



General Assembly

February Session, 2000

Raised Bill No. 5781

LCO No. 1986

Referred to Committee on Judiciary

Introduced by:
(JUD)

An Act Concerning Protection Of Children In Probate Courts.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-112 of the general statutes, as amended by
2 section 4 of public act 99-166, is repealed and the following is
3 substituted in lieu thereof:

4 (a) In respect to any child in the custody of the Commissioner of
5 Children and Families in accordance with section 46b-129, either the
6 commissioner, or the attorney who represented such child in a
7 pending or prior proceeding, or an attorney appointed by the Superior
8 Court on its own motion, or an attorney retained by such child after
9 attaining the age of fourteen, may petition the court for the termination
10 of parental rights with reference to such child. The petition shall be in
11 the form and contain the information set forth in subsection (b) of
12 section 45a-715, and be subject to the provisions of subsection (c) of
13 said section. If a petition indicates that either or both parents consent
14 to the termination of their parental rights, or if at any time following
15 the filing of a petition and before the entry of a decree, a parent
16 consents to the termination of the parent's parental rights, each
17 consenting parent shall acknowledge such consent on a form

18 promulgated by the Office of the Chief Court Administrator
19 evidencing that the parent has voluntarily and knowingly consented to
20 the termination of such parental rights. No consent to termination by a
21 mother shall be executed within forty-eight hours immediately after
22 the birth of such mother's child. A parent who is a minor shall have the
23 right to consent to termination of parental rights and such consent
24 shall not be voidable by reason of such minority. A guardian ad litem
25 shall be appointed by the court to assure that such minor parent is
26 giving an informed and voluntary consent. If the parents whose
27 parental rights have not been previously terminated consent to or do
28 not contest the petition for termination of their parental rights, the
29 Superior Court may transfer the matter to the Court of Probate for the
30 district in which the child resides. Thereupon the clerk of the Superior
31 Court shall transfer to the Clerk of the Probate Court the original file or
32 a certified copy thereof.

33 (b) The Superior Court upon hearing and notice, as provided in
34 sections 45a-716 and 45a-717, may grant a petition for termination of
35 parental rights based on consent filed pursuant to this section if it finds
36 that (1) upon clear and convincing evidence, the termination is in the
37 best interest of the child and (2) such parent has voluntarily and
38 knowingly consented to termination of parental rights with respect to
39 such child. If the court denies a petition for termination of parental
40 rights based on consent, it may refer the matter to an agency to assess
41 the needs of the child, the care the child is receiving and the plan of the
42 parent for the child. Consent for the termination of the parental rights
43 of one parent does not diminish the parental rights of the other parent
44 of the child, nor does it relieve the other parent of the duty to support
45 the child.

46 (c) The Superior Court, upon hearing and notice as provided in
47 sections 45a-716 and 45a-717, may grant a petition filed pursuant to
48 this section if it finds by clear and convincing evidence (1) that the
49 Department of Children and Families has made reasonable efforts to
50 locate the parent and to reunify the child with the parent, unless the

51 court finds in this proceeding that the parent is unable or unwilling to
52 benefit from reunification efforts provided such finding is not required
53 if the court has determined at a hearing pursuant to subsection (b) of
54 section 17a-110 or section 17a-111b that such efforts are not
55 appropriate, (2) that termination is in the best interest of the child, and
56 (3) that: (A) The child has been abandoned by the parent in the sense
57 that the parent has failed to maintain a reasonable degree of interest,
58 concern or responsibility as to the welfare of the child; (B) the parent of
59 a child who (1) has been found by the Superior Court or the Probate
60 Court to have been neglected or uncared for in a prior proceeding, or
61 (2) is found to be neglected or uncared for and has been in the custody
62 of the commissioner for at least fifteen months and such parent has
63 been provided specific steps to take to facilitate the return of the child
64 to the parent pursuant to section 46b-129 and has failed to achieve such
65 degree of personal rehabilitation as would encourage the belief that
66 within a reasonable time, considering the age and needs of the child,
67 such parent could assume a responsible position in the life of the child;
68 (C) the child has been denied, by reason of an act or acts of parental
69 commission or omission including, but not limited to, sexual
70 molestation or exploitation, severe physical abuse or a pattern of
71 abuse, the care, guidance or control necessary for such child's physical,
72 educational, moral or emotional well-being. Nonaccidental or
73 inadequately explained serious physical injury to a child shall
74 constitute prima facie evidence of acts of parental commission or
75 omission sufficient for the termination of parental rights; (D) there is
76 no ongoing parent-child relationship, which means the relationship
77 that ordinarily develops as a result of a parent having met on a day to
78 day basis the physical, emotional, moral and educational needs of the
79 child and to allow further time for the establishment or
80 reestablishment of such parent-child relationship would be
81 detrimental to the best interest of the child; (E) the parent of a child
82 under the age of seven years who is neglected or uncared for, has
83 failed, is unable or is unwilling to achieve such degree of personal
84 rehabilitation as would encourage the belief that within a reasonable

85 period of time, considering the age and needs of the child, such parent
86 could assume a responsible position in the life of the child and such
87 parent's parental rights of another child were previously terminated
88 pursuant to a petition filed by the Commissioner of Children and
89 Families; (F) the parent has killed through deliberate, nonaccidental act
90 another child of the parent or has requested, commanded, importuned,
91 attempted, conspired or solicited such killing or has committed an
92 assault, through deliberate, nonaccidental act that resulted in serious
93 bodily injury of another child of the parent; or (G) the parent was
94 convicted by a court of competent jurisdiction of a sexual assault
95 resulting in the conception of the child, except a conviction for a
96 violation of section 53a-71 or 53a-73a, provided the court may
97 terminate such parent's parental rights to such child at any time after
98 such conviction.

99 (d) Except in the case where termination is based on consent, in
100 determining whether to terminate parental rights under this section,
101 the court shall consider and shall make written findings regarding: (1)
102 The timeliness, nature and extent of services offered, provided and
103 made available to the parent and the child by an agency to facilitate the
104 reunion of the child with the parent; (2) whether the Department of
105 Children and Families has made reasonable efforts to reunite the
106 family pursuant to the federal Adoption Assistance and Child Welfare
107 Act of 1980, as amended; (3) the terms of any applicable court order
108 entered into and agreed upon by any individual or agency and the
109 parent, and the extent to which all parties have fulfilled their
110 obligations under such order; (4) the feelings and emotional ties of the
111 child with respect to the child's parents, any guardian of such child's
112 person and any person who has exercised physical care, custody or
113 control of the child for at least one year and with whom the child has
114 developed significant emotional ties; (5) the age of the child; (6) the
115 efforts the parent has made to adjust such parent's circumstances,
116 conduct, or conditions to make it in the best interest of the child to
117 return such child home in the foreseeable future, including, but not
118 limited to, (A) the extent to which the parent has maintained contact

119 with the child as part of an effort to reunite the child with the parent,
120 provided the court may give weight to incidental visitations,
121 communications or contributions, and (B) the maintenance of regular
122 contact or communication with the guardian or other custodian of the
123 child; and (7) the extent to which a parent has been prevented from
124 maintaining a meaningful relationship with the child by the
125 unreasonable act or conduct of the other parent of the child, or the
126 unreasonable act of any other person or by the economic circumstances
127 of the parent.

128 (e) Any petition brought by the Commissioner of Children and
129 Families to the Superior Court, pursuant to subsection (a) of section
130 46b-129, may be accompanied by or, upon motion by the petitioner,
131 consolidated with a petition for termination of parental rights filed in
132 accordance with this section with respect to such child. Notice of the
133 hearing on such petitions shall be given in accordance with sections
134 45a-716 and 45a-717. The Superior Court, after hearing, in accordance
135 with the provisions of subsection (b) or (c) of this section, may, in lieu
136 of granting the petition filed pursuant to section 46b-129, grant the
137 petition for termination of parental rights as provided in section
138 45a-717.

139 (f) Nothing contained in this section and sections 17a-113, 45a-187,
140 45a-606, 45a-607, 45a-707 to 45a-709, inclusive, 45a-715 to 45a-718,
141 inclusive, 45a-724, 45a-725, 45a-727, 45a-733, 45a-754 and 52-231a shall
142 negate the right of the Commissioner of Children and Families to
143 subsequently petition the Superior Court for revocation of a
144 commitment of a child as to whom parental rights have been
145 terminated in accordance with the provisions of this section. The
146 Superior Court may appoint a statutory parent at any time after it has
147 terminated parental rights if the petitioner so requests.

148 (g) If the parental rights of only one parent are terminated, the
149 remaining parent shall be the sole parent and, unless otherwise
150 provided by law, guardian of the person.

151 (h) In the case where termination of parental rights is granted, the
152 guardian of the person or statutory parent shall report to the court
153 within sixty days of the date judgment is entered on a case plan, as
154 defined by the federal Adoption Assistance and Child Welfare Act of
155 1980, for the child which shall include measurable objectives and time
156 schedules. At least every six months thereafter, such guardian or
157 statutory parent shall make a report to the court on the progress made
158 on implementation of the plan. The court shall convene a hearing for
159 the purpose of reviewing the plan for the child no more than twelve
160 months from the date judgment is entered and at least once a year
161 thereafter until such time as any proposed adoption plan has become
162 finalized.

163 (i) The provisions of this section shall be liberally construed in the
164 best interests of any child for whom a petition under this section has
165 been filed.

166 Sec. 2. Section 45a-717 of the general statutes is repealed and the
167 following is substituted in lieu thereof:

168 (a) At the hearing held on any petition for the termination of
169 parental rights filed in the Court of Probate under section 45a-715, or
170 filed in the Superior Court under section 17a-112, or transferred to the
171 Superior Court from the Court of Probate under section 45a-715, any
172 party to whom notice was given shall have the right to appear and be
173 heard with respect to the petition. If a parent who is consenting to the
174 termination of such parent's parental rights appears at the hearing on
175 the petition for termination of parental rights, the court shall explain to
176 the parent the meaning and consequences of termination of parental
177 rights. Nothing in this subsection shall be construed to require the
178 appearance of a consenting parent at the hearing regarding the
179 termination of such parent's parental rights except as otherwise
180 provided by court order.

181 (b) If a party appears without counsel, the court shall inform such
182 party of the party's right to counsel and upon request, if he or she is

183 unable to pay for counsel, shall appoint counsel to represent such
184 party. No party may waive counsel unless the court has first explained
185 the nature and meaning of a petition for the termination of parental
186 rights. Unless the appointment of counsel is required under section
187 46b-136, the court may appoint counsel to represent or appear on
188 behalf of any child in a hearing held under this section to speak on
189 behalf of the best interests of the child. If the respondent parent is
190 unable to pay for such respondent's own counsel or if the child or the
191 parent or guardian of the child is unable to pay for the child's counsel,
192 in the case of a Superior Court matter, the reasonable compensation of
193 counsel appointed for the respondent parent or the child shall be
194 established by, and paid from funds appropriated to, the Judicial
195 Department and, in the case of a Probate Court matter, the reasonable
196 compensation of counsel appointed for the respondent parent or the
197 child shall be established by, and paid from funds appropriated to, the
198 Judicial Department, however, in the case of a Probate Court matter, if
199 funds have not been included in the budget of the Judicial Department
200 for such purposes, such compensation shall be established by the
201 Probate Court Administrator and paid from the Probate Court
202 Administration Fund.

203 (c) The court shall, if a claim for paternity has been filed in
204 accordance with section 46b-172a, continue the hearing under the
205 provisions of this section until the claim for paternity is adjudicated,
206 provided the court may combine the hearing on the claim for paternity
207 with the hearing on the termination of parental rights petition.

208 (d) Upon finding at the hearing or at any time during the pendency
209 of the petition that reasonable cause exists to warrant an examination,
210 the court, on its own motion or on motion by any party, may order the
211 child to be examined at a suitable place by a physician, psychiatrist or
212 licensed clinical psychologist appointed by the court. The court may
213 also order examination of a parent or custodian whose competency or
214 ability to care for a child before the court is at issue. In the event the
215 court requires the assistance of the Department of Children and

216 Families in arranging, directing or assisting in the court-ordered
217 examination, the commissioner shall render such assistance. The
218 expenses of any examination if ordered by the court on its own motion
219 shall be paid for by the petitioner or, if ordered on motion by a party,
220 shall be paid for by the party moving for such an examination unless
221 such party or petitioner is unable to pay such expenses in which case,
222 they shall be paid for by funds appropriated to the Judicial
223 Department, however, in the case of a Probate Court matter, if funds
224 have not been included in the budget of the Judicial Department for
225 such purposes, such expenses shall be established by the Probate Court
226 Administrator and paid from the Probate Court Administration Fund.
227 The court may consider the results of the examinations in ruling on the
228 merits of the petition.

229 (e) (1) The court may, and in any contested case shall, request the
230 Commissioner of Children and Families or any child-placing agency
231 licensed by the commissioner to make an investigation and written
232 report to it, within ninety days from the receipt of such request. The
233 report shall indicate the physical, mental and emotional status of the
234 child and shall contain such facts as may be relevant to the court's
235 determination of whether the proposed termination of parental rights
236 will be in the best interests of the child, including the physical, mental,
237 social and financial condition of the biological parents, and any other
238 factors which the commissioner or such child-placing agency finds
239 relevant to the court's determination of whether the proposed
240 termination will be in the best interests of the child. The Court of
241 Probate may request and the commissioner or agency shall undertake
242 such additional investigations and reports as the Court of Probate
243 deems necessary in the child's best interests. Such additional
244 investigations and reports to the court shall be completed as
245 expeditiously as possible, but the report shall be submitted to the court
246 not later than ninety days from the date of the request. (2) If such a
247 report has been requested, upon the expiration of such ninety-day
248 period or upon receipt of the report, whichever is earlier, the court
249 shall set a day for a hearing not more than thirty days thereafter. The

250 court shall give reasonable notice of such adjourned hearing to all
251 parties to the first hearing, including the child, if over fourteen years of
252 age, and to such other persons as the court shall deem appropriate. (3)
253 The report shall be admissible in evidence, subject to the right of any
254 interested party to require that the person making it appear as a
255 witness, if available, and subject himself to examination.

256 (f) At the adjourned hearing or at the initial hearing where no
257 investigation and report has been requested, the court may approve a
258 petition for termination of parental rights based on consent filed
259 pursuant to this section terminating the parental rights and may
260 appoint a guardian of the person of the child, or if the petitioner
261 requests, the court may appoint a statutory parent, if it finds, upon
262 clear and convincing evidence that (1) the termination is in the best
263 interest of the child and (2) such parent has voluntarily and knowingly
264 consented to termination of the parent's parental rights with respect to
265 such child. If the court denies a petition for termination of parental
266 rights based on consent, it may refer the matter to an agency to assess
267 the needs of the child, the care the child is receiving and the plan of the
268 parent for the child. Consent for the termination of the parental right of
269 one parent does not diminish the parental rights of the other parent of
270 the child nor does it relieve the other parent of the duty to support the
271 child.

272 (g) At the adjourned hearing or at the initial hearing where no
273 investigation and report has been requested, the court may approve a
274 petition terminating the parental rights and may appoint a guardian of
275 the person of the child, or, if the petitioner requests, the court may
276 appoint a statutory parent, if it finds, upon clear and convincing
277 evidence, that (1) the termination is in the best interest of the child, and
278 (2) (A) the child has been abandoned by the parent in the sense that the
279 parent has failed to maintain a reasonable degree of interest, concern
280 or responsibility as to the welfare of the child; (B) the child has been
281 denied, by reason of an act or acts of parental commission or omission,
282 including, but not limited to sexual molestation and exploitation,

283 severe physical abuse or a pattern of abuse, the care, guidance or
284 control necessary for the child's physical, educational, moral or
285 emotional well-being. Nonaccidental or inadequately explained
286 serious physical injury to a child shall constitute prima facie evidence
287 of acts of parental commission or omission sufficient for the
288 termination of parental rights; (C) there is no ongoing parent-child
289 relationship which is defined as the relationship that ordinarily
290 develops as a result of a parent having met on a continuing, day-to-
291 day basis the physical, emotional, moral and educational needs of the
292 child and to allow further time for the establishment or
293 reestablishment of the parent-child relationship would be detrimental
294 to the best interests of the child; (D) the parent of a child who (1) has
295 been found by the Superior Court or the Probate Court to have been
296 neglected or uncared for in a prior proceeding, or (2) is found to be
297 neglected or uncared for and has been in the custody of the
298 commissioner for at least fifteen months and such parent has been
299 provided specific steps to take to facilitate the return of the child to the
300 parent pursuant to section 46b-129 and has failed to achieve such
301 degree of personal rehabilitation as would encourage the belief that
302 within a reasonable time, considering the age and needs of the child,
303 such parent could assume a responsible position in the life of the child;
304 (E) the parent of a child, under the age of seven years who is neglected
305 or uncared for, has failed, is unable or is unwilling to achieve such
306 degree of personal rehabilitation as would encourage the belief that
307 within a reasonable amount of time, considering the age and needs of
308 the child, such parent could assume a responsible position in the life of
309 the child and such parent's parental rights of another child were
310 previously terminated pursuant to a petition filed by the
311 Commissioner of Children and Families; (F) the parent has killed
312 through deliberate, nonaccidental act another child of the parent or has
313 requested, commanded, importuned, attempted, conspired or solicited
314 such killing or has committed an assault, through deliberate,
315 nonaccidental act that resulted in serious bodily injury of another child
316 of the parent; or (G) the parent was convicted by a court of competent

317 jurisdiction of sexual assault except for a violation of section 53a-71 or
318 53a-73a resulting in the conception of the child.

319 (h) Except in the case where termination is based on consent, in
320 determining whether to terminate parental rights under this section,
321 the court shall consider and shall make written findings regarding: (1)
322 The timeliness, nature and extent of services offered, provided and
323 made available to the parent and the child by a child-placing agency to
324 facilitate the reunion of the child with the parent; (2) the terms of any
325 applicable court order entered into and agreed upon by any individual
326 or child-placing agency and the parent, and the extent to which all
327 parties have fulfilled their obligations under such order; (3) the
328 feelings and emotional ties of the child with respect to the child's
329 parents, any guardian of the child's person and any person who has
330 exercised physical care, custody or control of the child for at least one
331 year and with whom the child has developed significant emotional
332 ties; (4) the age of the child; (5) the efforts the parent has made to
333 adjust such parent's circumstances, conduct or conditions to make it in
334 the best interest of the child to return the child to the parent's home in
335 the foreseeable future, including, but not limited to, (A) the extent to
336 which the parent has maintained contact with the child as part of an
337 effort to reunite the child with the parent, provided the court may give
338 weight to incidental visitations, communications or contributions and
339 (B) the maintenance of regular contact or communication with the
340 guardian or other custodian of the child; and (6) the extent to which a
341 parent has been prevented from maintaining a meaningful relationship
342 with the child by the unreasonable act or conduct of the other parent of
343 the child, or the unreasonable act of any other person or by the
344 economic circumstances of the parent.

345 (i) If the parental rights of only one parent are terminated, the
346 remaining parent shall be sole parent and, unless otherwise provided
347 by law, guardian of the person.

348 (j) In the case where termination of parental rights is granted, the

349 guardian of the person or statutory parent shall report to the court
350 within ninety days of the date judgment is entered on a case plan, as
351 defined by the federal Adoption Assistance and Child Welfare Act of
352 1980, as amended from time to time, for the child. At least every six
353 months thereafter, such guardian or statutory parent shall make a
354 report to the court on the implementation of the plan. The court shall
355 convene a hearing for the purpose of reviewing the plan no more than
356 fifteen months from the date judgment is entered and at least once a
357 year thereafter until such time as any proposed adoption plan has
358 become finalized.

359 Sec. 3. Section 45a-610 of the general statutes is repealed and the
360 following is substituted in lieu thereof:

361 If the Court of Probate finds that notice has been given or a waiver
362 has been filed, as provided in section 45a-609, it may remove a parent
363 as guardian, if the court finds by clear and convincing evidence one of
364 the following: (1) The parent consents to his or her removal as
365 guardian; or (2) the minor child has been abandoned by the parent in
366 the sense that the parent has failed to maintain a reasonable degree of
367 interest, concern or responsibility for the minor's welfare; or (3) the
368 minor child has been denied the care, guidance or control necessary for
369 his or her physical, educational, moral or emotional well-being, as a
370 result of acts of parental commission or omission, whether the acts are
371 the result of the physical or mental incapability of the parent or
372 conditions attributable to parental habits, misconduct or neglect, and
373 the parental acts or deficiencies support the conclusion that the parent
374 cannot exercise, or should not in the best interests of the minor child be
375 permitted to exercise, parental rights and duties at this time; [or] (4)
376 the minor child has had physical injury or injuries inflicted upon him
377 by a person responsible for such child's health, welfare or care, or by a
378 person given access to such child by such responsible person, other
379 than by accidental means, or has injuries which are at variance with
380 the history given of them or is in a condition which is the result of
381 maltreatment such as, but not limited to, malnutrition, sexual

382 molestation, deprivation of necessities, emotional maltreatment or
383 cruel punishment; or (5) the minor child has been found to be
384 neglected or uncared for, as provided in section 46b-120. If, after
385 removal of a parent as guardian under this section, the child has no
386 guardian of his person, such a guardian may be appointed under the
387 provisions of section 45a-616.

388 Sec. 4. Section 45a-620 of the general statutes is repealed and the
389 following is substituted in lieu thereof:

390 The Court of Probate may appoint counsel to represent or appear on
391 behalf of any minor in proceedings brought under sections 45a-603 to
392 [45a-622] 45a-624, inclusive. [, to speak on behalf of the best interests of
393 the minor.] In any proceeding in which abuse or neglect, as defined in
394 section 46b-120, is alleged by the petitioner, or reasonably suspected by
395 the court, the court shall appoint counsel to advocate the position of
396 the child if the child is mature enough to formulate a reasonably
397 coherent position. If the child is unable to do so, counsel shall advocate
398 the best interests of the child. In any case, the court may appoint a
399 guardian ad litem who shall advocate the best interests of the child.
400 Counsel and the guardian ad litem should be knowledgeable about the
401 needs and protection of children. The Court of Probate shall appoint
402 counsel to represent any respondent who notifies the court that he or
403 she is unable to obtain counsel, or is unable to pay for counsel. The cost
404 of such counsel shall be paid by the person whom he or she represents,
405 except that if such person is unable to pay for such counsel and files an
406 affidavit with the court demonstrating his or her inability to pay, the
407 reasonable compensation of appointed counsel shall be established by,
408 and paid from funds appropriated to, the Judicial Department,
409 however, if funds have not been included in the budget of the Judicial
410 Department for such purposes, such compensation shall be established
411 by the Probate Court Administrator and paid from the Probate Court
412 Administration Fund. In the case of a minor, such affidavit may be
413 filed by a suitable person having knowledge of the financial status of
414 such minor.

415 Sec. 5. Section 45a-607 of the general statutes, as amended by section
416 23 of public act 99-84, is repealed and the following is substituted in
417 lieu thereof:

418 (a) When application has been made for the removal of one or both
419 parents as guardians or of any other guardian of the person of a minor,
420 or when an application has been made for the termination of the
421 parental rights of any parties who may have parental rights with
422 regard to any minor child, or when, in any proceeding the court has
423 reasonable grounds to believe that any minor child has no guardian of
424 his or her person, the court of probate in which the proceeding is
425 pending may issue an order awarding temporary custody of the minor
426 to a person other than the parent or guardian, with or without the
427 parent's or guardian's consent, but such order may only be issued in
428 accordance with the provisions of this section.

429 (b) In the case of a child in the custody of the parent or other
430 guardian, no application for custody of such child may be granted ex
431 parte, except in accordance with subdivision (2) of this subsection. In
432 the case of a child in the custody of a person other than the parent or
433 guardian, no application for custody may be granted ex parte, except
434 in accordance with subdivisions (1) to (3), inclusive, of this subsection.

435 (1) An application for immediate temporary custody shall be
436 accompanied by an affidavit made by the custodian of such child
437 under penalty of false statement, stating the circumstances under
438 which such custody was obtained, the length of time the affiant has
439 had custody and specific facts which would justify the conclusion that
440 determination cannot await the hearing required by subsection (c) of
441 this section. Upon such application, the court may grant immediate
442 temporary custody to the affiant or some other suitable person if the
443 court finds that: (A) The child was not taken or kept from the parent,
444 parents or guardian and (B) there is a substantial likelihood that the
445 child will be removed from the jurisdiction prior to a hearing under
446 subsection (c) of this section, or (C) to return the child to the parent,

447 parents or guardian would place the child in circumstances which
448 would result in serious physical illness or injury, or the threat thereof,
449 or imminent physical danger prior to a hearing under subsection (c) of
450 this section.

451 (2) In the case of a child who is hospitalized as a result of serious
452 physical illness or serious physical injury, an application for immediate
453 temporary custody shall contain a certificate signed by two physicians
454 licensed to practice medicine in this state stating that (A) the child is in
455 need of immediate medical or surgical treatment, the delay of which
456 would be life threatening, (B) the parent, parents or guardian of the
457 child refuses or is unable to consent to such treatment and (C)
458 determination of the need for temporary custody cannot await notice
459 of hearing. Upon such application the court may grant immediate
460 temporary custody to some suitable person if it finds that (i) a child
461 has suffered from serious physical illness or serious physical injury, is
462 in need of immediate medical or surgical treatment, (ii) the parent,
463 parents or guardian refuses to consent to such treatment, and (iii) to
464 delay such treatment would be life threatening.

465 (3) If an order of temporary custody is issued ex parte, notice of the
466 hearing required by subsection (c) of this section shall be given
467 promptly, and the hearing shall be held within five business days of
468 the date of such ex parte order of temporary custody, provided the
469 respondent shall be entitled to continuance upon request. Upon
470 issuance of an ex parte order of temporary custody, the court shall
471 promptly notify the Commissioner of Children and Families, who shall
472 cause an investigation to be made forthwith, in accordance with
473 section 17a-101g, and who shall present his report to the court at the
474 hearing on the application for temporary custody. The hearing on an
475 ex parte order of temporary custody shall not be postponed, except
476 with the consent of the respondent, or if notice cannot be given as
477 required by this section, a postponement may be ordered by the court
478 for the purpose of a further order of notice.

479 (c) Except as provided in subsection (b) of this section, upon receipt
480 of an application for temporary custody under this section, the court
481 shall promptly set the time and place for hearing to be held on such
482 application. The court shall order notice of the hearing on temporary
483 custody to be given by regular mail to the Commissioner of Children
484 and Families and by personal service in accordance with section 52-50
485 to both parents and to the minor, if over twelve years of age, at least
486 five days prior to the date of the hearing, except that in lieu of personal
487 service on a parent or the father of a child born out of wedlock who is
488 either a petitioner or who signs under penalty of false statement a
489 written waiver of personal service on a form provided by the Probate
490 Court Administrator, the court may order notice to be given by
491 certified mail, return receipt requested, deliverable to addressee only,
492 at least five days prior to the date of the hearing. If the whereabouts of
493 the parents are unknown, or if such delivery cannot reasonably be
494 effected, then notice shall be ordered to be given by publication. Such
495 notice may be combined with the notice under section 45a-609 or with
496 the notice required under section 45a-716. If the parents are not
497 residents of the state or are absent from the state, the court shall order
498 notice to be given by certified mail, return receipt requested,
499 deliverable to addressee only, at least five days prior to the date of the
500 hearing. If the whereabouts of the parents are unknown, or if delivery
501 cannot reasonably be effected, the court may order notice to be given
502 by publication. Any notice by publication under this subsection shall
503 be in a newspaper which has a circulation at the last-known place of
504 residence of the parents. In either case, such notice shall be given at
505 least five days prior to the date of the hearing, except in the case of
506 notice of hearing on immediate temporary custody under subsection
507 (b) of this section. If the applicant alleges that the whereabouts of a
508 respondent are unknown, such allegation shall be made under penalty
509 of false statement and shall also state the last-known address of the
510 respondent and the efforts which have been made by the applicant to
511 obtain a current address. The applicant shall have the burden of
512 ascertaining the names and addresses of all parties in interest and of

513 proving to the satisfaction of the court that he or she used all proper
514 diligence to discover such names and addresses. Except in the case of
515 newspaper notice, such notice shall include: (1) The time and place of
516 the hearing, (2) a copy of the application for removal or application for
517 termination of parental rights, (3) a copy of the motion for temporary
518 custody, (4) any affidavit or verified petition filed with the motion for
519 temporary custody, (5) any other documents filed by the petitioner, (6)
520 any other orders or notices made by the court of probate, and (7) any
521 request for investigation by the Department of Children and Families
522 or any other person or agency. Such notice shall also inform the
523 respondent of the right to have an attorney represent him or her, and if
524 he or she is unable to obtain or pay an attorney, the respondent may
525 request the court of probate to appoint an attorney to represent him or
526 her. Newspaper notice shall include such facts as the court may direct.

527 (d) If, after hearing, the court finds by a fair preponderance of the
528 evidence (1) that the parent or other guardian has performed acts of
529 omission or commission as set forth in section 45a-610, and (2) that,
530 because of such acts, the child is suffering from serious physical illness,
531 serious physical injury or the immediate threat thereof, or is in
532 immediate physical danger, so as to require that temporary custody be
533 granted, the court may order the custody of the minor to be given to
534 one of the following, taking into consideration the standards set forth
535 in section 45a-617: (A) The Commissioner of Children and Families; (B)
536 the board of managers of any child-caring institution or organization;
537 or (C) any children's home or similar institution licensed or approved
538 by the Commissioner of Children and Families; or (D) any other
539 person. The fact that an order of temporary custody may have been
540 issued ex parte under subsection (b) of this section shall be of no
541 weight in a hearing held under this subsection. The burden of proof
542 shall remain upon the applicant to establish his case. The court may
543 issue the order without taking into consideration the standards set
544 forth in section 45a-610 and in this section if the parent or other
545 guardian consents to the minor's temporary removal, or the court finds
546 that the minor has no guardian of his or her person.

547 (e) Such order for temporary custody shall be effective until
548 disposition of the application for removal of parents or guardians as
549 guardian or for termination of parental rights or until a guardian is
550 appointed for a child who has no guardian, unless modified or
551 terminated by the court of probate. Any respondent, temporary
552 custodian or attorney for the minor child may petition the court of
553 probate issuing such order at any time for modification or revocation
554 thereof, and such court shall set a hearing upon receipt of such petition
555 in the same manner as subsection (c) of this section. If the court finds
556 after such hearing that the conditions upon which it based its order for
557 temporary custody no longer exist, and that the conditions set forth in
558 subsection (b) of this section do not exist, then the order shall be
559 revoked and the minor shall be returned to the custody of the parent
560 or guardian.

561 (f) A copy of any order issued under this section shall be mailed
562 immediately to the last known address of the parent or other guardian
563 from whose custody the minor has been removed.

564 Sec. 6. Section 45a-609 of the general statutes, as amended by section
565 24 of public act 99-84, is repealed and the following is substituted in
566 lieu thereof:

567 (a) Upon application for removal of a parent or parents as guardian,
568 the court shall set a time and place for hearing to be held within thirty
569 days of the application, unless the court requests an investigation in
570 accordance with the provisions of section 45a-619. In that case, the
571 court shall set a day for hearing not more than thirty days following
572 receipt of the results of the investigation.

573 (b) The court shall order notice of the hearing to be given by regular
574 mail to the Commissioner of Children and Families and by personal
575 service in accordance with section 52-50 to both parents and to the
576 minor, if over twelve years of age, at least ten days before the time of
577 the hearing, except that in lieu of personal service on a parent or the
578 father of a child born out of wedlock who is either a petitioner or who

579 signs under oath a written waiver of personal service on a form
580 provided by the Probate Court Administrator, the court may order
581 notice to be given by certified mail, return receipt requested,
582 deliverable to addressee only, at least ten days prior to the date of the
583 hearing. If such delivery cannot reasonably be effected, then notice
584 shall be ordered to be given by publication. If the parents reside out of
585 or are absent from the state, the court shall order notice to be given by
586 certified mail, return receipt requested, deliverable to addressee only,
587 at least ten days prior to the date of the hearing. If the whereabouts of
588 the parents are unknown, or if delivery cannot reasonably be effected,
589 the court may order notice to be given by publication. Any notice by
590 publication under this subsection shall be in some newspaper which
591 has a circulation at the parents' last-known place of residence. In either
592 case, such notice shall be given at least ten days before the time of the
593 hearing. If the applicant alleges that the whereabouts of a respondent
594 are unknown, such allegation shall be made under penalty of false
595 statement and shall also state the last-known address of the
596 respondent and the efforts which have been made by the applicant to
597 obtain a current address. The applicant shall have the burden of
598 ascertaining the names and addresses of all parties in interest and of
599 proving to the satisfaction of the court that he or she used all proper
600 diligence to discover such names and addresses. Except in the case of
601 newspaper notice, the notice of hearing shall include the following: (1)
602 The notice of hearing, (2) the application for removal of parent as
603 guardian, (3) any supporting documents and affidavits filed with such
604 application, (4) any other orders or notice made by the Court of
605 Probate, and (5) any request for investigation by the Department of
606 Children and Families or any other person or agency. Such notice shall
607 also inform the respondent of the right to have an attorney represent
608 him or her in the matter, and if he or she is unable to obtain or to pay
609 an attorney, the respondent may request the Court of Probate to
610 appoint an attorney to represent him or her. Newspaper notice shall
611 include such facts as the court may direct.

612 (c) If a parent is over eighteen years of age he or she may sign and

613 file a written waiver of notice with the court.

614 (d) Upon finding at the hearing or at any time during the pendency
615 of the proceeding that reasonable cause exists to warrant an
616 examination, the court, on its own motion or on motion by any party,
617 may order the child to be examined at a suitable place by a physician,
618 psychiatrist or licensed clinical psychologist appointed by the court.
619 The court may also order examination of a parent or custodian whose
620 competency or ability to care for a child before the court is at issue. In
621 the event that the court requires the assistance of the Commissioner of
622 Children and Families in arranging, directing or assisting in the court-
623 ordered examination, the commissioner shall render such assistance.
624 The expenses of any examination, if ordered by the court on its own
625 motion, shall be paid for by the applicant, or if ordered on motion by a
626 party, shall be paid for by the party moving for such an examination. If
627 such applicant or party is unable to pay the expense of any such
628 examination, it shall be paid from the Probate Court Administration
629 Fund, or, if the matter has been removed to the Superior Court, from
630 funds appropriated to the Judicial Department.

631 Sec. 7. Section 45a-619 of the general statutes is repealed and the
632 following is substituted in lieu thereof:

633 [In any proceeding under sections 45a-603 to 45a-622, inclusive, the
634 Court of Probate shall request an investigation by the Commissioner of
635 Children and Families or by any organization, agency or individual
636 licensed or approved by the commissioner, unless this requirement is
637 waived by the court for cause shown.]

638 In any proceeding under sections 45a-603 to 45a-624, inclusive, in
639 which either the petitioner has alleged that the minor has been abused
640 or neglected, as those terms are defined in section 46b-120, or in which
641 the probate judge has reason to believe that the minor may have been
642 abused or neglected, the Court of Probate shall request the
643 Commissioner of Children and Families or any organization, agency or
644 individual licensed or approved by the commissioner, to make an

645 investigation and written report to it, within ninety days from the
646 receipt of such request, unless the request concerns an application for
647 immediate temporary custody or temporary custody, in which case the
648 commissioner shall render the report by such date as is reasonably
649 ordered by the court. The report shall indicate the physical, mental and
650 emotional status of the child and shall contain such facts as may be
651 relevant to the court's determination of whether the proposed court
652 action will be in the best interests of the child, including the physical,
653 social, mental, and financial condition of the parties, and such other
654 factors which the commissioner or agency finds relevant to the court's
655 determination of whether the proposed action will be in the best
656 interests of the child. In any other proceeding under sections 45a-603 to
657 45a-624, inclusive, the court shall request an investigation and report
658 unless this requirement is waived for cause shown. The report shall be
659 admissible in evidence, subject to the right of any interested party to
660 require that the person making it appear as a witness, if available, and
661 subject himself to examination. The Court of Probate may request and
662 the commissioner or agency shall undertake such additional
663 investigations and reports as the Court of Probate deems necessary in
664 the child's best interest. Such additional investigations and reports to
665 the court shall be completed as expeditiously as possible, but the
666 report shall be submitted to the court no later than ninety days from
667 the date of the requests.

668 Sec. 8. Section 45a-623 of the general statutes is repealed and the
669 following is substituted in lieu thereof:

670 In any proceeding under sections 45a-603 to 45a-622, inclusive, that
671 is contested, the Court of Probate shall, upon motion of any party other
672 than a party who made application for the removal of a parent as a
673 guardian, under rules adopted by the judges of the Supreme Court,
674 transfer the case to the Superior Court. Notwithstanding the
675 provisions of this section, the Court of Probate may, on the court's own
676 motion or that of any interested party, transfer the matter to another
677 judge of probate, which judge shall be appointed by the Probate Court

678 Administrator from a panel of qualified probate judges who specialize
679 in children's matters. Such panel shall be proposed by the Probate
680 Court Administrator and approved by the executive committee of the
681 Connecticut Probate Assembly. Upon transfer, the clerk of the Court of
682 Probate shall transmit to the clerk of the Superior Court or the Probate
683 Court to which the matter was transferred the original files and papers
684 in the case.

685 Sec. 9. Section 45a-614 of the general statutes is repealed and the
686 following is substituted in lieu thereof:

687 The following persons may apply to the court of probate for the
688 district in which the minor resides for the removal as guardian of one
689 or both parents of the minor: (1) Any adult relative of the minor,
690 including those by blood or marriage; (2) the court on its own motion;
691 [or] (3) counsel for the minor; or (4) the Commissioner of Children and
692 Families.

693 Sec. 10. Section 45a-715 of the general statutes is repealed and the
694 following is substituted in lieu thereof:

695 (a) Any of the following persons may petition the Court of Probate
696 to terminate parental rights of all persons who may have parental
697 rights regarding any minor child or for the termination of parental
698 rights of only one parent provided the application so states: (1) Either
699 or both parents, including a parent who is a minor; (2) the guardian of
700 the child; (3) the selectmen of any town having charge of any
701 foundling child; (4) a duly authorized officer of any child care facility
702 or child-placing agency or organization or any children's home or
703 similar institution approved by the Commissioner of Children and
704 Families; (5) a relative of the child if the parent or parents have
705 abandoned or deserted the child; (6) the Commissioner of Children
706 and Families, provided the custodial parent of such minor child has
707 consented to, or is likely to consent to, the termination of parental
708 rights and the child has not been committed to the commissioner, and
709 no application for commitment has been made; provided in any case

710 hereunder where the child with respect to whom the petition is
711 brought has attained the age of twelve, the child shall join in the
712 petition.

713 (b) A petition for termination of parental rights shall be entitled "In
714 the interest of (Name of child), a person under the age of eighteen
715 years", and shall set forth with specificity: (1) The name, sex, date and
716 place of birth, and present address of the child; (2) the name and
717 address of the petitioner, and the nature of the relationship between
718 the petitioner and the child; (3) the names, dates of birth and addresses
719 of the parents of the child, if known, including the name of any
720 putative father named by the mother, and the tribe and reservation of
721 an American Indian parent; (4) if the parent of the child is a minor, the
722 names and addresses of the parents or guardian of the person of such
723 minor; (5) the names and addresses of: (A) The guardian of the person
724 of the child; (B) any guardians ad litem appointed in a prior
725 proceeding; (C) the tribe and reservation of an American Indian child;
726 and (D) the child-placing agency which placed the child in his current
727 placement; (6) the facts upon which termination is sought, the legal
728 grounds authorizing termination, the effects of a termination decree
729 and the basis for the jurisdiction of the court; (7) the name of the
730 persons or agencies which have agreed to accept custody or
731 guardianship of the child's person upon disposition.

732 (c) If the information required under subdivisions (2) and (6) of
733 subsection (b) of this section is not stated, the petition shall be
734 dismissed. If any other facts required under subdivision (1), (3), (4), (5)
735 or (7) of subsection (b) of this section are not known or cannot be
736 ascertained by the petitioner, he shall so state in the petition. If the
737 whereabouts of either parent or the putative father named under
738 subdivision (3) of subsection (b) of this section are unknown, the
739 petitioner shall diligently search for any such parent or putative father.
740 The petitioner shall file an affidavit with the petition indicating the
741 efforts used to locate the parent or putative father.

742 (d) If a petition indicates that either or both parents consent to the
743 termination of their parental rights, or if at any time following the
744 filing of a petition and before the entry of a decree a parent consents to
745 the termination of his parental rights, each consenting parent shall
746 acknowledge such consent on a form promulgated by the Office of the
747 Chief Court Administrator evidencing to the satisfaction of the court
748 that the parent has voluntarily and knowingly consented to the
749 termination of his parental rights. No consent to termination by a
750 mother shall be executed within forty-eight hours immediately after
751 the birth of her child. A parent who is a minor shall have the right to
752 consent to termination of parental rights and such consent shall not be
753 voidable by reason of such minority. A guardian ad litem shall be
754 appointed by the court to assure that such minor parent is giving an
755 informed and voluntary consent.

756 (e) A petition under this section shall be filed in the court of probate
757 for the district in which the petitioner or the child resides or, in the
758 case of a minor who is under the guardianship of any child care facility
759 or child-placing agency, in the court of probate for the district in which
760 the main office or any local office of the agency is located. If the
761 petition is filed with respect to a child born out of wedlock, the petition
762 shall state whether there is a putative father to whom notice shall be
763 given under subdivision (2) of subsection (b) of section 45a-716.

764 (f) If any petitioner under subsection (a) is a minor or incompetent,
765 the guardian ad litem, appointed by the court in accordance with
766 section 45a-708, must approve the petition in writing, before action by
767 the court.

768 (g) Before a hearing on the merits in any case in which a petition for
769 termination of parental rights is contested in a court of probate, the
770 Court of Probate shall, on the motion of any legal party except the
771 petitioner or may on its own motion or that of the petitioner, under
772 rules adopted by the judges of the Supreme Court, transfer the case to
773 the Superior Court. Notwithstanding the provisions of this section, the

774 Probate Court may, on the court's own motion or that of any interested
775 party, transfer the matter to another judge of probate, which judge
776 shall be appointed by the Probate Court Administrator from a panel of
777 qualified probate judges who specialize in children's matters. Such
778 panel shall be proposed by the Probate Court Administrator and
779 approved by the executive committee of the Connecticut Probate
780 Assembly. Upon transfer, the clerk of the Court of Probate shall
781 transmit to the clerk of the Superior Court or the Probate Court to
782 which the matter was transferred, the original files and papers in the
783 case. The Superior Court, or the Probate Court to which the matter was
784 transferred upon hearing after notice as provided in sections 45a-716
785 and 45a-717, may grant the petition as provided in section 45a-717.

786 Sec. 11. (NEW) In any proceeding in the Superior Court under
787 section 46b-129, in which the Commissioner of Children and Families
788 has placed or is about to place a neglected or uncared for child or
789 youth with a suitable caregiver other than a licensed foster parent, or
790 in which the revocation of an order of commitment for such child or
791 youth has been requested, the court may, on its own motion or that of
792 any interested party, transfer the case to the Probate Court for the
793 district in which the child or youth actually resides. Upon such a
794 transfer, the Clerk of the Superior Court shall transmit to the Clerk of
795 the Probate Court the original file or a certified copy thereof.

796 Sec. 12. Section 46b-150a of the general statutes is repealed and the
797 following is substituted in lieu thereof:

798 (a) With respect to a petition filed in Superior Court pursuant to
799 section 46b-150, the Superior Court may, if it deems it appropriate, (1)
800 require a probation officer, the Commissioner of Children and Families
801 or any other person to investigate the allegations in the petition and
802 file a report of that investigation with the court, (2) appoint counsel for
803 the minor who may serve as guardian ad litem for the minor, (3)
804 appoint counsel for the minor's parents or guardian, or (4) make any
805 other orders regarding the matter which the court deems appropriate.

806 (b) With respect to a petition filed in Probate Court pursuant to
807 section 46b-150, the Probate Court shall request an investigation by the
808 Commissioner of Children and Families, unless this requirement is
809 waived by the court for cause shown. The court shall appoint counsel
810 to represent the minor. The costs of such counsel shall be paid by the
811 minor, except that if such minor is unable to pay for such counsel and
812 files an affidavit with the court demonstrating his inability to pay, the
813 reasonable compensation shall be established by, and paid from funds
814 appropriated to, the Judicial Department. If funds have not been
815 included in the budget of the Judicial Department for such purposes,
816 such compensation shall be established by the Probate Court
817 Administrator and paid from the Probate Court Administration Fund.

818 (c) Upon finding at the hearing or any time during the pendency of
819 the proceeding in the Probate Court, that reasonable cause exists to
820 warrant an examination, the court on its own motion or on motion of
821 any party, may order the child to be examined at a suitable place by a
822 physician, psychiatrist or licensed psychologist appointed by the court.
823 The court may also order examination of a parent whose competency
824 or ability to care for a child before the court is at issue. In the event the
825 court requires the assistance of the Department of Children and
826 Families in arranging, directing or assisting in the court-ordered
827 examination, the commissioner shall render such assistance. The
828 expenses of any examination if ordered by the court on its own motion
829 shall be paid for by the petitioner or if ordered on motion by a party,
830 shall be paid for by the party moving for such an examination, unless
831 such party or petitioner is unable to pay such expenses in which case
832 they shall be paid for by funds appropriated to the Judicial
833 Department. However, in the case of a probate matter, if funds have
834 not been included in the budget of the Judicial Department for such
835 purposes, such expenses shall be established by the Probate Court
836 Administrator and paid from the Probate Court Administration Fund.
837 The court may consider the results of the examinations in ruling on the
838 merits of the petition.

Statement of Purpose:

To provide greater resources to Probate courts to protect children in removal of guardian and termination of parental rights cases; to clarify responsibilities of the Department of Children and Families with respect to the Probate Courts; to permit transfer of consent termination and custody matters from Superior Court to Probate Court; to add new ground for removal of parents as guardians; and to clarify role of attorneys and guardians ad litem appointed in probate matters.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]