

Legislative History for Connecticut Act

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HOUSE

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House of Representatives

Thursday, April 17, 1986

REP. CANDELORI: (23rd)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Candelori.

REP. CANDELORI: (23rd)

Mr. Speaker, in the affirmative, please.

DEPUTY SPEAKER BELDEN:

Rep. Candelori of the 23rd in the affirmative.

The Clerk will please announce the tally.

CLERK:

House Bill 5616.

Total number voting 144

Necessary for passage 73

Those voting yea 144

Those voting nay 0

Those absent and not voting 7

DEPUTY SPEAKER BELDEN:

The bill is passed.

CLERK:

Calendar 387, House Bill 5854, File No. 403,

AN ACT AUTHORIZING INTERLOCUTORY APPEALS OF JUVENILE
TRANSFER ORDERS. Favorable Report of the Committee on
Judiciary.

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REP. WOLLENBERG: (21st)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

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

DEPUTY SPEAKER BELDEN:

The motion is for acceptance and passage. Will you remark, Sir?

REP. WOLLENBERG: (21st)

Thank you, Mr. Speaker. Mr. Speaker, last year we passed a bill for accelerated rehabilitation that said a decision as to whether or not you could have accelerated rehabilitation was appealable on that decision rather than having to go through the trial and then take an appeal from the full trial. This does that for transfers of juvenile cases. In other words, if a case is going to be transferred and you disagree with that, that's an appealable action and you can have a determination made on that at a higher court and then come back and try it, depending upon what they say but it is appealable. Right now it is not appealable. You

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have to go through the trial and then make a determination of whether or not you want to appeal that. It doesn't make much sense. This bill does make sense and I urge passage.

DEPUTY SPEAKER BELDEN:

Will you remark further on the bill?

REP. WARD: (86th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Robert Ward.

REP. WARD: (86th)

Through you, if I may, a brief question to the proponent.

DEPUTY SPEAKER BELDEN:

Please frame your question, Sir.

REP. WARD: (86th)

Rep. Wollenberg, do the court advocates, the prosecutors of juvenile court cases, take any position on this bill?

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (86th)

Through you, Mr. Speaker. I couldn't hear the question. I'm sorry.

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REP. WARD: (86th)

I apologize. The question was --

DEPUTY SPEAKER BELDEN:

-- Rep. Ward, if you could get the mike up a little closer, we'd appreciate it. Please rephrase your question.

REP. WARD: (86th)

Thank you. My question was did the court advocates that prosecute juvenile court cases take any position on this bill before your committee?

DEPUTY SPEAKER BELDEN:

Rep. Wollenberg, would you care to respond?

REP. WOLLENBERG: (21st)

Yes, thank you, Mr. Speaker. Through you, The Juvenile Justice Advisory Committee did favor the bill. The Division of Public Defender Services and the Center for Advocacy and Research, that would not be the agency you suggested, but I think there was some support for it.

DEPUTY SPEAKER BELDEN:

Rep. Ward, you have the floor, Sir.

REP. WARD: (86th)

Just another question so I'm clear on that. Was there opposition from the States Attorneys Office or the branch that prosecutes juvenile cases?

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DEPUTY SPEAKER BELDEN:

Rep. Wollenberg.

REP. WOLLENBERG: (21st)

Thank you. Through you, Mr. Speaker, there was no opposition noted.

REP. WARD: (86th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Thank you. Will you remark further on the bill? If not, staff and guests please come to the well of the House. An immediate roll call is ordered. Will the Clerk please announce a roll call is in progress.

CLERK:

The House of Representatives is now voting by roll. Will all members please return to the Chamber.

The House of Representatives is now voting by roll call. Will all members please return to the Chamber immediately.

DEPUTY SPEAKER BELDEN:

Have all the members voted? Please check the board to determine if your vote is properly recorded. The machine is open. The machine will be locked. The Clerk will take a tally.

Will the Clerk please announce the tally.

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CLERK:

House Bill 5854.

Total number voting 149

Necessary for passage 75

Those voting yea 149

Those voting nay 0

Those absent and not voting 2

DEPUTY SPEAKER BELDEN:

The bill is passed.

REP. PALERMINO: (5th)

Mr. Speaker.

DEPUTY SPEAKER BELDEN:

Rep. Palermo of the 5th.

REP. PALERMINO: (5th)

That's Palermino, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

The Chair apologizes, Sir.

REP. PALERMINO: (5th)

Thank you, Mr. Speaker. I rise for the purpose
of a Point of Personal Privilege.

DEPUTY SPEAKER BELDEN:

Please proceed, Sir.

REP. PALERMINO: (5th)

Thank you, Mr. Speaker. Ladies and gentlemen,

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none, so ordered. Senator Smith.

SENATOR SMITH:

Thank you Mr. President. On page 3 of the calendar, at this time, Mr. President, I'd like to move that calendar numbers ^{HB 5343} 415, ^{HB 5608} ^{HB 5616} 416 and 417 be placed on the consent calendar.

THE CHAIR:

Hearing no objection, so ordered.

SENATOR SMITH:

On page 4, at this time I'd like to move that calendar No. ^{HB 5664} 418 and 419 be placed on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR SMITH:

And at this time I'd like the Clerk to call calendar No. 424.

THE ASS'T. CLERK:

Calendar No. 424, Substitute for House Bill No. 5754. An Act Concerning A Ban On The Use Of Lead Solder In Potable Water Systems.

Favorable Report of the Committee on Public Safety.

THE CHAIR:

Senator DiBella, I guess he wishes to yield to you? Want to proceed?

SENATOR DiBELLA:

Thank you Mr. President. I was on legislative business and I missed a roll call. I believe it was on calendar 442, An Act Concerning Elderly Nutrition And Area Agencies On Aging. I would like to be recorded, for the record, in the affirmative vote, please?

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calendar.

THE ASS'T. CLERK:

Page 3, calendar No. 415, House Bill No. 5543. Calendar 416, House Bill No. 5608. Calendar 417, House Bill No. 5616. Page 4, calendar 418, Substitute for House Bill No. 5664. Calendar 419, House Bill No. 5854. Calendar 428, Senate Bill No. 369. Calendar No. 429, Substitute for Senate Bill No. 194. On page 5, calendar No. 430, Senate Bill No. 150. Calendar No. 431, Senate Bill No. 151. Calendar No. 432, Senate Bill No. 335. Calendar No. 433, Substitute for Senate Bill No. 406. On page 6, calendar No. 441, Substitute for Senate Bill No. 552. Calendar No. 446, Substitute for Senate Bill No. 76. Calendar No. 447, Substitute for Senate Bill No. 168. Calendar No. 448, Substitute for Senate Bill No. 172. On page 7, calendar 449, Substitute for Senate Bill No. 173. Calendar 450, Substitute for Senate Bill No. 380. On page 8, calendar No. 459, Senate Bill No. 486. Calendar No. 470, House Bill No. 5280. Calendar 472, House Bill No. 6145 and calendar 473, Substitute for House Bill No. 5934. On page 9, calendar No. 474, Substitute for House Bill No. 6048. Calendar No. 476, House Bill No. 5490. Calendar 478, House Bill No. 5612. Calendar 479, House Bill No. 5613. On page 10, calendar No. 485, House Bill, oh we took, I'm sorry, that was taken off of consent. On page 12, calendar No. 511, Substitute for House Bill No. 5122. On page 14, calendar No. 520, Substitute for House Bill No. 5909 and calendar 522, House Bill No. 6028. On page 15, calendar No. 526, House Bill No. 6079 and calendar 528, House Bill No.

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6140. On page 16, calendar No. 536, Substitute for Senate Bill No. 107 and calendar 537, Senate Bill No. 108. On page 18, calendar 551, Substitute for House Bill No. 5768. On page 26, calendar No. 273, Substitute for House Bill No. 5314. Page 27, calendar 305, Senate Bill No. 558. That's all I have on consent.

THE CHAIR:

Is there any request to delete any item from the consent calendar? Senator Markley?

SENATOR MARKLEY:

Mr. President, I must regretfully ask that we take calendar 447, Senate Bill 168 on page 6 while we consider a problem that's been brought to our attention.

THE CHAIR:

All right. Page 6, calendar No. 447, Substitute for Senate Bill 168 is no longer on the consent calendar.

SENATOR MARKLEY:

Could that bill be P.T.d at this point?

THE CHAIR:

Hearing no objection, so ordered. Are there any other items to be taken off the consent calendar? Hearing none, the machine will be opened. Machine'll be closed. Clerk, please take a tally. Those voting in favor of the consent calendar, 34. Those opposed, 0. The consent calendar, surprisingly, is adopted. Madam Clerk, will you please call the next item?

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March 7, 1986

MR. PODOLSKY: (continued)

be harmful. The underlying problem is that mediation is fair only when the parties are of relatively equal in status. It does not work as fairly if one party doesn't have a lawyer or if one party is overwhelmed by the other. That's a problem in the case of battered women that have a history of abuse and intimidation.

The Bill refers to party--that a lawyer may participate. It's important that it be clear that the participation of the lawyer is the party's right and not merely at the discretion of the mediator. The Bill talks about the mediator making a recommendation to the court in regard to custody and visitation. My understanding is that that's not the role of the mediator. What the mediator does is he reports whether there's been an agreement.

Or, if there is no agreement, he can say I think there ought to be a family relations investigation. You don't want the mediation being used as a mechanism, as sort of an abbreviated investigation in which people who have been open and honest in the mediation process, now discover whatever they have said is used against them because the mediator decides to make a recommendation even though the parties haven't agreed.

The point of mediation is to work out a mutual agreement. Something in there needs to make clear that the mediation does not necessarily mean both parties have to be in the room simultaneously with the mediator. In Hartford, especially in cases where there is history of violence in the family, the mediator will meet first with one and then with the other. There's language in here that makes it unclear and makes it look like the parties might have to go jointly and finally, I think section 3 needs a full re-write because--I won't go item by item, but there are parts of it that don't make a lot of sense.

There are two Bills that deal with appeals on the juvenile court from decisions ordering a child transferred from juvenile court to the regular docket. Those are Bills 5663 and 5854. Substantially they do the same thing. Those are good Bills and I would urge you to probably merge them and pass them. The problem arises from a recent supreme court case in 1985 that says you can't take

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MR. PODOLSKY: (continued)

an appeal if the superior court moves a child who's been charged with delinquency and then are treated as an adult crime, moves them from the juvenile docket to the regular docket. You have to go all the way through the trial and then, if you're convicted, then you can take your appeal.

But the reason that decision needs to be appealable earlier is because what you lose is you lose the confidentiality of the juvenile court system and you lose the right to have children segregated from adults. So that if you can't take the appeal at that point, that appeal will forever be lost. It was a 3 to 2 decision of the supreme court interpreting the existing statute. This Bill, in effect, adopts the opinion of the two rather than the opinion of the three.

REP. WOLLENBERG: Is that something that had to do with AR last year?

MR. PODOLSKY: Yes, in fact, it's basically exactly the same thing you did with AR. And finally, the last Bill that I would--

REP. WOLLENBERG: What do you mean by that? I don't understand.

MR. PODOLSKY: Accelerated rehabilitation--

REP. WOLLENBERG: --it's the same principle, of course.

MR. PODOLSKY: If you denied--if you take accelerated rehabilitation which means you won't have to go to trial, the case will be dismissed. At the end of the accelerated rehabilitation period, the court is supposed to dismiss the case, but if the court refuses to dismiss the case, therefore forces you to go to trial, someone trying to take an appeal saying I've completed my AR, I shouldn't have to go to trial, the supreme court says--

REP. WOLLENBERG: Three to two--

MR. PODOLSKY: Right, says it's not a final decision and it's not appealable, you have to go to trial, lose and then you can appeal the fact that they made you go to trial.

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MR. PODOLSKY: (continued)

And you by statute, overturn that decision and said no, you can take an appeal at that point. This is analagous the same way.

The last Bill I'll comment on is 5857 which is a Bill that deals with the extension of group insurance coverage. I'm uncertain why it's in this Committee. It does have something to do with family law indirectly. It probably ought to be in insurance and you'd probably ought to get it there quickly.

Right now, you can buy into a policy for 39 weeks and this extends it to 156 weeks; three years. There's no prejudice to anyone because you have to pay for it yourself anyway, but it makes for a better transition.

REP. WOLLENBERG: It can't be cheaper than--

MR. PODOLSKY: It's cheaper to you. It's cheaper to you but the employer gets the money back so nobody's laying out money but if you're going to do something with you'd probably better get to insurance in a hurry or send it to the floor with the knowledge that it--thank you very much.

REP. WOLLENBERG: Thank you. I'll adjourn the meeting.

The next two (2) bills I would like to address are H.B. 5663, An Act Authorizing the Appeal of an Order Transferring a Child From Juvenile Court to the Regular Criminal Docket of Superior Court, and H.B. 5854, An Act Authorizing Interlocutory Appeals of Juvenile Transfer Orders. The Office of the Chief Court Administrator neither supports or opposes these bills but would like to raise one concern. If an immediate appeal is granted, where is the child to be detained pending the appeal? Juvenile detention facilities are not suitable for potentially long periods of confinement.

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Raphael L. Podolsky
Acting Director

March 7, 1986

TESTIMONY OF RAPHAEL L. PODOLSKY

H.B. 5874 -- Payment into court during a summary process case OPPOSE

Under existing law, a tenant defending an eviction action can be ordered, at the landlord's request, to make on-going use and occupancy payments to the clerk of the court during an eviction. Failure to do so requires him to close the pleadings within four days or else lose the case by default. This approach protects the interest of the landlord while preserving the right of the tenant to defend.

This bill would provide that failure to make the payment on time produces an automatic judgment for the landlord. While this may sound appealing, it is very probably unconstitutional, since it prevents a tenant from presenting his defense to the court solely because of his inability to make payments. This is true, even though the tenant might have a complete defense to payment, such as that the apartment was illegally rented without a certificate of occupancy. Passage of unconstitutional legislation in this area will not accelerate eviction procedures but will only lead to protracted constitutional challenges in the courts.

H.B. 5854 and H.B. 5663 -- Interlocutory appeal of order SUPPORT
transferring juvenile offender to regular docket

These bills would reverse the Supreme Court's 3-2 decision in In re Juvenile Appeal, 195 Conn. 303 (1985), which held that orders transferring juvenile cases from the juvenile court to the regular criminal docket are not final judgments and can therefore not be appealed until after a full trial is held on the regular docket. If tried in the juvenile court, the child is entitled to a confidential proceeding and is protected against being mixed with adult prisoners. If transferred, the trial can be public and the child can be jailed with adults. If it is claimed that a transfer order is illegal, these important rights can be protected only if an appeal of the transfer order can be taken before the case is actually tried.

Last year, the General Assembly adopted P.A. 85-374, which overturned an analogous Supreme Court decision on appeals regarding denial of accelerated rehabilitation (which allows the defendant to avoid going to trial). Surely, the right of a child to be tried as a juvenile is at least as important as the right of an adult to accelerated rehabilitation. The Judiciary Committee should follow the principle of P.A. 85-374 and approve these bills.

H.B. 5854 and H.B. 5663 appear to accomplish the same purpose. They should be combined and passed as a single bill.