

Legislative History for Connecticut Act

HB 5348 PA 21 1976

Senate: 354

House: 397-8 LAW/LEGISLATIVE REFERENCE  
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Judiciary: 101-3

116

123-4

9 p

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1976

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1976 - GENERAL ASSEMBLY

SENATE

WEDNESDAY

MARCH 17, 1976

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LFU

THE CHAIR:

No objection to consent? It is so ordered.

THE CLERK:

Calendar No. 175, File No. 47, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for House Bill No. 5348, AN ACT CONCERNING THE DISPOSITION OF PREJUDGMENT REMEDIES.

THE CHAIR:

Senator Neiditz.

SENATOR NEIDITZ:

Mr. President, I move adoption of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the House.

THE CHAIR:

Will you remark on it, Senator?

SENATOR NEIDITZ:

Mr. President, this Bill is - I will just remark briefly - that it's necessary, since there is no incentive to refund the entry fee in prejudgment remedy cases and I move it on the Consent Calendar.

THE CHAIR:

Without objection, it is so ordered.

THE CLERK:

Calendar No. 176, File 62, Favorable Report of the Joint Standing Committee on Public Health and Safety, House Bill No. 5587, AN ACT CONCERNING MEMBERSHIP OF THE STATE ALCOHOL COUNCIL AND THE STATE ALCOHOL ADVISORY COUNCIL.

THE CHAIR:

Senator Ciarlone.

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House of Representatives

Thursday, March 11, 1976

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THE SPEAKER:

Bill is passed.

THE CLERK:

Page one of the calendar.

Calendar 108. Substitute the House Bill No. 5154. AN ACT CONCERNING THE APPLICATION OF THE FAMILY CAR DOCTRINE TO THE DEFENDANT ONLY.

THE SPEAKER:

Gentleman of the 34th.

REP. WILLIAM A. O'NEILL (34th):

Mr. Speaker, may that ought to be passed retaining its place on the calendar.

THE SPEAKER:

Is there objection? Hearing none, the matter is retained.

THE CLERK:

Calendar 124. Substitute the House Bill No. 5348. AN ACT CONCERNING THE DISPOSITION OF PREJUDGMENT REMEDIES. Judiciary.

THE SPEAKER:

Gentleman from the 21st.

REP. THOMAS C. CLARK (21st):

Mr. Speaker, I move acceptance of the Joint Committees' favorable report and passage of the bill.

(Tape)  
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THE SPEAKER:

Question is on acceptance of the Joint Committees' favorable report and passage of the bill. Will you remark sir?

Gentleman of the 21st.

REP. THOMAS C. CLARK (21st):

Yes Mr. Speaker. This bill is addressed to a problem which

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the judiciary is having with regard to removal of pre-judgment remedy petitions; where the parties are not pursuing the remedy. In the instance of this legislation, it would be the ability of the court to remove these pre-judgment remedies where they are denied or where the parties don't intend to go forward with them. Basically it just allows the court now by passage of this act, to get these pre-judgment remedies, which are not being pursued or have been denied, off of their records.

THE SPEAKER:

Will you remark further on the bill? Will you remark? If not, the chair will announce an immediate roll call. Will the members, please, be seated. Will the staff come to the well. Will members, please, be seated. The staff come to the well. Machine will be open. Have all the members voted? And is your vote properly recorded? If so, the machine will be closed. The clerk will take a tally. The clerk, please, announce the tally.

THE CLERK:

Total Number Voting.....	134
Necessary for Passage.....	68
Those voting Yea.....	134
Those voting Nay.....	0
Those absent and not Voting.....	17

THE SPEAKER:

The bill is passed.

THE CLERK:

Page Two of the Calendar.

Calendar No. 125. Substitute the House Bill No. 5643. AN

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WILLIAM M. IVLER: Cont.

On the Raised Committee Bill 5348 regarding the Prejudgement Remedies, there is an attempt by this change to rectify a situation that I think is an important, though it doesn't seem so on the surface, Just recently the dormant list in the Superior Court for Fairfield County at Stamford came out and I had a situation where I had brought a prejudgement remedy application of approximately eight months ago. It was denied and on the basis of the advice of my client did not serve the writ summons and complaint. I suddenly found this case appearing on the dormant list that as if a writ summons and complaint had actually been filed, not proposed writ summons and complaint. The only way that I was able to stop the process of having this dismissed and possibly and I couldn't tell dismissed as a record of dismissing the substance of the case, I filed a withdrawal slip and demanded my entry fee back. It would appear to me that possibly this approach is not the best approach but that what we should do is just take out the word proposed in our present PJR Statute so that when you're serving the prejudgement remedy application you're serving the actual writ summons and complaint. Then we will have the situation that you are not required to reserve the writ summons and complaint you actually have your action started whether the remedy is granted or not granted. In that way, you do avoid the question should the entry fee be returned if the action is not started in a certain period of time or not. I am not hung up on any specific solution but I do believe that there must be a solution because right now with serving your PJR application with a proposed written complaint leaves that in a state of limbo. There's no question about it, we don't know exactly what that limbo is. May I just say a word, I heard Senator Rome, and I've heard the comments I've had as an attorney, the personal experiences that I've had, and again with grandparents, some judges consider that they have rights, others do not consider that they have rights. I think that we all know that the cardinal consideration is for the children and there are many many circumstances where the children would be sadly deprived if the grandparents are not given these rights. Sir, I'm finished.

REP. HEALEY: Representative Clark.

REP. CLARK: I'd like to ask you about this practice, practice well not practice, putting it into the statutes this brings about filing all the motions addressed to ..... inaudible. That being alot of summary process, there is a practice book section addressing this problem, this doesn't

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REP. CLARK: Cont. refer to summary process?

WILLIAM M. IVLER: I don't think that it refers to what this is trying to reach.

REP. CLARK: (Inaudible) addresses itself to the fact that you have to file all the motions addressed to the pleading and then it refers to the motions.

WILLIAM M. IVLER: It has not been enforced, I can tell you right now that it has not been enforced. I think any practicing attorney will tell you if they represented any landlords in summary process where legal services has been defending that they do it successively and not all at once. That has been my personal experience and apparently whoever brought this to the committees attention realizes this is the same thing. So - ah - it's not working.

REP. HEALEY: Mr. Ivler, I'm Mr. Healey of the committee. What bothers me about 50-90 is I don't see how it can possibly work. You're requiring all motions to be filed simultaneously, now one of these is a motion for a more specific statement - just as an example. More specific statement is filed and you're not going to permit a motion addressed to that more specific statement?

WILLIAM M. IVLER: Well, I would feel that that is a one motion that should not be in because the motion more specific statement is really a form of pleading. When we file a more specific statement as you know, that is considered an amendment to the pleading and its a part of the pleading. I don't consider that the same as a motion to expunge, a motion to separate a motion to correct, or a motion to erase. I believe that there, that you put your finger on the one, I have my own reservations on the more specific statement. As to the others, I believe they can be done simultaneously, but more specific statement gets into pleading.

REP. HEALEY: But if there is a motion for more specific statement, more specific statement is filed, it certainly is subject to a motion to erase, a motion to expunge, a motion to erase, a motion to separate or a motion to correct.

WILLIAM M. IVLER: Are you referring to the motion to address to the motion for more specific statement.

REP. HEALEY: No, I'm talking about the motion addressed to.....

WILLIAM M. IVER: Youre talking to the specific statement.

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REP. HEALEY: Yes.

WILLIAM M. IVLER: But I'm saying these are defenda if they are considering these as defendents motions. Now if you take the more specific statement out, you will find that the substance forming the basis of expunging, erasing, separating or correcting would all be able to be done at the same time. The motion for more specific statement I agree with you should not be in there. I would say that that is presenting the problem, but you're saying, however, that if I make a motion for more specific statement I would not respond there to by a motion to erase, I would respond by an objection to that, to force the issue and bring it before the court. You know, this doesn't say what I thought it said, either though. The practice book says you shall file a motion to expunge, separate, erase, correct altogether. This says you shall file, not only file all those together, but you shall file those simultaneously with any other such motions. The idea, the concept is that it would not be picked off and today they are - they'll make a motion and lets say a motion to expunge, that will be denied, and then they'll make a motion to separate, a motion to correct, and that will be denied, and then a motion for more specific statement. The motion for more specific statement as we know does go to the pleadings themselves where if a motion for more specific statement is granted that more specific statement becomes a part of that pleading, and I do believe thats a different type of motion than the others. I'm just concerned that I don't think that the particular way this is drafted says what -, unfortunately the problem of course arises that our present statutes states that in a summary process each step shall proceed in every three days. And unfortunately as you know it doesnt and so we come down to the problem of how are we going to expedite a summary process and this is just one of the attempts to find an answer. I have had nothing to do with the drafting of it, I see it, I know the problem is there, I know we have to meet it and as I said, I am not hung up on this, but I do believe that some method has to be made to get summary process summary again. Thank you very much Sir.

REP. HEALEY; Thank you. Judge Lexton.

JUDGE LEXTON: The first matter is Committee Bill No. 128 dealing with the return of seized property. When the original act was passed in which the Judicial department was given the responsibility for the safe keeping of seized property in connection with judicial process it was something that was needed a long time but as is true of many of the statutes, once you put them into effect you find that there are

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JUDGE LEXTON (CONT.): I found it was on a divorce action the order was given by a judge. Further investigation of the fact showed that the defendant at the time was outside the State of Connecticut, \$150 a week order was entered, I didn't know under what circumstances or anything about the case. He was now back in here and the Family Relations Division up there just simply had an arrest warrant issued in the Circuit Court and he was up before me for non-support. So in fact, we were doing and are doing and I imagine we are going to do a little more of it to enforce these things through the criminal action. I don't know if that answers your question but certainly this is no time to, until this whole thing is settled, and I think we'll have to wait until that other case goes up on appeal I think it is going up on appeal now to find out whether infact it's not unconstitutional under the equal treatment I think that we're going to jail males who have failed to pay a court order alimony support without a jury trial. This is certainly no time to act on this bill. I don't even know the purpose of it in a sense, I was never consulted on this, just somebody passed it in.

Are we through with the youthful offender. The destruction of court records 5347 this is a good bill. This was prepared by Judicial, I think it was Joe Keefe's office, we are now getting to a point where I think we may end up by having so many warehouses holding records that should not be held and it's a good bill.

Bill 5348 CONCERNING THE DISPOSITION OF PREJUDGEMENT REMEDIES, we have a condition that has been created know because a great many prejudgement remedies have been brought and nothing done after that there are, I couldn't give you the exact statistics on it but a tremendous number of cases that are piling up in which nothing happens beyond the application for prejedgement remedy. I think this is a good act to get rid of some of that stuff which otherwise would have to be kept. Concerning folio charges of court reporters 5358, I know little about it except in reading it , I don't see where it applies to Court of Common Pleas and I just wondered why, whoever is interested in that bill perhaps should be alerted to that.

5578 abolishing the offices of chief clerk and chief family relations officer to the Court of Common Pleas. Well I have since learned that the chief Family Relations officer is a creature of the Superior Court

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JOSEPH KEEFE (CONT.): order for support which is greater than the amount of the support order in a dissolution of marriage base. This has presented some problem, I think that law should remain but I think the petition is representative under certain circumstances should be permitted to go into the Superior Court and ask for a modification of the support order.

An example of the problem it has created is as follows, I recently received a letter from California complaining that a woman who is divorced in Connecticut by a man who is divorcing his wife in Connecticut was ordered to pay the children

something like twenty dollars per week support and he was allowed visitation rights. She left for California and the court because his visitation rights would be disturbed by her going to California terminated the order of support. She then went on welfare out in California and California through their bureau of support petitioned for support in Connecticut. Our law in Connecticut says that the Court of Common Pleas can not enter an order larger than the Superior Court order which is something that had been modified now to something like a dollar a year.

So we would like to allow in situations like that to give the petitioners' representative the authority to go into the Superior Court and try to modify the judgement of the Superior Court. Section 2 of the bill would allow investigators of the Bureau of Support to serve civil process. At present time they are allowed to serve criminal process but we don't think that's sufficient and it doesn't include such things as issuing habeous and also civil contempt summons. Judge Lexton spoke in favor of 5347 AN ACT CONCERNING DESTRUCTION OF COURT RECORDS, and this is my opinion the present law indicates that court records must be kept for twenty-five years and that is way, way to long. We do have practice book rules, which incidentally are in conflict with this particular statute. I would move for the adoption of 5347.

5348 is a bill concerning the disposition of pre-judgement remedies. It's a little bit difficult to understand the problem here but essentially it's as follows you may get an application remedy which is entered into the system and then there's a hearing. The pre-judgement remedy may be denied or it may be granted. Now most frequently a writ is then issued and return to court there's no new entry fee for the writ and the writ simply goes into the file where the pre-judgement remedy was.

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JOSEPH KEEFE (CONT.): But occasionally the prejudgement remedy whether it be granted or denied is not followed up by written summons and complaint. This leaves us with a dangling prejudgement remedy. As an earlier speaker said he found one on the dormancy program down in Stamford, I'm not sure whether or not that's proper or not because it really is not a case in court.

What we would like is some mechanism for getting rid of these prejudgement remedies which have not been followed up by a written summons and complaint. and I think it's necessary to do this or preferable at least to do this by legislation, rather than by rule of court. However if the committee does feel that sections 1-3 should more properly be handled by rule of court I nevertheless would urge the committee to adopt section 4 because that concerns a fee an entry fee, and it can in no way be handled by a rule of the judges because matters of establishing costs and court fees are definitely for the legislature.

Raised Committee Bill 5358 AN ACT CONCERNING FOLIO CHARGES OF COURT REPORTERS is intended to take care of two existing problems. Under the present law court reporter may charge \$1.25 per page for the original of the transcript, 40¢ per page for a copy. The question that has always arisen is this if the transcript is ordered by two different parties can the court reporter charge the original fee to each of \$1.25 a page. I have felt in the past that he could not but I think that some court reporters may be charging others may not be charging the original price of \$1.25 to each person ordering the transcript. So it would resolve that problem.

Second problem that currently exists is that some judges, especially judges of the Superior Court find that 51-63 is not applicable to situations where daily transcripts is ordered. That is where they've ordered the court reporter to furnish transcripts of today's testimony by no later than tomorrow morning and since they have found that it is inapplicable in such situations they have authorized higher fees for providing transcripts in these cases. I think that the legislature should establish the fees for providing transcripts and not leave it up to individual judges to decide what the fees should be depending upon the circumstances.

5383 is AN ACT CONCERNING CUSTODY AWARDS OF THE SUPERIOR COURT, this is an act which would allow the Superior Court in a dissolution of marriage case to award custody to the Commissioner of Social Services