



Senate

General Assembly

File No. 413

February Session, 2006

Substitute Senate Bill No. 156

Senate, April 6, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING COURT OPERATIONS.

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

1 Section 1. Subsection (d) of section 4b-3 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (d) Notwithstanding any other statute or special act to the contrary,
5 the Commissioner of Public Works shall be the sole person authorized
6 to represent the state in its dealings with third parties for the
7 acquisition, construction, development or leasing of real estate for
8 housing the offices or equipment of all agencies of the state or for the
9 state-owned public buildings or realty hereinafter provided for in
10 [section 2-90,] sections 2-90, 4b-1 to 4b-5, inclusive, 4b-21, 4b-23, as
11 amended, 4b-24, 4b-26, 4b-27, 4b-30 and 4b-32, subsection (c) of section
12 4b-66 [] and sections 4b-67 to 4b-69, inclusive, 4b-71, 4b-72, 10-95, 10a-
13 72, 10a-89, 10a-90, 10a-114, 10a-130, 10a-144, 17b-655, 22-64, 22a-324,
14 26-3, 27-45, 32-1c, 32-39, 48-9, 51-27d and 51-27f, except that the Joint
15 Committee on Legislative Management may represent the state in the

16 planning and construction of the Legislative Office Building and
17 related facilities, in Hartford; the Chief Court Administrator may
18 represent the state in providing for space for the Court Support
19 Services Division as part of a contract for an alternative incarceration
20 program pursuant to section 54-103b, as amended by this act; the
21 board of trustees of a constituent unit of the state system of higher
22 education may represent the state in the leasing of real estate for
23 housing the offices or equipment of such constituent unit, provided no
24 lease payments for such realty are made with funds generated from
25 the general revenues of the state; the Labor Commissioner may
26 represent the state in the leasing of premises required for employment
27 security operations as provided in subsection (c) of section 31-250; the
28 Commissioner of Mental Retardation may represent the state in the
29 leasing of residential property as part of the program developed
30 pursuant to subsection (b) of section 17a-218, as amended, provided
31 such residential property does not exceed two thousand five hundred
32 square feet, for the community placement of persons eligible to receive
33 residential services from the department; and the Connecticut
34 Marketing Authority may represent the state in the leasing of land or
35 markets under the control of the [authority] Connecticut Marketing
36 Authority, and, except for the housing of offices or equipment in
37 connection with the initial acquisition of an existing state mass transit
38 system or the leasing of land by [said] the Connecticut Marketing
39 Authority for a term of one year or more in which cases the actions of
40 the Department of Transportation and the Connecticut Marketing
41 Authority shall be subject to the review and approval of the State
42 Properties Review Board. [Said commissioner] The Commissioner of
43 Public Works shall have the power to establish and implement any
44 procedures necessary for [him] the commissioner to assume [his] the
45 commissioner's responsibilities as said sole bargaining agent for state
46 realty acquisitions and shall perform the duties necessary to carry out
47 such procedures. [He] The Commissioner of Public Works may
48 appoint, within [his] the commissioner's budget and subject to the
49 provisions of chapter 67, such personnel deemed necessary by [him]
50 the commissioner to carry out the provisions hereof, including experts

51 in real estate, construction operations, financing, banking, contracting,
52 architecture and engineering. The Attorney General's office, at the
53 request of the commissioner, shall assist the commissioner in contract
54 negotiations regarding the purchase, lease or construction of real
55 estate.

56 Sec. 2. Subsection (e) of section 46b-15 of the 2006 supplement to the
57 general statutes is repealed and the following is substituted in lieu
58 thereof (*Effective October 1, 2006*):

59 (e) The applicant shall cause notice of the hearing pursuant to
60 subsection (b) of this section and a copy of the application and the
61 applicant's affidavit and of any ex parte order issued pursuant to
62 subsection (b) of this section to be served on the respondent not less
63 than five days before the hearing. The cost of such service shall be paid
64 for by the judicial branch. Upon the granting of an ex parte order, the
65 clerk of the court shall provide two certified copies of the order to the
66 applicant. Upon the granting of an order after notice and hearing, the
67 clerk of the court shall provide two certified copies of the order to the
68 applicant and a copy to the respondent. Every order of the court made
69 in accordance with this section after notice and hearing shall contain
70 the following language: "This court had jurisdiction over the parties
71 and the subject matter when it issued this protection order.
72 Respondent was afforded both notice and opportunity to be heard in
73 the hearing that gave rise to this order. Pursuant to the Violence
74 Against Women Act of 1994, 18 USC 2265, this order is valid and
75 enforceable in all fifty states, any territory or possession of the United
76 States, the District of Columbia, the Commonwealth of Puerto Rico
77 and tribal lands." Immediately after making service on the respondent,
78 the proper officer shall send or cause to be sent, by facsimile or other
79 means, a copy of the application, or the information contained in such
80 application, stating the date and time the respondent was served, to
81 the law enforcement agency or agencies for the town in which the
82 applicant resides, the town in which the applicant is employed and the
83 town in which the respondent resides. The clerk of the court shall
84 send, by facsimile or other means, a copy of any ex parte order and of

85 any order after notice and hearing, or the information contained in any
86 such order, to the law enforcement agency or agencies for the town in
87 which the applicant resides, the town in which the applicant is
88 employed and the town in which the respondent resides, within forty-
89 eight hours of the issuance of such order.

90 Sec. 3. Section 46b-123d of the 2006 supplement to the general
91 statutes is repealed and the following is substituted in lieu thereof
92 (*Effective October 1, 2006*):

93 The Chief Child Protection Attorney appointed under section 46b-
94 123c shall, on or before July 1, 2006:

95 (1) Establish a system for the provision of: (A) Legal services and
96 guardians ad litem to children and indigent respondents in family
97 [contempt and paternity] matters in which the state has been ordered
98 to pay the cost of such legal services and guardians ad litem, and (B)
99 legal services and guardians ad litem to children and indigent
100 [parents] parties in proceedings before the superior court for juvenile
101 matters, [as defined in subsection (a) of section 46b-121, other than
102 representation of] other than legal services for children in delinquency
103 matters. To carry out the requirements of this section, the Chief Child
104 Protection Attorney may contract with (i) appropriate not-for-profit
105 legal services agencies, and (ii) individual lawyers for the delivery of
106 legal services to represent children and indigent [parents] parties in
107 such proceedings;

108 (2) Ensure that attorneys providing legal services pursuant to this
109 section are assigned to cases in a manner that will avoid conflicts of
110 interest, as defined by the Rules of Professional Conduct; and

111 (3) Provide initial and in-service training for guardians ad litem
112 provided pursuant to this section and for attorneys providing legal
113 services pursuant to this section, and establish training, practice and
114 caseload standards for the representation of: (A) Indigent respondents
115 in family [contempt and paternity] matters, and (B) children and
116 indigent [parents] parties in juvenile matters, [as defined in subsection

117 (a) of section 46b-121,] other than representation of children in
118 delinquency matters. Such standards shall apply to any attorney who
119 represents children or indigent [parents] respondents or parties in such
120 matters pursuant to this section and shall be designed to ensure a high
121 quality of legal representation. The training for attorneys required by
122 this subdivision shall be designed to ensure proficiency in the
123 procedural and substantive law related to such matters and to
124 establish a minimum level of proficiency in relevant subject areas,
125 including, but not limited to, family violence, child development,
126 behavioral health, educational disabilities and cultural competence.

127 Sec. 4. Subsection (a) of section 46b-123e of the 2006 supplement to
128 the general statutes is repealed and the following is substituted in lieu
129 thereof (*Effective October 1, 2006*):

130 (a) The judicial authority before whom a juvenile or family matter
131 described in section 46b-123d, as amended by this act, is pending shall
132 determine eligibility for counsel for a child or youth and the parents or
133 guardian of a child or youth if they are unable to afford counsel. Upon
134 a finding that a party is unable to afford counsel, the judicial authority
135 shall appoint the Chief Child Protection Attorney [appointed under
136 section 46b-123c] to provide representation. For purposes of
137 determining eligibility for appointment of counsel, the judicial
138 authority shall cause the parent or guardian of a child or youth to
139 complete a written statement under oath or affirmation setting forth
140 the parent or guardian's liabilities and assets, income and sources
141 thereof, and such other information which the Commission on Child
142 Protection shall designate and require on forms adopted by the
143 Commission on Child Protection. Upon the appointment of [counsel
144 for a parent, guardian, child or youth, the judicial authority shall
145 notify] the Chief Child Protection Attorney pursuant to this subsection,
146 [who] the Chief Child Protection Attorney shall assign the matter to an
147 attorney under contract with the [Commission on Child Protection]
148 Chief Child Protection Attorney to provide such representation.

149 Sec. 5. Subsection (c) of section 51-36 of the 2006 supplement to the

150 general statutes is repealed and the following is substituted in lieu
151 thereof (*Effective October 1, 2006*):

152 (c) (1) In any case in which a person has been convicted after trial of
153 a felony, other than a capital felony, or in any case in which a person
154 has entered a plea of guilty or nolo contendere to a felony, other than a
155 capital felony, the official records of evidence or judicial proceedings in
156 the court may be destroyed upon the expiration of twenty years from
157 the date of final disposition of such case or upon the expiration of the
158 sentence imposed upon such person, whichever is later.

159 (2) In any case in which a person has been convicted after trial of a
160 capital felony, the official records of evidence or judicial proceedings in
161 the court may be destroyed upon the expiration of seventy-five years
162 from the conviction of such person.

163 (3) In any case in which a person has been found not guilty, or in
164 any case that has been dismissed or was not prosecuted, the court may
165 order the destruction or disposal of all exhibits entered in such case
166 upon the expiration of ninety days from the date of final disposition of
167 such case, unless a prior disposition of such exhibits has been ordered
168 pursuant to section 54-36a. In any case in which a nolle has been
169 entered, the court may order the destruction or disposal of all exhibits
170 entered in such case upon the expiration of thirteen months from the
171 date of final disposition of such case. Not less than thirty days prior to
172 the scheduled destruction or disposal of exhibits under this
173 subdivision, the clerk of the court shall send notice to all parties and
174 any party may request a hearing on the issue of such destruction or
175 disposal before the court in which the matter is pending.

176 (4) In any case in which a person has been convicted after trial of a
177 misdemeanor or has been adjudicated a youthful offender, or in any
178 case in which a person has entered a plea of guilty or nolo contendere
179 to a misdemeanor, the court may order the destruction or disposal of
180 all exhibits entered in such case upon the expiration of ten years from
181 the date of final disposition of such case or upon the expiration of the
182 sentence imposed on such person, whichever is later, unless a prior

183 disposition of such exhibits has been ordered pursuant to section 54-
184 36a. Not less than thirty days prior to the scheduled destruction or
185 disposal of exhibits under this subdivision, the clerk of the court shall
186 send notice to all parties and any party may request a hearing on the
187 issue of such destruction or disposal before the court in which the
188 matter is pending.

189 (5) In any case in which a person is charged with multiple offenses,
190 no destruction or disposal of exhibits may be ordered under this
191 subsection until the longest applicable retention period under this
192 subsection has expired. The provisions of this subdivision and
193 subdivisions (3), (4) and (6) of this subsection shall apply to any
194 criminal or motor vehicle case disposed of before, on or after the
195 effective date of this section.

196 (6) The retention period for the official records of evidence and
197 exhibits in any habeas corpus proceeding, petition for a new trial or
198 other proceeding arising out of a criminal case in which a person has
199 been convicted shall be the same as the applicable retention period
200 under this subsection for the criminal case from which such
201 proceeding or petition arose.

202 (7) For the purposes of this subsection: (A) "Date of final
203 disposition" includes the date of decision of any direct appeal to a state
204 or federal court, habeas corpus proceeding, direct appeal from a
205 habeas corpus proceeding or petition for a new trial that is brought
206 after a conviction in a criminal case and during the sentence of the
207 person convicted, whichever date is applicable and is later; and (B)
208 "sentence" includes any period of incarceration, parole or special
209 parole.

210 Sec. 6. Subsection (f) of section 52-148e of the general statutes is
211 repealed and the following is substituted in lieu thereof (*Effective*
212 *October 1, 2006*):

213 (f) Deposition of witnesses living in this state may be taken in like
214 manner to be used as evidence in a civil action or probate proceeding

215 pending in any court of the United States or of any other state of the
216 United States or of any foreign country, on application to the court in
217 which such civil action or probate proceeding is pending of any party
218 to such civil action or probate proceeding. The Superior Court shall
219 have jurisdiction to quash or modify, or to enforce compliance with, a
220 subpoena issued for the taking of a deposition pursuant to this
221 subsection.

222 Sec. 7. Subsection (a) of section 52-466 of the general statutes is
223 repealed and the following is substituted in lieu thereof (*Effective*
224 *October 1, 2006*):

225 (a) (1) An application for a writ of habeas corpus, other than an
226 application pursuant to subdivision (2) of this subsection, shall be
227 made to the superior court, or to a judge thereof, for the judicial district
228 in which the person whose custody is in question is claimed to be
229 illegally confined or deprived of [his] such person's liberty. [, provided
230 any application made by or on behalf of a person confined in the
231 Connecticut Correctional Institution, Enfield-Medium or the Carl
232 Robinson Correctional Institution, Enfield, shall be made to the
233 superior court or a judge thereof for the judicial district of Tolland.]

234 (2) An application for a writ of habeas corpus claiming illegal
235 confinement or deprivation of liberty, made by or on behalf of an
236 inmate or prisoner confined in a correctional facility as a result of a
237 conviction of a crime, shall be made to the superior court, or to a judge
238 thereof, for the judicial district of Tolland.

239 Sec. 8. Section 54-103b of the general statutes is repealed and the
240 following is substituted in lieu thereof (*Effective from passage*):

241 The Court Support Services Division shall implement liaison with
242 local community service providers throughout the state for the
243 purpose of improving services delivery for probation referrals.
244 Contractual services purchased shall be predominantly for the purpose
245 of, but not limited to, employment, psychiatric and psychological
246 evaluation and counseling, drug and alcohol dependency treatment,

247 and other services towards more effective control and rehabilitation of
 248 probation referrals. The Chief Court Administrator, as part of a
 249 publicly bid contract for an alternative incarceration program, may
 250 include a requirement that the contractor provide such space as is
 251 necessary for staff of the Court Support Services Division to meet with
 252 probationers and to conduct any business that may be necessary to
 253 oversee and monitor such program. Other outside professional service
 254 fees consonant with the primary purpose of improved direct services
 255 shall be within the scope of the authority granted by this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4b-3(d)
Sec. 2	<i>October 1, 2006</i>	46b-15(e)
Sec. 3	<i>October 1, 2006</i>	46b-123d
Sec. 4	<i>October 1, 2006</i>	46b-123e(a)
Sec. 5	<i>October 1, 2006</i>	51-36(c)
Sec. 6	<i>October 1, 2006</i>	52-148e(f)
Sec. 7	<i>October 1, 2006</i>	52-466(a)
Sec. 8	<i>from passage</i>	54-103b

JUD *Joint Favorable Subst.*

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 07 \$	FY 08 \$
Judicial Dept.; Commission on Child Protection	GF - Implements the Budget	See Below	See Below
Judicial Dept.	GF - Savings	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill implements the budget by shifting from the Judicial Department to the new Commission on Child Protection the responsibility for administering the system to provide guardians ad litem to certain children. The FY 07 budget, sHB 5007 as favorably reported by the Appropriations Committee on March 30, 2006, contains the reallocation of funding, in the amount of \$500,000, to provide for these services.

In addition to the change described above, the bill specifies the length of time that must expire before exhibits may be destroyed or disposed of, which may generate future cost savings related to avoidance for the need to store exhibits. The bill also makes various technical, minor and conforming changes that have no fiscal impact.

The Out Years

The potential future cost-savings attributable to limited storage of exhibits, as described above, would continue into the out years.

**OLR Bill Analysis
sSB 156*****AN ACT CONCERNING COURT OPERATIONS.*****SUMMARY:**

This bill makes numerous changes in the laws relating to the operation of the Superior Court.

This bill authorizes the chief court administrator, as part of a publicly bid contract for an alternative incarceration program, to include a requirement that the contractor provide space for division staff to meet with probationers and oversee and monitor the program. The bill authorizes the chief court administrator instead to the public works commissioner to represent the state in providing space for the Judicial Department's Court Support Services Division as part of a contract for an alternative incarceration program.

It also authorizes information contained in an application for a restraining order, instead of a copy of the application, to be sent immediately to police departments.

It reduces the time periods for disposing of exhibits and other records in certain cases and applies these changes to any criminal or motor vehicle case disposed of before, on, or after October 1, 2006.

The bill expands the duty of the Child Protection Attorney to establish a system to deliver legal services and guardians ad litem. It adds (1) guardians ad litem to children and indigent respondents in family matters; (2) legal services to indigent respondents in any family matter, instead of only contempt and paternity matters; and (3) legal services and guardians ad litem to indigent parties, instead of just children and indigent parents in juvenile matters. But it specifies that the duty to provide a guardian ad litem to children and indigent respondents in family matters is limited to situations in which a judge

has ordered the state to pay.

The bill specifies that applications for depositions of witnesses in Connecticut for cases filed in federal court or in another state's or country's court must be filed in the court in which the civil action or probate proceeding is pending. It also specifies that the Superior Court has jurisdiction to quash, modify, or enforce compliance with a subpoena issued for taking such a deposition.

Finally, the bill requires that all habeas corpus applications claiming illegal confinement or deprivation, made by or on behalf of people confined in a correctional facility, be filed in the Tolland Judicial District. Under current law, this requirement applies only to applications filed by or on behalf of inmates in certain correctional institutions.

EFFECTIVE DATE: October 1, 2006, except for the provisions dealing with the chief court administrator, which become effective upon passage.

APPLICATION FOR RESTRAINING ORDER

Under current law, immediately after making service on the respondent, the proper officer must send, by facsimile or other means, a copy of the application for the restraining order, stating the date and time the respondent was served, to the law enforcement agency or agencies in the town where the applicant resides, the town where he is employed, and the town where he resides. The bill allows the officer to send, or cause to be sent, the information contained in the application, instead of a copy of the application.

By law, the court must send, by facsimile or other means, a copy of any ex parte order and of any order, after notice and hearing, or the information contained in the order, to the law enforcement agency or agencies for the town in which the applicant resides, the town in which the applicant is employed, and the town in which the respondent resides, within 48 hours of the issuance of such order.

CHIEF CHILD PROTECTION ATTORNEY

Current law requires that the chief child protection attorney (CCPA), by July 1, 2006, establish a system to deliver (1) legal services to indigent respondents in family contempt and paternity matters and (2) legal services and guardians ad litem to children and indigent parents in juvenile proceedings before the Superior Court. (A guardian ad litem is a person the court appoints to protect a child's best interests in a legal proceeding.)

The bill expands this duty to include providing

1. guardians ad litem to children and indigent respondents in family matters;
2. legal services to indigent respondents in any family matter, instead of only contempt and paternity matters; and
3. legal services and guardians ad litem to indigent parties instead of just children and indigent parents in juvenile matters.

But it specifies that the duty to provide a guardian ad litem to children and indigent respondents in family matters is limited to situations in which a judge has ordered the state to pay.

It also requires the CCPA to provide initial and in-service training for guardians ad litem provided under the bill. It also makes conforming technical changes.

The bill also makes clear that the judge appoints the CCPA to provide legal representation, who in turn assigns the case to an attorney under contract with him.

DISPOSAL OR DESTRUCTION OF COURT EXHIBITS AND OTHER RECORDS

The bill authorizes a court to destroy or dispose of all exhibits entered in certain cases sooner than currently authorized by existing

law or court rule.

Specifically, for cases dismissed or not prosecuted or in which a person has been found not guilty, the bill authorizes the court to do so within 90 days, instead of three years from the date of final disposition (see §§ 7-13 of the Connecticut Practice Book).

The bill authorizes the court to destroy or dispose of all exhibits entered in the following cases after 10 years from the case's final disposition or the expiration of the sentence imposed, whichever is later: (1) misdemeanor cases resulting in a conviction, (2) youthful offender cases, or (3) any case in which the defendant pleaded guilty or no contest. (This is the same as is currently required by court rule (see §§ 7-13 of the Connecticut Practice Book).) The bill specifies that "sentence" includes any period of incarceration, parole, or special parole.

The bill requires that, at least 30 days before the scheduled destruction or disposal of such exhibits, the court clerk send a notice to all parties. It authorizes any party to ask for a hearing on the destruction or disposal.

Multiple Offenses

The bill specifies that in any case in which a person is charged with multiple offenses, no destruction or disposal of exhibits may be ordered until the longest applicable retention period has expired.

Habeas Proceedings, Petitions for a New Trial, or Other Proceedings

The bill requires that the retention period for the official records of evidence and exhibits in any habeas corpus proceeding, petition for a new trial, other proceeding arising out of a criminal case resulting in a conviction be the same as the applicable retention period for the criminal case from which the proceeding or petition arose.

Date of Final Disposition

The bill specifies that the "date of final disposition" includes the date

of decision of any direct court appeal, habeas corpus proceeding, direct appeal from a habeas corpus proceeding, or petition for a new trial brought after a conviction in a criminal case and during the sentence of the person convicted, whichever date is applicable and is later.

HABEAS CORPUS

Under current law, an application for a writ of habeas corpus made by or on behalf of a person confined in the Connecticut Correctional Institution, Enfield-Medium or the Carl Robinson Correctional Institution, Enfield who claims that he is being illegally confined or deprived of his liberty must be made to the Tolland Judicial District. The bill, instead, requires such applications made by or on behalf of an inmate or prisoner confined in any correctional facility as a result of a conviction of a crime to be made to the Superior Court, or to a judge thereof, for the Tolland Judicial District.

DEPOSITIONS OF WITNESSES

By law, depositions of witnesses living in Connecticut may be taken to be used as evidence in a civil action or probate proceeding pending in any federal court, any other state's court, or any court of any foreign country. The bill specifies that the application for such deposition must be filed in the court in which the civil action or probate proceeding is pending. It also specifies that the Superior Court has jurisdiction to quash, modify, or enforce compliance with a subpoena issued for taking such a deposition.

BACKGROUND

Related Laws — Record Retention

By law, the official records of evidence or judicial proceedings in the court concerning anyone convicted of (1) a capital felony may be destroyed after 75 years from his conviction and (2) a felony, other than a capital felony, after 20 years from the date the case was disposed of or when his sentence expires, whichever is later.

Under current law, any Superior Court judge may order that official records of evidence or judicial proceedings in any other cases be

destroyed after seven years.

Alternative Incarceration Program Services

The law requires the Court Support Services Division to coordinate with local community service providers to improve services delivery for probation referrals, with a focus on employment, psychiatric and psychological evaluation and counseling, drug and alcohol dependency treatment, and other services to more effectively control and rehabilitate people sentenced to probation (CGS § 54-103b).

Family Matters

State law defines "family relations matters" as matters (CGS § 46b-1). Among other areas it includes (1) dissolution of marriage; (2) legal separation; (3) annulment of marriage; (4) alimony, support, custody and change of name incident to dissolution of marriage, legal separation and annulment; and (5) applications for court protective orders because of physical abuse by family or household members.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 0 (03/21/2006)