

Legislative History for Connecticut Act

SB 499	PA 196	1988
House 4045-4054		(10)
Senate 1305-1309, 1376, 1407-1408, 2402-2403, 2449-2450		(12)
Judiciary 1328, 1397, 1502, 1568, (1569) 1571, 1605-1606		(8)
		Total 30P

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
and House of Representatives Proceedings

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H-498

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1988

VOL. 31  
PART 12  
3991-4376

abs

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House of Representatives

Thursday, April 21, 1988

AND ELECTIONS.

REP. FRANKEL: (121st)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Frankel.

REP. FRANKEL: (121st)

I move that this bill be referred to the Committee on Appropriations.

SPEAKER STOLBERG:

Motion is to refer to Appropriations. Is there objection? Seeing no objection, it is so ordered. Clerk, please continue.

CLERK:

Continuing with Calendar 403, on page 6, Substitute for Senate Bill 499. AN ACT CONCERNING AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT. (As amended by Senate Amendment Schedule "A"). Favorable Report of the Committee on the JUDICIARY.

REP. TULISANO: (29th)

Mr. Speaker? Mr. Speaker?

SPEAKER STOLBERG:

Good morning, Representative Tulisano.

REP. TULISANO: (29th)

Good morning, Mr. Speaker, members of the General

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Assembly.

SPEAKER STOLBERG:

And people of Connecticut.

REP. TULISANO: (29th)

And the people of Connecticut. I move for acceptance of the Joint Committee's Favorable Report and passage of the bill, in concurrence with the Senate.

SPEAKER STOLBERG:

Will you remark, sir?

REP. TULISANO: (29th)

Yes, Mr. Speaker. This bill has a Senate Amendment, Senate Amendment Schedule whatever, "A", LCO 3357.

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 3357, previously designated Senate "A". Will the Clerk please call and read?

CLERK:

LCO 3357, designated Senate Schedule "A", offered by Senator Avallone.

In line 11, after "contempt" insert the following:  
", PROVIDED IF ANY SUCH PERSON IS NOT FOUND IN CONTEMPT OF SUCH ORDER, THE COURT MAY AWARD A REASONABLE ATTORNEY'S FEE TO SUCH PERSON"

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REP. TULISANO: (29th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for rejection of Senate "A".

SPEAKER STOLBERG:

Motion is to reject Senate Amendment Schedule "A".

Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. This amendment is a bit convoluted. There is, I think, a misplaced word in it, and we will be offering a House "A" which effectively attempts to do the same thing, but in correct language.

SPEAKER STOLBERG:

Will you remark further on the motion to reject?

If not, all those in favor of the motion to reject, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary, nay. Senate "A" is rejected. Will you remark further?

REP. TULISANO: (29th)

Mr. Speaker, Clerk has an amendment, LCO 3557.

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SPEAKER STOLBERG:

Clerk has an amendment, LCO 3557, designated House Amendment Schedule "A". Will the Clerk please call and read?

CLERK:

LCO 3557, designated House Schedule "A", offered by Representative Tulisano.

In line 11, after "contempt" insert the following:  
"  , PROVIDED IF ANY SUCH PERSON IS FOUND NOT TO BE IN CONTEMPT OF SUCH ORDER, THE COURT MAY AWARD A REASONABLE ATTORNEY'S FEE TO SUCH PERSON."

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move adoption of the amendment.

SPEAKER STOLBERG:

Will you remark on the syntax of House Amendment Schedule "A"?

REP. TULISANO: (29th)

Mr. Speaker, this makes it clear that a court could also award, order attorney's fees to an improperly charged defendant in such a matter. It creates an equality in the system. I would move its passage.

SPEAKER STOLBERG:

Will you remark further on House "A"? If not...

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You are really going to remark on House "A"?

Representative Nania of the 63rd.

REP. NANIA: (63rd)

Mr. Speaker, a question, through you, to Representative Tulisano.

SPEAKER STOLBERG:

Please frame your question.

REP. NANIA: (63rd)

Representative, the bill provides that, and I am going to use an example to make it clear, that if a wife hauls a husband into court on contempt because he has failed to pay alimony or child support, then the wife in addition to getting the back alimony and child support may also have her attorney's fees paid by order of the court. Is that correct?

REP. TULISANO: (29th)

Through you, Mr. Speaker, that is correct.

REP. NANIA: (63rd)

And your amendment would provide that, if in fact the court found that the husband was not in contempt, then the husband's attorney's fees might be ordered to be paid by the wife.

REP. TULISANO: (29th)

That is correct. Through you, Mr. Speaker.

REP. NANIA: (63rd)

abs

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Mr. Speaker, the problem I have with that is simple. I think that, if not abused, that is a good idea. The problem is that simply because the husband is not found in contempt doesn't mean the wife is in contempt and should pay the bills. And, I am wondering if we are inviting courts to charge attorney's fees to the wife when her claim for back alimony and child support is not in fact found to be good by the trial court.

For that, this was not an amendment that was discussed in Committee. I know that the Representative would like to have some balance in the law, but I am wondering if this is over-balancing it in favor of the husband.

REP. TULISANO: (29th)

Through you, Mr. Speaker?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

I think Representative Nania is correct. If abused, it could be dangerous. As you are no doubt aware, it is in the discretion of the court, as all of these things are, and on both sides of the case. I doubt very much... and I think he also is right that if the husband is not in contempt, it doesn't

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necessarily mean the wife is.

But, in fact, if the wife were in contempt, if knowingly, she purposely put through somebody, put somebody through service of process, brought them into court without just cause, then that option of awarding him defense, cost for defending that is at least available to the courts. Otherwise, it would not be.

I agree, if it is abused. But, all of our statutes... it could be abused on the wife's side, if a person... As an example, if a person was doing the best they could and was found in contempt, I am not so sure they should be awarded attorney's fees either. And, I think that that is something that has to be determined with fairness and equity on a case by case basis, but at least should be available to the court when it is necessary. Although, I agree, it probably wouldn't be necessary too many times.

REP. NANIA: (63rd)

Mr. Speaker, I think that the Representative and I are at least in principle in agreement. And, I guess I am going to vote for this amendment. The only problem I have is that I have never seen a wife take a husband to court for contempt for back alimony or back child support unless he really owed it, and I am wondering what question of fact might be different.

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I don't think that has an answer. Thank you, Mr. Speaker.

REP. FRANKEL: (121st)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Robert Frankel.

REP. FRANKEL: (121st)

Just to provide a little bit of clarification, not to belabor it... If you will look closely, there is a very fine change in the wording on line 15 of the amendment. It talks about when a person is found not to be in contempt. In other words, there is actually a finding that goes all the way right to the judge, saying "I find not in contempt," which is one possibility. The other is he finds that the person is in contempt. And the third possibility, which is the most usual case, is the parties resolve it, and therefore there is no finding at all.

The words are merely reversed. "Found not" is here, which is the final judgement, so to speak, and "not found" which is the usual case. So, this is a very rare circumstance, and I think perhaps that might resolve Representative Nania's concern.

SPEAKER STOLBERG:

Will you remark further on House "A"? If not, all

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those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

All those to the contrary, nay. The amendment is adopted, ruled technical. Will you remark further on the bill? If not, will members please be seated? Staff and guests, to the Well of the House. The machine will be opened.

CLERK:

The House of Representatives is taking its first roll call vote of the day. Will all members return to the Chamber? The House is voting by roll. Members, to the Chamber, please.

DEPUTY SPEAKER CIBES:

Have all members voted? Have all members voted?

SPEAKER STOLBERG:

Have all the members voted, and is your vote properly recorded? If all the members have voted, and your vote is properly recorded, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally?

CLERK:

abs

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Senate Bill 499, as amended by House "A".

Total Number Voting 135

Necessary for Passage 68

Those Voting Yea 135

Those Voting Nay 0

Those absent and not Voting 16

SPEAKER STOLBERG:

The bill, as amended, is passed. Are there  
announcements or points of personal privilege?

REP. LUGO: (130th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Lugo, un momento, por favor.

REP. LUGO: (130th)

Muchas gracias, Mr. Speaker.

SPEAKER STOLBERG:

Por nada. Momento. Will the House come to order?  
Will the House come to order? Will the House please  
come to order? Representative Lugo.

REP. LUGO: (130th)

Thank you, Mr. Speaker. Muchas gracias, again.  
Mr. Speaker, ladies and gentlemen of the House, it is a  
great honor and pleasure for me to introduce to you,  
make a personal presentation of one of the

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There are stipulations that require that we treat the patient very humanely when they do return to the nursing home and I move adoption of the bill.

THE CHAIR:

Further remarks?

SENATOR PRZYBYSZ:

If there are no objections I move this be placed on the Consent Calendar.

THE CHAIR:

If there are no objections the item is placed on the Consent Calendar. Clerk will call the next bill.

THE CLERK:

Calendar 255, File 342, Substitute for Senate Bill 499, AN ACT CONCERNING AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT. Favorable Report of the Committee on JUDICIARY.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Mr. President, I would move the Joint Committee's Favorable Report and adoption of the bill.

THE CHAIR:

Would you care to remark?

SENATOR AVALLONE:

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Yes. What this bill does is it allows the discretion of the court when a contempt citation is filed with the court and the person who files it is successful because of a delinquency in a support payment. It allows the court to attribute to the losing party the court costs and a reasonable attorney's fee.

THE CHAIR:

Further remarks? Senator Robertson.

SENATOR ROBERTSON:

Thank you very much, Mr. President. Through you, I could ask Senator Avallone a question?

THE CHAIR:

You may proceed.

SENATOR ROBERTSON:

Through you, Mr. President. The losing party?

SENATOR AVALLONE:

Excuse me, if the person who brings the contempt citation is successful, then that person may be allowed to get back its attorney's fees and its cost of bringing the action, so it's not the winner or loser. If the person who brings the citation, the contempt citation alleging that the support payments are delinquent. If that person is successful in proving his or her case, then that person can also get

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reasonable attorney's fees and costs of the action.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Through you, Mr. President to Senator Avallone. If the person who brings the contempt citation, who is the plaintiff is not successful will then the defendant be able to collect his or her council fees from the bringer of the citation?

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

I don't believe the bill allows that.

SENATOR ROBERTSON:

Mr. President, why not?

SENATOR AVALLONE:

Through you, Mr. President, the testimony at the hearing indicated that in those cases where the person was not...because in these types of cases it is generally clear whether or not the payments are delinquent or not. There may be a reason for the delinquency. If that reason is generally brought forward prior to, for example, someone has had a heart attack, an illness, is not working, those cases generally don't reach trial. It's the cases where the

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payment isn't made because there is an allocation that the other party isn't being consistent with the visitation with the children or some other reason for the non-payment. And that has been the general court.

The purpose of the legislation was to put in an additional onus on people not to bring forward reasons for delinquencies that don't relate to the financial matters, but relate to something else.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, it seems to me that the legislation is very much one sided. I am actually surprised that Senator Avallone would allow one sided piece of legislation out of his Committee and I think it's a sad day when the Judiciary Committee does produce legislation based on general understandings of cases in the past.

What's fair is fair. If the bringer of the contempt citation is entitled to attorney fees, then I believe the receiver of that citation if the citation is not successful should also be entitled and I would again ask that there be a PT.

THE CHAIR:

Senator Avallone, do you care to respond?

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SENATOR AVALLONE:

No, and I would agree with the PT.

THE CHAIR:

Senator Avallone, as I understand it, you request a PT.

SENATOR AVALLONE:

Yes, I'm sorry, Mr. President, I would request that the matter be PT'd.

THE CHAIR:

Hearing no objection, the bill is PT'd. Clerk will call the next bill.

THE CLERK:

Calendar Page 5, Calendar 256, File 343, Substitute for Senate Bill 522, AN ACT ELIMINATING OBSOLETE AND UNNECESSARY PROVISIONS OF THE LAWS CONCERNING EDUCATION. Favorable Report of the Committee on EDUCATION.

THE CHAIR:

Senator Sullivan.

SENATOR SULLIVAN:

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

THE CHAIR:

Care to remark?

SENATOR SULLIVAN:

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Mr. Clerk, Senator Avallone has called to my attention an item that he would like to take up out of order since he is involved in Committee matters, is there any objection? Senator Avallone, which item is that please?

SENATOR AVALLONE:

Calendar 255, I'm sorry. Calendar 274, File 375.

THE CHAIR:

Calendar 274. The Clerk calls my attention to the fact that Calendar 255 is also..

SENATOR AVALLONE:

Yes. I don't care which order. I would like to do those two bills though.

THE CHAIR:

Oh. Why don't we take 255 because it's next and then we will jump over to the other. Mr. Clerk will you call Calendar 255.

THE CLERK:

Calendar Page 3, Calendar 255, File 342, Substitute for Senate Bill 499, AN ACT CONCERNING AWARD OF COUNCIL FEES IN DEFENSE CASES TO COLLECT THE DELINQUENT ALIMONY OR SUPPORT. Favorable Report of the Committee on JUDICIARY. Clerk is in possession of an amendment.

THE CHAIR:

Senator Avallone.

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on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Please give your attention to the Clerk who will call the items that have been referred to the Consent Calendar. Mr. Clerk.

THE CLERK:

Beginning on Page 3, Calendar 225, Substitute for Senate Bill 450. Calendar 255, Substitute for Senate Bill 499. Calendar Page 4, Calendar 263, House Bill 5887. Calendar 269, Substitute for House Bill 5850. Calendar Page 5, Calendar 274, Senate Bill 500. Calendar 275, House Bill 6037. Calendar 276, House Bill 5769. Calendar Page 6, Calendar 277, Substitute for House Bill 5777. Calendar 278, Substitute for House Bill 5319. Calendar 279, House Bill 5256. Calendar 282, House Bill 5919. Calendar 284, Substitute for House Bill 5983. Calendar 285, Substitute for House Bill 5852. Calendar Page 8, Calendar 288, House Bill 6001. Calendar 289, Senate Bill 544. Calendar 290, Substitute for Senate Bill 97.

I believe that that completes the first Consent Calendar, Mr. President.

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THE CHAIR:

Any changes or omissions? The machine is open.  
Please record your vote. Has everyone voted? The  
machine is closed. Clerk please tally the vote.

The result of the vote:

36 Yea

0 Nay

The Consent Calendar is adopted.

THE CLERK:

Calendar Page 5, Calendar 273, Substitute for  
Senate Bill 402, AN ACT CONCERNING THE COMPOSITION OF  
THE CODES AND STANDARDS COMMITTEE. Favorable Report of  
the Committee on GOVERNMENT ADMINISTRATION AND  
ELECTIONS. Clerk is in possession of an amendment.

THE CHAIR:

Senator Herbst.

SENATOR HERBST:

Thank you, Mr. President. I move the Joint  
Favorable Report and passage of the bill.

THE CHAIR:

Clerk please call the amendment.

THE CLERK:

LCO 3178 designated Senate Amendment Schedule "A"  
offered by Senator Herbst of the 35th District.

THE CHAIR:

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SENATE

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Without objection, so ordered.

THE CLERK:

Calendar Page 19, Calendar 255, File No. 342 and 683, Substitute for Senate Bill 499, AN ACT CONCERNING THE AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT. (As amended by Senate Amendment Schedule "A" and House Amendment Schedule "A") Favorable Report of the Committee on JUDICIARY. The House rejected Senate Amendment "A".

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes, Mr. President. I would move that the Joint Committee's favorable Report and adoption of the bill in accordance with the action of the House.

THE CHAIR:

You may proceed.

SENATOR AVALLONE:

Yes, the bill came, went down to the House with an amendment, really which was the idea of Senator Robertson. The House rejected that amendment but really put it back on in their House "A" making what that perceive to be a technical correction.

THE CHAIR:

Will you remark further? Further remarks?

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SENATOR AVALLONE:

I would put it on consent. Move it on to the  
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

Will the Clerk please call the next item.

THE CLERK:

Calendar page 14, Calendar No. 481. File 672,  
Substitute for Senate Bill 222. AN ACT CONCERNING THE  
VALLEY REGIONAL WATER AUTHORITY. Favorable Report on  
the Committee of FINANCE, REVENUE AND BONDING. The  
Clerk is in position of an amendment.

THE CHAIR:

Senator Hale.

SENATOR HALE:

Thank you, Mr. President. I move acceptance of the  
Committee's Joint Favorable Report and passage of the  
bill. And I believe there are amendments.

THE CHAIR:

You may proceed. Clerk has amendments.

THE CLERK:

LCO 4529, designated Senate Amendment Schedule "A"  
offered by Senator Hale of the 17th district.

THE CHAIR:

Senator Hale.

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Calendar and please make the appropriate announcement that the Consent Calendar will be called.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Will all Senators please return to the Chamber.

Immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Clerk, please read off the items that are being considered for the Consent Calendar.

THE CLERK:

The Second Consent Calendar begins on Page 2, Calendar No. 320, Substitute House Bill 6045. Calendar Page 5, Calendar 398, Substitute for Senate Bill 535. Calendar Page 10, Calendar 462, Substitute for House Bill 5249. Calendar Page 11, Calendar 464, Substitute for House Bill 5854. Calendar 468, Page 11, Substitute for House Bill 5008.

Calendar Page 12, Calendar 471, Substitute for House Bill 6097. Calendar Page 13, Calendar 475, Substitute for House Bill 5751. Calendar 477, Substitute for Senate Bill 112.

Calendar Page 14, Calendar 480, Substitute for Senate Bill 507, Calendar 481, Substitute for Senate

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Bill 222.

Calendar Page 16, Calendar 227, Substitute for  
Senate Bill 487. Calendar Page 17, Calendar 272,  
Substitute for Senate Bill 336. Calendar Page 18,  
Calendar 390, Substitute for Senate Bill 300. Calendar  
148, Substitute for Senate Bill 40. SB66

Calendar Page 19, Calendar No. 255, Substitute for  
Senate Bill 499. And returning to Page 17, Calendar  
381. Mr. President, I believe that completes the  
second Consent Calendar.

THE CHAIR:

Any corrections, additions or deletions? We are  
now voting on the Consent Calendar. The machine is  
open. Please cast your vote. Has everyone voted? The  
machine is closed. Clerk please tally the vote.

The result of the vote.

36 Yea

0 Nay

The Consent Calendar is adopted.

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. Mr. President, I move  
for suspension of the rules for all those matters which  
have to go to the House.

THE CHAIR:

JOINT  
STANDING  
COMMITTEE  
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abs.

JUDICIARY

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statutes, to make sure that there is no conflict between the two.

Senate Bill 499, AN ACT CONCERNING MANDATORY AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT. We have two problems with the bill. First, it makes it mandatory, and second, it limits when the court, and what types of contempt cases. We believe that the court should have the discretion to award reasonable attorney's fees incurred by petition in all family contempt proceedings. I have attached substituted language for your consideration and support.

(cass 2)

And the last bill is Senate Bill 514, AN ACT PERMITTING MUNICIPAL OFFICERS TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF REGULATIONS AND ORDINANCES. This proposal permits towns to establish a Citation Hearing Procedure and provides enforcement of the town's assessments and judgements by the Superior Court. Three points.

One, there is a technical error...

SEN. AVALLONE: I am sorry. What bill are we talking about?

FAITH MANDELL: 514?

SEN. AVALLONE: Okay.

FAITH MANDELL: There is just a technical error in drafting in Section 1. It doesn't state what section is being amended. Two, I would like to bring to your attention that this would effect 16,000 ordinance violations that are presently handled by the court. And, third, we would ask that an effective date of October 1, rather than July, because we also have to revise forms and reprogram our computer system.

And, that concludes my testimony.

SEN. AVALLONE: Quick question. I am sorry. Representative McCavanagh.

REP. MCCAVANAGH: No, no. Go ahead.

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abs

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retired or on a fixed income, as with myself, or as a single head of a household simply cannot afford to purchase an apartment converted into a condominium. They will probably be displaced out of the community and be uprooted from friends and family. Can we allow such disregard of the public interest? Do we allow for the potential creation of a whole new class of homeless people?

We believe we owe protection to our vulnerable citizens who rent. The Windsor Coalition for Affordable Housing, therefore, urges the passage of legislation giving towns in our state oversight and approval powers in regard to condominium conversion. We support Committee Bill 6039, now before your committee.

Thank you very much.

REP. TULISANO: Thank you. Any questions? Thank you.  
Raphael Podolsky.

ATTY. RAPHAEL PODOLSKY: My name is Raphael Podolsky. I'm a lawyer with Connecticut Legal Services. I want to comment briefly on one bill and slightly longer on a second.

The first bill is Senate Bill 499, which deals with mandatory counsel fees in contempt proceedings in family cases. Mandatory award of counsel fees. I would - just want to make two comments on that bill.

One is that, under existing law, the court can award counsel fees but need not. This bill would make it mandatory. If this committee is going to move this bill forward, then I would urge you to limit the mandatory aspect to those cases in which the obligor is found to have funds and wilfully does not pay. Because the doctrine that seems to have developed in the Connecticut courts on contempt proceedings is that the mere fact of non-payment is sufficient to justify a finding of contempt. But the sanction may be impacted by whether a person has an ability to pay. So in my written testimony I have suggested specific language.

The bill I want to focus on is House Bill #6039,

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realize that although that is the technology which is currently beyond us, it is not so far beyond us that it is outside the realm of possibility. And I think insofar as we have reservations about the process at all with regard to humans, the image somehow of some wonderful Simian or cow giving birth to a human child is enough to make the tiny hairs rise up all over my body. I don't know about yours.

REP. TULISANO: Thank you. Gail you have a tough act to follow and you have exactly one minute to top all of this.

GAIL HAMM: Even though what Sharon was going to say. First of all Senate Bill 499, let's get that out of the way, Mandatory Council fees contempt. Now that looks like perhaps it's a give me PCSW bill. I didn't hear anyone testify in opposition except Raph, he raised a concern about...

REP. TULISANO: (inaudible)

GAIL HAMM: I'm here. I'm here testifying in support. 8.8 million women are heading households alone.

REP. TULISANO: In Connecticut?

GAIL HAMM: Nationwide. He doesn't count in my minute. Less than 10% of fathers in this country voluntarily contribute 100% of their child support, after the first year. Okay? So it's a problem nationally. As I have told you many times before, PCSW is involved in an economic study of divorce, the results are beginning to come in and we are going to present them to the Connecticut Bar Association Alimony Symposium in April and as I mentioned we will come back in 89 with full divorce reform proposals.

This one we would love if you would consider this year. Now the tough one, 6109, surrogate parenting. Sharon has been very eloquent. You have all heard the PCSW approach before and as purists I am very troubled with the process. In fact this bill is not a bill on surrogate parenthood as Sharon pointed out to you, because we in fact have a woman who is donating not only an egg, but a womb and so I have a very hard time

State of Connecticut

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JUDICIAL DEPARTMENT

OFFICE OF THE CHIEF COURT ADMINISTRATOR

Drawer N, Station A  
Hartford, Connecticut 06106

Testimony of Faith A. Mandell  
Judiciary Committee Public Hearing  
Monday, March 21, 1988

S.B. 499, An Act Concerning Mandatory Award of Counsel Fees in  
Contempt Cases to Collect Delinquent Alimony or Support

I appear before you as a representative of the Judicial Department. The Judicial Department has two objections to S.B. 499, An Act Concerning Mandatory Award of Counsel Fees in Contempt Cases to Collect Delinquent Alimony or Support, as it is currently drafted. First, it makes mandatory the award of attorneys fees in contempt cases to collect delinquent alimony or support, and (2) it limits when attorneys fees may be awarded to contempt cases involving delinquent alimony or support. The Department believes that the court should have the authority to award reasonable attorneys fees incurred by a petitioner in all family contempt proceedings. I have attached to my testimony recommended substitute language which would accomplish such purposes for your consideration and support.

Thank you for giving me the opportunity to testify today.

FAM:fw

## AN ACT CONCERNING FAMILY MATTERS

(SB 499)

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 46b-87 of the general statutes is repealed and the following is substituted in lieu thereof:

When any person is found in contempt of an order of the superior court entered under section 46b-60 to 46b-62, inclusive, 46b-81 to 46b-83, inclusive, or 46b-86, the court may award to the petitioner A REASONABLE ATTORNEY'S FEE AND the fees of the officer serving the contempt citation, SUCH SUMS to be paid by the person found in contempt. The costs of commitment of any person imprisoned for contempt of court by reason of failure to comply with such an order shall be paid by the state as in criminal cases.

STATEMENT OF PURPOSE: To permit the court to award reasonable attorney's fees incurred by a petitioner in family contempt proceedings.

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1571

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March 21, 1988

S.B. 499 — Mandatory counsel fees in family contempt proceedings

-- Submitted by Raphael L. Podolsky

Recommended Committee action: AMEND

This bill would mandate an award of taxable court costs and attorney's fees in any case in which a party is found in contempt of court for failure to pay alimony or support. Courts already have the power to make such awards. This bill would remove judicial discretion.

If the Committee wishes to move this bill forward, it should remove the court's discretion only as to contempts in which the court specifically finds that the obligor had the funds with which to pay the support order and wilfully failed to do so. As interpreted by Connecticut courts, it appears that contempts are often entered on a mere finding of arrearage, without regard to the wilfulness of the failure to pay. Attorney's fee awards should not be mandatory in such cases. To make this change in the bill, the Committee should insert the following in l. 21, after the word "determines":

...that the obligor had the funds with which to comply with  
the order of the court but wilfully failed to do so and that...

State of Connecticut

1605

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PERMANENT COMMISSION ON  
THE STATUS OF WOMEN  
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TESTIMONY BEFORE THE  
JUDICIARY COMMITTEE

MONDAY, MARCH 21, 1988

ROOM E-53

TESTIMONY AND COMMENTS ON: SB # 499, HB # 6109

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GOOD AFTERNOON, MY NAME IS GAIL K. HAMM AND I AM HERE TO SPEAK ON BEHALF OF THE PERMANENT COMMISSION ON THE STATUS OF WOMEN. I WOULD LIKE TO VIGOROUSLY EXPRESS OUR SUPPORT FOR SB # 499 - "AN ACT CONCERNING MANDATORY AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT." THEREAFTER, I WILL MAKE SOME COMMENTS ABOUT HB # 6109 - "AN ACT CONCERNING SURROGATE PARENTHOOD."

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SB # 499 - "AN ACT CONCERNING AWARD OF COUNSEL FEES IN CONTEMPT CASES TO COLLECT DELINQUENT ALIMONY OR SUPPORT":

PCSW IS CURRENTLY CONCLUDING AN ECONOMICS OF DIVORCE STUDY WHICH WILL DOCUMENT THE ECONOMIC REALITY OF DIVORCE FOR CONNECTICUT FAMILIES. THE RESULTS WILL BE PRESENTED TO THE ALIMONY SYMPOSIUM OF THE CONNECTICUT BAR ASSOCIATION IN APRIL, 1988. IT IS CLEAR THAT ONE OF THE MOST IMPORTANT WAYS TO COLLECT COURT-ORDERED CHILD SUPPORT AND ALIMONY IS TO REQUIRE THE OFFENDING PARTY TO PAY THE ATTORNEYS' FEES OF THE PERSON SEEKING COLLECTION.

ACCORDING TO 1985 U.S. CENSUS DATA, THERE WERE 8.8 MILLION WOMEN BRINGING UP CHILDREN ALONE, WHICH REPRESENTS A 70 PERCENT INCREASE IN SINGLE-PARENT FAMILIES OVER THE LAST DECADE. ONLY 16 PERCENT OF THESE MOTHER-CHILD HOUSEHOLDS INVOLVE UNWED MOTHERS- THE REST HAVE BEEN CREATED PRIMARILY BY THE SHARP INCREASE IN DIVORCE.

FEWER THAN 10 PERCENT OF ABSENT FATHERS PAY COURT-ORDERED CHILD SUPPORT IN FULL, VOLUNTARILY, AFTER THE FIRST YEAR. TWO-THIRDS OF

THOSE 8.8 MILLION WOMEN RECEIVE NO CHILD SUPPORT AT ALL, THOUGH ABOUT HALF WANTED SUPPORT.

FURTHER, ONLY 3 PERCENT OF DIVORCED WOMEN IN AMERICA RECEIVE ALIMONY. DR. LENORE WEITZMAN HAS SHOWN IN HER BOOK, THE DIVORCE REVOLUTION, THAT DIVORCED WOMEN AND CHILDREN SUFFER AN IMMEDIATE 73 PERCENT DROP IN THEIR STANDARD OF LIVING WHILE MEN ENJOY A 42 PERCENT INCREASE IN THEIRS.

MOST DIVORCED WOMEN CANNOT AFFORD THE EXPENSE OF COUNSEL FEES IN ORDER TO COLLECT THE DELINQUENT AMOUNTS OWED. THE CHILD SUPPORT ENFORCEMENT PROCESS IS STILL CUMBERSOME AND DIFFICULT, ALTHOUGH EFFORTS ARE BEING MADE TO IMPROVE THE SYSTEM. THE PRIMARY 'ECONOMIC BURDEN' OF DEFAULT IS FELT BY WOMEN AND CHILDREN. IN CONNECTICUT, 40 PERCENT OF FAMILIES MAINTAINED BY WOMEN ARE POOR. SOME OF THIS POVERTY COULD BE ALLEVIATED THROUGH TIMELY PAYMENT OF CHILD SUPPORT. IF MEN WERE ASSURED THAT FAILURE TO PAY THEIR ALIMONY AND CHILD SUPPORT ON A TIMELY BASIS WOULD COST THEM MONEY FOR THEIR EX-SPOUSE'S ATTORNEY, PCSW IS CERTAIN THAT CONNECTICUT WOULD SEE AN INCREASE IN PAYMENTS OF BOTH ALIMONY AND CHILD SUPPORT. WE URGE YOU TO PASS THIS BILL.

HB # 6109- " AN ACT CONCERNING SURROGATE PARENTHOOD " :

THE CONNECTICUT COMMISSION ON THE STATUS OF WOMEN WOULD BE REMISS IF WE DID NOT TAKE THIS OPPORTUNITY TO MAKE SEVERAL COMMENTS OF HB # 6109. ALTHOUGH OUR COMMISSION DOES NOT HAVE AN OFFICIAL POSITION ON THE PROHIBITION OR REGULATION OF THE SURROGATE PROCESS ITSELF, WE HAVE SOME BASIC THOUGHTS ON THE MATTER WHICH I WOULD LIKE TO SHARE WITH YOU:

(1) OUR COMMISSION IS UNABLE TO ARRIVE AT A POSITION ON PROPOSED LEGISLATION OF THIS IMPORTANCE IN SUCH A SHORT TIME FRAME - THREE BUSINESS DAYS. AND WE BELIEVE THAT SUCH A BILL WARRANTS A MORE REASONABLE AMOUNT OF TIME FOR THOROUGH ANALYSIS.

IT IS CLEAR THAT A MATTER OF THIS COMPLEXITY IS OF VITAL IMPORTANCE TO ALL CONNECTICUT CONSTITUENTS, ESPECIALLY WOMEN. CHOICES AND DECISIONS MADE WHICH WILL AFFECT THE MOST BASIC OF OUR REPRODUCTIVE FREEDOMS, THE RIGHT TO BEAR A CHILD, DEMANDS THAT ADEQUATE TIME AND ATTENTION BE AFFORDED TO BRING WOMEN AND THE GENERAL PUBLIC INTO THE PROCESS. THIS GENERAL ASSEMBLY HAS DEVOTED ENERGIES AND PUBLIC DEBATE ON MATTERS AS DIVERSE AS GAY RIGHTS AND THE DEATH PENALTY. SURROGATE PARENTING, AND THIS STATE'S RESPONSE TO IT, REQUIRES NO LESS. PERHAPS CONNECTICUT SHOULD SIMPLY ACCEPT THE NEW JERSEY "BABY M" DECISION AS APPROPRIATE. PERHAPS A MODEL BASED UPON OUR IDENTIFIED ADOPTION PROGRAM WOULD BE USEFUL. PERHAPS IT WOULD BE HELPFUL TO CONDUCT INTERVIEWS WITH CONNECTICUT ADOPTION AND INFERTILITY AND ETHICS EXPERTS BEFORE WE MAKE A DECISION. PERHAPS CONNECTICUT LAW WILL REQUIRE A COLLABORATION OF SEVERAL DISCIPLINES. THIS STATE HAS CONSISTENTLY BEEN DEDICATED TO EXCELLENCE AND OTHER STATES FREQUENTLY LOOK TO OUR LEGISLATURE FOR GUIDANCE AND DIRECTION. THIS MATTER IS OF SUCH IMPORTANCE. THE FAMILIES OF THIS STATE