

2016 -- S 2717

LC004738

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO DELINQUENT AND DEPENDENT CHILDREN -- PROCEEDINGS IN
FAMILY COURT

Introduced By: Senators Coyne, Crowley, Archambault, Goldin, and Conley

Date Introduced: March 08, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 14-1-30 of the General Laws in Chapter 14-1 entitled "Proceedings in Family Court" is hereby amended as follows:

14-1-30. Conduct of hearings. -- In the hearing of any case, the general public shall be excluded; only an attorney or attorneys, selected by the parents or guardian of a child to represent the child, may attend, and only those other persons shall be admitted who have a direct interest in the case, and as the justice may direct. All cases involving children shall be heard separately and apart from the trial of cases against adults. Except, any child proceeding pursuant to §14-1-5(1)(iv) for child abuse or neglect may be open to the general public if the court makes an affirmative finding that opening the proceeding to the general public is in the best interests of the child who is the subject of the proceeding. In determining whether opening all or part of the proceeding is in the best interest of the child who is the subject of the proceeding, the judge shall consider and give due weight to the desires of that child when appropriate.

SECTION 2. Section 42-72-8 of the General Laws in Chapter 42-72 entitled "Department of Children, Youth, and Families" is hereby amended to read as follows:

42-72-8. Confidentiality of records. -- (a) Any records of the department pertaining to children and their families in need of service pursuant to the provisions of this chapter; or for whom an application for services has been made, shall be confidential and only disclosed as provided by law.

1 (b) Records may be disclosed when necessary:

2 (1) To individuals, or public or private agencies engaged in medical, psychological or
3 psychiatric diagnosis or treatment or education of the person under the supervision of the
4 department;

5 (2) To individuals or public or private agencies for the purposes of temporary or
6 permanent placement of the person, and when the director determines that the disclosure is
7 needed to accomplish that placement including any and all health care information obtained by
8 the department in accordance with the provisions of chapter 5-37.3 of the general laws and
9 applicable federal laws and regulations;

10 (3) When the director determines that there is a risk of physical injury by the person to
11 himself or herself or others, and that disclosure of the records is necessary to reduce that risk;

12 (4) To the family court including periodic reports regarding the care and treatment of
13 children; provided, that if a child is represented by a guardian ad litem or attorney, a copy of the
14 family court report will be made available to the guardian ad litem or attorney prior to its
15 submission;

16 (5) To inform any person who made a report of child abuse or neglect pursuant to § 40-
17 11-3, whether services have been provided the child as a result of the report; provided, however,
18 that no facts or information shall be released pursuant to this subsection other than the fact that
19 services have been or are being provided;

20 (6) To permit access to computer records relating to child abuse and neglect
21 investigations by physicians who are examining a child when the physician believes that there is
22 reasonable cause to suspect that a child may have been abused or neglected;

23 (7) To the office of the department of attorney general upon the request of the attorney
24 general or assistant attorney general when the office is engaged in the investigation of or
25 prosecution of criminal conduct by another relating to the child or other children within the same
26 family unit;

27 (8) To the department of corrections in the case of an individual who has been transferred
28 to the jurisdiction of that department pursuant to the provisions of § 14-1-7.3 "certification" or §
29 14-1-7.1 "waiver of jurisdiction"; and

30 (9) To the office of the department of the attorney general upon the request of the
31 attorney general or assistant attorney general when the office is engaged in the investigation of or
32 prosecution of criminal conduct as defined in § 40-11-3.2.

33 (10) To individuals employed by a state or county child welfare agency outside of Rhode
34 Island when the director determines that the information is needed to ensure the care, protection

1 and/or treatment of any child; provided, however, any records relating to allegations previously
2 determined to be unfounded, unsubstantiated, or not indicated shall not be disclosed.

3 (11) Whenever a person previously under the supervision of the training school becomes
4 subject to the jurisdiction of the department of corrections as an adult offender, the director of
5 corrections or his or her designee shall receive, upon request, the portions of the person's training
6 school records limited to the escape history, disciplinary record, and juvenile classification
7 history.

8 (12) In an administrative hearing held pursuant to § 42-35-9, the records, or exact copies
9 of the records, shall be delivered to the administrative hearing officer pursuant to a written
10 request by one of the parties, and shall be delivered to the party making the request or shall be
11 reviewed in camera by the administrative hearing officer for purposes of making a determination
12 of relevancy to the merits of the administrative matter pending before the hearing officer, as the
13 hearing officer may direct. If the records or a portion are relevant to the matter, those records may
14 be viewed and/or copied by counsel of record, at the expense of the party requesting the records.
15 The records shall not be disseminated in any form beyond the parties, counsel of record and their
16 agents, and any experts, except as otherwise specifically authorized by the hearing officer, and
17 provided further that at the conclusion of the action, the records shall be sealed.

18 (13) In a criminal or civil action, the records, or exact copies of the records, shall be
19 delivered to a court of proper jurisdiction pursuant to a subpoena duces tecum, properly issued by
20 one of the parties, and shall be delivered to the party issuing the subpoena or shall be reviewed in
21 camera by the trial justice for purposes of making a determination of relevancy to the merits of
22 the civil or criminal action pending before the court, as the court may direct. If the records or a
23 portion are relevant to the civil or criminal action, those records may be viewed and/or copied by
24 counsel of record, at the expense of the party requesting the records. The court shall issue a
25 protective order preventing dissemination of the records in any form beyond the parties, counsel
26 of record and their agents, and any experts, except as otherwise specifically authorized by the
27 court, and provided further that at the conclusion of the action, all records shall be sealed.

28 (c) The director ~~may~~ shall disclose the findings and facts ~~or other information~~ about a
29 child abuse or neglect case ~~as the director deems necessary in a case of child abuse or neglect~~
30 ~~which~~ that has resulted in a child fatality or near fatality.

31 (1) Except as otherwise provided in subsection (c)(2) of this section, the data or
32 information which must be disclosed includes, without limitation:

33 (i) A summary of the report of abuse or neglect and a factual description of the contents
34 of the report;

1 (ii) The date of birth and gender of the child;

2 (iii) The date that the child suffered the fatality or near fatality;

3 (iv) The cause of the fatality or near fatality, if such information has been determined;

4 (v) Whether the department of children, youth, and families had any contact with the

5 child or a member of the child's family or household before the fatality or near fatality and, if so:

6 (A) The frequency of any contact or communication with the child or a member of the

7 child's family or household before the fatality or near fatality and the date on which the last

8 contact or communication occurred before the fatality or near fatality;

9 (B) Whether the agency which provides child welfare services provided any child welfare

10 services to the child or to a member of the child's family or household before or at the time of the

11 fatality or near fatality;

12 (C) Whether the agency which provides child welfare services made any referrals for

13 child welfare services for the child or for a member of the child's family or household before or at

14 the time of the fatality or near fatality;

15 (D) Whether the agency which provides child welfare services took any other action

16 concerning the welfare of the child before or at the time of the fatality or near fatality; and

17 (E) A summary of the status of the child's case at the time of the fatality or near fatality,

18 including, without limitation, whether the child's case was closed by the agency which provides

19 child welfare services before the fatality or near fatality and, if so, the reasons why the case was

20 closed; and

21 (vi) Whether the department of children, youth, and families, in response to the fatality or

22 near fatality;

23 (A) Has provided or intends to provide child welfare services to the child or to a member

24 of the child's family or household;

25 (B) Has made or intends to make a referral for child welfare services for the child or for a

26 member of the child's family or household; and

27 (C) Has taken or intends to take any other action concerning the welfare and safety of the

28 child or any member of the child's family or household.

29 (2) The director shall not disclose the following data or information pursuant to

30 subsection (c)(1) of this section:

31 (i) Except as otherwise provided by law, data or information concerning the identity of

32 the person responsible for reporting the abuse or neglect of the child to a public agency;

33 (ii) The name of the child who suffered a fatality or near fatality or the name of any

34 member of the family or other person who lives in the household of the child who suffered

1 [fatality or near fatality:](#)

2 [\(iii\) A privileged communication between an attorney and client; and](#)

3 [\(iv\) Information that may undermine a criminal investigation or pending criminal](#)
4 [prosecution.](#)

5 (d) If a public panel is convened or established by the department to evaluate the extent to
6 which the department is discharging its child protection responsibilities, the panel or any of its
7 members or staff shall not disclose identifying information about a specific child protection case
8 nor make public any identifying information provided by the department except as may be
9 authorized by law. Any person who violates this subsection shall be subject to civil sanctions as
10 provided by law.

11 (e) If a public panel is convened or established by the department, this panel, in the
12 course of its evaluation, may review, but shall not investigate, any child fatality that is under the
13 jurisdiction of the child advocate in accordance with the provisions of § 42-73-7(2).

14 (f) In the event records and information contained within DCYF records are shared with
15 individuals or public or private agencies as specified in subsection (b) above, any such individual
16 and/or public or private agency shall be advised that the shared information cannot be further
17 disclosed, except as specifically provided for under applicable federal and/or state law and
18 regulation. Any individual and/or public or private agency who violates this subsection shall be
19 subject to civil sanctions as provided in chapter 37.3 of title 5, and any other federal or state law
20 pertinent thereto.

21 SECTION 3. Sections 42-73-2.1, 42-73-2.2 and 42-73-6 of the General Laws in Chapter
22 42-73 entitled "Child Advocate Office" are hereby amended to read as follows:

23 **42-73-2.1. Advisory committee established. --** There is hereby established an advisory
24 committee to the office of the child advocate established under § 42-73-1. The advisory
25 committee shall consist of nine (9) members, one attorney appointed by the Rhode Island Bar
26 Association; one judge or magistrate of the family court appointed by the chief judge of the
27 family court; one pediatrician with expertise in child and adolescent treatment or child abuse and
28 neglect appointed by the Rhode Island Medical Society; one psychologist with expertise in child
29 and adolescent treatment appointed by the Rhode Island Psychological Association; one Licensed
30 Independent Clinical Social Worker appointed by the Rhode Island Chapter of the National
31 Association of Social Workers; one psychiatrist with expertise in child and adolescent treatment
32 appointed by the Rhode Island Medical Society; and three (3) members, one of whom is a youth
33 or parent (foster or birth) formerly involved in the state child welfare system, familiar with duties
34 established under § 42-73-7, appointed by the child advocate. [The child advocate may](#)

1 temporarily appoint up to two (2) members for the purpose of reviewing child fatalities of a
2 particular case if the advocate determines that additional expertise would benefit the review
3 process for no more than six (6) months or the conclusion of said case, whichever is less. No one
4 shall be eligible for appointment unless he or she is a resident of this state. No member of the
5 advisory committee shall be a person who is a volunteer for, a board member of, or is employed
6 by or contractor of, any entity or agency subject to the review of, or evaluation or monitoring by
7 the child advocate pursuant to chapter 73 of title 42, or who lobbies on behalf of any entity or
8 agency subject to the review of, or evaluation or monitoring by, the child advocate pursuant to
9 chapter 73 of title 42. Each permanent member of the advisory committee shall serve a term of
10 five (5) years and may be reappointed at the conclusion of such term. All initial appointments to
11 the advisory committee shall be made no later than October 1, 2014. Any vacancy in the
12 membership of the committee shall be filled by the appointing authority for the unexpired portion
13 of the term. The committee shall elect from among the members a chair and a vice-chair.

14 **42-73-2.2. Duties. --** It shall be the duty of the advisory committee to:

15 (a) Provide advice and support to the child advocate related to the duties described in §
16 42-73-7. The committee's duties include, but are not limited to, the following:

17 (1) Establish a regular meeting schedule and form subcommittees as may be appropriate;

18 (2) Meet with the child advocate and staff to review and assess patterns of treatment and
19 services, policy implications, and necessary systemic improvements;

20 (3) Provide an annual report on its activities and recommendations in conjunction with
21 the child advocate, and submit the report to the governor, the president of the senate, and the
22 speaker of the house of representatives, on or by December 31, 2015, and annually thereafter; ;
23 and

24 (4) Review the records of selected cases of deaths of children under eighteen (18) years
25 of age, if:

26 (i) The child dies while in the custody of or involved with an agency which provides
27 child welfare services, or if the child's family previously received services from such an agency;

28 (ii) The death is alleged to be from abuse or neglect of the child; or

29 (iii) A sibling, household member or day care provider has been the subject of a child
30 abuse and neglect investigation within the previous twelve (12) months, including, without
31 limitation, cases in which the report was unsubstantiated or the investigation is currently pending.

32 The committee shall assess and analyze such cases, make recommendations regarding
33 such cases, and make recommendations for improvements to laws, policies and practices that
34 support the safety of children and prevent future deaths of children.

1 (b) The advisory committee shall be subject to the confidentiality provisions of § 42-73-
2 10.

3 **42-73-6. Annual report. --** The child advocate shall annually submit to the governor and
4 the general assembly, a detailed report analyzing the work of his or her office and any
5 recommendations resulting therefrom. [including non-identifying child fatality and near fatality](#)
6 [information and recommendations. The report shall be posted on the office of the child advocate's](#)
7 [website.](#)

8 SECTION 4. This act shall take effect upon passage.

=====
LC004738
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO DELINQUENT AND DEPENDENT CHILDREN -- PROCEEDINGS IN
FAMILY COURT

- 1 This act would make hearings on child abuse or neglect cases open to the public if doing
2 so would be in the best interest of the child. It would also provide that the director of DCYF
3 disclose findings and facts of investigations when there is a fatality or near fatality of a child. It
4 would also require that the director of DCYF disclose without limitation, information regarding
5 the age and gender of a child who suffers a fatality or near fatality, the cause and date of said
6 fatality or near fatality and whether the department has had contact with the child, the child's
7 family or household prior to the fatality or near fatality. It would also require the department to
8 disclose whether it will provide services to the child or child's family in response to the fatality or
9 near fatality.
- 10 This act shall take effect upon passage.

=====
LC004738
=====