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The Law of Child Abuse and Neglect in Connecticut

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CHILD ABUSE AND NEGLECT

IN CONNECTICUT

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This book is lovingly dedicated to Brigid, Madeleine and Camille.

Paul Chill
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CHAPTER 1: INTRODUCTION

1. SCOPE AND COVERAGE

This book is designed as a handbook for lawyers who represent clients in child-protection matters, as well as social workers, teachers, mental health professionals, physicians, nurses, law enforcement officers, and other professionals who work with abused and neglected children and their families.

The book is organized according to the actual sequence of events followed in most cases involving suspected child abuse or neglect. After some introductory sections, Chapter 2 outlines Connecticut's "reporting" requirements, traces the process by which the state may seize and maintain temporary custody of a neglected child, and then details the manner in which neglect petitions are filed, adjudicated and ultimately disposed of in the Superior Court for Juvenile Matters. Separate sections describe DCF administrative case review and hearing procedures, as well as guardianship matters in probate courts. Chapter 3 covers termination of parental rights.

The following related topics are generally beyond the scope of this book: juvenile delinquency; special education; child custody disputes between private parties; criminal prosecutions and civil tort actions for child abuse; families with service needs (FWSN) petitions; emancipation; foster care and other forms of out-of-home placement; and adoption. Some of these topics may be explored in supplements or subsequent volumes.

Throughout this book, female and male pronouns are used interchangeably. Therefore, unless otherwise apparent from the context, "she" includes "he" and "her" includes "his," and vice versa.

2. SOURCES OF LAW

A. State

The principal statutory provisions regarding child abuse, neglect and termination of parental rights are contained, confusingly, in five separate chapters spread over three different titles of the Connecticut General Statutes. They are as follows:

Title 17: Social and Human Services and Resources
Chapter 319: Department of Children and Families
Chapter 319a: Child Welfare

Title 45a: Probate Courts and Procedure
Chapter 802h: Protected Persons and Their Property
Chapter 803: Termination of Parental Rights and Adoption

Title 46b: Family Law
Chapter 815t: Juvenile Matters

The Connecticut Practice Book, which contains rules of court, also devotes several sections to procedure in juvenile matters. Sections 1023.1 and 1040.1 through 1062.1, which apply to abuse, neglect and termination cases, were entirely rewritten and renumbered in 1993. In addition, the Connecticut Probate Practice Book contains rules concerning guardians ad litem, guardians, and transfers of contested guardianship and termination matters to juvenile court.

DCF has promulgated regulations on a variety of subjects, from licensing of foster homes to subsidies for special-needs adoptions. These regulations, although poorly indexed and difficult to use, should be consulted whenever an issue arises about whether DCF has acted fairly or followed proper procedures.

A fourth source of state law is the newly-rewritten DCF Policy Manual. Its 19 volumes cover virtually every aspect of DCF operations. Although the Policy Manual does not carry the same authoritative weight as statutes, court rules or regulations, it is an important source of legal authority.

Finally, there are dozens of decisions by Connecticut appellate courts applying or construing the above sources of law, as well as an increasing number of published trial court decisions (available principally on Lexis and Westlaw).

B. Federal

Three provisions of federal law have shaped the development of Connecticut's (and other states') law in the area of child abuse and neglect, and provide a crucial background for understanding state law.

The first provision is the due process clause of the 14th Amendment to the United States Constitution, which provides that no state shall "deprive any person of life, liberty or property without due process of law." Since the early 1920's, the U. S. Supreme Court has recognized that the term "liberty" encompasses not just freedom from physical confinement, but also the right of parents and children to be free of unwarranted interference in matters of child-rearing. See, e.g., Santosky v. Kramer, 455 U.S. 745 (1982); Lassiter v. Department of Social Services, 452 U.S. 18 (1981); Meyer v. Nebraska, 262 U.S. 390 (1923). Thus state intervention in the family to protect children from abuse and neglect must comport with due process. Supreme Court cases defining and applying this fundamental "right to family integrity," which has both procedural and substantive components, has necessarily had a major and continuing impact on Connecticut law.

The second provision is the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), Public Law 93-247, as amended, codified at 42 U.S.C. § 5101 et seq. CAPTA represented Congress' first use of its spending power to encourage states to enact laws protecting children from abuse and neglect. Two of CAPTA's major innovations were its requirements that, to be eligible for federal grants, states must adopt mandatory reporting laws and provide for the appointment of guardians ad litem in child-protection proceedings. CAPTA thus served as a major catalyst for reforming and improving child-protective services in Connecticut and elsewhere.

The third provision is the Adoption Assistance and Child Welfare Act of 1980 (AACWA), Public Law 96-272, as amended, codified at 42 U.S.C. §§ 620-628 and §§ 670-676. This Act, which amended Title IV of the Social Security Act, sought to provide states with fiscal incentives to strengthen the families of children at risk of abuse or neglect, and to encourage a more active and systematic monitoring of children in the foster care system. The AACWA accomplishes this in part by conditioning federal funding for state child welfare, foster care and adoption programs upon each state's development of a comprehensive case planning and review system. 42 U.S.C. § 671(a)(16). The AACWA also makes federal funding dependent upon each state's express commitment to make, "in each case, reasonable efforts . . . prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and . . . to make it possible for the child to return to his home." 42

U.S.C. § 671(a)(15). These and other provisions of the AACWA have left large footprints on Connecticut law.

A fourth provision of federal law that practitioners should be aware of is the Indian Child Welfare Act of 1978, Public Law 95-608, 25 U.S.C. §§ 1901-1963. The Act controls any state child custody proceeding involving an Indian child. 25 U.S.C. § 1911. An Indian child is defined as "any unmarried person who is under age eighteen and is either (b) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C. §1903(4). Among other things, the Act requires that the tribe be notified of the proceeding, gives the tribe the right to intervene in the proceeding, and gives the tribe and the child's parents the right to transfer the matter to a tribal court. 25 U.S.C. § 1911. A significant provision of the Act requires that termination of parental rights be based upon evidence beyond a reasonable doubt. 25 U.S.C. § 1912(f). This federal law should be quickly consulted whenever a practitioner believes that a neglected child may be of Native American ancestry.

3. INSTITUTIONAL SETTING

A. Superior Court for Juvenile Matters

Most cases alleging that a child is abused or neglected are filed in the Superior Court for Juvenile Matters (SCJM). For the sake of convenience, the SCJM is often referred to (here as well as elsewhere) as the "juvenile court." This term is technically inaccurate; the juvenile court was abolished as a separate court system in 1978. See Conn. Gen. Stat. § 51-164s. Today the SCJM is a part of the Family Division of the Superior Court, the sole court of original jurisdiction in Connecticut (except for the probate courts; see below). Id.; Conn. Practice Book § 3.

Matters within the purview of the Superior Court for Juvenile Matters include: all proceedings concerning neglected, uncared for, dependent, and delinquent children; matters concerning families with service needs; termination of parental rights of children committed to DCF; emancipation of minors; contested guardianship matters and termination of parental rights cases transferred from the probate courts; and appeals from probate concerning adoption, termination of parental rights and removal of a parent as guardian. Conn. Gen. Stat. § 46b-121.

The SCJM is divided into 13 venue "districts" established by the Chief Court Administrator. See Conn. Gen. Stat. § 46b-142(a). In addition, in 1996, a "Child Protection Session" was established in Middletown to expedite trials in non-delinquency cases. The Child Protection Session receives cases from all 13 juvenile-matter districts.

Proceedings in juvenile court are confidential. "[A]ny person whose presence is, in the court's opinion, not necessary," must be excluded from the courtroom. Conn. Gen. Stat. § 46b-122. Moreover, juvenile matters "shall be kept separate and apart" from all other court business "as far as is practicable." Id.

Juvenile court records are also confidential and generally may not be inspected by or disclosed to third parties. Conn. Gen. Stat. § 46b-124(a). There are numerous exceptions, especially with regard to delinquency proceedings. See Conn. Gen. Stat. §§ 46b-124(b) through (h).

Proceedings in the SCJM are "essentially civil" in nature. Conn. Practice Book § 1049.1(1). Because liberty rather than property interests are at stake, however, they resemble criminal proceedings in important respects. Proceedings in the SCJM are conducted "as informal[ly] as the requirements of due process and fairness permit," Conn. Practice Book § 1049.1(1), and the Rules are construed liberally to promote the best interest of the child. Conn. Practice Book § 1055.1(1).

B. Probate Courts

Other cases involving children who are alleged to be abused or neglected are filed in the probate courts. There are currently 133 probate court districts statewide. Each is administered by a judge elected by the electors in that district for a four-year term. Conn. Gen. Stat. § 45a-18(a). The system is managed by a full-time Probate Court Administrator appointed by the Chief Justice of the Connecticut Supreme Court. Conn. Gen. Stat. § 45a-74(a).

The probate courts have the power to remove and appoint guardians of the person of a minor, Conn. Gen. Stat. § 45a-603 et seq., as well as to terminate parental rights with respect to a minor, Conn. Gen. Stat. § 45a-715 et seq., and issue decrees of adoption. Conn. Gen. Stat. § 45a-724 et seq. Other matters within the jurisdiction of the probate courts (but beyond the scope of this book) include: guardianships of the estates of minors, Conn. Gen. Stat. § 45a-628 et seq.; guardianships of persons with mental retardation, Conn. Gen. Stat. 45a-668 et seq.; conservatorships of persons who are incapable of caring for themselves or managing their affairs, Conn. Gen. Stat. § 45a-644 et seq.; and a variety of related matters. Probate courts also handle, of course, matters involving trusts, estates and wills, see Conn. Gen. Stat. 45a-98, and related matters.

Proceedings in the probate courts are generally informal, but contested cases may result in the application of the rules of evidence and should always involve strict adherence to the constitutional and statutory requirements of due process. Although transcripts and recordings of hearings are not usually made in probate court proceedings, many judges will do so in contested matters, and the parties may agree in writing to utilize the services of an official court stenographer. Conn. Gen. Stat. § 51-72. If the parties so agree, a subsequent appeal to the Superior Court will be based on the probate court record and not be a trial de novo. Conn. Gen. Stat. § 51-73.

C. Department of Children and Families

The vast majority of neglect cases are brought by the Connecticut Department of Children and Families, or "DCF."[1] DCF is the state agency charged with enforcing the "public policy of this state"

> [t]o protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse, investigation of such reports by a social agency, and provision of services, where needed, to such child and family.

Conn. Gen. Stat. § 17a-101(a).

For the past several years, DCF has been undergoing wholesale changes in its structure, operation and institutional attitude. These reforms are the result of a settlement in a federal lawsuit, Juan F. v. O'Neill, Civil Action No. H-89-859 (AHN), reached in early 1991. Under this settlement or "consent decree," the State of Connecticut committed itself to a complete overhaul of its child protective services system. Among the most significant changes are the hiring of hundreds of additional social workers, inauguration of a training academy, and the promulgation of a massive, entirely revised policy manual.

Certain other specified persons may file abuse or neglect cases in juvenile court. Conn. Gen. Stat. § 46b-129(a). In addition, certain persons may apply to the probate courts for removal of one or both parents as guardian of a minor. Conn. Gen. Stat. § 45a-614.

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[1] DCF used to be, and is still sometimes mistakenly, referred to as "DCYS," short for Department of Children and Youth Services. The agency was renamed in 1993. See Public Act 93-91 §1.

D. Office of Child Advocate

In 1995, the Connecticut legislature created the Office of the Child Advocate and charged it with taking "all possible action . . . to secure and ensure the legal, civil and special rights of children who reside in this state." Conn. Gen. Stat. § 46a-13l(a)(7). Among the Child Advocate's specifically enumerated responsibilities are reviewing the procedures of, and services delivered by, DCF and other state and private agencies; recommending changes in these procedures where appropriate; conducting programs of public education and legislative advocacy; providing training and technical assistance to court-appointed advocates for children; and investigating complaints. Conn. Gen. Stat. § 46a-13l(a). In carrying out its broad mission, the Child Advocate "shall act independently of any state department in the performance of his duties." Conn. Gen. Stat. § 46a-13k(c).

The Child Advocate has sweeping investigative powers, including virtually unrestricted access to otherwise confidential records maintained by DCF, the Superior Court for Juvenile Matters and other public and private agencies. Conn. Gen. Stat. § 46a-13m, § 46a-13n(2). In addition, the Child Advocate has authority to initiate litigation or intervene in "any proceeding before any court, agency, board or commission" on behalf of a child with the consent of that child's parent or legal guardian, and after making a good faith effort to mediate the issues involved. Conn. Gen. Stat. § 46a-13o(a).

An advisory committee meets at least three times a year with the Child Advocate and annually evaluates the office's effectiveness. Conn. Gen. Stat. § 46a-13q(a). Any legal action initiated by the Child Advocate in state court against a state agency must be authorized by the advisory committee. Conn. Gen. Stat. § 46a-13q(c).

CHAPTER 2: ABUSE AND NEGLECT

4. DEFINITIONS

A. Abuse

Child abuse is defined by law in terms of a status or condition of a child. Thus, an "abused child"[2] is one who:

> (A) has had a physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual abuse, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment.

Conn. Gen. Stat. § 46b-120. This definition is important because a determination that a child has been abused (or may have been, or may be, abused) triggers certain legal obligations for a variety of people and institutions -- professionals involved with the child or her parents, DCF, the courts, and others. Such a determination may also have significant consequences, obviously, for the child and family themselves.

The definition of abuse was intentionally drafted broadly and in the disjunctive, so as to encompass a wide range of child maltreatment. In Connecticut, as elsewhere, statutory definitions such as this have survived challenges on grounds of unconstitutional vagueness. See, e.g., State v. Anonymous, 179 Conn. 155, 164, 425 A.2d 939, 945 (1979) ("It is true that these

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[2] A "child" means any person under 16 years of age; a person age 16 or 17 is designated a "youth." Conn. Gen. Stat. § 46b-120. With a few salient exceptions, the law is the same for children and youths. Therefore, for the sake of convenience, the term "child," as used herein, includes youth, except where specifically noted.

somewhat general phrases encompass a wide variety of conduct, but the process of parenting itself is multifaceted and encompasses all of life's activities.").

Nevertheless, the breadth of the definition creates some uncertainty as to its scope. The rest of this section attempts to clarify what acts do and do not constitute child abuse.

A source of frequent confusion is corporal punishment. "[N]ot every act of corporal punishment constitutes abuse." In re Bakari P., 1996 Conn. Super. LEXIS at *13, 1996 WL 409325 at *5 (1996) (Dyer, J.). In general, corporal punishment is not regarded as child abuse so long as it is "reasonable." A portion of the penal code provides that:

> A parent, guardian or other person entrusted with the care and supervision of a minor or incompetent person, except a person entrusted with the care and supervision of a minor for school purposes . . . , may use reasonable physical force upon such minor or incompetent person when and to the extent that he reasonably believes such to be necessary to maintain discipline or to promote the welfare of such minor or incompetent person.

Conn. Gen. Stat. § 53a-18(1) (emphasis added).[3] This provision "demonstrates the public recognition of the parental right to punish children for their own welfare." State v. Leavitt, 8 Conn. App. 517, 522, 513 A.2d 744, 747 (1986). "It is clear that a parent, being charged with the training and education of his child, has the right to exercise such control and restraint and to adopt such disciplinary measures for the child as will enable him to discharge his parental duty." Id. (internal quotations omitted).

The key question, then, is at what point physical force becomes unreasonable. "Whether that limit has been reached in any particular case is a factual determination to be made by the trier of fact." Id. Based on the statutory definition of abuse, one critical line of demarcation would appear to be physical

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[3] "A teacher or other person entrusted with the care and supervision of a minor for school purposes may use reasonable physical force upon such minor when and to the extent he reasonably believes such to be necessary to (A) protect himself or others from immediate physical injury, (B) obtain possession of a dangerous instrument or controlled substance, . . . upon or within the control of such minor, (C) protect property from physical damage or (D) restrain such minor or remove such minor to another area, to maintain order." Conn. Gen. Stat. § 53a-18(6).

injury. Corporal punishment that causes physical injury clearly satisfies the definition of abuse and is thus unreasonable. (That is not to say, however, that corporal punishment not resulting in physical injury could never be deemed abuse. It could, for example, if the means of punishment were deemed "cruel.")

The "operational definitions" section of the DCF Policy Manual provides some useful examples of injuries that may result from physical abuse:

- head injuries;
- bruises, cuts or lacerations;
- internal injuries;
- burns, scalds
  (reddening or blistering of the tissue through application of heat by fire, chemical substances, cigarettes, matches, electricity, scalding water, friction, etc.);
- injuries to bone, muscle, cartilage, ligaments
  (fractures, dislocations, sprains, strains, displacements, hematomas, etc.);
- death.

DCF Policy Manual § 34-2-7, p. 1 (Rev. 10/1/96). This list obviously is not intended to be exhaustive, but at least it provides some idea of what DCF looks for in determining whether or not abuse has occurred. Furthermore, it is quite conceivable that corporal punishment that does not cause physical injury -- and thus might not meet the definition of abuse -- could constitute neglect. (See § 4(B) below.)

The DCF Policy Manual also provides helpful operational definitions of the other types of abuse. The Policy Manual defines **sexual abuse** as "any incident of sexual contact involving a child which is inflicted or allowed to be inflicted by the person responsible for the child's care." Id., p. 2. Examples include:

- rape;
- intercourse;
- sodomy;
- fondling;
- oral sex;
- incest;
- sexual penetration (digital, penile or with foreign objects);
- fondling.

Id. **Sexual exploitation** "includes permitting, allowing, coercing or forcing a child to:"

- participate in pornography;
- engage in sexual behavior.

Id. **Emotional abuse or maltreatment** "is the result of cruel or unconscionable acts and/or statements made, threatened to be made, or allowed to be made by the person responsible for the child's care which have a direct effect on the child. The observable and substantial impairment of the child's psychological, cognitive, emotional and/or social well-being and functioning must be related to the behavior of the person responsible for the child's care. Emotional abuse or maltreatment may result from:"

- repeated negative acts or statements directed at the child;
- exposure to repeated violent, brutal, or intimidating acts or statements among members of the household;
- cruel or unusual actions used in the attempt to gain submission, enforce maximum control, or to modify the child's behavior;
- rejection of the child.

Id. Again, these operational definitions are set forth to provide an idea of what specific behaviors DCF interprets as abuse. These definitions are not legally authoritative, however. Indeed, at least one of the categories of abuse listed in the Policy Manual -- sexual exploitation -- cannot be found in the statute. See Conn. Gen. Stat. § 46b-120. That does not mean that a court might not find sexual exploitation to constitute abuse or neglect. (It probably would). Rather, it simply means that these operational definitions should be seen as guideposts, rather than as legally binding interpretations of the law.

B. Neglect

Neglect is also a term of art that is defined in terms of a status or condition of a child. A "neglected child" is one who:

> (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused.

Conn. Gen. Stat. § 46b-120. The definition of neglect thus includes abuse, but not vice versa. (As a result, it is common to use the term "neglect" to refer to both abuse and neglect. That is how the term is used throughout this book, except where specifically indicated.)

Like the definition of abuse, this definition is important because a determination that a child has been neglected (or may have been, or may be, neglected) triggers certain legal obligations that may have significant consequences for the child and her family. As with abuse, the definition was intentionally drafted broadly and disjunctively in order to encompass a wide range of child maltreatment.

For a child to be **abandoned** within the meaning of the neglect definition, a parental intent to relinquish responsibility for him totally and permanently must be shown. See In re Shannon S., 41 Conn. Supp. 145, 151, 562 A.2d 79, 83 (1988), adopted and affirmed, 19 Conn. App. 20, 560 A.2d 993 (1989). This common-law definition of abandonment is stricter than statutory abandonment, which is a ground for termination of parental rights. (See § 24(A) below.)

The DCF Policy Manual provides the following examples of **physical neglect**:

- the failure to provide adequate food, shelter, and clothing which is appropriate to the climatic andenvironmental conditions;
- the failure to provide, whether intentional or otherwise, supervision or a reliable person(s) to provide child care, including leaving a child alone for an excessive period of time, given the child's age and cognitive abilities, and holding the child responsible for the care of siblings or others beyond the child's ability;
- the person responsible for the child's care displays erratic or impaired behavior or is unable to consistently provide the minimum of child-caring tasks.

DCF Policy Manual § 34-2-7, p. 3 (Rev. 10/1/96). A child is **educationally neglected** "when, by reason of the actions or inactions on the part of the person responsible for the child's care," a child age 7-15:

- is not registered in school;
- is not allowed to attend school.

Id. Examples of **emotional and moral neglect** include:

- encouraging the child to steal or engage in other illegal activities;
- encouraging the child to use drugs and/or alcohol;
- recognizing the child's need but failing to provide the child with emotional nurturance;
- having inappropriate expectations of the child given the child's developmental level.

Id. The Policy Manual notes that "[f]or court intervention regarding emotional neglect, a statement from a mental health provider documenting the condition is required." Id.

The Policy Manual also contains an operational definition of **medical neglect**. It is defined as:

- the refusal or failure on the part of the person responsible for the child's care to seek, obtain, and/or maintain those services for necessary medical, dental, or mental health care;
- withholding medically indicated treatment from disabled infants with life-threatening conditions.

Id., p. 4. The Policy Manual notes that "[f]ailure to provide the child with immunizations or routine well child-care in and of itself does not constitute medical neglect." Id.

C. Uncared for and Dependent

Two key related terms are "uncared for" and "dependent." An uncared for child is defined as one "who is homeless or whose home cannot provide the specialized care which his physical, emotional or mental condition requires." Conn. Gen Stat. § 46b-120. A dependent child is one "whose home is a suitable one for him, save for the financial inability of his parents, parent, guardian, or other person maintaining such home, to provide the specialized care his condition requires." Id.

A determination that a child is uncared for or dependent may have different consequences than a determination of abuse or neglect, depending on the context. For instance, the reporting obligation does not extend to uncared for or dependent children. (See § 5(B) below.) However, a judicial determination that a child is uncared for or dependent has the identical legal consequence as a determination of abuse or neglect -- it gives the court power to effect changes in the guardianship of the child. (See § 15(A) below.)

Petitions alleging that a child is dependent nowadays are virtually nonexistent. This may be due to the fact that the current definition of uncared for (adopted in 1975; see Public Act 75-602) renders dependency petitions superfluous. It may also be due in part to concerns that explicitly using parents' "financial inability" as a basis for state intervention creates constitutional problems.

Some juvenile court judges have held that a child living with a roof over his head may nevertheless qualify as uncared for under the "homeless" prong of the definition. Home, "at least for an infant, means more than 'house'; it implies the presence of a competent caretaker." In re Juan A.R., 1990 Conn. Super. LEXIS 1253 at *15, 1990 WL 279537 at *5 (1990) (Brenneman, J.); see also In re Donnell Timothy W., 1993 Conn. Super. LEXIS 581 at *7-8, 1993 WL 73689 at *2 (1993) (Mulcahy, J.) (child adjudicated homeless where neither parent able to provide home where newborn infant's needs "could be met in an adequate, competent manner"). No appellate court has yet addressed this issue.

Cases brought under the "specialized needs" prong of uncared for generally involve children with mental or physical disabilities. A child does not meet the definition, for instance, merely because he is an infant. In re Carl O., 10 Conn. App. 428, 435-436, 523 A.2d 1339, 1342-1343 (1987), cert. denied, 204 Conn. 802, 525 A.2d 964 (1987). An infant with an extraordinarily sensitive nature, however, with parents who would not be able to administer to his special needs even with extensive training, does meet the definition. Id. Furthermore, to show that a child with specialized needs cannot be cared for in the home, proof of ongoing parenting deficiencies -- as

opposed to specific incidents of abuse of neglect -- is sufficient to satisfy the statute. In re Kelly S., 29 Conn. App. 600, 613, 616 A.2d 1161, 1168 (1992). Presumably, proof of parenting deficiencies is not even required when the child's specialized needs are such that perfectly adequate parents could not meet them in the home.

5. REPORTING

A. Historical Overview

In Connecticut, as in other states, the vast majority of neglect cases originate with an allegation that a particular child is abused or neglected, often made by a person with a statutory mandate to "report" the same.

The origins of the duty to report are comparatively recent. In 1963, the U.S. Department of Health, Education and Welfare promulgated a model statute requiring physicians to report suspected cases of serious child abuse. Subsequent Congressional legislation conditioned federal funding of state child-abuse prevention programs on the states' adoption of comparable "reporting statutes." Not surprisingly, by 1967 all 50 states had such a statute.

Connecticut's original reporting law, Public Act 580, was enacted in 1965. Since then, the legislature has considerably broadened the reporting statute in two ways: first, it has added more and more categories of people to those required or encouraged to report; second, it has expanded the types of maltreatment required to be reported. The reporting laws were most recently amended in 1996 by Public Act 96-246, whose provisions became effective October 1, 1996.

B. Mandated Reporters

Title 17a of the Connecticut General Statutes requires certain people engaged in professional occupations to report suspected child abuse and neglect under penalty of criminal prosecution. These so-called "mandated reporters" include the following:

1. physicians (including residents and interns)
2. registered nurses
3. licensed practical nurses
4. medical examiners
5. dentists
6. psychologists
7. school teachers
8. school principals
9. school guidance counselors
10. social workers
11. police officers
12. clergypersons
13. osteopaths
14. optometrists
15. chiropractors
16. podiatrists
17. mental health professionals
18. physician assistants
19. certified substance abuse counselors
20. certified marital and family therapists
21. paid daycare workers

Conn. Gen. Stat. § 17a-101(b). Any of these persons who, in his professional capacity, has "reasonable cause to suspect or believe" that any child

> is in danger of being abused or has had nonaccidental physical injury, or injury which is at variance with the history given of such injury, inflicted upon him by a person responsible for such child's health, welfare or care or by a person given access to such child by such responsible person, or has been neglected,

and fails to make an appropriate report is subject to a maximum fine of $500. Conn. Gen. Stat. § 17a-101a.

Attorneys are not mandated reporters. Indeed, attorneys are legally bound not to "reveal information relating to representation of a client unless the client consents after consultation." Connecticut Rules of Professional Conduct for Attorneys, Rule 1.6(a). An attorney can, of course, make a report (as can any person) if it is based on non-confidential information. An attorney is ethically obliged to make a report, whether or not so doing would reveal confidential information, if

the lawyer reasonably believes that disclosure is "necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm." Id., Rule 1.6(b). Thus, for example, if a client revealed to her attorney a desire and intent to kill a child, the attorney should report that to DCF.

An oral report must be made "within twenty-four hours of suspecting or believing that a child has been abused or neglected by telephone or in person" to DCF or the local or state police. Conn. Gen. Stat. § 17a-101b(a). Any oral and written reports should contain, if known, the following information: the name and address of the child; the name and address of the adults responsible for the child's care; the child's age and gender; the nature, extent and approximate date and time of the child's injuries, maltreatment or neglect; information concerning any previous injury, maltreatment or neglect to the child or the child's siblings; the circumstances in which the injury, maltreatment, or neglect came to be known to the reporter; the name of the person or persons suspected to be responsible for causing such injury, maltreatment or neglect; and whatever action, if any, was taken to treat, provide shelter or otherwise assist the child. Conn. Gen. Stat. § 17a-101d. Unless a reporter has orally provided DCF with the above information, a reporter must submit a written report to DCF within 48 hours. Conn. Gen. Stat. § 17a-101c.

If the mandated reporter suspects that an employee of an institution or facility that provides care for the child or a school employee has abused or neglected the child, the reporter must also notify the person (or person's designee) in charge of the institution, facility or school. The person in charge (or his designee) must then immediately notify the person responsible for the child's care that a report has been made. Conn. Gen. Stat. § 17a-101b(b).

If the mandated reporter is a staff member of any institution or facility that provides care of the child, or of any school, the reporter must also submit a written report to the person in charge of that institution, facility or school. Conn. Gen. Stat. § 17a-101c.

If the person suspected is a certified school employee, the person in charge of the institution, facility or school must also send a written report to the Commissioner of Education. If the person suspected is an employee of a licensed child care facility, a written report must also be sent to the executive head of the state licensing agency. Id.

Mandated reporters are also required to make reports when there has been no actual abuse or neglect but there is reasonable cause to suspect or believe that a child "is in danger of being

abused." Conn. Gen. Stat. § 17a-102. However, there appear to be no criminal or other penalties for failing to report such danger-of-abuse cases. The only report required under this section is a written report, which must be filed "immediately," although DCF policy seems to permit oral reports as well. The report should provide the name and address of the child and the adult(s) responsible for the child's care, along with the evidence forming the basis for the belief that the child is in danger of abuse. Conn. Gen. Stat. § 17a-102.

The statute by its terms does not require that mandated reporters report suspected danger-of-neglect (as opposed to abuse) cases.

C. Reporting by Other Persons

All persons other than mandated reporters who have "reasonable cause to suspect or believe that any child . . . is in danger of being abused, or has been abused or neglected," may make an oral or written report to DCF or a law enforcement agency. Conn. Gen. Stat. § 17a-103. If the report is made anonymously, DCF must use its "best efforts" to identify the reporter. Id.

DCF may not disclose the name of any non-mandated reporter without his written consent except to law enforcement officers and assistant attorneys general. Conn. Gen. Stat. § 17a-28(h). A lawsuit now pending in Superior Court, Leventhal v. Commissioner of DCF, (Docket No. CV-96-0477079S, Judicial District of Hartford/New Britain, at New Britain), claims in essence that this prohibition against disclosure applies only to persons who file reports in good faith.

D. Legal Protections for Reporters

Any person, institution or agency that makes a "good faith" report of abuse or neglect or danger thereof is immune from any liability, civil or criminal, "which might otherwise be incurred or imposed" for making the report, so long as the reporter did not perpetrate the abuse or neglect. Conn. Gen. Stat. § 17a-101e(b). Although there are no cases defining exactly what "good faith" means in this context, it presumably means a subjective, honest belief that the reported information is accurate and that it might constitute, if true, abuse or neglect or danger thereof within the meaning of the statute.

Conversely, any person who knowingly files a false report of abuse or neglect "shall be fined" up to $2000 and/or imprisoned for up to one year. Conn. Gen. Stat. § 17a-101e(c).

A new provision added by Public Act 96-246 prohibits employers from discriminating or retaliating against any employee for reporting, in good faith, suspected abuse or neglect, or for testifying in any proceeding involving abuse or neglect. Conn. Gen. Stat. § 17a-101e(a). The Attorney General is authorized to file suit in Superior Court against any employer who violates this provision. Id. The court may assess a civil penalty of up to $2500 and "order such other equitable relief as the court deems appropriate." Id. It is unclear whether the affected employee also has a private right of action under this statute.

6. D.C.F. INVESTIGATION

Upon receiving a report of abuse or neglect, DCF must immediately classify and evaluate the report. Conn. Gen. Stat. § 17a-101g(a). Assuming that the report contains sufficient information to warrant investigation and that it concerns "an imminent risk of physical harm to a child or other emergency," DCF must use its "best efforts" to begin its investigation within two hours of receiving the report. Id. All other investigations must be commenced within 72 hours of receiving a report. All investigations must be completed within 30 days of receiving the report. Id. All investigations must result in a written report. Conn. Gen. Stat. § 17a-101g(b).

The investigation should include a home visit to observe the child and any siblings, if appropriate. Id. It should determine the nature, extent and cause of the reported abuse or neglect; the persons suspected to be responsible; and the names, ages and conditions of other children residing in the household. It should include an "evaluation" of the parents and the home. Id. It should include a review of any criminal convictions of the persons alleged to be responsible, any previous allegations of abuse or neglect concerning any children residing in the household, and any allegations concerning family violence. Id.

Investigatory activities must be coordinated "in order to minimize the number of interviews of any child and share information with other persons authorized to conduct" child abuse and neglect investigations. Conn. Gen. Stat. § 17a-101h. Consent to interview a child must be obtained from the child's parent, guardian or other person responsible for her care unless DCF has reason to believe that such person, or any member of the child's household, "is the perpetrator of the alleged abuse." Id. When consent is not required, the child must be interviewed in the presence of a disinterested adult "unless immediate access to the child is necessary to protect the child from imminent risk of physical harm and a disinterested adult is not available after reasonable search." Id.

There are special provisions regarding what happens if investigation reveals that an employee of a school or child-care facility has abused a child. See Conn. Gen. Stat. § 17a-101i.

7. EMERGENCY REMOVAL AND TEMPORARY CUSTODY

A. Overview

Depending on the results of the investigation, DCF may opt to do nothing further; open a "protective services" file and offer the family voluntary services; file a neglect petition in the Superior Court for Juvenile Matters, with or without an application for an order of temporary custody; or immediately seize the child from her parents or legal guardian on an emergency basis.

The last option is reserved for the most serious cases of suspected abuse or neglect. In such cases, the child may be removed and held away from her home without any parental consent or court order. This emergency removal may not exceed 96 hours and is thus commonly referred to as a "96-hour hold." A 96-hour hold may be invoked either by an examining physician or DCF.

In order to hold a child beyond 96 hours, DCF must apply for and obtain an order of temporary custody from a judge of the Superior Court for Juvenile Matters. The application must be accompanied by certain other documents, including a neglect petition. While the judge may issue the order ex parte (that is, without the parents being present or even aware of the proceedings), the court must schedule a hearing within ten days to give the parents an opportunity to challenge the order. If the judge extends the order after the hearing, the order remains in effect until the underlying neglect petition is fully resolved. However, the parents (or the child herself) may request a further hearing at any time in order to demonstrate that circumstances have changed and that the criteria for temporary custody no longer exist.

B. 96-Hour Hold

If, after investigation of a report of abuse or neglect, there is "probable cause to believe that the child or any other child in the household is in imminent risk of physical harm from his surroundings, and that immediate removal from such surroundings is necessary to insure the child's safety," DCF may remove the child "and any other child similarly situated" from those surroundings. Conn. Gen. Stat. § 17a-101g(c). No parental consent is required. After the child has been removed, DCF may have the child examined by a physician who may "perform diagnostic tests and procedures necessary to the detection of child abuse or neglect." Conn. Gen. Stat. § 17a-101g(d).

Before the expiration of the 96-hour custodial period, DCF must either apply for and obtain an order of temporary custody (see below), or return the child to her parents or legal guardian.

C. 96-Hour Hold by Physician

Any physician who suspects that a child whom she is examining has been abused or neglected may "keep such child in the custody of a hospital for no longer than ninety-six hours in order to perform diagnostic tests and procedures necessary to the detection of child abuse or neglect and to provide necessary medical care." Conn. Gen. Stat. § 17a-101f. Although parental consent is not required, the physician must make "reasonable attempts" to obtain such consent and to advise the parents or other responsible persons of her suspicions. The physician may take photographs of visible trauma on the child and send them to DCF or the local police department. DCF must pay the cost of the child's temporary hospital care and any diagnostic tests actually performed, unless it is covered by insurance. However, the state may recover expenses from the parent if the parent is subsequently found to have abused or neglected the child. Id.

D. Orders of Temporary Custody

As stated above, in order for DCF to hold a child beyond 96 hours, an order of temporary custody (OTC) must be obtained from a judge of the Superior Court. Usually DCF applies for the OTC; in theory, however, any person who can lawfully file a neglect petition (see "Petitions" section below) can also apply for an OTC. For simplicity's sake, the following discussion assumes that DCF is the applicant.

An application for an OTC must be accompanied or preceded by a neglect petition. The court has no jurisdiction to issue an OTC where there is no underlying lawsuit. See Conn. Gen. Stat. § 46b-129(b); Conn. Practice Book § 1041.1(1). Often the application is filed at the same time as the petition itself, but it may also be filed "subsequent thereto." Id.

An order of temporary custody, like a 96-hour hold, is reserved for cases of immediate physical danger to a child. In order to be granted, the application must be supported by one or more sworn statements

> alleging such facts as would support a finding of probable cause to believe that the child is suffering from serious physical illness or serious physical injury or is in immediate physical danger from the surroundings and that immediate removal from such surroundings is necessary to ensure the child's safety.

Conn. Practice Book § 1041.1(1); see also Conn. Gen. Stat. § 17a-101g(c); see generally In re Juvenile Appeal (83-CD), 189 Conn. 276, 289, 455 A.2d 1313, 1320 (1983).[4] Usually these sworn

[4] This restrictive standard -- immediate physical danger -- is not apparent from the text of the statute governing orders of

statements are supplied by the DCF social worker who conducted the investigation and any doctors, nurses, teachers, or other persons who have had first-hand contact with the child in question or his parents.

If the standard is met, the judge may grant the OTC ex parte based on the sworn statements alone and "vest in some suitable agency or person the child's . . . care and custody." Conn. Gen. Stat. § 46b-129(b). Alternatively, the judge may order the child's parents to appear in court at a specified date and time to "show cause" why an OTC should not be granted. Id.

If the judge grants the OTC ex parte, the child and her parents are entitled to a hearing before the court within ten days to challenge the OTC. Id. Typically, the judge sets a day and time for this hearing when she signs the order granting temporary custody. The parents must be given notice of the hearing and be advised of their rights to be represented by counsel and to remain silent. Id.; see also Conn. Practice Book § 1041.1(2). The sole purpose of the hearing is to determine "the continued need for protective custody." Id. Other matters, such as the merits of the underlying neglect petition, are not relevant.

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temporary custody. That provision states merely that the court may grant an OTC if "there is reasonable cause to find that the child's . . . condition or the circumstances surrounding his care require that his custody be immediately assumed to safeguard his welfare." Conn. Gen. Stat. § 46b-129(b). In In re Juvenile Appeal (83-CD), the Connecticut Supreme Court, striving to find a constitutionally valid interpretation of § 46b-129(b), construed the provision as incorporating the more restrictive standard governing 96-hour holds set forth in the former § 17a-101(e) (since replaced by § 17a-101g(c)). This holding was finally incorporated in the Practice Book as part of the wholesale revision of the rules for juvenile matters effective October 1, 1993. The statute (§ 46b-129(b)) has never been amended.

At the ten-day hearing, DCF (or whoever has obtained the OTC) has a higher burden of proof than the "probable cause" standard applicable to the earlier, ex parte stage. At this "adversary evidentiary temporary custody hearing," the moving party must prove by a fair preponderance of the evidence that one of the criteria of § 17a-101(e) is satisfied. See In re Juvenile Appeal (83-CD), 189 Conn. at 300, 455 A.2d at 1325. The state must present testimony from live witnesses; the sworn affidavits submitted with the OTC application are inadmissible hearsay and should no longer be considered by the court. The parents must be given an opportunity to cross-examine the state's witnesses as well as present any witnesses of their own to rebut the state's allegations.

If the court extends the order of temporary custody after hearing the evidence, the order remains in effect until the underlying neglect petition is fully adjudicated and a disposition entered. At that point, assuming the child is found to be neglected or uncared for and is committed to DCF, the validity of the OTC becomes moot. In re Carl O., 10 Conn. App. 428, 434, 523 A.2d 1339, 1342 (1987), cert. denied, 204 Conn. 802, 525 A.2d 964 (1987). Prior to adjudication, however, the parents may seek a further hearing if there is a basis for arguing that the criteria for temporary custody no longer apply. Indeed, if it is clear that the reasons for temporary custody no longer exist, DCF itself has an obligation to move to have the OTC dissolved and to reunite the family. In re Juvenile Appeal (83-CD), 189 Conn. at 291, 455 A.2d at 1321.

When an OTC is extended by a court (or issued following a show-cause hearing), the court must provide DCF and the parents with "specific steps" that the latter may take to facilitate the child's return. Conn. Gen. Stat. § 46b-129(b).

If the court declines to extend an OTC after a ten-day hearing, the child must immediately be returned to the custody of his or her parents. If the court declines to enter an OTC after a show-cause hearing, the court may nevertheless provide DCF and the parents with "specific steps" the latter may take in order to maintain custody of the child. Conn. Gen. Stat. § 46b-129(b).

In cases where DCF obtains an OTC ex parte contemporaneously with filing a neglect petition, the 10-day hearing marks the first time that the parents or guardian of the child must appear in court. Although the papers served on respondents explain their right to counsel, as a practical matter few parents request or obtain counsel prior to the hearing. When unrepresented parents appear in court to challenge an OTC, most judges will automatically continue the OTC "without prejudice" to the parents' right to request a hearing once counsel is appointed. A class-action lawsuit now pending in state court alleges that this

practice violates the state and federal constitutions, as does the widespread practice of holding pro forma ten-day hearings at which little or no evidence is heard. See Pamela B. v. Ment, Docket No. CV-95-0556127-S, Superior Court, Judicial District of Hartford-New Britain, at Hartford.

8. NEGLECT PETITIONS

A. Introduction

All court proceedings in neglect cases are initiated by filing a "petition" in the Superior Court for Juvenile Matters. Conn. Practice Book § 1055.1(1). A petition is a type of pleading, similar to a complaint in an ordinary civil action. Unlike other civil actions, however, in a neglect case the petition is often the only pleading filed. This section discusses the technical requirements of pleading in the Superior Court for Juvenile Matters.

B. Parties and Standing

A neglect petition may be filed in the Superior Court for Juvenile Matters by any of the following "petitioners":

1. selectmen
2. town managers
3. town, city and borough welfare departments
4. probation officers
5. the Connecticut Humane Society
6. the Commissioner of Social Services
7. the Commissioner of Children and Families
8. child-caring institutions and agencies approved by DCF
9. a child or his representative or attorney
10. a foster parent of a child

Conn. Gen. Stat. § 46b-129(a). Other persons may initiate neglect-type proceedings in the probate courts. (See § 19(A) below.)

Both parents of a child alleged to be neglected, if their identities are known, must be named as respondents. The term "parent" means any biological or adoptive mother or father, if no subsequent judicial decree has divested him or her of statutory co-guardianship as created by marriage or adoption. Conn. Practice Book § 1023.1(j); see also Conn. Gen. Stat. § 45a-606 (mother and father of every minor child are joint guardians). With respect to a child born out of wedlock, "parent" includes any father who, at the time of the filing of the petition:

> (A) he has been adjudicated the father of such child by a court which possessed the authority to make such adjudication, or (B) he has acknowledged in writing to be the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under Gen. Stat. § 46b-172a.

Conn. Practice Book § 1023.1(j).

If the child's legal guardian is someone other than the parents, the guardian should be named as a respondent as well. See Conn. Gen. Stat. § 46b-129(a); Conn. Practice Book § 1023.1(n). A guardian has the same status as a parent under the juvenile court rules. Conn. Practice Book § 1023.1(e). Parents and other legal guardians are considered "legal parties" because their relationship to the matter "is of such a nature and kind as to mandate the receipt of proper legal notice as a condition precedent to the establishment of the court's authority to adjudicate the matter . . . ." Conn. Practice Book § 1023.1(k)(2).

The child who is the subject of a neglect petition is also a party to the proceeding. Conn. Practice Book § 1023.1(k)(1).

Any other person "whose interest in the matter before the court is not of such a nature and kind as to entitle legal service as a prerequisite to the court's authority to adjudicate the matter . . . but whose participation therein . . . may promote the interests of justice" may be permitted to intervene in the discretion of the court. Conn. Practice Book § 1023.1(k)(3). In determining whether to grant a request for permissive intervention, the court must consider the timeliness of the request, the applicant's interest in the controversy, the adequacy with which such interests are represented by other parties, any delay or other prejudice that may be caused by the intervention, and the need for or value of such intervention in resolving the controversy. See In re Baby Girl B., 224 Conn. 263, 277, 618 A.2d 1, 9 (1992) (upholding trial court's denial of preadoptive parents' request to intervene in adjudicatory phase of termination of parental rights proceeding).

Foster parents generally do not have standing in juvenile matters except with regard to "the placement or revocation of commitment of a foster child living with" them. Conn. Gen. Stat. § 46b-129(i). (Foster parents must thus be notified whenever a revocation petition is filed or hearing scheduled. Id.) A foster parent may, however, apply for a writ of habeas corpus "regarding the custody of a child currently or recently in his care for a continuous period of not less than ninety days" for a child under three and "not less than one hundred eighty days" for any other child." Conn. Gen. Stat. § 52-466(f); see also Orsi v. Senatore, 230 Conn. 459, 468, 645 A.2d 986, 991 (1994) (foster parent may bring action "as next friend on behalf of his or her foster child when warranted by exceptional circumstances").

Foster parents, relatives of a child and other persons may also have standing to seek visitation. Conn. Gen. Stat. § 46b-59 provides: "The Superior Court may grant the right of visitation with respect to any minor child or children to any person, upon an application of such person. . . . In making, modifying or terminating such an order, the court shall be guided by the best interest of the child, . . ." In Castagno v. Wholean, 239 Conn. 336, 684 A.2d 1181 (1996), the court restricted this section's ostensibly unlimited scope to circumstances where there already exists "disruption of the family sufficient to justify state intervention." Id. at 338, 684 A.2d at 1182-1183. Although the court declined to state precisely what circumstances this might include, it seems clear that a pending neglect petition would suffice. See id. at 352 n.16, 1189-1190; see also In re Jennifer P., 17 Conn. App. 427, 553 A.2d 196 (1989), cert. denied, 211 Conn. 801, 559 A.2d 1136 (1989) (cited approvingly in Castagno). Indeed, the court suggested that a mere "good faith allegation

by a third party of abuse or neglect" may suffice. Castagno, 239 Conn. at 352 n.16, 1189-1190.

C. Contents of Petition

The petition must "set forth, with reasonable particularity, including statutory references, the specific conditions which have resulted in the situation which is the subject of the petition." Conn. Practice Book § 1040.1(1). It must be verified (that is, sworn to by the petitioner). Conn. Gen. Stat. § 46b-129(a). It must include the name, date of birth, sex, and residence of the child, as well as the names and residences of all respondents. Id.

The petition must always be accompanied by a "summary of facts substantiating the allegations of the petition . . . [which] shall be incorporated by reference." Conn. Practice Book § 1040.1(2). The petition will be liberally construed in the best interest of the child. Conn. Practice Book § 1055.1(1).

D. Notice, Service and Venue

The court, not the petitioner, is responsible for service of process. Conn. Gen. Stat. §46b-129(a). Personal or abode service is preferred. This means that a writ of summons requiring the respondent "to appear in court at the time and place named," along with a true and attested copy of the petition, must be personally delivered to each respondent or left at her usual place of abode. Conn. Gen. Stat. § 46b-129(a) (incorporating provisions of § 46b-128). Service may be made by a sheriff, probation officer or aide, or indifferent person. Id. There is no requirement that the child be served. Conn. Practice Book § 1040.1(3); cf. Conn. Gen. Stat. § 46b-128 (requiring service on child in delinquency cases).

Some juvenile courts routinely serve only the petition, but not the summary of facts, on respondents. Although the rules are ambiguous on this point, see Conn. Practice Book § 1040.1(3), this practice would seem hard to square with constitutional notice requirements.

If personal service cannot be effected, the court may order substitute service, which usually takes the form of publication. Id. "Any application for an order of publication when the identity or present location of a parent is unknown shall have attached an affidavit reciting the efforts to identify and locate the parent. The court shall require reasonable efforts to identify and locate the absent parent." Conn. Practice Book § 1040.1(6); see also Conn. Gen. Stat. § 46b-128.

There are strict time limits within which service must be accomplished. The petition must be served not less than 14 days before the date of the plea hearing (see below), which itself must be scheduled not more than 45 days from the filing of the petition. Conn. Gen. Stat. § 46b-129; Conn. Practice Book § 1040.1(3).

There are overlapping, and to some extent conflicting, statutory and Practice Book provisions regarding venue. By statute, the proper venue for all non-delinquency petitions is the district where the child "resided at the time of the filing of the petition." Conn. Gen. Stat. § 46b-142(a). (A child "born in any hospital or institution where the mother is confined at the time of birth shall be deemed to have residence in the district wherein his mother was living at the time of her admission to such hospital or institution." Id.) The Practice Book states, however, that when the child has been placed before the filing of the petition, "venue shall be in the district wherein the custodial parent was living at the time of placement." Conn. Practice Book § 1040.1(5).

E. Amendments, Responsive Pleadings and Motions

A petition may be amended at any time by the court on its own motion or pursuant to the motion of any party. Conn. Practice Book § 1055.1(3). If the new or changed allegations are such that additional time is needed to respond to them adequately, the court must grant a continuance. Id; see also In re Donna M., 33 Conn. App. 632, 639, 637 A.2d 795, 799 (1994), cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994) (reversing termination judgment where trial court permitted mid-trial amendment that "changed the basic nature of the offense charged in the original petition").

No answer or other responsive pleading is required in juvenile court. Nothing in the Rules, however, precludes a respondent from filing a request to revise, motion to strike, motion to dismiss, or any other type of request or motion, if the circumstances so warrant. In fact, Section 1055.1(2) specifically contemplates the filing of such motions. It provides:

> A motion other than one made during a hearing shall be in writing and shall have annexed to it a proper order and where appropriate shall be in the form called for by the Practice Book. A motion whose form is not therein prescribed shall state in paragraphs successively numbered the specific grounds upon which it is made. A copy of all written motions shall be served on the opposing party or counsel pursuant to Sec. 120. . . . All motions shall be heard by the judge within fifteen days . . . .

Conn. Practice Book § 1055.1(2).

9. ATTORNEYS

DCF is almost always represented by counsel in neglect cases, although such representation is only required in contested matters. Conn. Practice Book § 1048.1(2). The Office of the Attorney General has an entire section, the Child Protection Unit, devoted to representing DCF. Many of attorneys in this Unit are very knowledgeable about, and experienced in, juvenile matters.

There is no general, constitutional right to counsel for parents or children in juvenile matters. See Lassiter v. Department of Social Services, 452 U.S. 18 (1981) (adopting case-by-case approach for parents in termination cases). Nevertheless, in Connecticut, both parents and children have a statutory and Practice Book right to counsel "in each and every phase of any and all proceedings in juvenile matters, including appeals." Conn. Practice Book § 1048.1(2); Conn. Gen. Stat. § 46b-135(b), § 46b-136. "[I]t is implicit that this means competent counsel." State of Connecticut v. Anonymous, 179 Conn. 155, 160, 425 A.2d 939, 943 (1979). It also means the effective assistance of counsel. See id.; see also In re Alexander V., 223 Conn. 557, 569, 613 A.2d 780, 787 (1992).

If parents are unable to afford counsel, the court must appoint an attorney for them upon request and upon a finding that they are indeed financially unable to afford the services of a lawyer. Conn. Practice Book § 1048.1(2). Even in the absence of such a request or finding, the court must appoint counsel for parents "if in the opinion of the court a fair hearing necessitates such an appointment." Id.; Conn. Gen. Stat. 46b-136 ("if the judge determines that the interests of justice so require"). If it is later determined that parents were able to afford counsel in whole or in part, the court must assess costs against them to the extent of their ability to pay. Id.

A statement of the parents' right to counsel must be included on every petition (including revocation petitions and motions to modify dispositions) or on the notice of the initial hearing on such petition. Conn. Practice Book § 1048.1(2). In addition, at the commencement of any neglect proceeding, the judge must inform parents of their right to an attorney as well as their right to court-appointed counsel if they cannot afford one, among other things. Conn. Gen. Stat. § 46b-135(b).

The provisions regarding counsel for children are confusing and somewhat contradictory. On the one hand, according to the provisions discussed just above, the court must appoint an attorney for the child if his custody is at issue, if his interests and those of his parents appear to conflict, or if a fair hearing or the interests of justice so require. Conn. Gen. Stat. § 46b-136; Conn. Practice Book § 1048.1(2).

On the other hand, a separate section of the General Statutes effectively supersedes these provisions and renders them superfluous. Conn. Gen. Stat. § 46b-129a states that "a child shall be represented by counsel appointed by the court" in all neglect proceedings. This section provides that the court may, if it deems appropriate, also appoint a separate guardian ad litem "to speak on behalf of the best interests of the child." Id. The guardian ad litem need not be an attorney but must be knowledgeable about the needs and protection of children. The fees of the child's counsel and guardian litem, if any, "shall be paid by the parents or guardian, or the estate of the child, or, if such persons are unable to pay, by the court." Id.

The predecessor to Conn. Gen. Stat. § 46b-129a (repealed by Public Act 96-246) stated that counsel for the child "shall also be appointed guardian ad litem . . . in all cases except those in which the court deems it necessary to appoint a separate guardian ad litem." Conn. Gen. Stat. § 17a-101(f). The removal of this language would seem to evince a legislative intent to abrogate the former dual role of counsel for children in juvenile matters.

All appearances by counsel in neglect proceedings are deemed to continue "during the period of any commitment or protective supervision or during the period until final adoption following termination of parental rights." Conn. Practice Book § 1056.1(2). Although an attorney appointed to represent a child in a neglect proceeding will automatically continue to represent that child in a subsequent termination proceeding, the same is not true of an attorney for a parent (although the latter may specifically request to continue). Id.

Attorneys for parents and children are appointed from lists (called "panels") maintained by the clerk in each juvenile court district. Attorneys interested in serving on such panels must apply in writing, indicating their prior experience in juvenile matters, their participation in education programs related to juvenile matters, and any other experience, education or training in the area of juvenile law or child-related subjects.

In 1996, the Judicial Branch adopted a "letter of agreement" required to be signed by all counsel wishing serve on juvenile court panels. The agreement contains, among other things, detailed "minimum guidelines" for handling individual cases. The agreement must be renewed each year.

Court-appointed counsel are currently compensated at the rate of $55 for the first hour of in-court time each day, $39 for the second hour, and $22 for subsequent hours up to a daily maximum of $182. Counsel receive $25 per hour for out-of-court "preparation" time.

The Judicial Branch is currently experimenting with a contract-based system for appointment of counsel in the Waterbury, Bridgeport, Hartford, and Willimantic juvenile courts. Interested attorneys may apply to handle between 25 and 100 cases annually at a fixed rate of $350 per case. An additional $40 per hour may be authorized by the court when representation in a particular case requires more than 30 hours.

10. PLEA HEARINGS

The first court appearance following the filing and service of a neglect petition is generally referred to as the "plea hearing." This term, however, does not appear anywhere in the statutes or Rules. The Practice Book designates this initial court appearance as the "adjudicatory hearing," which is a misnomer since few petitions are actually adjudicated at this early stage. (The Practice Book considers subsequent hearings at which the petition may in fact be adjudicated as continuations of this original hearing.)

The plea hearing must be held no more than 45 days from the filing of the petition. Conn. Practice Book § 1040.1(3).

At the plea hearing, the judge must first determine that all necessary parties are present and that any nonappearing party has been properly served. Conn. Practice Book § 1042.1(1). While the Practice Book does not define "necessary parties," the term probably encompasses the petitioner, both parents and any legal guardian of the child other than the parents. The child, though legally a party to the proceeding, Conn. Practice Book § 1023.1(k), is generally not considered a necessary party.

Next, the judge must inform any unrepresented parties of the substance of the petition. Conn. Practice Book § 1042.1(1).

Next, the judge should inform any unrepresented respondent or child that he has the "right to retain counsel, and that if he is unable to afford counsel, counsel will be appointed to represent him, that he has a right to refuse to make any statement and that any statements he makes may be introduced in evidence against him." Conn. Gen. Stat. § 46b-137(b); see also Conn. Practice Book §§ 1048.1(1), 1042.1(2).

The judge should then inquire of the respondent "whether the allegations of the petition are presently admitted or denied." Conn. Practice Book § 1042.1(2). (For some reason, the new Practice Book Rules state that this inquiry should be directed only to custodial parents in neglect and uncared for cases, but to all appearing parents in termination of parental rights matters. Id.) This inquiry should be made whether or not the respondent has previously acknowledged responsibility for the acts, circumstances, or conditions alleged in the neglect petition. Id.

A respondent may admit the allegations, deny them or submit a written plea of nolo contendere. Id. Although the Rules do not specifically say so, if an unrepresented respondent requests counsel, the judge should probably treat such request as a "pro forma denial" without making the inquiry described in the previous paragraph.

If the allegations are denied, the judge must continue the matter "for a case status conference and a subsequent hearing before a judge who has not read the conference memo." Conn. Practice Book § 1042.1(3). The case status conference may be waived at the request of the parties. Id.

If the allegations of the petition are admitted or a plea of nolo contendere is entered, the judge "shall determine whether the right to counsel has been waived [if appropriate], and that the parties understand the content and consequences of their admission or plea." Conn. Practice Book § 1042.1(2). Following this canvas, the court "shall make its finding as to the validity of the facts alleged in the petition [i.e., adjudicate the child neglected or uncared for] and may proceed to a dispositional hearing." Conn. Practice Book § 1042.1(2).

If the mandated DCF social study is available (see § 15(E) below), the court may read the study, hear any other evidence on the issue and enter a disposition. See Conn. Practice Book § 1043.1. No disposition may be made, however, until the social study has been submitted. Id. As a practical matter, DCF usually needs more time to complete the study, and the dispositional hearing must be continued to a later date.

If a parent who is inclined not to contest a petition faces potential collateral (criminal or civil) liability for the acts or omissions alleged in the petition, she should be advised to enter a plea of nolo contendere rather than an admission. Such a plea has the exact same effect as an admission in the juvenile court but cannot be used against the parent in any other proceeding.

11. PHYSICAL AND PSYCHOLOGICAL EVALUATIONS

Motions for physical or psychological evaluations of a parent or child, or both, are frequently made by DCF or the child's attorney at the plea hearing or later on during pretrial proceedings. Such evaluations are extremely important in neglect cases.

The court has unrestricted power to order a "thorough physical and mental examination" of any child who is the subject of a neglect or uncared for petition. See Conn. Gen. Stat. § 46b-129(c).

The court's power to order an evaluation of a parent appears to be more circumscribed. The same section provides:

> The court after hearing on the petition and upon a finding that the physical or mental ability of a parent or guardian to care for the child or youth before the court is at issue may order a thorough physical or mental examination, or both, of the parent or guardian whose competency is in question.

Id. This provision raises difficult questions of interpretation. What, for example, is a "hearing on the petition" in this context? The Practice Book defines only two types of hearing, adjudicatory and dispositive. Conn. Practice Book § 1023.1(f). If a "hearing on the petition" must be one of these, then it would seem that the court cannot order an evaluation of a parent at least until after the child is adjudicated neglected or uncared for. Yet most juvenile court judges routinely order evaluations prior to adjudication, although there are no reported decisions directly on point. The Appellate Court has recently intimated that a "hearing on the petition" means a hearing on the motion for evaluation itself. See In re Donna M., 33 Conn. App. 632, 640-43, 637 A.2d 795, 800-801 (1994), cert. denied, 229 Conn. 912, 642 A.2d 1207 (1994) (holding that trial court need not provide such a hearing unless a party objects to the motion).

The issue is further complicated by another statute that provides:

> In proceedings in the superior court under section 46b-129: (1) The court may order the child, the parents, the guardian, or other persons accused by a competent witness with abusing the child, to be examined by one or more competent physicians, psychiatrists or psychologists appointed by the court.

Conn. Gen. Stat. § 46b-129a (emphasis added). This language seems to give the court unrestricted power to order evaluations of parents in cases of abuse, as contrasted with other types of

neglect and uncared for cases. Even this interpretation, however, is uncertain.

A final complication is presented by the statutory and Practice Book right of parents and children to remain silent in neglect proceedings. See Conn. Gen. Stat. § 46b-137; Conn. Practice Book § 1048.1. (See § 14(F)-(G) below.) This right presumably extends to evaluations ordered by the court pursuant to the above-discussed provisions. Whether a party may or should refuse to participate in a court-ordered evaluation, and what effect, if any, such refusal should be given by the court in adjudication and disposition, remain unanswered questions.

If the respondents disagree with the results of a court-ordered evaluation, many judges will grant their motion for an "independent evaluation" with an evaluator of the respondents' choice. This evaluator's findings will not automatically become part of the court record but may be used or disregarded at the respondents' discretion. But see Secondino v. New Haven Gas Co., 147 Conn. 672, 675, 165 A.2d 598, 600 (1960) ("failure of a party to produce a witness who is within his power to produce and who would naturally have been produced by him, permits the inference that the evidence of the witness would be unfavorable to the party's cause"). Such independent evaluations are paid for by the Judicial Branch, unlike court-ordered evaluations sought by DCF, which are "paid as costs of commitment are paid." Conn. Gen. Stat. § 46b-129(c). Before retaining an independent evaluator, therefore, respondents' counsel should ascertain the court's going rates for such evaluations and, if necessary, include within the motion a specific request for a higher rate if necessary to retain a particular evaluator.

A separate issue concerns the mental competency of parents in juvenile matters. A parent is not competent in this context "if he is unable to understand the proceedings against him or to assist in his own defense." In re Alexander V., 223 Conn. 557, 562 n. 4, 613 A.2d 780, 783 (1992), quoting Conn. Gen. Stat. § 54-56(a). If the court is concerned about a parent's competency, it may (and typically will) appoint a guardian ad litem for him, either upon motion or sua sponte. See Conn. Gen. Stat. § 45a-132, § 45a-708.

In the Alexander V. case, the Connecticut Supreme Court held that due process requires the court to hold a competency hearing in any termination of parental rights case in which a parent's counsel requests one, or "in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte." 223 Conn. at 566, 613 A.2d at 785. Whether this holding applies to neglect (as opposed to termination) cases, and exactly what the court should do if it concludes that the parent is in fact incompetent, remain unclear.

12. INVESTIGATION AND DISCOVERY

A. Fact Investigation

Most discovery in juvenile matters occurs through informal fact investigation. Typically the most important sources of information are the DCF social worker and the agency's files in the matter.

DCF will usually permit counsel for parents and children to inspect at least some of its files, often with some documents removed. Counsel may or may not be permitted to copy portions of the files. If access to or photocopying of any documents is denied, a thorough description of the withheld materials should be obtained. Section 17a-28 of the General Statutes, which contains detailed confidentiality guidelines concerning DCF records, should be carefully reviewed. The same section also establishes a procedure for obtaining judicial review of the agency's refusal to permit inspection or reproduction of materials in its possession. Alternatively, judicial review could be invoked by way of a discovery motion filed pursuant to Practice Book § 1058.1. (See § 12(B) below.)

Other documents that are often important to obtain include any relevant medical, psychological, psychiatric, or other counseling records pertaining to the child or parents; police reports concerning incidents alleged in the petition; pertinent educational records; etc. To obtain records pertaining to a parent, his or her written authorization will usually be required.[5] To obtain records pertaining to a child, it is necessary to obtain the written authorization of the child's legal guardian. Ordinarily this means one of the child's

[5] There is a patchwork of statutes creating privileges for certain types of communications and records, and each contains specific consent and disclosure provisions. See Conn. Gen. Stat. § 52-146c (psychologists); § 52-146d (psychiatrists); § 52-146k (battered women's and sexual assault counselors); § 52-146o (physicians); § 52-146p (marital and family therapists); § 52-146q (social workers); see also 42 C.F.R. Part 2 (alcohol and drug abuse treatment records). (See § 14(G) below.)

parents. See Conn. Gen. Stat. § 45a-606 (mother and father of every minor child are joint guardians). If the child is already committed to DCF or under an order of temporary custody, however, it may be necessary to obtain DCF's written authorization to obtain records.

The DCF social worker is also a crucial source of information about the case. Usually the social worker is more than willing to discuss the case with counsel. In a contested case, as a courtesy, counsel should probably notify the assistant attorney general (AAG) before actually interviewing a social worker. However, it is probably unnecessary to obtain the AAG's consent to do so, as would ordinarily be required under Rule 4.2 of the Rules of Professional Conduct.[6] A "lawyer for a private party who is in litigation with the government may seek ex parte interviews with relevant government officials." GEOFFREY C. HAZARD, JR., & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK OF THE MODEL RULES OF PROFESSIONAL CONDUCT (2d. ed. 1993 Supp.) at 742.

Which other witnesses should be interviewed will depend on the nature and circumstances of the case. Counsel should be careful to comply strictly with Rule 4.2 and any other applicable Rules of Professional Conduct, especially when seeking to interview the child at issue or his parents.

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[6] Rule 4.2 states: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

B. Discovery

Prior to the 1993 revision of the Practice Book Rules governing juvenile matters, there were no statutory or Practice Book provisions regarding discovery. The Rules now provide:

> (1) Pre-trial discovery by interrogatory, production, inspection or deposition of a person may be allowed with the permission of the court only if the information or material sought is not otherwise obtainable and upon a finding that proceedings will not be unduly delayed.
>
> (2) Upon its own motion or upon the request of a party, the court may limit discovery methods, and specify overall timing and sequence, provided that the parties shall be allowed a reasonable opportunity to obtain information needed for the preparation of their case. The court may grant the requested discovery, order reciprocal discovery, order appropriate sanctions for any clear misuse of discovery or arbitrary delay or refusal to comply with a discovery request, and deny, limit, or set conditions on the requested discovery, including any protective orders under Sec. 221.

Conn. Practice Book § 1058.1. A Practice Book revision effective October 1, 1996, deleted the words "other than a child or youth" after the phrase "deposition of a person" in subsection (1).

13. CASE STATUS CONFERENCES

The case status conference (CSC) is an opportunity for the parties to discuss the case informally, outside the presence of the judge, with the goal of settling some if not all of the outstanding issues.

Typically the CSC is facilitated by a trained court services officer. Others normally in attendance include the assistant attorney general, counsel for the respondents, counsel for the child, and the DCF social worker. It is unusual for the respondents themselves to attend the CSC, although it may be a good idea for them to be present in the courthouse or at least reachable by phone if counsel anticipates that negotiations may bear fruit. Some judges require respondents to be physically present in the courthouse.

Ideally, by the time the CSC is convened, the parties should have obtained all the information necessary to try the case. The results of any court-ordered evaluations should be available. As a practical matter, however, this seldom occurs. Often it is necessary to schedule a second CSC so that settlement discussions can take place on the basis of more complete information. In such cases, the initial CSC may turn into a discussion of exactly what information each party wishes to obtain, and how.

The case status conference may lead to any number of results. In rare cases, DCF might be persuaded to drop its petition if the facts do not adequately support the allegations, or if the circumstances which gave rise to the filing of the petition no longer exist. In the latter instance, however, DCF is more likely to seek an adjudication of neglect or uncared for while perhaps agreeing to a disposition of protective supervision. This result permits the agency to monitor the family for a period of time so as to ensure that the neglect does not quickly recur.

For the same reason, it is equally rare for DCF to agree to a postponement of the trial on the petition in contemplation of voluntary withdrawal. Such a postponement might be sought by respondents' counsel when, for instance, the alleged neglect is relatively minor and the parents are already cooperating with treatment or other services offered or provided by DCF. There is also a second reason why this alternative is viewed unfavorably: time is properly considered to be of the essence in neglect cases -- as in other types of cases involving children -- and the system is geared toward quick resolution of such cases (even though this is hard to achieve in practice).

The parties may agree to postpone the trial, however, if it appears that allowing some additional time is likely to facilitate settlement of the case. This may be so when, for

example, some evaluation of the child or parents has not been completed by the time of the CSC. In such circumstances, the matter may be set down for another CSC, with the parties working out a clear understanding of exactly what is expected to happen in the interim.

Cases are sometimes settled at the CSC on the basis of the respondent's agreement to plead no contest to one or more of the less onerous allegations in the petition. It is usually felt, for instance, that an adjudication of uncared for is preferable to one of neglect -- even though the legal consequences are exactly the same -- because it suggests no fault on the part of the parent. Likewise, a neglect adjudication based upon a child's "being permitted to live under conditions, circumstances or associations injurious to the his well-being" is often preferred to one based on abuse, or one based upon the child "being denied proper care and attention physically, educationally, emotionally or morally."

Even if the parties can work out a mutually acceptable adjudication, they may or may not be able to agree on disposition. The first issue, which is often insurmountable, is whether the child will be committed to DCF or returned or permitted to remain with his parents, perhaps under protective supervision. If this obstacle is overcome, it is usually easier to agree on the terms and conditions of whichever disposition has been agreed upon.

If the case status conference does not result in settlement of the case, a date will be set for trial.

14. TRIALS

A. Adjudicatory and Dispositional Phases

Neglect trials have two distinct components or phases: adjudication and disposition. These phases are roughly equivalent to the liability and damages portions of ordinary civil trials. In the adjudicatory phase, the issue before the court is whether the child is indeed neglected or uncared for as alleged in the petition. In the dispositional phase, the court must decide what remedial action, if any, will promote the best interest of the child.

A key difference between the adjudicatory and dispositional phases involves the so-called adjudicatory date. In the adjudicatory phase of the trial, only facts and events preceding the date that the petition or latest amendment was filed -- the "adjudicatory date" -- are admissible. Conn. Practice Book § 1042.1(4); see also In re Romance M., 229 Conn. 345, 358-359, 641 A.2d 378, 385 (1994); In re Valerie D., 223 Conn. 492, 527, 613 A.2d 748, 766 (1992). In other words, the court must determine whether or not the child was neglected or uncared for as of the date the petition was filed or last amended.

In the dispositional phase, however, the court may consider facts and events occurring right up "through the close of the evidentiary hearing." Conn. Practice Book § 1043.1(1). Assuming that the court finds the child to have been neglected or uncared for as of the adjudicatory date, it must determine what remedial action is in the child's best interest at the end of trial.

As with the issues of liability and damages in ordinary civil trials, the adjudicatory and dispositional phases of a neglect trial are generally heard simultaneously. See Conn. Practice Book § 1042.1(4). However, the court may not consider disposition until the adjudicatory phase has concluded. Id. Furthermore, the court has discretion to bifurcate the trial in appropriate circumstances upon motion of a party or sua sponte. Id.; see also In re Juvenile Appeal (84-AB), 192 Conn. 254, 260, 471 A.2d 1380, 1384 (1984). Bifurcation may be appropriate when, for example, a parent's conduct or functioning regresses dramatically after the adjudicatory date. While evidence of this decline is legally relevant to disposition only, it may ineluctably creep into the judge's subconscious and taint the adjudicatory phase as well. In such circumstances, the safer alternative is to bifurcate the trial so that the damaging evidence is excluded until after an adjudication.

B. Presence of Necessary Parties

Neglect trials typically involve at least three parties: the petitioner (usually DCF), one or both parents, and one or more children.

A court should not commence a neglect trial if a parent is absent through no fault of her own. In In re Jonathan P., 23 Conn. App. 207, 579 A.2d 587 (1990), the Appellate Court reversed a termination judgment where the trial court had commenced trial before the arrival of the father, who was incarcerated and "on his way to the courthouse after a writ of habeas corpus had been issued to ensure his presence at the hearing." 23 Conn. App. at 213, 579 A.2d at 590. The father's attorney was also out of the courtroom when trial began, trying to reach the Department of Correction by telephone to ascertain his client's whereabouts. The Appellate Court noted in dictum, however, that "under the circumstances of this case, it would have been improper for the court to proceed . . . , even if [the father's] counsel had been in the courtroom at the time." 23 Conn. App. at 212, 579 A.2d at 590. This suggests that a court should not proceed with trial even if an absent parent's counsel purports to waive his client's presence.

When DCF is a party, the agency is entitled to have a designated social worker present during trial, even if that social worker may also testify as a witness. In re Christopher A., 22 Conn. App. 656, 578 A.2d 1092 (1990) (termination case). As the Commissioner's designee, the DCF social worker is a party to the proceeding. Id. at 664, 578 A.2d at 1095. The power "to exclude a party-witness during the course of a trial, . . . is a power to be sparingly exercised and only upon the clearest grounds so far as the party is concerned." Id. at 663, 578 A.2d at 1095 (internal quotations omitted).

C. Burden of Proof and Order of Proceeding

The petitioner has the burden of proving its allegations by a fair preponderance of the evidence. Conn. Practice Book § 1050.1(2). This is less than the clear and convincing evidence required for termination of parental rights because, in neglect proceedings, "any deprivation of rights is reviewable and nonpermanent . . . ." In re Juvenile Appeal (84-AB), 192 Conn. 254, 264, 471 A.2d 1380, 1386 (1984).

The petitioner (usually DCF) naturally presents its case-in-chief first. Although no rule governs this, the usual practice is for respondents to present their cases (if any) next, followed by the child. Cross examination of witnesses typically proceeds in the same order.

D. Rules of Evidence: In General

A certain amount of confusion surrounds the application of the rules of evidence to juvenile matters. Neglect hearings are "essentially civil proceedings." Conn. Practice Book § 1049.1(1); see also In re Baby Girl B., 224 Conn. 263, 282, 618 A.2d 1, 11 (1992). Yet hearings are supposed to be conducted "as informal[ly] as the requirements of due process and fairness permit." Conn. Practice Book § 1049.1(1). According to the leading treatise on Connecticut evidence, this language seems "to call for a liberal rather than a strict application of the rules of evidence, provided due process and fairness are observed." COLIN C. TAIT, TAIT & LAPLANTE'S HANDBOOK OF CONNECTICUT EVIDENCE (2d. ed. 1988), 1996 Supp. at 9.

Some evidentiary rules are clearly relaxed. Testimony, for instance, may be given in narrative form. Conn. Practice Book § 1049.1(1). More significantly, in the dispositional phase, the court "may admit into evidence any testimony relevant and material to the issue of disposition." Conn. Practice Book § 1043.1(1) (emphasis added). This means that dispositional evidence may be admitted in any form whatsoever -- including responsible hearsay. See TAIT, supra, at 13.

Nevertheless, where evidence is likely to be determinative of the matter, all authorities agree that the court should return to the formal rules of evidence. See id.; see also In re Juvenile Appeal (85-2), 3 Conn. App. 184, 190, 485 A.2d 1362, 1367 (1985); Anonymous v. Norton, 168 Conn. 421, 425, 362 A.2d 532, 535 (1975), cert. denied, 423 U.S. 935 (1975). In practice, most judges treat this admonition as requiring application of the formal rules of evidence in the adjudicatory phase generally.

The following sections explore specific evidentiary issues that regularly arise in juvenile matters.

E. Rules of Evidence: Judicial Notice

In many juvenile court trials, the court is asked (or offers sua sponte) to "take judicial notice of the file." The file often includes records of prior cases, and perhaps even earlier trials, involving the child at issue or other children of the respondent.

"Although the trial court may take judicial notice of the file in another action . . ., this does not mean that it can use every statement or conclusion found in the file . . . ." TAIT, supra, at 120 (main volume); see also Drabik v. Town of East Lyme, 234 Conn. 390, 398, 662 A.2d 118, 122 (1995); In re David M., 29 Conn. App. 499, 507, 615 A.2d 1082, 1097 (1992). The problem is that many such statements would be hearsay if offered to prove the truth of the matter asserted. Id.

In general, therefore, records of prior cases may only be used to prove that particular documents exist and that statements in them were in fact made. Id. at 65 (1996 Supplement). Thus, for example, a court could take judicial notice of the filing of an earlier neglect petition concerning another child of the respondent, the grounds alleged therein, and the outcome, but not of specific factual allegations or evidence in the prior case.

A court could also take judicial notice of factual findings in the earlier case, but only if the requirements of collateral estoppel were met. See id. In many juvenile court cases, those requirements are indeed met. See In re Juvenile Appeal (83-DE), 190 Conn. 313, 316, 460 A.2d 1277, 1281 (1983) (collateral estoppel, or issue preclusion, prohibits relitigation of an issue that "was actually litigated and necessarily determined in a prior action between the same parties upon a different claim"). (See § 27(B) below.)

Given the limitations on the court's ability to take judicial notice of particular items in the file, it should be incumbent on the party seeking judicial notice to offer specific, relevant and admissible portions of the file. See Drabik v. Town of East Lyme, 234 Conn. at 399, 662 A.2d at 123.

F. Rules of Evidence: Child Witnesses

Special rules pertain to child witnesses. A child may take a simplified oath, or no oath at all if the court finds that it would be "meaningless to the particular child, or would otherwise inhibit the child from testifying freely and fully." Conn. Practice Book § 1051.1(1). An adult "who is known to the child and with whom the child feels comfortable shall be permitted to sit in close proximity to the child . . . without obscuring the child from view." Conn. Practice Book § 1051.1(2). Attorneys "shall ask questions and pose objections while seated and in a manner which is not intimidating to the child." Id. If all parties consent, the judge may privately interview the child and share the results of the interview with counsel on the record. Conn. Practice Book § 1051.1(3).[7]

When a respondent's own child testifies, the respondent may be excluded from the courtroom "upon a showing by clear and compelling evidence that the child witness would be so intimidated or inhibited that trustworthiness of the child witness is seriously called into question." Conn. Practice Book § 1051.1(4). If an unrepresented parent is thus excluded, the court shall summarize for her the nature of the child's testimony. Id.

The Rules provide that "[a]ny child shall have the right to remain silent at any stage of the proceedings." Conn. Practice Book § 1048.1(3). While this language presumably refers to the child who is the subject of the petition (it is contained in Chapter 39A, titled "Rights of Parties"), the use of the phrase "any child" creates an unfortunate ambiguity with regard to the scope of this privilege.

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[7] When the child thus interviewed is the subject of the pending petition, this provision may conflict with a statute which provides that "conversations of the judge with a child or youth whose case is before the court shall be privileged." Conn. Gen. Stat. § 46b-138. One way of reconciling the statute and the rule is to presume that the child's consent to a private interview with the judge constitutes a waiver of the statutory privilege.

A child's right to remain silent also presents thorny problems when her parent (rather than DCF) seeks to call the child as a witness. In that situation, the child's right conflicts with the parent's statutory and Practice Book rights of confrontation and cross-examination. Conn. Gen. Stat. § 46b-135(b); Conn. Practice Book § 1048.1(2). Because of the fundamental interests involved, especially in termination of parental rights cases, these latter rights may also have constitutional dimensions. See Santosky v. Kramer, 455 U.S. 745, 753-754 (parents must be provided with "fundamentally fair procedures"). Under the circumstances, the child's rule-based right probably must yield to the parent's superior statutory rights. See Mitchell v. Mitchell, 194 Conn. 312, 324, 481 A.2d 31, 37 (1984) ("where a statute creates a substantive right, a conflicting practice book rule cannot stand").[8]

[8] A statutory basis for a child's right to remain silent also exists, but it arguably applies only to delinquency cases. Conn. Gen. Stat. § 46b-138a provides: "In any juvenile proceeding in the Superior Court, the accused child shall be a competent witness, and at his or her option may testify or refuse to testify in such proceedings." (Emphasis added.) Since "accused" children are only subjects of delinquency (and perhaps FWSN) petitions, the statute's nominal application to "any" juvenile proceeding appears overbroad.

F. Rules of Evidence: Privileges

In addition to allowing a child not to testify (see preceding section), the Practice Book also provides that "[n]o parent who is the subject of a petition shall be compelled to testify if the testimony might tend to incriminate in [sic] any criminal proceeding or to establish the validity of the facts alleged in the petition." Conn. Practice Book § 1048.1(3). This language suggests that a parent may be compelled to testify in other respects -- such as with regard to disposition. However, a statute appears to provide a broader privilege than the rule:

> Any confession, admission or statement, written or oral, made by the . . . parents or guardian . . . after the filing of the petition . . . shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of his right to retain counsel, and that if he is unable to afford counsel, counsel will be appointed to represent him, that he has a right to refuse to make any statement and that any statements he makes may be introduced in evidence against him.

Conn. Gen. Stat. § 46b-137(b) (emphasis added). As with the rule-statute conflict discussed in the previous section, the Practice Book rule here probably must yield to the statute. See Mitchell v. Mitchell, 194 Conn. 312, 324, 481 A.2d 31, 37 (1984).

The spousal privilege is abrogated in neglect and uncared for cases. Conn. Gen. Stat. § 46b-129a(3). There is no comparable provision for termination cases.

Many juvenile court trials raise significant issues concerning the psychotherapist-patient privilege. In Connecticut, this actually is not a single doctrine but rather a set of privileges that differ somewhat depending upon the type of professional involved. Separate statutes protect the confidentiality of communications with **psychologists**, Conn. Gen. Stat. § 52-146c; **psychiatrists**, Conn. Gen. Stat. § 52-146d et seq.; **licensed clinical social workers**, Conn. Gen. Stat. § 52-146q; **battered women's counselors** and **sexual assault counselors**, Conn. Gen. Stat. § 52-146k; and **marital and family therapists**, Conn. Gen. Stat. § 52-146p. (There are also separate privileges for communications with physicians and other health care providers, Conn. Gen. Stat. § 52-146o; clergy, Conn. Gen. Stat. § 52-146b; and others.) The purpose of these statutes is to promote effective psychotherapy by ensuring an atmosphere of total (or near-total) confidentiality. See James K. Filan, Jr., Psychotherapist-Patient Privileges in Child Custody Disputes: Connecticut and Beyond, 13 BRIDGEPORT L. REV. QUINNIPIAC COLLEGE 281, 284 (1993).

Detailed exploration of each of these privileges is beyond the scope of this book. In general, they provide that communications between a patient and his psychotherapist, and records thereof, may not be disclosed without the consent of the patient or his authorized representative. See, e.g., Conn. Gen. Stat. § 52-146c(b), § 52-146e(a). Consent generally must be in writing and may also need to meet other requirements. Conn. Gen. Stat. § 52-146c(b), § 52-146e(b). Consent once given may subsequently be withdrawn. Conn. Gen. Stat. § 52-146c(b), § 52-146e(c). There are numerous exceptions, including where disclosure is "mandated by any other provision of the general statutes" -- such as the child abuse and neglect reporting statute. Conn. Gen. Stat. § 52-146p(c)(1), § 52-146q(c)(2).[9] To determine what types of communications are protected, the requirements of a valid consent, which exceptions to the consent requirement apply to which confidential relationships, and other such issues, the statutes themselves should be consulted.

A nettlesome issue in many juvenile cases concerns one of the exceptions to the consent requirement. The privileges pertaining to psychiatrists, psychologists and clinical social workers all permit disclosure of confidential communications and records, without the patient's consent,

> in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, . . . and the court or judge determines finds that it is more important to the interests of justice that the communications be disclosed than that the relationship between patient and psychiatrist be protected.

Conn. Gen. Stat. § 52-146f(5); see also Conn. Gen. Stat. § 52-146c(c)(2), § 52-146q(c)(4). Juvenile matters are civil cases. Conn. Practice Book § 1049.1(1). In what circumstances, then, in a juvenile case, can a parent be said to have introduced his

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[9] Oddly, the psychiatrist-patient and psychologist-patient privilege statutes do not contain this exception, even though psychiatrists and psychologists are both mandated reporters. See Conn. Gen. Stat. § 17a-101(b). The psychologist-patient privilege does contain an exception for suspected child abuse, although not for neglect. Conn. Gen. Stat. § 52-146c(c)(4).

mental condition as an element of his defense and thereby waived psychotherapist-patient privilege?

In many cases, the petitioner introduces a parent's mental condition as an element of its claim that a child is neglected or that parental rights should be terminated. It would seem paradoxical to assert that by resisting such a claim, the parent thereby introduces her mental condition as an element of her defense and thus waives the privilege. See Cabrera v. Cabrera. 23 Conn. App. 330, 341, 580 A.2d 1227, 1234 (1990), cert. denied, 216 Conn. 828, 582 A.2d 505 (1990) (even when person's mental health is automatically at issue pursuant to statute, as in divorce cases, privilege is not waived). It would also seem incongruous to assert that, by offering psychiatric testimony to rebut mental-health evidence presented by the petitioner, the parent thereby introduces her mental condition and waives the privilege. Id at 339, 580 A.2d at 1233.

The Appellate Court, however, has also specifically held that

> when the mental health of a parent in a termination of parental rights case is an issue, . . . the best interest of the child requires that the privilege between psychiatrist and patient give way once it is shown to the trier of fact that the communications and records [sought to be disclosed] are relevant to the issues in the case.

In re Romance M., 30 Conn. App. 839, 851, 622 A.2d 1047, 1054 (1993), cert. granted in part, 226 Conn. 916, 628 A.2d 988 (1993), appeal dismissed 229 Conn. 345, 641 A.2d 378 (1994) (emphasis added). This holding, which effectively establishes a broad, best-interest-of-the-child exception to the psychiatrist-patient privilege in termination cases, is hard to square with the plain language of the statute. The decision may be explained by the fact that the confidential information at issue was a report generated by a psychiatrist at an inpatient drug and alcohol detoxification program. The parent/patient had been ordered by the trial court to enter the program after the court found her in contempt for being intoxicated in the courtroom. Id. at 848, 622 A.2d at 1052. The Appellate Court devoted considerable analysis to the confidentiality issues presented under 28 C.F.R., regarding federally-funded drug and alcohol treatment facilities (see below). Id. at 848-851, 622 A.2d at 1052-1053. The court devoted a single paragraph, however, to the state-law confidentiality issue, and offered the above statement entirely without analysis. To the extent that the Romance M. decision is good law, therefore, it probably should be strictly limited to its facts.

Federal law also establishes a privilege against disclosure

of records and other information concerning patients in federally-assisted alcohol and drug abuse programs. 42 U.S.C. § 290dd-3, § 290ee-3; 42 C.F.R. Part 2. The regulations regarding confidentiality of these records are extremely detailed, much more so than the state-law provisions discussed above. For example, a patient may consent in writing to disclosure, but to be valid the consent form must satisfy nine specific criteria. 42 C.F.R. § 2.31. A court may order disclosure without a patient's consent, but only if:

> (1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties; (2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or (3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

42 C.F.R § 2.63. In all other situations, not even a court can order disclosure of drug and alcohol treatment records.

Even if one of the above criteria is met, the court may order disclosure only if it follows certain procedures and finds that "good cause" exists. 42 C.F.R. § 2.64. To make a finding of good cause, the court must conclude that: (1) other ways of obtaining the information are not available or would not be effective; and (2) the public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services. 42 C.F.R. § 2.64(d). Even when good cause is found, disclosure must be limited to the information essential to fulfill the purpose of the order, and it must be restricted to those persons who need the information for that purpose. 42 C.F.R. § 2.64(e). The court should also take any other steps necessary to protect the patient's confidentiality. Id.

Before a court can issue an authorizing order, the program and the patient must be given notice of the application and an opportunity to be heard orally or in writing with regard thereto. 42 C.F.R. § 2.64(b).

A drug or alcohol treatment program may not lawfully surrender records even pursuant to a subpoena, unless the subpoena is accompanied by an order signed by a judge that complies with the foregoing requirements. 42 C.F.R. § 2.61.

Improper disclosure of drug or alcohol treatment records is a federal crime. See 42 U.S.C. § 290dd-3(f), § 290ee-3(f). An attorney who issues a subpoena for such records without obtaining the requisite court order probably violates the rules of ethics. See Connecticut Rules of Professional Conduct for Attorneys, Rule 4.4 (in representing a client, "a lawyer shall not . . . use methods of obtaining evidence that violate the legal rights of" a third person).

The obligations of attorneys and treatment providers are somewhat less clear with respect to subpoenas seeking mental-health treatment records. A state statute authorizes the following procedure to be followed when any hospital receiving state aid "is served with a subpoena issued by competent authority directing the production of such hospital record in connection with any proceedings in any court": the hospital may

> deliver such record or at its option a copy thereof to the clerk of such court. Such clerk shall give a receipt for the same, shall be responsible for the safekeeping thereof, shall not permit the same to be removed from the premises of the court and shall notify the hospital to call for the same when it is no longer needed for use in court. Any such record or copy so delivered to such clerk shall be sealed in an envelope which shall indicate the name of the patient, the name of the attorney subpoenaing the same and the title of the case referred to in the subpoena. No such record or copy shall be open to inspection by any person except upon the order of a judge of the court concerned, and any such record or copy shall at all times be subject to the order of such judge.

Conn. Gen. Stat. § 4-104. The statute, however, expressly exempts records that "pertain[] to a mentally ill patient" from this procedure. Id. Nevertheless, confidential records pertaining to mentally ill patients are frequently subpoenaed by attorneys -- and delivered under seal by hospitals and other agencies -- as if this procedure did apply. It is unclear whether this is ethically or legally appropriate.

In conclusion, simply because subpoenaed records have been delivered to court under seal, or because a client's psychotherapist has been called as a witness by another party, a lawyer should by no means assume that a particular privilege is inapplicable.

G. Rules of Evidence: Hearsay

Although a general discussion of the rules concerning hearsay is beyond the scope of this book, certain hearsay issues frequently arise in juvenile trials.

As noted earlier, hearsay is generally considered to be admissible in the dispositional phase, where the court "may admit into evidence any testimony relevant and material to the issue." Conn. Practice Book § 1043.1(1); see COLIN C. TAIT, TAIT & LAPLANTE'S HANDBOOK OF CONNECTICUT EVIDENCE (2d. ed. 1988), 1996 Supp. at 13. This does not mean that any hearsay is admissible -- it must be "relevant and material." Double and triple hearsay, for instance, ("he said that she said") may not meet this standard. Hearsay is generally not considered to be admissible in the adjudicatory phase.

Because neglect trials usually are not bifurcated, the different treatment of hearsay in the two phases may create a tactical problem for lawyers seeking to exclude hearsay in the adjudicatory phase. One option is to object to all hearsay testimony and documents, unless clearly relevant only to disposition, "to the extent it is offered for adjudication." At some point the judge may become irritated, but at least the point will have been made. In any event, a lawyer has an obligation to protect the record, and a judge should be sensitive to that obligation.

DCF social workers are key witnesses in most neglect trials, and their knowledge of facts comes almost entirely from hearsay sources. Statements made by a parent can be testified to by a DCF worker because they constitute admissions of a party opponent. See generally Tait, supra, § 11.5. Statements made by a child are not considered admissions of a party opponent, however, and cannot be testified to by a DCF worker unless they fall within some other exception to the hearsay rule. See In re Jason S., 9 Conn. App. 98, 103-104, 516 A.2d at 1352, 1355-1356 (1986).

Another place where inadmissible hearsay frequently turns up is in hospital records, police reports and other documents that may be introduced under the "business record" exception to the hearsay rule. See Conn. Gen. Stat. § 52-180. Not every entry in a document that otherwise satisfies the criteria for that exception is admissible. For instance, a statement made to a police officer by an eyewitness to an alleged incident of child abuse, recounted in a police report, would be inadmissible double hearsay unless the eyewitness had some business duty to make the report to the officer (or his statement falls within some independent exception to the hearsay rule). See In re Barbara J., 215 Conn. 31, 40, 574 A.2d 203, 208 (1990). Assuming that the eyewitness did not have such a duty, and that an appropriate

business record foundation was established for the report, the appropriate procedure would be to admit the report into evidence with the double hearsay redacted. See generally Tait, supra, § 11.14.5.

The same principles apply to hospital records. In addition to qualifying as business records under Conn. Gen. Stat. § 52-180, records of in-state hospitals that receive state aid, and records of all out-of-state hospitals, are also admissible under Conn. Gen. Stat. § 4-104 and § 52-180a, respectively. These two statutes allows hospital records that are "not otherwise inadmissible" to be admitted into evidence "without any preliminary testimony" if an appropriate certification by the recordkeeper is attached. Id. An example of information in a hospital record that might not otherwise be admissible is an entry unrelated to the care or treatment of the patient, such as an unconnected prior medical condition. Maggi v. Mendillo, 147 Conn. 663, 667-668, 165 A.2d 603, 605-606 (1960).

Finally, three appellate decisions relate specifically to hearsay issues in juvenile matters. They are:

In re Juvenile Appeal (85-2): The Appellate Court upheld a trial court's admission of a three-year-old boy's out-of-court statements threatening to "make love" to his sister and recounting sodomization by his father. 3 Conn. App. 184, 191-192, 485 A.2d 1362, 1367 (1985). The court deemed these statements non-hearsay "verbal acts" because they revealed that the child "possessed a level of acquaintance with sexual activity far beyond" his years. Id. The statements, therefore, "totally apart from the truth of their content, were relevant to the conditions in which the children lived, if not to an inference of outright parental misconduct." Id.

In re Jason S.: The Appellate Court ruled inadmissible several out-of-court statements made by a child concerning physical abuse. 9 Conn. App. 98, 103-107, 516 A.2d 1352, 1355-1357 (1986). Concluding that the statements had no relevance apart from the truth of their content, the court rejected the state's argument that the statements had been properly admitted under In re Juvenile Appeal (85-2) (see preceding paragraph). Id. at 104-105, 516 A.2d at 1356. The court also held that a child's out-of-court statements cannot be introduced by DCF under the "admission of a party opponent" exception to the hearsay rule. Id. at 103-104, 516 A.2d at 1355-1356. Finally, the court ruled that the child's statements were inadmissible under the "catch-all" exception. Id. at 105-107, 516 A.2d at 1356-1357. (The court explicitly noted that it was not holding that a child's out-of-court statements are never admissible in a juvenile case. Id. at 106 n.3, 516 A.2d at 1357.)

In re Barbara J.: Concluding that foster parents have a statutory duty to report to DCF concerning children in their care, the Supreme Court held that letters from a foster parent to a DCF treatment worker may be admissible under the "business record" exception to the hearsay rule. 215 Conn. 31, 39–42, 574 A.2d 203, 207–209 (1990).

15. DISPOSITION

A. Power to Transfer Guardianship

Once a child has been adjudicated neglected or uncared for, the court has three basic dispositional options. These are: to "commit" the child to DCF; to vest guardianship of the child in some third party; or to permit the child's parent(s) to retain guardianship with or without "protective supervision" by DCF. Conn. Gen. Stat. § 46b-129(d).

"Guardianship" in this context means guardianship of the person of a minor, which is defined as "the obligation of care and control, the right to custody and the duty and authority to make major decisions affecting such minor's welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment." Conn. Gen. Stat. § 17a-93(d), § 45a-707(d); see also Conn. Gen. Stat. § 45a-604(5). By law, both parents of a minor are joint guardians with equal rights, duties and powers. Conn. Gen. Stat. § 45a-606. If one of the parents dies or is removed (by a court) as guardian, the other parent becomes sole guardian. Id.

The statutes and cases on abuse and neglect sometimes refer to guardianship, confusingly, as "care and custody" or just plain "custody." See, e.g., Conn. Gen. Stat. § 46b-129(d) (upon finding of neglect court may vest child's "care and personal custody" in third person). This is especially unfortunate because those terms have different meanings in other, closely-related contexts. See, e.g., Conn. Gen. Stat. § 46b-56 (custody of minor children in context of divorce). Whenever possible, the term "guardianship" should be used in the context of abuse, neglect and termination of parental rights cases.

In determining the appropriate disposition, the court must be guided by the best interest of the child. Conn. Practice Book § 1023.1(f)(2). It is presumed that a child's best interests are met by her parents retaining guardianship. See, e.g., In re Juvenile Appeal (83-CD), 189 Conn. 276, 285, 455 A.2d 1313, 1318 (1983); In re Juvenile Appeal (Anonymous) v. Commissioner of Children and Youth Services, 177 Conn. 648, 661-62, 420 A.2d 875, 882 (1979). However, this is a rebuttable presumption that can be overcome when "it is plainly shown that a child's welfare requires custody to be placed in a stranger." In re Juvenile Appeal (Anonymous), 177 Conn. at 662, 420 A.2d at 882; cf. Conn. Gen. Stat. § 46b-56b ("In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.").

B. Commitment

The most common disposition following an adjudication of neglect or uncared for is commitment of the child to DCF. The legal effect of committing a child to DCF is to transfer guardianship from her parents to the agency. Id.

Since October 1, 1995, commitments have been limited to 12 months. See Public Act 95-238 § 4. (Before the enactment of Public Act 95-238, commitments were for 18 months.) A commitment cannot extend beyond a person's 18th birthday, unless such person is under age 21, "in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program" and consents to the commitment. Conn. Gen. Stat. §46b-129(d).

DCF has wide latitude with respect to the placement of committed children. The Department may place a child:

> in a suitable foster home or in the home of a person related by blood to such child . . . or in a licensed child-caring institution or in the care and custody of any accredited, licensed or approved child-caring agency, . . . or in a receiving home maintained and operated by [DCF].

Conn. Gen. Stat. § 46b-129(d). Where possible, the child must be placed in a setting "of like religious faith to that of a parent of such child." Id. No child may be placed outside of Connecticut "except for good cause and unless the parents of such child are notified in advance of such placement and given an opportunity to be heard." Id.

Parents may challenge DCF's placement of a committed child in one of two ways. They may request an administrative hearing pursuant to Conn. Gen. Stat. § 17a-15. (See section on "DCF Administrative Proceedings.") Parents may also challenge DCF's placement of their child by filing a motion with the juvenile court. The SCJM has broad authority "to make and enforce such orders . . . as it deems necessary or appropriate to secure the welfare, protection, proper care and suitable support of a child . . . subject to its jurisdiction or otherwise committed to or in the custody of [DCF]." Conn. Gen. Stat. § 46b-121. Some juvenile court judges have taken the position that the court is without jurisdiction to consider this type of issue until parents have exhausted their administrative remedies pursuant to § 17a-15. While none of these decisions is reported, there is at least one reported Superior Court decision intimating that a parent need not exhaust administrative remedies when challenging actions taken by DCF in a related context. See In re William J., 1993 Conn. Super. LEXIS 1074 at *33, 1993 WL 137611 at *11 (Conn. Super.) (1993) (Teller, J.) (provision of adequate visitation).

When a child is committed to DCF, the court customarily establishes "expectations" that the parents must meet in order to regain guardianship of their child. These typically include several boilerplate provisions such as cooperating with DCF, visiting the child as often as permitted, maintaining an adequate home and lawful source of income, etc. Depending on the circumstances, they may also include a number of more specific expectations, such as participating in individual or family counseling or parenting training, remaining drug and alcohol free, etc. While parental compliance or noncompliance with court-ordered expectations is an important factor in determining when, and whether, guardianship will be restored to them, it is by no means dispositive. See, e.g., In re Michael M., 29 Conn. App. 112, 125, 614 A.2d 832, 839 (1992).

C. Transfer of Guardianship to Third Person

Alternatively, the court may vest guardianship of any child found to be neglected or uncared for "in any private or public agency which is permitted by law to care for neglected, uncared for or dependent children . . . or with any person found to be suitable and worthy of such responsibility by the court." Conn. Gen. Stat. § 46b-129(d). Typically this means a grandparent or other close relative of a child, although obviously the statute does not limit this dispositional alternative to family members.

Unlike a commitment to DCF, a transfer of guardianship is indeterminate: it lasts until a child's 18th birthday. See In re Juvenile Appeal (85-BC), 195 Conn. 344, 488 A.2d 790 (1985). However, a parent may petition the court to "revoke" such a transfer at any time. Id. at 367, 488 A.2d at 803. It is not exactly clear whether the petitioning parent has to demonstrate that revocation would be in the best interest of the child, or that no cause for maintaining guardianship in the third person any longer exists, or both. See id.

D. Protective Supervision

If the best interests of a neglected or uncared for child would be served by permitting the parents to retain guardianship, the court may do so. Although this alternative is not expressly provided for in § 46b-129(d), "it is implicit in the legislature's use of the permissive term 'may' throughout that subsection." In re Juvenile Appeal (85-BC), 195 Conn. at 353 n. 9, 488 A.2d at 796. This disposition might be appropriate where, for instance, the parents have substantially rehabilitated themselves after the adjudicatory date.

If the court allows the parents to retain guardianship, it may or may not enter an order of protective supervision. Protective supervision is defined as:

> A disposition following adjudication in neglected, uncared for or dependent cases created by an order of the judge requesting a supervising agency other than the court to assume the responsibility of furthering the welfare of the family and best interests of the child when the child's place of abode remains with the parent or any suitable or worthy person, subject to the continuing jurisdiction of the court.

Conn. Practice Book § 1023.1(o)(2); see also Conn. Gen. Stat. § 17a-93(i). The "supervising agency" is almost always DCF. Note that protective supervision may be imposed when the "child's place of abode remains with the parent or any suitable or worthy person," suggesting that it may also be appropriate when the court transfers guardianship to a third person.

Protective supervision is usually imposed for a set period of time, often three or six months, with conditions or expectations carefully spelled out (as when a child is committed to DCF; see above). A court hearing is usually scheduled toward the end of this period so that the court can review the need for continued supervision. See Conn. Practice Book § 1044.1.

During the period of protective supervision, the court retains jurisdiction over the matter. This means that if the home situation deteriorates, the court can modify the disposition and commit the child to DCF, if necessary, without the need for another adjudicatory trial. The court must, however, notify the parents and hold a hearing on the proposed change in disposition. Id. Of course, if the situation deteriorates such that probable cause exists "to believe that the child is in imminent risk of physical harm from his surroundings, and that immediate removal from such surroundings is necessary to insure the child's safety," Conn. Gen. Stat. § 17a-101g(d), DCF may institute a 96-hour hold and/or seek an order of temporary custody in the same manner as it may at any other time.

E. Mandated Social Study

No disposition may be made in a neglect, uncared for or termination of parental rights case until the "mandated social study" has been submitted to the court. Conn. Practice Book. § 1043.1(1). The social study is a report prepared by a DCF social worker containing detailed allegations about the child's background, that of her parents and other family members, the reasons for the petition, the efforts by DCF to assist the family, and the Department's dispositional recommendation.

The social study can be a powerful tool for DCF. Because it relates to disposition, hearsay statements contained within it are generally admissible. See P.B. § 1043.1(1) (on disposition, "any testimony relevant and material to the issue" may be admitted); see also COLIN C. TAIT, TAIT & LAPLANTE'S HANDBOOK OF CONNECTICUT EVIDENCE (2d. ed. 1988), 1996 Supp. at 13. Moreover, the Practice Book makes the social study presumptively admissible: upon submission, it "shall be marked as an exhibit subject to the right of any party to require that the author, if available, appear for cross-examination." P.B. § 1043.1(2) (emphasis added). These factors, combined with the sheer volume of information it may contain, makes the social study a highly effective means of presenting the court with potentially damaging information about parents.

The language of the Practice Book seems to indicate that a social study could be admitted into evidence even if its author is unavailable for cross-examination. See id. This might raise constitutional problems, however, and there exists authority to the contrary. See In re Eduardo F. and Adaliz N., 1996 Conn. Super. LEXIS 1582, 1996 WL 409319 at *2 (1996) (Foley, J.) (court refused to admit social study where sole DCF social worker available to testify had not been involved in preparation of study).

The statutes and rules provide little guidance -- and place few restrictions -- on the content of the social study. The statutory authorization for the social study is unclear. It probably lies in Conn. Gen. Stat. § 46b-129(c), which requires DCF to "make a thorough investigation of the case" whenever a petition seeking commitment of a child is filed with the court. Apart from that provision, however, and the Practice Book provisions cited above, there are no other legal requirements.

The DCF Policy Manual contains detailed guidelines for preparing social studies. There are separate formats for neglect, extension of commitment, revocation of commitment, and termination of parental rights petitions. The reader should refer to the Policy Manual for a fuller understanding of the many kinds of information that may appear in a social study.

Based on the language of the Practice Book, it has generally been thought that the social study may be used solely for dispositional purposes. See, e.g., In re Juvenile Appeal (84-AB), 192 Conn. 254, 259-60, 471 A.2d 1380, 1383-84 (1984) (assuming without deciding that social study is purely dispositional). A recent Appellate Court decision, however, contradicts this assumption. In In re Tabitha P., that court held that P.B. § 1043.1 "does not preclude [social] studies from being . . . considered by the court . . . during the adjudicatory phase of the hearing" to the extent that "facts and events discussed . . . [therein] predate the filing of the petition." 39 Conn. App. 353, 368, 664 A.2d 1168, 1176 (1995). Whether this decision will affect the long-standing practice in most juvenile courts, and whether it will remain good law, remain to be seen.

The social study shall "be made available for inspection to all counsel of record and, in the absence of counsel, to the parties themselves." Conn. Practice Book § 1043.1(3). However, it must be returned to the clerk, "together with any notes, copies or abstractions thereof," immediately following disposition. Id. As with all court documents in juvenile matters, the social study must be kept confidential. Id.; see also Conn. Gen. Stat. § 46b-124(a).

16. EXTENSION AND REVOCATION OF COMMITMENT

A. Introduction

Ninety days before the expiration of a commitment or any extension thereof, DCF is supposed to petition the court either to revoke the commitment, extend it for another twelve-month period, or terminate parental rights. Conn. Gen. Stat. § 46b-129(e). Although the statute says DCF "shall" do this, that language has been held to be merely "directory," not mandatory. See In re Adrien C., 9 Conn. App. 506, 519 A.2d 1241 (1987), cert. denied, 203 Conn. 802, 522 A.2d 292 (1987). In practice, DCF seldom acts within the statutory time.

The court must schedule a hearing on whatever petition DCF files. Respondents are entitled to at least two-week notice thereof. Conn. Gen. Stat. § 46b-129(e).

B. Extension

As previously discussed, the maximum period for which a child may be committed since Public Act 95-238 took effect is 12 months. However, any commitment may be extended for an additional statutory period if DCF can demonstrate that extension is in the best interest of the child, based upon a fair preponderance of the evidence. Conn. Gen. Stat. § 46b-129(e); Conn. Practice Book § 1045.1. There is no limit on how many such extensions DCF may seek.

A new provision that took effect October 1, 1995, requires the court to determine, at the hearing on DCF's extension petition, "the appropriateness of continued efforts to reunify the child or youth with his family." Public Act 95-238 § 4, to be codified at Conn. Gen. Stat. § 46b-129(e). If the court finds that such efforts are not appropriate, DCF must do one of three things within 60 days: petition for termination of parental rights; petition to revoke the commitment and "vest the custody and guardianship of the child on a permanent or long-term basis in an appropriate individual or couple"; or "file a written permanency plan with the court for permanent or long-term foster care, which plan shall include an explanation of the reason that neither termination of parental rights nor custody and guardianship is appropriate for the child." Id. If DCF chooses the third option, the court must "promptly convene a hearing for the purpose of reviewing" the written plan. Id.

Assuming that the court finds DCF's continued efforts at reunification to be appropriate, it is unclear how the court should handle a parent's objection to the proposed extension of commitment. Some juvenile court judges will schedule an evidentiary hearing based solely on the parent's objection. Other judges, however, require parents to petition for revocation in order to challenge the extension. In either case, because the hearing on the extension petition often does not occur until just before the commitment is about to expire, the court may have no choice but to extend the commitment for a limited period, based solely on the extension papers and offers of proof, until a full hearing can be scheduled.

C. Revocation

The court may revoke the commitment of any committed child upon "the application of the attorney who represented such child in a prior or pending commitment proceeding, an attorney appointed by the superior court on its own motion or an attorney retained by such child after attaining the age of fourteen, a parent, . . . or other relative of such child . . . , the selectman or any original petitioner, or a licensed child-caring agency or institution approved by the commissioner, or said commissioner." Conn. Gen. Stat. § 46b-129(g). Upon revocation, guardianship over the child reverts from DCF to the child's parents or previous guardian. Id.

The person seeking revocation must initially prove, by a fair preponderance of the evidence, that no cause for continued commitment exists. If that burden is met, the burden then shifts to any party opposing revocation to prove, also by a fair preponderance of the evidence, that revocation would not be in the best interest of the child. Conn. Practice Book § 1045.1(2).

The revocation statute provides that "[n]o hearing shall be held for such reopening and termination of commitment or transfer of commitment more than once in six months, except upon application of the commissioner." Conn. Gen. Stat. § 46b-129(g). This provision is widely assumed to bar a parent from seeking to revoke a commitment during the first six months of the commitment or any extension thereof. However, that is not what the provision says, and there do not appear to be any reported decisions so construing it. To further complicate matters, upon request of the parents (often with the agreement of DCF) made at the time of the commitment or extension hearing, the court frequently grants the respondents a "waiver" of this supposed six-month bar. If the statute means what it is widely assumed to mean, it is difficult to see how such a waiver can be justified. However, that is the practice of many juvenile courts, and advocates should be aware of it.

A foster parent has standing in SCJM with regard to "the placement or revocation of commitment of a foster child living with such parent" and must be notified whenever a revocation petition is filed or hearing scheduled. Conn. Gen. Stat. § 46b-129(i).

17. APPEALS

DCF or "any party at interest aggrieved by any final judgment or order" of the juvenile court may appeal to the Appellate Court. Conn. Gen. Stat. § 46b-142(b). Such an appeal must be taken within 20 days of "the issuance of notice of the rendition of the decision or judgment from which the appeal is taken." Conn. Practice Book § 1059.1(1), § 4166(B).

An order of temporary custody is considered a final judgment and may thus be immediately appealed. See Madigan v. Madigan, 224 Conn. 749, 757, 620 A.2d 1276, 1279 (1993) (family relations matter); see also In re Juvenile Appeal (83-CD), 189 Conn. 276, 455 A.2d 1313 (1983) (appealability of OTC's in juvenile matters assumed). Conversely, an adjudication of neglect, prior to entry of a dispositional order, is not immediately appealable. In re Elisabeth H., 40 Conn. App. 216, 669 A.2d 1246 (1996). An adjudication of neglect followed by commitment of a child renders moot any issues surrounding the prior issuance of an OTC. In re Carl O., 10 Conn. App. 428, 434, 523 A.2d 1339, 1342 (1987), cert. denied 204 Conn. 802, 525 A.2d 964 (1987).

A special procedure must be followed when an indigent party wishes to file an appeal that his counsel believes lacks merit:

> If an indigent party wishes to appeal a final decision and if the trial counsel declines to represent the party because in counsel's professional opinion the appeal lacks merit, counsel shall file a timely motion to withdraw and to extend the time in which to take an appeal. The court shall then forthwith appoint another attorney to review this record who, if willing to represent the party on appeal, will be appointed for this purpose. If the second attorney determines that there is no merit to an appeal, that attorney shall make this known to the court at the earliest possible moment, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may be appointed to represent the party on appeal.

Conn. Practice Book § 1059.1(2).

The appellate record and briefs in any juvenile matter are "open for inspection only to counsel of record and to others having a proper interest therein only upon order" of the court. Conn. Practice Book § 4166B.2. The name of the child shall not appear on the record. Id. The court may exclude from oral argument any person "whose presence is unnecessary." Conn. Practice Book § 4166B.3.

18. D.C.F. TREATMENT PLANNING

A. Administrative Case Reviews

Whenever a child or family is receiving any services from DCF (even if the child is not committed), the Department is required to prepare and maintain a formal, written treatment plan. Conn. Gen. Stat. § 17a-15(a); DCF Policy Manual § 36-8. The treatment plan is a comprehensive document that outlines, among other things, the reasons for DCF's involvement with the family, the Department's goals and the specific measures to be taken to achieve those goals. The treatment plan must be reviewed at least once every six months to determine whether the plan and the child's placement are appropriate. Conn. Gen. Stat. § 17a-15(b).

All treatment plans subsequent to the initial one must be reviewed at a DCF "administrative case review" (ACR). These brief, informal meetings are conducted by an administrative case reviewer from DCF's Division of Quality Assurance. DCF Policy Manual § 24-5 (3/1/94). Beside the case reviewer, the following people are required by the DCF Policy Manual to attend: the social worker whose case is being reviewed; his or her supervisor; any member of the Regional Resource Group, a community consultant, support-staff worker, or community service provider who has been involved in the case within the prior seven months; and the adoption specialist (only if parental rights have been terminated). In practice, DCF personnel other than the case reviewer and the social worker are seldom present.

The following people must be invited to attend: the child's parents (unless their parental rights have been terminated); the child if age 12 or above; the child's foster parents or residential care social worker; the parents' counsel; and the child's counsel and GAL. Other professionals, as well as certain relatives, may also be invited. The Assistant Attorney General must be notified of the ACR in writing. Id.

At the beginning of an ACR, the participants usually take several minutes to read through the treatment plans, which are lengthy. There are often two distinct but similar plans under review, an "individual plan" and a "family plan." The case reviewer must then facilitate "a full discussion of each case plan component," maintaining a "focus on permanency planning issues" and "help[ing] participants achieve resolution of disagreements" or advising them about "alternative mechanisms for the resolution of disagreements." Id. § 24-7. The case reviewer must make a written report of the meeting and may take various remedial measures, including recommending that the treatment plan be changed or directing that it be reviewed again prior to the next scheduled 6-month review. Id.

The treatment-plan review process is often routine and noncontroversial. In some cases, however, an ACR provides a valuable forum for advocating on behalf of a client. It is also a useful opportunity to meet with the social worker and exchange information and ideas about the case.

B. Treatment Plan Hearings

Any child or parent aggrieved by any aspect of a DCF treatment plan, placement or denial of services is entitled to request an administrative hearing with a DCF hearing officer. Conn. Gen. Stat. § 17a-15(c). The hearing must be scheduled within 30 days of a written request for the same. Id. Such a "treatment plan hearing" may be an effective means of compelling DCF to do something more, or something differently, in a particular case. They are generally underused by advocates.

A request for a hearing should be mailed to the Commissioner or to the DCF Administrative Hearings Unit at 505 Hudson Street, Hartford, CT 06106. The request should specify the provisions of the treatment plan at issue or the services refused.

Hearings are conducted as contested cases in accordance with the Uniform Administrative Procedures Act, Conn. Gen. Stat. § 4-166 et seq., except that a final decision must be rendered within 15 days of the close of evidence and filing of briefs. Conn. Gen. Stat. § 17a-15(d).

The hearing officer's decision may be appealed to the Superior Court for Juvenile Matters. Venue is determined pursuant to Conn. Gen. Stat. § 46b-142. Id.

19. GUARDIANSHIP MATTERS IN PROBATE COURTS

A. Generally

Section 45a-614 provides that the following persons may apply to the court of probate for the district in which the minor child resides for the removal of one or both parents as guardian of the person: any adult relative of the minor, by blood or marriage, the court on its own motion, or counsel for the minor. The residence of the minor means his or her actual residence and not that imputed to the minor by the residence of his or her parents or guardian. Section 45a-603.

Section 45a-605 provides that the provisions of the removal statutes be liberally construed in the best interests of the minor child and that all proceedings be held without unreasonable delay.

Section 45a-606 makes it clear that the mother and father of every child are joint guardians of the person of that child, with equal rights and powers. It also makes it clear that when one parent dies or is removed as guardian, that the other shall become the sole guardian of the person of the minor.

Once an application has been filed for the removal of a parent or guardian, the petitioner may also seek either temporary custody (which requires a duly noticed hearing) or immediate temporary custody, which the court can entertain ex parte.

Immediate temporary custody (ex parte) is available under very limited circumstances as set forth in Section 45a-607. In those cases in which the child is not within the physical custody of the parent, the court may award immediate temporary custody if it finds that: (a) the child was not taken or kept from the parent, parents or guardian and (b) there is a substantial likelihood that the child will be removed from the jurisdiction prior to a hearing, or (c) to return the child to the parent, parents or guardian would place the child in circumstances which would result in serious physical illness or injury, or the threat thereof, or imminent physical danger prior to a hearing. If the parent has actual physical custody and control of the child, the available relief is even more limited to circumstances in which the child is in need of immediate medical or surgical treatment, the delay of which would be life-threatening, and the parent refuses or is unable to consent to such treatment.

If an ex parte order is issued, notice of that order must be given promptly to the parents and the hearing on temporary custody must be held within five business days thereafter (although the respondent may seek a continuance). At the required hearing following the issuance of an ex parte order, or, if an ex parte order was not originally requested, at the hearing

for temporary custody, before the court may issue such an order, it must find by a fair preponderance of the evidence that the parent or guardian has performed certain acts of omission or commission which would warrant removal at the final hearing (as set forth in 45a-610), and that as a result of such acts, the child is suffering from serious physical illness, injury or the immediate threat thereof, or is in immediate physical danger. Once these circumstances are found to exist, the court may award temporary custody to the Commissioner of the Department of Children and Families, the Board of Managers of any child-caring institution or organization, any children's home or similar institution licensed or approved by DCF, or any other person.

The Court will generally request an investigation for both the temporary custody and removal hearings, to be undertaken and completed by DCF, unless waived for cause shown (45a-619). Within thirty days following the receipt of the results of the investigation for the removal petition, the Court will hold a hearing and provide notice as required by Section 45a-609.

At the hearing for removal of the parent as guardian, the Court may remove the parent as guardian if it finds by clear and convincing evidence one of the following: (1) the parent consents to his or her removal as guardian; or (2) the minor child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility for the minor's welfare; or (3) the minor child has been denied the care, guidance or control necessary for his or her physical, educational, moral or emotional well being, as a result of acts of parental commission or omission, whether the acts are the result of the physical and mental incapability of the parent or conditions attributable to parental habits, misconduct or neglect, and the parental acts or deficiencies support the conclusion that the parent cannot exercise, or should not in the best interests of the minor child be permitted to exercise, parental rights and duties at this time; or (4) the minor child has had physical injury or injuries inflicted upon him by a person responsible for such child's health, welfare or care, or by a person given access to such child by such responsible person, other than by accidental means, or has injuries which are at variance with the history given of them or is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment. These standards are similar but not identical to those which must be found by SCJM.

Section 45a-617 provides the standards by which the Court shall appoint an appropriate guardian, including the wishes of the child, which must be taken into consideration if the child is over the age of 12.

Section 45a-611 provides for the reinstatement of the removed parent as guardian, if the Court determines that (1) the factors which resulted in the removal of the parent have been "resolved satisfactorily," and (2) if it determines that it is in the best interests of the child to do so. This section appears to put the burden of proof upon the removed parent.

Section 45a-612 gives the Court the power to grant visitation rights to any person who has been removed, temporarily or indefinitely, as well as to any relative of the minor child.

Section 45a-620 allows the Court to appoint counsel for the child in order "to speak on behalf of the best interests of the minor." This is the traditional role of a guardian ad litem. Accordingly, if a dispute should arise between the position taken by a guardian ad litem and the child who is able to articulate his or her position, the Court may appoint separate counsel to serve as an advocate for the child.

Section 45a-187 provides for a thirty day period in which to take an appeal to Superior Court from an order of the probate courts. (See Connecticut Practice Book, Section 1004.7). However, if a required party had no notice of the hearing and was not present, then the requisite appeals period is extended to 12 months (except for appeal from a termination of parental rights or adoption, which is limited to 90 days).

B. Transfer from Probate to Superior Court

Any party to a contested removal-of-parent-as-guardian petition in the probate courts, other than the applicant, may move to have the case transferred to the SCJM. Conn. Gen. Stat. § 45a-623. Transfer is automatic upon filing of the motion -- the court must grant it within five days. Id.; Conn. Probate Practice Book § 8.1, § 8.4.

A transfer motion must state that the removal petition will be contested. Conn. Probate Practice Book § 8.3. A motion filed by a person who is a minor or incompetent, or such person's attorney, must also be approved by the person's guardian ad litem. Id.

A transfer motion must be filed by the date of the first hearing on the merits. Conn. Probate Practice Book § 8.2. The motion must be served upon all parties of record at least three days before filing. Id. The court may extend these time limits for good cause shown. Id. Failure to file and serve the motion in a timely manner waives a party's right to seek transfer. Id.

Within three days of the granting of a transfer motion, the probate court clerk must transmit by certified mail the original files and papers in the case to the clerk of the juvenile court "having jurisdiction over matters arising in the probate district where the petition is filed." Conn. Gen. Stat. § 45a-623; Conn. Probate Practice Book § 8.5. The probate court clerk retains a copy of the file of a transferred case and must notify all parties of the date on which the original file was transferred. Conn. Probate Practice Book § 8.5.

The date that the juvenile court receives the transferred petition is considered the date of filing in the juvenile court for purposes of determining initial hearing dates. Conn. Practice Book § 1047.1(b). Similarly, if the probate court issued an ex parte order of temporary custody and did not subsequently hold a hearing on the same, the date that the juvenile court receives the order is considered the issuance date of the OTC in the juvenile court. Id.

Any appearance filed by an attorney in the probate court automatically continues in the juvenile court. Conn. Practice Book § 1047.1(c). The juvenile court must order service for any party not previously served. Id. The clerk of the juvenile court must send the probate court a copy of all orders or decrees thereafter rendered in the case, as well as a copy of any appeal. Conn. Practice Book § 1047.1(a).

CHAPTER 3: TERMINATION OF PARENTAL RIGHTS

20. INTRODUCTION

Termination of parental rights is "the complete severance by court order of the legal relationship, with all its rights and responsibilities, between the child and his parent or parents." Conn. Gen. Stat. § 17a-93(e); see also Conn. Gen. Stat. § 45a-604(7), § 45a-707(8). Its legal effect, and its usual purpose, is to free a child for adoption. Unless a child has no living parents, all parental rights must be terminated before adoption can occur. Conn. Gen. Stat. § 45a-725.

Once parental rights are terminated, a child and his parents become legal strangers. However, termination does not affect the child's inheritance rights or religious affiliation. Conn. Gen. Stat. § 17a-93, § 45a-707(8).

The Connecticut Supreme Court has stated, in oft-repeated language, that termination is "a most serious and sensitive judicial action." See, e.g., In re Baby Girl B., 224 Conn. 263, 279, 618 A.2d 1, 10 (1992). "[T]he interest of parents in their children is a fundamental constitutional right that undeniably warrants deference and, absent a powerful countervailing interest, protection." Id., citing Stanley v. Illinois, 405 U.S. 645, 651 (1972). Furthermore,

> [t]ermination of parental rights does not follow automatically from parental conduct justifying the removal of custody. The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.

Id., 224 Conn. at 279-80, 618 A.2d at 10, citing Santosky v. Kramer, 455 U.S. 745, 753 (1982).

There are two fundamentally distinct types of termination of parental rights cases: consensual and contested. They represent quite different processes. In a consent case, termination is no more than a legal hoop a parent must jump through in order to free a child for adoption. In a contested case, however, termination represents a process through which the state or some other person outside the family seeks to forcibly and permanently sever the legal relationship between a parent and child.

21. TERMINATION PETITIONS

A. Introduction

All court proceedings to terminate parental rights, like neglect proceedings, are initiated by filing a petition. Unlike a neglect petition, however, a termination petition may be filed in either the Superior Court for Juvenile Matters or the probate courts, depending on the circumstances. Probate court termination petitions are governed by Conn. Gen. Stat. § 45a-715 et seq.; SCJM termination petitions are controlled by Conn. Gen. Stat. § 17a-112, which (confusingly) incorporates by reference many of the probate court provisions.

B. Parties and Standing

Termination petitions in the SCJM typically involve a child who is committed to DCF as neglected or uncared for. With respect to such a child, or any other child "in the custody of" DCF, the following persons may petition the juvenile court for termination of parental rights: DCF; the attorney who represented the child in a pending or prior proceeding; an attorney appointed by the court on its own motion; or an attorney retained by a child age 14 or older. Conn. Gen. Stat. § 17a-112(a).

DCF, and DCF alone, may also petition the juvenile court to terminate parental rights with respect to a child who is not committed to that agency. Such a termination petition is not free-standing: it must either be filed concomitantly with a neglect petition or consolidated with a pending neglect petition. Conn. Gen. Stat. § 17a-112(f). Such concomitant or consolidated neglect or termination petitions are referred to as "coterminous" petitions.

The following persons may petition the probate court for termination of parental rights with respect to either or both parents of a child:

> (1) either or both parents, including a parent who is a minor; (2) the guardian of the child; (3) the selectmen of any town having charge of any foundling child; (4) a duly authorized officer of any child care agency or child-placing agency or organization or any children's home or similar institution approved by the commissioner of the department of children and families; (5) a relative of the child if the parent or parents have abandoned or deserted the child; (6) the commissioner of the department of children and families, provided the custodial parent of such minor child has consented to the termination of parental rights and the child has not been committed to the commissioner, and no application for commitment has been made.

Conn. Gen. Stat. § 45a-715(a). A relative is defined as "any person descended from a common ancestor, whether by blood or adoption, not more than three generations removed from the child." Conn. Gen. Stat. § 45a-707(6). If the child who is the subject of the petition is age 12 or older, he or she "shall join in the petition." Conn. Gen. Stat. § 45a-715(a).

(For standing issues in juvenile court, see § 8(B) above.)

C. Contents of Petition

The statutorily prescribed form and content for termination petitions in the SCJM and probate courts are identical. A petition must be entitled "In the interest of .... (Name of child), a person under the age of eighteen years," and must set forth with specificity:

> (1) The name, sex, date and place of birth, and present address of the child; (2) the name and address of the petitioner, and the nature of the relationship between the petitioner and the child; (3) the names, dates of birth, and addresses of the parents of the child, if known, including the name of any putative father named by the mother, and the tribe and reservation of an American Indian parent; (4) if the parent of the child is a minor, the names and addresses of the parents or guardian of the person of such minor; (5) the names and addresses of: (A) The guardian of the person of the child; (B) any guardians ad litem appointed in a prior proceeding; (C) the tribe and reservation of an American Indian child; and (D) the agency which placed the child in his or her current placement; (6) the facts upon which termination is sought, the legal grounds authorizing termination, the effects of a termination decree and the basis for the jurisdiction of the court; (7) the name of the persons or agencies which have agreed to accept custody or guardianship of the child's person upon disposition.

Conn. Gen. Stat. § 45a-715(b); see also Conn. Gen. Stat. § 17a-112(a) (incorporating probate court requirements). A petitioner's failure to provide the information required under subdivisions (2) and (6) above will result in dismissal of the petition. Conn. Gen. Stat. § 45a-715(c). If any other required information is not known or cannot be ascertained by the petitioner, he or she should so state in the petition. Id. If the whereabouts of either parent or the putative father named under subdivision (3) above are unknown, the petitioner must search "diligently" for him or her and file an affidavit with the petition detailing such search. Id.

A termination petition filed in juvenile court must also have attached to it a "summary of the facts substantiating the allegations of the petition." Conn. Practice Book § 1040.1(2).

D. Notice, Service and Venue

Upon receipt of a termination petition, the court must schedule a hearing within 30 days. Conn. Gen. Stat. § 45a-716(a); see also Conn. Gen. Stat. 17a-112(b) (incorporating probate court notice and service requirements).

The court must cause notice of the hearing to be given to the following persons:

> (1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606; (2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, or (B) he has acknowledged in writing to be the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as the father of the child by the mother; (3) the guardian or any other person whom the court shall deem appropriate; (4) the Commissioner of Children and Families.

Conn. Gen. Stat. § 45a-716(b). The notice provided to the parents and any other person whose parental rights are sought to be terminated must "contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent." Id.

Notice of the hearing and a certified copy of the petition must generally be served by personal service at least ten days before the hearing date. Conn. Gen. Stat. § 45a-716(c). DCF may be served by certified mail. Id. Furthermore:

> If the address of any person entitled to personal service is unknown, or if personal service cannot be reasonably effected within the state or if any person enumerated in subsection (b) of this section is out of the state, a judge or clerk of the court shall order notice to be given by registered or certified mail, return receipt requested, or by publication at least ten days before the date of the hearing. Any publication shall be in a newspaper of general circulation in the place of the last-known address of the person to be notified, whether within or without this state, or if no such address is known, in the place where the termination petition has been filed.

Id. In probate court proceedings only, parents who are either petitioners or who sign a written waiver of personal service may also be served by certified mail. Conn. Gen. Stat. § 45a-716(d).

The venue rules for termination petitions filed in the juvenile court are the same as for neglect petitions. See Conn. Gen. Stat. § 46b-142; Conn. Practice Book § 1040.1(5). (See § 8(D) above.) The proper venue for a termination petition filed in the probate courts is "the district in which the petitioner or the child resides or, in the case of any child-care agency or child-placing agency, . . . in the district in which the main office or any local office of the agency is located." Conn. Gen. Stat. § 45a-717(e).

E. Amendments, Responsive Pleadings and Motions

In juvenile court, the same principles govern amendments, responsive pleadings and motions in termination cases as in neglect cases. (See § 8(E) above.)

In probate court proceedings, amendments to the application may be made at any time, provided that the affected parties are given a reasonable opportunity to respond and present opposing evidence. The time frame would appear to be within the discretion of the court.

F. Coterminous Petitions

In rare circumstances of severe abuse, neglect or abandonment, DCF may file "coterminous" petitions of neglect and for termination of parental rights. See Conn. Gen. Stat. § 17a-112(f). The procedure to be followed is governed by Practice Book § 1046.1, which provides:

> When coterminous petitions are filed, the court first determines whether the child is neglected, uncared for or dependent by a fair preponderance of the evidence; if so, then the court determines whether statutory grounds exist to terminate parental rights by clear and convincing evidence; if so, then the court determines whether termination is in the best interest of the child by clear and convincing evidence. If the court determines that termination grounds do not exist or termination is not in the best interest of the child, then the court may consider any of the dispositional alternatives available under the neglect, uncared for or dependent petition by a fair preponderance of the evidence.

22. PROCEDURE IN TERMINATION CASES

A. In General

Hearing procedures in both the SCJM and probate courts are governed by Conn. Gen. Stat. § 45a-716 and § 45a-717. See Conn. Gen. Stat. § 17a-112(b), § 17a-112(c). In addition, termination hearings in the SCJM are subject to the same Practice Book rules as neglect hearings. (See § 9-14 above.)

B. Plea Hearings and Attorneys

Any party who received notice has the right to appear and be heard with respect to the petition. Conn. Gen. Stat. § 45a-717(a). (See § 21(D) above.) A consenting parent need not appear at the hearing unless required to do so by court order. Id. If a consenting parent does appear, the court must explain to her the meaning and consequences of termination. Id.

If a party appears without counsel,

> the court shall inform such party of the party's right to counsel and upon request, if he or she is unable to pay for counsel, shall appoint counsel to represent such party. No party may waive counsel unless the court has first explained the nature and meaning of a petition for the termination of parental rights. Unless the appointment of counsel is required under section 46b-136, the court may appoint counsel to represent or appear on behalf of any child in a hearing held under this section to speak on behalf of the best interests of the child.

Conn. Gen. Stat. § 45a-717(b).[10] (For a discussion of when

[10] "If the respondent parent is unable to pay for such respondent's own counsel or if the child or the parent or guardian of the child is unable to pay for the child's counsel, in the case of a Superior Court matter, the reasonable compensation of counsel appointed for the respondent parent or the child shall be established by, and paid from funds appropriated to, the Judicial Department and, in the case of a Probate Court matter, the reasonable compensation of counsel appointed for the respondent parent or the child shall be established by the Probate Court Administrator and paid from the Probate Court Administration Fund." Conn. Gen. Stat. § 45a-717(b).

appointment of counsel is required under Conn. Gen. Stat. § 46b-136, see § 9 above.)

In juvenile court, the Practice Book rules regarding plea hearings also apply. (See § 10 above.)

If a paternity claim has been filed pursuant to Conn. Gen. Stat. § 46b-172a, the court should continue the hearing until that claim has been adjudicated or consolidate the hearing on the paternity claim with the hearing on the termination of parental rights petition. Conn. Gen. Stat. § 45a-717(c).

C. Physical and Psychological Evaluations

The court may, upon motion or sua sponte, order an examination of the child at any time during the pendency of the petition if it finds that reasonable cause exists to warrant such an examination. Conn. Gen. Stat. § 45a-717(d). Such an examination may be conducted by a physician, psychiatrist or licensed clinical psychologist appointed by the court. Id. 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." Id.[11]

(For a discussion of some of the unresolved issues surrounding the court's power to order psychological evaluations of parents, see § 11 above.)

[11] "The expenses of any examination if ordered by the court on its own motion shall be paid for by the petitioner or, if ordered on motion by a party, shall be paid for by the party moving for such an examination unless such party or petitioner is unable to pay such expenses in which case, in a Superior Court matter, they shall be paid for by funds appropriated to the Judicial Department and in a Probate Court matter, they shall be paid from the Probate Court Administration Fund." Conn. Gen. Stat. § 45a-717(d).

D. Social Study

The court may, and in a contested case must, request DCF or any licensed child-placing agency to conduct an investigation of the case and file a written report with the court. Conn. Gen. Stat. § 45a-717(e)(1). The report

> shall indicate the physical, mental and emotional status of the child and shall contain such facts as may be relevant to the court's determination of whether the proposed termination of parental rights will be in the best interests of the child, including the physical, mental, social and financial condition of the biological parents, and any other factors which the commissioner or such child-placing agency finds relevant to the court's determination of whether the proposed termination will be in the best interests of the child.

Id. The report must be filed within ninety of the agency's receipt of the court's request. Id. The court must schedule a hearing within 30 days of the receipt of the report or the expiration of the 90-day period, whichever comes first. Conn. Gen. Stat. § 45a-717(e)(2). "The report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness, if available, and subject himself to examination." Conn. Gen. Stat. § 45a-717(e)(3).

(See also § 15(E) above.)

E. Trials

Because of the weighty liberty interests at stake, a higher standard of proof -- clear and convincing evidence -- is constitutionally required to terminate parental rights. Conn. Practice Book § 1050.1(3); Conn. Gen. Stat. § 17a-112(b), § 45a-717(f). This is the constitutional minimum established by the United States Supreme Court in Santosky v. Kramer, 455 U.S. 745 (1982).[12] It applies to "all elements" of a termination petition. In re Juvenile Appeal (84-AB), 192 Conn. 254, 266, 471 A.2d 1380, 1387 (1984).

The precise meaning of clear and convincing evidence is murky. It is something more than the preponderance of evidence required in neglect (and other ordinary civil) cases but something less than the proof beyond a reasonable doubt required to sustain a criminal conviction. In re Michael M., 28 Conn. App. 112, 118 n.6, 614 A.2d 832, 836 (1992). It has been characterized as evidence that "induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." Lopinto v. Haines, 185 Conn. 527, 534, 441 A.2d 151, 155-156 (1981) (quoting Dacey v. Connecticut Bar Association, 170 Conn. 520, 537, 368 A.2d 125, 134 (1976)); see generally COLIN C. TAIT, TAIT & LAPLANTE'S HANDBOOK OF CONNECTICUT EVIDENCE (2d. ed. 1988) at 73-74.

Proceedings to terminate parental rights, like neglect cases, have distinct adjudicatory and dispositional phases.

In the adjudicatory phase, the only issue before the court is whether one or more of the statutory grounds for termination has been proven by the requisite standard of proof (clear and convincing evidence; see below). In the dispositional phase, the issue before the court is whether termination is in the best interest of the child. See, e.g., In re Romance M., 229 Conn. 345, 356-57, 641 A.2d 378, 384 (1994).

Maintaining a rigid conceptual distinction between adjudicatory and dispositional criteria is especially important in termination cases, where the stakes are so high. "Our

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[12] Note that in proceedings controlled by the Indian Child Welfare Act, an even higher standard, proof beyond a reasonable doubt, is required. 25 U.S.C. § 1912(f). (See § 2(B) above.)

statutes and caselaw make it crystal clear that the determination of the child's best interests comes into play only after statutory grounds for termination of parental rights have been established by clear and convincing evidence." In re Valerie D., 223 Conn. 492, 511, 613 A.2d 748, 758 (1992). "As a matter of statutory fiat, consideration of the best interests of the child cannot vitiate the necessity of compliance with the specified statutory standards for termination." In re Jessica M., 217 Conn. 459, 465, 586 A.2d 597, 600 (1991). "The statute does not permit the termination of parental rights on the basis of a generic all encompassing finding that termination is in the best interest of the child." In re Baby Girl B., 224 Conn. 263, 293, 618 A.2d 1, 16 (1992).

As in a neglect trial, the adjudicatory phase of a termination case concerns only facts and events preceding the date of the petition or the latest amendment thereto -- the so-called "adjudicatory date." Conn. Practice Book § 1042.1(4); see also In re Romance M., 229 Conn. at 358, 641 A.2d at 385; In re Valerie D., 223 Conn. at 527, 613 A. at 766 (1992). The dispositional phase, however, may involve facts and events occurring right up "through the close of the evidentiary hearing." Conn. Practice Book § 1043.1(1). Although the adjudicatory and dispositional phases are generally heard simultaneously, the court has discretion to bifurcate the trial in appropriate circumstances upon motion of a party or sua sponte. Conn. Practice Book § 1042.1(4); see also In re Barbara J., 215 Conn. 31, 47, 574 A.2d 203, 211 ("Bifurcating the termination decision, . . . enables the trial court to focus clearly on the statutory requirements of each subsection.").

The rules of evidence as applied in termination cases are generally identical to those in neglect cases. (See § 14 above.)

23. TERMINATION BY CONSENT

A parent may consent to having his or her parental rights terminated. Consensual termination is usually a relatively simple and straightforward matter. The consenting parent must acknowledge his or her consent on a Judicial Branch form entitled "Affidavit/Consent to Termination of Parental Rights" (JD-JM-60, Rev. 7/91). Conn. Gen. Stat. § 17a-112(a), § 45a-715(d). This form, which explains in great detail the implications of termination, must be notarized. Before terminating parental rights, the court must find that the parent's consent was given "knowingly and voluntarily" and that termination is in the best interest of the child. Conn. Gen. Stat. § 17a-112(b), § 45a-717(f). Both of these findings must be made by clear and convincing evidence. Id.

No consent to termination may be executed by a mother within 48 hours after the birth of her child. Conn. Gen. Stat. § 17a-112(a), § 45a-715(d).

A minor may consent to the termination of his or her parental rights, and such consent will not be voidable by reason of the parent's minority. Id. However, the court must appoint a guardian ad litem to assure that the minor parent's consent is informed and voluntary. Id.

One parent's consent to termination does not impair the other parent's parental rights or diminish the latter's duty to support the child. Conn. Gen. Stat. § 17a-112(b), § 45a-717(f).

Paradoxically, a consensual termination petition is occasionally contested. This may occur, for instance, when a child's father seeks to terminate his own parental rights over the mother's objection. Obviously the mother's concern here -- and that of society at large -- is that the father may simply be seeking to avoid his obligation to support his child. In such circumstances, the Connecticut Supreme Court has held that "the trial court must consider the financial conditions of the parents as one of the factors in determining the best interest of the child." In re Bruce R., 234 Conn. 194, 215, 662 A.2d 107, 117 (1995).

Effective October 1, 1996, if the court denies a petition for termination of parental rights based on consent, "it may refer the matter to an agency to assess the needs of the child, the care the child is receiving and the plan of the parent for the child." Conn. Gen. Stat. § 17a-112(b), § 45a-717(f), as amended by Public Act § 96-246 §§ 18 and 19.

24. NONCONSENSUAL TERMINATION: GROUNDS

A. Abandonment

Both the juvenile court and the probate courts may terminate the parental rights of a parent who has "abandoned" a child "in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child." Conn. Gen. Stat. § 17a-112(c)(A), § 45a-717(g)(A).

"Abandonment focuses on the parent's conduct." In re Juvenile Appeal (Docket No. 9489), 183 Conn. 11, 14, 438 A.2d 801, 802 (1981); In re Michael M., 29 Conn. App. 112, 121, 614 A.2d 832, 837 (1992). There are five commonly understood general obligations of parenthood: "(1) express love and affection for the child; (2) express personal concern over the health, education and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; (5) the duty to furnish social and religious guidance." Id. "The extent to which specific parents must be held to the performance of all or some of the[se] obligations . . . depends in large part on the particulars of a given case." Id.

"Attempts to achieve contact with a child, telephone calls, the sending of cards and gifts, and financial support are [all] indicia of 'interest, concern or responsibility' for the welfare of a child." In re Rayna M., 13 Conn. App. 23, 37, 534 A.2d 897, 904 (1987).

A parent's imprisonment alone does not constitute abandonment and cannot be the basis for termination of parental rights. In re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 443, 446 A.2d 808, 814 (1982); In re Juvenile Appeal, 2 Conn. App. 705, 712, 483 A.2d 1101, 1104 (1984). "The restrictions on movement that are inherent to incarceration, however, do not excuse a parent's failure to make use of available, albeit limited, resources for communication with her children." In re Shannon S., 41 Conn. Supp. 145, 153, 562 A.2d 79, 84 (1988), adopted and affirmed, 19 Conn. App. 20, 560 A.2d 993 (1989). An incarcerated person's failure to do so may result in termination of her parental rights.

Statutory abandonment is easier to demonstrate than common-law abandonment. At common law, an intent to abandon the child "totally and permanently" had to be proved. In re Shannon S., Id. at 151, 562 A.2d at 83; Litvaitas v. Litvaitas, 162 Conn. 540, 547, 295 A.2d 519, 523 (1972). Under the statutory standard, in contrast, even parents who has shown "some interest" in their children can have their rights terminated for abandonment. Likewise, a showing of sporadic parental interest,

concern or responsibility in a child is insufficient to defeat a claim of statutory abandonment; the interest must be "continuing." In re Migdalia M., 6 Conn. App. 194, 210, 504 A.2d 533, 541 (1986).

B. Failure to Rehabilitate

Both the juvenile court and the probate courts may terminate the parental rights of a parent who has failed "to rehabilitate" with respect to a child. Conn. Gen. Stat. § 17a-112(c)(B), § 45a-717(g)(B). This is defined as

> the parent of a child who has been found by the superior court to have been neglected or uncared for in a prior proceeding has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child.

Id. Prior to October 1, 1995, this ground was not available in probate court. See Public Act 95-238 § 5.

The statute does not precisely define the degree of personal rehabilitation a parent must achieve to avoid termination of her parental rights. In re Migdalia M., 6 Conn. App. 194, 206, 504 A.2d 533, 539 (1986). Rather, the trial court must try to discern the future and predict whether rehabilitation is "foreseeable within a reasonable time" given "the needs of the particular child." In re Luis C., 210 Conn. 157, 167, 554 A.2d 722, 727 (1989). What is a reasonable time is a factual determination that must be made on a case-by-case basis. In re Shannon S., 41 Conn. Sup. 145, 154, 562 A.2d 79, 84 (1988), adopted and affirmed, 19 Conn. App. 20, 560 A.2d 993 (1989).

In practice, a parent's rehabilitation is often measured against the expectations established by the court following adjudication and disposition of the prior neglect petition. This type of analysis is not dispositive, however. A parent's failure to fulfill expectations does not compel a finding of failure to rehabilitate. In re Migdalia M., 6 Conn. App. 194, 206, 504 A.2d 533, 539 (1986). By the same token, a parent may be found to have failed to rehabilitate even if expectations were never established or communicated to her. In re Michael M., 29 Conn. App. 112, 125-26, 614 A.2d 832, 839 (1992). It is unclear whether parental rights could be terminated on the basis of failure to rehabilitate where a parent has fulfilled all of her expectations.

To be capable of assuming a "responsible position" in a child's life, a parent must be restored "to his or her former constructive role as a parent." In re Migdalia M., 6 Conn. App. at 203, 504 A.2d at 538. "[T]his is not necessarily the same thing as a full time caretaker." Id. at 206, 504 A.2d at 539. It also does not necessarily mean that a parent must "prove that she will be able to assume full responsibility for her child, unaided by available support systems." In re Juvenile Appeal

(84-3), 1 Conn. App. 463, 477, 473 A.2d 795, 802 (1984). In In re Migdalia M., the Appellate Court reversed a trial court judgment terminating the rights of two parents whose limitations lay "in their inability to care for a seriously ill child" (who had chronic kidney disease). 6 Conn. App. at 205, 504 A.2d at 538. Recognizing that it was possible the parents would never be able to care for the child "all by themselves" during her minority, the court refused to sustain termination. It held that

> If . . . parents of a child with developmental disabilities have parenting limitations but love their child, consistently express an interest in the child's welfare, and periodically visit with the child committed to foster care, parental rights should not be terminated unless the effect on the child is detrimental, since the situation affords the child both the consistency of foster parenting and the relationship with natural parents.

Id. at 207-208, 504 A.2d at 539-40.

It is no defense to a claim of failure to rehabilitate that a parent, because of a physical or mental disability, may be incapable of rehabilitating. In re Juvenile Appeal (83-BC), 189 Conn. 66, 77-79, 454 A.2d 1262, 1268-1269 (1983). Although a parent's status as a person with a physical or mental disability cannot legally be the basis for terminating her parental rights, termination may be warranted when the disability "manifests itself in conduct demonstrative of an inability to care for her children." In re Nicolina T., 9 Conn. App. 598, 607, 520 A.2d 639, 644 (1987).

The impact on this ground of the 1990 Americans with Disabilities Act (ADA), however, remains unclear. Although the cases cited in the preceding paragraph would still appear to be good law, the ADA may have implications for the services provided by DCF to persons who may be subject to termination petitions based upon failure to rehabilitate. Title II of the ADA prohibits discrimination by state and local governments -- including child protective services agencies -- on the basis of disability. See 42 U.S.C. § 12131 et seq. Federal regulations provide, inter alia, that such an agency may not "[d]eny a qualified individual with a disability the opportunity to participate in or benefit from" services it provides, nor afford such an individual "an opportunity to participate in or benefit from . . . [such services] that is not equal to that afforded others." 28 C.F.R. § 35.130(b). Further, the services provided must be as effective "in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement," to disabled and nondisabled persons alike. Id.

Only one Connecticut decision has addressed a parent's claim, in the context of a termination of parental rights proceeding, that DCF violated the ADA by providing inadequate reunification services. In re Caresse B., 1997 Conn. Super. LEXIS 647 at *11-13, 1997 WL 133402 at *4-5 (1997) (Foley, J.). The court in that case essentially concluded that no services existed that conceivably could have accommodated the parent's multiple disabilities. The court assumed, however, that "[i]f DCF had failed to provide or offer reasonable services to the respondent the allegation of violation of the . . . [ADA] might have some application." Id.; accord In re Angel B., 659 A.2d 277, 279 (Me. 1995); In re the Welfare of A.J.R., 78 Wash. App. 222, 229-230, 896 P.2d 1298, 1302 (Wash. App. 1995). Most courts that have analyzed this issue, however, have concluded that an ADA violation cannot serve as a defense to a termination action. See, e.g., Stone v. Daviess County Division of Children and Family Services, 656 N.E.2d 824, 829-831 (Ind. App. 1995); In re Torrance P., 187 Wis.2d 10, 15-16, 522 N.W.2d 243, 245-246 (Wis. App. 1994).

C. Acts of Commission/Omission

Both the juvenile court and the probate courts may terminate parental rights with respect to a child who "has been denied, by reason of an act or acts of parental commission or omission, the care, guidance or control necessary for his physical, educational, moral or emotional well-being." Conn. Gen. Stat. § 17a-112(b)(C), § 45a-717(g)(C). These provisions go on to state that "[n]onaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights." Id.

This ground authorizes termination where specific parental acts or omissions "have caused serious physical or emotional injury to the child." In re Kezia M., 33 Conn. App. 12, 19, 632 A.2d 1122, 1128 (1993). In cases of physical injury, "[t]he language regarding prima facie evidence shifts the burden from the petitioner to the parent" to show why termination should not be granted. In re Sean H., 24 Conn. App. 135, 144, 586 A.2d 1171, 1177 (1991), cert. denied, 218 Conn. 904, 588 A.2d 1078 (1991). Although that burden-shifting language does not apply in cases of serious emotional injury, the Appellate Court has held that the ground itself does apply to such cases. Id.

To prevail on this ground, the petitioner must establish that the child has actually suffered serious injury. The ground does not permit termination "based on speculation as to what acts may befall a child," even where such acts are reasonably certain to occur. In re Kelly S., 29 Conn. App. 600, 614, 616 A.2d 1161, 1168 (1992). The ground can be applied, however, to noncustodial as well as custodial parents. See In re Sean H., 24 Conn. App. at 144-145, 586 A.2d at 1176-1177 (upholding termination of noncustodial father who brutally murdered mother in presence of children). Nevertheless, perhaps because noncustodial parents have more limited opportunities to inflict serious harm on their children than custodial ones, this ground is used most frequently in coterminous petitions.

D. No Ongoing Parent-Child Relationship

A fourth ground allows termination where

> there is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day to day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child.

Conn. Gen. Stat. § 17a-112(c)(D), § 45a-717(g)(C). This ground, in existence since 1974, appears to provide a broad, no-fault basis for termination of parental rights. However, it has been all but written out of existence by the Connecticut Supreme Court.

In a series of cases culminating in In re Jessica M., 217 Conn. 459, 586 A.2d 597 (1991), the Court has made it clear that termination on the basis of no ongoing parent-child relationship is inappropriate unless "the child has no positive memories or feelings for the natural parent." Id. at 468, 586 A.2d at 602 (quoting In re Juvenile Appeal (Anonymous), 177 Conn. 648, 670, 420 A.2d 875, 886 (1979)). The Court reached this result by reasoning that the statutory language is "inherently ambiguous when applied to noncustodial parents who must maintain their relationships with their children through visitation." Id. at 467, 586 A.2d at 601. The Court also based its interpretation on considerations of public policy:

> If a court were authorized to find that day-to-day absence alone proved that "no ongoing parent child relationship" existed, a parent whose child needed a temporary placement would otherwise have to consider the risk that his or her parental rights might be terminated if the guardian subsequently wished to adopt. Such a standard for termination would create an incentive for a parent to yield temporary custody to a stranger rather than to an interested relative who might develop a strong bond with the child. Creating a disincentive for a parent to choose the guardian most likely to love and protect the child while the parent was unable to provide daily care would contravene the state's interests in protecting both family integrity and the best interests of the child.

Id. at 470-71, 586 A.2d at 603. The Court bolstered its decision by observing that a 1983 legislative effort to overrule In re Juvenile Appeal (Anonymous) by substituting the phrase "meaningful relationship between parent and child" for "ongoing parent-child relationship," had failed. Id.

In 1992, the Supreme Court further eviscerated this statutory ground by holding that termination is improper where the lack of an ongoing parent-child relationship is the "direct result" of a prior custody determination. See In re Valerie D., 223 Conn. 492, 613 A.2d 748 (1992); see also In re Kelly S., 29 Conn. App. 600, 616-18, 616 A.2d 1161, 1169-70 (1992). In Valerie D., the child had remained continuously in foster care (by virtue of a neglect petition and order of temporary custody) from a few days following her birth through the adjudication date of the termination petition. The Court observed that

> once the child had been placed in foster care pursuant to the determinations made under § 46b-129, a finding of a lack of an ongoing parent-child relationship three and one-half months later was inevitable . . . , because absent extraordinary and heroic efforts by the respondent, the petitioner was destined to have established the absence of such a relationship.

In re Valerie D., 223 Conn. at 533, 613 A.2d at 769. In other words, the "factual predicate for custody, established by the lesser standard of a preponderance of the evidence, led inexorably, for all practical purposes, to the factual predicate for termination required to be established by the higher standard of clear and convincing evidence." Id. at 533-34, 613 A.2d at 769. The Court reasoned that, under the circumstances, it would be "bizarre" and probably unconstitutional to permit termination on the basis of no ongoing parent-child relationship. Id. at 534-35, 613 A.2d at 769-70.

The logic of the Valerie D. decision is not limited to cases where a child is removed from her parent's care at birth, thus precluding the development of an ongoing parent-child relationship. The holding would appear to apply equally well to cases where the removal of a somewhat older child leads to the breakdown of an established parent-child relationship. However, there have not yet been any reported decisions on this point.

Finally, although no Connecticut court has addressed the issue, this no-fault ground may well be unconstitutional on its face. The U.S. Supreme Court has stated: "We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." Quilloin v. Walcott, 434 U.S. 246, 255 (1978) (internal quotations omitted); see also Santosky v. Kramer, 455 U.S. 745, 760 n. 10 (1982) (unclear that state could constitutionally terminate parental rights "without showing parental unfitness").

Thus, little remains of this ground for termination.

E. Predictive Failure to Rehabilitate

A new, fifth ground for termination of parental rights took effect October 1, 1996:

> [T]he parent of a child, under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable period of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the commissioner of children and families.

Conn. Gen. Stat. § 17a-112(c)(E), § 45a-717(g)(E). This ground essentially allows the court to apply the existing ground of failure to rehabilitate, in certain circumstances, to parents without affording them any opportunity for rehabilitation. The ground may only be used against parents of children under seven who have previously had their rights to another child terminated by DCF, who require extensive "personal rehabilitation," and who are "unable or unwilling" to achieve it.

As proposed by the governor and attorney general, this new ground expressly included within its sweep parents with conditions "including drug or alcohol dependency or physical or mental disability." 1996 Raised Bill No. 404 § 1. Although this language was subsequently withdrawn, the impact of this new ground doubtless will be felt primarily by such parents and their children.

As this book went to press, only one reported decision had discussed this ground. See In re Sarah B., 1996 Conn. Super. LEXIS 2979, 1996 WL 677488 (1996) (Dyer, J.). The court in that case dismissed sua sponte a count in a termination petition based on predictive failure to rehabilitate, despite the court's earlier approval of an amendment -- stipulated to by the parties -- adding the count to the petition at the outset of trial. Citing In re Migdalia M., 6 Conn. App. 194, 504 A.2d 533 (1986), the court concluded that it would be improper to apply this new ground to conduct and circumstances that "occurred, in large measure," before its effective date. In re Sarah B., 1996 Conn. Super. LEXIS 2979 at *19, 1996 WL 677488 at *7.

In light of this decision, as well as established principles of statutory construction, it is questionable whether any conduct or circumstances that occurred before October 1, 1996, could properly be considered in a termination petition based on this ground. "No provision of the general statutes, not previously contained in the statutes of the state, which imposes any new

obligation on any person or corporation, shall be construed to have a retrospective effect." Conn. Gen. Stat. § 55-3; see also In re Daniel H., 237 Conn. 364, 678 A.2d 462 (1996).

25. NONCONSENSUAL TERMINATION: OTHER REQUIREMENTS

A. One-Year Requirement and Waiver Thereof

Both the juvenile court and probate court statutes require that the alleged adjudicatory grounds for termination exist "over an extended period of time, which . . . shall not be less than one year." Conn. Gen. Stat. § 17a-112(c), § 45a-717(h).

The court may waive this requirement if it finds:

> (1) from the totality of the circumstances surrounding the child that such a waiver is necessary to promote the best interest of the child. Abandonment of a child under the age of six months shall constitute prima facie evidence that a waiver is necessary to promote the best interest of the child, provided (A) the parent has neither had nor initiated contact with the child or the guardian or caretaker of the child for at least sixty consecutive days and (B) the whereabouts of the parent are unknown, despite a diligent search for the parent by the department of children and families. The department shall file an affidavit indicating the efforts used to locate the parent; or (2) the child is under seven years of age and has been in the custody and care of the department of children and families for at least three months pursuant to a commitment under subsection (d) of Section 46b-129, . . . and the child will be at imminent risk of abuse or neglect if returned to the parent, provided (A) the parent has had parental rights terminated with respect to a sibling of the child or (B) a sibling of the child has suffered nonaccidental or inadequately explained death as a result of parental acts of omission or commission.

Conn. Gen. Stat. § 17a-112(d), § 45a-717(h). The second and third sentences of this provision, regarding abandonment, were added by the legislature in 1992 in response to the controversial Baby Girl B. decision, 224 Conn. 263, 618 A.2d 1 (1992). See Public Act 93-193. Subsection (2) was added by Public Act 95-238, §§ 3 and 5, and did not take effect until October 1, 1995. (Public Act 95-238 also broke the provision down into the subsections that appear above.)

There is no fixed starting date for the running of the one-year period, such as the date of voluntary placement or the date of the child's commitment to DCF. The statute "requires only that the ground exist for not less than one year." In re Saba P., 13 Conn. App. 605, 609, 538 A.2d 711, 714 (1988), cert. denied, 207 Conn. 811, 541 A.2d 1241 (1988); see also In re Felicia D., 35 Conn. App. 490, 498, 646 A.2d 862, 866 (1994); but see In re Nelson and Angelica S., 1991 Conn. Super. LEXIS 2805

at *10, 1991 WL 269298 at *4 (1991) (Brenneman, J.) (suggesting that for ground of failure to rehabilitate only, one-year period begins when court "articulat[es] . . . expectations for reunification" following adjudication and disposition of the underlying neglect petition).

B. Seven Dispositional Factors

Before terminating parental rights in a contested case, in determining whether termination is in the best interest of the child, the court "shall consider and shall make written findings regarding" the following seven factors:

1. The timeliness, nature and extent of services offered or provided to the parent and the child by an agency to facilitate the reunion of the child with the parent;

2. Whether the department of children and families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, as amended;

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 have fulfilled their obligations under such order;

4. The feelings and emotional ties of the child with respect to his parents, any guardian of his person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties;

5. The age of the child;

6. The efforts the parent has made to adjust his circumstances, conduct, or conditions to make it in the best interest of the child to return him to his home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child; and

7. The extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.

Conn. Gen. Stat. § 17a-112(e), § 45a-717(i).

It is clear that these so-called "seven factors" are dispositional factors, relevant only to the court's determination of whether termination is in the best interest of the child. In a 1987 decision, however, the Appellate Court inexplicably had held that these factors must be considered as part of the adjudicatory phase in petitions alleging failure to rehabilitate. See In re Shavoughn K., 13 Conn. App. 91, 98, 534 A.2d 1243, 1247 (1987). Subsequent cases repeated this holding. The matter was put to rest by the Supreme Court in In re Barbara J., 215 Conn. 31, 47, 574 A.2d 203, 211 (1990) (holding that these factors are dispositional in all contested cases).

C. Reasonable Efforts Finding

Effective October 1, 1996, in order to terminate parental rights, the juvenile court (but not the probate court) must find by clear and convincing evidence that DCF "has made reasonable efforts to locate the parent and to reunify the child with the parent." Conn. Gen. Stat. § 17a-112(c), as amended by Public Act 96-246 § 18. This finding is not required if the court determines that the parent "is unable or unwilling to benefit from reunification efforts," or if the court has previously determined that reunification efforts are inappropriate in a hearing held pursuant to Conn. Gen. Stat. § 17a-110(b) (i.e., in connection with DCF's petition for extension of commitment). Id.

This new provision supplanted a measure enacted just a year earlier that required the juvenile court to find, as a condition precedent to terminating parental rights, that DCF "has made reasonable efforts to reunify the child with the parent." Public Act 95-238 § 3. The earlier provision effectively overruled two Appellate Court decisions which had held that the federal Adoption Assistance and Child Welfare Act (which contains the original reasonable-efforts requirement) "is an appropriations act and does not apply to individual actions or judicial findings . . . but merely sets forth general guidelines for a state's continued eligibility" for federal foster care subsidies. In re Cynthia A., 8 Conn. App. 656, 664, 514 A.2d 360, 365 (1986); In re Carl O., 10 Conn. App. 428, 436-37, 523 A.2d 1339, 1343 (1987), cert. denied, 204 Conn. 802, 525 A.2d 964 (1987).

The new provision makes it clear that reasonable efforts must be proven by clear and convincing evidence. (The earlier provision left this ambiguous.) But it fails to specify the requisite standard of proof for a finding that a parent is unable or unwilling to benefit from reunification efforts. Presumably this too must be based on clear and convincing evidence. See Santosky v. Kramer, 455 U.S. 745 (1982); In re Juvenile Appeal (84-AB), 192 Conn. 254, 266, 471 A.2d 1380, 1387 (1984) (clear and convincing evidence standard applies to "all elements" of a termination petition). Furthermore, because of this constitutional requirement, the provision allowing the court to bypass a reasonable efforts finding if it has previously determined that reunification efforts are inappropriate (at a hearing held in connection with DCF's petition for extension of commitment) would seem to be unconstitutional on its face, since the earlier finding would only have been based on a fair preponderance of the evidence. See In re Valerie D., 223 Conn. 492, 533-34, 613 A.2d 748, 769 (1992) (reversing termination judgment where the "factual predicate for custody, established by the lesser standard of a preponderance of the evidence, led inexorably, for all practical purposes, to the factual predicate for termination required to be established by the higher standard of clear and convincing evidence.")

26. POST-JUDGMENT PROCEDURES

A. Generally

Post-termination procedures differ somewhat between the SCJM and the probate courts.

Following termination, the juvenile court "may appoint a statutory parent at any time . . . if the petitioner so requests." Conn. Gen. Stat. § 17a-112(G). A statutory parent means DCF or any "child-placing agency appointed by the court for the purpose of giving a minor child . . . in adoption." Conn. Gen. Stat. § 45a-707(7).

The child's guardian or statutory parent must report to the court within 90 days of judgment on a case plan for the child, as defined by the federal Adoption Assistance and Child Welfare Act of 1980. Conn. Gen. Stat. § 17a-112(i). Thereafter, the guardian or statutory parent must report to the court every 6 months "on the implementation of the plan." Id. Within 15 months from the date of judgment, and at least once a year thereafter, the court must convene a hearing "for the purpose of reviewing the plan for the child." Id.

Section 45a-717(k) provides for similar follow-up reviews in the probate courts by the guardian of the person or statutory parent following the termination of parental rights. In addition, the probate courts must convene a hearing for the purpose of reviewing the child's placement plan no more than 15 months following judgment and at least once a year thereafter until a plan has been finalized.

B. Motions to Open

In response to the Supreme Court's decision in In re Baby Girl B., 224 Conn. 263, 618 A.2d 1 (1992), the legislature enacted special provisions limiting the court's power to open or set aside termination judgments. See Public Act 93-51, codified at Conn. Gen. Stat. § 52-212a; Public Act 93-170 § 1, codified at Conn. Gen. Stat. § 45a-719. A motion to open a termination judgment may be granted only under the following circumstances:

1. It must be filed within four months following entry of judgment unless consented to by the parties. See Conn. Gen. Stat. § 52-212(a) ("The continuing jurisdiction conferred on the court in preadoptive proceedings pursuant to subsection (i) of section 17a-112 does not confer continuing jurisdiction on the court for purposes of reopening a judgment terminating parental rights.").

2. It must be filed before "a final decree of adoption has been issued." Conn. Gen. Stat. § 45a-719.

3. The filing of an amended termination petition may not be deemed to "constitute a waiver" of the four-month limit "or a submission to the jurisdiction of the court" to reopen a termination judgment. Conn. Gen. Stat. § 52-212(a).

4. Any person who has legal or physical custody of the child pursuant to an agreement, including an agreement with DCF or a licensed child-placing agency, must be permitted to "provide evidence to the court concerning the best interest of the child" at any hearing on the motion. Conn. Gen. Stat. § 45a-719.

5. The court must consider the best interest of the child, which consideration shall include but not be limited to:

> a consideration of the age of the child, the nature of the relationship of the child with the caretaker of the child, the length of time the child has been in the custody of the caretaker, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caretaker's household, and the psychological and medical needs of the child.

Id. The court may not, however, consider "the socioeconomic status of the birth parent or the caretaker." Id.

C. Appeals

(See § 17 above.)

27. MISCELLANEOUS

A. Transfer from Probate to Superior Court

Any party to a contested termination petition brought in the probate courts, or the court itself, may move to have the case transferred to the SCJM. Conn. Gen. Stat. § 45a-715(g). When the motion is filed by a party other than the petitioner, transfer is automatic -- the court must grant it within five days. Id.; Conn. Probate Practice Book § 7.1., § 7.7. When the motion is made by the petitioner or the court itself, transfer is discretionary. Id.; Conn. Probate Practice Book § 7.2. When the motion is filed by the petitioner, the court must schedule a hearing for the petitioner to show cause why the matter should be transferred, and notify the parties of the hearing at least three days in advance. Conn. Probate Practice Book § 7.6.

All transfer motions must state that the termination petition will be contested. Conn. Probate Practice Book § 7.4. A motion filed by a petitioner must also set forth reasons why the petition should be transferred. Id. A motion filed by a person who is a minor or incompetent, or such person's attorney, must also be approved by the person's guardian ad litem. Id.

A transfer motion must be filed by the date of the first hearing on the merits. Conn. Probate Practice Book § 7.3. The motion must be served upon all parties of record at least three days before filing. Id. The court may extend these time limits for good cause shown. Id. Failure to file and serve the motion in a timely manner waives a party's right to seek transfer. Id.

When the court determines that a case should be transferred on its own motion, it must notify all parties of its decision by the date of the hearing on the merits, unless good cause for a later transfer exists. Conn. Probate Practice Book § 7.5.

Within three days of the granting of a transfer motion, the probate court clerk must transmit by certified mail the original files and papers in the case to the clerk of "the juvenile court having jurisdiction over matters arising in the probate district where the petition is filed." Conn. Gen. Stat. § 45a-715(g); Conn. Probate Practice Book § 7.8. The juvenile court, "upon hearing after notice as provided in sections 45a-716 and 45a-717, may grant the petition as provided in section 45a-717." Conn. Gen. Stat. § 45a-715(g).

The probate court clerk retains a copy of the file of a transferred case. Conn. Probate Practice Book § 7.8. The juvenile court must send a copy of its final decree, as well as a copy of any appeal, to the probate court from which the transfer was made. Conn. Probate Practice Book § 7.9.

B. Res Judicata and Collateral Estoppel

Application of the doctrines of res judicata and collateral estoppel to termination cases presents difficult problems. Res judicata, or claim preclusion, generally bars relitigation of a claim that has previously been adjudicated on the merits. See, e.g., In re Juvenile Appeal (83-DE), 190 Conn. 310, 313, 460 A.2d 1277, 1280 (1983). Collateral estoppel, or issue preclusion, prohibits relitigation of an issue that "was actually litigated and necessarily determined in a prior action between the same parties upon a different claim." Id. at 316, 460 A.2d at 1281.

In In re Juvenile Appeal (83-DE), the Connecticut Supreme Court held that a trial court's dismissal of a termination petition, on the ground that the one-year requirement should not be waived, did not amount to a judgment on the merits. Therefore, that dismissal had no preclusive effect in a second termination action, brought only five months later, alleging the identical substantive grounds. Id. at 314-316, 460 A.2d at 1280-1281. Moreover, collateral estoppel did not apply, both because waiver of the one-year requirement was not an issue in the second case and because the substantive issue of parental unfitness was not "necessarily determined" in the prior case. Id. at 316-317, 460 A.2d at 1281-1282.

In broad dictum, the court went on to state:

> Because the issue of whether termination of parental rights is appropriate must be decided upon the basis of conditions as they appear at the time of trial, the doctrines of res judicata and collateral estoppel ordinarily afford very little protection to a parent who has once successfully resisted an attempt to terminate his rights to a child. . . . An adjudication that a ground for termination did not exist at one time does not mean such ground has not arisen at a later time.

Id. at 318-319, 460 A.2d at 1282. The court suggested, but declined to adopt, "a material change in circumstances standard as an evidentiary threshold to the admission of evidence of events occurring prior to an earlier attempt to terminate parental rights." Id. at 319, 460 A.2d at 1282-1283.

Subsequently, the Appellate Court held that when "new" and "substantial" facts justify the bringing of a second termination petition, "the doctrines of res judicata and collateral estoppel do not apply because courts are required in all termination proceedings to take into account the entire relationship between the parent and child." In re John B., 20 Conn. App. 725, 731-732, 570 A.2d 237, 240 (1990).

At least one juvenile court judge has concluded that the holding in In re John B. "relates only to termination of parental rights, not neglect and uncared for petitions." In re Monica C., 1991 Conn. Super. LEXIS 107 at *3-4, 1991 WL 27915 at *2 (1991) (Sullivan, J.). The court reasoned that:

> Unlike the situation in a termination petition, the court is not required to consider the entire relationship between parent and child in the adjudication phase of a neglect/uncared for petition. In such proceedings the court's only concern must be whether, as of the date of adjudication, the child was neglected or uncared for. The relationship with the parents becomes relevant and material only if the court adjudicates the child to be neglected or uncared for and reaches the dispositional phase of the hearing.

Id.