

Legal Assistance Resource Center

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S.B. 667 -- Title IV-D child support orders

Human Services Committee public hearing -- March 11, 2008

Testimony of Raphael L. Podolsky

Recommended Committee action: AMENDMENT OF THE BILL

We are generally in support of this DSS bill, which makes a number of minor changes to child support collection procedures. There are, however, three portions of the bill that we believe are undesirable, and we urge the Committee to modify them:

- In Section 33(b), put a period after "amounts" in line 1338, delete the rest of line 1338, and delete all of lines 1339-1340.

Lines 1339-1340 are unnecessary, are likely to cause confusion, and could result in the unintentional misinterpretation of a prior statutory amendment. Under existing law as construed by the courts, a family support magistrate cannot require an obligor receiving disability benefits under SSI, Social Security, or SAGA to prove that he is disabled. Nor can the magistrate use deviation criteria to ignore an agency determination of disability. Lines 1339-1340, however, suggest that the magistrate can consider "applicable deviation criteria" other than the criterion of earning capacity to ignore the obligor's disability. If such criteria are, indeed, applicable and not based on the disability, the law already permits such consideration. This language, however, could erroneously lead a magistrate or court to believe that the legislature intends to overrule Marrocco v. Giardino, 255 Conn. 617 (2001), the Connecticut Supreme Court case that prevents the use of deviation criteria to circumvent a finding of disability. Since this new language is unnecessary and could cause misunderstanding, it should be deleted from the bill.

- In Sections 5, 15, 19, 22, and 28, delete the proposed exception to the clear rule that liability for past-due support cannot go back more than three years.

The bill would make an exception to the existing three-year lookback period for "willfully avoiding payment" of support. This is an exception that will swallow the rule. In practice, it will always be hard to distinguish a "mere" failure to pay from a willful avoidance of paying. The three-year lookback recognizes that creating huge uncollectible arrearages is counterproductive. Moreover, such arrearages are usually for repayment to the state and not to the custodial parent. This proposed exception will do much more harm than good.

- In Sections 5, 27, and 28, restore the reference to "neglect or refusal to furnish support" as the basis for retroactive support orders.

This prerequisite to certain support orders has been in the statutes for more than a century. It is part of the rule that retroactive support orders require negligence or some other fault by the obligor – in contrast, for example, to a case in which the mother never told the father of the child's existence. There is no sudden need for this change after all these years, and it risks unfair (and in some circumstances possibly unconstitutional) results.