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## **OLR Bill Analysis**

**sSB 964 (File 840, as amended by Senate "A")\***

### ***AN ACT CONCERNING COURT OPERATIONS.***

#### **SUMMARY**

This bill makes changes in various laws related to court operations and judicial employees. Among other things, it makes various changes in the laws related to court reporters, monitors, and transcripts. For example, it eliminates a requirement that court reporters employ assistant court reporters, modifies the circumstances in which the state's attorney automatically receives copies of transcripts, and requires court proceedings to be digitally recorded (§§ 4-8 & 25).

It also:

1. adds victim services advocates employed by the judicial department to the list of professionals who the law designates as mandated reporters of child abuse and neglect (§ 1);
2. allows parties who have filed for divorce to subsequently file for a non-adversarial divorce without an additional filing fee if they satisfy certain eligibility criteria (§ 2);
3. requires the Division of Public Defender Services (DPDS) and the Judicial Department to share the cost of counsel appointed in certain juvenile court proceedings (§§ 3 & 11);
4. specifies that writs of error from Superior Court final judgments or actions fall within the jurisdiction of the Appellate Court, rather than the Supreme Court as under current law (§§ 9-10);
5. allows the court, following a criminal conviction, to order an abridged presentence investigation (PSI) in lieu of a full PSI (§ 12);

6. allows the Office of Victims Services or a victims compensation commissioner to order compensation for pecuniary loss to an injured victim or the relatives or dependents of an injured or deceased victim for attendance at juvenile proceedings and Board of Pardons and Parole hearings (§ 13);
7. (a) expands the courts to which the Freedom of Information (FOI) commission may apply for a penalty against a person who failed to pay a fine for filing a frivolous complaint and (b) moves appeals from certain commission decisions from the Hartford Judicial District to the New Britain Judicial District (§§ 14 & 22);
8. appears to specify that a family support magistrate cannot serve after his or her term has expired unless the governor nominates him or her for reappointment (§ 15);
9. expands the courts where a medical malpractice claim automatically triggers a 90-day statute of limitations extension under certain circumstances (§ 16);
10. repeals a law that permits a legally taken deposition to be admissible and used by either party in an Appellate Court or tribunal proceeding where the evidence is competent (§ 26);
11. modifies the timeframe in which an individual may request a trial to appeal an arbitrator's decision to reflect the arbitrator's ability to provide notice of his or her decision electronically (§ 23);
12. narrows the circumstances in which a person may appeal a Superior Court decision related to a municipal zoning board action by increasing, from two out of nine to three out of nine, the number of Appellate Court judges who must certify the issue for appeal (§ 24); and
13. makes minor, technical, and conforming changes, including changes to conform to the closure of the Litchfield Courthouse in August 2017 and the upcoming closure of the Bristol Courthouse

in August 2019 (§§ 17-21 and throughout).

\*Senate Amendment “A” eliminates a provision in the underlying bill that would have allowed the judge in a criminal trial to waive the presence of the defendant at an arraignment for good cause shown. It also adds the provisions that (1) make changes to conform to the courthouse closures, (2) increase the number of judges needed to certify an appeal of a Superior Court decision on a planning and zoning matter, and (3) modify the time frame for appealing arbitration decisions.

EFFECTIVE DATE: July 1, 2019, except provisions (1) pertaining to non-adversarial divorce, appearances at arraignments, digital court proceeding recordings, victim compensation, FOI matters, statutes of limitations for certain civil claims, depositions, and appeals of planning and zoning decisions are effective October 1, 2019; (2) pertaining to writs of error are effective January 1, 2020; and (3) that make changes to conform to courthouse closures and other minor and technical changes are effective September 1, 2019.

## **§ 2 — NON-ADVERSARIAL DIVORCE PETITION**

The bill permits parties who have filed for divorce on the regular family court docket to file for a non-adversarial divorce if (1) the court has not yet entered a decree dissolving the marriage and (2) the parties satisfy the law’s conditions for a non-adversarial divorce (e.g., the divorce is not contested, the marriage did not exceed nine years, and the couple does not have any children). Under these circumstances, parties filing for a non-adversarial divorce do not need to include a waiver of service of process with the filing or pay an additional filing fee for the petition. The latter claim supersedes the original one and the action may then continue as a non-adversarial proceeding.

## **§§ 3 & 11 — COST FOR PUBLIC DEFENDER SERVICES**

Under the bill, when the court appoints counsel in a juvenile court civil proceeding and orders the DPDS to provide the counsel, the judicial department and DPDS must share the cost (see BACKGROUND). Currently, DPDS is responsible for the cost.

Under the bill, if the party for whom counsel is appointed is found able to pay part or all of the cost, the court must assess the costs against the party and order him or her to reimburse DPDS and the judicial department to the extent he or she is financially able to do so. Currently, the party must reimburse DPDS to this extent if able to do so.

When the court appoints counsel in a juvenile court criminal proceeding and orders DPDS to provide the counsel, the bill specifies that DPDS must incur the cost, and the court must order the party to reimburse the division to the extent that he or she is financially able to do so if the party is found able to pay part or all of the cost.

The bill also makes a conforming change.

#### **§§ 4-8, 25 — COURT REPORTERS, MONITORS, AND TRANSCRIPTS**

The bill makes various changes in the laws pertaining to court reporters and monitors and the transcripts they produce.

For the bill's purposes, transcripts are the official written recording of a proceeding or any part of it, including testimony and counsel's arguments, produced in the Superior, Appellate, or Supreme Court by an official court report or a court recording monitor the chief court administrator designates.

#### ***Court Reporter Responsibilities***

The bill permits, instead of requires, court reporters to attend court proceedings and make records of all proceedings in the court. As under current law, this applies to all court proceedings except small claims. Currently, court reporters are required to record counsels' arguments only at the request of a party. The bill instead authorizes the reporter to record these arguments without a request to do so.

#### ***Assistant Court Reporters***

The bill requires the Judicial Branch, instead of court reporters at the court's direction, to employ court recording monitors. As under current law, recording monitors must be sworn to faithfully perform

their duties before beginning their responsibilities.

It also eliminates a requirement that the reporters employ assistant court reporters and makes conforming changes by eliminating references to assistant court reporters in current law.

### ***Court Reporter Assistance and Compensation***

The bill eliminates a (1) requirement that court reporters receive compensation for travel expenses and (2) provision that authorizes them to have clerical assistance in each judicial district as the judges determine necessary.

It also eliminates a requirement that the court clerk for the judicial district where an action is heard pay court reporters approved (1) compensation for attendance and (2) fees for copies a judge or state referee ordered, in the same manner as other court expenses.

### ***Successors to Reporters***

The bill repeals a law that (1) requires the presiding court judge to appoint a successor if the official court reporter dies, resigns, or is permanently unable to serve for any reason and (2) permits the judge to appoint a competent person to act during a reporter's temporary absence.

### ***Reporter Exams and Salary Classification***

The bill also eliminates requirements that (1) a court reporter pass an entry level exam to be appointed a court reporter and (2) court reporter salaries be divided into two classes, for which the reporter must take an exam to determine class placement. It additionally eliminates a prohibition against a reporter being placed in a higher court reporter salary classification if he or she has not passed the examination for the higher classification.

### ***Transcripts for State's Attorney or Public Defender***

Currently, whenever a state's attorney or public defender requests a transcript, the court reporter or monitor must provide it and the cost must be shared by the state's attorney and public defender.

Under the bill, if the state's attorney or a public defender requests a transcript in a matter in which each is a party, the reporter or monitor must first inform the non-requesting party about the request. If that party also requests a copy of the transcript, both parties must share the transcript cost before the transcript is delivered to the requesting party. If a reporter or monitor receives a transcript request after the transcript is delivered to the original requester, the latter requester must pay the full transcript copy rate.

As under current law, the reporter or monitor must provide the transcript in a form that may be photocopied.

Currently, the court reporter or monitor must automatically furnish a transcript or portion of it to the state's attorney at no cost whenever a party of record requests a transcript of the proceedings. The bill instead requires court reporters and monitors to inform the state's attorney whenever a party to a case in which the office has filed an appearance requests a transcript. If the request is made by a party, or by a party represented by counsel other than a public defender, the reporter or monitor must provide the state's attorney, upon request, with a copy of the transcript at no cost.

### ***Records of Proceedings***

The bill eliminates a requirement that all records of proceedings for a trial for any action be filed with the clerk's office within 30 days after the action was submitted.

It also requires court reporters and court monitors to use digital recording equipment, as approved by the chief justice, to record court proceedings. Current law permits reporters, assistant court reporters, stenographers, and assistant stenographers to use shorthand, a shorthand writing machine, or a mechanical or sound recording machine to make such records.

## **§ 12 — ABRIDGED PRESENTENCE INVESTIGATION REPORT**

Except for murder with special circumstances, existing law requires a probation officer to conduct a presentence investigation (PSI) for

anyone convicted of a (1) felony for the first time in Connecticut or (2) family violence felony for which a prison sentence may be imposed. For any other criminal conviction, the court may order a presentence investigation in its discretion.

The bill permits the court to order an abridged PSI in lieu of a full one. The abridged PSI must contain:

1. the defendant's identifying information and criminal record;
2. information from the court record about the pending case;
3. the circumstances of the offense;
4. the complainant's or victim's attitude; and
5. any damages the victim suffered, including medical expenses or loss of earnings or property.

Abridged PSIs for a felony involving family violence must additionally include information about the defendant's (1) family background, (2) significant relationships or children, (3) mental health status, and (4) substance abuse history.

Additionally, the abridged report may encompass one or more areas of the defendant's present condition and social history, including family background, significant relationships or children, vocational training or education, employment history, financial or housing situation, medical or mental health status, substance abuse history, any clinical evaluation results, or any other information the court requires that is consistent with these provisions.

## **§§ 14 & 22 — COURTS WITH JURISDICTION OVER FOI-RELATED MATTERS**

Under existing law, the FOI commission may impose a penalty against a person who files a frivolous appeal with the commission without reasonable grounds and solely to harass the commission. The bill requires any Superior Court, upon receiving an application from the commission, to issue an order requiring the person to pay the

penalty if he or she has failed to do so. Currently, only the Hartford Superior Court is required to issue these orders.

Also, under existing law, the commission's executive director cannot schedule an FOI appeal without obtaining leave from the commission if she believes that the appeal (1) is beyond the commission's jurisdiction, (2) would perpetrate an injustice, and (3) would be an abuse of the commission's administrative process. If the commission refuses to grant such leave, the bill permits the aggrieved party to apply to the New Britain Superior Court, instead of the Hartford Superior Court as under current law, for an order requiring the commission to hear the appeal.

Additionally, the bill permits the FOI commission to apply to the New Britain Superior Court, instead of the Hartford Superior Court as under current law, for a court order to require a person to comply with the commission's subpoena and testify before the commission regarding an alleged FOI violation.

#### **§ 16 — STATUTE OF LIMITATIONS ON WRONGFUL DEATH AND PERSONAL INJURY CASES**

Under the bill, upon the petition of the clerk from any superior or federal district court, the court must grant an automatic 90-day extension of the statute of limitations on a medical malpractice claim involving personal injury or wrongful death in order to allow reasonable inquiry to determine whether there are grounds for a good faith belief that medical malpractice has occurred. Under current law, the court is only required to grant this claim if the clerk is from the court where the claim will be filed.

#### **§ 23 — APPEALS OF ARBITRATION DECISIONS**

By law, a party to arbitration may appeal the arbitrator's decision by requesting a trial in Superior Court. Under current law, the party must file the request with the court clerk within 20 days after the postmark on the arbitrator's mailed decision. The bill instead allows the party to file the request by that date or within 20 days after the arbitrator sends his or her decision electronically to the parties or their counsel,



whichever is later. The bill also requires the request to include a certification that a copy of the arbitrator's decision was served on each party or counsel of record, instead of only on each counsel of record as under current law.

## **§ 24 — APPEALS OF PLANNING AND ZONING DECISIONS**

Under existing law, a person aggrieved by a municipal planning or zoning board or commission decision may appeal that decision to the Superior Court. The court, following a hearing, may reverse or affirm that decision and, in certain limited circumstances, may reassess any damages or benefits. Currently, the person may appeal the Superior Court's decision on the matter to the Appellate Court if two Appellate Court judges certify the matter for review. The bill instead requires certification by three Appellate Court judges in order for the Appellate Court to hear the matter.

### **BACKGROUND**

#### ***Court Appointed Counsel in Juvenile Matters***

Under existing law, the judge in any juvenile matter must provide an attorney to represent the child or youth, his or her parents or guardian, or another person with control of the child or youth, even without a request to do so, if the judge determines that the interests of justice so require. If a child's custody is at issue, the judge must provide an attorney to represent the child. Additionally, the court may appoint or authorize an attorney to represent a child or youth, parent, guardian, or other person on appeal from a juvenile matters decision (CGS § 46b-136).

The law also requires the court to appoint an attorney for a child in juvenile delinquency proceedings if the child's parents or guardian cannot afford one (CGS § 46b-129).

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0 (04/08/2019)