

# PROBATE COURT

## Guardianship

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### Policy

At the request of the Probate Court, the Department of Children and Families shall conduct an assessment and make recommendations regarding a removal or reinstatement of guardianship petition filed by a third party.

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### Eligible Petitioners for Removal of Guardian

The following persons may petition for the removal of the parents as guardians of a child:

- any adult relative of the child, including those by blood or marriage;
  - a person with actual physical custody of the child at the time the petition is filed; or
  - the attorney for the child.
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### Grounds for Removal of Guardian

In order to remove a parent or current guardian as legal guardian, the Court must find, by clear and convincing evidence, at least one of the following grounds:

- the parent consents to his or her removal as guardian;
- the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the child's welfare;
- the child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well-being, as a result of acts of parental commission or omission, whether the acts are the result of the physical or mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interests of the child be permitted to exercise, parental rights and duties at the time;
- the child has had physical injury or injuries inflicted upon him or her by a person responsible for the child's health, welfare or care, or by a person given access to the child by such responsible person other than by accidental means, or has injuries at variance with the history given of them, or is in a condition which is the result of maltreatment, such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment; or
- the child has been found to be neglected or uncared for, as defined in Conn. Gen. Stat. §46b-120.

**Note:** If there are two parents, both parents must be removed as guardians before a third party may be appointed as guardian. If just one parent is removed as guardian, the remaining parent becomes the sole legal guardian. However, pursuant to Conn. Gen. Stat. §45a-616, a co-guardian of the child may be appointed by the Probate Court.

**Legal reference:** Conn. Gen. Stat. §45a-606.

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### Temporary Guardianship

Any parent or guardian of the person of a child may apply to the Probate Court for the appointment of a temporary guardian if the petitioner (parent or guardian) is unable to care for the child for any reason, including but not limited to illness or absence from the jurisdiction.

Temporary guardianship is not appropriate if DCF concludes that it would be unsafe for the child to return to parental care.

**Note:** DCF shall not recommend that a parent file a petition for temporary guardianship if there are grounds to file a petition for neglect or abuse in Juvenile Court.

**Legal reference:** Conn. Gen. Stat. §45a-622.

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### Duration of Temporary Guardianship

The appointment of a temporary guardian by the Probate Court is for a maximum period of one year and automatically expires at the end of that year.

**Note:** The appointing parent or guardian may terminate the appointment of the temporary guardian at any time by notifying the Probate Court and temporary guardian.

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### Rights and Responsibilities of Temporary Guardian

A person awarded temporary guardianship by the court has the following rights and duties:

- the obligation of care and control of the child;
- the authority to make decisions regarding the child's education and welfare, including but not limited to consent determinations regarding marriage; enlistment in the armed forces; and major medical, psychiatric or surgical treatment; and
- upon the death of the child, the authority to make decisions concerning funeral arrangements and the disposition of the body of the child.

**Note:** A temporary guardian is not liable as a guardian for property damage or injury willfully or maliciously caused by the child.

**Legal reference:** Conn. Gen. Sta. §45a-622.

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### Considerations of the Probate Court when Appointing a Guardian

Before appointing a guardian for the child, the Probate Court shall consider:

- the ability of the proposed guardian to meet, on a continuing day-to-day basis, the physical, emotional, moral and educational needs of the child;
- the child's wishes, if he or she is at least 12 years old, or of sufficient maturity and capable of forming an intelligent preference; and
- the existence or non-existence of an established relationship between the child and the proposed guardian.

In preparing its report (DCF-Probate-002) for the court, DCF shall focus on these factors in evaluating the proposed guardian.

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### Permanent Guardianship

In appointing a guardian of the person of a child pursuant to Conn. Gen. Stat. §45a-616, or at any time following such an appointment, the Probate Court may establish a permanent guardianship.

**Legal reference:** Conn. Gen. Stat. §45a-616a.

**Permanent guardianship** means guardianship of a child that is intended to remain in effect until the child reaches the age of majority without the termination of parental rights, and includes:

- the obligation of care and control;
- the authority to make major decisions affecting the child's education and welfare, including but not limited to consent determinations for marriage; military enlistment; and major medical, psychiatric or surgical treatment; and
- upon the death of the child, the authority to make decisions concerning funeral arrangements and the disposition of the body of the child.

**Note:** Permanent guardianship is different from the traditional transfer of guardianship in that the parents may not be reinstated as guardians when a permanent guardianship has been established, unless the permanent guardian becomes unable or unwilling to continue to serve as guardian and the court determines it is in the child's best interests to reinstate the parent(s) as guardian(s).

### Mandatory Court Findings for Permanent Guardianship

The Court must make a finding that it is in the child's best interests for the permanent guardianship to be established and that the following have been found by clear and convincing evidence:

- one of the grounds for termination of parental rights, as set forth in Conn. Gen. Stat §§ 45a-717(g)(2)(A) to 45a-717(g)(2)(H) exists or the parents have voluntarily consented to the appointment of a permanent guardian;
- adoption of the child is not possible or appropriate;
- if the child is
  - at least 12 years of age, he or she consents to the proposed appointment of a permanent guardian; or
  - under the age of 12, the proposed permanent guardian is a relative or already serving as the permanent guardian of at least one of the child's siblings;
- the child has resided with the proposed permanent guardian for at least one year; and
- the proposed permanent guardian is suitable and worthy and committed to remaining the permanent guardian and assuming the rights and responsibilities for the child until the child reaches the age of majority.

### Successor Guardian for Permanent Guardian

If a permanent guardian appointed by the Probate Court becomes unable or unwilling to serve as a permanent guardian, the Probate Court may:

- appoint a successor guardian; or
- reinstate a parent of the child who was previously removed as guardian if the court finds that the factors that resulted in the removal of the parent as guardian have been resolved satisfactorily, and that it is in the best interests of the child to reinstate the parent as guardian.

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### Factors for Consideration for Permanent Guardianship

When appointing a permanent guardian for a child, the Probate Court shall take into consideration the following factors:

- the ability of the prospective permanent guardian to meet, on a continuing day-to-day basis, the physical, emotional, moral and educational needs of the child;
- the child's wishes, if he or she is over the age of 12, or is of sufficient maturity and capable of forming an intelligent preference;
- the existence or non-existence of an established relationship between the child and the proposed permanent guardian; and
- the best interests of the child.

There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a permanent guardian is in the best interests of the child.

In preparing its report (DCF-Probate-002) for the Court, DCF shall focus on these factors in evaluating the proposed permanent guardian.

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### Duration of Permanent Guardianship

An order transferring permanent guardianship from a child's parents to a third party remains in effect unless and until the child reaches the age of majority or until further order of the court.

**Note:** A child's parent may not petition for revocation of a permanent guardianship.

This is distinguishable from *temporary custody* that may be modified at any time at the request of the parties, including the child's parent and *temporary guardianship* which is for a one-year period and may be revoked at any time by the parent.

**See** Practice Guide: "Probate Court" for additional information regarding the difference between temporary custody and temporary guardianship.

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### Eligible Petitioner for Reinstatement of Parent as Guardian

A parent may petition the Probate Court which removed him or her as legal guardian for reinstatement of guardianship if the parent believes that the factors which led to the removal have been satisfactorily resolved and a permanent legal guardian has not been appointed.

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### Assessment and Report for Reinstatement of Parent as Guardian

The Probate Court may request an assessment (DCF-Probate-002) regarding the reinstatement of guardianship to determine:

- if the factors which resulted in the removal have, in fact, been resolved satisfactorily; and
- if it is in the child's best interests that the parent's legal guardianship be reinstated.

The assessment shall focus on the parent requesting reinstatement and include an assessment of how reinstatement will impact the child.

**Note:** If the reinstatement is not contested, there is no need for collateral contact information on the legal guardian.

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