

Legislative History for Connecticut Act

HB8092

PA 360

1977

Senate: P. 2067-2069

(3p)

House: P. 2185-2187, 4543-4545

(6p)

Judiciary: P. 1250-1252

(3p)

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1977

VOL. 20  
PART 5  
1686-2095

## 1977 - GENERAL ASSEMBLY

## SENATE

WEDNESDAY

MAY 11, 1977

100  
LFU

really read the section of the Statute that I quoted, you won't take the matter quite so lightly and I think it is a matter of importance and concern and it's not the way to go about a resolution to the problem. I would urge that you vote no.

THE CHAIR:

Everybody in their seats? The machine may be opened. Please cast your vote. Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, I want to note that Senator Houley has had to leave the building to make a speech to the CPEC tonight.

THE CHAIR:

I think he left with a parched throat. The machine is closed. The Clerk may tally the vote. And I might add, I hope it isn't libation. Result of the vote:

TOTAL VOTING	35
NECESSARY FOR PASSAGE	18
YEAS	22
NAYS	13

The Bill is adopted.

THE CLERK:

Page eleven of the Calendar, Calendar 750, File 563, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for House Bill 8092, AN ACT CONCERNING AN ACCUSED PERSON'S FAILURE TO TESTIFY IN A CRIMINAL ACTION as amended by House Amendment, Schedule A.

THE CHAIR:

Senator DePiano.

1977 - GENERAL ASSEMBLY

## SENATE

WEDNESDAY

MAY 11, 1977

101  
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SENATOR DE PIANO:

Mr. President, I move acceptance of the Committee's Joint Favorable Report and passage of the Bill. There is an Amendment.

THE CLERK:

Clerk has Senate Amendment, Schedule A, File 563, Substitute House Bill 8092, LCO 8475, offered by Senator DePiano. Copies are on the desks.

THE CHAIR:

Senator DePiano.

SENATOR DE PIANO:

Yes, the Amendment merely makes the Court manditorily give a charge to the jury that they can draw no unreasonable or unfavorable inference against a defendant who has not testified in his own behalf unless the defendant makes a motion to the Court asking the Court not to make such a charge to the jury in which case, if such motion is made, it is mandatory upon the Court not to make that charge. If there is no objection, I move for passage of the Amendment.

THE CHAIR:

Senator Putnam.

SENATOR PUTNAM:

Mr. President, through you, I just looked at the Constitution of the State of Connecticut and the Constitution of the United States and they both seem to indicate that a person has a right not to testify against himself. Should this law say that prior to this time a judge has not been able to make that statement, even though it's in our Constitution?

THE CHAIR:

You're deferring to a constitutional lawyer. Senator DePiano.

1977 - GENERAL ASSEMBLY

SENATE

WEDNESDAY

MAY 11, 1977

102  
LFU

SENATOR DE PIANO:

I can speak without a parched throat, Senator. In answer to the good Senator's question, it's been a diversified opinion in regard to whether that rule applies or it doesn't apply. Some courts have taken the position that the Supreme Court has taken some courts have misinterpreted it, at least I think it is a misinterpretation. This will clarify the problem and make it standard in all cases in this State.

THE CHAIR:

Very explicit. All those in favor of the Amendment, signify by saying aye. Those opposed nay. Senator DePiano.

SENATOR DE PIANO:

Mr. President, I now move for passage of the Bill as amended, sir.

THE CHAIR:

If there is no objection, it may be placed on the Consent Calendar.

SENATOR DE PIANO:

Thank you very much.

THE CLERK:

Calendar 751, File 590, Favorable Report of the Joint Standing Committee on Human Services, House Bill 6218, AN ACT CONCERNING PROVISION OF A REASONABLE TIME IN WHICH TO FILE FAIR HEARING APPEALS, as amended by House Amendment, Schedule A.

THE CHAIR:

Senator Hudson.

SENATOR HUDSON:

Yes, Mr. President, I move acceptance of the Committee's Joint Favorable Report and passage of the Bill, as amended by House Amendment A.

H-187

CONNECTICUT  
GEN. ASSEMBLY

HOUSE

PROCEEDINGS  
1977

VOL. 20

PART 6

2134-2538

House of Representatives

Wednesday, April 27, 1977

52  
teg

MR. RITTER (6th):

Mr. Speaker, thank you, I'd like to move this be recommitted to the General Law Committee.

MR. SPEAKER:

Is there any objection? Hearing none, it is so ordered.

THE CLERK:

Cal. 651, substitute for H.B. No. 8092, file 563, An Act Concerning An Accused Person's Failure to Testify in a Criminal Action, Favorable Report of the Committee on Judiciary.

MR. SPEAKER:

Gentleman from the 148th.

MR. ABATE (148th):

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

MR. SPEAKER:

The question's on acceptance and passage and will you remark sir?

MR. ABATE (148th):

Yes, Mr. Speaker, the Clerk has an amendment, L.C.O. No. 8058.

MR. SPEAKER:

Will the Clerk please call and read L.C.O. No. 8058 House Amendment Schedule A?

THE CLERK:

House Amendment Schedule A, L.CO. No. 8058, offered by

House of Representatives

Wednesday, April 27, 1977 53  
teg

Representative Abate of the 148th district, in line one strike "section 1." strike lines 30 and 31 in their entirety.

MR. SPEAKER:

You have the amendment, what is your pleasure?

MR. ABATE (148th):

Mr. Speaker, Ladies and Gentleman, what the amendment does is simply delete from you file copy section number two which indicates that this act shall be take effect on passage. I move adoption of the amendment.

MR. SPEAKER:

Will you remark further on House A? If not, the question's on its adoption, all those in favor will indicate by saying aye. Opposed? House A is adopted and ruled technical. Will you remark further on the bill as amended? Gentleman from the 148th.

MR. ABATE (148th):

Mr. Speaker, thank you. Ladies and Gentleman, this bill will relate to an individual's right under the constitution not to testify at a trial which he is the accused. I'll call you attention to lines 18 through 22, it says the neglect or refusal of an accused party to testify shall not be commented upon to the Court or jury. This does not indicate that the Court or Prosecutorial officials can not comment on that point in either instructions or otherwise. What the bill does now is it says the neglect or refusal of an accused party to testify shall not be commented

House of Representatives

Wednesday, April 27, 1977

54  
teg

by the Court or Prosecuting Official except as provided in sub-section B and of course sub-section B just allows an individual to waive this right and permit comment. The bill is clearly a good bill, it ought to pass.

MR. SPEAKER:

Will you remark further on the bill as amendment? If not, will the members please be seated, staff and guests please come to the well of the House, the machine will be opened. Have all the members voted and is your vote properly recorded? If so, the machine will be closed and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

Total number voting .....	145
Necessary for Passage .....	73
Those voting Yea .....	145
Those voting Nay .....	0
Those absent and not voting .....	6

MR. SPEAKER:

The bill as amended is passed.

THE CLERK:

Cal. 652, substitute for H.B. No. 8213, file 562, An Act Concerning the Role of the State Board of Education in Injunctive Proceedings Resulting from a Teacher Strike, Favorable Report of the Committee on Education.

H-192

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1977

VOL. 20  
PART 11  
4327-4784

Monday, May 23, 1977 133.

Those voting Yea. . . . .	104	efr
Those voting Nay. . . . .	36	
Those absent and not voting . . . . .	11	

The bill as amended is passed.

THE CLERK:

Page 16 of the Calendar, Calendar 651, Substitute for H.B. 8092, Files 563, 1063, an Act concerning an accused person's failure to testify in a criminal action. As amended by House Amendment Schedule "A" and Senate Amendment Schedule "A". Favorable report of the Committee on Judiciary.

ROBERT G. JAEKLE:

Mr. Speaker. Thank you, Mr. Speaker. I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

MR. SPEAKER:

The question's on acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate. Would you remark, sir?

ROBERT G. JAEKLE:

Thank you, Mr. Speaker. The Clerk has an amendment, Senate Amendment Schedule "A", L.C.O. No. 8475. Would the Clerk please call and read.

MR. SPEAKER:

The Clerk please call Senate Amendment Schedule "A"... call and read.

THE CLERK:

Monday, May 23, 1977 134.

Senate Amendment Schedule "A", L.C.O. 8475, offered by efr  
Senator DePiano, 23rd District. In line 23 strike everything af-  
ter "be" and insert "unless the accused requests". In line 24  
strike out "testify in his own behalf but not".

ROBERT G. JAEKLE:

Mr. Speaker, I move adoption of the amendment.

MR. SPEAKER:

The question is on adoption of Senate Amendment Schedule  
"A". Would you remark, sir?

ROBERT G. JAEKLE:

Thank you, Mr. Speaker. On April 27th this House unani-  
mously passed then File No. 563, which provided that in the event  
that an accused fails to testify against himself in a criminal  
action that he could request that the Judge so instruct the jury  
that no adverse inference could be drawn from the accused's fail-  
ure to testify. In the Senate, Senate Amendment "A" modified this  
to provide that in any case where a defendant fails to testify  
that the Judge automatically would instruct the jury that no ad-  
verse inference could be drawn, unless the defendant request to  
the contrary. I say in this case it's a matter of making a good  
bill better, and I urge passage of this bill.

MR. SPEAKER:

The question's on adoption of Senate Amendment Schedule  
"A". Would you remark further? If not, all those in favor of  
Senate Amendment Schedule "A" indicate by saying "aye". Those  
opposed. Senate "A" is adopted and ruled technical. Would you  
remark further on the bill as amended? Would you remark further

Monday, May 23, 1977 135.

on the bill as amended? If not, will the Members please take their efr  
seats, and will the staff please come to the well of the House.  
The machine will be opened. Have all the Members voted? Have all  
the Members voted? If so, the machine will be locked. The Clerk  
please take a tally. The Clerk please announce the tally.

The following is the result of the vote:

Total number voting . . . . .	137
Necessary for passage . . . . .	69
Those voting Yea. . . . .	129
Those voting Nay. . . . .	8
Those absent and not voting . . . . .	14

TAPE  
#20

The bill as amended is passed.

THE CLERK:

Calendar 653, H.B. 5116, Files 8560 and 1055, an Act  
concerning certain definitions in the Teachers' Retirement System.  
As amended by Senate Amendment Schedule "A". Favorable report of  
the Committee on Public Personnel and Military Affairs.

NICHOLAS M. MOTTO:

Mr. Speaker, I move acceptance of the Joint Committee's  
favorable report and passage of the bill as amended...in concur-  
rence with the Senate.

MR. SPEAKER:

The question's on the acceptance of the Joint Committee's  
favorable report and passage of the bill in concurrence with the  
Senate, and would you remark, sir?

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 4  
999-1455**

**1977**

April 4, 1977

49  
cslJUDICIARY

GERALD BARNETT: This is a new proposed statute and it does not amend any existing law. What it does is to incorporate into law what in fact is the present procedure by which application at the Correctional Institution at Somers are processed in the Superior Court for Hartford County. Now by far the main source of Habeas Corpus litigation is in the prison at Somers, but there is also Habeas Corpus applications filed from Niantic, from Cheshire, from all of the other Correctional Institutions for the reason that the Commissioner has such great discretion in which institution he shall place people. Without the procedure outlined in this bill, what usually happens is that the prisoner draws his own application. It comes in handwritten to the Clerk. The Clerk doesn't know what to do with it. We get calls. We are obligated to represent the people. We must go and see them to draft the petitions in proper order. This consequently leads to delay. Habeas Corpus is also a federal remedy. Co-petitions get filed in the Federal Court. The action is late in getting docketed in the state court. If the commissioner is required in all institutions, to follow the procedure he presently follows at Somers, the application is docketed immediately. It's a present case, the attorney is assigned, he prepares an amended petition if such is necessary. The case is heard promptly.

The second bill I wish to testify in favor of is Raised Committee Bill No. 8090. An Act Concerning The Number of Jurors in Criminal Cases, punishable by Life Imprisonment. Earlier this morning, Mr. Gormley, the Chief States Attorney, testified in favor of this bill and he informed you that ambiguity existed as to whether in Class A felonies the accused was entitled to a six man jury or a six person jury rather, or a twelve person jury. Actually, in some courts, judges have ordered six and some courts judges have ordered twelve. Now, what Mr. Gormley did not state was probably the main reason for the ambiguity. The reason is that in a non-jury trial, the assembly has decided in existing Section 54-82 that where the crime charged is a Class A felony and the person elect not to be tried by a jury, is entitled to three judges. What this bill would do is to elevate the jury trial to the same level. If you get three judges rather than one for a defense trial in a Class A felony, then we feel that you should be entitled to twelve jurors rather than six. Otherwise it does seem to pose some kind of an equal protection problem as to whether you are unconstitutionally effecting a persons right to choose a jury trial. Are there any questions?

The third bill is Raised Committee Bill No. 8092. An Act Concerning An Accused Failure to Testify in a Criminal Action,

JUDICIARY

GERALD BARNETT CONTINUED: Now here we have proposed two changes, to existing Section 54-84. One is that at the present time the statute reads, "the neglect or refusal of an accused party to testify, shall not be commented upon to the court or the jury"

Now at the present time of course, there is no comment made. The judge does not inform the jury that the accused should be held to some degree of culpability because he didn't testify, but that isn't because of this statute. That is because of the United States Supreme Court Decision in Griffin versus California. The change to Section 1 of 54-84 would make our statute conform to Griffin versus California. Prior to the Supreme Court Decision in Griffin versus California, Judges in Connecticut commented to juries in all criminal cases.

The second change is that upon...let me back track a little. Griffin versus California is known as the rule of silence. The judge shall not tell the jury that the accused is required to testify or that the accused has a constitutional right not to testify. The judge just keeps quiet. Now we have requested an addition, that an accused who chooses not to testify, can request that the court tell the jury that they may draw no unfavorable inference from his declanation to testify, or in cases which are non jury cases, the court is not to draw an unfavorable imprint from the accused silence.

Now basically the second requested change is based on a case called Bruno versus the United States which is not a new case. Bruno versus the United States held that this legislation which we proposed today was required to be given by federal judges in instructions to federal juries when the accused so requested. The Bruno case is based on a federal statute that is very similar to one of our own. A statute that says an accused previous record does not affect it's competency to testify but may affect his credibility. Now recently the Supreme Court of Connecticut in a case called State versus Branham refused to follow the Bruno decision. The Supreme Court of Connecticut held that the Bruno decision was based on a federal statute and that the Griffin Decision was based on the constitution. But when you base the Griffin Decision back you come to a case called Witherspoon versus the United States and that was the same situation as Griffin. A question of whether the judge should say anything at all. You find that the Witherspoon Decision is based on the same statute as the Bruno Decision. In other words, when the United States Supreme Court was dealing with the Court System of California it had to use the Federal Constitution. When the United

April 4, 1977

51  
cslJUDICIARY

GERALD BARNETT CONTINUED: States Supreme Court deals with the courts in the federal system it does not. It has supervisory power that it can use. It has statutes.

We feel that if Branham had reached the Supreme Court of United States, and it wasn't one of our cases, or it would have reached the United States Supreme Court, that the Court would have followed the Bruno analogy and held, that due process under the fifth amendment as incorporated into the fourteenth amendment required that the court tell the jury on the accused request that a man does not have to testify in a criminal action in this state or in this country. Now when the Branham Decision was tried, I was an Assistant States Attorney and I was so sure it was going to be reversed to the Supreme Court of Connecticut that I tried to hurry the deal up and Branham's said "Why?" and I said "If you are correct, it could do a great deal of damage", to subsequent cases. There may be several convictions that will have to be reversed.

Well it took three and a half years for that case to reach the Supreme Court of Connecticut. By that time I changed jobs, and my fears were unfounded. However, when the decision finally did come out I prepared a short memorandum for all Public Defenders in the state, as to the existing state of the law, as to the facts that most courts of the country, most state courts that is were contrary to the Decision of the Connecticut Supreme Court. That the federal courts were bound by the Bruno decisions, so they were contrary to the Decision of the Connecticut Supreme Court. The memo asked them to continue to request the instruction, so that if a case were properly framed, as Branham may not have been, we could go to the United States Supreme Court on a petition for certiorari.

But, we are here first, because the Connecticut Supreme Court has said implicitly in the Branham Case, that Bruno's rights were statutory, and if you want similar rights in Connecticut go to the General Assembly. With the permission of this body I will leave some copies of the memorandum with your clerk.

REP. ABATE: Thank you very much. Are there any questions?

JOSEPH SHORTALL: Thank you.

REP. ABATE: Senator Putnam

SEN. PUTNAM: Good morning, Douglas Putnam from the 5th District. This is very brief. I am speaking for the Republican Senate, on Bill #5071, which on the back side indicates that Senate Bill #147 has been mixed in with it, combined with it.