwise indigent and unable to pay such costs"

Retroactive Liability for Support

Sections 5, 13 and 16 of this bill amend provisions defining the limits of liability for retroactive support. To understand these changes, it is important to understand that acknowledgments of paternity and support orders are often not obtained at the same



time. Acknowledgments of paternity obtained in the hospital are filed with the Department of Public Health, which triggers a support action by the Bureau of Child Support Enforcement. Support petitions are initiated when BCSE has sufficient information about the father's address and income. Such petitions may be delayed in instances where the financial information suggests that the father is unemployed.

The proposed changes to these sections would establish that when the petition for support or agreement to support comes at a later point in time than the acknowledgment of paternity, liability for past support would run back three years before the execution of the acknowledgment of paternity, rather than from the filing of the support petition or agreement to support.

The three year retroactive limitation on support liability represents a compromise that the legislature adopted once the previous statute of limitation was found unconstitutional. *Pickett v. Brown*, 462 U.S. 1 (1983.) The legislature amended the paternity statute, 46b-160, by allowing the filing of a paternity petition up until the child's eighteenth birthday. But, in recognition of the principle behind the statute of limitations, the provision also limited retroactive liability to three years before the granting of the petition for paternity. (This was later amended so that retroactive liability runs from the date of *filing* the paternity petition.) Agreements to support were also limited retroactively to the three years before the filing of the agreement. But the legislature never specifically addressed the retroactive liability for support petitions filed separately from petitions for paternity.

These changes make retroactive liability run from the date of the execution of an acknowledgment, for both agreements to support, and judgments pursuant to a petition for support, no matter when the support petition is initiated. This undercuts the compromise struck previously, when the legislature balanced eliminating the statute of limitations by restricting retroactive liability.

If there is little delay between the acknowledgment of paternity and the entry of the support order, this will not pose a problem. But when there is such a delay it will make it difficult for an obligor to marshal the necessary financial evidence from distant periods of time. When the delay results, as it may, because BCSE determines the obligor has no significant ability to pay, the retroactive order could be based on a higher earning capacity that, as was known to BCSE, he did not have at that time. Moreover, if he contributed to the support of the children during this time, but was not under a support obligation, he is not likely to be able to document such expenses, and so may not receive credit for them. Although he may have signed an acknowledgment of paternity, that is quite different from understanding the actual liability that a support order might entail, and the fact that contributions made prior to the entry of such an order should be documented and credited against an arrearage order.

Section 13 of this bill doesn't merely clarify the period of retroactive liability, it significantly extends retroactive liability for agreements to support. It makes the retroactive liability run from the execution of the acknowledgment of paternity, rather than the filing of an agreement to support as the statute currently provides.

Proposed Language:

Section 5 , lines 273 -278, amending section 17b-745:

- The father's liability for past-due support of a child born out of wedlock shall be limited to the three years next preceding either ~~(i) the execution of an acknowledgment of paternity in accordance with section 46b-172, as amended by this act, or (ii) the filing of a paternity petition under section 46b-160 or section 46b-162, whichever occurs first.~~
THE FILING OF A PETITION PURSUANT TO THIS SECTION

Section 16, lines 787-792, amending section 46b-215

In the case of a child born out of wedlock whose parents have not intermarried, The father's liability for such support shall be limited to the three years next preceding either ~~(i) the execution of an acknowledgment of paternity in accordance with section 46b-172, as amended by this act, or (ii) the filing of a paternity petition under section 46b-160 or section 46b-162, whichever occurs first.~~ THE FILING OF A PETITION PURSUANT TO THIS SECTION

Section 13, lines 631-633, amending 46b-172, keep statute as presently worded:

[Past due] Past-due support in such cases shall be limited to the three years next preceding the date of the { filing of such agreements to support } ~~execution of the acknowledgement of paternity.~~