



STATE OF CONNECTICUT

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**TO:** Senate Co-Chair Catherine A. Osten  
House Co-Chair Toni E. Walker  
Senate Ranking Member Craig Miner  
House Ranking Member Mike France  
Honorable Members of the Appropriations Committee

**FROM:** Beverly K. Streit-Kefalas  
Probate Court Administrator

**RE:** HB 6439, An Act Concerning the State Budget for the Biennium Ending  
June Thirtieth, 2023, and Making Appropriations Therefor

**DATE:** February 26, 2021

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Thank you for the opportunity to testify about the budget needs of the Probate Court system.

An important distinction for the funding request for the Probate Court system is that the system is largely funded by probate fee revenue and not through General Fund appropriation. We respectfully ask the committee to approve funding for the Probate Courts in the amount set forth in the Judicial Branch's requested budget for the biennium. The requested appropriations are:

Fiscal year 2022	\$ 13.5 million
Fiscal year 2023	\$ 13.4 million

This request represents only 75% of the Probate Court system budget and if approved, will provide the funds necessary to meet constitutionally mandated due process protections for indigent parties as well as to support the Kinship and Respite Funds for eligible guardians of minor children. It also provides stability in funding sources to allow for prudent fiscal planning and cash flow in times of probate fee fluctuations.

## **The Safety Net's Safety Net**

The State of Connecticut funds through other state systems a safety net to meet the needs of indigent individuals through housing subsidies, inpatient psychiatric hospitals, group homes for adults with intellectual disability and foster care homes for children at risk, to name a few such resources.

Connecticut's Probate Court system serves a critical function as the safety net for this safety net. We facilitate probate court solutions for family-managed care, safety and services for thousands of our most vulnerable residents. Some are children needing stable homes; others are adults struggling with substance use disorder. They have mental health conditions, intellectual disability or sometimes cognitive impairments due to the natural aging process. For families needing assistance, one of the "people's courts" may be the connection that saves a life or offers improvement to quality of life.

Conservators managing finances and ensuring rent is paid can mean the difference between homelessness or safe housing for an individual with mental health conditions. Safe housing can be the stability needed to avoid emergency inpatient psychiatric care, at a significant financial savings to the state and an invaluable benefit to such a conserved person in the quality of their life.

About 21,000 Connecticut residents rely on a conservator to arrange nutrition, housing, medical care, psychiatric treatment, and personal safety. Nearly 7,200 children are cared for by a guardian who is a relative or close family friend appointed by a Probate Court. Thousands of adults with intellectual disability rely on a guardian to assist them with decisions affecting many aspects of their lives. For many seniors with dementia, nursing-home care would be a necessity but for the home-care services that a conservator arranges to provide an individual the dignity of aging in place.

## **Trends Affecting the Probate Courts**

The role of the Probate Courts has changed dramatically in recent years. While historically associated with trusts and decedent estates, these matters now comprise only 44% of case types. The majority of cases in the Probate Courts today address the needs of children, seniors, and individuals with mental health conditions, intellectual disability and other challenges.

Our caseload is growing rapidly in all of these areas. Probate Courts now handle 40% more matters since the courts consolidated in 2011, and the matters are increasingly complex.

The rising workload is a direct reflection of broader societal trends. The population is growing older and the prevalence of dementia is rising. The opioid addiction crisis continues largely unabated and fentanyl-related overdoses have escalated. Children suffer neglect or worse when parents suffer from substance use disorder. Residential psychiatric facilities have been closed while the state struggles to provide community-based living arrangements. Best practices favor aging in place rather than nursing home

care whenever possible. The need for conservators and guardians to assist persons with disabilities grows as state and community providers strain to meet the needs. The mental health cost of the current public health emergency now approaching its twelfth month is just beginning to emerge.

These trends are disturbing. The reassuring constant is that the related legal needs are resolved on a daily basis by the Probate Courts. The Probate Courts remain vital to the safety net for all of the populations affected by these trends. Stable funding for the Probate Courts is therefore critical.

### **Efficiency Measures**

Despite the enormous growth in caseload, the Probate Court system is a far leaner organization than it was 10 years ago. In 2011, the system reduced from 117 courts to 54, implementing a regional structure that is often cited as a model for other services. This consolidation continues to save the state more than \$4 million annually.

Because staffing levels have been static since court consolidation, we constantly look for ways to manage the ever-expanding workload by embracing technology and streamlining procedures. We have adopted uniform Rules of Procedure, for example, that make it unnecessary for the court to schedule a formal hearing when the parties are in agreement on an issue. Similarly, the rules permit conservators, guardians and other fiduciaries to use simplified financial reports instead of the extensive detail required in traditional accountings.

Our technological advances provide greater access to justice and increased efficiencies. In January 2020, we implemented an electronic filing system that enables parties to file documents, view court files and pay fees through a secure online portal that is available on a 24/7 basis. The implementation of our eFiling system could not have come at a better time with the declaration of a public health emergency in March of 2020. Along with the unanticipated but necessary rollout of Cisco Webex videoconferencing, our courts continued to serve the public in full operations during the public health emergency.

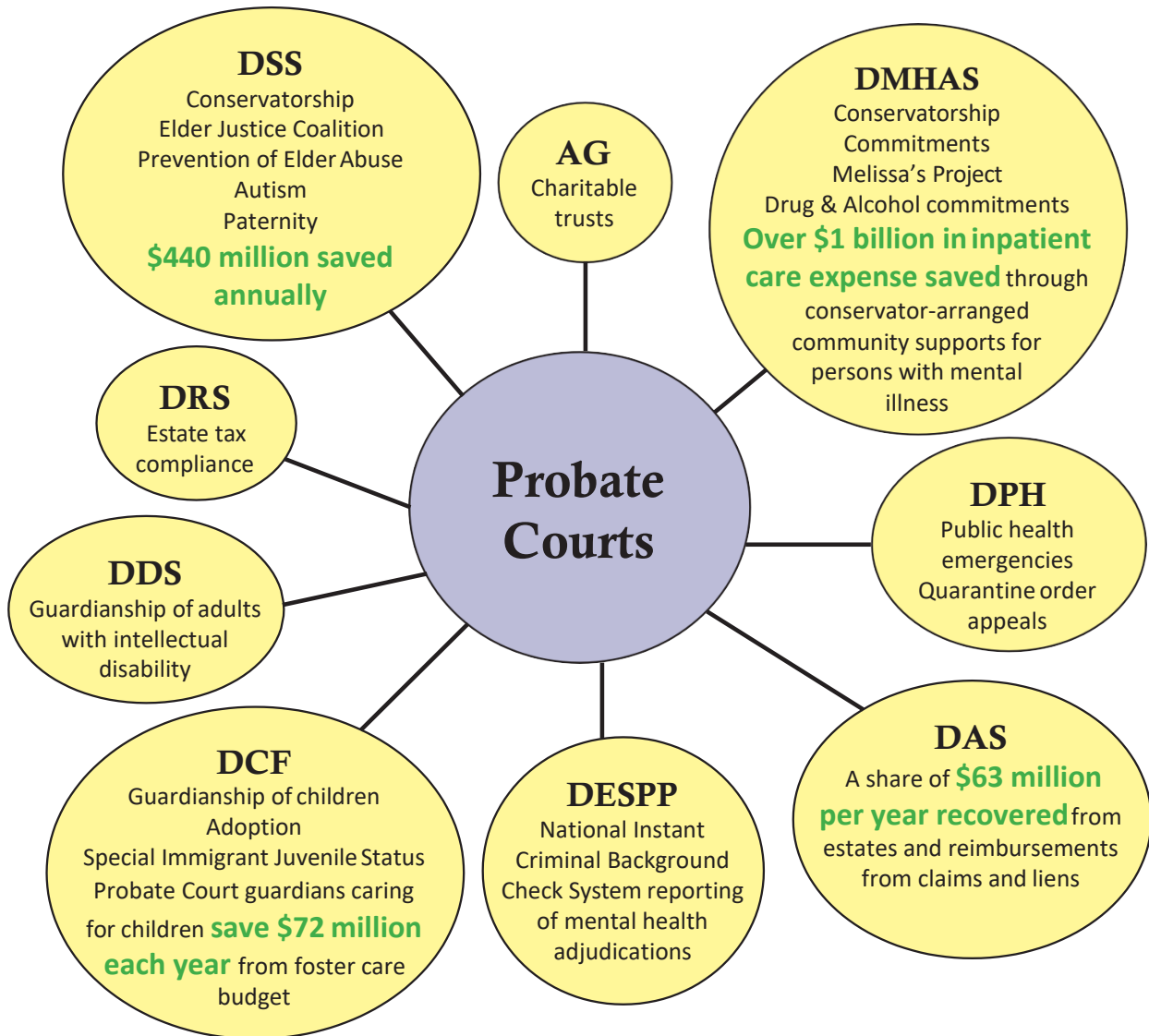
Further streamlining of operations include an expansion of the eFiling system for use by state agencies, the online billing system for conservators and attorneys that eliminates 25,000 paper invoices per year. We have free online training (in both English and Spanish) to help conservators understand their duties and minimize the staff time required for training. All of these initiatives expand access to the courts and increase operational efficiencies.

### **Probate Court Services Save Other State Agencies**

The efforts of guardians and conservators arranging care at home or other community-based settings save the state over \$1.5 billion each year by avoiding more costly state services:

# Probate Courts and State Agencies: Meeting Family Needs Creates Significant Savings

Probate Courts facilitate family-centered solutions to meet the needs of seniors, children and individuals with intellectual disability and mental illness. The efforts of guardians and conservators to arrange care at home or other community-based settings **save the state over \$1.5 billion each year** by avoiding more costly state services.



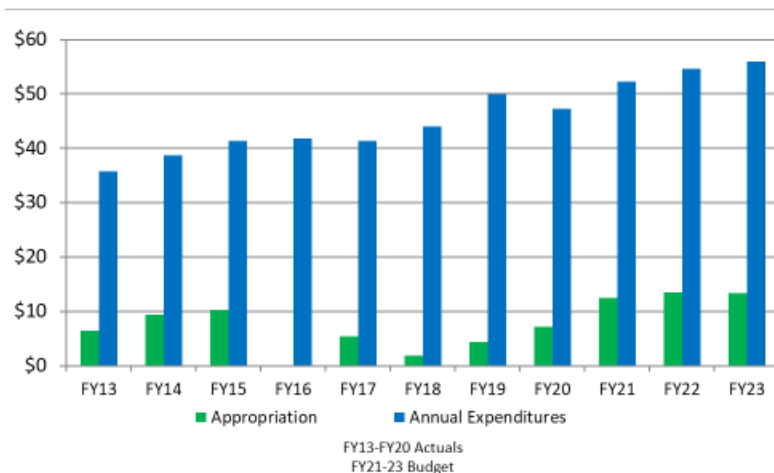
\* May 2020 statistics

- DMHAS would spend more than \$1 billion for inpatient psychiatric hospitalizations for indigent conserved persons but for the services arranged by conservators to ensure safe living in the community.
- Grandparents and other relatives serving as guardians for children make foster care unnecessary, thereby saving DCF more than \$72 million annually and increases the long-term success rate for children who remain with family.
- DSS saves more than \$440 million in nursing home care costs when conservators arrange services for low-income seniors to safely age in place in their own homes.

### General Fund Appropriation as a Percentage of Probate Court Operating Expenses

State savings from Probate Court services is even more remarkable considering how small a portion of Probate Court system operating cost is borne by the General Fund. As the chart below illustrates, the **General Fund appropriation will represent only 25% of our budget** for the next two years (assuming funding at the Judicial Branch proposed amount).

General Fund Appropriation Compared to Annual Expenditures *(in millions)*



This minimal investment represents an exceptional value proposition for our state. For every \$1 of appropriation, the state achieves \$111 in savings by avoiding more costly state services for individuals in need. The majority (75%) of the system’s financial needs depend on probate fee revenue which is inherently unpredictable and volatile.

### **Probate Court Revenue is Volatile**

The Probate Court system is unique in that it is dependent on its own revenue for operations. Apart from the cost of facilities borne by municipalities, all other expenses of the Probate Court system are managed through a dedicated revenue fund known as the Probate Court Administration Fund (PCAF). The PCAF has two revenue sources: probate fees and the annual appropriation from the General Fund. Both sources have proven to be unpredictable.

For this upcoming biennium, probate fee revenue represents 75% of the total proposed budget. This revenue is derived from estate tax returns and court filings. During the first quarter of the current public health emergency, with many businesses and law offices shuttered and a delay in the due date of estate tax returns, the probate fee revenue declined by 40%. The economic impact on the value of assets is also a significant factor. Both conditions highlight the stark reality in the volatility and thus unpredictability of the major source of funding for the Probate Court operations.

The legislature's annual General Fund appropriation is necessary to allow for prudent financial planning and sustainability of the Court operations. It also protects the Probate Courts' ability to ensure constitutionally-mandated services to support indigent individuals in the Probate Court system.

As with the state budget, market fluctuations or economic downturns result in depressed revenue. The unpredictability of cash flow places the system in a financially perilous position, compromises the ability for sound fiscal planning, and jeopardizes ongoing operations.

We have been fortunate that the sharp revenue decline experienced due to the public health emergency by our system and the state overall has been overcome due to the unexpected but welcome market improvements. Lost revenue due to the delayed tax return due dates was largely deferred and ultimately not lost. As in the state budget situation, probate fee revenue has returned to budget levels and we have overcome the COVID-19 revenue shortfalls.

### **The Governor's Recommendations Insufficient to Meet Indigent Needs**

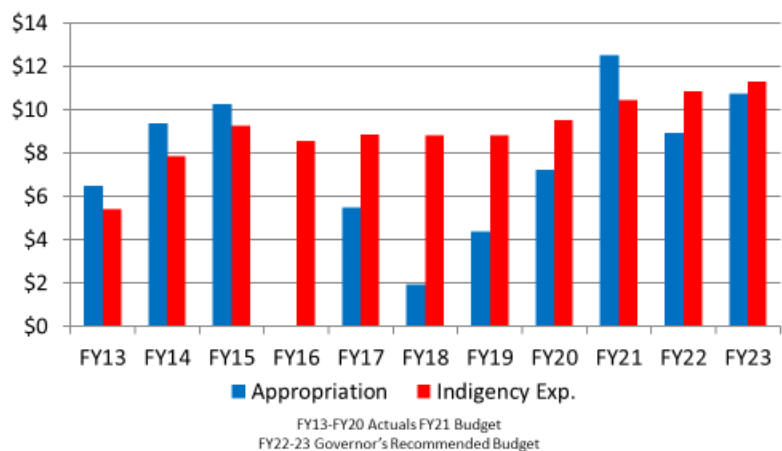
Unlike many states, Connecticut looks to its Probate Courts to pay for the services of the conservator when the conserved person is indigent and has no available family. In addition, our state mandates that the Probate Courts pay for attorneys for indigent individuals, and it requires the Probate Courts to fund a grant program that helps guardians pay expenses for children in their care.

The Governor's appropriation recommendations for FY22 of \$8,897,708 and FY23 of \$10,700,215, are insufficient to support the needs of indigent individuals in the probate court system as illustrated in the table to follow:

	FY22	FY23
<b>Governor's Funding Recommendation</b>	<b>\$8,898</b>	<b>\$10,700</b>
Conservators for indigent conserved persons	6,053	6,356
Attorneys for indigent parties	2,807	2,948
Kinship and Respite grants for children	2,000	2,000
<b>Total</b>	<b>\$10,861</b>	<b>\$11,304</b>
<b>Net Funding Deficit</b>	<b>(\$1,963)</b>	<b>(\$604)</b>

Until FY16, the General Fund appropriation for the Probate Courts covered the cost of these three mandates. Due to large cuts in General Fund support for the Probate Courts until FY21, the Probate Courts have had to subsidize these mandated services, as illustrated below:

## Governor's General Fund Appropriation/Utilization (in millions)



In the current fiscal year, the General Fund appropriation restored normalized funding to meet the needs of indigent individuals. The cost of providing conservators to indigent conserved persons – a mandated expense that is driven entirely by external forces – historically increases year over year. We no longer have the ability to subsidize these mandated services as there will be no surplus in the Probate Court Administration Fund. The fund balance will be depleted if the indigency expenses follow historical trends and the General Fund appropriation does not keep pace.

In addition to the Governor's reduced recommendation for the Probate Court General Fund appropriation, the Governor's budget overestimates probate fee revenue by \$1.5 million which in effect results in a net appropriation of only \$7.4 million for FY22 and \$9.2 million for FY23.

### **Funding Requirements in FY22 and FY23**

The funding request that we present today was developed with a number of key objectives. First, it maintains the same percentage of funding as the current fiscal year – 25% of the court's expenses with 75% dependent on projected probate fee revenue and reflects a unique additional pay period in FY22.

Second, it provides the necessary funds for indigent individuals and Kinship and Respite grants to guardians of minor children. These expenses have historically been subsidized by the Probate Court system due to insufficient General Fund appropriations yet they are constitutionally mandated to ensure access to justice and due process protections.

Third, it reflects compensation adjustments for court staff. The Probate Courts have met the needs of rising workloads with multiple years of pay freezes including a years-long deferral of the implementation of the system's compensation equity study. Despite the ongoing public health emergency, the Probate Judges and court staff have continued to report to the courts and maintained court operations.

The Governor's recommended appropriation requires the Probate Courts to again subsidize constitutionally mandated services depleting the PCA Fund.

### **Conclusion**

The past year has presented unprecedented difficulties for all of us. Throughout the public health emergency, the Probate Court system has diligently and safely operated to meet the legal needs of the public while also protecting the physical and fiscal health of our court staff and judges. Our state is fortunate to have a Probate Court system that delivers vital safety-net services to its most vulnerable individuals while saving state agencies \$1.5 billion each year. Our state is equally fortunate that the General Fund bears a mere fraction of the cost of providing those services.

We have aggressively implemented efficiency measures such as eFiling including expansion to state agencies and planned development of eBench capabilities. We have eased the impact of the rising cost of providing services to indigent residents with prudent management of the Probate Court Administration Fund. Despite these efforts, the volatility of probate fee revenue and historical general fund challenges will deplete our fund balance to levels below even the recommended 15% of total expenditures.

Given rising indigent expenses and volatile probate fee revenue, the budget must suspend the automatic sweep of the Probate Court Administration Fund. Under C.G.S.



section 45a-82(j), any funds in the PCAF in excess of 15% of budget are automatically swept each year to the General Fund. Suspension of the June 30, 2021 sweep is needed to avoid operational instability.

We respectfully urge the committee to approve General Fund appropriations for the Probate Courts of \$13.5 million in FY22 and \$13.4 million in FY23.

Thank you for your consideration and continued support of the Probate Court system.