

Legislative History for Connecticut Act

HB 5770

PA-169

1974

Senate: Consent, p. 1754

House: P. 2802 - 2835

(no hearing)

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1974

VOL. 17
PART 4
1360-1817

Monday, April 29, 1974

230.

SENATOR GUIDERA: (26th)

roc

Mr. President, I move acceptance and passage of Substitute for House Bill 5770, AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE DISSOLUTION OF MARRIAGE ACT.

Mr. President, they are technical amendments except there is one that I think is not a technical amendment but is a salutary amendment and that is that we no longer mandate counsel for children. We leave that to the discretion of the judge. It has been found over the last six or seven months that mandating thereof is not good, it is not necessary in all cases. I was one of those who thought it was. I was wrong. The Committee was wrong. This thing makes the amendments and I would move it to the Consent Calendar.

THE CHAIR:

Thank you, senator. Are there any further remarks? There being none, the question is on transfer to the Consent Calendar. Are there any objections? There being none, it is so ordered.

THE CLERK:

Page 5. Cal. 457.

THE CHAIR:

Senator Guidera.

SENATOR GUIDERA: (26th)

Mr. President, I move acceptance and passage of Substitute for House Bill 5796, AN ACT AMENDING THE CHARTER OF THE GROVE CEMETERY ASSOCIATION. Mr. President, this amends the

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retaining its place on the Calendar.

hw

MR. SPEAKER:

Is there objection to the gentleman's motion to pass retaining the item he just called? Without objection, it is so ordered and the item will be passed retaining its place on the Calendar.

THE CLERK:

Cal. No. 450, File No. 298, Sub. for H.B. No. 5770, AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE DISSOLUTION OF MARRIAGE ACT.

Favorable Report of the Committee on Judiciary.

MR. SPEAKER:

The gentleman from Stamford, 147th district.

REP. BINGHAM: (147th)

Mr. Speaker, this chamber will remember that last year we passed Public Act 73-373 entitled the "Dissolution of Marriage Act". Since the passage of that act which took effect October 1st, 1974, we found that it's necessary to make certain amendments to the act. The Bar Association and the Family Law Committee and various judges have worked with the act and in general they are very happy with the legislation that we passed and there are some matters however which need correction.

In Section 1 we have revised the Dissolution of Marriage Act to provide for legal grounds of separation so that the legal separation may be obtained on the same grounds that a dissolution of marriage may be obtained. We've also made it clear to include the dissolution grounds will be causes for a divorce along with the ordinary statutory grounds which we had prior to the enactment of this section or this bill.

In Section 2 of the amendment we have removed the term "the

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plaintiff" and substituted the term "either party" wherever it appears because we felt that jurisdiction should be predicated not only on the plaintiff if the plaintiff satisfies the jurisdictional requirements but also if the defendant or "served party" meets the jurisdictional requirements. hw

Section 3 of the amendment we have attempted to conform the Dissolution of Marriage Act to section 52-89 of the General Statutes which provides for service of process.

In Section 4 we have attempted to accomplish for the pre-judgement remedy that you will recall we passed a pre-judgement remedy bill last year but we passed it after the Dissolution of Marriage bill and there was some conflict in the attachment procedures and we've made the dissolution of marriage bill conform with the pre-judgement remedy bill and we further have removed a notice of pendency and replaced it with "lis pendens" which is a technical legal term and there's much case law which we feel this is much better statutory construction. tape #4.

In Section 5 there was a question as to whether one party or both parties should meet with the conciliators and we have made it clear that each party must meet with the conciliators.

In Section 7 we have requested that the parties and not the attorneys execute a written stipulation of separation. We feel that this is personal enough matter that the parties themselves should execute the agreement and not just the attorneys.

And further we have provided where both parties are physically present and stipulate verbally in court that their marriage is irretrievably broken down and have submitted an agreement although it is not a written agreement that the court may grant a dissolution

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of marriage on a written or unwritten agreement.

hw

Section 6, is a revision again to allude to legal separation which is a technical correction.

Section 7, is again a technical correction. We have substituted the words "adverse party" for the word "defendant" so as to permit not only the plaintiff to bring proceedings on the ground enumerated but also for the defendant to bring a cross-complaint on the ground of irretrievable marriage breakdown. Some judges have held that it was impossible under the present status of the practice book for defendants to cross-claim on irretrievable breakdown and we have mandated that they shall be able to bring a cross-complaint on irretrievable breakdown in this particular amendment.

In Section 8, we have broadened the scope relating to custody and care of minor children not only with respect to the husband and wife or former husband and wife as the old Section 15 was limited. We feel it's appropriate to permit the Superior Court as much jurisdiction as possible when it pertains to the custody of children in accord with recent Supreme Court decisions.

We have also put some clarifying language again to permit the causes for dissolution or legal separation should be taken into account in the initial determination of custody but we felt that it was unreasonable to drag up the old grounds for divorce in the event there was a custody action brought or a custody motion brought ten years later or sometime subsequent to the entry of a decree of divorce or dissolution of marriage.

Section 9 of the bill addresses itself to Section 16 of the Dissolution of Marriage Act and this is the section that caused

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the most difficulty with the bill. We have dispensed with the obligation of mandatory appointment of counsel for minor children. We are aware that this section has caused much controversy and many courthouse problems. Many judges have ignored the section. Many judges have sought to go around the section. There has been much controversy among the members of the bar. They feel that it adds to the cost of a divorce and we feel that the judge will take the interest of the child in consideration when appointing the counsel for children so therefore we have not mandated that there be counsel for children but made it permissive and when the court deems it to be in the best interest of the children. We do not feel that this materially affected the divorce bill, the dissolution of marriage bill which we passed last year.

Section 17 is revised again which permits the jurisdiction of the Superior Court to take cases involving minor children.

Section 18 which is Section 11 of this bill deletes from the old act the necessity that an agreement be referred to involving custody and care which is in conformity with the prior amendment.

In Section 12 which addresses itself to Section 19 of the Dissolution of Marriage Act further expands the jurisdiction of the Superior Court involving minor children and further states that the section can be used in controversies not only involving a husband and wife but to controversies involving parents of minor children or children if they are no longer married or were never married. This permits the Superior Court to provide for the custody and care and support of minor children.

Section 22 is revised and this was done so that pendente lite relief may be afforded not only on a dissolution and legal separ-

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hw

ation but in other proceedings in the General Statutes. Certain case law has come to our attention which makes it appear that some courts will not grant pendente lite relief in certain proceedings and we obviously intended that there should be pendente lite relief granted on all proceedings.

Section 26 of the act attempts to clear up a certain ambiguity. We were aware that the old Section 26 simply stated that upon annulment or dissolution and what we really meant was, upon or subsequent to the annulment or dissolution of marriage. This is purely a technical change to clear up the language in the act and there's no attempt to change the meaning.

Section 15 is self-explanatory and proposes to clear up an ambiguity in the language.

Section 16 is a new section which simply states that the act should be---that any action should be amended which would apply to all pending actions. The Chief Judge of the Superior Court provided by rule that whether the divorce action was commenced prior to this Dissolution of Marriage Act or subsequent to it, amendments might be made. We are now providing for this in statutory form.

Section 17 again is self-explanatory. We are providing that these amendments shall take effect immediately upon signature by the governor if the act passes.

These amendments are mainly technical in nature except for the removable of mandatory counsel for children, and I urge passage of this bill.

MR. SPEAKER:

Gentleman from the 104th.

REP. AJELLO: (104th)

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Mr. Speaker, I find it hard to believe that the members of the House have not listened more carefully to the rather lengthy explanation of what is not a technical amendments bill at all but a very significant addition and correction and change to a major piece of legislation from the last session. One which is important and affects very many people in our state. With that delivered initially I'd like to ask the chairman of the committee a question concerning his statements about the change in jurisdiction as from expanding the jurisdiction of the Superior Court over children.

Does the bill do away with or substantially alter the present powers of Courts of Probate with reference to matters concerning children?

REP. BINGHAM: (147th)

No. It does not.

REP. AJELLO: (104th)

Thank you sir. Mr. Speaker, I think that it would be well if some kind of an outline of this very lengthy and not altogether simple bill were provided to everybody here so that the members might look at it. I note that the chairman was apparently reading from such a summary and I would urge that it be reproduced and placed on the members' desks so that whether or not they want to listen to it, they might have the opportunity to read about it and be forewarned that you're going to get some angry comments and questions no matter what you do with a bill like this, and you really ought to know what's in it.

I submit that despite the lengthy and comprehensive explanation by the chairman of the committee, not many people here listened to it or seemed to care much.

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REP. BINGHAM: (147th)

hw

Through you Mr. Speaker to the Minority Leader. (MR. SPEAKER: Gentleman from the 147th) Such a statement will be prepared and presented to the members.

While there was a statement prepared and presented to the members by the Office of Legislative Research I find that although I admired some of their work that there were many facets lacking in that preparation and I will prepare comprehensive statements to the members.

MR. SPEAKER:

Gentleman from the 138th.

REP. BARD: (138th)

Mr. Speaker, I have an amendment. I wonder if the clerk might read it.

MR. SPEAKER:

Clerk please read-----

REP. BARD: (138th)

Mr. Speaker, I would ask that perhaps the members might want to look to their files to take down the notes as she reads them.

THE CLERK:

This is House Amendment Schedule "A" offered by Rep. Bard of the 138th. It's your File No. 298, the LCO No. 2182:

Delete sections 9 and 10 and renumber accordingly.

In line 63, strike out the number "13" and insert the number "11"

In line 103, strike out the number "12" and insert the number "10"

In line 296, strike out the number "14" and insert the number "12"

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In line 396, strike out the comma after the number "8" and insert the word "AND"; strike out ", 10 AND 11" hw

In line 405, strike out the number "12" and insert the number "10"

In line 461, strike out the number "15" and insert the number "13"

REP. BARD: (138th)

Mr. Speaker, in effect what my amendment does is bring us back precisely to the law that we passed last session as regards Sections 9 and 10.

Mr. Speaker, I have discussed this amendment with Rep. Bingham, the distinguished chairman of the Judiciary Committee, and he differs with me in regard to my view on this thing. I'm sure a number of lawyers do. But nevertheless I think it's healthy for a legislature that people speak upon bills even though there may be perhaps an overwhelming differences of opinion.

I feel that the bill we passed last session providing counsel for children in certain circumstances in a situation involving a dissolution of a marriage was sound. As you recall there was many, many months, perhaps even years, of preparation of that bill that we passed last year and I support that particular section that we passed last year. Now we find today that because of what I consider some lawyers finding it a little difficult and a little troublesome to handle matter like this that we're going to change the law.

The people who have indicated to me a difference of opinion than mine, in other words agreeing with Rep. Bingham's change, that there are two reasons for it.

The parents don't want to pay the extra legal fee for the

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counsel for the children and some lawyers have complained that it holds up divorces because the children's interests muddied up the process, and I'm sure that both of those points have been made. I consider them, and I know many lawyers don't agree with me, completely irrelevant.

About one-third of the population of the state are children and for many years many people in this state and this legislature tried to provide counsel for children and I still use the word "divorce" because it's easier to say than "dissolution of marriage" and I'll use it a number of times. In divorce matters the kids are affected but they have no say here. Now I know that Rep. Bingham may respond by saying, well, all we're doing is leaving it up to the judge to determine whether the best interests of the children are being provided. I maintain in a practical situation that's not enough.

I think there ought to be counsel provided for children. I know that it muddies up things and I know that parents don't want to pay that extra fee but what are we really talking about. We're talking about people who are being very much affected by the process by divorce, a dissolution of a marriage, with no counsel.

I don't think I have to go on for a long period of time. I think everybody understands what I'm talking about. It's a basic and perhaps philosophical difference with a number of attorneys, a number of people perhaps, but I could not let this bill go by without responding in the way I have.

Just think about it. Many of you who are not lawyers probably don't understand the total process. You can't understand how a dissolution of marriage occurs by reading a statute. It's a very

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arduous and heartbreaking, straining and oftentimes it creates much strain and emotional upheaval in the family. All I'm saying is that let's leave counsel in here to protect the children because too many kids are either being used as pawns in a divorce situation or their particular rights are not being effected. And I'm not talking just about financial rights. I think custody and the emotional upheaval that takes place when children are separated from their parents must be looked at in disgust.

TAPE #5

I'm sure that Rep. Bingham has some comments but I must say that I feel very strongly about this and I hope that you will consider this amendment very seriously because I think that if there is a problem with the situation that it perhaps can be addressed in a manner much better than this one which seems to me goes to the far extreme of "just kind of wipe it out thing".

I just don't believe a judge will take the time or perhaps even be aware there's a necessity for the child. That's the problem. I don't think the judge is necessarily aware that there is a problem. You could have a divorce go through with a lot of shuffling of papers and the kids--all the kids are to the judge is a name on a piece of paper. I think kids have got to be protected here. We're talking about as I said approximately a thirty to thirty-three percent of our population and they don't have too many spokesmen here. I know a lot of attorneys are perhaps madder than hell that I'm saying this but I think we ought to look at this.

Thank you Mr. Speaker. I ask, Mr. Speaker, that there be a roll call when we take the vote and my amendment be printed in the Journal.

MR. SPEAKER:

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All those in favor of a roll call vote indicate by saying AYE. The necessary 20% having indicated a desire for a roll call, a roll call will be ordered. hw

Gentleman from the 147th.

REP. BINGHAM: (147th)

Mr. Speaker, speaking in opposition to the amendment. I, myself, during the last session supported this mandatory counsel for children. Upon reflection and upon seeing the operation of the act and upon consultation with attorneys who are expert in the field of domestic relations, I have now come to believe that only is that provision unnecessary but the provision is unworkable.

As you may know and maybe some of the members do not know, there was a seminar conducted on Connecticut's new divorce law and probably received by the members of the bar more participation than any seminar we've ever held. At that seminar three of the four members who conducted the seminar, and I was one of the members, stated and referred to Section 8a and 18 which provides for the mandatory counsel for children, and it provides that any time you have a separation agreement or a written agreement that there must be custody and involving the custody and care and education of children, that there must be counsel for--the appointment of the counsel for children, and this provision has probably caused the most difficulty with the act.

As a matter of fact, one person in the seminar stated that it was not horrifying but it almost was horrifying because in an attempt to apply the law many questions came up and there were many problems involved. First of all, the person who has a lot of money or the wealthier person is not going to be really concerned about whether

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counsel shall be appointed for children or shall not, the fee will not materially affect them. But it will affect the persons of the lower, middle class, or the moderate person, or the poor person, and possibly the fee for the counsel of children and if so resulted might be as large as the fee of the attorney himself.

There have been methods of avoiding this provision whereby attorneys or people actually come to an agreement, an oral agreement, and then make recommendations to the court upon that agreement, thereby avoiding the provision of mandatory counsel for children. This method of practice, I feel, is bad. I do not think it is quite honest with the court to agree with counsel in the hall and state that you have an agreement and then go into court and make recommendations to a court. I think that the court is participating and though unwillingly in a certain charade and this is what we have attempted to avoid in this bill.

We attempted and very seriously attempted to make divorces a civilized proceeding and a proceeding without scars and a proceeding without going through the charade of telling partial truth and partial untruths or making up something that isn't true.

I have come to the belief and I have been convinced that the mandatory provision appointing counsel for children in all cases is unworkable and it certainly is a significant method of legislation that if a statute is unworkable, we should admit it. We should say, and I will be the first one to say, that in this particular instance we did make a mistake.

Further, there is no person in the court that is more carefully looked after or scrutinized on behalf of himself and the child. It is often said that the judge himself is the counsel for children,

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that he is the person who takes care of the children. Further, hw there is a provision that counsel may be appointed. So that in the event that a husband feels that a wife who is seeking custody does not feel that the wife is the proper person to receive custody, he may request counsel for children, and further, if the wife feels that the husband is not adequately supporting the child or some other problem, she may request counsel for children, and if it's in the best interest for the child, and that's what we were directing ourselves to last session, what was in the best interests of the child, the judge will appoint counsel for children.

I do not feel that we are losing anything by taking away the mandatory provision of counsel for children and providing for a permissive counsel for children.

I urge defeat of the amendment.

MR. SPEAKER:

Gentleman from the 136th.

REP. NEVAS: (136th)

Mr. Speaker, I rise in opposition to this amendment. The divorce reform bill which was passed at the last session of this legislature was one of the major pieces of legislation that came out of last year's session. It was a fine bill. It was an excellent bill. It was a bill that was worked on for many months, resulted in compromise with respect to some provisions, and one of the provisions about which a number of people who worked on the bill had serious reservations was the very provision that Rep. Bard's amendment would seek to replace or to keep in the bill, and that was the provision requiring the appointment of counsel for children. I personally had serious reservations about that provision at the time but in a

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spirit of compromise there were many who urged it and it was included in the bill. hw

It has been and it is totally unworkable. It has been seriously abused. I know of instances in some circuit courts, some circuits of this state, where it is common practice for lawyers to appoint young assistant prosecutors in those circuit courts as counsel for children in an attempt to curry favor with those prosecutors when they come into those circuit courts on criminal business.

As a general rule you will find those persons who have been appointed as counsel for children to be in the whole, young, inexperienced lawyers who are the only ones who are willing to take on these positions and who in many instances do not give the serious consideration that is required in these situations.

The current system is being abused and it is not working. It is a sham and it needs correction and the adoption of Rep. Bard's amendment would perpetuate this sham.

Mr. Speaker, the only sensible and logical way to improve the current system is to defeat this amendment and to permit us to return to a system wherein the court will have the discretion where in its judgement it feels it is necessary for the protection of the interests of children to appoint counsel.

I urge defeat of this amendment.

MR. SPEAKER:

Gentleman from the 135th.

REP. FREEDMAN: (135th)

Mr. Speaker, while I recognize the spirit with which this amendment has been put forth I must oppose it and associate myself with the remarks of Mr. Bingham, the Judiciary chairman.

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Mr. Speaker, while I recognize the spirit of this amendment, of necessity I must oppose it because I believe it to be wrong.

Mr. Bard says it's put in there because it's troublesome to lawyers and because of the extra cost. Mr. Speaker, it's not put in for those reasons. It is put in for quite another reason. It's put in because experience since this bill has gone into effect has taught us beyond any shadow of a doubt that the provision has been unworkable, that it has been abused, and that it has been unnecessary.

Mr. Speaker, experience has taught us that in some cases counsel for children is absolutely necessary. Experience has also taught us that in some cases counsel for children is absolutely and totally unnecessary. What we need is a workable arrangement whereby decisions can be made in an intelligent manner on a case by case basis. It makes no sense to mandate something which is unnecessary. It is only in those cases where you are forcing people to pay two and three hundred dollars to an attorney where one is not necessary, and in cases, and I have seen many of them, where children are adequately cared for, where children's custody is adequately provided for, where there is absolutely no need for something like this.

The law is mandating the need for counsel. What it does, is not only make it unworkable but it makes it unreasonable. What we need are reasonable laws. We do not need our laws which force us to do things which are unnecessary.

The judge in each case will examine the agreement and determine whether or not counsel is necessary. It's a very simple matter to make a motion to the court to determine that very fact whether or

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not counsel is necessary for the children. Any decent lawyer would inquire immediately before he would let his case go very far but this particular amendment would destroy the whole concept that we are trying to get of a workable divorce bill and I must of necessity oppose it. It's a very bad amendment.

MR. SPEAKER:

Gentleman from the 137th.

REP. NEWMAN: (137th)

Mr. Speaker, I oppose the amendment also. Since colonial times in our laws and our case law it has been repeated thousands of times and it's a fact that children are wards of the court. That means that should be the judge's paramount interest in the case. Truly, I have heard judges remark that they're not concerned with the bickering of the parents but the welfare of the children is the uppermost thing in their minds and the controlling thing in the case.

Now, only one of the rare days when we were not in session earlier this month I had a divorce case and I went to court on it, everything was agreed upon, the rights to visitation, custody of the children, and so on, the judge looked over the agreement, he thought it was fair and equitable, but he said he had to appoint counsel for the children under this law. Now, these counsels have to be paid, they don't render their services for nothing. They probably get \$150 or \$250 from the litigants and there's absolutely no necessity in the case I'm mentioning for having counsel. It should be on a case to case basis.

I think this amendment and the remarks supporting it are a terrible indictment of the judiciary. When someone says that the judge ruffles papers, he doesn't pay any attention to the rights of

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the children, and so on. I think it's an indictment of the legislature and the Judiciary Committee also because we do attempt to screen the judges out. We do question them in committee. We try to find out their feelings, and----

REP. BARD: (138th)

Mr. Speaker, point of order.

MR. SPEAKER:

Gentleman from the 138th please state your point.

REP. BARD: (138th)

Mr. Speaker, I don't mind Rep. Newman speaking against the bill but I wish that he had listened to me correctly. When I talked about ruffling of papers ----

MR. SPEAKER:

Please state your point of order.

REP. BARD: (138th)

Mr. Speaker, I believe Mr. Newman is attacking me unfairly and I'd like to respond to that.

REP. NEWMAN: (137th)

I'm not attacking Rep. Bard personally---

MR. SPEAKER:

Members would please refrain from speaking until the point of order has been decided. Point of order is not the proper procedure to ask for an opportunity to defend one's position on matters.

The point of order in my opinion is not well taken. I believe the gentleman was speaking on the amendment. The Chair would request the members not to engage in personalities but to discuss the issues before us.

The gentleman from the 137th.

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tape #6

REP. NEWMAN: (137th)

hw

As I was saying, Mr. Speaker, we do screen the appointees to the Superior Court bench which is the court that handles divorce cases. We do attempt to find out their philosophies as to children and so on, and in the legislature when the appointment comes up for nomination, comes up for approval, we also discuss the qualifications of the judges and I think I have come across none of them in my experience that have shown any callousness towards the rights of the children. On the contrary they have been interested in it and I think this is a bad amendment and should be defeated.

MR. SPEAKER:

Lady from the 108th.

REP. OSIECKI: (108th)

Mr. Speaker, I oppose the amendment. In relation to my opposition I would like to ask the proponent of the bill a question if I may. (MR. SPEAKER: Please state your question.) Mr. Bingham, in relation to Section 6, can you tell me if we can expect our judges to honor a signed written agreement between two parties, two adults, that their marriage is irretrievably broken down?

REP. BINGHAM: (147th)

Yes. (MR. SPEAKER: Gentleman from the 138th, please state your point.)

REP. BARD: (138th)

I believe we are speaking on the amendment. I believe the young lady is speaking on another part of the bill.

MR. SPEAKER:

The gentleman is correct. The Chair does not see any indication in the amendment relating to Section 6.

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REP. OSIECKI: (108th)

hw

Mr. Speaker, I oppose the amendment.

MR. SPEAKER:

The Chair has ruled that if the lady wishes to pursue her questioning, the appropriate time will come as soon as we've taken action on the amendment, if it relates to Section 6.

REP. OSIECKI: (108th)

I will speak on the amendment which deletes the attorney for children mandatory by the court.

I believe that once two adults have agreed to dissolve their marriage on legal grounds and the judge sits in judgement of them, they're both represented by counsel if they so choose, and they have made the decision about their own futures, about their children, education, custody, financial status and all, that those two adult agreements should also be honored by the court. I don't speak of an attorney but I do not want an indifferent person coming in, being obligated to come in, and deciding the future of my children.

If my husband and I have decided to dissolve our marriage, however if we're unable to agree I would have to have some faith in the court and in the judge that he should decide then that we are unable to agree on the needs of our children and at that time he will have the discretion to appoint an attorney.

I don't believe it should be an obligation of the court. I think once last year that we finally decided to loosen up the way two consenting adults can obtain a divorce and decide their own futures, that we should leave it that way and when they do run into difficulty in agreeing that the court should then make the decision concerning the children. I oppose the amendment.

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REP. TEDESCO: (126th)

hw

Mr. Speaker, I too rise in opposition to the amendment and I'd like to associate my remarks with the remarks of Rep. Nevas.

I know from my own personal experience having been involved representing both plaintiffs and defendants in divorce litigation that the court is overscrupulous. They go out of their way to look out for the best interest of the child which is considered paramount in any divorce case, and I've heard it mentioned by some walking through the hall here that the lawyers are getting up and speaking on this bill. Well if anything this is a bill that would eliminate unnecessary lawyer's fees so I think it's a good indication that we're speaking against it and I think it indicates sincerity against this proposal.

MR. SPEAKER:

Gentleman from the 114th.

REP. McHUGH: (114th)

Mr. Speaker, apparently I'm going to be one of the minority. I support this amendment. In all family issue matters the interest of the child is paramount. Very often at the time of dissolution of marriage principal parties are blinded to anything except their own welfare. I don't think that the cost of additional counsel should have any impact in deciding what is the best interest of the children. I believe the best interests of the children could be obtained by direct contact, by personal counsel who will represent their interest. I support the amendment.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

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A question through you sir to Mr. Bard. (MR. SPEAKER: Please state your question.) Does your amendment provide that dissolution shall be taken care of for custody or any dealings with the children shall be exercised by the court?

REP. BARD: (138th)

Mr. Speaker, I'm not---Mr. Speaker, if you could bring a little order, please, and I'm not quite sure I heard the total question.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

One more time through you. Does your amendment provide that the dissolution shall be taken care of before there is any decision on the children whatsoever?

REP. BARD: (138th)

No.

REP. MAZZOLA: (49th)

Allright then, through you sir, the point of clarification. (MR. SPEAKER: Please state your point.) All you're providing for is that there will be mandatory counsel for the child. Is that true?

MR. SPEAKER:

Gentleman care to respond?

REP. BARD: (138th)

Yes, Mr. Speaker, through you. In the cases or the situations that provided in last year's law that we spent many months coming to.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

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So, through you sir, so that means that the children still figure in the total dissolution and still muddy up the divorce proceedings as you mentioned in your previous statement. hw

MR. SPEAKER:

Gentleman care to respond?

REP. BARD: (138th)

Mr. Speaker, I'm not quite sure what the representative is saying.

REP. MAZZOLA: (49th)

Let me try one more time. I've had questions from lawyers in my district who address the questions to the amendment that you are proposing, I think, and what their point is, they feel that children are used as a leverage by one party or another to affect a no-fault divorce, and their point is that the divorce proceeding should be decided just on the merits of divorce and the children should be decided as to custody at a later date. Now, does your amendment go anywhere near that concept?

REP. BARD: (138th)

I think that if my amendment were to pass and the law were to be--go back or exist the way it is now, that the thing that you're talking about could be accomplished because you'd have representation for the children and once you have a representation which is no more than in effect a mouthpiece for the child, just like the parents have their mouthpiece, any number of things can be worked out. What is being worked out now or if this amendment were to fail, I feel there are many situations where the child or children will not have their mouthpiece.

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Gentleman from the 49th.

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REP. MAZZOLA: (49th)

Mr. Speaker, one more question through you sir. (MR. SPEAKER: Please state your question.) The second point that the attorneys contacted me about was the fact that in the bill which we passed last session counsel for the children is provided for but nowhere in the bill or anywhere does it say how that counsel is to be paid. Does your amendment address itself to this fact?

MR. SPEAKER:

Gentleman from the 138th.

REP. BARD: (138th)

Mr. Speaker, through you, I think it should be very clear that what my amendment is doing is bringing us back precisely to the law we had last session and that law does not provide specifically, as far as I know, who pays for the counsel but it's very clear to me that in most cases unless you have an indigent situation the parents are responsible for those children, I mean for the payment for the counsel for those children. The only other alternative would be that the court would pay for it and then you would be in a situation where you're taxing the people of the State of Connecticut to provide representation for children. Very frankly, that might not be a bad idea and certainly would be one that I will be thinking about if this amendment didn't pass.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

Mr. Speaker, one more question. What happens in the case where neither party will pay the attorney for the custody of the children?

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REP. BARD: (138th)

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I think that despite what Mr. Nevas's experience may be in terms of those who have talked to him, my experience is that there is gradually being built up a cadre of attorneys, be they young or otherwise, and I don't know why Mr. Nevas must be getting on in years when he talked about young attorneys but there's a cadre of attorneys being developed as should be who become experts in this field. Because in this field it demands more than just legal prowess, it demands a lot of other areas.

I think that's enough on that particular point of view. If you have other questions, I'd be glad to try to answer them.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

I still don't think I got the answer to the question and maybe it should be directed to Mr. Bingham on the original bill but I'm going to try it one more time.

Supposing that neither party agrees to pay for the children--custody of the children--for the attorney--then who pays the bill?

REP. BINGHAM: (147th)

The Dissolution of Marriage Act provides for that. If the parties are financially able to pay, the court will order that either or both parties will pay for the counsel for children. In the event that the parties are not financially able to pay for counsel for children, the court will mandate that an attorney be appointed and that the state shall pay for the counsel for children.

REP. MAZZALO: (49th)

Thank you sir.

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MR. SPEAKER:

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Will you remark further on adoption of House Amendment Schedule "A". Gentleman from the 122nd.

REP. BEVACQUA: (122nd)

Mr. Speaker, I rise to support this amendment. Since enactment of this legislation a year ago our divorce courts have seen increased activity which invariably leads to seeking expeditious means to clear crowded dockets, calendars.

Now under the bill that we enacted last year the needs of the children involved must be protected. This amendment insures that protection. It does not leave it almost to chance. I am not at all suggesting that our courts are so callous that they would deny the needs of children deliberately but I do say that if this amendment is not enacted, that there might be inadvertently a situation where the needs of the child could be denied, and I say that that would be absolutely not in the best interests of the children involved in heated divorce cases.

We must protect the children that are involved in divorce. If two people can no longer make it together, there's no reason why they should not be separated. However in attempting to resolve that difference between two people it is entirely possible, if not likely, that the needs of the children involved would not be taken care of unless we required that those needs be taken care of.

Legal counsel for the children would insure, in my judgement, that the children of the divorce would have their requirements responded to not only for what their needs are immediately but also for their future needs which sometimes may not be considered in determining what the child requires.

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I submit to you that in the event that legal counsel is not-- hw
is no longer mandated that there would be instances where the child-
ren would not have their needs met. I do not support the concept
that even if one child would be denied this that this amendment
should be defeated. I support the amendment.

MR. SPEAKER:

Gentleman from the 135th.

REP. FREEDMAN: (135th)

Mr. Speaker, the best answer to the proponents of this amend-
ment that I know of is that the interests of the child are not only
adequately protected but very well protected by the bill itself.
Without question the bill repeats in many places that it is the best
interest of the child which is paramount, and in doing so it codifies
the common law and makes it very clear to the judge and to the court
exactly what they should be doing.

What this amendment would attempt to do would be to place this
legislature in the judge's chair and to make decisions which it has
no right to make.

The amendment is unnecessary because the bill carefully and
well protects the interest of every child in the State of Connecticut,
and I respectfully disagree with its proponents.

MR. SPEAKER:

Will you remark further. The gentleman from the 82nd.

REP. EVILIA: (82nd)

Mr. Speaker, I rise to support this amendment and I'd just be
very brief and say that when we passed this bill last year making
divorce easy to obtain or easier to obtain, we felt that it was
necessary to go all out to protect the children. That's all that

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this amendment is doing. It's protecting the children. You can say what you want about it but I don't see there's any big problem in having a lawyer protect your children if you want to separate or have a divorce from your wife or vice versa. I see no big problem with this amendment whatsoever.

MR. SPEAKER:

Gentleman from the 116th.

REP. ANTONETTI: (116th)

Mr. Speaker, I rise in support of this amendment. Last session we passed this bill that it's titled in our Journal or our file here, "An Act Concerning a Technical Amendment to the Dissolution of Marriage Act", it should be a dissolution of the families in Connecticut rightfully titled.

We passed a bad bill in the last session that came out of the Judiciary Committee. We have an amendment before us in our file again today. It's a bad amendment and every session before the tape #7 House we're going to have amendment on amendment on bad, bad legislation. What we are going to find that the only salvation may be is the fact that we can save the children and what we are going to find is an amendment that has been offered by Rep. Bard is this type of humanitarian effort to keep the lawyer's hands out of the pockets of the people who are going through a hard time within the courts of Connecticut.

In all seriousness, Mr. Speaker, this is the only attempt to make a piece of legislation that is bringing tremendous hardship on many families in Connecticut. If this legislation was not on the books, then I'm sure as statistics will show we will not see the alarming rate of divorce in Connecticut of which another speaker

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had mentioned earlier. I'd like to rise therefore in support
at least at an effort to make the bill somewhat humanitarian and
associate myself with the comments made by Rep. McHugh and Rep. Bard.

MR. SPEAKER:

Will you remark further on adoption of House "A".

Gentleman from the 147th for the second time.

REP. BINGHAM: (147th)

Yes, Mr. Speaker. I will not attempt to answer the attack upon what I consider a humanitarian bill but I would like to point out to those people who are listening to very salutary comments and possibly some comments which are used to pander to the sympathies of people suggesting that we do not concern the interest of the children, may I point out that we do, that this bill is directed in total to the interests of the children, and I might also point out that the proposer of the amendment has omitted to read Section 16 which is now the law which states that any counsel shall be heard upon the custody care and support of children which would be the counsel for children so long as the court deems such representation to be in the best interests of the child.

The bill provides that the court doesn't even have to listen to the counsel for children and it's so provided last year. We are making this bill a realistic bill. If in the consideration of the court or in the opinion of the court the best interests of the child shall be served by appointing counsel for children, they shall so appoint, and that is the law of the State of Connecticut as far as removing children from their parents, so far as the criminal law is concerned and I think that this amendment is a humane amendment--- the amendment that is proposed to the bill--I oppose Mr. Bard's

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amendment. I think Mr. Bard's amendment should be denied and that we should pass the bill as presented to this House.

MR. SPEAKER:

Gentleman from the 29th.

REP. KABLIK: (29th)

Mr. Speaker, it's a bad amendment.

MR. SPEAKER:

Gentleman from the 138th.

REP. BARD: (138th)

Mr. Speaker, I think this amendment as far as I'm concerned is too serious to cause perhaps some accusations either for or against the amendment by some of the attorneys in the hall. I just happened to think that, and I'm well aware of Section 16 and I'm well aware of the terms "in the best interests of the child", I've heard those words so much and I've experienced and seen and read of a number of cases where those words have been used to disguise real tragedy occurring in behalf of children.

All I'm suggesting, and if Mr. Bingham thinks that my amendment doesn't properly address the problem, all I can say is that was the law last year. I'd be very willing to PR this thing and see if I could come out with better language than the existing bill has or my amendment.

Now some people will say, no, we're in a hurry, we're going to get this session over, I don't buy that. I don't buy that idea that we're going to hurry it up about these things. We've talked at length about this bill and I realize that some people may be impatient about that. But it's unfortunate that we're not continuing sessions so that we can deal with these problems and a lot of other

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problems. What happens many times in this hall is that because we're working against the clock we don't do the job that we should. But another bill, maybe next year, will take care of that.

But as to this particular problem I just don't feel and I can't respond in agreement with the opponents of this amendment. I just don't feel that if the law passes the way Mr. Bingham suggests it does, that children will be taken care of. If he or others feel that my amendment is not the proper one, then I would suggest that we would PR for other consideration.

Now some people over on my left are saying, oh, we don't want to do this. Well, hey look, when you express it by vote but if this vote goes down, so be it. I've expressed my view on this thing. I would ask Mr. Bingham and I'm not sure what he will say, whether he would agree to PR this in hopes of making it a better bill, if he says in the negative then I would suggest that unless somebody else wants to speak on this thing, we vote. Thank you Mr. Speaker.

MR. SPEAKER:

All members would please take their seats. Clerk announce an immediate roll call vote on House Amendment Schedule "A". Question is on adoption of House Amendment Schedule "A" offered by the gentleman from the 138th. Gentleman from the 72nd.

REP. HEALEY: (72nd)

Mr. Speaker, as ranking member of the Judiciary Committee I feel I should go on record as being in complete agreement with the chairman's position. I urge the defeat of this amendment. It has been our experience that the present law with the mandatory requirement of counsel for children in all cases, willy nilly, simply has not worked, has been the subject for abuse, and very frequently the

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best interests of the children is not taken care of by this mandatory appointment. hw

The bill is replete with a mandate to the court to conduct itself in such fashion as to assure the best interests of the children and the discretionary power in the judge to appoint counsel is adequate to fulfill that mandate.

I urge defeat of the amendment.

MR. SPEAKER:

Gentleman from the 49th.

REP. MAZZOLA: (49th)

Mr. Speaker, I would be in support of the amendment. I think it addresses itself to the problems that a lot of the attorneys have contacted me about since we passed the last bill and this bill that's coming up now even makes it worse. I'd like to keep it the way it is and try to do better the next time but not pass this bill which is going to further complicate the problem.

I support the amendment.

MR. SPEAKER:

If all members would take their seats. Question is on adoption of House Amendment Schedule "A". Machine will be open. Has everyone voted? Machine will be closed and the clerk please take a tally.

THE CLERK:

| | |
|-----------------------------|-----|
| Total Number Voting..... | 117 |
| Necessary for Adoption..... | 59 |
| Those voting Yea..... | 24 |
| Those voting Nay..... | 93 |
| Absent and Not Voting..... | 34 |

MR. SPEAKER:

House Amendment "A" is lost.

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Question is now on acceptance and passage of the bill. Will you remark further. hw

REP. BINGHAM: (147th)

Yes, Mr. Speaker. This bill has been debated at length and explained at length. I urge passage of the bill.

MR. SPEAKER:

Will you remark further on acceptance and passage. If not, if the members would please take their seats. Clerk announce an immediate roll call. Lady from the 108th.

REP. OSIECKI: (108th)

Mr. Speaker, may I ask a question of the proponent of the bill, please? (MR. SPEAKER: Please state your question.) I'm looking for the section which now decrees that either party can be a resident of the state. Is that the way it should be interpreted?

REP. BINGHAM: (147th)

Yes. That's correct. The original bill stated and provided that the plaintiff had to be a resident of the state and I don't think that we intended that. I think that either person actually should be a resident of the state for jurisdictional grounds. That's not reducing the amount of time that you are a resident of the state. It just means that either party shall be a resident of the state at the time of the commencement of the action so long as you meet the other mandatory time limitations on residents in the state which is one year.

REP. OSIECKI: (108th)

And all the other grounds, through you Mr. Speaker, (MR. SPEAKER: Lady from the 108th.) like the eighteen month separation, all the other grounds then?

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REP. BINGHAM: (147th)

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Well, that was provided for. In Section 1 we urged that we, there seemed to be a dichotomy between dissolution of marriage and the grounds and we united them as all causes for divorce and they remain as they were intended last session.

REP. OSIECKI: (108th)

Thank you.

MR. SPEAKER:

Gentleman from the 116th.

REP. ANTONETTI: (116th)

Mr. Speaker, I'd just like to rise in opposition to it and state very simply because much has been said, that this amendment before us to the bill makes a bad bill even worse. Thank you.

MR. SPEAKER:

Members would take their seats. Question is on adoption----

Gentleman from the 138th.

REP. BARD: (138th)

Mr. Speaker, I want to speak in support of the bill though I believe that my amendment would have made the bill better. I believe the bill is a good bill.

MR. SPEAKER:

Question is on acceptance and passage of Sub. for H.B. No. 5770. Machine will be open. Has everyone voted? Machine will be closed and the clerk please take a tally.

THE CLERK:

Total Number Voting.....119

Necessary for Passage..... 60

Those voting Yea.....113

Those voting Nay..... 6

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Absent and Not Voting.....32

hw

MR. SPEAKER:

The Joint Committee's Favorable Report is accepted and the bill is passed.

THE CLERK:

Returning to the Calendar, page 6, Cal. No. 454, File No. 317, H.B. No. 5528, AN ACT CONCERNING THE SELLING OF BEER AND CIDER IN TAVERNS ON SUNDAY.

Favorable Report of the Committee on Liquor Control.

MR. SPEAKER:

Gentleman from the 134th.

REP. WENZ: (134th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

MR. SPEAKER:

Question is on acceptance and passage. Will you remark.

REP. WENZ: (134th)

Yes, Mr. Speaker. This bill addresses itself to 30-91 which is the hours and days of closing of all permit classifications.

The committee determined after reviewing the section that the only permit classification which was not allowed to be open on Sunday was the tavern permits. The committee decided that this was slightly discriminatory and in their wisdom came up with this change which we hope the body will accept. It will now permit tavern permit classifications to be open on Sunday from noon until 11:00 p.m.

This will be in conformity with all the rest of the liquor permit classifications and I might add, Mr. Speaker, that local options still will prevail. I urge adoption.