 VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES Family Services Policy Manual		<h1>85</h1>
Chapter:	Working with Families in Court	
Subject:	Minor Guardianships Through the Probate Court	Page 1 of 3
Approved:	Cynthia K. Walcott, Deputy Commissioner	Interim: 7/1/2013
Supersedes:		Dated:

Purpose

To provide guidance to staff about (1) the role of FSD social workers in recommending and/or facilitating minor guardianships through the probate court and (2) the role of the FSD social worker after a guardianship has been established, when the division has been involved with the parents


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Introduction

Minor guardianship through the probate court has long provided an avenue for families to “take care of their own.” The guardianship may be for a short period, 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, such as illness, employment, military deployment, or incarceration. Or, they may be driven by a complex set of circumstances that involve issues such as mental illness or substance abuse. It is important to note that currently:

- The probate court has limited capacity for an assessment of the family situation, or the capacity of the prospective guardians to provide safe and appropriate care;
- Family members are not usually represented by counsel; there is usually no GAL assigned to look after the best interests of the child;

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- There is not an avenue for permanent guardianship through the probate court. These guardianships can be subject to ongoing litigation that keeps a child and other family members in limbo.

At times, a Family Services social worker may have been involved with the family before or during the time the guardianship has been established. This policy establishes guidelines for the worker’s involvement in these matters.

Policy

Alternative Caregivers as Part of Safety Plan


When the division is involved with a family due to a child safety concern (Chapter 49 investigation or assessment, CHINS(B) assessment or open family case), we may determine that a child is presently unsafe in the care of the parent or caretakers. In that case, it may be appropriate to work with the family to put a safety plan in place that includes the use of an alternative caretaker on a temporary basis, no longer than 1 month.

However, if it is necessary for the child(ren) to be in the care of an alternative caretaker on an extended basis in order to address identified dangers, it is not appropriate for the social worker to encourage or recommend that the family address that concern through the use of probate court for a minor guardianship.

Family Court vs. Probate Court

If court intervention is needed because the parent or caretaker is unable to safely resume care of the child(ren) within one month, the case should be referred to the State's Attorney for a CHINS petition. The Family Division and the CHINS process are the appropriate response to manage the on-going safety, permanency and well-being issues for children. The CHINS process helps hold all parties, including the division, accountable and maintains a focus on permanency for the child.

There are times when, on their own initiative, the family decides to petition for minor guardianship in the probate court. The social worker should make it clear that this is the family’s choice. In there are unresolved dangers, the social worker should still refer the matter to the state’s attorney for consideration of a CHINS petition, also informing him or her of the pending action in the probate court.

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FSD Role during Probate Minor Guardianship Proceedings

Information from Family Services Records

Vermont law provides that DCF 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, we 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 DCF views such requests as an order of the probate court, any information should be given directly to the probate judge, and not to any attorneys or parties, unless otherwise specifically directed by the judge.

Probate court hearings

At times, when the division has active involvement with a family who is the subject of a petition for minor guardianship, a probate judge may request that an FSD social worker attend a hearing. If so, the social worker should attend the hearing as requested to provide relevant information to the judge as he or she directs.

Requests for Assessments and Case Planning Supports

Division social workers have no statutory responsibility for providing assessment or case planning services specifically to support a minor guardianship. If the judge makes such a request to a social worker, the social worker should inform his or supervisor and the assistant attorney general assigned to the district.

FSD Role after Establishment of Minor Guardianship

If a minor guardianship is established during the time that the division has an open case, the social worker will review the case with his or her supervisor, with a focus on any unresolved dangers. Assuming that 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 closure, the worker should offer the new guardian(s) information about services and supports that are available to them in the community. Absent a new accepted report concerning the care of the child by the guardian(s), the case will be closed within 3 months.