

Legislative History for Connecticut Act

HB 5347 PA 59 1976

Senate: P. 600, Consent.

House: P. 606-613

Judiciary: P 116, 123 (sentence sub.)

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1976

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Wednesday, March 31, 1976

24.

THE CLERK:

Cal. 317, File 137. Favorable report of the joint standing committee on Judiciary. Sub. for H.B. 5347, AN ACT CONCERNING DESTRUCTION OF COURT RECORDS.

THE PRESIDENT:

Senator Neiditz.

SENATOR NEIDITZ: (5th)

Mr. President, I move acceptance and passage and on the CONSENT CALENDAR.

THE PRESIDENT:

Without objection, it is so ordered.

THE CLERK:

Cal. 318, File 147. Favorable report of the joint standing committee on Judiciary. Sub. H.B. 5624, AN ACT RAISING THE AMOUNT OF MONEY EXEMPT FROM EXECUTION UPON WAGES FOR FAMILY SUPPORT.

THE PRESIDENT:

Senator Neiditz.

SENATOR NEIDITZ: (5th)

Mr. President, I move acceptance and passage.

THE PRESIDENT:

Will you remark on it, senator?

SENATOR NEIDITZ:

Yes. Mr. President, the amount of wages subject to attachment under this section of the statutes has not been raised for some twenty-five or thirty years and the committee

roc:

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HOUSE

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think that we should waive those safeguards based upon what a Federal law may contain, and we don't know today what is in this Federal law in terms of safeguards, and, therefore, I would ask support of the motion to pass retain.

MR. SPEAKER:

Will you remark further?

WILLIAM A. O'NEILL:

Mr. Speaker, if the Minority Leader would withdraw his motion to p.r., I would move that we p.t. this item and discuss it further before the end of the day. It may end up p.r.'d, and we may be able to go with the bill with a simple amendment.

GERALD F. STEVENS:

Mr. Speaker, I would withdraw my motion to pass retain.

MR. SPEAKER:

The motion is to pass the matter temporarily. Is there objection? Hearing none, the matter is passed temporarily.

THE CLERK:

Calendar 233, Substitute for H.B. 5347, an Act concerning destruction of Court records. Judiciary.

JOSEPH F. WEIGAND, JR.;

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

MR. SPEAKER:

The question's on acceptance and passage. Will you remark, sir?

JOSEPH F. WEIGAND, JR.:

Yes, Mr. Speaker. Mr. Speaker, Sec. 1 of this bill

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provides that all Court records may be destroyed according to rules of Court. Sec. 2 provides that no execution to enforce a money judgement shall be issued beyond 20 years after entry of the judgement. No action based on a money judgement shall be instituted beyond 25 years after the judgement was entered. No execution to enforce a Small Claims judgement shall be issued beyond five years from judgement, and no action upon such Small Claims judgement shall be instituted beyond ten years after the judgement. Sec. 3 of the bill provides that no execution upon a Summary Process judgement shall be instituted beyond a one year after the judgement is entered. I move passage of the bill.

MR. SPEAKER:

Will you remark further on the bill?

ALAN H. NEVAS:

Mr. Speaker, I rise merely to express a concern with respect to a portion of this bill which gives up, in my opinion, a certain amount of legislative prerogative and gives it up to the Court. Under the existing statute, this General Assembly has the right to prescribe when records can be destroyed. Under the terms of this statute we are losing that power, and we are giving that power up to the Courts to prevent them to make the rules. In my opinion this goes in the wrong direction. I'm always reluctant to see this General Assembly give up its powers and to turn over discretionary powers to other bodies, whether they be the Executive branch or the Judicial branch, and for that reason, Mr. Speaker, I'm going to vote against the bill.

MR. SPEAKER:

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Will you remark further on the bill?

efr

CLARICE A. OSIECKI:

Mr. Speaker, may I ask a question, please, to the proponent of the bill?

MR. SPEAKER:

Please frame your question.

CLARICE A. OSIECKI:

Is it a fact now that the Courts do destroy the records after 20 years?

MR. SPEAKER:

Gentleman of the 83rd care to respond?

JOSEPH F. WEIGAND, JR.:

I believe the present law is that the Court records would be destroyed after 25 years at the discretion of the Chief Court Administrator.

CLARICE A. OSIECKI:

May I ask another one, please?

MR. SPEAKER:

The lady of the 108th has the floor.

CLARICE A. OSIECKI:

It's my understanding in trying to trace something back for a constituent that the Court records were destroyed and that this individual had to go to the Board of Pardons, because the records were being...the records were retained at State Police headquarters. Am I addressing the same statute, which will have an effect on this in the future?

TAPE
#7

MR. SPEAKER:

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Gentleman of the 83rd to respond. efr

JOSEPH F. WEIGAND, JR.:

Yes, Mr. Speaker. This bill does not address itself to any records that might have been stored or retained at State Police headquarters. It would only refer to Court records stored within the Judicial Department.

CLARICE A. OSIECKI:

Yes, I know that, but what I'd like to know is what would be done within this statute to resolve a situation where the record of an individual is on file at...I think it's 60 Washington Street...but the disposition of the case is no longer available in the Court records?

MR. SPEAKER:

Gentleman care to respond?

JOSEPH F. WEIGAND, JR.:

I don't believe I can shed any further information on that, Mr. Speaker. Perhaps the Chairman of the Committee would care to address that.

MR. SPEAKER:

Gentleman of the 72nd care to respond?

JAMES T. HEALEY:

Yes, Mr. Speaker. There would continue to be in existence, as I understand it, the docket, which would show the disposition. What the basic underlying records are the ones which will be destroyed...the complaint, for instance; the answer; various pleadings; briefs; demurrers; and so forth and so on, the continued existence of which merely imposes a very substantial burden upon

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the Judicial Department as far as storage is concerned. They would efr
have to literally lease warehouses in order to continue to hold on-
to the stuff. But the docket itself would be retained, and the
docket would show the ultimate disposition.

CLARICE A. OSIECKI:

Mr. Speaker.

MR. SPEAKER:

The lady from the 108th has the floor.

CLARICE A. OSIECKI:

Yes. Mr. Healey, would you tell me if this is done now
...if the Court records are destroyed now...in calls to that De-
partment, they're not able to give disposition from a docket at
all...or judgement...or what the sentencing was...or any part of
it. They simply say they no longer have a record of the case.

JAMES T. HEALEY:

Mr. Speaker, through you, sir, my understanding is that
the docket does show the disposition. It would an entry in the
docket, which would show the disposition, and there's no intention
of destroying the docket. It's the basic underlying papers which
would be destroyed, which are the bulk of the file.

CLARICE A. OSIECKI:

Thank you.

MR. SPEAKER:

Will you remark further?

RICHARD A. DICE:

Mr. Speaker, through you, a question to the Chairman of
Judiciary concerning the limitation of the time in which executions

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can be issued. I inquire whether or not in view of the...through efr
you, Mr. Speaker, in view of the fact you cannot bring an execution
on either Small Claims or Summary Process action within the limited
time...whether or not that effectively cuts off the plaintiff's
ever recovering in view of the fact that if you bring another ac-
tion and want to execute, you'll be faced with a defense of res ad-
judicata. Can you explain whether or not we're not, in effect,
cutting down the effective time in which a judgement creditor can
make a claim if he ever goes and brings a lawsuit?

JAMES T. HEALEY:

Mr. Speaker, through you, sir, that is exactly the inten-
tion. We feel that with Small Claims if the judgement creditor has
not wiped the thing out within five years that he ought to bring a
new suit within five years. As far as Summary Process is concerned,
we see no reason why an execution should be entered...should be is-
sued after one year from the date of judgement giving credit for any
stays of execution, because there is no reason for delay unless
what has happened is that the tenant has made his peace with the
landlord meanwhile and commence paying rent again, in which case
it's a violation of law for that landlord to utilize an execution,
because he has created a brand new tenancy meanwhile by accepting
rent.

RICHARD A. DICE:

Through you, Mr. Speaker, back to the Small Claims pro-
blem, is it my understanding that you felt that after the period
of time in which you cannot issue an execution that the creditor
can bring another action on the same debt?

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JAMES T. HEALEY:

efr

Mr. Speaker, through you, sir, no. He would have to bring the new action within the five-year period.

MR. SPEAKER:

Gentleman of the 89th has the floor.

RICHARD A. DICE:

Mr. Speaker, through you, if he brought a new action within the five-year period, would he still not be faced with the question of whether or not the new action is res adjudicata in view of the fact that the first action has been litigated?

JAMES T. HEALEY:

Mr. Speaker, it is my definite understanding that a suit on a judgement is not subject to a pleasef res adjudicata. We are suing on a judgement. That is a separate cause of action. There has been a merger of the original cause of action into the judgement, and, therefore, it is a completely separate cause of action.

RICHARD A. DICE:

Is it my understanding, then, that the judgement creditor can, in a sense, continue to keep his judgement open even though he does issue an execution on the first judgement but sues on the judgement subsequently?

JAMES T. HEALEY:

Mr. Speaker, through you, sir, the gentleman is completely and absolutely correct.

RICHARD A. DICE:

Thank you, Mr. Speaker.

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MR. SPEAKER:

efr

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. The machine will be opened. The staff and our guests please clear the floor area during the pendency of a vote. The machine is still open. The machine is still open. The machine is still open. The machine will be closed, and the Clerk will take a tally. The Clerk please announce the tally.

The following is the result of the vote:

Total number voting	139
Necessary for passage	70
Those voting Yea.	123
Those voting Nay.	16
Those absent and not voting	12

The bill is passed.

THE CLERK:

Calendar 234, H.B. 5593, an Act concerning the conveyance of a parcel of land to the Nathan Hale Ancient Fifes and Drums, Inc.

WILLIAM A. O'NEILL:

Mr. Speaker, because this is an Act transferring real property in the Town of Coventry, I move that we refer this at this time to the Committee on Finance.

MR. SPEAKER:

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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 prejudgetment 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

JUDICIAL

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 habeas 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.