



House of Representatives

General Assembly

File No. 577

January Session, 2005

House Bill No. 6638

House of Representatives, April 28, 2005

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT ADOPTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CUSTODY, DIVORCE AND CHILDREN.

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

1 Section 1. Section 46b-56 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) In any controversy before the Superior Court as to the custody or
4 care of minor children, and at any time after the return day of any
5 complaint under section 46b-45, the court may [at any time] make or
6 modify any proper order regarding the [education and support of the
7 children and of care, custody and visitation] custody, care, education
8 and support of the children if it has jurisdiction under the provisions
9 of chapter 815p. Subject to the provisions of section 46b-56a, as
10 amended by this act, the court may assign [the custody of any child to
11 the parents jointly,] parental responsibility for raising the child to the
12 parents jointly, or may award custody to either parent or to a third

13 party, according to its best judgment upon the facts of the case and
14 subject to such conditions and limitations as it deems equitable. The
15 court may also make any order granting the right of visitation of any
16 child to a third party to the action, including, but not limited to,
17 grandparents.

18 (b) In making or modifying any order [with respect to custody or
19 visitation, the court shall (1) be guided by the best interests of the
20 child, giving consideration to the wishes of the child if the child is of
21 sufficient age and capable of forming an intelligent preference,
22 provided in making the initial order the court may take into
23 consideration the causes for dissolution of the marriage or legal
24 separation if such causes are relevant in a determination of the best
25 interests of the child, and (2) consider whether the party satisfactorily
26 completed participation in a parenting education program established
27 pursuant to section 46b-69b] as provided in subsection (a) of this
28 section, the rights and responsibilities of both parents shall be shared
29 and the court shall enter orders that serve the best interests of the child
30 and provide the child with the active and consistent involvement of
31 both parents commensurate with their abilities and interests. Such
32 orders may include, but shall not be limited to: (1) Approval of a
33 parental responsibility plan agreed to by the parents pursuant to
34 section 46b-56a, as amended by this act; (2) the award of joint parental
35 responsibility of a minor child to both parents, which shall include (A)
36 provisions for residential arrangements with each parent in accordance
37 with the needs of the child and the parents, and (B) provisions for
38 consultation between the parents and for the making of major
39 decisions regarding the child's health, education and religious
40 upbringing; (3) the award of sole custody to one parent with
41 appropriate parenting time for the noncustodial parent where sole
42 custody is in the best interests of the child; or (4) any other custody
43 arrangements as the court may determine to be in the best interests of
44 the child.

45 (c) In making or modifying any order as provided in subsections (a)
46 and (b) of this section, the court shall consider the best interests of the

47 child, including, but not limited to, the following factors: (1) The
48 temperament and developmental needs of the child; (2) the capacity
49 and the disposition of the parents to understand and meet the needs of
50 the child; (3) any relevant and material information obtained from the
51 child; (4) the wishes of the child's parents as to custody; (5) the past
52 and current interaction and relationship of the child with each parent,
53 the child's siblings and any other person who may significantly affect
54 the best interests of the child; (6) the willingness and ability of each
55 parent to facilitate and encourage such continuing parent-child
56 relationship between the child and the other parent as is appropriate,
57 including compliance with any court orders; (7) any manipulation by
58 or coercive behavior of the parents in an effort to involve the child in
59 the parents' dispute; (8) the ability of each parent to be actively
60 involved in the life of the child; (9) the child's adjustment to his or her
61 home, school and community environments; (10) the length of time
62 that the child has lived in a stable and satisfactory environment and
63 the desirability of maintaining continuity in such environment,
64 provided the court shall consider favorably a parent who voluntarily
65 leaves the child's family home pendente lite in order to alleviate stress
66 in the household; (11) the stability of the child's existing or proposed
67 residences, or both; (12) the mental and physical health of all
68 individuals involved, except that a disability of a proposed custodial
69 parent or other party, in and of itself, shall not be determinative of
70 custody unless the proposed custodial arrangement is not in the best
71 interests of the child; (13) the child's cultural background; (14) the
72 effect on the child of the actions of an abuser, if any domestic violence
73 has occurred between the parents or between a parent and another
74 individual or the child; (15) whether the child or a sibling of the child
75 has been abused or neglected, as defined respectively in section 46b-
76 120; and (16) whether the party satisfactorily completed participation
77 in a parenting education program established pursuant to section 46b-
78 69b. The court shall consider all of the factors set forth in subdivisions
79 (1) to (16), inclusive, of this subsection, but is not required to assign
80 any weight to any of such factors.

81 (d) Upon the issuance of any order assigning custody of the child to

82 the Commissioner of Children and Families, or not later than sixty
83 days after the issuance of such order, the court shall make a
84 determination whether the Department of Children and Families made
85 reasonable efforts to keep the child with his or her parents prior to the
86 issuance of such order and, if such efforts were not made, whether
87 such reasonable efforts were not possible, taking into consideration the
88 [child's] best interests of the child, including the child's health and
89 safety.

90 [(c)] (e) In determining whether a child is in need of support and, if
91 in need, the respective abilities of the parents to provide support, the
92 court shall take into consideration all the factors enumerated in section
93 46b-84.

94 [(d)] (f) When the court is not sitting, any judge of the court may
95 make any order in the cause which the court might make under
96 [subsection (a) of] this section, including orders of injunction, prior to
97 any action in the cause by the court.

98 [(e)] (g) A parent not granted custody of a minor child shall not be
99 denied the right of access to the academic, medical, hospital or other
100 health records of such minor child, unless otherwise ordered by the
101 court for good cause shown.

102 [(f)] (h) Notwithstanding the provisions of [subsection] subsections
103 (b) and (c) of this section, when a motion for modification of custody
104 or visitation is pending before the court or has been decided by the
105 court and the investigation ordered by the court pursuant to section
106 46b-6 recommends psychiatric or psychological therapy for a child,
107 and such therapy would, in the court's opinion, be in the best interests
108 of the child and aid the child's response to a modification, the court
109 may order such therapy and reserve judgment on the motion for
110 modification.

111 [(g)] (i) As part of a decision concerning custody or visitation, the
112 court may order either parent or both of the parents and any child of
113 such parents to participate in counseling and drug or alcohol

114 screening, provided such participation is in the best [interest] interests
115 of the child.

116 Sec. 2. Section 46b-56a of the general statutes is repealed and the
117 following is substituted in lieu thereof (*Effective October 1, 2005*):

118 [(a) For the purposes of this section, "joint custody" means an order
119 awarding legal custody of the minor child to both parents, providing
120 for joint decision-making by the parents and providing that physical
121 custody shall be shared by the parents in such a way as to assure the
122 child of continuing contact with both parents. The court may award
123 joint legal custody without awarding joint physical custody where the
124 parents have agreed to merely joint legal custody.

125 (b) There shall be a presumption, affecting the burden of proof, that
126 joint custody is in the best interests of a minor child where the parents
127 have agreed to an award of joint custody or so agree in open court at a
128 hearing for the purpose of determining the custody of the minor child
129 or children of the marriage. If the court declines to enter an order
130 awarding joint custody pursuant to this subsection, the court shall
131 state in its decision the reasons for denial of an award of joint custody.

132 (c) If only one parent seeks an order of joint custody upon a motion
133 duly made, the court may order both parties to submit to conciliation
134 at their own expense with the costs of such conciliation to be borne by
135 the parties as the court directs according to each party's ability to pay.]

136 (a) In any proceeding before the Superior Court involving a dispute
137 between the parents of a minor child with respect to the custody, care,
138 education and upbringing of such child, the parents shall file with the
139 court, at such time and in such form as provided by rule of court, a
140 proposed parental responsibility plan that shall include, at a
141 minimum, the following: (1) A schedule of the physical residence of
142 the child during the year; (2) provisions allocating decision-making
143 authority to one or both parents regarding the child's health, education
144 and religious upbringing; (3) provisions for the resolution of future
145 disputes between the parents, including, where appropriate, the

146 involvement of a mental health professional or other parties to assist
147 the parents in reaching a developmentally appropriate resolution to
148 such disputes; (4) provisions for dealing with the parents' failure to
149 honor their responsibilities under the plan; (5) provisions for dealing
150 with the child's changing needs as the child grows and matures; and
151 (6) provisions for minimizing the child's exposure to harmful parental
152 conflict, encouraging the parents in appropriate circumstances to meet
153 their responsibilities through agreements, and protecting the best
154 interests of the child. If the parents fail to file such plan in a timely
155 manner as required by this subsection and the rules of court, the court
156 shall automatically refer the parents to the Court Support Services
157 Division for mediation or assistance in preparing such plan.

158 (b) The objectives of a parental responsibility plan under this section
159 are to provide for the child's physical care and emotional stability, to
160 provide for the child's changing needs as the child grows and to set
161 forth the authority and responsibility of each parent with respect to the
162 child.

163 (c) If both parents consent to a parental responsibility plan under
164 this section, such plan shall be approved by the court as the custodial
165 and access orders of the court pursuant to section 46b-56, as amended
166 by this act, unless the court finds, after hearing, that such plan as
167 submitted and agreed to is not in the best interests of the child.

168 Sec. 3. Section 46b-62 of the general statutes is repealed and the
169 following is substituted in lieu thereof (*Effective October 1, 2005*):

170 In any proceeding seeking relief under the provisions of this chapter
171 and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-
172 213v, inclusive, 47-14g, 51-348a and 52-362, the court may order either
173 spouse or, if such proceeding concerns the custody, care, education,
174 visitation or support of a minor child, either parent to pay the
175 reasonable attorney's fees of the other in accordance with their
176 respective financial abilities and the criteria set forth in section 46b-82.
177 If, in any proceeding under this chapter and said sections, the court
178 appoints an attorney for a minor child, the court may order the father,

179 mother or an intervening party, individually or in any combination, to
180 pay the reasonable fees of the attorney or may order the payment of
181 the attorney's fees in whole or in part from the estate of the child. If the
182 child is receiving or has received state aid or care, the reasonable
183 compensation of the attorney shall be established by, and paid from
184 funds appropriated to, the Judicial Department. In determining
185 whether to order the payment of attorney's fees in a proceeding
186 concerning the custody, care, education, visitation or support of a
187 minor child, the court may consider any unnecessary delays or the use
188 of any obstructionist or other unnecessary tactics by one or both
189 parents or their attorneys.

190 Sec. 4. Section 46b-83 of the general statutes is repealed and the
191 following is substituted in lieu thereof (*Effective October 1, 2005*):

192 (a) At any time after the return day of a complaint under section
193 46b-45 or 46b-56, as amended by this act, or after filing an application
194 under section 46b-61, and after hearing, alimony and support pendente
195 lite may be awarded to either of the parties from the date of the filing
196 of an application therefor with the Superior Court. Full credit shall be
197 given for all sums paid to one party by the other from the date of the
198 filing of such a motion to the date of rendition of such order. In
199 making an order for alimony pendente lite, the court shall consider all
200 factors enumerated in section 46b-82, except the grounds for the
201 complaint or cross complaint, to be considered with respect to a
202 permanent award of alimony. In making an order for support
203 pendente lite, the court shall consider all factors enumerated in section
204 46b-84. The court may also award exclusive use of the family home or
205 any other dwelling unit which is available for use as a residence
206 pendente lite to either of the parties as is just and equitable without
207 regard to the respective interests of the parties in the property.

208 (b) In any proceeding brought under section 46b-45, 46b-56, as
209 amended by this act, or 46b-61 involving a minor child, if one of the
210 parents residing in the family home leaves such home voluntarily and
211 not subject to court order, and if the court finds that the voluntary

212 leaving of the family home by such parent served the best interests of
213 the child, the court may consider such voluntary leaving as a factor
214 when making or modifying any order pursuant to section 46b-56, as
215 amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	46b-56
Sec. 2	<i>October 1, 2005</i>	46b-56a
Sec. 3	<i>October 1, 2005</i>	46b-62
Sec. 4	<i>October 1, 2005</i>	46b-83

JUD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Judicial Dept.	GF - Cost	600,117	830,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	117,000	427,000
Total State Cost	GF - Cost	717,000	1,257,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires a parenting plan to be filed in every dissolution case involving minor children. More than fifty per cent of dissolution proceedings involve one or more litigants who represent themselves (*pro se*). It is anticipated that these individuals would require the assistance of family services counselors with the Court Support Services Division in order to draft parent responsibility plans in accordance with the bill.

Based on the number of dissolution cases filed each year in which minors are involved, up to twelve additional family services counselors in addition to administrative staff would be needed to assist in completion of parent responsibility forms and engaging in mediation. The annual cost associated with these positions is approximately \$1.3 million, including fringe benefits and other expenses.¹

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated fringe benefit reimbursement rate as a percentage of payroll is 53.91%, effective July 1, 2004. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 22.65%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

OLR Bill Analysis

HB 6638

AN ACT ADOPTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CUSTODY, DIVORCE AND CHILDREN**SUMMARY:**

This bill makes a number of substantial changes to child custody, support, and visitation statutes based on recommendations of the Governor's Commission on Custody, Divorce, and Children. It:

1. requires divorcing or separating parents who disagree about matters involving their minor children to file proposed parental responsibility plans with the court,
2. appears to require courts to award the child's parents shared parenting rights and responsibilities although other portions of the bill make such orders permissive, and
3. enumerates new factors the courts can consider in making these decisions.

Current law requires courts to be guided by the child's best interest and presumes that joint custody is appropriate when the parents agree to it. The bill expands this presumption to other matters the parents agree upon, including allocations of each party's authority to decide issues involving the child's health, education, and religious upbringing.

The bill also eliminates references to "visitation" in most of the child custody statutes it amends, making it unclear whether the bill eliminates the court's current authority to issue or award visitation orders.

EFFECTIVE DATE: October 1, 2005

PARENTAL RESPONSIBILITY PLANS (§ 2)

The bill requires each parent who disagrees on child custody, care, education, or upbringing to submit a proposed parental responsibility plan to the court. The objectives of the plan are to set forth each parent's authority and responsibility over the child and to provide for the child's physical care, emotional stability, and changing needs as he grows older. Parenting plans must include provisions:

1. designating where the child will live during the year;
2. allocating decision-making authority to either or both parents concerning the child's health, education, and religious upbringing;
3. for resolving future disputes that include seeking assistance from mental health professionals or others in reaching a developmentally appropriate resolution, where appropriate;
4. for dealing with (a) a parent's failure to honor his or her responsibilities under the plan and (b) the child's changing needs over time;
5. for encouraging the parents in appropriate circumstances to meet their responsibilities through agreements; and
6. for protecting the child's best interests.

The court must automatically refer parents who do not file reports within the deadlines the court sets to the Court Support Services Division for mediation or assistance in preparing them.

Court Approval of Plans

The court must adopt parenting plans that both parents have voluntarily agreed to and make their terms its custodial and access orders unless it holds a hearing and determines that the plan is not in the child's best interests.

COURT ORDERS AND MODIFICATIONS (§ 1)

The bill requires court custody and support orders to (1) include shared parenting rights and responsibilities, (2) serve the child's best

interests, and (3) provide for the active and consistent involvement of both parents according to their abilities and interests.

The plans may include:

1. approval of a parental responsibility plan the parents have agreed to;
2. joint parental responsibility orders, which must include provisions for (a) the child's living arrangements in accordance with the child's and parents' needs, (b) parental consultations, and (c) making major decisions concerning the child's health, education, and parental upbringing;
3. an award of sole custody to one parent with appropriate parenting time for the other parent when sole custody is in the child's best interests; and
4. any other custody arrangements the court determines are in the child's best interests.

Factors the Court Must Consider (§§ 1 & 4)

In considering the child's best interests, the bill requires judges to consider:

1. the child's temperament and developmental needs;
2. the parents' capacity and disposition to understand and meet the child's needs;
3. any relevant and material information obtained from the child;
4. the parents' wishes concerning child custody;
5. the child's past and current interaction and relationship with each parent, his siblings, and any other person who may significantly affect his best interests;
6. each parents' willingness and ability to facilitate and encourage a continuing parent-child relationship with the other parent, as appropriate, including complying with any court orders;

7. either parents' coercive behavior designed to manipulate the child and involve him in their dispute;
8. each parent's ability to be actively involved in the child's life;
9. the child's adjustment to his home, school, and community environments;
10. how long the child has lived in a stable and satisfactory environment and the desirability of continuing this;
11. a parent's voluntary leaving of the family home, where leaving served the child's best interests;
12. the stability of the child's existing or proposed residences;
13. the mental and physical health of all involved;
14. the child's cultural background;
15. how a child has been affected by an abuser's domestic violence occurring between the parents or between one parent and another person or the child;
16. whether the child or his siblings have been abused or neglected under existing statutory definitions; and
17. whether the parents completed court-mandated parenting education classes.

The court need not assign any particular weight to any of these factors, but it cannot deny custody based solely on a parent's disability unless it determines that this is in the child's best interests.

Current child custody statutes do not mandate that the courts consider factors other than the child's wishes and the parents' completion of the court's parenting education program. Judges generally tailor the factors they consider to the specific case before them.

Attorney's Fee Awards (§ 3)

By law, divorce courts may appoint an attorney to represent a child involved in the proceedings. It may allocate his fees among any combination of either or both parents and intervening parties. The bill permits the court to consider whether either or both parents, or their attorneys, engaged in unnecessary delays or used obstructionist or unnecessary tactics.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 25 Nay 15