

Legislative History for Connecticut Act

HB 6500	PA. 193	1993
Sen: 3177, 3224-3226	(4)	
House: 4884-4885, 5816-5819	(6)	
Judiciary 721-729, 916-919, 921, 934, 989	(16)	
		26

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

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S-351

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1993

VOL. 36
PART 9
2948-3332

003177

TUESDAY
June 1, 1993

12
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SENATOR DIBELLA:

Calendar Item No. 507 is Passed Temporarily.
Calendar Item No. 509, Substitute for House Bill No. 7234, I move to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar 509, Substitute for House Bill 7234, on the Consent Calendar? Any objection? Hearing none, so ordered.

THE CHAIR:

Calendar Item No. 510 is Pass Retained.
On Page 15, Calendar Item No. 511, Substitute for House Bill No. 6800, I move this to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar 511, Substitute for House Bill 6800, on the Consent Calendar? Is there any objection? Any objection? Hearing none, so ordered.

SENATOR DIBELLA:

Calendar Item No. 5012, Substitute for House Bill No. 7194, I move to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar 512, Substitute for House Bill 7194, on the Consent Calendar? Is there any objection? Hearing none, so

003224

TUESDAY
June 1, 1993

59
tcc

Calendar Page 5, Calendar No. 392, Substitute for
House Bill 7031.

Calendar Page 6, Calendar No. 431, Substitute for
House Bill 5599. Calendar 432, Substitute for House
Bill 6888.

Calendar Page 7, Calendar No. 434, Substitute for
House Bill 6896. Calendar 436, Substitute for House
Bill 7244.

Calendar Page 8, Calendar No. 449, Substitute for
House Bill 6666. Calendar 452, Substitute for House
Bill 7321. Calendar 453, House Bill 6977.

Calendar Page 12, Calendar No. 490, Substitute for
House Bill 5579.

Calendar Page 13, Calendar No. 498, Substitute for
House Bill 6993. Calendar No. 500, Substitute for
House Bill 7231.

Calendar Page 14, Calendar No. 506, House Bill
7120. Calendar No. 509, Substitute for House Bill
7234.

Calendar Page 15, Calendar No. 511, Substitute for
House Bill 6800. Calendar 512, Substitute for House
Bill 7194.

Calendar Page 17, Calendar No. 531, Substitute for
House Bill 7201.

Calendar Page 18, Calendar No. 532, Substitute for

003225

TUESDAY
June 1, 1993

60
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House Bill 7108. Calendar No. 534, Substitute for
House Bill 6911.

Calendar Page 20, Calendar No. 548, Substitute for
House Bill 6652.

Calendar Page 21, Calendar 549, Substitute for
House Bill 7096.

Calendar Page 31, Calendar No. 387, Substitute for
House Bill 6873.

Calendar Page 32, Calendar 439, Substitute for
Senate Bill 838.

Madam President, that --. Correction. Calendar
Page 35, Calendar No. 324, Senate Bill No. 992.

Madam President, that completes the Consent
Calendar.

THE CHAIR:

Thank you very much, Mr. Clerk. You've heard the
items that have been placed on Consent Calendar No. 1
for today, June 1st, 1993. The machine is on. You may
record your vote.

Is Senator Jepsen here? Is Senator Jepsen here?

THE CHAIR:

Have all Senators voted and are your votes properly
recorded? Have all Senators voted and are your votes
properly recorded? The machine is closed.

The result of the vote:

003226

TUESDAY
June 1, 1993

61
tcc

35 Yea
0 Nay
1 Absent

The Consent Calendar is adopted.

Mr. Clerk.

THE CLERK:

Calendar Page 16, Calendar No. 521, File 794 and
924, Substitute for House Bill 5972, AN ACT CONCERNING
STATE PERMITS TO CARRY PISTOLS AND REVOLVERS. (As
amended by House Amendment Schedule "A".

Favorable Report of the Committee on
Appropriations.

THE CHAIR:

Thank you very much. Is Senator Maloney right
here? Thank you.

SENATOR MALONEY:

Thank you, Madam President. I would move approval
of the Joint Committee's Favorable Report and passage
of the bill in accordance with the House.

THE CHAIR:

Thank you very much, Senator. Do you wish to
remark further?

SENATOR MALONEY:

Madam President, all the bill does is provide a
modest increase in fees and then spends most of that

H-663

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1993

VOL. 36
PART 14
4778-5152

006884
317

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House of Representatives

Wednesday, May 12, 1993

DEPUTY SPEAKER COLEMAN:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Public Health.

DEPUTY SPEAKER COLEMAN:

Motion is for referral to the Committee on Public Health. Is there objection? Seeing none, so ordered.

CLERK:

Calendar 512, Substitute for House Bill 7055, AN
ACT CONCERNING THE ISSUANCE OF A CERTIFICATE OF
OCCUPANCY. Favorable Report of the Committee on
Judiciary.

DEPUTY SPEAKER COLEMAN:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Planning and Development.

DEPUTY SPEAKER COLEMAN:

Motion is for referral to Planning and Development. Is there objection? Seeing none, so ordered.

CLERK:

Calendar 515, Substitute for House Bill 6800, AN
ACT CLARIFYING THE GROUNDS FOR TERMINATION OF PARENTAL
RIGHTS. Favorable Report of the Committee on

004885
318

gmh

House of Representatives

Wednesday, May 12, 1993

Judiciary.

DEPUTY SPEAKER COLEMAN:

Representative Luby.

REP. LUBY: (82nd)

I move that that matter be referred to the
Committee on Human Services.

DEPUTY SPEAKER COLEMAN:

Motion is for referral to Human Services. Without
objection, so ordered.

CLERK:

Calendar 516, Substitute for House Bill 5641, AN
ACT CONCERNING FINALITY OF ORDERS TERMINATING PARENTAL
RIGHTS.

DEPUTY SPEAKER COLEMAN:

Please proceed, Representative Luby.

REP. LUBY: (82nd)

Mr. Speaker, I move that that matter be referred to
the Committee on Human Services.

DEPUTY SPEAKER COLEMAN:

Motion is for referral to the Human Services.
Without objection, so ordered.

CLERK:

Calendar 518, Substitute for House Bill 6244, AN
ACT CONCERNING ASSESSMENT OF STATE FOREST LAND.
Favorable Report of the Committee on Finance.

H-666

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1993

VOL. 36
PART 17
5812-6116

005816

98

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House of Representatives

Wednesday, May 19, 1993

Have all the members voted? Are your votes properly recorded? If so, the machine will be locked. The Clerk will take a tally. The Clerk will announce the tally.

DEPUTY SPEAKER PUDLIN:

House Bill 5883.

Total Number Voting 145

Necessary for Passage 73

Those Voting Yea 145

Those Voting Nay 0

Those absent and not Voting 6

DEPUTY SPEAKER PUDLIN:

The bill is passed.

The Clerk will return to the Call of the Calendar, No. 515.

CLERK:

Please turn to Page 34, Calendar 515, Substitute for House Bill 6800, AN ACT CLARIFYING THE GROUNDS FOR TERMINATION OF PARENTAL RIGHTS. Favorable Report of the Committee on Human Services.

DEPUTY SPEAKER PUDLIN:

Representative Graziani of the 57th.

REP. GRAZIANI: (57th)

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

005817

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99

House of Representatives

Wednesday, May 19, 1993

the bill.

DEPUTY SPEAKER PUDLIN:

The question is on acceptance and passage. Will you remark?

REP. GRAZIANI: (57th)

Yes, thank you, Mr. Speaker. What this bill does is in the case of an abandonment of a child under the age of six months, it provides that there shall be a prima facie case of abandonment in which case the parental rites can be terminated, if there has been no contact for 60 continuous days with the caretaker or the child.

Basically under existing law, the court has to wait for circumstances to exist for a period of one year from the termination under such circumstances unless the totality of the circumstances dictate otherwise. What this particular statute is doing is saying that we feel that it is in the best interest of a child with a prima facie case that the termination be granted if for a young child under the age of six months there's been at least 60 continuous days of abandonment.

The theory being that young children are obviously very important and a small period of time in their life is indeed very important to their both medical and psychological welfare. Additionally, what the bill does is requires the court to make a finding regarding

005818

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100

House of Representatives

Wednesday, May 19, 1993

what efforts were used in termination to reunite the family which is currently required under federal law, and it allows neglect and termination petitions to be heard together in certain circumstances, and those co-terminus petitions. I move passage of the bill.

DEPUTY SPEAKER PUDLIN:

The question is on passage. Will you remark? Ladies and gentlemen, will you remark on the bill? Will you remark? If not, staff and guests to the Well of the House. Members, please be seated. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members, to the Chamber please. The House of Representatives is taking a roll call vote. Members, to the Chamber.

DEPUTY SPEAKER PUDLIN:

Have all the members voted? Is your vote properly recorded? If so, the machine will be locked. The Clerk will take a tally. The Clerk will announce the tally.

CLERK:

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 3
678-1015

1993

000721

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JUDICIARY

February 26, 1993
1:00 p.m.

PRESIDING CHAIRMEN: Senator Jepsen
Representative Tulisano

COMMITTEE MEMBERS PRESENT:

SENATORS: Aniskovich, Looney

REPRESENTATIVES: Amann, Caruso, Garcia,
Godfrey, Graziani,
Jarjura, Knierim, Lawlor,
McCavanagh, Nystrom,
O'Neill, Rennie, Staples,
Scalettar, Tavegia,
Thompson, Thorp, Truglia,
Varese, Winkler,
Wollenberg, Radcliffe

REPRESENTATIVE TULISANO: The first hour is devoted to State officials. The Attorney General has sent us a communication because they have a blue ribbon commission studying similar issues that are before us today. He will be submitting written testimony, will not actually testify today, and then begin the drafting process as we normally do it.

REPRESENTATIVE RADCLIFFE: The Attorney General doesn't feel unwelcome?

REPRESENTATIVE TULISANO: No, he doesn't feel that way. He feels more than welcome, but premature.

Judge Robert Killian.

JUDGE ROBERT KILLIAN: Good afternoon, Mr. Chairman and members of the Committee. I have submitted written testimony and if I may I'd just like to summarize, and perhaps highlight (microphone not on)

I think we're all aware that termination of parental rights is a forceful and faithful exercise of the State's police powers. You have before you today a number of bills, HB5640, HB5641, HB5647,

000722

2
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JUDICIARY

February 26, 1993

HB 5801 HB 5938 (see added testimony, pg. 916)

SB801, SB938 and HB6800 which in one manner or another address this very powerful exercise of the State's police power right.

I would just like to respectfully urge the Committee and the members of the General Assembly exercise great caution as they try to adjust what they perceive as some of the problems in the administration of our current statute. Particularly, I think, Mr. Chairman, I have some grave concerns about the use of buzz words in this or any other aspect of the law which concerns rights and I fear the best interests of the child is rapidly taking on some of the overtones of a buzz word.

Obviously, the best interest of the child is what we're all seeking as we attempt to resolve problems, but I think we have to always keep foremost in our minds the fact that, as we seek the best interest of the child we first must be sure that the State has business in interfering in the privacy rights of the family or in the personal rights of the parents as it relates to the child.

Obviously, best interest doesn't prevail if the State has no business interfering. Should the smarter guardian prevail over a less intelligent guardian, or the richer prevail over the poorer, or should the grandparent prevail over the teenage mother. In the case of a retarded citizen, should that citizen lose the right to raise a child of extraordinary abilities to a family that could perhaps in some people's estimation, better cultivate that young person's spark and should the parent who's eccentric be required to surrender a child to guardians who more traditionally adhere to societal norms.

And I don't think so and I don't think the U. S. Constitution believes that and the Connecticut Constitution, and I think that we have to be careful as we adjust the termination of parental rights statutes that we maintain a juras prudential correctness in our approach.

000723

3
pat

JUDICIARY

February 26, 1993

And while one might be criticized or even pilloried for saying it, there are principles that do transcend this new buzz word, the best interest of the child.

I am particularly concerned that some of what we talk about this year is in response to the Baby B case, the case that was certainly a convoluted case and one that presents tremendous problems but must be recognized for that it is, an anomaly in a situation in an administration of a law that is utilized hundreds, if not thousands, of times over the course of the years and results in one very difficult and troubling case.

I think it may not be necessary to race to a panoply of statutory changes if we quantify the problems we've had with the statute as it exists, particularly since it's a human system. Anything that would curtail the right of human people who administer the judicial system to correct errors, to prevent abuse that's the result of fraud or deceit would be very troubling to me.

If there are any questions, Mr. Chairman, I'd be happy to answer them.

REP. TULISANO: Mr. Radcliffe.

REP. RADCLIFFE: Thank you, Mr. Chairman. Judge, our current law gives the probate court certain functions and certain functions in the superior court. Probate court of course is not a court of record. Its judges are elected, rather than being appointed. Do you feel that the role that's being played currently by the probate court should be maintained, and if so, why? And if not, why not?

JUDGE ROBERT KILLIAN: I would respectfully disagree with one statement. We are a court of record. We are a court without a transcript. Our supreme court has made it clear that it's the fact that we are a court that maintains a record --

REP. RADCLIFFE: That's true.

JUDGE ROBERT KILLIAN: -- that affords us the full faith (inaudible)

000724

4
pat

JUDICIARY

February 26, 1993

REP. RADCLIFFE: You maintain records without a stenographic hearing, which of course would be necessary in terms of knowing a record for appeal, that's the context in which I asked the question.

JUDGE ROBERT KILLIAN: The probate court also is precluded from participating in those termination matters which trouble me the most, and that is where the State is the moving party. Since where there is that State action, that spectre of State action, the Department of Children and Youth Services is the moving party and the termination is obliged to go to the superior court.

We also have in the probate court one wonderful device, the removal statute, which I wish at the same time you grant a concurrent jurisdiction of termination at the probate court, you are given concurrent jurisdiction over removals to the superior court because I think in many instances the removal of a parent, guardian is viewed as a temporary thing, usually, with the appointment or designation of another family member as the guardian for the time being is a very humane and advantageous alternative to the termination process right from the start.

When people get to choose where they go, they overwhelmingly come to the probate courts. And when they come there, they automatically have a right of appeal, de novo appeal, a review (inaudible) by the superior court and statistically relatively few choose to avail themselves of that right.

So the conclusion that I must reach is that those who come to our system and avail themselves of the adjudication therein, are satisfied with the service they're getting and I hope that any studies that the Committee or others might engage in would bear out the truth.

REP. RADCLIFFE: Let me ask you this. I indicated the probate court was not a court of record before, there is no transcript. If in fact in termination of parental rights cases a transcript were required or a stenographer were required by one party, and an appeal were granted as in other administrative situations where the superior court would review the record to see if the judge had considered all

000725

5
pat

JUDICIARY

February 26, 1993

of the facts, to see if there had been an abuse of discretion, to see, basically treating it as an administrative appeal.

If people in fact, come to the probate court for that, wouldn't that serve the cause of finality rather than encouraging forum shopping as our present law does?

JUDGE ROBERT KILLIAN: People have the right now to designate the probate court as the trial court, to have a transcript and in those circumstances the appeal is on the record and is not an appeal de novo. It is a seldom utilized vehicle.

REP. RADCLIFFE: Should that be mandatory, that if you're going to the probate court --

JUDGE ROBERT KILLIAN: I think it would be a change without any meaningful purpose. We don't furnish any business of significance in the superior court. Out of 50,000 matters which were adjudicated in the probate system last year, there were approximately 100 appeals. Of that 100 appeals, the overwhelming majority were in will contest and I would submit, although I don't have a figure to prove it, that the overwhelming majority of those 100 appeals never furnished one moment of business to the superior court.

The appeal was taken to afford the lawyers the second bite of the apple in which to negotiate the settlement which quite frankly, they probably should have negotiated before the hearing in the probate court anyway.

REP. RADCLIFFE: Should there be a waiver provision to prevent an individual from going first to the superior court and then to the probate court or, perhaps you know, while a case is pending, seeking removal --

JUDGE ROBERT KILLIAN: Someone is obliged to file with us an affidavit that there is no proceeding pending any place else. If someone comes to our court, for example, with a removal petition, and there is a petition for termination filed in the superior court, the, it should be picked up by virtue of that affidavit that they're obliged to file. We

000726

6
pat

JUDICIARY

February 26, 1993

would then defer to the forum, in this case the superior court where the previous petition had been filed.

People lie. People cheat. People perjure themselves. One of the reasons why I am concerned about statutes that preclude the right of review, the right to change a judgment in too short a period of time, is precisely because people lie and people perjure themselves and people cheat and people do inadequate jobs in reporting.

But I do believe that the forum shopping while on paper, one could fabricate a means of doing it, is not a specific problem in the judicial department. (inaudible) a very small part.

REP. RADCLIFFE: You say most people choose the probate court rather than the superior court in these instances. Why do you think that is?

JUDGE ROBERT KILLIAN: I think there are a number of reasons. I think the proximity of the probate court to the population. We are still the neighborhood court. I think the fact that it is a less intimidating environment for most people who are often having their first encounter with the judicial system.

I think because our entry fee is \$90 and it's a significantly higher than that in the superior court. You can get the same result at a third less cost, one might question why you would ever go for the higher priced spread?

And I think finally, because of the speed with which our adjudications are completed. A matter that's lodged in the probate court is usually at least in my district, which is large and the ones I'm familiar with in the greater Hartford region, are usually heard within two weeks, we are scheduling the first hearing. And I think that that is not necessarily the case in the superior court.

REP. RADCLIFFE: Which may in fact make the probate court a more suitable forum because in these types of cases, perhaps deliberation and finality are, perhaps, qualities to be sought.

000727

7
pat

JUDICIARY

February 26, 1993

JUDGE ROBERT KILLIAN: The probate court has some limitations in hearings. We don't have available to us the resources of the superior court for investigation. We get significant support and input from the Department of Children and Youth Services. They do a good job in reports, but there is a jurisprudential difference in the cases that come to us and the cases that go to the superior court, and that is the fact that virtually all our petitioners are family members who are seeking to assist another family member, be it the child who is the subject of the petition, or the parent who is having troubles, with a troublesome period in their life.

Where the State of Connecticut is engaged in the frightful business of taking away a child from a family involuntary, permanently, irrevocably, I for one am grateful when the matter goes to the superior court with the attendant greater procedural attention to detail. I try to do a good job, but I am aware that there are some constraints on a court that by its very legislative creation is a court that's supposed to have some informality and some limitations.

It's also one of the reasons Representative Radcliffe, why I am pleased that there is an opportunity for a de novo hearing. It takes some burden off me. I handle about 300 matters a year that concern the custodies of minors.

REP. RADCLIFFE: That goes back to my original question, the de novo hearing in superior court. You have your hearing in the probate court. A probate judge makes a decision which he or she thinks is based upon the evidence. Let's assume we have a transcript for the record. One party is dissatisfied and the probate proceeding then doesn't become a final judgment, it becomes nothing more than a pretrial discovery procedure.

Should we do something about that to insure some finality, perhaps in the probate court where a judge has done that type of job.

000728

8

pat

JUDICIARY

February 26, 1993

JUDGE ROBERT KILLIAN: If you were going to do that, I would want to then get rid of the lot of the informality of the probate system. We don't have the same strict adherence to the rules of evidence. We don't have the same type of investigation and review, and because of the nature of the matters that are coming before us, and the fact that if we make a mistake because of our informality, which also is one of our strengths --

REP. RADCLIFFE: It sounds to me, Judge, as if you're saying, we can try a speeding case, but we don't want a capital felony in our court because of the limitations. Is that?

JUDGE ROBERT KILLIAN: I wouldn't want a capital felony handled in any court the way a speeding matter is handled in the geographical areas. The realities of life are that we afford a forum for people who can properly avail themselves of what we have to offer.

If we can't do it, we can transfer it to the superior court on our motion. If we bite off more than we can chew, they have an absolute opportunity to have what we've done reviewed. But in the overwhelming majority of the cases, the system is working and people at least, as evidenced by the fact that they are so few appeals, are not seeking to have the de novo hearings.

REP. RADCLIFFE: How about a situation where there is no contest, where you think there is no contest. It's agreed. We have a birth mother. We have a father. We have perhaps a planned adoption as they do in some states. You don't believe there's any contest, it seems perfectly suitable, very well suited to the informal procedures of the probate court.

And six months' later, somebody decides that something happened in the probate court that they didn't agree with. Didn't agree with the decision, have had second thoughts. Should there be some finality to that decision?

000729

9
pat

JUDICIARY

February 26, 1993

JUDGE ROBERT KILLIAN: There is finality to that decision. That decision is res judicata. That happened in this case when the parties failed to appeal or in any event, 120 days after the hearing, so the six month example you give is I think, taken care of by the current statute.

If the question came up three months later, there may be some window of opportunity to review the decision, but it's subject to the discretion at that point of the judge.

REP. RADCLIFFE: In that situation, is the probate court decision subject to greater collateral attack than the decision of the superior court somehow and is there anything that you would suggest that we do to prevent a collateral attack six months later, and I use that six months later deliberately knowing the 120 day period.

JUDGE ROBERT KILLIAN: Eight years of experience, I haven't seen one of my matters attacked collaterally, or for that matter in only one case have I seen an appeal of a custody issue that I've heard, and I hear about 300 a year.

If you quantify the problems, I don't think, I think the problem is someone illusory, Representative Radcliffe. I don't think that there is wholesale problem with people coming in either 20 days, 30 days, four months or six months later attempting to reopen these things.

We have seen this year, a very significant aberration in the Baby B case and I would respectfully submit probably a proper reopening, although I have some problems with the jurisprudential basis for that in the supreme court decision.

REP. RADCLIFFE: Thank you, Judge.

REP. TULISANO: Judge Killian, you didn't speak about HB5883. It deals with the right of putative fathers to file registration with the adoption registry. I know it's not what you're here to talk about, but in reading the bill, it allows that it be found, any information tending to identify the genetic parents, including the putative father who

000916

Testimony of Robert K. Killian, Jr. Before the Judiciary Committee
of the Connecticut General Assembly, Friday, February 26, 1993

Mr. Chairman and members of this distinguished committee:

My name is Robert K. Killian, Jr. I am a member of the Connecticut bar these past twenty years and have served for more than eight years as Probate Judge for the District of Hartford. While I speak today solely in my own capacity and not as a representative or spokesman for my colleagues, I do believe I speak with some experiential knowledge having presided over more than two thousand hearings relating to various child custody issues.

I would respectfully urge great caution on the part of our General Assembly as it reviews bills such as H.B. 5640, 5641, 5647, 5801, 5938 and 6800.

Termination of parental rights is a forceful and fateful exercise of the state's police powers. By federal and state constitutional mandate, the state may intrude in the basic right of a parent to be free from governmental constraint only upon a proof, of the highest civil standard, that the parent has engaged in acts of commission or omission so egregious as to justify the state's action.

Our philosophical forebears, in framing our democracy, chose the startling course of elevating individual right over governmental power and adopted procedures which gave the force of law to the healthy skepticism of government's exercise of power which was, and is, a hallmark of our society.

Now, in response to a difficult legal case and a somewhat convoluted state supreme court opinion, we may place in jeopardy a principle which, on the whole, has served us and our democracy well.

"Best interest of the child" is a concept with which it is difficult to take issue. But if taken literally--or mandated as HB 5801 would require--it would allow great evil in the guise of goodness.

000917

Should the smarter guardian prevail over the less intelligent? Should the richer prevail over the poorer? The grandparent over the teenaged mother? The non-handicapped over the handicapped? Should a retarded citizen lose a child of extraordinary ability to a family that could better cultivate the young person's spark? Should the parent who is eccentric be required to surrender a child to guardians who more traditionally adhere to societal norms? I don't think so, the U.S. Constitution doesn't think so and, unless you pass some of these well meaning yet jurisprudentially suspect bills, neither do the statutes of our great state.

While one might be pilloried for saying it, there are principles that transcend the importance of the best interest of the child. Our fundamental civil liberties require that we accept the reality that in any given case a noble goal of government, such as limiting hateful and hurtful speech, might fall in the face of the first amendment; or a very bad person might not be convicted because of an ill advised search of the suspect's home in contravention of the fourth amendment; or a clearly mentally ill individual may be allowed to eschew medication or treatment because of the fifth amendment, extended to the states through the fourteenth.

So, ladies and gentlemen, a child may have some distress in life because constraints on state power deny even a benevolent government the right to intrude in its citizen's lives without a clear and convincing proof that acts or omissions of the parents justify the intrusion.

I am particularly concerned that many of these proposed bills would not even allow a court to fashion a remedy where the first court decision was secured through fraud, duress or other artifice.

If you quantify the problems, I believe you will find that the overwhelming percentage of terminations proceed without the emotional horror of Baby Girl B. It is the very fact that cases are not routinely reopened that marks this as an extraordinary case. Please do not legislate for the extraordinary case. Our judges have shown great reluctance to reopen cases. There is no evidence of regular or even rare abuse of discretion. Please do not try to constrain our court's ability to take unusual action under unusual circumstances because in so doing, the potential for ill greatly outweighs the advantages.

Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

80 Jefferson Street ❖ Hartford, Connecticut 06106
(203) 278-5688 ❖ FAX (203) 278-2957

February 26, 1993

TESTIMONY OF RAPHAEL L. PODOLSKY
Judiciary Committee public hearing

H.B. 5640, H.B. 5641, H.B. 5647, H.B. 5802, H.B. 5938, H.B. 6800
Reopening of judgments terminating parental rights

Recommended Committee action: REJECTION OF THE BILLS

All of these bills limit the ability to reopen a judgment terminating parental rights. C.G.S. §52-212 and §52-212a give the trial courts jurisdiction to reopen a civil judgment for up to four months after it is entered, upon a showing of sufficient cause. The person seeking to reopen must usually prove both (a) a good excuse for having allowed the original judgment to enter and (b) a good defense such that the case might have a different result if the judgment were to be reopened.

The ability to move to reopen is an escape hatch to avoid injustice. It allows the court to temper the potentially harsh effect of a mistake when reconsideration would produce a different decision. And mistakes needing correction do on occasion get made. The mere fact that the law permits a litigant to ask for reopening does not, however, mean that the court will grant reopening. What these bills put at risk is the authority of a court to even consider the motion during the four-month period after a judgment has been entered.

The termination of parental rights is a matter of great importance and is not to be undertaken lightly. The Connecticut Supreme Court has suggested that a law which provides less capacity to reopen a termination judgment than other civil judgments would be constitutionally suspect. In Baby Girl B, 224 Conn. 263, at 286, it said:

First, from the viewpoint of §52-212a, we do not believe that the legislature would have intended to provide greater judicial oversight to correct defaults arising out of "inadvertence and misfortune" in actions involving property interests (such as mechanic's liens) than in actions [e.g., terminations of parental rights] involving liberty interests.... Third, from the viewpoint of the liberty interest of a natural parent in the care, custody and management of her child, fundamental constitutional rights are safeguarded by a construction of §52-212a that affords a fair opportunity to present a meritorious defense, or otherwise to permit an appropriate exercise of judicial discretion, with regard

to a judgment terminating parental rights. In choosing between two statutory constructions, one valid and one constitutionally precarious, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent." [citations omitted]

The circumstances in which reopening is sought can vary significantly. The most obvious variations depend upon where the child is in the adoption process. At one end, the child might be in temporary foster care, perhaps even being moved from temporary home to temporary home. At the other end, the child may already have been adopted. Placement with a pre-adoptive parent is an intermediate situation. When the legislature restricts the capacity of a court to even consider reopening, it prohibits reconsideration in every case, even in ones where it would be better for the child to be returned to a parent who has become able to love and care for the child.

H.B. 5640 would codify the Supreme Court's decision in Baby Girl B, which held that the court's continuing power to monitor the adoption process after termination does not constitute the kind of "continuing jurisdiction" which would allow it to reopen a judgment beyond the four-month limit. The bill is unnecessary because it does not change existing law.

H.B. 5647 incorporates the "no continuing jurisdiction" rule of H.B. 5640 and also reverses the portion of Baby Girl B which held that the state's decision to reinvoke the court's jurisdiction by introducing new grounds for termination is a waiver of the four-month rule for reopening. This bill is unnecessary, because Baby Girl B provides explicit instruction to the state as to how to avoid an unintentional waiver. It is therefore highly unlikely that an unintentional waiver will ever occur again. On the other hand, there is no reason to preclude the state from deliberately waiving the four-month limit by filing an amended petition. Introducing a new ground for termination does reestablish court jurisdiction.

H.B. 5938 sets a 60-day limit for moving to reopen a termination judgment. This period is unreasonably short.

H.B. 6800 increases the appeal period in termination cases from 20 days to 90 days. If the intent of the bill is to set a 90-day reopening period, the appeal period should stay at 20 days. The grounds for appeal are much narrower than those for reopening a judgment (i.e., they are based on error by the trial court) and do not leave room for trial court discretion. That discretion is essential to separating the cases appropriate for reopening from those where it should be denied.

H.B. 5641 and H.B. 5802 prohibit termination judgments from ever being reopened, even a day after entry. That would leave appeal, which must be filed within 20 days, as the only means of review. This would be an exceptionally harsh rule.

000921

Termination of Parental Rights (continued)

HB 5802 AN ACT CONCERNING THE FINALITY OF JUDGMENTS TERMINATING PARENTAL RIGHTS

The Department supports the intent of this bill, but prefers the Department's proposed substitute.

HB 5862 AN ACT CONCERNING TERMINATION OF PARENTAL RIGHTS

The Department supports the intent of this bill and has included the intent in the Department's proposed substitute.

HB 5938 AN ACT CONCERNING THE REOPENING OF A JUDGEMENT TERMINATING PARENTAL RIGHTS

The Department supports the general intent of this bill, but disagrees with the bill's 60 day time period and has instead included a 30 day time period in the Department's proposed substitute.

HB 6800 AN ACT CONCERNING THE APPEAL OF A JUDGEMENT TERMINATING PARENTAL RIGHTS

The Department supports the general intent of this bill, but disagrees with the bill's 90 day time period and has instead included a 30 day time period in the Department's proposed substitute.

000934

TO: JUDICIARY COMMITTEE
FROM: LINDA A. DOW, CHIEF COUNSEL, PROBATE COURT ADMINISTRATION
RE: TERMINATION OF PARENTAL RIGHTS MATTERS

<u>5641</u>	AAC THE REOPENING OF A JUDGMENT TERMINATING PARENTAL RIGHTS
<u>5647</u>	AAC JUDGMENTS TERMINATING PARENTAL RIGHTS
<u>5802</u>	AAC THE FINALITY OF JUDGMENTS TERMINATING PARENTAL RIGHTS
<u>5938</u>	AAC THE REOPENING OF A JUDGMENT TERMINATING PARENTAL RIGHTS
<u>6800</u>	AAC THE APPEAL OF A JUDGMENT TERMINATING PARENTAL RIGHTS

These proposals before you concern the reopening of judgments in parental rights cases.

As Chief Counsel for the 133 Courts of Probate, I share a concern with you over the reopening of termination of parental rights judgments. Proposed Bill 5641 specifically addresses the reconsideration, revocation or modification of probate court ordered termination of parental rights decrees; and we wholeheartedly support that proposal.

Just as important though are all of these proposals that limit the time for reopening judgments in termination of parental rights matters.

This Committee is well aware of the outcry over In Re Baby Girl B, 224 Conn. 263 (1992). The case received nationwide attention in the press and resulted in the legislative proposals we see before this Committee.

Although the Baby Girl B case did not involve a probate court termination, some of the proposals before you would affect our decisions.

As a matter of policy, we strongly believe that, in the best interests of the child, there must be a definitive time frame beyond which no appeal may be taken.

Section 45a-187 of the probate statutes provides that *"An appeal under section 45a-186 by those of the age of majority and who are present or who have legal notice to be present, shall be taken within thirty days."* In a termination of parental rights case, if such person has no notice to be present and is not present, then *"the appeal shall be taken within ninety (90) days."*

We feel these time constraints are in the best interests of the child, and we would support legislation which sets definitive time limits for appeals.

February 26, 1993

000989

The Honorable Judge Gertrude Mainzer of New York makes the point that while the legislators are concerned about opening records retroactively these same people seem to have no second thoughts when they closed them retroactively. Many people in the Adoption Triangle were then denied information that they had been previously promised.

Just as I don't believe a woman should make a decision on relinquishment before or to soon after birth. I believe the Judiciary Committee should table Bills 5938, 5640, 5641, 5647, 5861, 5862, 5801, 6800, and not rush to make laws based on the Pellagrino/La Flame debacle.

Adoption should be, as it was originally meant, for The Children in need of parents - Not Parents in need of children. Adoption is not a cure for infertility.

Thank you for your consideration. I will be out of town during the hearing. If you have any questions concerning Adoption, please feel free to contact me at the above address/number.

Respectfully,


Judy Baker Taylor, Sec./Treas. C.E.R.A.,
Group Leader, Adoption Crossroads