

PROBATE COURT

Authority of Probate Court in Children's Matters

The Probate Court is authorized to:

- grant immediate temporary custody of a child to a third party *ex parte* (without a hearing);
- grant temporary custody of a child to a third party after a hearing;
- remove a parent or parents as legal guardian(s);
- remove legal guardianship from any other guardian of the minor;
- reinstate the legal guardianship of a parent or former legal guardian;
- grant permanent guardianship;
- commit a mentally ill child to a mental health facility;
- review DCF voluntary services cases;
- make findings related to Special Immigrant Juvenile Status;
- terminate parental rights; and
- issue adoption decrees for children for whom parental rights have been terminated.

Legal references: Conn. Gen. Stat. §§ 45a-603 to 45a-625, 45a-715 to 45a-719, 45a-724 to 45a-757, 17a-11, 17a-76.

Cross Reference: Practice Guide: "DCF Probate Court."

Authority to Grant Visitation Rights

The Probate Court may grant the right of visitation to any:

- parent or guardian if temporary custody of the minor has been granted to another person pending the hearing on removal or termination of parental rights;
- person who has been removed as guardian of the minor; or
- relative of the minor.

A visitation order will be entered according to the best judgment of the Court upon the facts of the case and subject to such conditions and limitations as it deems equitable. In making, modifying or terminating a visitation order, the Court shall be guided by the best interest of the child, giving consideration to the wishes of the child if he or she is of sufficient age and capable of forming an intelligent opinion.

The Probate Court may request that DCF:

- provide recommendations regarding visitation;
- conduct in-state criminal records and protective services checks on persons proposed to supervise visitation, provided that said persons have signed appropriate releases of information; and
- provide a written or oral report to the Court.

Legal reference: Conn. Gen. Stat. §45a-612.

Enforcement

The Probate Court may enforce any custody decree it has ordered by issuing a warrant directed to a proper officer commanding the officer to take possession of the child and to deliver the child into the care and custody of the person or organization entitled to custody.

Legal reference: Conn. Gen. Stat. §45a-618.

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Sharing of Information

DCF shall disclose records and information, without the consent of the person who is the subject of the record, to a judge or employee of a Probate Court who requires access to such records in order to perform official duties.

Information shall be shared as soon as possible, when requested by the Probate Court, to allow Probate Court staff to make informed decisions pending the submission of DCF's final report.

Legal reference: Conn. Gen. Stat. §17a-28(g)(15).

DCF Role

For applications involving visitation, custody, guardianship and parental rights, DCF shall, upon request from the Probate Court:

- conduct a thorough assessment of the situation;
- make appropriate recommendations for the child in a written Probate Court Study (DCF-Probate 002 and DCF-Probate 003);
- attend all scheduled court hearings and family meetings; and
- provide updated studies to the Probate Court throughout the proceedings if so ordered.

For commitments of mentally ill children who are in the care and custody of DCF, either through a court order or voluntarily, DCF shall:

- file the appropriate application in the Probate Court having jurisdiction over the matter;
- request that an attorney for the child be appointed for the Probate Court proceeding; and
- provide the Probate Court with such information as the Court needs to make a determination regarding the application.

For DCF Voluntary Services cases that have been open for 120 days, DCF shall petition the Probate Court for a determination as to whether continuation in the Voluntary Services Program is in the child's best interest and, if so, whether the case plan is appropriate.

Access to Services

DCF may refer any party to the action to community service providers and programs if appropriate during the course of the assessment.

DCF Assessment and Report

The Social Worker shall conduct a thorough assessment of the situation and provide as much information as possible, including a recommendation based on the child's best interest, to the Probate Court, tailored to the proposed custody, guardianship or visitation petition that is pending.

The Social Worker shall submit the written report to the Probate Court only. The Probate Court will distribute the report to the appropriate parties. (DCF-Probate 002 and DCF-Probate 003, as applicable).

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Attendance at Probate Court Hearing

The Court will notify all parties of the date and time for the Probate Court hearing.

The assigned Social Worker or other DCF representative shall be present. Since additional important information may be presented at the Court hearing by the parties, it is important for the assigned Social Worker to be present. If that Social Worker is unavailable, another representative of DCF familiar with the case shall be present.

In some cases, the Court may continue the hearing to a later date and order a written follow-up report from DCF. In these cases, an updated Probate Court Study shall be submitted within the time frame ordered by the Court.

Simultaneous Court Actions

Whenever DCF receives an order from a Probate Court to conduct an assessment, the assigned Social Worker shall conduct a diligent search to determine whether another court case involving the custody of the child is currently pending in another court.

The Social Worker shall inform the Probate Court if a Superior or Probate Court case is pending.

If there is a pending case in another court, the Social Worker may either:

- request that the Probate Court dismiss its case; or
- proceed in accordance with Rule 42 of the Probate Court Rules, "Overlapping Jurisdiction in Superior and Probate Courts" ctprobate.gov. (Rule 42 codifies the DCF-Probate Court Interagency Agreement.)

If DCF files a Juvenile Court case after the Probate Court matter was filed, DCF shall determine whether the child's needs may be met through the Probate Court proceeding, considering:

- whether the child is already living with a suitable relative;
- whether that relative requires services from DCF; and
- any other factors that may affect the child's safety and permanency.

If DCF determines that the child's needs can be met through the pending Probate Court proceeding, it shall withdraw the Juvenile Court action.

If the Probate Court appoints DCF as temporary custodian or guardian of a minor, DCF shall immediately file a petition in the Juvenile Court and notify the Probate Court of the filing.

DCF Case Closure

DCF, at its discretion, may close its case after the final dispositional hearing regarding the application or petition pending before the Probate Court.

If the final disposition of a case is delayed beyond the original anticipated final hearing date, DCF shall notify the court that the DCF case will be closed. However, an updated status report will be completed upon request of the court.

DCF shall not keep a case open through the probate unit to monitor the case. If it is believed that DCF monitoring or additional services are required to ensure the wellbeing of the child, a CPS referral shall be made.

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Child Protective Concerns in Probate Court Cases

If, during the course of an assessment, suspected child abuse or neglect is identified concerning the proposed temporary custodian or guardian, the DCF Social Worker shall:

- make a referral to the Child Abuse and Neglect Careline for investigation of the suspected abuse or neglect;
- inform the Probate Court of the allegations and that the Probate investigation has been temporarily suspended pending the outcome of the CPS report;
- notify the Probate Court if circumstances necessitate a 96-hour hold;
- inform the Probate Court that DCF will provide an update regarding the status and outcome of the CPS report in writing;
- provide the Probate Court with an update regarding the status and outcome of the CPS report in writing; and
- request a legal consult from the Area Office attorney to address whether legal sufficiency exists to file an abuse or neglect petition in the Superior Court for Juvenile Matters.

If a neglect or abuse petition is filed in the Superior Court for Juvenile Matters, the Social Worker shall:

- indicate that there is a pending Probate Court matter on the Custody Affidavit (JD-JM-30) filed in the Superior Court;
- request, in writing (DCF-Probate 001), that the Probate Court either defer any action while the Juvenile Court petition is pending or dismiss the Probate Court action;
- consult with DCF legal staff or an AAG regarding any other legal remedies that may be available; and
- if a Safety Plan has been entered into regarding a child for whom a Probate Court has a pending matter, and if requested by the court, notify the Probate Court whether DCF intends to file a petition in Juvenile Court.

Notification of Investigation Finding Regarding a Probate Court Appointed Guardian

If, upon completion of an investigation into allegations of child abuse or neglect, DCF substantiates an allegation of abuse or neglect against an individual who has been appointed guardian of a child by the Probate Court, DCF shall notify the Probate Court of such substantiation.

The Investigations Social Worker shall forward a copy of the Investigation Protocol to the Office of Probate Court Administration for distribution to the appropriate Probate Court.

This notification shall be made in any case of substantiated child abuse or neglect against a legal guardian, regardless of whether or not the allegations:

- involve the guardian's own children or those for whom he or she is guardian; or
- occur when the DCF Probate case is open or closed.

Cross reference: DCF Policy 22-2-2, "Child Protective Investigations".