

## Backgrounder: Termination of Parental Rights

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### Issue

Describe the procedures in law for termination of parental rights.

### Summary

By law, “termination of parental rights” (TPR) means the complete severance by court order of the legal relationship between a minor child and one or both parents so that the child is free for adoption ([CGS § 17a-93\(5\)](#)).

Depending on the circumstances, TPR cases may be brought in probate court or Superior Court.

Certain parties may petition the probate court to terminate parental rights, including:

1. either or both parents, including a parent who is a minor;
2. the child’s guardian;
3. a licensed child-care facility or adoption agency;
4. a relative of the child if the parent or parents have abandoned or deserted the child;
5. certain municipal officials; or
6. the Department of Children and Families (DCF) commissioner, provided (a) the custodial parent has consented to the termination, (b) the child has not been committed to the department, and (c) no commitment application has been made.

If the petition is filed in probate court and the child is age 12 or older, he or she must join in the petition ([CGS § 45a-715](#)).

The Superior Court serves as the venue for the petition if (1) the child is in DCF custody because he or she was abused, neglected, or uncared for, in which case, the DCF commissioner or an attorney representing the child may file the petition or (2) the probate court, on its own motion or the motion of a party, transfers a contested TPR petition to the Superior Court before the probate court holds a hearing on the merits ([CGS §§ 45a-715\(g\), 45a-716\(a\)](#)).

By law, the presiding court must provide notice and conduct a hearing before approving or denying a TPR petition. The court may only approve a TPR petition if it finds, based on clear and convincing evidence, that the termination is in the child's best interest and one of the grounds for termination provided in law exists (e.g., if the parent consents to the termination or the child has been abandoned or severely abused).

Under state law, a parent who is the subject of such a petition has the right to counsel. If the parent is a minor or incompetent, the court must appoint a guardian ad litem (GAL) for the parent and if that parent is the petitioner, the GAL must approve the petition before the court may act on it.

If the parental rights of only one parent are terminated, the remaining parent is the child's sole parent and, unless otherwise provided by law, his or her guardian. If the parental rights of both parents are terminated, the child becomes available for adoption.

A parent may appeal a TPR decision and, in limited circumstances, the Superior Court may reopen and reconsider or set aside a TPR judgment.

## **Petition**

The TPR petition must include certain information the law prescribes, such as:

1. the child's name, sex, date and location of birth, and present address;
2. the names, birth dates, and addresses of the child's parents, if known;
3. the petitioner's name, address, and relationship to the child;
4. the facts upon which termination is sought, the legal grounds authorizing termination, the effects of a termination decree, and the basis for the court's jurisdiction; and
5. the name of any individual who, or agency that, agreed to accept custody or guardianship of the child upon disposition ([CGS § 45a-715\(b\)](#)).

If the parent consents to the termination, he or she must acknowledge so on a form promulgated by the chief court administrator. By law, a mother cannot consent to termination within 48 hours after giving birth. A parent who is a minor may consent to terminating parental rights. The decision is not voidable based on a minor parent's age, but the court must appoint a GAL to assure that he or she is giving informed and voluntary consent ([CGS §§ 17a-112\(a\), 45a-715\(d\)](#)).

## Notice

When the court receives a TPR petition, it must schedule a hearing within 30 days of the petition's filing, or within 20 days of the filing if the parent consents to the termination ([CGS § 45a-716\(a\)](#)).

The court must provide notice and a certified copy of the petition at least 10 days before the hearing to the (1) child's parents, (2) guardian or any other person the court deems appropriate, (3) DCF commissioner, and (4) attorney general. If the child was born to unwed parents, the court must also provide notice to the father if he (1) has been adjudicated as the child's father, (2) has acknowledged paternity in writing, (3) has regularly paid child support, (4) filed a claim for paternity, (5) is named as the father on the child's birth certificate, or (6) is named in the petition as the father by the child's mother. Notice to the parent or parents whose rights may be terminated must state that they have a right to be represented by counsel and the court will appoint counsel if they are unable to afford it ([CGS §§ 45a-716\(b\), \(c\)](#)).

When a TPR proceeding is pending in Superior Court, the court may order the child removed from the home and placed in DCF custody or the custody of a proper person, child care institution or organization, or DCF-licensed facility while the petition is pending. The court may only order such placement if it deems it necessary based on the child's best interests. If the court orders the child to be placed in DCF custody, it must determine within 60 days whether the department made reasonable efforts to keep the child with his or her parents or guardian before the order was issued. If DCF did not make such efforts, the court must determine whether reasonable efforts were not possible, taking into consideration the child's best interests, including his or her health and safety ([CGS § 17a-113](#)).

## Hearing

Any party who was notified of the TPR hearing has the right to appear and be heard on the petition. A parent consenting to TPR is not required to attend such a hearing unless otherwise provided by court order. If a consenting parent does attend the hearing, the court must explain to him or her the meaning and consequences of the termination ([CGS § 45a-717\(a\)](#)).

If the hearing takes place in Superior Court, the court may permit any person it finds has a legitimate interest in the hearing or the court's work to attend the hearing, including (1) foster parents and relatives; (2) service providers; and (3) members of the media and individuals or representatives of any agency, entity, or association. For a child's safety and protection, judges may direct members of the last group who are present at a hearing not to disclose information that identifies the child, his or her custodian or caretaker, or members of the child's family involved in the case ([CGS § 46b-122](#)).

### ***Legal Representation***

If parents facing TPR appear without counsel, the court must inform them of their right to counsel and upon request, appoint counsel if they are unable to afford it. A parent may not waive the right to counsel unless the court has explained the nature and meaning of TPR. By law, in proceedings in which the custody of a child is at issue, the court must provide an attorney to represent the child. The court may also appoint counsel to speak at the hearing on behalf of the child's best interests ([CGS §§ 45a-717\(b\), 46b-136](#)).

If it appears that either of the child's parents is a minor or incompetent, the court must appoint a GAL for the parent. The GAL must be a licensed attorney or authorized officer of a child-placing agency, if the agency is not the petitioner. If the parent is the petitioner, the GAL must approve the petition in writing before the court takes action ([CGS §§ 45a-708, 45a-715\(f\)](#)).

### ***Reports and Examinations***

The court may, on its own motion or the motion of any party, either while the petition is pending or at the hearing, order the child to be examined by a court-appointed physician, psychiatrist, or licensed clinical psychologist if reasonable cause exists. The court may also order examination of a parent or custodian whose competency or ability to care for a child before the court is at issue. The court may consider the results when ruling on the merits of the petition ([CGS § 45a-717\(d\)](#)).

The court may, or in a contested case must, ask DCF or a DCF-licensed child placing agency to investigate and report in writing to the court within 90 days of the request. The report must indicate the child's physical, emotional, and mental status and contain facts that may be relevant to the court's determination of whether termination of parental rights would be in the child's best interest, including the physical, mental, social, and financial conditions of the biological parents.

If such a report is requested, the court must schedule a hearing after (1) the 90 day period or (2) receiving the report, whichever is earlier. The court must provide notice of the hearing to (1) all the parties notified of the first hearing, (2) the child if he or she is over age 14, and (3) any other individuals the court deems appropriate. The report must be admitted as evidence and any interested party may require that the person who wrote it appear as a witness, if available ([CGS § 45a-717\(e\)](#)).

## **Standard to Grant Petition**

The court may approve a TPR petition if it finds, based on clear and convincing evidence, that the termination is in the child's best interest and one of the following grounds for termination exists:

1. the parent voluntarily and knowingly consented to the termination;
2. the child has been abandoned by the parent;
3. the child has been denied the care, guidance, or control needed for his or her physical, educational, emotional, or moral well-being due to certain actions by the parent (e.g., sexual molestation or exploitation or severe physical abuse);
4. there is no ongoing relationship between the parent and child and to allow more time to establish or re-establish such a relationship would be detrimental to the child's best interests;
5. (a) in Superior Court, the child has been found by either court in a prior proceeding to have been abused or (b) in probate court, a child of the parent was found by either court in a prior proceeding to have been abused;
6. one of the parent's children was found to be neglected, abused, or uncared for and has been in DCF custody for at least fifteen months, during which time the parent has been provided steps to have the child returned to his or her care but the parent has failed to rehabilitate to the degree that would encourage the belief that he or she would, within a reasonable time, be able to have a responsible role in the child's life (if the TPR proceedings take place in Superior Court, the child must be the subject of the petition);
7. one of the parent's children is under age seven and found to be abused, neglected, or uncared for and the parent (a) has failed, or is unable or unwilling, to rehabilitate to the degree that he or she is able to have a responsible role in the child's life and (b) had parental rights terminated for another child based on a petition filed by the DCF commissioner;
8. the parent has deliberately (a) killed or conspired to kill another of his or her children or (b) assaulted another of his or her children resulting in serious bodily injury; or

9. the parent committed sexual assault that resulted in the child's conception. (Under this circumstance, if the petition is before the probate court and the Superior Court finds that the parent was not guilty of such assault, the probate court must transfer the TPR petition to the Superior Court for a hearing and ruling ([CGS §§ 17a-112\(j\), 45a-717\(g\),\(h\).](#))

For the Superior Court to grant a TPR petition, it must additionally find by clear and convincing evidence that DCF has made reasonable efforts to locate the parent and reunify the child with him or her, unless it finds that the parent is unable or unwilling to benefit from reunification efforts. This requirement does not apply if the court, at a prior hearing on DCF's permanency plan for the child or at a trial on the TPR petition, determined that such efforts are not required. The law also authorizes the Superior Court, when it grants a TPR petition, to appoint a guardian of the person (e.g., a relative caregiver) or, if the petitioner requests, a statutory parent (i.e., DCF or an adoption agency) to care for the child ([CGS §§ 17a-112\(j\), 45a-717\(f\),\(g\).](#))

### ***Additional Considerations***

Unless the termination is voluntary, the court must also consider and issue written findings regarding:

1. child-placing agency services offered to the parent and child to facilitate their reunion;
2. if the case is in Superior Court, whether DCF has made reasonable efforts to reunite the family pursuant to federal law;
3. the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties fulfilled their obligation under the order;
4. the child's feelings towards and emotional ties with his or her parents, guardian, or anyone who provided care for at least one year and with whom the child has developed significant emotional ties;
5. the child's age;
6. the parent's efforts to adjust his or her circumstances, conduct, or conditions to make it in the child's best interest to return home, including the (a) extent to which the parent maintained contact with the child and (b) maintenance of regular contact or communication with the child's guardian or custodian; and
7. the extent to which the parent was prevented from maintaining a meaningful relationship with the child by the unreasonable actions of another person, including the other parent, or the parent's economic circumstances ([CGS §§ 17a-112\(k\), 45a-717\(i\).](#))

If the parental rights of only one parent are terminated, the remaining parent is the sole parent and, unless otherwise provided by law, guardian ([CGS §§ 17a-112\(n\), 45a-717\(j\)](#)). If the court terminates parental rights and appoints DCF as the child's statutory parent, the commissioner may, after the appeals period expires, file an adoption petition in the court that granted the TPR petition ([CGS § 46b-129b](#)).

## **Post-Judgment**

### ***Reopening a Judgment Terminating Parental Rights***

In cases where an adoption has not been finalized, the Superior Court may reopen and reconsider or set aside a judgment to terminate parental rights within four months of the judgment. The four month time limit does not apply if the judgment was based on fraud ([CGS §§ 45a-719, 52-212](#)).

The court must take the child's best interests into consideration when deciding whether to reopen, set aside, or grant a new trial. Anyone with legal or physical custody of the child under an agreement, including an agreement with DCF or an adoption agency, may provide evidence to the court concerning the child's best interest at a hearing on a motion to reopen or set aside a TPR decision. The determination cannot be based on a consideration of the birth parent's or caretaker's socioeconomic status ([CGS § 45a-719](#)).

### ***Appeals of Termination Decisions***

The law permits a parent whose rights were terminated in probate court to appeal the court's decision in Superior Court. Generally, the appeal must be made within 30 days of the decision unless the:

1. parent appealing the order did not receive notice of the hearing, in which case the appeal must be made within 90 days or
2. appeal is based on a voluntary termination of parental rights, in which case it must be made within 20 days ([CGS § 45a-187](#)).

The law also permits DCF, or any party to the TPR action aggrieved by a final judgment in a TPR proceeding to appeal the decision at an expedited hearing before the Appellate Court ([CGS § 46b-142](#)). The Appellate Court's final decision must be issued as soon as practicable after the date the certified copy of the case record is filed with the court clerk ([CGS § 46b-142](#)).

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