Bill as Introduced

HB 447 – AS INTRODUCED

2003 SESSION

03-0651
05/10

HOUSE BILL ***447***

AN ACT limiting retroactive child support awards under the uniform act on paternity.

SPONSORS: Rep. Bickford, Straf 68

COMMITTEE: Children and Family Law

ANALYSIS

This bill provides that, in an action to establish paternity, child support may be retroactive until the child is 3 months old. After the child is 3 months old, child support may be retroactive to the date of service of the petition upon the respondent.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 447 – AS INTRODUCED

03-0651
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT limiting retroactive child support awards under the uniform act on paternity.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Uniform Act on Paternity; Limitations on Recovery From Father's Estate; Limitations on Retroactive Support Awards. Amend RSA 168-A:3 to read as follows:

168-A:3 Limitations ***on Retroactive Support Awards and*** on Recovery From Father's Estate.

I. If the child is 3 months old or older, the father's liability for past education and support under RSA 168-A:1 is limited to amounts accrued from the date of service of the petition on the father or, if the court finds that the father is willfully avoiding service, from such date as the court determines is just and equitable. There is no limitation on retroactive support if the child is less than 3 months old.

II. The obligation of the estate of the father for liabilities under this chapter is limited to amounts accrued prior to his death and such sums as may be payable for dependence under other laws.

2 Effective Date. This act shall take effect January 1, 2004.

LBAO
03-0651
2/4/03

HB 447 FISCAL NOTE

AN ACT limiting retroactive child support awards under the uniform act on paternity.

FISCAL IMPACT:

The Department of Health and Human Services stated this bill will decrease state revenue by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on state, county and local expenditures or county and local revenue.

METHODOLOGY:

The Department indicated this bill would limit retroactive child support awards in actions to establish paternity. Under this bill, once a child becomes 3 months old, support may be retroactive only to the date of service of the petition on the assumed father. The Department assumed this bill will preclude recovery of public assistance expended prior to the date of service for children three months old or older. The Department does not have the data necessary to estimate the amount of public assistance money that would not be recovered.

Amendments

Rep. Bickford, Straf 68
March 19, 2003
2003-0868h
05/10

Amendment to HB 447

Amend the bill by replacing all after the enacting clause with the following:

1 New Section; Uniform Act on Paternity; Limitation on Child Support. Amend RSA 168-A by inserting after section 3 the following new section:

168-A:3-a Limitation on Retroactive Support Award. If the child is 3 months old or older, the father's liability for past education and support under RSA 168-A:1 is limited to amounts accrued from the date of service of the petition on the father or, if the court finds that the father is willfully avoiding service, from such date as the court determines is just and equitable. There is no limitation on retroactive support if the child is less than 3 months old.

2 Effective Date. This act shall take effect January 1, 2004.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 447 Date 2/5/03

Committee Children & Family Law

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Jim Wheeler	Seabrook NH		SoH	✓	
M Geanoulis	New Castle	436-8810	NCFC	✓	

Hearing Minutes

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 447

BILL TITLE: limiting retroactive child support awards under the uniform act on paternity.

DATE: Feb. 5, 2003

LOB ROOM: 206 **Time Public Hearing Called to Order:** 2:35 p.m.

Time Adjourned: 3:00 p.m.

(please circle if present)

Committee Members: Reps. Moran, McRae, J. Brown, Arnold, Bickford, Greenberg, D. Bouchard, Itse, Furman, Gargasz, Dokmo, Ouellette, Hallyburton, J. Allen, E. Blanchard, Grassie, B. Richardson, Allison, T. Pratt, L. Johnson and Gile

Bill Sponsors: Rep. Bickford

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. David Bickford, New Durham, prime sponsor- This bill would affect unwed parents. To make a claim many years later for support retroactively does not seem appropriate unless the father willfully avoids service. Rep. Hallyburton wondered whether this in the appropriate statute for this bill.

Michael Geanoulis, National Congress for Fathers and Children, New Castle- Supports. He feels fathers should be involved with their children.

Respectfully Submitted,

Barbara Hull Richardson

Rep. Barbara Hull Richardson, Clerk

Testimony

HB 4475

FILE

DIVORCE LITIGATION

Volume 11/Number 12 December 1999

PATERNITY SUPPORT RETROACTIVITY AND STATUTES OF LIMITATION

See California

Ronald W. Nelson
Chair-Elect, Kansas Bar Association, Family Law Section

Over the past few years significant attention has been paid to and numerous scholarly articles written about child support and the guidelines for child support mandated by federal law. Few, if any, articles exist analyzing, on a national scope, the existing limitations on the time to bring a parentage action to secure past support obligations and the extent of recovery of past support obligations that a parent can obtain under the various state laws.

ALSO IN THIS ISSUE

Paternity Support Retroactivity and Statutes of Limitation: A State-by-State Survey
by Ronald W. Nelson ..... Page 240

Liability of an Attorney or Spouse for Torts Committed by a Private Detective
by Laura W. Morgan ..... Page 247

The Ethical Dilemma Posed by Surreptitiously Obtained Evidence
by Amy G. Gore ..... Page 252

Statutes of Limitation

The first issue that must be addressed is the time within which an action can be filed to establish parentage. Although some states' statutes provide a specific limitation on the time within which a child or another person on behalf of the child can file an action to establish paternity for all purposes, the vast majority specifically exclude from the limitation an action for the purposes merely of establishing the fact of parentage (without any concomitant request or ability to request child support or reimbursement).

In the early history of the United States until the late 1960s, states sometimes placed severe limitations on the ability of children to establish a paternity relationship in those situations in which no marriage existed between the child's mother and father. The primary rationales for these statutes were the punishment of immoral behavior by the parents and the sacrosanct nature of procreation within the marital relationship. Starting in 1968, however, the United States Supreme Court decided a series of cases and found that many of those existing statutes unconstitutionally discriminated against children

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born outside of a marital relationship. The Court determined that the Equal Protection Clause mandated that states treat those children no differently than children of a marital relationship. Accordingly, many of the statutory schemes that had been set up to deter birth outside the marriage by denying the child of that non-marital relationship the same rights as those enjoyed by children of a marital relationship were struck down as unconstitutional. The lack of logical justification for those statutes and the failure of them to pass constitutional muster was expressed by the Supreme Court in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 92 S. Ct. 1400, 1406-07 (1972):

> The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage. But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where—as in this case—the classification is justified by no legitimate state interest, compelling or otherwise.

Accordingly, every state presently provides either by statute or case law that a child has an extended time in order to establish parentage. A majority of the states provide that the child has at least one year past attaining the age of majority to file an action to establish parentage; a significant minority of states provide, however, that paternity can only be established (for non-probate reasons) to the age of majority.

DIVORCE LITIGATION

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Nature of Retroactive Support Obligation

The second area about which there is a substantial difference among the states is the manner by which the retroactive support obligation is determined. Under this heading, there are basically two different ways in which the states deal with the matter. First, there are states that allow only reimbursement of expenses incurred on behalf of the child prior to the date on which the action to establish paternity and to begin child support was filed. The parent seeking recovery from the other parent is allowed only to recover some portion of those expenses that were actually incurred in raising and supporting the child. This scheme puts a substantial burden on the parent seeking the reimbursement because it requires that the parent produce specific evidence of the nature and amounts of money expended for or on behalf of the child during some period of time between birth and the filing of the action. While the statutes provide different specifics as to what is included in expenses that may be subject to reimbursement, those statutes that make any reference to expenses often refer to costs pertaining to the child's health, education, and general welfare. Most, if not all, provide that, in addition to any other reimbursement for support expenses incurred, a mother may recover any moneys paid for prenatal care and birth expenses.

A few states allow the imposition of retroactive support with the idea that merely allowing recovery of moneys expended on a child which can be shown by specific evidence does not adequately take into consideration all those moneys actually paid out. These states provide that the actual expenses which can be shown as having been paid have little or no importance to a determination of the retroactive support obligation. Instead, the retroactive liability is determined in the same way the courts of those states determine present and future support—by application of the child support guidelines. The income used to calculate child support under the guidelines is not the amount currently earned, but that amount earned for the particular year for which retroactive support is sought. Many of these statutes allow additional deviation in the assessment of past support that is not permitted in the assessment of current and future support.

Although most states use the terminology "support" rather than "reimbursement" in their statutes, some states have interpreted the phrase narrowly to require that the party seeking imposition of the retroactive support obligation prove the actual amounts of necessary expenses incurred for support of the child. The parent may not rely on the parent's incomes in order to calculate a retroactive award of child support.

Limitation of Retroactivity

The third issue addressed by the statutes for determination of parentage relating to support is the time period prior to the filing of the action that the state allows the child, or parent on behalf of the child, to seek reimbursement. Again, the states have taken different avenues in attempting to strike a balance between the need to provide support for a child outside of a marital relationship and the perceived inequity of the potential of a delayed judgment for a retroactive child support obligation.

A majority of the states have apparently determined that the balance is better struck by allowing the obligation for support of a child to reach back to the date of birth of the child. Under these provisions, the state's courts have the flexibility of trying to look at equitably adjusting the expenses of raising the child and providing some sharing of the support obligation for the entire minority of the child.

While the majority of states allow a retroactive support obligation to stretch from the date of filing of the action back to the date of birth (which may

also include a provision that the court may also order all or a portion of prenatal and birth expenses paid by one or both parents), a significant number of states place limitations on a parent's liability for past support obligations—even if no support has previously ever been paid. The presumed rationale of this kind of limitation on liability is the encouragement of prompt action by the child or a parent who may seek child support against the other parent, as well as a possible perception that such a policy might discourage agreements between parents in which a non-residential parent agrees not to have contact with the child in exchange for a supposed agreement not to seek child support on which the residential parent later reneges when the child is almost at the age of majority and a potentially huge retroactive support order may result.

Paternity Support Retroactivity and Statutes of Limitation: A State-by-State Survey

State	Uniform Act (year effective)	Time Within Which Action Must Be Filed	Limitation on Retroactive Recovery (from date of filing of action)	Type of Recovery	Statutory Reference
AL	UPA 1973 (1984)	<Age 19	2 years	Past education and support	Ala. Code § 26-17-8
AK	No	Minority	2 years	Support[1]	Alaska Stat. § 9.10.140; Alaska R. Civ. P. 90.3
AZ	No		3 years[2]	Support[3]	Ariz. Rev. Stat. § 25-809
AR	No		Birth	Reimbursement	Ark. Code Ann. § 9-10-110
CA	UPA 1973 (1976)	Majority	Date of filing[4]	Support	Cal. Fam. Code § 4000
CO	UPA 1973 (1977)	2 years after majority	Birth	Support	Colo. Rev. Stat. § 14-14-104
CT		Majority	Birth	Reimbursement	Conn. Gen. Stat. § 46b-171
DE	UPA 1973 (1983)	Majority	Birth	Support	Del. Code Ann. tit. 8, §§ 501, 806, 812

DIVORCE LITIGATION

State	Uniform Act (year effective)	Time Within Which Action Must Be Filed	Limitation on Retroactive Recovery (from date of filing of action)	Type of Recovery	Statutory Reference
DC	No	<21 years	Birth	Support	D.C. Code Ann. tit. 16, § 916[5]
FL	No		24 months[6]	Support	Fla. Stat. Ann. §§ 742.031, 61.30(17)
GA	No				
HI	UPA 1973 (1975)	3 years after majority		Support	Haw. Rev. Stat. § 584-7
ID				Reimbursement of support	Idaho Code § 7-1121
IL	UPA 1973 (1985)	2 years after majority	Birth[7]	Support	750 Ill. Comp. Stat. Ann. 45/9, 45/14
IN	No		Birth	Support	Ind. Code § 31-14-11-5
IA	No	1 year after majority	Birth	Support	Iowa Code §§ 600B.1, 600B.2, 614.8
KS	UPA (1985)	3 years after majority	Birth	Reimbursement	Kan. Stat. Ann. §§ 38-1115, 38-1121
KY	U.A. Pat. 1960 (1964)	Majority	>Age 4[8]	Support	Ky. Rev. Stat. Ann. § 406.031
LA	No	Majority	Filing of action	Reimbursement	La. Rev. Stat. Ann. § 9:399
ME	U.A. Pat. 1960 (1967)	<18 years	6 years	Support	Me. Rev. Stat. Ann. tit. 19A, § 1554
MD	No				
MA	No	<18 years	Birth	Support	Mass. Gen. Laws Ann. § 209C-9
MI	No	<18 years	6 years[9]	Support	Mich. Comp. Laws §§ 722.714, 722.717

DIVORCE LITIGATION

State	Uniform Act (year effective)	Time Within Which Action Must Be Filed	Limitation on Retroactive Recovery (from date of filing of action)	Type of Recovery	Statutory Reference
MN	UPA 1973 (1980)	1 year after majority	2 years	Reimbursement	Minn. Stat. §§ 257.58, 257.66
MS	U.A. Pat. 1960 (1962)	1 year after majority	1 year	Support	Miss. Code Ann. §§ 93-9-11, 93-9-29
MO	UPA 1973 (1987)	<18 years[10]	5 years	Reimbursement	Mo. Rev. Stat. § 210.828
MT	UPA 1973 (1975)	2 years after majority	Birth	Reimbursement	Mont. Code Ann. §§ 40-6-16, 40-6-108
NE	No	<18 years	Birth	Reimbursement	Neb. Rev. Stat. §§ 43-1402, 43-1411
NV	UPA 1973 (1979)	3 years after majority	Birth[11]	Reimbursement	Nev. Rev. Stat. § 126-161
NH	U.A. Pat. 1960 (1971)	<18 years	Birth[12]	Support	N.H. Rev. Stat. Ann. § 168A-1, 168A-12
NJ	UPA 1973 (1983)	5 years after majority	Birth	Reimbursement	N.J. Stat. Ann. §§ 9:17-45, 9:17-55
NM	UPA (1986)	3 years after majority	Birth	Support	N.M. Stat Ann. §§ 40-11-15, 40-11-23
NY	No	<21 years	Birth	Reimbursement[13]	N.Y. Consol. Laws §§ 686-517, 686-545
NC	No	<18 years	Birth	Reimbursement[14]	N.C. Gen. Stat. §§ 49-14, 49-15
ND	UPA 1973 (1975)	3 years after majority	Birth	Support	N.D. Cent. Code §§ 14-17-06, 14-17-14

DIVORCE LITIGATION

State	Uniform Act (year effective)	Time Within Which Action Must Be Filed	Limitation on Retroactive Recovery (from date of filing of action)	Type of Recovery	Statutory Reference
OH	UPA 1973 (1982)	5 years after majority	Birth	Reimbursement	Ohio Rev. Code Ann. §§ 3111.05, 3111.13
OK	No	<18 years	5 years	Reimbursement[15]	Okla. Stat. tit. § 10, § 35
OR	No			Support	Or. Rev. Stat. Ann. § 109.155[16]
PA	No	<18 years			Pa. Cons. Stat. Ann. § 4343
RI	U.A. Pat. U. Par. A. 1973 (1979)	4 years after majority	6 years	Support	R.I. Gen. Laws §§ 15-8-4, 15-8-6, 15-8-7
SC	No				
SD	No	<18 years	Birth[18]	Support	S.D. Codified Laws § 25-8-5
TN	No	3 years after majority	Birth	Support	Tenn. Code Ann. § 36-2-311
TX	No	2 years after majority	Birth	Support	Tex. Code Ann. § 160.005
UT	U.A. Pat. 1960 (1965)		4 years	Support	Utah Code Ann. §§ 78-45a-1, 78-45a-3
VT	No	3 years after majority			Vt. Stat. Ann. §§ 15-302, 15-306
VA	No		None	Reimbursement	Va. Code Ann. § 20-49.8
WA	UPA 1973 (1989)		5 years[19]	Support	Wash. Rev. Code § 26.26.30

DIVORCE LITIGATION

State	Uniform Act (year effective)	Time Within Which Action Must Be Filed	Limitation on Retroactive Recovery (from date of filing of action)	Type of Recovery	Statutory Reference
WV	No	<21	Birth	Support	W. Va. Code §§ 48A-6-1, 48A-6-3
WI	UPA	<19 years[20]	Birth	Reimbursement	Wis. Stat. § 767.51(4)
WY	UPA 1973 (1977)	3 years after majority[21]		Reimbursement	Wyo. Stat. Ann. § 14-2-105

Notes

1. "Requiring proof of actual costs can lead to prolonged disputes when the interests of custodial parents in maximizing support may encourage deception and the interests of non-custodial parents in minimizing support may disadvantage the children. Rule 90.3 itself is relatively well defined. Its standards are well known to the trial courts, and reported appellate decisions interpret it. Attempts to calculate actual out-of-pocket expenses are not only difficult, but are also likely to underestimate incremental costs attributable to support. Therefore, we hold that, absent extraordinary circumstances, courts should apply the calculation methodology of Rule 90.3 to determine amounts to be reimbursed to custodial parents for support of children during periods not covered by support orders." *Vachon v. Pugliese*, 931 P.2d 371, 381-82 (1996).

2. ". . . unless the court makes a written finding of good cause after considering all relevant circumstances." Ariz. Rev. Stat. § 25-809.

3. Court shall also award "actual costs of the pregnancy, childbirth and any genetic testing and other related costs." Ariz. Rev. Stat. § 25-809.

4. However, if public support has been expended, retroactive support may be awarded for a period of up to three years prior to institution of the matter.

5. *J.A.W. v. D.M.E.*, 591 A.2d 844, 847-48 (D.C. 1991) ("Appellant next claims that the trial judge abused his discretion by denying her request to make the child *support* award *retroactive* to the birth of the child. Although there is no express statutory authority for awarding *retroactive support* for children born out of wedlock, this court has previously held that such children may be awarded *support retroactive* at least to the date of service of the petition for *support*. *Cyrus v. Mondesir*, 515 A.2d 736 (D.C. 1986). Until today we have not had occasion to go further back than that, but neither *Cyrus* nor any other case precludes us from doing so." (emphasis added)).

6. In initial child support determination, whether parentage or dissolution, the court has discretion to award child support retroactive to the date when parents did not reside together in the same house with the child.

7. "In an action brought within two years after a child's birth, the judgment or order may direct either parent to pay the reasonable expenses incurred by either parent related to the mother's pregnancy and the delivery of the child."

8. "[L]iability for child support shall not predate the initiation of action taken to determine paternity as set forth in KRS 406.021 if the action is taken four (4) years or more from the date of birth." Ky. Rev. Stat. Ann. § 406.031.

9. "However, if proceedings under this act are commenced after the lapse of more than 6 years from the birth of the child, an amount shall not be awarded for expenses or support that accrued before the date on which the complaint was filed unless [certain conditions] exist." Mich. Comp. Laws § 722.717(2).

10. "Action where child has no presumed father may not be brought more than eighteen years after birth. . . except that an action to determine the existence of the father and child relationship as to a child with no presumed father . . . may be brought by the child within three years after such child attains the age of eighteen." Mo. Rev. Stat. § 21-828.

11. The court may "[d]irect the father to pay the reasonable expenses of the mother's pregnancy and confinement . . . [and t]he court may limit the father's liability for past support of the child to the proportion of the expenses already incurred which the court deems just." Nev. Rev. Stat. § 126-161.

12. ". . . for the reasonable expense of the mother's pregnancy and confinement and for the education and necessary support of the child."

13. "The order may also direct each parent to pay an amount as the court may determine and apportion for the support of the child prior to the making of the order of filiation, and may direct each parent to pay an amount as the court may determine and apportion for (i) the funeral expenses if the child has died, (ii) the necessary expenses incurred by or for the mother in connection with her confinement and recovery, and (iii) such expenses in connection with the pregnancy of the mother as the court may deem proper."

14. *Retroactive* child *support* is based on the non-custodial parent's share of the reasonable actual expenditures made by the custodial parent on behalf of the child. *Hicks v. Hicks*, 34 N.C. App. 128, 237 S.E.2d 307, 309 (1977); *Tidwell v. Booker*, 290 N.C. 98, 225 S.E.2d 816, 827 (1976). The amount of *support* which the non-custodial parent "should have paid" based on an application of the Guidelines is not the appropriate test of liability. *See Hicks*, 237 S.E.2d at 309; *Lawrence v. Tise*, 107 N.C. App. 140, 419 S.E.2d 176 (1992).

15. ". . . shall be ordered to pay all or a portion of the costs of the birth and the reasonable expenses of providing for the child, provided that liability for support provided before the determination of paternity shall be imposed for five (5) years preceding the filing of the action." Okla. Stat. tit. 10, § 35."

16. Or. Rev. Stat. § 109.155 is not effective until December 31, 2001. Until that time, § 26, Chapter 746, 1997 Oregon Laws, as amended by § 57a, Chapter 704, 1997 Oregon Laws, is effective and is automatically repealed on December 31, 2001.

17. Rhode Island has adopted the Uniform Paternity Act but has included some significant provisions of the Uniform Parentage Act of 1973.

18. "In the absence of a previous demand in writing served personally or by registered or certified letter addressed to the father at his last known residence, not more than six years' support furnished before

bringing an action may be recovered from the father." S.D. Codified Laws § 25-8-5.

19. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the court under this chapter shall not be included within the five-year period.

20. 19 years of age and pursuing a high school education. Wis. Stat. §§ 767.51, 767.25. "Essentially, if a child files a *paternity* action before graduating from high school, as Brad Michael did, under Wis. Stat. Sections 767.51(3) and (4), the father is liable for past *support* from the child's birth until the child reaches age 19 or obtains his or her high school diploma. However, if the child files a *paternity* action when she is less than 19 years old but after graduating from high school, as Roberta Jo did, under settled law the father is not liable for any past child *support* payments." *In re Paternity of Roberta Jo W.*, No. 96753 (Wis. May 22, 1998).

21. Statute of limitations is five years from date of birth if paternity action is not brought by or on behalf of the child or the state department of family services.

HB 944-B

FILE COPY

Portsmouth Family Division

No. 2001-409

IN THE MATTER OF STATE OF NEW HAMPSHIRE EX. REL. VICKIE REITENOUR AND WENDELL MONTGOMERY

Submitted: July 25, 2002

Opinion Issued: September 18, 2002

Krans and Krans, of Dover (Hamilton R. Krans, Jr. on the brief), for the petitioner.

Coughlin, Rainboth, Murphy & Lown, P.A., of Portsmouth (Kenneth D. Murphy on the brief), for the respondent.

Philip T. McLaughlin, attorney general (Suzan M. Lehmann, assistant attorney general, on the brief), for the State, as amicus curiae.

Duggan, J. The respondent, Wendell Montgomery, appeals a decision of the Portsmouth Family Division (DeVries, J.) ordering him to pay retroactive child support dating to the birth of his minor child who was born out of wedlock. We affirm.

In March 2000, the department of health and human services (DHHS) filed an action under RSA chapter 168-A (2002), the Uniform Act on Paternity, on behalf of the petitioner, Vickie Reitenour, alleging that the respondent was the father of an infant born out of wedlock on July 31, 1986. DHHS requested the court to declare the respondent to be the father of the child and to order him to pay both prospective and retroactive child support. DHHS subsequently moved to amend its petition to include claims under RSA chapter 546-B (Supp. 2001), the Uniform Interstate Family Support Act, which the court granted. After a hearing, the court ordered the respondent to pay both prospective and retroactive child support, and granted the petitioner reimbursement for the expenses associated with bringing the action.

Although the respondent does not dispute that he is the father of the child, he argues that the trial court erred in: (1) ordering retroactive child support; (2) not finding the petitioner guilty of laches; (3) admitting into evidence two letters from state agencies; (4) not requiring that any retroactive payments be held in trust for the child; and (5) not requiring specific receipts and bills to support an award of costs and attorney's fees. We address each argument in turn.

The respondent first argues that neither RSA chapter 168-A nor RSA chapter 546-B authorizes a court to order retroactive child support. RSA chapter 168-A sets forth the procedure by which a mother, child, or public authority chargeable by law with the support of the child may determine the paternity of a child born out of wedlock. See RSA 168-A:2; see also Opinion of the Justices, 131 N.H. 573, 576 (1989). Once

paternity has been established, the father of a child born out of wedlock is liable for the "reasonable expense of the mother's pregnancy and confinement and for the education and necessary support of the child." RSA 168-A:1. The plain language of this statute indicates a legislative intent to make fathers retroactively liable for some expenses because once paternity has been established, the father of a child born out of wedlock may be liable for past expenses associated with the mother's pregnancy and confinement. See id. Additionally, the applicable statute of limitations permits proceedings to be brought within eighteen years of the date of birth of the child in question. See RSA 168-A:12. As this action is not barred by the statute of limitations, it would appear that the trial court was authorized to order the respondent to pay retroactive child support.

The respondent does not dispute that the petitioner was permitted to bring this paternity action nor does he dispute the trial court's authority to order him to pay for the necessary support and education of his child. Instead, he argues that "[t]he ability of a mother to commence a paternity action is not synonymous with the ability to obtain eighteen (18) years of retroactive child support." Thus, while the petitioner was permitted to bring an action under this statute to determine paternity and to establish his prospective child support obligations, the respondent argues that RSA chapter 168-A "does not contain language which would allow child support to be paid retroactively to the birth of the child."

In support of this argument, the respondent points to Maine's Uniform Act on Paternity, which provides an eighteen-year statute of limitations to establish paternity, yet specifically limits a father's liability for past education and support to the six-year period preceding the commencement of an action. See Me. Rev. Stat. Ann. tit. 19-A, § 1554 (West 1998). A review of the legislative history of RSA chapter 168-A reveals that our legislature considered adopting a similar statute, but did not do so. See HB 663 (1971).

When HB 663, an act adopting the Uniform Act on Paternity, was introduced in the house, proposed RSA 168-A:3 limited a father's liability for past education and necessary support to "a period of four years next preceding the commencement of a proceeding to recover said expenses." (Emphasis added.) The senate, however, proposed amending RSA 168-A:3 by substituting the words "one year" for the words "four years," so that the proposed statute as amended read: "The father's liabilities for past education and necessary support are limited to a period of one year next preceding the commencement of a proceeding to recover said expenses." N.H.S. Jour. 1647-50 (1971) (emphasis added). The senate also added RSA 168-A:13, which contained a statute of limitations that stated: "No proceeding under this chapter shall be maintained unless commenced within one year of the date of birth of the child in question." In explaining these proposed amendments, Senator Nixon stated that they

> would restrict the liability of the alleged father in the instances of a child born out of wedlock for a period of one year from the date of birth. The original bill would have extended his liability exposure to four years. The thinking behind this amendment is that an alleged father should not have to be kept in suspense for a 4

year period awaiting the mother's action to bring suit to have a declaration of his responsibility determined upon.

N.H.S. Jour. at 1649. Obviously, this legislative history illustrates that the legislature was aware of the issue now before us. Cf. Wigginton v. Com. ex rel. Caldwell, 760 S.W.2d 885, 886 (Ky. Ct. App. 1988).

Nonetheless, the senate eventually removed RSA 168-A:3 and instead opted to include only the statute of limitations. In explaining this change, Senator Koromilas stated: "There was an amendment put in by the Senate and there was some misunderstanding with respect to the limitations. We put an additional limitation to within one year of the birth of the child conceived out of wedlock. We took out a section which was inconsistent with that limitation." N.H.S. Jour. 1991 (1971). As finally passed, RSA 168-A:3 did not specifically limit the time during which a father could be liable for past education and support. See Laws 1971, ch. 530:1. Instead, the only limitation on a father's liability was contained in the statute of limitations. See id. By failing to include a specific provision limiting a father's liability for past education and support, the legislature intended the only restriction on a petitioner's ability to collect retroactive child support to be the statute of limitations. When the legislature later amended the statute of limitations to eighteen years, it did not add a provision limiting the father's liability for past education and support. Thus, so long as a proceeding is brought within the applicable statute of limitations, we conclude that the trial court has discretion to order retroactive child support back to the child's birth.

This interpretation of the statute has been applied in prior cases. See State v. Weeks, 134 N.H. 237, 242-43 (1991); Joann P. v. Gary W., 122 N.H. 104, 106 (1982). We have explained that a trial court may hold a father responsible for repaying all public assistance benefits made during the child's life. See Weeks, 134 N.H. at 242. The only statutory limitation on such recovery has been deemed to be the statute of limitations. See id.; see also Joann P., 122 N.H. at 106.

The respondent argues that this interpretation "would invite mothers to wait and file paternity actions years after the birth when evidence and witnesses may be stale." This danger, however, is limited by the fact that if a respondent can show that the delay in commencing suit is unreasonable and prejudicial, the action may be barred by laches. See Weeks, 134 N.H. at 243. As we conclude that RSA chapter 168-A authorizes a court to order retroactive child support, we need not undertake a separate analysis under RSA chapter 546-B.

We next address whether the petitioner's suit is barred by laches. Laches may apply to paternity actions filed prior to the expiration of the statute of limitations, but only if the respondent shows that the delay was prejudicial and unreasonable. See id. at 240.

Laches is not triggered by the mere passage of time, but may be appropriate where a suit has been unreasonably delayed and the delay has resulted in unfair

> prejudice. In determining whether the doctrine should apply to bar a suit, the court should consider the knowledge of the plaintiffs, the conduct of the defendants, the interests to be vindicated, and the resulting prejudice. This inquiry hinges upon the particular facts of each case.

Miner v. A & C Tire Co., 146 N.H. 631, 633 (2001) (quotations and citations omitted). A trial court has wide latitude in deciding whether the circumstances justify its application. See id. "Unless we find that the trial court's decision is unsupported by the evidence or erroneous as a matter of law, we will not overturn it." Id.

In support of his argument that an award of retroactive child support should be barred by laches, the respondent notes that no action was brought until fourteen years after the birth of the child, and that the petitioner "admitted that in 1986 and 1987 she was aware that the [r]espondent was residing in New Hampshire . . . [yet she] failed to file any court action . . . and failed to contact a lawyer or investigator in New Hampshire." Even assuming the petitioner unreasonably delayed bringing this paternity proceeding, the respondent has failed to prove that he was materially prejudiced by this delay. See id. at 633-34. The respondent contends that the delay prevented him from refuting the petitioner's allegations that he was aware of her pregnancy. During the hearing, the petitioner testified that she informed the respondent of her pregnancy by giving paperwork to his supervisor. The trial court found that "[t]hrough the receipt of petitioner's letters forwarded to him in the package, respondent discovered petitioner was pregnant." The respondent argues that he was unable to refute the petitioner's allegation that he received the package because he "attempted to obtain business records from his old employer but the company no longer exists" and because he was "unable to locate the witness." Such allegation, however, was inconsequential to the trial court's ultimate determination that the respondent knew of the petitioner's pregnancy. The trial court found that "petitioner telephoned respondent on several occasions: to inform him that she was in labor, that his daughter was born and that she and the child were released from the hospital" and that "[f]ollowing the birth of the parties' child and while they remained in communication, petitioner requested financial assistance . . . from respondent." As the paperwork was not the only source of the trial court's finding that the respondent had been informed of the petitioner's pregnancy, we cannot conclude that the delay resulted in any prejudice.

We also reject the respondent's claim that he has been materially prejudiced by the delay because had he been aware of his obligation to support the child, he would have been "a little more reserved about getting married and having another family" and "[f]inancially [he] may have made a few other choices in [his] life." The respondent has not asserted that he will suffer any particular hardship from having to meet the obligations imposed by the trial court's decree. Cf. State v. Garcia, 931 P.2d 427, 429 (Ariz. Ct. App. 1996) (finding hardship where paternity action not filed for more than sixteen years and father was self-employed as a scrap metal recycler, did not own a home, had a wife and six minor children and no savings or retirement plan); see also Annotation, Retroactive Child Support, 87 A.L.R.5th 361, 431 (2001) (collecting cases in which retroactive child support award was limited or precluded by laches). We conclude,

therefore, that the trial court did not err in determining that the petitioner's claim for retroactive child support was not barred by the defense of laches.

We next turn to the respondent's assertion that the trial court erred in admitting into evidence two letters from state agencies relating to the issue of laches. The letters were written by state agencies and indicate that the petitioner contacted them and tried to obtain child support from the respondent through these agencies. The respondent argues that the letters are inadmissible hearsay. The petitioner contends that because the rules of evidence do not apply to these proceedings, the letters are not barred by hearsay.

We need not decide today, however, whether the rules of evidence apply because the trial court's exercise of discretion in admitting the letters is sustainable. Regardless whether the rules of evidence apply to these proceedings, the trial court strictly applied the rules of evidence and determined that the two letters were admissible under the public records exception to the hearsay rule. See N.H. R. Ev. 803(8). We agree that the letters were admissible under Rule 803(8)(c) because they are statements that set forth "factual findings resulting from an investigation made pursuant to authority granted by law . . . ." Id; see also 4 C. Mueller & L. Kirkpatrick, Federal Evidence § 456 (2d ed. 1994). While one letter simply states that "a child support case was opened [ ] on March 6, 1986 and closed on September 5, 1986," the other letter states that "your child support case was opened on June 21, 1994 . . . [and the case] has been closed . . . [because the] Father's location and/or all identifiable information is unknown. Attempts to locate this person have been made quarterly using at least three locate sources over the past three years, all of which have been un[suc]cessful." The trial court determined that these documents were trustworthy. See 5 J. Weinstein & M. Berger, Weinstein's Federal Evidence § 803.13[1] (J. McLaughlin ed. 2d ed. 2002) (explaining trustworthiness requirement). As the respondent does not point to facts in the record indicating otherwise, we conclude that the trial court properly admitted the letters into evidence.

We next address whether the court's exercise of discretion in refusing to place the retroactive payments into trust was sustainable. The respondent argues that a trust is necessary "to ensure that the funds [are] available for the sole benefit of the minor child." Generally, any retroactive support payments are paid directly to the custodial adult except "under special circumstances where equitable considerations warrant direct payments to the child." West v. Turchioe, 144 N.H. 509, 512 (1999). The respondent has not articulated any special circumstances that would necessitate placing the funds into a trust fund. The petitioner was required to raise the child on a modest income and has incurred significant debt while doing so. As one of the purposes of providing retroactive child support is to remedy past debts incurred by the mother on the child's behalf, we conclude that the trial court's exercise of discretion is sustainable. Cf. State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard).

We lastly address whether the trial court erred in awarding costs and attorney's fees to the petitioner without receiving copies of the bills for such expenses. As the respondent never specifically objected to the petitioner's failure to introduce the individual receipts, this issue has not been preserved for appeal. See State v. Wisowaty, 133 N.H. 604, 607 (1990).

Affirmed.

BROCK, C.J., and NADEAU and DALIANIS, JJ., concurred.

Voting Sheets

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 447

BILL TITLE: **limiting retroactive child support awards under the uniform act on paternity.**

DATE: March 19, 2003

LOB ROOM: 206

Amendments:

Sponsor: Rep. Bickford	OLS Document #:	0868h	Adopted
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.) **AMENDMENT**

Moved by Rep. David M. Bouchard

Seconded by Rep. Anne C. Grassie

Vote: 12-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Karen K. McRae

Seconded by Rep. Robert O. Ouellette

Vote: 13-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Barbara Hull Richardson, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

CHILDREN AND FAMILY LAW

Bill #: HB 447 Title: limiting retroactive child support awards under the uniform act on paternity

PH Date: 2/5/03 Exec Session Date: 3/19/03

Motion: Amendment Amendment #: 0868h

MEMBER	YEAS	NAYS
Moran, Edward P, Chairman	✓	
McRae, Karen K, V Chairman	✓	
Brown, Julie M		
Arnold, Thomas I		
Bickford, David A	✓	
Greenberg, Gary C		
Bouchard, David M	✓	
Itse, Daniel C		
Furman, Christine M		
Gargasz, Carolyn M		
Dokmo, Cynthia J		
Ouellette, Robert O	✓	
Hallyburton, Margaret D		
Allen, Janet F	✓	
Blanchard, Elizabeth D	✓	
Pratt, Irene A	✓	
Allison, David C		
Richardson, Barbara Hull, Clerk	✓	
Johnson, Lionel W	✓	
Grassie, Anne C	✓	
Gile, Mary Stuart	✓	
	12	0
TOTAL VOTE:		

Printed: 2/5/2003

OFFICE OF THE HOUSE CLERK 2003 SESSION

CHILDREN AND FAMILY LAW

Bill #: HB 447 Title: _____

PH Date: 2/5/03 Exec Session Date: 3/19/03

Motion: OTP/A Amendment #: 0868h

MEMBER	YEAS	NAYS
Moran, Edward P, Chairman	✓	
McRae, Karen K, V Chairman	✓	
Brown, Julie M		
Arnold, Thomas I	✓	
Bickford, David A	✓	
Greenberg, Gary C		
Bouchard, David M	✓	
Itse, Daniel C		
Furman, Christine M		
Gargasz, Carolyn M		
Dokmo, Cynthia J		
Ouellette, Robert O	✓	
Hallyburton, Margaret D		
Allen, Janet F	✓	
Blanchard, Elizabeth D	✓	
Pratt, Irene A	✓	
Allison, David C		
Richardson, Barbara Hull, Clerk	✓	
Johnson, Lionel W	✓	
Grassie, Anne C	✓	
Gile, Mary Stuart	✓	
	13	0

TOTAL VOTE:

Committee Report

COMMITTEE REPORT

COMMITTEE: **Children and Family Law**

BILL NUMBER: **HB 447**

TITLE: limiting retroactive child support awards under the uniform act on paternity.

DATE: March 19, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

The amendment is the bill. It is a new section in RSA 168-A:3 which sets time limits for retroactive child support.

Vote 13-0.

Rep. Karen K. McRae
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

CONSENT CALENDAR

Children and Family Law

HB 447, limiting retroactive child support awards under the uniform act on paternity. **OUGHT TO PASS WITH AMENDMENT**

Rep. Karen K. McRae for Children and Family Law: The amendment is the bill. It is a new section in RSA 168-A:3 which sets time limits for retroactive child support. **Vote 13-0.**

State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

HB477 OTP/A 13-0 Consent

The amendment is the bill. It is a new section in RSA 168-A:3 which sets time limits for retroactive child support.

Karen McRae ok, EPM.