

# PROBATE COURT

## Temporary Custody

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### Policy

When a third-party files a motion with the Probate Court requesting temporary custody, the Department of Children and Families shall conduct an assessment of the proposed temporary custodian, the parent or existing legal guardian and the child.

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### Temporary Custody in General

The Probate Court is authorized to grant temporary custody of a child when:

- an application has been made for removal of one or both of the parents as guardians or for the removal of any other guardian of the child; or
- an application has been made for termination of parental rights of any parent; or
- in any proceeding, the court has reasonable grounds to believe that a child has no guardian of his or her person;

AND

- the court has found, by a fair preponderance of the evidence, that:
  - the parent or guardian has performed acts of omission or commission as set forth in Conn. Gen. Stat. §45a-610; and
  - because of such acts, the child is suffering from serious physical illness or injury, or the immediate threat thereof, or is in immediate physical danger.

The fact that an order of ITC may have been issued *ex parte* shall be of no weight in a hearing for temporary custody. The burden of proof shall remain upon the applicant to establish the applicant's case.

There shall be a rebuttable presumption that awarding temporary custody to a relative is in the best interests of a child.

**Legal reference:** Conn. Gen. Stat. §45a-607.

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### Immediate Temporary Custody when Child is in Custody of Person other than Parent or Guardian

If the child is in the physical custody of someone other than a parent or legal guardian, the Court may issue an immediate temporary custody order (ITC) *ex parte* (without a hearing) if an application is made accompanied by an affidavit from the custodian stating the:

- circumstances under which custody was obtained;
- length of time the affiant has had custody; and
- specific facts which would justify the conclusion that determination cannot await a hearing.

The Court is required to find that:

- the child was not taken or kept from the parent, parents or guardian;

AND

- there is a substantial likelihood that the child will be removed from the jurisdiction prior to a hearing; or
  - returning the child to the parent, parents or guardian would place the child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger, prior to the hearing.
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### **Immediate Temporary Custody when Child is in Custody of Parent or Guardian**

If the child is in the physical custody of a parent or other legal guardian, the Court may issue an ITC order *ex parte* (without a hearing) in the case of a child who is hospitalized as a result of serious physical illness or serious physical injury, if an application is filed containing a certificate signed by two physicians licensed to practice medicine in Connecticut, stating that:

- the child is in need of immediate medical or surgical treatment, the delay of which would be life threatening;
- the parent, parents or guardian refuse or are unable to consent to such treatment; and
- determination of need for temporary custody cannot await notice of a hearing.

The Court is then required to find:

- the child has suffered from a serious physical illness or serious physical injury and is in need of immediate medical or surgical treatment;
- the parent or guardian refuses to consent to such treatment; and
- to delay such treatment would be life threatening.

**Note:** This is the only ground by which the Probate Court may order an ITC when the child is in the physical custody of the parent and the parent is unwilling to give physical custody to the petitioner. In all other cases requiring immediate action, DCF may invoke a 96-hour hold pursuant to Conn. Gen. Stat. §17a-101g.

### **Ex Parte Order and Preliminary Hearing**

The Probate Court may grant an ITC by issuing an *ex parte* (without a hearing) order.

In situations in which the Court orders an ITC, a preliminary hearing must be scheduled with five days of the date of the order to give the parents or legal guardian the opportunity to contest the order.

The five-day hearing may be postponed:

- upon the request of the respondent (parent or legal guardian); or
- if the Court has been unable to give notice to the respondent as required by statute.

Note: DCF may not request a continuance of the preliminary hearing.

### **DCF Involvement in Five-Day Hearing**

DCF may be requested to submit a written or oral report for the preliminary hearing.

**Note:** If an oral report is provided to the Court, a written report shall be submitted within five days of the hearing.

If a DCF Investigations Social Worker is involved in the case, he or she shall prepare the five-day ITC report, rather than a Probate Social Worker. The ISW shall confer with the DCF Probate Unit Supervisor to ensure that the report complies with the requirements of this policy.

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### DCF Involvement in Five-Day Hearing (Continued)

The five-day ITC assessment by the Social Worker shall focus on the facts which have been alleged in the petitioner's affidavit and shall confirm or rebut each allegation.

The report shall:

- discuss in detail whether to return the child to the parent, parents or guardian would place the child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger, prior to the hearing;
- recommend whether temporary custody should be vested in someone other than a parent or current legal guardian;
- make any other appropriate recommendations to the Court; and
- be documented in the LINK narrative.

See the Practice Guide: "Probate Court" for more detailed information regarding the DCF assessment and report.

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### Temporary Custody (without ITC)

A petitioner may file for temporary custody (not an ITC) if he or she:

- has filed a petition for removal of guardianship or termination of parental rights; and
  - believes the child is suffering from serious physical illness or serious physical injury, or the immediate threat thereof, or is in immediate physical danger and that to await a hearing on removal of guardianship or termination of parental rights may endanger the child's health or safety.
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### Who May Petition for Temporary Custody

The following parties may petition for temporary custody if he or she has filed an application for the removal of guardian or termination of parental rights:

- 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
  - an attorney for the child.
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### Time Frame for Filing Report

The DCF-Probate-003 report for a temporary custody hearing is due by the hearing date or other date as reasonably ordered by the court.

**Note:** Due to the nature of temporary custody, prompt completion of the assessment and report, and participation in family conferences and meetings, is extremely important.

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### Rights and Duties of Person Awarded ITC or Temporary Custody

A person awarded temporary custody by the Court has the following rights and duties:

- the obligation of care and control of the child;
- the authority to make decisions regarding routine medical treatment; school issues; counseling; and emergency medical, psychiatric or surgical treatment; and
- other rights and duties which the Probate Court having jurisdiction may approve.

**Legal reference:** Conn. Gen. Stat. §45a-608.

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### Who May be Awarded ITC or Temporary Custody

If the Court finds that grounds exist for ordering custody removed from a parent or current guardian, it may grant temporary custody to:

- a relative of the child;
- the Commissioner of DCF;
- the board of managers of any child-caring institution or organization;
- any children's home or similar institution licensed or approved by DCF; or
- any other person.

**Note:** The court may also issue an order of temporary custody if the parent or other guardian consents to the temporary removal of the child, or the court finds that the child has no guardian of his or her person.

If the Probate Court orders the child into the care and custody of DCF, the Social Worker shall request a legal consult with the Area Office attorney within one business day to file a neglect or abuse petition in the Superior Court for Juvenile Matters. If a petition is filed in Superior Court, the Social Worker shall request, in writing, that the Probate Court either defer any action while the Superior Court petition is pending or dismiss the Probate Court action (DCF/Probate-001).

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### Duration of Temporary Custody

Unless modified or terminated by the Probate Court, an order of temporary custody remains in effect until:

- disposition of the petition for removal of guardianship or termination of parental rights; or
- a guardian is appointed for a child who has no guardian.

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### Modification or Revocation

Any respondent (parent or legal guardian), temporary custodian or attorney for the child may, at any time, petition the Probate Court that issued the order of temporary custody for modification or revocation of the order.

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