

BEST INTEREST OF THE CHILD STANDARD

ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS

Legislative History of Public Act No. 05-258 (Preliminary)

TITLE: AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS AND ADOPTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CUSTODY, DIVORCE AND CHILDREN.

SUMMARY: This bill makes several changes in child custody, support, and visitation statutes based on the recommendations of the Governor's Commission on Custody, Divorce, and Children. Current law requires courts to be guided by the child's best interests and presumes joint custody is appropriate when the parents agree to it. The bill extends this presumption to other matters they agree on.

It also permits divorcing couples to submit disputes, except those involving child support, visitation, or custody, to binding arbitration. It requires advance approval by the court, which must determine that (1) each party voluntarily agreed to arbitrate and (2) the terms of their written arbitration agreement are fair and equitable under the circumstances.

It subjects marital arbitrations to the same rules, standards, and limited court review as currently apply to other arbitrations.

EFFECTIVE DATE: October 1, 2005

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COMPILER'S NOTE

Please note: Page numbers in this document do not constitute official pagination. Official pagination is not yet available online or in this document. If you have any questions please contact [your local law librarian](#).

BACKGROUND: the Report of the Governor's Commission on Divorce, Custody and Children at http://www.opm.state.ct.us/pdpd1/ccdc/CDCC_FinalReport.doc

TESTIMONY: A public hearing was held before the Joint Committee on the Judiciary on March 7, 2005 at 2 p.m. Testimony was given by William Fitzmaurice (Sponsor the bill) President of the American Academy of Matrimonial Lawyers in Connecticut and past president of the Family Law Section of the Connecticut Bar Association and Raphael Podolsky from the Legal Assistance Resources Center.

FISCAL ANALYSIS: The Fiscal note for S.B. 1194 as amended by Senate "A" (LCO 6059), Senate "B" (LCO 7496) is on page 16

BILL ANALYSIS: The OLR analysis of this bill is available on page 12.

JOINT FAVORABLE REPORT of the Committee was given on April 14, 2005 and the full text appears at page 10.

SENATE PROCEEDINGS: The Senate adopted its own Amendment Schedule A on May 18, 2005 and Schedule B on June 3, 2005.

HOUSE PROCEEDINGS: The House passed concurred with the Senate on June 8, 2005.

PUBLIC ACT: The bill was designated Public Act 05-258 and Effective October 1, 2005 it will repeal and be substituted for the following Connecticut General Statutes sections:

Section 1	§ 46b-66
Section 2	§ 52-408
Section 3	§ 46b-56
Section 4	§ 46b-56a
Section 5	§ 46b-83

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History of Substitute for Raised Senate Bill No. 1194

(Reverse Chronological Order)

<http://www.cga.ct.gov/2005/cbs/S/SB-1194.htm>

Date	Action Taken
6/22/2005 (LCO)	Public Act 05-258
6/8/2005	In Concurrence
6/8/2005	House Passed as Amended by Senate Amendment Schedule A,B
6/8/2005	House Adopted Senate Amendment Schedule A,B
6/4/2005	House Calendar Number 631
6/4/2005	Favorable Report, Tabled for the Calendar, House
6/3/2005	Rules Suspended, Transmitted to the House
6/3/2005	Senate Passed as Amended by Senate Amendment Schedule A,B
6/3/2005	Senate Adopted Senate Amendment Schedule B 7496
5/18/2005	Matter Pass Retained
5/18/2005	Senate Adopted Senate Amendment Schedule A 6059
4/28/2005 (LCO)	File Number 567
4/28/2005	Senate Calendar Number 417
4/28/2005	Favorable Report, Tabled for the Calendar, Senate
4/28/2005 (LCO)	Reported Out of Legislative Commissioners' Office
4/22/2005 (LCO)	Referred to Office of Legislative Research and Office of Fiscal Analysis 04/27/05 5:00 PM
4/15/2005 (LCO)	Filed with Legislative Commissioners' Office
4/14/2005 (JUD)	Joint Favorable Substitute
3/3/2005	Public Hearing 03/07
2/24/2005	Referred to Joint Committee on Judiciary

Public Hearing before Judicial Committee

March 7, 2005

WILLIAM FITZMAURICE: Good afternoon, Mr. Chair and members of the Committee. My name is Bill Fitzmaurice from Milford, and I am here in support of Raised Senate Bill 1194, which is AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS.

I hold a couple of titles in that regard. I am currently the president of the American Academy of Matrimonial Lawyers in Connecticut. I am a past president of the Family Law Section of the Connecticut Law Association. Both those [Gap in testimony. Changing from Tape 2A to Tape 2B.]

--relations officers and the people who do the day-to-day work in the system.

The problem is, under our existing arbitration statute, almost everything, despite the family relationship, can be arbitrated, except the statute doesn't clearly cover matrimonial cases.

So today, if you have a dispute with your mother that's a legal dispute, you can arbitrate that dispute, or with one of your siblings. Or with one of your adult children, you can arbitrate that dispute very clearly. Even if, God forbid, your spouse is killed or a sibling is killed, you can arbitrate that dispute.

If you have a dispute where your business is going to be taken away from you, or your house is going to be taken away from you, or your life savings is going to be taken away from you, you can arbitrate that dispute.

Our statutes does not make clear, and we're asking the Legislature to make clear, that you can arbitrate your matrimonial dispute. So this bill is simply to give to matrimonial litigants the same option that is available to most other litigants in other types of contexts in the state of Connecticut.

And frankly, it's an answer to the cry that the people in the field here all the time from people going through the process.

If you talk to therapists, social workers, family relations officers, attorneys, mediators, folks going through the divorce process say to us all the time, this process is so terrible for us. Why does it have to be made more terrible by leaving us with the only resolution of going to the court system if we can't resolve our dispute?

In a different forum we hear the same cry all the time from judges who say to us, isn't it too bad that we can't take this out of our system and have some type of more humane, compassionate organized approach to this case? But our statute doesn't allow for it.

I've submitted some materials, and I'm not going to repeat what is in the materials except to highlight a few points.

First of all, there are at least 11 states, and there may be 12 or 13 states, that allow arbitration in matrimonial cases by statute.

Anecdotally I can tell the Committee that, from my conversations with colleagues from those states, particularly in Colorado and Texas and Wisconsin, they not only like it, they rave about it. This is a solution to lots of problems and lots of types of cases.

So the endorsement from, you know, the CBA and from the Academy is a nice endorsement, but the fact of the matter is this is really to solve problems that are engaged in by day-to-day litigants who would like to arbitrate as opposed to using the court system.

I'm happy to take questions.

REP. LAWLOR: Thank you very much. Are there questions? Representative Farr.

REP. FARR: The items to be arbitrated, I see that there's an exclusion here for with respect to custody, visitation, support. Is that correct?

WILLIAM FITZMAURICE: Custody and child support, Sir, yes.

REP. FARR: And then, but it seems that, what about educational support? Is that an item?

WILLIAM FITZMAURICE: Well, I would think. Not rendering a full legal opinion, but I would think that's a component of child support. So the financial orders with respect to children would have to be pinned down, and the custodial orders with respect to children would have to be pinned down before the parties could avail themselves of arbitration.

REP. FARR: And how, at what time do the parties, at what point in the process do the parties, do you envision the parties entering into an arbitration agreement?

WILLIAM FITZMAURICE: As early as possible. So if two parties came to lawyers or on their own decided early on in their case that they were going to use an arbitration methodology, they would know that the first thing they have to do is go to court and have their custody dispute resolved, most often by agreement.

The people who aren't going to be able to resolve their custody dispute by agreement are probably not going to select arbitration. So we're probably talking about parents who are going to up front easily resolve their custody dispute. That happens in a very substantial number of cases. They can easily, particularly pursuant to the guidelines, resolve their child custody, child support issues.

And then all that's left is remaining is a business dispute between two adults. It's now a division of property and a division of cash flow between two adults. And so, it's our suggestion that that type of dispute should be able to be arbitrated, just as if a husband and wife were partners in a business, and they wanted to arbitrate their business dispute because they were taking apart their business.

REP. FARR: Well that may be true, but if there's children involved, there may be an overlap between the issues of support and alimony and property.

WILLIAM FITZMAURICE: In all honesty, there's not as big of an overlap between alimony and child support as there used to be, for two reasons.

There used to be a lot of gamesmanship with respect to that, with respect to shifting cash flow to unallocated alimony and support for tax arbitrage reasons. With the condensation of the federal tax brackets, pretty much in both hands the income is going to be taxed the same. So unallocated alimony and support is not used as often as it used to be, and it's not as advantageous as it used to be 10 or 15 years ago.

Secondly, the child support guidelines have made it a lot easier to calculate what the child support portion should be, in any event.

So, what we're hoping and what we envision, and what has happened in other states, because certain other states have these provisions that custody and child support are ruled out, they're finding in those states that parents readily come in with agreements up front dealing with those issues.

So a backhanded advantage of this type of scheme is it has the parents resolving earliest on some of the issues under different bills the Committee has heard about this afternoon, so that the kid issues are dealt with properly, with respect to custody and child support, so that then basically the financial issues could be left for an arbitrator.

REP. FARR: And under this bill would the parties be able to enter into an agreement to arbitrate as part of their prenuptial agreement?

WILLIAM FITZMAURICE: I believe they could.

REP. FARR: And would there be an examination by the court as to whether that really is truly, freely entered into?

WILLIAM FITZMAURICE: The arbitration, the entry into the arbitration agreement itself, yes.

REP. FARR: When would that be done?

WILLIAM FITZMAURICE: At the same time as now under our act, the Premarital Agreement Act, that that is unfortunately done at the end of the case.

But you're going to have to get divorced anyway, so all of these arbitration awards are going to be submitted to a court after the arbitration has concluded.

At that time, if any participant has questions about the arbitration process or the entry into the arbitration agreement, they're free to raise those concerns to the court at that point.

REP. FARR: And the arbitrators in this case could consist, could be anyone?

WILLIAM FITZMAURICE: Conceivably they could be anyone. That's up to the agreement of the parties. Learning from the other states is primarily they are experienced lawyers who are involved in matrimonial cases on a day-to-day basis. Some people have had great success using accountants, if there are complicated financial disputes. But the act itself does not define who the arbitrator would be.

What's happened, in my discussions with other states is what happens is, after the act is passed, the jurisdiction tends to develop its own practices for how to deal with it in its own handbook, in its own set of forms, in its own practices with respect to that. Just as has happened in other types of areas.

When arbitration came into securities litigation and the concept came forth that you would arbitrate almost always securities cases with your broker. The securities organizations came up with standards and forms and ideas on who the arbitrator should be, and you get to a point where you have approved lists of arbitrations, arbitrators.

And the American Arbitration Association on the commercial side has, over the years, developed forms and practices and different lists of arbitrators for different types of arbitrations. The labor lawyers have their own group for that.

I think over time what would happen, if we got a foothold with respect to this, and what has happened in other states, some of the states who have had it for a long time, nobody would dream of going to a judge for a matrimonial case. They have people who have been professional arbitrators on the matrimonial side for 15, 20, 25 years. And people wait in line to get before these people.

REP. FARR: And what is the advantage of going to the arbitrator versus the judge? I'm not sure I understand.

WILLIAM FITZMAURICE: I put in my materials an actual list from, that they used in North Carolina, which is the latest list of advantages. But the basic is the following.

And I'm not complaining about the judges because the judges are overburdened, and they are overworked, and they don't have enough help to deal with these cases.

But we commonly get a court to, unfortunately, try a case in those few occasions where you can't resolve it. And we're very frequently told by a judge, I know you were assigned today. I'm not going to reach you today. I might be able to give you two hours tomorrow afternoon. But the next day you're going to have is two weeks from now from 3:00 to 5:00. And two weeks from then you go to 3:00 to 5:00 and they say, well, I can only give you from 4:00 to 5:00. How about two weeks later from, you know, 2:30 to 4:30?

And we're dealing with people here that are under enormous pressure and have enormous problems with the whole process. And just the weight and the uncertainty about scheduling, and the uncertainty of which judge you're going to get, and what the personality of that judge is, and what the approach to the judge is, all that does is add to the burdens of these people.

So the advantages you get in arbitration is by agreement the people pick their decision-maker, and then they work with that decision-maker where they do the case on their schedule, on a schedule that makes sense to them. It's almost always done consecutively. Nobody would ever pick a schedule where you would drag out eight hours of testimony over two months in two-hour, three-hour time periods. You just would never do that.

So the mechanics is better. And with all due respect to the judges, and there was a discussion this morning with respect to a different bill about how they rotate through the system, I mean this is the least favorite job of most people who are on the bench. They do not want to sit family.

You get to pick people who actually want to hear matrimonial cases and want to decide matrimonial cases.

REP. FARR: And do they normally use a single judge or a multi-judge? Single arbitrators or multi, or multi-member arbitration panels?

WILLIAM FITZMAURICE: The anecdotal information I have from other states is almost exclusively it's one person.

REP. FARR: Okay.

WILLIAM FITZMAURICE: But then again, you know, it's voluntary. If you don't like, you know, this is only going to be people who select this process. Even if it's only 10% or 20% of the folks, they're going to be 10% or 20% who could agree on a person because they have confidence in that person mutually. Or the people who are assisting them have confidence in that person mutually.

And then what it does is that even if it only initially saves the judicial department 10% or 20% of its resources, it can then take those resources and devote them to other cases that need the resources.

REP. FARR: Thank you.

REP. LAWLOR: Thank you very much. Are there other questions? If not, thanks.

WILLIAM FITZMAURICE: Thank you.

Additional testimony

RAPHAEL PODOLSKY: Thank you very much. I'm Raphael Podolsky from the Legal Assistance Resource Center

And the last thing I want to say is I just want to mention something on a different bill. I submitted written testimony for a technical amendment on Senate Bill 1194, which is the one that deals with family arbitration.

We don't have a position on the bill. If you do the bill, though, I would suggest you make sure that visitation is treated in the bill the same way as custody is. But on the bill itself we don't have a position.

REPORT ON BILLS FAVORABLY REPORTED BY COMMITTEE

COMMITTEE: Judiciary Committee

File No.:

Bill No.: SB-1194

PH Date: 3/7/2005

Action/Date: JFS 04/14/2005

Reference Change:

TITLE OF BILL:

AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS.

SPONSORS OF BILL:

William Fitzmaurice

REASONS FOR BILL:

There is a disagreement as to whether current law allows for arbitration as an option in family relations matters, and many want it clarified.

Substitute Language: States that arbitration can proceed only after the court finds that both parties agree to arbitration of their own free will and have not been coerced into it.

RESPONSE FROM ADMINISTRATION/AGENCY:

Nothing submitted.

NATURE AND SOURCES OF SUPPORT:

William Fitzmaurice, President, American Academy of Matrimonial Lawyers, Milford - The problem is, under our existing arbitration statute, almost everything, despite the family relationship, can be arbitrated, except the statute doesn't clearly cover matrimonial cases.

If you have a dispute with your mother, one of your siblings or with one of your adult children, you can arbitrate such a dispute very clearly. If you have a dispute where your business is going to be taken away from you, your house is going to be taken away from you, or your life savings are going to be taken away from you, you can arbitrate that dispute. We're asking the legislature to make clear that you can arbitrate your matrimonial dispute. This bill simply gives to matrimonial litigants the same option that is available to most other litigants in other types of contexts in the state of Connecticut. Frankly, it's an answer to the cry that the people in the field hear all the time from people going through the process. Therapists, social workers, family relations officers, attorneys, mediators, and people going through the divorce process tell us all the time that this process is terrible. In a different forum we hear the same cry all the time from

judges that they wish they could take this out of the system and have some type of more humane, compassionate organized approach to this process, but our statute doesn't allow for it.

First of all, there are at least 11 states that allow arbitration in matrimonial cases by statute. Anecdotally I can tell the Committee that, from my conversations with colleagues from those states, particularly in Colorado and Texas and Wisconsin, they not only like it, they rave about it. This is a solution to many problems in many types of cases. This bill will really solve problems that are engaged in by day-to-day litigants who would like to arbitrate as opposed to using the court system.

This legislation simply makes arbitration an option, and there is no reason to have it not be an option today. A variety of non-binding alternate dispute resolution options are made available to family litigants already.

Many family litigants have reasonable and good faith disagreements they cannot resolve alone. If available, many others would happily choose arbitration to resolve their dispute rather than the court process. Even if only 10 to 20% of cases utilize arbitration, that will mean that many fewer cases in court. Furthermore, this will cost the state nothing and may likely cause effective savings for the state.

Arthur Balbirer, Family Relations Lawyer - This bill is certainly in the public interest. There are not enough Judges to handle the volume of family relations matters before them. Matters which take more than a day to hear often result in disrupted trials that get dragged out over months, and this becomes extremely costly to all parties involved. Arbitration will allow for an uninterrupted hearing, a hearing venue convenient to the parties, and a process of selectable levels of formality. It will also save the litigants from enormous expenses.

Paul Tusch, Chair, Connecticut Bar Association Family Law Section - It is nothing short of bizarre to me that this option, available in so many other types of similar disputes, is not available in family relations matters.

Wayne D. Efron, Esq. - There is little lose and a great deal to gain by allowing arbitration.

Arnold Rutkin, Former Chair, Connecticut Bar Association, Family Law Committee

Raphael Podolsky, Legal Assistance Resource Center of Connecticut, Inc. - We take no position on the bill, but we do believe that visitation, which is inseparable from custody, should also be exempted from arbitration.

NATURE AND SOURCES OF OPPOSITION:

Nothing submitted.

Reported by:

Date:

Amanda Abbey

04/27/2005

OLR Bill Analysis

sSB 1194 (File 567, as amended by Senate "A" and "B")*

AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS

SUMMARY:

This bill makes several changes in child custody, support, and visitation statutes based on the recommendations of the Governor's Commission on Custody, Divorce, and Children. Current law requires courts to be guided by the child's best interests and presumes joint custody is appropriate when the parents agree to it. The bill extends this presumption to other matters they agree on.

It also permits divorcing couples to submit disputes, except those involving child support, visitation, or custody, to binding arbitration. It requires advance approval by the court, which must determine that (1) each party voluntarily agreed to arbitrate and (2) the terms of their written arbitration agreement are fair and equitable under the circumstances.

It subjects marital arbitrations to the same rules, standards, and limited court review as currently apply to other arbitrations.

*Senate Amendment "A" excludes child visitation matters from arbitration.

*Senate Amendment "B" adds the provisions incorporating recommendations of the governor's commission.

EFFECTIVE DATE: October 1, 2005

PARENTAL RESPONSIBILITY PLANS

The bill requires parental responsibility plans to be submitted to the court if both parents agree to their terms. 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 for 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 minimizing the child's exposure to harmful parental conflict and encouraging the parents in appropriate circumstances to meet their responsibilities through agreements; and
6. for protecting the child's best interests.

Court Approval of Plans

The court must adopt consensual parenting plans 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. The bill authorizes courts to modify their terms in the same manner it currently follows in other divorce matters involving children.

COURT ORDERS AND MODIFICATIONS

The bill requires court custody and support orders to (1) take into consideration each parent's 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 May Consider

The bill permits judges to consider, when making or modifying plans:

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 parent's 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 parent's 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 the factors it considers, 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 list factors the courts may consider other than the child's wishes and the parents' completion of the court's parenting education program.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0

OFFICE OF FISCAL ANALYSIS

sSB-1194

AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS.

As Amended by Senate "A" (LCO 6059), Senate "B" (LCO 7496)

House Calendar No. : 631

Senate Calendar No. : 417

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Judicial Dept.	GF - Savings	Potential Minimal	Potential Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill permits parties to a dissolution of marriage proceeding to agree to arbitrate the matter except for issues related to child support, visitation and custody. Providing another alternative dispute mechanism for certain issues in marriage dissolution proceedings could decrease the workload of the Judicial Department's Family Division and thereby speed the disposition of cases. Any efficiencies gained under the bill are not expected to yield a reduction in caseloads sufficient to substantially decrease staffing or expenses. As a consequence, any budgetary savings are anticipated to be minimal.

The bill also makes other changes related to the court's handling of child custody, support, and visitation statutes and does not result in a fiscal impact.

Senate "A" added visitation as another issue that may not be subject to binding arbitration and reduced the potential savings.

Senate "B" made changes related to the court's handling of child custody, support and visitation statutes and did not result in a fiscal impact.

The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either House thereof for any purpose.

Transcript of Senate 5/18/05:

Adoption of Senate Amendment A: LCO-6059

THE CLERK:

Turning to Calendar Page 4, Calendar 417, File 567, Substitute for S.B. 1194, An Act Concerning Arbitration in Certain Family Relations Matters, Favorable Report of the Committee on Judiciary. Clerk is in possession of one amendment.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark? Senator McDonald.

SEN. MCDONALD:

Mr. President, this bill is intended to make available to individuals who are becoming involved in a dissolution action an opportunity to voluntarily enter into an arbitration proceeding for the purposes of resolution of that dissolution.

Mr. President, the bill excludes from the scope of permissible arbitration any consideration of custody or child support payments within the scope of the arbitration referral.

And, Mr. President, I believe that the Clerk has, in his possession, an amendment. And I would ask that LCO 6059 be called and I'd be given leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 6059, which will be designated as Senate Amendment Schedule "A", is offered by Senator McDonald of the 27th District, et al.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. I move adoption of the amendment.

THE CHAIR:

On adoption, will you remark? Senator McDonald.

SEN. MCDONALD:

Mr. President, the amendment merely would add, in addition to child support and custody issues, issues of visitation, which would be outside of the scope of an arbitration referral in a marriage dissolution action.

THE CHAIR:

On adoption, will you remark further? If not, all, try your minds, all those in favor, please say "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

Those opposed? The ayes have it. The amendment is adopted. Senator McDonald.

SEN. MCDONALD:

Mr. President, the bill is intended, as amended, to provide a viable economic and efficient alternative for individuals who are seeking to dissolve their marriage or union, but would otherwise have to incur the expense and delay of a court proceeding.

And I should note, Mr. President, that it is, as I indicated, a voluntary opportunity for individuals.

And in order to enter into such an arrangement, a court would first have to determine, independently, that that agreement was voluntary and that it was being entered into without coercion. Thank you, Mr. President.

THE CHAIR:

Will you remark further? Senator Meyer.

SEN. MEYER:

Thank you, Mr. President. I rise in strong and enthusiastic support of this bill. The trend in the United States has been toward arbitration and resolution of disputes without court action.

The fact is that, in a normal divorce action, the time from the beginning of the case being filed until trial is somewhere between two and three years in Connecticut. And the cost for many litigants, husband and wife, will exceed \$100,000.

Through an arbitration, however, the time in which you can reach an arbitration is reduced to somewhere in several months, often 60 to 90 days, and the cost is a fraction of what a trial would be.

There's the further advantage of the privacy that's more likely to come from an arbitration than from a court proceeding.

In a court proceeding, you're going to have a very public divorce trial, as we all know from the newspapers. In an arbitration, it tends to be more of a private matter.

There's so many good parts to this bill, I urge your support. I just regret, in some ways, that some areas of matrimonial dispute have been left out of this bill. I think they all should have been included in it. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Kissel.

SEN. KISSEL:

Thank you very much, Mr. President. Just a question to the proponent, just to help clarify the legislative history.

THE CHAIR:

Please proceed, Senator.

SEN. KISSEL:

Thank you very much, Mr. President. Through you to the Senate Chair of the Judiciary Committee, it's my understanding from what you stated that the courts would have to pass upon the initial application and make sure that this was entered into voluntarily by both parties.

But I'm just wondering whether this is a binding arbitration, and if one of the parties, after the arbitration, felt that they were aggrieved by one or more parts of the arbitrated decision, would they have any rights of appeal and what would those rights be, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. And through you, in fact, it would be binding. The law, as it currently stands, allows parties to enter into non-binding mediation opportunities.

But this would be, within the scope of the referral, this would be a binding proceeding, subject to confirmation and modification or vacature in a court proceeding, as exists for other binding proceedings.

THE CHAIR:

Thank you, Senator. Senator Kissel.

SEN. KISSEL:

So through you, Mr. President, just by way of, to clarify, if there was just one, let's say they went into arbitration on a variety of issues, but one of the parties walked away from that determination.

Let's say that had to do with visitation, and they felt that that isolated part of the arbitrated decision, they did not agree with.

What exactly would be their rights to appeal or to contest that portion of the arbitrated decision, through you, Mr. President?

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Well, through you, Mr. President, there are, under this bill, as amended, there are three topics which will not be permitted to be referred to an arbitration proceeding, and that includes child support, child custody, and visitation relating to children.

That would not be within the scope of an arbitrator's authority under this bill.

SEN. KISSEL:

Okay.

THE CHAIR:

Senator Kissel.

SEN. KISSEL:

Then let me, if I could, through you, Mr. President, the subjects that are potentially arbitrated, if a litigant or a party agreed with all of them but one, and as I read the amendment, I thought we were adding visitation in.

But now, in retrospect, I see that we're taking visitation out, so I apologize for that initial example.

But again, let's say that, out of nine issues, a party, after the arbitration, feels aggrieved or does not agree with the determination of one, what would be that party's rights to appeal, if any, or would they be bound at the end of the arbitration, through you, Mr. President?

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Through you, Mr. President, the rights of such an individual would be extremely limited, as exists under current law.

The opportunity to contest an arbitrator's findings and award after the conclusion of the arbitration are very limited under our law and could only be modified or vacated under very narrow circumstances, such as when the arbitrator willfully disallowed existing case law.

But as to all matters of equity, fairness, and any interpretation of the relative rights of parties, that arbitration award would be final for all purposes.

SEN. KISSEL:

Thank you very much. And through you, Mr. President, how does that compare and contrast to a litigant's ability to appeal a determination of said rights in the traditional superior court arena?

In other words, if one pursues the path of arbitration, are their appeals' rights more limited, as opposed to if they pursued a course in the superior court?

And ultimately, just to get to the heart of the matter, my concern is, while I agree with Senator Meyer that this is an appealing process, it's more cost-efficient and there is a trend in the United States to move in this direction, if the appeals' rights or the ability to contest the

determination is more limited in the arbitration setting, I can see counsel actually urging a party to avoid that if they would have better grounds for an appeal after a traditional superior court determination.

And so that's my ultimate question, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Well, let me first say that, that is, that Senator Kissel's observation is precisely why we have language in this bill which would require a court to make an independent inquiry of the litigants, prior to the arbitration referral, to make sure that the litigants understood what rights they would be giving up by entering into an arbitration proceeding.

And only after that vetting, if you will, would the court be permitted to allow them to voluntarily enter into an arbitration proceeding and potentially forego procedural, evidentiary, or appellate rights that they might otherwise have available to them in the superior court.

I do think the point Senator Kissel is alluding to in his question is a valid one, that anybody who enters into an arbitration proceeding has some benefits and perhaps some disadvantages.

And oftentimes, the benefits outweigh the disadvantages, and that's why they opt for the arbitration proceeding.

The fact is that it is a faster, more economic, and, ultimately, a more final resolution that is achieved in a much more rapid fashion than an extended litigation might take in the courts.

THE CHAIR:

Senator Kissel.

SEN. KISSEL:

Thank you very much. I very much appreciate the explanation offered by Chairman McDonald. I think that helps us, and it certainly helps myself, understand what this bill is trying to accomplish.

For certain litigants, this would be the way to go. And I'm sure that their counsel or even if they studied the law themselves and decided not to go with counsel, that this would be an apt alternative.

But certainly, there's upsides and downsides to this. It's not a panacea. And I think that the points raised in this colloquy were very helpful to me, and I support the bill. Thank you very much, Mr. President.

THE CHAIR:

Will you remark further? Senator Roraback.

SEN. RORABACK:

Thank you, Mr. President. I just have a quick question, through you, to Senator McDonald, if I may. Senator McDonald, I'm just looking at Section 2.

Would the law allow people, after they got married, to decide that, in the unhappy event that they chose to part ways, that they would have their dissolution arbitrated?

We're all familiar with prenuptial agreements, and I'm certain that the language in Subsection 2 would apply if someone in a prenuptial agreement agreed to arbitrate a future divorce.

I'm just curious if someone post-marriage wanted to enter into such an agreement, whether that would be enforceable, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Through you, Mr. President, I'm not certain I understood the question. Perhaps Senator Roraback could restate it.

THE CHAIR:

Senator Roraback, would you care to rephrase the question?

SEN. RORABACK:

I would be happy to. I think, Mr. President, we're all familiar with what are commonly referred to as prenuptial agreements. And I would imagine that one could certainly, if this bill passes, include in a prenuptial agreement a provision which would submit any subsequent dissolution to arbitration.

My question is, suppose individuals got married without the benefit of a prenuptial agreement and thereafter said, you know what, should things sour, we ought to go to arbitration.

Would an agreement made to do that after a marriage be enforceable under the terms of Section 2 of the bill, if Senator McDonald knows? It was just a thought I had as I was reading the bill, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Through you, Mr. President, I would surmise that anybody would be able to enter into any such agreement. It would still, however, be subject to prior approval by a judge of the superior court before it could be binding or given legal effect.

SEN. RORABACK:

So what I understand Senator McDonald to say is that the outcome of any such arbitration would necessarily be subject to the review of the court, without regard to when people decided to submit to arbitration. Is that correct, through you, Mr. President.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

That is my reading of the bill and my understanding of its intent.

SEN. RORABACK:

Thank--

THE CHAIR:

Senator Roraback.

SEN. RORABACK:

--thank you, Mr. President, and thank Senator McDonald for his answers.

THE CHAIR:

Will you remark further? Will you remark further? If not, Senator McDonald.

SEN. MCDONALD:

Mr. President, if there's no objection, might this item be placed on the Consent Calendar?

THE CHAIR:

Hearing no objection, so ordered.

Additional

SEN. LOONEY:

Also, Mr. President, there is one item to be removed from the Consent Calendar. And that is Calendar Page 4, Calendar 417, S.B. 1194, should be removed from the Consent Calendar and marked PR.

THE CHAIR:

Thank you, Mr. Majority Leader. Mr. Clerk.

Transcript of Senate 6/3/05:

Adoption of Senate Amendment B: LCO-7496

THE CLERK:

Calendar Page 5, Calendar 417, File 567, Substitute for S.B. 1194, An Act Concerning Arbitration in Certain Family Relations Matters, (As amended by Senate Amendment Schedule "A"), Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

On acceptance and passage, will you remark? Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, Members of the Circle may recall this bill. It was addressed by us a few days ago, and then it was PT'd while we worked on the amendment to deal with certain matters relating to custody and visitation rights and the relative positions with respect to dissolution actions and custody and visitation.

And, Mr. President, I believe the Clerk has in his possession LCO 7496. I ask that it be called and I be granted leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 4796, which will be designated as Senate Amendment Schedule "A", correction, Schedule "B", offered by Senator McDonald of the 27th District, et al.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. I move adoption of the amendment.

THE CHAIR:

Will you remark further on adoption? Senator McDonald.

SEN. MCDONALD:

Mr. President, as I indicated, the Judiciary Committee undertook several bills this year dealing with the issue of custody and visitation with respect to family relations matters, and some of them were conflicting.

And frankly, Mr. President, the amendment before us today represents a consensus between all sorts of groups, members of the bar, members of the bench, interest groups relating to domestic violence, a whole host of groups, not the least of which were a number of Legislators.

And I wanted to particularly thank Senator Freedman for her assistance on this issue and Representative Klarides from the House.

Mr. President, the amendment outlines a number of ways in which the courts would consider orders dealing with visitation and custody, all centered around what is in the best interests of the children.

And I believe that the consensus of the group was that all of our children will be better served with the adoption on this amendment.

THE CHAIR:

On the amendment, will you remark further on the amendment? If not, we'll try your minds. All those in favor, please say "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

Any opposed, "nay"? The ayes have it. The amendment is adopted. Senator McDonald.

SEN. MCDONALD:

Mr. President, if there's no objection, might this item be placed on the Consent Calendar?

THE CHAIR:

Hearing no objection, the item will be placed on the Consent Calendar.

THE CHAIR:

Will the Clerk please read those items on the first Consent Calendar?

THE CLERK:

Mr. President, those items placed on the first Consent Calendar begin on Calendar Page 1, Calendar 604, H.J. 104.

Calendar 417, Substitute for S.B. 1194.

Transcript of Senate 6/8/05: House Adopted Senate Amendment Schedule A,B

DEPUTY SPEAKER GODFREY:

The Bill as amended passes in concurrence with the Senate. Clerk please call Calendar Number 631.

CLERK:

On Page 14, Calendar Number 631, Substitute for Senate Bill Number 1194, AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS, Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER GODFREY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill, in concurrence with the Senate.

DEPUTY SPEAKER GODFREY:

Question is on acceptance and passage. Will you explain the Bill, Sir?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. The File Copy provides for arbitration pursuant to the usual arbitration rules, in dissolution of marriage cases, except for support and custody matters. Mr. Speaker, the Senate adopted two Amendments.

The first, LCO Number 6059, I'd ask the Clerk to please call and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

Will the Clerk please call LCO Number 6059, previously designated Senate Amendment Schedule "A".

CLERK:

LCO Number 6059, Senate Amendment Schedule "A", offered by Senator Williams, et al.

DEPUTY SPEAKER GODFREY:

Is there objection to summarization? Hearing none, please proceed, Sir.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This Amendment adds visitation to the support and custody issues which may not be arbitrated. I urge adoption.

DEPUTY SPEAKER GODFREY:

Question is on adoption. Will you remark on the Amendment? Will you remark on the Amendment? Representative Rowe. Representative Klarides.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. I rise in support of this Amendment. This Bill allows for attorney arbitration of portions of a dissolution of marriage, not dealing with custody, visitation or child support.

Pursuant to arbitration statutes, Chapter 909, any arbitrator's award may be confirmed, set aside or vacated pursuant to the same Chapter, 909, and I urge the Chamber's support.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Will you remark further on the Amendment? If not, let me try your minds. All those in favor of Senate Amendment Schedule "A", signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, Nay. The Ayes have it, the Amendment is adopted. Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I urge passage of the Bill.

DEPUTY SPEAKER GODFREY:

Representative Klarides.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. The Clerk is in possession of LCO Number 7496, previously designated Senate Amendment Schedule "B". I ask that he please call and I be allowed to summarize.

DEPUTY SPEAKER GODFREY:

Clerk has LCO Number 7496, previously designated Senate Amendment Schedule "B". Will the Clerk please call.

CLERK:

LCO Number 7496, Senate Amendment Schedule "B", offered by Senator McDonough, Representative Klarides, et al.

DEPUTY SPEAKER GODFREY:

Is there any objection to summarization? Hearing none, please proceed, Madam.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. This Senate Amendment Schedule "B" implements the Governor's commission on custody, divorce and children, unanimous recommendations, I move adoption.

DEPUTY SPEAKER GODFREY:

Question is on adoption. Will you remark? Will you remark? If not, let me try your minds. All those in favor signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, Nay. The Ayes have it. The Amendment is adopted. Will you remark further on the Bill as amended? Representative Klarides.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. I will be brief. In making and modifying of any order for custody, this Bill really talks about the best interest of the child, adds some additional factors the court can look at, but is not limited to, and discusses a parental responsibility plan.

I'd like to thank everybody in this Chamber, both sides of the aisle, in the House and the Senate for working on this, and I urge support.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Are you ready for the question? Are you ready for the question? If so, machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? If so, the machine will be locked and the Clerk will take a tally. Representative Urban, how would you like to be recorded? Representative Urban in the affirmative. Clerk will announce the tally.

CLERK:

Senate Bill Number 1194, as amended by Senate Amendment Schedules "A" and "B", in concurrence with the Senate.

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	2

DEPUTY SPEAKER GODFREY:

Bill is passed in concurrence with the Senate.

Public Act No. 05-258

AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS AND 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:

Section 1. Section 46b-66 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In any case under this chapter where the parties have submitted to the court an agreement concerning the custody, care, education, visitation, maintenance or support of any of their children or concerning alimony or the disposition of property, the court shall inquire into the financial resources and actual needs of the spouses and their respective fitness to have physical custody of or rights of visitation with any minor child, in order to determine whether the agreement of the spouses is fair and equitable under all the circumstances. If the court finds the agreement fair and equitable, it shall become part of the court file, and if the agreement is in writing, it shall be incorporated by reference into the order or decree of the court. If the court finds the agreement is not fair and equitable, it shall make such orders as to finances and custody as the circumstances require. If the agreement is in writing and provides for the care, education, maintenance or support of a child beyond the age of eighteen, it may also be incorporated or otherwise made a part of any such order and shall be enforceable to the same extent as any other provision of such order or decree, notwithstanding the provisions of section 1-1d.

(b) Agreements providing for the care, education, maintenance or support of a child beyond the age of eighteen entered into on or after July 1, 2001, shall be modifiable to the same extent as any other provision of any order or decree in accordance with section 46b-86.

(c) The provisions of chapter 909 shall be applicable to any agreement to arbitrate in an action for dissolution of marriage under this chapter, provided (1) an arbitration pursuant to such agreement may proceed only after the court has made a thorough inquiry and is satisfied that (A) each party entered into such agreement voluntarily and without coercion, and (B) such agreement is fair and equitable under the circumstances, and (2) such agreement and an arbitration pursuant to such agreement shall not include issues related to child support, visitation and custody. An arbitration award in such action shall be confirmed, modified or vacated in accordance with the provisions of said chapter.

Sec. 2. Section 52-408 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

An agreement in any written contract, or in a separate writing executed by the parties to any written contract, to settle by arbitration any controversy thereafter arising out of such contract, or out of the failure or refusal to perform the whole or any part thereof, or a written provision in the articles of association or bylaws of an association or corporation of which both parties are members to arbitrate any controversy which may arise between them in the future, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or an agreement in writing between the parties to a marriage to submit to arbitration any controversy between them with respect to the dissolution of their marriage, except issues related to child support, visitation and custody, shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally.

Sec. 3. Section 46b-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may [at any time] make or modify any proper order regarding the [education and support of the children and of care, custody and visitation] custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, as amended by this act, the court may assign [the custody of any child to the parents jointly,] parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.

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

(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.

(d) Upon the issuance of any order assigning custody of the child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination

whether the Department of Children and Families made reasonable efforts to keep the child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the [child's] best interests of the child, including the child's health and safety.

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

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

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

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

[(g)] (i) As part of a decision concerning custody or visitation, the court may order either parent or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided such participation is in the best [interest] interests of the child.

Sec. 4. Section 46b-56a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

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

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

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

(d) In any proceeding before the Superior Court involving a dispute between the parents of a minor child with respect to the custody, care, education and upbringing of such child, the parents shall file with the court, at such time and in such form as provided by rule of court, a proposed parental responsibility plan that shall include, at a minimum, the following: (1) A schedule of the physical residence of the child during the year; (2) provisions allocating decision-making authority to one or both parents regarding the child's health, education and religious upbringing; (3) provisions for the resolution of future disputes between the parents, including, where appropriate, the involvement of a mental health professional or other parties to assist the parents in reaching a developmentally appropriate resolution to such disputes; (4) provisions for dealing with the parents' failure to honor their responsibilities under the plan; (5) provisions for dealing with the child's changing needs as the child grows and matures; and (6) provisions for minimizing the

child's exposure to harmful parental conflict, encouraging the parents in appropriate circumstances to meet their responsibilities through agreements, and protecting the best interests of the child.

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

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

(g) The court may modify any orders made under this section in accordance with section 46b-56, as amended by this act.

Sec. 5. Section 46b-83 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

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

(b) In any proceeding brought under section 46b-45, 46b-56, as amended by this act, or 46b-61 involving a minor child, if one of the parents residing in the family home leaves such home voluntarily and not subject to court order, and if the court finds that the voluntary leaving of the family home by such parent served the best interests of the child, the court may consider such voluntary leaving as a factor when making or modifying any order pursuant to section 46b-56, as amended by this act.