

# Executive Summary

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## CONNECTICUT PROBATE COURT SYSTEM

With more than a 300-year history, the Connecticut probate court system is one of the oldest in the nation. Since 1850, probate judges have been elected officials serving the voters of the towns comprising their respective probate districts. Currently, there are 123 probate judges serving four-year terms.

The traditional probate court function is the administration of decedents' estates or "probating", which is the process of proving that a will is genuine and distributing the property. The legislature has expanded the probate court jurisdiction through the years. Probate courts now handle a variety of matters in addition to decedents' estates such as: conservatorships; children's matters including guardianship and temporary custody, termination of parental rights, and adoptions; commitment of mentally ill children and adults; guardianship of persons with mental retardation; and name changes.

The probate court system was structured to be self-supporting without assistance from the state's general revenue. The towns that are served by a probate district have a financial obligation to provide court facilities, but the balance of the funding should be provided solely from court fees that are set by statute. The probate court administrator, appointed by the chief justice of the state Supreme Court, has general oversight of the probate system.

For years, various groups have examined the structure and operations of the probate system with recurring themes but differing results. Several operational changes have been implemented but the probate courts remain a separate and distinct court system retaining administrative and fiscal autonomy.

On April 11, 2005, the Legislative Program Review and Investigations Committee voted to undertake a study of the state's probate court system. Among the committee's findings:

- The existing 123 probate courts, to date, have collectively generated sufficient gross receipts to cover their operating expenses. The probate court system at present is self-sustaining. Based on a variety of assumptions, the 123 probate courts as a whole will continue to generate sufficient gross receipts to cover their basic operating costs through 2010. However, growing expenses in the upcoming years will mean less income going into the Probate Administration Fund for other system costs. In particular, the health insurance costs and the inclusion of indigent costs in the Probate Administration Fund are two factors impacting the stability of the probate fund.
- Although the judges' compensation was set by statutory formula to address disparities in workload, the present system still produces considerable variation among the individual judges' compensation.
- The total operating expenses for the Office of the Probate Court Administrator demonstrated a modest growth between FY 2000 and FY 2003 but increased substantially from FY 2003.

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- Initial steps have been taken to expand the regional children's probate courts without an implementation plan. In addition, there has been no itemized budget of the anticipated costs and impact on the Probate Administration Fund.
- Recent legislative changes regarding the calculation of probate fees for decedent estates may have resulted in an unintentional impact.
- Overall, the judges seem to be generally satisfied with the support services provided by the probate administration staff. However, the level of satisfaction and dissatisfaction with the management of the Office of the Probate Court Administrator is closely divided.
- The majority of probate attorneys responding to a program review survey have a positive opinion regarding the Connecticut probate courts. However, 57 percent of the attorneys indicated they experience major differences among the courts. The public hearing testimony and survey comments received by the program review committee suggest inconsistent policies and practices among courts.
- The hours of operation for the probate courts vary widely. There are no guidelines or regulations to address court personnel issues such as compensation levels or training.
- There are statutory provisions in place which have not been enforced by the Office of the Probate Court Administrator. The administrator's enforcement authority is somewhat limited by the fact that probate judges are elected officials. A different enforcement mechanism may be necessary if non-compliance does not rise to the level for referral to the Council on Probate Judicial Conduct.
- Voluntary consolidation of the probate courts is reasonable given the need for stronger financial accountability along with evidence of workload inequities in the current probate districts.

## RECOMMENDATIONS

- 1. The Office of the Probate Court Administrator, in consultation with the executive committee of the Probate Assembly, shall obtain the services of an independent professional financial consultant to develop a mechanism for judicial compensation taking into account the health insurance and retirement benefits provided to probate judges under current law as well as the time and skills reasonably necessary to perform judicial duties. A final report shall be submitted to the Judiciary Committee no later than September 1, 2006. Any changes requiring statutory revisions shall be proposed in the 2007 legislative session.**
- 2. The costs related to indigent cases shall be paid from the state's general revenues.**
- 3. Not later than May 31, 2006, the Office of the Probate Court Administrator shall**

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submit to the committees of cognizance of the General Assembly a written report on the experience of the regional children's probate court in New Haven.

The Office of Probate Court Administrator shall develop a written implementation plan, in consultation with the Department of Children and Families, identifying the possible probate districts that may be considered for additional children's probate courts pursuant to P.A. 05-225. The plan will describe the selection process for participating towns as well as a process for establishing the towns' desire to participate. The plan will also outline anticipated costs based on the experience of the regional children's probate courts already in place, describe the roles of those other agencies involved in the proposed court initiatives such as the Department of Mental Health and Addiction Services and the Department of Children and Families, and indicate whether those agencies should be financially contributing to the operation of these proposed courts who are benefiting their clients. No additional regional children's probate courts shall be established beyond the two existing ones until the written implementation plan is submitted to the committees of cognizance of the General Assembly.

4. The growth in the Office of the Probate Court Administrator's operating budget shall be capped at the previous year's growth in the Probate Administration Fund. The independent audit of the Probate Administration Fund shall be submitted to the legislative committees of cognizance.
5. The Office of the Probate Court Administrator shall submit to the Probate Court Assembly for approval minimum standards regarding hours of operation and staffing. All probate courts shall be open pursuant to these standards, and staffing standards should include consideration of necessary vacation time, sick time and personal days. Enforcement of these standards shall be administered by the Office of the Probate Court Administrator.
6. No later than January 1, 2007, the Office of the Probate Court Administrator shall develop and submit to the Probate Court Assembly for approval salary standards for the various probate staff positions.
7. The Office of the Probate Court Administrator, in conjunction with the Connecticut Association of Probate Clerks, shall develop a mandatory training program for probate clerks no later than September 1, 2006. This training should insure that consistent standards be developed and implemented. Probate clerks should be given paid time for their participation in continuing education and the cost of the training be covered by the probate court.
8. The Office of the Probate Court Administrator must pursue all available enforcement options to ensure compliance with existing statutory mandates.
9. The Office of the Probate Court Administrator, in consultation with the Probate Assembly, should examine the issue of enforcement authority for situations that do not rise to the level of formal referral to the Council on Probate Judicial Conduct. The review should take into consideration but not limit itself to monetary sanctions. The

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**Office of the Probate Court Administrator must prepare and submit a formal report with any recommended changes to the General Assembly's committees of cognizance and the Chief Justice no later than September 1, 2006.**

- 10. The Office of the Probate Court Administrator shall enforce the continuing education credit requirement for probate judges and discontinue the allowance of credit for presentations to the general public.**
- 11. The Office of the Probate Court Administrator shall re-examine the scope of the probate judge training and continuing education program to address inconsistent practices and better understanding of probate practice.**
- 12. The Office of the Probate Court Administrator and the Probate Assembly shall develop a curriculum and examination to establish the competency of probate judges to hear cases. Before taking office, new probate judges will be required to complete the curriculum and/or pass the examination. Currently sitting judges should be "grandfathered" in for the balance of their term.**
- 13. The Office of the Probate Court Administrator and the Probate Court Assembly shall jointly establish a minimum allowable workload standard per full-time employee.**

**The Office of the Probate Court Administrator and the Probate Court Assembly shall develop a report identifying potential opportunities for a voluntary consolidation of existing probate court districts to achieve a minimum weighted workload in each district. In addition to a minimum weighted workload, the report must take into consideration the adequacy of the existing court facilities, the potential expense for expanded facilities, and any reasonable geographic impact on transportation. Furthermore, the report must take into account the impact of the anticipated expansion of the regional children probate court model on the existing workload of the regular probate courts.**

**The report shall be developed by September 1, 2006, and provided to the Probate Assembly and the chief elected official of each town recommended for consolidation for comment. A final report, including comments received, shall be submitted to the Judiciary Committee and the Chief Justice by December 31, 2006.**