



Greater Hartford Legal Aid, Inc.

Testimony before Human Services Committee

March 10, 2008

Submitted by Lucy Potter
Greater Hartford Legal Aid

S.B. 667: An Act Concerning Establishment, Modification and Enforcement of Title IV-D Child Support Orders, oppose specified changes in sections 5, 15, 19, 22, 27, 28 and 33

I am an attorney at Greater Hartford Legal Aid. I have represented low income Hartford area residents for many years. I have also served on the Fatherhood Advisory Council and the last four Child Support Guideline commissions. I am not here speaking on behalf of either of these groups today, but rather on behalf of Greater Hartford Legal Aid's low income clients.

This lengthy bill makes changes to an array of child support statutes. I do not object to most of the bill, but do have concern about three specific changes. While they may appear to be in the nature of "technical changes," they could have important ramifications for individuals in the system...

Over the past twenty years, the overall mission of child support enforcement has shifted from a model in which the first priority was to recover welfare costs, to the present administration which better balances the needs of families. The child support magistrate system, where support orders are established and enforced, processes a very high volume of cases. It is a legally imbalanced system, with legal representation on behalf of the interests of the State, but much less representation on behalf of either parent, when their interests do not align with those of the state. Connecticut statutes have been improved to add some protections for custodial and noncustodial parties vis a vis the interest of the state. For example, changes have been made to assure that child support arrearages reflect ability to pay, to limit orders for those who have documented disabilities, to limit liability during periods when the obligor is institutionalized and allow compromise of arrearages owing to the state for successful participation in fatherhood programs. Such changes are now considered "best practices" that all states are encouraged to follow as states review the effect of the support enforcement system on the population re-entering from incarceration. (See for example, "Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents," New Jersey Institute for Social Justice, February 2005 <http://www.njisj.org/reports/makingworkpay.pdf>; Levingston, Kristen D. and Turetsky, Vicki, Debtor's Prison—Prisoner's Accumulation of Debt as a Barrier to Reentry, Center for Law and Social Policy, January 30, 2008.

http://www.clasp.org/publications/debtors__prison2007.pdf

A number of the proposals included in this bill run counter to these enlightened trends of recent years.

Section 33. This section deals with establishing support against an individual who has been determined to be disabled. If the individual receives SSI or SAGA cash, that means he or she also has very limited income. 46b-215b was amended in 2003 to bar imputation of income when an obligor has been determined disabled by a state or federal disability determination entity. Magistrates used to impute income to SSI recipients, under the deviation criterion "earning capacity" following a Connecticut Supreme court decision that disallowed consideration of SSI income under the 'best



interests of the child” deviation criterion, because it was otherwise excluded from consideration under the guidelines. Marrocco v. Giardino, 255 Conn. 617(2001)

The proposal here, according to the explanation that accompanied its submission to OPM, seeks to clarify that income other than SSI can be considered in the guideline determination, in accordance with guideline principles. Existing law permits just that. Because the proposed language intends to convey what is already implicit, it invites a broader misinterpretation that would run afoul of a line of Connecticut Supreme Court decisions “so as to be inconsistent with and, in effect, to govern the application of the guidelines themselves.” Favrow v. Vargas, 222 Conn. 699 716, (1992) quoted with approval in Marrocco v. Giardino, 255 Conn. 617, 731

Recommendation, delete lines 1339, following “amounts,” through 1340.

Sections 5, 15, 19, 22 and 28. Various revisions over the last few years have established a uniform policy limiting retroactive liability for arrearages to three year prior to entry of the order. These sections erode that policy by allowing for liability for earlier periods upon a finding that the obligor willfully avoided payment.

Arrearages that predate entry of the initial order almost always are payable to the State of Connecticut. While there is identical legal liability to the custodial parent, it is not the practice for parties to seek or be awarded these arrearages. The proposed language will have the effect of increasing liability to the state of Connecticut, for retroactive periods. It is always difficult, especially for an unrepresented person, to reconstruct such history as needed to raise any potential defenses. The three years retroactive limitation that has finally been implemented across the board should be left to stand.

Recommendation: delete the following language from sections 5, 15, 19, 22 and 28:

“unless the court or family support magistrate finds that such parent engaged in a pattern of willfully avoiding payment of support while having an ability to pay. In such cases, liability for past-due support may also be found for periods of time prior to the three years during which such parent willfully avoided such payment.”

Section 5, 27 and 28, deletes language from the statute that made “neglect or refusal to support” a pre-condition for obtaining an order for an arrearage that pre-dates entry of the order. This is language that dates back over a century and should remain in the statutes. Embodied in this language is the established principle that the obligor must both have an awareness of the liability and an ability to pay before an obligation will be established retroactively. Eliminating this longstanding language would fundamentally change the nature of retroactive liability, and raise due process concerns in situations where the obligor had no knowledge of the child’s existence prior to commencement of the action for support.

Recommendation: do not delete:

Lines 266-67 “In the determination of child support due based on neglect or refusal to furnish support prior to the action, the”

Lines 1054-55 “who neglects or refuses to furnish necessary support to”

Lines 1069-70 “because of neglect or refusal to furnish support”