

Legal Assistance Resource Center of Connecticut, Inc.

80 Jefferson Street ❖ Hartford, Connecticut 06106-5050
(860) 278-5688 x13 ❖ cell (860) 836-6355 ❖ fax (860) 278-2957 ❖ RPodolsky@LARCC.org

H.B. 5599 -- Consideration of the cause of divorce in the issuance of alimony and property settlement orders

Judiciary Committee Public Hearing -- March 10, 2006
Testimony of Raphael L. Podolsky

Recommended Committee action: REJECTION OF THE BILL

This bill repeals the existing authority of the Superior Court to consider the "causes" of a divorce in making alimony orders and dividing a divorcing couple's property. At first glance, this may seem reasonable, since most dissolutions of marriage in Connecticut are granted on "irretrievable breakdown of marriage," which is considered a "no-fault" ground. On closer examination, however, it is clear that the court's consideration of the causes of the breakdown is both relevant and necessary, even in a "no-fault" divorce, and that H.B. 5599 will cause significant damage to divorce procedure. The bill should be rejected for the following reasons:

- It will seriously and adversely impact the entire "no fault" dissolution of marriage process in Connecticut, because it is likely to force a party who wants the court to be aware of the causes of the breakdown to plead and litigate counts of intolerable cruelty, adultery, and other pre-"no fault" grounds. This in turn will complicate and lengthen divorce proceedings and exacerbate tensions in a divorce. It is not in the interest of the system as a whole that parties be induced to plead fault counts so as to make evidence of the cause of the breakdown germane. Indeed, it will move the system in the very opposite direction from no-fault divorce.
- It ignores the reality that the cause of the breakdown of the marriage, even in "no fault" dissolutions, is often a relevant factor to be considered by the court in making the fairest decision on alimony and the division of the parties' resources, particularly to assure that the innocent party has adequate resources to start a new life. It is especially important in marriages which involved physical or emotional violence, where it is essential to fair alimony and property awards for the court to understand the conduct which led to the breakdown. Dissolution of marriage actions are equitable in nature, and the court needs to be able to consider all equitable factors.
- It confuses child support awards, for which the cause of the breakdown is largely irrelevant, with alimony and property division, for which it may be very relevant. The Child Support Guidelines are not based on the cause of the marriage breakdown, because the only real factor to be considered is ability to pay. Alimony and property settlement, however, have always taken into consideration other factors.

H.B. 5599 is neither practical within the framework of Connecticut pleading procedures nor fair as a matter of equitable decision-making and should be rejected.