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Honorable Members of the Appropriations Committee

FROM: Beverly K. Streit-Kefalas
Probate Court Administrator

RE: H.B. 6659 An Act Concerning The State Budget for The Biennium Ending
June 23, 2025, And Making Appropriations Therefor

DATE: February 23, 2023

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

In considering request for the Probate Court system, it is important to understand the unique funding structure of this system. The Probate Court system is largely funded by probate fee revenue and not through General Fund appropriation. Though general fund appropriations do not represent a large portion of the system's financial needs, the appropriations are essential to the system's stability and viability.

In reviewing the Governor's budget, we support certain adjustments to the Probate Court system's previously submitted general fund appropriations which amounts are set forth in the Judicial Branch's requested budget for the biennium. Specifically, our adjusted requested appropriations are:

Fiscal year 2024	\$ 14.4 million
Fiscal year 2025	\$ 15.75 million

In developing the general fund appropriation needs for the Probate Court system, analysis focuses on forecasting of both revenue and expenditures. As many Committee members know, the Probate Court system is largely funded and, in many years, has been solely funded by probate fee revenue. The requests before you reflect general fund appropriations of 25% of the system's needs with the largest source (75%) funded by probate fee revenue.

As most of the funding is through probate fee revenue, it is important to consider external and fluctuating forces on fee revenue such as economic conditions, market values of assets, inflation and recession forecasts, and historic trends in probate fee revenue itself. It is important to recall the precipitous drop in probate fee revenue in the initial months of the COVID-19 public health emergency when the state had shut down. Though the Probate Courts continued in operations, the revenue rapidly declined with law offices closed and estate tax return deadlines extended by executive order. But for the general fund appropriation cushioning that cash flow decline, the system would have had to take drastic measures to continue operations.

The general fund appropriations serve as a critical revenue source not only to buffer against such dramatic volatility but to also ensure the financial stability to meet constitutionally mandated due process protections for indigent parties, support the Kinship and Respite Funds for eligible guardians of minor children, and to safeguard the continued critical work of the regional children's probate courts. It provides stability in funding sources to allow for prudent fiscal planning and cash flow in times of probate fee fluctuations.

The Governor's proposed budget with regard to the Probate Court budget request includes a proposed change to the filing due date of the Connecticut estate tax returns to align with the federal estate tax returns. We take no position on the policy for such proposal but call attention to the impact such a change will have on probate fee revenue. Additionally, a negative adjustment to remove funding for the 27th payroll in FY23 had already been factored in the Probate Court system request and is therefore effectively eliminated twice from our budget request. The Judicial Branch and the Governor's budget reflect adjustments for judicial compensation that are different from original proposals. As the compensation for probate judges is tied statutorily to Superior Court judicial compensation, our request is adjusted to reflect the Governor's proposal.

Community-Based Focus of Probate Court Matters

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 an indispensable function as the safety net for this safety net. We facilitate probate court solutions for family-managed and largely community-based 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” – the Connecticut Probate 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 and stable 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.

Maintaining an individual’s dignity and self-determination in the least restrictive environment – such as living in one’s own home with community-based services – is an essential component of the way the Probate Courts impact its vulnerable constituents.

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 45% 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 50% more matters since the courts consolidated in 2011, and the matters are increasingly complex.

The rising workload and the increased complexity of family needs 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

Court Consolidation and Financial Reforms

Despite the enormous growth in caseload, the Probate Court system is a far leaner organization than it was 12 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 governmental services. This consolidation continues to save the state more than \$4 million annually and a total of almost \$53 million to date.

Technology Improvements – eFiling System

As 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. In January 2020, we launched the eFiling system that maximizes efficiencies for all court users and enhances access to the courts 24/7. This initiative was instrumental in the continued operations of the courts during the recent public health emergency and continues to improve efficiencies. The system has been expanded so that state agency stakeholders are now electronically filing and reviewing probate matters in which they are involved. To date, the Department of Children and Families, the Office of the Attorney General, the Department of Developmental Services, and the Department of Administrative Services all are now utilizing the eFiling system with additional state agencies coming online in the near future.

Hybrid Hearings

The unprecedented duration of the public health emergency caused society to quickly pivot to new ways of accomplishing critical tasks. The Probate Courts were on the forefront in keeping court matters moving with the near-immediate implementation of virtual hearings via simple webcam proceedings. With the knowledge we have gained from the experience and benefit of virtual hearings, we have expanded the technology to include more sophisticated and inclusive hybrid hearing equipment to allow more comprehensive inclusion of remote and in-person hearing attendance.

Some of the important lessons learned from the early days of conducting virtual hearings to the return to in-person proceedings is that participation in hearings increased for many individuals. Parties no longer had to lose a full day at work to attend a court hearing when a request to attend remotely may be appropriate. Long distance travel challenges can also now be readily addressed for hearings that do not

necessitate in-person attendance. And the court rules regarding electronic participation ensure that parties are not adversely impacted when there is a digital divide that would hamper virtual participation. Factors such as the complexity of the case, equities of the digital divide, savings in time and travel for parties and their attorneys, and enhancing access to the courts are all factors for a court to balance in scheduling virtual or hybrid hearings.

Revisions to the Probate Court Rules of Procedure

The advisory committee on the Probate Court Rules of Procedure reviews the rules on a biennial basis to ensure efficiencies as well as ease of access for the court users. The 2022 edition incorporated a number of revisions including Rule 66 regarding electronic participation in hearings. The uniform Rules of Procedure were first adopted in 2013 and undergo regular substantive review and revision as necessitated to reflect statutory or procedural changes as well as incorporating best practices. Some examples for rules that facilitate access to the courts include procedures where no formal hearing must be scheduled 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.

Additional Initiatives

To name just a few additional initiatives adopted by the Probate Court system in recent years includes 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 family members who become conservators for their loved ones to understand their duties and minimize the staff time required for training.

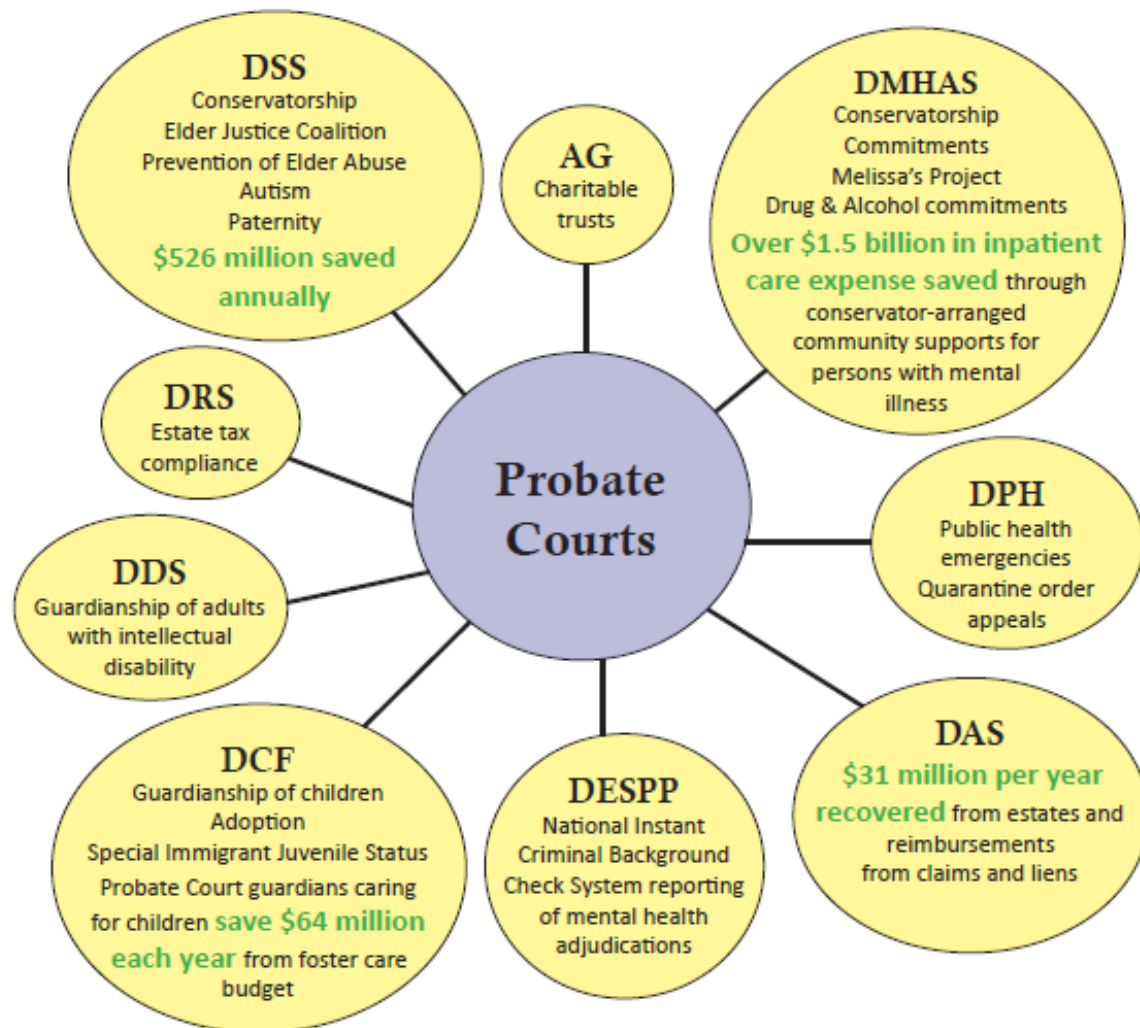
All of these initiatives and accomplishments expand access to the courts and increase operational efficiencies.

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 \$2.1 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 \$2.16 billion each year** by avoiding more costly state services.



** February 2022 statistics*

- DMHAS would spend more than \$1.5 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 \$64 million annually and increases the long-term success rate for children who remain with family.
- DSS saves more than \$526 million in nursing home care costs when conservators arrange services for low-income seniors to safely age in place in their own homes.

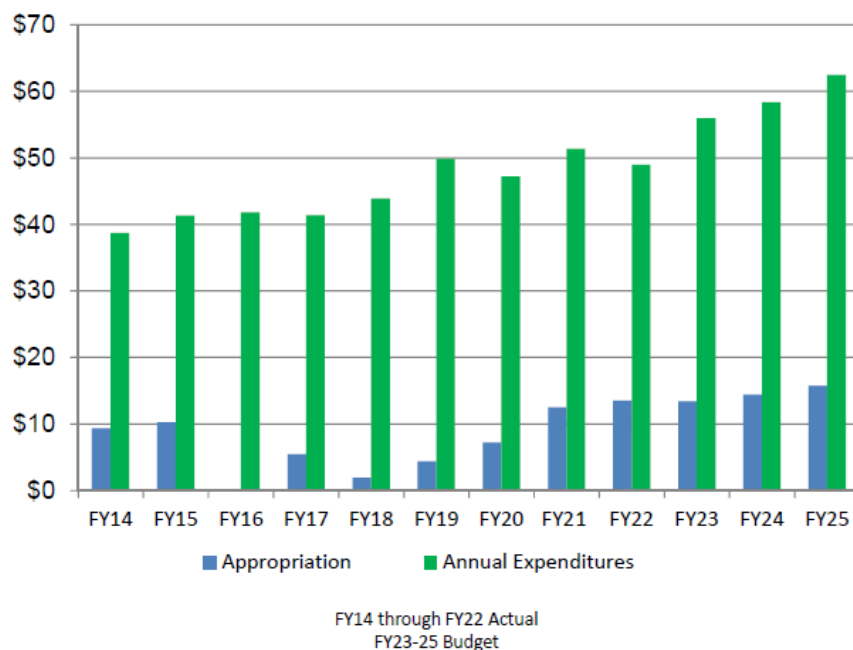
General Fund Appropriation as a Percentage of Probate Court Operating Expenses

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).

Connecticut Probate Courts

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 \$161 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.

Economy and Market Changes

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. The economic impact and market value volatility on the value of assets is a significant factor on the level of probate fee revenue.

Revenue Shift If Estate Tax Return Due Dates Change

Although we take no position on the governor's proposal to align the filing due dates of Connecticut estate tax returns with the federal filing due dates (from six months to nine months), there will be an adverse impact on probate fee revenue as the revenue receipts will shift by at least three months. We expect this impact to be a \$9 million shift in probate fee revenue out of fiscal year 2024.

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.

The Governor's Recommendations Insufficient to Meet Essential Services for Indigent and Vulnerable Parties

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.

Probate Courts subsidize mandated services for indigent individuals

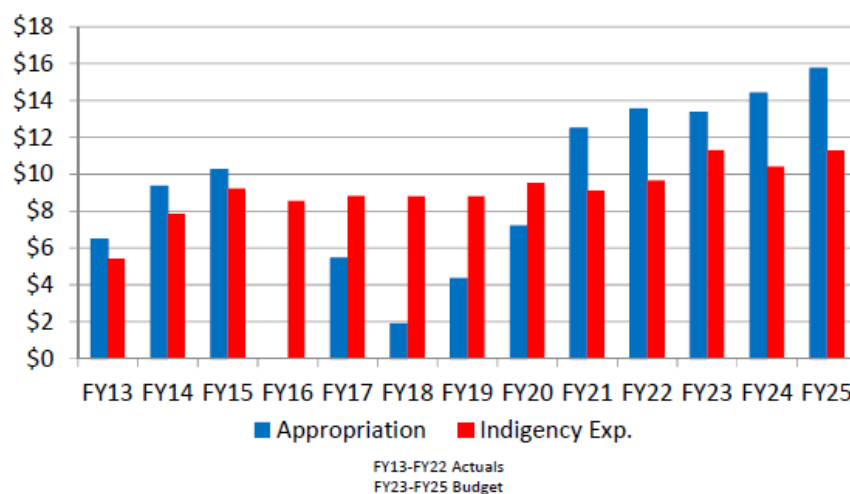
The Governor's appropriation recommendation for FY24 and FY25 of \$13,281,024 per year, is insufficient to support the needs of indigent individuals and social service functions in the probate court system.

(in thousands)

	FY24	FY25
Governor's Funding Recommendation	\$13,281	\$13,281
Conservators for indigent conserved persons	6,460	7,106
Attorneys for indigent parties	1,979	2,177
Kinship and Respite grants for children	2,000	2,000
Waived probate fees for indigent petitioners	2,565	2,565
Regional Children's Probate Courts	4,501	4,757
Total	\$17,505	\$18,605
Net Funding Deficit	(\$4,224)	(\$5,325)

Due to large cuts in General Fund support for the Probate Courts until FY21, the Probate Courts have had to subsidize mandated services for indigent individuals, as illustrated below:

General Fund Appropriation/Utilization *(in millions)*



In the current biennial budget, the General Fund appropriation for FY22 and FY23 restored normalized funding to meet the needs of indigent individuals. The cost of providing conservators to indigent conserved persons, with the exception of the pandemic effect, historically increases year over year.

Funding Requirements in FY24 and FY25

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.

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 as well as to lift up the children and families in need of support during family crises.

Third, it reflects compensation adjustments for court staff and judges. 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. Recent revenue receipts have supported long overdue cost of living and merit compensation adjustments for court staff for the past four fiscal years.

The governor's recommended appropriation together with the proposed change in the due date for estate tax return filings, will result in a negative fund balance by the end of fiscal year 2024.

Conclusion

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 \$2.1 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 engaged efficiency measures such as eFiling including expansion to state agencies and implementation of expanded video conferencing 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. The Governor's proposal to reduce the appropriation together with the estate tax return filing deadline change, will exacerbate the projected deficit.

Given rising indigent expenses and volatile probate fee revenue, we request suspension of 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, 2023 sweep is needed to avoid operational instability.

We respectfully urge the committee to approve the revised General Fund appropriations for the Probate Courts of \$14.4 million in FY24 and \$15.75 million in FY25.

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