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§ 16.1 INTRODUCTION

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While most child welfare cases arise in the Juvenile Court, this chapter addresses the four situations in which the Probate and Family Court has jurisdiction over these actions: 1) "care and responsibility" (i.e., child protection) petitions filed by the Department of Children and Families (DCF) under [G.L. c. 119, § 23\(a\)\(3\)](#); 2) sua sponte orders by the court granting custody of a child to DCF, also under [G.L. c. 119, § 23\(a\)\(3\)](#); 3) termination of parental rights proceedings filed under [G.L. c. 210, § 3](#); and 4) voluntary placement petitions filed under [G.L. c. 119, § 23\(a\)\(1\)](#). Please note that the name of the Department of Social Services (DSS) was changed to the Department of Children and Families in 2008. Both designations may appear in this chapter; they are interchangeable.

Historically, child welfare cases were commonly heard in the Probate and Family Court. However, since the expansion of the Juvenile Court in the mid-1990s, the number of child welfare cases filed in the Probate and Family Court has dwindled. Nevertheless, the Probate and Family Court continues to have jurisdiction over child protection and termination of parental rights proceedings, and counsel wishing to represent parents and children in the Probate and Family Court must be familiar with its practices and procedures.

The Probate and Family Court has jurisdiction over four types of child welfare proceedings:

- "care and responsibility" (i.e., child protection) petitions filed by DSS under [G.L. c. 119, § 23\(a\)\(3\)](#) (formerly § 23(C));
- sua sponte orders by the court granting custody of a child to DSS, also under [G.L. c. 119, § 23\(a\)\(3\)](#) (formerly § 23(C));
- termination of parental rights proceedings filed under [G.L. c. 210, § 3](#); and
- voluntary placement petitions filed under [G.L. c. 119, § 23\(a\)\(1\)](#) (formerly § 23(A)).

Prior to the 2008 amendments to [Chapter 119, Section 23\(a\)\(3\)](#) cases were called "23Cs" because they were found in Section 23(C) of the statute. Similarly, Section 23(a)(1) cases were called "23As" because they were found in [Section 23\(A\) of Chapter 119](#).

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While proceedings under [G.L. c. 119, § 23\(a\)\(3\)](#) and [G.L. c. 210, § 3](#) affect the same rights and interests as care and protection and termination of parental rights proceedings in the Juvenile Court, there are a number of differences that are addressed briefly in this chapter. Counsel representing clients in the Probate and Family Court will also need to review the other chapters of this manual for legal, tactical, and strategic considerations. If a parent or child might be of Native American descent, counsel should also review Appendix A, Child Welfare Proceedings Under the Indian Child Welfare Act.

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