

Legislative History for Connecticut Act

SB475 PA 199 ^{FAX} COPY 1978
Senate: P. 1718-1720, 1791, 1793 (5p)
House: P. 3595-3602 (8p)
Judiciary: P. 1302-1303; 1325-1326 (4p)

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1978

VOL. 21
PART 5
1672-2081

Wednesday, April 19, 1978

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confidential unless otherwise directed by the individual member, and can be used by the Ethics Commission to find probable cause of the violation of the ethics code. If there is no objection, I would move the bill to the consent calendar.

THE CHAIR:

Hearing none, so ordered

THE CLERK:

Turning to page 8 of the calendar, calendar 528, File 444, Favorable Report of the Joint Standing Committee on Judiciary, substitute for Senate Bill 243, An Act Concerning the Reopening of Default Judgements.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

Mr. President, I move for recomittment of that bill.

THE CHAIR:

No objection, so ordered.

THE CLERK:

Calendar 530, File 442, Favorable Report of the Joint Standing Committee on Judiciary, Substitute for Senate Bill 475, An Act To Provide Inheritance Rights To Children Born Out Of Wedlock.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

I move for acceptance of the committee's joint favorable report

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and passage of the bill.

THE CHAIR:

Will you remark?

SENATOR DEPIANO:

There is an amendment, Mr. President.

THE CHAIR:

Clerk has Senate Amendment Schedule "A", Substitute Senate Bill 475, LCO 3808, 3808, offered by Senator DePiano.

THE CHAIR:

Senator DePiano.

SENATOR DEPIANO:

The amendment would provide that in line 29 strike out the words "within one year after the birth of the child" and that would pertain to the fact that the father would have to sign an affidavit within one year of the birth of the child. Requirement of the one year signing is taken out of the statute and then the bill also pursuant to the amendment strike out lines 50 to 74 which I think is self-explanatory.

THE CHAIR:

Will you remark further on the amendment? If not, all those in favor signify by saying aye, those opposed nay, the ayes have it. The amendment's adopted. Senator DePiano.

SENATOR DEPIANO:

I now move for acceptance of the committee's favorable report and passage of the bill as amended.

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THE CHAIR:

Will you remark further?

SENATOR DEPIANO:

Yes. This bill would merely provide that a child who is born out of wedlock could inherit from the father providing that the father has been declared the parent of the child by a court (inaudible) jurisdiction, or has signed an affidavit under oath that he is the father. If there is no objection, I move it be placed on the consent calendar.

THE CHAIR:

Hearing no objection, so ordered.

THE CLERK:

Calendar 531, File 439, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for Senate Bill 497, An Act Concerning the Revision of Shellfish Laws.

THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

Mr. President, I move adoption of the favorable report and passage of the bill. There is an amendment.

THE CLERK:

Clerk has Senate Amendment Schedule "A", Substitute Senate Bill 497, LCO 3446. 3446, offered by Senator Gunther.

THE CHAIR:

Senator Gunther.

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THE CLERK:

Yes, we have another page of the agenda too that we received, senate Agenda, page 4 that have been distributed. (Transcriber's Note: This was inadvertently included by me on my pages 6, 7, & 8).

SENATOR LIEBERMAN:

Mr. President, I move for adoption of page 4 of today's agenda pursuant to my earlier motion.

THE CHAIR:

You heard the motion. Objection? All in favor of adopting? Opposed, say nay. Page 4 is adopted, I think.

THE CLERK:

Clerk has received Petition 33 in accordance with provisions of Joint Rule 19, Committee on Appropriations, Substitute Bill 249, entitled An Act Concerning Prisoner Transportation by the Department of Correction. Clerk is ready to go over the consent calendar while we're waiting. On page 2, calendar ^{SR 66, SR 67} 686, 687, on page 3, all items ^{SR 68,} SJR 152-155 ^{SJR 156} ^{SR 14} on the calendar, on page 4, calendar 693 and 34. On page 5, calendar 331, 358, 392. On page 6, calendar 418, on page 7, calendar ^{SB 112, SB 514, SB 327} ^{SB 560} ^{SB 117} 513. On page 8, calendar 530, 531, on page 9, calendar 541 and 553. ^{SB 475, SB 497} ^{HB 5849} ^{SB 312} On page 10, calendar 560, 567, 568. Page 11, calendar 571, 585. On ^{SB 580} ^{HB 5307, HB 5310, HB 5602} ^{HB 5081,} page 12, calendar 586, calendars 603, 604, 605. Page 13, calendar ^{HB 5165, HB 5695} ^{SB 15, SB 255, SB 271, SB 615} 606, 607, 609. Page 14, calendar 626, 628, 629, 630. On page 15, ^{SB 572, SB 541, SB 621, SB 622} calendar 646, 647, 648, 649 and on page 22, all the items under ^{SR 53, HJR 56-58} the heading Resolutions, calendar 645, 683, 684 and 685. (Note on p. 1793)

SENATOR LIEBERMAN:

Mr. President, I would then move for adoption of the Consent Calendar and ask that when the vote be taken, it be taken by roll

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we're coming back to the Sunday closing laws after the consent calendar, so they not depart from the Chamber.

SENATOR SULLIVAN:

Mr. President.

THE CHAIR:

Senator Sullivan.

SENATOR SULLIVAN:

Will you hold the machine open until I get Senator Flynn? He's right outside.

THE CHAIR:

Certainly, Senator.

SENATOR SULLIVAN:

I think he forgot the announcement.

THE CHAIR:

Certainly, Senator. Machine is closed and locked. 34 total voting, 18 necessary for passage. 34 yeas, 0 nays. Consent is (see p 1791) adopted. Let's come to order again, Ladies and Gentlemen of the Circle. Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, I wonder if I might ask Senator Hudson, Members of the Circle, while we are waiting for the copies of the amendment to be distributed if, as we have done in other cases, we could start the debate on the amendment proposed.

SENATOR DEPIANO:

Mr. President, may I recorded in the yea on the consent calendar, please?

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GEN. ASSEMBLY
HOUSE

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The machine will be opened. The machine is still open. Have all efr
the members voted, and is your vote properly recorded? If all
the members have voted, the machine will be locked, and the Clerk
will take a tally. The Clerk please announce the tally.

The following is the result of the vote:

Total number voting	144
Necessary for passage	73
Those voting Yea.	144
Those voting Nay.	0
Those absent and not voting	7

The bill is passed.

THE CLERK:

Calendar 1009, Substitute for S.B. 560, File 320, an
Act concerning political activities of State employees. Favor-
able report of the Committee on Public Personnel and Military
Affairs.

ROBERT J. CARRAGHER:

Mr. Speaker, I move that this bill be passed retaining
its place.

MR. SPEAKER:

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

THE CLERK:

Calendar 1011, Substitute for S.B. 475, File 442, an Act
to provide inheritance rights to children born out of wedlock.
As amended by Senate Amendment Schedule "A". Favorable report of

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the Committee on Judiciary. efr

RICHARD D. TULISANO:

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

MR. SPEAKER:

The question is on acceptance of the Joint Committee's favorable report and passage of the bill, and will you remark, sir?

RICHARD D. TULISANO:

In concurrence. Mr. Speaker, the Clerk has an amendment, Senate Amendment Schedule "A", L.C.O. 3808.

MR. SPEAKER:

The Clerk please call and read L.C.O. 3808, House "A"... Senate "A".

THE CLERK:

Senate Amendment Schedule "A", L.C.O. 3808, offered by Senator DePiano, 23rd District. In line 29 strike "within one year after the birth of the". In line 30 strike the word "child". Strike lines 50 to 74 inclusive in their entirety.

MR. SPEAKER:

You have the amendment. What is your pleasure, sir?

RICHARD D. TULISANO:

Mr. Speaker, the...everybody reads the legislation, I believe...

MR. SPEAKER:

The Chair will entertain a motion for adoption.

RICHARD D. TULISANO:

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I move the amendment be adopted.

efr

MR. SPEAKER:

Will you remark on the adoption of Senate "A", sir?

RICHARD D. TULISANO:

Yes, Mr. Speaker. Mr. Speaker, this amendment is of a technical nature. It clarifies the meaning and the intent of the Committee when it reported this bill out for purposes of providing inheritance rights to children born out of wedlock, and I move its adoption.

MR. SPEAKER:

Will you remark further on the amendment? If not, the question is on its adoption. All those in favor of Senate "A" will indicate by saying "aye". Opposed. The "ayes" have it. Senate "A" is adopted and ruled technical. Will you remark on the bill as amended?

RICHARD D. TULISANO:

Yes, Mr. Speaker. Mr. Speaker, this proposed legislation as amended is a response to a Supreme Court decision known as Trimble vs. Gordon in which it indicated that a...there should not be a distinction between legitimate and illegitimate children for purposes of inheritance, and that being the only distinction. This legislation addresses that decision by providing that if a putative father acknowledges paternity either through a written acknowledgement or Court adjudication then the child could inherit, and I move its adoption.

MR. SPEAKER:

Will you remark further on the bill as amended?

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ELMER W. LOWDEN:

efr

Mr. Speaker, I should like to direct Representative Tulisano's attention to lines 23 through 29, or what is left of 29 after the amendment, and then I would like to put through you, Mr. Speaker, a question to the Representative.

MR. SPEAKER:

Please frame your question, sir.

TAPE
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ELMER W. LOWDEN:

Representative Tulisano, I have a little trouble with this language, which says a child born out of wedlock shall inherit from (a) his or her mother, and (b) his or her father provided such father, and so forth, acknowledges that his is the father. Does this mean that unless the father acknowledges parenthood that the child, the illegitimate child, will not inherit from the mother?

MR. SPEAKER:

The gentleman from the 29th care to respond?

RICHARD D. TULISANO:

Mr. Speaker, I do not believe that is so. I believe the language says he...I believe the language as written indicates that the child will want to inherit from his or her mother, and in the event that the father acknowledges paternity either through the adjudication by a Court of competent jurisdiction, or through the written acknowledgement under oath, then he or she may also inherit through both parents.

MR. SPEAKER:

The gentleman of the 146th has the floor.

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ELMER W. LOWDEN:

efr

Mr. Speaker, I just want to acknowledge that I understand the bill better now, and I think Representative Tulisano is absolutely correct. Thank you.

MR. SPEAKER:

Will you remark? Further remarks?

DOROTHY C. GOODWIN:

Mr. Speaker. Thank you, Mr. Speaker. A question through you to the proponent of the bill.

MR. SPEAKER:

Please frame your question, madam.

DOROTHY C. GOODWIN:

Mr. Speaker, if I understand Section 1a correctly, this applies only to intestate situations.

RICHARD D. TULISANO:

Mr. Speaker, through you, that's correct. This applies to intestate situations. Testate the putative father could, of course, provide for distribution of the estate any way he wants to any person he pleases.

DOROTHY C. GOODWIN:

Well, I'm thinking of a case where an estate is left in trust and provides for distribution of the proceeds of the trust to the third generation afterwards...for the second generation afterwards...if they are lawful issue and the will was written years before the babies were born.

MR. SPEAKER:

The gentleman care to respond?

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RICHARD D. TULISANO:

efr

I think, through you, Mr. Speaker, as I understand the Court decision and existing law, the fact that there was a trust and a written instrument which put a limitation on the distribution of the testate or estate...that is to lawful issue...that would presume, if I were to interpret that, that means they acknowledge the fact there could be issue which was not lawful, and they were distinguishing themselves. What the Court decision indicated was that this was a state action equal to the 14th Amendment. They interpreted the 14th Amendment's equal protection clause and prohibited states by making that...from making an invalid distinction between individuals...not from between a testate or a father from making a distinction. So, I think that in your case that you have indicated the father could make the distinction between lawful or unlawful issue...unlawful...that's an improper word...but lawful issue or otherwise; whereas the state cannot make a distinction to its intestacy laws. I hope that clarifies it.

DOROTHY C. GOODWIN:

Thank you, Mr. Speaker. It clarifies it, but it disappoints me. Thank you.

MR. SPEAKER:

Further remarks?

ROBERT M. BENNETT:

Mr. Speaker, a question through you to the proponent of the bill.

.MR. SPEAKER:

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Please frame your question, sir. efr

ROBERT M. BENNETT:

Mr. Tulisano, would you please inform me as why the Section 3 was eliminated from the bill?

MR. SPEAKER:

The gentleman care to respond?

RICHARD D. TULISANO:

Through you, Mr. Speaker, that was a decision that was made in the Senate...I think to clarify...to make it very clear that when this bill went through Committee, and I'm only...this is my understanding, and only mine, that we were dealing with inheritance rights, and that has...that is really a different subject and not...it should not have been dealt with in this bill. That had to do with collection, as I recall. It allowed the town, or someone standing in the place of the child to make collection. It had nothing to do with inheritance rights.

ROBERT M. BENNETT:

Mr. Speaker, a further question through you on the bill.

MR. SPEAKER:

You have the floor, sir.

ROBERT M. BENNETT:

Is this a matter of hearsay with you, or is this a matter of fact, sir?

RICHARD D. TULISANO:

It's just only my...through you, Mr. Speaker, it is my...it's solely my belief. I just...as I read the bill and can understand what happened. To do otherwise may have misled some people

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from the title of the bill and the way it was...has been heard in efr
Committee. But I could not...I only...it is hearsay, if that's
what you want call it.

ROBERT M. BENNETT:

Thank you, sir.

MR. SPEAKER:

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

The following is the result of the vote:

Total number voting	143
Necessary for passage	72
Those voting Yea.	142
Those voting Nay.	1
Those absent and not voting	8

The bill as amended is passed.

THE CLERK:

Calendar 1012, Substitute for S.B. 525, File 440, an
Act concerning receivership of nursing homes. As amended by
Senate Amendment Schedules "A", "B" and "C". Favorable report
of the Committee on Judiciary.

ERNEST N. ABATE:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
857 - 1353**

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SEN. DE PIANO: Thank you very much. Joanne Miner? Welcome back.
Belt #9

JOANNE MINER: Thank you. I'm beginning to feel like a regular visitor. As you know, Senator, I'm Joanne Miner. I'm with the Legal Services Legislative Office, and we provide legislative advocacy on behalf of Legal Services clients throughout the state.

I'm here today to speak on two bills. I will try to be brief.

The first bill is Committee Bill No. 475 which is an act to provide inheritance rights to children born out of wedlock. We support the concept of the bill. We do have some questions about the specific provisions of the bill.

In respect to new Subsection B-1, there are only two circumstances provided for under which a child whose parents have not married and who was born out of wedlock will be given the inheritance rights which the bill provides. It is our feeling that these two circumstances are too narrowly drawn. We would prefer to see the bill broadened to include not only situations in which the father has been adjudged to be the father or has acknowledged under oath in writing that he is the father but also circumstances under which the father has supported the child throughout the child's life, even without a written acknowledgement, or has actually lived with the child and the child's mother or another supervising relative. We feel that this would provide adequate safeguards so as to avoid frivolous claims of inheritance rights by children but would also recognize the fact that in all situations fathers do not acknowledge paternity and indeed are not adjudged to be the fathers.

Our second concern with the bill is Section 3, Subsection B. This provides that a child who has been born out of wedlock may, through a guardian of the person or next friend, institute a paternity action against a putative father if the mother refuses to prosecute such an action. I'm not certain what the motivation is for this provision. I am concerned that it may be an attempt or could be used as an attempt to circumvent the present federal and state laws regarding..with respect to AFDC mothers, the naming of the father of a child. There are specific provisions provided under which a mother of a child who is born out of wedlock, who is receiving assistance from the State of Connecticut, will not be required to institute a paternity action. This exception to the General Rule that she is required to institute an action is mandated by Federal Law and Federal regulation.

JOANNE MINER (Continued): This Subsection B appears to be an attempt to get around this provision -- if the mother refuses and is found by the Department to have legitimate reason to refuse to participate in the paternity action, it's possible that the Department could attempt to have a guardian appointed a child who would then institute proceedings on behalf of the child. I would simply ask that the Committee consider that there is perhaps no need for this subsection. In fact, it could be very harmful and could some of the rights that have been granted to mothers.

The second bill which I would like to address today and I would like to address it despite your remarks to Dr. Marsh is Bill No. 384. I was very active in the drafting of this bill as were a number of other attorneys. We did not draft this bill in a vacuum. We worked with the Department of Children and Youth Services over a three or four month period with a number of meetings to draft a proposal which would reflect the concern of the State of Connecticut, hopefully, for the children who are being committed to Mental Health facilities. We were under the impression, and I am still under the impression that the Department of Children and Youth Services is not satisfied with the present system and wanted a new and better, more well-developed system.

At the present time, a child can be committed to a mental health facility in Connecticut by three different routes with three different standards. A child can be committed by Juvenile Court if a child comes before Juvenile Court on a delinquency or a neglect...

SEN. DE PIANO: Let me ask you a question. Are in favor of the Study Program that we've been talking about?

JOANNE MINER: I think I would support the position of Judge Higgins, that we would like to see a bill enacted this year and we are certainly very willing and very eager to work with the Study Commission in drafting perhaps revisions of a bill or a bill in more depth than what might get enacted this year.

SEN. DE PIANO: But you want legislation this time without the Study Commission and the Study Commission afterwards.

JOANNE MINER: That's correct essentially. At the present time, children can be committed by Juvenile Court, by Probate Court under the adult commitment statute that apparently also applies to children and has, I might add, a standard that we feel is much stricter than the standard we have provided for. Also, if the child is a child who has been committed to DCYS by the Juvenile Court and DCYS feels the

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kjj

JUDICIARY

March 23, 1978

JUDGE KNIERIM: That's correct, Senator ...

SEN. DE PIANO: All the way through the Probate Court system, if it's happening to our office, it must be happening to other offices.

JUDGE KNIERIM: They are working very hard to remedy that situation and they have been short-handed, and I've been working with them and they are trying their best, and I think they'll go back to their six week computation system - I hope they do, but still the person who doesn't file the return and lets it drag on, in the Federal system we have a penalty similar to this one for not filing, and I think we really ought to. Now, there is another indirect benefit to this Bill, and that is, we have a situation which is developing where people who are domiciled in Connecticut for one reason or another direct that their estates be probated in other states, and they're likely to ignore our tax law, and we lose tax revenues, and having a penalty for failure to file a tax return is an important feature to help us in that regard, too.

Bill 413 is technical amendment to our Adoption Information Law which you were good enough to pass for us last year. I'd like to report to you that the Adoption Information Law is working very well. Bill 413 just fixes up some very technical problems. There is no change in substance. There are two things that need to be changed which I submitted, and somehow on the computer they got left out of this draft, and rather than take up your time, I would like to submit the changes to Marsha Smith so that she can incorporate it.

SEN. DE PIANO: Bring it to her attention.

JUDGE KNIERIM: Thank you.

SEN. DE PIANO: Okay.

JUDGE KNIERIM: Bill 475, an Act To Provide Inheritance Rights To Children Born Out Of Wedlock. I have with me a substitute Bill, which again I would like to give to Marsha Smith. Probably no Bill that I've ever drafted gave me more trouble and my staff more trouble than this Bill. The Bill is in response to a United States Supreme Court case issued last year which declares Connecticut's inheritance laws for illegitimates completely unconstitutional. We have to pass some legislation if we are to respond to the case of Trimble vs. Gordon. I tried almost every approach to define what classes of illegitimates should inherit, because if you're

JUDGE KNIERIM (Continued): not careful you will open the flood gates. You invite delays of administering estates because you have people making claims for an inheritance where paternity was never proved, and so I finally narrowed it down to the classifications that you have before you in this Bill. Number one is if adjudication has taken place in our courts of paternity, then inheritance takes place.

SEN. DE PIANO: Would this Bill cover a situation where a man doesn't admit the paternity - he dies and then they take steps to have him declared as the father after his death, would this Bill cover that, or is there a prior requisite that before the death of the father that the paternity must be declared.

JUDGE KNIERIM: If adjudication has begun prior to his death, but is completed thereafter, it would cover it.

SEN. DE PIANO: But if nothing has been done, would this Bill cover it?

JUDGE KNIERIM: No.

SEN. DE PIANO: Would you still be able to inherit under this Bill?

JUDGE KNIERIM: No, because we wanted to prevent the wholesale claims that might come in if we just opened the door. Secondly, of course, he's not there to defend himself anymore. There are many other areas of punitive fathers who perhaps should be in a situation where their children should inherit, but the real problem is the matter of proof, and the Supreme Court said to us that adjudication certainly establishes inheritance rights, and we leave it up to the states to decide what other categories. Now, the only thing we've said here, the only other category would be where the person has filed written acknowledgement under oath that this is his child. That person could also inherit even though it wasn't adjudicated, and we don't think we have to go further at this time until we get some experience and see how this thing develops. Now the idea that someone remarked about earlier, Section II of this Bill, which permits a child to pursue an action for paternity, which is not available under our present statute, is simply to give the child the right before the fact to perfect his inheritance rights. If a mother has no interest in it and drops her action, this Section III would permit the child to pursue the action, and I think that's important in the Court of Common Pleas of the Superior Court after July 1st. I'll leave the substitute Bill with Marsha Smith.