



PA 19-47—sHB 7130

Judiciary Committee

AN ACT CONCERNING PROBATE COURT OPERATIONS

SUMMARY: This act makes various changes to the state’s probate court operations laws. Principally, the act:

1. allows for electronic filing and delivery of probate court documents and requires the appeal period for electronically served decisions to be calculated from the date of transmission (§§ 1 & 10-15);
2. expands the circumstances under which the Department of Children and Families (DCF) commissioner must notify the probate court when she substantiates an abuse or neglect allegation (§ 2);
3. increases, from \$225 to \$250, the fee for filing motions, petitions, or applications in probate court for matters other than decedents’ estates (§ 4);
4. removes the probate court’s ability to, on its own motion, appoint a guardian for a minor who has no parent or guardian and instead only allows an adult relative, person with physical custody of the minor, or the minor’s attorney to petition for a guardian appointment (§ 5);
5. eliminates the requirement that the guardian of an adult with intellectual disability (i.e., a plenary or limited guardian) receive personal service of a petition to remove his or her guardianship (§ 6);
6. alters certain notice requirements involving termination of parental rights proceedings, including requiring notice to minor children age 12 or older (§§ 7-9);
7. repeals a procedure by which a petitioner may freeze the assets of someone who is the subject of a conservatorship proceeding by filing a certified copy of the petition with a financial institution or recording the copy on the land records (CGS § 45a-653) (§ 17); and
8. makes minor, technical, and conforming changes (§ 3 and throughout).

EFFECTIVE DATE: Upon passage, except the provisions on (1) terminating parental rights, plenary or limited guardians, statutory parent appointments, and a technical change to probate court appeals are effective October 1, 2019; (2) probate court filing fees and freezing assets are effective July 1, 2019; and (3) child abuse or neglect investigations and petitions for guardianship appointments are effective January 1, 2020.

§§ 1 & 10-15 — ELECTRONIC FILING AND PROBATE COURT APPEALS

Electronic Filing

The act allows the probate court administrator to maintain an electronic filing

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(eFiling) system for filing, sending, receiving, and viewing probate court documents. The system must also enable users to pay associated court fees and expenses.

Under the act, the probate court or a party or attorney in a probate court matter can use the system to electronically serve (eServe) a filing, notice, or other document to a registered filer (i.e., someone registered to use the system) if the court has granted the filer's request for online access to the matter's records.

The act specifies that using the eFiling system satisfies the law's requirements on transmitting a filing, notice, or document by means other than personal service.

Probate Court Appeals

By law, individuals may appeal a probate court order, denial, or decree within a certain time period. The length of time permitted for an appeal varies based on the matter involved. Under prior law, the time period for an appeal was calculated from when the court sent the order, denial, or decree. Under the act, the appeal period is calculated from that date or the date on which the court transmitted the order, denial, or decree, whichever is later.

§ 2 — NOTICE TO PROBATE COURT OF CHILD ABUSE OR NEGLECT

The act requires the DCF commissioner to notify the probate court of her findings after investigating and substantiating a child abuse or neglect allegation against someone who lives with a probate court-appointed guardian of a minor child. The law already requires her to provide this notice if she investigates and substantiates an allegation of child abuse or neglect against a child's probate court-appointed guardian.

§ 5 — GUARDIAN APPOINTMENT FOR A MINOR

Prior law permitted a probate court to appoint a guardian or co-guardians for a minor under its jurisdiction who had no guardian or parent. The act instead allows the following individuals to petition the probate court for guardianship of the minor: an adult relative by blood or marriage, a person with actual physical custody of the minor when the petition is filed, or the minor's attorney.

Under the act, the petition must be filed in the probate court in the district where the minor lives, is domiciled, or is located when the petition is filed. The court must consider standards in existing law when making such appointments, such as the best interests of the minor and the ability of a prospective guardian to meet the minor's needs.

The act also requires the court to order that notice of a guardianship hearing be provided to 12-year-old minors who are the subject of these hearings, in addition to minors over age 12 as required under existing law.

For these purposes, a "minor" is (1) someone under age 18 or (2) an unmarried person under age 21 who (a) is dependent on a competent caregiver, (b) has consented to continuation of a guardianship after turning 18, and (c) files,

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or on whose behalf is filed, a petition for special immigrant juvenile status (SIJ) (see BACKGROUND).

§§ 7-9 — PARENTAL RIGHTS TERMINATION PROCEEDINGS

Notice Requirements

The act requires the probate court to provide notice of a termination of parental rights hearing to any child age 12 or older whose parent is the subject of the hearing. Under existing law, unchanged by the act, the court must also give notice, as applicable, to the child's parents or guardians, any other person the court deems appropriate, the DCF commissioner, and the attorney general.

By law, when a child is eligible for adoption and no statutory parent has been appointed, the court must hold a hearing to make an appointment upon petition from the child's guardian or a duly authorized officer of a child care facility or child-placing agency. The act requires the hearing notice to be sent to the child if he or she is age 12 or older and other interested parties by first class mail at least 10 days before the hearing. Under prior law, the notice was sent (1) to the child if he or she was age 13 or older and (2) by registered or certified mail or other method.

Court-Ordered Evaluations

By law, the court, during the hearing or at any time the termination petition is pending, may order an examination by a court-appointed physician, psychiatrist, or licensed clinical psychologist of the (1) child or (2) parent or custodian if his or her competency to care for the child is at issue.

Under the act, if the court orders the examination on its own motion, the petitioner, respondent, or requesting party must pay for the examination in a proportion that the court determines, and if a responsible party is indigent, then that party's share must be covered by the judicial department or probate court, as applicable.

By law, the court must order a hearing 90 days after ordering the examination or upon receiving the examination results, whichever occurs first. Prior law required the court to give reasonable notice of the hearing to all parties to the initial parental rights termination hearing, including the child if he or she was over age 14. The act eliminates this specific reference to a child over age 14.

Under prior law, the petitioner had to pay for the examination, but if another party moved for the examination, then that party had to cover the cost. If neither was able to pay, then the judicial department or probate court, as applicable, covered the cost.

DCF Investigations and Reports

By law, the court may, and must in contested case hearings, ask DCF or a DCF-licensed child-placing agency to investigate and report on the child's

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physical, mental, and emotional status and other relevant factors to help it determine if terminating parental rights would be in the child's best interest.

Under the act, the report is admissible as evidence in the proceedings subject to the right of a party to require that the person who made the report appear as a witness and be subject to examination. Under prior law, only interested parties had this right, and the witness only had to appear if he or she was available.

BACKGROUND

Special Immigrant Juvenile (SIJ) Status

Existing law permits a party in a probate court case involving guardianship, parental rights, or adoption to petition the court to make certain findings that someone may use to apply to the U.S. Citizenship and Immigration Services for SIJ status (CGS § 45a-608n).

Under federal law, an immigrant child under age 21 may apply for SIJ status if he or she (1) was abused, neglected, or abandoned and (2) meets certain other criteria. If granted by the federal court, SIJ status allows the child to legally remain in the United States (8 U.S.C. § 1101(a)(27)(J)).