



LAW GOVERNING TERMINATION OF PARENTAL RIGHTS IN CASES OF MEDICAL NEGLIGENCE AND RELATED ISSUES

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MEDICAL NEGLIGENCE

Medical neglect is the refusal or failure of a person with responsibility for a child to seek, obtain, and/or maintain necessary medical care for the child, according to DCF.

QUESTIONS

Describe the law regarding parents' rights to choose medical treatment for their child, the Department of Children and Families' (DCF) authority to intervene in cases of suspected medical neglect, what happens when DCF intervenes, and limits on DCF's authority over children in its custody. Following are the specific questions with each answer.

1. Do parents have the right to choose the medical treatment for their child even if physicians recommend a different treatment?

Yes, parents have the right to choose, but this right is limited by child neglect laws. Under state law, the parent or guardian of a minor child has the authority to make decisions affecting a child's welfare, including decisions on major medical, psychiatric, and surgical treatments (CGS § [45a-604](#)). The mother and father of a child are considered joint guardians with equal authority to make decisions for the child.

By law, a physician is a mandatory reporter, who is required to report suspected medical neglect when, in the ordinary course of professional work, he or she has reasonable cause to suspect a child is being denied necessary medical care based on the physician's professional judgment. In determining this, a doctor must take into account his or her observations, professional training and experience, and information gathered from the child and parents. The duty to report suspected medical neglect creates a limit, although rarely used, on parental rights to choose medical treatment for a child (CGS §§ [17a-101](#) through [17a-103](#), and [45a-606](#)).

2. Is a physician required to report suspected medical neglect because he or she disagrees with the treatment choice of the parents?

A physician only reports suspected neglect if he or she believes the parents' treatment choice amounts to neglect. As mandatory reporters, physicians are required to report to DCF when, in the ordinary course of their work, they have a reasonable cause to suspect or believe a child is being subjected to medical neglect (CGS §§ [17a-101](#) through [17a-103](#)). Under state law, a child is neglected when, for reasons other than poverty, the child has been (1) abandoned; (2) denied proper care and attention physically, educationally, emotionally, or morally; or (3) permitted to live under conditions harmful to the child's well-being (CGS § [46b-120](#)). State law and DCF regulations do not define "medical neglect," however, [DCF guidance](#) defines the term to mean the refusal or failure of a person with responsibility for a child to seek, obtain, and/or maintain necessary medical care for the child. The guidance specifies that failure to provide a child with immunizations or routine well child care alone does not constitute medical neglect.

Connecticut law and regulations do not provide more guidance on when a medical professional has reasonable cause to suspect medical neglect. [Online DCF training materials](#) state the mandated reporter does not need to be certain the child is being neglected and this would apply to medical neglect. Rather, the decision to report is based on professional judgment.

Failure by a mandated reporter to make a report is a class A misdemeanor (CGS § [17a-101a](#)). Any person who knowingly makes a false report is subject to criminal penalties of up to one year in prison and a fine of up to \$2,000.

3. What happens once a physician reports suspected medical neglect?

When a mandated reporter has reasonable cause to suspect medical neglect, an oral report must be made to DCF within 12 hours. Within 48 hours after making the oral report, the mandated reporter must submit a written report (CGS § [17a-101c](#)). Certain types of reports (including reports of a child's death, sexual assault, brain damage, serious impairment of a bodily function or organ, and serious non-accidental physical injuries) require DCF to notify the appropriate police department within 12 hours after receiving the report. Under less serious circumstances, DCF proceeds by immediately evaluating and classifying the seriousness of the report, which determines how the process moves forward (CGS § [17a-101g](#)).

If further investigation is warranted, DCF begins its investigation within two hours if there is an imminent risk of physical harm or other emergency and within three days in other cases. In all cases, DCF must complete its investigation within 45 calendar days. Before DCF may interview a child, it must obtain the consent of the child's parent or guardian unless there is reason to believe the guardian is a perpetrator of abuse (CGS § [17a-101h](#)). Generally, DCF must have either a guardian or a disinterested adult present during the interview, unless exigent circumstances make that impractical.

[Online training materials](#) from DCF state a mandated reporter should not attempt to conduct his or her own preliminary investigation before making a report. Rather, the mandated reporter's duty is solely to report the suspected neglect.

4. What recourse do parents have if DCF seeks to terminate their custodial rights because of medical neglect and how can parents regain custody?

DCF cannot unilaterally terminate parents' custody of their child. DCF must take a number of steps and Probate or Superior court must hold hearings, before a court could terminate the parents' custody.

When DCF receives a report of child abuse or neglect, it is required by state law to conduct an assessment or investigation of the report. In the course of this assessment DCF may determine the child is at imminent risk of physical harm and that immediate removal is necessary. In these situations, DCF may take custody of the child for 96 hours if the agency has probable cause to believe the child is facing imminent danger. Before beginning a 96-hour custody period, the agency must give the parent a written explanation of why the child is being removed and the legal basis for the removal ([DCF Policy 34-10-4.1: Child Protective Investigations, Removal of a Child](#)).

In cases where DCF believes it is necessary to retain custody beyond 96 hours, the department must request an Order of Temporary Custody (OTC) from the court. If DCF does not seek the OTC, it must return the child to the parents at the end of the 96 hours.

Parents are entitled to a court hearing on the OTC request within 10 days after DCF seeks it. At the hearing, the parents can contest the order as a full party to the proceeding. During the hearing, parents have the right to an attorney and, if they cannot afford one, the court will appoint one. It should be noted that an OTC is not a permanent denial of custody and is intended to be the beginning of a process designed to remedy the circumstances giving rise to the claim of abuse or neglect

so the child may be returned to his or her family. State law requires the court, upon issuing an OTC, to provide parents with specific requirements to meet as a necessary condition of regaining custody of the child.

When the court permits DCF to take temporary custody, DCF must seek court approval of a permanent plan for the child within nine months and the court must hold a hearing on the plan within 90 days after DCF makes a motion for approval of the plan. Connecticut law requires DCF to make reasonable efforts to return the child to its parents. The department can only bypass this obligation if the court (1) determines by clear and convincing evidence, which is a high standard, that it is inappropriate or unnecessary under the circumstances (e.g., abandonment) or (2) approves a permanency plan other than returning the child to its parents. Among other things, the permanency plan hearing can result in: (1) reunification of child and parents, (2) transfer of guardianship, (3) initiating termination of parental rights, or (4) long-term foster care with a relative licensed as a foster parent.

When DCF files a petition for the termination of parental rights, the court must schedule a hearing on the petition (CGS §§ [45a-716](#), [46b-129](#)). Generally as a first step, the parties will discuss the matter at a case management conference. If the issue cannot be solved through the conference, then the court will hold a full evidentiary hearing, during which the parent again has the right to counsel, which the court will provide if the parent cannot afford one, and the right to contest DCF's case. Among the circumstances that would allow a court to terminate parental rights, and not seek reunification, is clear and convincing evidence the parent has (1) abandoned the child; (2) inflicted or allowed infliction of sexual molestation, severe physical abuse, or other patterns of abuse or neglect; or (3) deliberately caused the death of another child (CGS §§ [17a-111b](#), [17a-112](#)).

5. Can DCF enroll children in its custody in medical trials or experiments? Who approves medical care for children in DCF custody?

It is possible for children in DCF custody to be included in a drug trial or medical study, but only after the agency's Medical Review Board (MRB) reviews the request and the commissioner approves. According to the [National Institutes of Health](#), the term medical trial or study can encompass a number of different activities. Some studies test what a layperson might consider "experimental treatments," meaning a treatment in which the efficacy is unknown. Other studies may simply seek to compare the success rate of two or more well-established and standard medical treatments.

While DCF policies, discussed below, expressly permit participation in medical trials after receiving MRB review and commissioner approval, the agency's legal office says DCF would not permit a child in the agency's custody to receive a "purely experimental treatment."

Under Connecticut law, DCF has the authority to make decisions regarding emergency medical, psychological, psychiatric, or surgical treatment for children in its custody. DCF's policy on medical decisions is to rely on the expertise of the child's existing health care providers and the advice of the MRB ([DCF Policy 26-5-1: Health Management, Medical Review Board](#)). The MRB provides recommendations about medical care for children in DCF custody when their medical conditions are complex or otherwise involve difficult ethical or legal issues. The MRB makes recommendations to the commissioner, but ultimately the decision rests with the commissioner.

The MRB consists of the following DCF staff: director of pediatrics, medical director, child and adolescent development administrator, and legal director. Additionally, the board must include members, who may or may not be staff, with the following professional expertise in: pediatric intensive care, community-based child and adolescent psychiatry, pediatrics, pediatric neurology, and biomedical ethics. Members of MRB are appointed by the DCF commissioner and a single member may fill more than one of the named positions. The chairperson of MRB may add ad hoc members with particular specialties to give advice on a particular case within that person's expertise.

Cases are referred to MRB when DCF is seeking approval for:

1. a child's inclusion in a drug trial or medical study;
2. complex, high risk, or unusual medical or surgical treatment, whether measured by medical, ethical, or legal standards;
3. treatment that is contrary to the parents' wishes and is proposed by the child's medical provider;
4. a medical or surgical remedy with a high likelihood of long-term or irreversible life-altering implications;
5. organ donation;
6. a medical, surgical, or psychological procedure that is considered non-traditional;

7. a psychiatric treatment that is exceptionally complex, unusual, controversial, or experimental; or
8. electroconvulsive therapy.

Cases are referred to MRB also if they involve decisions on medical or psychiatric care that have an impact on, or may conflict with, religious and cultural practices (e.g., for children who are Seventh Day Adventists or Christian Scientists).

Authorization for any of these procedures or treatments requires MRB to begin reviewing a referred case within 10 working days for non-emergency cases and immediately for emergency cases. A minimum of four MRB members must be involved in the review to make a recommendation to the commissioner. DCF policy provides for decision-making by consensus; however, whenever consensus cannot be reached, the chairperson must develop a specific recommendation for review by the commissioner (CGS § [46b-129](#)).

6. Does Connecticut law provide for a child in DCF custody to continue (a) education at his or her original school and (b) his or her religious practices while in state custody?

Education. State law presumes the best interest of the child is to remain in the school he or she was attending before being placed in DCF custody. If the agency believes it would be inappropriate for the child to continue at his or her original school, then the agency has the burden of demonstrating that a transfer to another school is in the child's best interest. According to DCF, the agency attempts to facilitate keeping a child in the school of origin by placing the child with relatives or foster care within the original school district. State law requires DCF to consider proximity to school of origin when choosing a residential placement (CGS § [17a-16a](#)).

Regardless of where DCF places a child residentially, it is responsible for any additional transportation costs associated with transporting the child from the residential placement the agency chooses to school.

Placement decisions made by DCF cannot override an Individual Education Program (IEP) plan for the child ([DCF Policy 45-12: Education Stability](#)). IEPs are a component of Connecticut's special education program providing an individualized plan to meet the educational needs of children eligible for special education services.

When circumstances change, the educational placement of the child may be reassessed. Reassessment may be triggered by DCF, parents, guardians ad litem, and the child's attorney ([DCF Policy 45-12: Education Stability](#)).

Religion. DCF is required to consider a child's religious practices and background when making placement decisions (CGS §§ [17a-96](#), [46b-129\(j\)\(4\)](#)). State regulations require the agency and any placement guardians or supervisors to respect the child's religious beliefs and practices and provide an opportunity to continue practicing the religion whenever possible (Conn. Agencies Reg. §§ [17a-145-97](#), [17a-145-151](#)). According to DCF, the agency works with foster parents and congregate care facilities (i.e., group homes) to ensure the child is able to continue attending religious services at his or her original religious institution. However, state law does not require DCF to facilitate the child's continued attendance at the religious institution or church the child attended before being placed in DCF custody.

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