# Legislative History

Public Act 06-168
sHB-5536

## An Act Concerning the Relocation of Parents Having Custody of Minor

Substitute House Bill No. 06-168

**Title**: AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN

**SUMMARY**: This act requires a divorced parent who relocates or plans to relocate with a child to prove that the relocation is in the child's best interest. Prior binding case law placed the burden on the parent objecting to the move. It also codifies a nonexclusive list of factors family court must consider when the non-relocating parent seeks to block the move due to its significant impact on an existing parenting plan (i.e. a court-approved custody and visitation schedule). These considerations are already required by a Connecticut Supreme Court ruling.

**EFFECTIVE DATE**: October 1, 2006

**CODIFICATION**: Conn. Gen. Stats. § 46b-56d (2008).

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# History of Bill 5536

## Bill History (in chronological order)

| Date | | Action Taken |
|---|---|---|
| 2/23/2006 | | Referred to Joint Committee on Judiciary |
| 2/27/2006 | | Public Hearing 03/03 |
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| 6/6/2006 | | Signed by the Governor |

# 2006 Connecticut General Assembly
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**Act Number**: 168

**Bull Number**: 5536

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**REPORT ON BILLS FAVORABLY REPORTED BY COMMITTEE**

**COMMITTEE:** **Judiciary Committee**

**File No.:**

**Bill No.:** HB-5536

**PH Date:** 3/3/2006

**Action/Date:** JFS 3/27/06

**Reference Change:**

**TITLE OF BILL:**

AN ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD.

**SPONSORS OF BILL:**

Rep. Klarides, 114th District

**REASONS FOR BILL:**

To overturn the Connecticut Supreme Court decision in *Ireland v. Ireland* so that it will become the responsibility of the relocating parent to show why it is in the best interest of the child to move, rather than have the non-relocating parent prove why it would not be in the best interest of the child to move.

**SUBSTITUTE LANGUAGE:** Adds specific details that the court will consider when deciding whether or not to grant the relocation of the custodial parent with a minor child.

**RESPONSE FROM ADMINISTRATION/AGENCY:**

Nothing submitted

**NATURE AND SOURCES OF SUPPORT:**

Sarah S. Oldham, Family Law Section, Connecticut Bar Association- we support the concept addressed in this bill because it is intended to overrule the burden shifting requirements set forth in Ireland which have proven to be unworkable. It was hoped that the Ireland decision would produce clear guidelines that would help families and reduce litigation by making the outcome of these tough cases more predictable.

Unfortunately, in the experience of the members of the Family Law Section, it has had the opposite effect. The judges do not like it, the Family Relations Officers do not like it, lawyers and families do not like it and there is more and more litigation. This is not in the best interests of the children of this state.

This bill begins to address these problems and begins to create a better mechanism for courts to determine the best interests of the child in relocation cases. This bill clarifies the important, though somewhat technical problems of the burden of proof. However, there are two problems with the bill which can be easily resolved by some minor revisions.

The first issue is: Does the bill apply only to post-judgment relocation cases or also to relocations requested at the time of the divorce? The language in this bill is ambiguous. Our case law says that Ireland only applies to post-judgment matters. If the Legislature intends

this bill to apply to the initial determination of custody, it must be redrafted to say so, and be sure that the language of this new statute complements and does not supersede the factors the court must consider in the initial custody determination. If it is limited to post-judgment cases, the Family Law Section has proposed clarifying language.

The second issue is: Should the criteria to be considered by the court in relocation cases be limited to those affecting the non-relocating parent or should the court consider all the factors enumerated in Ireland? The proposed bill states: "In determining whether to grant such motion, the court shall consider the child's relationship with the non-relocating parent and the effect of the relocation on such relationship." The court's focus would appear to be only on the needs and relationship of the child with the non-relocating parent. The members of the Family Law Section strongly agree that a more balanced approach would be to cite the factors enumerated in the Ireland case. We have included proposed language to this effect for your review. (Addressed in substitute language)

**NATURE AND SOURCES OF OPPOSITION:**

Raphael L. Podolsky, Legal Assistance Resource Center of Connecticut, Inc.-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.

If a version of this bill is to be adopted, then we suggest that the trigger for application of the bill be tightened. If this bill moves forward, the phrase "significant impact" in line 5 should be changed to "significant adverse impact."

Alice Pritchard, Executive Director, Connecticut Women's Education and Legal Fund- The current system allows judges to decide each situation on a case-by-case basis taking into account that situation's specific facts. Also, the current system makes available alternatives such as mediation to assist parties to come to joint decisions on custody matters. Further, the family courts' Family Services Departments aid the courts in these decisions with their assessments and subsequent recommendations of what situation would be in the best interest of the child. Given these resources, we believe this bill is unnecessary and will in fact cause more problems in family law cases than it solves.

Women are much more likely to have primary custody of their children after divorce, are more financially vulnerable than their former husbands, and are most likely to move after divorce out of economic necessity. Most women's relocation decisions are often premised on career opportunities and financial advancement, which are essential ways in which women enter into the mainstream of society. Therefore, the chance to attain access to these opportunities through relocation is particularly vital to the self-sufficiency of their families.

In addition to moving for purposes of economic advancement, women also may chose to relocate to be closer to family or to escape a domestic violence situation. An emphasis on maintaining the home in which a parent has custody without allowance for relocation provides opportunities for continuing controlling behavior by abusive former spouses. Discouraging relocation decisions is also inappropriate because to do otherwise would impinge on a parent's fundamental right to travel. The new family unit after the divorce consists of the relocating parent and the children, and courts have found that what is beneficial to that unit as a whole is also in the best interests of the children involved. As a result, the post-divorce unit within which the child usually resides must be protected by the courts.

Pamela Heller, Policy Intern, CT Coalition Against Domestic Violence- Ireland established an extremely fair and judicious burden shifting scheme that required the relocating custodial parent first show the relocation is for a legitimate purpose, and the location is related to that

purpose. However, this proposed bill would unduly burden the relocating parent to prove that it is in the best interests of the child to move. This proposed change to child custody law would be a step backwards for Connecticut. Custodial parents will now be forced to choose between starting a new life and an expensive legal battle that may or may not result in permission to move. When non-custodial parents wish to move, nothing prevents them from doing so.

For many divorced parents, this new proposal will not be relevant. When one parent wants to move, the other agrees and they come up with new terms of visitation and creative ways of maintaining the parent-child relationship with the non-custodial parent. This is an era of cheap and quick air travel, as well as multi-media communications. However, for survivors of domestic violence and their children, this legal burden will be yet another barrier preventing a fresh start. Perpetrators of family violence crimes are more likely than other parents to fight the relocation of their spouses. Child custody litigation is widely recognized as a tool of further power and control to be utilized by abusers. With the entire legal burden shifted to the custodial parent, as it would be under this proposed legislation, a battering spouse need only refuse to agree to the relocation-in order to cause the victim tremendous expense and headache.

Survivors of domestic violence face many barriers in starting a new life. The abuse kept them isolated from social networks and often unemployed. They may be judged in their community for having been a victim of domestic violence. Relocation provides them with the opportunity to seek employment, and move to an area with family and friends. To start over without anyone knowing their history can revitalize survivors.

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| Sarah Kolb | 4/4/06 |
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# OLR Bill Analysis

**sHB 5536**

***AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN.***

**SUMMARY:**

This bill requires parents who relocate or plan to relocate with a child to prove that the relocation is in the child's best interest. Current law places the burden on the parent objecting to the move. It also codifies a nonexclusive list of factors family courts must consider when the non-relocating parent seeks to block the move due to its significant impact on an existing parenting plan (i. e. , a court-approved custody and visitation schedule). These considerations are already required by the common (judge-made) law.

EFFECTIVE DATE: October 1, 2006

**BURDEN OF PROOF IN PARENTAL RELOCATION DISPUTES**

By law, a relocating parent has the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose and (2) the new location bears a reasonable relationship to that purpose. If those two burdens are met, current law shifts the burden to the parent objecting to the move to prove that it would not be in the child's best interest. The bill places all three burdens of proof on the relocating parent.

**COURT CONSIDERATIONS**

Factors a court must consider in resolving relocation disputes include, at a minimum:

1. each parent's reasons for seeking or opposing the relocation;

2. the quality of the child's relationship with each parent;

3. the relocation's impact on the quality and quantity of the child's future contact with the nonrelocating parent;

4. the degree to which the relocation may enhance the relocating parent and child economically, emotionally, and educationally; and

5. the feasibility of making suitable visitation arrangements to preserve the relationship between the child and nonrelocating parent.

**BACKGROUND**

***Related Case***

In 1998, the Connecticut Supreme Court ruled that a divorced parent objecting to his ex-spouse's decision to relocate with their child had to prove that the move was not in the child's best interests. The Court also listed factors that judges should consider in resolving these disputes *(Ireland v. Ireland,* 246 Conn. 413).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)

AMY MILLER: Good afternoon. My name is Amy Miller, and I'm the Program and Policy Director at the Connecticut Women's Education and Legal Fund, CWELF.

CWELF is a statewide, nonprofit organization dedicated to empowering women, girls and their families to achieve equal opportunities in their professional and personal lives.

For over 30 years, CWELF has operated an information referral service, which provides legal information on family, education, employment, and civil rights law. The vast majority of our calls we receive are regarding divorce and custody.

Of the 2,000 calls we received on custody in the past two years, 88% of the calls were women and 20% of those custody calls also involved domestic violence.
In addition, many female callers reported that the man involved in the custody dispute had an attorney, while she was not able to afford to hire legal representation herself.





This places women at a distinct disadvantage. CWELF opposes House Bill 5536, AN ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD as currently written, and I urge you to do the same.

The current system allows judges to decide each situation on a case-by-case basis, taking into account that situation's specific facts.

Also the current system makes available alternatives, such as mediation, to assist parties to come to joint decisions on custody matters.

Further, the Family Courts/Family Services Department aid the courts in these decisions with their assessments and subsequent recommendations of what situation would be in the best interest of the child.

Given these resources, we believe this bill is unnecessary and will, in fact, cause more problems in family law cases than it solves.

Women are much more likely to have primary custody of their children after divorce, are more financially vulnerable than their former husbands, and are most likely to move out of divorce out of economic necessity.

Most women's relocation decisions are often premised on career opportunities and financial advancement, which are essential ways in which women enter into the mainstream of society and gain economic parity with men.

Many women have not previously had access to these types of professional opportunities, because of their status as stay-at-home moms or part-time workers.

Therefore, the chance to obtain access to these opportunities through relocation is particularly vital to the self-sufficiency to their families.

In addition to moving for purposes of economic advancement, women also may choose to relocate to be closer to family, or to escape a domestic violence situation.
An emphasis on maintaining a home in which a parent has custody without allowance for relocation provides opportunities for continuing controlling behavior for former abusive spouses.

Discouraging relocation decisions is also inappropriate, because to do otherwise, would impinge on a parent's fundamental right to travel.
Of particular concern to women is the ability of the courts to coerce a mother into staying in the state or within a certain geographical distance of the original residence by virtue of her attachment to the children.

The new family unit after the divorce consists of the relocating parent and the children, and the courts have found what is beneficial to

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that unit as a whole, is also in the best interest of the children involved.

As a result, the post-divorced unit within which the child usually resides must be protected by the courts. It is for these reasons that we strongly urge you to reject Proposed House Bill 5536.

Additionally, CWELF opposes Proposed House Bill 5539. This proposed statute would provide that the hearings of family relations matters shall be private upon motion of either party, or of counsel of any minor children, and that the records and the papers in such matters shall be confidential, unless otherwise required in the public interest as determined by the court.

This Proposed Bill is unnecessary, since these provisions do not change existing law. In the current system, judges may preclude from chambers or a courtroom the public and the press, if the judge hearing the case determines that the welfare of any child involved or the nature of the case so requires.

Further, the current system provides that all records and papers and any family relations matter may be ordered by the court to be kept confidential and not open to inspection, except upon order of the judge for the cause shown.

Both proposed changes do not alter any subsequent substantive manner the current system and, therefore, do not need to be adopted. Thank you for your time and your attention.

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I understand that a landlord owns the property, but a reasonable time period to reclaim your property should be granted, if necessary, to vacate the premises.

Your close consideration to this bill, that this bill be eliminated, is greatly appreciated. Thank you for your attention.

SEN. MCDONALD: And thank you for your testimony. Are there any questions from Members of the Committee? Thank you very much.

JINNY GERENA: Thanks.

SEN. MCDONALD: Sarah Oldham, followed by Arnold Rutkin.

SARAH OLDHAM: Good afternoon, Senator McDonald and Members of the Judiciary Committee. Thank you for the opportunity to appear before you to comment on House Bill 5536, AN ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD.

My name is Sarah Oldham, and I've been practicing matrimonial law for 18 years. I am a recent passer of the Law Section of the Connecticut Bar Association. I'm also a member of the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers.

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dab JUDICIARY March 3, 2006

I'm here today on behalf of the Connecticut Bar Association Family Law Section and its 700 members who support this bill.

The, I have submitted written testimony, and I think that rather than read all that, it is important to understand what the problem is that this bill is trying to fix.
The bill is trying to address a problem which arose as a result of the Ireland v. Ireland decision in 1998.

Prior to that time, the burden always rested on the parent proposing a modification of custody arrangements to prove that it was in the best interest of the child to have the modification.
In the Ireland decision, our Supreme Court decided that there would be a shifting burden of proof, that the relocating parent would only have to prove that they had a good reason.

I'm simplifying a little bit, but that they had a good reason to move, and that then if they can meet that burden, the burden would shift to the non-relocating parent to show that it's not in the children's best interest.

The problem is that it's the parent who wants to relocate who has chosen to relocation, has reasons for why they want to go there, and has, knows all the details about that place. But it's the burden of the non-relocating parent to show that that new situation is not good for the child.

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dab JUDICIARY March 3, 200.6

It's virtually impossible, and, in effect, creates a presumption that it's okay to move. The Ireland decision was based in large part on social research by Judith Wallerstein, which at the time, was questionable, and many family lawyers that have written about this issue.

It has since been shown that there really wasn't any research that that was based on. It was an opinion that got a lot of publicity and showed up in a lot of legal briefs, but it really wasn't based on any research.

The social research shows that it is in the child's best interest to have contact with both parents, if at all possible.

For this reason, we, the Bar Association supports this bill which only says that it's the burden of the parent who is relocating to prove that it's in the child's best interest.

Now, there, it is not an issue, which is a woman's issue, or a man's issue, and contrary to what some people have testified about, it's not an issue that is in the Bar Association's view should be limited by a domestic violence issue.

It's an issue of what's right for children, and the simple solution is to say that the burden of proof should be on the parent proposing to relocate, and the, may I have another moment? The bill proposes to do that.

There are two problems which I've highlighted in my brief testimony and that is that the as-

drafted, the proposed wording doesn't make it clear whether we're talking about post-judgment or at the time of the divorce. That needs to be clarified.
The Bar Association Family Law Section's view is that it should be post-judgment, with attached language that addresses that.

The second problem is that the proposed wording, for some reason, talks only about factors to be considered by the court in making these decisions, or to look at the child's relationship with the non-relocating parent.

The Ireland case set forth very comprehensive factors to be considered, which were based on a New York case, Cotropia, and we think those should be incorporated, all of those factors which present a much more balanced view.

And if those are incorporated in this Statute, it addresses many of the issues that the people who are concerned about a change in the law about the rights of women who need to move for personal security purposes, or have other needs for wanting to move.

We respectfully request that you support this view, respond favorably to it, with the amendments and the language that we're suggesting, or that we have further discussion about that. Thank you, and I'd be happy to answer any questions.

SEN. MCDONALD: Representative Farr.



REP. FARR: Yes, thank you for coming and testifying. A couple of issues that you don't talk about in your testimony.

One is the, what is meant by relocation? In the past, we've had bills that talk about relocation and define it on a mileage thing, or define it in an out-of-state thing.
You don't address that, other than the fact that you say, I believe you used the language, significant impact on an existing parenting plan, and that isn't defined what significant impact is.

Can you give us some insight as to what the thinking was on what type of relocation [inaudible] and what wouldn't?

SARAH OLDHAM: Yes, certainly. Last year when a similar bill was before this Committee, there was a proposal as to in-state or out-of-state, or as particular mileage.

And the problem with that is if you have someone down in the section of the state moving just to, from Greenwich to Westchester, it might only be two miles, but it's over state lines. It wouldn't really impact on the parenting time, or the parenting plan.

Up in Hartford, it could be moving up to Springfield, or to some place, you know, across the Massachusetts line. The mileage amount limitations don't seem to be appropriate, because it's really a question of time.

The issue is, does it impact the existing parenting plan? Does it make it impossible to keep doing what you're doing, or can you have a, you know, continue this plan? That really is where the focus should be.

Some suggested a significant adverse impact on the parenting plan, but I think that's probably implied.

And I think that when the judges look at these cases on a case-by-case basis, the do a very good job of assessing whether it's a, you know, the distance of the move, and whatever. I don't think we can have a formulaic answer to that.

REP. FARR: Well, I think the only question, the only concern I have in this area is that when we don't define what relocation is, we allow then any, either party, or the party that is adverse to the relocation, to always go to court to litigate the issue whether it's a relocation that would adversely affect the parenting plan.

If you have two parties living in the same community and they live two blocks away, and one party moves into the next community and its three miles away.
Is that adversely affecting the parenting plan? Certainly the party who doesn't want the relocation is, you know, now is invited to go litigate it.

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SARAH OLDHAM: Sure. And since I have to drive ten minutes more and that's a significant impact. And I think that the Bar, the Family Law Section has a lot of discussion and debate on this with all of the people who, and as you know, it's a very large and active section, with people practicing all over the state.

And the consensus, by a very strong consensus, was that a specific limitation would be inappropriate and the combination of the case-by-case basis.

And, in fact, our new rule, which requires a probable cause hearing before you can have a hearing on a modification of parenting, really are enough safeguards for the judges to be able to weed out those cases that are really, I think what you're talking about, which we're all concerned about are really more frivolous.

REP. FARR: Well, but, I mean, there's a broad spectrum in terms of those cases that are now going to be litigated under this in terms of relocation, because you haven't given any guidance, or any restriction at all.

SARAH OLDHAM: Well, our experience with the existing law is two things. One is that there has been more litigation since the Ireland case, rather than less.
Everybody thought that perhaps those guidelines would give us less litigation. In fact, there's been more.

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And the existing case law has a conflict in it, because of the Brotherton case where it was found that the burden of proof, even though the burden of proof couldn't be met by the relocating parent, then you still have to consider the best interest of the child.

So the issue of the burden of proof needs to be addressed and, you know, I don't think that our case law, or our statutes, have previously defined relocation.

I think, you know, we see no reason to think it would be more litigation than we have now. The idea is that this would limit some of those problems.

REP. FARR: Well, I mean, obviously it seems to me you're going to have more litigation, because by changing the burden of proof, you've now pushed it on the person who's relocating to show that it doesn't have the adverse impact.

So in the past, if you were relocating, you're relocating 40 miles away, the person, the noncustodial parent would be hard-pressed to show, to meet that burden.

Now you've just flipped it, and said that the person who's relocating, or 20 miles away, has got the burden to show that there's no adverse impact on the best interest of the child, and, therefore, it seems to me it's more likely to be litigated.

SARAH OLDHAMD: Well, actually, I would disagree with that. I think what happens is that, I

don't think that there's a burden of proof that there's no significant impact.
The burden of proof is to prove that the modification requested is in the best interest of the child, and that's for all modifications of custody.

If you don't like a particular parenting plan that the burden is always on the person who wants to make the modification, wants to make the change.

This is a quirk in our law, which isn't working, and it's because of the Ireland case, and we have a conflict now of cases saying we can kind of disregard [inaudible]

REP. FARR: [inaudible] when you say modification. When you relocate, you don't need a modification. If you relocated 20 miles away, you wouldn't have to have a modification.

And all I'm suggesting is that under Ireland, if you relocated 20 miles away, it's highly unlikely somebody's going to go and argue that, it's less likely anyway, that somebody's going to argue that relocation of 20 miles is, should be the grounds for a modification.

SARAH OLDHAM: Well, I would disagree, and the cases would disagree that people have argued about it and moved from Fairfield to Hartford.

REP. FARR: [inaudible] they argue about everything.



SARAH OLDHAM: I mean, you know, really if people are going to argue about a 20-mile move, it's not, the burden of proof isn't going to deter them one way or the other.

REP. FARR: Fortunately in Fairfield County they can afford to argue over the short terms.

SARAH OLDHAM: Well, we have cases up here too in court.

REP. FARR: Thank you.

SEN. MCDONALD: Let me, and I'm sorry, are there any other questions? Representative Fox.

REP. FOX: Thank you, Mr. Chairman. Attorney Oldham, thank you for coming here this afternoon. Could I ask you, in your experience and the experience of the family bar, how is the interpretation, or how have the lower courts been interpreting the Ireland case?

Have they been trying to get around it in certain ways, or is there some kind of inconsistency?

Because when I talk to people about it, they seem to feel, they still can't, Ireland is not necessarily going to be followed by the judge, because it just might be an unfairness involved, or something along those lines? Do you—

SARAH OLDHAM: Well, thank you for asking. It's absolutely true. The people, the judges don't like it when we talk to them unofficially.

The family relations officers, when they do their evaluations of, you know, should somebody relocate, they don't like it and they say, well, we can't apply Ireland, because this or that, or the other factor doesn't apply in this case.

Or if we have to apply Ireland, this is how we are going to get around it, because we have this argument. Families don't like it.

It's done, it has not done what I think it was, people had hoped it would do, which would be decrease litigation. It has increase litigation and made peOple less certain about what's going to happen in these cases.

REP. FOX: Okay, thank you.

SEN. MCDONALD: Let me just ask, Subsection 1 says that one of the criteria would be that the relocation is for a legitimate purpose. What would qualify, and what would not qualify as a legitimate purpose in your estimation?

SARAH OLDHAM: Well, under the case law, legitimate purpose has been interpreted to mean something like the relocating parent lives in Connecticut and applied to nursing schools, and couldn't get into a nursing school in Connecticut, you know, shows that they had applied here, but they did get into one in Indiana.

They had family living in Washington State. They have some connection with this other state, some reason they would need to go. It's

a fairly, it's been viewed as a fairly low hurdle, but just some reason.

It can't be something as frivolous as I like the weather in Florida better. And even a standard of living, or cost of living, when you have to have a lot of evidence on that, unless there's something more.

SEN. MCDONALD: Okay. But what if you had a, somebody to your point, got into a nursing school in Connecticut, lived in Greenwich, but got into nursing school at University of Connecticut, and they also got into a nursing school in New York City.

One is a public institution at a much more affordable rate, than a private institution in New York, and so it was a financial consideration for the advancement of a life goal. Is that a legitimate purpose, even though they had an alternative that was closer at to home?

SARAH OLDHAM: Well, I think that that's clearly a fact specific issue, which the court would have to decide. But under Ireland, and the ways things have been [Gap in testimony. Changing from Tape 2A to Tape 2B.]

--you have that burden. Under Ireland, they also have the burden to show the second one, the second criteria, the proposed location is reasonable in light of such purpose, which goes hand-in-hand.



The only difference is that the third one is, in Ireland, the Supreme Court said that then, if the mother, if the relocating parent to be politically correct, meets the first two standards, then the burden shifts to the non- relocating parent to show that the move is not in the best interest of the child.

All we're doing here with this proposed language is saying that that third piece, the burden remains on the parent who wants to relocate. Let me give you an example. In the Brotherton case, the mother wanted—

SEN. MCDONALD: Don't assume familiarity with the case.

SARAH OLDHAM: --the mother wanted, said she wanted to move, I believe, it was to Washington State, but court found that she had no good reason for doing that.
She did not have a legitimate purpose, and whatever her purpose was, it didn't have anything to do with that particular location.

She just felt like moving to Washington, and she had talked her mother into moving with her, but her mother lives here. If it's really a burden of proof, that should be the end of it.

So the father's lawyers said, okay, that should be the end of the analysis. And the judge said, you know what, I can't do that. I still have to look at the best interest of the child, so I'm going to hear all the evidence.

two major concerns, and that is that right now,

And after hearing all the evidence, the judge found out that the father was also willing to move to Washington, among other things, if the mother was allowed to move.

But the father would stay in his town, but he had bought a house, but he didn't have any idea what the name of the school was, or who would take care of the kids. He worked long hours. He didn't have any plan for how to take care of these children if they stayed in Connecticut.

And the judge said, the trial court said, you know, notwithstanding Ireland and this elaborate burden shifting scheme, I have to look at the best interest of the children, and I find that it's in the best interest to be with the mother in Washington State, because she's been the one taking care of these kids all along, and she's going to Washington State.

And that was upheld by the Appellate Court, and it stands today in direct contrast to the Ireland case. So we have this conflict. And what do you do when you have those circumstances? I mean, you can't just say, okay, that's the end of the case.

SEN. MCDONALD: You come to the Legislature and ask us [inaudible).

SARAH OLDHAM: That's right. That's I think why we're here.

SEN. MCDONALD: Thank you very much.

SARAH OLDHAM: Thank you.

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SEN. MCDONALD: Next is Arnold Rutkin, followed by Edith McClure.

ARNOLD RUTKIN: Good afternoon, Senator McDonald, Members of the Judiciary Committee. I'm supposed to be talking about, or want to talk about House Bill 5538, but I also would like to say a few things about House Bill 5536, Representative Farr.

As you can see from me, I've been around for awhile, and it's I have, and I won't go through my past, except to say that I've been a Special Master in almost every court in the area that I practice in, regional family trial and so on, have negotiated many prenups and litigated many.

And House Bill 5538 is a bad idea. When you passed 36, 46B, 36A through 36J, the present statute regarding prenuptial agreements. In 1995, that was a good idea, but it, not to bore you non-lawyers, that shifted the burden of proof and made really almost a presumption that the prenup was valid. Not a real presumption, but almost.

But it shifted to the person who wanted to attack the prenup, the burden, as opposed to the old law, it was the other way. There really is no reason to change the law. It's being enforced across the state.

Prenups pretty much are in force. When they're not in force, it's not because of the

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unconscionability factor alone. It could be one of four or five factors.

Let me give you two quick stories here as really good reasons for not changing the law. One quickly is two people, first marriage, they sign a prenuptial agreement in which the wife would get no alimony and no property, or almost no property from her multimillionaire husband.

She moves up from Washington, D.C., or wherever she had lived, had a really good job, gave it. They had three children who are now all under the age of ten.

Under, if this law was passed, this lady would get nothing, because the unconscionability factor is the only thing which gives the judge some ability to take a second look. That's all we're talking about. Let the judges do that.

Another example is a man with a very substantial estate who signed a prenup, second marriage for both, no children. He found out into the marriage that his wife had carried with her a lover from prior years.

Under, in my view, under the new law, this, I put it in quotes, fraudulent behavior on behalf of the wife, would not get, would get the benefit of this new statute, and she would get whatever she was supposed to get under the prenup.

And this man, in this scenario, I think you would say, should be able to get it not enforced to attack it.

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I'd like to, if I have permission of you, Senator, just to say a few things about relocation, a subject about which I am somewhat passionate.

You know, if you ask children whether they want their parents to live 600 miles or 3,000 miles apart, they will tell you that they do not want that to be so. I was Editor-in-Chief of a national magazine many years ago, and we had a relocation issue.

And one of the articles was written by a child who was then in his majority, who wrote about the pains of relocation, and not having two parents around.

In the original family trial docket here in Middletown, they have a video, which frankly, provided to them, which had been put together by the State Bar of Texas.

I'm going to send you that video. I didn't think to bring it today, if it's okay. It will make you cry, because most of the cases, most of the vignettes in this video are about children whose lives had been ruined by the fact that their one parent was allowed to relocate.

Now I'm not saying that relocation shouldn't be possible in certain circumstances. It should be, especially where there's been violence, and most judges would view that as a slam dunk. But as the prior speaker said, no one likes the law the way it is under Ireland. No one.

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It was passed at a time with an expert who was part of an amicus brief and presentation whose alleged science has been discredited. And by the way, Representative Farr, the case in California in which she became famous and testified, the Burgess case was about 40 miles.

So the, you heard the presentation by Women's • Education and Legal Fund, CWELF. I was listening carefully. There wasn't a single word said about children in that presentation. It was all about a female parent, a woman.

Well, you know, in our society, our children are supposed to have two parents and, unless there's a really good reason, you should make sure that they have two parents.
I could see an exclusion for violence to Women's Education and Legal Fund's, CWELF, concerns, pardon the pun.

But, you know, children do have rights, too. And Representative Farr, I have this problem with the mileage thing, which I agree with you, we should be able to do something about that.

But don't we bang into the Uniform Child- Custody Jurisdiction and Enforcement Act, UCCJEA, when you allow almost by presumption people to move over the state line?

If we didn't have interstate issues like in the Uniform Child-Custody Jurisdiction and Enforcement Act, UCCJEA, then I would very much

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be in favor of a presumption of, you know, 25 miles you ought to be able to do it.

Anyway I am, the idea, one of the last things the Women's Education and Legal Fund, CWELF, speaker said was, and I'll try to quote as well as I can.

In the Ireland case, they talk about the new family unit was, what was important for children. That has been discredited and is a little insulting. Thank you. Do you have any questions?

SEN. MCDONALD: Thank you.

ARNOLD RUTKIN: I'd be happy to respond.

SEN. MCDONALD: Representative Farr.

REP. FARR: Yes, two things. One, on the question of what relocation is, I don't have an answer.
I'm just raising the questions. I mean, I'm trying to look at something that minimizes some of the litigation that we get into and I don't really have an answer to those questions.

As far as what is the impact on children. It's clear. I mean, from a child's point of view, living in a different house is a disaster, and divorces are a disaster.

I mean, all the studies indicate, you know, they're always a disaster, and I, you know, we're not going to be able to fix that. We just come up with the best patch we can on a bad situation.

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But, you know, but, I mean, there is no reason to have one, because there is no children involved, and just because he had assets coming in, 20 years from the date of the marriage is no reason for him to say, well, now if we get divorced, 20 years from now you get $50,000. That was, it was really preposterous.

So I'm very much opposed to this type of situation, where you've got to even strength in prenuptial agreements when most cases, they're not appropriate.

ARNOLD RUTKIN: Glad to hear it. Can I make a comment to something that you said now?

SEN. MCDONALD: Sure.

ARNOLD RUTKIN: I'll be very brief. You know, the truth is, at least down in our area, that there are very few relocation cases based on less than 50 miles. That's not something that happens. That can be easily negotiated.

And lastly, when a child is torn away from their parent in a relocation situation, a long mileage one, you know, it robs that person by being put to bed by that parent, man or woman. It's different than a regular divorce situation when they're at different homes.

**Written Testimony**

Alice Pritchard, pp. 872-873

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***Judiciary Committee***
***HB 5536 An Act Concerning the Burden of Proof in Custody Proceedings Regarding the Relocation of a Parent with a Minor Child and 5539 An Act Concerning Private Hearings and Confidential Records in Family Relations Matters***
***Testimony by Alice Pritchard, Executive Director***
***Connecticut Women's Education and Legal Fund***
***March 3, 2006***

Good afternoon. My name is Alice Pritchard and I am the Executive Director of the Connecticut Women's Education and Legal Fund. CWEALF is a statewide non-profit organization dedicated to empowering women, young girls, and their families to achieve equal opportunities in their professional and personal lives. For over 30 years CWEALF has operated an Information & Referral (I&R) Service which provides legal information on family, employment, education and civil rights law. The vast majority of the calls we receive are regarding divorce and custody.

Of the two thousand calls we received on custody issues in past two years, eighty-eight percent (88%) of the callers were women and twenty percent (20%) of those custody calls also involved domestic violence. In addition, many female callers reported that the man involved in the custody dispute had an attorney, while she was not able to afford to hire legal representation herself. This places women at a distinct disadvantage.

CWEALF opposes HB 5536 *An Act Concerning the Burden of Proof in Custody Proceedings Regarding the Relocation of a Parent with a Minor Child* as currently written and urge you to do the same. The current system allows judges to decide each situation on a case-by-case basis taking into account that situation's specific facts. Also, the current system makes available alternatives such as mediation to assist parties to come to joint decisions on custody matters. Further, the family courts' Family Services Departments aid the courts in these decisions with their assessments and subsequent recommendations of what situation would be in the best interest of the child. Given these resources, **we believe this bill is unnecessary and will in fact cause more problems in family law cases than it solves.**

Women are much more likely to have primary custody of their children after divorce, are more financially vulnerable than their former husbands, and are most likely to move after divorce out of economic necessity. Most women's relocation decisions are often premised on career opportunities and financial advancement, which are essential ways in which women enter into the mainstream of society and gain economic parity with men. Many women have not previously had access to these types of professional opportunities because of their status as stay-at-home moms and/or part-time workers. Therefore, the chance to attain access to these opportunities through relocation is particularly vital to the self-sufficiency of their families.

# Legal Assistance Resource Center ❖ of Connecticut, Inc. ❖

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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 l. 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.

Sarah S. Oldham, pp. 882-885

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Testimony of Sarah S. Oldham. Member Executive Committee

Family Law Section of the Connecticut Bar Association

House Bill 5536

**ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS**

**REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD**

Judiciary Committee

March 3,2006

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to appear before the committee to comment on House Bill No. 5536, An Act Concerning the Burden of Proof in Custody Proceedings Regarding the Relocation of a Parent with a Minor Child.

My name is Sarah Oldham. I have been practicing matrimonial law for 18 years. I am a recent past Chair of the Family Law Section of the Connecticut Bar Association and a fellow in both the American Academy of Matrimonial Lawyers and International Academy of Matrimonial Lawyers. I speak to you today on behalf of the CBA Family Law Section.

The Family Law Section supports the concept addressed in House Bill No. 5536 because it is intended to overrule the burden shifting requirements set forth in Ireland which have proven to be unworkable. The Ireland decision attempted "to provide guidance in this evolving area of the law". It was hoped that clear guidelines would help families and reduce litigation by making the outcome of these tough cases more predictable. Unfortunately, in the experience of the members of the Family Law Section, it has had the opposite effect. The judges do not like it, the Family Relations officers do not like it, lawyers and families do not like it and there is more and more litigation. This is not in the best interests of the children of this state.

House Bill 5536 begins to address these problems and begins to create a better

mechanism for courts to determine the best interests of the child in relocation cases. The bill clarifies the important, though somewhat technical problems of the burden of proof. However, there are two problems with the bill which can be easily resolved by some minor revisions. On behalf of the Family Law Section, I respectfully request that the Judiciary Committee revise House Bill No. 5536 before favorably reporting on it.

The first issue is: Does the bill apply only to post-judgment relocation cases or also to relocations requested at the time of the divorce? The language in House Bill 5536 is ambiguous. Our case law says that Ireland only applies to post-judgment matters. The reasoning in Ireland was based in large measure on the courts' belief that the initial custody determination had already been made and should not be undermined. In initial custody determinations, we have a new statute which details all the many factors the court must consider. If the Legislature intends this bill to apply to the initial determination of custody, it must be redrafted to say so, and be sure that the language of this new statute complements and does not supersede the factors the court must consider in the initial custody determination. If it is limited to post-judgment cases, the Family Law Section has proposed clarifying language.

The second issue is: Should the criteria to be considered by the court in relocation cases be limited to those affecting the non-relocating parent or should the court consider all the factors enumerated in Ireland? House Bill 5536 states: "In determining whether to grant such motion, the court shall consider the child's relationship with the non-relocating parent and the effect of the relocation on such relationship." The court's focus would appear to be only on the needs and relationship of the child with the non-relocating parent. The members of the Family Law Section strongly agree that a more balanced approach would be to cite the factors enumerated in the Ireland case as follows:

In determining whether to approve the relocation of the child, the cour:
shall consider, but shall not be limited to: each parent's reasons for seeking
or opposing the move, the quality of the relationships between the child and
each parent, the impact of the move on the quantity and quality of the child's
future contact with the non-relocating parent, the degree to which the
relocating parent's and child's life may be enhanced economically,
emotionally and educationally by the move, and the feasibility of preserving
the relationship between the non-relocating parent and child through
suitable visitation arrangements.

We have included this language in the attached, proposed substitute bill for yo& review.

The CBA Family Law Section applauds the proponent's effort to improve this area of the law for Connecticut families. We look forward to working together on proposed substitute language. On behalf of the Family Law Section, we respectfully request that the Judiciary Committee amend and favorably report House Bill 5536.

I would be happy to answer any questions you may have.

Proposed Substitute Language re: House Bill 5536

Section 1. (NEW) (Effective October 1, 2006) In any proceeding before the Superior Cow arising after the entry of a judgment awarding custody of a minor child, involving the relocation of either parent with the child, where such relocation would have a significant impact on an existing parenting plan, the relocating parent shall bear the burden of proving, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, (2) the proposed location is reasonable in light of such purpose, and (3) the relocation is in the best interests of the child. In determining whether to approve the relocation of the child, the court shall consider, but shall not be limited to: each parent's reasons for seeking or opposing the move, the quality of the relationships between the child and each parent, the impact of the move on the quantity and quality of the child's future contact with the non-relocating parent, the degree to which the relocating parent's and child's life may be enhanced economically, emotionally and educationally by the move, and the feasibility of preserving the relationship between the non-relocating parent and child through suitable visitation arrangements.

Pamela Heller, pp. 886-888

**CCADV**

Connecticut Coalition Against Domestic Violence

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**To: Members of the Judiciary Committee**

**From: Pamela Heller, Policy Intern, CCADV**

**Date: March 3,2006**

**Re: Raised Bill No. 5536** - **AN ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD.**

Good afternoon, Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee. My name is Pamela Heller and I am a student at UConn School of Law and UConn School of Social Work, interning at Connecticut Coalition Against Domestic Violence. I am writing today in opposition to Raised Bill No. 5536: AN ACT CONCERNING THE BURDEN OF PROOF IN CUSTODY PROCEEDINGS REGARDING THE RELOCATION OF A PARENT WITH A MINOR CHILD.

This bill would overrule the decision of the Connecticut Supreme Court in Ireland v. Ireland (246 Conn. 4 13,7 17 A.2d 676, Conn. 1998). In that decision, the Court established an extremely fair and judicious burden shifting scheme that required that the relocating custodial parent first show that the relocation is for a legitimate purpose, and that the location is related to that purpose. Once this prima facie case is made, the non-custodial parent must then prove that it is not in the best interests of the child to relocate with the custodial parent. However, the proposed bill HR 5536 would unduly burden the relocating parent to prove that it is in the best interests of the child to move.

As Justice Katz pointed out in her 1998 decision, the trend across the country has been toward allowing greater leeway for the custodial parent to move. This proposed change to child custody law would be a step backwards for Connecticut. Custodial parents will now be forced to choose between starting a new life and an expensive legal battle that may or may not result in permission to move. When non-custodial

parents wish to move, nothing prevents them from doing so.
For many divorced parents, this new proposal will not be relevant. When one parent wants to move, the other agrees and they come up with new terms of visitation and creative ways of maintaining the parent-child relationship with the non-custodial parent. This is an era of cheap and quick air travel, as well as multi-media communications. However, for survivors of domestic violence and their children, this legal burden will be yet another barrier preventing a fresh start. Perpetrators of family violence crimes are more likely than other parents to fight the relocatioil of their spouses. Child custody litigation is widely recognized as a tool of fuitlier power and coiitrol to be utilized by abusers. With the entire legal burden shifted to the custodial parent, as it would be under this proposed legislation, a battering spouse need only refuse to agree to the relocation-in order to cause the victim tremendous expense and headache. This legislation is a boon to batterers who use child custody litigation to break down the resolve of victims who have chosen to leave the abuse.
Survivors of domestic violence face many barriers in starting a new life. The abuse kept them isolated from social networks and often unemployed. They may be judged in their community for having been a victim of domestic violence. The opportunity to seek employment, move to an area with family and friends, and to start over without anyone knowing their history can revitalize survivors. Being forced to choose an expensive battle or a new life, as this legislation would essentially ask, is not fair to victims of domestic violence.
As Justice Katz points out in her opinion, if custodial parents are foregoing opportunities to better their lives, it will not be good for their mental state. Parents may get depressed and discouraged and these states do not make for good parenting practices. This concern is especially significant with victims of domestic violence who will be recovering from the trauma of the violence and abuse and therefore more vulnerable to mental health issues like depression.
Please do not unduly burden victims of domestic violence. Thank you.

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SEN. LOONEY:

Thank you, Mr. President. The next item also on Calendar Page 9, Calendar 518, House Bill 5776, would move for suspension to take up that item.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

And, Mr. President, would move to place Calendar 518, House Bill 5776, on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.



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THE CHAIR:

All items on the Consent Calendar are passed

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On Page 4, Calendar Number 311, Substitute for House Bill Number 5536, AN ACT CONCERNING THE RELOCATION OF PARENTS HAVING CUSTODY OF MINOR CHILDREN, Favorable Report by the Committee on the Judiciary.

DEPUTY SPEAKER GODFREY:

The distinguished Vice Chairman of the Judiciary Committee, Representative Spallone. Before we begin.

(GAVEL)

Much better, thank you very much. Representative Spallone, you have the floor, Sir.

REP. SPALLONE: (36th)

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

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will you explain the Bill, please, Sir.

REP. SPALLONE: (36th)

Yes, thank you, Mr. Speaker. Mr. Speaker, this Bill addresses a situation which can occur in our family courts in a post-judgment situation, that is, after the parents have already been divorced and custody has been determined, usually a joint legal custody of the child with primary physical custody with one of the parents. And as frequently happens in our mobile society, one of the parents may relocate.

And if that is the parent who has physical custody of the child, the parent who does not have primary physical custody may be interested in this move because it may affect their parenting plan, that is, how often the child is visiting with each parent.

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This situation had been previously addressed by the Supreme Court of Connecticut in the case of Ireland v. Ireland at 246 Connecticut 413 1998.

And in the Ireland case, the court had said there were two parts to when there's a motion concerning relocation.

On the one hand, the party who is moving would have to show that they're move was for a legitimate purpose and that the new location was for a reasonable relationship to the purpose for the move.

Then the burden would shift to the parent who is not relocating to show if they desired that the relocation was not in the best interest of the minor child.

The family bar has been concerned about some confusion that this particular scheme causes, and has required or advocated for a change in the law to statutorily define these situations.

So the Bill before us provides that in post-judgment family situations, when there is a proposed relocation, there would be a burden of proof by preponderance of the evidence on the party that is relocating that the relocation is for a legitimate

purpose, that the proposed location is reasonable in light of the purpose, and that the relocation is in the best interest of the child.

The Bill in question also codifies several factors that a court will consider to determine whether the best interests of the child are met, and those are in subsection B of the Bill.

Mr. Speaker, this Bill fulfills a legitimate purpose of clarifying the situation in the statutes, and of addressing a case which has caused some concern in the practice of family law. Therefore, I would urge the House to support the Bill this evening. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Klarides of the 114th.

REP. KLARIDES: (114th)

Thank you, Mr. Speaker. I also rise to support the Bill, and I associate my remarks with Representative Spallone. This has been a negotiated Bill that the family law section of the bar association has been working very diligently towards.

And it is clarification of a law, that as most lawyers know that practice family law, it's a lot of confusion. Thank you.

DEPUTY SPEAKER GODFREY:

I thank the gentlewoman. Representative Farr.

REP. FARR: (19th)

Thank you, Mr. Speaker. Mr. Speaker, this is a complex issue. We've had it before the Judiciary on several occasions, and one of the problems that we've tried to deal with in the past is what sort of relocation would trigger the reexamination.

In past versions of this Bill, we've tried to talk about relocating out of state. We've tried to talk about relocating outside of a certain distance.

This version recognizes that there are flaws with both of those approaches, and instead says the trigger will be where the relocation would have a significant impact on the existing parenting plan.

So that relocation could be a relatively close distance or it could be a significant distance before it has that impact on the parenting plan. I guess I have, for legislative intent, one question, through you to Representative Spallone.

DEPUTY SPEAKER GODFREY:

Please frame your question, Sir.

REP. FARR: (19th)

And, Representative Spallone, who would have the burden of proving that it has a significant impact on the parenting plan? Do you have an opinion as to which of the parties would have that burden?

DEPUTY SPEAKER GODFREY:

Representative Spallone, you look pensive.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Farr, the custodial parent would be making the movement to change the parenting plan to relocate. However, it's possible that the custodial parent could have their own opinion that it does not affect the existing parenting plan.

In which case I believe the motion practice would probably result in the other side asking the court to make that determination so that the matter could be heard. Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

So through you, Mr. Speaker, to Representative Spallone, you believe that it would probably be up to the party that was opposing the relocation to show that it was significantly impacting the parenting plan? Through you, Mr. Speaker, to Representative Spallone.

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Farr, if there was not agreement that it significantly affects the parenting plan, that is a possibility.

DEPUTY SPEAKER GODFREY:

Representative Farr.

REP. FARR: (19th)

Thank you, Mr. Speaker. I would concur, I would think in most cases there would be agreement, but in those cases where there is a disagreement, it would seem to me that the party who alleges that there is a significant impact would have the burden of showing that.

And I would think that's the way the court would treat it. I think that this Bill attempts to deal

with a very complex and difficult issue. I think it's reasonable in its format we're come forward with this year, and I would urge adoption of the Bill. Thank you.

DEPUTY SPEAKER GODFREY:

Thank you, Sir. Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. Mr. Speaker, as a parent, as a person who as gone through a divorce and someone who went through custody battles, this is a very, very hard situation to try and make a clear definition of who is going to have the option of moving the child, taking the child with them.

I know we go through the courts and we talk about who's going to be the custodial parent, and I've talked to a lot of fathers who are feeling in the circumstances of the court that they are not given equal opportunity to be the rearing or the custodial parent. And so I'd like to propose a couple of questions to the proponent of the Bill.

DEPUTY SPEAKER GODFREY:

Please frame your questions, Madam.
Representative Spallone, prepare yourself.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. Representative Spallone, when determining who is going to be the custodial parent and if before the custodial parent is declared, do you feel that they have to declare that they are planning to move out of the state, is that going to be part of the process?

DEPUTY SPEAKER GODFREY:

Representative Spallone.

REP. SPALLONE: (36th)

Through you, Mr. Speaker, to Representative Walker. The Bill before us contemplates a move that would occur in a post judgment proceeding.

So the Bill would take effect in a situation where the parties have already submitted their case to judgment and they have a divorce, an agreement governing their dissolution of marriage and a parenting plan in place.

Parenting plans are now not only good practice, but required by our statutes after a bill that we passed last year.

So this Bill contemplates what would happen when a decision to move arises after the parties have

already been through either trail or a significant negotiated settlement. Through you.

DEPUTY SPEAKER GODFREY:

Representative Walker.

REP. WALKER: (93rd)

Thank you, Mr. Speaker. I want to thank the gentleman for his answers. I guess in some respects this is very strange, but I think I'm almost agreeing with Representative Farr.

This is a very hard, hard thing to make a determination on, what is going to be appropriate for the child.

I think in the description or the summary of the Bill they say that it's about what's going to be best for the child, but in many times it's not really the child's issues that are at stake.

It's really the custodial parent and whether they want to move out or whether they want to separately from the person they are divorcing, and the child ends up being sort of the pawn.

So I'm very concerned about how we make these determinations on who's going to have the right to take the child, and what is the best interest.

This is such a very, very sensitive situation. When I moved away from my first marriage and took my child, that was something that really was very difficult, and quite honestly, it was really for the benefit of me.

And I guess my ability to function and survive was probably going to impact the quality of life for my child, but at the same time, I also wonder in that separation was I separating my child from her father to a degree where he was not going to have as much input.

So it's very hard, and I'm still questioning whether this is a good idea. I understand the intent of the Bill, but I also look at what's going to happen to the father or to the other parent.

Because we always seem to make the mother the custodial parent, and I think many fathers have that same right, so I'm going to think about this as we go further in this discussion. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, Madam. Are you ready for the question? If so, staff and guests please come to the

Well of the House. Members take their seats. The machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is taking a Roll Call Vote. Members to the Chamber please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted, and is your vote properly recorded? If all the Members have voted, the machine will be locked. Clerk will take a tally. And, Mr. Clerk, if you would announce the tally.

CLERK:

House Bill Number 5536.

Total Number Voting 140

Necessary for Passage 71

Those voting Yea 132

Those voting Nay 8

Those absent and not voting 11

DEPUTY SPEAKER GODFREY:

The Bill is passed. Representative Donovan.