AMENDMENTS TO THE JUVENILE RULES

Sec. 26-1. Definitions Applicable to Proceedings on Juvenile Matters

In these definitions and in the rules of practice and procedure on juvenile matters, the singular shall include the plural and the plural, the singular where appropriate.

(a) (1) "Child" means any person under sixteen years of age, [and,] except that (A) for purposes of delinquency matters and proceedings, [and family with service needs matters,] "child" means any person [(A) under sixteen years of age whose delinquent act or family with service needs conduct occurred prior to the person's sixteenth birthday or, (B) sixteen] (i) under seventeen years of age who has not been legally emancipated or, (ii) seventeen years of age or older who, prior to attaining [sixteen] seventeen years of age, has [violated any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs,] committed a delinquent act and, subsequent to attaining [sixteen] seventeen years of age, (I) violates any order of a judicial authority or any condition of probation ordered by a judicial authority with respect to such delinquency proceeding; or (II) willfully fails to appear in response to a summons under General Statutes § 46b-133, with respect to such delinquency proceeding, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age; (2) "Youth" means any person sixteen or seventeen

years of age who has not been legally emancipated; (3) "Youth in crisis" means any seventeen year old youth who, within the last two years, (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode; (B) is beyond the control of the youth's parents, guardian or other custodian; or (C) has four unexcused absences from school in any one month or ten unexcused absences in any school year; (4) The definitions of the terms "abused," "mentally deficient," "delinquent," "delinquent act," "dependent," "neglected," "uncared for," "alcohol-dependent child," "family with service needs," "drug-dependent child," "serious juvenile offense," "serious juvenile offender," and "serious juvenile repeat offender" shall be as set forth in General Statutes § 46b-120. (5) "Indian child" means an unmarried person under age eighteen who is either a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe, and is involved in custody proceedings, excluding delinquency proceedings.

(b) "Commitment" means an order of the judicial authority whereby custody and/or guardianship of a child or youth are transferred to the commissioner of the department of children and families.

(c) "Complaint" means a written allegation or statement presented to the judicial authority that a child's or youth's conduct as a delinquent or situation as a child from a

family with service needs or youth in crisis brings the child or youth within the jurisdiction of the judicial authority as prescribed by General Statutes § 46b-121.

(d) "Detention" means a secure building or staff secure facility for the temporary care of a child who is the subject of a delinquent complaint.

(e) "Family support center" means a community-based service center for children and families involved with a complaint that has been filed with the Superior Court under General Statutes § 46b-149, that provides multiple services, or access to such services, for the purpose of preventing such children and families from having further involvement with the court as families with service needs.

(f) "Guardian" means a person who has a judicially created relationship with a child or youth which is intended to be permanent and self sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child or youth: protection, education, care and control of the person, custody of the person and decision making.

(g) "Hearing" means an activity of the court on the record in the presence of a judicial authority and shall include (1) "Adjudicatory hearing": A court hearing to determine the validity of the facts alleged in a petition or information to establish thereby the judicial authority's jurisdiction to decide the matter which is the subject of the petition or information; (2) "Contested hearing on an order of temporary custody" means a hearing on an ex parte order of temporary custody or

an order to appear which is held not later than ten days from the day of a preliminary hearing on such orders. Contested hearings shall be held on consecutive days except for compelling circumstances or at the request of the respondent; (3) ''Dispositive hearing'': The judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition or information having been established, a court hearing in which the judicial authority, after considering the social study or predispositional study and the total circumstances of the child or youth, orders whatever action is in the best interests of the child, youth or family and, where applicable, the community. In the discretion of the judicial authority, evidence concerning adjudication and disposition may be presented in a single hearing. (4) ''Preliminary hearing'' means a hearing on an ex parte order of temporary custody or an order to appear or the first hearing on a petition alleging that a child or youth is uncared for, neglected, or dependent. A preliminary hearing on any ex parte custody order or order to appear shall be held not later than ten days from the issuance of the order. (5) ''Plea hearing'' is a hearing at which (i) A parent or guardian who is a named respondent in a neglect, uncared for or dependency petition, upon being advised of his or her rights admits, denies, or pleads nolo contendere to allegations contained in the petition; or (ii) a child or youth who is a named respondent in a delinquency petition or information enters a plea of not guilty, guilty, or nolo contendere upon being advised of the charges against him or her contained in the information or petition, or a

hearing at which a child or youth who is a named respondent in a family with service needs or youth in crisis petition admits or denies the allegations contained in the petition upon being advised of the allegations.

(h) "Parent" means a biological mother or father or adoptive mother or father except a biological or adoptive mother or father whose parental rights have been terminated; or the father of any child or youth born out of wedlock, provided at the time of the filing of the petition (1) he has been adjudicated the father of such child or youth by a court which possessed the authority to make such adjudication, or (2) he has acknowledged in writing to be the father of such child or youth, or (3) he has contributed regularly to the support of such child, or (4) his name appears on the birth certificate, or (5) he has filed a claim for paternity as provided under General Statutes § 46b-172a, or (6) he has been named in the petition as the father of the minor child or youth by the mother.

(i) "Parties" includes: (1) The child or youth who is the subject of a proceeding and those additional persons as defined herein; (2) "Legal party": Any person, including a parent, whose legal relationship to the matter pending before the judicial authority 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 judicial authority's jurisdiction to adjudicate the matter pending before it; and (3) "Intervening party": Any person whose interest in the matter before the judicial authority is not of such a nature and kind as

to entitle legal service or notice as a prerequisite to the judicial authority's jurisdiction to adjudicate the matter pending before it but whose participation therein, at the discretion of the judicial authority, may promote the interests of justice. An ''intervening party'' may in any proceeding before the judicial authority be given notice thereof in any manner reasonably appropriate to that end, but no such ''intervening party'' shall be entitled, as a matter of right, to provision of counsel by the court.

(j) ''Permanency plan'' means a plan developed by the commissioner of the department of children and families for the permanent placement of a child or youth in the commissioner's care. Permanency plans shall be reviewed by the judicial authority as prescribed in General Statutes §§ 17a-110 (b), 17a-111b (c), 46b-129 (k), [and] 46b-141, and 46b-149(j).

(k) ''Petition'' means a formal pleading, executed under oath, alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be filed by any one of the parties authorized to do so by statute.

(*l*) ''Information'' means a formal pleading filed by a prosecutor alleging that a child or youth in a delinquency matter is within the judicial authority's jurisdiction.

(m) "Probation" means a legal status created in delinquency cases following conviction whereby a respondent child is permitted to remain in the home or in the physical custody of a relative or other fit person subject to supervision by the court through the court's probation officers and upon such terms as the judicial authority determines, subject to the continuing jurisdiction of the judicial authority.

(n) "Respondent" means a person who is alleged to be a delinquent or a child from a family with service needs, or a youth in crisis, or a parent or a guardian of a child or youth who is the subject of a petition alleging that the child is uncared for, neglected, or dependent or requesting termination of parental rights.

(o) "Specific steps" means those judicially determined steps the parent or guardian and the commissioner of the department of children and families should take in order for the parent or guardian to retain or regain custody of a child or youth.

(p) "Staff secure facility" means a residential facility (1) that does not include construction features designed to physically restrict the movements and activities of juvenile residents who are placed therein, (2) that may establish reasonable rules restricting entrance to and egress from the facility, and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision.

(q) "Supervision" includes: (1) "Nonjudicial supervision": A legal status without the filing of a petition or a court conviction or adjudication but following the child's admission to a complaint wherein a probation officer exercises supervision over the child with the consent of the child and the parent; (2) "Protective supervision": A disposition following adjudication in neglected, uncared for or dependent cases created by an order of the judicial authority 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 or youth when the child's or youth's place of abode remains with the parent or any suitable or worthy person, or when the judicial authority vests custody or guardianship in another suitable and worthy person, subject to the continuing jurisdiction of the court; and (3) "Judicial supervision": A legal status similar to probation for a child adjudicated to be from a family with service needs or subject to supervision pursuant to an order of suspended proceedings under General Statutes § 46b-133b or § 46b-133e.

(r) "Take into Custody Order" means an order by a judicial authority that a child be taken into custody and immediately turned over to a detention superintendent where probable cause has been found that the child has committed a delinquent act, there is no less restrictive alternative available, and the child meets the criteria set forth in Section 31a-13.

(s) "Victim" means the person who is the victim of a delinquent act, a parent or guardian of such person, the legal

representative of such person or an advocate appointed for such person pursuant to General Statutes § 54-221.

COMMENTARY: The revisions in subsections (a) and (r) implement provisions of Sept. Spec. Sess, 09-7, Sec. 69 which amended General Statutes § 46b-120. The revision in subsection (j) implements provisions of Public Act 08-86, section 3, which amended Gen. Stat. § 46b-149(j). The revision in subsection (q) is to clarify that the judicial authority may order protective supervision after the child has been placed with a guardian or custodian.

Sec. 33a-7. Preliminary Order of Temporary Custody or First Hearing; Actions by Judicial Authority

(a) At the preliminary hearing on the order of temporary custody or order to appear, or at the first hearing on a petition for neglect, uncared for, dependency, or termination of parental rights, the judicial authority shall:

(1) first determine whether the [all] necessary parties are present and that the rules governing service on or notice to nonappearing parties, and notice to grandparents, foster parents, relative caregivers and pre-adoptive parents, as applicable, have been complied with, and [shall] should note these facts for the record, and may proceed with respect to the parties who (i) are present and have been properly served; (ii) are present and waive any defects in service; and (iii) are not present, but have been properly served. As to any party who is not present and who has not been properly served, the judicial authority may continue the proceedings with respect to

such party for a reasonable period of time for service to be made and confirmed;

(2) inform the respondents of the allegations contained in all petitions and applications that are the subject of the hearing;

(3) inform the respondents of their right to remain silent;

(4) ensure that an attorney, and where appropriate, a separate guardian ad litem, has been assigned to represent the child or youth by the chief child protection attorney, in accordance with General Statutes §§ 46b-123e, 46b-129a (2), 46b-136 and Section 32a-1 of these rules;

(5) advise the respondents of their right to counsel and their right to have counsel assigned if they are unable to afford representation, determine eligibility for state paid representation and notify the chief child protection attorney to assign an attorney to represent any respondent who is unable to afford representation, as determined by the judicial authority;

(6) advise the respondents of the right to a hearing on the petitions and applications, to be held not later than ten days after the date of the preliminary hearing if the hearing is pursuant to an ex parte order of temporary custody or an order to appear;

(7) notwithstanding any prior statements acknowledging responsibility, inquire of the custodial respondent in neglect, uncared for and dependency matters,

and of all respondents in termination matters, whether the allegations of the petition are presently admitted or denied;

(8) make any interim orders, including visitation, that the judicial authority determines are in the best interests of the child or youth, and order specific steps the commissioner and the respondents shall take for the respondents to regain or to retain custody of the child or youth;

(9) take steps to determine the identity of the father of the child or youth, including ordering genetic testing, if necessary and appropriate, and order service of the amended petition citing in the putative father and notice of the hearing date, if any, to be made upon him;

(10) if the person named as the putative father appears, and admits that he is the biological father, provide him and the mother with the notices which comply with General Statutes § 17b-27 and provide them with the opportunity to sign a paternity acknowledgment and affirmation on forms which comply with General Statutes § 17b-27, which documents shall be executed and filed in accordance with General Statutes § 46b-172 and a copy delivered to the clerk of the superior court for juvenile matters; and

(11) in the event that the person named as a putative father appears and denies that he is the biological father of the child or youth, advise him that he may have no further standing in any proceeding concerning the child or youth, and either order genetic testing to determine paternity or direct him to execute a written denial of paternity on a form promulgated

by the office of the chief court administrator. Upon execution of such a form by the putative father, the judicial authority may remove him from the case and afford him no further standing in the case or in any subsequent proceeding regarding the child or youth until such time as paternity is established by formal acknowledgment or adjudication in a court of competent jurisdiction.

(b) At the preliminary hearing on the order of temporary custody or order to appear, the judicial authority may provide parties an opportunity to present argument with regard to the sufficiency of the sworn statements.

(c) If any respondent fails, after proper service, to appear at the preliminary hearing, the judicial authority may enter or sustain an order of temporary custody.

(d) Upon request, or upon its own motion, the judicial authority shall schedule a hearing on the order for temporary custody or the order to appear to be held as soon as practicable but not later than ten days after the date of the preliminary hearing. Such hearing shall be held on consecutive days except for compelling circumstances or at the request of the respondents.

(e) Subject to the requirements of Section 33a-7 (a) (6), upon motion of any party or on its own motion, the judicial authority may consolidate the hearing, on the order of temporary custody or order to appear with the adjudicatory phase of the trial on the underlying petition. At a consolidated order of temporary custody and neglect adjudication hearing,

the judicial authority shall determine the outcome of the order of temporary custody based upon whether or not continued removal is necessary to ensure the child's or youth's safety, irrespective of its findings on whether there is sufficient evidence to support an adjudication of neglect or uncared for. Nothing in this subsection prohibits the judicial authority from proceeding to disposition of the underlying petition immediately after such consolidated hearing if the social study has been filed and the parties had previously agreed to sustain the order of temporary custody and waived the ten day hearing or the parties should reasonably be ready to proceed.

COMMENTARY: The change in subsection (a) (1) authorizes the judicial authority to extend the plea date when service needs to be accomplished.

Sec. 34a-1. Motions, Requests and Amendments

(a) Except as otherwise provided, the sections in chapters 1 through 7 shall apply to juvenile matters in the superior court as defined by General Statutes § 46b-121.

(b) The provisions of Sections 8-2, 9-5, 9-22, 10-12 (a) and (c), 10-13, 10-14, 10-17, 10-18, 10-29, 10-62, 11-4, 11-5, 11-6, 11-7, 11-8, 11-10,11-11, 11-12, 11-13, 12-1, 12-2, 12-3, 13-1 through 13-11 inclusive, 13-14, 13-16, 13-21 through 13-32 inclusive, subject to Sec. 34a-20, 17-4 and 17-21 of the rules of practice shall apply to juvenile matters as defined by General Statutes § 46b-121.

(c) A motion or request, other than a motion made orally during a hearing, shall be in writing. An objection to a

request shall also be in writing. A motion, request or objection to a request shall have annexed to it a proper order and where appropriate shall be in the form called for by Section 4-1. The form and manner of notice shall adequately inform the interested parties of the time, place and nature of the hearing. A motion, request, or objection to a request 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, requests, or objections to requests shall be served on the opposing party or counsel pursuant to Sections 10-12 (a) and (c), 10-13, 10-14 and 10-17. All motions or objections to requests shall be given an initial hearing by the judicial authority within fifteen days after filing provided reasonable notice is given to parties in interest, or notices are waived; any motion in a case on trial or assigned for trial may be disposed of by the judicial authority at its discretion or ordered upon the docket.

(d) A petition may be amended at any time by the judicial authority on its own motion or in response to a motion prior to any final adjudication. When an amendment has been so ordered, a continuance shall be granted whenever the judicial authority finds that the new allegations in the petition justify the need for additional time to permit the parties to respond adequately to the additional or changed facts and circumstances.

(e) If the moving party determines and reports that all counsel and pro se parties agree to the granting of a motion or

agree that the motion may be considered without the need for oral argument or testimony and the motion states on its face that there is such an agreement, the judicial authority may consider and rule on the motion without a hearing.

COMMENTARY: The revision to subsection (b) adds references to applicable civil practice book rules that are frequently used in Juvenile Matters.

Sec. 34a-21. Court Ordered Evaluations

(a) The judicial authority, after hearing on a motion for a court ordered evaluation or after an agreement has been reached to conduct such an evaluation, may order a mental or physical examination of a child or youth. The judicial authority after hearing or after an agreement has been reached may also order a thorough physical or mental examination of a parent or guardian whose competency or ability to care for a child or youth is at issue.

(b) The judicial authority shall select and appoint an evaluator qualified to conduct such assessments, with the input of the parties. All expenses related to the court-ordered evaluations shall be the responsibility of the petitioner; however the party calling the evaluator to testify will bear the expenses of the evaluator related to testifying.

[(b)] (c) At the time of appointment of any court appointed evaluator, counsel and the court services officer shall complete the evaluation form and agree upon appropriate questions to be addressed by the evaluator and materials to be reviewed by the evaluator. If the parties cannot agree, the

judicial authority shall decide the issue of appropriate questions to be addressed and materials to be reviewed by the evaluator. A representative of the court shall contact the evaluator and arrange for scheduling and for delivery of the referral package.

[c)] (d) Any party who wishes to alter, update, amend or modify the initial terms of referral shall seek prior permission of the judicial authority. There shall be no ex parte communication with the evaluator by counsel prior to completion of the evaluation.

[(d)] (e) After the evaluation has been completed and filed with the court, counsel may communicate with the evaluator subject to the following terms and conditions:

(1) Counsel shall identify themselves as an attorney and the party she or he represents;

(2) Counsel shall advise the evaluator that with respect to any substantive inquiry into the evaluation or opinions contained therein, the evaluator has the right to have the interview take place in the presence of counsel of his/her choice, or in the presence of all counsel of record;

(3) Counsel shall have a duty to disclose to other counsel the nature of any ex parte communication with the evaluator and whether it was substantive or procedural. The disclosure shall occur within a reasonable time after the communication and prior to the time of the evaluator's testimony;

(4) All counsel shall have the right to contact the evaluator and discuss procedural matters relating to the time

and place of court hearings or evaluation sessions, the evaluator's willingness to voluntarily attend without subpoena, what records are requested, and the parameters of the proposed examination of the evaluator as a witness.

(f) Counsel for children, youths, parents or guardians may move the judicial authority for permission to disclose court records for an independent evaluation of their own client. Such evaluations shall be paid for by the moving party and shall not be required to be disclosed to the judicial authority or other parties, unless the requesting party, upon receipt of the evaluation report, declares an intention to introduce the evaluation report or call the evaluator as a witness at trial.

COMMENTARY: New subsection (b) clarifies that the judicial authority oversees the selection and appointment of court-ordered evaluators; however the Commissioner of the Department of Children and Families is responsible for the costs of the evaluation under subsection (b) above and the party seeking to have the evaluator testify is responsible for the cost related to the testimony. The revision in subsection (f) further clarifies the evaluation procedure.

Sec. 35a-8. Burden of Proceeding

(a) The petitioner shall be prepared to substantiate the allegations of the petition. All parties except the child or youth shall be present at trial unless excused for good cause shown. Failure of any party to appear in person or by their statutorily permitted designee may result in a default or nonsuit for failure

to appear for trial, as the case may be, and evidence may be introduced and judgment rendered.

(b) If a parent fails to appear at the initial hearing and no military affidavit has been filed, the judicial authority shall continue the proceedings prior to entering a default for failure to appear until such time as the military affidavit is filed, provided if the identity of the parent, after reasonable search, cannot be determined, then default may enter and no military affidavit is required.

[(b)](c) The clerk shall give notice by mail to the defaulted party and the party's attorney of the default and of any action taken by the judicial authority. The clerk shall note the date that such notice is given or mailed.

COMMENTARY: Clarifies that the judicial authority should continue the proceedings until a military affidavit is filed, when a parent fails to appear at the initial hearing; however, if the parent's identity is not known, a military affidavit is not necessary.

Sec. 35a-19. Transfer from Probate Court of Petitions for Removal of Parent as Guardian or Termination of Parental Rights

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any

orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) Any appearance filed for any party in the court of probate shall continue in the superior court until [withdrawn] a motion to withdraw is filed by counsel and granted by the court of probate or the superior court [or replaced] or another counsel files an "in lieu of" appearance on behalf of the party. Counsel previously appointed by the court of probate for indigent parties or for the minor child(ren) and paid by Probate Court Administration who remain on the case in superior court shall be paid by the Commission on Child Protection at the rate of pay established by the Commission. If a motion to withdraw is filed and granted and the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned and paid by the Commission on Child Protection.

(d) (1) The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than

thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian, and an advisement of rights notice to be served on any nonappearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing which shall be held not more than thirty days from the date of receipt petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to General Statutes § 45a-619. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

COMMENTARY: The amendment to the above section clarifies the intent that attorneys handling cases that have been transferred from the court of probate to superior court are required to continue providing representation, unless they appropriately terminate their representation. The amendment also reflects existing practice whereby the Commission on Child Protection is responsible for the assignment and payment of counsel for children and indigent parents in civil matters before the superior court for juvenile matters.

Sec. 35a-21. Appeals

(a) Appeals from final judgments or decisions of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment or decision from which the appeal is taken in the manner provided by the rules of appellate procedure.

(b) [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 time in which to take an appeal. The judicial authority shall then forthwith notify the chief child protection attorney to assign another attorney to review this record who, if willing to represent the party on appeal, will be assigned by the chief child protection attorney for this purpose. If the second attorney determines that there is no merit to an appeal, that attorney shall make this known to the judicial authority and the chief child protection attorney 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 file an appearance to represent the party on the appeal.]

If an indigent party, child or youth wishes to appeal a final decision, trial counsel shall immediately request an expedited transcript from the court reporter the cost of which shall be billed to the Commission on Child Protection. Trial counsel shall either file the appeal within 20 days or file a timely motion to extend time in which to take an appeal and request the appointment of counsel to review the matter for purposes of appeal. If the reviewing attorney determines there is a non-frivolous ground for appeal, such attorney shall file an "in addition to" appearance for purposes of the appeal with the appellate court. The trial attorney shall remain in the underlying juvenile matters case in order to handle ongoing procedures before the local or regional juvenile court. Counsel who filed the appeal or filed an appearance in the appellate court after the appeal was filed shall be deemed to have appeared in the trial court for the limited purpose of prosecuting or defending the appeal. If the reviewing attorney determines that there is no merit to an appeal, such attorney shall make this known to the judicial authority as soon as practicable, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal.

AMENDMENTS TO THE CONNECTICUT CODE OF EVIDENCE

TABLE OF SECTIONS AFFECTED

Sec. 8-10. Hearsay Exception: Tender Years

[(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim, or any alleged act of physical abuse committed against the child by the child's parent, guardian or any other person then exercising comparable authority over the child at the time of the act, is admissible in evidence in criminal and juvenile proceedings if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness;

(2) The statement was not made in preparation for a legal proceeding; and

(3) The child either:

(A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or

(B) Is unavailable as a witness, provided that:

(i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and

(ii) The statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) A statement m ay not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its trustworthiness. If the statement is in writing, the proponent must provide the adverse party a copy of the writing; if the statement is otherwise recorded by audiotape, videotape, or some other equally reliable medium, the proponent must provide the adverse party a copy in the medium in the possession of the proponent in which the statement will be proffered. Except for good cause shown, notice and a copy must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from:

(1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act described in the first paragraph of section (a) than they do for other declarants; and

(2) admitting by way of a residual hearsay exception statements described in the first paragraph of section (a).]

"Admissibility in criminal and juvenile proceedings of statement by child under thirteen relating to sexual offense or offense involving physical abuse against child. (a) Notwithstanding any other rule of evidence or provision of law, a statement by a child under thirteen years of age relating to a sexual offense committed against that child, or an offense involving physical abuse committed against that child by a person or persons who had authority or apparent authority over the child, shall be admissible in a criminal or juvenile proceeding if: (1) The court finds, in a hearing conducted outside the presence of the jury, if any, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness, (2) the statement was not made in preparation for a legal proceeding, (3) the proponent of the statement makes known to the adverse party an intention to offer the statement and the particulars of the statement including the content of the statement, the approximate time, date and location of the statement, the person to whom the statement was made and the circumstances surrounding the statement that indicate its

trustworthiness, at such time as to provide the adverse party with a fair opportunity to prepare to meet it, and (4) either (A) the child testifies and is subject to cross-examination at the proceeding, or (B) the child is unavailable as a witness and (i) there is independent nontestimonial corroborative evidence of the alleged act, and (ii) the statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) Nothing in this section shall be construed to (1) prevent the admission of any statement under another hearsay exception, (2) allow broader definitions in other hearsay exceptions for statements made by children under thirteen years of age at the time of the statement concerning any alleged act described in subsection (a) of this section than is done for other declarants, or (3) allow the admission pursuant to the residual hearsay exception of a statement described in subsection (a) of this section." General Statutes § 54-86*l*.

COMMENTARY: [This section addresses the unique and limited area of statements made by children concerning alleged acts of sexual assault or other sexual misconduct against the child, or other alleged acts of physical abuse against the child by a parent, guardian or other person with like authority over the child at the time of the alleged act. It recognizes that children, because of their vulnerability and psychological makeup, are not as likely as adults to exclaim spontaneously about such events, making section 8-3 (2) unavailable to admit statements about such events; are not as likely to seek or

receive timely medical diagnoses or treatment after such events, making section 8 -3 (5) unavailable; and it provides more specific guidance for this category of statements than does the residual exception, section 8 -9.

Subsection (a) defines the factual scope of the statements that may be admitted under the exception and the types of proceedings to which the exception applies. The proceedings included are criminal proceedings, with or without a jury, and juvenile proceedings; civil proceedings are not included. The rule applies to alleged acts of sexual assault or sexual misconduct com mitted by anyone against the child. It only applies to alleged acts of physical abuse committed by a parent, guardian or someone in a com parable position of authority at the time of the alleged act of physical abuse. It provides guidance on the test of trustworthiness the court must apply to the proffered statement (subdivision (1)); addresses the exclusion of testimonial statements prohibited by Crawford. v. Washington, 541 U.S. 36 (2004) (subdivisions (2) and (3)(B)(ii)); and, sets forth separate requirements when the child testifies and is subject to cross-examination and when the child is unavailable (subdivision (3)(B)).

Subsection (b) provides for notice to the adverse party of the proponents intent to offer the statement.

Subsection (c)(1) prohibits expanded interpretations of other hearsay exceptions where statements covered by this section are not admissible. It is not intended to limit exceptions that, heretofore, have been legally applied to such statements.

Subsection (c)(2), however, prohibits the use of the residual exception for statements treated by this section.]

The section was amended to harmonize it with the general statutes. As amended, and to be consistent with the 2009 amendment to General Statutes § 54-86*l*, it no longer explicitly provides that the cross-examination of the child may be by video telecommunication or by submitting to a recorded video deposition for that purpose; it does not require the proponent to provide the adverse party a copy of the statement in writing or in whatever other medium the original statement is in and is intended to be proffered in; and, it does not provide a good cause exception to the obligation to provide the adverse party with advance notice sufficient to permit the adverse party to prepare to meet the statement. These changes do not limit the discretion of the court to impose such requirements.