 <b>VERMONT</b> DEPARTMENT FOR CHILDREN AND FAMILIES <b>Family Services Policy Manual</b>		<h1>85</h1>
Chapter:	Working with Youth and Families in Court	
Subject:	Minor Guardianships Through the Probate Division of the Superior Court	Page 1 of 8
Approved:	Aryka Radke, Deputy Commissioner	Effective: 8/10/2023
Supersedes:	Family Services Policy 85	Dated: 7/1/2013

## Purpose

To provide guidance to division staff about:

- The role of family services workers in recommending and/or facilitating minor guardianships through the Probate Division of the Superior Court; and
- The role of family services workers after a guardianship has been established when the division has been involved with the parents or the guardians.

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## Related Policies

Family Services [Policy 51](#): Screening Reports of Child Abuse and Neglect  
Family Services [Policy 52](#): Child Safety Interventions – Investigations and Assessments  
Family Services [Policy 80](#): Working with Families in Court – Definitions  
Family Services [Policy 82](#): Juvenile Court Proceedings – CHINS  
Family Services [Policy 84](#): Conditional Custody Orders (CCOs)  
Family Services [Policy 91](#): Kinship Care & Collaboration with Relatives  
Family Services [Policy 125](#): Permanency Planning for Children and Youth

## Introduction

Minor guardianship through the Probate Division of the Superior Court has long provided an avenue for relatives to “take care of their own”. Guardianships may be

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established for short periods or for the duration of the child’s minority. These situations may be driven by the temporary inability of a parent to care for a child (i.e., illness, employment, military deployment, or incarceration). These situations may also be driven by a complex set of circumstances that involve issues such as mental illness or substance use disorders.

Currently in Probate Division of the Superior Court proceedings:


- There is limited capacity to assess family situations or evaluate the suitability of the prospective guardians to provide safe and appropriate care;
- Family members are not usually represented by legal counsel during this process;
- A guardian ad litem (GAL) is not typically assigned to the case to speak to the best interests of the child;
- There is not an avenue for permanent guardianship; and
- These guardianships can be subject to ongoing litigation that keeps a child and other family members in legal limbo.

**Definitions**

***Permanent Guardianship:*** A guardianship established in the Family Division of the Superior Court through juvenile court proceedings, with the intent of a child or youth having care outside of their legal parents until their eighteenth birthday. These guardianships can be contested by the parents and are entered into with the intent that the guardian will care for the child until adulthood. If a guardianship dissolves for any reason (i.e., the guardian no longer wishes to serve as guardian or dies), and a successor has not been named, the child returns to DCF custody. Residual parental rights remain intact to establish a permanent guardianship.

***Temporary Guardianship (or Temporary Minor Guardianship):*** A guardianship established in the Probate Division of the Superior Court with the intent of a child having temporary care outside that of their legal parents. These guardianships are typically voluntary and created for specific reasons and periods of time. Reasons for the temporary guardianship, per 14 V.S.A. § [2622](#), may include:

- The child's custodial parent has a serious or terminal illness;
- A custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child;
- The child's home is no longer habitable as the result of a natural disaster;
- A custodial parent of the child is incarcerated;
- A custodial parent of the child is on active military duty; or
- The parties have articulated and agreed to another reason that guardianship is in the best interests of the child.

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***Vermont Family Division of the Superior Court:*** The [Family Division of the Superior Court](#) manages all family-related legal matters. Decisions about divorce, separation, civil union dissolution, and parentage are decided in the family division. Child support and custody are also decided here. Many people come to the family division to change previous court orders. These usually involve child support, custody arrangements, or visitation (parent/child contact). When a child has been delinquent, abused, or neglected, the family court judge decides how to help or protect that child. The family division determines how best to protect victims of domestic violence. It also decides how the state will care for people with mental illnesses and developmental disabilities.

***Vermont Probate Division of the Superior Court:*** The [Probate Division of the Superior Court](#) handles adoptions; corrections to birth, death, and marriage records; emancipation; guardianship; authorization of nonresident clergy to perform marriages; and probate (proving the validity) of estates, trusts, and wills. There are 14 probate division judges who are elected for four-year terms.

## Policy

14 V.S.A. § [2634](#) tasks the division with adopting a policy defining its role with respect to families who establish a guardianship. Vermont statute requires that the division’s policy be consistent with the following principles:

- (1) The Family Services Division shall maintain a policy ensuring that when a child must be removed from his or her home to ensure the child's safety, the division **will pursue a CHINS procedure promptly** if there are sufficient grounds under 33 V.S.A. § [5102](#).
- (2) When the Family Services Division is conducting a child safety intervention (investigation or assessment) and the child may be a child in need of care and supervision as defined in 33 V.S.A. § [5102](#) (3), the division **shall not make any recommendation regarding whether a family should pursue a temporary minor guardianship**. The staff may provide referrals to community-based resources for information regarding minor guardianships.
- (3) In response to a request from a probate court judge, family services workers shall attend a minor guardianship hearing and provide information relevant to the proceeding.
- (4) If a minor guardianship is established during the time the division has an open case involving the minor, the family services worker shall inform the guardian

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and the parents about services and supports available to them in the community and will close the case within a reasonable time unless a specific danger is identified.

### **Family Court and Probate Court Jurisdictions and Functions**

If court intervention is needed because parent(s) are unable to safely care for their child(ren), the case should be referred to the State’s Attorney’s Office for a CHINS petition. Information about seeking emergency care orders (ECOs) or non-emergency CHINS petitions is found in Family Services [Policy 82](#).

The Family Division of the Superior Court and the CHINS process are the appropriate response to manage ongoing safety, permanency, well-being, and law abidance issues for children and youth. The CHINS process helps to hold all parties, including the division, accountable and maintains a focus on timely and lasting permanency for the child.


There are times when, on their own initiative, a family may decide to petition for temporary minor guardianship through the Probate Division of the Superior Court. The family services worker should make it clear that this is the family’s choice. Division staff will oppose, on the record, any motion to move the matter to the Probate Division of the Superior Court when there are outstanding child safety concerns or unresolved dangers. In these instances, the family services worker shall refer the matter to the local state’s attorney’s office for consideration of a CHINS petition, also informing them of the pending action in the Probate Division of the Superior Court.

### **Alternative Caregivers as Part of Safety Plan**

When the division is involved with a family due to a child safety concern (child safety interventions or family support cases), division staff may determine that a child is presently unsafe in the care of the parent or caretakers. In these instances, it may be appropriate to work with the family to put a safety plan in place which includes the support of an alternative caregiver on a temporary basis. The division’s safety plan documents include:

- [FSD Safety Plan: Framework](#)
- [FSD Safety Plan: Actions Needed](#)
- [FSD Safety Plan: Signature Page](#)

The [Signature Page](#) is always required when safety planning, and division staff may choose whether they use the [Framework](#) or [Actions Needed](#). See Appendix I of Family Services [Policy 91](#) for guidance on placement situations determined to be unsafe or dangerous, where an individual or household should not be used for a temporary out-of-

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home safety plan.

A safety plan with an alternative caregiver **shall not last longer than one month**. If it is necessary for the child(ren) to be in the care of an alternative caretaker on an extended basis to address identified dangers, division staff shall not encourage or recommend that the family address that concern through the Probate Division of the Superior Court for a temporary minor guardianship, and will refer to the local state’s attorney’s office for a CHINS petition in the Family Division of the Superior Court in compliance with 14 V.S.A. § [2634](#). In situations involving significant complexity or disagreement with partners, the permanency planning manager should be included for consultation, who may also include the child safety manager, operations manager, and/or an AAG.


#### **Temporary Minor Guardianship Established During a Family Support (CF) Case**

If a temporary minor guardianship is established during the time the division has an open family support case, despite the division’s objection, the family services worker will review the case with their supervisor with a focus on any unresolved dangers. Once safety has been achieved for the children who were the subject of our involvement, the worker should plan for timely closure of the case.

Before case closure, the worker should offer the new guardian(s) information about services and supports that are available to them in the community (i.e., services through the local mental health designated agency, post-permanency services, [Child-Only Reach Up](#), kinship specific supports, or a coordinated services plan). If additional information about relevant services is needed, the permanency planning manager may be consulted. Absent a new accepted report concerning the care of the child by the guardian(s), the case will be closed as required by 14 V.S.A. § [2634](#)(4).

#### **Temporary Minor Guardianship Filed During a CHINS Proceeding in Family Court**

If a family petitions for a temporary minor guardianship during a CHINS proceeding in family court, it is inappropriate for the division to support that disposition. Once division staff become aware that a temporary minor guardianship petition has been filed, consultation with the local state’s attorney’s office and the assigned assistant attorney general (AAG) shall occur. Sample/template language and statute citations in Appendix I may be referenced and utilized for any affidavits or court communication.

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### **CHINS Petition Filed on a Case Where a Probate Temporary Minor Guardianship Exists**

When division staff are aware of an existing temporary minor guardianship when seeking a CHINS petition, affidavits should include the following language to notify the family division of the superior court:

*The Department for Children and Families (DCF), Family Services Division (FSD) understands that a minor guardianship case exists regarding this child in the (County, if known) Probate Division of the Superior Court. We respectfully request that the court act in accordance with 33 V.S.A. § [5117\(c\)2](#) to notify the Probate Court this juvenile proceeding exists, and 14 V.S.A. § [2624](#) regarding jurisdiction and transfer.*

If division staff learn of an existing temporary minor guardianship after an affidavit was already submitted, a supplemental affidavit should be written and submitted to the family court. See Appendix I for sample/template language and statutory citations.


### **Concurrent Planning with Guardians and Legal Parents**

In cases where a child is subject to a temporary minor guardianship through probate court and then becomes involved with the division through a CHINS proceeding in family court, the division has a responsibility to case plan with both the guardian(s) and any legal parents whose parental rights remain intact. The division is required to make reasonable efforts to provide the guardians and legal/birth parent with case planning supports and individualized action plans. If either legal relationship is severed during the CHINS case, the division will continue case planning with the other party. In these complicated cases, consultation with supervisors, local permanency teams, and the permanency planning manager should occur.

### **Special Considerations Regarding DV/IPV Homicides**

The division does not support a minor guardianship through the Probate Division of the Superior Court following a domestic violence (DV)/intimate partner violence (IPV) related homicide of a parent. Unless there is another legal caretaker who was not the victim or perpetrator of the homicide who can provide safety, care, and decision-making for the child(ren), the division accepts reports involving DV/IPV homicides as child safety interventions. See Family Services [Policy 51](#) for additional information.

If the division learns of probate court proceedings following a DV/IPV homicide, the division will request that the probate court redirect the family to the attention of the division and family court/CHINS process.

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## **FSD Role During Probate Court Minor Guardianship Proceedings**

### **Information from FSD Records**

Vermont law provides that the division shall make its records available to the probate court upon its request to assist the court in minor guardianship proceedings. These requests should be provided in the form of a court order. If the division receives such an order from the probate court, staff will provide a copy of the relevant file(s) directly to the probate court for its review. Statutory responsibility for distribution of these records lies with the probate court. Because the division views such requests as an order of the probate court, any information should be given directly to the probate judge and not to attorneys or other parties (unless specifically directed by the judge). When records are requested by a probate court judge through an order or motion, district staff will promptly notify and consult with their assigned assistant attorney general (AAG), who will support division staff in providing and filing the confidential documents as required by 33 V.S.A. § [4921\(c\)\(1\)\(G\)](#).

### **Probate Court Hearings**

At times, when the division has active involvement with a family who is the subject of a petition for temporary minor guardianship, a probate judge may request that a family services worker attend a hearing. If so, the family services worker will promptly notify and consult with their assigned assistant attorney general (AAG) and attend the probate hearing as requested to provide relevant information to the judge as directed per 14 V.S.A. § [2634](#).

### **Requests for Assessments and Case Planning Supports in Existing Temporary Minor Guardianship Cases**

Family services workers have no statutory responsibility for providing assessment or case planning services specifically to support a temporary minor guardianship. If the judge makes such a request to a family services worker, the worker should inform their supervisor and the assistant attorney general (AAG) assigned to the district office.

## Appendix I: Sample Affidavit Language

The Department for Children and Families (DCF), Family Services Division (FSD) understands the parent(s) is/are supportive of this matter being resolved through a temporary minor guardianship in the Probate Division of the Superior Court as opposed to the Family Division, and that a petition has or will be filed. Pursuant to 14 V.S.A. § [2624](#), we understand this court will consider the petition. 14 V.S.A. § [2634](#) requires the Department for Children and Families (DCF), Family Services Division (FSD) to maintain policy regarding the use of temporary minor guardianships when CHINS issues are present.

The department does not support a temporary minor guardianship when child safety concerns or unresolved dangers are present. The department would like the court to consider the following:

The Department believes the child(ren) is/are in need of care and supervision, and the oversight provided by the Probate Division of the Superior Court does not afford the same level of permanency, and this legal arrangement presents potential long-term risks.

With additional time, assessment, and case management, the department may recommend a permanent guardianship, which would ensure that the department be notified if termination of the guardianship is under consideration.

If a temporary minor guardianship of the child were to be granted, the department is concerned about the responsibility, resource intensiveness, and the familial conflict that would be caused by the proposed guardians needing to advocate in the Probate Division of the Superior Court in the event of requests for modifications of parent-child contact or a request for termination. Per 14 V.S.A. § [2632](#), the burden of proof to continue the guardianship would be on the proposed guardians. Additionally, notification of a termination of a temporary minor guardianship would not be made to the department and we believe that the child would be at risk without further assessment of the parents.

14 V.S.A. § [2624](#) states “A custodial minor guardianship proceeding brought in the Probate Division under this article shall be transferred to the Family Division if there is an open proceeding in the Family Division involving custody of the same child who is the subject of the guardianship proceeding in the Probate Division.”

We respectfully request that the court act in accordance with 33 V.S.A. § [5117\(c\)](#)<sup>21</sup> to notify the Probate Court this juvenile proceeding exists, and 14 V.S.A. § [2624](#) regarding jurisdiction and transfer.

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<sup>1</sup> 33 V.S.A. § 5117(c)2: “Upon the court's own motion in a probate proceeding involving adoption, guardianship, or termination of parental rights, the court may order that court records in a juvenile proceeding involving the same child or children be released to the Probate Division. When the court orders release of records pursuant to this subdivision, the court shall notify the parties that it intends to consider confidential juvenile case information and shall provide the parties with access to the information in a manner that preserves its confidentiality.”