

Legislative History for Connecticut Act

SB 570	PA 202	1996
Senate :	1695, 1710-1711, 5155-5156	(5)
House :	3539 - 3573	(35)
Judiciary :	1810-1812	(3)
	total	43 pg

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL. 39
PART 5
1343-1701

On Calendar page 16, Calendar 375.

SB641

THE CHAIR:

Without objection.

SEN. FLEMING:

Madam President, I thought I would move them all at one time, and make the motion as one motion.

THE CHAIR:

Alright, that's fine.

SEN. FLEMING

On Calendar page 17, Calendar items 382, and 383.

HB 5527

On Calendar page 18, Calendar 387. On Calendar page

HB 5278

20, Calendar 397, and Calendar 400. And, Ma'am

SB 570

SB 615

President, on Calendar page 29, under Disagreeing

Actions, Calendar 44, and Calendar 123. Madam

SB 87

SB 276

President, I would like to move those items to the

Consent Calendar.

THE CHAIR:

Without objection, so ordered. Mr. Clerk, would you proceed with the Calendar.

THE CLERK:

Page 13, Calendar 358, Substitute for House Bill
No. 5450, File 228. AN ACT CONCERNING CRIMINAL AND
LIMITED CIVIL REGULATORY JURISDICTION ON THE
RESERVATION OF THE MOHEGAN TRIBE OF INDIANS OF
CONNECTICUT. Favorable Report of Committee on

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1702-2040

kmg

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Senate

Wednesday, April 17, 1996

001710

Senators return to the chamber.

Page 6, SB 437 Calendar 283. Page 6, SB 300 Calendar 307. Page
7, SB 492 Calendar 319. Page 9, SB 589 Calendar 332 and SB 621 333. Page
10, SB 307 Calendar 340. Page 11, HB 5470 Calendar 346 and HB 5428 349. Page
12, HB 5502 Calendar 352 and HB 5630 356. Page 13, HB 5450 Calendar 358 and
HB 5018 361. Page 12, HB 5433 Calendar 354. Page 14, HB 5558 Calendar 363.
Page 15, SB 524 Calendar 372. Page 16, SB 641 Calendar 375, 379, SB 613
SB 687 380. Page 17, HB 5527 Calendar 383. Page 18, HB 5278 Calendar 387 and
HB 5516 389. Page 20, SB 570 Calendar 397, SB 615 400. Page 29, SB 87 Calendar 44
SB 276 and 123. Page 13, HB 5445 Calendar 357. Page 19, SB 543 Calendar
392.

THE CHAIR:

Does that cover the Consent Calendar, Mr. Clerk?

THE CLERK:

Yes.

THE CHAIR:

Would you make another announcement to make sure we're all here. The machine is now open, we're voting on the Consent Calendar.

THE CLERK:

The Consent Calendar is being voted in the Senate. All Senators return to the chamber. Consent Calendar is being voted in the Senate. Will all Senators return to the chamber.

THE CHAIR:

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Senate

Wednesday, April 17, 1996 001711

SEN. Senator Somma. Senator Prague. Senator
Guglielmo. Senator Prague. Senator Prague. The
machine is now closed. Mr. Clerk would you give me a
tally please.

THE CLERK:

Total Number Voting	34
Necessary for passage	18
Those voting Yea	34
Those voting Nay	0

THE CHAIR:

Consent Calendar passes. Mr. Clerk.

THE CLERK:

Page 15, Calendar 371, Senate Bill 389, File 507.

AN ACT STRENGTHENING THE LAW CONCERNING CHILD RESTRAINT
SYSTEMS. Favorable Report of Committee on
Transportation, and Judiciary. File 507. The Clerk
has two amendments.

THE CHAIR:

Senator Aniskovich.

SEN. ANISKOVICH:

Thank you Madam President. Madam President, I
move adoption of the Joint Committee's Favorable Report
and passage of the bill.

THE CHAIR:

Would you comment further?

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Senate

Wednesday, May 8, 1996 005155

THE CHAIR:

Chamber will stand at ease. Senator Fleming.

SEN. FLEMING:

Yes, Madam President. At this time I would like to ask that we would pass this item temporarily.

THE CHAIR:

This item will be passed temporarily.

SEN. FLEMING:

And that the Clerk call an item from Calendar Page 26. On Calendar Page 26, I would ask that the Clerk please call Calendar 397.

THE CLERK:

Page 26, Calendar 397, File 547, 755, Substitute SB 570 for SB57, AN ACT CONCERNING PROBATE MATTERS. (Amended by House Amendment "A" and "C") Favorable Report of Committee on Judiciary.

THE CHAIR:

Senator Upson.

SEN. UPSON:

Yes, I move acceptance of the Joint Committee's Favorable Report, passage of the bill in concurrence with the House.

THE CHAIR:

Question is on passage in concurrence. Will you remark?

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Senate

Wednesday, May 8, 1996 005156

SEN. UPSON:

Since this has already been through the Senate Madam President, the House has added two Amendments. These are technical changes to probate bills. The two Amendments deal with the effective date of wills, as we changed in another bill SB613.

And number two, it allows for successor of trustees of inter vivos trust to ask a probate court for financial accounting. I believe, okay if there's no objection, I'd have this be placed on the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SEN. FLEMING:

Madam President?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Yes, thank you Madam President. At this time I would like to ask that the Clerk go to Calendar Page 27. And that the Clerk please call Calendar item 418.

THE CLERK:

Page 27, Calendar 418, File 596, 754, SB296. AN ACT CONCERNING THE PROBATE COURT ADMINISTRATION FUND

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1996

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3485-3870

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House of Representatives

Wednesday, May 1, 1996

Have all the members voted? If all members have voted, please check the roll call machine to make sure your vote is properly recorded. If it has, the machine will be locked. Clerk, please take the tally.

Clerk, please announce the tally.

CLERK:

Senate Bill 344, as amended by House "A"

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	1

DEPUTY SPEAKER HYSLOP:

The bill, as amended passes. Clerk, please call Calendar 498.

CLERK:

On page 13, Calendar 498, Substitute for Senate
Bill Number 580, AN ACT CONCERNING PROBATE MATTERS.

SB570

Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Doyle.

REP. DOYLE: (28TH)

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

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DEPUTY SPEAKER HYSLOP:

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

REP. DOYLE: (28TH)

Thank you, Mr. Speaker. This bill is a bill from the Probate Administrator's Office. Facing a technical bill, it has a lot of sections with different changes. I will summarize a few of the changes.

For instance, it expands the power of attorneys and expands the jurisdiction of the Probate Court to all powers of attorneys, not just durable power of attorneys for accountings. Therefore, if a principal, a grantor of a power of attorney wanted to have the court have jurisdiction to have an accounting, they would have the ability to petition a court. It also allows the Probate Court in a situation where someone has petitioned them, a parent is removed as a guardian, the Probate Court would have the ability to order a psychological evaluation of a child, parent or a guardian, if deemed necessary.

It also would with regard to the liability of a temporary guardian, it -- a temporary guardian is limited to a one-year period. Basically, a temporary guardian would not be liable for the torts of minors and this is necessary because the courts have trouble

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getting people to act as temporary guardians and in a situation where there is a shortage, at this point, to have liability for the torts of the minors, it could be problematic. It also allows for the transferring of the files of a guardian for minors and it also basically repeals statutory section 45a-438 regarding distribution of intestate estates of a minor.

Mr. Speaker, I have amendment LCO 6046. Will the Clerk please call and I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call Calendar -- call LCO 6046, designated House "A" and the Representative has asked leave to summarize.

REP. DOYLE: (28TH)

Thank you, Mr. Speaker.

CLERK:

LCO Number 6046, House "A" offered by
Representative Tulisano.

DEPUTY SPEAKER HYSLOP:

Representative Doyle.

REP. DOYLE: (28TH)

Thank you, Mr. Speaker. What this amendment does is -- we passed Senate Bill 613 a week or so ago.

Basically, that was a bill affecting the --

DEPUTY SPEAKER HYSLOP:

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Representative Doyle, would you hold it just for a moment. Would the Chamber please stand at ease for a moment? They are just getting the amendment on the other side of the aisle.

The Chamber will come back to order.

Representative Doyle, proceed.

REP. DOYLE: (28TH)

Thank you, Mr. Speaker. What this amendment does is -- this relates back to Senate Bill 613 which was passed by the House a week ago and recently passed by the Senate. Basically, it is an issue of -- this bill is regarding saving provisions of a bill that was executed and after a will is executed, current law says that the divorce or marriage absolutely revokes the will and Senate Bill 613 saves provisions in the wills unrelated to that. For instance, the minor provisions, the appointment of the executor or a specific devise.

What this amendment does is it simply makes the effective date for Senate Bill 613 January 1, 1997. It also makes these new provisions of makes the provisions that are saved, effective for wills that are executed on or after January 1, 1997.

I move for its adoption.

DEPUTY SPEAKER HYSLOP:

The question is on adoption. Will you remark?

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Will you remark on House "A"? If not, we will try your minds. Representative O'Neill.

REP. O'NEILL: (69TH)

Mr. Speaker, even though this does modify the earlier action of the Assembly, and does sort of reverse the actions that the Law Revision Commission had contemplated, I would urge support of the amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House "A"? Will you remark further on House "A"? If not, we will try your minds. All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Opposed, nay. The ayes have it. House "A" is adopted. Will you remark further on this bill, as amended?

Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has an amendment, LCO 5400. May he please call and may I request leave of the Chamber to summarize?

DEPUTY SPEAKER HYSLOP:

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DEPUTY SPEAKER HARTLEY:

Will the Clerk please call LCO 5400?

CLERK:

LCO Number 5400, House "B" offered by
Representatives Radcliffe and Lawlor.

DEPUTY SPEAKER HARTLEY:

The Representative has asked leave to summarize.
Without objection, proceed, sir.

REP. RADCLIFFE: (123RD)

Thank you, Madam Speaker. This would increase
from the current \$5,000 to \$7,500, the maximum
liability of a parent for the willful and malicious
acts of a minor. I move adoption.

DEPUTY SPEAKER HARTLEY:

The question is adoption. Will you remark
further?

REP. RADCLIFFE: (123RD)

Madam Speaker, this is a bill that was actually
approved by the Judiciary Committee. I believe the
comment of file number 547 makes reference to that bill
which was approved. It was approved with additional
provisions which when sent to the Appropriations
Committee, carried a large fiscal note and therefore,
the bill itself was not recommended for approval by
that committee.

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This particular amendment has no fiscal impact. It is actually half of the increase, which the Judiciary Committee had initially recommended. Our initial recommendation was to increase this liability to \$10,000.

This would increase the liability to \$7,500 of the potential responsibility with -- the committee felt, based on testimony and this was an unanimous recommendation, that the \$5,000 limit in many cases is willfully inadequate, that in some circumstances, individuals who are minors, who are below the age of 14, who may not individually have assets with which to compensate a victim, the parents may, nonetheless, be liable. Insurance policies will cover these activities for parents because they are unintended from the standpoint of the insured, up to \$7,500. And this represents a more realistic analysis of the damages under certain circumstances. It will go a long way to making victims of crimes whole and may allow access to a deeper pocket than a 13 year old, 14 year old juvenile.

For that reason, I would request approval.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further on House "B"? Representative Kirkley-Bey. You have the floor,

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Madam.

REP. KIRKLEY-BEY: (5TH)

Thank you, Madam Speaker. Through you, to Representative Radcliffe.

I am just trying to put this, Representative Radcliffe in context with the constitutional amendment for victims' rights. How would this effect that? We are saying that if I am a parent of a juvenile who may commit a crime, under that constitutional amendment, I could be liable for the child so you are raising my liability or I have to buy something that will cover me? Explain it to me, please.

REP. RADCLIFFE: (123RD)

No. Through you --

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Thank you. Through you, Madam Speaker. No, Ma'am. Under existing law, any individual -- parents are liable for the willful and malicious acts. Only for a wilful and malicious or intentional act up to \$5,000. That's existing law. That exists independent of any addition to the Constitution of the State of Connecticut which maybe voted by this General Assembly and approved by the voters in November.

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What this amendment does is it raises that \$5,000 figure to \$7,500. So if an individual, for example, sustained damages in excess of \$5,000, but somehow less than \$7,500, then the parent would be liable for the full amount of those damages as opposed to the \$5,000 limit.

This is a means of insuring parental responsibility. It also allows a victim to pursue a legal remedy. The amendment that was adopted the other evening and hopefully will be adopted by the Senate today, did contain a provision regarding restitution, but said, "as otherwise provided by law or enforceable as any other cause of action". This is exactly the type of legislative action contemplated to make that provision a reality.

Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Kirkley-Bey. Thank you, Madam. Will you remark further on House "B"? Representative Winkler of the 41st. You have the floor, Madam
REP. WINKLER: (41ST)

Thank you, Madam Speaker. I am opposed to this amendment and the reason being, we have, in Connecticut, what they refer to as the gray law which does not cover 16 and 17 year olds and until we give

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the tools back to the parents to allow them to have some jurisdiction over their children, I don't think it is fair that we increase this.

I know the legislation which is Family With Service Needs to include the 16 and 17 year olds, has a price tag of about \$1 million or \$1.5 million. And until this General Assembly is willing to address that issue and put the money in the budget to give the parents back what they are asking for and I am sure many of you have gotten those phone calls asking for some relief from the gray law that we currently have, I can't support increasing this and putting an added burden on the families.

Thank you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Thank you, Madam. Will you remark further?
Representative Mazzocchi.

REP. MAZZOCOLI: (27TH)

Thank you, Madam Speaker. I have to concur with the comment of Representative Winkler. We had a discussion of this on the Judiciary Committee. I raised the same concerns that I think unfortunately sometimes there are kids that do things who are not under the control of their parents and they are held accountable. And until some of the changes that were

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discussed are made, I think we shouldn't change this, at this time. Thank you.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Simmons. You have the floor.

REP. SIMMONS: (43RD)

Thank you, Madam Speaker. I also rise in opposition to this amendment. As some members of the Chamber know, last year we had a bill that was supported by a number of us that extended the Family With Service Needs Program to 16 and 17 year olds. This what we call "The Youth Category" of minors. Youth Category being those who are 16 and 17.

And we have had -- we have encountered numerous problems in the law because families in this particular instance, are held accountable or responsible for their youths, but they don't have the means to control them. And what this amendment basically does for those families that have 16 and 17 year olds, who tend to be acting out and who tend to be out of control, what it does is it increases the liability that they face for the actions of their young adults or their youths, but at the same time, we do not give them any means to establish control.

So it is a very unfair proposition, in my opinion.

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Now this year again, we have encountered the same problems with the legislation that was designed to extend the Family With Service Needs Programs to this age group. The administration was unable to come up with a fiscal note that they felt was doable even though the cost is estimated at only around \$1 million which actually is not a big price to pay if it can keep these young people out of jail.

And I understand that there will be a task force to deal with this issue coming up within the Task Force bill that I guess we will deal with next week. But I think it sends a very wrong message to the parents of these 16 and 17 year olds that we are going to increase their liability for the actions of their children when at the same time, we do not give them the means to control these children. So I oppose the amendment.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Newton. You have the floor, sir.

REP. NEWTON: (124TH)

Madam Speaker, a question to the proponent of the amendment.

DEPUTY SPEAKER HARTLEY:

Please frame your question, sir.

REP. NEWTON: (124TH)

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What if a person can't afford -- what happens now if a person can't afford the \$5,000 fee right now? What happens?

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Through you, Madam Speaker. Do you mean if an individual were indigent and could not afford to pay it? Well, then an individual -- because this particular statute is an addition to and not in lieu of any other remedy provided by law, an individual could obtain a judgment against that individual and that judgment would essentially be uncollectible.

If the individual, however, had homeowner's insurance or renter's insurance, usually that would cover these particular acts because the renter is the insurer, the parent, and the insurance company would usually pay, which was what I indicated was the deep pocket approach. It is a way of making a victim whole.

But in answer to your question, through you, Madam Speaker, just like any other judgment that is received, it would be, in effect, uncollectible. Ultimately, it would be dischargeable in bankruptcy if the individual took that particular approach.

Through you, Madam Speaker.

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DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Newton.

REP. NEWTON: (124TH)

Madam Speaker, I rise in opposition and I think it is also -- lawmakers have already said.

You know, we pass a lot of laws here on parental rights. We got a bill on the docket right now. We take a lot of rights away from parents. I am a father of two children who are not at the age of 16 and 17, but how can we take rights from parents and then sock it to them on the other end for a child -- if you discipline a child these days, they can call 9-1-1, cry child abuse and then on the other hand, we are going to raise this fee from \$5,000 to \$7,500. I just don't think it is fair. We ought to be giving parents tools to discipline their children and then maybe I could go along with this amendment. But to raise it, and take away rights from parents, I am talking about good parents, too, like many of you who sit in this Chamber. If you discipline your child today, you better be careful that DCYS don't come to your house.

So I would rise in opposition and let's start doing something for the parents here and stop taking away their rights.

Thank you, Madam Speaker.

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DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Nystrom of the 46th. You have the floor, sir.

REP. NYSTROM: (46TH)

Thank you, Madam Speaker. Those previous speakers who have spoken in opposition to this amendment all point out a -- I think what is a real need that needs to be addressed and as one of them mentioned, that there is a task force that may take a look at that issue, the gray law area. But where parents have more control, but I don't think that, in itself, is a reason to oppose this amendment.

One of the reasons this language of this amendment was before our committee, it was brought to us by someone who suffered probably the worse nightmare that anyone could find and that was his wife and child were murdered by someone who was under the age of 16 and not only did he lose his entire family, but it has caused extensive economic harm to him, who is now alone. And I am talking about John Clooney. His wife, Elaine and son were murdered by someone who has since been convicted. The crime occurred when the child was 15 years old and I think that tells us that the innocence of youth is somewhat lost in society today.

The actions that they are now acting out are not

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the minor violations. They are killing people. They are killing each other. They are using guns and if you are someone who is a recipient of that action and you find yourself destitute as this poor man will probably end up financially destitute as well. So he came to this committee and he wanted to know why there is no restitution to someone in that situation. And that's one of the reasons that our committee considered increasing that liability. And it doesn't help him at all. It is not retroactive, nor is this. But he was looking at people who found themselves in that situation in the future.

Those who have spoken in opposition to this amendment point out something that we need to address. And I am sorry to see that we are not going to be doing it because our committee reported out a bill that was sent to Appropriations that would have addressed it, but due to the economic situations of our state, I guess we are not going to do that. We are going to study it further. But that, in itself, is not a reason to oppose this amendment. And I certainly don't wish anyone to be in this situation where your child has run into trouble with the law and you find yourself, as a parent, liable. I am a parent of three children. They happen to be very small at the moment, but they will

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grow older and I hope I don't face those issues that others have called me about as well.

I have received letters, phone calls from parents who don't know what to do with their children because they have no control. It is sad to say that we are not going to address that issue, but again, that is not a reason to oppose this amendment and I would urge that we adopt it.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further on House "B"? Representative Fedele.

REP. FEDELE: (147TH)

Thank you, Madam Speaker. Madam Speaker, I find it somewhat of an irony that we, as a legislature, can sit here and vote for a constitutional amendment for victims' rights and put words on paper and then one of the key components of victims' right is to be able to recover damages.

I have a young gentleman who is a constituent of mine who was attacked a year and one-half ago by three young men that he went to school with and he laid in a comma up to about fourteen months ago and he awoke and the probability is he is going to die because of the action of these 16 and 17 year olds.

His parents are going to be destitute because of

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the hundreds of thousands of dollars that they will have to pay and will continue to pay for his care while he is here on earth. And yet, we want to legislate law that allows parents to discipline their children.

Well, ladies and gentlemen, I have three children too and disciplining does not start at 16 and 17 years old. Respect, love, for your fellow man, starts when they are born and as they grow and as a parent, you do have some responsibilities and it is unfortunate that -- quite frankly, I would like to see this amendment be higher than \$7,500. I think that we do have a responsibility to the community. We do have a responsibility to victims and we have a responsibility as parents to make sure, as we raise our children, that they are not put in the situation and I am not saying that money will solve the misery that a family has, but I just, as I said earlier, find it very interesting that we have no problem giving victims rights and yet not backing it up with money.

So, Madam Speaker, I rise in support of this amendment and I would only wish that the dollar value of it was even higher.

Thank you.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Ryan of the 141st.

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You have the floor, sir.

REP. RYAN: (141ST)

Thank you, Madam Speaker. Through you, a question for the proponent of the amendment.

DEPUTY SPEAKER HARTLEY:

Please frame your question.

REP. RYAN: (141ST)

I understand the question and the discussion concerns some of the liability of parents and through you, Madam Speaker, my understanding is there was a procedure, Mr. Radcliffe, for emancipation of minors. Can you comment on that procedure?

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Through you, Madam Speaker. There is a procedure for emancipation. So in the case of an individual who was totally uncontrollable, that individual could be emancipated at his or her own request or at the request of the parents and the individual parent would then not be liable under this provision of the General Statutes. Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Thank you. Representative Ryan.

REP. RYAN: (141ST)

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Thank you. And is it my understanding, through you, Madam Speaker that that is a procedure that can be initiated through the court by the parent?

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Through you, Madam Speaker. It can. The citation is section 45b-160 of the General Statutes and yes, it can be initiated through the court to relieve the parents of this or any other obligation under appropriate circumstances. Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further? Will you remark further on House "B"? Representative Prelli of the 63rd. You have the floor.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, I rise to point out what I believe is a drafting error in the amendment that can be corrected by LCO, but I would like it as part of our record that we noticed it. The reference is to line 482, yet "exceeding" never shows in line 482, so it should say "481" and so I think for a drafting error that LCO can correct we just need to point it out for our journal.

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DEPUTY SPEAKER HARTLEY:

I thank you, sir for your attention to detail. Will you remark further on House "B"? Representative Thompson.

REP. THOMPSON: (13TH)

Thank you, Madam Speaker. Madam Speaker, I rise to speak against the amendment. I believe the amendment may be premature. We really have had difficulty pinning down responsibility, particularly with 16 and 17 year olds where there, as previously speakers have noted, there is a great deal of freedom, including the right to seek emancipation. But as long as I have been in the Assembly, we have wrestled with this issue of 16 and 17 year olds who seem to be beyond the control of their parents, beyond the control of the law until they commit a crime and then also, as things happen.

We have Family With Service Needs available to children or youths younger than 16, but we really do not have anything in place for the kid who is on the street causing trouble and incurring, in some cases, liability for their parents.

We have requested, Representative Simmons and I have requested that this matter, due to our failure to get legislation passed on this issue, that this matter

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be studied in the coming year and a report come back to the session next year where we could have appropriate language.

So, I think we should address this issue, but I think just increasing the liability of parents does place an undue burden on some parents in this society whose children literally seem to be beyond control, but not within the jurisdiction of the law.

So I would urge rejection of the amendment. Thank you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further on House "B"? Will you remark further on House "B"? If not, -- Representative Lawlor of the 99th, you have the floor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I rise in support of the amendment, mindful of the comments that have been made in opposition, but I think like many issues which we handle here, we have to adjust them from time to time because of the advent of inflation or simply the cost of living. For example, this. For example, the limit for small claims court and for example, the minimum wage. I think the time has come to increase the limit.

DEPUTY SPEAKER HARTLEY:

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This is a cost of living issue. Thank you, sir.
Will you remark further? Representative Radcliffe.

REP. RADCLIFFE: (123RD)

Thank you, Madam Speaker. Madam Speaker, I think I should point out that this amendment only applies to a certain type of activity on the part of minor children and that is to wilful and malicious acts. Otherwise, as has been pointed out in this discussion, they are usually criminal acts. It could be something as insignificant as criminal mischief and give an individual an avenue of recovery against parents for a downed mailbox or a broken window or it could be something as substantial as an individual being wounded by either the use of a firearm or sustaining serious physical injury in the course of a burglary or a robbery from their person. So it could apply to a number of situations.

The current limit of \$5,000 has been in place for many years. The initial bill that was reported out of the Judiciary Committee raised that limit to \$10,000. This amendment is only \$7,500, as Representative Fedele indicated, not sufficient by any means to compensate an individual for serious and permanent injuries.

However, in many instances, these types of injuries are covered by a homeowner's or a renter's

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insurance policy. So there is a deep pocket available to a victim.

Now, the victim can always bring an action against a 13 year old, a 14 year old, or a 15 year old delinquent who has caused the injury, but I suggest that that is no remedy at all because a 13, 14, or 15 year old is not going to have sufficient assets to compensate anyone. Bringing a civil action against that individual is really a hollow remedy that serves no useful purpose.

You can't have it both ways. You can't say that we ought to have parental responsibility. You can't say that we want to make the victims of crime whole and then when legislation is put in front of you to do that, say, well we have to feel for the parents in this case because in a certain circumstance, it might work a hardship. There is the ability of a parent right now to go to court and to have a child emancipated. That would relieve them of responsibility for a child who is totally incorrigible and uncontrollable.

But this particular amendment raising the limit, giving a victim of a crime a real opportunity to recover, recompense, or restitution for that for which they have lost, I suggest is something that we can do at the very least.

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This is not breaking new ground. This is not a new statute. This is simply increasing the monetary limits of a statute that is already in place, that only applies to wilful and malicious acts and, quite frankly, is a measure that will help assist the victims of crime in this state to receive just compensation for injuries which they received.

It is a good amendment. I wish it were higher, as well. I think \$7,500 is eminently reasonable in light of current conditions and it ought to pass.

Thank you.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Representative Simmons for the second time.

REP. SIMMONS: (43RD)

Thank you, Madam Speaker. Yes, for the second time. Just a couple of comments. Yes, it is true, the Judiciary Committee voted to raise the amount to \$10,000. It is also true that the Judiciary Committee accepted the Winkler amendment which extended the Family with Service Needs Program to the youth category or to the gray area. So that was a balanced proposal.

Increase the liability on the parents, but give the parents the tools to deal with their teenage youths. Fair and equitable. The bill came to the

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Appropriations Committee and the Appropriations Committee took no action. Now we have an amendment that is only one piece and not both pieces of what the Judiciary Committee did. It is one piece. It is the liability piece. It is the punishment of the parents piece. It does not punish the kids who cause the damage, it punishes the parents.

But what about the piece that made the thing whole, that gave the parents some tools to deal with these kids who are acting out? Well, that piece is gone. That piece is not in here. And that is why we framed the task force to study the whole range of issues dealing with our youths and that task force is supposed to convene at the end of this session and among other things, yes indeed, it is going to address the issue of parental liability. So why don't we let that process unfold? Do not take half of what came out of Judiciary, which is punitive to the parents, to the families, and send it forward and leave the other half that gives them some tools to deal with these young people, leave that half behind.

I urge my colleagues to vote against the amendment.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further?

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Representative Winkler of the 41st.

REP. WINKLER: (41ST)

Thank you, Madam Speaker. I would just like to pick up where Representative Simmons left off and respond to one of the comments that Representative Radcliffe had made and that was the possibility of a parent going to court for emancipation. What that is, is basically a legal divorce from your children. How many parents really want to do that? This gray area that we are dealing with is 16 and 17 year olds that take off, the parents know where they are, and the police will do nothing to go and bring them back because they fall in that area of 16 and 17 year olds.

I would be willing to support treble damages, raise the tort to \$15,000 if we gave the parents the tools to control their children. They are not in place. I don't support the amendment. I urge you to vote down the amendment. Thank you.

DEPUTY SPEAKER HARTLEY:

Will you remark further? Representative Nystrom, for the second time.

REP. NYSTROM: (46TH)

Thank you, Madam Speaker. Briefly, I supported the language which extended that program to 16 and 17 year olds and I still support it and would like to see

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that take place. And when a child takes off from home, it is very frustrating for a parent. I have had those same calls that many of you have had and you feel the frustration of the parent on the other end of the telephone. But I think we should not forget, that is not breaking the law, they may not come home and it breaks your own heart as a parent, but if they haven't broken the law, they haven't harmed someone, you are not exposed to any liability other than the heartache of not being with your child and that is a great heartache, but what this amendment purports to provide, isn't going to affect you. It is when they break the law it might affect you. It is when they harm someone or damage property, it might affect you. And only in those circumstances.

I think we should support the amendment. Thank you.

DEPUTY SPEAKER HARTLEY:

Will you remark further? Representative Kirkley-Bey of the 5th, you have the floor, Madam.

REP. KIRKLEY-BEY: (5TH)

Thank you, Madam Speaker. For the second time. I have been listening to this and I am really trying to formulate a comprehensive picture in my mind. I asked Representative Radcliffe a question and he answered it

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quite clearly for me. However, this legislation before us or that should be coming before us in the termination of parental rights, and if I understand what that is trying to accomplish, it is saying that if a mother is an alcoholic or a drug dependent person, that we will take the child. So now the child is under the custody of the Department of Children and Families. We have over 8,000 -- I think 8,118 kids that went through the system last year. If those kids were to commit some kind act or deed that would make them come under this, I almost feel that with the Constitutional Amendment and this is why I am trying to get it clear, that the State of Connecticut is liable for those children. And if we keep bringing more and more kids into this system, at any age, as long as we have them until they are 18, we are responsible.

So I think I am going to vote against it just because it is fuzzy in my mind how all the pieces of this puzzle fit together and I think I would be doing a disservice to my constituents and others if I can't see it laid out and it is not coming clear and I think we are getting ourselves in trouble by just looking at what is being stated here. We know that that piece of legislation is coming. We do not know how it is. I wrote an op-ed piece so I know last year 8,118 kids

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went into DCF. If they do something -- I understand the law is on the books. By talking about it, people will become more aware of it. What liability would we be putting the State under? And in the answer to Representative Newton's question, for parents who are indigent, that you can take their possessions. I have difficulty with this and for myself, I think I would urge people not to support it until we have a better picture of what this whole puzzle looks like and I think Representative Simmons says, let's wait until June and get it all put together in one fine document and then we could take it all collectively and come up with a comprehensive piece of legislation next session.

Thank you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

I thank you, Madam. Will you remark further on House "B"? Representative Concannon of the 34th. Madam, you have the floor.

REP. CONCANNON: (34TH)

Thank you, Madam Speaker. Last year I was involved with a group of women who came from Middletown, a large group, very concerned about their kids and very concerned about the fact that they -- because their children were 16 and 17, that they were not entitled to control their kids in the way they

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would of wished. These were parents that belonged to Tough Love. Parents who really cared about their kids, parents who want to work with their kids, but they did not feel that it was fair that their hands were tied and yet, they were liable for the damages that could be created are caused by their children.

So I think we have to -- first things first, and I cannot support this amendment as it is and I thank you.

DEPUTY SPEAKER HARTLEY:

Thank you, Madam. Representative Lawlor of the 99th, sir. You have the floor.

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. I request a roll call.

DEPUTY SPEAKER HARTLEY:

When this vote is taken, it will be taken by roll.
Will you remark further on House "B"? If not, staff and guests please come to the well. Members, take your seats. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting House Amendment Schedule "B" by roll call. Members to the Chamber, please.

DEPUTY SPEAKER HARTLEY:

Have all the members voted? Is your vote properly

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recorded? If so, the machine will be locked. The Clerk will please take a tally.

The Clerk will please announce the tally.

CLERK:

Senate Bill Number 570, as amended by -- I am sorry. On House Amendment Schedule "B" to Senate Bill Number 570

Total Number Voting	149
Necessary for Adoption	75
Those voting Yea	67
Those voting Nay	82
Those absent and not voting	1

DEPUTY SPEAKER HARTLEY:

The amendment fails. Will you remark further on the bill? Will you remark further on the bill? Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, the Clerk has an amendment, LCO Number 5839. Could he please call and I be allowed to summarize?

DEPUTY SPEAKER HARTLEY:

The Clerk has LCO 5839. Will the Clerk please call?

CLERK:

LCO Number 5839, House "C" offered by

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Representative Prelli.

DEPUTY SPEAKER HARTLEY:

The Representative has asked leave to summarize.
Without objection sir, proceed.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. Madam Speaker, this is really a technical amendment. When reading in lines 252 of the file copy there was some question of where "his successor" reverted back to and this amendment was meant to clean it up, that it meant all three previous categories and I move its adoption.

DEPUTY SPEAKER HARTLEY:

The question is adoption. Will you remark further, sir?

REP. PRELLI: (63RD)

Madam Speaker, just very quickly. In the file copy it says a "trustee, settlor or attorney-in-fact or his successor". In my discussions with the people supporting this bill, they said that it should fall back on -- "his successor" should fall back to all three categories. I didn't think it was clear. I thought this cleared it up and I would urge support.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further on House "C"? Representative Doyle of the 26th, you have the

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floor, sir.

REP. DOYLE: (28TH)

Twenty-eighth.

DEPUTY SPEAKER HARTLEY:

My eyes failed me, Representative. The 28th.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. Just for the record, I believe this is a technical amendment. I move its adoption. Thank you.

DEPUTY SPEAKER HARTLEY:

Thank you, sir. Will you remark further on House "C"? If not, we will try your minds. All those in favor, please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HARTLEY:

Those opposed, nay. The ayes have it. The amendment is adopted.

Will you remark further on the bill, as amended?
Will you remark further? If not, staff and guests please come to the well. Members, take your seat. The machine will be opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by

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roll call. Members to the Chamber, please.

DEPUTY SPEAKER HARTLEY:

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

The Clerk will please announce the tally.

CLERK:

Senate Bill Number 570, as amended by House
Amendment Schedules "A", and "C"

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER HARTLEY:

The bill, as amended is passed.

Will the Clerk please call Calendar 417?

CLERK:

On page 27, Calendar 417, Substitute for House
Bill Number 5396, AN ACT CONCERNING CHILDREN ORPHANED
BY THE DEATH OR INCAPACITY OF A PARENT AND CO-
GUARDIANSHIP. Favorable Report of the Committee on
Human Services.

DEPUTY SPEAKER HARTLEY:

Representative Mushinsky of the 85th. You have

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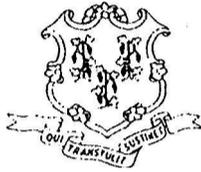
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**Testimony of David L. Hemond
Chief Attorney, Connecticut Law Revision Commission**

to the Judiciary Committee

in favor of S.B. No. 570

An Act Concerning Probate Matters

March 15, 1996

Senate Bill 570, An Act Concerning Probate Matters, contains recommendations of the Law Revision Commission's Probate Advisory Committee for a number of discrete changes to the probate statutes. More specifically, the bill would do the following:

Secs. 1 & 2. Technical revision of sections 17a-541 and 17a-543.

These technical changes would replace the term "incompetent" with "incapable" in section 17a-541 for consistency with the referenced provisions and change a reference in section 17a-543 from "guardian" to "conservator, guardian of the person of the minor, or other duly authorized guardian" to more accurately cite the applicable fiduciaries.

Sec. 3. Revision of section 7-53.

Section 7-53 provides for the issuance of original birth certificates, on order of a probate court, in cases where a person has been subsequently adopted. Under current law, the

probate court with jurisdiction is the court in which the adopted person was born. The Commission recommends providing concurrent jurisdiction to the probate court in which the adopted person was adopted, which is often the court with the closest and most recent contact to the adopted person.

Sec. 4. Revision of section 45a-175 re accounts under powers of attorney.

Section 45a-175 provides courts of probate with jurisdiction of accounts of the actions of "attorneys-in-fact acting under powers of attorney created in accordance with section 45a-562." Section 45a-562 concerns creations of durable powers of attorneys - powers of attorney that survive the incapability of the principal. The Commission recommends that the probate courts have jurisdiction of account over all powers of attorney, whether or not created under the durable power statute. The jurisdiction is limited and can only be invoked by the principal or by the attorney-in-fact. The Commission finds no policy reason for restricting the right to such an accounting to durable powers of attorney.

Sec. 5. Deletion of obsolete references to the insolvent debtor statutes.

Connecticut's insolvent debtor statutes - which were superseded by federal bankruptcy law - were repealed on recommendation of the Law Revision Commission in 1980. See Public Act 80-107. Section 45a-316 contains obsolete references to those repealed provisions. The Commission recommends that the section be revised appropriately to delete those references.

Sec. 6. Revision of section 45a-609 to allow psychological evaluations.

Section 45a-609 states the procedure for removal of a parent as guardian. The proposed order to remove a parent affects fundamental rights of custody and, although not necessarily final, is analogous to termination of parental rights cases in the probate court and Superior Court. In termination cases, the respective court may order a psychological evaluation of the parties for reasonable cause. See section 45a-717(d). The Commission recommends that similar authority, to order psychological evaluations, be provided in the case of a removal petition.

Sec. 7 & 8. Clarification that temporary guardians are not liable under section 52-572.

Under section 52-572, a parent or guardian may be liable up to \$5000 for the torts of a child or minor ward. The Commission finds that this provision should not apply in the context of a temporary guardian appointed under section 45a-622. Such a temporary guardian holds a temporary, and essentially supplemental, guardianship position because the parent or primary guardian of the child has not been removed. Because a temporary guardian is a supplementary guardian, often appointed in an emergency context, we find that holding such a temporary guardian liable for the wrongdoing of the minor is

inappropriate. Such a temporary guardian is unlikely to have either the ongoing contact or longstanding authority that may make such liability reasonable with respect to parents or permanent guardians. Furthermore, this liability statute can make obtaining such a temporary guardian unnecessarily difficult, or impossible, in cases where such a liability might arise.

We also note that, because section 52-572 refers to a "guardian" rather than a "temporary guardian", it may not, in fact, apply to temporary guardians. However, current law is sufficiently ambiguous so that the possibility that the provision applies to temporary guardians, and with its consequent chilling effect on appointments, exists. The Commission recommends that the section be revised to clearly not apply to temporary guardians.

Sec. 9. Repeal of section 45a-438a.

Section 45a-438a provides that:

"If any minor child dies intestate, unmarried and without issue, before any distribution of the estate [of the deceased parent of the minor child], the portion of such deceased child shall be distributed as if such child had died in the lifetime of his parents."

The point of this statute is to allow the parent's estate to be administered and distributed without the estate's executor or administrator having to open an estate for the deceased child. Such an estate for the deceased child, in the absence of the statute, would be necessary to administer the property that would pass from the parent to the deceased child's estate. This statutory provision, however, is fundamentally unsound because the child's equitable right to distribution vests, under equitable principles, immediately on the death of his parent, the testator or intestate decedent. This statute, therefore, improperly attempts to divest the child's estate of assets that automatically vested in the child on the parent's death, thereby denying not only distribution to the child's next of kin, but denying access to the assets to the child's creditors, if any. This statute also would make the actual order of distribution dependent on how rapidly the parent's fiduciary has administered the parent's estate. If the fiduciary is slow and the child dies before distribution, according to the statute, the property passes under the parent's estate. If the fiduciary is expeditious and the child is still alive at the time of distribution, the property passes to the child and the child's estate will be opened and property will be distributed in accordance with the child's estate. Such a result is illogical. In short, the Commission finds the statute fatally flawed.