

Legal Assistance Resource Center

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H.B. 5536 -- Burden of proof when custodial parent relocates

Judiciary Committee Public Hearing -- March 3, 2006

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION

This bill deals with cases in which a parent with primary custody over a child relocates. The bill proposes to overturn the burden-shifting system adopted by the Connecticut Supreme Court in Ireland v. Ireland, 246 Conn. 413, 717 A.2d 676 (1998). In Ireland, the Court held that a primary custodial parent seeking to relocate out of state over the objection of the other parent bears the burden of proof to establish that (1) the relocation is motivated by a legitimate purpose and (2) the new location bears a reasonable relationship to that purpose. If those two burdens are met, then (3) the burden of proof shifts to the parent objecting to relocation to show that relocation would not be in the best interest of the child. H.B. 5536, in contrast, requires the relocating parent to prove that relocation is in the best interest of the child.

There are persuasive arguments on both sides of this issue. On balance, however, we believe that it is preferable to allow the Ireland burden-shifting approach to stand. Ireland already puts the burden on a relocating parent to show that the relocation is for legitimate reasons. For example, it precludes a custodial parent from relocating in order to reduce the other parent's visitation. It also recognizes that a relocation which in fact changes the nature of visitation may be harmful to the child. It balances this against the danger that a non-custodial parent can use control over where the other parent lives as a way of preventing that parent from establishing a new life. This has particular significance in the kind of cases seen by the legal services programs, in which there is often a history of violence, intimidation, and manipulation that contributed heavily to the break-up of the marriage.

If a version of this bill is to be adopted, then we suggest that the trigger for application of the bill be tightened. Lines 5-6 of the bill apply the burden of proof requirements to cases which will have a "significant impact" on an existing parental responsibility plan. The point of restricting relocation, however, is not merely that the impact is significant but also that it is adverse, i.e., harmful to the child's relationship with the non-custodial party. As a result, if this bill moves forward, the phrase "significant impact" in I. 5 should be changed to "significant adverse impact." In the absence of a showing of significant adverse impact by the objecting party, the statute's provisions should not come into play.