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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- PROBATE COURTS

Introduced By: Representatives Lombardi, O'Neill, Shekarchi, Craven, and Jacquard

Date Introduced: February 26, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-9-9 of the General Laws in Chapter 8-9 entitled "Probate Courts"
2 is hereby amended to read as follows:
3 **8-9-9. General probate jurisdiction.** – (a) Every probate court shall have jurisdiction in
4 the town or city in which it is established of the probate of wills; the granting of administration,
5 the appointment of custodians, of administrators, of guardians of persons and estates, or of
6 persons only or of estates only, and of conservators; the accepting and allowing of bonds,
7 inventories, and accounts of executors, administrators, and guardians; the granting of leave to sell
8 at public or private sale, or to mortgage property, as hereinafter provided; of the making of
9 partition of the real estate of deceased persons; of the adoption of persons eighteen (18) years of
10 age or older; of change of names of persons; of the removal or filling of a vacancy of a trustee of
11 any trust established under a will, or the termination of such trust; of setting off and allowing real
12 estate and personal property to widows and surviving husbands; and of all other matters now
13 within the jurisdiction of probate courts. The court shall have power to accept the resignation of,
14 or to remove, any custodian, executor, administrator, or guardian, or any other person appointed
15 by the court, and also power to do and transact all matters and things incidental to the jurisdiction
16 and powers vested in probate courts by law. Every probate court shall have the power to follow
17 the course of equity insofar as necessary to fulfill the mandates of title 33 of the General Laws,
18 specifically: the replacement, removal, or filling of any vacancy of any trustee under a trust
19 established under a will; or tax minimization or estate planning under section 33-15-37.1. The

1 jurisdiction assumed in any case by the court, so far as it depends on the place of residence of a
2 person, shall not be contested in any suit or proceedings except in the original case or on appeal
3 therein or when the want of jurisdiction appears on the record.

4 (b) Nothing in this chapter shall be construed to apply to undocumented, non-citizen
5 minors under eighteen (18) years of age as defined in § 14-1-3(12) who have no estate, unless
6 there is a dispute over any rights, credits, or estates, real or personal, in the town or city of
7 residence or any other town or city in this state.

8 SECTION 2. Section 8-10-3 of the General Laws in Chapter 8-10 entitled "Family Court"
9 is hereby amended to read as follows:

10 **8-10-3. Establishment of court -- Jurisdiction -- Seal -- Oaths.** -- (a) There is hereby
11 established a family court, consisting of a chief judge and eleven (11) associate justices, to hear
12 and determine all petitions for divorce from the bond of marriage and from bed and board; all
13 motions for allowance, alimony, support and custody of children, allowance of counsel and
14 witness fees, and other matters arising out of petitions and motions relative to real and personal
15 property in aid thereof, including, but not limited to, partitions, accountings, receiverships,
16 sequestration of assets, resulting and constructive trust, impressions of trust, and such other
17 equitable matters arising out of the family relationship, wherein jurisdiction is acquired by the
18 court by the filing of petitions for divorce, bed and board and separate maintenance; all motions
19 for allowance for support and educational costs of children attending high school at the time of
20 their eighteenth (18th) birthday and up to ninety (90) days after high school graduation, but in no
21 case beyond their nineteenth (19th) birthday; enforcement of any order or decree granting
22 alimony and/or child support, and/or custody and/or visitation of any court of competent
23 jurisdiction of another state; modification of any order or decree granting alimony and/or custody
24 and/or visitation of any court of competent jurisdiction of another state on the ground that there
25 has been a change of circumstances; modification of any order or decree granting child support of
26 any court of competent jurisdiction of another state provided: (1) the order has been registered in
27 Rhode Island for the purposes of modification pursuant to section 15-23.1-611, or (2) Rhode
28 Island issued the order and has continuing exclusive jurisdiction over the parties; antenuptial
29 agreements, property settlement agreements and all other contracts between persons, who at the
30 time of execution of the contracts, were husband and wife or planned to enter into that
31 relationship; complaints for support of parents and children, or undocumented, non-citizen minor
32 persons with no estate, under eighteen (18) years of age as defined in § 14-1-3(12); those matters
33 relating to delinquent, wayward, dependent, neglected, or children with disabilities who by reason
34 of any disability requires special education or treatment and other related services; to hear and

1 determine all petitions for guardianship of any child who has been placed in the care, custody,
2 and control of the department for children, youth, and families pursuant to the provisions of
3 chapter 1 of title 14 and chapter 11 of title 40; adoption of children under eighteen (18) years of
4 age; change of names of children under the age of eighteen (18) years; paternity of children born
5 out of wedlock and provision for the support and disposition of such children or their mothers;
6 child marriages; those matters referred to the court in accordance with the provisions of section
7 14-1-28; those matters relating to adults who shall be involved with paternity of children born out
8 of wedlock; responsibility for or contributing to the delinquency, waywardness, or neglect of
9 children under sixteen (16) years of age; desertion, abandonment, or failure to provide
10 subsistence for any children dependent upon such adults for support; neglect to send any child to
11 school as required by law; bastardy proceedings and custody to children in proceedings, whether
12 or not supported by petitions for divorce or separate maintenance or for relief without
13 commencement of divorce proceedings; and appeals of administrative decisions concerning setoff
14 of income tax refunds for past due child support in accordance with sections 44-30.1-5 and 40-6-
15 21. The holding of real estate as tenants by the entirety shall not in and of itself preclude the
16 family court from partitioning real estate so held for a period of six (6) months after the entry of
17 final decree of divorce.

18 (b) The family court shall be a court of record and shall have a seal which shall contain
19 such words and devices as the court shall adopt.

20 (c) The judges and clerk of the family court shall have power to administer oaths and
21 affirmations.

22 (d) The family court shall have exclusive initial jurisdiction of all appeals from any
23 administrative agency or board affecting or concerning children under the age of eighteen (18)
24 years and appeals of administrative decisions concerning setoff of income tax refunds, lottery set
25 offs, insurance intercept, and lien enforcement provisions for past due child support, in
26 accordance with sections 44-30.1-5 and 40-6-21, and appeals of administrative agency orders of
27 the department of human services to withhold income under chapter 16 of title 15.

28 (e) The family court shall have jurisdiction over those civil matters relating to the
29 enforcement of laws regulating child care providers and child placing agencies.

30 (f) The family court shall have exclusive jurisdiction of matters relating to the revocation
31 or nonrenewal of a license of an obligor due to noncompliance with a court order of support, in
32 accordance with chapter 11.1 of title 15.

33 [See section 12-1-15 of the General Laws.]

34 (g) Notwithstanding any general or public law to the contrary, the family court shall have

1 jurisdiction over all protective orders provided pursuant to the Rhode Island general laws, when
2 either party is a juvenile.

3 SECTION 3. Sections 14-1-3 and 14-1-5 of the General Laws in Chapter 14-1 entitled
4 "Proceedings in Family Court" are hereby amended to read as follows:

5 **14-1-3. Definitions.** -- The following words and phrases when used in this chapter shall,
6 unless the context otherwise requires, be construed as follows:

7 (1) "Adult" means a person eighteen (18) years of age or older, except that "adult"
8 includes any person seventeen (17) years of age or older who is charged with a delinquent offense
9 involving murder, first degree sexual assault, first degree child molestation, or assault with intent
10 to commit murder, and that person shall not be subject to the jurisdiction of the family court as set
11 forth in sections 14-1-5 and 14-1-6 if after a hearing, the family court determines that probable
12 cause exists to believe that the offense charged has been committed and that the person charged
13 has committed the offense.

14 (2) "Appropriate person," as used in sections 14-1-10 and 14-1-11, except in matters
15 relating to adoptions and child marriages, means and includes:

- 16 (i) Any police official of this state, or of any city or town within this state;
- 17 (ii) Any duly qualified prosecuting officer of this state, or of any city or town within this
18 state;
- 19 (iii) Any director of public welfare of any city or town within this state, or his or her duly
20 authorized subordinate;
- 21 (iv) Any truant officer or other school official of any city or town within this state;
- 22 (v) Any duly authorized representative of any public or duly licensed private agency or
23 institution established for purposes similar to those specified in section 8-10-2 or 14-1-2; or
- 24 (vi) Any maternal or paternal grandparent, who alleges that the surviving parent, in those
25 cases in which one parent is deceased, is an unfit and improper person to have custody of any
26 child or children.

27 (3) "Child" means a person under eighteen (18) years of age.

28 (4) "The court" means the family court of the state of Rhode Island.

29 (5) "Delinquent" when applied to a child means and includes any child who has
30 committed any offense which, if committed by an adult, would constitute a felony, or who has on
31 more than one occasion violated any of the other laws of the state or of the United States or any
32 of the ordinances of cities and towns, other than ordinances relating to the operation of motor
33 vehicles.

34 (6) "Dependent" means any child who requires the protection and assistance of the court

1 when his or her physical or mental health or welfare is harmed or threatened with harm due to the
2 inability of the parent or guardian, through no fault of the parent or guardian, to provide the child
3 with a minimum degree of care or proper supervision because of:

4 (i) The death or illness of a parent; or

5 (ii) The special medical, educational, or social service needs of the child which the
6 parent is unable to provide.

7 (7) "Justice" means a justice of the family court.

8 (8) "Neglect" means a child who requires the protection and assistance of the court when
9 his or her physical or mental health or welfare is harmed or threatened with harm when the
10 parents or guardian:

11 (i) Fails to supply the child with adequate food, clothing, shelter, or medical care, though
12 financially able to do so or offered financial or other reasonable means to do so;

13 (ii) Fails to provide the child proper education as required by law; or

14 (iii) Abandons and/or deserts the child.

15 (9) "Wayward" when applied to a child means and includes any child:

16 (i) Who has deserted his or her home without good or sufficient cause;

17 (ii) Who habitually associates with dissolute, vicious, or immoral persons;

18 (iii) Who is leading an immoral or vicious life;

19 (iv) Who is habitually disobedient to the reasonable and lawful commands of his or her
20 parent or parents, guardian, or other lawful custodian;

21 (v) Who, being required by chapter 19 of title 16 to attend school, willfully and
22 habitually absents himself or herself from school or habitually violates the rules and regulations
23 of the school when he or she attends; or

24 (vi) Who has on any occasion violated any of the laws of the state or of the United States
25 or any of the ordinances of cities and towns, other than ordinances relating to the operation of
26 motor vehicles.

27 (10) The singular shall be construed to include the plural, the plural the singular, and the
28 masculine the feminine, when consistent with the intent of this chapter.

29 (11) For the purposes of this chapter, "electronic surveillance and monitoring devices"
30 means any "radio frequency identification device (RFID)" OR "global positioning device" that is
31 either tethered to a person or is intended to be kept with a person and is used for the purposes of
32 tracking the whereabouts of that person within the community.

33 (12) "Undocumented" means a person who is not a citizen or national of the United
34 States and/or does not possess lawful permanent immigrant status in the United States; whether

1 [the person entered the United States unlawfully, or with proper immigration documents which](#)
2 [have expired.](#)

3 **14-1-5. Exclusive jurisdiction.** -- The court shall, as set forth in this chapter, have
4 exclusive original jurisdiction in proceedings:

5 (1) Concerning any child residing or being within the state who is: (i) delinquent; (ii)
6 wayward; (iii) dependent; (iv) neglected; or (v) mentally disabled, except that any person aged
7 seventeen (17) years of age or older who is charged with a delinquent offense involving murder,
8 first degree sexual assault, or assault with intent to commit murder shall not be subject to the
9 jurisdiction of the family court if, after a hearing, the family court determines that probable cause
10 exists to believe that the offense charged has been committed and that the person charged has
11 committed the offense. The family court shall conduct a hearing within ten (10) days of the
12 arraignment on the charge(s), unless the time for the hearing is extended by the court for good
13 cause shown;

14 (2) Concerning adoption of children;

15 (3) To determine the paternity of any child alleged to have been born out of wedlock and
16 to provide for the support and disposition of that child in case that child or its mother has
17 residence within the state;

18 (4) Relating to child marriages, as prescribed by section 15-2-11; ~~and~~

19 (5) Referred to the court in accordance with the provisions of section 14-1-28-; ~~and~~

20 [\(6\) Concerning the guardianship of undocumented, non-citizen minors with no estate,](#)
21 [under eighteen \(18\) years of age.](#)

22 SECTION 4. Sections 33-15.1-4 and 33-15.1-11 of the General Laws in Chapter 33-15.1
23 entitled "Guardianship of Minors" are hereby amended to read as follows:

24 **33-15.1-4. Power of probate court to appoint guardians.** -- The probate court in each
25 city or town, if occasion shall require, shall have power to appoint or approve guardians of the
26 persons and estates, or of the person or estate of minors who shall reside, or have a legal
27 settlement in the city or town, and of the estate within the city or town, [except as restricted by §](#)
28 [8-9-9\(b\).](#)

29 **33-15.1-11. Notice to spouse, children or heirs at law of ward.** -- (a) No petition for
30 guardianship of a minor shall be heard and no person shall be appointed guardian of the person or
31 estate of another unless notice of the application for appointment together with notice of the date,
32 time and place set for hearing has been given to the prospective ward's spouse, children, and/or
33 heirs at law who would inherit the prospective ward's estate pursuant to the terms of section 33-1-
34 1.

1 (b) Notice shall be given by the petitioner or his or her attorney at least ten (10) days
2 before the date set for hearing on the petition by regular mail, postage prepaid, addressed to the
3 prospective ward's spouse and children at their last known addresses, or, if there be no children,
4 then to the prospective ward's heirs at law next in line (under the rules of descent) as set forth in
5 section 33-1-1 only at their last known address. The petitioner or his or her attorney shall at or
6 prior to the hearing, file or leave to be filed an affidavit that notice was given setting forth the
7 names and post office addresses of the persons to whom the notice was sent and the date of
8 mailing thereof, together with a copy of the notice.

9 (c) Should the petitioner have no knowledge of the existence or whereabouts of any
10 children or of any heir at law, an affidavit to that effect filed with the court shall satisfy this notice
11 requirement.

12 (d) Notwithstanding any notice requirement of the petitioner, the court shall give notice
13 of the petition by advertisement.

14 (e) Nothing in this section shall be construed to apply to any petition for guardianship of
15 a minor as provided in § 8-9-9(b).

16 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- PROBATE COURTS

1 This act would remove from the probate courts any jurisdiction over guardianship for
2 undocumented, non-citizen minors under eighteen (18) years of age, and would transfer exclusive
3 jurisdiction to the family court to address all matters dealing with undocumented persons under
4 the age of eighteen (18) years. An undocumented person would include any person who is not a
5 citizen or national of the United States, and/or does not possess lawful permanent immigrant
6 status in the United States whether the person entered the United States unlawfully or with proper
7 immigration documents which have expired.

8 This act would take effect upon passage.

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